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

BULLETIN 218 DECEMBER 6, 1937

1. APPELLATE DECISIONS - JONES vs. ABSECON

JESSIE BUGG JONES, :

Appellant :

-vs- : ON APPEAL
CONCLUSIONS

COMMON COUNCIL OF THE CITY OF ABSECON, :

Respondent. :

- - - - - - - - - - - - - - - -

Paul M. Salsburg, Esq., Attorney for Appellant
Samuel Levinson, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This appeal is from the refusal to renew a plenary retail consumption license for the "Cameo Cafe", 898 New Jersey Avenue, City of Absecon.

Jessie Bugg Jones is colored.

When her original license was granted, it was attacked on certain ostensible grounds but the real objection was because of her color. Her license was sustained when it became apparent that she was a woman of good character and there was no sound objection to the place which had been licensed. Sears Roebuck & Co. vs. Jones and Absecon, Bulletin 185, item 10.

So far as the record shows, her place has been run ever since in a decent, clean, law abiding manner. No charges have ever been made against her. Her record is clear.

Written objections to the renewal of her license were filed on behalf of thirteen residents of the section of Absecon known as "Atlantic City Estates," who alleged that the licensed premises were in a residential section and because a bus line stop was in close proximity.

On June 18, 1937 respondent held a hearing on these objections and at the same time considered the renewal applications of the other four outstanding licenses. It deferred action on appellant's application until June 23rd but granted the other renewals. On June 23 respondent denied appellant's application and introduced an ordinance changing

the limitation of the number of consumption licenses from five to four. On July 10, 1937 said ordinance was adopted on final reading.

There is nothing to show that the factual situation has changed since the case last cited was decided. The conclusion then reached that the premises in question are not located in a built-up residential district, was strengthened by the photographs introduced in the present case which show that these premises are far removed from any residence. No evidence was introduced herein as to the bus stop and, in view of the uncontradicted evidence that appellant has always properly conducted her premises, the alleged fears of meeting intoxicated persons at or near the bus stop appear wholly unfounded. The written objections are an insufficient reason for the refusal to renew.

Respondent, however, alleges that its decision is justified because of other facts. It appears that on May 26, 1937, judgment by default for possession of these premises, in favor of the landlord, was entered in the District Court, Atlantic City; that subsequently an Order to show cause why the default judgment should not be set aside was allowed; that no decision on said Order had been entered up to the time of hearing; that appellant was still in possession of the licensed premises at the time the appeal was heard.

It appears also that about June 5 appellant had a conversation with Councilman Irwin wherein she told him that she intended to withdraw her application after Councilman Irwin had told her that she would probably receive the votes of only himself and another councilman; that on June 18 appellant had another conversation with Councilman Irwin wherein she stated she would like to get her license because a party had talked to her about purchasing the business and employing her to run it. All of the foregoing facts were considered by Council at its meeting held on June 23. Councilman Irwin testified that he voted against renewal because he felt that appellant intended to obtain the license and transfer it to a residential section, and also because he felt that someone else would be the real owner of the business. He testified that Councilman Truax decided to vote against renewal "after I stated my findings." Councilman Budd testified:

> "My reason for voting down is because of the objections of those present at the hearing. I listened to what Mr. Irwin stated and, along with all the other facts in general, I voted against the application and not because of the person herself."

It will be necessary to consider these alleged reasons for denial because they seem to have influenced to a great extent the votes of three of the five councilmen who voted to deny renewal. The sixth councilman voted to grant the renewal.

The difficulty with the landlord as to possession of the premises would not be a sufficient ground for denying renewal. Appellant was still in possession of the premises, and resisting the judgment for possession. The case differs from Jones v. Sea Girt, Bulletin 167, Item 14, wherein there

was a real dispute between the holder of a license for the premises and an applicant for a new license. In that case the fact of possession and the right to possession were so confused that it was held that the license issuing authorities need not inquire into the merits of such a dispute. In the present case appellant was clearly in possession and had a sufficient interest in the place to be licensed. Gruner vs. Washington, Bulletin 149, item 6. The objection that appellant might transfer the license to a residential district is not valid because any transfer would be subject to the consent and therefore within the control of respondent. As to the other reason, there is no evidence that appellant is not the real party in interest. If eventually she sells the business to another party, it would still be necessary to apply to respondent for a transfer of the license, and the qualifications of any person seeking to acquire the license would have to be passed upon by the respondent at that time.

Respondent relies finally upon the ordinance reducing the number of licenses from five to four. In Widlansky vs. Highland Park, Bulletin 209, item 7, I said:

> "*** the ordinance is a factor because I ought to take it into consideration in determining whether the license should be granted now. In cases, however, where the ordinance is enacted after application is denied, appellant should have an opportunity to contest the reasonableness of the municipal regulation and its application to him."

This appellant has done. There is no question here as to respondent's right to reduce the number of licenses outstanding. The question is whether, in applying the ordinance, respondent acted in an arbitrary or unreasonable manner in granting the other four renewals and denying appellant's renewal. True, no one has a vested right to a renewal. Re Marritz, Bulletin 61, item 8. However, in Re Juska, Bulletin 116, item 7, I said:

> "But assuming each licensee's record is clear, it is obvious that some yardstick would have to be set up by which the Council could be guided in making its selection. Just how to do that so that it would apply with equal fairness to all, I really do not know. Certainly, the time of filing is not a fair test. It sounds all very plausible on the surface to say 'first come, first served.' But there are too many obvious tricks inherent in such a scheme. Inside tips to jump the field or get under the wire ahead of somebody else leads all too surely to justified charges of political or personal favoritism. Friends of the administration are protected when the secret word is passed 'Now is the time.' The non-contributors are left at the post. The object of limitations is not to catch licensees napping but to choose the best. Hence, on appeal I shall scrutinize any such procedure with the utmost care. I submit that if a licensee's record is clear, the fact that he has in good faith and in reliance upon his license incurred commitments and made expenditures in improving his premises and building up his business is substantial reason to warrant renewal of his license privilege and not to re-

ject him because of favoritism or politics or under any other unfair or arbitrary procedure. I advise against any such course."

Cf. In Re Morton, Bulletin 126, Item 14.

In this case it is not contended that appellant has improperly conducted her premises. Apparently she is as worthy as the four licensees whose licenses were renewed. One of respondent's witnesses, the President of the Common Council, testified that no particular reason existed for reducing the outstanding consumption licenses to the precise number of four. Nor does any adequate reason appear for selecting the four renewal applicants who were chosen and eliminating appellant who likewise was a renewal applicant. Respondent attempts to justify its selection by stating that the other four licensees were in business districts. While technically appellant's premises are not located in a business district, it is also true that they are not located in a built-up residential section. The fact is the premises in question have been licensed ever since Repeal. There is no substantial evidence as to when the policy to limit licenses to business districts was adopted. It appears, rather, that the ordinance was adopted to draw a color line without saying so and thus to bolster up respondent's case after the renewal was denied for alleged reasons discussed herein. Renewals of licenses are not to be denied on flimsy generalities. Borelli v. Red Bank, Bulletin 133, Item 4; Costa v. Red Bank, Bulletin 133, Item 5. I find that the ordinance is unreasonable as applied to appellant.

Finally, respondent contends that its denial was proper because the application was not accompanied by the license fee or by a Federal stamp. The fee should have been paid at the time the application was submitted. In Re Bell, Bulletin 180, Item 6. The evidence shows that the clerk accepted the fee on June 8, about 10 days after application filed, and that she likewise accepted fees from two other applicants after their applications were submitted. As to the Federal stamp, appellant submitted to the clerk a money order receipt for Twenty-five Dollars ($25.00) in lieu of her Federal stamp. This evidence was accepted by the clerk as sufficient. The receipt, of course, was not a photostatic copy of a Federal stamp nor was it evidence in lieu thereof within the rule concerning other evidence in lieu of photostatic copy of Federal stamps. This case, however, is not analogous to Radich v. Woodbridge, Bulletin 88, Item 4 and cases therein cited, wherein appellants failed to obtain a Federal tax stamp or pay the necessary license fee. Here appellant paid her fee and had her Federal stamp before the application was considered. Appellant should not be penalized for the failure of the Borough Clerk to require proper evidence in lieu of photostatic copy of a Federal stamp. Re Baumgartner, Bulletin 196, Item 4. While the provisions of Section 22 of the Control Act are mandatory and cannot be waived, Jackson v. Mt. Ephraim, Bulletin 169, Item 7, it would be manifestly unfair to appellants to dismiss appeals on technical grounds where municipal clerks, by their actions, have lulled applicants into a sense of security, and the municipal issuing

authorities have acted on the application without raising any objections thereto and the technicality is raised for the first time on appeal. Schwartz vs. Kingwood, Bulletin 42, Item 7; Brechka vs. Carteret, Bulletin 161, Item 4; Meyers vs. Plainfield, Bulletin 164, Item 2.

Finding no proper reason for the denial of appellant's application for renewal license, the action of respondent, therefore, is reversed. It is directed that license shall be issued by respondent forthwith as applied for, provided, however, that appellant shall first present to the municipal clerk a photostatic copy of her Federal Stamp or the Federal stamp itself for inspection and approval or an official Receipt of the Federal clerk of Internal Revenue indicating that the Federal fee has been paid for such stamp, so that the clerk may make the proper notations; and further provided that appellant is presently in possession of the licensed premises.

D. FREDERICK BURNETT
Dated: November 29, 1937. Commissioner

2. LICENSES - ACCEPTANCE OF SURRENDER IN LIEU OF DISCIPLINE - HEREIN OF REBATES IN SUCH CASES.

November 29, 1937.

Karl B. Bieselin, Township Clerk,
Mullica Township,
Elwood, N. J.

Dear Mr. Bieselin:

I have staff report and your letter relative to proceedings before the Township Committee of Mullica against Angela Hassinger, t/a Turf Villa, charged with (a) having permitted prostitutes and immoral activities on the licensed premises and (b) having failed to disclose in her application for the license the fact that she had been previously convicted of a crime.

I note that while the charges were pending and before hearing, the licensee surrendered her license.

The report states:

"Information had been received by this Department to the effect that this licensee had been arrested by State Troopers and charged with having maintained a disorderly house at the licensed premises. Investigators McTighe and Wagner were assigned. Their investigation disclosed the following:

"On August 14, 1937, State Trooper Louis E. Droffner visited the licensed premises. While there, he was questioned as to who he was, etc., by the 'madam' of the house and one of the two girls there. He was solicited by this girl to go upstairs with her for a stipulated price. He said he would return later. While in the place from 9:00 to 10:00 P. M., he observed eight men go upstairs with the girls.

"On August 16, 1937, Trooper Droffner returned and observed conditions from 11:15 P.M. to 1:00 A.M. the next morning. He saw eleven (11) men enter the barroom and later go upstairs with the girls. Droffner was again solicited by one of the girls.

"Detective Sergeant Kelly of Troop 'A' was detailed by Sergeant E. L. Mury to serve a warrant on Angela Hassinger, the licensee, charging her with maintaining a disorderly house. On August 18, 1937, Sergeant Mury, together with Detective Piana and Troopers Camp and Dean, entered the licensed premises at about 11:20 P.M. Kelly and Camp went in the side door; Trooper Piana went in the front door and Trooper Dean entered the rear door. The licensee, Angela Hassinger, was behind the bar. She was arrested. Trooper Camp immediately went to the second floor where he found a man and a woman in a bedroom. The woman was naked. The man was only partly clothed. They were both arrested and charged as disorderly persons before the Justice of the Peace (J. Nassokin) of Elwood, New Jersey. The woman was fined fifteen ($15.00) dollars and costs; the man five ($5.00) and costs. The licensee, Angela Hassinger, was charged with maintaining a disorderly house and committed to the County Jail in default of one thousand ($1000) dollars bail to await Grand Jury action.

"Investigators McTighe and Wagner secured a copy of the application which had been filed with the Township Committee by this licensee. It revealed she had failed to disclose that she had ever been convicted of a crime, whereas an investigation made by McTighe showed that during the January term, 1934, of the Atlantic Quarter Sessions Court, she pleaded non vult to an indictment which charged her with possessing a 'slot machine'; that she was sentenced to pay $100.00 fine which was later cancelled by the Court."

Permit me to thank the Township Committee for their prompt and effective action in this case. This type of licensee has no place in the present order of things. Vice and immorality on licensed premises will not be tolerated.

You inquire if it is necessary, in view of the surrender of the license, to proceed with a hearing to revoke the license; or if a resolution of the Township Committee declaring the license to be revoked for causes as stated in the synopsis submitted by this Department will be sufficient.

Section 28 of the Control Act, among other things, provides that "the surrender of a license shall not bar proceedings to revoke such license." It is therefore within the province of your Township Committee, if it so desires, to go ahead with proceedings to revoke the license. However, such proceedings would have to be conducted in accordance with the procedure as set forth in Section 28, viz: charges would have to be preferred and the licensee given an opportunity to be heard thereon.

A resolution revoking the license without such charges and without hearing would not be valid.

I am of the opinion that the object aimed at in this matter has been accomplished by the surrender of Angela Hassinger's license while she was "under fire." See re Stephenson, Bulletin 182, Item 5, relative to a somewhat similar situation where a license was surrendered while the licensee was under charges and my comments thereon. It is therefore my suggestion that a resolution be passed by your Committee accepting the surrender of the license.

Re your inquiry as to a rebate of part of the license fee.

Section 28 of the Control Act also provides as follows:

> "No refund, except as expressly permitted by section twenty-three, shall be made of any portion of a license fee after issuance of a license; provided, however, that if any licensee, except a seasonal retail consumption licensee, shall voluntarily surrender his license, there shall be returned to him, after deducting as a surrender fee fifty per centum of the license fee paid by him, the prorated fee for the unexpired term; provided, further, that such licensee shall not have committed any violation of this act or of any rule or regulation or done anything which in the fair discretion of the commissioner or other issuing authority, as the case may be, should bar or preclude such licensee from making such claim for refund."

You will note the underscored words. It is my opinion that this is a typical case where your Township Committee should refuse a refund by reason of the violations charged against this licensee.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

5. ENFORCEMENT DIVISION ACTIVITY REPORT FOR NOVEMBER 1 to 30, 1937.

To D. Frederick Burnett, Commissioner

ARRESTS: Total number of persons - - - 49
Licensees - 5 Non-Licensees - 44

SEIZURES: Stills - Total number - 29
Seized by this Department -19 Adopted - 10
Capacity 1 to 50 gal. - Total number - 21
Seized by this Department -11 Adopted -10
Capacity 50 gal. and over - Total number -8
Seized by this Department - 8 - Adopted -0

Motor Vehicles - total number seized - 5
Trucks - 1 Pleasure cars - 4

Alcohol
Beverage alcohol - - - - - - - - - - - 112 Gallons

Mash - total number of gallons - 42,125

Alcoholic Beverages
Beer, Ale, etc. - - - - - - - - - - - - 157 Bottles
Wine - - - - - - - - - - - - - - - - - -494 Gallons
Whiskies and other hard liquor - - - - 54 Gallons

RETAIL INSPECTIONS:

Licensed prémises inspected - - - - - - - - - 1817
Illicit (Bootleg) liquor- - - - - - - - - - - 6
Gambling violations- - - - - - - - - - - - - 41
Sign violations- - - - - - - - - - - - - - - 84
Unqualified employees- - - - - - - - - - - - 42
Other violations - - - - - - - - - - - - - - 57

Total violations found - - - - - - - - - - - 230

Total number of bottles gauged - - - - - - - - 11,787

COMPLAINTS:

Investigated and closed - - - - - - - - - 325
Investigated, pending completion- - - - 114

LABORATORY:

Number of samples submitted - - - - - - - 187
Number of analyses made - - - - - - - - - 175
Number of poison liquor cases - - - - - - 0
Number of cases of denaturants- - - - - 2
Acetone cases - 1
Isopropyl " - 1
Number of cases of alcohol, water and artificial coloring - - - - - - - 11
Number of cases of moonshine (Home-made finished product of illicit still) - - - - - - - - 25

Respectfully submitted,

E. W. GARRETT
Deputy Commissioner

December 1, 1937.

4. DISCIPLINARY PROCEEDINGS - ASSORTED VIOLATIONS - TWENTY DAYS SUSPENSION.

December 1, 1937

Elmer C. Hall, Esq.,
Township Clerk of Howell,
c/o First National Bank,
Freehold, New Jersey.

Dear Mr. Hall:

I have staff report and your certification of the proceedings before the Township Committee of Howell against

Howell Restaurant Co., Inc., and note that a plea of guilty was entered to charges of (a) having price signs on the exterior of the licensed premises which are prohibited by State Rule, (b) having employed disqualified persons and (c) having failed to notify your Committee of changes in stock holdings; further, that the license was suspended for a period of twenty days from November 29, 1937.

My investigators report the evident desire on the part of your Committee to cooperate with this Department. The stiff penalty confirms it.

My thanks and appreciation.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. APPELLATE DECISIONS - PASSAIC RETAIL LICENSED BEVERAGE ASSOCIATION, INC. vs. PASSAIC

PASSAIC RETAIL LICENSED BEVERAGE ASSOCIATION, INC., Appellant, -vs- BOARD OF COMMISSIONERS OF THE CITY OF PASSAIC, and EVER READY SOCIAL CLUB, a corporation of New Jersey, Respondents.	ON APPEAL CONCLUSIONS

. . . . . .

Stanley J. Polack, Esq., Attorney for Appellant.
Joseph J. Weinberger, Esq., Attorney for Respondents.

BY THE COMMISSIONER:

This is an appeal from the issuance of a club license to respondent Ever Ready Social Club, for premises located at 861 Main Avenue, Passaic.

The petition of appeal alleges: (1) that the club did not comply with a resolution of respondent Board of Commissioners requiring that "any new applicant for a club alcoholic beverage license shall appear before the Board of Commissioners, or its duly authorized officers, for preliminary examination to show strict compliance with the law regulating the issuance of licenses;" (2) that the club had not been in exclusive continuous possession and use of a club house or club quarters for at least three years immediately prior to the submission of the application.

A hearing was duly scheduled for September 16, 1937. At that time attorney for appellant requested an adjournment so that he might make further investigation. This request of appellant

for adjournment was granted, despite objection by the attorney for respondent. Thereupon the attorney for respondent requested and leave was granted to take the testimony of Commissioner VanHouten and Commissioner Martini so that they would not have to appear again at the adjourned hearing.

The testimony given by the Commissioners shows that there was substantial compliance with the resolution of the Board of Commissioners referred to in the petition of appeal. It likewise appears from the testimony taken at that time that Ever Ready Social Club was incorporated May 22, 1930 and has been in continuous existence since that time. There was some evidence that it has had its club quarters at different addresses in Passaic from 1930 to February 1937, at which time it took possession of the premises it now occupies. In the absence of any evidence to the contrary, this testimony is sufficient to show compliance with the rules governing the issuance of club licenses. Cf. Wildwood Villas Fishing Club vs. Way, Bulletin #215, Item 6.

The adjourned hearing was duly scheduled for November 5, 1937, at which time appellant again failed to proceed. On this occasion no one appeared for appellant. Respondent thereupon moved to dismiss the appeal. In view of appellant's failure to prosecute the appeal, and the evidence introduced on behalf of respondents which tends to show that there is no basis for the appeal, the motion is granted.

The appeal is, therefore, dismissed.

D. FREDERICK BURNETT
Commissioner

Dated: December 1, 1937.

6. EDUCATIONAL CAMPAIGN

I have frequent requests from men's clubs, women's societies, churches, police departments, temperance units, tavern owners' associations, and business, civic and social organizations generally for speakers to inform them of the work which the Department is doing.

I am glad to honor all such requests. In doing so, the men are not sent out to boost the Department but solely to awaken our citizens to the grave importance of the problem and the need of cooperative action all along the line. The battle will be won through consciousness.

Applications for speakers may be made any time by letter directly to me. Assignment of dates will be made at mutual convenience - as far ahead as you and your friends desire.

The current Calendar follows:

WEEK BEGINNING NOVEMBER 28, 1937

Wed. Dec. 1.	Parent-Teachers Assn., Coolidge School, Grandview Ave., Wyckoff - 8:15 P. M.	Inspector S.J. MacIntosh
Thurs. Dec.2.	Elks Club, 475 Main St., Orange (Tavern Owners' Assn. of Orange - 2:30 P.M.	Inspector Charles Basile
Fri. Dec.3	Hunterdon County Municipal Officers Ass'n. Sandy Ridge Church - 7:30 P. M.	Inspector Charles Basile

WEEK BEGINNING DECEMBER 5, 1937

Wed. Dec.8	Haddonfield Rotary Club, Tavistock Country Club, Haddonfield - 12:15 P.M.	Investigator R.C. Lockwood
Wed. Dec.8	Exchange Club, Senator Hotel, Atlantic City - 1:30 P.M.	Attorney-in-Chief Edward J.Dorton
Wed. Dec.8	Atlantic City Lions Club, Hackney's Restaurant, Atlantic City - 6:30 P.M.	Inspector D.J. Murray
Wed. Dec.8	Medico-Dental Society, Grossman's Hotel, Connecticut & Pacific Avenues, Atlantic City - 8:45 P.M.	Inspector Simon Lippman
Fri. Dec.10	Camden Kiwanis Club, Hotel Walt Whitman Camden - 12:15 P.M.	Inspector Frank Middleton
Fri. Dec.10	Newark Junior Chamber of Commerce - 6:30 P. M.	Commissioner D.Frederick Burnett
Fri. Dec.10	Atlantic City Shrine Club, Log Cabin, Jerome Ave., Margate City - 6:30 P.M.	Investigator Schuyler Adams.

WEEK BEGINNING DECEMBER 12, 1937

Mon. Dec.13	Atlantic City Ministerial Union -11:00 A.M. First Presbyterian Church, Atlantic City	Investigator George Tracy
Mon. Dec.13	Edgewater Republican Club, 916 River Rd. Edgewater - 8:45 P.M.	Inspector W.S. Codd
Tues. Dec.14	Burlington Kiwanis Club, Metropolitan Coffee Shop, Burlington - 12:15 P.M.	Inspector Frank Middleton

WEEK BEGINNING DECEMBER 19, 1937

Tues. Dec.21	Paulsboro Kiwanis Club, St. Paul's Methodist Episcopal Church, Paulsboro - 6:15 P.M.	Inspector Frank Middleton

WEEK BEGINNING DECEMBER 26, 1937

Tues. Dec.28	Atlantic City Tuna Club, 741 N.Massachusetts Ave. Atlantic City - 8:30 P.M.	Inspector Simon Lippman

WEEK BEGINNING JANUARY 2, 1938

Tuesday, Jan. 4th	American Legion Post #159, Flemington, N. J. - 8:00 P. M.	Inspector D.J. Murray

WEEK BEGINNING JANUARY 9th, 1938

Monday, Jan. 10th	Lambertville Rotary Club, St. Andrew's Hall, Lambertville, N. J. 6:00 P. M.	Inspector Judiah Higgins

WEEK BEGINNING JANUARY 16, 1938

Wednesday, January 19th.	Young Women's Club, South Park Presbyterian Church, Newark. 8:00 P.M.	Inspector S.J.MacIntosh

WEEK BEGINNING JANUARY 23, 1938

Monday, January 24th.	Lambertville Kiwanis Club, Lambertville House, Lambertville, N. J. 6:15 P. M.	Inspector Judiah Higgins

D. FREDERICK BURNETT
Commissioner

7. MUNICIPAL ORDINANCES - REQUIREMENT THAT THOSE HANDLING BEVERAGES SHALL BE FREE FROM VENEREAL OR CONTAGIOUS DISEASE - APPROVED

November 29, 1937.

Philip R. Shingler,
Borough Clerk,
Brielle, N. J.

My dear Mr. Shingler:

I have before me the ordinance* regulating the handling and sale of foodstuffs and beverages in the Borough of Brielle, which was adopted by the Borough Council on May 10, 1937.

I note that the ordinance licenses food handlers, requires medical examination and the holding of food handler's cards by all persons selling, serving or handling any foodstuffs or beverages in the Borough, and provides a penalty of fine or imprisonment or both for violation.

To the extent that the ordinance may be said to regulate the conduct of licensed liquor businesses it is approved as submitted.

The approval herein given is subject, as in the case of all ex parte approvals, to review on appeal. See Re Hauck & Felter, Bulletin 130, Item 3, and the items cited therein.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

*The ordinance provides:

"SECTION 1. No person shall engage in the business, nor shall any person, firm or corporation

employ any person in the business of manufacturing, selling, serving or handling any foodstuffs or beverages in the Borough of Brielle, intended or suited for human consumption, unless such person shall have previously filed with the Board of Health of the Borough of Brielle, a medical examination certificate from the duly appointed physician of the Board of Health of the Borough of Brielle setting forth that such person is free from any venereal or contagious disease, and received therefrom a food handler's card; provided, however, that this section shall not apply to the handling of any food stuffs which are enclosed in cans, jars, or other similar receptacles.

"SECTION 2. The term 'Contagious Disease', as herein employed, shall be held to include any disease of an infectious, contagious or pestilential nature with which any person may be sick, affected or attacked.

"SECTION 3. Each person, coming within the provisions of Section 1 hereof, before receiving the food handler's card hereinbefore mentioned, must pay a fee of Fifty Cents (50c), which fee shall be deposited by the Board of Health with the Treasurer of the Borough of Brielle, and must furnish to the Board of Health two photographs of himself or herself, one to be retained by the Board of Health and one to be fastened to the card, which, when granted, shall be carried by the person to whom issued and shall be exhibited upon demand to any resident within the Borough of Brielle.

"SECTION 4. The medical examination certificate referred to in this ordinance shall be made out upon blanks to be supplied by the Board of Health, and, when filed, shall be good for a period of six months, provided no change occurs in the physical condition of the person during said six month period as to render him unfit to handle foodstuffs or beverages, and must be renewed on June 1st and December 1st, of each year, upon the payment of Fifty (50c) for each renewal. A separate certificate shall be filed for each person.

"SECTION 5. The Council of the Borough of Brielle is hereby authorized to make such rules and regulations governing the issuance of said food handler's cards, and the keeping of records thereof, as the said Council shall consider necessary for the proper enforcement of this ordinance.

"SECTION 6. No person, firm or corporation shall employ any person to manufacture, sell, serve or handle any foodstuff or beverage unless the person so employed shall have first exhibited to said person, firm or corporation the card as issued by the Board of Health of the Borough of Brielle.

"SECTION 7. Any person, firm or corporation violating any of the provisions of this ordinance shall, upon conviction thereof, be subject to a fine not to exceed $100.00 or to imprisonment in the County Jail for a period not to exceed 30 days, or both, for the first offense, and for each subsequent offense shall be subject to a fine not to exceed $200.00 or to imprisonment in the County jail for a period not to exceed 90 days or both."

8. DISCIPLINARY PROCEEDINGS - A MUNICIPAL COURSE OF IMPOSING PENALTIES WHICH ARE OBVIOUSLY INADEQUATE REQUIRES THAT THE STATE TAKE OVER ALL DISCIPLINARY FUNCTIONS UNTIL A PROPER CONTROL OF LICENSEES IS EFFECTED IN THAT MUNICIPALITY.

December 2, 1937.

Miss Mary E. Vaccaro,
Acting City Clerk
Asbury Park, N. J.

Dear Miss Vaccaro:

I have staff report and your certifications of the proceedings before the City Council of Asbury Park against Henry O. Lopez, Inc., charged with having sold alcoholic beverages during prohibited hours in violation of your local regulation and against August Genovese, charged with having employed a disqualified person in the licensed premises.

I note Henry O. Lopez, Inc. pleaded guilty to the charge and that the license was suspended for two days; further, that August Genovese pleaded guilty to the charge against him and that his license was suspended for one day.

So far as the latter case is concerned, the report states that the licensee's manager was his brother, Sabatino, who had been convicted of murder in Italy and had served thirteen years in jail there; that the City Council found as fact that when August Genovese was made aware of the violation, "he rectified same at once." Taking the quoted words to mean that he discharged his brother not only as manager but also from employment on the licensed premises in any capacity, I find no difficulty in approving the one day suspension. This does not mean, of course that either the Council or I pass any opinion on Sabatino's claim that he was justified in killing his stepmother because of her ill-treatment of his brothers and sisters. That case is not before us. The fact that he was convicted of murder disqualifies him from employment on licensed premises. It appears that the moment that August learned that his brother was disqualified, he discharged him. A one-day penalty for such unintentional violation seems sufficient.

As regards the two days penalty in the Lopez case, it is utterly inadequate. This licensee was deliberately violating the closing hour regulations, not to give his own brother asylum as in the Genovese case, but to make money by selling on Sunday morning long after closing time had passed. This occurred at least on two different Sundays in the height of the season -- June 27 and July 11. In each case the place was going full blast -- twenty-five men and women drinking, entertainers performing -- in one case at 4:00 A. M. in the other at 4:20, whereas sales are prohibited by your own regulations after 3:00 A. M. What use are your rules if when openly and wantonly defied your Council lets the matter drag along until the season is over and then in the drab days of November, when no one cares whether the place is open or not, closes it down for a paltry two days? Is this fair to the licensees who close on time. If the Council doesn't enforce its own rules, how can anyone else have respect?

I have had occasion heretofore to complain of inadequate penalties by your Council. As I pointed out in the Marinaccio case, three days' suspension for possession of illicit alcoholic beverages is entirely too short. Thirty days should be the very minimum. Why should persons privileged to dispense legitimate liquor be allowed to palm off refilled bootleg on their unsuspecting customers with impunity or practically so when all they get for such a serious offense is a paltry three days' suspension? Why should any bootleg liquor be sold at all in licensed places? Why should the State be defrauded of revenue and the customer cheated? Honest licensees can't compete against this kind of thing. The State can't and won't tolerate it. Hence, if Asbury Park does not do its full duty in these disciplinary cases, I shall take over the job myself until a proper control of the conduct of licensees is effected in Asbury Park. I shall therefore watch the disposition of future cases with interest and shall give no further warning.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - RABSTEIN vs. TRENTON

MAX RABSTEIN,)
Appellant,)
-vs-) ON APPEAL
CITY COUNCIL OF THE CITY OF TRENTON,) CONCLUSIONS
Respondent.)

. . . . . .

William H. Geraghty, Esq., Attorney for Appellant.
Adolph F. Kunca, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located at 351 Reservoir Avenue, Trenton.

Respondent denied the license because there are a sufficient number of licensed places in the vicinity, and because of objections filed by residents of the neighborhood.

Reservoir Avenue is located in a section of Trenton which is of a mixed industrial and residential character. The evidence shows that there are many industrial plants nearby but, with the exception of the plant occupied by Fitzgibbons & Crisp, which is hereafter considered, all of them are located nearer to other licensed premises than to the premises in question.

In the immediate vicinity a consumption license has been issued for premises known as 69 Wilson Street, at the corner of Wilson Street and Reservoir Avenue. The rear of 69 Wilson Street is approximately one hundred sixteen feet from the side of the premises in question. Another consumption license has been issued for 410 Reservoir Avenue, about a block away from the premises in question.

The only evidence as to necessity was given by a son-in-law of Mrs. Kaplan, the owner of the property, and by the appellant. The first of these witnesses testified that the premises are suitable for saloon purposes; that taxes on said property are unpaid and that the granting of the license would increase the revenue from the property in a substantial degree.

Appellant testified that seven hundred seventy people are employed in Fitzgibbons & Crisp's automobile plant; that it will be more convenient for these employees to reach his premises by way of an alley from Dunham Street than to reach either of the other two licensed places in the neighborhood.

It likewise appears from the cross-examination of respondent's witnesses that the premises in question were licensed for many years prior to Prohibition, although they have been vacant for the past three years. It also appeared that prior to Prohibition, there were three saloons in the neighborhood, whereas at the present time there are only two.

The burden of proof is upon appellant. His evidence as to the Fitzgibbons & Crisp plant is not sufficient in itself to show necessity, especially where, as here, the two existing licensed places are only a short distance further away from the automobile plant.

The fact that more licensed places existed in this vicinity prior to Prohibition does not show necessity. There is some evidence that the number of industrial plants in that section have decreased within the past twenty years. Moreover, the situation as to the licenses which existed prior to Prohibition, does not control the issuance of licenses at the present time. Palmer v. Englishtown,

Bulletin 116, Item 4; Rosania vs. Readington, Bulletin 123, Item 4.

Less, rather than more, licensees is the present day need.

Appellant has failed to show that the action of respondent was arbitrary or unreasonable.

The action of respondent is, therefore, affirmed.

Dated: December 3, 1937 Commissioner