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

BULLETIN 215 NOVEMBER 24, 1937

1. RETAIL LICENSEES - SUNDAY SALES - REFERENDUM PROHIBITING SUNDAY SALES DISTINGUISHED FROM MUNICIPAL REGULATION REQUIRING THAT LICENSED PREMISES BE CLOSED.

Dear Sir:

I would like to have an opinion on the following condition.

I am the president of an athletic organization in Gloucester Township which at the November election voted for a closed Sunday. This organization consists of about sixty active members, is chartered and holds a club beverage license. We have been holding dances at our own club hall on Saturday nights for members and their guests only; but have had to close at midnight due to the closed Sunday.

I would like to know if clubs are permitted to remain open after midnight on Saturday nights and also on Sundays. We do not permit the public access to the premises of this organization. If I'm correct, I think that clubs in Camden were given permission to stay open to their members and their guests only on Sundays.

Respectfully yours,

Peter Gallo

November 16, 1937.

Mr. Peter Gallo,
Blackwood, N. J.

My dear Mr. Gallo:

As the referendum looking to the sale of alcoholic beverages on Sundays after 1:00 p.m., submitted to the electorate of Gloucester Township at the last general election, was defeated, it follows that all sales of alcoholic beverages on Sundays in Gloucester Township are prohibited by virtue of the referendum held on November 6, 1934 which remains effective until superseded by another referendum.

The 1934 referendum prohibited sales on Sundays. The Gloucester Township Committee carried this a step forward by adopting a regulation on July 17, 1935 requiring that after 1:00 a.m. on Sundays all licensed premises must also be closed, viz.: "that all stores, establishments or stands designated as the licensed premises for the sale and distribution of alcoholic beverages in the Township of Gloucester, shall be closed at the hour of one o'clock A.M. on Sunday and shall remain closed until seven o'clock A.M. on the following day, Monday." For the difference in effect between a prohibition of sales and a requirement of actual closing, see re Capple, Bulletin 56, Item 12, re Kintner, Bulletin 58, Item 1 and re Stevens, Bulletin 197, Item 5.

Your club and its premises come within the term "establishment" used in the regulation of July 17, 1935.

It follows that your club may not sell any alcoholic beverages at any time on Sundays for that would be in violation of the referendum. It would not only be cause for disciplinary proceedings but also would constitute a misdemeanor. See re Bogota, Bulletin 213, Item 3. Nor may it remain open on Sundays after 1:00 a.m. for that would be in violation of the local regulation for which the license could be suspended or revoked.

The reason that clubs in Camden may stay open on Sundays is because there is no regulation in Camden requiring them to close. All the Camden regulation does is prohibit sales on Sundays after 2:00 a.m.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. DISCIPLINARY PROCEEDINGS - MISREPRESENTATION AND SUPPRESSION OF MATERIAL FACTS - OUTRIGHT REVOCATION.

November 17, 1937.

Richard A. Jessen, Clerk,
Borough Council of Keansburg,
Keansburg, N. J.

Dear Mr. Jessen:

I have staff report of the proceedings before the Borough Council of Keansburg against David C. Allardice, charged with having obtained a plenary retail consumption license through misrepresentation and suppression of material facts in his application to your Borough Council.

I note the licensee pleaded guilty to the charge and that his license was immediately revoked.

Applicants who don't tell the truth won't get licenses. Lynch vs. Paterson, Bulletin 107, Item 1, and cases cited.

Applicants need no warning that sworn applications must state the whole truth and nothing but the truth. The sooner they learn that suppressions and misrepresentations are out of style, the better. Supsension in such a case is improper because the license never would have been issued at all had the truth been known. Revocation is plainly indicated in all such cases.

I am glad that your Borough Council did its full duty.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

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

November 17, 1937.

Re: Case #192

Solicitor obtained his permit pursuant to a sworn statement in his questionnaire and application that he had never been convicted of a crime. Departmental investigation revealed that solicitor had been convicted of a criminal offense on two occasions. Accordingly, proceedings were instituted by the Department to determine whether solicitor's permit should be revoked on the ground that he has been convicted of a crime involving moral turpitude within Section 22 of the Control Act. Before hearing in this matter, solicitor filed an application for removal of disqualification in the event that he should be deemed disqualified.

In 1918, when solicitor was 16 years of age, he and two equally young companions broke into a haberdashery store at night and stole ties, shirts, etc. of the approximate value of $20.00. Pursuant to this criminal behavior, petitioner was arrested on a charge of "breaking, entering, and larceny", was duly convicted on his plea of non vult, given a suspended sentence and released on probation.

Ordinarily, the crime of "breaking, entering, and larceny" involves moral turpitude. Re Case #179, Bulletin 206, Item 12; Re Case #186, Bulletin 209, Item 6. However, since solicitor's crime was committed when he was but 16 years of age, he takes the benefit of the liberal rule enunciated in Re Case #36, Bulletin 149, Item 1, to the effect that a crime committed by a person when under 18 years of age is not to be construed as a crime involving moral turpitude within the meaning of Section 22 of the Control Act.

In 1919, petitioner was convicted as a disorderly person for loitering. Conviction for such offense, however, is not conviction of a crime within the meaning of the aforesaid Section 22. Re Case #65, Bulletin 193, Item 11, and cases therein cited; Re Case #171, Bulletin 195, Item 6, and cases therein cited.

Since solicitor, in view of the foregoing, has not been convicted of a crime involving moral turpitude, it is recommended that he be declared qualified to hold his solicitor's permit and that his application for removal of disqualification be dismissed as unnecessary.

However, solicitor swore in his questionnaire and application for permit that he had never been convicted of any crime. In view of the above conviction in 1918 for "breaking, entering, and larceny", this oath was false. It is, therefore, recommended that as punishment for his false oath, solicitor's permit be suspended for ten days, commencing November 22 , 1937.

NATHAN DAVIS
Attorney

Approved as to result.

The effect of the decision in Bulletin 149, Item 1, is, however, somewhat overstated. It does not decide that any crime committed by a person when under eighteen necessarily lacks moral turpitude. What it does is to give "the requirement

as strict a construction as the specific facts will admit." This was done "in order to save as far as possible a lasting blight upon their lives." Hence, in the case of minors under eighteen, a crime will not be held to involve moral turpitude "unless that conclusion is clearly indicated or is demanded by the precedents."

In the instant case, the result is the same for, after independent consideration of the specific facts in the light of the then tender youth of the solicitor, I conclude that his crime did not involve moral turpitude.

D. FREDERICK BURNETT
Commissioner

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION - REVOCATION.

November 19, 1937.

Arthur Lozier, Esq.,
Borough Clerk of Paramus,
Hackensack R.D. #1
New Jersey

Dear Mr. Lozier:

I have staff report of the proceedings before the Borough Council of Paramus against William Webber, charged with having made a false statement in his application for his license, viz. that he had resided in New Jersey for five years.

I note that after a complete hearing held on October 13, 1937 (lasting from 8:15 to 11:30 P.M.) the Borough Council reserved decision; that later a verdict was rendered adjudicating the licensee guilty and revoking his license outright.

Expressing no opinion on the merits of the case because it might come before me by way of appeal, I wish to extend to the members of the Council my appreciation for their patient and careful consideration of this matter. Apparently the license should never have been issued and would not have been except for the misstatement in the application. On the facts reported, revocation is the proper penalty.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

5. APPELLATE DECISIONS - NEW JERSEY LICENSED BEVERAGE ASSOCIATION vs. CAMDEN

NEW JERSEY LICENSED BEVERAGE ASSOCIATION DIVISION NO. 5, a corporation of New Jersey, and ANTONIO DI PAOLO, Individually, Appellants, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF CAMDEN and CLITO VIVIANI, Respondents.	On Appeal CONCLUSIONS

. . . . . .

Harry Mendell, Esq., Attorney for Appellant New Jersey Licensed Beverage Association.
Angelo DePersia, Esq., Attorney for Appellant Antonio DiPaolo.
Meyer Sakin, Esq., Attorney for Shirley Goldman, an Objector.
Edward V. Martino, Esq., Attorney for Respondent, Municipal Board of Alcoholic Beverage Control of Camden.
Gene R. Mariano, Esq., Attorney for Respondent, Clito Viviani.

BY THE COMMISSIONER:

Clito Viviani formerly held a plenary retail consumption license for premises 520-522-524 Walnut Street, Camden. He obtained a transfer of this license to premises comprising 522-524 Walnut Street and 1005 Broadway, Camden.

Appellants contend (1) that the transfer was improper in that the Walnut Street and Broadway premises were and still are separate premises requiring a separate license for each specific place of business and, therefore, could not lawfully be covered by a single and the same license; (2) that if the transfer was proper, it was, in effect, the issuance of a new license for new premises at 1005 Broadway, and therefore in violation of the limitation of the number of licenses and the restriction of new licenses to premises five hundred feet distant from other licensed premises, set forth in Section 7 of the City's alcoholic beverage ordinance adopted December 27, 1934, as amended July 9, 1936.

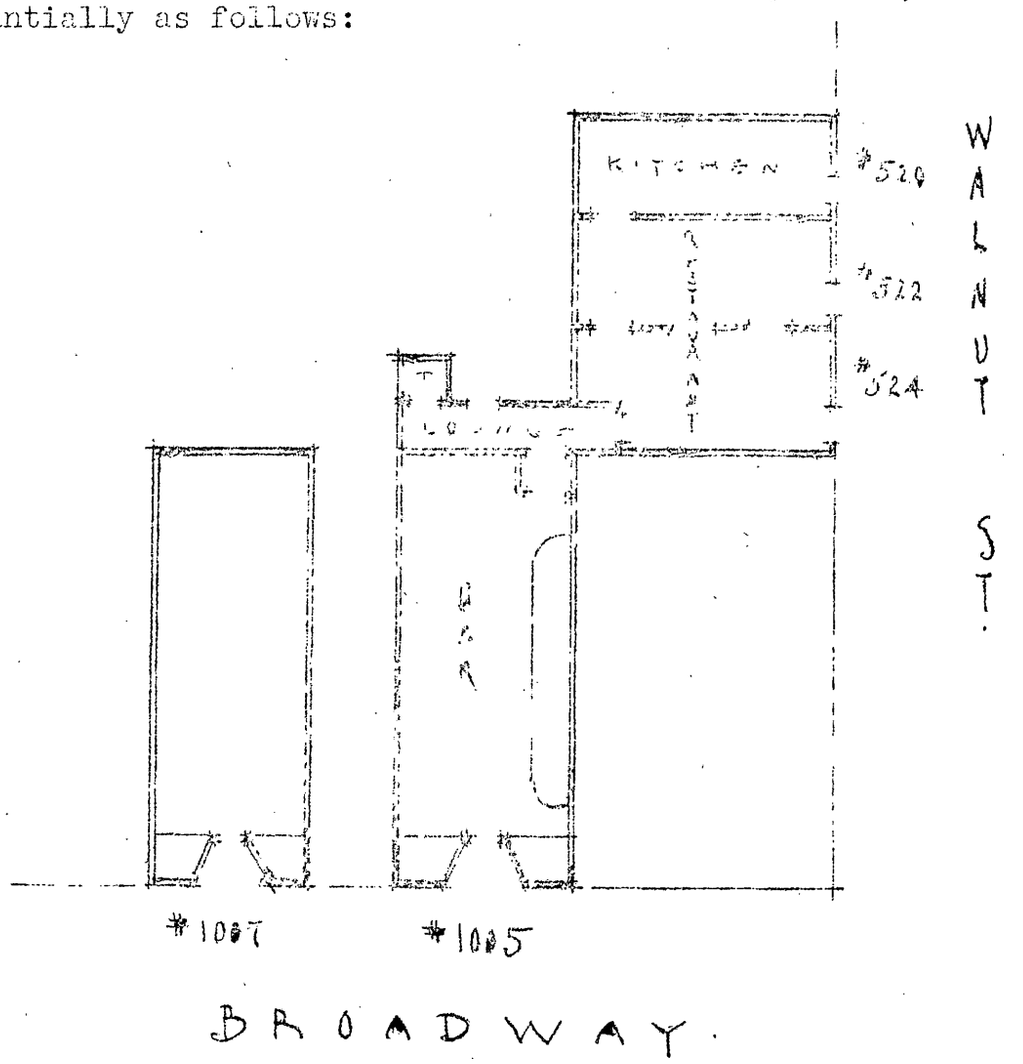
Section 7, so far as pertinent, provides:

> "No more than 200 Plenary Retail Consumption licenses shall be in effect in this municipality at any one time hereafter, and no new such licenses shall be issued for any premises within five hundred (500) feet of any other Plenary Retail Consumption licensed premises."

Some 217 such licenses were outstanding at the time of the transfer. The premises 1005 Broadway immediately adjoin 1007 Broadway. Appellant DiPaolo held a plenary retail consumption license for No. 1007 at the time the contested transfer was made. His license is still outstanding.

The first question is whether or not Viviani's premises are single or separate.

The arrangement, as closely as it can be approximated from the exhibits submitted and the testimony taken, is substantially as follows:



The part designated as the restaurant, Nos. 522-524 Walnut Street, together with No. 520 which is now the kitchen, comprised the original licensed premises. The bar designated as 1005 Broadway is the addition. The only work necessary to connect the premises was to break through the walls and install the arches and doors. The extension, designated as the lounge in the rear of premises 1005 Broadway, was there all the time.

Thus, a person entering Viviani's premises from either Broadway or Walnut Street can pass to any part of his place of business by way of the doorways and the lounge. The toilet facilities which were added adjacent to the lounge are used by patrons of both the bar and the restaurant and are accessible only from the lounge. Meals are served at tables in both the restaurant and the bar premises from the Walnut Street kitchen. Alcoholic beverages served to patrons in both the bar and restaurant are served from the Broadway bar.

The Walnut Street and the Broadway premises, while originally separate, have, by the structural changes made, been

converted into a single restaurant. The test, whether stores or establishments are single or separate, is not how they were originally built or what they used to be, but rather what they are now. The two plots are now so situated and operated that they may fairly be said to constitute a single place of business. It is therefore immaterial that the two buildings are owned by different individuals. Cf. re Cohen, Bulletin 89, Item 7 (extension to include part of adjacent premises); re Heller, Bulletin 114, Item 5, (adjacent stores); re Campanello, Bulletin 114, Item 8 (building and adjacent picnic grounds); re Johnson, Bulletin 170, Item 14 (premises on first and second floors of a building); re Wooding, Bulletin 172, Item 14, (two adjacent boats under the same ownership and permanently connected with each other).

See also re Beisch, Bulletin 81, Item 10, pointing out that where there are separate buildings, separate licenses will in general be necessary, but that where they are adjacent and operated as a single unit, it can reasonably be said that they constitute one place of business within the meaning of the statute and, consequently, can be covered by one license.

Earlier rulings made in re Ross, Bulletin 59, Item 12 and re Applegate, Bulletin 74, Item 5, to the extent that they implied that upon the enlargement of existing licensed premises, a new license is required, were superseded by the ruling in re Cohen supra and the others following it. The present and more liberal rule is: "In order to extend a licensed premises, it is necessary that the licensee obtain either a new license for the additional premises or the transfer of his old license to cover both." Re Daly, Bulletin 171, Item 3.

The principle works both ways. For instance, if Viviani should now desire to operate some mercantile business on any part of his presently reconstructed premises he would be prohibited from doing so because he holds a retail consumption license. See Re Johnson, Bulletin 212, Item 10 and citations therein. Whatever physically constitutes a single licensed premises remains single for all purposes until physical barriers are interposed to separate and subdivide it.

The thought expressed by appellants that the transfer to the new premises was improper because Viviani did not give up the whole of the old premises, is based on a misconception of the law. It is not essential that the old premises be abandoned. The transfer may lawfully be made to include both the new and the old. Re Daly, supra.

It follows that respondent Municipal Board has not granted a new license for a separate and distinct premises at 1005 Broadway, but has merely transferred an existing license to cover enlarged premises including the latter address.

The transfer, therefore, was proper.

The second contention that the transfer, if proper, was, nevertheless, the issuance of a new license for new premises at 1005 Broadway in violation of the Camden ordinance, has no merit as the ordinance now reads. It does not require that places licensed for consumption shall be 500 feet apart.

Its only requirement is that no new license shall be issued for any premises within 500 feet of any other consumption licensed premises. The transfer of an existing license is not the issuance of a new one. Transfers are not covered by the ordinance as it is written. If protection of existing places against encroachment of new places within 500 feet is desired, the ordinance will have to be amended. Re Guenther, Bulletin 206, Item 15. If it were, then the principle of Goldberg vs. Little Falls, Bulletin 177, Item 4, would prevent Viviani from enlarging his premises by transfer if the result had been to bring him within 500 feet of DiPaolo.

The action of respondent Municipal Board of Alcoholic Beverage Control of the City of Camden is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 21, 1937.

6. APPELLATE DECISIONS - WILDWOOD VILLAS FISHING CLUB vs. WAY.

WILDWOOD VILLAS FISHING CLUB,)
Appellant,)
-vs-) ON APPEAL
HONORABLE PALMER M. WAY, Judge of the Court of Common Pleas of Cape May County and Issuing Authority,) CONCLUSIONS
Respondent.)

. . . . . .

A. J. Cafiero, Esq., and Robert C. Hendrickson, Esq., Attorneys for Appellant.

Irving Shenberg, Esq., Attorney for Cape May County Beverage Association.

No appearance on behalf of Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a club license. The place sought to be licensed is appellant's club house, #301 Pennsylvania Avenue, Wildwood Villas, Lower Township, Cape May County. When the application came before Judge Way, he denied it because the present club house had not been acquired by the Club until May 1937 and appellant had not otherwise satisfactorily established that it had been in exclusive and continuous possession of a club house or club quarters for a period of three years immediately prior to the submission of the application, as required by the State Rules Governing the Issuance of Club Licenses.

Rule 2 Governing the Issuance of Club Licenses provides:

"Club licenses shall be issued only to bona fide clubs. No license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously, immediately prior to the submission of said application, and shall have been in exclusive, continuous possession and use of a club-house or club quarters for the same period of time; provided, however that bona fide organizations as aforesaid, deprived of the continuous possession and use of said quarters by reason of foreclosure, dispossess or other removal for a cause other than a violation of the laws of the State or of municipal ordinance, shall be permitted to obtain a Club License upon proof to the satisfaction of the issuing authority that it is a bona fide organization as provided for under the laws and these rules and that possession of suitable premises has been obtained, ..."

In 1933, appellant rented and occupied a regular club house at New Jersey and Columbia Avenues in the municipality but financial stress in maintaining both its pier, hereinafter mentioned, and the club house resulted in a voluntary discontinuance of the latter in the autumn of 1933.

Thereafter and until appellant acquired its present club house in May 1937, as aforesaid, business meetings of the club were conducted at the garage of its president. Cars were maintained in the garage but were evidently moved out on the occasions when meetings were held. It could not be said that the garage was in the exclusive and continuous possession of the club. Unlike the situation in Burak vs. Irvington, Bulletin 130, Item 2, the evidence before Judge Way did not satisfactorily establish that the applicant had lost possession of its club house by reason of foreclosure, dispossess or similar cause and had occupied the garage merely as a temporary and emergent measure pending acquisition of a new club house. On the proofs then presented, the decision of the learned Judge was correct.

On this appeal the case was tried de novo. Appellant's claim is now based, not on the casual meetings held in the garage but on its exclusive continuous possession and use of a certain fishing pier. The single question presented is whether compliance has been had with the Rule.

It is undisputed that appellant is a bona fide, non-pecuniary club, devoted to the sport of fishing; that it has been in active and continuous existence at Wildwood Villas since 1928, and has been incorporated in this State since 1929; and that it consists of several hundred members, some residents for the summer, some all-year round.

In 1931, appellant built a (now 500-feet) fishing pier into the Delaware Bay at Wildwood Villas. On the pier, a few feet off shore, there is a gate and a small guard-building; toward the middle of the pier, there is a roofed but open pavilion built in 1932. The pier is twelve feet wide to the pavilion, there expands in width for a space and then continues at a width of eight feet the rest of its length. Only members (and presumably their guests) have been permitted on the pavilion or pier, with the exception of the season in 1933 when non-members were allowed on the pier for angling purposes but only on payment of a fee. While business meetings were held elsewhere, the pavilioned pier was the real gathering place for

members who wished to enjoy the piscicapturist advantages afforded by their organization.

There is nothing in the Control Act which expressly requires the holder of a club license to own or possess anything. Section 13 (5). The object of the Act, which afforded this privilege at a greatly reduced fee but confined it to such clubs as were not operated for private gain and then only to bona fide club members and their guests, was to insure that such licenses should be granted only to bona fide clubs. The requirement of a club house or club quarters made by the State rule, was designed to secure that object. Before the State rules were promulgated a public hearing was held to formulate them to which all clubs, municipal officials and the public generally were invited. The invitation declared:

> "The objective will be to include within the benefit of this new low priced license all bona fide clubs and to exclude therefrom mushroom and spurious organizations. The honest plenary retail consumption licensee who pays the full fee must be protected against unfair competition. Municipalities are not to be deprived of revenue to which they are really entitled. The Pennsylvania precedent of using or resurrecting club charters for purely commercial enterprises is not to be repeated in this state.
>
> "It is confidently believed that bona fide organizations, municipal officials and public-minded citizens generally will cooperate in suggested reasonably stringent conditions and rules to distinguish legitimate clubs from neo-speakeasies." Bulletin 21, Item 28.

The State Rules were promulgated following that hearing. Among the objective tests included in Rule 2 is the requirement of exclusive continuous possession and use of a club house or club quarters for a period of three years continuously, immediately prior to the submission of the application. The requirement was in the alternative. It need not be a club house. Club quarters would suffice if there were exclusive, continuous possession for the requisite period of time.

The term "quarters" connotes a specific place, an assigned station or definite location - for instance, the "Latin Quarter"; the "Winter Quarters" of an army or of a circus. There is no requirement of roofing, or housing, or benches or chairs. What counts is the place, not the particular equipment. Washington established his headquarters wherever he chose.

This club built and owns its pier - a sizeable one at that, jutting out 800 feet into the Delaware Bay. At one time it extended 1200 feet but the ice broke part of it away. The pier, for the past six years, has been the quarters of the club. There is no question but that its possession and use of the pier has been exclusive and continuous. The objective test of the Rule is satisfied.

The action of respondent is therefore reversed.

Respondent is directed to issue the license as applied for.

Dated: November 20, 1937.

D. FREDERICK BURNETT
Commissioner

7. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITIES - OUTRIGHT REVOCATION INDICATED AND EFFECTED.

November 20, 1937.

Joseph Gardiner, Clerk,
Township of Saddle River,
Rochelle Park, N. J.

Dear Mr. Gardiner:

I have before me staff report and your certification of the disciplinary proceedings before the Township Committee of Saddle River against Jack Shupack, t/a Alabama Club, adjudged guilty of (a) having allowed, permitted and suffered immoral activities on or about the licensed premises and allowing same to become a nuisance, and (b) having employed out-of-state entertainers without a permit.

I note that the license was revoked effective November 15, 1937.

Neither expressing nor entertaining any opinion on the merits of the case which was handled by the staff in routine course, I wish to extend to your Township Committee and to attorney Herbert A. Chary, Esq., my sincere thanks for the prompt and efficient manner in which this disagreeable matter was handled. They have acquitted themselves well.

As I said to the City Council of Clifton -- commenting upon their revocation of the liquor license held by the father of Jack Shupack, in that municipality on somewhat similar charges -- it is a loathsome job for my men to be forced to "track down calloused and predatory females who give a bad name to every place they infest." Neither the gathering of evidence in cases of this kind nor presentation of such evidence at open hearings is a pleasant task for my investigators; nor is it pleasant for municipal authorities to have to hear such evidence and sit in judgment.

It is, however, our duty, your Committeemen as much as mine, to put an end to practices in licensed premises which insult decency and challenge the very maintenance of the privilege to dispense liquor.

Sincerely yours,

D. Frederick Burnett
Commissioner

8. LICENSED PREMISES - DIFFERENT PARTS MAY BE CALLED BY VARIOUS NAMES AS FANCIED - HEREIN OF EMBASSIES.

Dear Sir:

We have been in communication with your local office in Toms River with reference to our application for a liquor license, and wish to ask the following advice:

The applied-for license calls for a bar and grill, and we would like to name this bar and grill, for example, "Club Embassy", and wish to know whether or not this liquor license

will allow this idea. The premises will not be run as an exclusive club of any kind, nor will have any membership, cover charge, and the name of such premises will be for publicity purposes only.

We would appreciate if you would advise officially whether the applied-for Plenary Retail Consumers' License allows for the above.

Very truly yours,

Max Grossman
Hotel Grossman

November 22, 1937.

Hotel Grossman,
Lakewood, N. J.

Gentlemen:

Your license affords all the privileges of a club license and more besides.

Hence, there is no objection to naming your Bar and Grill the "Club Embassy." It is your child. You may christen it as you choose. Nobody would expect the clientele to be exclusively Ambassadors, or Envoys Extraordinary, or even Senators. After all, it's only a name - more or less diplomatic. The Swiss in Union City were permitted to call their restaurant the "Alpine Tavern" and to yodel ad lib. (Bulletin 206, Item 6). So you may call your grill, if you will, "Club Embassy" and require all who enter to wear knee breeches and spats or side-arms, if fancy impels.

It is not the name but the nature of the place that gives me concern.

Best wishes.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

9. DISCIPLINARY PROCEEDINGS - INDECENT DANCE - FIFTEEN DAYS' SUSPENSION - HEREIN OF PRESSURE GROUPS.

November 22, 1937.

Louis L. Lowe, Secretary,
Municipal Board of Alcoholic Beverage Control,
City Hall,
Orange, N. J.

Dear Mr. Lowe:

I have staff report and the written conclusions of the Municipal Board of Alcoholic Beverage Control of Orange in connection with disciplinary proceedings against Frank J. Dodd, 272 Main Street, holder of your plenary retail consumption license No. C-19, charged with having permitted a lewd and indecent dance performance on his licensed premises.

I note the licensee was adjudicated guilty and that his license was suspended for a period of fifteen days beginning November 17, 1937, at 7:00 A. M.

Please thank the members of the Board for the prompt and wholesome manner in which they have discharged their duty. An appeal was filed but since withdrawn. Hence the suspension is now in full force and effect.

The ruling made by the Board to the effect that licensees are personally responsible for whatever goes on in licensed premises was the only conclusion which could be reached in accord with sound public policy.

I am sorry to learn but am glad the Board mentioned the influences sought to be exerted upon it. It made an unpleasant duty doubly hard. Their resistance to pressure groups made their decision all the more commendable.

I also wish to express my appreciation to the Board's attorney, Louis J. Goldberg, Esq., for the very careful and painstaking manner in which the Department's case was presented.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

10. APPELLATE DECISIONS - WEISS vs. CLIFTON

HERBERT WEISS and ROSE KUSHNER, trading as CLIFTON WINE & LIQUOR SHOP,

Appellants,

-vs-

MAYOR and COMMON COUNCIL of the CITY OF CLIFTON, and JOSEPH PETERS,

Respondents.

ON APPEAL

CONCLUSIONS

. . . . . .

Peter Cohn, Esq., Attorney for Appellants.
John G. Dluhy, Esq., Attorney for Respondent Mayor and Common Council of the City of Clifton.
Milton Werksman, Esq., Attorney for Respondent-Licensee Joseph Peters.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail distribution license to respondent Peters, for premises known as 683 Main Avenue, Clifton.

Appellants, who hold a similar license at 702½ Main Avenue, Clifton, filed written objections below to the granting of said license. These objections, in effect, set forth that there are sufficient licensed places in the neighborhood and request the rejection of the application, "having in mind the best interests of the people of the City of Clifton and also the best interests of the present dealers."

The evidence shows that, in addition to appellants' premises, distribution licenses are outstanding at 713 Main Avenue and 751 Main Avenue, which premises are respectively about two and three blocks north of the premises in question. There are also a large number of consumption licenses outstanding in this section of Clifton. It appears, however, that Main Avenue is one of the principal business streets of Clifton. It is noted also that Peters' premises are on the opposite side of this business street from appellants' premises.

Unquestionably there are a large number of licensed places in the vicinity, but determination as to the number of licenses which should be permitted in any given vicinity is a matter confided to the sound discretion of the issuing authority. Kalish vs. Linden, Bulletin 71, Item 14. Where, as here, an attack is made upon the exercise of the discretion of the municipal issuing authority in the issuance of the license, the burden rests upon the appellant to prove an abuse of that discretion by clear and convincing evidence. Considering the business character of the neighborhood and the fact that the premises in question are located on the opposite side of the street from appellants' premises, I conclude that appellants have not sustained the burden of proof in this case.

Appellants refer to conclusions filed in Crociata vs. Clifton, Bulletin 189, Item 6, as dispositive of the issues in this case. In the Crociata case application was made for a distribution license in the same neighborhood as that considered herein. Respondent therein had denied the application because the issuance thereof would result in too many licensed premises in the neighborhood, and because there was no further demand or need for such business. In the Crociata case the evidence, in addition to showing the numerous licensed places in the vicinity, disclosed that a similar license existed on the same side of Main Avenue and within one hundred feet of the premises for which appellant sought his license. The case is thus distinguished on its facts from the present case. In addition thereto, the burden of proof in the Crociata case was upon appellant to show that respondent had abused its discretion, and I held that appellant had not sustained the burden of proof in that case. In the present appeal the burden of proof is upon appellants to show an abuse of discretion by the issuing authority in the issuance of the license to respondent Peters. This burden I find appellants have failed to sustain.

Appellants contended that the premises for which the license was granted is actually known as 685 Main Avenue and that, therefore, the issuance of the license to 683 Main Avenue was improper. It is admitted that the application was made for 683 Main Avenue, that the published notice of intention refers to 683 Main Avenue and that the license itself covers premises known as 683 Main Avenue. If in fact the true address is 685 Main Avenue, then, of course, the license issued does not permit the operation of the business where it is being presently conducted. Likewise the notice of intention published for 683 Main Avenue would, under the circumstances, be fatally defective. Trotto vs Trenton, Bulletin 48, Item 11; Methodist Episcopal Church vs. Verona and Freedman, Bulletin 101, Item 5.

There seems to be some confusion as to the proper numbering of stores on Main Avenue in this locality. Up to the present time the City has not designated any official street numbers for these stores. The premises in which the licensed business is

being conducted pursuant to the license issued to Peters is the most northerly of three small stores located in a one-story frame building, all of which are under a single roof. The central store in this building has been occupied by Peters for some time as a delicatessen, and the awning in front of the delicatessen store bears the number "683." The store to the south of the delicatessen in this building is occupied by a tailor, and the number "683"appears upon the door of the tailor shop. The premises in question, which are located in this building to the north of the delicatessen store, bear no number. To the south of the one-story structure containing the three stores already described is a two-story building which has borne the number "681" for more than twenty years. To the north of said one-story building is a two-story structure occupied on the main floor as a drug store. The drug store has two doors, one of which bears the number "685", the other of which bears the number "687". These numbers have been used for more than eight years. It appears that under this evidence the only proper designation of the licensed premises is 683 Main Avenue. Certainly the local issuing authority was not misled, because the Chief of Police who investigated the licensed premises reported that "the applicant intends to have a separate store for the liquor next to his delicatessen store." Appellants produced a lease entered into between Joseph M. Peters and Helen M. Peters, his wife, and Benjamin Rosenzweig, on December 31, 1929, wherein the premises in question were described as 685 Main Avenue. Whatever designation was used for the premises eight years ago, it seems clear that the proper address today is 683 Main Avenue. I conclude that the proper street number of these premises appears in the application, notice of intention and license.

Since appellants have not shown that the license was improperly issued, the action of respondent Mayor and Common Council of the City of Clifton, in issuing the license to respondent Peters, is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 21, 1937.

11. APPELLATE DECISIONS - MAY vs. HOPATCONG

HARRY N. MAY,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF HOPATCONG and WALTER EISENBACH and THOMAS L. ROGERS,

Respondents.

ON APPEAL

CONCLUSIONS

. . . . . .

No appearance on behalf of Appellant

No appearance on behalf of Respondent, Borough Council of the Borough of Hopatcong

Walter Eisenbach and Thomas L. Rogers, Respondent-Licensees, Pro Se

BY THE COMMISSIONER:

This appeal was filed with me to review the issuance of a plenary retail consumption license for premises located on Lakeside Avenue, Northwood, Borough of Hopatcong.

After obtaining two adjournments, postponing hearing in this matter from August 10 to September 24, appellant failed to appear at the hearing. The only appearance entered was by the respondent-licensees, who appeared pro se, without benefit of answer filed either on their behalf or on behalf of the respondent Borough Council.

Upon interrogation by the Hearer, the respondent-licensees testified as follows:

That in May 1937, a consumption license for the last term was issued to them, covering the premises in question, no objection having been made or protest filed against the issuance of that license; that in June 1937, after filing application for a renewal license, they were notified that appellant had lodged a protest against this renewal application, and that a public hearing thereon was scheduled for June 20 (or June 24); that at this public hearing, which they attended, the only objection made was by appellant's attorney, to the effect that the existence of the licensed premises depreciated the value of appellant's adjoining property and bungalow; and that no other objection has been made or protest filed against their application for renewal.

In view of this testimony, and appellant's failure to prosecute, the present appeal is hereby dismissed.

Dated: November 21, 1937. Commissioner