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

BULLETIN 245. MAY 18, 1938.

1. AUTOMATIC STATUTORY SUSPENSION - ORDER LIFTING.

In the Matter of the Petition of OSCAR J. HELKE to Lift the Automatic Suspension of his license.	)))	CONCLUSIONS AND ORDER

. . . . . .

David L. Horuvitz, Attorney for the Petitioner.

BY THE COMMISSIONER:

This matter comes before me on a petition by Oscar J. Helke to lift the automatic suspension now in force against Plenary Retail Consumption License C-2, issued by the Township Committee of Upper Penns Neck, Salem County, New Jersey.

The petitioner was arrested on January 3, 1938 for selling alcoholic beverages to a minor on Hallowe'en Night in 1937. Thereafter he was indicted by the Grand Jury of Salem County and, on March 16, 1938, was tried before a Jury in the Salem County Court of Quarter Sessions and found guilty. On April 14, 1938, sentence was imposed consisting of imprisonment at hard labor in the State Prison for a term of from one to two years and the payment of a fine of $1,000. The prison sentence was suspended and defendant directed to pay $300.00 of said fine to the Sheriff and stand committed to the County Jail until said $300.00 be paid; the balance of the fine to be paid to the Probation Officer at such times and in such amounts as said officer shall direct.

Under R.S. 33:1-31.1 (Control Act Reprint, Section *82), the license of Oscar J. Helke, by reason of this conviction, became suspended for the balance of its term, viz., to June 30, 1938. The license was actually picked up by Inspector Middleton of this Department on April 18, 1938 and the licensed premises have been closed down ever since.

The petition sets forth that the sale in question made to a minor was not made by the petitioner personally but by an employee, one B. Webb, his bartender, and that at the time the sale was made, the petitioner was not in his place of business being in his home asleep and that the sale to the minor was made without his direction, knowledge, acquiescence or consent. The petitioner avers that he deeply regrets the incident; that it has caused not only him to suffer but also his family who rely upon him for support and maintenance; that he has no other means of livelihood and assures the State Commissioner that there will be no repetition of the offense and that he will keep strictly within the laws and regulations of the Department.

The petition is accompanied by a statement petitioning the restoration of the Oscar Helke license to him, which statement is signed by Fred G. Kern, John J. Myers and Irvin D. Wright, the three members of the governing board of the Township of Upper Penns Neck, which issued the license, and by Charles Troupe, the

municipal clerk. This statement declares that he has been a resident of the Township for the past ten years; that he has always had an excellent reputation; that the offense for which he was convicted was the first and only offense; that the aforesaid signers would appreciate the restoration of his license.

The petition is also accompanied by several signed character recommendations of reputable citizens from the County, headed by Walter J. Conine, Police Recorder, and Robert N. Kidd, the Postmaster of Penns Grove.

Save for the single conviction aforesaid, the records of this Department are clear so far as petitioner is concerned.

Carelessness by licensees in selling alcoholic beverages to children of tender age is thoroughly reprehensible. I am informed by Judge Leap that the minor in question is seventeen years old but that she looks nearer fifteen. Stiff punishments are the best means to making licensees conscious of their duties to every mother's sons and daughters. The practice must be broken up. In some respects it is a harsh doctrine that an employer should be liable for the acts of his employees but strict enforcement of that doctrine will go a mighty long way to save the retail liquor industry from annihilation. It is the only fair thing to other licensees who refuse to take chances. Punishment inflicted upon the proprietor will make him a very active force in making sure that thereafter no bartender of his will ever get him into such trouble again.

The proprietor has now been closed for twenty-five days for the sins of his bartender. In addition he has been severely punished in the criminal court. I am satisfied that he has learned his lesson.

Accordingly, it is, on this 13th day of May, 1938, ORDERED that the statutory suspension now in force, be lifted and that Plenary Retail Consumption License C-2, heretofore issued to Oscar J. Helke by the Township Committee of Upper Penns Neck, be and it is hereby declared to be, again in full force and effect.

D. FREDERICK BURNETT
Commissioner

2. SPECIAL PERMITS - W.P.A. OR OTHER FEDERAL SUBSIDY CAMPS - PROGRESS REPORT ON THE EXPERIMENT IN SOCIAL SERVICE AT CAMP McMAHON.

May 16, 1938.

Mrs. John H. Ramsey,
Clinton, N. J.

My dear Mrs. Ramsey: RE: CAMP McMAHON

I have yours of the 10th and note your desire that the license be withdrawn and that "something will be done to help those poor boys."

The special permit was issued as a social experiment for the reasons set forth in Bulletin 242, Item, copy enclosed.

Please do not get the idea that the men in the Camp are mere boys. It is a work camp -- not a playground. The special permit is expressly conditioned against sale to minors. The objective is to better conditions on the public highways, in the town taverns, and in the Camp itself; to substitute beer of low alcoholic content for hard liquor of high potency; to sublimate the wanderlust of payday and its companion urges into a comparatively innocuous party at home.

It is all very well to say "Don't do this!" and "Don't do that!" But all too often such negative advice gets one nowhere. On the other hand, affirmatively to suggest "Why not do this? or "Try that" proves a constructive help.

Prosecutor C. Lloyd Fisher reports that the first special license day was Monday May 9th; that there are now 96 men in camp on the Federal payroll and 12 to 14 camp employees, or a total of 110 men including the clerical personnel; that these men were paid at 4 P. M. on Monday.

He says:

"I went to the Camp at about five-thirty and stayed there until seven-thirty. The management had bottled beer only. They had it in several big galvanized tubs with the beer perfectly iced and were handling it in the building in which the canteen is housed. Purchasers stepped up to a counter across the doorway of the building, and having made their purchase, sat down on the steps or the side of the hill overlooking the lake to consume their beer. The thing was being handled in perfect order and there was no evidence of disorder of any kind, nature or description. I suppose twenty men came up to the counter while I was there and purchased a bottle of beer. I saw no sign of over-indulging or no one showed the slightest sign of intoxication. I had the management check the roll of the camp at seven o'clock and although the men had been paid for three hours, only two men were absent from camp, and these two men had asked permission to go to the homes of members of their families in Phillipsburg, N. J. Incidentally, I passed these two men walking out the road as I was going in and they had bundles with them indicating they were going away for overnight. I checked back with the camp management yesterday morning and they advised me that no other men left camp. They further stated that there was no disorder of any kind, that for the first time since the camp had been there, there was no case of drunkenness on pay night, and further that every single employee except the two who had been excused were up and ready to go to work on call on Tuesday morning. It is the first time, they tell me, that this situation has existed, and that invariably the men have lost work on the day following pay day, when pay day fell on a week day."

In view of this report, the experiment will be continued.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. MUNICIPAL REGULATIONS - HOURS OF SALE - HOURS OF CLOSING - A REGULATION WHICH MERELY PROHIBITS SALES AND FORBIDS PATRONS TO BE ON THE PREMISES DURING SPECIFIED HOURS IS NOT A REQUIREMENT THAT THE PREMISES BE CLOSED.

May 10, 1938.

My dear Commissioner:

A few of our members conduct exclusive package stores and inform me that the North Bergen licensing authority insists that they remain closed on Sunday up to 1:00 P. M. However, the combination stores are permitted to remain open, but, of course, are not allowed to sell liquor during the prohibited hours.

It seems to me that from the resolution which I am herewith enclosing, no one except the licensee and his actual employees and agents can be on the premises during the prohibited hours for the sale of liquor and other commodities and, therefore, all licensees must remain closed whether they have an exclusive store or a combination liquor store. The licensees who I represent, have been ordered to close some time ago and prior to that time remained open for the sale of soft drinks, cigarettes and other incidentals, until ordered closed by the issuing authority on Sunday prior to 1:00 P. M.

I would appreciate a ruling on the resolution as to whether or not all stores, whether combination or exclusive liquor stores, must remain closed for the sale of liquor and other commodities up to 1:00 P. M. on Sunday.

Very truly yours,

SAMUEL MOSKOWITZ,
Counsel & Sec.

May 14, 1938.

Samuel Moskowitz, Esq.,
Hudson-Bergen County Retail Liquor Stores Ass'n.,
Union City, N. J.

My dear Mr. Moskowitz:

I have your letter of May 10th, and copy of resolution adopted by the North Bergen Board of Commissioners on February 23, 1938, amending Rule 6 of Regulations adopted by the Municipal Board of Alcoholic Beverage Control on December 13, 1933, as follows:

> "6. The holder of each license issued hereunder shall be entitled, subject to the aforesaid rules and regulations, to sell for consumption on the licensed premises any alcoholic beverages by the glass or other open receptacle, or to sell all alcoholic beverages for consumption off the licensed premises, provided, however, that no licensee shall (A) conduct said licensed business or (B) suffer or permit any person whatsoever except the licensee and his actual employees and agents in or upon the licensed premises except

during the following hours only, to wit: Weekdays from 7 A.M. to 3 A.M.; Sundays from 1 P.M. to 3 A.M. During all other hours all shades, screens and other obstructions whatsoever must be removed so as to permit a clear view of the bar in said licensed premises."

You tell me that pursuant to the resolution, the municipal authorities have required that until 1:00 P. M. on Sundays package stores selling alcoholic beverages exclusively shall be closed, and inquire if combination stores selling liquor and other merchandise are subject to the same restriction.

The regulation, as worded, does not require that anyone be closed. It provides merely that during the specified hours no licensee shall conduct the licensed business or permit anyone other than himself or his employees on the licensed premises. In that regard it applies to both combination stores and stores selling alcoholic beverages exclusively, without exception.

The licensed business is the sale of alcoholic beverages. The effect of the regulation is, therefore, to stop all sales of alcoholic beverages and to exclude all patrons from the premises during the prohibited hours. Combination stores, it seems, while they may not allow patrons on the premises during the prohibited hours, are free to accept orders for other merchandise and make deliveries of same to their customers, any place except on the licensed premises. Such conduct, according to the regulation, is not prohibited.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

May 14, 1938.

Walter Beisch,
Township Clerk,
North Bergen, N. J.

My dear Mr. Beisch:

I am sending you herewith, for the information of the Board of Commissioners, copy of letter of even date to Samuel Moskowitz, Esq., Counsel and Secretary, Hudson-Bergen County Retail Liquor Stores Association, who has inquired regarding the effect of the February 23, 1938 amendment to Section 6 of your local regulations.

I gather, from Mr. Moskowitz's letter, that the Board is of the impression that the regulation requires that during the prohibited hours the entire licensed premises must be closed. You will note that it does not accomplish that purpose.

If it is the thought of the Board of Commissioners to require the closing of the licensed premises during the hours sales are prohibited, I suggest that Section 6 be again amended in form and manner suggested in Re Franco, Bulletin 231, Item 5, and Re Stevens, Bulletin 197, Item 5.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. APPELLATE DECISIONS - RAINBOW GRILL OF BORDENTOWN vs. BORDENTOWN TOWNSHIP.

RAINBOW GRILL OF BORDENTOWN, a corporation,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BORDENTOWN,
Respondent.

ON APPEAL

CONCLUSIONS

William H. Parry, Esq., Attorney for Appellant
William Hinkle, Chairman of the Township Committee, for the Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for a "diner" known as the Rainbow Grill, located on the easterly side of State Highway #25, near Cemetery Lane, Bordentown Township.

Respondent denied appellant's application because the municipal quota of 8 consumption establishments (fixed by ordinance adopted August 11, 1936) has been exhausted.

Appellant contends that this quota is an unreasonable limitation for the Township. The evidence, however, fails to substantiate this claim. Bordentown Township (area, 7.4 square miles; population, approximately 1,000) is a rural municipality, with no police force. Its only center of population is at Piersonville, a small community of some 20 homes and 150 inhabitants, located 3 or 4 miles from appellant's premises. Important traffic arteries pass through the Township, notably State Highways #25 and #39. Seven of the 8 establishments presently outstanding in the Township are located on these routes, 3 being on Route #25, 2 on Route #39, and 2 at points where those Routes converge. There is no indication that either the resident population in the Township or the travelling public passing through it are insufficiently serviced.

It is further contended that the limiting ordinance is unreasonable and discriminatory in its application to appellant. The Rainbow Grill is a large and apparently attractive "diner" located on a very heavily trafficked stretch of road. State Routes #25 and #39 converge 1,000 feet south of the Rainbow Grill, run together to a point 1/4 mile north of the Grill, and then diverge. At each of these junctures, there is a consumption establishment, with a third such establishment being located several hundred feet above the northern juncture. The remaining 5 consumption establishments in the Township are scattered from 1/2 mile to 3 miles from appellant's premises. There is no indication in this evidence that the particular vicinity is inadequately serviced.

Appellant argues, however, that a prior tenant held a consumption license for 1934-5 for a roadside building at the

premises in question, which was much inferior to the Rainbow Grill; that, therefore, it is unreasonable and discriminatory now to deny a consumption license for appellant's "diner". This contention, however, fails. When the old building was licensed, there was apparently only one other licensed establishment in the vicinity. Now, however, 3 are in existence. Assuming the superior quality of the Rainbow Grill over the old building licensed in 1934-5, nothing appears in that fact to entitle the Grill to a present license.

Appellant further argues that the Rainbow Grill is a restaurant doing business 24 hours a day; that 95% of its business (since its opening in December, 1936) is transient trade from the travelling public; that the Rainbow Grill is thus a quasi-public institution similar to a hotel; and that it is, therefore, unreasonable to deny a license for a Grill, despite the limiting ordinance. Even assuming (although not deciding) that a restaurant, like a hotel, is affected with a public interest, nevertheless the test whether it shall be licensed despite the previous filling of a local quota, is whether public necessity and convenience require that it be so licensed. As I said in Current vs. Fredon, Bulletin 184, Item 1 and reiterated in Braunstein vs. Bridgeton, Bulletin 216, Item 10, involving the question whether a formal limitation of consumption licenses was reasonable in its application to 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."

Appellant fails to meet that test. The licensed establishment located at the juncture of Routes #25 and #39, south of the Rainbow Grill, is a large restaurant, known as the Bordentown Grill. Similarly, the licensed establishment located at the juncture of Routes #25 and #39, north of the Rainbow Grill, is a restaurant, known as the Red Top Inn. It is not shown that public necessity and convenience require that appellant's restaurant also be licensed. Cf. Lewis vs. Phillipsburg, Bulletin 232, Item 13. While it may be true that many persons turn away from the Rainbow Grill because of its inability to serve liquor, there is nothing to indicate that these persons will be seriously inconvenienced by going to the licensed restaurants located nearby. The mere fact that issuance of the license will save these customers for appellant and thereby benefit its business, is not a sufficient reason for issuance of the license. Cf. Grieb vs. Metuchen, Bulletin 217, Item 3.

Appellant bases its final contention upon the following facts: that its lease (for 10 years) covering the premises in question, was executed on July 24, 1936, that at or about the same time, obligations were incurred for the erection of the Rainbow Grill; that both the lease and these obligations were entered into with the idea of securing a consumption license for the "diner"; that the limiting ordinance was first introduced in the Township Committee on July 28, 1936, and was finally adopted on August 11, 1937. It is contended that the ordinance is unreasonable and discriminatory in its application to appellant because it was introduced subsequent to the making of the lease and the incurring of obligations. But this is a far cry to any estoppel against the Township. Its officers were no parties to that private transaction. Admitting appellant had the idea in mind of getting a license, there is nothing to show that it was their idea too.

Use of property for the retail sale of liquor is subject to the police power bestowed upon a municipality under

R.S. Sec. 33:1-40 (Control Act, Sec. 37) to limit the number of consumption or other licenses in the municipality. Cf. Sanford vs. Court of Common Pleas of Morris, 36 N.J.L. 72, 76-77 (Sup. Ct. 1872); Meehan vs. Excise Commissioners, 73 N.J.L. 382, 386 (Sup. Ct. 1906) aff'd. 75 N.J.L. 557 (E. & A. 1907). Commercial transactions (here, the leasing of land and construction of a "diner") are subject to the subsequent exercise of this police power and are not exempt from it.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 16, 1938.

5. SALES TO MINORS - HEREIN OF THE EFFECT IN CRIMINAL AND DISCIPLINARY PROCEEDINGS OF AN AFFIDAVIT OR OTHER SIGNED AND SOLEMN AFFIRMATION BY A MINOR THAT HE IS OF FULL AGE - NOT A DEFENSE PER SE BUT MAY UNDER CERTAIN CONDITIONS BE OF GREAT WEIGHT IN MITIGATION - HEREIN OF THE CONDITIONS.

Dear Sir:

Does a signed affidavit of a person who swears he is of age, free a tavern owner of any consequences that may arise from serving minors?

Does a signed affidavit offer any protection at all to a tavern owner?

Harry Gott.

May 16th, 1938.

Mr. Harry Gott,
Passaic, N. J.

Dear Sir:

A person who sells any alcoholic beverage to a minor is guilty of a misdemeanor and renders his license subject to disciplinary proceedings.

The fact that the licensee obtains a signed affidavit from the person stating that he or she is of full age would not be a defense in a criminal proceeding or a disciplinary proceeding, if in fact the person to whom the alcoholic beverages were sold was a minor at the time of the sale.

Such an affidavit, however, while not an absolute defense either to criminal or disciplinary proceedings, would have great weight on the question as to the punishment to be made for selling to a minor, provided that the appearance of the person who was served was such as to indicate to an ordinary reasonable man that he was of full age, and further provided that the bartender or other person who served him relied in good faith not only on the sworn affidavit or the signed statement but upon the appearances of the party who turned out to be a minor.

Chapter 55, P.L. 1937 (R.S. 33:1-81) provides:

"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 a fine not exceeding Two Hundred Dollars ($200.). ***"

This Act penalizes the person guilty of the misrepresentation, but does not protect the licensee. Re Lozier, Bulletin 204, Item 11. The only sure way to avoid trouble is to refuse to sell, serve or deliver any alcoholic beverages to a person when you are in doubt as to whether or not such person is twenty-one years of age.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. LIMITED RETAIL DISTRIBUTION LICENSEES - SALES OF CHILLED BEER PROHIBITED.

May 16, 1938.

Mr. William Gerdes,
Grantwood, N. J.

My dear Mr. Gerdes:

Your limited retail distribution license permits you to sell only unchilled beer.

If, as a practical matter, this prevents you from selling certain types of beer which do not keep unless chilled, I am sorry, but that is the law. If you wish to sell beer that must be chilled you will have to take out the regular plenary retail distribution license which permits the licensee to do so. See Re Hornung and Re Prodsky, Bulletin 36, Item 4.

The sale of chilled beer by limited distribution licensees is cause for the suspension or revocation of the license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. SPECIAL PERMITS - NOT ISSUABLE TO TRANSFEREE OF LICENSE PENDING THE GRANTING OF THE TRANSFER - CONTINGENCIES NOT PROVIDED FOR DISTINGUISHED FROM MERE IMPATIENCE TO COMMENCE BUSINESS.

Dear Commissioner:

I desire to know whether or not you will issue a special permit under the following circumstances:

My client is the owner of a premises which is now leased to a tenant. The tenant desires to vacate the premises. The tenant is the holder of a retail consumption license. My client wishes to obtain a transfer of this license with the

tenant's consent. However, an interval of about four weeks will elapse between the time the tenant vacates and the next meeting of our Council. The premises concerned is a hotel. It is necessary for my client to have a license during the above mentioned time.

If you will issue a permit under the foregoing circumstances, kindly send me the necessary forms to apply for the permit.

Very truly yours,

JOSEPH R. SCHECHTER

May 16, 1938.

Joseph R. Schechter, Esq.,
Belvidere, N. J.

Dear Mr. Schechter:

No Special Permit may be issued to your client permitting him to conduct an alcoholic beverage business pending the transfer of the license now held by his tenant to himself. He must await determination upon his application by the local issuing authority the same as any other applicant for license. The reasons, which are twofold, are as follows:

First, R.S. Sec. 33:1-26 (Control Act, Sec. 23) which provides for transfer of license, sets forth the statutory procedure requiring, among other things, that both the applicant for the transfer and the premises qualify within the meaning of the statute and that Notice of Application be published once a week for two weeks successively. Assuming that the premises are qualified because they are already covered by license, your client has not as yet qualified personally and will not qualify until the local issuing authority has acted upon the application for transfer. In addition, objections may be filed in respect to the transfer which would necessitate hearing and determination by the local issuing authority. It would be utterly wrong to allow a person to go into the alcoholic beverage business before the granting of a license to him and in the face of possible objections.

Second, R.S. Sec. 33:1-74 (Control Act, Sec. 75) authorizes me to issue Special Permits where a contingency, not otherwise provided for in the Control Act, exists. Since transfer of license is provided for, the instant case would not constitute a contingency within the meaning of the above Section, and there is no cause for me to exercise the discretion given me in the aforementioned section.

I am sorry but what your client should have done was to apply for transfer of the license in sufficient time so that the transfer could have been consummated at the time that his tenant vacated the premises.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. APPELLATE DECISIONS - THE TRUSTEES OF THE FIRST PARTICULAR BAPTIST CHURCH OF PATERSON v. PATERSON and SILVER ROD STORES, INC.

THE TRUSTEES OF THE FIRST PARTICULAR BAPTIST CHURCH OF PATERSON,	:	
Appellant,	:	ON APPEAL
-vs-	:	
BOARD OF ALDERMEN OF THE CITY OF PATERSON and SILVER ROD STORES, INC.,	:	CONCLUSIONS
Respondents.	:	

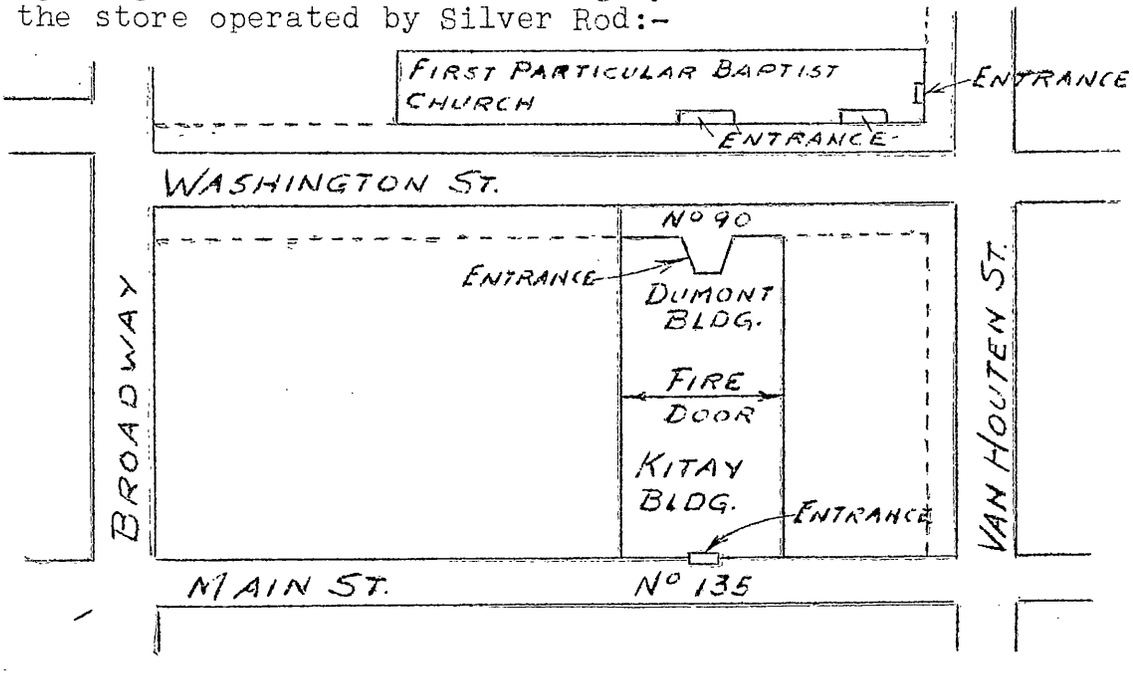
James T. Fairclough, Member of the Board of Trustees of The First Particular Baptist Church of Paterson, For the Appellant.
Salvatore D. Viviano, Esq., Attorney for Respondent, City of Paterson.
James J. Murner, Esq., Attorney for Respondent, Silver Rod Stores, Inc.
Herman C. Silverstein, Esq., by Alrod A. Barison, Esq., Attorney for Objector, Passaic County Distribution Licensees' Ass'n.

BY THE COMMISSIONER:

Appellant appeals from the issuance of a plenary retail distribution license by respondent, Board of Aldermen, to respondent, Silver Rod Stores, Inc. (hereafter called Silver Rod), for premises located at 135 Main Street, Paterson.

Appellant alleges that the Washington Street entrance to the Silver Rod store (which it contends is an entrance to the licensed premises) is within two hundred feet of the nearest entrance to The First Particular Baptist Church.

There is no serious dispute about the facts. The following diagram will illustrate roughly the location of the church and the store operated by Silver Rod:-



The license has been issued for premises known as 135 Main Street. The distance from the entrance thereto at 135 Main Street, measured along Main Street and thence along VanHouten Street to the nearest entrance to the church, is three hundred fifty feet. If that were all, the objection would be baseless.

However, the distance from the entrance to the Silver Rod store at 90 Washington Street, measured along Washington Street to VanHouten Street and thence across VanHouten Street to the nearest entrance to the church, is but one hundred fifty-one and one-half feet. Hence, if the entrance to the premises at 90 Washington Street is also an entrance to the licensed premises at 135 Main Street, the liquor store is within the proscribed two hundred feet distance set forth in R.S. 33:1-76 (Section 76 of the Control Act). The main question then to solve is - Is it such an entrance?

Licensee contends that its store consists of two separate buildings, namely, the Kitay Building fronting on Main Street, and the Dumont Building fronting on Washington Street; that its license restricts sale or display of alcoholic beverages to the Kitay Building; that the only entrances to the Kitay Building are (1) the Main Street door which, as heretofore described, is three hundred fifty feet from the nearest entrance to the church, and (2) the fire-door in the rear wall of the Kitay Building which, however, is also in the rear wall of the Dumont Building. It contends that this fire-door is two hundred fifty-one feet from the nearest entrance to the church. It computes this distance of two hundred fifty-one feet by adding the depth of the Dumont Building to the measurement of one hundred fifty-one and one-half feet heretofore described as the distance from the entrance at 90 Washington Street to the nearest entrance to the church.

As the diagram illustrates, these buildings stand back to back and have a common fire door. The store, part of which is in one building and part in another, leased from different landlords, is operated as a single establishment. It is one and the same business enterprise. The part located in the Kitay Building contains the cigar, photographic, liquor and cosmetic departments; the part located in the Dumont Building contains the luncheonette and drug department. There is free and constant access from one part of the store to the other, from one so-called department to another. The fire-door between the two buildings is required by municipal regulations but it is ordinarily raised so that during business hours there is nothing to indicate that part of the store is in one building and part in another. Patrons may enter indiscriminately at either 90 Washington Street or at 135 Main Street. The Vice-President of Silver Rod admits that 10% of its customers enter at Washington Street.

If anything more than this were needed, the Silver Rod's own advertisement which appeared in the Paterson Morning Call of February 25, 1938, is dispositive. This exhibit shows an advertisement of whiskey and wines as well as magnesia and liver pills which, without further mention of the numerous other articles, also thus advertised, is sufficient to show that the single advertisement includes items sold in the liquor department in the Kitay Building as well as in the drug department in the Dumont Building. And, to invite the public and point the way to the bargains in liquors as well as laxatives, its advertisement immediately following its name is captioned, viz.:

"135 Main St. (Use both Entrances) 90 Washington St." !!!

Here then is a single store under common management operated as a single place of business. There are no concessions, no segregations, no separations.

The test whether stores or establishments are single or separate is not how they were originally built or what they used to be, but rather what they are now. Whatever physically constitutes a single licensed premises remains single for all purposes until physical barriers are interposed to separate and subdivide it. New Jersey Licensed Beverage Association vs. Camden, Bulletin #215, Item 5. The two hundred feet distance is not to be pieced out by transparent artificialities for the purpose of getting around the law. St. Mary's Greek Catholic Church vs. Manville, Bulletin #187, Item 1. The salutary statutory protection to churches hereinbefore mentioned is not to be frittered away. Memorial Presbyterian Church vs. Newark, Bulletin #191, Item 8. Subterfuge or evasion designed to circumvent the two hundred feet rule will not be tolerated. Re Simon, Bulletin #238, Item 6.

The fire-door was installed to comply with a municipal ordinance and to guard, if occasion should arise, against potential fire and not for the purpose or with the effect of physically separating the two stores. It, therefore, cannot do the double duty of protecting the liquor store from the operation of the law of the State designed for the benefit of churches.

I find as the fact that the entrance at 90 Washington Street is an entrance to the premises which have been licensed for the sale of liquor. Since it is within two hundred feet of the church, and since no waiver has ever been filed by the church, it follows as a matter of law that the license should never have been issued.

Licensee contends also that appellant has no standing to prosecute this appeal because it does not affirmatively appear that the Board of Trustees has authority to file this appeal on behalf of the church.

A member of the Board of Trustees testified that his Board had filed an objection after the license had been granted, but he did not produce a copy of the minutes of the Board of Trustees authorizing the filing of the appeal, nor did he produce any evidence that the Board of Trustees was authorized to act on behalf of the church. There is no evidence that this appeal was filed contrary to the wishes of the Board. Presumptively the appeal filed in the name of the Board is the act of the Board until the contrary affirmatively appears. If the Board of Trustees of a Baptist Church does not have the power to represent the Church in secular affairs, it is difficult to think offhand of any other body that could authorize the Board to act except, of course, the congregation. There is no indication in the Alcoholic Beverage Control Act that the congregation of any church must be polled before Section 76 may be invoked. Since nothing is said on this score, the intendment is rather that the duly constituted secular authorities of any church are authorized to speak up whenever the statute is violated. No one who has the slightest semblance of a right to disavow the filing of this appeal has challenged it. Certainly the attorneys for the respondents are not the spokesmen for the appellant church.

It is unnecessary, however, to decide the question. For, assuming that this appellant has no standing to prosecute this appeal, the State Commissioner, on his own motion, either in this or some other proceeding, does have authority to declare a license void if in fact it has been issued in violation of R.S. 33:1-76 (Section 76 of the Control Act). Here it appears that a license was issued against the mandatory words of the statute which expressly provides that no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church unless a proper waiver is procured. The situation is similar to that which I considered in East Brunswick Township Board of Adjustment vs. East Brunswick and Mills, Bulletin #223, Item 5, wherein I said:

> "If the law is broken and the subject matter is within the Commissioner's jurisdiction, what difference does it really make who brings the matter to his attention? Is the Commissioner, charged with superintendent responsibility to see to it that the liquor law is enforced, to be divested of the plenary power which has been conferred upon him simply because the information did not come to him garnished with the usual formalities?"

The only difference between the case just cited and the present case is that in the former the license was granted in violation of a zoning ordinance, whereas in the present case the license has been issued in violation of a Section of the Control Act.

In Re Loeb, Bulletin #206, Item 14, I declared void on my own initiative a license issued in violation of the terms of an ordinance restricting the number of licenses in Atlantic City.

In Haines vs. Burlington and Zekis, Bulletin #223, Item 3, the license was declared void because it had been issued within two hundred feet of a synagogue and it appeared that no waiver had been obtained from the synagogue. While it was there determined that appellant Haines had sufficient standing as a taxpayer to prosecute the appeal, the same result would have been reached without such determination, for the reasons set forth in East Brunswick Township Board of Adjustment vs. East Brunswick and Mills, supra.

I conclude that the license issued to Silver Rod must be declared void.

There is nothing unfair in such proceeding. Silver Rod has had its day in court and has been afforded full opportunity to be heard. The case has been decided against it on the merits. As to its counter attack on the status of appellant, nothing is gained in dismissing the present appeal and immediately instituting direct proceedings on rule to show cause as in Re Loeb, supra. On the other hand, the public convenience is served, time saved, and circuity avoided by making the finding, ruling, decision and order in the present case as may be right and proper and consonant with the spirit of the Act.

Accordingly, the license issued to Silver Rod Stores, Inc. is hereby declared void; the action of the respondent Board of Aldermen of the City of Paterson in issuing the license is hereby reversed; all operations under said license must cease forthwith, and the license certificate must be surrendered to the City Clerk of the City of Paterson. It is so ordered.

D. FREDERICK BURNETT,
Commissioner.

Dated: May 17, 1938.

9. LICENSES - APPLICATIONS - QUESTIONNAIRE - HOW TO ANSWER QUESTIONS 29, 30, 31, 32 and 33 AFTER COMPROMISE OF ALLEGED FEDERAL VIOLATION.

May 16, 1938.

My dear Mr._____:

You inquire if you must reveal in your application for liquor license for the coming year, your offer of February 10th in compromise of prosecution for violation of the Federal liquor law.

The pertinent questions in the application for the license (Bulletin 237, Item 2) are Questions 29, 30, 31, 32 and 33.

Question 29 asks if the applicant or any person mentioned in the application has ever been convicted of a crime. The acceptance of your offer of compromise does not constitute conviction of crime in the contemplation of the State liquor laws. For such conviction, the offender must have due notice, reasonable opportunity to be heard, and have been found guilty in court. You will, therefore, so far as the compromise offense is concerned, answer Question 29 in the negative.

Question 30 asks if the applicant or any person mentioned in the application has committed or ever been convicted of any violation of the New Jersey liquor law. The compromise contemplates only the offence against the Federal law. It is not conclusive as to commission or conviction of violation of the State law. For the purposes of the question, to have committed a violation of the State law the offender must have been found to have done so by State court or by the State Commissioner or by some municipal license issuing authority after notice of charges and hearing. As it is, no charges have been preferred under the New Jersey law at all, nor has any New Jersey tribunal formally considered any such charge. In Re Case 59, Bulletin 193, Item 6; In Re Case 63, Bulletin 195, Item 1. Question 30, contemplating only the Federal compromise, should also be answered in the negative.

Question 31 asks if the applicant or any person mentioned in the application has ever been convicted of a violation of any Federal or State law concerning the sale of alcoholic beverages. The acceptance of a compromise in lieu of prosecution does not, in the contemplation of the State law, constitute conviction. The answer to Question 31, so far as the compromise is concerned, is, therefore, also in the negative.

Question 32 asks if the applicant or any person mentioned in the application has ever paid a fine or penalty in settlement of any prosecution for any violation of any Federal or State law concerning the sale of alcoholic beverages. The offer of compromise and its acceptance is such a settlement. The answer to Question 32 is, therefore, in the affirmative, and the details of the offense and the penalty paid must be stated.

Question 33, which asks if the applicant or any person mentioned in the application has ever forfeited a bond to appear in court to answer any charge of violation of Federal or State law concerning alcoholic beverages, is not material to your inquiry, as I take it no bond to appear in court was requested or given.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. BREWERIES - RETAILERS - UNLAWFUL FOR BREWERIES TO DELIVER BEER DIRECTLY TO CONSUMERS, WHETHER BILLED TO A RETAILER OR NOT.

Dear Sir:

We have had a request on several occasions by a licensed tap-room owner, to whom we serve draught beer, to make a delivery of draught beer for him from our truck to place other than his place of business, for such an occasion as a wedding.

We are writing you to ask if such a delivery is permissible to be made by us. Understand, the beer is to be billed to and paid for by our tap-room customer.

Yours very truly,

EASTERN BEVERAGE CORPORATION

May 16, 1938.

Eastern Beverage Corporation,
Hammonton, N. J.

Gentlemen:

It is against the law for breweries to deliver beer directly to consumers. It makes no difference that the delivery is made at the request of the retailer or that the sale is billed to the retailer. Breweries may sell and distribute alcoholic beverages only to licensed wholesalers and retailers. If the ruling were otherwise, then breweries would never be out of bounds if only they went through the form of charging the transaction to an accommodating middle man. Hence, irrespective of whether the deal is bona fide or an intended cover for a "wash" sale, it is forbidden.

"Wash" sales are illegal and cause for the revocation of the license. See Notice to Wholesalers, March 25, 1937, Bulletin 169, Item 5.

So is delivery of beer by a brewery direct to a consumer.

Very truly yours,

Frederick P. Burnett

Commissioner