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

BULLETIN 334 JULY 19, 1939.

1. APPELLATE DECISIONS - SMITH v. WINSLOW TOWNSHIP.

BENJAMIN M. SMITH,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WINSLOW,)
Respondent)
- - - - - - - - - - - - - - - - - -)

William B. Knight, Jr., Esq., Attorney for Appellant.
Frank M. Lario, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial, last term, of a person to person and place to place transfer of a 1938-39 plenary retail consumption license from Ellsworth R. Appleby for premises on the Turnerville Road in a section of Winslow Township known as Sicklerville, to appellant, for premises three or three and one-half miles away on the Tansboro Road in a section of the Township known as Tansboro.

Respondent contends that the denial of transfer was valid because, in its opinion, there are sufficient taverns in the proposed section.

Winslow is a rural farming township, 58.1 square miles in area, with an estimated population of 6,000. Tansboro, the unofficial community in which appellant seeks to locate, is 4-1/8 square miles in area and has about 100 homes. It already contains 4 taverns, with another nearby.

The proposed site is on the Tansboro Road, one-third of a mile south of the Atco Road. There is a tavern on the latter road a little less than one-half mile away; another is on the Tansboro Road shortly over two miles south of appellant's premises; another (but apparently not in Tansboro) is about one-quarter of a mile further south; two other taverns are on the New Freedom Road, which runs parallel with the Tansboro Road about five-eighths of a mile away.

At the hearing below about 30 persons appeared and voiced protest against appellant's application. At the hearing on appeal 8 objectors appeared, all but one or perhaps two living from 200 feet to a little over a mile of the proposed site; 8 other persons (two being husband and wife) appeared on appellant's behalf and live at varying points from across the street from his premises to a distance 3 miles away.

The number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton,

Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11. The privilege of a place to place transfer of an outstanding license is subject, among other things, to the reasonable and bona fide exercise of that discretion. Lingelbach v. North Caldwell, Bulletin 180, Item 8; Ninety-One Jefferson St., Passaic, Inc. v. Passaic, Bulletin 255, Item 9; Polansky v. Millburn, Bulletin 258, Item 2; Mita v. Orange, Bulletin 266, Item 10; Gomulka v. Linden, Bulletin 294, Item 8.

In view of the facts that Tansboro is a sparsely settled rural section already containing 4 taverns (with another nearby), that one tavern is on Tansboro Road shortly over two miles south of appellant's premises and another on the Atco Road less than one-half mile away, and that various residents in the section are in protest against further taverns, it cannot be said that respondent was unreasonable in determining that sufficient taverns are already located there.

While appellant may, as claimed by him, have spent time, effort and money in acquiring his premises and adapting them for a liquor license, this of itself can give him no prerogative to a license. As I said in Ninety-One Jefferson St., Passaic, Inc. v. Passaic, Supra:

> "Speculative ventures under our capitalistic system may lawfully yield handsome profits to go into the private pockets of those who have the foresight and the courage to take the chances but there is no obligation on the public to support the enterprise or to guarantee its existence or to warrant that it must forever and a day enjoy the privileges and prerequisites from which it at one time or another garnered private profits. Use of premises for the retail sale of liquor is subject to the wholesale power in the issuing authority to deny a municipal license on the ground that, all circumstances weighed, sufficient liquor places exist in the neighborhood. Premises, though extensively remodeled in anticipation of a liquor license, are nevertheless subject to the reasonable exercise of this police power. Rainbow Grill of Bordentown v. Bordentown, Bulletin 245, Item 4. In any conflict between the private interests of an individual property owner and the interests of the public, which cannot be otherwise harmonized or satisfactorily ironed out, the latter must prevail. Lingelbach v. North Caldwell, supra."

The action of respondent is, therefore, affirmed.

Dated: July 11, 1939.

D. FREDERICK BURNETT,
Commissioner.

2. LICENSES - APPLICATION FORM - CORPORATE LICENSEES - HEREIN OF THE DIFFERENCE BETWEEN AUTHORIZED STOCK AND STOCK WHICH IS ISSUED AND OUTSTANDING AND OF AN ERROR CORRECTED.

May 23, 1939

Gentlemen:

In your application form for State Beverage license, question 26 requests the name and residence of all stockholders holding one per cent or more of the stock of an applicant corporation. This question requires the number of shares held by each stockholder holding more than one per cent and the percentage of authorized stock held by each.

Our authorized capital stock is 500,000 shares. The amount outstanding at the present time is 268,405 shares. Should a percentage of stock held by the different stockholders be computed in relation to the 268,405 shares outstanding or in relation to the 500,000 shares which are authorized.

Very truly yours,
Laird & Company,
W. E. Johnston,
Comptroller.

July 11, 1939

Laird & Company,
Scobeyville, N. J.
Att: W. E. Johnston, Comptroller.

Gentlemen:

I have before me your letter dated May 23rd. I acted on it the moment it came in, but, in the pressure of constant work incident to the peak of the licensing season, have had no opportunity to write you heretofore.

Question 26 of the application for State licenses, as it was printed, requires the percent of authorized stock to be set forth opposite the names of all stockholders holding one per cent or more of the stock of the applicant corporation. Such printing, however, was clearly in error for it makes the answer to the question quite meaningless for any practical purposes. The total of authorized stock merely represents the maximum amount of stock which may possibly be issued. Such stock has no existence until it is issued. All that has to be done to authorize stock is to pay a small fee to the Secretary of State. If the authorized stock were 10,000 shares of the par value of $100.00 each, of which but 100 shares were issued and outstanding, then a man in the saddle, who owned 90% of all the stock actually issued and outstanding, would own but .009%, or, in other words, less than 1% of the authorized stock, whereas in fact his control is almost complete, which demonstrates that questions based on the amount of authorized stock cannot possibly reflect any true picture of the actual inside control of the corporation.

I am grateful to you for asking the question for it led to discovery of the error in the application form which my Licensing Division had been using, which error was immediately corrected by rubber stamping upon the form of corporate application for all state licenses, so that the question now calls for the amount of stock issued and outstanding. This will be the form of the question as it will appear in the next printing.

Your inquiry also led me today to inquire as to how the question was set up in the form of application for municipal retail licenses and I find that the same error occurs there, viz.: In Question 22, as set forth in the form promulgated in Bulletin 237, Item 2. I have directed, of course, that similar appropriate correction be made in that form forthwith.

Thanks very much for your constructive question.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. MUNICIPAL REGULATIONS - SALES ON SUNDAYS IN BONA FIDE RESTAURANTS WITH MEALS - DETERMINATION BY MUNICIPALITY THAT LICENSEE CONDUCTS A BONA FIDE RESTAURANT.

RETAIL LICENSES - SPECIAL CONDITIONS - PROVISO THAT ALL REQUIREMENTS ARE MET - DISAPPROVED FOR INDEFINITENESS.

July 11, 1939

Frank Van Fleet,
Borough Clerk,
Fieldsboro, N. J.

My dear Mr. Van Fleet:

I have before me the resolutions adopted by the Council on June 26 and July 3, authorizing the issuance of plenary retail consumption licenses.

My attention is particularly directed to those providing for the Glenk and Zabriskie licenses.

The former provides:

"BE IT RESOLVED, that Mr. Henry Glenk be granted a retail consumption license, class C. for the Mansion House Restaurant located at Fourth and Delaware Ave., with the special privilege that inasmuch as it has been determined by the Borough Council that he conducts a bonafide restaurant, sales may be made on Sunday as provided in Section 3 of the ordinance adopted May 20, 1938.",

by which it appears that Glenk is conducting a bona fide restaurant and is to be afforded the privilege, pursuant to Section 3 aforesaid, of selling alcoholic beverages on Sundays after 12:00 o'clock noon with meals. I shall accept the Council's finding, pending any review that may be sought on appeal.

The latter provides:

"BE IT RESOLVED, that Mrs. Emma Wallace Zabriskie be granted a retail consumption license, class C for the Dew Drop Inn located on Front St., with no special privileges, when all the requirements are met."

Apparently, when Mrs. Zabriskie's license was authorized there were further requirements to be met. Otherwise, there would be no point to the provision. But where licenses are authorized subject to such conditions, it should affirmatively appear in the resolution just what further steps the applicant must take in order to get his license. If these matters are not specifically enumerated, there is no way of the applicant's knowing what he must do, or of the Clerk's knowing when he has complied. If you will certify to me the particular requirements contemplated by the resolution and what has been done to satisfy them, I shall be glad to consider the matter further. As it now stands, I cannot approve it. It is much too indefinite.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES AFTER HOURS.

In the Matter of Disciplinary Proceedings against

NICHOLAS LANKO,
571 North 6th Street,
Newark, N. J.,

Holder of Plenary Retail Consumption License C-52, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Nicholas Lanko, Pro Se.
Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to charges that during prohibited hours on Sunday, June 18, 1939, his licensed place or establishment was open, and also that he sold alcoholic beverages therein, in violation of Newark Ordinance No. 3930, adopted December 21, 1938.

The usual penalty for each violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Subsequent to the institution of these proceedings the above mentioned license has expired and has been renewed by the issuance of Plenary Retail Consumption License C-54.

Accordingly, it is, on this 11th day of July, 1939,

ORDERED, that Plenary Retail Consumption License C-54, heretofore issued to Nicholas Lanko by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective July 14, 1939, at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - BINGO - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against

FLORIAN J. HABLE,
296-298 - 16th Avenue,
Newark, N. J.,

Holder of Plenary Retail Consumption License No. C-828, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark for the fiscal year 1938-39.

CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for the Licensee.
Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges served upon the licensee allege, in substance, that (1) on April 12, 1939 he allowed a game of bingo to be conducted in a room in which a bar for the sale of alcoholic beverages was located, in violation of Rule 16 of State Regulations No. 20, and (2) on March 1, 1939 he allowed a lottery to be conducted on his licensed premises, to wit: a drawing for a cash prize, in violation of Rule 6 of State Regulations No. 20.

On both dates mentioned above, licensee rented a hall in the rear part of his licensed premises to a club which conducted bingo games therein. Prior to February 15, 1939 a bar for the service of liquor was located in the hall. When the licensee decided to rent the hall for bingo parties, he called at the office of the Newark Chief of Police and was advised that he would have to "put up a fence six feet high" around the bar before bingo could be played in the hall. On February 15, 1939 a carpenter built a partition, consisting of six or seven sections of clapboard, around the bar. Two police officers inspected the partition, reported it O.K., and thereafter, as the licensee alleges, the Chief of Police issued a permit to the club to conduct the bingo games at the licensed premises.

Investigators from this Department testified that the top of the back bar could be seen above the partition, and that the bar itself could be seen by looking through a small space between the end of the partition and a side wall of the room. No liquor was served at said bar on either occasions when bingo was played.

The rule prohibiting bingo from being played in a room where a bar is located will be strictly enforced, and no subterfuge will be permitted in attempts to avoid the effect of the rule. Thus, in Re Einzinger, Bulletin 231, Item 11, I disapproved a plan to place curtains between a barroom and the room in which the bingo games were to be played.

In the present case, however, the licensee appears to have acted in perfect good faith and to have received the approval of the local police as to the sufficiency of the form of partition erected. It would be preferable if the police would confine their activities to enforcing the law and leave the rulings and interpretations to be made by the State Commissioner. In fairness, I find the licensee not guilty as to Charge 1. In the

future, however, nothing short of the physical removal of the bar or the erection of a permanent partition, so as to place the bar in another room, will suffice to comply with Rule 16.

As to Charge 2: The evidence shows that the prize for one game of bingo was either Five Dollars cash, as testified to by Investigator Kane, or a choice between Five Dollars in cash or an order for the same amount of merchandise, as testified to by the Vice-President of the club conducting the games. In either event, the evidence shows that the prize was given to the winner of the bingo game. There was no drawing or lottery unless bingo itself be a form of lottery. I have heretofore ruled that, until the courts otherwise decide, a prize given to the winner of a bingo game is not a prize awarded in a lottery. The very liberality of that ruling is the reason why it is so strictly conditioned against the game being played in a room in which there is a bar or in which liquor is served, sold or consumed while the game is in progress.

On the evidence, the second charge must also be dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 12, 1939.

6. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938)	CONCLUSIONS AND ORDER
Case No. 62	

Thomas F. Shebell, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On October 13, 1937 petitioner was disqualified, because of having been previously convicted in Italy for murder, from holding a liquor license or being employed by a liquor licensee in this State, and his application for an "ARC" permit was denied. Re Eligibility Case No. 181, Bulletin 208, Item 2. Thereafter he filed petition for removal of the disqualification, which, however, was dismissed on December 20, 1937 with leave to file later application. Re Rehabilitation Case No. 16, Bulletin 222, Item 12. On April 29, 1938 he filed the present petition.

Petitioner, born in this country in 1903, testified that he was taken to Italy when a child; that he was there in prison from May 1924 until December 1933 for his crime of murder; that he then worked on his father's farm, married, and, in April 1935, took ship for America, landing here in May 1935; that his wife came over a few months later; that together they settled in Asbury Park, living over a tavern standing in his brother's name.

Petitioner further testified that he worked as general manager of this tavern until 1937, when informed he was disqualified from such employment. It was during that year (1937) that the above decisions were rendered against him ruling him ineligible because of conviction of a crime involving moral turpitude, denying

his application for an "ARC" permit, and dismissing his original petition to remove the said disqualification. Also, in November of that same year the Asbury Park City Council found his brother guilty of violating the Alcoholic Beverage Control Law by employing petitioner at the tavern and, for that and other offenses, suspended the tavern's license for one day.

Petitioner admits that, despite these adjudications and the knowledge of his ineligibility, he nevertheless continued to tend bar "quite a few times" and to help around the tavern until April 1939. Apparently, what then gave him pause was the fact of a further disciplinary proceeding against his brother by the Asbury Park City Council, in which, on May 22, 1939, the Council again found him guilty of employing petitioner and, for that and other offenses, suspended the tavern's license for seven days.

The State Commissioner will remove disqualification resulting from conviction of a crime involving moral turpitude only if satisfied that the petitioner has, for five years last passed, been leading an honest and law-abiding life meriting the removal. Here, however, petitioner, aware of his ineligibility and in open contempt of the State Commissioner's adjudications against him, continued to tend bar and work in the tavern until at least April 1939. It is from that date that the five years of good behavior will have to run. Cf. Re Rehabilitation Case No. 43, Bulletin 300, Item 3; Re Rehabilitation Case No. 49, Bulletin 308, Item 8.

Accordingly, the petition is denied, with leave to reapply in or after April 1944.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 12, 1939.

7. REPORT ON APPEAL CASES FROM JULY 1, 1938 TO JUNE 30, 1939.

Affirmances	67
Affirmance (Penalty Modified)	1
Dismissed	4
Condition imposed by issuing authority modified	1
Remanded	2
Reversals	19
Reversed on condition	11
Withdrawn	25
Ordinance approved	1
Not decided	30
TOTAL	161

Edward J. Dorton,
Deputy Commissioner and Counsel.

8. NEW LEGISLATION - RESTRICTION OF LANDS IN SIXTH CLASS COUNTIES AGAINST ALCOHOLIC BEVERAGES.

Assembly Bill No. 437 was approved by Governor Moore on July 1, 1939 and thereupon became Chapter 110, P. L. 1939.

The Act therefore became effective July 1, 1939. It reads:

"AN ACT concerning municipalities located in counties of the sixth class, and empowering such municipalities to convey and reacquire lands for the purpose of creating restrictions on the use thereof.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. The several municipalities located in counties of the sixth class are hereby empowered to convey any and all lands owned by said municipalities, and to reacquire the same, for the purpose and in the manner as hereinafter provided.

"2. Any such lands may be conveyed, without the necessity of advertising the same for sale, and may be reacquired by said municipalities without condemnation proceedings or any other proceedings now required of municipalities pertaining to land; for the purpose or purposes only of placing said lands under the restrictions that no spirituous, malt, intoxicating or vinous liquors, preparations or substances in the nature thereof, shall be manufactured, bought, sold or kept for sale as a beverage, on the said lands.

"3. Any lands conveyed by a municipality pursuant to the provisions of this act shall be immediately reconveyed to the said municipality, subject to said restrictions, otherwise the conveyance or conveyances made by the municipality shall be considered null and void.

"4. That the legal consideration supporting any such conveyance or conveyances shall not be subject to dispute.

"5. Any provision of law to the contrary notwithstanding, the governing bodies of said municipalities, by the proper officers thereof, are hereby empowered to make conveyances pursuant to this act and then reacquire said lands in the manner as hereinbefore provided.

"6. This act shall take effect immediately, and the powers granted hereby shall become null and void on and after the first day of January, one thousand nine hundred and forty-one."

July 13, 1939.

D. FREDERICK BURNETT,
Commissioner.

9. NEW LEGISLATION - LOSS LEADERS - PROHIBITION AGAINST LIMITING OR RESTRICTING THE MAXIMUM QUANTITY WHICH MAY BE SOLD TO A CONSUMER FOR OFF-PREMISES CONSUMPTION.

Assembly Bill No. 207 was approved by Governor Moore on July 11, 1939 and thereupon became Chapter 171, P. L. 1939.

This supplement is, therefore, effective immediately.

The purpose of this Act is to prevent licensees from luring the public into their establishments by advertising a particular brand of alcoholic beverages at a bargain but upon entry into the licensed premises limiting the amount of the purchase to one bottle while, at the same time, endeavoring to sell them other alcoholic beverages by high pressure sales methods. It reads:

"AN ACT concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. No retail licensee shall hereafter limit or restrict the maximum quantity of alcoholic beverages which he shall sell to a consumer in original containers for consumption off the licensed premises; provided, however, nothing herein contained shall prevent a retail licensee from refusing to sell alcoholic beverages in a quantity which shall be in excess of the quantity permitted by the Federal Tax stamps held by him.

"2. Any retail licensee who shall advertise the sale of alcoholic beverages of any particular brand or manufacture, and who, subsequent to such advertising, shall dispose of his entire stock thereof shall, when said disposal occurs, forthwith make known such fact to consumers by placing written notices of said disposal upon the licensed premises. At least one of said notices shall be placed so that it may be viewed from the outside of the licensed premises.

"3. The State Commissioner of Alcoholic Beverage Control shall adopt and promulgate suitable rules and regulations to insure compliance with this act.

"4. This act shall take effect immediately.

July 13, 1939.

D. FREDERICK BURNETT,
Commissioner.

10. NEW LEGISLATION - ILLICIT BEVERAGES - WHEN DEEMED PRIMA FACIE ILLICIT.

Assembly Bill No. 502 was approved by Governor Moore on July 11, 1939 and thereupon became Chapter 177, P. L. 1939.

This supplement is, therefore, effective immediately. It reads:

"AN ACT concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Any alcoholic beverage in any keg, barrel, can, bottle, flask or similar container shall, in any proceeding under the chapter which this act supplements, be deemed prima facie an illicit beverage where the container (1) does not bear any label describing its contents, or (2) bears a label which does not truly describe its contents, or (3) does not bear such indicia of payment of tax as is required by the laws of the United States and the State of New Jersey.

"2. This act shall take effect immediately."

D. FREDERICK BURNETT,
July 13, 1939. Commissioner.

11. ALCOHOL - SALES TO CONSUMERS - DISPOSAL OF ALCOHOL NOW IN POSSESSION OF LICENSEES - HEREIN OF THE INDICATED PROCEDURE EITHER TO OBTAIN A SPECIAL PERMIT OR TO DISPOSE OF ALCOHOL NOW ON HAND.

July 5, 1939

Dear Sir:

I have a couple cases of alcohol on hand and I would like to know how to dispose of it.

Can I get a permit to sell alcohol permanently or can I get a special permit to dispose of my immediate stock or must I return my alcohol.

Will you kindly advise me.

Yours truly,
Louis Greenberg

July 7, 1939

Mr. Louis Greenberg,
Caldwell, N. J.

My dear Mr. Greenberg: Re: Assembly 217

I have yours of the 5th.

At present writing, and as far as I know, Assembly Bill 217, which forbids retail licensees to sell alcohol unless by special permit, has not been signed by the Governor.

Consequently, and until the bill becomes a law, you need no permit whatsoever.

In view of your inquiry, I will advise you if and when the bill becomes a law and answer your request when the rules shall have been promulgated.

Now that you know the bill is under consideration by the Governor, do not buy any more alcohol.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

July 13, 1939

Mr. Louis Greenberg,
Caldwell, N. J.

Dear Mr. Greenberg:

Kindly refer to yours of the 5th and my reply of the 7th.

Assembly 217 was approved by the Governor on July 11th and is now effective as Chapter 175, P. L. 1939. Enclosed is a copy.

Also enclosed is a copy of Re Gillbard, Bulletin 333, Item 5.

You may get a permit to sell alcohol on the same terms and subject to the same restrictions as anyone else. There are, however, several difficult matters which have to be worked out before the terms of such special permits are established. A form of application, when ready, will be mailed to you.

As regards alcohol now on hand: Of course, you cannot sell it unless and until a special permit is issued to you. To do so would be a misdemeanor. Technically, it is against the strict wording of the statute for you, as a licensee, even to possess it upon licensed premises. You have shown your good faith, however, in promptly reporting to the State Commissioner such possession. The law was not intended to work a hardship and hence, providing that you do not sell or offer any alcohol for sale until you receive a special permit, no charges will be brought against you based solely on your present possession.

If perchance you are not granted such special permit or change your mind about selling alcohol, a disposal permit will be issued to you, upon conditions now in process of determination, to dispose of the alcohol you now have on hand.

Of course, you are not to buy any more alcohol unless and until a special permit is issued to you.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. APPELLATE DECISIONS - HOFFMAN v. RIDGEFIELD PARK.

NED HOFFMAN,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE VILLAGE OF RIDGEFIELD PARK,

Respondent

ON APPEAL
CONCLUSIONS

Milton K. Chapman, Esq., Attorney for Appellant.
Morrison, Lloyd & Morrison, Esqs., by John W. Griggs, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail distribution license for the fiscal year 1938-1939 for premises located at 222 Main Street, Village of Ridgefield Park.

Respondent alleges (1) that the Village of Ridgefield Park is adequately served by the present licenses and that there is no economic necessity for the granting of any additional licenses, and (2) that on November 4, 1938 respondent adopted a formal resolution declaring that the needs of the community were adequately served by liquor licensees then operating and that no further licenses would be granted unless the necessity therefor was clearly demonstrated.

An ordinance adopted by respondent on March 10, 1936 provides:

> "Not more than ten (10) plenary retail distribution licenses shall be in effect in the Village of Ridgefield Park at any time."

Eight plenary retail distribution licenses are now outstanding in the Village.

Appellant contends that the resolution passed on November 4, 1938 was ineffective because since July 1, 1937 all limitations of licenses must be enacted by ordinance. That is true. I, therefore, cannot consider said resolution as affecting the number of such licenses which may be outstanding because the ordinance of March 10, 1936 contains no provision permitting its amendment by resolution and in the absence thereof, the ordinance cannot be amended by resolution. Re Livelli, Bulletin 235, Item 15, and cases therein cited.

Appellant further contends that since two vacancies exist under the ordinance, respondent cannot properly deny his application merely on the ground that there are a sufficient number of licenses outstanding in the Village. That, too, is correct. Eisen v. Plainfield, Bulletin 68, Item 12; Sosnow v. Freehold, Bulletin 68, Item 13; DeLucca v. Fairview, Bulletin 279, Item 12; Sobolewski v. Fairview, Bulletin 280, Item 11. It should be noted, however, that in all of said cases no other issues were involved.

In the present appeal, it appears that four plenary retail distribution licenses are outstanding for premises on Main Street between Mt. Vernon Street and Park Street, which are the blocks between which appellant's premises are located, and that there are two additional licenses of the same type outstanding on Main Street about a block away from appellant's premises. No substantial evidence was offered by appellant as to the need of another distribution license in this section of the Village. Thus, whatever the situation may be as to the total number of such licenses in the Village itself, it clearly appears that there was no need for an additional distribution license in this particular section of the Village. Appellant must sustain the burden of proof in showing that respondent's action was arbitrary or unreasonable, even in the absence of any evidence by respondent. Crociata v. Clifton, Bulletin 189, Item 6.

I find, therefore, upon the evidence presented, that appellant has not clearly shown that he is entitled to the license which he seeks.

In fairness to applicants, respondent should promptly amend its ordinance if it is satisfied that eight distribution licenses instead of ten are sufficient to serve the needs of the municipality.

For the reasons aforesaid, the action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 14, 1939.

13. SEIZURES - CONFISCATION PROCEEDINGS - LIEN ALLOWED.

In the Matter of the Seizure of a Buick Sedan and seven 5-gallon cans of alcohol found therein in the vicinity of 119 Broome St., in the City of Newark, County of Essex and State of New Jersey.

ON HEARING
CONCLUSIONS AND ORDER

Lyman H. Whitney, Office Manager of Newark Branch of Commercial Credit Corp., for the Commercial Credit Corp.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On April 28, 1939, police officers of the City of Newark discovered John Longo and Charles Campise, in the vicinity of 119 Broome Street, transporting seven 5-gallon cans of alcohol in Mario Bruno's Buick Sedan. The officers seized the motor vehicle and alcohol as unlawful property under the provisions of R.S.Title 33, Chapter 1, because the cans bore no Federal tax stamps or other indication that the alcohol was tax paid, and further, because the motor vehicle was not licensed to transport alcoholic beverages.

The Buick Sedan and alcohol were thereafter turned over to this Department, and two samples of the alcohol were analyzed by the Department's chemist and found to be fit for beverage

purposes, having an alcoholic content of 35.60% and 36.60% by volume respectively.

At a hearing duly held to determine whether the motor vehicle and the alcohol should be confiscated, the only appearance entered was that of the Commercial Credit Corporation, which did not contest the proceedings, but merely urged that it held a lien covering the Buick Sedan and requested the recognition thereof.

To establish the validity of its lien claim, it presented proof that the sum of $250.76 is due and owing to it on a conditional sales contract made by Mario Bruno covering the Buick Sedan; that it made a thorough inquiry concerning Mario Bruno's employment, residence and other pertinent matters, which revealed that he was employed by the Department of Public Welfare of the City of Newark; furthermore, that its investigation did not reveal any information of a detrimental nature from which it could have anticipated that illicit alcoholic beverages would be transported in the vehicle.

The absence of Federal tax stamps on the cans raises a presumption that the alcohol is illicit. Under the statute, illicit alcohol and the vehicle used in its transportation are subject to confiscation. No cause is here shown why confiscation should not result in the instant case, since the Commercial Credit Corporation seeks only to impress a lien on the forfeited vehicle.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property and is forfeited in accordance with the provisions of R. S. Section 33:1-66.

Since the Commercial Credit Corporation has satisfied the Commissioner that the sum of $250.76 is the balance due to it on the conditional sales contract, and that it acted in good faith, its lien in that amount is recognized, subject to the payment of the costs due, paid or incurred, in connection with the seizure of the vehicle.

It further appears that the Commissioner of Finance of the State of New Jersey has requested that the vehicle be retained for the use of the State upon payment of the amount of the lien claim, and that it is for the best interests of the State that such vehicle be retained.

It is therefore ordered that the Buick Sedan be retained for the use of the State of New Jersey, conditioned upon the payment of the said sum of $250.76.

The illicit alcohol shall be retained for the use of hospitals and State, County and municipal institutions, or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 14, 1939.

14. HOTELS - LICENSE HELD BY LESSEE - ALCOHOLIC BEVERAGES MAY BE SERVED IN OPEN CONTAINERS ONLY ON THE LICENSED PREMISES - PACKAGE GOODS MAY BE DELIVERED IN THE REST OF THE HOTEL BUT ONLY BY QUALIFIED EMPLOYEES OF THE LICENSEE.

My dear Commissioner:

Re your letter of June 23 Re Sebold, Bulletin 326, Item 7:

We are now confronted with a new situation. Since the receipt of a copy of this letter by the St. Francis Hotel, they have prohibited the bell boys from purchasing from the licensee bottle goods. The situation, therefore, is this: A guest registering at the hotel may go out and purchase a pint of liquor or a bottle of beer from anyone of the numerous package stores or taverns in the immediate vicinity of the premises in question. By the same token he may send a bell boy to purchase it for him or he may call anyone of the stores and have the same delivered. Of course, the purchaser or the bell boy or the agent used must meet all the other regulations, that is, he can't be a minor, etc.

Now the question arises, why shouldn't the guests be able to buy a pint of liquor or a bottle of beer from the licensee who is right in the hotel itself?

Respectfully yours,
Charles Handler

June 27, 1939

Charles Handler, Esq.,
Newark, N. J.

My dear Mr. Handler:

The St. Francis Hotel was right in prohibiting their bell boys from purchasing liquor from your client. It is a misdemeanor for a licensee to sell to minors, and I assume that, when you say "bell boys", they are just that.

There is no objection to guests in the hotel buying a pint of liquor or a bottle of beer from the licensee, who, I assume, has a plenary retail consumption license. Nor is there any objection to the licensee making a delivery of the liquor so purchased to a guest in his room. The point is, however, that if the licensee makes such deliveries, the deliveries must be by its own employees for whom it is exclusively responsible. It cannot use the employees of the hotel for this purpose.

Under no circumstances can the licensee serve liquor in open containers, such as a glass of beer or a cocktail or a highball, except in or upon the licensed premises. No one, not even his own employees, can deliver such beverages to other parts of the hotel, for the consumption privilege is confined by the terms of the license to licensed premises. But bottle goods may be so delivered for off-premises consumption. Such bottle goods may even be delivered by a minor provided that he is over the age of at least fifteen years and further provided that he shall have obtained a special permit from me to be so employed.

Very truly yours,

Frederick Burnett

Commissioner.