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

BULLETIN NUMBER 185 June 12, 1937

1. NEW LEGISLATION - AMENDMENT TO SECTION 23 OF THE CONTROL ACT - NON-RESIDENTS MAY BE EMPLOYED BY RETAIL LICENSEES PURSUANT TO SPECIAL PERMIT TO SELL AND SOLICIT THE SALE OF ALCOHOLIC BEVERAGES.

Assembly Bill No. 382 was approved by Governor Hoffman on June 2, 1937 and thereupon became Chapter 124 of the Laws of 1937.

It is effective immediately.

It amends the last paragraph of Section 23 of the Control Act (the rest of the section remaining the same) to read:

> "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; and further provided, that persons failing to qualify as to age, residence or citizenship may, with the approval of the commissioner, and subject to rules and regulations, be employed by any licensee, but such employee, if disqualified by age or citizenship, shall not, in any manner whatsoever, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage."

Heretofore, persons who had not been residents of New Jersey for five years could not be employed by retail licensees unless a special permit issued by the Commissioner had first been obtained and even then, not in any manner whatsoever to sell or solicit the sale of alcoholic beverages.

Persons who do not have the required residence must still obtain special permits before they may be employed by retail licensees, but henceforth if of age and a citizen and if otherwise qualified and if such special permit is obtained, they may sell, serve, solicit, etc. alcoholic beverages.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 9, 1937.

2.NEW LEGISLATION - SUPPLEMENT TO THE CONTROL ACT - DISQUALIFICATION BY MORAL TURPITUDE - MAY BE OVERCOME BY TEN YEARS OF GOOD BEHAVIOR.

Assembly Bill No. 379 was approved by Governor Hoffman on May 29, 1937 and thereupon became Chapter 76 of the Laws of 1937.

It is effective immediately.

The supplement, which hereafter will be designated in the pamphlet reprint of the Alcoholic Beverage Control Act as Section *22B, provides:

"1. Any person convicted of a crime involving moral turpitude may, after the lapse of ten (10) years from the date of conviction, apply to the State Commissioner of Alcoholic Beverage Control for an order removing the resulting statutory disqualification from obtaining or holding any license or permit under the act, as amended and supplemented, to which this is a supplement.

"2. Whenever any such application is made and it appears to the satisfaction of the commissioner that at least ten (10) years have elapsed from the date of conviction, that the applicant has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to the public interest, the commissioner may, in his discretion and subject to rules and regulations, enter an order removing the applicant's disqualification from obtaining or holding a license or permit because of the conviction.

"3. On and after the date of the entry of such order, the person therein named shall be qualified to obtain and hold a license or permit under the act, as amended and supplemented, to which this is a supplement, notwithstanding the conviction therein referred to, provided he is, in all other respects, qualified under said act."

The harshness of the permanent disqualification heretofore imposed by the Control Act, preventing a person who had been convicted of a crime involving moral turpitude from receiving a license or being employed by a licensee for all time, is ameliorated by the supplement which empowers the Commissioner at his discretion to lift the disqualification so far as concerns obtaining and holding a license or permit under the Alcoholic Beverage Control Act, provided ten years have elapsed, and further provided that during that time the applicant shall have conducted himself in a law-abiding manner, and his association with the alcoholic beverage industry will not be contrary to the public interest.

The reasons for the enactment of this advanced legislation are set forth in Bulletin 149, Items 1, 2, 3, 8, 10, 11 and 12.

Dated: June 9, 1937.

D. Frederick Burnett,
Commissioner.

3. NEW LEGISLATION - AMENDMENT TO SECTION 37 OF THE CONTROL ACT - LIMITATION OF LICENSES MUST HENCEFORTH BE ENACTED BY ORDINANCE.

Assembly Bill No. 381 was approved by Governor Hoffman on June 2, 1937 and thereupon became Chapter 136 of the Laws of 1937.

The amendment is effective July 1, 1937.

It amends Section 37 of the Control Act to read:

> "37. The governing board or body of each municipality, may as regards said municipality, by ordinance, limit the number of licenses to sell alcoholic beverages at retail; provided, however, that any such limitation heretofore adopted by ordinance or resolution shall continue in full force and effect until repealed, amended or otherwise altered by ordinance. The governing board or body of each municipality may, as regards said municipality, by ordinance or resolution, limit the hours between which the sale of alcoholic beverages at retail may be made, prohibit the retail sale of alcoholic beverages on Sunday, and, subject to the approval of the commissioner first obtained, regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted. The aforesaid limitations of number of licensees and of hours of sale shall be subject respectively to appeal to the commissioner as hereinafter provided. The governing board or body of each municipality shall have power to make, enforce, amend and repeal such ordinances as it may deem necessary to prevent the possession, sale, distribution and transportation of alcoholic beverages within its municipality in violation of this act. The governing board or body of each municipality may, by ordinance, enact that no more than one retail license shall be granted to any person, corporation, partnership, limited partnership or association in said municipality and that said license shall cover only the licensed premises; provided, however, that nothing herein contained shall operate to disqualify a guardian, executor, administrator, trustee, receiver, or any other fiduciary or court officer from obtaining or from holding more than one such license in different official capacities."

All municipal limitations of the number of licenses, adopted prior to July 1, 1937 either by resolution or by ordinance, continue in full force and effect. Limitations adopted before July 1, 1937 by resolution may, however, be repealed, amended or otherwise changed after July 1, 1937 only by ordinance. After July 1, 1937, all new municipal regulations limiting the number of licenses must be adopted by ordinance which thus insures that notice and public hearing be afforded to all persons interested.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 9, 1937.

4. NEW LEGISLATION - AMENDMENT TO SECTION 40 OF THE CONTROL ACT - "TIED HOUSE" MORATORIUM - EXTENSION FOR ONE MORE YEAR.

Assembly Bill No. 97 was approved by Governor Hoffman on June 2, 1937 and thereupon became Chapter 126 of the Laws of 1937.

Since no effective date is stated, it will become effective on July 4, 1937.

It amends Section 40 of the Control Act to read:

> "40. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this act, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler; provided, however, that prior to December sixth, one thousand nine hundred and <u>thirty-eight</u> the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages. And it shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either in whole or in part, or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery, rectifying and blending plant, or wholesaling or importing interests of any kind whatsoever outside of the State. No interest in the retailing of alcoholic beverages shall be deemed to exist by reason of the ownership, delivery or loan of interior signs designed for and exclusively used for advertising the product of or product offered for sale by such brewery, winery, distillery or rectifying and blending plant or wholesaler."

The new matter is italicized. The moratorium which would have expired on December 6, 1937 is thus extended for one year.

D. Frederick Burnett,
Commissioner.

Dated: June 9, 1937.

5. NEW LEGISLATION - SUPPLEMENT TO THE CONTROL ACT - MINORS - MISREPRESENTATION OF AGE.

Assembly Bill No. 380 was approved by Governor Hoffman on June 2, 1937 and thereupon became Chapter 135 of the Laws of 1937.

It is effective immediately.

The supplement, which hereafter will be designated in the pamphlet reprint of the Alcoholic Beverage Control Act as Section *77A, provides:

> "1. Any person who shall misrepresent or misstate his or her age or the age of any other person for the purpose of inducing any licensee or any employee of any licensee to sell, serve or deliver any alcoholic beverage to a person under the age of twenty-one (21) years shall be deemed and adjudged to be a disorderly person and upon conviction thereof shall be punished by fine not exceeding two hundred dollars ($200.00).
>
> "2. All proceedings under this supplementary act shall conform to the procedure and practice set forth in an act entitled 'An act concerning disorderly persons' (Revision of 1898), and the acts amendatory thereof and supplemental thereto."

Henceforth, any person who misrepresents his own age or the age of another person for the purpose of inducing a sale of alcoholic beverages to a minor, is deemed a disorderly person and may be so punished. The new law which permits the prosecution of those who are instrumental in aiding or abetting or causing licensees to violate the law by selling to minors should prove of substantial help to police and other law enforcement agencies.

Violations may be prosecuted by summary proceeding before a Police Magistrate or Recorder with the right of appeal and hearing de novo as in other convictions for disorderly conduct. Since violation of the supplement is not made a misdemeanor, it is not an indictable offense and offenders are not to be held for the Grand Jury.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 9, 1937.

6. NEW LEGISLATION - AMENDMENT TO SECTION 11 OF THE CONTROL ACT - LIMITED DISTILLERY LICENSE.

Assembly Bill No. 207 was approved by Governor Hoffman on June 1, 1937 and thereupon became Chapter 118 of the Laws of 1937.

It is effective immediately.

It amends subsection (3)b of Section 11 of the Control Act to read:

> "(3) b. Limited distillery license. The holder of this license shall be entitled, subject to rules and regulations, to manufacture, to bottle and to sell any alcoholic beverages distilled from fruit juices and rectify, blend, treat and mix, and to distribute to wholesalers and retailers respectively licensed in accordance with this act, and to sell and

distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to warehouse these products. The fee for this license shall be one thousand dollars ($1,000.00)."

Heretofore the statute authorized the issuance of limited distillery licenses to manufacture alcoholic beverages distilled from fruit juices in limited quantities at graduated fees.

Henceforth, only one class of limited distillery license may be issued. It is unlimited as to quantity. The fee is $1,000.00 per annum.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 9, 1937.

7. DISCIPLINARY PROCEEDINGS - INDECENT AND IMMORAL ACTIVITY - HEREIN OF SO-CALLED "MASTERS OF CEREMONIES" - ALSO THE OTHER SIDE OF THE STORY.

June 6, 1937

John J. Tischner, Sr., Editor,
The Camden Times,
East Camden, N. J.

Dear Mr. Tischner:

I have just read, with pleasure and profit, your editorial of May 27th re so-called "hot shows." I also note your reference to the type of lowbrow who poses as "master of ceremonies" whose vaporings are, as you well say, "rotten to the core."

They will be weeded out as fast as we can catch up with them.

A few stout-hearted revocations by officials who will fearlessly do their duty will clear the foul air quickly.

As regards the girls in these shows: We men, by consuetude I suppose, are prone to place the blame on the woman. There is another side to the picture. I have a signed letter from a girl whose business card describes her as "Mistress of Ceremonies - Singing, Dancing & Comedy - Available for Stage, Banquet or Club Entertainment." She writes me:

"I am an entertainer and was booked at a place called the ----- at -----. When I got there I found I was to be a hostess. Instead I just did a couple of numbers on the floor and the rest of the time I was required to sit at the bar and drink with men who came in no matter what type. The proprietor made my drinks very weak so that I would be able to consume a lot and I was told if a girl couldn't drink more than she made at night she was fired and I was one of the girls as I do not drink or smoke. The proprietor was getting 35 cents a drink from the men, and the second night I was there I was fired.....If you want me to go to the front against this man I will be more than glad to cooperate with you, and if every entertainer would do this, I'm sure these places couldn't get away with what they are doing, as they are just hiring girls under false pretenses, booking them as entertainers when they are nothing more than plain hostesses. They don't even

know how to entertain except to take men over for all they've got and then leave them flat for the next sucker."

Needless to say, a complete investigation will be immediately made and appropriate action taken.

I shall be glad to have the continued backstopping of the Press in a determined, cooperative effort to wipe this hostess racket out of New Jersey for keeps.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - INDECENT AND IMMORAL ACTIVITIES - REVOCATION INDICATED AND EFFECTED - HEREIN THE CONCLUSIONS OF THE CALDWELL TOWNSHIP COMMITTEE OF PERMANENT VALUE.

June 9, 1937

Thomas J. Duffee, Clerk,
Caldwell Township,
R. F. D. Caldwell, N. J.

Dear Mr. Duffee:

I have your certification of the 8th re Little Cotton Club, the Conclusions rendered, and the letter of H. Morris Bush, Chairman of the Township Committee commending the work of my men.

Without entertaining or expressing any opinion on the merits of the case which may come before me by way of appeal, please express to Chairman Bush and his fellow Committeemen, Mrs. Helen Law and Henry K. Aprill, my profound respect for the manner in which they have discharged, "with regret but without reluctance," their full duty.

Believing their subjoined opinion is of permanent value in the cause of firm and sane liquor control, I shall incorporate it in the next official bulletin.

Please extend also my thanks to Robert Shaw, Esq., Township Attorney, for his highly cooperative and effective work in bringing this case to a successful conclusion.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF CALDWELL

In the Matter of the Proceedings to Revoke the Plenary Retail Consumption License No. C-17 issued to MEYER PALLIE, t/a LITTLE COTTON CLUB

OPINION

The alleged violations of the Alcoholic Beverage Control Act and Rules of the State Commissioner of Alcoholic Beverage Control, concerning which charges were preferred against the licensee, consisted of:

(1) Misrepresentation of material facts in the procurement of the license.

(2) The employment, in connection with the business of the licensee, of persons not qualified by reason of age or residence to become licensees without a special permit therefor.

(3) The sale of alcoholic beverages to minors.

(4) Indecent and immoral activities on the licensed premises.

The licensee, appearing with counsel and witnesses in his behalf, denied at the outset of the hearing all of the charges preferred. With respect to the charge of fraud in the procurement of the license, no evidence upon which we can rest a conclusion of guilt was produced, and we are therefore compelled to exonerate the licensee on this count.

During the trial, it was conceded by the defense that persons, not qualified to be employees under the provisions of the Act and Rules above cited, were employed by the licensee in the operation of his establishment. In mitigation thereof, and in a request for leniency in the disposition of this charge, the licensee's ignorance of the law and of the rules and regulations of the State Department of Alcoholic Beverage Control was urged. We are not inclined to look with approval upon this plea. Those who are accorded the privilege of holding a license are charged with the responsibility of acquainting themselves with the requirements subject to which their establishments must be operated. Opportunity to do this is not lacking, and we are therefore compelled to conclude that the violation was wilful. To view it otherwise would be to impair the effectiveness of the operation of the law in curbing the practices which it prohibits.

The fact that beer was sold and served to minors at the licensed premises, as set forth in the charges, was well established by the testimony of the minors served and by that of the investigators of the State Department of Alcoholic Beverage Control who were present at the licensed premises on May 9, 1937, one of the dates on which such a violation is alleged to have occurred. Though the licensee denied guilt with respect to this charge, no testimony was produced in his behalf directly refuting it. The testimony of the defense and the cross-examination by defense counsel on this point were concerned chiefly with the deceptive appearance of the minors served, the congestion of traffic at the bar when the violations occurred, and the preoccupation of the bartender who was busily engaged in ministering to the wants of other patrons.

The minors in question, who appeared to testify, were not sufficiently mature in appearance to justify the assumption that they were of age without further inquiry, and, while expediency and the profitable operation of a tavern may, on occasion, not be consistent with precautions to observe the law, it is the opinion of the Committee that, when such a conflict occurs, the interest of the licensee must yield to the policy of the State.

The licensee did not refute the charge that a "strip tease" dance was conducted on the premises on April 24, 1937. He contends, however, that the performance conducted was in no sense lewd or indecent. The licensee maintained the position that "panties" and brassiere are generally accepted by mature people as proper articles of adornment for entertainers in a place of the type run by him.

In this day and age it is superfluous to describe the nature of a "strip tease" dance. Suffice it to say that in this instance the portion of the costume retained by the performer at the

end of her dance, variously described by witnesses as a veil and as a curtain, was scanty enough, to judge from the evidence, to keep a person cool in a blazing summer sun, but so lacking in sufficient coverage when clothing the alluring and provocative dancing gestures of the entertainer and complementing an atmosphere where the psychology of "double meaning" songs prevailed, as to constitute "lewd and immoral activity" under the Act. It may be pertinent to point out that a type of performance which is considered lewd and indecent by a nearby city of prominent size and sophistication, seems also somewhat too "advanced" in its "art form" for the people of this community and state.

For the reasons herein set forth and on the basis of the testimony produced at the hearing, we find the licensee guilty of the violations alleged in paragraphs 1, 2, 3, 4 and 6 of the Notice of Charges filed herein.

Having determined the guilt of the licensee with respect to said violations, the Committee is now faced with the further problem of the penalty to be imposed. We cannot find in this case the extenuating circumstances which would justify the exercise of leniency for which the licensee pleads. The general atmosphere which characterized the licensed premises, as we view it, from all of the testimony produced, was one not well calculated to create a sense of respect and a concept of reputability in the public mind. As we see it, it therefore becomes our duty, which we perform with much regret but without reluctance, to revoke the Plenary Retail Consumption License issued to this licensee.

The Township Committee of the
Township of Caldwell.

By: H. Morris Bush,
Chairman.

9. APPELLATE DECISIONS - RAPP v. LINDEN.

GRANT RAPP,)
Appellant,)
-vs-) ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF LINDEN,) CONCLUSIONS
Respondent)

Eugene F. Mainzer, Esq., Attorney for Appellant.
Lewis Winetsky, Esq., by Joseph C. Monico, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, the holder of plenary retail consumption license No. C-63, appeals from denial of a transfer of said license from North Stiles Street to 9 East Price Street, Linden.

Respondent's answer justifies the denial because of the location.

The premises known as 9 East Price Street consist of a one-story business building located about one hundred feet east of Wood Avenue, which is one of the principal business streets of Linden. East Price Street in the immediate vicinity contains some

small business buildings, but there are many residences located thereon. The transfer was denied after investigation by respondent on the ground that there were too many places in the neighborhood.

The evidence as to the existing places shows that there are no consumption places on the easterly side of Wood Avenue in the immediate vicinity, but that on the westerly side of Wood Avenue there are two consumption places, one about one hundred sixty-five feet north of Price Street and the other about one hundred twenty-five feet south of Price Street; that a consumption license has been issued for premises on West Price Street about one hundred fifty feet west of Wood Avenue; one on Blancke Street (the first street to the north), and two on Elizabeth Avenue (the first street to the south), all three of which are within two hundred feet of Wood Avenue. The fact is that there are already six licensed places for consumption within the immediate vicinity of 9 East Price Street, to say nothing of two distribution licenses on Wood Avenue between Blancke Street and Elizabeth Avenue.

A transfer from place to place is not an inherent privilege. The issuing authority may grant or deny such transfer in the exercise of a reasonable discretion. As I said in DeBlasio v. Trenton, Bulletin 175, Item 6:

> "Since a municipality may deny a license where the granting thereof would result in the existence of too many licensed places in a particular vicinity, Levitt v. Liberty, Bulletin 169, Item 4, so an issuing authority may refuse to transfer a license to a section already adequately serviced."

In view of the evidence as to the number of licensed places already existing in the vicinity, it cannot be said that respondent's determination was unreasonable.

Appellant also contends that the action of respondent was improper because when the application was first considered on March 1st the matter was laid over for investigation until April 5th, notwithstanding no objections had been filed to the granting of the transfer.

The Secretary of the Municipal Board of Alcoholic Beverage Control testified that it was the usual practice of the Board to receive the application at the first meeting following the date of filing and to refer such application to the investigating committee for action to be taken at the subsequent meeting. Such procedure is eminently proper in view of the fact that the Board is charged with the duty of investigating all applications and must have a reasonable opportunity to do so. The evidence shows that a protest signed by twenty-three residents of the community was filed with respondent at its meeting on April 5th, but received too late for consideration, and that the application was denied solely as a result of the investigation conducted by respondent. What of it? Even if no protests had ever been filed, a local issuing authority is required to make a thorough investigation on its own initiative. (Rule 8 of Rules Applicable to All Municipal Retail Licenses for Advertising "Notice of Intention" to Apply for a License). It need not supinely wait for someone to object before it can decide to reject on its own motion.

Appellant alleges also that licenses have been granted in closer proximity in other sections of the City. It is admitted by one of the members of respondent Board that such licenses were issued some years ago in closer proximity on Roselle Street, a business street, but his testimony showed that the Board realized

a mistake had been made in creating such a condition and that the Board has not followed that precedent in recent years. It appears also that respondent has recently denied two applications for licenses in this section because there are too many located there.

I do not find any discrimination against appellant in this case. The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 10, 1937.

10. APPELLATE DECISIONS - SEARS ROEBUCK v. ABSECON and JONES.

SEARS ROEBUCK & CO.,)
Appellant,)
-vs-) ON APPEAL
COMMON COUNCIL OF THE CITY OF ABSECON and JESSIE BUGG JONES,) CONCLUSIONS
Respondents)

Alexander K. Blatt, Esq., Attorney for Appellant.
C. Bruce Surran, Esq., Attorney for Respondent, Jessie Bugg Jones.
No appearance for Respondent, Common Council of the City of Absecon.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license to Jessie Bugg Jones, for premises located at 898 New Jersey Avenue, Absecon.

The real objection is that Jessie Bugg Jones is colored.

The formal contention is that the issuance of the license was improper because (1) the licensed premises are located in a highly restricted and residential section of Absecon known as "Atlantic Estates," and numerous persons residing nearby objected to the issuance of the license, and (2) the application upon which the license was granted is defective.

"Atlantic Estates" is a residential development of a high type, located about seven-eighths of a mile from the business center of Absecon. All buildings erected in "Atlantic Estates" are private homes except (1) the licensed premises hereafter described, (2) a home on the opposite side of New Jersey Avenue which bears a sign "Carpenter," and (3) a few bungalows on New Jersey Avenue about three or four blocks away which accommodate tourists. New Jersey Avenue was formerly part of the White Horse Pike, but a new section of the Pike has been built a considerable distance to the west of the licensed premises and this has served to divert a great deal of traffic from New Jersey Avenue. There is testimony, however, that a bus line still operates along New Jersey Avenue. The objectors either own property or reside in homes on New Jersey Avenue, or on the side streets in Atlantic Estates. No objector, however, owns property or resides within two city blocks of the licensed premises. The only home within two city blocks is that occupied by the carpenter mentioned above, who lives on the opposite side of New Jersey Avenue about a block and a half away, and who has not objected to the issuance of the license.

The licensed premises consist of a two-story frame building with a dining room on the first floor, capable of accommodating two hundred people. The rooms above are occupied by

the licensee and her help at the present time, but the licensee testified that she contemplates obtaining a tourists license so that she may rent two of these rooms.

The premises in question were originally licensed for the sale of beer to another individual on July 5, 1933, and thereafter continuously licensed to the same individual for either beer or alcoholic beverages until she surrendered her license on February 26, 1936. While this first licensee was in possession, her license was suspended for thirty days because she permitted female impersonators on the premises. After the license was surrendered on February 26, 1936, the premises were immediately licensed to another individual who surrendered his license on August 27, 1936. Mrs. Jones filed application for her license on November 30, 1936 and her license was granted on December 30, 1936. Thus the premises have been licensed almost continuously for nearly four years. Some of the objectors herein testified that they objected at the time the previous licenses were issued, but no appeal was taken from the action of the local issuing authority in granting any of these previous licenses despite objections filed and overruled by the local issuing authorities.

The only question for me to decide is whether the action of the Common Council of the City of Absecon in granting a license to Jones was arbitrary and unreasonable. It is true that licensed premises are out of place in a strictly residential neighborhood. Vanozzi vs. Trenton, Bulletin #35, Item 7; In Re Cranford Veterans Holding Co., Inc., Bulletin #126, Item 11; Lavelle vs. Way, Bulletin #140, Item 1; Farley vs. High Bridge, Bulletin #151, Item 13. This case, however, differs from the cases cited, in all of which licenses were sought in closely built up residential sections. They are likewise distinguished because in each of the cases cited the local issuing authorities, exercising their discretion, decided that licenses should not be issued, which action was affirmed on appeal; whereas, in the present case, the local issuing authorities, exercising their discretion, have decided that the license should issue, and I am now asked to set aside the action of the local body as arbitrary or unreasonable.

Despite the fact that Atlantic Estates considered in its entirety is residential, it appears that this building is far removed from the nearest residence; that New Jersey Avenue still retains to some small extent its character as a traffic artery; that the premises have been licensed almost continuously for four years; that the nearest objectors reside about two thousand feet away. Considering all these facts, I conclude that the action of the local issuing authority in granting this license was not arbitrary or unreasonable.

As to the application, it appears that Jessie Bugg Jones filed an application for other premises in Absecon with the former City Clerk on or about June 8, 1936, and that subsequently her application for those premises was denied because of the residential character of the neighborhood in which she then sought a license. She testified that when she went to the City Clerk's office to file her application for 898 New Jersey Avenue, she asked the then City Clerk if the application was ready and he handed her an application. She does not recall signing a paper at that time, but says that she did swear to a paper. The application as presented at the hearing shows erasures and interlineations. After Question 2, "Present residence of applicant, Street and Number," there is an erasure and the words "898 New Jersey Avenue" are inserted in pencil. After Question 4, "Location of premises to be

licensed, Street and Number," there is an erasure and "898 New Jersey Avenue" is inserted in ink. In the affidavit attached to the application, the number "8" is stricken out and the number "30" inserted in pencil; the word "June" is stricken out and the word "November" inserted in pencil. Mrs. Jones denies that she made any of these changes. She testifies they were made by the former City Clerk in her presence. The present City Clerk testified that she had made no changes or corrections in the application, and that she received it from the former City Clerk who went out of office the latter part of December. If the application as presented on the appeal were otherwise in proper form, the evidence as to re-execution of the application before the City Clerk might be sufficient to remove all objection as to the application. The application, however, is otherwise defective. It gives the name and address of the owner as "Dr. Jacques Batey," whereas it is admitted that the owner of 898 New Jersey Avenue is Atlantic City Daily Press and Union. It also gives the dates of publication of the notice of intention as June 9, 1936 and June 16, 1936, which are clearly erroneous. There was no attempt made by applicant to mislead, although the information contained in the application is incorrect. Dr. Batey was the owner of the premises for which she originally sought a license. The fault seems to rest with the former City Clerk who attempted to change the first application and who failed to make all necessary changes before having Mrs. Jones re-execute the application. I conclude that the misstatements which appear in the application now on file were not intentional and do not constitute sufficient ground for setting aside the license. Vuono vs. Belleville, Bulletin #163, Item 12.

The purpose of the provisions of the Control Act and the rules and regulations requiring a sworn application was to facilitate prosecution of those filing false applications. Non-compliance did not injure or mislead appellant or anybody else. Meyers vs. Plainfield, Bulletin #164, Item 2.

There is nothing in the testimony concerning what I sense to be the real objection except the summation of counsel for the objectors which candidly and deftly refers to it. He says:

> "***** there are certain factors that, if we were to mention them, would immediately lead to the objection that there is discrimination, and we can allude to it only from one standpoint, that the patrons of such an establishment may create a condition of ill feeling in that vicinity and fear and apprehension on the part of the women and youngsters in that vicinity. I realize, and so does the court, exactly what we are confronted with. As your Honor knows, in past decisions of this state, there have been instances where the highest court has said, yes, this is not a proposition of discrimination, but it may create a condition that will lead to not only breach of the peace, but more serious things in the future. I feel that your Honor should take that into consideration for what effect it may have on the residents who made this locality their suburban home."

I have taken it into consideration. The woman is of high character. There is no presumption that because she will probably receive colored patronage that there will be a breach of the peace. That is merely subtle, shallow gloss to cover discrimination. If the place is improperly conducted, the governing body

has it within its power at all times to revoke or suspend the license. Pelos and McNamara v. Passaic Township, Bulletin 156, Item 2. If Jessie Bugg Jones were white then on the facts of this case she would win on this appeal. Color, however, makes no difference with rights.

The action of respondent is, therefore, affirmed, upon condition, however, that the licensee files forthwith a corrected application in accordance with these conclusions.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 10, 1937.

11. MUNICIPAL ORDINANCES - REQUIREMENT OF RESIDENCE WITHIN MUNICIPALITY AS A CONDITION TO ISSUANCE OF LICENSE - APPROVED AS TO INDIVIDUALS - DISAPPROVED AS TO CORPORATIONS.

June 10, 1937

J. Ford Flagg,
Borough Clerk,
Highland Park, New Jersey.

My dear Mr. Flagg:

I have before me your letter of May 8th; also, copy of ordinance adopted May 3d amending Section 19 of ordinance adopted June 17, 1935, which provides:

> "Section 19. No license shall be granted unless and until the applicant has resided in the Borough of Highland Park continuously for a period of one year next preceding the date of making the application for a license, nor shall a license be issued to any corporation or association unless said corporation or association has either been in existence for at least one year prior to the date of its application or the holder or holders of a majority of the stock of said corporation have resided in the Borough of Highland Park continuously for a period of one year next preceding the date of making said application; nor shall more than one license be issued to any person, firm, corporation or co-partnership. The qualification as to residence shall not apply to any person nor shall the period of existence apply to any corporation, or association which now has and enjoys a license to sell alcoholic beverages in the Borough of Highland Park."

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

The amendment does not, therefore, need my approval in the first instance in order to be effective. So long as duly enacted in accordance with the statutes, it becomes legally operative without it. I feel, however, that as a matter of courtesy I should give you my thoughts in connection with the regulation and hence, offer the following comments for your consideration.

So far as the regulation prohibits the issuance of licenses to individuals unless the applicant has resided in Highland Park for at least one year preceding the filing of the application, I

believe it to be proper. A number of municipalities have adopted local regulations requiring individual applicants for retail licenses to be residents of the municipality. Two have already come before me; Iamello v. Rumson, Bulletin 77, Item 9; McHugh v. West Deptford, Bulletin 106, Item 1. The former involved a regulation requiring one year's residence in the municipality; the regulation in the latter case required two. On appeal I found both to be reasonable.

But as regards the proviso allowing corporations and associations to qualify for a license if they have been in existence for a year prior to the filing of the application, I have grave doubts.

The purpose, I take it, is similar to the purpose of the rule applicable to individual applicants - to put corporations and associations likewise through a probationary period so as to be better able to tell whether or not they qualify to receive a license. But unless the corporation or association is actually doing business during this probationary period, the mere fact that it is in existence won't be of much use to you in indicating how its business will be conducted. Yet, all that you require is that it be in existence. In New Jersey, a corporation doesn't have to exercise its franchise to be in existence. It comes into being the moment its certificate of incorporation is filed. The formation of an association requires even less formality. Either could be in existence for years without doing any business and hence, not provide you with any means of judging its character and reputation.

Your alternate requirement, applicable to corporations, obliging the holder or holders of a majority of the stock of said corporation to have resided in Highland Park continuously for at least a year prior to the filing of the application, is good as far as it goes. It seems but fair that individuals should fulfill essentially the same residence requirement whether or not they use the corporate device. But your requirement that the holder or holders of a majority of the stock be residents is not a workable rule. Which class or classes of stock is meant? Voting or non-voting? Preferred or common? It seems to me that the residences of holders of non-voting stock would be immaterial, yet according to your rule they can be instrumental in qualifying the corporation.

I suggest that it would be preferable to eliminate all reference in your ordinance to corporations or associations for there is grave doubt as to its validity in that respect. After all, nothing takes the place of diligent, thorough investigation of the applicant whether it be a corporation or an individual. Residence may render it easier to make the investigation but it is, of itself, no assurance of quality.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. MUNICIPAL ORDINANCES - RESIDENCE REQUIREMENTS - CONSTRUCTION.

June 10, 1937

Edward J. Santoro, Esq.,
South Plainfield, N. J.

Dear Mr. Santoro:

I have before me your letter of May 24th regarding Section 19 of "An Ordinance to regulate the sale of alcoholic beverages in

the Borough of South Plainfield," adopted by the Mayor and Council September 19, 1935, which provides:

> "Section 19. No license shall be granted unless and until the applicant has resided in the Borough of South Plainfield continuously for a period of one year next preceding the date of making the application for a license, nor shall a license be issued to any corporation or association that has not been in existence for at least five years prior to the date of its application; nor shall more than one license be issued to any person, firm, corporation or co-partnership. The qualification as to residents shall not apply to any person nor shall the period of existence apply to any corporation, or association which now has and enjoys a license to sell alcoholic beverages in the Borough of South Plainfield."

You ask:

"(1) Can a municipality restrict licenses solely to persons who have been residents of the Borough for at least a period of one year?"

A municipality could not restrict licenses solely to persons who had been residents of the Borough for one year as that would exclude corporations, organizations or associations however well qualified. I take, it, however, that you are concerned with the validity of that part of Section 19 which provides, in effect, that if the applicant is an individual he must have resided in South Plainfield continuously for at least one year prior to filing his application. I believe that a requirement that individual applicants be residents of the municipality for one year is proper. A number of municipalities have adopted such local regulations. Two have already come before me; Iamello v. Rumson, Bulletin 77, Item 9; McHugh v. West Deptford, Bulletin 106, Item 1. In the former, a regulation requiring one year's residence was involved. The regulation in the latter case required two. On appeal, I found both to be reasonable.

"(2) Can a municipality refuse to grant a license to a corporation incorporated six weeks ago and having its principal office in the Borough of South Plainfield?"

The South Plainfield regulation requires that corporate applicants be in existence for five years. See Section 19 above. Hence, no license could be issued in South Plainfield to a corporation in being for only six weeks regardless of where its principal office was located so long as the ordinance stands as it now reads.

As such a requirement does not regulate the conduct of the licensed business, it is not subject to my approval first obtained. Whether or not it is reasonable is a matter to be determined on appeal. Until an appeal is taken, it would be wholly inappropriate for me to express an opinion on the merits of any particular case one way or the other. I send you herewith copy of letter of even date to J. Ford Flagg, Clerk of the Borough of Highland Park, Bulletin 185, Item 11, which deals with a similar regulation and will indicate my views.

"(3) If a New Jersey corporation has been in existence for the required time but has dealt principally in another business in another municipality, can the Borough of South Plainfield refuse to issue this corporation a license?"

All Section 19 of the South Plainfield ordinance requires is that the corporation shall have been in existence for five years. It need not have been in existence in South Plainfield. So long as it has been in existence for the five years and otherwise complies with the requirements of the Act, it can qualify for a license.

Very truly yours,

D. Frederick Burnett,
Commissioner.

Inspected by:
E. E. B. ANDERSON
and found O. K.