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

BULLETIN 251 271-270 June 10th, 1938.

1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - REFUSAL TO LIFT STATUTORY AUTOMATIC SUSPENSION - HEREIN OF THE REQUISITES OF JUDICIAL ADJUDICATION AND OF STRICT CONSTRUCTION BEFORE DECLARING A SECOND OFFENDER PERMANENTLY INELIGIBLE.

In the Matter of Disciplinary Proceedings against	:	
ABOLONIJA WIZNER, Kingwood Township, P. O. Frenchtown, New Jersey,	:	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License No. C-3 issued by the Township Committee of Kingwood Township.	:	
In the Matter of a Petition by	:	
ABOLONIJA WIZNER	:	CONCLUSIONS
To Lift the Automatic Suspension of Plenary Retail Consumption License No. C-3 issued by the Township Committee of Kingwood Township.	:	

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

Leon Gerofsky, Esq., for the Licensee-Petitioner.

BY THE COMMISSIONER:

On March 11, 1938 the licensee-petitioner herein pleaded guilty in the Hunterdon County Court of Special Sessions to a charge of selling liquor to a minor and was fined $200.

Thereby the license became automatically suspended and thereafter the same proceedings ensued and the same consolidation effected substantially as in Re Sandago, Bulletin #249, Item 1.

At the hearing herein, it was stipulated that the testimony of Marie Schaible, the deputy Sheriff, the matron of the County Jail, the constable and the county detective, which was given at the hearing held in the cases theretofore heard involving the Sandago, Beatty and Fischer licenses, Bulletin #249, Items 1, 2 and 3, should be considered as part of this case.

On the evening of March 10th, Wizner's was the first place visited by the persons named in Re Sandago, supra. Mrs. Wizner, the licensee-petitioner, poured the first drinks ordered by the minor and the others; Mrs. Wizner then went to the kitchen and a man came in and poured the second drinks. After the second drinks had been poured, the signal was given to the prosecutor and the others who remained outside, whereupon they entered and placed Mrs. Wizner under arrest for selling to a minor. On March 11, 1938 she appeared before Judge Prall, pleaded guilty to said charge and was fined $200.

The licensee-petitioner testified that she has known the minor since February 1937; that the minor had visited the licensed premises on previous occasions and had been served with alcoholic beverages on at least one of her visits; that the minor had previously told the licensee that she was of age and that the minor seemed to be twenty-two or twenty-three years of age. The Schaible girl testified:

"Q. Had you ever been to Mrs. Wizner's place before?
A. Yes.
Q. Had you ever been asked whether you were twenty-one before? A. No."

The responsibility of licensees for sales to minors has recently been discussed and set forth at length in Re Sandago, supra, whereby it appears that, so far as criminal and disciplinary liability is concerned, the licensee is absolutely responsible if in fact the person to whom he sold was a minor. Hence, it is unnecessary to determine the weight or credibility to be given to the testimony of the Schaible girl. It was sufficient that she was in fact a minor. The Hearer reports that the Schaible girl appeared to be very young.

I find that the licensee is guilty of selling alcoholic beverages to a minor.

As to the petition to lift the automatic suspension: The record of a conviction against this licensee-petitioner for a violation of the Alcoholic Beverage Control Act before one Embley R. Hummer, Justice of the Peace at Frenchtown, in July 1934, resulting in a fine of $100. (Criminal Docket 4904) was offered in evidence. It is hereby rejected. The Justice of the Peace had no jurisdiction whatsoever to levy a fine or to adjudicate that the Control Act had been violated.

There is, however, a matter of graver import to be considered:

On July 28, 1934 Investigators Flynn, Wagi and Shapiro visited the premises owned by the licensee and her husband, John Wizner, and then conducted as a general store. They asked Mrs. Wizner for three glasses of beer. The beer was drawn by the husband, but Mrs. Wizner brought the glasses to the table and received payment from the Investigators. The Wizner premises were not licensed at the time of the sale, but an appeal was then pending from the refusal of the Township Committee to issue a license to Mrs. Wizner. As a result of the discovery that appellant in said case was selling without a license in defiance of the law, said appeal was dismissed. Wizner vs. Kingwood Township, Bulletin #42, Item 8.

R.S. 33:1-25 (Control Act, Sec. 22) provides that "no license of any class shall be issued ..... to any person ..... who has committed two or more violations of this Act." There is no question but that selling alcoholic beverages to a minor is a violation of the Act. It is so provided in R.S. 33:1-77 (Control Act, Sec. 77). So, selling alcoholic beverages to any person without a license is a violation of the Act. R.S. 33:1-2 and R.S. 33:1-50 (Control Act, Sections 2 and 48).

The licensee-petitioner has been adjudicated guilty in

this very proceeding of having committed one violation of the Act in selling to a minor. The question is whether the decision in Wizner vs. Kingwood Township, supra, constitutes an adjudication against her of the commission of another violation of the Act. If it does, then she is ineligible forever to hold any liquor license. Re Wismer, Bulletin #171, Item 5 (Section 22 "is the most virile section in the whole Act. It will eventually operate to purge the industry of those who apparently can't learn that the law was made to be obeyed"); Re Sedlak, Bulletin #178, Item 12 (license revoked because of second violation of the Act); Re Siwek, Bulletin #180, Item 14 (license revoked because of second violation of the Act).

In considering this question, it should be noted that the Statute does not speak of one who has been "convicted of" two or more violations. That is the way Section 22 read as originally enacted. P.L. 1933, c. 436. All that was expressly changed by the amendments of 1934 so that the operative term now reads "committed" instead of "convicted of." P.L. 1934, c. 85 as amended by P.L. 1934, c. 194.

Notwithstanding the change in verbiage of Section 22, it still remains true that the Section, being penal in nature, must be strictly construed. Re Case No. 59, Bulletin #193, Item 6; Re Case No. 63, Bulletin #195, Item 1 (Strict construction in a case of this kind "means not being over-quick on the trigger to maim someone for life who already has his back to the wall and his hands up").

In order that a person, who has at least on two occasions violated the Act, be permanently barred, there should at least be a formal adjudication of guilt. That means charges preferred and an opportunity to be heard afforded. Due process of law could brook nothing less. Such an adjudication is in its very nature a judicial, or at least a quasi-judicial, act. A mere administrative act in which these primary essentials were lacking will not suffice to constitute an adjudication of commission of a violation of the Act.

Tested by these principles, the decision in Wizner vs. Kingwood Township, supra, while wholly proper for the purpose for which it was rendered will not suffice to constitute an adjudication that the present licensee-petitioner had violated the Act. The fact that, during the very time she was appealing from the denial of the issuance of a liquor license to her by the Township of Kingwood, she was caught selling alcoholic beverages without a license, was ample ground to justify the refusal on my own motion to order the Township Committee to issue her a license and to warrant dismissal of her appeal. True it is that from that decision she never appealed nor protested. But it is also true that no charges were ever preferred against her nor was she ever given the opportunity to say whatever she might say in her own behalf. For lack of those essential requisites that decision cannot stand as a formal adjudication that she committed a violation of the Act by selling without a license.

So far then as eligibility to have a license is concerned, there is but one strike against her, not two.

The finding of fact which was made in Wizner vs. Kingwood Township, supra, viz.: That she was selling alcoholic beverages without a license in defiance of the law, even though it cannot rise to the dignity of a formal adjudication, is sufficient ground, coupled with the present adjudication of guilt in selling to a minor, to deny her present petition to lift the statutory automatic suspension. That finding of fact was confirmed by the testimony of the State staff given in her presence in the present proceeding and the witnesses for the State who proved the facts were not only subject to cross-examination but were actually cross-examined by her own attorney. The proof is clear beyond a reasonable doubt that she did sell liquor in 1934 without a license.

The petition to lift, is therefore, denied.

D. FREDERICK BURNETT
Commissioner

Dated: June 4, 1938.

2. SPECIAL PERMITS - NO POWER IN MUNICIPALITY TO FIX OR COLLECT FEES FOR THE SALE OF ALCOHOLIC BEVERAGES OTHERWISE THAN FOR THE FIVE CLASSES OF RETAIL LICENSES THE STATUTE AUTHORIZES.

June 1, 1938.

Mrs. Johanna E. Berton, Clerk,
Borough of Pine Hill,
R.D. 1, Sicklerville, N. J.

My dear Mrs. Berton:

My attention is called to resolution adopted by the Council fixing the fee for carnival license pursuant to which the holder is authorized to sell alcoholic beverages, at $5.00 per night, which provides:

> "The fee for a carnival license shall be the sum of Five Dollars ($5.00) per night and the holder of such license shall be entitled, subject to rules and regulations, to sell alcoholic beverages intended for immediate consumption on the licensed premises which shall include the lot or parcel of land on which said carnival is being held and this license shall apply regardless of whether said carnival is being sponsored by a religious, fraternal, social, benevolent, recreational, athletic, or similar purpose and not for private gain, and such license shall be subject to the qualifications, conditions and restrictions imposed by said State Commissioner of Alcoholic Beverage Control."

There is no power in municipalities to fix fees and issue licenses for the sale of alcoholic beverages otherwise than for the five classes of retail licenses set forth in the Alcoholic Beverage Law (R.S. 33:1-12) in Section 13, subsections 1, 2, 3a, 3b and 5. Plenary and seasonal retail consumption, plenary and limited retail distribution and club licenses are the only liquor licenses the Council may issue. The authority to issue special permits and to fix and collect fees therefor is conferred exclusively by Section 75 of the Act (R.S. 33:1-74) on the State Commissioner. Re Lewis, Bulletin 126, Item 15; Re Stires, Bulletin 71, Item 4.

The resolution is of no legal force or effect. It affords neither privilege nor protection to the holder. It must be rescinded at earliest moment.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. APPELLATE DECISIONS - CONWAY vs. HADDON TOWNSHIP.

Frankie Conway,)
Appellant,)
-vs-) ON APPEAL
Township Committee of the Township of Haddon,) CONCLUSIONS
Respondent)

. . . . . .

Frank M. Lario, Esq., Attorney for Appellant

Mark Marritz, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application by appellant, Frankie Conway, for a plenary retail consumption license for premises located at 18 Cuthbert Road, Westmont, Haddon Township.

There is no dispute with respect to the personal qualifications of the appellant or the suitability of the building itself for which the license is sought. The respondent rests its denial upon the contention that the issuance of the license would (1) create a traffic hazard, and (2) be in violation of a limitation in force within the Township. The pertinent facts, as I find them to be, may be summarized as follows:

The appellant properly conducted a tavern on the Black Horse Pike, Haddon Township, pursuant to a license issued in 1935 and a renewal thereof in 1936. In due course, he applied for a transfer of his license for the period expiring June 30, 1937, to premises located at 18 Cuthbert Road. The respondent's denial of this application was reversed on appeal for the reasons embodied in the formal Conclusions dated June 28, 1937 appearing in Conway vs. Haddon, Bulletin 191, Item 9, and on June 30, 1937 the respondent actually transferred appellant's license to premises located at 18 Cuthbert Road. The appellant did not immediately enter the new premises or apply for renewal, largely because extensive alterations were required. He did, however, through his attorney, address a letter to the respondent requesting that it "reserve his privilege of renewal of said license for the year commencing July 1, 1937 to June 30, 1938". Subsequently, he negotiated with building contractors and repairs were completed by the close of November 1937. The evidence indicates that the respondent was aware that these repairs were being made and that a further application would be made by the appellant in due course.

On the afternoon of November 30, 1937, the appellant filed a formal application for license for the premises located at 18 Cuthbert Road. Later during the same day the respondent adopted an ordinance, which had been originally introduced two weeks prior thereto, limiting consumption licenses in the Township to 12, the number then outstanding. Thereafter, there was an inspection of appellant's premises, an ordinance raising the limitation to 13 was introduced but was not adopted, and on January 27, 1938 the appellant's application was denied.

In contradiction of respondent's assertion that the issuance of the license would create a traffic hazard, the appellant testified that his premises consist solely of a barroom and three tables in the rear; that his proposed manner of conducting business would not "draw large crowds"; that he has made satisfactory arrangements for the use of a lot, 50 feet by 60 feet in the rear of the premises sought to be licensed, as a parking space; and that this space would be wholly adequate to accommodate his patrons who arrived in automobiles. The general testimony introduced by respondent to the effect that a traffic hazard would be created is not convincing, particularly in the light of the fact that other licenses have been issued for localities which are not dissimilar, and the further fact that at no time during the proceedings culminating in the decision in Conway vs. Haddon, supra, was there any suggestion by the respondent that the issuance of the license sought would result in a traffic hazard. I, therefore, find that the denial of the appellant's application may not be justified on the ground a traffic hazard would otherwise result; the sole remaining ground to be considered is whether the denial was proper under the limitation fixed by the ordinance.

In Re Deighan, Bulletin 141, Item 2, it was held that the mere fact that there was a gap between the expiration of an old license and the issuance of a new license would not necessarily preclude consideration of the latter license as a renewal. In general, the intent to continue the establishment to which the old license was referable would be a governing factor. See Re Deighan, supra. Compare Berger vs. Carteret, Bulletin 213, Item 9; Re Bayonne, Bulletin 216, Item 3. In the light of the foregoing, the particular facts here presented amply warrant the conclusion that the application by the appellant was for "renewal" of the license actually issued to him on June 30, 1937. There was ever present the appellant's intent to apply for renewal as soon as the premises were rendered suitable; this intent was satisfactorily brought home to the respondent; the appellant's conduct was, at all times, consistent with this intent; and the application was made as soon as the alterations were substantially complete. It may well be pointed out that respondent did not, at any time, serve notice that applications for renewal must be filed within a designated time, as it might have done, by the adoption of an ordinance or resolution to that effect. Cf. Re Bayonne, supra.

It is true that "renewal, like an original liquor license, is a privilege and not a right" (see Rajca vs. Belleville, Bulletin 101, Item 1), and may therefore be denied for cause. Applicants for renewal, however, have generally, as the appellant did here, expended moneys and incurred commitments in reliance upon the justifiable assumption that their licenses will be renewed in the absence of improper conduct on their part or a strong public policy which overcomes their private interests. Cf. Costa vs. Red Bank, Bulletin 133, Item 5. A substantial showing that the public interest demands an immediate reduction in the number of licenses might justify the application of a newly adopted limitation to applicants for renewals who have not, in anywise, violated the law or regulations. But in the absence of this showing, such application of the limitation would be grossly unfair. Cf. Jones vs. Absecon, Bulletin 218, Item 1, Re Juska, Bulletin 116, Item 7 I find no such showing in the instant case. There are no consumption places of business in the vicinity of the appellant's premises; the aggregate number of consumption licenses in the Township is considerably less than heretofore; and the respondent has issued a new consumption license for the current period to

a person who has not theretofore held any license in the Township.

Although limitation of licenses is a laudable end, the public interest does not suggest that it is to be attained in total disregard of pre-existing individual interests. Such would be the result if the limitation were permitted to be applied against the appellant in the instant situation. I have, therefore, concluded that the limitation may not reasonably be applied to the appellant's pending application and that the denial may not properly be rested thereon.

The action of the respondent is reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: June 5, 1938.

4. APPELLATE DECISIONS - CRAIG vs. ORANGE.

ALEXANDER CRAIG, LTD., Appellant,	)	
-vs-	)	ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE, Respondent.	)	CONCLUSIONS

. . . . . .

Joseph F. Holland, Esq., Attorney for Appellant.
Louis J. Goldberg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the refusal to transfer its plenary retail distribution license No. D-9 from 282 Main Street to 43 Central Avenue, Orange.

Respondent denied the application to transfer "because there is a sufficient number of taverns and liquor stores in the City of Orange and in the vicinity in question to take care of its wants."

The licensed premises at 282 Main Street are located in the rear of the fourth floor of a bank building at that address. Alexander Craig, Ltd. conducts its business from that address entirely by mail and telephone. It imports whiskey and wines which it sells in not less than one-third case lots. In order to sell to its customers who are consumers residing in forty or fifty New Jersey communities, it has obtained a distribution license from the City of Orange.

Appellant recently leased a ground store at 43 Central Avenue and seeks to transfer its license to that address. The Central Avenue premises are located in a high-class business district.

If the transfer is granted, appellant plans to change, at least to some extent, its type of business. It has been testified that its mail and telephone business has been conducted at a loss. It now plans to sell high price whiskey and wine by the bottle to persons visiting the Central Avenue shopping district. In other words, it intends to conduct a "package goods" store.

While respondent might well have been willing to issue a distribution license to appellant to conduct its mail and telephone business from an office in a bank building, it does not follow that respondent must transfer that license to another location where a "package goods" store, even of a high type, will be conducted. In view of the many "package goods" stores in Orange, it cannot be successfully argued that an additional store of this type is necessary to supply the needs of the inhabitants of the City. Cf. Great Eastern Super Markets, Inc. vs. Orange, Bulletin 227, Item 6.

While it is true that appellant's license gives it exactly the same privileges afforded to the holders of similar licenses, it is true also that the right to transfer is not inherent in any license. VanSchoick vs. Howell, Bulletin 120, Item 6. A transfer may not be denied arbitrarily, but it may be denied for good cause. Technically, the transfer of appellant's license would not increase the number of distribution licenses outstanding but, practically, it would add another liquor store to the large number now existing. Respondent's determination that there are a sufficient number of liquor stores in Orange does not seem to be unreasonable.

Appellant argues that an affirmance herein would result in closing the Central Avenue business section against any further liquor stores. Such is not the effect of the decision rendered herein. Each case must depend upon its own facts. It is sufficient to say that the denial of appellant's application, under the circumstances of this case, has not been shown to be unreasonable.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 5, 1938.

5. APPELLATE DECISIONS - THE GREAT ATLANTIC & PACIFIC TEA COMPANY vs. DOVER

THE GREAT ATLANTIC & PACIFIC TEA COMPANY, a corporation of the State of New Jersey,	)	
Appellant,	)	ON APPEAL
-vs-	)	CONCLUSIONS
THE MAYOR AND BOARD OF ALDERMEN OF THE TOWN OF DOVER	)	
Respondent.	)	

. . . . . .

Pitney Hardin & Skinner, Esqs., by F.A. Frost, Esq., for the Appellant
No Appearance on behalf of Respondent.

BY THE COMMISSIONER:

This appeal is from the refusal to transfer appellant's plenary retail distribution license from #12 East Blackwell Street to #24 East Clinton Street, Dover.

Respondent denied the transfer because of a municipal resolution of January 24, 1938, reading:

> "WHEREAS, there has recently been developed a system of retail sales in which the customers wait upon themselves, and
> "WHEREAS, much of the marketing is done by minors, and
> "WHEREAS, it is the opinion of the Mayor and Board of Aldermen of the Town of Dover, that minors should not be exposed to direct contact with the sales of alcoholic beverages,
> "THEREFORE, BE IT RESOLVED, by the Mayor and Board of Aldermen, of the Town of Dover, that no plenary retail distribution license shall be issued to, or transferred to any establishment in the Town of Dover, in which merchandise is sold by the 'Self Service' method".

This resolution has not heretofore been submitted to the State Commissioner for approval as required by R.S. 33:1-40 (Control Act, Sec. 37), which enables municipalities, by ordinance or resolution, "subject to the approval of the commissioner first obtained", to "regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted."

While, therefore, the resolution was not legally effective at the time of the denial of the transfer, it will, nevertheless, now be considered on its merits nunc pro tunc just as in Peck vs. West Orange, Bulletin 147, Item 1 and Re Fidelity & Harmony Beneficial Association of South Plainfield, Bulletin 162, Item 14.

A resolution which outlaws distribution licenses from establishments where alcoholic beverages are sold on the "self-service" plan, is reasonable. Re Mallon, Bulletin 214, Item 8. Retail sales of liquor on the "self-service" plan obviously imperil the legislative policy that liquor, because of its socially dangerous incidents, shall be sold or purchased only by persons duly qualified under the State law and the State and local regulations. As said in Re Mallon, supra:

> "If self service of liquor were permitted, these statutory restrictions would be rendered nugatory. It is safer that, so far as liquor is concerned, the traditional manner of sale be retained and that the sale be made directly by and to duly qualified persons."

Respondent's resolution, however, goes farther than to interdict "self-service" sales of liquor. It forbids a distribution license for premises where a "self-service" business is being conducted. In so doing, it goes too far. There is no objection, so far as public policy is concerned, to the "self-service" plan of selling merchandise in general. The objection is aimed at and is confined to the sale of alcoholic beverages by that method.

The resolution as now broadly worded is, therefore, disapproved. To the extent, however, that alcoholic beverages constitute any part of merchandise sold by the "self-service" method, the resolution will be given effect.

I find from the record that while the store at 24 East Clinton Street is "self-service" in some respects, its liquor department (planned but not yet constructed) will be substantially separated from the rest of the premises and will be conducted strictly on an "over-the-counter" basis with a salesman always in charge. A customer, young or old, could no more walk off with a bottle of liquor than he could go into the meat department and hack off a lamb chop for himself.

There being no other objection to the transfer, the action of respondent is, therefore, reversed.

Respondent is directed to issue the transfer.

D. FREDERICK BURNETT
Commissioner

June 5, 1938.

6. APPELLATE DECISIONS - HUBERT vs. LINDEN.

THADDEUS J. HUBERT,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF LINDEN,) ON APPEAL
Respondent.) CONCLUSIONS
)

. . . . . .

Philip Cohen, Esq., Attorney for Appellant.
Lewis Winetsky, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail distribution license for premises known as No. 1101 South Wood Avenue, Linden.

Respondent denied the application because (1) it disapproves of the issuance of liquor licenses to combination stores and (2) it alleges that there are a sufficient number of licensed premises in the neighborhood.

As to (1): Appellant owns the premises in question, wherein he conducts a grocery and meat market. It is

true that the four outstanding distribution licenses have been issued to places operated solely as liquor stores. It is admitted, however, that no ordinance has been enacted prohibiting the issuance of this type of license for premises in which any other mercantile business is carried on. Despite this, respondent contends that it has adopted and uniformly applied such a policy. I have heretofore ruled that a resolution, prohibiting the issuance of distribution licenses for premises where other mercantile business is carried on, is of no effect. Re Knox, Bulletin 109, Item 3; Re Gaunt, Bulletin 115, Item 10. Since a resolution will not suffice, neither will a so-called policy. To be legally effective, such prohibition must be enacted by ordinance. R.S. 33:1-12 (Section 13(3)a of Control Act.) The first alleged ground is, therefore, no reason for denial.

As to (2): The nearest distribution license outstanding is Bieler's, located at 120 North Wood Avenue. North Wood Avenue is a continuation of South Wood Avenue. Bieler's is 3700 feet from appellant's premises. In close proximity to Bieler's store, two other distribution licenses have been granted, namely, at 228 North Wood Avenue and 119 North Wood Avenue. The fourth such license was granted in June 1937 to Balak, on East Edgar Road, nearly two miles from appellant's premises.

In 1935 respondent denied a distribution license at 101 North Wood Avenue because there were a sufficient number of licenses in the vicinity. Said denial was affirmed in Shor vs. Linden, Bulletin 190, Item 9, because of the existence of the other distribution licenses in that section of the City. The present case is clearly distinguishable from the Shor case because here it appears that the nearest distribution license is located 3700 feet away.

Respondent further contends that the denial should be upheld because a consumption license is outstanding on South Wood Avenue, one block from appellant's premises; two other consumption licenses are outstanding on South Wood Avenue near appellant's premises, and two other consumption licenses are outstanding on Edgar Road about two blocks away.

This contention is entitled to but little weight. A package goods license fills a need quite distinct from that supplied by a tavern. It may well be an important matter of social convenience and necessity that such a license be granted. Budd Lake Market, Inc. vs. Mt. Olive Township, Bulletin 160, Item 6; also reported in Bulletin 166, Item 16; Goldberg vs. Township of Livingston, Bulletin 163, Item 2.

This contention in the instant case is exploded by respondent's own action in issuing a distribution license to one Balak in June 1937, despite the fact that two consumption licenses existed nearby and a third consumption license existed about four blocks away. Appellant contends that the denial of his license is discriminatory, in view of the issuance of the Balak license. With that contention I agree. If a municipality is to adopt a policy, such policy must be uniformly applied to all applicants. It cannot, in fairness, make fish of one and fowl of another. There is nothing in the record which distinguishes the situation in the Balak case from that existing in the present case.

It is admitted that North Wood Avenue and South Wood Avenue are business arteries. Appellant's premises are located in the Sixth Ward which contains a large fraction of the total population of the City, estimated at twenty-eight thousand. He presented to respondent a petition signed by two hundred sixty-

three persons requesting the issuance of his license and, while respondent has shown that some of the persons who signed said petition do not live in the neighborhood, it is admitted that investigation disclosed that the large majority of said persons were residents of the neighborhood. Under the facts disclosed by the record, appellant has shown reasonable necessity for a distribution license in this section of the City of Linden.

The action of respondent is, therefore, reversed and respondent is ordered to issue the license as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: June 5, 1938.

7. MUNICIPAL REGULATION - HOURS OF SALE - PROHIBITION OF CONSUMPTION OF ALCOHOLIC BEVERAGES ON LICENSED PREMISES DURING HOURS WHEN SALES ARE PROHIBITED MEANS WHAT IT SAYS - IMMATERIAL THAT ALCOHOLIC BEVERAGES ARE NOT SOLD BY LICENSEE.

My dear Mr. Burnett:

A local club who holds a club license is planning on having a banquet on June 19th, which is on a Sunday. Said banquet is solely for club members and they wish to serve with the meal alcoholic beverages. The beverages will be part of the dinner and will not be sold. I should like to know if this is permissible.

Yours very truly,

AARON L. BROTMAN

June 6, 1938.

Aaron L. Brotman, Esq.,
Attorney, Borough of Vineland,
Vineland, N. J.

My dear Mr. Brotman:

I have your letter inquiring whether a club licensee in Vineland may, at a Sunday banquet for club members only, serve alcoholic beverages with the meal.

According to my records, ordinance adopted February 1, 1938, by Section 18, provides:

> "No Alcoholic beverage shall be sold, served, delivered or consumed, nor shall any licensee suffer or permit the sale, service, delivery or consumption of any alcoholic beverage, directly or indirectly, upon the licensed premises except between the hours of 7:00 o'clock A. M. and 12:00 o'clock midnight, excepting on the day of the Sabbath commonly known as Sunday, on which day no sale or distribution shall be made at any time, and excepting on the morning of January 1st. These hours shall be construed to indicate standard time or daylight saving time during such period as each is in effect in the Borough of Vineland."

As the ordinance stands, it would be unlawful for any licensee to sell, serve, deliver, or permit or suffer the sale, service, delivery or consumption of any alcoholic beverage on the

licensed premises on Sunday.

It does not matter that the alcoholic beverages are not sold but are "given" with the meal. All gifts of alcoholic beverages by licensees are sales. See R. S. 33:1-1 (Control Act, Sec. 1-v). Even if the beverages were furnished by someone else, they could not, as the ordinance now stands, be consumed on the licensed premises.

The Vineland regulation is air-tight. The club will have to hold its banquet on a week-day or else forego the alcoholic beverages. It is only because of the express exemption in Section 19 of the ordinance that the club can be open at all on Sundays.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. NEW LEGISLATION - AMENDMENT TO R.S. 33:1-43 (CONTROL ACT, SEC. 40) - TIED-HOUSE MORATORIUM - EXTENSION FOR ONE MORE YEAR.

Assembly Bill No. 418 was approved by Governor Moore on May 7, 1938 and thereupon became Chapter 147 of the Laws of 1938.

Since no effective date is stated, it will become effective on July 4, 1938.

It amends R.S. 33:1-43 (Control Act, Sec. 40) to read:

"33:1-43. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person interested in anyway whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this chapter, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler. Prior to December sixth, one thousand nine hundred and thirty-nine, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages.

"It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either in whole or in part, or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery, rectifying and blending plant, or wholesaling or importing interests of any kind whatsoever outside of the State.

"No interest in the retailing of alcoholic beverages shall be deemed to exist by reason of the ownership, delivery or loan of interior signs designed for and exclusively used for advertising the product of or product offered for sale by

such brewery, winery, distillery or rectifying and blending plant or wholesaler."

The new matter is italicized. The moratorium which would have expired on December 6, 1938 is extended for one year.

D. FREDERICK BURNETT
Commissioner

9. NEW LEGISLATION - AMENDMENT TO R.S. 33:1-21 (CONTROL ACT, SEC. 6) - ISSUANCE OF SPECIAL LICENSES FOR PREMISES SITUATED BETWEEN THE ATLANTIC OCEAN AND THE INLAND WATERWAY.

Senate Bill No. 232 was approved by Governor Moore on May 23, 1938 and thereupon became Chapter 209 of the Laws of 1938.

It is effective immediately.

It amends R.S. 33:1-21 (Control Act, Sec. 6) by the addition of a new paragraph. The section now reads as follows:

"33:1-21. Anything hereinbefore or hereinafter to the contrary notwithstanding, in all counties of the sixth class, all the powers conferred and all the duties imposed upon issuing officials in and for each municipality in said county by this chapter and the rules and regulations made pursuant thereto, in respect to all the several classes of retail licenses for the sale and for the distribution of alcoholic beverages, shall reside in and be imposed upon and performed by the judge of the court of common pleas of such county, and said judge shall be empowered and under a duty to fix the fees for such licenses in and for each municipality in said county in accordance with this chapter and may, as regards each respective municipality, limit the number of licenses to sell alcoholic beverages at retail and the hours between which the sales of alcoholic beverages at retail may be made, prohibit the retail sale of alcoholic beverages on Sunday, provide that no more than one retail license shall be granted to any person and that any one or more of the various types of retail licenses shall not be granted, and, subject to the approval of the commissioner first obtained, regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted. The aforesaid limitations of number of licensees and of hours of sale shall be subject respectively to appeal to the commissioner as hereinafter provided.

The judge of the court of common pleas shall have power to grant retail licenses which shall be operative only in that portion or part of any such municipality situate between the Atlantic ocean and the inland waterway, notwithstanding any ordinance or resolution of the governing body thereof regulating, restricting or prohibiting retail sales and which license shall fix the days and hours of sale and the license fee to be charged therefor."

The matter contained in the second paragraph of Section 1 is new.

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10. NEW LEGISLATION - OLD LAWS INCONSISTENT WITH THE PRESENT ALCOHOLIC BEVERAGE LAW REPEALED.

Assembly Bill No. 406 was approved by Governor Moore on May 31, 1938 and thereupon became Chapter 285 of the Laws of 1938.

It is effective immediately.

It provides:

"1. Sections 33:3-1 to 33:3-8, inclusive, of the Revised Statutes, are hereby repealed."

The effect of the Act is to repeal certain old laws concerning alcoholic beverages adopted prior to Prohibition now inconsistent with the present Alcoholic Beverage Law.

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11. APPELLATE DECISIONS - AGOSTINO vs. NEWARK.

FRANK J. AGOSTINO,)
Appellant,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL of the CITY OF NEWARK,)
Respondent.)

ON APPEAL

CONCLUSIONS

. . . . . .

Nathaniel J. Klein, Esq., Attorney for Appellant.
James F. X. O'Brien, Esq., by Joseph B. Sugrue, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from a fourteen day suspension of license No. C-794, heretofore issued to him for premises located at 349 Halsey Street, Newark.

The petition of appeal alleged (1) that the evidence produced before respondent did not warrant the finding of guilt; (2) that the penalty was excessive in view of all the circumstances.

At the hearing on appeal the first ground was abandoned and licensee admitted his guilt. It will be necessary, therefore, to consider only the second ground of appeal.

The evidence shows that on January 15, 1938 Investigators Kane and Hulin, of this Department, purchased alcoholic beverages on the licensed premises at various times between 3:15 A. M. and 4:20 A. M. These drinks were purchased from the bartender, but the Investigators did not disclose their identity at that time. The evidence further shows that on January 22, 1938 the same

Investigators purchased alcoholic beverages on the licensed premises at about 3:35 A. M. After the drinks were purchased on the latter date, Detective Petroll and Sergeant McGowan, of the Newark Police, entered the licensed premises, as prearranged by the Investigators, and placed the bartender under arrest.

The charges as originally drawn and served upon the licensee alleged sale of alcoholic beverages during prohibited hours on January 15, 1938, contrary to a local ordinance. Hearing on said charge was held on March 10th, during the course of which hearing it was discovered that a violation of January 22nd, had been inadvertently omitted from the charge. Accordingly, testimony was heard at that time concerning only the violation which occurred on January 15th. The attorney for respondent subsequently prepared and served upon the licensee a further charge alleging sale of alcoholic beverages during prohibited hours on January 22, 1938 and divers days prior thereto, contrary to the local ordinance. A hearing on said charge was held on March 24, 1938, at which time testimony was taken concerning the sale on January 22nd. Respondent announced its decision on April 14, 1938, wherein it was resolved and ordered that the license be suspended for one (1) week for each violation, a total of fourteen (14) days.

Appellant argues that if there had been no omission of the charge of being open after hours on January 22nd, the entire case would have been disposed of on March 10th and the case decided as if there had been a single violation; that the penalty was unusually severe in view of penalties inflicted in similar cases; and, finally, that the penalty was imposed due to passion or prejudice or excitement under the unusual circumstances when the Commissioner took over the disciplinary powers of respondent Board.

Respondent was justified in imposing separate penalties for each offense. In Re Vanderzee, Bulletin 241, Item 3, the licensee was found guilty of serving beer during prohibited hours on Sunday and also keeping the licensed premises open during those hours. I imposed a penalty of five (5) days for each offense. The same procedure was followed in Re Four Hundred Social Club, Inc., Bulletin 242, Item 8. Hence, I see no objection to imposing a separate penalty for each offense in this case. As to the length of the suspension: the measure or extent of penalty to be imposed in a disciplinary proceeding against a municipal licensee rests within the sound discretion of the issuing authority. I have on infrequent occasion reduced an excessive penalty. The abuse of discretion, however, must be palpable. Dzieman vs. Paterson, Bulletin 233, Item 10. The penalty inflicted in the instant case is not excessive.

As to the claim of passion or prejudice or excitement, it is sufficient to say that there is nothing in the evidence or in the nature of the penalty inflicted which would tend to support such a charge.

Accordingly, the action of respondent is affirmed.

Frederick Burnett
Commissioner

Dated: June 6, 1938.