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

BULLETIN 254. JUNE 22, 1938.

1. DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT SUSPENSION - CONCLUSIONS.

In the Matter of the Application of ROXY BAR & GRILL, INC., to Modify Suspension )

CONCLUSIONS

. . . . . .

Louis A. Fast, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

The license of Petitioner was suspended for a period of thirty (30) days from May 28, 1938, for possessing and distributing on licensed premises business cards which contained obscene, indecent and filthy printing.

The Petitioner promises that it will not permit the issuance of any such cards again and says that the continuance of the suspension will work a hardship on the corporation and its head and the members of his family.

Pursuant to the policy of the Department, Investigators were directed to make periodic visits to the licensed premises to observe compliance with the order of suspension.

I find that, on June 6th, 1938, at 12:10 P. M., Investigators Kane and DiPietro visited the licensed premises and found, and promptly confiscated, a sign approximately four feet square in area, printed in three colors, in the show window facing High Street, bearing the following inscription:

"CLOSED FOR ALTERATIONS
WATCH FOR OPENING."

This place was not closed for the purpose of making alterations. It was closed because its license had been suspended for violation of the State Rules, which forbid licensees to possess or distribute obscene, indecent or filthy advertising matter.

Licensees who try to play horse with the Department need not expect the leniency which might otherwise accompany a severe penalty, if coupled with genuine repentance.

The petition is denied.

D. FREDERICK BURNETT
Commissioner

Dated: June 11, 1938.

2. APPELLATE DECISIONS -- WALLACE and THOMAS vs. ORANGE

FRANK J. WALLACE and HAROLD THOMAS,
)
Appellants,
)
-vs- ON APPEAL
)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE, CONCLUSIONS.
)
Respondent.
)

. . . . . .

Michael N. Steinberg, Esq., Attorney for the Appellants.
Louis J. Goldberg, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This is an appeal from the respondent's suspension of the appellants' license for three days on the ground that they had violated the provisions of the municipality's ordinance pertaining to closing hours.

At the hearing on the appeal, Officer O'Rourke of the Orange police force testified that on January 23, 1938 at 2:18 A.M. he passed the licensed premises operated by the appellants, tried the front door and found it locked but noticed, through the window, that the licensees were in the premises and that four men were standing at the bar; there were three partly filled beer glasses in front of three of the men and a filled whiskey glass in front of the fourth; he called to the licensees and told them to get the men out and they answered "O.K."; he then observed the four men consume the contents of the glasses in front of them and leave through a side door; and thereafter he made formal report of the incident to his superior.

The licensees admitted that at the time in question there were four men standing at the bar who left immediately after Officer O'Rourke appeared; they testified, however, that two of these men were musicians employed at the premises, who were waiting to be paid and that the other two were customers who were disputing a bill for drinks served earlier that morning; they denied that these men were then drinking at the bar or that they emptied glasses in front of them as Officer O'Rourke testified. None of these men was produced at the hearing. No subpoenas were obtained by the appellants for their attendance, although admittedly the two customers still frequent the licensed premises and could have been served.

Section 11 of the Orange ordinance relating to the sale of alcoholic beverages provides, in part, as follows:

> "Every place in which the sale of alcoholic beverages is authorized by a license granted by the Municipal Board of Alcoholic Beverage Control of the City of Orange shall be closed, and no alcoholic beverages sold, offered for sale or given away upon the said licensed premises, and all patrons or guests shall

be excluded from said licensed premises on Sundays, between the hours of two a. m. and one p. m. and on every other day of the week between the hours of two a. m. and seven a. m. *****."

The testimony by Officer O'Rourke is adequate to establish a violation of the express terms of the ordinance. The explanation by the licensees is not at all convincing and consequently no determination need be made as to whether it would, if accepted, constitute a defense. Their failure to produce any of the four men who were at the bar, notwithstanding the ready availability of the two men who are still their customers, bespeaks volumes.

The action of the respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 17, 1938.

3. DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT SUSPENSION - MODIFICATION OF ORDER.

In the Matter of Disciplinary Proceedings against

ROXY BAR & GRILL, INC., 421 High Street, Newark, New Jersey,

Hold of Plenary Retail Consumption License No. C-743

MODIFICATION OF ORDER

. . . . . .

BY THE COMMISSIONER:

Since denying, on June 11, 1938, the petition to lift the suspension, I have had a heart to heart talk with Sampson Librizzi, the President of the licensee and proprietor of the business, who tells me, and his wife confirms by telegram:

"We are studying your book of Rules and Regulations day and night so nothing will occur again."

The place has been closed since May 28th. I am satisfied that he and his wife have learned a lesson.

Accordingly, the order of May 24, 1938 is hereby cancelled and the suspension is hereby lifted effective immediately.

D. FREDERICK BURNETT
Commissioner

Dated: June 17, 1938.

4. APPELLATE DECISIONS - SMITH v. MANSFIELD TOWNSHIP.

JAMES H. SMITH,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF MANSFIELD TOWNSHIP, WARREN COUNTY,
Respondent.

ON APPEAL
CONCLUSIONS

Saul N. Schechter, Esq., Attorney for Appellant.
Clark C. Bowers, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a denial of a plenary retail consumption license for premises located on Main Street, Port Murray, Mansfield Township.

Respondent denied the license because of an ordinance limiting the number of such licenses to five and the prior issuance of the allotted number.

Appellant held a consumption license for the premises in question from 1934 to June 30, 1937. He did not renew for the fiscal year 1937-1938 because, he testified, his family didn't want him to continue in the liquor business.

The ordinance limiting consumption licenses to five was adopted December 31, 1937. Between June 30, 1937, when appellant ceased conducting his business, and the time of the adoption of the ordinance, only five consumption licenses were outstanding in the Township. Appellant contends that the limiting ordinance was adopted to prevent an undesirable applicant from obtaining a license for an hotel in Port Murray. Members of the Township Committee admit that an application for a consumption license covering hotel premises in Port Murray was pending at the time the limiting ordinance was adopted but, while they admit that the ordinance was "directed against" that applicant, they further testify that in adopting the ordinance they felt they were carrying out the "will of the people" of Port Murray. Whatever the motive may have been which induced respondent to adopt the limiting resolution, it seems clear that it was not adopted with a view to discriminating unjustly against the present appellant. He had no application for a license pending at the time of the adoption of said ordinance and in fact did not file the application for the license which is being considered herein until many months after the ordinance was in full force and effect.

So long as the ordinance remains effective, respondent cannot lawfully issue the license applied for. Duffield v. Allenhurst, Bulletin 236, Item 12.

Appellant has not shown that the ordinance fixing the number of consumption licenses at five is unreasonable in itself. The entire population of the Township has been estimated at about twelve hundred. Five consumption licenses seem ample to take care of the needs of the inhabitants of the Township. Appellant cannot complain that the ordinance is unreasonable as applied to him. The mere fact that he operated a licensed place for a number of years gives him no right to operate in perpetuity. The fact that his premises are a mile away from the nearest licensed place, in a

settlement which contains between one hundred eighty-five and two hundred people, is not sufficient to show that public necessity requires the issuance of a sixth license in the Township. I find that the ordinance is not unreasonable in itself nor as applied to appellant.

The action of respondent is, therefore, affirmed.

Dated: June 17, 1938.

D. FREDERICK BURNETT,
Commissioner.

5. GAMBLING - LOTTERIES - CRUISE DANCE - NOT EVEN THE GARDEN VARIETY OF RAFFLE MAY BE CONDUCTED ON LICENSED PREMISES.

June 17, 1938

Henry W. Clement, Esq.,
Plainfield, N. J.

Dear Mr. Clement:

The raffle must not be held on licensed premises. Regulations 20, Rule 6, expressly forbids it. It provides:

> "No licensee shall allow, suffer or permit any lottery to be conducted . . . . . on or about the licensed premises."

At this Cruise Dance, which the Monday Afternoon Club purposes to hold on June 18th, sweepstake tickets for the "Britannic" or "Georgic" 4-day cruise to Nova Scotia for two persons are sold at 50¢ a ticket. It is, therefore, as you say, no more than "the ordinary garden variety of raffle", but it is none the less a lottery, and therefore not permissible on any place licensed for the sale of liquor. Violation of the Rule subjects the Country Club to revocation of its license. It makes no difference that the lottery is run by an outside organization.

You realize, of course, that while there is no question in mind as to the worthiness of the objective, all licensees must be treated alike, and what is forbidden on one licensed place may not lawfully be done on any other.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALE TO MINOR AND CONCEALMENT OF CONVICTION.

In the Matter of Disciplinary Proceedings against

MAX BLANKER,
204 Mulberry Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License C-388 issued by the Municipal Board of Alcoholic Beverage Control of Newark.

CONCLUSIONS AND ORDER

S. B. Helfand, Esq., for the State Department of Alcoholic Beverage Control.
Nathaniel J. Klein, Esq., Attorney for Max Blanker, Licensee.

BY THE COMMISSIONER:

The defendant, a Newark licensee, is charged with selling and serving beer to a minor in violation of R. S. 33:1-77 (Control Act, Sec. 77) and Rule #1 of State Regulations #20, and with falsely denying conviction of a crime in his application for his license and in his subsequent application for transfer thereof to his present premises, in violation of R. S. 33:1-25 (Control Act, Sec. 22).

As to the charge of sale and service to a minor: Norma Brown, 18 years of age, testified that she was in the defendant's tavern during the morning of Saturday, April 2nd, 1938, in the company of "Jerry" (who occasionally tended bar at the tavern) and two other men; that she ate some food which one of the men obtained across the street, but drank no liquor; that she left the tavern at 1:30 P. M., but returned at about 4 P. M. and remained there until 3 o'clock Sunday morning; that she had about 4 drinks of beer during that time, which were served by the defendant and his wife. She further testified that she visited the tavern on Sunday afternoon, April 3; that the defendant and his wife asked her to drink with the men at the bar but she refused; that she later left the tavern when the defendant told her to leave because the "cops" were coming.

The defendant denied Norma's story. He testified that she was not served with any liquor in his tavern, and that he ordered her from the premises whenever he saw her there because he disliked her being in the company of men. He admits, however, that she was in the tavern on Saturday night with 3 men (one being "Jerry"), and that he allowed her to remain. "Jerry", called as a witness on the defendant's behalf, testified that he had "7 or 8 beers" at the tavern that night, but that Norma, though asked to drink at each round, persistently refused.

It indisputably appears that the girl was at the tavern on Saturday night in the company of "Jerry" and other men, who were drinking freely. I am not impressed with the story that she steadily refused all offers of drinks. I find, in accordance with her testimony, that the defendant and his wife served her beer during that night.

As to the charge of falsely denying conviction of crime in his application for his license and in his subsequent application for transfer thereof to his present premises, the defendant admits that he was convicted in this State in 1931 for violation of the National Prohibition Act by reason of a sale of liquor by a bartender in a saloon then being operated by him in Newark. He further admits that he was fined $300.00 and sentenced to 60 days' imprisonment as a result of this conviction. In explanation of the reason why his applications fail to reveal such conviction, he testified that, being unable to read or write, he went in the instance of each application to a certain notary public to have them prepared and executed; that he revealed his conviction to this notary public, who, however, told him "to forget about it" because convictions during prohibition days "don't count"; that he did not know what statement, if any, the notary public made on the applications concerning the conviction.

The notary public, however, testified that in the instance of each application he asked and explained all the questions to the defendant and put down the answers given by him; that the defendant stated that he had never been convicted of any crime; that the defendant signed the applications and in each instance swore that the statements made therein were true. I see no reason to question the

veracity of this disinterested witness.

True, the crime of which the defendant was convicted does not involve moral turpitude and hence does not necessarily disqualify him from holding a liquor license. Re Case No. 64, Bulletin 196, Item 10. Nevertheless, he was required to reveal that conviction. Licensees must make applications which are complete and true, especially in point of their criminal record, so that issuing authorities may properly determine whether they are personally fit to hold a liquor license. Re Siwek, Bulletin 180, Item 14. This he did not do.

I find the defendant guilty on all counts as charged.

R. S. 33:1-25 (Control Act, Sec. 22) provides that no one shall hold a liquor license "who has committed two or more violations" of the statute. Although the defendant is here adjudicated guilty of "two or more violations" of the act -- viz., sale to a minor within the meaning of the statute, and misrepresentation of material fact in his applications --, he does not, however, fall under the mandatory disqualification of that section. Under strict construction the statute contemplates, not adjudication of "two or more violations" in a single proceeding, but an adjudication of guilt in one proceeding followed by a locus penitentiae, i. e., a chance to repent and amend, and thereafter a subsequent violation and adjudication. Re Case No. 63, Bulletin 195, Item 1. I shall not, therefore, revoke.

As to penalty: I shall impose a suspension of 10 days upon the defendant's license for sale and service of beer to a minor contrary to statute and to state regulation. As regards his false denial of conviction of a crime, I shall treat as ground for leniency the testimony of Deputy Chief Sebold of the Newark Police Department that, had the defendant revealed his conviction, he would nevertheless have recommended to the Municipal Board of Alcoholic Beverage Control in Newark that the defendant's applications be granted; and, further, that although many applicants before the Board were convicted of a crime similar to defendant's, he knows of no instance when the Board denied any such applicant merely because of that conviction. I shall accordingly impose an additional ten-day suspension (5 days for the false denial of conviction in each of the 2 applications).

Accordingly, it is on this 18th day of June, 1938, ORDERED, that effective 3:00 A. M. (Daylight Saving Time) on June 21, 1938, plenary retail consumption license No. C-388, issued to Max Blanker by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and hereby is suspended for the balance of its term, expiring midnight, June 30, 1938.

And it is further ORDERED that no renewal or other license under the Alcoholic Beverage Control Act (R. S. Title 33, Chapter 1) be issued to said Max Blanker before the 10th day of July, 1938.

D. FREDERICK BURNETT,
Commissioner.

7. APPELLATE DECISIONS - BIALOGLOW v. INDEPENDENCE TOWNSHIP.

KONSTANTY W. BIALOGLOW,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF INDEPENDENCE,
Respondent

ON APPEAL
CONCLUSIONS

Meehan Brothers, Esqs., by John J. Meehan, Esq.,
Attorneys for Appellant.
Clark C. Bowers, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located on Main Street, Route 6, Vienna, Township of Independence, Warren County.

Respondent denied the license for the alleged reasons that the issuance thereof would create a traffic hazard and would be contrary to the wishes of the majority of the residents of the neighborhood in which the premises in question are situated.

The premises are located at the foot of a hill, and the grounds contain some shade trees; it appears that the house is fifteen or twenty feet back from the road, and that there is a parking space to the rear of the premises in question. The evidence is not sufficient to show that any traffic hazard would arise.

Vienna is a small settlement in the Township of Independence. Its population is approximately two hundred. There are a number of homes along Route 6, in the vicinity of appellant's premises. It is apparent from the petition which was introduced into evidence, objecting to the issuance of the license, and from the large number of persons who attended the hearing and objected, that the prevailing sentiment of those who live in Vienna is against the issuance of any license in that section of the Township. It has been testified that no liquor license has been issued in Vienna for more than fifty years.

Local issuing authorities may refuse to issue licenses in certain sections of the municipality where local sentiment clearly supports such action, and the policy is not used as a subterfuge to hide discrimination against an applicant. Ely v. Long Branch, Bulletin 99, Item 2. Of course, such policy must be reasonable. If in fact public convenience and necessity require the issuance of a license in a certain section of the municipality, then a denial simply because premises are situated in such certain section would not be justified. Walsh v. Egg Harbor, Bulletin 146, Item 7.

Appellant has offered no substantial proof as to the need for another license in the Township. At the present time, seven consumption and two club licenses are outstanding in the Township of Independence, which is rural in character and has a population of but 964 according to the 1930 census. Appellant argues that the license is necessary to take care of the needs of summer boarders and transients. Four witnesses, who reside in Jersey City, testified that they stopped at appellant's premises occasionally and particularly during the summer time. As to the transients, while it is admitted that Route 6 is one of the most heavily traveled highways in the State of New Jersey, it appears that four consumption licensees are operating at the present time along the five and one-half

mile portion of said Route 6 which passes through Independence Township. The nearest of said licensed places to the premises in question is approximately a mile away. Appellant has not sustained the burden of proof in showing that public convenience and necessity require the issuance of a license in the settlement known as Vienna. In the absence of strong and convincing evidence on this point by appellant, the local sentiment against the issuance of any license in that section of the Township should be permitted to prevail.

Appellant lastly contends that he conducts an hotel. The evidence shows that appellant's building contains sixteen rooms, eight of which are bedrooms. At the time of the hearing, the premises contained a sign reading: "Tourists Accommodated", and meals could be obtained. It was testified that a register, signed by all persons who stopped at appellant's premises, was in existence, but the register was not produced. It appeared that no help was employed, and that very few persons stopped at appellant's premises except during the summer season. The premises seem to be a tourist house, rather than an hotel. Steup v. Wyckoff, Bulletin 155, Item 12; Mainiero v. Roxbury, Bulletin 246, Item 2.

I conclude that respondent's action in denying the license because of the local sentiment was reasonable and that appellant has not sustained the burden of proof in showing that an additional license is necessary at his premises.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 18, 1938.

8. APPELLATE DECISIONS - KIRSCHHOFF v. MILLVILLE and BECKETT.

HENRY CARL KIRSCHHOFF, )
Appellant, )
-vs- ON APPEAL
BOARD OF COMMISSIONERS OF THE CITY ) CONCLUSIONS
OF MILLVILLE and MARY F. BECKETT, )
Respondents. )
- - - - - - - - - - - - - - - - - - - )

Carroll & Taylor, Esqs., by Howard G. Kulp, Jr., Attorneys for the Appellant.
Harry R. Waltman, Esq., Attorney for Respondent, Board of Commissioners of the City of Millville.
Israel Davidow, Esq., Attorney for Respondent, Mary F. Beckett.

BY THE COMMISSIONER:

This appeal is from a refusal to grant a person-to-person transfer.

On March 30, 1938, appellant filed an application with the Board of Commissioners of Millville for the transfer to himself of a plenary retail consumption license for premises at 101 East Main Street, City of Millville. As required by R. S. 33:1-26 (Control Act, Sec. 23) and Rule 3 of State Regulations No. 3, he also submitted therewith the written consent of Mary F. Beckett, the

licensee. The latter, however, on April 14, notified the Board in writing that she wished to withdraw her consent. On May 6, appellant's application was denied by the Board for the reasons set forth below. Hence this appeal.

Both respondents -- the licensee and the Board -- contend that the transfer was validly denied because of the licensee's "withdrawal" of consent.

When appellant's application and the licensee's written consent were filed, jurisdiction vested in the Board to consider the application on its merits. The attempt by the licensee to withdraw her consent was ineffective to divest that jurisdiction. As was stated in Re Atlantic Highlands, Bulletin 129, Item 5:

> "Where the consent is defective on its face or has been declared invalid by a court of competent jurisdiction, it should be disregarded. Otherwise, however, any attempted withdrawal by the transferor of his duly filed consent is of no effect in so far as the jurisdiction of the municipal issuing authority is concerned. Cf. Bachman v. Town of Phillipsburg, 68 N. J. L. 552 (Sup. Ct. 1902); Sullivan v. Mayor and Council of the Borough of Ramsey, 105 N. J. L. 142 (E. & A. 1928). Any contrary view would raise difficult questions of administration and would involve consideration of private issues inter partes which should rest entirely within the determination of the courts."

The same point was decided in Mancini v. West New York, Bulletin 253, Item 10, contrary to respondents' contention.

The Board further contends that appellant's application for transfer was validly denied because "it conflicts with Ordinance No. 403", adopted by the Board on August 27, 1937. That ordinance, so far as pertinent, provides:

> "Sec. 13 a. The maximum number of licenses for the City of Millville shall be:
>
> | | |
> |---|---|
> | Plenary Retail Consumption, | 10, |
> | Plenary Retail Distribution, | 4, |
> | Club, | 6; |
>
> provided, however, that existing licenses may be renewed as long as the holders qualify."

When appellant's application was filed (March 30, 1938), 16 consumption licenses were in valid existence in Millville.

While fixing the quotas for licenses in the City, the ordinance in no way purports to restrict their statutory transferability (R. S. 33:1-26; Control Act, Sec. 23), either from person to person or from place to place. Cf. Luzzi v. Nutley, Bulletin 244, Item 5. In fact, transfers are not even mentioned.

Indubitably, reduction of the number of licenses in a municipality, when too many are deemed to be outstanding therein, is a praiseworthy end. But this objective may not be achieved in complete disregard of individual interests. Conway v. Haddon, Bulletin 251, Item 3. Licensees invest time, effort and money in their licensed businesses. The statute provides for a method whereby, through transfer of license within the sound discretion of the

issuing authority, they may sell their businesses and may remove them to new sites. In fairness, they should not be denied this privilege and be forced to the alternative of remaining in their liquor business willy-nilly and at the same location or else surrendering their investment, merely because the municipal authorities erred in previously granting too many licenses and now wish to correct that mistake by destroying transferability. It is true that in the instant case the respondent Beckett has, as aforesaid, after signing a consent to the transfer, changed her mind. But the argument of the respondent Board that it may deny a transfer in order to reduce the number of licenses would, if sound, apply, however anxious the respondent Beckett might be that the transfer be consummated.

Respondent Board asks the question: "If existing licenses may be freely sold and transferred, how will the number ever be reduced?"

Here is one answer which I have repeatedly urged upon municipalities, viz.: Reduction of outstanding licenses may be effected with fairness by eliminating, through revocation or through refusal to renew, those whose owners have misconducted themselves. Re Renton, Bulletin 115, Item 8; Re Juska, Bulletin 116, Item 7; Re Haney, Bulletin 119, Item 9; Re Hinchcliffe, Bulletin 171, Item 7; Re Bailey, Bulletin 172, Item 10. Case after case has been decided where renewals have been denied and upheld on appeal because of previous misconduct of the licensee. White v. Bordentown, Bulletin 130, Item 4; Wellens v. Passaic, Bulletin 134, Item 4; Schelf v. Weehawken, Bulletin 138, Item 10; Girard v. Trenton, Bulletin 140, Item 2; Greenberg v. Caldwell, Bulletin 141, Item 7; Brown v. Newark, Bulletin 146, Item 9; Hagenbucher v. Somers Point, Bulletin 192, Item 6; Repici v. Hamilton, Bulletin 201, Item 8; Hagerty v. Cranbury, Bulletin 202, Item 2; Klotz v. Trenton, Bulletin 202, Item 7; Callahan v. Keansburg, Bulletin 204, Item 6. Cf. Zicherman v. Newark, Bulletin 227, Item 7.

Or, if public interest demands such drastic and difficult action, municipalities may adopt a numerical quota which will require, at renewal time, the selection of only the most desirable of renewal applicants. See Re Hinchcliffe, supra.

These suggested methods reduce the quantity of licenses on a basis of quality. Reasonable and fair discrimination is substituted for the arbitrary and unfair method of denying all licensees, whether their conduct has been good or bad, the privilege to transfer their licenses and thus ultimately starve, exhaust or otherwise compel some of them to surrender or be unable to renew their licenses.

Moreover, municipal authorities are not necessarily powerless to put a time limit on the privilege of transfer in a reasonable and bona fide effort to deal with an existing oversupply of liquor places in the municipality. In Re McElroy, Bulletin 247, Item 6, I approved (tentatively) a municipal regulation which required licensees, seeking transfer of their licenses because of loss or surrender of their interest in the licensed premises, to make application therefor within 30 days of such loss or surrender.

Again, in Craig v. Orange, Bulletin 251, Item 4, I sustained a local issuing authority in its refusal, on the ground of sufficiency of "package" stores in the municipality, to grant a

transfer of a plenary retail distribution license from an office in a bank building where the licensee did a telephone and mail order business, to an ordinary store where he proposed to operate a normal type of distribution place. In such case, the transfer would aggravate the existing over-supply of "package" stores in the municipality; in the present case, the place is already licensed and the only transfer sought is from one proprietor to another.

The Board argues that the authority to grant a person-to-person transfer of an outstanding municipal license is a matter confided to the discretion of the issuing authority. It is. R. S. 33:1-26 (Control Act, Sec. 23). But it is also true that this discretion may not be exercised arbitrarily. A transfer, whether from person to person or from place to place, may be denied if there are valid and reasonable grounds to justify such refusal. See Blumenthal v. Wall, Bulletin 169, Item 6; Parker v. Belleville, Bulletin 179, Item 13; also see Craig v. Orange, supra. No such ground here appears.

The action of respondent is, therefore, reversed. Respondent is directed to issue the transfer forthwith.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 18, 1938.

9. CLUB LICENSES - PROPOSAL TO GRANT CLUBS SPECIAL PRIVILEGES TO SELL ALCOHOLIC BEVERAGES ON SUNDAYS WHEN ALL OTHER LICENSED PLACES ARE REQUIRED TO BE CLOSED - THE SERIOUS QUESTIONS INVOLVED.

June 18, 1938.

Robert E. Beakley,
Borough Clerk,
Vineland, N.J.

My dear Mr. Beakley:

I have before me copy of Ordinance No. 324, amending Section 18 of Ordinance No. 322 concerning alcoholic beverages, which passed first reading on June 7th and will shortly come up for final adoption.

Section 18, at present, provides, so far as pertinent, that no alcoholic beverage shall be sold, served, delivered or consumed on weekdays except between the hours of 7:00 A. M. and midnight, or on Sundays at any time.

The new matter to be added by the amendment reads:

> ".....excepting that this restriction applying to Sunday sale and consumption of alcoholic beverages shall not apply to Club licensees which Club licensees shall be privileged to remain open for the sale and consumption of alcoholic beverages on Sunday during the hours between 2:00 o'clock P. M. and 12:00 o'clock midnight....."

Strictly speaking, municipal regulations limiting hours of sale are not subject to the Commissioner's approval first obtained. See Bulletin 43, Item 2. They are, instead, as provided in R. S. 33:1-41 (Control Act, Sec. 38), subject to review on appeal, after which they may be amended, modified or otherwise superseded as the Commissioner may order. I thought, however, that as you propose to establish different hours for club licensees than for the others, I should give you my present reactions.

There is nothing in the Alcoholic Beverage Law which requires that all classes of licenses shall be treated alike. Re Grillo, Bulletin 253, Item 4. State Regulations No. 7, Rule 6 (Pamphlet Rules, pages 48, 49) provides that club licenses shall be subject to the same municipal regulations respecting hours of sale as are prescribed in respect to consumption licenses unless the municipality enacts that club licenses shall not be so subject. Hence, if club licenses are not to be subject to your Section 18, an express exemption, such as the one you propose, excepting them from the operation of the section, must be included. But as I said in Re Reed, Bulletin 248, Item 2, in regard to a similar situation:

> "Such exemptions, however, should be most carefully considered. You must bear in mind that the regular consumption licensees pay a much higher fee. If you grant longer hours to club licensees, the charge will inevitably be made that the less one pays for a license, the greater privileges he gets. It is true that there is a distinction. Club licensees may sell only to actual members and bona fide guests and not to the general public. It is for this reason that I have ruled (Re Carew, Bulletin 87, Item 11) that it can be done.....Consumption licensees continually complain that whereas they are made to toe the mark, clubs get away with murder."

If it is the thought of the Board of Commissioners that club licensees should be allowed to sell on Sundays after 2:00 P.M., sales by others being prohibited, I shall tentatively, albeit reluctantly, allow it, subject, as aforesaid, to appeal.

If the proposed ordinance goes through, what becomes of your closed Sunday? Or is it closed only to the workingman but open to those who can afford the privilege of club membership? Isn't this putting a new and priceless premium on the possession of club licenses? Won't it produce a bumper crop of "bona fide guests"? And what about the clubs that have taken out plenary retail consumption licenses? Are they who pay the full price to be in worse position than those who take the limited license? Or, if the door is to be swung wide open to them as well, is it not reasonable to expect them to do a land office business on Sundays? Why should there be one law for the rich and another for the poor?

These and similar questions crowd to mind. Their answers are reserved until all sides can be heard.

While the power may exist to make the exception, I earnestly submit to the Board that the policy should be most carefully considered, and the power most cautiously and sparingly exercised - if at all.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. LORIS and WEST NEW YORK.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, a corporation of New Jersey,
Appellant,
-vs-
MAX LORIS and THE BOARD OF COMMISSIONERS OF THE TOWN OF WEST NEW YORK,
Respondents

ON APPEAL
CONCLUSIONS

Samuel Moskowitz, Esq. and Harold Feinberg, Esq., Attorneys for Appellant.
Gross & Blumberg, Esqs., by Leo Blumberg, Esq., Attorneys for Respondent Max Loris.
Irwin Rubenstein, Esq., by Louis L. Flaum, Esq., Attorney for Respondent Board of Commissioners of the Town of West New York.

BY THE COMMISSIONER:

Appellant appeals from the issuance of a Plenary Retail Distribution License to respondent Max Loris by respondent Board of Commissioners for premises located at 560 Bergenline Avenue, West New York, N. J.

Appellant contends that the issuance of said license is in violation of Section 2 of an ordinance adopted on June 8, 1937 entitled "An Ordinance to Limit the Number of Plenary Retail Distribution Licenses in the Town of West New York," which section provides:

> "No new Plenary Retail Distribution License shall be issued for any premises within 500 feet of any other licensed premises for which a Plenary Retail Distribution License shall then be issued and outstanding."

Respondent Loris filed his application on February 1,1938. He had not theretofore held a plenary retail distribution license. At that time, Plenary Retail Distribution Licenses were issued and outstanding for premises known as 522 Bergenline Avenue and 585 Bergenline Avenue. The survey shows that the distance between the nearest entrance to 560 Bergenline Avenue (the Loris premises) and the nearest entrance to 522 Bergenline Avenue, measured in the normal way that a pedestrian would properly walk, is 493-1/2 feet; that the distance between the nearest entrance to 560 Bergenline Avenue and the nearest entrance to 585 Bergenline Avenue, measured in the normal way that a pedestrian would properly walk, is but 320-1/2 feet. The method of measuring the distance between the licensed places followed the rule laid down in Re Guenther, Bulletin 206, Item 15.

Therefore, at the time the Loris license was issued on March 1, 1938, there were already two places licensed for plenary retail distribution within 500 feet of the Loris premises, contrary to and in contravention of the ordinance above cited.

Respondent Loris contends that appellant has no right to question the issuance of his license. This point was decided adversely to respondent's contention in Retail Liquor Distributors v. Atlantic City and Polonsky, Bulletin 88, Item 10.

Since it is evident that the license was issued in violation of the town ordinance, it is clear that respondent Board of Commissioners had no jurisdiction to grant the license. In Re Loeb, Bulletin 206, Item 14.

Accordingly, the license issued to Max Loris is hereby declared void; the action of the respondent Board of Commissioners of the Town of West New York in issuing the license is hereby reversed; all operations under said license must cease forthwith, and the license certificate must be surrendered to the Town Clerk of the Town of West New York. It is so ordered.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 19, 1938.

11. APPELLATE DECISIONS - STOLZ v. NEWARK

SAM STOLZ, )
Appellant, )
-vs- ) ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, ) CONCLUSIONS
Respondent )

Leonard Brass, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent.
Sidney Simandl, Esq., Attorney for Joseph B. Rose, an Objector.

BY THE COMMISSIONER:

This is an appeal from denial of a transfer of a plenary retail consumption license from premises at 1006 Bergen Street to 884 Broad Street, Newark.

The sole reason assigned for denial was that there are a sufficient number of premises licensed for the sale of alcoholic beverages in the neighborhood to which appellant seeks to transfer his license.

The evidence shows that plenary retail consumption licenses are outstanding for premises located at 807, 898, 913, 921, 929, 938, 982 and 986 Broad Street, besides a license of this type which is issued to a store confining its business to the sale of package goods. Appellant contends that all of said licenses have been issued to restaurants, with the exception of 898 Broad Street, which is conducted solely as a tavern. Appellant testified that he intends to conduct a high class tavern, and that there is need for an additional tavern on Broad Street because it appears that, aside from the one at No. 898, there are no other taverns on Broad Street for a long distance in either direction.

Despite the fact that Broad Street is the main business street, the number of licenses that shall be outstanding even in such a neighborhood is primarily to be determined by the local issuing authorities. I find no error or unfairness in their judgment.

Appellant alleges unjust discrimination. He filed his application for transfer on March 31, 1938. On the same day another party applied to transfer a consumption license to 17 William Street, which the respondent Board granted. At the time the transfer was granted to 17 William Street, a consumption license was outstanding for premises at 24 William Street, and another for premises on the corner of William Street and Halsey Street, which is only a short distance away. If both the application which was granted, and appellant's application which was denied, concerned premises on Broad Street, in the vicinity of the place to which appellant sought his transfer, undoubtedly appellant's contention would be entitled to great weight. But different considerations apply to a main street such as Broad Street and a side street such as William Street. It does not necessarily follow that, because respondent permitted a license to be transferred to premises on William Street, that it must, therefore, grant appellant's application to transfer to Broad Street. The right to transfer is not inherent in any license. While it cannot be arbitrarily denied, it may be denied for valid reasons.

I find that respondent's action in denying the transfer because there are already a sufficient number of licensed places in the immediate neighborhood was valid, and that the transfer of the other license to William Street does not in and of itself show any discrimination against appellant.

The action of respondent is, therefore, affirmed.

Commissioner.

Dated: June 19, 1938.