Mr. MacIntosh

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

BULLETIN 456 MAY 1, 1941.

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

BULLETIN 456 MAY 1, 1941.

1. RETAIL APPLICATIONS - LICENSE CERTIFICATES - NOTICE.

To all Clerks of municipal license issuing authorities:

The prescribed forms for applications for municipal retail licenses except club licenses, and for club licenses, are in Items 2 and 3 of Bulletin 395. The same forms will be used for the fiscal year 1941-42, with the following changes:

(1) Lines 3, 4 and 5 of Question 13 of the application for all retail licenses except club licenses (sheet 3) will be revised to read:

"cation for transportation insignia, form No. 102, with the State Commissioner of the Department of Alcoholic Beverage Control, Newark, N. J.?"

(2) Line 2 of Question 27 of the application for all retail licenses except club licenses (sheet 4), first word, change "if" to "is."

(3) Lines 5 and 6 of Question 27 of the application for all retail licenses except club licenses (sheet 4) will be revised to read:

"direct to the State Commissioner of Alcoholic Beverage Control, Newark, N. J."

(4) Lines 5, 6 and 7 of Question 33 of the application for Club license (sheet 10) will be revised to read:

"cation must be made direct to the State Commissioner of the Department of Alcoholic Beverage Control, Newark, N. J."

Otherwise, the application forms will remain the same.

The prescribed forms for license certificates are in Items 4, 5, 6, 7 and 8 of Bulletin 395. The same forms will be used for the fiscal year 1941-42, except that the expiration date in the forms in Items 4, 5, 7 and 8 will be changed from "June 30th, 1941" to "June 30th, 1942." Otherwise, the forms for license certificates will remain the same.

The renewal season is close at hand. To avoid a last minute rush, have your forms printed at once.

Deliver to each licensee, at earliest moment, application forms and a copy of the attached notice, which are being sent you under separate cover, and see that the instructions are implicitly followed.

E. W. GARRETT,
Acting Commissioner.

Dated: May 1, 1941.

2. RETAIL LICENSES EXPIRING JUNE 30, 1941 - INSTRUCTIONS.

All licenses, except Seasonal Retail Consumption licenses, will expire at midnight, June 30, 1941. Licensees must obtain new licenses on or before that date in order to continue business without interruption.

Applications should be filed promptly. A day's delay may mean that some licensee will have to close up shop.

A licensee who seeks to renew must comply with all requirements pertaining to his original application.

Accordingly, he must:

1. File new application, accompanied by the full annual license fee.

2. Submit satisfactory evidence that new Federal Tax Stamp has been obtained.

3. Submit, in duplicate, affidavit that monthly reports have been filed with the State Tax Commissioner and that all taxes, penalties and interest due under the Alcoholic Beverage Tax Law have been paid. If you are not prepared to execute the affidavit at once, nevertheless file your application forthwith and forward the affidavit as soon as possible.

4. See that public Notice of Application is given once a week for two weeks successively in a qualified newspaper.

Note particularly that applications must be filed at or before the first insertion of the advertisement and that a hearing is set when an objection is filed, without the necessity of any request therefor by the objector or applicant. Regulations No. 2, Pamphlet Rules, pages 36 to 38 (Issue of September, 1939).

All permits to employ persons failing to qualify as to age, residence or citizenship likewise expire on June 30, 1941. Application forms for renewal of employment permits have been mailed directly to the permittees with instructions to file their applications immediately. If you wish applications for such permits for the next fiscal year, they will be mailed to you upon request. The employment after June 30th, of a disqualified person without permit is cause for suspension or revocation of license.

Concurrently, on June 30th, all transportation insignia also expire. New transportation insignia must be obtained by all licensees (including Seasonal Retail Consumption licensees) before any alcoholic beverages may be transported. Regulations No. 16, Pamphlet Rules, page 60 (Issue of September, 1939). No insignia will be issued until the issuance of the license has been certified to the State Commissioner. Application forms for transportation insignia, form #102, may be obtained from and are returned to the State Department.

Applicants must carefully follow the instructions for filing which appear in each application.

Licensees who fail to obtain new licenses on or prior to June 30, 1941 will not be permitted to operate until all legal requisites have been completed and licenses actually issued.

THE LAW WILL BE ENFORCED.

E. W. GARRETT,
Acting Commissioner.

Dated: May 1, 1941.

3. APPELLATE DECISIONS - McCRACKEN v. CALDWELL.

LICENSE REVOKED FOR ALLOWING THE PREMISES TO BE CONDUCTED AS A NUISANCE AND PERMITTING THEREON FEMALE IMPERSONATORS AND OTHER PERSONS OF ILL-REPUTE - KNOWLEDGE OF THE LICENSEE AND IMPROPER CONDUCT OF THE PREMISES APPARENT - REVOCATION AFFIRMED.

VERNA B. McCRACKEN, trading as KIT-KAT TAVERN,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CALDWELL,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

David Young, 3rd, Esq., Attorney for Appellant.

Robert Shaw, Esq., Attorney for Respondent.

After a hearing held upon charges alleging that appellant permitted her licensed premises to be conducted in such a manner as to become a nuisance and that she permitted female impersonators or other persons of ill-repute upon her premises, respondent revoked her plenary retail consumption license for premises located on Bloomfield Avenue, Caldwell Township, Essex County, New Jersey. Appellant appeals from the order of revocation.

On November 9, 1940, Investigators Carlin and Thievon of this Department entered the licensed premises about 10:00 P.M. and remained there until about 2:00 o'clock the following morning. They testified that shortly after their arrival they became acquainted with a male named Anderson, who acted in a very effeminate manner; that Anderson addressed other effeminate male patrons as "Pretty Mickey," "Miss Cavanaugh," and "Miss Hickey," and was addressed by them as "Miss Anderson"; that of fifty male patrons, all except about six were this type; that the male patrons danced together, embraced, kissed and otherwise acted in an indecent manner. Without detailing all the evidence, I am satisfied from the record that these persons, as well as one of the bartenders called "Paul" and another patron called "Hughie," were moral degenerates, "fairies," or, more politely, female impersonators. Re Orsi, Bulletin 326, Item 1.

The investigators returned on November 16, 1940 and remained there from about 10:00 P.M. until about 3:00 A.M. On this evening, sixty or seventy males were present and no female patrons. "Miss Anderson," "Pretty Mickey," and "Miss Hickey" were present and the conduct of the patrons was almost an exact duplication of their actions on the previous evening.

On behalf of appellant, a number of normal persons testified that appellant conducts her premises in a proper manner. Some of these witnesses were not present on the evenings in question. As to those who claimed to be present: One woman testified that on November 16th between 11:00 P.M. and midnight she saw no improper conduct, although she admits that she didn't "Pay particular notice"; two men testified that they were present on both evenings and saw nothing improper, although both admitted that they saw a few male patrons on the "effeminate side of life," and one admitted that he had heard a male patron addressed as "Miss Cavanaugh." In view of the detailed testimony given by the investigators, who were present for the purpose of observing conditions, I conclude that if these witnesses are telling the truth they failed to pay any particular attention to the actions of these undesirables.

The sole meritorious question seems to be whether appellant had any knowledge of the character of these undesirables so that she may be said to have permitted them upon her premises. At the hearing of the appeal she denied any knowledge of their character, said that she was busy in the check room so that she was unable to observe their conduct, and contends that she does not know the meaning of the term "female impersonator."

However, the investigators testified that when they entered the licensed premises on November 16th, the licensee said to them: "You fellows gave us a scare - one of the boys told me the police were outside," and later the same evening, after the investigators had called her attention to the fact that these male patrons were using the small toilet under suspicious circumstances, she said, "I know what the bastards are doing; they used to use my toilet upstairs until I chased them out." On November 19th, when the investigators again visited the licensed premises, she told them that the bartender Paul and three of the male patrons were "fags." Despite her denials at the hearing, I am satisfied from the record that she knew the character of these undesirables and permitted them upon her premises. The finding of guilt on the charges by the Township Committee is affirmed.

Appellant argues that the penalty is excessive. I do not think so. There is no excuse for permitting this sort of conduct on licensed premises. The question of the penalty to be imposed is primarily to be decided by the local issuing authority in a case of this kind, and, under the facts of the case, I am satisfied that the penalty was not unreasonable or excessive.

The action of the Township Committee in revoking the license is, therefore, affirmed.

Accordingly, it is, on this 18th day of April, 1941,

ORDERED, that the present appeal be and hereby is dismissed; and it is further

ORDERED, that the order of revocation of appellant's plenary retail consumption license, heretofore entered by respondent and held in abeyance pending disposition of the instant appeal, is hereby restored, to take effect on April 21, 1941, at 3:00 A.M.

E. W.GARRETT,
Acting Commissioner.

4. APPELLATE DECISIONS - QUARELLO v. RARITAN, JANSEN AND TURNER.

DECISION HERETOFORE RESERVED NOW RENDERED AND ISSUANCE OF LICENSE BY MUNICIPALITY REVERSED FOR FAILURE OF DISQUALIFIED PARTNER TO DISPOSE OF HIS INTEREST.

AURELLO L. QUARELLO,)
Appellant,)
-vs-) ON APPEAL
ORDER
BOARD OF COMMISSIONERS OF THE TOWNSHIP OF RARITAN, MIDDLESEX COUNTY, and JOSEPH JANSEN and EDWARD TURNER, t/a "The Hideaway,")
Respondents.)

Biunno & Rothberg, Esqs., by Ferdinand J. Biunno, Esq., Attorneys for Appellant.
Thomas L. Hansen, Esq., Attorney for Respondent Board.
Roger M. Yancey, Esq., Attorney for Joseph Jansen and Edward Turner.

On April 10, 1941, conclusions were entered herein (Bulletin 454, Item 4), granting leave to present to me proof, within ten days from the date of the conclusions, that Edward Turner had completely severed his connection with the licensed premises and that Joseph Jansen is now the sole owner of the business, and providing further that unless such proof was presented within said time a final order would be entered herein reversing the action of respondent Board of Commissioners in granting the license to Joseph Jansen and Edward Turner;

And it appearing that the ten days have expired and that no proof has been presented to me in accordance with the terms of the conclusions,

It is, on this 22nd day of April, 1941,

ORDERED, that the action of the Board of Commissioners of the Township of Raritan, Middlesex County, in granting a plenary retail consumption license to respondents, Joseph Jansen and Edward Turner, for premises on the north side of Inman Avenue, Piscataway-town, Township of Raritan, be and the same is hereby reversed, effective immediately; and it is further

ORDERED, that all operations under said license cease forthwith.

E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - JACKEL v. PLAINSBORO.

PUBLIC CONVENIENCE AND NECESSITY NOT SHOWN, DESPITE VACANCY UNDER MUNICIPAL REGULATION LIMITING THE NUMBER OF LICENSES - DENIAL AFFIRMED.

WILLIAM JACKEL, Appellant, -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PLAINSBORO, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for the Appellant.
John E. Wicoff, Esq., Attorney for the Respondent.

This is an appeal from the denial of a plenary retail consumption license to appellant for premises located on Grovers Mill Road, Plainsboro Township.

The municipality is essentially agricultural and of the type familiar in rural communities in this State. The houses are scattered, some close together, some comparatively far apart, but a homogeneous residential atmosphere prevails throughout. It covers approximately ten square miles and has a population of about 1100.

The premises are located in a remote and isolated section of the community on Grovers Mill Road, which is a township road used in the main by local residents and very little traveled by transients. The nearest residences to appellant's premises are located about one-quarter mile away, and within three-quarters of a mile in one direction there are only six homes, and within a mile in the other direction there is but one home. The majority of the residents reside along the county highway which traverses the entire width of the Township and runs parallel with Grovers Mill Road about a mile north thereof. The "center" is located more than a mile from appellant's premises and consists of the usual country grocery, a small confectionery store, a small luncheonette, a retail farm machinery business and a garage.

Respondent, which has adopted a quota limiting the issuance of consumption licenses to one, has not issued any such license for the past five years. Since then it has issued only one liquor license, a limited retail distribution license, the privileges of which are confined to the sale of unchilled brewed malt alcoholic beverages in original containers in quantities of not less than 72 fluid ounces for consumption off the licensed premises. Appellant's contention of discrimination because of the issuance of such license on Grovers Mill Road about one mile away from his premises is without merit since the privileges of a consumption license for which he has applied and under which alcoholic beverages may be sold for on-premises consumption, are entirely different from those of the outstanding limited distribution license. Cf. Roberts v. Delaware, Bulletin 447, Item 11.

At the hearing below none of the Township residents appeared in favor of the application. At the appeal hearing appellant produced only his stepson to testify on his behalf. On the other hand, two residents appeared and testified that their objection was based on the fact that the premises were located in a secluded area of the municipality where the problem of police control was greatly enhanced. The record also contains testimony, uncontradicted, that the Township Committee took into consideration, when voting upon appellant's application, "the location of the property being on a township road not heavily traveled," and that it would be "much easier to control the situation if the premises were located on the main road rather than on this road which is not lighted."

The fact that there is a vacancy in the local quota covering consumption licenses does not require respondent to issue such a license to appellant for his proposed premises. Despite such vacancy, an issuing authority may deny an application for good independent cause. Cf. Roberts v. Delaware, supra, and cases cited therein. In a case, such as here, where only one consumption license may be issued in the entire community, it cannot be said that it is unreasonable or arbitrary to refuse to place the only such permissible license in a secluded neighborhood on a side road that is inadequately lighted. Nor can it be said that respondent is unjustified in its belief that the existence of a licensed premises there would place an undue burden on its police force. Cf. Goff v. Piscataway, Bulletin 234, Item 5.

Such testimony indicates that respondent did not abuse its discretion in refusing to grant appellant's application especially since no competent evidence was offered by appellant, upon whom rests the burden of proof, to show that, despite the local sentiment and the aforesaid determination of the issuing authority, public convenience and necessity require that the license issue.

The foregoing renders it unnecessary to consider the objection of the Walker-Gordon Laboratory Company, Inc., producer of certified milk, which is the major business concern of the community, that the issuance of such license would be detrimental to its normal operations which require skill in the manipulation of various machinery. Cf. Zavatarro v. New Brunswick, Bulletin 173, Item 4; Stemple v. Bridgewater, Bulletin 177, Item 8; Albert v. New Brunswick, Bulletin 228, Item 5.

The action of respondent is affirmed.

Accordingly, it is, on this 23rd day of April, 1941,

ORDERED, that the petition of appeal be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

6. APPELLATE DECISIONS - DERRICO v. MONTCLAIR.

DISCONTINUANCE FILED - APPEAL DISMISSED.

GIRO DERRICO,

Appellant,

-vs-

THE BOARD OF COMMISSIONERS OF THE TOWN OF MONTCLAIR, NEW JERSEY,

Respondent.

ON APPEAL
ORDER OF DISMISSAL

Anthony Darrow Appice, Esq., Attorney for Appellant.
George S. Harris, Esq., Attorney for Respondent.
Nathan L. Jacobs, Esq., Attorney for Objectors, Mount Carmel Church et als.

A stipulation of discontinuance having been filed in this cause by the attorney for appellant, and the attorneys for respondent and objectors having duly consented thereto, and no cause appearing to the contrary;

It is, on this 23rd day of April, 1941,

ORDERED, that the within appeal be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

MATYAS HASSAN,
N/s Main Street,
Smithburg,
Millstone Township, N. J.,

Holder of Plenary Retail Consumption License C-134, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

McDermott & Finegold, Esqs., by Max Finegold, Esq., Attorneys for Defendant-Licensee.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge that during prohibited hours on Sunday, March 2, 1941 he sold, served, delivered, and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages in violation of a resolution of the Township Committee of Millstone Township, approved May 2, 1938.

The violation is the result of a sale of three cans of beer and a pint bottle of whiskey, made by the daughter-in-law of the licensee to a patron observed emerging from the licensed premises by investigators of this Department. The sale was admitted in a signed statement made by the licensee and his daughter-in-law.

These proceedings were instituted and heard here for the reason that the license was issued by the State Commissioner pursuant to R. S. 33:1-20, since a member of the Township Committee holds an indirect interest in the license, he being the landlord of the licensed premises.

The usual penalty for this violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three (3) days instead of five.

Accordingly, it is, on this 25th day of April, 1941,

ORDERED, that Plenary Retail Consumption License C-134, heretofore issued to Matyas Hassan by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of three (3) days, effective April 30, 1941, at 7:00 A.M.

E. W. GARRETT,
Acting Commissioner.

(The license herein was properly issued by the State Commissioner pursuant to Re Bailey, Bulletin 70, Item 5, since superseded, however, by Re Farias, Bulletin 426, Item 9. The change in procedure is immaterial to the decision).

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH SABOL,
T/a Joe's Wines & Liquors,
77 Union Boulevard,
Wallington, N. J.,

Holder of Plenary Retail Consumption License C-45, issued by the Mayor and Council of the Borough of Wallington.

CONCLUSIONS AND ORDER

Joseph Sabol, Pro Se.
Abraham Merin, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling alcoholic beverages on March 21, 1941 at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

Reports of the Department agents, who took part in the investigation, show that, on the afternoon of March 21, 1941, one of the agents entered the licensed premises and purchased from the

defendant-licensee a quart bottle of Wilson "That's All" Whiskey for the sum of $2.25. The minimum consumer price at which a quart bottle of this whiskey could be sold at that time was $2.59. Bulletin 424.

The minimum penalty for sale below Fair Trade is ten days. Since the instant offense is the defendant-licensee's first violation of record, the minimum penalty will be imposed.

By entering the guilty plea in ample time before the date set for hearing, the defendant-licensee has saved the Department the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 25th day of April, 1941,

ORDERED, that Plenary Retail Consumption License C-45, heretofore issued to Joseph Sabol by the Mayor and Council of the Borough of Wallington, be and the same is hereby suspended for a period of five (5) days, effective April 28, 1941, at 6:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

9. APPELLATE DECISIONS - VETERANS OF FOREIGN WARS v. WILDWOOD.

LIMITATION OF NUMBER OF LICENSES - UNREASONABLE AS APPLIED TO CLUB LICENSES - DENIAL REVERSED.

JOHN ADAMS POST #3509 VETERANS OF FOREIGN WARS, Appellant, -vs- BOARD OF COMMISSIONERS OF THE CITY OF WILDWOOD, Respondent.) ON APPEAL CONCLUSIONS AND ORDER

Robert Bright, Esq., Attorney for Appellant.
Irving Shenberg, Esq., Attorney for Respondent.

This appeal is from the denial of a club license to appellant, the local Post of the Veterans of Foreign Wars, for appellant's club quarters at Pacific and Spicer Avenues, Wildwood.

The case has, in lieu of hearing, been submitted for decision on an approved stipulation as to the pertinent facts. See Rule 8 of State Regulations No. 14.

There is no question as to the qualification of the Post or the suitability of its premises for a club license. Apparently, respondent's only objection to granting appellant such license is that the City allegedly has an ordinance limiting club licenses to one, and that such quota has already been filled by the issuance of a club license to the local chapter of the American Legion.

I find no copy of any such ordinance in the records of this Department. Of course, if actually no such ordinance exists, then the respondent's said objection is but illusory and hence not well taken.

However, even assuming, as may be the case, that such an ordinance does exist and inadvertently has not been certified to this Department, respondent's refusal to issue the club license in question must, nevertheless, be reversed.

This Department has consistently ruled that, where a local quota upon club licenses is drawn into issue on an appeal, the burden of proof is fairly upon the municipality to justify such quota.

Thus, in Societa Operaia etc. v. Trenton, Bulletin 41, Item 5, involving a municipal quota of twenty-five licenses, it was stated:

"Independent of economic considerations, the social justification for a limitation of Retail Consumption Licenses is evident. Consequently, such a limitation was sustained on appeal, because the appellant failed to establish that it was unreasonable. Ryman v. Branchburg Township Committee, Bulletin 37, Item 18.

"So the burden of proof is upon the appellant in the case of a Retail Distribution License to demonstrate that a community needs or will be more properly serviced by another liquor store. Colonna v. Montclair, Bulletin 39, Item 8.

"Should the same principle apply to club licenses?

"Consumption and distribution licenses do not stand on the same footing as club licenses. In the former, the objective is commercial, in the latter fraternal. The Legislature has recognized this by providing a special license for benevolent, charitable, fraternal, social, religious, recreational and athletic organizations, if not operated for private gain. The club may not sell to the public generally but only to bona fide members and guests and then only for immediate consumption. As against maximum and minimum fees of $2,000. and $200. for consumption licenses, the respective limits for club licenses are but $150. and $50. The obvious purpose was to recognize these clubs as a natural outlet for man's innate desire for fellowship with his own kind and to afford them the opportunity to furnish their bona fide members and guests with alcoholic beverages for a nominal fee amidst self-regulated, decent, home-like surroundings. It would be utterly un-American to allow some citizens special privilege to drink in their homes and refuse it to others. The club is but an association of several citizens; the clubhouse is in the nature of a common home. To grant the beverage privilege to one club and deny it to another, equally qualified, is unfair. It lacks both economic and social justification. True, a municipality has the power to limit the number of club licenses but the burden of proof to justify such a numerical limitation should be placed upon the municipality. It is so held."

Again, in Re Deull, Bulletin 234, Item 7, involving (as in the present case) a municipal quota of one club license, it was stated:

"I am not at all impressed with the numerical limitation of a single club license. If a club is really bona fide and is not operated for commercial gain, why should one social group of men get the privilege and another be denied? Why should there be any limitation at all in respect to club licenses? If it be said that they are not bona fide organizations or are one-man clubs, and then only in name, or that they do not obey the law, the answer is, why not establish that as a fact and then take the appropriate measures to weed out the unworthy and the disobedient? That's something quite different from refusing to give to a worthy group of men who have clubbed together for benevolent, fraternal, social or recreational purposes, any chance at all to dispense liquor in their own club house except they pay the full fee as if they were conducting the enterprise for private gain or commercial exploitation."

Also see Irish American Ass'n etc. v. Kearny, Bulletin 293, Item 11 (quota of five club licenses); Re Lee, Bulletin 366, Item 4 (quota of ten club licenses).

In the present case no reason whatsoever appears why club licenses in Wildwood should be limited to one; or why, if the local American Legion Post in Wildwood may have a club license, the local "V.F.W." Post there, apparently equally qualified, should not likewise be entitled to such a license.

Consequently, I conclude that any existent quota (and, by the same token, any existent policy) which seeks to limit club licenses in Wildwood to one, operates unreasonably with respect to appellant and hence does not justify denial of a club license to it.

Since the only objection against issuing such license to appellant is thus without merit, and since no reason appears why appellant should not have its license, respondent's action, in denying such license, must be reversed.

Accordingly, it is, on this 25th day of April, 1941,

ORDERED, that the action of the Board of Commissioners of the City of Wildwood, in denying the club license in question, be and hereby is reversed, and that such Board shall issue a club license to John Adams Post #3509, Veterans of Foreign Wars, forthwith as applied for.

E. W. GARRETT,
Acting Commissioner.

10. APPELLATE DECISIONS - PAWELEK v. SAYREVILLE.

SUSPENSION APPEALED ALLEGING LACK OF COUNSEL AT MUNICIPAL HEARING, PREJUDICE ON THE PART OF THE MUNICIPAL LICENSE ISSUING AUTHORITY, AND EXCESSIVE PENALTY - ALLEGATIONS FOUND WITHOUT MERIT - SUSPENSION AFFIRMED.

THOMAS E. PAWELEK,)

Appellant,)

-vs-) ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH OF SAYREVILLE,)

Respondent)

James V. Burke, Esq., Attorney for Appellant.
Joseph T. Karcher, Esq., Attorney for Respondent.

On April 2, 1941, appellant herein pleaded guilty to four charges in disciplinary proceedings instituted against him by respondent, and thereupon his license C-34, issued for premises on Washington Road near Burlington Road, Sayreville, was suspended for the balance of the fiscal year. Appellant appeals from said suspension, alleging numerous reasons which may be summarized as follows:

(1) Appellant did not have independent counsel and advice;

(2) The action of the Borough Council was the result of passion, prejudice and politics;

(3) Since this was appellant's first offense, the penalty invoked was not commensurate with the violations charged.

As to (1): Appellant is intelligent and understood the nature of the charges preferred. The fact that he did not have independent counsel and advice, even if true, would not be a sufficient reason for disturbing the action of respondent herein.

As to (2): There is an entire lack of evidence that the action of the Borough Council was the result of passion, prejudice or politics. Aside from the fact that appellant pleaded guilty to all the charges at the hearing below, the evidence, hereinafter set forth, given at the trial de novo clearly establishes his guilt. The license was suspended for the balance of the fiscal year by unanimous vote of the Borough Council.

As to (3): The charges preferred against appellant below substantially alleged that:

(a) From April 1, 1940 to October 26, 1940 he employed a person disqualified by reason of the fact that said person had been convicted of a crime;

(b) Between said dates he allowed a known criminal on the premises;

(c) On October 26, 1940 he sold alcoholic beverages during prohibited hours fixed by local regulation;

(d) On October 26, 1940 he failed to close his premises at the time fixed for closing by local regulation.

As to Charges (a) and (b): At the hearing herein, appellant admitted that between the dates set forth in the charges, he employed Joseph Osuch as bartender and assistant manager and that he knew Joseph had been convicted of burglary and, after serving time, had been released from prison about three years ago. He testified that he gave Joseph a job out of friendship and because he knew he could be trusted. Since the crime in question clearly involved moral turpitude, the employee was disqualified from being employed by or connected in any business capacity whatsoever with a liquor licensee. R. S. 33:1-26.

Apparently for the purpose of showing that he did not deliberately violate the law, licensee testified herein that when investigators from this Department found the disqualified person upon his premises in April 1940, they told him "to wait to hear from the Commissioner." However, Investigator Lippitt testified that on April 1, 1940 he first discovered Joseph upon the licensed premises and thereupon told the disqualified person that the matter would be taken up with the supervising inspector; that on April 11, 1940 he returned to the licensed premises and told the licensee that he would have to dispense with the services of this individual. The record shows that the disqualified person was working on the premises on September 30, 1940 and again on October 26, 1940. The evidence of Investigator Lippitt leads me to conclude that the violation was deliberate and continued over a long period of time.

As to Charges (c) and (d): The only explanation offered by the licensee is that he was not on the premises at the time the violations occurred, and that the disqualified employee, who was then in charge of the premises, permitted the violations contrary to the licensee's express instructions. I find no mitigating circumstances in the attempted explanation.

The question of the penalty to be imposed is primarily to be decided by the local issuing authority. McCracken v. Caldwell, Bulletin 456, Item 5. It may vary in different municipalities and according to the circumstances surrounding the offense, but should not be unreasonable. The penalty herein was more severe than that imposed by other municipalities and by this Department in cases involving employment of persons disqualified by reason of age, residence or citizenship. However, the violation is more serious where the employee is disqualified by reason of a criminal record. Thus, under facts similar to the present case, the then City Council of Trenton revoked a license. Re Haney, Bulletin 309, Item 5. Moreover, it appears herein that the licensee deliberately continued to employ the disqualified person for several months after he was notified to discharge him. I cannot say that the total suspension of eighty-six days, allowing for a substantial suspension on Charges (c) and (d), was so unreasonable as to warrant me in interfering with the unanimous judgment of the Borough Council.

The action of respondent Borough Council in suspending the license for the balance of the term is affirmed.

Accordingly, it is, on this 28th day of April, 1941,

ORDERED, that the present appeal be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

11. APPELLATE DECISIONS - MARINO v. MOUNT LAUREL.

PUBLIC CONVENIENCE AND NECESSITY NOT SHOWN, DESPITE VACANCY UNDER MUNICIPAL REGULATION LIMITING THE NUMBER OF LICENSES - DENIAL AFFIRMED.

NICHOLAS MARINO,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MOUNT LAUREL,)
Respondent)

Elmer Bertman, Esq., Attorney for the Appellant.
Benjamin Marmer, Esq., Attorney for the Respondent.

This is an appeal from the denial of a plenary retail consumption license to appellant for premises located on Mount Laurel-Hainesport Road, in close proximity to its intersection with Medford-Hartford Road.

Two of the three members of the Township Committee testified that, among other reasons, the application was denied because of the objections of residents to the location of a tavern in the neighborhood of the proposed premises.

Mount Laurel is a rural agricultural community having a permanent population of 2000 and a summer influx of 200. The vicinity of appellant's premises is known as Springville where only 56 persons reside all year round, although during the summer months the population of that section is increased to approximately 150. There are only six homes located within a half mile of the premises in question.

One licensed tavern already exists in Springville, on Medford-Hartford Road, less than a half mile from the proposed site. The only other businesses in the vicinity are a grocery store located directly at the intersection on lands immediately adjoining the property on which appellant's premises stand, and a dress factory, within a half mile, where 14 people are employed.

A petition signed by 39 residents of Springville objecting to the granting of the application was submitted in evidence. As opposed to this, appellant, upon whom rests the burden of proof, failed to present any evidence whatsoever that any residents were in favor of the issuance of a license to him. In view of the character of the neighborhood, the sentiment of a substantial number of the residents of the vicinity in opposition to the application, and the proximity of the existing tavern, I cannot say that respondent's refusal to place another tavern in that neighborhood is either arbitrary or unreasonable.

Nor is appellant's contention that the license is essential to take care of transient trade borne out by the evidence. The testimony shows that neither road is heavily traveled or connects any large municipalities. On the contrary, it appears that both are merely side roads leading into main arteries. In addition to the outstanding tavern on the Medford-Hartford Road, there is also another licensed premises within three miles of appellant's place on the Mount Laurel-Hainesport Road. In these days of automobile

travel, such distances present no problems to transients. Cf. Skeba v. Millstone, Bulletin 274, Item 1, where there was a stretch of 14 miles between licensed premises on an "important State Highway."

Appellant also testified, in attempted substantiation of his assertion that respondent was prejudiced against him, that the chairman of the Township Committee had stated that appellant "would be sorry" if he didn't support him politically. Not only is this denied by the chairman, but it also appears that, in view of the unanimous vote against appellant's application by the other two members of the Committee, he did not vote at all on the application; nor is there any evidence that he in anywise influenced the other members in their decision. Moreover, one of the two voting members is of the same political faith as appellant.

Lastly, the fact that the full number of licenses authorized by respondent's ordinance has not been issued and that a vacancy exists does not thereby entitle appellant to the license. It is well settled that a limitation in mere numbers must give way to a municipality's determination to restrict the number of licenses in a particular area. Young v. Pennsauken, Bulletin 114, Item 2; Berkey v. Pine Hill, Bulletin 262, Item 5; Bernstein v. Hillside, Bulletin 289, Item 7; Wenzel v. Maywood, Bulletin 310, Item 3; Ander v. Woodbridge, Bulletin 409, Item 11; Roberts v. Delaware, Bulletin 447, Item 11; Jackel v. Plainsboro, Bulletin 456, Item 5.

In view of the foregoing, it is unnecessary to consider the other grounds given by respondent for its denial of appellant's application.

The action of respondent is affirmed.

Accordingly, it is, on this 30th day of April, 1941,

ORDERED, that the petition of appeal be and the same is hereby dismissed.

E. W. Garrett
Acting Commissioner.