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

BULLETIN 381 JANUARY 29, 1940.

1. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938)

Case No. 75

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In Case 229, Bulletin 269, Item 11, it was decided that petitioner herein was ineligible to be employed by a liquor licensee because on November 14, 1932 he had been convicted of a crime involving moral turpitude. It appeared therein that on April 25, 1934 he had pleaded non vult to a statutory charge of rape and had received a suspended sentence; that on April 30, 1938 he had been arrested, charged with selling alcoholic beverages to a minor.

At the hearing herein a business man, who has known petitioner for fifteen years, and a County Supervisor of the W.P.A. who has known him since he was a boy, testified that petitioner has not been arrested or convicted at any time other than those above mentioned. The petitioner testified that he is married, has one child, is presently employed on a W.P.A. project, and that he has not been convicted of any crime since April 25, 1934. The Chief of Police of the municipality in which petitioner resides has since advised that there are no pending investigations against him.

The record shows that petitioner has not been convicted of any crime within the past five years and the only question to be considered is whether I should conclude that he has been law-abiding during that period in view of his arrest on April 30, 1938. At that time he was employed as bartender by a retail licensee and was charged with selling alcoholic beverages to a minor of the age of 18 years. He and the licensee were held to await the action of the Grand Jury, but a check of the records of the Prosecutor's office shows that the Grand Jury failed to indict either of them.

In view of the action of the Grand Jury and the other evidence presented herein, I conclude that petitioner has conducted himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 15th day of December, 1939,

ORDERED that the petitioner's disqualification from obtaining or holding a license or permit or being employed by a licensee because of the convictions referred to herein be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

D. FREDERICK BURNETT,
Commissioner.

2. APPELLATE DECISIONS - STARR v. CLEMENTON.

ELIZABETH STARR,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF CLEMENTON,

Respondent.

ON APPEAL
CONCLUSIONS

Leighton J. Heller, Esq., Attorney for Appellant.
Vincent L. Gallaher, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, the holder of a consumption license at 100 Berlin Road, Borough of Clementon, appeals from a suspension of said license for four months.

Respondent, after hearing duly held, imposed this punishment after finding licensee guilty on charges of selling alcoholic beverages to minors and permitting disorders on her licensed premises.

At the hearing herein, over an objection by appellant's attorney, transcript of the testimony taken below was admitted into evidence as to the testimony of the alleged minors, George Davis, James Collins, Benjamin Collins and Edward Lees. The basis of appellant's objection was that such testimony should not be received because State Regulations No. 14 provide that all appeals shall be heard de novo. Respondent, however, argues that said evidence is admissible because all of the alleged minors reside in Philadelphia, and hence are beyond the jurisdiction of a subpoena issued by this Department; and because unsuccessful efforts had been made to obtain the personal appearance of the four witnesses at the hearing of the appeal.

While it is true that Rule 6 of State Regulations No. 14 provides for a hearing de novo, said rule may be relaxed or dispensed with by the Commissioner in any case where a strict adherence to the rule would result in injustice. Rule 14, State Regulations No. 14. There is nothing contained in the statute which gives appellant a right to a trial de novo. R. S. 33:1-31. Because of the facts set forth above, and because appellant, represented by counsel at the hearing below, had full and complete opportunity to cross-examine the alleged minors, I shall, in the interest of justice, overrule the objection and permit the transcript to be considered in evidence, not only to the extent allowed at the hearing on the appeal but also as to appellant's witnesses heard below and who did not appear at the hearing of the appeal.

Appellant alleges, as a reason for reversal, that the Acting Mayor, who presided, sustained an objection to the following question asked of James Collins on cross-examination:

> "Where had you been on this evening prior to the time you entered Starr's cafe?"

As the question was framed, it would appear to be immaterial. If it was intended to show that the witness had obtained liquor elsewhere, as appellant contends, the error, if any, did not prejudice appellant because the following questions and answers were subsequently asked of and given by the same witness:

"Q Did you get any beer at any other place?
A Yes.
Q Where at?
A Over at the Park Grill.
Q What did you have at the Park Grill?
A Two or three beers."

Appellant argues also that the action should be reversed because the Acting Mayor, who sat at the hearing, voted for the passage of the resolution suspending the license. The point is without merit. Freint v. Dumont, 108 N. J. L. 245 (Sup. Ct.1931).

As to the merits: James Collins testified that he and Edward Lees, Benjamin Collins and George Davis entered the barroom of the licensed premises on the evening of August 19, 1939; that he ordered four beers from William Starr, the husband of the licensee at the bar; that he and the other three took the beers and walked into a back room where they drank the beers; that after they had been ordered to leave the back room by the licensee, they returned to the barroom and then walked to the street where they remained a few minutes; that when all four returned to the barroom, George Starr came to the far end of the bar and "then the whole bar seemed to move up on us" and they were "ganged up by a bunch of fellows in the barroom"; that one of the four in his party was knocked down and that he was pushed through the window of the door, sustaining a cut on his arm which required sixteen stitches; that he was twenty years of age on August 19, 1939.

Benjamin Collins testified that he and the other three in his party entered the barroom on the evening in question and that he first went to the dart board in the barroom and later to the back room; that he and his party left the back room, returned to the barroom, and thence went to the street; that when they again entered the barroom, George Starr came running over, saying "one, two, three", and "four men started and then the whole bar came over"; that they pushed Edward Lees down on his knees and they pushed Collins over on top of him and his hand went through the window; that he had taken a mouthful of the beer out of the glass of one of the other boys; that he was eighteen years of age on the date in question.

Edward Lees testified that he saw William Starr serve the beer in the barroom but that he did not drink any of the beer; that he followed the other three in his party to the back room and later went with them to the street; that when they returned to the barroom George Starr said "don't serve them - one, two, three"; that "a lot of fellows came towards us and Jimmie Collins fell over me and he went through the glass door."

George Davis testified that four beers were ordered of William Starr at the bar; that he stood at the bar and drank his beer; that they went to the back room and afterwards returned to the barroom and thence went directly to the street; that when they returned to the barroom George Starr pointed them out and said "one, two, three"; that there was a rush towards the front door;

that he couldn't see very well but heard the glass break; that he was then nineteen years of age.

On behalf of the licensee, William Starr testified that he did not serve the young men; that he was not tending bar but seated on a stool at the end of the bar; that the first time he saw the young men was when George Starr told the bartender not to give them anything to drink; that the young men were not pushed or thrown out.

George Krider, a bartender, testified that he did not see Mr. Starr serve the young men and that there was no unnecessary disturbance. He admitted that he had heard George Starr say "one, two, three".

George Starr testified that he had ordered the young men out of the rear room and that there had been no service of beer to his knowledge, but when the young men returned to the barroom he had told the bartender not to give them anything to drink and then started around in front of the bar; that he made no threatening gestures and didn't see anyone push the boys; that while the young men were in the street before returning to the barroom he had heard Edward Lees say that he was going in and wreck the place.

At the hearing on appeal, four persons who said they were at the licensed premises on the evening in question testified, in effect, that they had not seen any alcoholic beverages served to the young men and that no one in the premises had used any violence and that no one in the premises had touched the boys, although all admitted that they had heard the crash of the glass.

At the hearing below another witness testified that he did not see any type of violence from patrons or the management.

The evidence presents a question of fact as to whether the minors had been served alcoholic beverages and whether disorders had been permitted on the licensed premises. While there are certain discrepancies in the stories told by the young men as to the service and consumption of alcoholic beverages, I believe that they were served with drinks in the barroom by William Starr.

As to the disorders: The evidence shows that the licensee and her agents were warranted in ordering the young men from the licensed premises but I am satisfied that excessive force was used by patrons acting at the instigation of George Starr and hence that the licensee is guilty of permitting disorders on her licensed premises.

There were, however, mitigating circumstances, and in view thereof I shall reduce the penalty imposed from four months to two months.

Accordingly, the action of respondent in suspending the license is affirmed. The period of suspension is hereby reduced to two months.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 23, 1940.

3. APPELLATE DECISIONS - ZIOMEK v. CLEMENTON.

ANDREW ZIOMEK,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOROUGH COUNCIL OF THE)
BOROUGH OF CLEMENTON,)
Respondent)
- - - - - - - - - - - - - - - -)

Frank M. Lario, Esq., Attorney for Appellant.
Vincent L. Gallaher, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, the holder of a consumption license at 101 Berlin Road, Borough of Clementon, appeals from a suspension of said license for four months.

Respondent, after hearing duly held, imposed this punishment after finding licensee guilty on a charge of selling alcoholic beverages to minors.

The case was submitted upon the transcript of the hearing held before the Borough Council and upon additional evidence presented by appellant.

At the hearing below, George Davis, James Collins, Benjamin Collins and Edward Lees testified that they visited the licensed premises of Andrew Ziomek on August 19, 1939 at about 11:15 P.M.

George Davis testified that he was then nineteen years of age; that when the four young men entered the premises they started to play darts; that after two other players replaced two of those originally in the game, one of these two men purchased a glass of beer and a whiskey for Davis, both of which were served to Davis at the bar by the licensee.

James Collins testified that he was then twenty years of age; that while he was playing at the dart board he drank two glasses of beer which had been purchased at the bar by one of the two strangers who had entered the game.

Benjamin Collins testified that he was then eighteen years of age; that he had been in the dart game and had later walked to the bar where he drank either two or three glasses of beer served to him by the licensee.

Edward Lees testified that he was then eighteen years of age; that he had not been in the dart game but that he had purchased two or three glasses of beer at the bar from the licensee.

On behalf of appellant testimony was given by the licensee, his father, a waitress and three persons who said that they had been on the licensed premises the entire evening of August 19, 1939. All of said witnesses testified that business had been very dull because of a severe rain storm earlier in the day; that there

were very few patrons in the premises during the entire evening; that none of these young men were present at the licensed premises at any time on said evening.

While there are certain slight discrepancies between the stories told by the four young men, their testimony, considered in its entirety, has the ring of truth. They described the layout of the premises and identified the licensee as the bartender. Weighing their positive evidence against the negative evidence produced by appellant, I find that there is sufficient to sustain the finding of guilt.

Hence, the action of respondent in suspending the license was proper.

The only point remaining is the question of penalty, which, appellant argues, is excessive. He has been a licensee at his present address for about three years. He alleges that respondent,in inflicting a penalty, was influenced by the fact that it had imposed a similar penalty against another licensee in a case involving the same minors but wherein there were aggravating circumstances not present in this case. I dislike to moderate any penalty inflicted by any issuing authority and will do so only in those cases where it clearly appears that the penalty imposed is excessive. Allowing reasonable latitude for differences of opinion, thirty days would appear to be ample for a first offense of this kind.

The action of respondent in suspending the license is affirmed. The period of suspension is hereby reduced to thirty days.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 23, 1940.

4. APPELLATE DECISIONS - BASELICI v. ASBURY PARK.

MATTEO BASELICI,)
Appellant,)
-vs-)
CITY COUNCIL OF THE CITY OF ASBURY PARK,) ON APPEAL CONCLUSIONS
Respondent)

Schlossbach & Newman, Esqs., Attorneys for the Appellant.
Walter Taylor, Esq., Attorney for the Respondent.
Mortimer Eisner, Esq., Attorney for the Landlord.
Haydn Proctor, Esq., Attorney for William Oelman, a licensee and objector.

BY THE COMMISSIONER:

The issue to be determined in this appeal is whether it was proper for respondent to deny appellant's application to transfer his plenary retail consumption license from 1411 Kingsley Street to 1108 Main Street for the reason, among others, that there are a sufficient number of liquor stores already located on Main Street.

Nineteen licensed establishments are now housed on that street, which is approximately a mile long and consists of sixteen blocks. Fifteen are consumption licenses and four are distribution. Only two buildings separate the proposed premises from those of a tavern now located on the same block at 1114 Main Street.

As I said in Alpert v. Asbury Park, Bulletin 380, Item 2:

> "The number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1. The privilege of a place to place transfer of an outstanding license is subject, among other things, to the reasonable and bona fide exercise of that discretion. Lingelbach v. North Caldwell, Bulletin 180, Item 8; Ninety-One Jefferson St., Passaic, Inc. v. Passaic, Bulletin 255, Item 9; Polansky v. Millburn, Bulletin 258, Item 2; Mita v. Orange, Bulletin 266, Item 10; Gomulka v. Linden, Bulletin 294, Item 8; Smith v. Winslow, supra."

Respondent, with due civic pride in its outstanding business street, refuses to allow Main Street to become, as expressed by its mayor, a "bottle row." It should be upheld in that refusal even though it has not adopted any ordinance limiting the number of licenses that may be issued anywhere in the municipality. Alpert v. Asbury Park, supra. Such action cannot be said to be arbitrary or unreasonable in the light of the licenses already issued for premises on Main Street.

Appellant attempted to show that there was a public need for an additional tavern at the address where he seeks to transfer. One witness, residing next door, disclosed that her reason for desiring another tavern on that block was because the licensee now located there is of foreign extraction and "of course there are a lot of people would rather go where there are more Americans"; that "I would not want to go to Mr. Oelman's." Another witness, who does not reside in the municipality, and whose place of business is a half-mile from the proposed premises, when questioned whether there was any necessity for another tavern which did not also conduct a restaurant business, answered in the negative. Another, formerly employed by appellant and hopeful of future employment, admitted that the other tavern was sufficient to supply the needs of the people in the vicinity, and still another said, "I do not care for him (the other licensee) at all."

Such testimony falls far short of that necessary to sustain the burden of proving a public necessity for another liquor store in the neighborhood.

Appellant further alleges discrimination in that three consumption licenses were granted for premises on Main Street during the present fiscal year, prior to the denial of his application on September 26, 1939, as follows:

1. Frank Siciliano, 601 Main Street. This license was originally denied by respondent but issued on August 7, 1939, after reversal on appeal to this Department. Suffice it to say that the present issue was not raised in that case. See Siciliano v. Asbury Park, Bulletin 341, Item 3.

2. Ethel Fey, 808 Main Street. This address, for several years prior to the present fiscal year, has been licensed for the sale of liquor. The prior licensee conducted a tavern there until June 30, 1939, but failed to renew because of financial difficulties. Respondent then issued a license to Fey on August 8, 1939 because it felt "that where a license had been they were willing to permit another one to go there."

3. Guiseppe Marinaccio, 807 Main Street. This license was issued by respondent on June 27, 1939, three months before the denial of appellant's application.

True, the issuance of the Fey and Marinaccio licenses, and the fact that respondent failed to raise the question of sufficiency in the Siciliano case, lends color to appellant's contention of discrimination. However, there must be a time at which an issuing authority has a right to take a bona fide stand that the saturation point has been reached. Apparently, respondent has now determined upon a policy of restricting the number of licensed premises that it will allow on Main Street. In view of all the circumstances, I shall give the respondent the benefit of the doubt and shall take at face value its avowed intention not to constitute Main Street a "bottle row."

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 24, 1940.

5. EXTERIOR SIGNS - RETAIL LICENSEE AND PROPRIETOR OF UNLICENSED RESTAURANT MAY NOT ERECT A SIGN BETWEEN THE TWO STORES, READING "BAR AND RESTAURANT."

January 23, 1940

Mr. E. G. Gill,
Dover N. J.

My dear Mr. Gill:

I have yours of January 17th and understand that the proprietor of the tavern and the proprietor of the restaurant, whose premises are adjacent but in no wise connected, propose to erect between the two stores an outside sign reading "Bar and Restaurant", each paying half of the cost of the sign.

There is nothing wrong with sharing the expense, but the sign represents that both places are licensed to sell alcoholic beverages which is not true, as the restaurant proprietor holds no liquor license whatsoever.

The plan is therefore disapproved.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. APPELLATE DECISIONS - SAMUELS' PHARMACY, INC. vs. NEWARK AND TURK

Samuels' Pharmacy, Inc., a corporation,
Appellant,
-vs-
Municipal Board of Alcoholic Beverage Control of the City of Newark and Jacob Turk,
Respondents.

On Appeal

CONCLUSIONS

Farkas & Samuels, Esqs., by Maurice Schapira, Esq., Attorneys for Appellant.

Joseph B. Sugrue, Esq., Attorney for Respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark.

Sidney Simandl, Esq., Attorney for Respondent, Jacob Turk.

Samuel Poleshuck, Esq., Attorney for Combination Liquor Merchants of New Jersey, an objector.

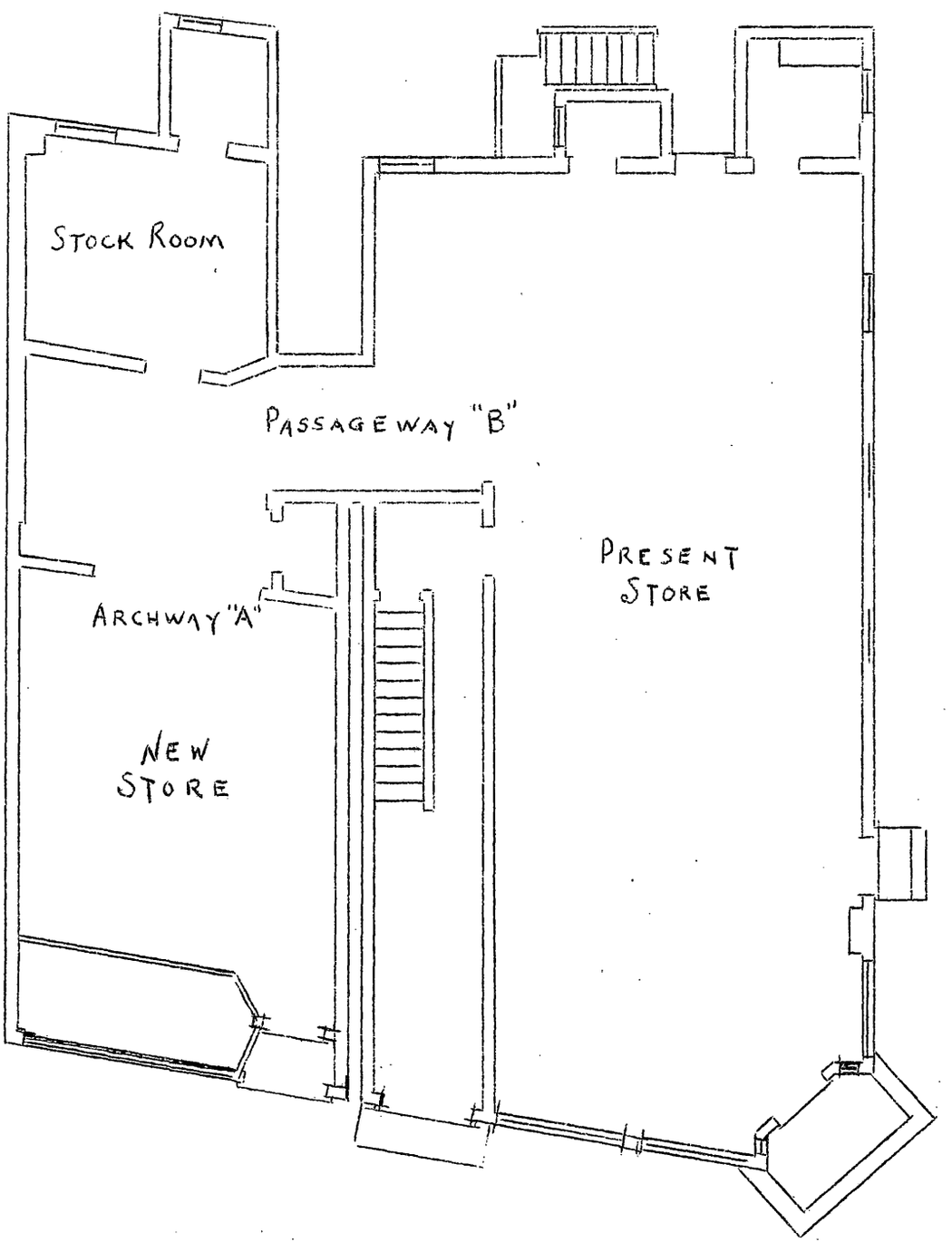
BY THE COMMISSIONER:

This is an appeal from the transfer of respondent Turk's plenary retail consumption license from 141 South Orange Avenue to 141-143 South Orange Avenue, Newark.

Appellant corporation, the holder of a distribution license for premises located within 150 feet of the premises considered herein, contends (1) that 141-143 South Orange Avenue are separate buildings and hence require separate licenses; (2) that the changes to be made by respondent Turk are a mere subterfuge to enable him to operate a tavern and a separate package goods store under his consumption license.

Viewed from the street, the buildings known as 141-143 South Orange Avenue (owned by the same individual) appear to be separate buildings. On the street level there is a space of seven inches between the two buildings but the upper floors of both buildings are apparently connected at the present time. Respondent Turk has filed plans to connect a portion of the first floors of both buildings. This is to be accomplished by structural changes to be made in the rear portions of both buildings, which will result in the creation of a passageway six feet in depth between the store at 141 South Orange Avenue and the store at 143 South Orange

Avenue. The resulting arrangement of the first floor would be substantially as shown in the diagram below:



As to (1): In Re Beisch, Bulletin #81, Item #10, I said:

> "Separate licenses, however, will not invariably be required on the sole ground that the premises sought to be licensed consist of several buildings. Situations may arise where it can reasonably be said that because of the adjacent location of the buildings and their operation as a single unit, they constitute one specified place of business within the meaning of the statute."

The present case is analogous to New Jersey Licensed Beverage Association vs. Camden, Bulletin #215, Item #5, wherein it was ruled:

> "The test, whether stores or establishments are single or separate, is not how they were originally built or what they used to be, but rather what they are now."

In the present case the structural changes to be made by respondent Turk will result in the establishment of a single place of business. The archway, which is marked "A" in the above diagram, is to be eight feet in width. The passageway previously referred to and marked "B" in the above diagram is six feet in depth, and the public may freely pass from one portion of the licensed premises to the other portions thereof. The present case, therefore, is clearly distinguishable from the situation discussed in Re Schlenger, Bulletin #165, Item #11, wherein it was held that where a tavern and package store are conducted distinctly and are separated entirely by a room or hallway, they are, in a substantial sense, separate establishments requiring separate licenses.

The premises considered herein will constitute a single place of business when the alterations are completed.

As to (2): A plenary retail consumption license entitles the holder thereof to the permissive privileges of selling liquor in original containers for off-premises consumption and selling liquor in open receptacles for on-premises consumption. The holder may, fancy-free, choose to exercise both, neither or either of these privileges. Franklin Stores Co. vs. Newark and Shapiro, Bulletin #362, Item #2. It follows that since Turk's premises will constitute a single establishment, he may conduct them as a tavern or package store or both. The fact that he plans to operate a package store in the front part of the addition to his licensed premises is immaterial. He may arrange his premises as he desires so long as the premises constitute a single establishment. Re Koehler, Bulletin #59, Item #13.

It is not necessary to consider herein whether this result works a hardship upon existing distribution licensees. That is not the question at issue in this case. I have heretofore disapproved a special condition inserted on transfer of a consumption license, the effect of which would limit the conduct of the package goods business, under circumstances similar to those considered herein. Re Whitman, Bulletin #312, Item #6. If proper control requires the elimination of arrangements similar to those considered herein, the remedy rests with the Legislature.

It does not clearly appear whether the structural changes have been made. The action of respondent is affirmed but the license may not be actually transferred until the changes are made in accordance with the plans submitted to the Municipal Board of Alcoholic Beverage Control of the City of Newark.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 24, 1940.

7. APPELLATE DECISIONS - FRANKLIN STORES CO. v. NEWARK.

FRANKLIN STORES COMPANY and GEORGE SAWCZUK, Appellants, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK and HARRY GRUBER, Respondents.	)	ON APPEAL CONCLUSIONS

Louis B. Englander, Esq., Attorney for Appellant, Franklin Stores Company.
Charles W. Chadwick, Esq., Attorney for Appellant, George Sawczuk.
Joseph B. Sugrue, Esq., Attorney for Respondent, Municipal Board of Alcoholic Beverage Control.
Klein & Klein, Esqs., by Nathaniel J. Klein, Esq., Attorneys for Respondent, Harry Gruber.

BY THE COMMISSIONER:

This appeal is from the person-to-person and place-to-place transfer of Joseph Atrashewski's 1938-39 plenary retail distribution license for 28 Garibaldi Avenue to Harry Gruber for 293 West Kinney Street, Newark, and from the renewal of that license, as thus transferred, for the present fiscal year.

Appellants' sole contention is that Gruber's package store is - and, at time of the transfer, was - within 750 feet of the existing plenary retail distribution premises of the Franklin Stores Company at 261½-263 Springfield Avenue, Newark; that hence the transfer and subsequent renewal violated Section 5 of Newark Ordinance #2419, which provides (with certain exceptions here not material):

> "No Plenary Retail Distribution License....shall be granted or transferred to another premises within a distance of seven hundred and fifty (750) feet from an existing licensed premises covered by a Plenary Retail Distribution License."

This regulation, designed to prevent the overcrowding of distribution licenses in any particular section of the City, is reasonable in purpose and hence valid. Schwarz Drug Stores, Inc. v. Newark et al., Bulletin 343, Item 5.

Since it fails to specify the mode of measuring the 750 feet, such measurement is to be made in the same manner as measurement of the 200 feet under R. S. 33:1-76 (which forbids the issuance of a retail liquor license for premises within 200 feet of a school or church). Re Guenther, Bulletin 206, Item 15; Re Deull, Bulletin 234, Item 7; Hudson-Bergen Retail Liquor Stores Association v. Loris and West New York, Bulletin 254, Item 10; Atlantic City Licensed Beverage Association v. Atlantic City et al., Bulletin 296, Item 6.

Such measurement is, so far as possible, directly along wall and street lines between the nearest point of the nearest entrances of the respective premises. Aldarelli v. Asbury Park, Bulletin 186, Item 12; St. Mary's Greek Catholic Church v. Manville et al., Bulletin 187, Item 1; Memorial Presbyterian Church v. Newark et al., Bulletin 191, Item 8; Szycher v. Bayonne, Bulletin 266, Item 5; Re Pasternak, Bulletin 287, Item 7.

However, respondents contend that, along the sidewalk between Gruber's store on West Kinney Street and the Franklin store on Springfield Avenue (each standing at the bottom of an "H", with Boyd Street being the cross-bar), there are various obstructions, such as doorsteps and cellar doors, etc. which prevent measurement along the wall or sidewalk line; that, measuring along a line to circumvent these obstructions, the distance is, as calculated by the Newark Police, 755 feet, and, as calculated by Gruber's surveyor, 757.24 feet.

These measurements go right up to the recessed doors of the entrance-ways of the respective stores, thus including, among other things, the full depth of the entrance-ways. Such squeezing in of additional footage, here necessary to make up the requisite distance, is improper. Proper measurement begins and ends, not at the recessed doors, but at the nearest point of each entrance-way on the sidewalk. Cf. Goldberg v. Little Falls, Bulletin 177, Item 4; Bely v. Bayonne et al., Bulletin 266, Item 4; Szycher v. Bayonne, supra; Re Schiffman, Bulletin 273, Item 5.

Thus measured, it appears that the distance, even following respondents' course of square corners wherever possible, is, at most, 745.5 feet (as calculated by the police) and 747.74 feet (as calculated by Gruber's surveyor), hence falling shy of the requisite distance. Measurement by the appellants' surveyor and by investigators of this Department reveals that the correct distance, without the sharply turned corners, is less than 740 feet.

While the shortage is perhaps small, nevertheless, since the Newark Ordinance definitively sets the limit at 750 feet, it is just as fatal as a greater shortage.

Hence, the transfer of the 1938-9 license and its renewal for the current fiscal year were, in so far as Gruber's premises are concerned, erroneous, since those premises are within the prohibited distance of an existing "package" store.

However, there is no evidence or contention that Gruber is not personally qualified to hold the license. In consequence, I shall, instead of cancelling his present license, suspend it until it is transferred to other and satisfactory premises. Cf. Re Henry, Bulletin 295, Item 9; Re McCauley, Bulletin 295, Item 10.

Accordingly, it is ORDERED that the said plenary retail distribution license of Harry Gruber for the current fiscal year, for premises at 293 West Kinney Street, Newark, be and the same is hereby suspended for the balance of its term, effective immediately, with leave reserved to the licensee to file application with the Municipal Board of Alcoholic Beverage Control of the City of Newark to transfer the said license to satisfactory premises in Newark, and, if the application be granted, to apply to me for an order lifting the suspension herein imposed so that the license may be effectively transferred.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 24, 1940.

8. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on December 16, 1939 of John Mack's Pontiac Sedan and a gallon jug of alcohol contained therein, on Harker Field Road, between English Creek Road and Zion Road, in the Township of Egg Harbor, County of Atlantic and State of New Jersey.	Case 5651 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

No other appearances.

BY THE COMMISSIONER:

On December 16, 1939 investigators of this Department apprehended Mack White while transporting a gallon jug of untaxed alcoholic beverages in a Pontiac Sedan owned by John Mack. They arrested Mack White, and seized the car and the liquor.

No one appeared at the hearing held herein to contest the seizure or forfeiture of the property.

The alcoholic beverages are prima facie illicit since the gallon jug bore no indicia of tax payment. P.L. 1939, c. 177. Hence, it and the automobile are unlawful property. R. S. 33:1-1(y).

Accordingly, it is ORDERED that the seized property described in Schedule "A" herein be and the same is hereby forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 24, 1940.

SCHEDULE "A"

1 - 1-gallon jug of alcoholic beverages
1 - Pontiac sedan, Engine No. 930095, Serial No. 811522, N. J. 1939 Registration No. AE 54 C.

9. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against

THEATRE LIQUOR SHOP, INC.,
716 Main Avenue,
Clifton, New Jersey,

Holder of Plenary Retail Distribution License D-10, issued by the Municipal Council of the City of Clifton.

CONCLUSIONS AND ORDER

John M. McDermott, Esq., Attorney for the Licensee.

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on December 27, 1939, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Accordingly, it is, on this 24th day of January, 1940,

ORDERED, that Plenary Retail Distribution License D-10, heretofore issued to Theatre Liquor Shop, Inc. by the Municipal Council of the City of Clifton, be and the same is hereby suspended for a period of five (5) days, effective January 28, 1940, at 3:00 A. M.

D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - BRAWL - LICENSE REVOKED.

January 24, 1940.

Samuel R. Morton,
City Clerk,
Rahway, N. J.

My dear Mr. Morton:

I have before me your letter of January 20th re disciplinary proceedings conducted by the Municipal Board of Alcoholic Beverage Control against Stephen Muzyka, 1591 Main Street, charged with permitting a brawl on his licensed premises on December 31st, and note that the license was revoked.

Please express to the members of the Board my appreciation for their conduct of these proceedings on the Board's own initiative.

Since I know nothing of the facts, I can express no opinion on the merits.

I note, however, that the resolution revoking the license recites that Muzyka had on two previous occasions been found guilty of violation of the State Regulations. According to my records, his license was suspended for forty days commencing in April 1938 for permitting gambling on his licensed premises and again for ninety-five days commencing in August 1938 for the same kind of violation.

Very truly yours,

Frederick Burne

Commissioner.