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

BULLETIN 253. JUNE 16, 1938.

1. BAR DECORATIONS - ALKALOIDS AND BROMIDES - HEREIN OF BROMO-PHOS WITH SPEARMINT FLAVOR.

June 11, 1938.

Mr. Morris Feldman,
Newark, N. J.

Dear Mr. Feldman:

I have before me your sample display card of "Bromo-Phos" with spearmint flavor -- a "relief for headache, heartburn and sour stomach", which you desire to sell to consumption licensees for resale over the bar.

Consumption licensees may not sell anything except alcoholic beverages, non-alcoholic accessory beverages, and cigars and cigarettes as an accommodation to patrons.

Although Bromo-Phos may be "soothing to tired, nervous, overworked stomachs" as claimed, and hence a sovereign remedy for hangovers, it is obviously a granulated powder and not a beverage at all.

Now it is true that I ruled in Re Orso, Bulletin 203, Item 4, that taverns may keep on their bars baking soda and alkaline and other linings for the stomach's sake, believing that they serve a useful if not novel purpose in the repentant moods of remorseful matins. But that was only for accommodation of customers, and to be given away, not sold. The sale of any jitter-killer, whether for on or off-premises consumption, would convert the tavern into a part-time pharmacy and thereby constitute the conduct of another mercantile business which, however, the Statute forbids. R.S. 33:1-12, (Control Act, Sec. 13-1).

Permission for such resale is therefore denied.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. APPELLATE DECISIONS - SEMENTO vs. WEST MILFORD TOWNSHIP.

FERDINAND SEMENTO,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WEST MILFORD,) ON APPEAL
Respondent.) CONCLUSIONS

. . . . . .

George R. Sommer, Esq., and Charles Gorgas, Esq., Attorneys for Appellant.

J. W. DeYoe, Esq., Attorney for Respondent.

J. Vincent Barnitt, Esq., Attorney for N.J. Liquor Dealers Ass'n. an Objector.

Irving Siegler, Esq., Attorney for Owner of Premises.

BY THE COMMISSIONER:

Appellant appeals from the denial of a transfer of a plenary retail consumption license from Louis Tacionis to himself, and from premises located on the Union Valley Road, in West Milford, to premises located on the Greenwood Lake Road, Greenwood Lake, Township of West Milford, known as "the Harris place."

The minutes of respondent's meeting at which the transfer was denied do not set forth any reason for the denial. The answer filed herein, however, alleges that

> "At the time of the hearing, April 2, 1938, there were nine licensed places or taverns within a quarter of a mile from the place sought to be licensed, and license for the place in question is not necessary."

In February, 1936, the owner of the Harris place leased it to John Ford who thereafter conducted said premises as a tavern until July, 1937. During the time that Ford was conducting his tavern in the Harris property, a licensed premises, known as the Skyline, was being operated directly across the road. In July, 1937 the licensee who was operating at the Skyline moved to other premises about one and one-half miles away. Mr. Ford then moved from the Harris property to the Skyline property, obtained a consumption license for the latter premises and has been operating his business there since that time. Because he was bound by the terms of his lease, Mr. Ford did not surrender possession of the Harris property until March 1938, although it was vacant between July, 1937 and March, 1938.

Without doubt, the section of the Township in question is liberally supplied with licensed places. Apart from the Skyline, there is a licensed place located about one hundred yards away operated by one Smith, another about two hundred yards away known as Brown's Hotel, another about one hundred twenty-five yards away known as Carl's; in all, there are eleven licensed places along Greenwood Lake Road within a distance of less than three-quarters of a mile.

Appellant argues, however, that the removal of the original licensee from the Skyline, followed by Ford's removal

to that place from the Harris property, has resulted in a reduction of the number of licensed places in the immediate neighborhood and that in fact the number of licenses now outstanding is two less than formerly because another licensed place on the road was closed after the death of the licensee. As to the latter contention, however, it appears that that place of business has been closed for almost two years. As to the reduction because of the changes made at the Skyline, the test herein is not whether there are a smaller number of licensed places now than formerly, but whether or not the existing places are sufficient to take care of the needs of the community and of the visitors to Greenwood Lake during the summer season. All three members of the Township Committee voted to deny the transfer. All three were present at the hearing on appeal, and each member testified that in his opinion there are a sufficient number of licenses already existing in that section of the Township. I find that there are.

Under the circumstances, it will be unnecessary to consider any of the other reasons for denying the license which are set forth in the answer filed herein.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 9, 1938.

3. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION vs. GOLD'S DRUG STORES and UNION CITY.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, Appellant, -vs- GOLD'S DRUG STORES, a corporation of New Jersey, and Board of Commissioners of the City of Union City, Respondents.	ON APPEAL CONCLUSIONS

. . . . . .

Samuel Moskowitz, Esq., and Harold Feinberg, Esq., Attorneys for Appellant.

Cyril J. McCauley, Esq., Attorney for Respondent Gold's Drug Stores.

Fred Eichmann, Esq., Attorney for Respondent Board of Commissioners of the City of Union City.

BY THE COMMISSIONER:

Appellant appeals from the issuance of a plenary retail distribution license to respondent Gold's Drug Stores by respondent Board of Commissioners of the City of Union City, for premises located at 792 Bergenline Avenue (south store), Union City.

Appellant sets forth nine separate reasons why the issuance of the license in question was improper. Some of the alleged reasons are general in character, and all may be considered under four general headings, namely, (1) respondent Gold's Drug Stores is disqualified from holding a license; (2) license was granted in violation of an ordinance of the City of Union City providing that no liquor business shall be carried on in conjunction with other mercantile business; (3) there were already ample liquor outlets in the immediate vicinity to take care of all the needs of the neighborhood and the community; (4) the application herein was in the nature of an application for a rehearing on a previous application which had been denied and respondent Board of Commissioners had no power to rehear or issue the license.

As to (1): A license held by Gold's Drug Stores, for premises in Jersey City, was suspended for a period of two (2) days by the issuing authority in Jersey City for a violation of State Rules Governing Signs and Other Advertising Matter (now Rules Governing Equipment, Signs and Other Advertising Matter). It is also admitted that Gold's Drug Stores at some time not specified paid a $10.00 fine to the Federal authorities for a violation of Federal regulation concerning the destruction of wine stamps. These violations were disclosed in the application upon which the present license was granted. Neither of said violations constitutes a violation of R.S. 33, Ch. 1 (Alcoholic Beverage Control Act). Hence, it does not appear that Gold's Drug Stores is disqualified from holding a license under the terms of R.S. 33:1-25 (Section 22, Control Act). While the violations disclosed may be taken into consideration by an issuing authority in determining whether a license should be issued, nevertheless it was within the discretion of respondent Board to determine that the licensee had been sufficiently punished for these violations. Leeds and Lippincott vs. Atlantic City, Bulletin 196, Item 12.

Appellant argues also that the license should have been denied because of the ruling made in Re Gold, Bulletin 231, Item 8. The use of the Union City premises as a place for advertising and transmitting orders for the sale of liquor was promptly discontinued upon receipt of my warning letter. The mere warning set forth in the correspondence referred to was not an adjudication of guilt. A licensee will not be deemed to have committed a violation of the Control Act until he has been adjudicated guilty of such violation in a formal proceeding. Re Wizner, Bulletin 251, Item 1.

As to (2): The licensed premises are approximately eleven feet in width by twenty-four feet in depth, and have been partitioned off from larger premises occupied by the licensee. There are separate entrances to the liquor store and to the drug store. The liquor store is separated from the drug store by means of a partition of wood and glass. There is no way in which the public may pass from the drug store to the liquor store except by way of the main entrances. It is true that there is a door at the rear of the licensed premises which opens into a portion of the drug store used for storage purposes, but such door

cannot be used by the general public and is intended only for the accommodation of employees of the drug store. Under these circumstances, the licensed premises constitute separate premises, and hence, there is no violation of the Union City Ordinance. Owl Drug Co. vs. Elizabeth, Bulletin 68, Item 7; Re Johnson, Bulletin 212, Item 10 and cases therein cited.

As to (3): The evidence shows that the licensed premises are located on the principal business street of Union City. Bergenline Avenue is devoted to business purposes for many blocks north and south of the premises in question. While it is true that there is a distribution license on Bergenline Avenue about one and one-half blocks to the south, a second distribution license about one and one-half blocks to the north, and a third distribution license about two and one-half blocks to the north, nevertheless, the number of such licenses which may be permitted in a strictly business district is very largely a matter of discretion with the issuing authority. Sobocienski vs. Newark, Bulletin 239, Item 8. While there is much room for difference of opinion on this point in the instant case, and the local decision might well have gone the other way, I find no abuse of discretion on the facts presented.

As to (4): On July 15, 1937, Gold's Drug Stores filed an application with the Board of Commissioners of the City of Union City wherein it applied for a distribution license for premises described in said application as 792½ Bergenline Avenue. At that time no physical separation of the premises for which the license was subsequently granted had been made, although the applicant therein filed a floor plan showing the contemplated structural changes. On August 9, 1937, after the Mayor and some of the Commissioners had visited the premises in question, said application was denied. Gold's Drug Stores thereupon filed an appeal with me from the action of the Board of Commissioners of the City of Union City, and a hearing was held at the offices of this Department. After the testimony was taken, but before the case was decided, the appeal was withdrawn and on the same day, viz.: February 7, 1938, the present application was filed. It was granted by respondent on February 24, 1938. I have heretofore ruled that each application for a license is an entirely new proceeding. Bulletin 35, Item 13. The cases cited in appellant's brief, namely, Ferguson vs. Atlantic City, 63 N.J.L. 95, Dilkes vs. Pancoast, 53 N.J.L. 553, and Ashworth vs. Court of Common Pleas, 92 N.J.L. 282, are based upon the wording of the particular statutes considered therein and, hence, are not in point.

The action of respondent Board of Commissioners is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 9, 1938.

4. MUNICIPAL REGULATIONS - HOURS OF SALE - EXCEPTION IN FAVOR OF PICNIC GROVES NOT PERMISSIBLE.

MUNICIPAL REGULATIONS - HOURS OF SALE - PLENARY RETAIL CONSUMPTION AND SEASONAL RETAIL CONSUMPTION LICENSEES MUST BE TREATED ALIKE.

SEASONAL RETAIL CONSUMPTION LICENSES - MAY NOT BE RESTRICTED TO PICNIC GROVES UNLESS PLENARY RETAIL CONSUMPTION LICENSES ARE

SIMILARLY RESTRICTED.

SEASONAL RETAIL CONSUMPTION LICENSES - ISSUANCE - PROHIBITION - TERMS - FEES.

Dear Sir:

The Borough Commissioners are confronted with a problem and would appreciate your suggesting if there is any way to fairly and legally issue licenses to certain kinds of applicants.

Every class of license now issued in the Borough is covered by rules and regulations adopted by the Borough Commissioners. The section regulating hours of operation reads as follows:

Week-days - 7 a.m. opening to 3 a.m. closing
Sundays - 1 p.m. opening to 3 a.m. closing.

Our problem is that two citizens seek to operate inns or taverns and in conjunction picnic groves. The majority of the business would be done in the summer season as they would have facilities to serve dinners and drinks to the patrons. Most of the patronage would come from out of town organizations, who would hire the picnic grove and make arrangements to be served with food and drinks. These prospective licensees state that it is impossible to book these organizations unless the regulation of hours on Sunday would allow them to serve drinks upon the patrons' arriving, which would be before noon.

1. Would it be possible to amend our present resolutions so as to permit the granting of conditional plenary retail licenses to these two prospective licensees - conditions being an earlier Sunday opening hour?

2. Or would it be possible to amend our resolutions so as to include seasonal licenses, and under that class to grant such licenses with an earlier Sunday opening?

3. If it be possible to grant seasonal licenses, may they be granted for both summer and winter season, or must they be summer only or winter only?

4. Is it possible to amend our present resolutions to allow the changing of the regulation of hours to these two prospective licensees only, as the Commissioners do not desire a general early opening hour?

Very truly yours,

Geo. V. Grillo,
Borough Clerk.

June 7, 1938.

George V. Grillo,
Borough Clerk,
Hawthorne, N. J.

My dear Mr. Grillo:

I understand your problem. It is often extremely difficult, in the light of conflicting private interests, to formulate regulations and policies that are legally sound and best serve the public interests of the community as a whole.

(1) It is wholly within the power of the Board to change the hours of sale for all consumption licensees at any time. See Re Closter, Bulletin 233, Item 12, and the items cited therein. But whether or not you may impose different hours for different classes of licenses or for members of the same license class raises intricate questions not only of policy but also of power.

Your present regulations (resolution of November 14, 1934, Section 2, as amended May 25, 1938) prohibit sales of alcoholic beverages on Sundays between the hours of 3:00 A. M. and 1:00 P. M.

It is not permissible, however, to amend your resolution to permit the two plenary retail consumption licensees who run picnic groves to sell Sunday morning, sales by others being prohibited, as heretofore, until after 1:00 P. M.

Whatever hours of sale the municipality fixes must apply to all licensees of the same class. Re Waesche, Bulletin 125, Item 8; Re Harrington, Bulletin 118, Item 13; Re Holz, Bulletin 117, Item 8, and the items cited therein. The only exception I have allowed is the sale of alcoholic beverages on Sundays in bona fide hotels and restaurants with meals. See Re Tomlinson, Bulletin 235, Item 6. Of course, to allow some members of the license class to sell when others are prohibited from doing so is discriminatory. It is justifiable, if at all, only on the ground of serving a public purpose. Allowing sales on Sundays as a purely incidental adjunct to a meal may carry out such a purpose. I think it clear, however, that the promiscuous sale of alcoholic beverages at picnic groves does not. There is no meal; nothing, in fact, to make it any different from the sale of liquor at any other time. Private commercial advantage is no reason for the extension of special privileges. Rainbow Grill v. Bordentown, Bulletin 245, Item 4. Hence, since everyone in the same class, subject to the one exception aforesaid, must be treated alike, no special exceptions such as you contemplate may be made. Cf. Re Bredder, Bulletin 246, Item 8.

(2) Nor is it permissible, after providing for seasonal retail consumption licenses, to permit seasonal licensees to sell alcoholic beverages on Sunday during the hours that the regular plenary retail consumption licensees are prohibited from doing so.

There is nothing in the Alcoholic Beverage Law which requires that all classes of licenses shall be treated alike. Re Reed, Bulletin 248, Item 2; Re Wenzel, Bulletin 19, Item 7; Bulletin 7, Item 1. This does not mean, however, that municipalities are free to establish different hours for different classes without due consideration of the purposes that the licenses serve or the nature of the privileges they afford. Different regulations for different classes of licenses may be properly established if based on reasonable factual differences. If not, they cannot be sustained. The theory of proper classification is broader than arbitrary class lines. All those similarly situated, by whatever name or designation they may be known, are entitled to the same privileges and must be subject to the same restrictions.

Plenary and seasonal retail consumption licenses both afford the same kinds of privileges. They serve the same purposes. The only difference between them is in the term and in the fee. Otherwise, they are symmetrical. Bulletin 21, Item 14. Asarnow v. Warren, Bulletin 249, Item 8. If seasonal licenses are granted at all, they cannot be issued only to picnic groves and denied to all applicants who do not run them, so long as plenary retail

consumption licenses are issued without any such restriction. That would be essentially similar to a requirement that they be issued only to hotels, which I have already disapproved. See Re Jeffrey, Bulletin 115, Item 11. It follows that whatever regulations are applicable to one must apply to both, whatever hours are fixed for one must be followed by the other. The Board of Commissioners has the power, of course, to fix the seasonal fee and issue seasonal licenses if it wishes, but it cannot grant different hours to seasonal licensees than to holders of plenary retail consumption licenses.

(3) Seasonal licenses may be granted for the summer season or for the winter season or for both. Or you may prohibit their issuance for the summer season or for the winter season or both. See Re Gordon, Bulletin 151, Item 12. The fee, which according to statute must be seventy-five per cent of the regular plenary retail consumption license fee, is for each term. If both summer and winter seasonal licenses are taken out, two fees must be paid and the licensee must cease doing business for the fifteen-day interval between the summer and winter seasonal terms.

(4) Your last question is covered in the answer to the first.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of R.S. 33:1-31.2 (Chapter 76, P.L. 1937) -	CONCLUSIONS AND ORDER
Case No. 25	

. . . . . .

Petitioner, Pro se.

BY THE COMMISSIONER:

In January 1921, petitioner pleaded non-vult to a charge of murder and was sentenced to prison for 10 to 30 years. In May 1927 he was released on parole and in November 1934 was restored to citizenship.

Since murder is a crime which necessarily involves moral turpitude, petitioner is presently disqualified under R.S. 33:1-25, 26 (Control Act, Secs. 22, 23) from holding a liquor license or from being employed by any liquor licensee in this State. Re Kennedy, Bulletin 118, Item 10.

Petitioner, following his release from prison in May, 1927, returned to the city where he had been living at the time of his conviction, and has resided there ever since. Until recently, he lived in retirement and maintained himself upon the

income of a personal estate. The successive years of the depression, however, depleted this estate and compelled him to seek employment. In July 1937, and for several months thereafter, he was engaged as a general handy-man for a bakery concern; later, for five weeks, he was employed by an engineering contractor as a part-time laborer. He is 60 years of age, and has now been offered a position as bartender.

Three character witnesses appeared at the hearing on petitioner's behalf. They testified that he is a well-read and sober man, and that his character and reputation as an honest and law-abiding citizen are good. One witness, owner of a fleet of taxi-cabs, has known him for 10 or 11 years. Another, the engineering contractor for whom petitioner worked part-time, testified that he has known petitioner for approximately 10 years. The third witness is the owner of the tavern where petitioner is prospectively to be employed. He has known petitioner since 1914, and when questioned whether petitioner's employment in the liquor business would be harmful to that business or to the public interest, testified:

> "No, he would be a good man; that's why I want to employ him. I know he's honest and he is sober. That means a lot in our business. He's courteous to the public".

I have received a testimonial of this man's character from Vice Chancellor Sooy, whose duties at the bench prevented him from attending the hearing. He certified that he has known petitioner for 30 years, that petitioner is of good character, and that "his mode of living since his parole has been exemplary".

Petitioner testified that he has never been arrested or convicted except for the aforementioned crime. His finger-print record confirms this testimony.

I am convinced by the evidence that petitioner has conducted himself in a law-abiding manner since his release from prison in 1927, and that his association with the alcoholic beverage industry will not be contrary to the public interest. Accordingly, his disqualification will be removed.

It is, therefore, on this 9th day of June, 1938, ORDERED that the petitioner's disqualification from holding a license or being employed by a licensee because of the conviction above set forth, be and the same is hereby removed in accordance with R.S. 33:1-31.2 (Ch. 76, P.L. 1937).

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - RUCERETO vs. DUMONT.

DOMINICK RUCERETO,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF DUMONT,

Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Joseph M. Rotolo, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.
Edward Freint, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellant appeals from the denial of a transfer of his plenary retail consumption license from 210 Grant Avenue to 15-17 Grant Avenue, Dumont.

Appellant alleges that respondent illegally considered an objection to the transfer filed by the landlord of premises at 210 Grant Avenue, and that the denial of the transfer was arbitrary.

Respondent filed an answer herein in which it alleges that it gave no weight to the objection filed by the landlord. The answer also contains the following:

> "The respondent further answering the Petition of the appellant says that it gave due and proper notice and hearing of the application of the appellant, to all parties concerned, and that after hearing the appellant, and the objectors to the granting of the appellant's application, it was unanimously of the opinion that the interests of the municipality, the interests of the trade, and the interests of the residents and tax-payers in the immediate vicinity of the premises to which the appellant desires his license transferred, were best to be served by a denial of the appellant's application, and that the Council's denial of the appellant's application was an acknowledgment of the will and wishes of the residents and tax-payers in the immediate vicinity of the premises to which the appellant desires to transfer, that they objected to the location of this business in their immediate community, and which tax-payers the Mayor and Council determined were more to be considered than the desire of the appellant to establish his business contrary to the wishes of the majority."

It appears from the evidence that a written objection to the transfer of this license was filed by the owner of premises known as 210 Grant Avenue. This objection alleged a violation of the provision of a lease whereby appellant herein agreed to assign his liquor license to the owner of the premises in the event of the termination of his lease. Such an agreement is illegal. Walsh vs. Bradley, 121 N.J. Eq. 359. This objection is, therefore, invalid.

At the time of the hearing before respondent a petition objecting to the transfer of the license was presented to the Borough Council which contained the names of seventy-two persons who allegedly resided within a radius of two blocks from the premises to which the transfer was sought. At the same hearing a petition in favor of the granting of the transfer was presented, which contained signatures of ninety-eight residents of the neighborhood to which the transfer was sought.

The objecting petition alleges that the establishment of a saloon at 15-17 Grant Avenue would be a detriment and a nuisance to the neighborhood because this is a shopping district visited by children; because children must pass these premises going to school, and because there is already one saloon on Grant Avenue between the school and Washington Avenue, and two places could not possibly be supported by the surrounding community.

At the hearing on the appeal, two objectors testified. One resides at 29 Grant Avenue, the other on Wood Place directly in the rear of 15 Grant Avenue. They testified that their objections were based upon the reasons set forth in the objecting petition.

It appears that Grant Avenue is zoned for business. There are still private residences located on Grant Avenue and the surrounding area is residential in character. The premises for which the license is sought is located in a business building which now contains a butcher shop, a barber shop and two empty stores. The stores now empty will constitute the licensed premises if the transfer is granted. Adjoining this building, on the corner of Grant Avenue and Washington Avenue, is another building containing a chain grocery store and a cigar and stationery store. On the opposite corner of Grant Avenue and Washington Avenue is a gasoline station. Under these circumstances, it cannot be said that the section of Grant Avenue to which the transfer is sought is residential in character. It is zoned for business and, while the business section is not large, it appears to be a typical business section found in communities of the size of Dumont. Since it appears that the premises to which the transfer is sought are located in a business district, general objections do not justify the issuing authority in refusing to transfer the license. Guenther vs. Parsippany, Bulletin 121, Item 8; DeChristie vs. Gloucester, Bulletin 121, Item 10; Conn vs. Kearny, Bulletin 173, Item 1; Land vs. Way, Bulletin 252, Item 14.

The objection that the granting of the transfer would be detrimental to children attending school is entitled to little weight since the children in this section must pass an existing licensed place which in fact is even nearer to the school. The further objection that the community could not support another saloon between the school and Washington Avenue would be entitled to consideration if this were an application for a new license. It appears, however, that both the old and the new premises are located in what is known as the Third District of Dumont, and that the applicant herein seeks a transfer from one part of Grant Avenue to another part of Grant Avenue. No objection has been made to the applicant or to the manner in which he has conducted his premises. The general objections filed herein are not sufficient to support the denial of the application for the transfer.

The action of respondent in denying the transfer is, therefore, reversed and respondent is directed to transfer the license as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: June 11, 1938.

7. BAR DECORATIONS - STOMACH SOOTHERS - THE LINE DRAWN AT DISPENSING LIQUID MEDICAMENTS BY THE DOSE - HEREIN OF PAR AND HANGOVER POP.

Dear Sir:

In accordance with a telephone conversation with your office this morning, I am submitting the full facts in connection with the merchandising of "PAR".

"Par" is a stomach aid or bitters, containing the following ingredients: Rhubarb, Soda, Pepsin, Capsicum, Sodium Bromide, Spearmint, Cascara and Alcohol, not over 10% for preservative purposes.

I have taken this matter to the office of the Pure Food and Drug Commission and their recommendation was that it be referred to the Pharmacy Association to make sure that its sale for dispensing over the bar would be within the law. Their decision in the matter is that inasmuch as it conforms with the law, sale in measured amounts is permissible. However, before offering it for sale to the liquor trade, I would like to have your opinion so that the bar man can dispense with the assurance that he has your approval.

"Par" is an ethical formula which has been known for the past fifty years in similar form. It is beneficial to the extent of relieving distress of what is commonly known as "hangover" to an amazing degree by the simple action of its ingredients and not by the deadening of any nerves in the system.

My reaction in talking to those I have known in the bar trade has been that they need it and will use it provided some assurance is given them that it is legitimate to dispense. This assurance, coming from your office, needless to say overcomes this factor.

Very truly yours,

Wm. R. Jones

June 11th, 1938.

Mr. William R. Jones,
Camden, N. J.

Dear Mr. Jones:

I have before me your letter and sample of "Par."

Though I do not think it smart advertising to fly distress signals in advance of actual disaster, taverns may, if they choose, decorate their bars with baking soda, bromides and similar dry alkaloids. Re Orso, Bulletin 203, Item 4; Re Feldman, Bulletin 253, Item 1. That is as far as I care to go with these stomach soothers.

I do not purpose, however, to convert taverns into hospitals and medical centers, with barkeeps as internes, ad-

ministering doses of hangover pop in "measured amounts" in the sick bays. If the line is not drawn somewhere, the next thing our bartenders will be keeping temperature charts and writing their prescriptions in Greek!

Therefore ruled that liquid medicaments may not be dispensed over the bar, albeit gratuitously.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

8. LICENSES - APPLICATION FORM - QUESTIONS 29 to 33 DISCUSSED.

APPLICANTS - CONVICTION OF CRIME - WHAT CONSTITUTES.

June 11, 1938.

Mrs. Ruth Leonard,
Borough Clerk,
Fieldsboro, N. J.

My dear Mrs. Leonard:

I have your letter of June 8th.

It is correct that Question 30 of the new application form (Bulletin 237, Item 1) applies only to violations of the State Alcoholic Beverage Law and not of municipal ordinances or resolutions.

Questions 31, 32 and 33 apply to offenses against State and Federal Laws both previous to and since Repeal.

Question 29 is designed to ascertain whether or not the applicant has ever been convicted of any crime. The information is necessary because (1) it is essential that the license issuing authority have full information as to the character and past conduct of applicants, and (2) if there has been a conviction of a crime involving moral turpitude, the applicant is automatically barred by the statute (R.S. 33:1-25; Control Act, Sec. 22), unless, upon appeal to the Commissioner, the disqualification is removed (R.S. 33:1-31.2; Control Act, Sec. *22B).

Generally, the violation of any State or Federal law which subjects the offender to fine, imprisonment or other punishment, is a crime. There are, however, exceptions. Conviction for violation of a municipal ordinance is not a conviction of a crime within the meaning of R.S. 33:1-25 (Control Act, Sec. 22). See Case 213, Bulletin 232, Item 6; Case 176, Bulletin 203, Item 10; Case 60, Bulletin 193, Item 10; Hearing 167, Bulletin 182, Item 10; Hearing 144, Bulletin 168, Item 8. Nor are certain convictions of violation of the Motor Vehicle Act. See Case 22, Bulletin 236, Item 11; Case 133, Bulletin 170, Item 7. Cf. Re Backer, Bulletin 229, Item 8. Nor is conviction of being a disorderly person. See Case 208, Bulletin 228, Item 4; Case 192, Bulletin 215, Item 3; Case 65, Bulletin 193, Item 11. Nor is an adjudication of guilt by the Juvenile Court. See Case 62, Bulletin 194, Item 5.

In case of doubt, the applicant should disclose the conviction, and determination can then be made whether or not it

is a conviction of crime within the meaning of the Alcoholic Beverage Law.

There is no question in the application requiring a disclosure of whether or not the applicant has ever violated any of the provisions of the municipal ordinances. You have all that in your own records. There is no need to require the applicant to tell the municipality what it already knows. The questions are designed to bring out information, pertinent to the application, of which the municipality has no official knowledge.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. MUNICIPAL REGULATIONS - INSIDE TOILETS ON PREMISES LICENSED FOR ON-PREMISES CONSUMPTION.

June 11, 1938.

Harvey F. Bartow,
Clerk of Independence Township,
R.D. 1, Hackettstown, N. J.

My dear Mr. Bartow:

I have your letter of June 6th and copy of proposed alcoholic beverage ordinance for Independence Township.

* * * * *

Section 6 provides:

> "No Plenary Retail Consumption License will be issued to any applicant until they have first installed inside toilets subject to the approval of the Township Committee."

The regulation is intended, I presume, to improve the conduct of licensed places and avoid the commission of nuisances outside of the premises or on the public highway.

If that is the case, should it not be made to apply to all who sell alcoholic beverages for on-premises consumption?

As presently worded, it applies only to plenary retail consumption licenses. My records indicate that the Township Committee has also provided for and issued club licenses. If necessary with respect to consumption places, I should think it would be equally as necessary in the case of clubs. I therefore suggest that it be made to apply to both.

There is also the thought that, as presently worded, the regulation seems to require that a toilet be installed regardless of whether or not there is already one there.

Furthermore, it would be better, rather than to require that the installation be made subject to the approval of the Township Committee, to provide for an independent test of compliance which anyone who may be concerned therewith could administer.

I therefore suggest that Section 6 be revised to read:

"No plenary retail consumption or club license shall be issued for the fiscal year commencing July 1, 1938 or thereafter, unless the premises contains an inside water closet in good repair and working order."

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. APPELLATE DECISIONS - MANCINI vs. WEST NEW YORK.

ALFRED MANCINI,)
Appellant,)
-vs-)
BOROUGH OF COMMISSIONERS OF THE TOWN OF WEST NEW YORK and JOSEPH COGGIOLA,) ON APPEAL
Respondents.) CONCLUSIONS.
. . . . . .

Francis A. Castellano, Jr., Esq., Attorney for Appellant
Hirschberg, Nashel, Zorn & Cronson, Esqs., By Samuel L. Hirschberg, Esq., Attorneys for Respondent Joseph Coggiola.
No appearance on behalf of Respondent Board of Commissioners of the Town of West New York.

BY THE COMMISSIONER:

This appeal is from a person-to-person transfer of appellant's plenary retail consumption license to Joseph Coggiola, for premises at 795 Hudson Avenue, West New York.

On April 4 or 5, 1938, Coggiola filed application with the Board of Commissioners of West New York for the aforesaid transfer. As required by R.S. 33:1-26 (Control Act, Sec. 23) and Rule 3 of State Regulations No. 3, he also submitted therewith a written consent to the transfer, bearing appellant's signature. Appellant, however, on or about April 6 filed a protest against the application, declaring that he had never consented to the transfer of his license to Coggiola. On April 12, the Board of Commissioners, despite this protest granted the transfer. Hence this appeal.

Appellant contends that the consent filed with Coggiola's application is a forgery. He testified that during March 1938 he was negotiating with Coggiola (his landlord and owner of the premises in question) to sell his liquor business and transfer the license to him, and to quit the premises as of April 1; that on March 31, Coggiola was at the tavern to close the transaction with him; that a disagreement arose as to terms, and appellant refused to go further; that (in Coggiola's presence) he placed, in an inner pocket of his coat then hanging on a wall, 2 unsigned copies of a typewritten consent for the transfer and a signed informal memorandum of sale of certain equipment, that while Coggiola was still in the tavern, he (appellant) went to his living quarters upstairs to see whether his furniture was being properly removed; that several days thereafter, when he saw Coggiola's notice of intention to apply for the transfer

advertised in a newspaper, he discovered that the documents which he had placed in his coat were missing. This is his story. Despite the alleged disagreement between himself and Coggiola, appellant nevertheless quit the premises on or by April 1.

Coggiola testified that, at the discussion in the tavern on March 31, appellant signed and delivered to him the informal memorandum of sale and both copies of the consent for the transfer (one being for "good measure"). Coggiola's wife, who was present during part of the discussion, testified that she saw appellant sign these papers. One Louis Zandonella, who was also present during the part of the discussion and who was interested in "buying" the license himself, testified that appellant told him that "It's too late. I just sold to Mr. Coggiola".

I find that the signature upon the consent filed with Coggiola's application is strikingly similar to admitted signatures of appellant upon other papers.

The weight of the evidence is convincing that the consent filed with that application is genuine and valid. Appellant himself substantially conceded this when, on rebuttal, he attempted to show -- in direct variance of his prior testimony in which he had explicitly related what occurred and what he did -- that he perhaps signed and delivered the consent but was too drunk to know what he was doing!

Appellant next contends that the protest which he filed -- six days prior to the Board's action in granting the transfer -- constituted a withdrawal of any consent which he may have given, and that the Board was without power thereafter to grant the transfer.

This contention, however, fails. When Coggiola's application and appellant's unconditional written consent were filed, jurisdiction vested in the Board to consider and grant the application. The attempt by appellant to withdraw his consent, whether acting capriciously or (as here claimed) because of disagreement with the prospective transferee or because of a supposed failure of consideration, was nevertheless ineffective to divest the Board of that jurisdiction. As was said 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."

Nor is there merit to appellant's final contention that the Board denied him an adequate hearing as objector. The Board conducted a public meeting on April 12, 1938, at which both

he and his attorney were present and at which his case was presented and argued. Although the Board refused to grant appellant's request for an adjournment, no reason is shown why the adjournment should have been granted or that the Board abused its discretion in denying it. See Meyers vs. Plainfield, Bulletin 164, Item 2, and cases therein cited; cf. Suskind vs. Clifton, Bulletin 80, Item 3. In any event, any supposed prejudice caused to appellant by the failure to adjourn his matter has been remedied by the fact that he has been afforded full and complete opportunity at the hearing on appeal to secure a determination as to both law and fact upon the merits of his case. But there are no such merits.

The action of the respondent Board of Commissioners of West New York is, therefore, affirmed.

Frederick Burnett

June 11, 1938. Commissioner