STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 642 DECEMBER 18, 1944

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

ULLETIN 642 DECEMBER 18, 1944.

LIMITATION OF LICENSES - MUNICIPAL ORDINANCE LIMITING NUMBER OF LICENSES IS BINDING UPON MUNICIPAL ISSUING AUTHORITY AND LICENSES MAY NOT BE ISSUED IN EXCESS OF THE ORDINANCE QUOTA.

INCREASE IN ORDINANCE QUOTA IN ORDER TO PERMIT ISSUANCE OF LICENSE TO AN EX-SERVICEMAN - HEREIN DISCUSSION REGARDING POLICY OF SUCH INCREASE.

December 5, 1944

Nelson S. Butera
Town Clerk
Morristown, N. J.

Dear Mr. Butera:

I have your letter of December 2nd, stating that an honorably discharged serviceman who has recently applied for a plenary retail distribution license in Morristown recited before the governing body that "the Commissioner, in one case, has ruled that any honorably discharged veteran would be allowed such a license." You point out that Morristown has an ordinance limiting the number of plenary retail distribution licenses, which quota is now completely filled, and you state that the Board of Aldermen would appreciate my opinion in the matter.

A municipal ordinance limiting the number of licenses is binding upon the municipal issuing authority. In other words, a municipal issuing authority cannot legally issue a license in excess of the quota fixed by an operative ordinance. That is true irrespective of whether the license applicant is an ex-serviceman or otherwise and I have, of course, made no ruling to the contrary.

Section 33:1-40 of the Revised Statutes authorizes our municipal governing bodies to enact limitation ordinances, and such ordinances are subject to review by the Commissioner on appeal pursuant to Revised Statutes 33:1-41. A municipality may, in the first instance, amend its limitation ordinance to permit issuance of an additional license to an ex-serviceman. If your Board were to request my opinion regarding the policy of enacting such an amendment of Morristown's numerical limitation ordinance, I should reply in the following manner:

Certainly no one will deny the fact that the entire nation is immeasurably obligated to its war veterans. On the other hand, we are dealing here not with the general subject of aid to veterans but with the unique subject of retail liquor licenses. Speaking generally, liquor licenses are properly issued to serve the public convenience and necessity. They are not properly issued, within the contemplation of the Alcoholic Beverage Law, to serve private, individual interests.

If a municipality changes its numerical limitation ordinance in order to issue a license to an ex-serviceman, other properly qualified and deserving ex-servicemen would appear to be unfairly discriminated against if their applications for retail licenses in that municipality should be denied. And if many returning ex-servicemen should apply for and receive licenses, the whole meaning and purpose of numerical limitation would be destroyed.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

2. APPELLATE DECISIONS - METROPOLITAN LIQUOR CORPORATION, T/A BETTINGER'S, v. JERSEY CITY - ORDER OF DISCONTINUANCE.

METROPOLITAN LIQUOR CORPORATION, T/a BETTINGER'S,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

William George, Esq. and Samuel Moskowitz, Esq.,
Attorneys for Appellant.
Charles A. Rooney, Esq., by John F. Lynch, Jr., Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appealed from the denial of its application for a transfer of its plenary retail distribution license from premises located at 50 Journal Square, City of Jersey City, New Jersey, to premises located at 5 Journal Square, Jersey City.

At the hearing scheduled to be held herein, the attorneys for the appellant conceded that the petition was prematurely filed and requested permission to withdraw the said appeal without prejudice, which application was not opposed by attorney for the respondent.

No reason appearing that the request should not be granted, it is, on this 5th day of December, 1944,

ORDERED, that leave be granted to withdraw the appeal and that the proceedings herein be and the same are hereby discontinued, without prejudice.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A PERSON ACTUALLY OR APPARENTLY INTOXICATED - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - PREVIOUS GOOD RECORD AND MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS.

AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - LICENSEE PAID FINE OF $150.00 - LICENSE SUSPENDED IN DISCIPLINARY PROCEEDINGS FOR 60 DAYS - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF 60 DAYS (SUSPENSION PERIOD) FROM EFFECTIVE DATE OF AUTOMATIC SUSPENSION.

In the Matter of Disciplinary Proceedings against

PARK AVENUE BEVERAGE CO., INC.
309 Park Avenue
Paterson, N. J.,

Holder of Plenary Retail Distribution License D-7 issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

In the Matter of Petition by

PARK AVENUE BEVERAGE CO., INC.
309 Park Avenue
Paterson, N. J.,

To Lift the Automatic Suspension of Plenary Retail Distribution License D-7 issued by the Board of Alcoholic Beverage Control of the City of Paterson.

Saul M. Mann, Esq., Attorney for Defendant and Petitioner.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On November 3, 1944 Herman Schlenger, President of Park Avenue Beverage Co., Inc., pleaded non vult in the Passaic County Court of Quarter Sessions to a charge of selling alcoholic beverages to a minor, and on November 10, 1944 said Herman Schlenger was sentenced to pay a fine of $150.00 as a result of his conviction. The fine was paid. Because of this conviction the license held by the corporation was automatically suspended for the balance of its term. R. S. 33:1-31.1. On November 14, 1944 the license was picked up by agents of the Department of Alcoholic Beverage Control, and no activities under the license have been permitted since that time.

On November 15, 1944 disciplinary proceedings were instituted by this Department against Park Avenue Beverage Co., Inc. Charges (1) and (2) therein alleged that on June 5, 1944 defendant sold alcoholic beverages on two occasions to Raymond ----, a minor, in violation of R. S. 33:1-77 and in violation of Rule 1 of State Regulations No. 20; and Charge (3) therein alleged that, on the second occasion, defendant sold and delivered alcoholic beverages to Raymond ----, a person actually and apparently intoxicated, in violation of Rule 1 of State Regulations No. 20. On November 15, 1944, Park Avenue Beverage Co., Inc. filed a petition to lift the automatic suspension of its license. R. S. 33:1-31.1. Thereafter it pleaded guilty to Charges (1) and (2) and not guilty as to Charge (3) in the disciplinary proceedings.

As the disciplinary proceedings and the petition to lift the automatic suspension involve substantially the same facts, they may be considered together in this proceeding.

An examination of the file discloses that Raymond ---- was born on April 13, 1928. In a statement given to an ABC investigator, Herman Schlenger admitted that, on the date mentioned in the charges, he sold a quart bottle of beer to Raymond and that, about an hour later, he sold another quart bottle of beer to the same individual.

At the hearing held on the third charge, Raymond testified that, after purchasing the first quart bottle of beer, he left the licensed premises and consumed the contents of the bottle; that he has no recollection of what happened thereafter. Another boy, fourteen years old, testified that he saw Raymond near the licensed premises after he had consumed the contents of the first bottle and that he then appeared to him to be intoxicated. This boy further testified that thereafter Raymond re-entered the licensed premises and walked with a stagger to the counter, where he purchased the second bottle of beer. This boy further testified that Raymond, after leaving the licensed premises with the second bottle of beer, consumed the contents thereof some distance from the licensed premises. There is no doubt that Raymond was definitely intoxicated when he reached his home shortly thereafter.

As to the third charge: I find that Raymond was actually or apparently intoxicated when he purchased the second bottle of beer from defendant's President. There appears to be no reason why either of the two boys should give false testimony. It may be that the defendant's President, an elderly man associated with the liquor industry for many years and with no previous adjudicated record, failed to notice Raymond's condition just as he failed to notice the boy's apparent youth. This does not, however, excuse the violations. Schlenger's prior good record, over a period of many years, however, leads me to the conclusion that the violations in question were the result of carelessness rather than deliberate intent. If this were not apparent, I would unhesitatingly order revocation of this license.

After considering all the facts and circumstances surrounding these violations, including the youth of the minor, the apparent previous good record of the defendant and its President, and the guilty plea to Charges (1) and (2), I have decided to suspend the license in the disciplinary proceedings for a period of sixty days. The suspension will be considered as having begun on the date the license was picked up, namely, November 14, 1944, and will continue until sixty days have expired from said date.

As to the petition: The criminal conviction resulted from the sales mentioned in the disciplinary proceedings. It has been the policy of this Department to lift an automatic suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4. Considering all the facts, I shall grant the relief sought in the petition after the automatic suspension has been in effect for a period of sixty days, so that the automatic suspension may be lifted when the suspension imposed in the disciplinary proceedings has been served.

Accordingly, it is, on this 7th day of December, 1944,

ORDERED, that the petition to lift the automatic suspension of License D-7, held by Park Avenue Beverage Co., Inc., is granted, effective at 7:00 A.M. January 13, 1945. Until then, the license stands suspended.

ALFRED E. DRISCOLL
Commissioner.

4. **DISQUALIFICATION** - APPLICATION TO LIFT - PETITIONER FAILED TO PROVE GOOD CONDUCT FOR **FIVE** YEARS LAST PAST - PETITION DISMISSED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 346.

CONCLUSIONS

BY THE COMMISSIONER:

Petitioner's imposing criminal record includes, between 1922 and 1934, three separate convictions for breaking, entering and larceny, with consequent incarceration during practically all of this twelve-year period. In February 1935 he was committed to the state prison for six to nine years after he pleaded guilty to a violation of the so-called "Gangster Act." When that law was declared unconstitutional by the U. S. Supreme Court, petitioner was released from prison. He was thereupon arrested under a detainer warrant upon an indictment charging him with the commission, in August 1934, of the crimes of burglary and larceny. He pleaded guilty to this indictment in October 1939 and received a three-year suspended jail sentence and was placed on probation for five years.

Despite the petitioner's disqualification resulting from the aforesaid convictions (see R. S. 33:1-25; 26), he nevertheless held occasional employment in a licensed tavern in this state. While so employed as a bartender in October 1943, he became personally implicated in a violation of the Alcoholic Beverage Law, as a result of which the license of his employer was suspended for a substantial period of time. See Bulletin 603, Item 9. In that proceeding the following appears:

> "On October 14, 1943 two ABC agents entered the defendant's tavern in the midst of a drunken brawl between two of the defendant's male patrons. Before the latter were finally separated by the agents, one of the participants was seriously beaten about the face and blood spurted from a laceration on his forehead. Both of these men were in an extreme state of intoxication. The bartender (petitioner) admitted that one of the men had been 'drinking all night up to closing time and started again' in the morning. Nevertheless, he served him '15 or 20 beers' during that morning. He also admitted serving 'two whiskies and two beers' to the other man, although he was 'feeling pretty good' when he entered the tavern. It further appears that the bartender made no attempt to avoid the altercation, which had been preceded by a verbal argument which continued for some period of time and, after the brawl started, made only feeble efforts to stop it."

It is evident that such conduct by the petitioner prevents me from finding that he "has conducted himself in a law-abiding manner.....and that his association with the alcoholic beverage industry will not be contrary to the public interest." In the absence of this finding, I have no authority to grant the relief prayed for in the petition. R. S. 33:1-31.2.

The petition is, therefore, dismissed.

ALFRED E. DRISCOLL
Commissioner.

Dated: December 7, 1944.

5. COMBINATION SALES - GIFT BASKETS AND PACKAGES - NEW RULING - EACH ITEM OFFERED FOR SALE IN COMBINATION WITH OTHER ITEMS MUST BE AVAILABLE FOR SALE APART FROM THE COMBINATION.

COMBINATION SALES - UNIT PRICE OF EACH ARTICLE REQUIRED AS HERETOFORE - THE PRICE OF EACH UNIT MUST BE THE CURRENT PRICE FOR THE SAME ARTICLE WHEN SOLD SINGLY.

This year, with serious shortages of supplies of particular types of liquors, such as scotch and bourbon, the sale of gift and holiday baskets by retail licensees requires certain restrictions and additional provisions as a safeguard against the possible use of scarce items as a device or bait to sell less popular items in combination packages. I therefore rule that every item of alcoholic beverage offered in an assortment contained in a gift or holiday package must be available individually and separately on the shelves of the retail licensed premises, or such item not separately available must be removed from the basket.

The Commissioner has previously ruled that there is no objection to packaging alcoholic beverages in gift or holiday baskets, provided the exact contents are itemized in detail and the unit price of each article is specifically stated at the same figure that it is currently sold by the licensee separately and independently of any combination. It is further provided that the price for the assortment shall be the aggregate of the individual items.

Subject to provisions and restrictions herein set forth, retailers may advertise and sell gift or holiday baskets containing assortments of alcoholic beverages.

For other rulings on this subject see Re Harris, Bulletin 220, Item 7; Re Garrett & Co., Bulletin 506, Item 9.

ALFRED E. DRISCOLL
Commissioner.

Dated: December 8, 1944.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS ON SUNDAY, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 AND R. S. 33:1-2 - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

13th WARD ITALIAN AMERICAN CITIZENS DEMOCRATIC CLUB
1300 Decatur Street
Camden, N. J.,

Holder of Club License CB-16, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Defendant-Licensee, by Joseph Mignogna, President.
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleads guilty to (1) sale and service of alcoholic beverages on Sunday, November 5, 1944, in violation of the municipal ordinance, and (2) the sale of alcoholic beverages to persons other than bona fide members and their bona fide guests, in violation of Rule 5 of State Regulations No. 7 and R. S. 33:1-2.

On the date in question, agents of the Department of Alcoholic Beverage Control observed several people enter the clubhouse premises and later walked in themselves and found about twenty-six people being served what appeared to be alcoholic beverages either at the bar or while seated at tables. The agents were served alcoholic beverages by both of the bartenders on duty. Neither of the agents was asked if he was a member of the club or a guest of a member. After being served, they made known their identity to the bartenders, both of whom signed a statement that they had served alcoholic beverages to the agents.

In 1938 the license of the club was suspended for five days by the local Board for selling alcoholic beverages on Sunday, in violation of the local ordinance. The usual penalty for sales on Sunday is fifteen days. Re Penns Grove Lodge No. 820 Loyal Order of Moose, Bulletin 615, Item 2. The usual penalty for sales to non-members is also fifteen days. Re Penns Grove Lodge No. 820 Loyal Order of Moose, supra. Under all the circumstances, I shall suspend the license for a total of forty days. The total suspension will be reduced by five days because of the plea.

Accordingly, it is, on this 11th day of December, 1944,

ORDERED, that Club License CB-16, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to 13th Ward Italian American Citizens Democratic Club, for premises 1300 Decatur Street, Camden, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 7:00 A. M. December 18, 1944, and terminating at 7:00 A. M. January 22, 1945.

ALFRED E. DRISCOLL
Commissioner.

7. APPELLATE DECISIONS - BERMAN v. WILDWOOD.

LOUIS BERMAN, t/a DAYTON HOTEL,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF WILDWOOD, a municipal corporation of New Jersey,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

T. Millet Hand, Esq., Attorney for Appellant.
Irving Shenberg, Esq. and Harry Tenenbaum, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to grant a plenary retail consumption license to the appellant for premises known as the Dayton Hotel, located on the southeast corner of Atlantic and Wildwood Avenues, Wildwood.

It appears from the respondent's answer in these proceedings and the resolution adopted by the Board of Commissioners on June 8, 1944, supported by stipulation of counsel, that the license was refused for the following reasons: (1) public convenience and necessity do not require the granting of an additional license (the Board of Commissioners apparently reached this conclusion after the hearing on the application for license, when numerous objections to the issuance of the license were presented); (2) the existence of an additional licensed premises in the neighborhood, where many licenses are now outstanding, would add to the noise and confusion of the neighborhood and jeopardize the business of existing nearby hotels, boarding houses and rooming houses; (3) the issuance of the license would be contrary to the terms of the municipal ordinance limiting to thirty (30) the number of plenary retail consumption licenses to be issued and outstanding in the City of Wildwood at the same time. The ordinance contains an exception permitting the renewal and transfer of licenses outstanding on the date of the ordinance, even though in excess of the established quota.* There are presently 52 plenary retail consumption licenses in the City of Wildwood.

Passing other issues raised by the appeal, it is evident that the respondent was bound by its own ordinance. In view of the limitation imposed in the ordinance and the number of licenses outstanding exceeding the quota, the Board of Commissioners had no jurisdiction to grant the application filed by the appellant. Cf. Bachman v. Phillipsburg, 68 N. J. L. 552 (S.C.); Gundrum v. South Amboy, 86 N.J.L. 450 (S.C.); Re Loeb, Bulletin 206, Item 14; Re Suskowitz, Bulletin 534 Item 2.

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*The ordinance does not contain an exception in favor of hotels.

Appellant, although not questioning the validity of the ordinance, contends that the limitation provided therein is unreasonable in its application to the premises in question, consisting of a bona fide summer hotel containing approximately 63 guest rooms.*

In a parallel case decided by the late Commissioner Burnett (Current v. Fredon, Bulletin 184, Item 1), the same contention was there made and rejected. In his opinion in the cited case, the Commissioner held:

> "***While hotels are distinguishable from ordinary drinking places and are not to be discriminated against in the issuance of licenses; see cases supra; also Retail Liquor Dealers Association v. Plainfield, Bulletin 70, Item 1 and Peck v. West Orange, Bulletin 147, Item 1; nevertheless it does not follow that a hotel is ipso facto entitled to a license just because it is a hotel. There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed."

See also Lincoln Avenue Corporation v. Wildwood, Bulletin 540, Item 2; Macon v. Wildwood, Bulletin 573, Item 6.

Applying the test laid down in the Current case to the evidence presented in this appeal, the record shows that the appellant produced only himself as a witness on the issue of public necessity and convenience. His testimony, in brief, is to the effect that a large number of his guests desire the convenience of having alcoholic

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*R. S. 33:1-41 provides:

> "If any person affected or who might be affected by any limitation of the number of licenses or of the hours between which sales of alcoholic beverages at retail may be made shall consider himself aggrieved thereby, he may appeal to the commissioner in respect thereto and thereupon the commissioner, after public hearing, may set aside, vacate and repeal the limitation complained of or change, alter, amend or otherwise modify the same."

It is to be noted that appellant, in his appeal, apparently relies upon R. S. 33:1-22, providing for an appeal to the Commissioner from the refusal to grant a license, rather than R. S. 33:1-41, quoted above. Despite this fact, I have considered all the issues purported to be raised by the pleadings.

beverages with their meals. This testimony was substantiated by a petition signed by approximately 40 guests of the hotel. The testimony of the appellant disclosed, however, that, if granted a license, he proposes to operate a "cocktail lounge" with a bar and that the lounge would be open to members of the general public.

The testimony offered by appellant falls far short of meeting the test of the Current case and certainly does not convince me that public convenience and necessity require that the appellant be granted a consumption license despite the limitation imposed in the municipal ordinance. On the contrary, it would appear that the neighborhood in which appellant's premises are located is amply supplied with liquor establishments. Within 200 feet of the premises, there are presently outstanding four consumption licenses.

The burden of proving that public convenience and necessity require the granting of a license rests with the appellant. The convenience of a comparatively few guests of a family type hotel in a summer resort must be weighed and considered in the light of the general public policy in the community. The City of Wildwood would appear presently to have ample facilities for the sale of alcoholic beverages.

The ordinance adopted June 11, 1940 by the respondent, limiting the number of licenses to be issued in the City of Wildwood, appears to have been a reasonable exercise of the authority delegated to the Board of Commissioners. See R. S. 33:1-40.

The appellant has not shown that the numerical restriction contained in the local ordinance is unreasonable, either generally or as applied to his individual case. Hence, the action of the respondent cannot be said to have been either arbitrary or capricious.

The action of respondent is affirmed.

Accordingly, it is, on this 11th day of December, 1944,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

APPELLATE DECISIONS - MACALUSO AND GOVERNALLI v. GARFIELD.
MACALUSO AND GOVERNALLI v. GARFIELD AND KROPINACK, SR.

THOMAS MACALUSO and PHILIP GOVERNALLI,

Appellants,

-vs-

CITY COUNCIL OF THE CITY OF GARFIELD,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

THOMAS MACALUSO and PHILIP GOVERNALLI,

Appellants,

-vs-

CITY COUNCIL OF THE CITY OF GARFIELD and STEPHEN KROPINACK, SR.,

Respondents

Carmen M. Belli, Esq., Attorney for Appellants.
Henry L. Janowski, Esq., Attorney for Respondent, City Council of the City of Garfield.
Chandless, Weller & Kramer, Esqs., by Julius E. Kramer, Esq., Attorneys for Respondeht, Stephen Kropinack, Sr.

BY THE COMMISSIONER:

These two appeals -- one from the denial of appellants' application for a plenary retail distribution license and the other from the granting of a plenary retail distribution license allegedly to Stephen M. Kropinack, Sr. -- involve the same issues, were consolidated at the hearing by agreement of the parties, and will be decided together.

On July 11, 1944 appellants filed their application for a plenary retail distribution license for premises at 213 Midland Avenue. On July 19, 1944 Stephen M. Kropinack and Edward Kropinack filed an application for a plenary retail distribution license for 79 Belmont Avenue. Both applications were considered for the first time by the City Council at its meeting held on August 2, 1944.

It is admitted that the ordinance of the City of Garfield limits the number of plenary retail distribution licenses to seven and that six licenses of this type were in existence when these applications were filed, the vacancy in the quota having existed for more than a year prior thereto.

From the evidence herein I conclude that, at its meeting held on August 2, 1944, the members of the City Council were still considering the advisability of amending another section of said ordinance by reducing the required distance between licensed premises from five hundred feet to four hundred fifty feet. This contemplated amendment had previously been passed on first reading, and was then being considered in order that a plenary retail consumption license might be granted to a war veteran who is not concerned in these proceedings. Apparently appellants' premises were in close proximity to

the premises for which the war veteran advised Council he intended to apply for a license because the minutes of the meeting of August 2, 1944 disclose that a motion was made to grant appellants' application

> "with the understanding that, in the event the 450-foot ordinance is passed, that he (sic) would agree with the City to move his license to other premises that would be 500 feet distant from those which the veteran would occupy."

This motion was defeated, and no further action was taken on appellants' application at that meeting. The City Council also failed to take any action at that meeting upon the application previously filed by the Kropinacks, apparently because the premises for which they had applied were within five hundred feet (and in fact within four hundred fifty feet) of existing licensed premises.

On August 16, 1944 Edward Kropinack and Stephen M. Kropinack filed a new application for a plenary retail distribution license at 93 Belmont Avenue, which premises are located more than five hundred feet from any existing licensed premises.

At its meeting held on September 13, 1944, the City Council granted the license to the Kropinacks for 93 Belmont Avenue and defeated a resolution authorizing the issuance of a license to appellants for the stated reason that the quota for distribution licenses had been filled by the granting of the Kropinack license.

At the hearing herein appellants produced no evidence, other than that set forth above, which would tend to show any bias or prejudice so far as any member of the City Council is concerned. They failed to produce any evidence which might tend to show that the welfare of the community required a distribution license at their premises rather than at the premises occupied by the Kropinacks. They did establish that their premises are located in the Third Ward, and that there is at the present time only one plenary retail distribution license in the Third Ward. But the record shows that, prior to September 13, 1944, there was only one plenary retail distribution license in the Second Ward where Kropinacks' premises are located, and it would seem that the question as to whether the additional license should be granted in the Third Ward or the Second Ward was primarily a matter to be decided in the sound discretion of the local issuing authority.

The mere fact of prior filing does not, ipso facto, entitle an applicant to preferential treatment. Gilberti v. Franklin, Bulletin 150, Item 3; Curry v. Margate City, Bulletin 472, Item 7. The failure to act on appellants' application at the meeting held on August 2, 1944 may well have been due to the fact that the City Council was still contemplating the reduction of the required distance between licensed premises, a plan which was subsequently abandoned. It might also be well to note here that the plenary retail consumption license was never issued to the war veteran. In making the choice on September 13, 1944, in favor of the Kropinacks, I cannot, upon the evidence produced, conclude that the local issuing authority acted in an unreasonable manner. The burden herein is upon the appellant to establish that such action was unreasonable. Having determined that the license should be issued to the Kropinacks, the local issuing authority was forced, by a valid subsisting ordinance, to deny appellants' application. Healey v. Waterford, Bulletin 633, Item 12.

In view of the result which I have reached herein, it is unnecessary to consider the technical objections that the second appeal was not filed within time and that Edward Kropinack was not joined as a respondent in the second appeal.

Finding no reversible error, the action of respondent City Council, in both cases, will be affirmed.

Accordingly, it is, on this 14th day of December, 1944,

ORDERED, that the action of respondent City Council of the City of Garfield, in both cases, be and the same is hereby affirmed, and that the appeals herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

HOURS OF SALE - STATE REGULATIONS NO. 38 LIMITING HOURS FOR SALE AND DELIVERY BY RETAIL LICENSEES OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION - NO RELAXATION OF THIS REGULATION WILL BE PERMITTED ON THE SUNDAYS PRECEDING CHRISTMAS AND NEW YEAR'S DAY.

ATTENTION OF RETAIL LICENSEES

It is not my intention to relax the provisions of State Regulations No. 38 to permit the sale of alcoholic beverages for off-premises consumption on the Sundays preceding Christmas and New Year's Day. Experience has demonstrated the wisdom of prohibiting the sale of alcoholic beverages for off-premises consumption on Sundays. State Regulations No. 38 have received substantial support from the public and, with rare exceptions, from a majority of the distribution licensees. The consuming public, by and large, has adjusted its procedure and made arrangements to purchase alcoholic beverages prior to 10:00 P. M. on Saturday.

State Regulations No. 38 were designed in part to help solve a very important war-time problem involving the welfare of our armed forces. In addition, however, the regulations were also designed to stop a growing public criticism of certain phases of the liquor industry.

Accordingly, State Regulations No. 38 will continue to be strictly enforced.

ALFRED E. DRISCOLL
Commissioner.

Dated: December 14, 1944.

10. APPELLATE DECISIONS - ROBERT AND MULLER v. HOBOKEN.

THEODORUS CHARLES ROBERT and GUSTAVE MULLER,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Louis J. Messano, Esq., Attorney for Appellants.
John J. Fallon, Esq., by Robert F. McAlevy, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of the Board of Commissioners of the City of Hoboken on October 31, 1944 in refusing to issue a plenary retail consumption license to appellants for premises 302 Hudson Street, Hoboken, N. J.

Both parties, through their respective attorneys, have stipulated that the sole question to be decided is whether the respondent Board of Commissioners was justified in refusing to issue a license to appellants on the ground that Theodorus Charles Robert, one of the two partner-applicants, is not a fit and proper person to hold a license.

It is, of course, conceded that where a partnership applies for a license, all of the partners must qualify as individual applicants. R. S. 33:1-25.

The undisputed evidence in the case discloses that the appellant Robert was born in Amsterdam, The Netherlands, and that he entered the United States on December 14, 1930. On the 28th day of September, 1936, Robert became a citizen of the United States. On or about December 12, 1942 a complaint was filed against him in the United States District Court for the Eastern District of South Carolina by the United States Attorney of that district, wherein it was alleged, inter alia, that his certificate of naturalization had been procured fraudulently and illegally and that the certificate was subject to cancellation. The admitted purpose of the complaint was to obtain an order revoking and setting aside the Decree of Naturalization and cancelling the certificate. On November 30, 1943, however, an order was entered by one of the Judges of the United States District Court for the Eastern District of South Carolina, wherein the complaint was dismissed "for proper cause shown."

According to the testimony of Robert, the filing of the complaint was the result of an unfortunate altercation he had with a man over the renting of a tourist cabin during a period when he was engaged in the operation of a tourist camp in South Carolina. Robert testified that at the time of the occurrence this personage threatened that he would make trouble for him.

In his testimony, Robert stated that he visited Holland on three occasions subsequent to his original entry into this country.

On the last occasion, in 1938, he and his family spent three months in Holland. During this period he visited Germany, where he stayed for about seven days before returning to Holland. Robert denied emphatically that he was ever a member of any subversive organization or that he had ever been convicted of a crime. There is no testimony or record to indicate otherwise.

Proper liquor control dictates that an issuing authority should be free, within the confines of a sound discretion, to determine whether or not a person is fit to hold a license. However, the determination of unfitness must in every case be founded upon valid and substantial grounds. Vuono v. Belleville, Bulletin 163, Item 12; Jones v. Absecon, Bulletin 218, Item 1; Zicherman v. Newark, Bulletin 227, Item 7; Sudol v. Wallington, Bulletin 276, Item 7.

In the instant case, the order dismissing the complaint filed in the United States District Court "for proper cause shown", on motion of the United States Attorney, who had caused the same to be filed, indicates that the Government was unable to prove its charges. I cannot agree with respondent's contention that the mere filing of a complaint, subsequently dismissed "for proper cause shown", constitutes, in itself and without more, evidence of unfitness on the part of Robert. To accept this contention would be to open up dangerous new avenues, neither consistent with proper judicial procedure or sound administrative practice. I am opposed to substituting allegations for evidence. Therefore, the objection to the fitness of the appellant Robert, based solely upon the complaint filed in the United States District Court, and subsequently dismissed, cannot be considered as having been founded upon valid and substantial grounds. The decision of the respondent on this narrow issue will, therefore, be reversed.

The City of Hoboken, with a population, according to the 1940 census, of 50,115, has outstanding 200 plenary retail consumption licenses. Despite the fact that by any reasonable standard it appears that the City already has an overabundance of places licensed for the sale of alcoholic beverages, respondent has not adopted an ordinance limiting the number of plenary retail consumption licenses that may be issued and outstanding at the same time. See R. S. 33:1-40. The record further discloses that from August 8th to October 24th, four plenary retail consumption licenses were issued by the respondent. Subsequent to the denial of appellants' application, the City of Hoboken has issued three plenary retail consumption licenses.

In this case, as previously indicated, counsel for the respondent has conceded that the premises sought to be licensed are fully qualified and that "the whole case depends on whether or not this individual (Robert) is a fit and proper person to have a license issued to him."

Therefore, notwithstanding my strong conviction on the subject of limitation, an impartial administration of the Alcoholic Beverage Law leads me to the conclusion that no reasonable ground has been presented for denying appellants' application during a period when other applications for plenary retail licenses were being granted.

Accordingly, it is, on this 14th day of December, 1944,

ORDERED, that the action of respondent be and it is hereby reversed and respondent is directed to issue to appellants a license for the present fiscal year, in accordance with the application heretofore filed.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF ITS TERM WITH PERMISSION GRANTED TO BONA FIDE TRANSFEREE TO PETITION TO LIFT AFTER EXPIRATION OF 40 DAYS' SUSPENSION - ILLEGAL SITUATION CORRECTED AND 40 DAYS' SUSPENSION COMPLETED - APPLICATION TO LIFT BY BONA FIDE TRANSFEREE GRANTED.

In the Matter of Disciplinary Proceedings against

VETERANS PARK TAVERN, INC.
604 Avenue A
Bayonne, N. J.,

Holder of Plenary Retail Consumption License C-125, issued by the Board of Commissioners of the City of Bayonne.

ON PETITION
O R D E R

Gross & Gross, Esqs., Attorneys for Petitioner, Anthony Pirozzi.

BY THE COMMISSIONER:

On October 24, 1944 I suspended the license of Veterans Park Tavern, Inc. for the balance of its term, effective at 2:00 A. M. November 1, 1944, after it had pleaded guilty to charges alleging that it had filed an application containing false statements, in violation of R. S. 33:1-25. Re Veterans Park Tavern, Inc., Bulletin 638, Item 7.

In said order it was provided that permission would be granted to a bona fide and properly qualified transferee of the license to petition to lift said suspension provided that the petition would not be granted until at least forty days had expired from the effective date of the suspension. Pursuant to said leave, Anthony Pirozzi has filed a verified petition wherein it is set forth that the Board of Commissioners of the City of Bayonne has duly transferred the license, subject to the suspension heretofore imposed, from Veterans Park Tavern, Inc. to said Anthony Pirozzi.

The petition further sets forth that petitioner has acquired all of the stock issued and outstanding of Veterans Park Tavern, Inc., a corporation of New Jersey, and that he is now the sole and exclusive owner thereof, and that no other person or persons have, either directly or indirectly, any interest whatsoever in the stock of the corporation or the license formerly held by the corporation.

It appearing that the aforesaid suspension has now been in effect for more than forty days, and it further appearing from the facts set forth in the verified petition that the unlawful situation has been corrected, I shall lift the suspension, effective immediately.

Accordingly, it is, on this 14th day of December, 1944,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-125, originally issued to Veterans Park Tavern, Inc. and transferred to Anthony Pirozzi, be and the same is hereby restored to full force and operation, effective immediately.

Alfred E. Driscoll
Commissioner.