COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 101. December 26, 1935

APPELLATE DECISIONS - RAJCA v. BELLEVILLE.

JOHN RAJCA, )
Appellant, )
-vs- ) ON APPEAL
BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE (ESSEX COUNTY), ) CONCLUSIONS
Respondent )

John Rajca, Pro Se.

Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located at #35 William Street, Belleville.

Respondent contends that the application was properly denied for the reason that there are a sufficient number of licensed places in the vicinity of appellant's premises and the issuance of an additional license in said vicinity would be socially undesirable.

During the previous license period which expired June 30, 1935, three consumption licenses had been issued for premises within a hundred feet of each other, of which one was in respect to the premises, #35 William Street, now in question. Two of those three licensees applied for and were granted renewals for the current license period. The third licensee, Thomas Lukowiak, for personal reasons, did not apply for a renewal of his license at #35 William Street although he was informed by respondent that he too would receive a renewal if he made application.

Appellant now enters the picture for the first time. He was the landlord of Lukowiak. Upon learning that Lukowiak did not intend to renew his license, appellant applied for a license for himself. When his application came up for consideration, respondent had before it a police report disapproving it and a petition signed by 63 residents objecting to it and a petition signed by 30 residents who favored issuance of the license. After lengthy discussion and consideration, both appellant and the objectors being represented by counsel, respondent denied appellant's application.

Appellant contends, not that public necessity or convenience dictates the issuance of an additional license for his premises, but that since there had been three licensed places in the vicinity during the preceding license period, it was unreasonable for respondent to deny his application for the current

period. The argument is not sound. The fact that proper restrictive measures were not adopted at the time when the three licenses crowding the vicinity were issued, is no reason why the mistake must be perpetuated. The present question is whether there is a sufficient number now, not whether there were more previously. If in good faith appellant's application was denied because there is presently a sufficient number of licensed places in the vicinity respondent's action will be upheld. Bader v. Camden, Bulletin #44, Item #8; Furman v. Springfield, Bulletin #49, Item #6; Clement v. Loder, Bulletin #52, Item #5; Snyder v. Middletown, Bulletin #56, Item #2; Botfan v. Howell, Bulletin #64, Item #9.

But appellant claims his application was not denied in good faith. He contends that the denial was improperly motivated and discriminatory. He argues: (a) Respondent's action in offering Lukowiak a renewal is inconsistent with its present contention that two licensed places within a hundred feet of each other are enough; (b) Subsequent to the denial respondent issued an additional plenary retail consumption license to one Florence Core.

(a) The mere fact that respondent was willing to renew a previous license does not render unreasonable its refusal to issue a license to a new applicant. It is one thing to determine that so long as an existing licensee has lived up to the law and complied with all requirements he should receive a renewal if he so desires, and quite another to determine that a license having once been issued for a particular place, that no fit applicant who applies may be rejected regardless of social undesirability. While a renewal, like an original liquor license, is a privilege and not a right, Re Marritz, Bulletin #61, Item #8, nevertheless, it is but fair, and therefore reasonable, that issuing authorities should weigh the facts that worthy licensees, in reliance upon their license have expended moneys, incurred commitments and otherwise changed their position. In those cases private justice is weighed as against the public interest of the community. In the instant case the applicant had no previous license and hence suffered no change of position. Hence there is nothing to put in the scales to offset or balance the public interest in reducing the number of licensed places.

(b) The license issued to Florence Core for premises at #14 Belmont Avenue, Belleville, was for an entirely different part of the municipality from that in which appellant's premises are located. There is nothing before me to indicate improper discrimination in the issuance of the Core license. The point is governed by Battaglia v. Glassboro, Bulletin #66, Item #4:-

> "Although a particular locality in a municipality is abundantly supplied with licensed places so that the issuance of an additional license is undesirable, nevertheless, licenses may properly be issued for other portions of the municipality. The mere fact, therefore, that more licenses have been issued in another neighborhood than presently exist in the vicinity in which appellant's premises are located, does not indicate that respondent is arbitrarily and without uniformity applying an alleged municipal policy in unfair discrimination of applicants in the absence of a showing that the two neighborhoods are similar.
>
> "Likewise the issuance of two licenses after appellant's application was denied is of no significance since these licenses were not issued for premises in the

vicinity of appellant's and there is nothing to show that they were issued for premises in a vicinity already adequately provided for."

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 21, 1935.

2. BOOTLEG LIQUOR - INFORMAL DISCUSSION OF THE PROBLEM.

December 23, 1935

The following news item is reprinted from and with acknowledgment to the Gazette of High Bridge, New Jersey. Whoever wrote it evidently knows what he is talking about. The picture presented is clear and substantially accurate. Because it applies to counties besides Hunterdon, I deem it helpful that the public should know out of what stuff bootleg is made.

It is reprinted subject to the following comments: (1) I do not know about the alleged political connections of still owners. If I did, I would act; (2) There is also much bootleg cracked from denatured alcohol with resultant poison still remaining in it in varying degrees -- if well done, always a trace remains; if poorly done, then blindness, paralysis, creeping death! (3) Very little confiscated alcohol is good enough for State institutions except for radiators, etc.---even then, it often rots the hose; (4) Signed letters will always be treated in sacred confidence and the name of the informant never disclosed to any one. They are far more helpful than anonymous tips.

D. FREDERICK BURNETT,
Commissioner.

Reprinted from the High Bridge (N. J.) Gazette:

"THERE'S STILLS IN THESE HILLS"

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Still Making Illicit Liquor in
Hunterdon Despite Passing
of Prohibition

SOME GOOD; MUCH BAD

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"The bootlegger is still operating in Hunterdon County and making good profits despite the fact that Prohibition has long since gone into the discard. The making of beer, however, has practically passed out of the picture with the exception of a few families who are still making home brew.

"The illegal breweries that flourished during the Prohibition era in Hunterdon County were pretentious concerns and in some of the larger counties officers raided plants that were worth fully a quarter of a million dollars.

"There are very few Americans engaged in this illicit business. Most violators are Italian, Hungarian and Polish. They

come out from the cities and buy or lease an isolated farm in the hills or mountains and set up a still in the cellar. Lately these have not been on such an elaborate scale as in the Prohibition days, but officers report that they occasionally find stills worth several thousand dollars. Some of the little fellows can make whisky with a $15 still.

"The raids made in this county disclose a wide variety of illicit liquors. The various brands include applejack brandy, rye whisky, plain alcohol made from sugar, yeast, water and sulphuric acid, molasses sometimes being used instead of sugar. There are also peach brandy and alcohol made from stale bread, potatoes and potato peelings, or anything containing starch. There is also considerable corn liquor which is made by putting corn in a vat and letting it ferment. Sometimes ordinary corn feed and cracked grain is used but this method is not very popular now because the material comes too high.

"Formerly the product of these Hunterdon stills was shipped to the cities and that is still a custom with the larger operators. Their method is to camouflage a shipment by placing the containers in egg crates, although often it is sent loose in milk cans. Often these stills are run in connection with a speakeasy where practically all the product is sold to local customers.

"The large stills, which usually are owned by a boss who has political connections in the city, are carefully guarded. They have two or three men watching out for officers and the plant is equipped with an electric alarm system. In case of a raid the workmen are thus warned and make their escape, generally by way of a tunnel. The boss has less concern about the seizure of the still than of the arrest of his men. When the officers get their men it means that they have to furnish bonds, pay their fines, employ an attorney and in many instances use political influence to get them out of their trouble.

"All the men arrested are fingerprinted and often the offendants are found to be fugitives from justice or men with criminal records. Even murderers have been found in these round-ups.

"Officers state that seldom do they meet with resistance. Most of the violators are men but a few women have also got into the business. The only reason these people are making bootleg liquor today is because it is profitable on account of the unreasonably high taxes imposed on legitimate liquor by the government.

"When a still is raided by officers the paraphernalia is wrecked and the manufactured liquor taken to the Newark headquarters of the Alcoholic Beverage Commission. After the case is finally disposed of such liquor as may be found to be of high standard is donated to various state institutions for medical use.

"The authorities who make the raids get their tips, not so much by sleuthing around themselves, as by information supplied by complaining neighbors, or leads provided by the County Prosecutor. It is also interesting to note that stills are often located by officers on tips provided by rival bootleggers. Occasionally neighbors report suspicious places but in many instances, when the officers run them down, they find them unfounded."

3. APPELLATE DECISIONS - HAYCOCK v. ROXBURY

FRED HAYCOCK, )
Appellant, )
-vs- ON APPEAL
TOWNSHIP COMMITTEE OF THE ) CONCLUSIONS
TOWNSHIP OF ROXBURY (MORRIS
COUNTY), )
Respondent )

Howard F. Barrett, Esq., by Clifford Manser, Esq.,
Attorney for Appellant.
Oscar Benson, Chairman of the Township Committee,
For the Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located at the northwest corner of New Jersey Route #6 and Dell Avenue, Roxbury Township.

Respondent contends that the application was properly denied because a sufficient number of plenary retail consumption licenses have been issued in Roxbury Township and the issuance of an additional license would be socially undesirable.

Roxbury Township, with a population of approximately 4,000, now has thirteen (13) consumption places. Five of these places are in the sparsely populated Kenvil section, where appellant's premises are located. All three Township Committeemen testified that there were enough places in the Township.

Appellant did not produce any contrary evidence but argued: (a) Since no formal limitation of the number of licenses had been adopted by respondent, its present contention is legally invalid; (b) Since the nearest licensed place in the Township is a half mile from appellant's premises, the issuance of a license therefor, regardless of the total number in the Township, is socially desirable.

(a) The right of a municipality to refuse to issue a license where a sufficient number have already been issued, even in the absence of a formal limitation of number of licenses to be issued, is settled. Bumball vs. Burnett, 115 N. J. L. 254, Bulletin #79, Item #9; Sussex County Drug Co. vs. Newton, Bulletin #47, Item #3; Walker vs. Verona, Bulletin #91, Item #4.

(b) It is true that the nearest licensed place within the Township is approximately one-half mile from appellant's premises. It appears, however, that there is another licensed place within 500 feet although that place is in an adjoining municipality. The respondent might properly take that fact into consideration. Skwara vs. Trenton, Bulletin #57, Item #7. There is no evidence that the reasonable needs of the community demand the issuance of an additional licensed place in that vicinity. Neither appellant nor any of his witnesses so testified. Appellant placed his principal reliance upon the Skwara case, supra. There the City contended that there were enough places in the neighborhood but it appeared that the City had

never adopted or uniformly applied any policy with reference to the number of licensed places existing in any given vicinity. On the contrary, the fact appeared that "Respondent has heretofore issued as many as five or six licenses for premises in a single block. See Kaplan vs. Trenton, Bulletin #41, Item #9. Throughout the municipality licenses have been issued with abandon, the distances intervening between the licensed premises in numerous instances being considerably less than one block." There it appeared that the reason alleged in defense at the appeal was not the real reason for denying the application, and the action of that respondent was there reversed. Here the good faith of the present respondent is unchallenged. The attempted analogy therefore falls.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 21st, 1935.

4. APPELLATE DECISIONS - ERRATH v. MIDDLETOWN

FRITZ ERRATH, )
Appellant, ) ON APPEAL
-vs- ) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MIDDLETOWN (MONMOUTH COUNTY), )
Respondent )

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John V. Crowell, Esq., by Frederick M. P. Pearse, Esq., Attorney for Appellant.
Snyder, Roberts & Pillsbury, Esqs., by Howard W. Roberts, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located at Headdon's Corner, Middletown Township.

Respondent contends the application was properly denied for the reason, among others, that there are a sufficient number of licensed places in the vicinity of appellant's premises and the issuance of an additional license in said vicinity would be socially undesirable.

Appellant's premises are in substantially the same neighborhood as premises for which respondent had already denied an application on the same ground as that now alleged. That denial was appealed to the Commissioner, and respondent's findin that there were a sufficient number of licensed places in that particular vicinity was held reasonable cause for the refusal to issue an additional license. Snyder vs. Middletown, Bulletin #56, Item #2. No evidence was introduced in the present case sufficient to alter this finding.

Accordingly, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 22nd, 1935.

5. APPELLATE DECISIONS - METHODIST EPISCOPAL CHURCH v. VERONA ET ALS.

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| THE METHODIST EPISCOPAL CHURCH AT VERONA, Appellant, -vs- MAYOR AND COUNCIL OF THE BOROUGH OF VERONA, and BARNETT FREEDMAN, PIETRO SCOLA and MARY SCOLA, Respondents | ) | ON APPEAL CONCLUSIONS |

Hobart & Minard, Esqs., by Ralph E. Cooper, Esq., Attorneys for Appellant.
Chester C. Beekman, Esq., Attorney for Respondent, Mayor and Council of the Borough of Verona.
Reed & Reynolds, Esqs., by Everett B. Smith, Esq., Attorneys for Respondents, Barnett Freedman, Pietro Scola and Mary Scola.

BY THE COMMISSIONER:

Appellant appeals from the action of respondent, Mayor and Council of the Borough of Verona, in renewing a plenary retail distribution license issued to respondent, Barnett Freedman, for premises at 652 Bloomfield Avenue, Verona. Appellant has named Pietro and Mary Scola as parties because they own the building in which the licensed premises are located.

Appellant raises at the threshold the technical claim that the renewal application was not properly advertised. Section 22 of the Control Act provides:

> "Every applicant for a license shall cause a notice of intention to make such application to be published in a form prescribed by rules and regulations, once a week for two weeks successively in a newspaper ***."

Respondent licensee's notice of intention was published twice, but inadvertently the first advertisement described the premises sought to be licensed as 644 Bloomfield Avenue instead of 652 Bloomfield Avenue. Since the first advertisement described the licensed premises incorrectly, it is invalid. This is a fatal defect. Trotto v. Trenton, Bulletin #46, Item #11, where it was said:

> "Section 22 of the Control Act provides that every applicant for a license shall cause a notice of intention to make such application to be published in a form prescribed by rules and regulations. The Commissioner's rules and regulations require that the notice of intention include the address of the premises sought to be licensed. The purpose of requiring the advertising of notice of intention is to make the advertisement a medium through which all bona fide objectors might be accorded a fair hearing. The disclosure of the location of the premises sought to be licensed is of the utmost importance in enabling persons residing in the vicinity to make known their objections to the issuance of a license for such premises. Failure to make such disclosure renders the advertisement fatally defective even though there was no intention to deceive on the part of appellant.

"Nor can respondent waive the requirements of the Act and the rules and regulations governing the advertising of notice of intention, for such requirements are jurisdictional prerequisites to the consideration of any application. Jurisdiction to issue a license, when there has not been complete compliance with the statutory requirements pertaining to the application, cannot be acquired by consent."

The contention of appellant on the merits is that no alcoholic beverage license may be issued in respect to the premises 652 Bloomfield Avenue on the ground that the premises themselves are subject to a restrictive covenant against the sale of alcoholic beverages.

Appellant concedes that ordinarily restrictive covenants are not properly the concern of license issuing authorities but are cognizable only by the civil courts. Barnegat Beach Association v. Busby, 44 N. J. L. 627 (Sup. Ct. 1882); Gamble v. Avon-by-the-Sea, Bulletin #35, Item #6; Brighton Hotel v. Loder, Bulletin #41, Item #6; Doherty v. Atlantic City, Bulletin #58, Item #8. Its argument is, however, that the licensed premises in question are subject to a restrictive covenant which was originally imposed by appellant when it conveyed this very property to the Borough of Verona in 1910, and was reimposed by the Borough by the deed of 1923 whereby it conveyed the property to respondents, Pietro and Mary Scola. While it is true that the covenant was so imposed and reimposed, appellant suggests no reason why that should lead to a different result in law. The fact that appellant imposed the particular restrictive covenant and the municipality reimposed it in nowise enlarges the jurisdiction of the State Commissioner as a license issuing authority. If, as appellant contends, the land now owned by the respondents, Scola and wife, is subject to the burden of the covenant and appellant is entitled to its benefit and there has been a breach thereof, it is a private controversy cognizable only in the civil courts. The plain remedy of appellant is to prosecute its cause in the Court of Chancery which has jurisdiction of the subject matter and of the parties necessary to a determination. The function of the State Commissioner is to enforce the alcoholic beverage law. Enforcement of restrictive covenants in private deeds is the function of the courts.

So far as the merits of this appeal are concerned, the action of respondent issuing authority is affirmed. The license itself, however, was improperly issued because of the lack of proper advertisement. For this purpose the case is reversed and the license ordered cancelled with leave reserved to respondent, Freedman, to make a new application.

Since appellant does not question the personal fitness of the licensee, or the propriety of his conduct of the business under his prior license or under the renewal improvidently granted as aforesaid, or the suitability of the licensed premises as such, an application for a special permit will be entertained authorizing the continuance of the business pending consideration and determination by respondent issuing authority of a new application if same is filed and the necessary procedure pursued with dispatch. Cf. Re Passaic Elks, Bulletin #90, Item #4.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 23rd, 1935.

6. APPELLATE DECISIONS - CRISONINO v. BAYONNE.

LOUIS P. CRISONINO, )
Appellant, ) ON APPEAL
-vs- ) CONCLUSIONS
BOARD OF COMMISSIONERS OF THE CITY OF BAYONNE, )
Respondent

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Irving Meyers, Esq., Attorney for Appellant.
Raymond J. Cuddy, Esq., Attorney for Respondent.
John Joseph Foerst, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license at 941 Broadway, Bayonne.

Respondent contends that the application was properly denied because there is a sufficient number of licensed places presently operating in the vicinity of the premises sought to be licensed adequately to supply the demands of said vicinity, and the issuance of an additional license therein would be socially undesirable.

The right of a municipality to deny an application where the issuance thereof would result in the existence of too many licensed places in any given vicinity is well settled. Bader v. Camden, Bulletin #44, Item #8; Furman v. Springfield, Bulletin #49, Item #6; Clement v. Loder, Bulletin #52, Item #5; Faccidomo v. Union Beach, Bulletin #55, Item #8; Haenelt v. Haworth, Bulletin #57, Item #11; Voos v. Union, Bulletin #73, Item #1; Redfern v. Keansburg, Bulletin #81, Item #7.

Appellant's premises are located at the northwest corner of Broadway and West 45th Street, Broadway being the principal business street of Bayonne. The side streets, especially in the northern part of the City, where the premises in question are located, are strictly residential. Broadway runs north and south. The four blocks on Broadway from 43rd to 47th Street, in the center of which, at 45th Street, is the appellant's premises, have no licensed places, but this causes only slight inconvenience to the thirsty for on the ten blocks on Broadway from 39th to 49th Street there are thirteen (13) plenary retail consumption licenses - really thirteen (13) in six blocks - some to the north and some to the south of appellant's premises. No argument on these facts is necessary to demonstrate that respondent's determination that the existing places in the vicinity were sufficient to take care of the needs of the residents therein, was reasonable.

The real stress of appellant's argument, however, is laid on the fact that respondent had never adopted or uniformly applied any policy or exercised any precaution with reference to the number of licensed places existing in any given vicinity, and that the denial of appellant's application was, therefore, purely arbitrary. Skwara et al. v. Trenton, Bulletin #57, Item #7. If this were the whole story, I should discount the sudden fit of virtue and hold the denial unreasonably discriminatory. I do not find, however, any smug and complacent attempt by the issuing authorities to invoke "lack of social desirability", an empty phrase unless backed by facts, as an "out" or as a cover for brazen personal or political favoritism. Rather I

find a sincere, earnest attempt to judge each case on its own merits. The unanimous denial in the instant case was supported by fair reasons, the strongest of which were the strenuous protests of residents in the immediate vicinity and the thirteen cases so close at hand. The overcrowded conditions to which appellant adverts were not created by respondent issuing Board as in the Skwara case, but by their predecessors in office whose terms expired in May, 1935. The mere fact that the old Board issued licenses beyond the saturation point and the new Board has gotten but slowly into stride, is no reason why the Board should not turn over a new leaf or why the mistakes of the past should be perpetuated or, as here sought, be extended. In Murphy v. Trenton, Bulletin #76, Item #15, it was held that that the incoming City Council was entitled to a clear chance to use its new broom. In Rajca v. Belleville, Bulletin #101, Item #1, it was held that the fact that proper restrictive measures were not adopted at the time when licenses were originally issued in neighborhoods already overcrowded was no reason why the mistake should compel the issuance of even more unnecessary licenses. In this case, as well as the two cases last cited, I assume a bona fide desire on the part of the issuing authority to keep down the number of licensed premises to a point which is socially desirable and to rectify the mistakes of the past. So believing, I find no unreasonable discrimination.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 24th, 1935.

7. APPELLATE DECISIONS - STEIN v. WEST NEW YORK

JULIUS STEIN, )
Appellant, )
-vs- ) ON APPEAL
) CONCLUSIONS
BOARD OF COMMISSIONERS OF THE TOWN OF WEST NEW YORK, )
Respondent )

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Meehan Brothers, Esqs., by John J. Meehan, Esq.,
Attorneys for Appellant.
Irwin Rubenstein, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license at 233 Seventeenth Street, West New York.

At the hearing of the appeal, it appeared that on October 15, 1935, after appellant's application had been denied, respondent adopted the following resolution:

"WHEREAS, it appears that the number of premises licensed to sell Alcoholic Beverages at retail is more than sufficient to take care of the needs of the Community, and

"WHEREAS, it will be for the best interests of the people of West New York if the standard of such places is raised to as high a plain as possible, and

"WHEREAS, this end can be better accomplished and the interests of the Community better served, by limiting the number of licensed places, be it further

"RESOLVED, that the following resolution be and is hereby adopted to limit the number of Plenary Retail Consumption Licenses in the Town of West New York;

"(1) Hereafter no Plenary Retail Consumption License shall be issued unless or until the number of such licenses issued and outstanding shall be less than seventy (70); when the number of such licenses issued and outstanding shall be less than Seventy (70), new licenses may be issued, but, no new licenses may be issued which will cause the number issued and outstanding to be greater than Seventy (70).

"(2) This limitation shall not apply to such licenses issued prior to the effective date of this resolution; neither shall it apply to the renewal of such licenses nor the transfer thereof as provided by Chapter 436 P. L. 1933, as amended and supplemented.

"(3) This limitation shall not apply to the renewal or transfer of licenses which have been issued in accordance with the provisions of this resolution.

"(4) This limitation shall apply to all licenses which have been surrendered or revoked."

There are presently 87 consumption licenses issued and outstanding in West New York. Hence, if the limitation to 70 is valid appellant comes within it.

Appellant does not question the reasonableness of the limitation of plenary retail consumption licenses in West New York to seventy, nor does he question the propriety of the rule laid down in Franklin Stores v. Elizabeth, Bulletin #61, Item #1, that a municipal ordinance enunciating public policy may properly be considered by the State Commissioner although enacted after denial of the particular application, where it was said:

"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."

Appellant argues, however, that respondent is estopped to deny his application because in reliance upon respondent's alleged representation that the application would be granted, the premises sought to be licensed were extensively altered and repaired.

The owner of the premises testified that the Mayor of West New York made these representations to him on August 12, 1935, when he, the owner, together with appellant, appeared at a meeting of the Board of Commissioners and inquired as to whether a license would be issued. Appellant, however, although recalling the conversation generally, did not remember whether the Mayor actually said the application would be granted. The Town Clerk denied that such representations had been made and testified that the Mayor merely told the owner that if an application were filed and if there were no objections he, the Mayor, didn't see any reason why it should not be granted. It is not suggested that the Board of Commissioners, as such, took any action, formal or otherwise, upon the oral request of appellant or his landlord; no motion, resolution or ordinance was adopted or minute made.

Without regard to whether an estoppel may be worked, the evidence in the instant case as to the alleged representations is so indefinite, meager and unsatisfactory, that it cannot be accepted. Zdenek v. Freehold, Bulletin #76, Item #9.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 24, 1935.

8. APPELLATE DECISIONS - CASO v. BELLEVILLE

ANTHONY JOSEPH CASO,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE,
Respondent

ON APPEAL
CONCLUSIONS

Thomas C. D'Avella, Esq., Attorney for Appellant.

Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from respondent's order suspending appellant's plenary retail consumption license for thirty (30) days.

The filing of the appeal automatically operated as a stay of the order of suspension under Section 28 of the Control Act, and an order was entered by the Commissioner requiring respondent to show cause why the effect of the order of suspension of appellant's license should not be stayed. At the return of this order, respondent introduced no evidence. From appellant's evidence it appeared that the action of respondent was prima facie erroneous, that appellant would suffer irreparable injury, and the subject matter of the appeal, to wit, the exercise of the privileges conferred by the license would be substantially impaired, if the stay were denied. Accordingly, the operation of

respondent's order of suspension was stayed pending final determination of this appeal.

At the final hearing respondent contended that appellant's license was properly suspended because appellant had failed to preserve peace and order in his establishment on August 8, 1935.

The evidence establishes that on the day in question a brawl occurred on appellant's premises during which one of the patrons struck another with a bottle. In the course of subsequent criminal proceedings tried before the Town Recorder, one of the participants in this affray was convicted of criminal assault, the Recorder finding as a fact that the fight occurred in appellant's licensed premises. Appellant's sole defense to the charge was that the brawl occurred outside of his place. The testimony of appellant's bartender, his brother, fully substantiates the finding of the Recorder. The record is sufficient to justify the finding of respondent that appellant violated Rule #5 of the State Rules Concerning the Conduct of Licensees and the Use of Licensed Premises (Bulletin #48, Item #1), which provides:

> "5. No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, brawls, or unnecessary noises, nor allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

The suspension ordered was therefore justified. It is a salutary exercise of disciplinary power to impress licensees that they are responsible for keeping the peace in their taverns at all times.

It is unnecessary, therefore, to consider respondent's other reasons.

The action of respondent is affirmed. The order heretofore entered staying the suspension pending the appeal is hereby vacated, effective December 27, 1935, on which date the respondent's order of suspension will become effective and remain effective pursuant to its terms for thirty (30) days.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 24, 1935.

9. SOLICITORS' PERMITS--MORAL TURPITUDE--FACTS EXAMINED--CONCLUSIONS.

December 23rd, 1935.

Re: Application for Solicitor's Permit - Case No. 20.

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. In his questionnaire applicant admitted "One conviction during prohibition on charge of possession. Tried and fined". Notice was served upon him to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude, and a hearing was duly held.

At the hearing applicant admitted that in 1928 he had been convicted for the possession of liquor and served three months in jail; that in 1930 he had pleaded guilty to a charge of possession and transportation of alcohol and received a suspended sentence; that in the same year he had pleaded guilty to maintaining a disorderly house, the charge arising out of the fact that illicit liquor had been found upon premises managed by him, on which conviction he was fined $100.00; and that in 1932 he had been tried in a Court of Special Sessions, found guilty of possession of a slot machine and fined $50.00.

It appears from the evidence and from our investigation that the first and third convictions mentioned above resulted from the finding of small quantities of liquor in a restaurant managed by applicant; that the second conviction mentioned above followed the discovery of liquor in the private automobile of the applicant, and that the conviction last mentioned above followed the finding of a slot machine in the restaurant which he managed. There appear to be no aggravating circumstances and, hence, I believe that no moral turpitude is involved in any of the convictions set forth herein.

In Bulletin #46, Item #3, it was held that three convictions under the Prohibition Law, if not involving moral turpitude, should not permanently disqualify a licensee.

The question that presents difficulty in this case is the misstatement in the questionnaire. At the hearing applicant admitted that the answer was incorrect, but testified he had been advised to put down the fact that he had been convicted and "they would look that up". The explanation is unsatisfactory. As the Commissioner said in the case of Gale v. Newark, Bulletin #95, Item #6:

> "Licensees are to obey the law and make applications which are absolutely true. They are not to run out on the alibi of 'advice'. The only good advice is to comply strictly with the law. Poor advice is no defense."

In view, however, of the fact that the applicant apparently has not been involved in any violations of the law since the Control Act went into effect, his frankness at the hearing, and the fact that none of the convictions involved a crime showing turpitude, the applicant should be given the benefit of the doubt in determining whether he knowingly misstated any material fact. It should also be noted that his questionnaire was submitted prior to the time the Commissioner issued his warning to licensees and applicants in the case of Gale v. Newark, supra.

Under all the circumstances, and without condoning the action of applicant in answering a material question incorrectly, it is recommended that the application for solicitor's permit be granted.

Edward J. Dorton,
Attorney-in-Chief.

Disapproved.

He deliberately answered falsely by stating one conviction when he knew there were three. He said he was fined, when he knew he had served three months in the cooler. His frankness, when cornered, comes too late! What else could he do? A person worthy

to have a solicitor's privilege needs no warning that his sworn application must state the whole of the truth and nothing but the truth. The sooner applicants learn that "outs" and alibis are out of style, the better. I have no mawkish sympathy for those who lie.

The application is denied.

D. FREDERICK BURNETT,
Commissioner.

10. HOSPITALS - SALES OF ALCOHOLIC BEVERAGES BY HOSPITALS TO BONA FIDE PATIENTS THEREIN ARE NOT PROHIBITED BY THE CONTROL ACT WHEN MADE PURSUANT TO PHYSICIANS' ORDERS OR PRESCRIPTIONS.

December 24, 1935

Newark Beth Israel Hospital,
Newark, New Jersey.

Gentlemen:

I have before me your letter of December 11th. As I understand it, the situation is that hospitals dispense alcoholic beverages for medicinal purposes and, in the case of private and semi-private patients, charge the patients therefor.

The Alcoholic Beverage Control Act, Section 26, provides that hospitals may purchase and use alcoholic beverages for the compounding of physicians' prescriptions, and for the preparation of mixtures and medicines unfit for use as beverages, "and for dispensing to patients in accordance with physicians' orders and prescriptions, without license therefor", subject to rules and regulations.

To date, no rules and regulations affecting these matters have been promulgated so the statute alone controls. In accordance therewith, hospitals may, without obtaining any license, dispense alcoholic beverages to bona fide patients therein upon physicians' orders and prescriptions.

As to charging patients for the alcoholic beverages so used, which procedure I understand to be common with that followed with respect to the charges made for other services and preparations which hospitals provide, I rule that such charge, when incurred pursuant to physicians' orders or prescriptions, is not prohibited by the statute and therefore may be made.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. DANCING - LICENSES - WITHIN MUNICIPAL POWER.

December 24, 1935

Peter Menzak, Borough Clerk,
Manville, New Jersey.

Dear Sir:

There is nothing in the Alcoholic Beverage Control Act or in the rules and regulations of this Department which would prevent the Borough Council from imposing a fee to license dancing upon premises already licensed to sell alcoholic beverages and this regardless of whether or not a fee is charged for the dancing.

There are, however, other aspects of the question to consider. It is doubtful that such a license fee could be imposed solely upon those holding alcoholic beverage licenses. To be legally sound, it may have to be imposed upon all premises allowing dancing regardless of whether or not they are also licensed for the sale of alcoholic beverages. As to these questions of local municipal law which are not matters of alcoholic beverage control and, therefore, outside of my jurisdiction, I suggest that you consult your Borough Attorney.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

12. MUNICIPAL ORDINANCES - VALIDITY - SOLICITATION - LICENSED PLACES - HEREIN OF "WOMEN CONVERSATIONALISTS"

December 26, 1935.

Arthur C. Malone, City Clerk,
Hoboken,
New Jersey.

Dear Sir:

I have before me the resolution adopted by your Board of Commissioners on December 17, 1935 which provides:

> "No licensee shall allow, permit or suffer in or upon the licensed premises any known criminals, gangsters, racketeers, pick-pockets, swindlers, confidence men, prostitutes, female impersonators, women conversationalists, or other persons of ill-repute, nor permit the assembling of females in the licensed premises for the enticing of customers or making assignations for improper purposes."

It is heartily approved as submitted except as to "women conversationalists". That is too big an order! It would exclude them all!! King Canute lost out trying a much easier task!!!

The salutary force of your resolution is nowise weakened by such elimination.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

December 20, 1935.

D. Frederick Burnett, Esq.,

Dear Sir:-

I am advised by our City Clerk, Mr. Arthur C. Malone, that he sent to you on December 17th, 1935, a copy of a resolution duly passed by the Board of Commissioners of the City of Hoboken, concerning the conduct of plenary retail consumption licensees and the use of their premises, which provided among other matters that said licensees should not permit the assembling of females in the licensed premises for the enticing of customers or making assignations for improper purposes.

Section 37 of the Alcoholic Beverage Control Act appears to call for your approval first obtained. Will you therefore approve such rule and regulation and furnish me with such evidence of your approval as is customary.

Back in 1901, the then governing body of Hoboken, the Board of Council, passed what was known as its bar maid ordinance, which made it unlawful for any owner, proprietor, keeper or agent of any hotel, inn, tavern, house of public entertainment, saloon or eating house, or other public place where intoxicating drinks were sold, to employ or permit the employment of any female, at any such place, to sell, vend, offer, procure, furnish or distribute any spiritous, vinous, malt or brewed liquors, or any intoxicating drinks whatsoever, or to employ any female as women conversationalists for the purpose of attracting persons to such places, or to permit the assembling of females at such places as aforesaid for the purpose of enticing customers, etc. This ordinance exempted the wife of the proprietor from the provisions of the ordinance.

This ordinance was sustained by the Supreme Court in the case of HOBOKEN v. GOODMAN, 68 N. J. L., p. 217. The Court there held it to be valid police regulation of the sale of intoxicating drinks that women shall not be employed in connection therewith. Justice Collins there held that the debarring of women from forming part of the allurements of drinking places was a wise one.

In the case of HOBOKEN v. GREINER, 68 N. J. L. 592, the licensee was convicted under said ordinance for permitting the assembling of females at his saloon for the purpose of enticing customers, and Justice Collins again said: "It is difficult to imagine a course of conducting a liquor saloon more deserving of reprobation than the permitting the assembling there of women for the purpose of enticing customers".

In view of the enactment of the Alcoholic Beverage Control Act in 1933, a question may be raised as to whether the City's Ordinance of 1901, which dealt with the conduct of a hotel, inn, tavern, house of public entertainment, saloon or eating house, or other public place where intoxicating drinks are sold, now applies to the conduct and regulation of premises having a plenary retail consumption license. I shall therefore advise the Board of Commissioners to adopt an ordinance prohibiting the assembling of females for the purpose of enticing customers and prohibiting any female from being compensated, by commissions or otherwise, on account of drinks had with customers. I am advised that in some instances the licensees make use of girls who drink with different men and receive a commission out of every drink as well as being paid in addition by the proprietor for being about the premises.

I desire the City to be in a position to penalize such females under the police powers of the City, as well as the licensees.

I would appreciate any suggestions you may have in reference to such proposed ordinance or any thoughts, which in your experience with this subject matter, you may have.

Thanking you, I beg to remain,

Very truly yours,

HORACE L. ALLEN
Corporation Attorney

December 26, 1935

Horace L. Allen, Esq.,
Corporation Attorney,
Hoboken, N. J.

Dear Mr. Allen:

I have your valued letter and citations of the 20th, which were very helpful. I have written Mr. Malone approving the resolution (copy enclosed) except as to "women conversationalists". Even the astute Justice Collins, writing for the Supreme Court in Hoboken v. Goodman, put that fighting term in quotation marks.

Of course, it would be cut down, by legal interpretation to persons of the same low kind as the context indicates and would clearly cover even without express mention. My policy, however, in considering municipal resolutions for approval, has been to require that prohibited conduct be defined in simple terms with sufficient precision so that everyone may know just what may not be done, and so to leave no doubt as to the exact thing prohibited. See Re Bailey, Bulletin #92, Item 2; Re Novack, Bulletin #92, Item 3, and Re Howell, Bulletin #98, Item 5.

I wholly agree with your advice to the Hoboken Board that, in view of the comprehensive scheme of control adopted by the Alcoholic Beverage Control Act of 1933, the old ordinance, should be re-enacted in the form you suggest. Your position is supported by Roche v. Jersey City, 40 N. J. L. 257; Re McNaughton, Bulletin #64, Item 3; Re Weed, Bulletin #98, Item 13; Matthews v. Asbury Park, 113 N. J. L. 205, and Re Retail Liquor Distributors v. Atlantic City, Bulletin #99, Item 4.

I am especially pleased to learn that the purposed ordinance will apply to all offenders as well as licensees.

Draft of the ordinance may be submitted for discussion in advance of enactment.

Very truly yours,

Commissioner