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

BULLETIN 696 FEBRUARY 25, 1946

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ITEM

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

BULLETIN 696 FEBRUARY 25, 1946

1. APPELLATE DECISIONS - CETRANO v. PATERSON.

CARMINE CETRANO,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF PATERSON,)
Respondent)

John C. Barbour, Esq., Attorney for Appellant.
George Surosky, Esq., Attorney for Respondent.
Paul Rittenberg, Esq., Attorney for the Objectors.

BY THE COMMISSIONER:

This is an appeal from the action of the Board of Alcoholic Beverage Control of the City of Paterson denying an application for renewal for the term 1945-46 of the plenary retail consumption license issued to the appellant for premises located at 350 Preakness Avenue, Paterson.

Prior to June 19, 1944, appellant operated the aforesaid licensed premises. On that date he contracted to sell his license to one Alice Koodray. On June 21, 1944, an application for the renewal of the license for the term 1944-45 was filed by the appellant, which application was granted. At approximately the same time an application for the transfer of the license was made by Alice Koodray. This application was not acted upon by the respondent Board prior to the expiration of its term, namely, June 30, 1944. The application was withdrawn on July 11, 1944, and a new application to transfer the license for the term 1944-45 was filed by the said Alice Koodray, which application was denied by the respondent Board. An appeal was taken to the Commissioner, which appeal was later withdrawn because the appellant had not acquired a right to possession of the proposed licensed premises. A further application for the transfer of the license was filed, which was denied, and an appeal taken to the Commissioner, which appeal was heard July 26, 1945.

On June 7, 1945 the appellant Cetrano filed an application for the renewal of the license for the term 1945-46. Notice of this application was published June 25 and July 2, 1945. On July 25, 1945 the application for renewal was denied. Hence this appeal.

It is admitted that since the date of the contract of sale from Cetrano to Koodray, June 19, 1944, and until the present time, the premises have not been operated as licensed premises, and that the license fees which accompanied the applications for renewal for the years 1944-45 and 1945-46 were advanced by Alice Koodray, the proposed purchaser and the applicant for the transfer of the license.

The respondent Board sets up as grounds for denial the following reasons: (1) that the appellant has not operated the licensed

premises for over a year and has peddled the license about, (2) that in his answer to Question 30 in the application the applicant answered "No", where in fact others than the applicant had an interest in said license, and (3) that said answer "No" constituted a fraud upon the respondent Board.

The appellant testified that, on June 19, 1944, he entered into an agreement to sell the business to Alice Koodray, giving as his reason that he was old and wanted to get out of business, and that after the contract had been signed he had discontinued business and had not operated the licensed premises since that time. He admits signing the application in question but states it was prepared for him by his attorney. He denied any fraud or intention to deceive whatever.

The president of the respondent Board testified that the application for renewal first came before the Board at a conference prior to the last meeting in June, 1945, at which time the other applications for renewal were considered. The application was laid over and came up for action at a special meeting held on July 26, 1945, at which time it was denied because of the alleged fraudulent answer to Question 30. This witness, a man of discernment and good judgment, testified that it was the opinion of the respondent Board that the answer perpetrated a fraud on the respondent and, further, that it did not believe a licensee should carry a license around for a year without taking some action. In view of the record in this case, I must dissent with conclusions. From the record it appears that the license was merely being held pending a final disposition of the application for transfer.

The clerk of the respondent Board testified that the application was received on June 7, 1945, and that he inspected the licensed premises and found them unoccupied. He further testified that, in preparing the resolution approving the other applications for renewal, he had inserted the name of the licensee presumably for approval by the Board. He further testified that just prior to the meeting held on June 28, 1945, when the other applications were acted upon and approved, he had been instructed to cross off the name of the appellant because the respondent Board desired an investigation and that the appellant's application was not considered. He further testified that at a special meeting held on July 25, 1945, the application was considered by the respondent Board and denied. He admits that no notice of a special meeting or the denial of the application was given to the applicant, stating that it was not the practice of the respondent Board to do so, and, further, that he had made no investigation of the premises between June 28, 1945 and July 25, 1945.

The first reason advanced by the respondent appears to be without sufficient merit to warrant the action taken. There is no evidence that the licensee "peddled" his license. The fact that the licensed premises were not operated was due entirely to the circumstances set forth above. There is no doubt that the licensee wished to retire, and once having agreed to sell his business he assumed that the transfer was a question of time. If the licensee had merely stopped business, not intending to operate under the license again, and then attempted to dispose of his license to the highest bidder, I would be confronted with an entirely different case.

As to the second reason advanced, while it appears to be true that the licensee, in making his application for renewal, was mindful of the application to transfer the license to Koodray, neither the

application nor the contract gave Koodray an interest in the license within the contemplation of Question 30. All the facts were known to the respondent Board and had been known to it even when it renewed the license for the term 1944-45. There was no concealment of any interest.

As to the third reason, namely, that the said answer constituted a fraud upon the respondent Board, such is not the fact. As above stated, all the facts were known to the respondent Board and the fact is that members of the respondent Board themselves appeared as witnesses in the Koodray appeal the morning after the denial of the renewal of the license. To constitute fraud there must be not only the commission of a fraudulent act but also the intention to deceive. Both of these elements are completely lacking.

Accordingly, it is, on this 13th day of February, 1946,

ORDERED, that the action of the respondent Board in denying the renewal be and the same is hereby reversed. Respondent is directed to issue the renewal as applied for.

ALFRED E. DRISCOLL
Commissioner.

2. COURT DECISIONS - NEW JERSEY SUPREME COURT - DROZDOWSKI v. MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF SAYREVILLE - HEREIN OF THE DUTY OF A MUNICIPAL ISSUING AUTHORITY TO GRANT A FAIR HEARING BOTH IN FACT AND IN LAW.

NEW JERSEY SUPREME COURT

FRANK DROZDOWSKI,)
Prosecutor,)
-vs-)
THE MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF SAYREVILLE,)
Respondents)

Argued November 3, 1945. Briefs submitted November 16, 1945. Decided
On writ of certiorari.

Before Case, J. sitting as a single justice pursuant to the statute.
For prosecutor, Paul C. Kemeny.
For respondents, Joseph T. Karcher.

Opinion by

Case, J. Prosecutor, after due newspaper advertisement, applied for and was granted a plenary retail consumption license by the Mayor and Council of the Borough of Sayreville. Later a neighboring property owner lodged a complaint and asked for the revocation of the license upon allegations that prosecutor had obtained the license by fraud and suppression of material facts. The statute provides (R. S. 33:1-25):- "Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for revocation." There was a trial at which both the complaining property owner and prosecutor were represented by counsel. By a vote of three councilmen for and one councilman against, the decision was that "the licensee has been

guilty of fraud, misrepresentation, false statements, misleading statements, evasion and suppression of material facts in securing the license" and that the license should be revoked.

The governing body of the borough consisted of the mayor and six councilmen. The mayor and four councilmen sat in trial. Two councilmen were not present. R. S. 40:88-1 provides:

> "Three councilmen and the mayor, and, in the absence of the mayor, four councilmen, shall constitute a quorum for the transaction of business; but a smaller number may meet and adjourn from time to time. The mayor shall preside over all meetings except as herein in this article otherwise provided, but shall not vote except to give the deciding vote in case of a tie."

The complaining property owner called and caused to be sworn and to testify as witnesses in his behalf two of the four sitting councilmen, by name Popowski and Buchanan. After their testimony had been taken prosecutor objected to their sitting further in the case. The mayor and council were advised by the borough attorney that the councilmen against whom objection had been so made should be permitted to sit. That was the ruling. Prosecutor noted formal exception. When the issue was decided two of the three votes for revocation came from those men. If the two members were disqualified to sit, there was not a legal quorum for the conduct of the business then in hand and the body lacked jurisdiction to proceed with the trial or to decide the issue. In such an event the capacity of the body to hear and decide was as thoroughly destroyed as though the tribunal had consisted of a single person who became disqualified. It is in proof that one of the two did not know that he was to be called, and the fair inference is that the complainant had made known to no one, either the called witnesses or the mayor and council, individually or as a body, his purpose to proceed in that manner.

The question I am called upon to decide is whether it was lawful for Councilmen Popowski and Buchanan to sit in judgment; and I decide that under the circumstances of the case it was not. I find that they were disqualified. The circumstances to which I give weight are that there were six councilmen qualified, in general, to sit in trial of the issue. Any four of those men in the absence of the mayor would constitute a quorum; so would any three of them with the mayor. There could have been a tribunal qualified to try the case without the two men in question, and with no showing to the contrary we may assume that the presence of the absentees could have been procured had the need been manifested. The need would have been manifested had the complaining party made known his purpose of calling on two members of the official body to be his witnesses.

A liquor license is not property, (Voight v. Board of Excise, 59 N. J. L. 358), but it is a privilege that usually has some money value and that sometimes has great money value; and the legislature has directed, R. S. 33:1-31, that no revocation shall be made until notice of the charges shall be given to the licensee and an opportunity to be heard is afforded. The statute has hedged the whole subject of the sale of intoxicating liquors with attempted safeguards, one of which is the provision for revocation above noted;

but a revocation calls for a determination, and while the mayor and the council, who have the authority to make the determination, are not, in strict sense, a court, they are, in this respect, a tribunal whose duty is to give a fair trial both in point of fact and in point of law. Indeed, it has been held that if the function be considered judicial the legislature has nevertheless the authority to create the body a judicial one for that purpose. Voight v. Board, supra.

It is a generally accepted maxim that no one shall be both judge and witness in the same trial. Support for the application of this principle to a judicial officer will be found in the following decisions: McCormick v. Brookfield, 4 N. J. L. 69, Outcalt v. Rankin, 14 N. J. L. 33, Paterson v. Schenck, 15 N. J. L. 434, Corlies v. Van Note, Administrator, etc., 16 N. J. L. 324, State of New Jersey v. De Maio, 69 N. J. L. 590, affirmed 70 N. J. L. 220; and since it has been held to apply to the trial of a police officer by the mayor or commissioner of public safety, Johnson v. Wildwood, 13 N. J. Misc. 593, Crawford v. Hendee, 95 N. J. L. 372, I see no sound reason why it should not govern in the instant case. The decision in Johnson v. Wildwood was reversed on other grounds, 116 N. J. L. 462, but the reversing opinion in the Court of Errors and Appeals accentuates the need for an impartial tribunal even when administrative officers sit in judgment.

Sometimes there is the embarrassment that a man essential to the court is also essential as a witness. That dilemma, as we have seen, does not exist here, and I do not reach beyond the circumstances of the case. The prosecutor has been deprived of something that he valued and that had value, upon charges which involved various facets of fraud and were determined adversely to him by three men of whom two had taken the witness stand against him. Trials should not only be fair in their results, they should be conducted in an atmosphere of fairness.

I believe that there should be a new hearing. To that end the resolution of revocation will be set aside, with costs.

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3. APPELLATE DECISIONS - NEW JERSEY TAVERN ASSOCIATION ET AL. v. ANDOVER TOWNSHIP AND CAMP CLEARWATER, INC.

NEW JERSEY TAVERN ASSOCIATION and SUSSEX COUNTY TAVERN ASSOCIATION,

Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER, and CAMP CLEARWATER, INC.,

Respondents

(Cases No. 1 and No. 2)

ON APPEAL
CONCLUSIONS AND ORDER

William C. Egan, Esq., Attorney for Appellants.
Peter Friedman, Esq., Attorney for Respondent, Township Committee of the Township of Andover.
Peter P. Artaserse, Esq., Attorney for Respondent-licensee, Camp Clearwater, Inc.

BY THE COMMISSIONER:

These appeals have been taken from the action of respondent Township Committee issuing and renewing the license of respondent Camp Clearwater, Inc. for premises located at Lake Iliff, Andover Township.

Appellants contend that the action of the Township Committee was erroneous in both the original issuance and subsequent renewal of the liquor license in that public convenience and necessity did not warrant an additional license in the township. The original license was issued on May 26, 1945. An appeal from this action was taken within the thirty-day statutory period. Thereafter an appeal was taken from the renewal of the license. Testimony in both appeals was taken at the same time.

Whether a renewal of a license should be granted or not is, like the original issuance of the license, a matter to be decided in the light of what is then determined by the issuing authority, in the exercise of its discretion, to be in the best common interest of the general public.

Appellants base their appeals on the preamble to an ordinance approved October 14, 1944, which limited the number of plenary retail consumption licenses to seven. This ordinance was, on April 14, 1945, repealed. The repealed ordinance reads as follows:

> "WHEREAS, the Township of Andover, in the County of Sussex and State of New Jersey, upon investigation have found that seven Plenary Retail Consumption licenses will amply satisfy the necessities, requirements and comforts and well-being of said Township and its inhabitants;
>
> "BE IT ORDAINED by the Township Committee of the Township of Andover, in the County of Sussex and State of New Jersey, that hereafter there shall not be granted or issued in the Township of Andover, in the County of Sussex and State of New Jersey, more than seven (7) Plenary Retail Consumption licenses to be effective at one time."

At the time the ordinance was adopted on October 14, 1944, there were seven plenary retail consumption licenses issued and outstanding. As of today, including the respondent Camp Clearwater, Inc. license, there are ten plenary retail consumption licenses in the township.

The population of the Township of Andover, according to the 1940 Federal census, was 590. Charles Barbay, Township Committee chairman, testified that the present population is "about 500 or 600." This testimony, standing alone, would clearly indicate that the respondent has far more than sufficient licenses to meet all public requirements and that the appellants' application and all subsequent applications should have been denied. Apparently aware of this fact, the respondents offered testimony for the purpose of showing that respondent's premises at Camp Clearwater should not be compared with the ordinary premises for which a liquor license is sought.

Camp Clearwater, now owned by respondent Camp Clearwater, Inc., a corporation, covers an area of approximately 210 acres of land, part of which borders on Lake Clearwater (formerly Lake Iliff, or Iliff's Pond). There are various buildings erected on the premises consisting of thirty-six cottages, one small and two large community dining halls, and a few small buildings used for miscellaneous purposes. The camp may be compared to a small village. The lake affords bathing opportunities for tenants and visitors. The camp was formerly known as Camp Nordland, for which an individual held a liquor license until July 1, 1939. Some time thereafter the title to the land and buildings thereon was vested in the United States Alien Property Custodian who, on May 22, 1945, conveyed the property to respondent Camp Clearwater, Inc.

Witnesses produced by respondents testified that during the past summer the cottages in the camp were constantly occupied by vacationists. Frank Bucino, president of the respondent licensee, testified that many of these cottages are rented on a yearly basis. Picnics and other social affairs have been held on the camp grounds and the respondent licensee plans to conduct various affairs, including sports events, on the premises.

Charles Barbay, chairman of the respondent Township Committee, testified that in his opinion the issuance of a license to respondent licensee was necessary to meet the convenience of the occupants of the cottages and those who used the camp. He based his opinion on the fact that there is no public transportation system from the camp, and that the nearest liquor licensee was approximately three-quarters of a mile to a mile away at the time the license in question was granted. He further stated that the camp has attracted a large group of visitors to the township and that this is helpful to the farmers and merchants in the neighborhood.

It was stipulated by the parties herein that William Marow, another member of the respondent Township Committee, would give testimony similar to that given by Charles Barbay.

Three other witnesses, among whom was a summer resident, an all-year-round resident, and a real estate operator, who made a survey of the camp covering the need or convenience to be served by the proposed licensed premises, were in agreement that the license would constitute a convenience for permanent as well as summer residents and visitors.

On appeal, where there is some evidence of a public convenience or necessity to be served by the issuance of a license, it is not my function to substitute my judgment for the judgment of the municipal issuing authority. Had I been a member of the municipal issuing authority, I might well have voted to deny the application. Despite this fact, on appeal, the burden of proof rests with the appellants to show that the action of the Township Committee was unreasonable or arbitrary. After a very careful study of the entire record, I

conclude that the appellants have not sustained the burden in this case and, therefore, the action of the municipal issuing authority must be affirmed.

Accordingly, it is, on this 14th day of February, 1946,

ORDERED, that the appeals herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

CHARLES PITALI (or Pitale))
216 White Horse Pike)
Hammonton, N. J.,) CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-17, issued by the Town Council of the Town of Hammonton.)

- - - - - - - - - - - - - - - - - - -)

Howard L. Miller, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to a charge alleging that, from July 1, 1944 to June 30, 1945, he exercised the rights and privileges of a plenary retail consumption license then held by one Anna Pitali (or Pitale) for premises 216 White Horse Pike, Hammonton, New Jersey, in violation of R. S. 33:1-26.

The defendant obtained a plenary retail consumption license following repeal of the National Prohibition Law and renewed the license from year to year until June 30, 1944. The license for the premises was then obtained in the name of Anna Pitali, sister of defendant, for the 1944-45 licensing period. On July 1, 1945, the license was again obtained by defendant, Charles Pitali, for the premises in question for the current licensing term.

The department file discloses that defendant had been a judgment-debtor in a substantial amount since 1927. Defendant filed a petition in bankruptcy in the United States District Court but prior thereto the license was taken in the name of his sister Anna Pitali as nominal licensee. After defendant was formally discharged by the Federal Court in the bankruptcy matter, he applied for and was again granted a license for the premises in question.

In explanation of the violation committed, petitioner contends that he was not aware of any wrongdoing. The motive which prompted defendant to file a petition to be adjudged a bankrupt to avoid payment of the judgment hereinbefore referred to, coupled with his apparent concealment of the true assets of his estate, renders his explanation unimpressive.

Despite the correction of the illegal condition, a fraud was practiced upon the issuing authority by failure to disclose the true ownership of the license for the 1944-45 licensing period. Because the "front" charge was preferred previous to January 1, 1946, and the correction had also been made prior to that time, the announced policy of increasing suspension of licenses to become effective with disciplinary proceedings hereafter instituted which involve "front" situations continued or created after January 1, 1946 does not apply. See Re Nicomini, Bulletin 686, Item 7.

I shall, therefore, suspend the within license for a period of twenty days. Re Melchiorre, Bulletin 578, Item 3.

Accordingly, it is, on this 18th day of February, 1946,

ORDERED, that Plenary Retail Consumption License C-17, issued by the Town Council of the Town of Hammonton to Charles Pitali (or Pitale), for premises 216 White Horse Pike, Hammonton, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. February 27, 1946, and terminating at 2:00 a.m. March 19, 1946.

ALFRED E. DRISCOLL
Commissioner.

5. SEIZURE - FORFEITURE PROCEEDINGS - MANUFACTURE AND SALE OF HOME-MADE WINE WITHOUT LICENSE OR PERMIT - SUPPLY OF HOME-MADE WINE, OTHER ALCOHOLIC BEVERAGES, WINE PRESS AND OTHER PERSONAL PROPERTY DECLARED UNLAWFUL PROPERTY AND ORDERED FORFEITED.

In the Matter of the Seizure on January 7, 1946 of about 450 gallons of home made wine, a quantity of other alcoholic beverages, a wine press and other personal property, at 829 South Third Street, in the City of Camden, County of Camden and State of New Jersey.	)	Case No. 6940 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, of the Revised Statutes, to determine whether approximately 450 gallons of home made wine, a quantity of other alcoholic beverages, a wine press, and other personal property, itemized in an inventory hereinafter set forth, seized on January 7, 1946 at 829 South Third Street, Camden, New Jersey, constitute unlawful property and should be forfeited.

On January 5, 1946 an ABC agent, on an undercover investigation of a complaint alleging that wine was being sold at a small grocery store at the above address, there purchased a bottle of wine from Paul Pestritto, the owner of such grocery store. On January 7, 1946 the agent, in company of other ABC agents, returned to the premises. On this occasion the agent again purchased a bottle of wine from Pestritto and a few minutes later the other agents entered, identified themselves, and searched the premises.

The agents seized two jugs of wine and three bottles of other alcoholic beverages in a room in the rear of the store, and also seized 9 - 50-gallon barrels of wine, 14 empty barrels and a wine press in the cellar of the premises.

Pestritto did not hold a license authorizing him to sell or serve alcoholic beverages or to manufacture wine. He was arrested on charge of violating the Alcoholic Beverage Law and has since been fined $100.00.

The wine is an illicit alcoholic beverage because it was not manufactured pursuant to any license or permit issued by the State Department of Alcoholic Beverage Control. It is likewise illicit because there is the permissible inference that it was Pestritto's stock of wine, possessed by him for sale in violation of the Alcoholic Beverage Law. R. S. 33:1-1(i), R. S. 33:1-2. Such illicit wine, together with the other alcoholic beverages, and personal property seized therewith on the premises, constitutes unlawful property and is subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-66.

When the matter came on for hearing, pursuant to R.S. 33:1-66, no one appeared to oppose forfeiture of the seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

Dated: February 18, 1946

SCHEDULE "A"

9 - 50-gallon barrels of wine
2 - 1-gallon jugs of wine
1 - wine press and various parts thereof
14 - empty wooden barrels
3 - bottles of alcoholic beverages
1 - piece of garden hose

6. APPELLATE DECISIONS - PRIDE OF TRENTON LODGE NO. 1118, I. B. P. O. E. OF W., INC. v. TRENTON.

PRIDE OF TRENTON LODGE NO. 1118, I. B. P. O. E. of W., INC., a corporation,)

Appellant,) ON APPEAL
-vs-) CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE CITY OF TRENTON,)

Respondent)

Robert Queen, Esq., Attorney for Appellant.
John A. Brieger, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of an application for a club license for premises known as 313 Calhoun Street, Trenton.

Appellant is a duly credentialed subordinate lodge of the Improved Benevolent and Protective Order of Elks of the World, Inc., a national Order. The latter has been in existence in New Jersey for more than three years continuously immediately prior to submission of the application for a liquor license. A certificate has been issued to appellant by the State Commissioner of Alcoholic Beverage Control, in accordance with the provisions of Rule 5 of State Regulations No. 7.

The Board of Commissioners of the City of Trenton denied appellant's application for a club license by a vote of three to two. Mayor Duch, in explanation of his vote in favor of the motion that the application of appellant be denied, stated:

> "In voting in the affirmative, I want to say that Reverend John A. White of the Shiloh Baptist Church, came into my office and stated to me that he thought that a club liquor license was not necessary in that neighborhood and he said that his church particularly objected to the granting of this application. He wanted me to know it. He said there was a saloon across from the club and there was no need for the club to have a liquor license. The membership of this club is so small that I don't think they need a liquor license for the selling and dispensing of liquor and I recall that the testimony indicated that there were sixty members in this club. The club was only organized in August and I, with him, feel that there is no need for a club liquor license at that place. If they miss drinking, they can go across the street. I voted yes for that reason."

John Butcher, local Alcoholic Beverage Control inspector, testified that the club premises consist of a three-story brick building on the corner of Church and Calhoun Streets. Mr. Butcher classified the neighborhood wherein the premises are located as residential in character. Testimony elicited from Mr. Butcher disclosed that there is a beauty parlor, garages, a saloon, a drug store, a coal yard, and a restaurant in the vicinity of the clubhouse; also, divers residences, including that of Harry Green, an objector who owns a home adjacent to appellant's premises and who testified that he was annoyed by noises from appellant's premises. The Shiloh

Baptist Church is situated 225 feet from the club premises.

Appellant contends that the neighborhood is not strictly residential in character. In view of the various business concerns in close proximity to the club premises, as outlined in the testimony of Mr. Butcher, I am satisfied that the neighborhood may be more correctly classified as a mixed residential and business area.

The conclusion reached by the majority of respondent Board appears to have been predicated mainly on the objection voiced by the Pastor of the Shiloh Baptist Church. No objectors affiliated with the church appeared at the hearing of this appeal. Two petitions addressed to the City Commissioners of the City of Trenton, one containing 16 signatures of church members and officials on the stationery of the Shiloh Baptist Church, and another petition containing 13 signatures of persons residing in the vicinity of the club premises, were presented on behalf of respondent.

Appellant questions the legality of the petitions (Exhibits R-1 and R-2) presented to the respondent objecting to the granting of the appellant's application for a club license. A petition is not a substitute for evidence, nor may it in any way be accepted in lieu of the independent investigation required by R. S. 33:1-24. Neither does the petition suffice as proof of non-compliance or of unworthiness. Applications should not be determined by a mere counting of noses. If the subject matter concerns local policy, the weight to be accorded a petition is entirely within the discretion of the local issuing authority. Re Powell, Bulletin 59, Item 15; Dunster v. Bernards, Bulletin 99, Item 1; Schick v. Millville, Bulletin 133, Item 8; De Blasio v. Trenton, Bulletin 175, Item 6; Shor & Reibel v. Linden, Bulletin 190, Item 9; Goff v. Piscataway, Bulletin 234, Item 5.

The fact that appellant produced witnesses who stated that, in their judgment, the issuance of a club license was socially desirable does not demonstrate that the action of respondent in denying the license was unreasonable. It merely indicates a difference of opinion on a question upon which reasonable men may differ. No one is entitled, as a matter of right, to a license. Bumball v. Burnett, 115 N. J. L. 254.

Although the club premises are more than 200 feet from the church and, hence, not barred by the provisions of R. S. 33:1-76, this fact does not deprive the issuing authority, in the exercise of its sound discretion, of the right to refuse to issue a new license for premises which, in its judgment, are in too close proximity to a church. Persi v. Trenton, Bulletin 46, Item 13.

Considering all the testimony, there is sufficient in the record to show that respondent's adverse determination of appellant's application was not unreasonable. Hence, I have no other alternative than to affirm the decision of the municipal issuing authority.

Appellant is not precluded from filing another application for a license for new premises or for the premises in question in the event of changed conditions.

Accordingly, it is, on this 18th day of February, 1946,

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

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against

WILLOW INN, INC.
T/a WILLOW INN
239-41 N. Willow Street
Trenton 8, N. J.,

Holder of Plenary Retail Consumption License C-119, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

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Willow Inn, Inc., by Morris Kolb, President, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, by its president, pleads not guilty to a charge alleging that, on November 14, 1945, it possessed at its licensed premises a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" and a pint bottle labeled "Mt. Vernon Brand Straight Rye Whiskey", both of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

An ABC investigator testified that on November 14, 1945 he tested 24 bottles of liquor on defendant's licensed premises and seized two bottles when preliminary tests indicated that the contents of the bottles were not genuine as labeled.

The department chemist testified, after an analysis of the contents of the seized bottles, he reached the conclusion that the two bottles had been refilled. He based his conclusion upon his finding that the contents of the suspected bottle of Canadian Club was lower in proof and higher in solids than the original brand and had no artificial color added, whereas genuine "Canadian Club" whiskey has traces of artificial coloring. As to the "Mt. Vernon" whiskey, the chemist stated he found a variation in acids, solids and proof when compared with analysis of a genuine sample.

The defendant testified that he had no knowledge of the fact that the bottles had been refilled. Although he may be personally innocent of the violation, a licensee is strictly responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2. No testimony was offered by defendant to offset the conclusion reached by the departmental chemist. I therefore find defendant guilty of the charge preferred.

Defendant has a prior adjudicated record. Its license was suspended by the State Commissioner for five days, effective December 4, 1944, for sale of alcoholic beverages to minors. Re Willow Inn, Inc., Bulletin 641, Item 7. Normally, the within violation warrants a suspension of the license for fifteen days. Re Delaney, Bulletin 680, Item 12. Under the circumstances, I shall suspend defendant's license for a period of twenty days.

Accordingly, it is, on this 18th day of February, 1946,

ORDERED, that Plenary Retail Consumption License C-119, issued by the Board of Commissioners of the City of Trenton to Willow Inn, Inc., t/a Willow Inn, for premises 239-41 N. Willow Street, Trenton, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. February 27, 1946, and terminating at 2:00 a.m. March 19, 1946.

ALFRED E. DRISCOLL

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

CHARLES G. BUTTEL, JR.
245-249 Grand Street
Paterson 1, N. J.,

Holder of Plenary Retail Consumption License C-165, issued by the Board of Alcoholic Beverage Control of the City of Paterson, and transferred during the pendency of these proceedings to

ROLLY BESKIN & LOUIS J. SCHWARTZ

for the same premises.

CONCLUSIONS AND ORDER

Louis Nussman, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges alleging that, on Saturday, December 1, 1945, at about 12:10 a.m., he sold a pint bottle of whiskey in its original container for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38.

Two agents of the Department of Alcoholic Beverage Control were present in defendant's licensed premises on the day in question. At about 12:10 a.m., one of the investigators requested a bartender to sell him a pint of whiskey, but the bartender refused. However, the second investigator requested another bartender to sell him a bottle of P. M. DeLuxe Blended Whiskey, and the bartender made the sale, as requested.

The licensee, in his plea in mitigation, states that this is his first violation of any nature, which is the fact. I shall suspend the license for a period of fifteen days, less five days' remission for the plea, making a net suspension of ten days. Re Van Harken, Bulletin 678, Item 10.

The license was transferred during the pendency of these proceedings to Rolly Beskin & Louis J. Schwartz. The suspension imposed herein applies to the license as transferred. Rule 3 of State Regulations No. 16.

Accordingly, it is, on this 19th day of February, 1946,

ORDERED, that Plenary Retail Consumption License C-165, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Charles G. Buttel, Jr. for premises 245-249 Grand Street, Paterson, and transferred during the pendency of these proceedings to Rolly Beskin and Louis J. Schwartz for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. February 25, 1946, and terminating at 3:00 a.m. March 7, 1946.

ALFRED E. DRISCOLL
Commissioner.

9. APPELLATE DECISIONS - KOODRAY v. PATERSON.

Case #2
ALICE KOODRAY,

Appellant,

-vs-

BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF PATERSON,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

John C. Barbour, Esq., Attorney for Appellant.
George Surosky, Esq., Attorney for Respondent.
Paul Rittenberg, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for transfer of a plenary retail consumption license, issued for the fiscal year 1944-45, from Carmine Cetrano to appellant herein and from premises at 350 Preakness Avenue to premises at 259 Park Avenue, Paterson.

At the time of the hearing the licensed premises (350 Preakness Avenue) were not in operation by the licensee (Cetrano) and had not been in operation since July 1, 1944. There is some testimony that the premises had not been in operation for some time prior to that date.

Testimony shows that, on July 12, 1944, appellant herein filed a prior application for a similar transfer, which was denied by the respondent municipality. An appeal was taken, which was later withdrawn. Koodray v. Paterson, Bulletin 641, Item 3. On February 20, 1945, the present application for a transfer was filed. This was denied by the respondent municipality on May 9, 1945 and resulted in the present appeal.

Thereafter, on June 7, 1945, Carmine Cetrano filed an application for the renewal of his license for the 1945-46 license year. On July 25, 1945, this application was denied and on appeal the decision of the respondent was reversed and the latter was directed to issue a license to Cetrano. There is no application pending for the transfer of the Cetrano license for the 1945-46 license year and the license (1944-45), the subject of the present appeal, has expired by its terms.

The present appeal does not become moot but is dispositive of identical issues based upon identical facts upon any application which may hereafter be made for transfer of Cetrano's current license to appellant. Shelby v. Trenton, Bulletin 129, Item 1.

The appellant, on her behalf, offered the testimony of engineers, supported by photographs showing the general character of the neighborhood. Appellant also offered the testimony of residents for the purpose of showing a need for another licensed premises in the particular area. A physical examination was made of both the present and the proposed locations. It is evident that the proposed location is in the midst of a rapidly changing neighborhood, most of which is devoted to business purposes.

Appellant likewise offered the testimony of six witnesses who testified that there was some need for additional licensed facilities in the area of the proposed premises. In addition, it was agreed between counsel that eight additional witnesses, if their testimony

were offered, would testify to the same effect. In general, these witnesses complained of crowded and allegedly unsatisfactory conditions in existing taverns in the neighborhood. Their testimony, while not too persuasive, was the only direct (in contrast to opinion) testimony on the subject of public need and convenience.

The two members of the respondent Board testified that, in addition to the neighborhood objections, they considered that there were enough saloons in the general neighborhood. One member of the Board testified that "there were nine or ten saloons in that neighborhood within a radius of a quarter of a mile" and the other member of the Board testified that he had made a careful inspection and that "there were a sufficient number of taverns in that neighborhood to supply the needs of those who live there."

The two locations are over two miles apart. It is not a transfer within the same general neighborhood and the desire of the municipality not to concentrate unduly licensed establishments in any one section is entitled to great weight. Even where the application for a transfer has been within the same general neighborhood, I have sustained the municipality where the testimony supported its opposition to the undue concentration of licensed premises. See Willner's Liquors v. Camden, Bulletin 669, Item 14.

Respondent's denial of the application, however, appears to rest principally on the alleged residential character of the neighborhood rather than upon the number of licenses required to service the neighborhood. As previously stated, the neighborhood appears to be of a mixed residential and business character, with the emphasis on business. Accordingly, on the basis of the testimony presented herein, this ground does not appear to be a sufficient reason for denying the transfer. Further, the testimony does not disclose whether or not there would be an overcrowding of licenses in the neighborhood when compared with other areas in the City of Paterson if the application for transfer had been granted.

The announced purpose of the respondent to prevent overcrowding is commendable. It may very well be that, on the basis of testimony available to the Board but not available on this appeal, its action was justified. On the record presented before me, however, the testimony left much to be desired.

The action of the respondent is reversed. As already explained, this decision, since the license in question has expired, is advisory and merely for the guidance of the parties herein in the event of a similar application. Both parties are, of course, free in any future application to offer testimony in addition to that already offered in these proceedings, either with respect to the present issues or such additional issues as may be raised.

Accordingly, it is, on this 18th day of February, 1946,

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

Alfred E. Driscoll
Commissioner.