STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 54 December 7, 1934

1. APPELLATE DECISIONS - GOLDSTEIN VS. TRENTON

JOHN GOLDSTEIN,
Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Crawford Jamieson, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license.

The appellant has complied with all the formal requirements pertaining to his application. There is favorable testimony with reference to his personal fitness and the suitability of the premises is unquestioned.

Respondent's sole contention is that the application was properly denied because of its resolution of May 31, 1934, limiting the number of plenary consumption licenses to be issued in the City of Trenton to 250, and the issuance of the allotted number. For the reasons stated in Central Restaurant, Inc. vs. Trenton, Bulletin #44, Item #5, this contention cannot be sustained.

It developed, however, that the premises sought to be licensed, together with the fixtures thereon, are owned by a licensed New Jersey brewery and were so owned on December 6, 1933.

Section 40 of the Control Act declares that it shall be unlawful for any person interested in the manufacturing or wholesaling of alcoholic beverages to be interested directly or indirectly in the retailing thereof; "provided, however, that prior to December sixth, one thousand nine hundred and thirty-six, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages."

The section does not in terms declare that ownership of or other interest in licensed premises constitutes an interest in the business conducted thereon, but the quoted proviso plainly contemplates this conclusion.

The objective of the section was to divorce the manufacture of alcoholic beverages from the retail sale thereof - to

eliminate, so far as the brewing industry was concerned, the curse of so-called brewery owned saloons. The aim of the proviso was to effect a three year moratorium to protect interests existing at the time the Control Act was passed against forced liquidation in the present unfavorable market. Until 1936 the proviso exempts not only ownership of the building in which the licensed premises are located but also any other interest in the licensed premises. The language and the reason are broad enough to include the ownership of the fixtures.

Since the brewery ownership of the building and fixtures existed when the Control Act took effect on December 6, 1933, Section 40 will not apply until December 6, 1936.

The action of the respondent is therefore reversed.

D. FREDERICK BURNETT,
Dated: November 30, 1934 Commissioner

2. APPELLATE DECISIONS - ROBINSON and FOUNTAIN VS. NEWARK

SAMUEL ROBINSON and TERRENCE FOUNTAIN,
Appellants,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS

Abraham I. Harkavy, Esq., Attorney for Appellants
No Appearance for Respondent.

BY THE COMMISSIONER:

This is an appeal from the revocation of appellants' plenary retail consumption license.

The revocation was caused by appellants' admitted violation of the Control Act in possessing, with intent to sell, illicit alcoholic beverages. After the license was revoked, application was made to respondent to modify the order of revocation and mitigate the punishment to a suspension of the license. Although viewing this application favorably, respondent deemed itself without jurisdiction to act because of the Commissioner's ruling in Re Hendrickson, Bulletin #47, Item #10 and so refused to consider the application. Therefore, this appeal was filed.

Pending the appeal, respondent took the initiative by certifying to the Commissioner that it deemed the order of revocation too harsh and suggested the order be modified and converted into an order of suspension.

Respondent misconceived the purport of the ruling in Re Hendrickson, (supra). That opinion merely was to the effect that after an issuing authority had denied an application for a license, it had no jurisdiction to rehear the matter and redetermine the facts. The opinion did not go so far as to deprive the

issuing authority of power to mitigate a penalty or punishment previously inflicted. It had such power. Bulletin #53, Item #5. This was not promulgated, however, until after the respondent had ruled as aforesaid that it had no power to consider appellants' application.

Notwithstanding respondent's failure to consider the merits of the application for modification, the Commissioner has the power on appeal to set aside or modify a penalty imposed by a local issuing authority. Such power, however, will be sparingly exercised and only with the greatest caution. The revocation of the license was a proper exercise of respondent's authority and its action would be affirmed without more were it not for the fact that respondent itself requested a reversal.

Because of that request, and in order to afford appellants their opportunity to present such mitigating circumstances as they may be able to adduce before the issuing authority that administered the original punishment, the action of respondent is reversed and the case remanded to respondent for further proceedings in accordance with this opinion.

D. FREDERICK BURNETT,
Commissioner

Dated: December 1, 1934

3. PARTNERSHIP - INTRODUCTION OF NEW PARTNER AFTER ISSUANCE OF LICENSE REQUIRES NEW LICENSE - WHERE INDIVIDUAL LICENSEE SUBSEQUENTLY ENTERS INTO PARTNERSHIP, BUSINESS MAY NOT BE CONDUCTED BY PARTNERSHIP UNDER ORIGINAL LICENSE

D. Frederick Burnett, Commissioner.

I represent an individual who is the holder of a plenary retail consumption license in the City of Newark. He desires to take a partner into his business and form a partnership.

Would a transaction of this type come within the section of the Act prohibiting a transfer of a license?

I contend that in view of the fact that the partnership is made up of one member who has already been granted a license and paid his fee that he should not be penalized the full amount by the City when he returns the license originally held by him.

Very truly yours,
SIDNEY SIMANDL

November 15, 1934

Sidney Simandl, Esq.,
Newark, N. J.

Dear Sir:-

In Bulletin #19, Item #6, the Commissioner ruled that although a literal construction of Section 23 of the Control Act, which provides that licenses are not transferable, might result in the prohibition of operations under a partnership license by the remaining partner after the retirement of a partner, no such conclusion was contemplated by the Legislature. The issuing

authority must pass upon the qualifications of each member of a partnership applicant. When, therefore, a license is issued to a partnership, presumably each member thereof is qualified to obtain a license and the retirement of a partner should not prevent the remaining partner from continuing under the partnership license without being required to pay another license fee.

When dealing with the proposed addition of a partner, however, a different conclusion must be reached. The issuing authority must investigate the qualifications of the new party as a new applicant. The vesting of any interest in the license in the new party clearly constitutes a transfer or other disposition of the license within the prohibition of Section 23 of the Control Act.

It is the ruling of the Commissioner that where an individual licensee enters into a partnership, the business may not be conducted by the partnership under the original license. In the event that the original license is surrendered, the amount of refund must be calculated in the manner set forth in Section 28.

While it may be suggested that equitably a greater refund than that provided for in Section 28 should be allowed in the particular situation presented, the statute contains no authority for such action.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

4. LICENSEES - CORPORATIONS - SUBSIDIARY CORPORATIONS MAY NOT OPERATE UNDER LICENSES GRANTED TO PARENT CORPORATION

D. Frederick Burnett, Commissioner.

As you know, this firm represents The Distillers Company, Limited, which has recently applied to the Commissioner of Alcoholic Beverage Control for a Rectifier and Blender License for its plant at Linden, New Jersey. A situation is presented with respect to a subsidiary of this corporation which I have discussed with you informally by telephone and which I now wish to place before you for a definite ruling.

The Distillers Company, Limited will manufacture six brands of gin under processes supplied by British companies affiliated with The Distillers Company, Limited of Edinburgh, the parent company of the applicant. The Company plans to market these gins through regional distributors who in turn will sell to the wholesale and retail trade. All such gins except Gordon's will be sold directly by the Company to such distributors. With respect to Gordon's gin, a different procedure is contemplated. The Company now has a subsidiary by the name of Gordon's Dry Gin Company, Limited, a Delaware corporation. It is planned that this company shall purchase Gordon's gin from The Distillers Company, Limited and resell it to the regional distributors, twenty or so in number, who will make the wholesale and retail distribu-

tion. A contract will be entered into between The Distillers Company, Limited and Gordon's Dry Gin Company, Limited so providing, and contracts with the regional distributors will be in the name of the latter.

Gordon's Dry Gin Company, Limited will be wholly owned by The Distillers Company, Limited. Its officers and directors will be officers and directors of The Distillers Company, Limited, and its employees will at the same time all be members of the staff of The Distillers Company, Limited. Its offices will be at the plant in Linden. Thus there will be in almost every respect complete identity between the two companies, and in fact the subsidiary will be operated as a sales department of the parent.

The question arises as to whether it will be necessary for Gordon's Dry Gin Company, Limited to have a wholesaler's license under the Alcoholic Beverage Control Act of New Jersey. Were the subsidiary an independent marketing company we should not doubt that it would have to become licensed. In the present case, however, where the identity is practically complete and where the subsidiary acts merely as a sales department and as such deals not with the wholesale or retail trade generally but with a limited number of large distributors, it may be that different considerations will be held to apply.

As I explained to you in our telephone conversations, we are discussing this same question with the Code authorities in Washington with the hope that it will not be necessary for the subsidiary to assume an independent status as a wholesaler and so be subject to the Wholesalers' Code. We have not yet heard from the authorities in this regard.

Yours very truly,
DAVIS POLK WARDWELL GARDINER & REED

November 26, 1934

Davis, Polk, Wardwell, Gardiner & Reed, Esqs.,
New York, N. Y.

Gentlemen:

You state that The Distillers Company, Limited, which has filed application for a rectifier and blender license, contemplates selling Gordon's gin to Gordon's Dry Gin Company, Limited, a subsidiary, which will resell it to regional distributors and inquire whether Gordon's Dry Gin Company, Limited, requires a license.

It is entirely clear that if Gordon's Dry Gin Company, Limited, were an independent corporation, it would require a wholesale license before it could sell alcoholic beverages in any manner. If it desired to sell alcoholic beverages within and without this State, it would require a plenary export wholesale license.

You suggest, however, that since there is substantial identity between Gordon's Dry Gin Company, Limited, and The Distillers Company, Limited, a license held by the latter might be considered sufficient to permit sales by the former in the manner contemplated. The Commissioner's ruling is to the contrary. Despite the substantial identity between the corporations, they are in legal contemplation distinct and a license held by the parent

furnishes no authority to the subsidiary to purchase alcoholic beverages from the parent and resell same. The subsidiary is not at liberty to disregard its independent corporate entity because it would be to its advantage to do so in the particular situation presented. Cf. Jackson vs. Hooper, 76 N.J.Eq. 592 (E. & A. 1909).

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

5. LANDLORD AND TENANT - DISTRAINT - LANDLORD MAY DISTRAIN BUT REQUIRES SPECIAL PERMIT TO SELL

D. Frederick Burnett, Commissioner.

Will you kindly let me know whether or not a landlord may distrain the alcoholic beverage stock of a tenant in default, and further whether or not, the landlord has a right to expose the alcoholic beverage stock of the tenant, to the ordinary sale under distress proceedings without first obtaining a license?

In going over the Beverage Act, I find in paragraph 52 of the Act is the nearest provision concerning my questions. However, it seems that paragraph 52 pertains mainly to the rights of a landlord in event of a violation of the Beverage Act on the par of the tenant. It does go on to provide, however, that upon the termination of the lease, in event of a violation, the landlord i entitled to possession, and in addition thereto, such further rights as the lessor-landlord may have under the terms of the lea and/or by law. It seems to me that one of the rights of a landlord, given to him by law, is the right to distrain.

Very truly yours,
LEON GEROFSKY

November 26, 1934

Leon Gerofsky, Esq.,
Somerville, N. J.

Dear Sir:-

Section 23 of the Control Act provides that:

"Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this act."

Although this section prohibits a landlord from obtaining through legal proceedings, any interest in the license or rights thereunder, it does not refer to levies, executions, distraints, etc. upon merchandise owned by the licensee.

In the absence of any prohibition in the Control Act, the

landlord has the right to distrain pursuant to statute and decisions to the same extent as he would have when dealing with merchandise other than alcoholic beverages. The alcoholic beverages distrained may not, however, be sold by the landlord directly or through an agent without first obtaining from this Department a special permit authorizing such sale.

Section 52 of the Control Act does not bear on the matter This section merely confers upon the lessor a right to terminate the lease, take possession of the leased premises and exercise such rights as may be reserved to him by the terms of the lease and by law, where the lessee has violated the Control Act. It furnishes an additional right and was not intended to limit other rights which a lessor may have with respect to the leased premises and the contents thereof in the absence of any violation of the Control Act by the lessee.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

6. APPELLATE DECISIONS - LUCIDI VS. TRENTON

SPARTACO LUCIDI,
Appellant

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Messrs. Felcone & Felcone, by Joseph J. Felcone, Esq., Attorneys for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's action in denying appellant's application for a plenary retail consumption license for premises located at 845 Chambers St., Trenton.

Respondent's sole contention was that the application was properly denied because of its resolution of May 31, 1934, limiting the number of plenary retail consumption licenses to be issued in the City of Trenton to 250, and the issuance of the allotted number. Pending determination of this case, however, respondent repealed the said resolution. Accordingly, the action of respondent would be reversed, without more, were it not for the following facts.

At the hearing, although not raised by the pleadings, it developed that the premises sought to be licensed are leased to appellant by and owned by a brother of the appellant who is a state beverage distributor licensee. The lessor has owned the

land for the past thirteen years. Subsequent to December 6, 1933, the building existing thereon was demolished and the present building constructed.

Section 40 of the Control Act declares that it shall be unlawful for any person interested in the wholesaling of alcoholic beverages to be directly or indirectly interested in the retailing thereof. Under this section, the ownership of licensed premises constitutes an interest in the business conducted thereon. Goldstein vs. Trenton, Bulletin #54, Item #1. Accordingly, no retail license may be issued for premises owned by a person interested in the wholesaling of alcoholic beverages, unless the situation is governed by the proviso contained in Section 40. This proviso reads:

> "provided, however, that prior to December sixth, one thousand nine hundred and thirty-six, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages."

In Goldstein vs. Trenton, supra, it was held that the aim of this proviso was to effect a three year moratorium to protect interests existing at the time the Control Act was passed against forced liquidation in the present unfavorable market. If, therefore, the building existing on December 6, 1933 had not been demolished, this case would be governed by Goldstein vs. Trenton.

The question in the instant case is whether the construction of a new building subsequent to December 6, 1933, upon land owned prior to that date and in replacement of a building existing on that date, comes within the above exception.

In order to obtain the benefit of ownership of property, it may be necessary to alter, remodel, demolish or reconstruct buildings existing thereon. If one were unable to do so, a potential source of income to meet taxes and fixed charges against the property would be denied him and the property might remain a dead weight upon his hands. This comes within the hardship sought to be avoided by the proviso. Neither Section 40 nor its proviso refers to buildings. It does refer to ownership of or mortgage upon or other interest in licensed premises - words which are apt when referring to land but which have no exclusive significance concerning buildings. There is nothing, therefore, in the proviso which confines its exemption to cases where there was a building in existence on December 6, 1933 or which contemplates the continued existence of any building. By its express terms, it does apply if the ownership of licensed premises existed on December 6, 1933.

Hence, since the licensed premises were owned by the lessor prior to December 6, 1933, the subsequent demolition of the building then standing thereon and the construction of the present building do not take the case out of the proviso.

The action of respondent is therefore reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 3, 1934

7. APPELLATE DECISIONS - PAPIO VS. SUMMIT

FRANK PAPIO,
Appellant

-vs-

COMMON COUNCIL OF THE CITY OF SUMMIT,
Respondent.

ON APPEAL
CONCLUSIONS

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Pizzi & Pizzi, Esqs., by F. A. Pizzi, Esq., Attorneys for Appellant
Frederick C. Kentz, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is a motion made by respondent to dismiss an appeal from its action in denying an application for a plenary retail consumption license on the ground that the appeal was not filed within thirty days after the denial of the application in accordance with Section 19 of the Control Act.

Respondent denied appellant's application on June 26, 1934. No action was taken by appellant until August 7, 1934, at which time he applied to respondent for reconsideration of his application. Shortly thereafter, appellant was given an opportunity by respondent to appear before it in support of the motion for reconsideration but the record reveals no further formal action taken thereon. Notice and petition of appeal were not served upon respondent until September 4, 1934, and were not filed with the Commissioner until September 25, 1934, almost three months after the denial of the application. This appeal is from the original denial of appellant's application.

Without considering whether the thirty-day period fixed by Section 19 is jurisdictional, it is clear that no sufficient cause exists in the instant case for waiving this statutory provision. The only excuse offered by appellant for his failure to act within thirty days after the denial of his application is that he was misled by the action of respondent in entertaining his petition for reconsideration. This reason is without force since the petition to reconsider was not filed until more than thirty days had elapsed after the denial of the application.

The motion to dismiss the appeal is granted.

D. FREDERICK BURNETT,
Commissioner

Dated: December 4, 1934

8. LICENSED PREMISES - DESTRUCTION BY FIRE - SPECIAL PERMIT PENDING APPLICATION FOR TRANSFER

November 13, 1934

A. B. Walker, Township Clerk,
Berlin, N. J.

Dear Sir:

I have yours of October 22nd requesting approval for the issuance of a duplicate license to Edward T. Harper for a

different premises than that provided for in the original license because the licensed premises were completely destroyed by fire (including the license).

I cannot approve the action of your Township Committee because Harper, despite his misfortune, is licensed to sell only at the place named in his license. A license issued in respect of one premises, cannot be utilized in respect to an entirely different premises. Hence the only way in which Harper can sell alcoholic beverages at his home will be to make application for transfer of his license to the proposed new premises.

Section 23 of the Control Act sets forth the statutory procedure which requires, among other things, publication exactly as in the case of an original license. The procedure to effect a transfer is specifically set forth in Bulletin 7, item 5.

Since the original license was itself destroyed by fire it will also be necessary for you to issue to him a certified copy of the original license, the procedure for which is set forth in Bulletin 50, item 8. It is on this certified copy that the endorsement of the permission for change of location will be made.

All sales of alcoholic beverages by Mr. Harper must therefore cease forthwith and not recommence until the proceedings for transfer have been fully completed, including, of course, the necessary advertising.

That will take, of course, the better part of two weeks. Question therefore arises as to whether I should exercise the authority conferred upon me by Section 75 of the Alcoholic Beverage Control Act, to grant a special permit. I am inclined to exercise the discretion so vested because this licensee is forced to apply for a transfer for causes entirely beyond his control. I note, however, that the place at which he now purposes to sell liquor is in his own home. Question as to whether or not that is a residential neighborhood, and if his neighbors complain. In addition, therefore, to the usual facts which must be submitted by him in his application for a special permit, I desire a certification by Harper that he has instituted the steps to transfer his license; that he has started his publication, and I will want a resolution from your governing body requesting me to exercise the discretion given under Section 75. Of course, even your governing body will not necessarily know all the complaints of the neighbors which may come to the surface through the form of publication and therefore the special permit, if granted, will be conditioned that it may be cancelled at any time by me in absolute discretion, and in no event will it remain in force and effect after your governing body shall deny his application for transfer.

This special permit, if granted, will enable Mr. Harper to sell his alcoholic beverages at his home pending the completion of the proceedings for transfer.

You will be governed accordingly, and commuicate this to Mr. Harper at once.

His application for special permit must be in the form of an affidavit setting forth the following information:

1. Name and address of applicant.
2. Kind and number of his license and by whom issued.
3. State fully whether certified copy of original license has been issued and the date thereof.
4. Address of originally licensed premises.
5. Address of proposed new premises.
6. An inventory of the alcoholic beverages now owned by permittee which will be transported to the new premises.
7. Place or places where said alcoholic beverages are now held.
8. A full statement of the reason for making application for special permit setting forth in detail the facts constituting the emergency.
9. State in full the steps already taken to effect a transfer of the license.
10. Approximate length of time which will be required to effect transfer thereof.
11. Any other facts pertinent to the issuance of such permit.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

9. APPELLATE DECISIONS - ADAMS VS. TRENTON

ANDREW ADAMS,
Appellant

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

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Crawford Jamieson, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license.

Respondent's sole contention is that the application was properly denied because of its resolution of May 31, 1934, limiting the number of plenary retail consumption licenses to be issued in the City of Trenton to 250, and the issuance of the allotted number. Pending the determination of this case, however, respondent repealed said resolution.

Although not raised by the pleadings, the record raises the question of whether a New Jersey licensed brewery is interested in the ownership of the premises sought to be licensed so as to come within the prohibition of Section 40 of the Control Act. This question arises from the fact that the premises together with the fixtures therein, are owned by a corporation, all of whose stock is owned by officers and employees of the brewery. Assuming, without deciding, that under such circumstances the brewery has an interest in the ownership of the premises, the interest in fact existed on December 6, 1933. Therefore Section 40 does not until December 6, 1936 bar the issuance of a retail license for these premises. Goldstein vs. Trenton, Bulletin #54, Item #1.

The action of respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 6, 1934

10. APPELLATE DECISIONS - NINTH WARD ITALIAN SOCIAL CLUB VS. TRENTON

NINTH WARD ITALIAN SOCIAL CLUB,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Sidney Goldmann, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a club license.

Respondent contends that the application was properly denied because (1) the premises sought to be licensed are unsuitable and (2) the issuance of a license to appellant for these premises is not socially desirable. It is unnecessary to consider the validity of these contentions inasmuch as the action of respondent must be affirmed for the reasons stated below.

Club licenses, under the Control Act, may be issued only in accordance with the rules and regulations promulgated by the Commissioner. These rules and regulations prohibit the issuance of any such license unless the club shall have been in active operation in the State of New Jersey for at least three (3) years continuously, immediately prior to the submission of the application, and shall have been in exclusive, continuous possession and use of the club house or club quarters for the same period of time. Rules and Regulations Governing Club Licenses, Bulletin #25, Item #1 (5). Appellant admittedly was not organized until May 5, 1934. It has, therefore, not been in existence for the requisite period of time to render it eligible to receive a club license.

It is contended, however, that although appellant club was formed on May 5,1934, it is the direct successor of the membership of the Circolo Filodrammatica Napoletano, a club founded in 1928, and as such is entitled to be considered as having been in existence since 1928. It may well be that where a bona fide club has been in existence for at least three years, a mere change in name would not render the organization ineligible to receive a club license. Cf. re Facts of Bayonne Publishing Co. Inc., Bulletin #35, Item #2. In the instant case it cannot be said that the identity of the Circolo Filodrammatica Napoletano has been continued in appellant. The original club had approximately 50 members and was organized for the purpose of giving dramatic performances and using the proceeds for charity. No dues were paid. Because of death and resignations the membership sank to about 20 and the club could no longer continue. Thereafter appellant organization

was formed. The officers are entirely different, none of them having been members of the former organization, the membership has been increased to approximately 235, dues are required, and no dramatic performances are attempted.

Thus appellant is a new corporation with a different name, different club rooms, different officers, different directors, different financial set-up and a different scheme of operation. It is not the same organization as Circolo Filodrammatica Napoletano simply because the remaining members of that defunct organization are now listed on its membership roll. One was a dramatic society. The other is a social club. They are not the same.

The action of respondent Board is affirmed.

D. FREDERICK BURNETT,
Dated: December 6, 1934 Commissioner

11. APPELLATE DECISIONS - KNIGHTS OF ST.STEPHEN'S CLUB VS. TRENTON

KNIGHTS OF ST. STEPHEN'S CLUB, INC., Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.

ON APPEAL
CONCLUSIONS

William A. Moore, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at 108 Roebling Avenue, Trenton.

Respondent contends that the application was properly denied because the premises sought to be licensed are within 200 feet of a church.

Section 76 of the Control Act prohibits the issuance of any license for the sale of alcoholic beverages within 200 feet of any church, except in certain enumerated situations. The distance from the entrance of appellant's premises to the nearest entrance of the church, measured in accordance with Section 76, is less than 200 feet. Accordingly, unless this case comes within one of the stated exceptions to the prohibition contained in Section 76, no license may be issued for appellant's premises.

Appellant relies on the exception in favor of clubs. This exception, however, runs only in favor of clubs "which own or are actually in possession of the licensed premises at the time" the Control Act became effective. Appellant does not own the premises sought to be licensed nor was it in possession of

the premises when the Control Act became effective. Therefore, appellant does not come within the exception relied on.

Accordingly, the action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: December 6, 1934

12. APPELLATE DECISIONS - ELIAS VS. TRENTON

ABDO ELIAS,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Ernest S. Glickman, Esq., Attorney for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises known as 18 E. Lafayette Street, Trenton.

Respondent's sole contention is that the application was properly denied because of an objection by a resident taxpayer to the issuance of the license.

This objection was based on the fact that the objector owned and resided in a house immediately adjoining appellant's premises and that he and the members of his family would be seriously inconvenienced by the anticipated noise and nuisance occasioned by the issuance of the license. The objector conceded the high character of appellant but objected to the issuance of any license for these premises.

The premises sought to be licensed are located in a neighborhood which is entirely business except for two houses, in one of which the objector resided. There is no reason to assume that if a license were issued to appellant, the business would not be conducted in an orderly and proper fashion. It has been held that general objections to the issuance of any license for premises located in a business neighborhood do not justify the denial of an application. Seashore Beverage Company vs. Way, Bulletin #47, Item #12. As was said in Bunks vs. Atlantic City, Bulletin #45, Item #14: "In a crowded urban community, almost any business use of property involves, to a certain extent, some interference with the enjoyment of neighboring property. Unless the interference is unduly burdensome, it should be regarded as merely an incident of our economic system and social set-up."

The action of respondent Board is reversed.

D. Frederick Burnett
Commissioner

Dated: December 6, 1934