Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 160. JANUARY 26, 1957

1. APPELLATE DECISIONS - DE VITO vs. NORTH ARLINGTON.

MARIE DE VITO, Appellant,	)	
-vs-	)	ON APPEAL
COMMON COUNCIL OF THE BOROUGH OF NORTH ARLINGTON, Respondent.	)	CONCLUSIONS

. . . . . .

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Appellant.
Bruck & Bigel, Esqs., by Joseph Bigel, Esq., Attorneys for Respondent.
Charles H. Stewart, Esq. Attorney for Knights of Pythias B. & L. Ass'n., Objector.

BY THE COMMISSIONER:

Appellant appeals from the denial of her application for a plenary retail consumption license for premises located at the northwest corner of Chestnut Street and Belleville Turnpike, North Arlington.

Respondent denied the application because (1) residents objected that the granting thereof would decrease the value of their property; (2) parking facilities afforded by appellant will be inadequate; (3) there are a sufficient number of taverns in the vicinity.

Belleville Turnpike, on which the premises are located, is a heavily travelled thoroughfare, zoned for business, and largely comprised of small business properties. Interspersed among these buildings are several one-family dwellings. The intersecting side streets are entirely residential except for one which is light industrial. The objectors reside on these side streets. General objections to the issuance of a license on a business thoroughfare, filed by residents of side streets which are residential, are not in themselves a sufficient reason for denying a license. Katz vs. Caldwell, Bulletin #143, Item 3 and cases therein cited.

As to the second alleged reason, it appears that there is a parking space on the easterly side of appellant's premises, the dimensions of which are fourteen feet by forty-eight feet. Moreover, appellant testified that she had made arrangements with the owners of property located directly opposite her premises to take care of cars that may stop at her restaurant. Respondent seems to fear that patrons attending appellant's place of business might leave their cars parked in front of residences on Chestnut Street, but that seems to be a matter for local police regulation and should be easily controlled. The second reason alleged is, therefore, not sufficient for denying the license.

As to the third reason alleged, it appears that within a radius of six blocks along the Turnpike there are already five licensed taverns and two package goods stores. This evidence standing alone would seem to demonstrate that the section is sufficiently supplied. It appears, however, that after the denial of appellant's application respondent transferred a consumption license from 31 Ridge Road to 318 Belleville Turnpike. These latter premises are in the immediate vicinity of appellant's premises, which are located at 346 Belleville Turnpike. In the case of Karpf vs. Way, Bulletin #81, Item 15, in considering a somewhat similar situation, I said:

> "While it is proper to refuse to issue a license for premises located in a vicinity already adequately provided for, nevertheless where the respondent subsequently issues additional licenses in the same vicinity, the contention that the issuance of additional licenses is socially undesirable falls of its own weight."

The same rule applies where, subsequent to the denial of an application, respondent transfers a license into the same neighborhood. Respondent was afforded an apportunity to explain the transfer of the license, but has failed to offer any explanation. For the reasons stated, the third alleged ground for denying the license is insufficient.

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

D. FREDERICK BURNETT
Commissioner

Dated: January 20, 1937.

2. SPECIAL PERMIT - APPLICATION BY RETAILER FOR PERMISSION TO PURCHASE OUTSIDE THIS STATE AND IMPORT SCHENLEY AND CALVERT PRODUCTS - DENIED AS TO SCHENLEY PRODUCTS UPON SHOWING THAT THEY COULD BE OBTAINED WITHIN NEW JERSEY UPON RETAILER'S EXECUTION OF FAIR TRADE CONTRACT REQUIRED OF OTHER RETAILERS SIMILARLY SITUATED - GRANTED AS TO CALVERT PRODUCTS ON THE BASIS OF ALLEGATIONS IN THE PETITION AND IN THE ABSENCE OF PROOF ON BEHALF OF CALVERT THAT ITS PRODUCTS WERE AVAILABLE TO THE PETITIONER WITHIN THE STATE UPON ITS EXECUTION OF FAIR TRADE CONTRACT OR OTHERWISE.

In the Matter of the Petition by FRANKLIN STORES CO., For permission to purchase alcoholic beverages outside New Jersey	)))))
	On Petition CONCLUSIONS

Appearances:

Louis B. Englander, Esq., Attorney for Petitioner, Franklin Stores Co.

Herman C. Silverstein, Esq., Attorney for New Jersey Retail Liquor Package Stores Association.

Henry Gillhaus, Pro Se.

On January 8, 1937, a verified petition by Franklin Stores Co. was filed alleging that it has been unable to purchase Calvert or Schenley products within this State and praying for permission to purchase these products outside New Jersey. Thereafter notice was mailed to Calvert Distillers Corporation, Schenley Products Co. and their wholesale distributors, located in Essex and Hudson Counties, advising that the petition had been filed and that a hearing thereon would be held at the offices of the Department on Thursday, January 14, 1937, at 10:00 A. M. No one appeared at the hearing except representatives of the petitioner, New Jersey Retail Liquor Package Stores Association and Mr. Gillhaus, President of Gillhaus Beverage Co., a distributor of Schenley products. At the request of counsel the hearing was adjourned.

Notice that a continued hearing would be held at the offices of the Department on January 18, 1937, at 4:00 P.M., was sent to Calvert Distillers Corporation, Schenley Products Co. and their wholesale distributors located in Essex and Hudson Counties. The parties represented at the continued hearing were the same as those represented at the original hearing.

Mr. Gillhaus testified at the hearing that as a distributor of Schenley products he has at all times been willing to sell such products to the petitioner upon its execution of a Fair Trade contract. No testimony to the contrary was introduced on behalf of the petitioner. The matter, therefore, in so far as Schenley products are concerned, falls directly within the ruling contained in Bulletin #108, Item #9, and for the reasons therein set forth permission to purchase outside New Jersey and import Schenley products should be denied. See also Bulletin #109, Item #19.

The application to purchase and import Calvert products stands, however, on a different footing. The petition, although general in terms, is sufficient on its face to indicate an inability on the part of the petitioner to obtain Clavert products within New Jersey. Notices of the original hearing and the continued hearing were sent to the Calvert Distillers Corporation and its wholesale distributors located in Essex and Hudson Counties for the purpose of affording them an opportunity to refute the petition and to establish, if such was the fact, that Calvert products were available to the petitioner upon execution of a Fair Trade contract or otherwise as the case may be. Since no one appeared on behalf of Calvert Distillers Corporation or its distributors and no testimony was introduced to establish that Calvert products were available to the petitioner upon its execution of a Fair Trade contract or otherwise, the petition should be granted. See Bulletin #100, Item #9.

The petition, in so far as it seeks to purchase and import Schenley products, is denied; in so far as it seeks a special permit to purchase and import Calvert products, it is granted. The special permit will authorize petitioner to purchase outside this State and import Calvert products not exceeding a specified quantity within a specified limited period of time and will be conditioned upon the making of satisfactory arrangements with the State Tax Commissioner for the payment of taxes due to the State of New Jersey.

D. FREDERICK BURNETT
Commissioner

By Nathan L. Jacobs
Chief Deputy Commissioner.

Dated: January 19th, 1937.

3. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

January 21st, 1937.

Case No. 151

As a result of an investigation conducted by this Department, it appeared that the individual investigated herein had been convicted in 1931 of receiving stolen goods and that he was presently employed as manager and bartender by a retail licensee. At a hearing duly held, the individual was given an opportunity to explain the circumstances surrounding his conviction so that a final determination might be made as to his eligibility for employment by a licensee.

At the hearing said individual admitted that he had been convicted in 1931 for receiving stolen goods; that he had been sentenced to State's Prison and had actually served ten months at the Bordentown Farms. He testified further that in 1929 he had been in the business of buying and selling used cars; that in the course of his business he had purchased and sold a certain car which was in fact a stolen car; that more than two years later he was indicted by a Grand Jury for receiving stolen goods, was thereafter arrested outside the State, returned voluntarily and at his trial was found guilty by a jury. He testified further that he had been in the business of handling second hand cars for three years, had never had any trouble with reference to any other car, did not know that this particular car had been stolen, and, in fact, paid a large sum of money therefor. All of his evidence herein which relates to his knowledge that the car had been stolen was presumably passed upon by the trial jury, and a re-determination as to his guilty intent cannot be made herein.

Ordinarily the crime of receiving stolen goods involves moral turpitude. In re Thompson, 174 Pacific 86 (Cal. 1918); in re Kirby, 10 S.D. 322, 39 L.R.A. 856; in re Application for Solicitor's Permit Case No. 6, Bulletin #92, Item 11. There is nothing in this case which would support a contrary conclusion.

It is recommended that the individual be advised that he is not eligible to be employed by a licensee in the State of New Jersey and, further, that notification be sent also to his employer to terminate his employment forthwith.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner

4. LICENSEES - THE OLD GAME OF RINGING THE CANE IS NOT TO BE RESURRECTED WITH LIQUOR AS THE PRIZE - HEREIN OF ALTRUISM AND SIDE SHOWS.

January 20, 1937.

Dear Sir:

Will you be good enough to advise me whether any license will be required of one of my clients under the following circumstances:

My client intends to lease space at a beach or other resort to conduct the game of tossing rings upon canes for prizes to consist of alcoholic beverages in original packages as well as other merchandise, in a strictly ethical and legitimate manner, taking proper precautions to prohibit drinking on the premises and to restrict minors to merchandise other than liquors, and in all respects to keep within the letter and spirit of the Alcoholic Beverage Control Law.

It is my opinion that the giving away of prizes of liquors as above stated does not constitute the sale of beverages under the statute, and that, therefore, no license is required.

Very truly yours,

MAXWELL N. RUDAW

January 23, 1937.

Maxwell N. Rudaw, Esq.,
New York, N. Y.

Dear Mr. Rudaw:

I have yours of the 20th.

I assume your client, if he leases the space and incurs other expense, intends to charge an entry fee to the competitors. If so, such "giving" of prizes is not appreciably altruistic, but rather an indirect sale, and, therefore, requires a license.

However, even if he obtains a license, he will not be allowed to dispense his liquor to customers who happen to ring the canes, nor will he be allowed to conduct any such game, whatever its year of vintage, upon licensed premises.

The sale of liquor is to be kept on a dignified business-like basis and not conducted as a side show.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. MUNICIPAL ORDINANCES - TRANSFER OF LICENSE FROM PERSON TO PERSON - A RIGHT OF TRANSFER CREATED BY STATUTE CANNOT BE NULLIFIED, POSTPONED OR OTHERWISE DIMINISHED BY ORDINANCE.

January 25, 1937.

Meyer Q. Kessel, Esq.,
Newark, N. J.

Dear Mr. Kessel: Re: Town of Irvington

I have before me your proposed amendment to Section 10 of Ordinance 1403, which amendment provides:

"There shall be no transfer, from person to person, of any license of any class authorized to be issued by the municipality, except club licenses, until the total number of licenses issued and outstanding is sixty."

The Control Act, Section 23, was expressly amended P. L. 1935, Chapter 257, to provide for just such transfer from person to person and the refusal to grant such transfer was made the subject of appeal to the State Commissioner.

Refusals to make specific transfers based on reasonable grounds have been upheld. Knights of St. Stephens vs. Trenton, Bulletin 37, Item 16; Botfan vs. Howell, Bulletin 64, Item 9; Fafalak vs. Bayonne, Bulletin 95, Item 5. But denials made without reasonable and proper grounds have been reversed. Broadway Liquor Stores vs. Trenton, Bulletin 121, Item 5; Guenther vs. Parsippany-Troy Hills, Bulletin 121, Item 8; DeChristie vs. Gloucester, Bulletin 121, Item 10.

Regardless of whether an applicant complies with the statute or not, and irrespective of the absence of fault or the presence of good cause, your proposed ordinance attempts to postpone all transfers from person to person until some indefinite time in the future.

This it cannot lawfully do. In re Phillipsburg, Bulletin 96, Item 4, I disapproved a municipal resolution which attempted arbitrarily to limit the number of transfers of a particular license to not more than one in six months. In Van Schoick vs. Howell Township, Bulletin 120, Item 6, I disapproved a resolution which attempted an absolute prohibition of all transfers from place to place.

The statutory provision allowing transfer from person to person is state wide and is operative in every municipality. It is not, like the permissive provision enabling municipalities to enact ordinances barring all other mercantile business to distribution licensees, optional with each municipality to decide for itself whether it will adopt such an ordinance.

Whether the municipality approves or not, the statute is the law of the State. Hence, there is no power in any municipality either to abrogate the statutory right or to postpone its operation.

A right of transfer created by statute and fortified by appeal cannot be nullified, postponed or otherwise diminished by ordinance however laudable the objective.

The proposed ordinance, is, therefore, disapproved.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - BUDD LAKE MARKET, INC. vs. MT. OLIVE TOWNSHIP

BUDD LAKE MARKET, INC., a Corporation,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MT. OLIVE,
Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Robert M. Dix, Esq., Attorney for Appellant.
William A. Hogarty, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of its application for a plenary retail distribution license for premises located at State Highway #6 and Elizabeth Lane, in the Township of Mt. Olive, Morris County.

Respondent denied the application because it alleged that there was no need for the license.

The Township of Mt. Olive has an all-year population of approximately 1200. However, the Budd Lake section of the Township is a summer resort and during the summer season the population is increased by several thousand. There are eighteen plenary retail consumption licenses now issued but no distribution licenses. In February, 1936, respondent Township Committee passed a resolution limiting the number of plenary retail consumption licenses to twelve, except that subsequent renewals and transfers of existing licenses are permitted. No new licenses of any kind have been issued since this resolution was adopted.

The appellant corporation operates a grocery and vegetable market on one of the main through-highways to Pennsylvania. The location is a shopping center for a large portion of the Township. There are no premises licensed for the sale of alcoholic beverages within three-quarters of a mile.

It cannot be disputed that the population is adequately supplied with taverns, and it is the contention of the respondent that these are sufficient to make a distribution store unnecessary. However, a former member of the Township Committee testified on behalf of himself and a large civic association which he represented, that there was real need for a distribution license in the Township. In this he was supported by a petition signed by some 170 property owners and residents. At the hearing on the application before the Township Committee the only opposition was that voiced by the tavern licensees.

A package goods license fills a need quite distinct from that supplied by the tavern, and it may well be an important matter of social convenience and necessity that such a license be granted. See Sanford Drug Co. vs. Maplewood, Bulletin #71, Item 6.

In view of the very substantial sentiment in favor of appellant's application and in the absence of any convincing objection to its issuance, the action of respondent is reversed. Respondent is directed to issue the license as applied for.

It appears from the record that at the suggestion of respondent's Clerk, the appellant did not furnish the necessary Federal stamp with its application. No license shall issue until appellant shall have complied with all the formal prerequisites.

D. FREDERICK BURNETT
Commissioner

Dated: January 22, 1937.

7. APPELLATE DECISIONS - BARTHOLD vs. CLIFTON.

LOUIS O. BARTHOLD,)
Appellant,)
-vs-) ON APPEAL
THE MAYOR AND CITY COUNCIL OF THE CITY OF CLIFTON,) CONCLUSIONS
Respondent.)

. . . . . .

Donald G. Collester, Esq., Attorney for Appellant.
John G. Dluhy, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises known as 370 Crooks Avenue, Clifton.

Respondent alleges (1) that the neighborhood is residential and a number of persons residing in the immediate vicinity objected to the issuance of the license; (2) that there are enough saloons in the district and there is no demand or need for such business or service.

Respondent contends that the factual situation in the present case is the same as that in the case of Borkowski vs. Clifton, Bulletin #139, Item 5. Hence, I have carefully reviewed the testimony and the exhibits in the Borkowski case in conjunction with that in this case.

It is difficult to draw an exact line in cases where a street, at one time devoted wholly to residential purposes, has changed or is changing character so that it has become or is in the process of becoming a strictly business street.

I find that Paulison Avenue, on which the Borkowski premises are located, is devoted to a very great extent to residential purposes, with a few scattered neighborhood stores as described in the conclusions filed in that case.

On the other hand, the undisputed testimony in this case shows, as regards appellant's premises located on Crooks Avenue between Vernon and Trenton Avenues, that there are two car tracks and several bus lines running along Crooks Avenue; that this section of Crooks Avenue is designated as a business zone; that on the same side of Crooks Avenue, beginning at Vernon Avenue, there is first a National Grocery store, then a large

butcher shop, a private house, a barber shop, a laundry, three private houses, the premises in question, seven vacant lots, two private houses, a real estate office, a dry cleaning establishment, a confectionary, another barber shop and a beauty shop; that in some of these buildings families live above the stores; that on the opposite side of Crooks Avenue (which is in the City of Paterson), there is a saloon and bowling alley directly opposite appellant's premises; that there are a few residences on that side of Crooks Avenue, but there are also four or five stores in the immediate vicinity.

Appellant testified that the main thoroughfares of Clifton are Main Avenue, Clifton Avenue, Lakeview Avenue, VanHouten Avenue and Crooks Avenue. It was also testified that the Clifton side of Crooks Avenue has been known as a business section for the last fifteen years; that permits are readily obtained to put stores on that block; that the land is so expensive that the seven empty lots can be used profitably only for business purposes.

This evidence distinguishes the present case from the Borkowski case. In the earlier case, the neighborhood was substantially residential although a few neighborhood stores had crept in. Here the neighborhood is definitely devoted to business, although there are a few remaining residences.

At the hearing before respondent, three persons appeared and objected to the issuance of the license. Their objections were based upon the fact that the neighborhood was residential and that children play upon the vacant plot which adjoins the premises in question. Respondent considered also a written objection filed by persons residing in the vicinity. It appears, however, that the large majority of these objectors reside on First, Second and Fourth Streets, which streets run parallel to Crooks Avenue to the south thereof, and admittedly are wholly residential. General objections filed by those living on residential streets in the vicinity do not justify an issuing authority in refusing to grant a license for premises located in an ordinary business district. Katz vs. Caldwell, Bulletin #143, Item 3.

As to the second reason alleged by respondent for denying the license, it appears that the nearest licensed places in the City of Clifton are located about four blocks away from appellant's premises. Of course, respondent might take into consideration the licensed place located directly across the street in the City of Paterson in determining whether there are sufficient licensed places in the neighborhood. Haycock vs. Roxbury, Bulletin #101, Item 3 and cases therein cited. However, respondent has heretofore issued licenses in close proximity to other licensed premises in other sections of the City which are similar in character to the one now under consideration, Kirchies vs. Clifton, Bulletin #66, Item 1, and there is no evidence in the present case that respondent has adopted and uniformly applied a policy of denying licenses in close proximity to premises already licensed. Indeed, the evidence shows that at the first meeting at which appellant's application was considered, the City Council granted a license at 148 Crooks Avenue; that on the night appellant's application was denied, a license was granted at 312 Lexington Avenue, and subsequently a license was granted at 714 Main Avenue. In view of the evidence that Lexington Avenue and Main Avenue are business streets of substantially the same character as Crooks Avenue, no reason appears why additional licenses have been granted on these avenues and denied for appellant's premises on Crooks Avenue, and more

particularly does it seem to be unreasonable to grant a license for 148 Crooks Avenue and deny a license for 370 Crooks Avenue, the appellant's premises.

Under all circumstances, the action of respondent in denying the license appears to be arbitrary and unreasonable.

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

D. FREDERICK BURNETT
Dated: January 23, 1937. Commissioner

8. CONVICTION OF CRIME - EFFECT OF PARDON - HOW SET FORTH IN APPLICATION FOR LICENSE

Dear Sir:

On my application for liquor license, it is necessary for me to have answered "yes" to question of whether I have been convicted of a crime (having been so - according as your records will prove) on April 1934.

I have just received from the Governor of the State a certification as to "my pardon and Resturation of Suffrage and right of being an Elector" as of Nov. 20, 1936.

I am therefore interested to know how I can correct your records so that in future I may answer such questions in the proper manner. Will it still be necessary for me to say "yes" and then answer "pardoned" or will I only hereafter say "no" to question whether I have been convicted of a crime.

Respectfully yours,

January 25, 1937.

Dear Mr.---------:

I have yours inquiring as to the effect of a pardon.

You state that you were convicted of a crime in April, 1934, and that in applying for your retail license to the City of Newark you disclosed such conviction by answering "Yes" to the question: "Have you ever been convicted of a crime?" You further declare that the Governor of the State of New Jersey has issued to you a pardon, effective as of November 20, 1936. You inquire as to how you may now correct the records so that in the future you may answer the aforementioned question satisfactorily.

In Bulletins #50, Item #1, and #92, Item #12 (copies enclosed), I pointed out that a person who has been convicted of a crime involving moral turpitude and thereafter obtains a complete pardon is not disqualified from holding a license. This is based upon the statement of Chancellor Walker in In re: Court of Pardons, 3 N.J. Misc. 585 (1925) that:

"The effect of the pardon is to make the offender a new man, to acquit him of all forfeitures annexed to that offense for which he obtains his pardon, not so much to restore his former, as to give him a new, credit and capacity."

So, when a pardon has been obtained, the offender is made a "new man" in so far as his conviction is concerned, wiping out the conviction and everything pertaining to it. The pardon gives the offender a clean bill, erasing the conviction as though the crime had never been committed.

Under the circumstances, should you at any future time apply for a license or permit, you may honestly declare that you have never been convicted of the crime of which you have been pardoned. However, in respect to your application now on file in the City of Newark, your answer of "Yes" must stand because at the time you filed such application and the affidavit to your answers thereto, on record you were convicted of the crime.

However, you should immediately take your pardon to the Secretary of the Alcoholic Beverage Control Board of the City of Newark, so that he may make note in the records of the fact that you have been pardoned of the crime disclosed in your application.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - BRIGGS vs. OAKLAND.

GEORGE W. BRIGGS,)
Appellant,)
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH OF OAKLAND,) CONCLUSIONS
Respondent.)

. . . . . .

Sanford Freedman, Esq., Attorney for Appellant.
Emil A. Trautmann, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a transfer of his plenary retail consumption license from premises located in West River Road in Oakland to premises located at Oakland Avenue and Elm Street, Oakland.

Respondent contends the application was properly denied for the reason, among others, that an existing licensed place within a short distance of appellant's proposed premises

is adequate to supply all reasonable demands of the residents in the vicinity and the establishment of an additional licensed place there would be socially undesirable.

Appellant's proposed premises are located in the small business neighborhood of the Borough. This entire section extends for approximately four blocks. There is a tavern within this area, approximately two blocks away. Appellant concedes that one properly conducted place is adequate to supply the needs of the community, but argues (1) that the existing place is run by a man who is generally disliked and (2) the denial of his application was improperly motivated.

(1) The contention that the existing place does not adequately serve the local residents requires little consideration. It rests on appellant's mere assertion; no facts are adduced and no witnesses produced. Furthermore, appellant admitted that he sought the patronage of transients and that there would not be enough local business to warrant his opening a place there.

(2) We come then to the charge of improper motivation. Such a charge is serious and must be proved by clear and convincing evidence. Schulte v. Perth Amboy, Bulletin 58, item 13; Franklin Stores Co. v. Belleville, Bulletin 102, item 2. The only evidence introduced are statements alleged to have been made to appellant by two of the six Borough Councilmen. One is reported to have said that although appellant's license would not be transferred to the particular premises for which he now seeks a transfer, that his application would be granted if he applied for an old house located in this same business area immediately across the street from the existing licensee, Art Seel. The Mayor's explanation of the circumstances under which this statement was made is adequate. He testified:

> "Q. There has been an unfortunate inference at this hearing today, from which I took the impression that perhaps one member at least of the council was trying to force this applicant to make application for another property -- do you know anything about that?
>
> "A. I think he knows better than that. Everyone is, of course, entitled to his opinion. But after the meeting, when this application was first made, I happened to hesitate as I went out the front door, and Mr. Briggs and Williams and Adamson were standing together, and Bert said plainly and clearly, 'George, if you had made application for permission to go into the Brindle Building, everyone would have voted for you' --it being a standing joke in the neighborhood that Art Seel pans everyone having anything to do with this administration.
>
> "Q. Is there any politics connected with this?
>
> "A. No. "

The second statement referred to was made by a Councilman who is reported to have said that if appellant were permitted to transfer his license from the outskirts of the Town where it is now located to the heart of the Town, he would bring all the

Jews to Town and they preferred to keep them on the outskirts. This alleged statement is based upon the fact that sixty percent of appellant's patronage is derived from the Jewish summer colony on the outskirts of the Borough. The Councilman charged with having made this statement was not present at the appellate hearing and it stands, therefore, undenied. Racial prejudice has no proper place in the issuance of liquor licenses or anywhere else. Any action based on this ground will be rigorously overruled. It does not follow, however, that the other five Councilmen who voted against appellant's application were so motivated. On the contrary, the proof is that there was no discussion whatsoever of this subject in the deliberations of the Council. The good faith of the majority of the Council, is, therefore, not impugned.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Dated: January 23, 1937. Commissioner

10. APPELLATE DECISIONS - THE MOHAWK RESTAURANT, INC. vs. NEWARK

THE MOHAWK RESTAURANT, INC.,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK (ESSEX COUNTY),)
Respondent.)

ON APPEAL

CONCLUSIONS

. . . . . .

Charles Handler, Esq., Attorney for Appellant.

Raymond E. Schroeder, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control.

Thomas E. Fitzsimmons, Esq., Attorney for Objectors.

Robert L. Hood, Esq., Attorney for Union National Bank, Owner of Premises.

BY THE COMMISSIONER:

Appellant applied for a transfer of its plenary retail consumption license from 990 Frelinghuysen Avenue, Newark, to 10 Read Street, Newark. Objections were filed with the City Clerk and a hearing held. One member of respondent Board is a director of the corporation owning the premises to which the license was sought to be transferred, and he therefore properly refrained from participating in the consideration of or vote upon the application. Re Cluesmann, Bulletin #144, Item #2. The remaining two members split, one voting in favor of the application, the other voting against it. An impasse thus preventing any effective disposition of the application, this appeal was filed.

Respondent Board filed an answer alleging various reasons for the denial of the transfer. No witnesses were produced by the Board, however, and no reason for its action offered except the written explanation for their respective votes filed by the two participating members of the Board. From these explanations it is clear that the motivating force below was the fact that objections were filed. It is also clear that in the absence of such objections the application for transfer would have been granted.

The issue, therefore, is simply, whether the objections made should properly cause the denial of this particular application. This, in turn, depends upon the validity of the reasons underlying the objections, weighed in the light of the established licensing policies adopted by respondent Board. For, as said in Sweeney v. Asbury Park, Bulletin #39, Item #9:

> "The mere fact that there were objections to the issuance of any licenses in a neighborhood where several had already been issued does not afford a reasonable basis for refusing to issue a license."

See also McConnell v. Trenton, Bulletin #46, Item #8; Kiszonak v. Clifton, Bulletin #97, Item #12.

The primary reason for the objections filed, and the reason particularly stressed by four priests who testified, is that the manner in which appellant proposes to conduct its business at its new location would not be conducive to the moral welfare of the patrons; that young people would be attracted to the premises and thereby come under the influence of undesirable surroundings and associates.

Appellant conducted a cabaret at its old location. It plans to continue this cabaret at its new premises, and in addition to run scheduled basketball games as well as maintain public bowling alleys. The building is peculiarly suited for this purpose. It was formerly the headquarters of the Engineers' Local, which erected it in 1930 as a recreational center. It is designed for entertainment purposes and built and created with that thought in mind. It has sound-proof walls specially constructed. Meeting with economic adversity, the Local was apparently unable to continue in sole possession of the building, and eventually title was taken over by the mortgagee. Prior to that time, however, American League Basketball Holding Co., Inc. obtained and held a plenary retail consumption license for these premises for a period of over two years. The last of these licenses expired on June 30, 1936. While this license was in effect the building was used for purposes of public entertainment, basketball games, and bowling. No objection was ever filed with reference to the original issuance or renewal of the license. The only proposed change in the use of the building under appellant's plan is the cabaret.

Cabarets are not unique in the City of Newark. There are many. If all cabarets were to be prohibited that would be one thing, but so long as the municipal officials tolerate and license them there is no reason for any discrimination against this one.

It is suggested that the additional features of the bowling alleys and the basketball games will attract particularly

the young to this cabaret and furnish them inducements to linger and be subjected to whatever evils come from close and prolonged contact with bars and bar habitues. As Father Duffy said when he testified:

> "I speak as one interested in the young men of our Parish. I know one of the worst influences, as far as bringing them into a moral atmosphere, is the multiplication of taverns; and added to that would be a recreation center. A recreation center should be confined to more official channels.*** If they attract the young people, they should have an official character; under present circumstances, a private organization should not be given charge of them."

This point of view, so well put by Father Duffy, and stated in other language by Fathers Walsh, Toohey and Whitley, has given me considerable pause. It is the considered and sincere judgmen of representative moral leaders of the community and is not lightly to be disregarded. Nevertheless it relates to a matter of policy which, under the Control Act, lies within the province of the local issuing authority. They might well have determined that a place peculiarly attractive to young men and women is not a suitable place for a license. Had they done so I would gladly have honored their determination. Turner v. Ramsey, Bulletin #37, Item #7. But so far from adopting any such policy, respondent Board has issued and renewed licenses for this very building despite the existence and use therein of the facilities complained of. The objection we are now considering applies not only to these premises as they are proposed to be run by appellant but also, to a greater or lesser degree, to many other places in the city. The extraordinary division of the vote by the members of respondent Board which necessitated this application's coming to the Commissioner without an original determination should not operate to appellant's detriment. Respondent is under a duty to apply its policies uniformly. Barbuto v. Trenton, Bulletin #56, Item #5. This ground of objection cannot support the proposed discrimination against appellant.

The second contention made by the objectors is that the neighborhood is residential and therefore the issuance of a liquor license for a cabaret to be conducted therein would constitute an abuse of discretion. It should be noted that this objection does not go to the issuance of a liquor license to an ordinary tavern. Thus one objector testified:

> "Q Are you opposed to this application for a tavern and dance hall and cabaret? A Yes.
>
> Q And why? A Because of the nature of the place they had before. She had quite a noisy following, and it would interfere with our private lives because it would be an all night affair, and we are all working people down there.
>
> * * * * *
>
> Q Would you have the same objection, or would you object if it was just a tavern and not a dancing establishment?

A If we didn't know about the people that were going in, we would not have a chance to say anything, but there were rumors a noisy crowd were coming down, and that is why we objected."

The only other objector who testified stated:

"Q Regardless of whether or not this application included a cabaret or dance floor, or recreation center, you would be opposed?

A I would oppose it vehemently, irrespective of whether the applicant is Mrs. Hudson or anyone else. We feel we have all we need in that locality. We don't want a cabaret and night club and floor show that goes on in a place of her kind.

Q. If Joe Fay applied would you object? A I don't think I would, if he was going to run a tavern, provided there weren't the number of taverns that are there now."

It is clear from the foregoing that the objection, based on the nature of the neighborhood, runs only against a cabaret. The question of whether the neighborhood is suitable for a cabaret, however, is not within my province to determine. Licenses for dance halls are issuable by the Newark Department of Public Safety. The present objection should be raised there. In fact I am informed by the City Clerk's office that the dance hall license issued to appellant for 990 Frelinghuysen Avenue was transferred to 10 Read Street some time ago, but expired on December 1, 1936. The objectors are therefore in a position to present their objection in that Department when an application for a new dance hall license is filed.

The objectors also argue that there are a sufficient number of licensed establishments in this neighborhood and no additional licenses are needed there. The nearest licensed place to appellant's premises is a block and a half away, approximately 450 feet. Respondent has issued licenses in much closer proximity throughout the city, sometimes several being on the same block. There is no evidence that respondent has adopted any policy to deny applications for premises close to existing licensed places. While the Commissioner has often sustained denials of particular applications in accordance with a local policy not to overcrowd any given neighborhood, nevertheless this ground for refusal is available only where such policy has been adopted and uniformly applied throughout the municipality. Kaplan v. Trenton, Bulletin #41, Item #9; Skwara and Proneska v. Trenton, Bulletin #57, Item #7; Sam Karpf Co. v. Camden, Bulletin #66, Item #3. As said in the Karpf case, supra:

> "A municipal policy with reference to the number of licensed places desirable in any given neighborhood must be uniformly applied throughout the municipality to all other neighborhoods of the same class. This is but one aspect of the general rule that all municipal policies, in order to be valid, must be uniformly applied. Tanko v. Trenton, Bulletin #56, Item #10; Barbuto v. Trenton, Bulletin #56, Item #5.

In view of the lack of evidence that any such policy exists in Newark and the fact that licenses have been issued without apparent regard to the proximity of the licensed places, the denial by respondent of appellant's application on this ground would be arbitrary and discriminatory and therefore invalid.

The fourth contention made by the objectors is that Olga V. Hudson, the principal stockholder and executive officer of appellant corporation, has been convicted of a crime involving moral turpitude and therefore she, and through her, appellant, is disqualified under Section 22 of the Control Act from receiving or holding any license of any class. This contention rests upon the conviction of Mrs. Hudson for adultery in 1924. I had occasion to consider this conviction in August, 1934, in connection with a prior license held by Mrs. Hudson, when I said:

> "The real question is whether her conviction of adultery with Albert Hudson, her present husband, to whom she has been married for the past ten years, constitutes the conviction of a crime involving moral turpitude.
>
> "There is no question but that adultery is an offence against morals but whether those convicted are guilty of moral turpitude within the meaning of the Alcoholic Beverage Act is one which leaves room for reasonable difference of opinion. This is so because of the inherent difficulty of defining the term 'turpitude'. The dictionaries side-step it with the words 'inherent baseness or vileness of principles, words or actions; shameful wickedness; depravity'. Turpitude is a conclusion based on or an inference derived from the facts of a given case. In every case of adultery it is a breach of plighted troth and a personal sin, but we cannot jump from that to the general conclusion that every commission signifies shameful wickedness or constitutes, per se, depravity. Everything depends on the facts. . . . .
>
> "The duty to hear the facts and make the decision in the first instance is upon the issuing authority." Re Hudson, Bulletin #45, Item #18.

Pursuant to this ruling the Municipal Board unanimously determined that the offense did not involve moral turpitude. Thus the issue was determined adversely to objectors' present contention. No facts were introduced indicating error in this determination. The finding of respondent will not be disturbed in the absence of proof to the contrary.

Objectors finally argue that appellant has improperly conducted its business at its old location and therefore should not be afforded the privileges of a transfer. Fafalak v. Bayonne, Bulletin #95, Item #5. In support of their charge the objectors point principally to the fact that Mrs. Hudson was convicted twice of violating the local hour of sale ordinance. The first of these convictions occurred at 3:15 A. M. on September 2, 1934, and she was fined $50.00; the second occurred at 3:15 A. M. on June 7, 1936 and sentence was suspended. The Newark ordinance prohibits all sales after 3:00 A. M. These facts had been brought to the attention of the respondent Board at the time they issued appellant's present license. They determined that these convictions were not sufficient ground for refusing to issue the license. It follows that they are not sufficient ground for refusing to transfer the license.

There is no other proof to substantiate the charge of improper conduct except that one witness stated she had heard

rumors that appellant had conducted a noisy place at its old location. She refused to state, however, where she had heard these rumors. On the other hand, a number of witnesses appeared and testified that they had been in appellant's place on several occasions and saw absolutely nothing wrong with the type of entertainment offered, the conduct of the patrons, or the place itself. The evidence fails to support the charge.

After carefully reviewing and considering the entire record, I have come to the conclusion that in order to maintain uniformity of licensing action within the City of Newark Appellant's application for transfer should be granted. Respondent is therefore directed to make the transfer as applied for.

D. Frederick Burnett

Dated: January 24, 1937.

D. Frederick Burnett
Commissioner