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

BULLETIN 216 NOVEMBER 29, 1937.

1. APPELLATE DECISIONS - AGZIGIAN vs. PEQUANNOCK

MICHAEL AGZIGIAN, )
Appellant, )
-vs- ) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PEQUANNOCK, ) CONCLUSIONS
Respondent. )

. . . . . .

Weiss & Weiss, Esqs., Attorneys for Appellant.
Hillery & Young, Esqs., by David Young, 3rd, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of renewal of a plenary retail consumption license for premises located on the south side of the Newark-Pompton Turnpike near the railroad station, Pequannock.

The premises are located in a small business district and have been licensed continuously since July 1, 1934. At some time prior to May 1937, the United States Post Office Department decided to seek new quarters for its post office which, at the time of the hearing, was located on the Newark-Pompton Turnpike, a short distance from appellant's premises. On May 7, 1937, the Post Office Department accepted appellant's bid for the use of the premises where his licensed business is located, but up to the time of hearing, appellant's premises had not been taken over for postal purposes. The Postmistress testified that the Post Office had not been moved to appellant's premises because she had not received the necessary equipment. It seems to be clear that appellant received no rental directly from the Government, although he accepted a Ten Dollars ($10.00) deposit from the Postmistress in part payment of the rental to become due for the month of September. At any rate, appellant was in full possession of his licensed premises at the date of the hearing.

It further appears that appellant employed one DeBenedetto in the month of June 1937. DeBenedetto applied to respondent for a consumption license for the Danner property, a business building on said Turnpike adjoining appellant's premises. DeBenedetto's application was refused. Thereupon appellant, on June 29, 1937, filed his application for renewal of his license. Written objections having been filed, a hearing was held at which thirty persons appeared and objected to the renewal of the license after which respondent, on July 13, 1937, rejected the application for renewal.

It appears from the testimony of the Township Committee that one of the reasons for denial was because respondent felt that the application was not made in good faith but solely for the purpose of obtaining a license so that it might be thereafter transferred to DeBenedetto for the Danner property when, as, and if appellant completes arrangements to have the Government remove the Post Office to the store where he now conducts his business. Appellant frankly admitted that,if DeBenedetto had obtained a license for the Danner building, he would have sold his fixtures to DeBenedetto and retired from the liquor business. He testified that he made his application because DeBenedetto's was rejected. There is nothing in the case which shows that appellant did not act in good faith in making his application for renewal. The fear that he might transfer to DeBenedetto is unfounded because such transfer would require the consent of the local issuing authority in any event.

An additional reason set forth by respondent was that neighbors objected to renewal because of noise and disturbances at the licensed premises. The Chief of Police testified that on August 15, 1936 he was called to the licensed premises by the proprietor because three young men were creating a disturbance. He said that the men had been drinking heavily but had told him they had been at Agzigian's place only a short time. He reprimanded the men and took them home. Aside from this incident the Chief of Police testified that he had had no complaints against the premises. A neighbor testified that in the Spring she saw a woman carried into a car in front of appellant's premises because the woman could not walk. Neighbors also testified that on numerous occasions about 2 A.M. in the morning patrons leaving the licensed premises would shout and sing and blow automobile horns so that the neighbors were unable to sleep. No written complaints against the premises had ever been received by the Township Committee. None of the neighbors ever complained to appellant about the manner in which he was conducting his place of business. Four patrons who resided in the Township for many years and visited the licensed premises testified that it had always been conducted in a very orderly manner. The evidence of the single disturbance would not be sufficient to justify the action of respondent. Auletto vs. Camden, Bulletin 137, Item 3, and cases therein cited.

The question of noise is more difficult. There is bound to be noise from automobiles on principal highways, especially in a section where they must or should stop at railroad crossings. How much of this annoyance was due to patrons leaving appellant's place, and how much to traffic, is difficult to determine. However, the evidence in this case was not of such a convincing character as to justify respondent in denying the renewal because of the noises outside appellant's premises.

There is some further testimony that renewal was denied because of a policy adopted not to issue licenses to premises located within fifteen hundred feet of other licensed premises. It appears that there is a licensed place located about one thousand feet away from appellant's premises in one direction, and another licensed place located about one thousand feet away from appellant's premises in the opposite direction. There is some evidence that respondent considered the adoption of such policy for a period of about six months before it acted upon appellant's application, but no formal

action was taken until August 10, 1937, at which time an ordinance was passed at first reading, the pertinent parts of which are as follows:

> "No plenary retail consumption license shall hereafter be issued within fifteen hundred (1500) feet of each other except as follows:-
> (a) Plenary retail consumption licenses presently outstanding may be renewed.***"

If the ordinance expresses the policy adopted six months previously, then it appears that it was contemplated that such ordinance should affect only licenses thereafter issued, but should not affect renewals of consumption licenses then outstanding. Since appellant had a license at that time, it follows that his license is excepted from the fifteen hundred feet requirement.

At the time of the hearing appellant was operating his premises under an order extending his old license. No valid reason appears why his application for renewal was denied. If, however, since the date of the hearing the United States Post Office Department has taken control of the premises, the license, of course, could not be issued. D'Annibale vs. Fredon, Bulletin 139, Item 7.

The action of respondent is, therefore, reversed and respondent is ordered to issue the license as applied for, provided, however, that appellant is presently in possession of the licensed premises.

D. FREDERICK BURNETT
Commissioner

Dated: November 21, 1937.

2. APPELLATE DECISIONS - GUIDA vs. CAMP.

EMILIO GUIDA,

Appellant,

-vs-

HONORABLE PERCY CAMP, Judge of the Court of Common Pleas, of Ocean County, and Issuing Authority,

Respondent.

ON APPEAL

CONCLUSIONS

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Joseph A. Citta, Esq., Attorney for Appellant.

Herman Gerber, Esq., and Robert A. Lederer, Esq., Attorneys for Objectors.

No appearance for respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located on 20th Street, Borough of Ship Bottom-Beach Arlington.

The Borough is an active summer resort with a winter population of 350 and a summer population reaching into the thousands. It lies across the middle of Long Beach Island - a long narrow island off Barnegat Bay, six miles from the New Jersey mainland.

The seashore along the Island is extensively used for bathing and recreational purposes. For the most part, the beach remains in its natural state; only at Beach Haven, a municipality on the Island near the Borough, is there a boardwalk.

Appellant's premises are located on the beach front of the Borough. These premises consist of a building at the shore and a 500-foot fishing pier which extends over the beach into the water. Together with this fishing pier, appellant conducts an incidental candy and sandwich business at the building for which he seeks the present license.

The beach front in this vicinity is frequented by many resident bathers, men, women and children. The area extending back from this part of the shoreline is concededly residential in character.

Nowhere along the Island's beach front, or along the Beach Haven boardwalk, has any liquor establishment been allowed. Twice before, appellant made application to sell liquor at his premises, but has been denied.

In opposition to the present application, the Borough Council has adopted a resolution disapproving such application on the ground that it is undesirable to have any liquor establishment at the beach front; the Long Beach Board of Trade and the Beach Haven Exchange Club, civic organizations operating throughout the Island, and over a score of residents near appellant's premises, have expressed similar protest. Appellant himself concedes that the Borough in general is opposed to the establishment of any liquor traffic along the beach front.

This municipal sentiment cannot be said to be unreasonable; it was proper for Judge Camp, the local issuing authority in Ocean County, to respect and follow it.

In an analogous situation, I have ruled that a local issuing authority may justifiably refuse a license at or near the boardwalk of our shore resorts. Sassinsky vs. Way, Bulletin 129, Item 7, and cases therein cited.

Furthermore, I have ruled that a local issuing authority may justifiably deny a license for a residential and recreational area at or near a shore or lakefront in order to eliminate or minimize the danger of disturbing activity. Butler vs. Middletown Township, Bulletin 210, Item 6, and cases therein cited.

There is testimony that the three consumption and two distribution licenses presently operating in the Borough do not adequately meet its demands during the summer season. Even were it assumed that such testimony indicates a public necessity or convenience for the establishment of additional licensed premises in the Borough, it does not overcome the reasonableness of respondent's denial to grant the present application to conduct a liquor establishment at the beach front adjoining a residential neighborhood where many residents are in protest.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 21, 1937.

3. LICENSES - RENEWAL - ORDINANCE FIXING 15 DAYS OF GRACE WITHIN WHICH APPLICATION MUST BE FILED IN ORDER TO CONSTITUTE IT A RENEWAL, APPROVED.

November 23, 1937

Board of Commissioners,
City Hall,
Bayonne, N. J.

Gentlemen:

I have before me your proposed ordinance introduced September 7, 1937, submitted for my approval. I note that it will supplement the ordinance concerning alcoholic beverages adopted June 2, 1936 with a section to be known as 9a, providing:

> "Applications for renewal of licenses must be filed with the City Clerk not later than July 15th of the license year for which the renewal is sought. All applications filed after said date by holders of licenses which have expired during the previous license year shall be classified as applications for new licenses."

According to Section 37 of the Control Act, my approval is required only of municipal regulations dealing with the conduct of licensed businesses or the nature and condition of licensed premises.

Hence, no approval from me is necessary for the regulation to become effective.

I believe the adoption of this ordinance will have a salutary effect. The decision in Re Deighan, Bulletin 141, Item 2, illustrated a case where a licensee had unduly delayed publication with the result that the new license was not actually issued until after the old had expired. The decision was that, if there was no intent to abandon the business, the license could be treated as a renewal. That case fixed no arbitrary time limit but declared the intent of the licensee to preserve and continue the former business to be the governing factor. The liberal ruling there laid down to save a tardy but sincere licensee has been repeatedly abused and invoked in many instances as a camouflage to cover the issuance of a so-called "renewal" license so as not to run foul of some municipal limitation of the number of new licenses — and then as soon as issued, the holder has transferred the license. The result only too often has been that ordinances limiting the number of new licenses are set at naught.

In Berger v. Carteret, Bulletin 213, Item 9, I confined the operation of this principle to the license period immediately following the expiration of the old license. All that was called for in that case was to decide the maximum time beyond which a license could not be said to be a renewal. After a whole year had gone by, there was no difficulty in that case in deciding that a license issued thereafter was not a renewal of a license issued in the second fiscal year preceding. The proposed ordinance goes much further, and, I think, properly so.

If licenses are to be cut down, the way to begin is to begin. My personal recommendation is to refuse to renew all licenses the holders of which have been subjected to disciplinary proceedings and found guilty of violating any part of the law, or of

the State rules and regulations, or of local ordinances. A further step is indicated by the ordinance submitted, which is, in effect, a statute of limitations - the establishment of a period of fifteen days of grace for those seeking renewals within which to make their applications and thereby declare themselves. There is, of course, no logic to any period of grace. When the law prescribes that a certain thing must be done within that time, a strict rule would require it to be performed then or else it is too late. Human nature being what it is, allowances often have to be made for the tardy, the delinquent, and those who are always putting things off. Most of us have three hands, a right and a left, and a little behindhand. But there ought to be a limit to this tolerance. Fifteen days is ample time to make up one's mind. It is enough of grace.

I am shocked to hear of the death of City Clerk William P. Lee. I never met him but felt through frequent correspondence that I knew him well. The pride that he took in the accuracy of his work was evident. He was cooperative in every way. He understood what was wanted and he did it. His reports were models of clarity and diction. I feel I have lost a personal friend.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. APPELLATE DECISIONS - ZAKAREW vs. SOUTH BOUND BROOK.

TARES ZAKAREW,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF SOUTH BOUND BROOK,

Respondent.

ON APPEAL

CONCLUSIONS

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Edward J. Johnson, Esq., Attorney for Appellant.
Grover F. Kipsey, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located at Louis Avenue and Canal Road (also known as Riverside Drive), Borough of South Bound Brook.

On December 12, 1933, the Borough Council adopted a resolution providing in effect, that the number of plenary retail consumption licenses outstanding in the municipality at any one time "shall not exceed" three. Only two are now outstanding. If this were all, the principles set forth in Sosnow Drug Company vs. Freehold, Bulletin 68, Item 13, would be dispositive of this case in favor of appellant.

However, irrespective of a vacancy in any formal quota, a local issuing authority may always deny an application for good independent cause. Re Borough of Somerville, Bulletin 110, Item 6. Thus, for example, although the quota has not been exhausted, it may validly deny an application on the ground that the vicinity in which applicant proposes to operate contains a sufficient number of liquor establishments. Vicari vs. Bloomfield, Bulletin 57, Item 4; Young vs. Pennsauken, Bulletin 114, Item 2; Sadovsky vs. Millstone, Bulletin 120, Item 4; Levitt vs. Liberty, Bulletin 169, Item 4; Lingelbach vs. North Caldwell, Bulletin 180, Item 8.

In the instant case respondent sought to justify denial of the present application for the reason, as alleged, that a liquor establishment is undesirable at appellant's premises because of proximity to a recreational site; that such an establishment will add to the trouble already encountered at that site by the local authorities and will unduly aggravate traffic hazards in the area.

South Bound Brook is a small municipality located at the extreme head of a hairpin bend in the Raritan River. Running alongside the river, within the municipality, is the Delaware and Raritan Canal. Closely skirting this canal is a county highway, Canal Road (also known as Riverside Drive). Appellant's premises are located on this road, directly across from a portion of the canal that is popularly used for summer bathing; this so-called "beach" here lies some thirty feet off the road.

Although no recreational facilities have been developed in this area (with the exception of a spring-board), nevertheless as many as several hundred persons from the Borough and surrounding municipalities come to this site to bathe on weekdays in the summer; on week-ends, the number is considerably larger.

The Borough has experienced difficulty because of nude bathing in this portion of the canal at night. Respondent is apprehensive that "lawlessness" may develop if a liquor establishment is permitted at this site. It asserts that additional policing will become necessary, which its budget is inadequate to finance.

A local issuing authority may validly deny a license because of a reasonably apprehended danger of resulting disturbances in a recreational area. See Kaline & Theringer vs. Burlington, Bulletin 188, Item 2; Conroy vs. Pemberton, Bulletin 191, Item 5; Butler vs. Middletown, Bulletin 210, Item 6.

Furthermore, it appears that the crowds that frequent this swimming site have created traffic perils. The bathing portion of the canal is located near the highway, with the result that many automobiles are congregated in the vicinity and many persons are upon the road.

A local issuing authority may validly deny a license because of a reasonable apprehension of aggravated traffic peril. See Palmarozza vs. Keansburg, Bulletin 190, Item 10, and cases therein cited. Respondent cannot be characterized as arbitrary or unreasonable in concluding that a consumption establishment at appellant's premises will unduly imperil an already hazardous traffic condition.

Appellant contends, however, that respondent has already granted a consumption license in a similar location, and that the present denial is discriminatory. Appellant has in mind a liquor establishment located near the canal but more than half a mile from appellant's premises. That establishment fails to sustain appellant's contention. It is located in a vicinity unattended by the recreational and traffic problems existent in the vicinity of appellant's premises. While it is true that the establishment is located within a couple of hundred feet from the canal, there is no direct accessibility to the canal in that area, and the nearby portion of the canal is scarcely used for swimming and is separated by a lock from that portion where swimming habitually occurs.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 23, 1937.

5. LOTTERIES - RAFFLING OF TURKEYS - A RAFFLE IN A COMBINATION STORE WHICH HAS A LIQUOR LICENSE IS FORBIDDEN EVEN THOUGH THE CHANCES ARE GIVEN AWAY ONLY WITH SALES OF MERCHANDISE OTHER THAN LIQUOR.

November 23, 1937.

Mrs. S. Kavaleer,
Kearny, N. J.

My dear Mrs. Kavaleer:

I have your letter of the 18th and note that you hold a plenary retail distribution license for your combination store.

I understand that your plan is to distribute chances on a turkey with each purchase of a dollar's worth of groceries in your store, and on Thanksgiving Eve to raffle off two turkeys.

The scheme is a lottery. It would, therefore, if held on your premises, be in violation of Rule 6 of the State Rules Concerning Conduct of Licensees, copy enclosed, and cause for the revocation of your license.

It would also be a violation for you to distribute the tickets on your premises. All gambling on licensed premises is prohibited. It makes no difference that the chances would be given away only with sales of merchandise other than liquor.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. CLUB LICENSES - TO WHOM ISSUABLE - MONOPOLY IN FAVOR OF ANY ONE GROUP NOT PERMISSIBLE.

November 23, 1937

Edward DuPree,
City Clerk,
Paterson, N. J.

My dear Mr. DuPree:

I have before me your letter of the 17th; also, the copy of the resolution adopted by the Board on November 15th providing:

> "BE IT RESOLVED that the Board of Aldermen of the City of Paterson, pursuant to Chapter 436 Laws of 1933, as amended by Chapter 85 Laws of 1934, issue a club license to any nationally recognized veteran organization having a Post Chapter or Camp located in the City of Paterson for a period of at least ten years.
>
> "The fee for said club license shall be $50.00 annually and said license shall run from July 1st to June 30th of the year following."

According to Section 37 of the Control Act, my approval is required only of municipal regulations dealing with the conduct of licensed businesses and the nature and condition of licensed premises. The resolution is, therefore, not subject, in the first instance, to my approval. See Bulletin 43, Item 2.

I thought, nevertheless, that as a matter of courtesy, I should give you my thoughts on the matter, for if it were brought before me on appeal, I would be compelled to set it aside, and with it would fall all licenses issued pursuant to the illegal resolution.

I would approve a requirement that clubs in order to qualify for club licenses shall have been in existence for ten years. The State Rules Governing Club Licenses, Pamphlet Rules, page 25 (Rule 2), provide that no license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously immediately prior to the submission of the application. The rule recognizes that municipalities may impose an additional restriction in this regard if they wish. Lengthening the requisite probationary period of existence to ten years tends to confine club licenses to bona fide clubs. See Re Siracusa, Bulletin 71, Item 1.

I would also tentatively approve, for the same reason, a requirement that applicants for club licenses be affiliated with a State or national organization. While I disapproved such a provision in Re Siracusa, supra, in view of the fact that many undesirable and undeserving organizations seemed to have been able to obtain club licenses, I later ruled in Re Christiansen, Bulletin 102, Item 4, that I would tentatively and as an experimental matter, in order to tighten up the rule, allow it to be done. Candidly, I have my doubts as to the validity of making such affiliation a requirement. There are many bona fide clubs which are wholly independent and self-contained units, and, if club licenses are to be given at all, are as much entitled to such a license as is a club which happens to be a chapter or a unit of some state or national association.

I could not, however, approve at all a regulation endeavoring to confine the issuance of club licenses exclusively to veterans' organizations. The Control Act, Section 13 (5), provides for the issuance of club licenses to such corporations, associations or organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain. The Aldermen cannot make fish of one club and fowl of another. If the Veterans may have a club liquor license, so may the Elks, the Moose, and all the orders. If club licenses are to be issued, they must be issued to all those which fall within the statutory definition and fulfill the requirements. Re Siracusa, supra; Re Glass, Bulletin 181, Item 2. Licenses, to be sure, are privileges, as distinguished from rights, but no one group may monopolize those privileges.

I suggest that the Board amend its resolution at once in accordance with the foregoing.

At the same time, strike out "as amended by Chapter 85 Laws of 1934" and in its place, insert "as amended and supplemented." The resolution will then purport to be enacted pursuant to Chapter 436, P.L. 1933 and all of the many supplements and amendments which have heretofore been made, as well as those which may be enacted in the future.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. APPELLATE DECISIONS - SOUTH PLAINFIELD LIQUOR AND BEVERAGE STORES, INC. vs. SOUTH PLAINFIELD.

SOUTH PLAINFIELD LIQUOR AND BEVERAGE STORES, INC.,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF SOUTH PLAINFIELD,

Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Edward J. Santoro, Esq., Attorney for Appellant

John J. Rafferty, Esq., by Philip Blacher, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant is a New Jersey corporation, created on April 23, 1937. Its stockholders, officers and directors consist of a resident of Plainfield who holds 148 shares, his wife, who holds one share, and a resident of the Borough of South Plainfield, who holds one share. Shortly following its incorporation, the

appellant filed an application for a plenary retail distribution license for the period expiring June 30, 1937, for premises located at 17-19 South Plainfield Avenue in the Borough of South Plainfield. This application was denied by the Borough Council on the sole ground that the applicant had not been in existence for five (5) years as required by Section 19 of a Borough Ordinance, reading as follows:

> "No license shall be granted unless and until the applicant has resided in the Borough of South Plainfield continuously for a period of one year next preceding the date of making the application for a license, nor shall a license be issued to any corporation or association that has not been in existence for at least five years prior to the date of its application * * * The qualification as to residents shall not apply to any person nor shall the period of existence apply to any corporation or association which now has and enjoys a license to sell alcoholic beverages in the Borough of South Plainfield."

Thereafter, the applicant appealed from the denial but its appeal was taken too late to be heard and determined before the expiration of the license period to which the application related. A stipulation was entered into at the hearing on appeal that the Commissioner's determination herein shall apply to any further application made by the appellant for the same premises.

At the hearing, respondent advanced the preliminary contention that the Commissioner has no authority to determine whether the ordinance requirement in question is valid or invalid. The appeal herein was taken within the authority of Section 19 and under Section 35 the Commissioner is authorized to direct the issuance of the license sought if he finds that it was "improperly refused." Nowhere in the Act is there the slightest suggestion that the Commissioner may not, in the course of an appeal, consider all pertinent issues, including the validity of the provision of an ordinance upon which the denial was based. If such power were absent, the comprehensive statutory appeal would indeed be a futile gesture. See Retail Liquor Distributors vs. Atlantic City, Bulletin 99, Item 4.

Accordingly, the respondent's preliminary contention cannot be sustained.

We come then to the meritorious issue, i.e. is the ordinance requirement that a corporate applicant be in existence for at least five years a valid one?

A requirement that an individual applicant be resident within a municipality for a reasonable stated period prior to submission of his application affords a ready means to the issuing authority for ascertaining whether he is a fit person to hold a license. For this reason such requirement has consistently been upheld. See Iamello vs. Borough of Rumson, Bulletin 77, Item 9; McHugh vs. West Deptford, Bulletin 106, Item 1. And it may possibly be urged that a requirement that a corporate

applicant be in business within the municipality or that its controlling stockholders be residents therein for a reasonable stated period prior to submission of the application, should be supported upon the same basis and as a means of preventing individuals from invoking the corporate device to defeat entirely the residence policy. But see Re Borough of Bogota, Bulletin 106, Item 5.

In any event, however, the requirement in respondent's ordinance, as now worded, is not reasonably calculated to aid in selecting proper licensees and would not, therefore, come within the foregoing principles. It would permit the issuance of a license to a corporation in existence for five years, even though it has never functioned, or functioned solely in a distant locality, or was owned by individuals who were non-residents and had recently acquired their stock. At the same time, it would exclude a corporation which had been in business within the municipality for several years less than five and had all resident stockholders fully qualified. In its present form, the requirement is unreasonable, and cannot be sustained. See Re Borough of Highland Park, Bulletin 185, Item 11; and Re City of Camden, Bulletin 186, Item 2.

Since the period to which the appellant's application related has expired and no further application is pending, there may not be any reversal accompanied by direction to issue the license applied for. In the event that an application is hereafter filed by the appellant for the same premises, the requirement in the ordinance that corporate applicants be in existence for at least five years shall be disregarded and respondent shall determine whether a license should issue in view of the facts then appearing, the policies then prevailing and the controlling principles set forth in these conclusions.

D. FREDERICK BURNETT
Commissioner

Dated: November 23, 1937

8. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SUNDAY SALES - ADMINISTRATION OF LAW WITHOUT FEAR OR FAVOR.

November 24, 1937.

Mrs. Ann M. Baumgartner, Secretary,
Municipal Board of Alcoholic Beverage Control,
Camden, New Jersey.

Dear Mrs. Baumgartner:

I have staff report and your certification of the proceedings before the Municipal Board of Alcoholic Beverage Control against Loyal Order of Moose, Lodge #111 of Camden, charged with having sold alcoholic beverages on Sunday during prohibited hours.

I note an adjudication of guilt was entered and that the license was suspended for a period of five days, November 19 to 23, 1937.

This substantial penalty translates into action the heartening declaration of Commissioner Sangtinette and endorsed by Mr. Morrissey and Mrs. Baumgartner: "It is my intention to see that the ordinance is strictly enforced in the future regardless of who the licensee may be and that more severe penalties be imposed."

On June 2, 1937, I had occasion to write to you in criticism of the action of the Board in connection with a suspended sentence on a "Sunday sale" violation case and made the following comment:

> "Nor can licensees who scrupulously close up shop when the law requires it, compete with those who deliberately take chances to 'make a little money on Sunday' and then are allowed to get away with it!"

The action of your Board in the present case is a complete answer to that letter. I am not concerned with leniency in the past but rather with strict enforcement without fear or favor in the future.

Keep up the good work.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. SPECIAL PERMITS - IMPORTATION BY RETAILER OF ALCOHOLIC BEVERAGES NOT OBTAINABLE IN NEW JERSEY - POLICY INDICATED WITH RESPECT TO FUTURE APPLICATIONS FOR SUCH SPECIAL PERMITS TO IMPORT.

November 23, 1937.

L. Bamberger & Co.,
Newark, N. J.

N.J. Institute of Wine and
Spirit Distributors, Inc.,
Newark, N. J.

Gentlemen: Re: In the Matter of the Petition of L. Bamberger & Co. for Special Permit to Import.

A petition was duly filed by L. Bamberger & Co. for a special permit to import from foreign countries alcoholic beverages described therein on the ground that they were not obtainable from licensed New Jersey manufacturers and wholesalers. Objections to the granting of the petition were made by New Jersey Institute of Wine and Spirit Distributors, Inc. and hearing thereon was duly held.

The transportation rules (Bulletin 39, Item 1) and the rules concerning conduct of licensees (Bulletin 124, Item 4) prohibit retail licensees from purchasing alcoholic beverages in foreign countries or States and importing the purchased beverages for resale within New Jersey. The wisdom of this restriction has been amply evidenced by its actual operation. It has increased assurance that all taxes due to the State on imported beverages are paid; has eliminated direct competition with New Jersey wholesalers by foreign dealers who have not paid any license fee to this State; and has effectuated the legislative policy implicit throughout the Control Act that retailers deal with licensed manufacturers and wholesalers who have furnished bonds to the State and are under strict supervision by the State Department. Cf. Bulletin #100, Item 9.

Notwithstanding the general restriction, special situations have heretofore arisen which justified the issuance of permits authorizing individual importations by retailers subject to adequate safeguards. Thus, upon a showing by any retailer that he could not obtain the beverages he desired from any licensed New Jersey wholesaler or manufacturer, the Commissioner has issued a special permit authorizing his direct importation. See Bulletin 100, Item 9. Cf. Bulletin 108, Item 9; Bulletin 208, Item 1. It appeared that such action was in the interests of the consuming public and would not, in a substantial sense, interfere with the policies underlying the general restriction against importations by retailers.

The New Jersey Institute of Wine and Spirit Distributors, Inc. is apparently in accord with all of the foregoing but objects to the granting of the application of L. Bamberger & Co. on the ground that New Jersey wholesalers and manufacturers could, upon request, furnish the applicant with the beverages it seeks to import. The record of the hearing does not, however, support this contention. The applicant asserts, and this is not substantially denied by the objector, that it has heretofore sent representatives to foreign countries for the purpose of making individual selections of whiskies and wines; has made arrangements with particular distilleries and vineyards for their outputs or parts thereof and for the bottling of their products under the applicant's labels; that no wholesaler or manufacturer was equipped and prepared to render to it similar and as complete service; and that no wholesaler or manufacturer could purchase in the open market any of the particular articles it seeks to import. Assuming these facts, the participation by a wholesaler in the transaction would be in the nature of a "clearance", expressly disapproved in Re Novelty Bar & Grill Bulletin 119, Item 16. The present application by L. Bamberger & Co. for a special permit to import the alcoholic beverages described in its petition is, therefore, granted.

However, in so far as future applications by retailers for special permits to import are concerned, it is noted: (1) that they will be scrutinized with utmost care and objectors will be afforded complete opportunity to be heard in order that the Department may be assured that the beverages sought to be imported are not obtainable from any licensed New Jersey wholesaler or manufacturer; (2) that where it appears that a wholesaler or manufacturer could and would, upon request, have obtained or supplied the beverages sought to be imported, the application will be denied; and (3) that for the purpose inter alia of encouraging direct and bona fide dealings with respect to imported beverages between retailers on one hand, and wholesalers and manufacturers, on the other, the permit fee fixed by this Department will be increased to the end that it will not, in any event, be less than the profit which would have been made by a New Jersey wholesaler or manufacturer if the retailer had originally ordered and purchased the beverages from him.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

10. APPELLATE DECISIONS - BRAUNSTEIN vs. BRIDGETON.

JACOB BRAUNSTEIN, )
Appellant, )
-vs- ) ON APPEAL
CITY COUNCIL OF THE CITY OF BRIDGETON, ) CONCLUSIONS
Respondent. )

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Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Appellant

Samuel Iredell, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located at 47-49 South Pearl Street, Bridgeton.

In 1935 respondent, by resolution, provided that plenary retail consumption licenses shall be issued only for premises operated as hotels or restaurants and that no more than nine such licenses shall be outstanding at any one time. Since the allotted number had been issued and were then outstanding, the appellant's application was denied. On appeal, several additional grounds for the denial were urged but they need not be considered in view of the findings hereinafter made.

Appellant's position is (1) that his premises are operated as a hotel, and (2) that it would be unreasonable to invoke the limitation to justify the denial of a license therefor. The premises sought to be licensed consist of a three-story structure, containing 16 rooms. Few of the rooms are completely furnished and there is but one bath. There is no clerk at the premises at any time and appellant is there only a short period during each day. In the appellant's absence, the entrance doors to the premises are locked and the four persons who are living there pay rent on a weekly basis and have keys of their own. Although the evidence may be considered as indicating that the premises are operated as a rooming house, it falls far short from establishing the existence of a bona fide hotel within the accepted meaning of that term. Cf. Steup vs. Wyckoff, Bulletin 155, Item 12.

Assuming that the premises do constitute a bona fide hotel, nevertheless the effect of the limitation may not be overcome in the absence of an affirmative showing by the appellant that public necessity and convenience dictate the issuance of the license sought. See Current vs. Fredon, Bulletin 184, Item 1:

> "There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed."

In addition to the nine consumption licenses, there are five distribution licenses and eight club licenses outstanding in the City of Bridgeton, which has a population of approximately 16,000 people. Four licensed places are located within two blocks of appellant's premises; two hold consumption licenses and the nearer of the two is located approximately 125 feet from the premises sought to be licensed. In the light of the foregoing, compelling evidence would be required to overcome the presumption that the limitation is reasonable and to establish that an affirmative need exists for the licensing of appellant's premises. Cf. Hutchinson vs. Wyckoff, Bulletin 84, Item 3.

Appellant called three witnesses in an attempt to prove that there is an affirmative need for the licensing of his premises. In response to an inquiry as to whether there was such need, the first testified "I don't know how the need is, but the City could use the money." The second, in response to a similar inquiry, testified "Well, it would do no hurt. If I had my say, I would give them all a license." The third lives at the appellant's premises and does odd jobs for him--he testified that he thought there was need for an additional license because he "used to room at the Hillcrest and it was always full." The foregoing evidence furnishes no substantial basis for a finding that the community needed an additional license and the application was therefore properly denied.

The action of respondent is affirmed.

Dated: November 24, 1937. Commissioner