Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 121 May 28, 1936.

1. TRANSPORTATION - LICENSEES REQUIRED TO WARN CONSUMERS OF JUST WHAT THE LAW IS - SPECIFIC WARNINGS REQUIRED.

LICENSEES - SALES IN QUANTITIES IN EXCESS OF PERMISSIBLE TRANSPORTATION - SPECIFIC WARNINGS REQUIRED IN SUCH CASES - ABNORMAL SALES REQUIRE UNUSUAL PRECAUTIONS.

May 23rd, 1936.

Weston & Co.,
Newark, N. J.

Gentlemen:

Yesterday, a customer who bought three cases of "hard" liquor from you was arrested for transporting them in his automobile. His machine was seized as well as the liquor. This unfortunate result would probably have been avoided if you had expressly warned him that it was illegal for him to do so.

It is the duty of licensees selling package goods in case lots to cooperate in strict enforcement of the liquor law by warning such purchasers of the law in this respect. Abnormal sales require unusual precautions.

You are therefore directed immediately and prominently to display signs in your premises warning customers that it is unlawful to transport within this State within any consecutive period of twenty-four hours more than twelve quarts of hard liquor or more than five gallons of wine or more than one-half barrel or twenty-four quarts of beer, ale or porter; that if anyone desires to transport quantities in excess of those mentioned, special permit must first be issued by the State Commissioner.

You are also directed to inform each person who desires to buy from you such excess quantities personally and expressly just what the law is in this respect, before any such sale is made.

All other licensees selling package goods in such excess quantities will do the same forthwith.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. SPECIAL PERMITS - WHEN REQUIRED

GIFTS - A LICENSEE WHOSE LICENSE DOES NOT CONFER THE PRIVILEGE OF SELLING TO CONSUMERS MAY NOT MAKE SUCH SALES EXCEPT PURSUANT TO SPECIAL PERMIT.

May 21, 1936.

Franklin H. Berry, Esq.,
Toms River, New Jersey.

Dear Sir:

In reply to your inquiry of May 18th for rulings upon the question of whether or not a special permit is required for the

serving gratuitously of beer at meetings of political or other groups, I am sending you herewith re Dworkin, Bulletin 53, item 12, re Gallicchio, Bulletin 113, item 2 and re Renner, Bulletin 115, item 4.

The substance of these rulings is that if the alcoholic beverages which are served are given away really gratuitously in every respect and no admission is charged nor tickets are sold nor special assessments are made, then it is not a sale of alcoholic beverages within the terms of the Control Act but an out and out gift under which circumstances no special permit is required.

Special permits are required only if the alcoholic beverages are themselves sold or if admission is charged or if the price of the alcoholic beverages is included in the price of other refreshments in which event, although indirectly, it would be a sale of alcoholic beverages within the terms of the Act, not an out and out gift.

Re Dworkin illustrates the general proposition. Re Gallicchio illustrates the circumstances under which no special permit is required. Re Renner is an example of an indirect sale for which a special permit must first be obtained.

Re Camden County Beverage Company, Bulletin 118, item 1 (copy also enclosed), while not directly on your question, holds that breweries, whose licenses confer the privilege of selling only to licensed wholesalers and retailers, may not make sales or gifts of beer to political or other organizations except pursuant to the terms and provisions of a special permit. It follows that no licenseewhose license does not confer the privilege of selling to consumers may make such sales unless a special permit authorizing same has first been obtained.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. TRANSPORTATION - INSIGNIA - FACTS AND FIGURES.

May 23, 1936.

C.E.Smith,
Director of Licensing and Enforcement,
Pennsylvania Liquor Control Board,
Harrisburg, Pa.

Dear Mr. Smith:

I have yours of the 14th in reference to our method in controlling the transportation of alcoholic beverages in New Jersey.

1. Up to the present time for the fiscal year, beginning July 1, 1935 and ending June 30, 1936, 5,642 Transportation Insignia have been issued by this Department. Of this number, 1,595 were issued free, on the basis that each holder of a license obtains his initial insignia free of charge and 4,047 were issued at a fee of $2.00 each.

2. The total income from insignia issued this year is $8,094.00.

3. The cost of preparation of these permits is as follows: $300.00 for printing the 8,000 insignia and $77.00 for the printing of 25,000 application forms, making a total cost of $377.00.

4. Our experience as far as placing the insignia on the windshield is concerned fails to disclose any appreciable hazard in respect to safe driving. As far as I know not a single case has been reported to this Department since the insignia were first used more than two years ago where any hazardous situation in reference to the operation of the vehicle arose because of the insignia.

If any further information is desired, I will gladly oblige.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. APPELLATE DECISIONS - JONES vs. CAROMANO.

ARTHUR W. JONES, IRVING RANDALL and W. DOUGLAS ROE, as ROSEDALE COMMUNITY COMMITTEE,	)	
Appellants,	)	
-vs-	)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF CAMDEN and FRANK CAROMANO,	)	CONCLUSIONS
Respondents.	)	

C. W. Rotzell, Esq., Attorney for Appellants.
Meyer L. Sakin, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control of Camden.
Joseph P. Wilson, Esq., Attorney for Licensee Frank Caromano.

BY THE COMMISSIONER:

This is an appeal from the issuance of plenary retail consumption license to respondent Caromano, for premises located at 3336 Westfield Avenue, Camden.

Appellants, representing a large number of citizens residing in the section of Camden which was formerly known as "Rosedale", contend that the license was improperly issued because the neighborhood is residential, and a large majority of the residents object to the issuance of said license.

The premises for which the license was sought consist of an extension store in front of a two story building at the corner

of Westfield Avenue and 34th Street. Westfield Avenue is a thoroughfare on which a bus line is operated, and which is used by much of the traffic passing through Camden. Trolley tracks remain in the street. Immediately adjoining is a gasoline station. In the other direction and on the same side of the street, the whole next block is fronted with small stores. There are also a large number of small stores located on Westfield Avenue to the east of 36th Street. Diagonally opposite the premises is another gasoline station. This section of Westfield Avenue, however, is not entirely given over to business because there are several private dwellings facing upon this street and there are families living above the stores heretofore mentioned.

After reading the transcript and examining the exhibits in this case, being in doubt, I made a personal examination of the location and its surroundings to satisfy myself as to the character of the neighborhood. I find it is not wholly business, although mainly so. It is far from my conception of being strictly residential. Westfield Avenue may have been all that in bygone days, but it is not now. No one on this section of Westfield Avenue would ever think himself in Fair View or Yorkship Village. Hence, Norton vs. Camden, Bulletin #97, item 9, and Ely vs. Long Branch, Bulletin #99, item 2, are not applicable. In those cases, the places for which the licenses were sought were located in the center of a strictly residential district. In the present case, the premises for which the license is sought are located on a main thoroughfare. In the Norton case, the stores were clumped together and fitted the neighborhood. In the present, they straggle along intermittently for blocks and in nowise are appropriate to the residences on the side streets. The section is essentially business.

The local issuing authority determined that the license should be issued. After careful consideration, I fail to find any abuse of their discretion.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner.

Dated: May 23, 1936.

5. APPELLATE DECISIONS - BROADWAY LIQUOR STORES vs. TRENTON.

BROADWAY LIQUOR STORES, INC., a corporation of the State of New Jersey,

Appellant,

-vs-

CITY COUNCIL OF THE CITY OF TRENTON,

Respondent.

ON APPEAL

CONCLUSIONS

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George Pellettieri, Esq., Attorney for Appellant.
Adolph F. Kunca., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of its application for transfer of a plenary retail distribution license which had been

issued to Ed's Wine and Liquor Store, 13 West Hanover Street, Trenton.

Substantially all of the stock of Broadway Liquor Stores, Inc. has been issued to and is now outstanding in the name of Helen Tattory. She is the President of said corporation, and her character and reputation are unquestioned. The other stockholders are related to Helen Tattory but they have no financial interest in appellant corporation.

Respondent contends that its action in denying the transfer was proper because of the relationship of the stockholders of appellant corporation to persons undesirable as licensees.

An investigator employed by the City of Trenton testified that on October 21, 1935 Charles Tattory, the husband of Helen Tattory, was arrested for possession of alleged illicit liquor and was held under Five Hundred ($500.00) Dollars bail to await the action of the Grand Jury. He further testified that certain other relatives of Helen Tattory, who are not the stockholders mentioned above, have been arrested and convicted at various times for aiding and abetting lotteries. As a result of the information obtained through this investigation, the application for the transfer was denied.

At the hearing Helen Tattory testified that neither she nor her husband have been on speaking terms for more than a year past with any of their relatives who had been convicted in connection with the lottery charges as set forth above, and that none of these relatives was interested in any way in the appellant corporation. In view of this testimony, which is uncontradicted, the evidence as to the criminal record of these relatives is of no moment. Relatives are born, not chosen.

I am satisfied that Charles Tattory has an interest in appellant corporation. About one-fifth of the capital of this corporation was contributed by him, and the balance of the capital was drawn from a joint savings account belonging to himself and his wife. He has been unemployed for some time past. It is planned that he will assist his wife in conducting the business.

The remaining question is whether Charles Tattory is eligible, for a corporation may not be used as a cloak by persons who are not eligible to receive licenses in their own names. Boccistico vs. Trenton, Bulletin #56, item 8; William Tell vs. Ridgewood, Bulletin #65, item 3.

The action of respondent in denying the transfer, because of his interest in appellant corporation, and at a time when charges were pending against him for possession of illicit liquor, was not unreasonable.

Subsequent investigation, however, shows that Charles Tattory was indicted on the charge for which he was arrested, by the Grand Jury of Mercer County, that he entered a plea of "not guilty" and that thereafter the indictment was quashed by order of Judge James S. Turp.

Hence, there is no reason now why the transfer should not be granted.

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

D. FREDERICK BURNETT
Commissioner

Dated: May 23, 1936.

6. APPELLATE DECISIONS - HODANISH vs. TRENTON

Anna Hodanish, Appellant, -against- City Council of the City of Trenton, Respondent.	ON APPEAL CONCLUSIONS

George Pellettieri, Esq., Attorney for Appellant
Adolph F. Kunca, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a refusal to transfer from Rocco Cracker to the appellant plenary retail consumption license No. c-305, for premises known as 219 Ferry Street, Trenton.

Respondent denied the transfer because it alleges that appellant, who has never held a liquor license, is personally unfit.

It is always unpleasant to be required to find that a prospective licensee is personally unfit to have a liquor license. This is true particularly in a case like the present one, which concerns a young woman, the mother of a boy nine years of age. It is well recognized, however, that if the problems of liquor control are to be solved, great care must be exercised in determining the question as to whether or not an applicant is worthy to receive a license.

The life history of appellant is rather drab. When sixteen years of age she was committed to the State Home for Girls as an incorrigible, and remained there two years and four months. A few months after leaving this institution she was married, but lived with her husband only a short time. The separation seems to have been due to the husband's fault, because he was required, by an order of the Court, to support his wife and their child, born after the separation, and it appears that he contributed six or eight dollars weekly to their support for a period of three or four years. He has been paying nothing to them during the past six years. From 1930 to 1934 appellant worked in a dry goods store, making $15.00 a week; thereafter, for eight or nine months, she worked as a waitress in a restaurant, at a small salary. She has been unemployed for the past year and a half.

On September 2nd, 1934 appellant was arrested with her mother, and both of them were charged with unlawful possession of alcoholic beverages. At that time she was and now is living with her mother. Thereafter her mother pleaded non vult to this charge and paid a fine. The case against appellant was nolle prossed.

At the hearing appellant testified that she has never been engaged in bootlegging activities. It appears that one of the principal reasons why the issuing authority refused to trans-

fer the license to her was because they believed that she has been engaged in such activities. It is true that there is no direct evidence upon which to base such a supposition, but it cannot be said that their suspicions are entirely unfounded in view of the fact that she is living with her mother who admittedly violated the provisions of the Control Act, and also because appellant, in the latter part of 1934, purchased an automobile (which she now owns) for the sum of $1150.00, despite her scant earnings and a long period of unemployment. It was also testified by an investigator for the City of Trenton that appellant's reputation was "not so good".

There is no conviction against appellant, let alone conviction for a crime involving moral turpitude. Nevertheless, it is competent for municipal issuing authorities to confine their selection of licensees to those who are clearly worthy. Speranzo vs. Millburn, Bulletin #57, item 8. Appellant is not disqualified by statute from receiving a license, but respondent has the power and is under the duty to examine into the character and fitness of all applicants, and to deny the application of those who they determine are unfit to receive a license. A determination by municipal issuing authority that just cause exists for the denial of an application should, on appeal, be given considerable weight. Moss v. Trenton, Bulletin #29, item 12; Alexander vs. Trenton, Bulletin #37, item 13; Orofino vs. Millburn, Bulletin #45, item 15; cf. Sylvester vs. South Belmar, Bulletin #38, item 15.

As was said in the case of Iamello vs. Rumson, Bulletin #77, item 9:

> "The dispensation of alcoholic beverages from time immemorial has been recognized as impregnated with public interest. The character of the persons to whom the privilege of making such sales is entrusted is of utmost importance - perhaps in the long run the most effective safeguard against abuses."

There is sufficient in the record to show that respondent's adverse determination to appellant was not unreasonable.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 23, 1936.

7. APPELLATE DECISIONS - WILLIAM TELL HOTEL CORP. vs. RIDGEWOOD

WILLIAM TELL HOTEL CORPORATION, a corporation of New Jersey,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE VILLAGE OF RIDGEWOOD,

Respondent.

ON APPEAL

CONCLUSIONS

Meehan Brothers, Esqs., Attorneys for Appellant.
Thomas L. Zimmerman, Jr., 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 74 Godwin Avenue, Ridgewood.

Respondent contends that the application was properly denied because (1) of the existence of a resolution adopted pursuant to Section 37 of the Control Act, which limits the number of plenary retail consumption licenses to be issued in Ridgewood to six and the issuance of said allotted number prior to filing of appellant's application, (2) of the personal disqualification of the president (John Wirz) of appellant corporation due to lack of the required period of residence in New Jersey, and (3) of the fact that a previous application made by appellant was denied for misstatements in the application which were intended to mislead the governing board.

Appellant contends that the action of respondent was prejudicial, discriminatory and against the best interest of the community in that (1) appellant had spent large sums of money to equip the premises suitably for the sale of alcoholic beverages, (2) the granting of the license was socially desirable, (3) the resident population is not adequately serviced by the existing licensed places and (4) the appellant is a bona fide hotel and therefore the limitation of licenses is unreasonable as applied to it.

A brief summary of the facts relative to previous applications made for licenses for premises sought to be licensed is appropriate.

One Victor Froelicher applied for and was granted a license for the period ending June 30, 1935. On November 27, 1934 that license was revoked by the Board of Commissioners of Ridgewood based upon proof satisfactory to it that Froelicher was a "front" for Dora Wirz, the owner of the property containing the licensed premises. Immediately thereafter--on November 28, 1934 -- the appellant corporation was formed and an application made by it for a license to dispense alcoholic beverages. Neither Dora Wirz nor her husband John Wirz appeared as stockholders in the newly formed corporation. The Board of Commissioners of Ridgewood upon investigation determined that that application was merely a subterfuge and that the real parties in interest had not been disclosed therein. This factual determination of the Board was approved on an appeal. William Tell Hotel Corporation v. Ridgewood, Bulletin #65, Item #3. In other words, the appellant corporation has been adjudicated guilty of an attempt to mislead the respondent.

It is the contention of respondent and supported by the evidence adduced at the hearing, that John Wirz is now the principal shareholder and President of the appellant Corporation; that his wife Dora Wirz still owns the building; that neither John Wirz nor his wife Dora would personally qualify for a license due to lack of five years residence in New Jersey; that although Dora Wirz holds no stock and has executed a bill of sale for her interest in all goods and chattels located in the building to appellant corporation, nevertheless she was still to be employed upstairs in charge of the rooms and John Wirz was to manage the kitchen and the dining room; that, therefore, regardless of the

change in stockholdings and officers it is the same corporation controlled by the same persons interested in the old rejected application.

It is forcefully contended by respondent that if a license had been issued on the original application and subsequent thereto, the true facts warranting the refusal to grant the license were discovered, the licensee could have been brought up on charges based upon that part of Section 22 of the Control Act which provides,

> "Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license, are grounds for revocation."

and that the license would have been revoked for the reasons set forth in the previous appeal, Bulletin #65, Item #3, and the premises disqualified (as permitted in Section 28 of the Control Act) for two years. Cf. Eckert v. Paterson, Bulletin #114, Item #13.

The reasoning of the respondent is sound. In granting or refusing to issue a license the issuing authority is in duty bound to weigh and consider carefully all the facts and circumstances in connection with the application and the applicant. That is its responsibility. That clearly has been done in this case. There has been no credible proof that the action of respondent was motivated by anything other than the exercise of its honest and best judgment.

The attempted change in the corporate set-up of appellant company in nowise alters the plain fact that it is the same corporation again applying for a license that had been previously denied for wilful concealment of material facts. That adjudication was sustained on appeal. It therefore operates as a personal bar to any application by this corporation.

In view of this finding, it is unnecessary to consider the other points involved.

The action of respondent is affirmed.

Dated: May 25, 1936.

D. FREDERICK BURNETT
Commissioner

8. APPELLATE DECISIONS - GUENTHER vs. PARSIPPANY.

MILDRED V. GUENTHER,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PARSIPPANY-TROY HILLS,

Respondent.

ON APPEAL

CONCLUSIONS

Emil H. Block, Esq., Attorney for Appellant.

John H. Grossman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant complied with all the formal requirements pertaining to her application for transfer of a plenary retail consumption license from premises on Bloomfield Avenue near Littleton Road to premises on Littleton Road near Parsippany Boulevard, in Parsippany-Troy Hills Township. Her personal fitness is admitted.

Respondent contends that the application was properly denied because the appellant's premises are located in a residential area and several persons residing in the vicinity objected to the transfer of the license. Littleton Road is a macadam highway into Morristown. The premises to which transfer is sought are located on Littleton Road about 250 feet from its point of intersection with Parsippany Boulevard. Between them and Parsippany Boulevard is a corner grocery store and gasoline station. On the opposite corner of the Boulevard is a residence where the owner does repair work on automobiles. In the opposite direction on Littleton Road are farms and residences. Some of the farmers sell their produce at roadside stands along Littleton Road. A small bakery business is conducted in one of the nearby residences. One of the neighboring farmers maintains a commercial hennery.

Under these circumstances it cannot be said that Littleton Road is residential. The Township had issued liquor licenses for two other premises on Littleton Road in farming sections which are substantially like the one in question. Indeed, a remonstrance which was filed with the Township Committee describes the signers as "property owners and business people in the neighborhood." The fact that Parsippany Boulevard is residential does not determine the character of Littleton Road. Doherty v. Atlantic City, Bulletin #58, Item #8. The only objector who testified at the hearing of the appeal resides on Parsippany Boulevard. This is likewise true of several who signed the petition against the transfer but who did not appear at the hearing.

A member of the Township Committee testified that the principal reason for refusing the transfer was the protest of the neighboring residents and that if there had been no such protest the application for transfer would have been granted. The objections of the residents are not directed to appellant, but to the issuance of any license in the vicinity. Such objections do not justify an issuing authority in refusing to transfer a license to premises in an ordinary business neighborhood. Bisante v. Camden, Bulletin #58, Item #10.

A further objection to the transfer, urged by respondent's counsel on appeal but not considered at the time the transfer was denied, is based upon the character of the premises itself. It is a small bungalow type residence with enclosed porch. While a uniform policy to require more suitable premises might well be sustained, the evidence in this case shows a complete lack of any such uniform regulation. The Chief of Police testified that several licensed premises were conducted in small dwelling houses. A policy which is not applied uniformly is of no moment on appeal. See Vonella v. Long Branch, Bulletin #71, Item #12.

While transfer of a liquor license to other premises is not an inherent privilege, nevertheless, when no fair question is

made of the personal character of the applicant or the suitability of the premises to which he desires transfer, the refusal to transfer cannot be arbitrary. Van Schoick v. Howell Township, Bulletin #120, Item #6.

The action of respondent in refusing to transfer is reversed. Respondent is directed to issue the transfer as applied for.

Dated: May 25, 1936.

D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - LISI vs. NEWFIELD

NICOLA LISI,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF NEWFIELD (Gloucester County),

Respondent.

ON APPEAL

CONCLUSIONS

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Harry Adler, Esq., Attorney for Appellant.
James B. Avis, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located on West Boulevard, Newfield.

Respondent contends that the application was properly denied for the reason that there is a sufficient number of licensed places in the vicinity of appellant's premises and the issuance of an additional license in said vicinity would be socially undesirable.

The area of the Borough of Newfield is about one (1) square mile and its population is about one thousand (1,000).

The premises for which a license is sought are located at the southerly end of the business section, which extends for a distance of about two blocks on the West Boulevard. About two hundred forty (240) feet north of appellant's premises there is a poolroom, and to the east of the poolroom, across the railroad tracks and about two hundred (200) feet away, is an old hotel. Consumption licenses have been issued to both the poolroom and the hotel.

The chief contention of appellant is that the denial of the license to him was unreasonable because the Borough had previously issued a third consumption license to a place on the West Boulevard at the northerly end of the business section. The third licensee failed to renew his license in July 1935. The

same contention was made in the case of Rajca vs. Belleville, Bulletin #101, item 1. In that case it was determined that the argument should not be given any weight. It was ruled therein:

> "The fact that proper restrictive measures were not adopted at the time when the three licenses crowding the vicinity were issued, is no reason why the mistake must be perpetuated. The present question is whether there is a sufficient number now, not whether there were more previously. If in good faith appellant's application was denied because there is presently a sufficient number of licensed places in the vicinity respondent's action will be upheld."

Appellant brought out on his cross-examination of the Councilmen who appeared that they would probably have granted a renewal of the license to the third licensee had he applied in July 1935, and argues therefrom that the denial of appellant's application is shown to be unreasonable. This same point was considered also in the Rajca case, and was held therein to be without weight.

There remains to be considered the question of the good faith of respondent in denying the application because there is a sufficient number of places in the vicinity. No objection was raised as to the character of the appellant. A short time before he had applied for a license for other premises on West Boulevard and respondent had denied that license when over one hundred (100) people appeared at the hearing to protest that they did not want another saloon in the Borough. With this evidence of local sentiment before them, the Borough Council refused to grant this application when it was made. The Mayor of Newfield testified that there was not enough business in the Borough for the two licensees now operating therein. The application was denied by a vote of one in favor and two against, but the three Councilmen who had not been present at the meeting appeared at the hearing of the appeal and testified that they would have voted against the issuance of the license because they felt that there was no need for an additional licensed premises in the Borough.

Appellant has attempted to show the necessity for an additional license by the testimony of witnesses who stated that during the summer season between one hundred and one hundred twenty-five farmers a day come into the shipping point at the railroad in Newfield for the purpose of shipping produce to market. It has been shown, however, that farmers, in order to reach the shipping point, must pass close to the two places already licensed, and it seems but fair to assume that these two places can take care of this trade.

There is some evidence that transient trade passing along the West Boulevard could support another license. The extent of the transient trade was not shown, but it is apparent that most of the transient through traffic uses the Delsea Drive rather than the West Boulevard, which is a tar road covered with stone and not a concrete highway. The needs of transients is only one of the many factors to be considered in deciding whether the granting of an application would result in the existence of too many licenses in a particular vicinity. Voos vs. Union, Bulletin #73, item 1; Connolly vs. Middletown, Bulletin #81, item 11; Henry vs. Way, Bulletin #90, item 9.

It appears also that Franklin Township, which surrounds the Borough of Newfield, has sixteen (16) licensed places, which

fact should be given weight in considering the thirst needs of the alleged parched farmers who come into the Borough from the Township.

The situation here is quite the same as in Palmer vs. Englishtown, Bulletin #116, item 4.

The appellant has not sustained the burden of proof showing that an additional licensed place is needed to take care of the needs of those residing in the Borough or those passing through the Borough, nor has he shown any discrimination against him by the respondent. The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

DATED: May 26, 1936.

10. APPELLATE DECISIONS - DeCHRISTIE vs. GLOUCESTER

PHILIP DeCHRISTIE,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF GLOUCESTER (CAMDEN COUNTY),
Respondent.

ON APPEAL

CONCLUSIONS

N. Thomas Smaldore, Esq., Attorney for Appellant.

George D. Rothermel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application by a plenary retail consumption licensee for a transfer from premises at Black Horse Pike and Water Street to Black Horse Pike near Sixth Avenue, in the Township of Gloucester.

The only question raised is the suitability of the location for which a license is sought.

It appears from the pleadings that the application for transfer was denied by the Township Committee because of objections filed by interested persons at the public hearing on the application. The objections may be summarized as follows: (1) a transfer, if permitted, would be dangerous to school children; (2) the licensed premises would be too close to a church and sunday school in the neighborhood, and (3) it would impair real estate values of adjoining property and destroy the residential character of the neighborhood.

The premises to which the license is sought to be transferred are located on the east side of Black Horse Pike, which is a main thoroughfare, 60 feet in width, running from north to south. The premises are between Fifth and Sixth Avenues near Sixth. Between it and Sixth Avenue is an "American" store. To the south is one house occupied as a residence. There are no other buildings to the intersection of the Black Horse Pike and Fifth Avenue. On the opposite side of Fifth Avenue are several stores and on the west side of Black Horse Pike is also a store. The intersection of Black Horse Pike and Fifth Avenue

constitutes the business center of a well defined section of Gloucester Township known as the Glendora Section. Directly across Black Horse Pike from the premises in question are several one-family residences.

At the northwest corner of Black Horse Pike is a bus stop used by school buses as well as the regular transportation vehicles. This bus stop is about 225 feet from the premises in question if measured in an airline. Measured, however, "in the normal way that a pedestrian would properly walk" (Re: Ackerman v. Paterson, Bulletin 48, Item 11) the distance is 284 feet. The church is located on the west side of Black Horse Pike approximately 600 feet north of the premises. The school house is on Fifth Avenue approximately 1200 feet from the premises.

Section 76 of the Control Act prohibits the issuance of any license for premises within 200 feet of a church or school. This minimum requirement does not, however, deprive issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near a church or school, although beyond the 200 foot minimum. Serafin v. Bayonne, Bulletin 107, item 3; In re: Borough of Upper Saddle River, Bulletin 77, item 6; Persi v. Trenton, Bulletin 46, Item 13; Staciewicz v. Trenton, Bulletin 35, Item 10. But such a policy, in addition to being reasonable, must be fairly and uniformly applied. McConnell v. Trenton, Bulletin 35, Item 12; Vonella v. Long Branch, Bulletin 71, item 12. In the instant case, there was until July 1935 a licensed saloon on the north side of Fifth Avenue, 40 feet west of Black Horse Pike, and therefore, within 40 feet of the school bus stop. This location was likewise much nearer both the church and the school house. No explanation appears from the record of the different standard applied by the respondent to this location and the one in question.

No evidence was adduced to show that this was a neighborhood of such residential character as to be unfavorably affected by the license transfer. General objections to the issuance of any license for premises located in a business neighborhood do not justify a refusal. Bisante v. Camden, Bulletin 58, Item 10.

While transfer of a liquor license to other premises is not an inherent privilege, nevertheless, when no fair question is made of the personal character of the applicant or the suitability of the premises to which he desires transfer, the refusal to transfer cannot be arbitrary. Van Schoick v. Howell Township, Bulletin 120 Item 6; Guenther v. Parsippany-Troy Hills, Bulletin 121, Item 8.

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

D. FREDERICK BURNETT
Commissioner

Dated: May 26, 1936.

11. APPELLATE DECISIONS - DUNSTER vs. BERNARDS.

LEPORT F. DUNSTER,)

Appellant,)

-vs-)

TOWNSHIP COMMITTEE OF BERNARDS TOWNSHIP (Somerset County),)

Respondent)

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ON APPEAL

CONCLUSIONS

Mulligan & Koenig, Esqs., By George D. Mulligan, Esq., Attorneys for Appellant.
Anthony P. Kearns, Esq., Attorney for Respondent.
McCarter & English, Esqs., by Herbert Baer, Esq., Attorneys for Objectors.

BY THE COMMISSIONER:

The parties to this appeal and the premises in question are the same as those described in a previous appeal reported under the same title in Bulletin #99, item 1.

The Township Committee, pursuant to conclusions filed in the case cited above, has given further consideration to the application and has denied again the license sought to be issued. It is from this action of respondent that the present appeal has been taken.

It appears that on reconsideration of this matter, the license was denied on a vote of two against and none in favor; the third member of the Township Committee not voting. Both of the Committeemen who twice voted against the granting of the license testified at the hearing of this appeal. Both testified that there is no need for another licensed place in the Township. One of these Committeemen (who did not testify at the hearing of the first appeal) gave as his principal reason for voting to deny the license the fact that all persons living in close proximity of the premises were opposed to the granting of this license. The other Committeeman testified that he voted to deny the license because, from personal interviews with seven or eight people who lived near the premises and from a study of the names on the petition, he was satisfied that the majority of residents in the immediate vicinity opposed the granting of the license. From this evidence, I am satisfied that the members of the Township Committee in reconsidering this case exercised their considered judgment on the facts and did not stop at a mere tabulation of the signatures which appeared on the petitions.

The Township of Bernards, with a population of about thirty-five hundred (3500) now has five consumption places. Respondent has not adopted an ordinance nor passed a resolution limiting the number of licenses. A municipality, however, may refuse to issue a license where a sufficient number has already been issued, even in the absence of a formal limitation of the number of licenses to be issued. Haycock vs. Roxbury, Bulletin #101, item 3 and cases cited therein.

The evidence as to necessity consists principally of petitions which have been filed urging the granting of the license. On the other hand, a petition was presented which contained the names of a large number of persons who opposed the granting of the license. From the testimony given at the hearing concerning

the names on these petitions, it appears that the occupants of the five or six homes which are located within a radius of one-quarter of a mile from the premises in question are opposed to the granting of the license, and that of those who live within a radius of more than one-quarter but less than one-half of a mile of the premises in question, only four or five persons favor the granting of this license. In view of this testimony it cannot be seriously contended that the license is necessary to take care of the local needs. The applicant has testified that he will depend for his business on transients, farmers and some local trade. There is no direct evidence in the case that the transient trade requires the issuance of this license. The only evidence as to such need is that of appellant, who testifies that he knows that a former licensee at the same premises "did a very nice business with the traveling public". This former licensee died in August 1934, his business was closed a short time after his death and has never been reopened since that time. There is testimony that this prior licensee conducted a dance hall on the premises in connection with his liquor business and that, while so conducted, the place became a nuisance to the community because of the noise and the type of people it attracted from out of town. There is no question in this case about the personal fitness of the present applicant and no intimation that he will conduct the premises in an improper manner. He has stated that he does not intend to permit dancing on the premises. The question remains, however, as to whether ordinary transient trade, not attracted by the dance hall feature, requires a licensed place in this vicinity.

The question as to the need of another licensed place is largely a matter of discretion with the local issuing authorities. Haenelt vs. Haworth, Bulletin #57, item 11; Kalish vs. Linden Bulletin #71, item 14; Connolly vs. Middletown, Bulletin #81, item 11; Henry vs. Way, Bulletin #90, item 9.

In view of the fact that appellant must look to transient trade for the larger part of his business and, in view of the further fact that there is testimony that the transient trade can be properly accommodated at two licensed places located on the same road about three miles east of the premises in question, it cannot be said that appellant has sustained the burden of proving that public necessity or convenience dictated the issuance of another license.

The evidence also shows that the premises in question are located in a sparsely settled residential section of the Township. There are no stores within three-quarters of a mile of the premises for which the license is sought. The residential character of this neighborhood, coupled with the fact that a substantial number of people residing therein object to the granting of the license, is sufficient reason for the denial of the privilege sought. Apgar vs. Tewksbury, Bulletin #66, item 2. There is nothing to show that the respondent has acted arbitrarily or unreasonably.

The action of respondent is, therefore, affirmed.

Dated: May 26, 1936.

D. Frederick Burnett
Commissioner