

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

BULLETIN 529

SEPTEMBER 24, 1942.

1. MUNICIPAL REGULATIONS - STANDARDS FOR DRINKING GLASS SANITATION -
PROPOSED ORDINANCE FIXING SPECIAL STANDARDS FOR "TAVERNS".
TENTATIVELY DISAPPROVED.

September 10, 1942

Louis A. Fast, Esq.,
Assistant Corporation Counsel,
Newark, N. J.

Dear Mr. Fast:

I have your letter of August 31, 1942 with copy of proposed ordinance prescribing standards for drinking glass sanitation in Newark taverns.

The principal sections of the proposed ordinance read as follows:

"1. It shall be illegal for a tavern licensee of the City of Newark, or any of his employes or representatives, to serve beverages in drinking glasses wherein the bacterial count 10,000 per c.c. or a colon index of more than 10 is found in the swabbings from the rims of such glasses.

"2. Any person, firm or corporation violating the provisions of this ordinance shall, upon conviction, be subject to a fine of not more than \$200.00 or 30 days imprisonment in the County jail, or both, in the discretion of the court."

I am informed that under a present health regulation in Newark administered by your Food and Drug Division, the standards applied to alcoholic beverage licenses, and others as well, require that the bacteria count of drinking glasses shall not exceed 100,000, and the colon index not more than 50. That the proposed ordinance would provide a double standard by fixing, for one group only, a top bacteria count of 10,000 and a top colon index of 10, indicates that, in Newark, "taverns" require a stricter standard of drinking glass sanitation than do other places such as, say, lunch wagons. If that is the thought of the Board of Commissioners, and if the distinction can be established on the basis of evidence from clearly demonstrable experience, then the distinction may be a proper one. In the absence of such evidence, however, the newly proposed classification might be successfully attacked as unreasonable.

Speaking generally, any proper effort toward better sanitation standards is, of course, wholly commendable. I understand, however, that the 10,000 bacteria count set in your proposed ordinance is still much higher and more generous than the standard recommended by federal and state health authorities, though the colon index of 10 would appear to satisfy the strictest of public health standards.

Regarding the form and language of proposed Section 1, I offer the following suggestions and comment:

The term "tavern licensee" has no definite meaning despite its common usage. The Alcoholic Beverage Law does not afford any

definition of a tavern - in fact, neither "tavern" nor "saloon" appear anywhere in the Act. Apparently, the intention was to affect plenary retail consumption licensees. If the additional purpose was to except "non-tavern" consumption licensees such as hotels, I am afraid the question of discrimination and unreasonable classification, commented on above, would be raised.

I recognize that the language "bacterial count 10,000 per c.c." may mean not exactly 10,000, but also more than that number. For purposes of precision, however, it would be better to provide "...10,000 or more per c.c."

You will understand that these suggestions relate to matters of form and expression. Until the larger issues of discrimination and unreasonable classification are resolved, I must disapprove the proposed ordinance as submitted. This action is taken without prejudice to your right to submit evidence and arguments in support of the Board's position. I hope you will do so.

Please give me your thoughts and those of your Board of Commissioners in the light of this letter.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 - PREVIOUS RECORD - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

LABOR TEMPLE ASS'N, INC.,)
538 Broadway,)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-39 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden for the fiscal year 1942-43.)
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Albert K. Plone, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, holder of a club license, pleads guilty to the following charge:

On or about June 12, 1942, it sold alcoholic beverages to persons who were not bona fide members or guests of bona fide members of the club licensee, in violation of Rule 5 of State Regulations No. 7.

The departmental record discloses that on June 12, 1942 A.B.C. investigators entered the licensed premises and went to the barroom, where they observed a large number of people drinking alcoholic beverages. The investigators ordered and were served, without

being questioned as to their membership, two drinks of rye whiskey by one of the bartenders. Following the ordering and service of two additional drinks, the agents disclosed their identities to the bartender. The bar was then closed. The licensee, in explanation, states that the only reason the violation took place was that the defendant had rented out the hall to an outside organization and, due to the crowd, it was necessary to hire extra and inexperienced bartenders. The defendant urges that these bartenders were so busy that they did not have time to inquire whether or not their customers were members although they had been specifically instructed so to do.

A club licensee obtains its license for a fee considerably less than that charged retail consumption licensees. The privilege granted to the club licensee is expressly conditioned that sales be made only to club members and their bona fide guests. When sales are made promiscuously and with no apparent precautions taken to confine the sales within proper limits, the resultant competition with those licensees who have paid a higher license fee for the privilege of selling to the general public is most unfair.

From the record before me, it is apparent that the defendant has on many occasions rented its hall to other organizations. This being so, the defendant should have been acquainted with the problem which confronted it in catering to a large gathering where there was every likelihood that non-members of the association would be present on the premises. It was its duty to take such precautions as were necessary under the circumstances to prevent the violation of the law. In the instant case, these precautions were not effectively taken and the licensee must suffer the consequences.

I note that the defendant has a previous record, having pleaded guilty to possession of slot machines on the licensed premises, and that the defendant's license was suspended for five days in May of this year for that offense.

I have previously stated that club licensees found guilty of the sale of alcoholic beverages to non-members must expect to receive drastic punishment. See Re Democratic Club of the 11th Ward, Bulletin 495, Item 5. The penalty in this case would normally be a suspension of ten days. In view of the previous record, it must necessarily be increased to fifteen days. Five days will be remitted for the guilty plea, making a total suspension of ten days.

Accordingly, it is, on this 11th day of September, 1942,

ORDERED, that Club License CB-39, heretofore issued to Labor Temple Ass'n, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Camden for premises 538 Broadway, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing September 15, 1942, at 2:00 A.M., and ending September 25, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BY REASON OF RESIDENCE) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against MAE FRANCIS SPERRY, T/a BERLIN HEIGHTS INN, 69 White Horse Pike, Berlin, N. J.,

Holder of Plenary Retail Consumption License C-3 for the fiscal year 1941-42, issued by the Borough Council of the Borough of Berlin, and predecessor in interest to

EARLE E. ROSENBERGER, T/a BERLIN HEIGHTS INN, 69 White Horse Pike, Berlin, N. J.,

Holder of Plenary Retail Consumption License C-3 for the fiscal year 1942-43, issued by the Borough Council of the Borough of Berlin.

CONCLUSIONS AND ORDER

Mae Francis Sperry, by Earle E. Rosenberger, Attorney-in-fact, and Earle E. Rosenberger personally. Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

There were served upon the licensee, Mae Francis Sperry, charges alleging in substance that (1) in applications dated March 10, 1939, June 19, 1939, June 19, 1940 and June 10, 1941, filed by her, she falsely stated that no other individual had any interest, directly or indirectly, in the licenses or the business to be conducted thereunder, whereas in fact Earle E. Rosenberger was so interested; said false statements being in violation of R. S. 33:1-25; and (2) from March 31, 1939 until March 25, 1942 she knowingly aided and abetted Earle E. Rosenberger, a non-licensee, to exercise the rights and privileges of her license; in violation of R. S. 33:1-52.

At the hearing Mae Francis Sperry did not appear. Earle E. Rosenberger appeared and presented a power of attorney authorizing him to act on behalf of said Mae Francis Sperry.

Evidence presented at the hearing, which included a statement obtained by our investigators from Mae Francis Sperry on November 28, 1941, and testimony given by Earle E. Rosenberger at the hearing, shows clearly that the latter individual was the owner of the licensed business from March 1939 to and including the date of hearing, viz., April 13, 1942. It further appears from the testimony that Rosenberger first became a resident of the State of New Jersey in September 1936 and hence, until September 1941, was ineligible to hold a license in this State because of lack of five years' residence within the State of New Jersey.

I am satisfied from the evidence that at all times mentioned in the charges the licensed business belonged to Earle E. Rosenberger, and that Mae Francis Sperry never participated in the conduct of the licensed business or received any profits therefrom. I find the licensee guilty as charged.

An additional charge that, between December 1937 and February 1938, one William A. Wilson had acted as a "front" for Earle E. Rosenberger is dismissed solely because the Borough Council of the Borough of Berlin previously suspended for a period of twenty-one days the license then held by Wilson after it had found him guilty on said charge. In fixing a penalty, however, I shall take into consideration the fact that Rosenberger participated in this violation by setting up Wilson as a "front" for himself.

As to penalty: For the present fiscal year the license formerly held by Sperry was not renewed. Our records, however, show that Earle E. Rosenberger applied to the Borough Council of the Borough of Berlin for a plenary retail consumption license for the current fiscal year and that thereafter the Borough Council issued to him plenary retail consumption license C-3 under which he is now operating. It appears, therefore, that the unlawful situation has been corrected. This proceeding does not come within the ruling as to increased penalty to be imposed if a "front" is created or continued after July 1, 1942. While the defendant-licensee has thus escaped revocation of her license, a substantial penalty must be imposed in view of the persistent and continued character of Rosenberger's attempt to "beat" the New Jersey law. I shall suspend the license now held by Earle E. Rosenberger for a period of thirty days. Re Smalls Paradise of N. J. Inc., Bulletin 527, Item 7; Rule 2 of State Regulations No. 15.

Accordingly, it is, on this 16th day of September, 1942,

ORDERED, that Plenary Retail Consumption License C-3, now held by Earle E. Rosenberger, t/a Berlin Heights Inn, for the current fiscal year for premises located at 69 White Horse Pike, Berlin, New Jersey, be and the same is hereby suspended for a period of thirty (30) days, effective September 19, 1942, at 2:00 A.M. and terminating October 19, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

4. ELIGIBILITY - ATROCIOUS ASSAULT AND BATTERY ACCOMPANIED BY USE OF WEAPON INVOLVED MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

September 17, 1942

Re: Case No. 455

Applicant seeks a ruling as to whether any of the following crimes of which he has been convicted involved the element of moral turpitude, and, hence, render him ineligible to work for a liquor licensee or hold a liquor license in this State. R. S. 33:1-25, 26.

In 1929 he was convicted of atrocious assault and battery and sentenced to four months in the county jail. This case involved a fight at a house party, during which the applicant fractured one man's jaw with his fist and stabbed another man with a knife. The person on whom the knife was used apparently did not receive any serious injury, since it appears that he did not require any stitches, but was merely treated for lacerations.

The fact that no serious injury was inflicted is immaterial, because where atrocious assault and battery involves the use of a weapon, moral turpitude is involved. Cf. Re Case No. 375, Bulletin 465, Item 8. Since applicant is thus disqualified, it is not necessary to determine whether the element of moral turpitude is also present in applicant's two convictions of desertion -- one in 1932 and one in 1939 -- each arising out of a charge that he neglected to provide for his children. On the last occasion he was sentenced to serve one year in the county penitentiary and was released in March 1940.

It is, therefore, recommended that applicant be advised that he is not eligible to hold a liquor license or be employed by a liquor licensee in this State.

It is advisable that applicant's attention be called to the fact that his 1939 conviction of desertion is, at least, evidence of misconduct within the past five years; that, in consequence, even though more than five years have elapsed since his conviction of atrocious assault and battery and he is, therefore, under the Statute (R. S. 33:1-2.1), technically entitled to petition this Department for removal of his disqualification, it would probably be fruitless for him to do so. See Re Case No. 439, Bulletin 518, Item 13.

Harry Castelbaum,
Attorney.

APPROVED:

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - PURCHASE BY RETAIL LICENSEE OF ALCOHOLIC BEVERAGES FROM PERSON NOT HOLDING NEW JERSEY MANUFACTURER'S OR WHOLESALER'S LICENSE, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - 5 DAYS' SUSPENSION.

DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO RETAIL LICENSEE BY HOLDER OF SOLICITOR'S PERMIT, IN VIOLATION OF R. S. 33:1-2 - 5 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

MARCELLA M. ANCELLOTTI,)
T/a ANCELLOTTI'S LIQUOR STORE,)
35 First Avenue,)
Raritan, N. J.,)

Holder of Plenary Retail Distribution License D-2 issued by the Board of Commissioners of the Town of Raritan (Somerset County).)

CONCLUSIONS AND ORDER

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In the Matter of Disciplinary Proceedings against)

HARRY S. CURCIO,)
110 North Thompson Street,)
Raritan, N. J.,)

Holder of Solicitor's Permit No. 754 issued by the State Commissioner of Alcoholic Beverage Control.)

George W. Allgair, Esq., Attorney for Defendant, Marcella M. Ancellotti.

Frazer, Stoffer & Jacobs, Esqs., by Joseph M. Jacobs, Esq., Attorneys for Defendant, Harry S. Curcio.

Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to a charge alleging that:

"In or about the early part of April 1942, you purchased alcoholic beverages from Harry S. Curcio, a person not the holder of a New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulations No. 20."

Defendant-permittee has pleaded nolo contendere to a charge alleging that:

"In or about the early part of April 1942, you sold alcoholic beverages in New Jersey not pursuant to or within the terms of your solicitor's permit, in that you sold to a retail liquor licensee in this State three bottles of Vanity Fair Rosolio liquor which you had purchased from another retail liquor licensee; such sale by you being in violation of R. S. 33:1-2."

In April 1942 Joseph V. Ancellotti, husband of defendant-licensee and manager of the licensed premises, received a request from a customer for three 4/5 quart bottles of Vanity Fair Rosolio liquor. He had none in stock. He inquired of a number of salesmen who visited the store and was told by each of them that the firm for which the solicitor worked did not handle the item in question. Among the salesmen to whom he spoke was Harry S. Curcio, holder of a solicitor's permit and employed by a New Jersey wholesale licensee. Curcio advised Ancellotti that his firm did not handle the item but that he would arrange to get it for him. Thereafter Curcio purchased three 4/5 quart bottles of Vanity Fair Rosolio liquor from a retailer. Curcio then sold the three bottles to Ancellotti for the same price at which he had purchased them from the retailer, and received a check drawn to his order and some cash in payment thereof.

As to penalty: In Re Susslin, Bulletin 458, Item 2, defendant's license was suspended for fifteen days after he had been found guilty (1) of purchasing alcoholic beverages from a vendor who was not the holder of a New Jersey manufacturer's or wholesaler's license, and (2) of transporting unlawfully the alcoholic beverages into this State. That case arose during a price war which was being carried on in the State of New York, and the facts therein fully warranted the penalty imposed. The offense committed herein is serious because it goes to the very root of proper liquor control within this State. The only mitigating circumstance seems to be that the violation was motivated chiefly by a desire to accommodate the customer. Under all the circumstances, I shall suspend both the license and the permit for ten days; in each case five days of the penalty will be remitted because of the plea.

Accordingly, it is, on this 17th day of September, 1942,

ORDERED, that Plenary Retail Distribution License D-2, issued to Marcella M. Ancellotti, t/a Ancellotti's Liquor Store, by the Board of Commissioners of the Town of Raritan, for premises 35 First Avenue, Raritan, be and the same is hereby suspended for a period of five (5) days, commencing September 28, 1942, at 1:00 A. M. and terminating October 3, 1942, at 1:00 A.M.; and it is further

ORDERED, that Solicitor's Permit No. 754, issued to Harry S. Curcio by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of five (5) days, effective September 28, 1942, at 7:00 A.M. and terminating October 3, 1942, at 7:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

6. APPELLATE DECISIONS - D'ANNIBALE v. TOWNSHIP OF SPARTA.

MAGDALINE D'ANNIBALE,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF SPARTA,)
)
 Respondent)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Vita A. Concilio, Esq., Attorney for Appellant.
 William A. Dolan, Esq., by Lewis P. Dolan, Esq., Attorney for Respondent.
 E. M. Scherer, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises known as Mohawk Inn, located on the Boardwalk, Lake Mohawk, Sparta, New Jersey.

The answer sets forth that the license was denied because, among other reasons:

"(1) It appeared that, while proceedings of revocation against Joseph D'Annibale were pending, application for the issuance of a license to the tavern known as Lake Mohawk Inn was made by both Joseph D'Annibale and Magdaline D'Annibale. Therefore, it would appear that, whereas Joseph D'Annibale was anticipating the penalty of revocation of the license, that Joseph D'Annibale and Magdaline D'Annibale, his wife, desired to continue to operate the business in either his name or the name of his wife, Magdaline D'Annibale, and it would appear that both applications were actually for the joint benefit of Joseph D'Annibale and Magdaline D'Annibale.

"(2) That it was proposed to operate Lake Mohawk Inn in the same manner as if the license of Joseph D'Annibale had not been revoked with the exception that any profit or loss would be charged to only Magdaline D'Annibale.

"(3) That the application of Magdaline D'Annibale was a mere subterfuge in an attempt to operate Lake Mohawk Inn to the same extent and in the same manner as if the license had been granted to Joseph D'Annibale."

The minutes of the meeting of the Township Committee at which the license was unanimously denied show that petitions containing more than 300 names had been filed requesting denial of the license upon substantially the same grounds set forth in the answer and that a number of objectors were then heard.

For the past four or five years Joseph D'Annibale has been employed as manager of a meat market. In September 1941 he and his wife, Magdaline D'Annibale, purchased the premises known as Mohawk Inn. The Inn contains a barroom situated below the level of the boardwalk, a restaurant and soda fountain on the floor level with the boardwalk, and a number of rooms on the second floor. Mr. and

Mrs. D'Annibale occupy some of the rooms on the second floor and the other rooms apparently are rented out to other persons. It appears from the testimony that, at the time of purchase, Joseph D'Annibale contributed \$1200.00, Magdaline D'Annibale contributed \$1300.00, and that both entered into a purchase money mortgage for the balance of the purchase price. At the same time they obtained from the former owner a bill of sale covering all the furniture and fixtures located in the "hotel, barroom and restaurant known as Mohawk Inn."

Shortly after they had purchased the property, Joseph D'Annibale applied for and obtained a transfer of a plenary retail consumption license which had previously been issued to another person for the barroom at the Inn. Thereafter, Joseph D'Annibale occasionally worked on the licensed premises during the times his services were not required as manager of the meat market. Magdaline D'Annibale testified that she operated the restaurant and hotel as her separate business. It is clear from the testimony that she also acted as manager of the licensed premises and frequently tended bar therein. It appears that all moneys received from the operation of the barroom, restaurant and hotel were placed in a single banking account which stood in the husband's name. There is a grave question as to whether or not from the very beginning the licensed business was not owned by both husband and wife, in which event the license should have been transferred to both names.

On June 11, 1942, respondent herein served charges upon Joseph D'Annibale requiring him to show cause why the license he then held should not be suspended or revoked because he had falsely stated in his application for the transfer of the license that he had never been convicted of a crime, whereas in fact, in 1936, he had been convicted of the crime of fornication. On June 18th Magdaline D'Annibale filed the application for a license which is the subject of this appeal. On June 19th respondent revoked the husband's license after receiving a letter from him tendering surrender of the license and contending that the failure to disclose his conviction had been due to an oversight and inadvertence on his part. Joseph D'Annibale did not file an application to renew his license for the present fiscal year but he had caused to be published a notice of intention to apply for renewal. Appellant testified that she decided to operate the licensed business after her husband had received the copy of charges which resulted in the revocation of his license.

It sufficiently appears from the foregoing evidence that, if the license is granted herein, the business will be conducted in substantially the same manner as during the preceding fiscal year except that the husband can no longer participate in the operation of the business. It further appears that the present application is an attempt to avoid the effect of the revocation of the husband's license. The case is distinguished from Graham v. Newark, Bulletin 513, Item 7, wherein it satisfactorily appeared that the wife intended to own and operate the business as her separate property. In the present case the evidence leads me to conclude that, if the license were granted to the wife, the licensed business would, for all practical purposes, continue to be a joint enterprise operated for the benefit of the husband and wife, as heretofore. Under the circumstances, I find that the action of respondent in denying the license was reasonable.

Accordingly, it is, on this 21st day of September, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

7. APPELLATE DECISIONS - BUCZEK v. TOWNSHIP OF PISCATAWAY.

JOHN BUCZEK,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS AND ORDER
)	
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF PISCATAWAY,)	
)	
Respondent)	
-----)	

William C. Egan, Esq., Attorney for Appellant.
 Maurice M. Bernstein, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of renewal of a plenary retail consumption license for premises at 381 Rushmore Avenue, Arbor, Township of Piscataway.

The answer sets forth that renewal was denied for the reason that "the continued operation of the said premises as a tavern has constituted and will continue to constitute a nuisance and a detriment to the health, safety, comfort and morals of the residents of Piscataway Township who reside in the immediate neighborhood of 381 Rushmore Avenue."

After appellant filed application for renewal, a written petition signed by forty persons objecting to renewal was filed with the clerk. At the hearing held thereon, about twenty objectors testified. The members of the Township Committee, after also hearing appellant and his witnesses, unanimously voted to deny renewal.

At the hearing herein, respondent produced twenty witnesses who reside nearby. From their testimony it appears that appellant caters largely to a colored trade which comes from Plainfield, particularly on Sunday when the licensed premises in Plainfield are closed. Nearly all of these witnesses testified that they are annoyed by the actions of patrons who make excessive noise, sing, fight and swear, both inside and outside of the tavern, during the early hours on Saturday and Sunday and throughout the day on Sunday. A number of these witnesses testified that they had seen intoxicated persons leave these premises. Other witnesses testified that these intoxicated people had trespassed on their property. One witness testified that:

"Men go in there and come out so drunk they don't get any further than ten or twelve feet from the place and they fall and their legs lay over the curb."

The Chief of Police testified that on one or two occasions a police officer was sent to the licensed premises and was confronted by twenty or twenty-five negroes, about half of whom were drunk and "more or less helpless to do anything."

On behalf of the licensee, he, his sister, his brother and four persons who reside near the licensed premises, testified that the premises had always been properly conducted. All of them admitted that there was a little noise and loud talking but said that it was "nothing out of the ordinary."

If there were any doubt as to the weight of evidence herein, it would be resolved in favor of respondent by reason of the following exhibit herein containing a resume of facts appearing on the police blotter of the Township of Piscataway:

- "The following is a record of arrests, calls and investigations at the Rushmore Cafe from January 1st, 1942 until July 1st, 1942:
- "January 1, 1942, one Robert Mercier was arrested at the Rushmore Cafe for petty larceny, he had stolen a coat at this place, he pleaded guilty and was sentenced to 30 days in the County Workhouse.
- "January 20, 1942, received a call from the bartender at the Rushmore Cafe that a person by name of William White had broken a window in this place, the offender was gone on arrival of police, bartender said he would make a complaint in the morning, no complaint was received.
- "January 30, 1942, David McGee, negro, complained that he had been beaten by a group of negroes at the Rushmore Cafe, said he would make a complaint but must have changed his mind.
- "April 19, 1942, William Goff arrested at the Rushmore Cafe for being drunk and disorderly, no person wished to make a complaint and he was released in the morning.
- "April 26, 1942, called to Rushmore Cafe due to a negro disturbance, no complaints made, no arrests.
- "May 3, 1942, dice game raided in front of the Rushmore Cafe, all negroes, two arrested and fined \$10.00 each.
- "May 20, 1942, report received at police hdqts that a panhandler from the Rushmore Cafe was bothering neighbors, tried to locate offender but could not.
- "May 31, 1942, called to Rushmore Cafe due to a disturbance by negroes, gone on arrival of police.
- "June 14, 1942, called to Rushmore Cafe due to a disturbance by negro patrons, no complaints were made so ordered offenders out of town.
- "June 21, 1942, called to the Rushmore Cafe by Mr. Buczek on two occasions, both disturbances by the negro patrons, no complaints made, police unable to make arrests due to lack of evidence or complaint.
- "June 23, 1942, called to Rushmore Cafe by Mr. William Goff, Sr., claimed his son Willie Goff was drunk and disorderly, police found Willie sitting in the Rushmore Cafe and placed him under arrest, he was sentenced to 60 days in the Middlesex County Workhouse."

The evidence herein shows that the premises have been improperly conducted during the preceding fiscal year. The action of respondent, in refusing to renew the license, appears to be entirely reasonable. Hence, the action of respondent is affirmed.

Accordingly, it is, on this 21st day of September, 1942,

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

ORDERED, that the extension of appellant's 1941-42 license, granted by order of June 29, 1942 to permit appellant to continue to operate pending disposition of this appeal, be and the same is hereby terminated, and that the appellant cease any alcoholic beverage activity thereunder forthwith.

ALFRED E. DRISCOLL,
Commissioner.

8. APPELLATE DECISIONS - GABELLONI v. FRANKLIN TOWNSHIP (SOMERSET COUNTY).

ANGELO GABELLONI,)
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF FRANKLIN)
TOWNSHIP, SOMERSET COUNTY,)
Respondent)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Ernest S. Glickman, Esq., Attorney for Appellant.
Frederick H. Dahmer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Respondent denied appellant's application for a plenary retail distribution license for premises located on Route #27, Franklin Township. Hence this appeal.

The denial was based, in part, upon respondent's contention that the use of the premises for the sale of alcoholic beverages would violate certain provisions of the local zoning ordinance.

Appellant's premises are situated in an agricultural district where, for some eleven years prior to the adoption of the zoning ordinance in August 1940, and ever since then, he has conducted a restaurant and gas service station. Such types of business, although prohibited in an agricultural district under Section IV of the ordinance, are permitted under Section II to continue as non-conforming uses existing prior to the adoption of the ordinance.

Question arises, therefore, whether the sale of alcoholic beverages is the same as, or so closely allied and incidental to, the use of appellant's premises as a restaurant as to be protected under Section II of the ordinance. This question was answered in the negative in the case of Marinaccio v. Ocean, Bulletin 264, Item 11, where the late Commissioner Burnett said:

"However, this non-conforming use of the premises as a restaurant does not include the privilege to sell alcoholic beverages there. When the restaurant began operation (1928-9) and when the zoning ordinance was

adopted (1930), Prohibition was in effect. As a result, although the restaurant may continue as a non-conforming use in this residential zone, it may so continue only as a non-liquor vending restaurant, since its exemption from the ordinance is limited to its non-conforming character at the time that ordinance was adopted. R.S. 40:55-48; Sec. 5, Ordinance of June 6, 1930.

"The privilege of selling or serving liquor is not inherent in or incident to a restaurant business. Such a privilege is a new and independent use."

See also Talbot et al. v. Keppler et al., Bulletin 117, Item 1; Miles v. Piscataway, Bulletin 484, Item 5.

It is apparent that the issuance of the license applied for by appellant would be contrary to the terms of the local zoning ordinance and, therefore, respondent was fully justified in refusing to grant appellant's application. Since this issue is dispositive of the entire appeal, it is unnecessary to consider any of the other reasons assigned by respondent in support of its action.

Accordingly, it is, on this 21st day of September, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

9. APPELLATE DECISIONS - CODINGTON v. WARREN TOWNSHIP AND BENDER.

HORACE CODINGTON,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WARREN, LUDWIG F.)
BENDER and ANTOINETTE BENDER,)
Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

Horace Codington, Pro Se.
Lester Sandles, Esq., Attorney for Respondent Licensees.

BY THE COMMISSIONER:

This is an appeal by a taxpayer and resident of Warren Township from the action of the Township Committee of that municipality in granting a transfer of a plenary retail consumption license to Ludwig F. Bender and Antoinette Bender, his wife, on June 8, 1942, and renewing said license for the present fiscal year for premises on Mt. Bethel Road, Warrenville, Warren Township.

The only ground of appeal is the bald assertion by appellant that the issuance of a license to a female is against "public health and morals, being contrary to public policy." No proof of any kind, however, was presented in support of this assertion.

reciting that appellant "has been warned that any further violation of the State Alcoholic Beverage Law or Regulations, or of any of the local regulations, or of any of the conditions herein, will result in disciplinary proceedings against his license for suspension or revocation thereof, or in a refusal to renew such license", provides that the Township Committee consents to a reversal of its refusal to renew appellant's license and that it be directed to issue such renewal upon the following conditions:

"1. There shall be no orchestra, singing or other form of entertainment whatsoever, except the playing of an automatic phonograph, upon the licensed premises. The sound from such automatic phonograph shall be so controlled that it shall not be audible beyond a distance of 200 feet from the licensed premises.

"2. No barbecue pit or stove shall be permitted to be operated on the outside of the premises owned or under the control of the licensee for the cooking of barbecue sandwiches."

Under all of the circumstances, no reason appears why this matter should not be disposed of in the manner suggested in respondent's resolution.

Accordingly, it is, on this 21st day of September, 1942,

ORDERED, that the action of respondent be reversed, and it is directed to issue to appellant forthwith the license as applied for, subject, however, to the aforesaid conditions to be inserted in the license.

Alfred E. Driscoll
Commissioner.

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