

STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 49.

October 20, 1934

1. APPELLATE DECISIONS - CINELLI VS. MT. EPHRAIM

GUILIO CINELLI,
Appellant

-vs-

MAYOR AND COUNCIL OF THE BOROUGH
OF MT. EPHRAIM (CAMDEN COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Julius Rosenberg, Esq., Attorney for Appellant
Frank M. Lario, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for a plenary retail consumption license for premises located at 29 Black Horse Pike, Mt. Ephraim, New Jersey.

Respondent contends that it properly denied said application because of the manner in which appellant had conducted the premises sought to be licensed. Said premises were operated by appellant until June 30, 1934 as manager, for one Baltake, who had a license. As a result of numerous complaints received from neighbors concerning the manner in which the place was run, the Police Committee of the Town of Mt. Ephraim held a public hearing on June 1, 1934 at which appellant appeared and testified. At this hearing there was competent evidence to show that music and noise from appellant's premises continued far into the night and materially disturbed the peace and quiet of the neighborhood and the comfort and well-being of the residents thereof; that brawls occurred in and about the premises; and that when one neighbor complained about the noise, appellant struck him and knocked him down. Before any action with reference to the Baltake license was taken by respondent, appellant applied for a license in his own name for the period expiring June 30, 1935. Upon this record, respondent denied the application.

Authority to dispense alcoholic beverages has at all times been recognized as a privilege, as distinguished from a right, which the issuing authority may deny for just cause. A factual determination by a municipal issuing authority that just cause exists for the denial of an application, will, on appeal, be given great weight and if reasonable will be sustained. Grofino vs. Township Committee of the Township of Millburn, Bulletin #45, Item #15. In view of the manner in which appellant conducted the business heretofore, I cannot say that respondent's determination was unreasonable.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: October 10, 1934.

2. APPELLATE DECISIONS - WHITCRAFT VS. LODER

LEAR WHITCRAFT,
Appellant

-vs-

HON. LEROY W. LODER, by designation
JUDGE OF THE COURT OF
COMMON PLEAS OF CAPE MAY COUNTY,
Respondent.

ON APPEAL
CONCLUSIONS

Benjamin M. Cohen, Esq., Attorney for Appellant
Rex Donnelly, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for a plenary retail consumption license for premises located on the Delsea Drive, Village of Eldora, Township of Dennis, County of Cape May.

Respondent contends that the application was properly denied because residents in the vicinity of appellant's premises object to the issuance of any licenses for premises located therein.

Appellant had a plenary retail consumption license for the period expiring June 30, 1934, for the premises now sought to be licensed. Said license had been issued by the Township Committee prior to the amendment of the Control Act which designated the Judge of the Court of Common Pleas as the issuing authority in Counties of the Sixth Class. A Township resolution introduced in evidence by consent of counsel states that the issuance of a license to appellant is for the best interests of the Township. One other license has been issued therein for the current period by respondent.

Appellant's premises are in a rural area along a principal state highway. The nearest residence is approximately 700 feet away. The objectors resided within a radius of several miles of appellant's premises and, except as hereinafter noted, objected not to this particular license, but desired no licenses at all in the neighborhood. Other local residents testified in favor of the granting of the application. While objections to the issuance of any license for premises located in a residential neighborhood may be of considerable weight, Vanozzi vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #35, Item #7, where, as here, the premises are not in a residential neighborhood, were operated under a license for the preceding period, and the governing body of the municipality certifies that the best interests of the community would be served by a renewal of the license, the application should not be denied merely upon the basis of general objections to the issuance of any licenses at all.

Respondent further contends that the application was properly denied for the reason that the premises were improperly conducted under the prior license, because on June 26, 1934, one Camp was seen to go into appellant's place of business sober and

emerge drunk several hours later. The only testimony introduced by respondent on this issue was hearsay and, in view of appellant's denial, not of sufficient weight to support the charge.

Respondent also alleges that appellant conducts another mercantile business upon her premises and that the issuance of a plenary retail consumption license would violate Section 13 (1) of the Control Act. Appellant offered, however, to confine her business to that of a restaurant in the event a license was issued.

The action of respondent is reversed upon condition that appellant confine the business upon the licensed premises to that of a restaurant.

D. FREDERICK BURNETT,
Commissioner

Dated: October 10, 1934

3. DISTILLERY LICENSES - TEMPORARY BOTTLING PLANT IN PRIVATE HOME

October 11, 1934

Rockland Distilling Co., Inc.,
74 Hudson Avenue,
Tenafly, N. J.

Gentlemen: Attention: A. Benjamin

Yours of September 24, 1934 received, wherein you request special permission to bottle brandy in the basement of the home of one of your officers for the reason that it is the only available place at the present time, your proposed bottling plant not having been vacated by the present tenant.

As a limited distillery licensee you are entitled to bottle alcoholic beverages distilled from fruit juices. Furthermore, by the ruling of the Commissioner, you may bottle in your warehouse. Because of Federal regulations which do not permit bottling in bonded warehouses, however, your present warehouse which is bonded may not be so used. You therefore ask for permission to bottle elsewhere.

Section 15 of the Control Act provides that any licensee entitled to maintain a warehouse may obtain a separate license for an additional warehouse upon the payment of 25% of the fee paid for his respective license. Since the Commissioner has ruled that manufacturing licensees may bottle in their warehouses you may secure an additional warehouse in which to bottle.

Ordinarily permission should not be given to use a residential premises for the manufacture of alcoholic beverages for the reason that effective enforcement is more difficult. Because of the emergency as outlined in your letter, however, the Commissioner will entertain an application for a license to maintain an additional warehouse to be located in the basement of the home of A. Benjamin, an officer of your corporation, subject, of course, to objections of the neighbors in this residential neighborhood.

Herewith are application forms which must be filled out in duplicate, also form to be followed in publishing notice of intention which must be advertised once each week for two successive weeks in a newspaper published in the Town of Demarest where the proposed warehouse is to be located.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

4. REVOCATION - GROUNDS - RESPONSIBILITY OF LICENSEE FOR ACTS OF EMPLOYEES

In the Matter of Revocation	}	ON REVOCATION CONCLUSIONS AND ORDER
Proceedings against Abe Kneller,		
185 Pacific Street, Newark, N.J.		

Appearances:

Jerome B. McKenna, Esq., Attorney for Department
Simon J. Englander, Esq., Attorney for Abe Kneller.

BY THE COMMISSIONER:

A notice to show cause, returnable August 10, 1934, was duly served on Abe Kneller, directing him to show cause why Plenary Retail Consumption License #C-329 granted him by the Municipal Board of Alcoholic Beverage Control of the City of Newark, should not be suspended or revoked for violation of the provisions of Chapter 456 of the Laws of 1933 as amended and supplemented. Said hearing was adjourned to August 20, 1934.

It was stipulated by counsel for respondent that illicit alcoholic beverages and paraphernalia were seized on the licensed premises; that Sam Kneller, a brother of the licensee, pleaded guilty before the Second Criminal Court, Newark, to violating the Act in that he manufactured and possessed illicit whiskey; and that he was fined \$100.00 and received a suspended sentence of two months in jail.

The testimony shows that a saloon business has been conducted on the licensed premises by various members of respondent's family since 1906. Sam Kneller who acted as manager for his brother, the licensee, assumed sole responsibility for the violations complained of. He testified that he kept the illicit alcohol, and coloring matter used in manufacturing the seized whiskey, secreted in a rear room under the stairs and pocketed the money realized from sales thereof; that his brother, a cigarette salesman, usually visited the licensed premises for only a few moments each day to check receipts and approve disbursements and tended bar only on rare occasions.

Respondent testified that his cigarette business required his constant attention; that he was unaware of his brother's unlawful beverage activity and immediately discharged him upon learning thereof.

A license to sell alcoholic beverages is a privilege,

implying special trust and confidence in the holder thereof. Feigenspan vs. Mulligan, 63 N.J.Eq. 179; Voight vs. Board of Excise Commissioners of Newark, 59 N.J.L. 358; Meehan vs. Excise Commissioners of Jersey City, 73 N.J.L. 382. The licensee may enjoy said privileges only so long as he complies with all the limitations, conditions and restrictions pertaining to his license. Hoboken vs. Greiner, 68 N.J.L. 592.

A licensee, when apprehended for violation of the law, may not hide behind the cloak of his employees. The license is his. So is the business. It is his duty to see to it that the business is conducted in accordance with the law. If unable to do so because of other interests, that is his personal lookout. It does not exonerate him from full responsibility for what goes on upon the licensed premises. This licensee was his brother's keeper.

It is, therefore, on this 16th day of October, 1934, ORDERED that Plenary Retail Consumption License #C-329 granted Abe Kneller by the Municipal Board of Alcoholic Beverage Control of the City of Newark to sell alcoholic beverages at 185 Pacific Street, Newark, be and the same is hereby suspended for the term of thirty days from October 19, 1934.

D. FREDERICK BURNETT,
Commissioner

5. APPELLATE DECISIONS - ZOTTO VS. TRENTON

MINNIE ZOTTO,)	ON APPEAL
Appellant,		
-vs-)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC		
BEVERAGE CONTROL OF TRENTON,)	
Respondent.		

Felcone & Felcone, Esqs., By Joseph J. Felcone, Attorneys for Appellant
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER.

This is an appeal from respondent's action in denying appellant's application for a plenary retail consumption license for premises located at 1324 Hamilton Avenue, Trenton, New Jersey.

Respondent contends that the application was properly denied for the reason that the premises sought to be licensed are located in a residential neighborhood. It appears, however, that the neighborhood is zoned as a business district; that appellant's premises have been operated as a public restaurant for seven or eight years; and that there are at least six other places of business, not all of which, however, are presently occupied, all on the same block. In view of this evidence, respondent's contention that this is a residential neighborhood cannot be sustained.

It is not material that appellant's restaurant is conducted in what was formerly and still appears to be a private dwell-

ing. There is no good reason why a person desiring to utilize a former private residence for a restaurant in a business neighborhood should be compelled to alter the exterior of the premises. A large electric sign designates appellant's premises as a public restaurant as well as any alteration of the building might do.

Respondent further claims that the application was properly denied because appellant had improperly conducted her restaurant heretofore but this contention is not sustained by the evidence. The police officer who patrolled the beat testified that the place had been conducted properly. While it is true that several neighbors testified that noises emanating from the restaurant disturbed their sleep, it does not appear from the testimony that these noises were other than the usual sounds incident to the conduct of a public restaurant.

Respondent also relies upon a resolution adopted by it on May 31, 1934, limiting the number of plenary retail consumption licenses in the City of Trenton to 250, and the issuance of the allotted number. For the reasons set forth in Central Restaurant, Inc. vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #44, Item #5, this contention cannot be sustained.

The action of the respondent Board is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: October 18, 1934

6. APPELLATE DECISIONS - FURMAN VS. SPRINGFIELD

WILLIAM FURMAN,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF SPRINGFIELD
(UNION COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Milton Freiman, Esq., Attorney for Appellant
Charles W. Weeks, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's action in denying appellant's application for a plenary retail consumption license for premises located at the intersection of Morris Avenue and Baltusrol Way, Springfield.

Respondent contends (1) that the application was properly denied because of its resolution limiting the number of plenary retail consumption licenses to eight, and the issuance of the allotted number; (2) that there is a sufficient number of licensed places in the vicinity of the premises sought to be licensed so that an additional license in said vicinity would be socially undesirable.

Appellant's premises are located at the intersection of two state highways which carry considerable traffic. There are two licensees presently operating at this intersection; one, a plenary retail consumption licensee, being diagonally across

the road; the other, a distribution licensee. The neighborhood is sparsely populated. Appellant concedes that the local residents are adequately serviced by the existing licensed places, but argues that the large number of transients traveling along the highways justifies his application.

The right of a municipality to deny an application where the granting thereof would result in the existence of too many licenses in a particular vicinity, is settled. Bader vs. Municipal Board of Alcoholic Beverage Control of Camden, Bulletin #44, Item #8. The number of transients passing the premises sought to be licensed is one but only one of the factors to be considered by an issuing authority in reaching its decision. The Chairman of the Township Committee testified that the needs of the transient trade were adequately serviced by the existing licensed places in the vicinity. No evidence to the contrary has been introduced. Appellant has failed to sustain the burden of proof.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: October 17, 1934

7. DEEDS - RESTRICTIONS ON USE OF PROPERTY - NOT ENFORCEABLE
UNDER ALCOHOLIC BEVERAGE CONTROL ACT

October 16, 1934

Dear Mr. -----:

I have your complaint of the 13th re -----.

As regards the property deeds which you mention, they are not within my province as the restrictions therein contained are the result of a personal contract of a civil nature and enforceable only in the courts of law and equity. The State law which controls the manufacture, distribution and sale of alcoholic beverages is neither dependent upon nor intensified by private contract or the absence thereof. If the restrictions are valid and enforceable, the appropriate forum in which to seek relief is the Court of Chancery which, in a proper case, will grant an injunction against violation of the covenant. Since it appears from your letter that you own property in the immediate vicinity, the question for your lawyer to decide is whether or not you, as owner of such property, are entitled to the benefit of the restriction. Then comes the question whether the defendant is subject to the burden and the delicate, equitable questions of balancing the equities. All this is a matter on which you should consult private civil counsel. I have no jurisdiction to try out the validity or to effect the enforcement of restrictions on real estate but only to enforce the alcoholic beverage law. Hence I cannot consider that phase of the matter at all. Re Menmouth Tobacco Co., Bulletin 14, Item 6; Gamble vs. Avon-by-the-Sea, Bulletin 35, Item 6, Brighton Hotel Co. vs. Loder, Bulletin 41, Item 6.

As regards the nature of the place which they conduct, that is entirely within my province and I am glad indeed to have you call it to my attention. You do not furnish me, however, with any specifications as to what they are doing which is wrong. You do say that "these people have caused the most profound sorrow and trouble in many homes." That is, as you will see on reflection,

entirely too indefinite. Please write and tell me just what they are doing which is wrong and wherein they are violating the alcoholic beverage law or the rules and regulations made pursuant thereto or local rules and regulations or ordinances. Upon receipt of such definite information, I will then put the matter up to the Borough officials to close the place up if the complaint appears to be well founded. Your name will not be disclosed or used in the correspondence, but I must have definite, responsible information on which I can act. If the Borough officials do nothing about it, I will then have my own staff investigate it and take appropriate action.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

8. ALCOHOLIC BEVERAGES - TRANSPORTATION - IMPORTATION + SPECIAL PERMIT - WHAT CONSTITUTES SPECIAL CAUSE

October 18, 1934

Gentlemen:

The petition on behalf of ----- to import alcoholic beverages into New Jersey sets forth that petitioner is a retail licensee and operates a store in the City of Newark; that the rules governing transportation of alcoholic beverages into New Jersey, promulgated July 2, 1934, effective July 9, 1934, prohibit it from importing alcoholic beverages into this State; that prior to the promulgation of said rules petitioner purchased in foreign countries a large quantity of alcoholic beverages which have been shipped to this country and are now held in a warehouse in Newark subject to release upon payment of duty and taxes; that a complete itemized list of the alcoholic beverages so purchased, together with the date of order, date of entry, and location of vendor is attached thereto; and prays for a special permit to import the alcoholic beverages therein set forth.

Paragraph 5 of the rules governing transportation of alcoholic beverages into New Jersey authorize the importation of alcoholic beverages under special permits. This paragraph was designed to enable specific and limited importation, otherwise prohibited, where special cause therefor appeared.

When petitioner made its commitments for the purchase of the alcoholic beverages in question, there was no prohibition against importation by retail licensees. It was therefore unaware that before the importation could be effected, the above mentioned rules would render completion of the transaction illegal. If petitioner cannot import them it has but two alternatives, either to direct a return thereof to the vendors and secure whatever credit it can, or else to sell them to a wholesaler and repurchase after the alcoholic beverages have been brought into the State. The former would undoubtedly result in substantial loss. The latter involves an unjustified profit to the wholesaler and increases the cost of the purchases to the petitioner. I am of the opinion that the facts of this case constitute special cause warranting the issuance of a permit.

The application will therefore be granted. The permit will authorize the importation of the alcoholic beverages set forth in the petition.

Before the permit is granted a waiver from the State Tax Department must be submitted. You should therefore communicate with George W. Grimm, Jr., Deputy Tax Commissioner, 744 Broad Street, Newark, N. J. to obtain such waiver.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

9. SPECIAL PERMITS - CONSENT OF LOCAL AUTHORITIES - MUNICIPAL DELEGATION OF AUTHORITY TO CHIEF OF POLICE TO SIGN CONSENTS

October 18, 1934

J. Cory Johnson, Town Clerk,
Bloomfield, N. J.

Dear Sir:-

I have the resolution adopted by your Town Council on October 15, 1934, delegating to Charles F. Jensen, Chief of Police, authority to approve applications for the special permits to be issued by the Commissioner.

This resolution is approved as submitted.

My objective in requiring each applicant for special one-day permits for the sale of alcoholic beverages to obtain the consent of the Municipal Clerk and also the Chief of Police (see Bulletin 31, item 3, and Bulletin 40, item 7) before I would issue any such permit, was to protect local interests and to save inadvertent conflict with any local resolutions or ordinances, or the declared policy of a municipality, and to inform me where sound objection to the character of the applicant existed, and generally to supply the essential data where for any other reason the permit should be refused by me.

If your Town Council prefers to delegate this matter exclusively to your Chief of Police, I am glad to honor its wish but do cordially suggest that the Chief keep himself thoroughly familiarized with your local resolutions and ordinances to the end that the application for permit will be refused if the Chief certifies that it is in conflict with such resolutions or ordinances or your declared policy, or, if not refused entirely, that appropriate conditions and safeguards may be inserted in the permit.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

10. MUNICIPAL REGULATIONS - CONFORMITY TO STATE-WIDE RULES

TO ALL MUNICIPAL GOVERNING BODIES AND BOARDS:

Gentlemen:

Several municipalities have heretofore enacted local rules requiring retail consumption licensees to close on election

days. These regulations have been uniformly approved as submitted. ~~On October 18th,~~ a State-wide rule covering the subject-matter was promulgated, being rule #2 of Rules Concerning Conduct of Licensees and the Use of Licensed Premises, reading:

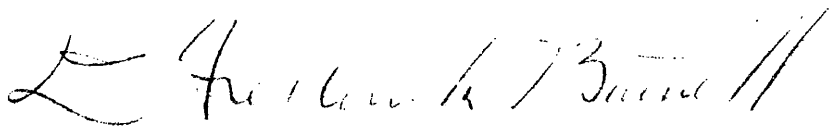
"No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."
(Bulletin 48, Item 1).

This State-wide regulation takes precedence, of course, over all municipal rules to the extent that there is any actual conflict between the same (Bulletin 43, Item 12).

Since the State-wide rule carries out the intention of the several local rules, I respectfully suggest to each municipal governing body and board that, for the sake of uniformity and the elimination of any possible legal complication caused by the difference in language of the State and local rules, that the latter, if heretofore enacted, be amended, and if hereafter enacted, be drawn so as to read identically with the State rule. This will prevent an "out" which violators might try to take advantage of otherwise and will make, I believe, for better and uniform enforcement.

Your cooperation will be greatly appreciated.

Respectfully yours,



Dated: October 19, 1934

Commissioner

11. ALIENS - EMPLOYMENT - NOT PERMISSIBLE BY LICENSEES

October 19, 1934

Feder and Rinzler, Esqs.,
Passaic, N. J.

Gentlemen:

I have your letter of October 17th, enclosing petition of Sam Barcelona, an alien, for permission to be employed by his son, a retail licensee. The petition sets forth that the petitioner will not sell alcoholic beverages, but desires to do manual work, including the washing of glasses and the sweeping of the floor at the licensed premises.

Section 22 of the Control Act prohibits the issuance of a license to any individual who is an alien. Section 23 provides as follows:

"No person who would fail to qualify as a licensee under this act shall be knowingly employed by or connected in any business capacity whatsoever with the licensee; provided,

however, that specialized technical workers, required in any business may, with the approval of the commissioner, and subject to rules and regulations, be employed although failing to qualify as to residence or citizenship".

The meaning of the sections is evident. They prohibit the employment, in the manner sought, of the petitioner by his son. See Bulletin #30, Item #2.

The hardship involved in the particular situation presented is fully appreciated. The question, however, is one of power and not discretion. The legislature has not empowered the Commissioner to authorize the employment of aliens except where they are "specialized technical workers". Obviously, the petitioner does not come within this category.

Aside from the single statutory exception, the legislative policy is to exclude the employment of aliens by licensees. While this policy continues, the Commissioner's function is to enforce it and not pass upon its wisdom. Any modification thereof must be sought directly from the legislature.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

12. RULES GOVERNING TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO
NEW JERSEY - CONSTITUTIONALITY

October 17, 1934

Pickrell & McDonald, Esqs.,
#230 Fifth Avenue,
New York City

Gentlemen:

I have your letter of October 5th, in which you question the constitutionality of this Department's requirements with respect to shipments into this State.

I am enclosing herewith the rules governing the transportation of alcoholic beverages into New Jersey, which were promulgated by this Department under date of July 2, 1934. Under these rules, your client may not import from a foreign country alcoholic beverages intended for personal consumption, except in accordance with paragraph 4 or under the authority of a special permit.

Section 56 of the New Jersey Control Act provides that the Commissioner is empowered to make such general rules and regulations as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of the Act. The same section enumerates various matters, including transportation, which may be the subject of regulation.

The Webb Kenyon Act (37 Stat. 699) divested intoxicating

liquors of their interstate character in certain cases, and prohibited the shipment of such liquors into a State in violation of the laws of such State. See McCormick & Co. vs. Brown, 286 U.S. 131, 76 L.Ed. 1017 (1932). And the Supreme Court, in DeBarry vs. Louisiana, 227 U. S. 108 (1912), recognized that a State may properly, in the exercise of its police powers, impose a fee on imports of alcoholic beverages without violation of any constitutional prohibition. Furthermore, section 2 of the 21st Amendment expressly prohibits the importation into any State for delivery or use therein of intoxicating liquors in violation of the laws thereof.

In the light of the foregoing decisions and constitutional amendment, the constitutional authority for the regulations adopted by this Department under date of July 2, 1934, can hardly be doubted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

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

13. APPELLATE DECISIONS - EZZO AND CARUCCI VS. TRENTON

HENRY EZZO and PAOL CARUCCI,)
Appellants,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF TRENTON,)
Respondent.)

ON APPEAL
CONCLUSIONS

Charles C. Wacks, Esq., Attorney for Appellants.
Romulus P. Rimo, 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 507 Chestnut St., Trenton.

Respondent contends that application was properly denied because the premises are too close to a church and a school connected therewith. measured in accordance with the method set out in Ackerman vs. Paterson, Bulletin #48, Item #11, appellants' premises are within 200 feet of the school.

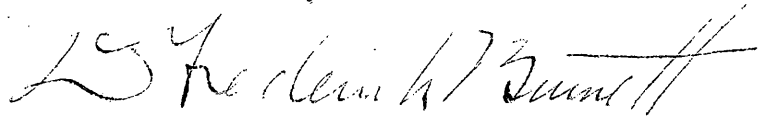
Appellants contend, however, that the 200 feet prohibition, Section 76, does not apply to the particular premises, because they were licensed for the sale of alcoholic beverages at the time the school was established and hence come within the exception set forth in the second paragraph of Section 76.

Section 76, P.L.1933, C. 436, as amended by P.L.1934, C. 35, provides: "...no license shall be issued for the sale of alcoholic beverages within two hundred (200) feet of any church or

76 removed the statutory ban so far as the particular premises were concerned, the revocation was set aside. All that case decided was that the statutory ban had been removed.

The action of the respondent board is affirmed.

Dated: October 30, 1934.

A handwritten signature in cursive script, appearing to read "L. B. Hendon". The signature is written in dark ink and is positioned above the printed title "Commissioner".

Commissioner