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

BULLETIN NUMBER 163 February 24, 1937

1. APPELLATE DECISIONS - OLSEN v. BOGOTA

GERTRUDE E. OLSEN,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF BOGOTA,
Respondent

ON APPEAL
CONCLUSIONS

Chandless, Weller & Selser, Esqs., by Dominick Fondo, Esq., Attorneys for Appellant.
Harold W. Gammon, Esq., Attorney for Respondent.
Stanley W. Bradley, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellant appeals from the denial of her application for a plenary retail consumption license for premises located at 265-267 Queen Anne Road, Bogota.

Respondent denied the license because (1) numerous persons residing in the vicinity objected to the issuance thereof; (2) the issuance of the license would result, it was thought, in too many saloons in the immediate vicinity.

Appellant seeks a license for a corner store in a building containing five stores with apartments above, located at the southeast corner of Queen Anne Road and Fort Lee Road, Bogota. This building is in a section zoned for business. The southwest corner of Queen Anne Road and Fort Lee Road, Bogota, on which is erected a gasoline station, is likewise zoned for business. Queen Anne Road, southerly of the corners described, is predominantly residential. Fort Lee Road is the dividing line between Bogota on the south and Teaneck on the north. Queen Anne Road continues northerly from Fort Lee Road through Teaneck. There are stores located on the northeast and northwest corners of Fort Lee Road and Queen Anne Road, in Teaneck, and also along Queen Anne Road in Teaneck for some distance north of Fort Lee Road.

The majority of the objectors reside on Queen Anne Road, Bogota, to the south of the premises in question and in the immediate neighborhood. They object because the issuance of the license would depreciate the value of their property and because they have been annoyed frequently by the actions of intoxicated persons. Their first reason for objection being general in character is not a sufficient reason for denying a license to a place located in a business district. Katz v. Caldwell, Bulletin #143, Item #3, and cases therein cited. As to their second reason, the evidence shows that the objectors have been annoyed on many occasions by intoxicated persons who they believe came from taverns in Teaneck. Their complaints, which were never brought to the attention of the police authorities either in Bogota or in Teaneck, are directed against the manner in which Teaneck licensed places have been conducted. This testimony, however, would not be a sufficient reason for denying appellant's license because it cannot be presumed that appellant, whose qualifications are not questioned, would improperly conduct her place of business if granted a license. These objectors contend also that there are enough places in the immediate vicinity. Their objections, however, on this ground stand or fall with the validity of the second reason assigned by respondent for denying the license.

In considering the second reason alleged by respondent for the denial of the license, it is necessary first to describe the licensing situation as it existed in Bogota at the time of the denial and the hearing of this appeal. There was and is no ordinance or resolution limiting the number of licenses to be issued. Three licenses were outstanding at that time; one on Queen Anne Road, about three-tenths of a mile south of the premises in question, another on the same road about a block further south, the third on Fort Lee Road at the railroad, about one-half mile to the west.

The determination of the question as to the number of licensed premises which should be permitted in any given vicinity is a matter confided to the sound discretion of the issuing authorities. Kalish v. Linden, Bulletin #71, Item 14; Cascio v. Roselle Park, Bulletin #127, Item 7; Farley v. High Bridge, Bulletin #151, Item 13. Respondents may, however, take into consideration the licenses outstanding in an adjoining municipality in determining whether the immediate vicinity is sufficiently supplied. Skwara v. Trenton, Bulletin #57, Item 7; Haycock v. Roxbury, Bulletin #101, Item 3. There are three licensed places in Teaneck which are near the intersection of Fort Lee Road and Queen Anne Road -- one located on the northerly side of Fort Lee Road about three blocks east of Queen Anne Road, and two located on Queen Anne Road within two hundred fifty and three hundred fifty feet respectively of Fort Lee Road. Until a short time ago a fourth licensed place was in existence on the northerly side of Fort Lee Road in Teaneck, a short distance east of Queen Anne Road and almost directly opposite the premises in question, but this licensee is no longer in business.

If this were all, I would be inclined to agree that there are a sufficient number of licensed premises in the immediate vicinity, especially in view of the fact that eight objectors appeared at the hearing and testified that the premises licensed in Teaneck were sufficient to take care of the needs of persons residing in that neighborhood, and also the testimony of the Mayor of Bogota, who stated that in his opinion the three licensed places then existing in the Borough were sufficient and that numerous requests have been made to him to limit the number of licenses.

It appears, however, that after the hearing of the appeal of this case, namely, on January 28, 1937, respondent issued a fourth license to Westa, for premises at 20 E. Fort Lee Road, near the railroad. This fourth license was issued to a bowling alley located within about one hundred twenty-five feet of the existing licensed place on Fort Lee Road. Upon receipt of this information, an oral argument was ordered, at which the attorneys for all the parties appeared and fully and fairly argued the effect that the issuance of this fourth license issued should have on the appeal herein. Respondent argued that the issuance of this fourth license to a bowling alley should not affect this appeal because the new licensee catered only to those who came to his place for the purpose of bowling, and did not sell to the general public. The fact remains, however, that his license gives him the right to sell generally and I feel, therefore, that this license must be considered on the same basis as any other license issued for consumption purposes. Appellant argues that respondent has not uniformly applied its alleged policy and, therefore, should not be permitted to assert it now. Karpf v. Camden, Bulletin #66, Item 3; Battaglia v. Glassboro, Bulletin #66, Item 4; DeVito v. North Arlington, Bulletin #160, Item 1.

In Battaglia v. Glassboro, supra, I said:

> "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."

It appears, however, in this case that the neighborhood in which the Westa license was issued is substantially of the same character as that in which appellant's premises are located. The Westa premises and appellant's premises are both located in small business sections of the Borough, approximately one-half mile apart, along Fort Lee Road. To deny appellant's application upon the ground that there were sufficient licensed places in the vicinity of her premises and thereafter to grant the Westa license within one hundred twenty-five feet of an existing place, seems under the circumstances of this case to be discriminatory.

The action of respondent is, therefore, reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 14, 1937.

APPELLATE DECISIONS - GOLDBERG v. LIVINGSTON TOWNSHIP.

ABRAHAM GOLDBERG,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE) CONCLUSIONS
TOWNSHIP OF LIVINGSTON,)
Respondent)

Edward Gaulkin, Esq., Attorney for Appellant.
Alfred J. Grosso, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of an application for a plenary retail distribution license for premises located at 525 South Livingston Avenue, Livingston.

Respondent denied the license contending (1) it is socially undesirable to have a licensed place in proximity to a church and school; (2) there are a sufficient number of licensed places in the vicinity; (3) appellant's premises are within two hundred feet of a church.

There are twelve to fifteen business zones in Livingston, including one at Northfield center. The premises for which the license is sought are located in a business building two stories in height, known as the Livingston State Bank Building, and located at Northfield center. There are numerous stores in this building on both sides of the store for which the application is sought. This building faces on South Livingston Avenue, and also on East Northfield Road. At the time the application was considered by respondent, appellant submitted plans which showed two entrances to his premises. One entrance, described throughout the testimony as entrance "B," faces on South Livingston Avenue. The other entrance, described throughout the testimony as entrance "A," would face on East Northfield Road. The Northfield Baptist Church is located on the opposite side of East Northfield Road, at the corner of South

Livingston Avenue. There is a great deal of testimony as to the distance between the entrance to the Baptist Church and entrance "A" of appellant's premises, which would be the entrance nearer to the church. Different results are arrived at in determining that distance because of differences of opinion as to the normal way that a pedestrian would properly walk from the nearest entrance of said church to the nearest entrance of the premises sought to be licensed. Cf. Bulletin #48, Item 11. For reasons hereinafter stated, it is unnecessary to determine that distance exactly. It appears, in any event, that the premises are in close proximity to the church. The entrance to the Roosevelt School is about three hundred fifty-eight (358) feet from the premises for which the license is sought.

If this were all the evidence, respondent's action would be sustained. The minimum requirement set forth in Section 76 of the Control Act does not deprive issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but nevertheless beyond two hundred feet. Serafin v. Bayonne, Bulletin #107, Item 3, and cases therein cited.

It appears, however, that there is another business section in Livingston known as Livingston center, which is of substantially the same character as Northfield center. At Livingston center respondent has issued plenary retail distribution licenses for the past few years to two stores -- one operated by the Great Atlantic and Pacific Tea Company, the other by Hockenjos. Both of these latter stores are only slightly beyond two hundred feet from the Livingston Baptist Church, and both of these licenses were issued despite the objection of that church which was made at the time these licenses were originally issued. It appears also that a license has been issued to a place about seven hundred feet away from a school. Under these circumstances it does not appear that respondent has adopted any policy not to issue licenses to places in proximity to churches or schools, or, if such policy has been adopted, that it has been uniformly applied. A policy which is not applied fairly and uniformly is of no moment on appeal. Skwara v. Trenton, Bulletin #57, Item 7; Barbuto v. Trenton, Bulletin #56, Item 5; Budenstein v. Atlantic City, Bulletin #144, Item 6. Refusal to issue appellant's license because of alleged close proximity of his premises to a church and school is unreasonably discriminatory under the circumstances of this case.

Considering the second reason advanced by respondent, the evidence shows that a consumption license has been issued to a Mrs. Pitscher for a place about one thousand feet away from Northfield center, and that the next nearest licensed place is about a mile away. Numerous witnesses were produced by appellant, who testified that Northfield center is a shopping center similar in character to Livingston center which is about two and one-half miles away, and which has two distribution stores. These witnesses testified that the issuance of the license would be a convenience to them and to others residing in that section of the Township, and that Mrs. Pitscher conducts a restaurant and does not cater to package trade. A package goods license fills a need quite distinct from that supplied by the tavern. It may well be an important matter of social convenience and necessity that such a license be granted. Budd Lake Market, Inc. v. Mount Olive, Bulletin #160, Item 6. The population of Livingston is four thousand. Its area is 15.73 square miles. The only distribution licenses outstanding are those at Livingston center. Under all the circumstances, I find that appellant has sustained the burden of proof in showing that an additional distribution license is needed at Northfield center.

It remains to be considered whether or not the premises are actually within two hundred feet of a church. If so, the license cannot be issued. Measuring various courses from the nearest

entrance of the Northfield Baptist Church to entrance "A" of appellant's premises, the measurements vary from a maximum of 228.55 feet to a minimum of 180.01 feet. It clearly appears, however, that entrance "B" to appellant's premises is 32.7 feet further removed from the church, so that said entrance "B" is at least 212.71 feet from the entrance to the church. Appellant, at the hearing before the local Board, offered to close entrance "A." At the hearing he testified that he was still willing to do that. If entrance "A" is permanently closed, and entrance "B" is the only entrance to appellant's premises, then the issuance of the license is not prevented by the terms of Section 76 of the Control Act.

Appellant has offered not to display neon or other signs advertising wines or liquors. His offer is accepted. It relieves considerably the offense to religious sensibilities.

Accordingly, the action of respondent is reversed on condition that appellant permanently close entrance "A," and upon the further condition that the only entrance to appellant's premises shall be the entrance described as "B" entrance, and upon the further condition that no neon or other sign advertising wines or liquors be displayed on the licensed premises or be visible from the outside thereof. Respondent is directed to issue the license as applied for, subject to these several conditions.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 15, 1937.

3. WINE PERMITS - GIFT OF WINE MANUFACTURED THEREUNDER - NO OBJECTION TO MAKING A GIFT OF SUCH WINE PROVIDED IT IS REALLY AN OUT-AND-OUT GIFT AND NOT A SALE - HEREIN OF THE TERM "FOR PERSONAL CONSUMPTION ONLY."

February 15, 1937

J. Lindsay de Valliere, Deputy Commissioner,
State Tax Dept., Beverage Tax Division,
Trenton, New Jersey.

Dear Commissioner;

I have yours of the 9th with enclosed list of Special Wine permittees who have reported to your Department gifts of wine which was manufactured by them for their personal consumption.

Section 75A of the Control Act provides for the issuance of Special Wine Permits for the manufacture of wine for personal consumption only. The purpose of this Section was to permit the manufacture of wine for personal consumption by persons, most of whom are of foreign extraction and who believe the privilege of making wine is a God given right and thereby keep it under control and so prevent wholesale violation of the Control Act. As you know, the legislative policy in respect to the issuance of these permits has been extremely liberal as indicated by the provisions which permit issuance without investigation, inspection, hearing or advertisement.

The question of gifts of wine which has been manufactured for personal consumption was considered in re Smith, Bulletin #78, Item 11. There, in answer to the inquiry: "Wine that is made at home and for home consumption - may the maker, after securing his $1.00 permit, be permitted to serve wine to his guests or friends in his own home without making himself liable for a fine from your department," I ruled:

"The answer is in the affirmative. Having complied with the law, the maker may serve his guests and friends as freely as he would food - always providing that it is a bona fide out-and-out gift. Under no circumstances may he sell such wine."

If the words "for personal consumption only" were strictly construed, then the holder of a Special Wine Permit could not even serve a glass of wine so made to members of his own family or to guests dining at his home. This would be far fetched and defeat the very purpose of the provision for such permit. Following the same reasoning, there is nothing wrong for a permittee to give bottled wine to a friend or guest to take home; provided, of course, it is really a gift and not a sale.

Hence, unless the gifts referred to in your letter were not of a purely gratuitous nature, they do not constitute a sale within the meaning of the Control Act and, therefore, do not warrant action by this Department.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

February 11, 1937

Re: Application for Solicitor's Permit - Case No. 44.

Applicant having admitted in his questionnaire that he had been convicted of manslaughter in 1926, a hearing was held to determine whether the crime for which he was convicted involved moral turpitude.

Applicant testified that on the evening in question he was returning from work on a motorcycle; that a man who was driving a Ford automobile in the same direction had caused his automobile to collide with applicant's motorcycle; that the man attempted to run away but was brought back and later struck applicant on the shoulder; that applicant asked the other man "to take it easy" but that the other man again attempted to strike him. Thereupon applicant punched the other man, who fell, hit his head on the pavement, fractured his skull and died the same day. Applicant was later indicted for manslaughter, pleaded non-vult, was sentenced to a year in the County Penitentiary and served nine months and twenty-one days. Applicant further testified at the hearing that he had never before met the man whose death he caused, and that he later learned that the other man was intoxicated at the time of the accident.

The question to be decided here is not whether under the circumstances applicant was guilty of the crime of manslaughter, but simply whether the crime involved moral turpitude. In the case of U. S. ex rel Meyer v. Day, 54 Fed. 2nd 336 (1931), the Court said: "It is in the intent that moral turpitude inheres." The Courts have held that conviction for manslaughter through neglect or reckless operation of an auto without intent to injure decedent was not conviction of a crime involving moral turpitude. In re DiCola, 7 Fed. Sup., p. 194 (1934). While it is true that the present case involves more than mere negligence, it does not appear that the applicant contemplated the disastrous result which followed the blow he struck, and which result may have been due in part at least to the condition of the other man. Each case of this nature must be decided upon the facts which appear. Under the facts of this case I do not believe the crime for which the applicant was convicted involved moral turpitude.

It is recommended that the permit be granted.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - OUTRIGHT REVOCATION.

February 14, 1937

Jacob Van Hook, Esq.,
Borough Clerk,
Wallington, N. J.

Dear Mr. Van Hook:

I have staff report and your certification of proceeding before the Borough Council of Wallington against Jack Coopersmith, charged with having possessed illicit alcoholic beverages, and note the licensee was adjudicated guilty and that his license was revoked.

Passing no opinion on the merits of the case because it may come before me by way of appeal, I ask that you express to the members of the Council my thanks for their prompt and salutary action. Such a drastic penalty is encouraging to those honest licensees who scrupulously obey the law. They often complain that they pay high license fees, handle nothing but legitimate liquor, but so often get little or no protection against cheaters in their trade who take a chance to reap a major profit if not detected, but if caught, get off with little or no punishment. Cheaters in the liquor business have no place in the present order of things.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

6. RULES CONCERNING CONDUCT OF LICENSEES AND USE OF LICENSED PREMISES CONSTRUED - LOTTERIES - MERE POSSESSION OF LOTTERY TICKETS ON LICENSED PREMISES IS NOT A VIOLATION.

My dear Commissioner:

Will you kindly advise whether the possession of lottery slips or lottery books on the person of a licensee while on the licensed premises, and/or the possession of lottery slips or lottery books on the licensed premises constitute a violation of the Rules Concerning Conduct of Licensees and Use of Licensed Premises.

I would greatly appreciate your advising whether or not a licensee having such slips or books on the premises or on his person while on the licensed premises would come within the rules.

Very truly yours,
LOUIS J. GOLDBERG,
Assistant City Counsel of the
City of Orange.

February 15, 1937

Louis J. Goldberg, Esq.,
East Orange, N. J.

My dear Mr. Goldberg: Re: City of Orange.

Rule 6 of the State Rules Concerning Conduct of Licensees provides:

> "No licensee shall allow, suffer or permit any lottery to be conducted, or any ticket or participation right in any lottery to be sold or offered for sale, on or about the licensed premises."

It prohibits the conduct of lotteries or the sale or offering for sale of any lottery tickets on or about the licensed premises. It makes the licensee fully responsible to see to it that on his premises the mandate of the rule is carried out. Knowledge on the part of the licensee is not necessary to constitute a violation.

Possession may be a link in a chain of proof of sale but of itself is not an offence. The rule does not prohibit mere possession. If a man has lottery tickets in his pocket, whether he be customer, licensee or employee, and all that he does is keep them in his pocket out of sight, there is no violation.

This I deem to be wholly reasonable. We say that licensees must be held fully responsible for any unlawful conduct on their premises whether with their knowledge or without. But a licensee should not be held responsible for the conduct of others unless they do something or perform overt acts.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. COURT DECISIONS - MOTOR FINANCE CORPORATION vs. DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL - ON APPLICATION FOR WRIT OF CERTIORARI TO REVIEW FORFEITURE OF SEIZED VEHICLE - WRIT DENIED (SEE BULLETIN 163, Item 8)

February 15, 1937.

Gentlemen:

In the matter of the application of Motor Finance Corporation for a writ of certiorari to review the decision of the Commissioner in regard to an automobile used by one Stewart in the transportation of intoxicating liquors and seized by the Commissioner on that account, I conclude that the application should be denied.

It does not seem to be disputed but that the automobile in question was "unlawful property" in the intendment of the statute, so the case seems to turn on paragraph "f" of Section 64 of the Beverage Control Act. This authorizes the Commissioner on being satisfied of a bona fide and valid lien, and that the holder thereof "has acted in good faith and had no knowledge of * * such facts as would have led a person or ordinary prudence to discover" (the unlawful use to which the property was put) to recognize the validity of the lien. But such recognition is expressly committed to the discretion of the Commissioner.

There is nothing to show any unlawful use existing at the time of the sale to Stewart, or at the time of the assignment of the conditional sale contract to the Finance Co. The date of both was April 24, 1936: The seizure for unlawful use came on the 27th when illicit liquor was being transferred from the car to a building. I think the statute means discovery of a present or past use, and not of a future unlawful use. The ruling of the Deputy Commissioner seems to go on the ground that the Finance Co. should have learned enough about Stewart in advance to anticipate that there would be an unlawful use. At this stage, I doubt that the statute intends to impose such an obligation in a case where the purchaser is not a reputed violator of the liquor law.

But assuming all this, the matter of recognizing a lien is still left to the discretion of the Commissioner by the statute. Hence such "recognition" is not mandatory. In the present case the discretion not to recognize is based on the fact as found, that Stewart had a bad criminal record and that reasonable investigation would have discovered this and led to a refusal by the Finance Co. to take over the said contract. I cannot say the decision based on this finding was an abuse of discretion.

Allocatur is therefore denied, subject to further application to the court in banc if desired.

Yours very truly,

C. W. PARKER

8. FORFEITURE PROCEEDINGS - SEIZED PROPERTY DECLARED UNLAWFUL AND FORFEITED - APPLICATION BY LIEN CLAIMANT FOR RETURN OF SEIZED VEHICLE DENIED BECAUSE IT HAD NOT MADE AN ADEQUATE INVESTIGATION (See Bulletin #163, Item 7).

In the Matter of the Seizure on April 27, 1936 on the public highway at or near the intersection of Henderson Street and Newark Avenue, in the City of Jersey City, County of Hudson and State of New Jersey.	On Hearing CONCLUSIONS, DETERMINATION AND ORDER

Appearances:
George B. Turton, Esq., for Motor Finance Corp.
John Meehan, Esq., for Theodore Stewart.

On April 27, 1936, police officers of Jersey City seized a Buick coupe registered in the name of Theodore Stewart, together with two 1-gallon jugs of alcoholic beverages alleged to be unlawful property under the provisions of the "Act Concerning Alcoholic Beverages," on the public highway in the City of Jersey City. The property was turned over to this Department.

In accordance with the provisions of the Control Act, a hearing was held to determine whether the seized property constitutes unlawful property and should be forfeited to the State.

The arresting officers testified as follows: Two men, later identified as Theodore Stewart and Samuel Grissom, were in the Buick coupe which came to a stop in front of a certain building on Newark Avenue. Grissom left the vehicle with two packages and entered the building. One of the officers overtook Grissom in the hallway and discovered the two packages containing two 1-gallon jugs of untaxed liquor which Grissom stated belonged to Stewart. In the meantime, the other officer accosted Theodore Stewart, who had remained in the vehicle, and upon examination of the same,

found a jug containing a small quantity of alcohol. Stewart stated that he had consumed the alcohol which had been in the jug and had purchased the other alcohol from a truckman near the ferry in Jersey City.

Stewart appeared at the hearing and made application for the return of the vehicle to him. He denied making the statements attributed to him by the officers and testified that as he was driving home he observed his friend, Grissom, enter the building, and waited for him to emerge in order to give him a ride home. He further testified that he had previously observed the jug in his car, but could not account for its presence except that his brother-in-law had used the car the previous day. Grissom admitted that he had two jugs of alcoholic beverages but claimed that the beverages found by the officers were not those which had been in his possession.

Stewart's purported explanation is unconvincing and the Commissioner is satisfied that the illicit alcoholic beverages were transported in his vehicle. His application for the return of the motor vehicle is therefore denied.

An appearance was entered for Motor Finance Corporation as holder of a conditional sales contract made by Theodore Stewart and Moses Stewart covering the seized motor vehicle, and application was made by it for recognition of its claim as an innocent lienor.

Prior to its accepting the contract, the corporation caused an investigation to be made of Stewart. Such investigation disclosed that Stewart was not employed by any particular concern but did odd jobs on his own account, earning what he could. This information was furnished by the wife and mother of Stewart. The only other inquiries made were of Stewart's landlady with reference to the payment of rent, and of another finance company with which Stewart had previously had an account.

One of the persons charged with making the investigation admitted that ordinarily the disclosure that the subject of the inquiry has no apparent source of income would lead to a further investigation. No such investigation was made because, as he stated, he thought that the neighbors would be unable to furnish him with any information.

The corporation evidently entered into the contract on the strength of the guarantee of the account by Moses Stewart, father of Theodore Stewart, who apparently was steadily employed. No investigation was made by the corporation as to whether Theodore Stewart had a criminal record, although in fact he had such a record, disclosing eight previous arrests on various charges since 1925 and six convictions on such charges. The Credit Manager admits that if he had been aware of Stewart's criminal record the corporation would not have financed the purchase of the motor vehicle.

A finance company presenting a lien claim against a motor vehicle seized for a violation of the Control Act must present proof that an adequate investigation was made. Cf. Bulletin #116, Item 9. The purpose of making such investigation is to ascertain the identity and character of the persons involved. In the instant case the investigation was merely perfunctory. Reasonable prudence would have led to the discovery that Theodore Stewart was a person of ill repute who, it could be anticipated, would make an illegal use of the motor vehicle. The claim of the Motor Finance Corporation will therefore be denied.

It is, therefore, on this 9th day of January, 1937, ADJUDGED and DETERMINED that all of the seized property above described constitutes unlawful property and is hereby declared forfeited; and

It is further ORDERED that all of the seized property above described shall be retained for the use of hospitals and State, County and municipal institutions, or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - WHOLESALERS MAY SELL ONLY TO LICENSEES - PROCEEDINGS DIRECTED AGAINST WHOLESALERS ALLEGED TO HAVE BILLED AND SOLD LIQUOR TO A NON-LICENSEE.

February 18, 1937

Jacob Van Hook, Esq.,
Borough Clerk,
Wallington, N. J.

Dear Mr. Van Hook:

I have staff report and your certification of proceedings before the Borough Council of Wallington against Harry Pross, charged with transferring his license to Karol Skrzypczak without any compliance whatsoever with the statutory requirements, and permitting the latter to operate the business as if he were a licensee, and take all the profits over and above the sum of $65.00 per month, of which $40.00 was to be for rent and $25.00 on account of the license. The arrangement so far as your or my records are concerned was entirely secret. Skrzypczak in nowise appears thereon as a licensee.

I note that Harry Pross was adjudged guilty and his license was suspended for a period of thirty days.

Expressing no opinion on the merits of the case because it may come before me by way of appeal, I again request that you convey to the members of the Council my respect and appreciation. This suspension, coupled with the revocation handed out in the Coopersmith case, should teach Wallington licensees that they will be held to strict accountability for violations.

I am directing immediate institution of disciplinary proceedings against Wilkinson-Gaddis & Co., National Wine & Liquors, Inc. and Suffern Bottling Works, Inc., who billed and sold liquor to Karol Skrzypczak. Wholesalers well know that they may sell only to licensees.

Wholesalers, like retailers, will have to learn that the law was made to be obeyed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. COURT DECISIONS - ST. ALOYSIUS ROMAN CATHOLIC CHURCH v. NEWARK AND MOHAWK RESTAURANT, INC. - ON APPLICATION FOR WRIT OF CERTIORARI TO REVIEW ORDER DIRECTING TRANSFER OF LICENSE (See Bulletin #160, Item 10).

February 15, 1937

Gentlemen:

In the matter of application by The Mohawk Restaurant, Inc. for a writ of certiorari to review the permit granted by the Munici-

pal Board of Alcoholic Beverage Control of the City of Newark for the transfer of the license from Frelinghuysen Avenue to Read Street, I conclude that the allocatur should be refused.

The precise question relates not to the award of the license in the first place, but to the permit for a transfer of the location of the licensee to other premises. I have carefully considered the argument made and also read the decision of Commissioner Burnett, with which in the main I concur.

I should be unwilling to say that the crime of which the licensee was convicted some years ago is not a crime involving moral turpitude, or even that there is much doubt on that subject; but this it is unnecessary to decide, for the underlying reason that that objection goes to the award of a license in the first place rather than to a transfer, and that there does not appear to have been any objection to the licensing of this party on any such ground.

The allocatur is therefore denied, but without prejudice to an application to the Supreme Court if desired.

Yours very truly,

C. W. PARKER

11. APPELLATE DECISIONS - LAN v. MILLBURN

SAMUEL LAN,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MILLBURN,

Respondent.

ON APPEAL
CONCLUSIONS

Milton Freiman, Esq., and Sidney Simandl, Esq., Attorneys for Appellant.
R. J. Wortendyke, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail distribution license for premises known as 331 Millburn Avenue, Millburn.

On August 3rd respondent conducted a hearing pursuant to objections filed by the Millburn Retail Liquor Dealers Association. The substance of these objections was that applicant was interested, directly or indirectly, in a corporation which holds a wholesale license in New Jersey. At that meeting this objection was considered, but no formal action was taken thereon. At an adjourned meeting held on August 24th, applicant satisfied respondent that he had no interest, directly or indirectly, in said corporation. The minutes of the meeting of August 24th, however, show that the members of the Township Committee discussed the number of licensed places in the immediate vicinity, and adopted the following resolution:

"1. That public necessity and convenience do not require an additional licensed premises at the location for which said license is applied for, and that on the contrary the granting of a plenary retail distribution license for premises at #331 Millburn Avenue would result in too many licensed

places in that particular vicinity and would be contrary to the best interests of the community.

"2. That the said application of Samuel Lan, trading as Benson and Company, for a plenary retail distribution license for premises at #331 Millburn Avenue, be and the same is hereby denied."

Appellant contends that the denial was not made in good faith; that there are vacancies under a resolution limiting licenses and that, since his personal qualifications are admitted and the suitability of the premises themselves is not denied, a license should be granted.

It appears that on March 9th, 1936 respondent adopted a resolution limiting the number of plenary retail distribution licenses to ten, and that at that time there were eight of such licenses outstanding. Only seven of such licenses were outstanding at the time appellant's application was considered. Admittedly, there were vacancies under the resolution and, in the absence of other evidence, appellant's application should have been granted. Eisen vs. Plainfield, Bulletin #68, Item 12; Sosnow vs. Freehold, Bulletin #68, Item 13.

There remains to be considered, however, the question as to whether or not, despite the vacancies under the resolution, respondent was justified in denying the license because there are a sufficient number of licensed premises in the immediate vicinity. The premises for which a license is sought are located in the heart of the business district of Millburn. A distribution license was issued in 1934 to a former tenant who conducted a delicatessen therein. Her license was renewed in 1935. A receiver for the delicatessen was appointed some time in May 1936. The business was closed during that month, and in June the owner of the delicatessen was adjudged bankrupt. On July 3rd, applicant leased the premises and applied for a license, which was denied for the reasons heretofore set forth. The evidence further shows that distribution licenses are outstanding for premises known as 327, 337, 343 and 347 Millburn Avenue, and consumption licenses for premises known as 311 and 321 Millburn Avenue; that a distribution license is outstanding for 36 Main Street, and a consumption license for premises at 35 Main Street, both of which are in close proximity to Millburn Avenue. The section is, therefore, well supplied.

I find that the denial was made in good faith and based on reasonable grounds.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 20, 1937.

12. APPELLATE DECISIONS - VUONO v. BELLEVILLE

SAMUEL VUONO,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE,

Respondent.

ON APPEAL
CONCLUSIONS

Joseph P. Dallanegra, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for renewal of plenary retail consumption license for premises located at 190 Passaic Avenue, Belleville. In support of its action, respondent asserted in its Answer (1) that appellant is not a fit person to continue holding a license, and (2) that there are a sufficient number of consumption licenses outstanding to meet the requirements of the neighborhood.

The licensed building was erected in 1934 and was particularly designed for the conduct of a tavern. The first license therefor was issued to appellant, Samuel Vuono, in October 1934 and was renewed in June 1935. Application for renewal for the current license period was duly made in June 1936 but this application was denied by a vote of three to two. The deciding vote was cast by Commissioner Gerard, who testified that upon his return to Belleville on May 24, 1936, from an extended trip, he was advised by two members of the Commission that they had "certain evidence against Mr. Vuono's place". In reliance upon this statement, which referred to an alleged indecent dance held on March 30, 1935, he opposed renewal. The evidence introduced at the hearing on appeal established that following receipt of an anonymous complaint that an indecent dance was to be held at appellant's tavern, police officers visited the tavern on the evening of March 30, 1935, arrested a female entertainer and brought her before the local Recorder. No complaint, however, was ever filed and the Recorder testified that the evidence produced before him did not establish that any indecent performance had occurred. The same entertainer danced at another place on the same evening. Although there was conflicting testimony as to whether the appellant was in attendance, there was no testimony to establish that any indecent performance occurred. The evidence on appeal, therefore, failed completely to establish that any indecent performance had occurred at the licensed premises or elsewhere under the appellant's supervision.

In further support of its contention that appellant was not a fit person to hold a license, respondent introduced testimony pertaining to a fight which occurred on March 5, 1936 outside the licensed premises. This testimony established that an argument between two of appellant's customers began on the licensed premises and that appellant told them to go outside if they wanted to fight. They did so and appellant later participated in the melee which occurred outside the licensed premises. There was conflicting evidence as to the justification and extent of appellant's participation. In any event, however, this single instance would hardly be

sufficient to warrant a denial of appellant's application for renewal, particularly in the light of the substantial evidence introduced on behalf of the appellant to establish his good character, that the licensed premises were conducted in orderly and proper fashion, and that there had never been any complaints or charges against the conduct of his business. Cf. Auletto vs. Camden, Bulletin #137, Item 3.

In support of its second ground for denying the application for renewal, certain of the Commissioners testified that there were enough licensed premises in the vicinity. When appellant first obtained a license the nearest licensed place of business in Belleville was approximately two miles distant. On January 28, 1936, respondent transferred a license held by William A. Kent to premises situated approximately one-half mile from appellant's place of business. Presumably the character of the neighborhood has not been altered and inquiry may well be made as to the reason for permitting the transfer of Kent's license if a single license for the vicinity was considered sufficient by the Commissioners. In any event, however, it would require a complete disregard of equitable considerations to sanction the termination of a licensed place of business which has been conducted properly since 1934 on the ground that another place, subsequently established, sufficiently meets the needs of the community.

At the hearing it was urged for the first time on behalf of the respondent that appellant had made a deliberate misstatement in his application and that accordingly the respondent's action should be affirmed. Although appellant in his application for license denied having been convicted of crime, the records of the Belleville Police Department disclose that the appellant was found guilty on June 20, 1930 of assault and battery and fined $50.00. On June 27, 1930, sentence was suspended. Appellant testified that the assault and battery charge resulted from a fist fight; that he was released in the custody of his counsel and was not "locked up"; and that he discussed the matter with his counsel who filled in his applications. His counsel testified that he thought the charge had been dismissed and that he had filled in the appellant's applications in accordance with his recollection. It is not suggested that the crime involved moral turpitude and under the circumstances I conclude that the misstatement was not intentional and does not constitute sufficient ground for denial of the application for renewal. The application should, however, be corrected forthwith.

The action of respondent is reversed, with directions that the license applied for be issued, provided, however, that appellant files forthwith corrected application in accordance with these Conclusions.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 21, 1937.

13. APPELLATE DECISIONS - LYSAGHT v. DENVILLE.

CHARLES E. LYSAGHT,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE) CONCLUSIONS
TOWNSHIP OF DENVILE,)
Respondent

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Harold Simandl, Esq., Attorney for Appellant.
Joseph P. Hughes, Chairman of the Township Committee, for the Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located in a building on Main Street, known as the Lysaght Block, in Denville.

The good character of appellant is unquestioned. He now holds a plenary retail distribution license in Denville within a very short distance of the proposed location.

Each of the members of the Township Committee appeared and testified at the hearing on the appeal. Four opposed the application and one favored it.

The Chairman of the Township Committee stated that one of the reasons he voted against the application was that he believed there are a sufficient number of consumption licenses issued in Denville and that no new licenses are necessary. He further testified that he favored enacting an ordinance limiting the number of consumption licenses to be issued to the number presently outstanding, ten. Two of the Committeemen were likewise of the opinion that there are enough in Denville, although one of these two is opposed to a formal limitation because he believes it may provide an opportunity for politics to creep into the licensing question. The fourth Committeeman was of the opinion that a municipality should accept as much revenue and issue as many licenses as possible and leave it to the natural law of economic competition to solve the problem of overcrowding. He explained his vote against the application on the ground of the number of people who objected. The only Councilman who favored the application has for several years advocated the adoption of a formal limitation, but at the hearing stated that the number fixed should include appellant, not because the municipality needed the additional place, but because of appellant's good character and the fact that at the time his application was filed there was no limitation.

Thus, four members of respondent Committee are of the opinion that there are a sufficient number of licenses outstanding in the municipality; three are in favor of a formal limitation; and the fifth is more interested in obtaining revenue without regard to the social consequences of overcrowding.

After denying the application respondent Committee instructed its counsel to draw an ordinance which, among other things, would limit the number of licenses to those presently outstanding. Final adoption of this ordinance, however, has been withheld pending the determination of the instant case, the idea apparently being that if the denial is affirmed the number will be fixed at ten, all of which are presently outstanding, and if the denial is reversed in these proceedings the number will be fixed at eleven. This commendable attitude is matched only by the fair though strenuous effort made on oral argument by the attorney of appellant in the effort to convince me that the reason given by the majority of the Committeemen for the denial was not the true reason which motivated them,

but on the contrary, they were unduly influenced by the vigorous objections of certain residents.

This is a hard case to decide against appellant in view of his character and the suitability of his place but, after reading the record twice with scrutinizing care, I find nothing to impeach the good faith of the Township Committee in making their decision that there are a sufficient number of licenses already issued, nor do I find any error in their determination. Hence, although there is no limiting ordinance, the municipality may properly refuse to issue a license where there are a sufficient number already issued. Bumball v. Burnett, 115 N. J. L. 254, Bulletin #79, Item 9; Haycock v. Roxbury, Bulletin #101, Item 3; Re Renton, Bulletin #115, Item 8; Palmer v. Englishtown, Bulletin #116, Item 4; Cascio v. Roselle Park, Bulletin #127, Item 7; Farley v. High Bridge, Bulletin #151, Item 13.

Appellant further argues that public necessity and convenience would be better served by the issuance of a license to him because he intends to operate a popular-priced restaurant and grill, and because there is no similar establishment in the community. There is, however, a hotel immediately across the street which serves meals at regular hours; an inn called "The Stage Door" some 300 feet away, which serves food; there are several other eating places in the vicinity serving sandwiches and the like. A Minister testified that there are no less than eight eating places within three-quarters of a mile, or a mile at the most, all of which serve some kind of food such as appellant plans to serve; that there are a number of eating places, lunch places and restaurants within 500 or 600 feet of appellant's proposed location, and that he has eaten in these places at various times and knows that they serve good food. The burden of proof has not been sustained on this point.

The action of respondent is affirmed.

Commissioner.

Dated: February 22, 1937.