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

BULLETIN 228 FEBRUARY 7, 1958

230-13
292-1

1. LICENSES - SUSPENSION - LICENSEES MAY REPAIR OR REDECORATE LICENSED PREMISES DURING PERIOD WHEN LICENSE IS SUSPENDED - MISLEADING SIGNS DISPLAYED ON OR ABOUT THE LICENSED PREMISES DURING PERIOD OF SUSPENSION SUCH AS "CLOSED FOR ALTERATIONS" TENDING TO DECEIVE THE PUBLIC AS TO TRUE REASON FOR CLOSING, ARE PROHIBITED - SUCH SIGNS ARE IN CONTEMPT OF ORDER OF SUSPENSION AND CALL FOR FURTHER DISCIPLINARY ACTION AGAINST LICENSEE - MANUFACTURERS AND WHOLESALERS MAY NOT TRANSACT BUSINESS WITH A SUSPENDED RETAIL LICENSEE.

Dear Commissioner:

A permit, to enter the barroom during the period of suspension of the license #C14 in the Lakewood Log Cabin Inn, Route #4, Howell Township will be appreciated. This permit will enable us to do some renovating and painting. All alcoholic beverages will be kept in a separate storeroom under lock.

Suspension of the license will end on February 6th at 7.o'clock A. M. This being a Sunday and no delivery being made on this day we also ask for permit to have deliveries from distributors made 2 days prior to end of suspension of the license.

Yours truly,

Lakewood Log Cabin Inn
MAX KRUEGER

January 27, 1938

Lakewood Log Cabin Inn
Lakewood, New Jersey.

Gentlemen:

My records indicate that your license was issued to Irma Tuzenew, t/a Log Cabin Inn, by the Township Committee of Howell Township; further that it was suspended by that Committee for a period of twenty days -- January 17 to February 5, 1938.

You may repair and redecorate the barroom of your licensed premises during the period your license is under suspension for the reasons set forth in Re Spindel, Bulletin 89, Item 14, copy enclosed.

You may not, however, put up any sign to the effect that your place is "closed for alterations" or make any other misleading statement. I am informed by the field staff that some licensees who have been closed down because of suspension of their licenses are making such false declarations. Any such sign is wholly improper. The fact that some repairs are being made is not the reason why the licensee is closed down. Such signs are in open contempt of the authority that imposed the suspension and I will deal with such licensees personally, if necessary, and inflict such additional suspension as may be necessary to inculcate respect in them for the law.

As to your request for permission to have alcoholic beverages delivered to the licensed premises by manufacturers, wholesalers, or distributors before the end of your suspension period: This is denied. The suspension of your license destroyed all privileges of handling liquor during the term of the suspension. Manufacturers, wholesalers, or distributors who might deliver to you during the period the license is suspended would be violating the law, as they would have no right under the terms of their licenses to deliver to a person who does not hold a license or whose license is not in force at the time the deliveries are made. See Re Majestic Wine & Spirits, Inc., Bulletin 162, Item 8.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. ALIENS - NOT ALL ALIENS BARRED AS LICENSEES OR EMPLOYEES - THE EFFECT OF THE FEDERAL TREATIES EXPLAINED.

January 27, 1938.

Harry T. McGuigan, Financial Secretary
Hotel and Restaurant Employees'
International Alliance, Local 263,
Camden, N. J.

Dear Mr. McGuigan.

I have your letter of January 24th.

It is true, as you state, that Section 22 of the Alcoholic Beverage Control Act requires all liquor licensees to be citizens of the United States. Section 23 of said Act prevents a person who fails to qualify as a licensee from being employed by a licensee to sell or dispense alcoholic beverages. Hence, the employment of aliens by any Camden licensees would, in general, be in violation of the law.

But there is something else that you must also take into account and that is the treaties which the Federal Government has made with certain foreign nations which provide that the citizens of those countries cannot be excluded as aliens from privileges granted to American citizens. Since treaties made by the President and ratified by the Senate are, under our Constitution, the supreme law of the land, they therefore supersede, to that extent, the provisions of New Jersey State law. The whole matter is explained in the enclosed copy of Re Guskind, Bulletin 130, Item 5, which contains a list of the countries whose citizens are protected by such a treaty. If the aliens about whom you write come from one of these countries mentioned therein, they would stand upon the same footing as a United States citizen and can be employed by the licensee to sell or dispense alcoholic beverages on the licensed premises, provided they are not otherwise disqualified.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of Chapter 76, P. L. 1937 - Case No. 15. Valosin	)	CONCLUSIONS AND ORDER

Alexander Avidan, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Petitioner, who has been employed by a retail licensee for more than four years, filed a petition herein, praying a determination that the crimes of which he has been convicted are not crimes involving moral turpitude, or, in the alternative, that his disqualification be removed under the provisions of Chapter 76, P. L. 1937.

At the original hearing on said petition, the proofs were insufficient and a subsequent hearing was held at which additional evidence was presented.

Petitioner was convicted in 1914 of the crime of petty larceny and, in 1919, of the crime of breaking and entering with intent to steal. At the time of his first conviction he was fifteen years of age; at the time of his second conviction he was twenty years of age. His first conviction followed his arrest for stealing a small quantity of merchandise from a store where he was then employed; his second conviction followed the arrest of petitioner and another young man for breaking into a grocery store by night. Following his first conviction, petitioner was placed on probation for one year; following his second conviction, sentence was suspended, petitioner was placed on probation for three years and ordered to pay $100. fine and $1.00 per week during probation. In view of petitioner's age, and the facts set forth above, I find that the first conviction did not involve moral turpitude but, clearly, the second conviction did. Re Hearing No. 101, Bulletin 147, Item 11.

It thus becomes necessary to determine whether petitioner's disqualification, because of his conviction in 1919, should be removed. Testimony shows that from 1919 to 1933 petitioner operated a fruit and vegetable stand in the municipality where he now resides. Thereafter, and until the present time, he has been employed as manager of a licensed tavern in said municipality.

A neighbor of petitioner, who served with him on an election board, corroborated his places of residence, testified that he has known him for more than ten years and that his reputation in the community is "among the best." An official of one of the State Departments of the State of New Jersey, who is related to the petitioner by marriage, testified that he has known him for more than twenty-three years and that, since the time of the conviction in 1919, petitioner has been a very good citizen. The Chief of Police of the municipality in which petitioner resides, testified that he has known him for more than

seven years; that during that time petitioner has never been in any difficulty with the police, and that petitioner bears a good reputation in the community. A member of the Township Committee of said municipality testified that he has known petitioner eleven years, and that he is a person of good moral character and a respectable citizen. Fingerprint records disclose no criminal record subsequent to 1919.

After examining the evidence in this case, I am satisfied that petitioner has conducted himself in a law abiding manner for the past ten years, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 27th day of January, 1938, ORDERED that petitioner's disqualification from obtaining or holding a license or being employed by a licensee, because of the conviction of the crime of breaking and entering with intent to steal, be and the same is hereby removed in accordance with the provisions of Chapter 76, P. L. 1937.

D. FREDERICK BURNETT
Commissioner

4. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

January 29, 1938

Re Case #208

A hearing was held to determine if solicitor's permit heretofore issued to applicant, should not be cancelled or revoked.

The facts, as a result of the investigation conducted and evidence produced at the hearing, reveal the following:

In 1931, applicant, then twenty years of age, was employed as a night watchman in a garage. On the night in question, he, with three or four friends, took out an automobile which was parked on a lot beside the garage and under his custody for a ride around Newark without the owner's permission. Applicant states that one of the young men with them on the ride was related to the owner of the car. In the course of the ride, they took a box of rolls from a breadbox in front of a grocery store. A police officer, becoming suspicious of their movements, placed them under arrest.

The original record of the arrest of applicant charges "larceny." However, that charge was later changed and applicant was convicted as a "disorderly person" for loitering on a public street. He was placed on probation for one year by a Newark police magistrate.

Hence, applicant has never been convicted of a crime. I recommend that the proceedings be dismissed.

Jerome B. McKenna, Attorney

Approved:

D. FREDERICK BURNETT
Commissioner

5. APPELLATE DECISIONS - ALBERT vs. NEW BRUNSWICK

JOHN ALBERT,

Appellant,

-vs-

BOARD OF COMMISSIONERS of the CITY OF NEW BRUNSWICK,

Respondent.

ON APPEAL

CONCLUSIONS

Alexander Eber, Esq., Attorney for Appellant.
Thomas H. Hagerty, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for premises located at 85 George's Road, New Brunswick.

Appellant's premises are located approximately ninety-two feet from a roadway known as Squibb Driveway which leads from George's Road to the plant of E. R. Squibb & Sons. The entrance to the plant is about eleven hundred feet from George's Road, and the plant itself approximately three hundred feet beyond the entrance. There are a number of business places in the vicinity of appellant's premises on George's Road, among which is one about three hundred feet northeast of appellant's premises, which has been licensed for on-premises consumption of liquor for a long period.

Objections to the issuance of this license were filed by E. R. Squibb & Sons, the New Brunswick Chamber of Commerce, Inc. and the College of Agriculture of Rutgers University. After a hearing held on said objections, the license was denied by a tie-vote - two commissioners voting in favor, two against and the Mayor being absent.

At the hearing on appeal Dr. John F. Anderson, Vice-President of E. R. Squibb & Sons, testified that his Company manufactures medicinal preparations such as ether, anti-toxins, insulin and endocrines; that it employs about four hundred people and operates twenty-four hours a day; that its employees are usually highly skilled and that the operation of its machines requires a high degree of coordination; that, in his opinion, if the employees of the plant used alcohol it would have an adverse effect and would definitely increase the accident hazard. He said:

" *** we have a forty minute lunch period. There may be individuals who might wish to get a drink of alcoholic liquor and would have no difficulty during that period in getting to #85 George's Road; but I doubt very much whether they could with any convenience, unless in a car, go to the other places where liquor is available and get back within time. We have had experience which impressed on us that the taking of alcohol by individuals increases our accident hazards and lowers the production rate. That is a general experience with all plants. It is nothing peculiar to Squibbs. We are mindful of the welfare of

our employees and do everything we can to promote their well-being, to prevent accidents, and the result is, of course, satisfactory work."

Kenneth Robbie, Vice-President of the New Brunswick Chamber of Commerce, testified:

" *** we in New Brunswick have spent considerable money, time and effort, to satisfy and keep content the manufacturers which we have in New Brunswick; and to bring others into the city. There is considerable competition among other cities to try and get some of our industries to go to their towns. Our interest in all these factories is that those that are there and producing the wealth for our city, should be encouraged to expand their plants and increase their outputs. Squibbs is at this moment expending a large sum of money in expanding their plant, running up into the millions of dollars. We were particularly happy to have such extension because it means employment of many more people. When one of our representative manufacturers, such as Dr. Anderson, comes before a body to object to what he considers a hazard, we naturally want to sustain him in his efforts, because we think it is genuine and true."

I had a similar situation before me in Zavatarro vs. New Brunswick, Bulletin #175, Item 4. In that case the building sought to be licensed was near three industrial plants employing respectively two hundred forty-seven, eighty-five, and ninety-one persons. In that case no tavern had ever been operated in the neighborhood and representatives of these three plants, together with the local Chamber of Commerce, protested against the licensing of Zavatarro's premises. The application was denied by the local Board of Commissioners and an appeal was taken. I held that the action of the New Brunswick authorities was not, under the facts presented, arbitrary or unreasonably discriminatory and, therefore, affirmed their decision, saying:

"It is evident that the drinking of liquor by industrial employees about to handle complicated machinery would increase the danger of injury. And the presence of a tavern directly in front of the industrial plant might well furnish a temptation, not otherwise present, to employees about to begin their shift to have 'just one drink' before entering the plant. Consequently, in the interests of efficiency and safety, it was open to the Board to decline the issuance of licenses for premises near industrial plants."

The same result was reached for the same reasons in Stemple vs. Township of Bridgewater, Bulletin #177, Item 8. In that case a license had at one time been issued to a place within two hundred feet of one of the industrial plants there involved which employed twenty-three hundred persons in various shifts throughout the day and night, but that license had expired more than a year and a half before the case was decided and had not been renewed.

Appellant contends that the cases cited are distinguishable (1) because it appeared in those cases that the premises for which the respective licenses were sought would cater substantially only to the employees of the objecting factories, whereas in the present case it appears that a majority of the Squibb employees come to the plant in their own cars or in buses, and very few leave the plant during the forty minute noon-day lunch period; that appellant purposes to rely for his trade on a large number of people of his own nationality who live in the vicinity, of which there are one hundred forty of such families within a radius of six square

blocks; (2) because there were, at the time of the decision of the cited cases, no saloons in the respective vicinities, whereas in the present case there are three other saloons in the neighborhood to which the employees of the Squibb plant could resort if they wished.

Dr. Anderson opined that it would be possible for an employee to leave his plant during the lunch period and visit appellant's premises, whereas it would be more difficult, if not impossible, to visit the other places in the vicinity and get back to the plant on time. This does not impress me. As counsel for the appellant well says:

> "There is a tavern located one block from the proposed tavern. Certainly if a tavern provided a dangerous hazard for Squibbs and Sons that would have been exhibited a long time ago. There is no unfortunate experience as a result of that tavern being located there. The difference of one block does not represent the difference between safety and danger."

The real question, however, which I have to decide is not whether a particular opinion of an objector is valid or not, or whether the speculation of appellant, that he would not draw any patronage from the factory but only from families in the neighborhood, is sound. In the presence of a tie vote by the local issuing authorities, which, therefore, effects a denial of the application, I am called to decide whether public convenience and necessity is served by granting or withholding the license which is sought.

It is unnecessary to consider the objection of the College of Agriculture of Rutgers University, based on a proposal to establish some time in the future a playground in this section. The proposed location is some four or five blocks away and the alleged detrimental influence is remote.

I find that there are three places in the immediate neighborhood already licensed for on-premises consumption of liquor. No one appeared to testify as to the need of an additional licensed place in that neighborhood except appellant and his next door neighbor. The neighborhood appears plentifully supplied.

Again, I am mindful of the efforts of certain of our municipalities and of their industrial commissioners and chambers of commerce to attract new industry into New Jersey because it means, not only new dollars brought into the State and new ratables to lighten the load of taxation, but primarily because, it affords employment and gratifies one of our most precious rights - the right and the opportunity to work. Capital is at best a timid commodity. In times such as these it needs special encouragement to make new and substantial commitments. If the heads of industry are mistaken in believing that the addition of a new saloon in the vicinity of their plants will create a new danger, the belief is as true to them as if it were the fact. Governing boards of municipalities may, therefore, well give pause to the objections of those who can give or bring employment to our citizenry. To be sure, there are three taverns already in existence in the neighborhood and it might be said that another slice from the cut loaf will never be missed. It is true that a new industrial center, free from all taverns, is not involved in this case. But that is not a good reason for increasing the number of existing taverns. Other enterprises contemplating possible location in the State judge of the future by the past.

Business charts its course by trends. If the tendency is to give out new licenses in a neighborhood already plentifully supplied, the fear complex naturally increases and may well operate as a deterrent. On the other hand, if the inclination is against expansion of the liquor privilege and in favor of limitation to actual needs, it may well be the turning point in the decision to locate in New Jersey. This does not signify that a private citizen is not entitled to the same consideration as industry. What it means is that the individual's rights must give way to the welfare of the many in the interests of society as a whole. It does not signify that industry is to have a veto power on the issuance of liquor licenses. What it means is that new licenses should not be issued unless it affirmatively appears that the public convenience and necessity will be served thereby. There is no such showing in the case at bar. The weight of the testimoney is the other way.

The action of respondent in denying the license is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: January 31, 1938.

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SEVEN DAYS' SUSPENSION OF TWO LICENSES SHOULD SERVE AS EXAMPLE AND WARNING - MORE DRASTIC PUNISHMENT IN ORDER IF SUCH VIOLATIONS CONTINUE.

February 1, 1938.

Mr. Arthur Lozier,
Borough Clerk of Paramus,
Spring Valley Road,
Hackensack, R.F.D., N.J.

Dear Mr. Lozier:

I have staff report of the proceedings before the Borough Council of Paramus against

1. George baar, t/a George Baar Lunch Car
207 Teaneck Road, and,

2. Julius DeGeeter, t/a Paramus Skating Rink,
Corner Route #2, and Midland Avenue,

both charged with having sold and served alcoholic beverages to minors.

I note Baar was adjudicated guilty and that DeGeeter pleaded guilty to the charge; further, that each license was suspended for a period of seven days.

Expressing no opinion on the merits of the Baar case because it might come before me by way of an appeal, I wish to extend to the Borough Council and to its attorney, Charles Schmidt, Esq., my sincere appreciation for their prompt and effective action in these cases.

I am sure we all agree that sale and service of alcoholic beverages to boys and girls amount to practically a scandal. Licensees know full well that careless and inefficient handling of the privilege given to them to sell liquor, has the effect of bringing the entire liquor traffic into disrepute. My men apparently had no trouble at all spotting the minors in these cases. Why should the licensee or the employees of the licensee

have any difficulty in doing the same thing if they really wanted to break up the traffic? I hope the penalties imposed will put an end to this type of violation in Paramus; also, that it will serve as an example throughout the State.

If sales to minors continue, more drastic punishment will be in order.

Thanks greatly for effective cooperation.

Sincerely yours,

D. FREDERICK BURNETT
Commissioner.

7. LICENSES - INTEREST IN LICENSED PREMISES - WHEN NEW LICENSE MAY BE ISSUED FOR, OR EXISTING LICENSE TRANSFERRED TO, VACATED PREMISES.

January 25, 1938.

My dear Commissioner:

A property owner in Camden whose property has been maintained as a saloon for a great number of years, recently leased the building to a party who applied for and obtained a retail license. After occupying the building for a month the license holder moved out taking the license with him.

He has not applied for a transfer and would not surrender the license to the property holder to transfer to her name.

Because of an Ordinance in the City of Camden limiting the number of license holders, it is impossible to issue a new license for these premises, of course, there is the other obstacle of issuing two licenses to one premise in our State law. The property holder who is in dire circumstances has found another individual who wishes to transfer their present license to her premises.

With the above circumstances in mind, would it be possible for us to vacate the license held by the first licensee and issue the transfer. If this cannot be done, is there any other solution that might assist the property owner. Personally, I could find none, but at the insistence of the property owner, I am writing for your opinion.

Very truly yours,

JOHN L. MORRISSEY

January 31, 1938.

John L. Morrissey, Chairman,
Municipal Board of Alcoholic Beverage Control,
Camden, N. J.

My dear Mr. Morrissey:

I have your letter of the 25th and am sending you herewith ruling made in re Kappelmann, Bulletin 211, Item 1, which

deals specifically with the point you raise.

It all depends on whether or not the original licensee retains any present estate or interest in the licensed premises. If he does, so long as that interest exists, no other license can be granted for or transferred to those premises. If he does not, then there is no objection to your transferring an existing license to those premises.

Your letter says that the original license holder has "moved out." If by that you mean that the tenant has abandoned or surrender his lease and this surrender has been accepted by the landlord so that the tenant has no present property right whatsoever in the leasehold premises, then the road is clear to transfer another license to those premises even though the licensee refuses to surrender his license. On the other hand, the mere moving out of the tenant from the licensed premises would not of itself be a surrender of his leasehold interest. There is no requirement, of course, that the tenant must personally occupy or be in physical possession of the demised premises. If he pays the rent he could keep the premises vacant.

If there is any question about the existence of the tenant's rights to possession, that could be tested and adjudicated through the medium of a dispossess suit.

I am familiar with the problems confronting owners of property leased for tavern purposes which arise under municipal limitations of licenses. Some of this has appeared in the official bulletins. See Re Konesky, Bulletin 217, Item 7. Cf. Wenger v. Ridgewood, Bulletin 110, Item 3; Potanski v. South River, Bulletin 226, Item 7.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. MUNICIPAL ORDINANCES - EXPRESSIONS OF POLICY RECITING THE EXISTENCE OF A SUFFICIENT NUMBER OF LICENSES AND DETERMINING THAT NONE FURTHER WILL BE GRANTED UNLESS PUBLIC NECESSITY AFFIRMATIVELY APPEARS - HEREIN OF THE ADVANTAGES OF PUBLICLY DECLARING A POLICY IN ADVANCE OF ITS APPLICATION.

January 31, 1938.

Edgar C. Warren,
Borough Clerk,
Princeton, N. J.

My dear Mr. Warren:

I have before me your letter of the 25th and copy of resolution* reciting the existence of a sufficient number of licenses in the Borough and resolving that none further will be granted unless public necessity affirmatively appears, adopted by the Council on November 3, 1937.

Municipal resolutions enunciating licensing policies, such as the foregoing, are not subject to the Commissioner's

approval.

I deem the expression of policy, however, to be well made. It properly declares the rule before, instead of waiting until after applications are made. That is the way it should be done. It gives prospective applicants something definite to go by and may serve to avoid, in event of future denials, the charge of discrimination or personal or political preference.

Opinion as to the application of the policy in particular cases must, of course, be reserved pending appeal when any party who feels aggrieved may have the opportunity of being heard.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

* WHEREAS, this body has, from time to time, issued certain Retail Consumption, Retail Distribution and Club Licenses; and

WHEREAS, additional Club and Retail Consumption Licenses have, from time to time, been issued in the Borough of Princeton by the Commissioner of Alcoholic Beverage Control; and

WHEREAS, after a careful study of the situation this body believes, that under conditions as they now exist, there is no need for any additional licenses, of any kind or sort, in relation to the sale of Alcoholic Beverages.

NOW, THEREFORE, BE IT RESOLVED, That it is the sense of this body that there are sufficient licenses already issued in the Borough of Princeton to properly serve the needs of its inhabitants.

And be it FURTHER RESOLVED, That it is the sense of this body that no licenses, in addition to those already in existence, be granted, unless it can be affirmatively shown that the issuance of such license or licenses would directly serve the public need and be for the benefit of the Community as a whole.

9. APPELLATE DECISIONS - RANEY and FLYNN vs. EWING TOWNSHIP.

WILLIAM H. RANEY and EDWARD A. FLYNN,	)	
Appellants,	)	
-vs-	)	ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EWING,	)	CONCLUSIONS
Respondent.	)	

. . . . . .

Crawford Jamieson, Esq., Attorney for Appellants
No appearance on behalf of the Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail distribution license for premises to be constructed at 1020-22 Pennington Avenue, Township of Ewing.

Appellants have obtained a building permit for the premises to be constructed; no objection has been made against the suitability of the plan of those premises. It appears that respondent denied appellants' application solely because a general petition of protest containing eleven signatures was filed against that application.

Evidence produced by appellants indicates that their proposed store is to be located near the intersection of two highways, Pennington Avenue and Parkway Avenue; that this vicinity is the main business section of the Township and contains a score of stores and commercial properties; that in it there is one consumption but no distribution establishment; that although there are homes in the general area, only two residents now object, one a minister, the other a relative of the nearby consumption licensee; that these persons are two of the eleven signers of the aforesaid petition; that a third signer lives nearby but has admitted that he has no real objection; that the remaining eight objectors live three blocks or more from appellants' place; that six of these eight, when informed that appellants' application was for a "package" store and not a "saloon", stated that their only objection was to the latter type of establishment and that they therefore withdrew their objection to appellants' application; that the remaining two of these eight persons stated that their objection was not to the issuance of a liquor license but to the construction of a business establishment at the proposed site, and withdrew their objection when informed that the vicinity is zoned for business.

Upon testimony taken as to the foregoing facts, the Ewing Township Committee, lacking jurisdiction to reconsider its previous action, Plager vs. Atlantic City, Bulletin 80, Item 11, in accordance with the procedure heretofore set forth, in Re Writer, Bulletin 82, Item 11 and subsequently applied in Maurer vs. Sussex, Bulletin 85, Item 11; Eckerle vs. Camden, Bulletin 114, Item 11; Zeichner vs. Orange, Bulletin 137, Item 5; and Katzner vs. Newark, Bulletin 175, Item 5, unanimously adopted a resolution expressing their position and reading:

> "In view of the information furnished the Committee that the residents adjacent to the property located at 1022 and 1024 Pennington Road have no objection to the issuing of a Plenary Retail Distribution License at that location, and
>
> "In view of the fact that the license was denied altogether on these grounds,
>
> "BE IT RESOLVED, That the Committee have no other objection to the issuing of the license applied for."

Although this Department sent notice to the persons whose signatures appear upon the aforementioned petition, none made answer or filed any appearance on this appeal.

In view of the evidence before me in this uncontested matter, no substantial reason now appears for the denial of appellants' application.

The action of respondent is therefore reversed. Respondent is directed to issue the license as applied for provided, however, that the building on the premises sought to be licensed shall have been completed in conformity to the plans and specifications upon which the aforesaid building permit was obtained.

D. FREDERICK BURNETT
Commissioner

Dated: February 2, 1938.

10. APPELLATE DECISIONS - ZIMMERMAN vs. BERNARDS TOWNSHIP.

FRED H. ZIMMERMAN,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS,
Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Frederic M. P. Pearse, Esq., by George Such Pearse, Esq. and Max S. Mehler, Esq., Attorneys for Appellant.
Anthony P. Kearns, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from an order entered by the respondent, Township Committee of the Township of Bernards, suspending appellant's license for a period of ten (10) days on the ground that he sold alcoholic beverages to a minor in violation of the Control Act. Appellant does not deny that on July 11, 1937, two drinks of alcoholic beverages were sold at his licensed place of business to Sam Hollander, who was then eighteen years of age, but contends that he was "entrapped" and that consequently the suspension was improper.

The doctrine of entrapment and its incidents received elaborate discussion by the Supreme Court of the United States in Sorrells vs. United States, 287 U.S. 435 (1932). It was there recognized that officers of the law may properly use strategem to catch those engaged in criminal enterprises; may properly use decoys and present opportunities to those intending or willing to commit crimes; and may directly, or through informers, participate in unlawful purchases and sales for the purpose of obtaining evidence. Cf. Camden vs. Public Service Railway Co., 84 N.J.L. 305 (Sup. Ct. 1913); State vs. Dougherty, 86 N.J.L. 525 (Sup.Ct. 1915) rev'd 88 N.J.L. 209 (E. & A. 1915); State vs. Contarino, 91 N.J.L. 103 (Sup. Ct. 1918); State vs. Frank, 90 N.J.L. 78 (Sup. Ct. 1917), aff'd 91 N.J.L. 718 (E. & A. 1918). It was equally recognized, however, that officers of the law may not,

through trickery, persuasion or fraud, procure the commission of an offense by one who would not otherwise have perpetrated it. See particularly the separate opinion of Mr. Justice Roberts:

> "There is common agreement that where a law officer envisages a crime, plans it, and activates its commission by one not theretofore intending its perpetration, for the sole purpose of obtaining a victim through indictment, conviction and sentence, the consummation of so revolting a plan ought not to be permitted by any self-respecting tribunal. Equally true is this whether the offense is one at common law or merely a creature of statute. Public policy forbids such sacrifice of decency. The enforcement of this policy calls upon the court, in every instance where alleged entrapment of a defendant is brought to its notice, to ascertain the facts, to appraise their effect upon the administration of justice, and to make such order with respect to the further prosecution of the cause as the circumstances require."

With the foregoing I agree entirely. Although it is desirable that officers of the law be afforded every reasonable means of obtaining evidence to thwart criminal activity, it is "less evil that some criminals should escape than that the government should play an ignoble part." Mr. Justice Holmes dissenting in Olmstead vs. United States, 277 U. S. 438, 470 (1927). Consequently, if the evidence supported the appellant's contention that a paid investigator of the respondent Township had caused one of his relatives, who was a minor but looked over age, to visit the appellant's place of business, misstate his age and purchase alcoholic beverages, I would unhesitatingly reverse the order of suspension. Condonation of such conduct by public officials would go far towards undermining the very foundations of law. Cf. the following language of Mr. Justice Brandeis, dissenting in Olmstead vs. United States, supra:

> "Decency, security, and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law-breaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the admininstration of the criminal law the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face."

See also Nardone vs. United States, 82 L. Ed. 250 (1937). Cf. Re Entrapment, Bulletin 200, Item 3.

In view of the authorities, I hold that, in order to establish the defense of entrapment, it must appear that some official charged with enforcement of the law, either himself or through some other person acting for him, implanted a criminal

scheme in the mind of an otherwise innocent individual; that the very essence of the defense of entrapment is that the crime originated in the mind of the officer rather than of the accused. The question is one of practical law enforcement. See Note 44 Harvard Law Review, 109. Public officials have no right to treat the innocent scurrilously - neither are they to be over-squeamish in dealing with offenders.

The difficulty with appellant's position in the instant case is that the evidence introduced on his behalf fails to support his charge of entrapment. It is true that Michael Weinstein, the paid investigator of the Township who furnished the evidence resulting in the proceedings against the appellant, is a brother of the stepfather of Sam Hollander. Both Weinstein and Hollander testified that they had nothing whatsoever to do with each other's presence at the licensed premises and no evidence was introduced to the contrary. Hollander testified that while in the company of some friends at Morristown someone suggested that they get something to drink, that since it was Sunday and the licensed places in Morristown were closed, they went to appellant's place of business in Bernards Township; that while there, they were served and no question as to age was asked prior to such service; and that before he finished his second drink Michael Weinstein, whom he knew slightly, came to his table, asked him his age and thereafter placed the licensee under arrest. Others in the party who were not in anywise related to Weinstein or Hollander testified in corroboration.

Upon this state of the record there cannot be any finding of entrapment, notwithstanding such vague suspicions as might arise by virtue of the distant relationship between Hollander and Weinstein.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: February 2, 1938.

11. PLENARY RETAIL DISTRIBUTION LICENSES - FEES - THERE IS BUT ONE KIND OF SUCH LICENSE FOR WHICH A SINGLE UNIFORM FEE MUST BE CHARGED - A SLIDING SCALE OF FEES DEPENDENT UPON WHETHER A LICENSEE SELLS ON SUNDAY OR NOT OR UPON THE EXERCISE OF OTHER PRIVILEGES IS IMPROPER.

February 1, 1938.

Herbert A. Small,
Chief of Police,
Leonia, N. J.

My dear Chief Small:

I have your letter of January 21st by which I note that the Plenary Retail Distribution License fee in Leonia

is now $250. and in which you inquire whether it would be possible to rearrange the fee so that $250. would be charged to those who conducted their business only for six days a week and $300. to those who wished to take advantage of the proposed privilege of making Sunday sales, which, if permitted, would run from 1:00 P. M. until midnight.

A somewhat similar question arose last year in connection with Englewood Cliffs, which sought to fix the regular fee for on-premises consumption at $300. but provided that consumption licensees who had entertainment or amusement on the licensed premises must pay $400.00. See Re Ostermeier, Bulletin 189, Item 1. I ruled that there was no authority in the law for a sliding scale of fees dependent upon the particular privileges afforded to different licensees who all belonged to the same license class; that for each type of license, a single fee must be charged uniform throughout the municipality and applicable to all members of the class. Otherwise we get into the absurd situations which the cited case pointed out as the logical outcome of any deviation from the Statute.

It, therefore, would not be legal to have two different fees for plenary retail distribution licensees dependent on whether or not the licensee takes advantage of the privilege of selling on Sunday.

Very truly yours,

Commissioner

C. E. HENDRICKSON