

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

BULLETIN 256.

JUNE 29, 1938.

1. APPELLATE DECISIONS - SANNINO vs. WAY.

HARRY SANNINO,)
Appellant,)
-vs-)
HONORABLE PALMER M. WAY, JUDGE OF)
THE COURT OF COMMON PLEAS IN AND)
FOR THE COUNTY OF CAPE MAY AND)
ISSUING AUTHORITY,)
Respondent.)
.....)

ON APPEAL
CONCLUSIONS

Charles A. Bonnell, Esq., Attorney for the Appellant.
No appearance on behalf of Respondent.
No appearance on behalf of Objectors.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for a proposed restaurant on State Highway #47, in or near Tuckahoe, Upper Township, Cape May County.

Under Rule 6 of Regulations promulgated by respondent for Cape May County, as amended May 16, 1938, the issuance of additional plenary retail consumption licenses in the County is prohibited. The Rule, however, expressly exempts "premises on which a bona fide restaurant without a bar is conducted."

Appellant plans to alter and enlarge his present building on the highway and there to operate a bona fide 2-room restaurant, for which he seeks the present license. He states that two gasoline pumps presently located in front of the building will be removed by him if the license is granted.

Appellant submitted a detailed plan of the proposed restaurant to respondent, who approved it as satisfactory for license, subject, however, to respondent's final determination whether the restaurant shall contain one large dining room or shall be sub-divided into two adjoining dining rooms, as presently planned.

Respondent denied appellant's application, however, because of objectors against the issuance of a liquor license in this vicinity. Neither respondent nor any of the objectors (all of whom were duly notified by this department of the hearing on appeal) entered an appearance herein.

Upper Township, approximately 51 square miles in area, has a population of 1,657 under the 1930 Federal census but now estimated to be 3,000. Presently outstanding in the Township are three plenary retail consumption and two plenary retail distribution licenses. Appellant's premises are located near Tuckahoe or

Marshalville, small unofficial communities which adjoin each other in the Township and neither of which contain any liquor establishments.

It was testified that appellant's premises are located on State Highway #47 in sparsely settled country, with the nearest residence being approximately 1/2 mile away; that, within a radius of 1-3/5 miles of appellant's site, there are but 11 residences; that, on appellant's side of the highway and extending back from the road some 3 or 4 miles, there is merely unimproved land with "woods" and then swamp; that the highway is fairly well travelled, especially with "shore" traffic in the summer time; that the nearest licensed places to appellant's site are located 3 or 3-1/2 and 9 miles away, respectively, and that the nearest licensed place on State Highway #47 is 14 miles away.

It was further testified that protesting petitions (signed by some 60 residents in Tuckahoe) and a favoring petition (signed by some 130 residents in Tuckahoe and nearby communities) were filed with respondent; that, of the 11 residences within a radius of 1-3/5 miles of appellant's site, there are 3 objectors, located 1/2, 3/5 and 1-3/5 miles away, respectively; that at the hearing before respondent, 8 or 10 persons appeared for, and a like number against, appellant's application; that Reverend Walter Yerkes spoke on behalf of the objectors and protested generally against any liquor places in the vicinity; that respondent stated at that hearing that he would deny the application because of Rev. Yerkes' wishes but that he, himself, thought it should be granted and therefore would not defend his denial on appeal; that the Township Committeemen of Upper Township have no objection against the license being applied for.

From the evidence before me on this uncontested appeal, I must conclude that appellant's application was erroneously denied. The license is, not for a tavern, but for a proposed way-side restaurant on a fairly well travelled road in open country, with no other licensed place within miles. The objectors, persons resident a substantial distance away, believe that no license, even though for a restaurant, should be permitted in this vicinity. However, it appears that neither respondent nor the Township Committeemen nor a great many residents in Tuckahoe and nearby communities share such belief.

The action of respondent is, therefore, reversed. A license is directed to issue, subject, however to final approval by respondent of appellant's plan as being satisfactory and in accordance with the aforesaid regulation promulgated by respondent for Cape May County, and not to be issued until appellant has removed the two gasoline pumps in front of his premises and until he has constructed his restaurant in accordance with the approved plan.

D. FREDERICK BURNETT
Commissioner

Dated: June 24, 1938.

2. MINORS - MINORS MAY NOT SELL OR SERVE ALCOHOLIC BEVERAGES EVEN THOUGH AN EMPLOYMENT PERMIT HAS BEEN OBTAINED.

RETAIL LICENSEES - MINORS - SALE, OR SERVICE TO, OR CONSUMPTION OF ALCOHOLIC BEVERAGES BY MINORS ON LICENSED PREMISES, PROHIBITED.

Dear Sir:

There are two questions I would like to put before you.

The first is: Can a girl eighteen years old, who has her minor permit, be allowed to solicit drinks at a table and serve them?

The second question is: A party came in consisting of a man and wife, and two youngsters, one twelve and one fourteen years, both boys. They ordered two bottles of beer, which the waiter brought to them. They then asked for another glass, telling the waiter that they wanted to give the boys a glass of beer. I did not allow this service, and the party became very indignant, said they were from New York, etc., etc. Was I right in my decision, and is this the proper procedure - not to allow minors to be served in any way whatsoever?

Very truly yours,

BUTTONWOOD MANOR

Thos. O. Koopman

June 23, 1938

Mr. Thomas O. Koopman,
Buttonwood Manor,
Matawan, N. J.

My dear Mr. Koopman:

1st. It is not permissible for a minor, either man or woman, to sell or serve any alcoholic beverages, even though an employment permit has been obtained. The law provides for the issuance of employment permits to minors, it is true, but expressly declares that such employees shall not, in any manner whatsoever sell or solicit sale of any alcoholic beverage. R.S. 33:1-26 (Control Act, Sec. 23). See the rules governing such employment, State Regulations No. 11, Rule 2, Pamphlet Rules, page 52.

2nd. You were absolutely right in not permitting your waiter to provide an extra glass so that the customer could give beer to the minor. The sale of alcoholic beverages to minors is a misdemeanor under R.S. 33:1-77 (Control Act, Sec. 77); and subjects the offender to arrest and fine or imprisonment or both. Sale or service to minors, or the consumption of alcoholic beverages by minors on licensed premises, is also in violation of State Regulations No. 20, Rule 1. See Re Mount, Bulletin 159, Item 9. Violation of either the State law or the State Regulations is cause for the suspension or revocation of your license. The only safe course for you to follow is not to allow any minor to consume any alcoholic beverages on your premises, and if there is any doubt that the person is an adult, not to serve.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

3. APPELLATE DECISIONS - KLUCKE vs. ORANGE.

EMIL KLUCKE,)

Appellant,)

-vs-)

ON APPEAL

MUNICIPAL BOARD OF ALCOHOLIC)

BEVERAGE CONTROL of the CITY)

OF ORANGE,)

Respondent.)

.)

CONCLUSIONS

Russell A. Riley, Esq., Attorney for Appellant.
Louis J. Goldberg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from a thirty day suspension of his plenary retail consumption license No. C-45, issued for premises located at 111-113 Park Street, Orange, New Jersey.

Respondent suspended said license after finding appellant guilty of violating the 9th Section of an ordinance of the City of Orange, which provides:

"No licensee, his servant, agent or employee shall allow, permit or suffer in or upon the licensed premises any disturbance, brawl or unnecessary noise, or suffer or permit the said licensed premises to be conducted in such a manner as to become disorderly."

The evidence introduced at the hearing herein shows that a brawl occurred in the barroom of the licensed premises, during the course of which one patron was struck in the eye and on various parts of the head and neck by a broken beer glass wielded by another patron. As a result, the patron who was struck lost the sight of one eye and was otherwise severely injured. The sole question, therefore, is whether the licensee, his servant, agent or employee allowed, permitted or suffered the brawl to take place.

The man who was injured entered the licensed premises about 9:00 P. M. About a half hour later he and the man who subsequently inflicted the injuries engaged in a short argument about some ancient trouble between them. The licensee admits that he was tending bar at the time this argument occurred and warned the parties to stop. Thereafter there was no trouble between these two men until approximately 11:00 P. M. when the brawl in which four or five men participated took place. One of respondent's witnesses testified that the brawl lasted about ten minutes. The injured man testified that it lasted about twenty minutes. A witness for appellant testified that the brawl lasted less than a minute, but the latter witness admitted that he wasn't paying attention to what occurred in the barroom.

Appellant testified that he knew nothing about the brawl until more than a half hour after it occurred. He attempts to explain his lack of knowledge by stating that he was tending bar from 9:00 P.M. until about 11:00 P. M., after which time he left

the barroom and went to another room on the licensed premises where he folded chairs from 11:00 P.M. to 12:30 A. M. While the evidence shows that a Bingo game, in which about three hundred people participated, was being conducted in another room on the licensed premises on the evening in question, I am satisfied from the testimony that the Bingo game was still in progress at the time the brawl occurred. Hence, I do not believe appellant's testimony that, when the brawl occurred, he was in the other room folding the chairs which had been occupied by those playing Bingo. The injured man testified that, during the brawl, appellant was behind the bar, and another of respondent's witnesses testified that during the brawl appellant was behind the bar and appeared to be quite nervous.

Appellant was present on the licensed premises at the time the brawl occurred. He made no effort to stop it. He did not notify the police that it had occurred. By his own admission, licensee knew that there was bad blood between two of the patrons of his licensed premises. Under the circumstances, he might reasonably have anticipated that something more serious than a mere argument might occur. I find the licensee guilty of permitting a brawl upon his licensed premises.

Appellant argues that his failure to notify the police was due to the fact that a policeman in civilian clothes was present that evening at the licensed premises. A witness, who described himself as a chanceman and not a regular police officer, admitted that he was in appellant's premises at about 9:30 P. M., when the verbal argument occurred, but denied that he was present at about 11:00 P. M., when the brawl took place. Hence, without deciding the question as to whether the presence of a police officer would in itself absolve a licensee from taking any steps to prevent disturbances, I find as a fact that the police officer was not on the licensed premises at the time the brawl occurred.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 24, 1938.

4. CONSUMPTION LICENSEES - SALES IN OPEN CONTAINERS FOR ON-PREMISES CONSUMPTION - USE OF OPEN CRUETS OR DECANTERS PERMISSIBLE.

June 11, 1938.

Dear Commissioner:

Would you please inform us as to whether it is in accordance with your rulings to serve liquor in cruets instead of whiskey shot glasses.

We have experienced great difficulty in serving in the latter because of the fact that many times in the course of bringing the liquor from the bar to the table a considerable amount would be spilled. This is also not feasible for room service.

Very truly yours,

ESSEX HOUSE,
F. W. Wilson,
Manager.

June 23, 1938.

F. W. Wilson, Manager,
Essex House,
Newark, N. J.

My dear Mr. Wilson:

It is permissible, for the reasons given in Re Jacoby, Bulletin 60, Item 6, copy enclosed, for plenary retail consumption licensees to serve alcoholic beverages for on-premises consumption in cruets or decanters, provided they are of the open type without stopper or top of any kind.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. APPELLATE DECISIONS - ADLER vs. CAMP.

IDA ADLER,)
Appellant,)

-vs-

ON APPEAL

HONORABLE PERCY CAMP, Judge of)
the Court of Common Pleas in and)
for the County of Ocean and)
Issuing Authority,)
Respondent.)

CONCLUSIONS

.....

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys
for Appellant.

Joseph A. Citta, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application by the appellant, Ida Adler, for a plenary retail distribution license for premises located on Highway 37, 485 Washington Street, Toms River.

Respondent justifies his denial on the ground, among others, that the appellant is not a fit person to hold a license.

In 1934, investigators of the Department of Alcoholic Beverage Control seized certain alcoholic beverages, alleged to be illicit, at the premises occupied by the appellant and her husband, Aaron J. Adler. Thereafter, Aaron J. Adler was convicted for possession, with intent to sell, of an illicit beverage in violation of the provisions of the Control Act.

Appellant denies that she has at any time participated in any unlawful alcoholic beverage activity and asserts that her husband has no interest in the business sought to be licensed. However, several witnesses produced on behalf of the respondent directly testified that the appellant participated in the sale of alcoholic beverages in violation of the Control Act. One witness

testified that during Prohibition and in 1934 he purchased alcoholic beverages from the appellant; another testified that in 1934 he purchased beer from the appellant and alcohol for beverage purposes from the appellant's husband in her presence; and a third and fourth testified that they purchased alcoholic beverages from the appellant during 1934 and early in 1935. It is not disputed that neither the appellant nor her husband had any license during 1934 and 1935.

It is apparently true that the appellant was never convicted for any crime. Issuing authorities, however, are not confined to the exclusion of persons who have actually been convicted; they are fully empowered to exclude law violators upon satisfactory evidence thereof, notwithstanding the absence of criminal conviction. See Hodanish vs. Trenton, Bulletin 121, Item 6. The respondent's finding that the appellant is unfit to hold a license is supported by ample evidence that the appellant engaged in unlawful alcoholic beverage activity during a substantial period of time following the enactment of the Control Act. Consequently, the denial of her application for license was wholly justified.

The action of the respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 25, 1938.

6. TWO HUNDRED FEET RULE - LICENSED PREMISES AND SCHOOL ON OPPOSITE SIDES OF THE STREET IN THE MIDDLE OF THE BLOCK - HEREIN OF INTERMEDIATE CROSSWALKS OTHERWISE THAN AT STREET INTERSECTIONS.

June 25, 1938.

William B. Dunn,
City Clerk,
Salem, N. J.

My dear Mr. Dunn:

I have letter regarding the club license for which application has been made directly across the street from the Market and Grant Street Grammar School, Salem.

* * * * *

Your understanding as to the measurement is substantially correct. The distance is measured in the normal way that a person would properly walk from the nearest entrance of the proposed licensed premises to the nearest entrance of the school. See Bulletin 3, Item 8. The course is by public sidewalks and crosswalks. The shortest distance must be taken, measured along the inside of the sidewalk and the near side of the crosswalk, not along the center line.

* * * * *

I note that both the entrance to the school and the proposed licensed premises are in the middle of a long block, thus necessitating, if the measurement is made as above, computing the distance down Grant Street to Market Street, across at the intersection, and up the other side of Grant Street to the nearest entrance to the school. But I also note that you have a crosswalk

painted on Grant Street directly opposite the Grant Street entrance to the school and almost opposite the licensed premises. I have not heretofore had occasion to rule in regard to crosswalks in the middle of the block. No such case has been presented. I can see, though, that in many cases an intermediate crosswalk may be entirely proper; e.g. where the block is exceedingly long, and, as in the instant case, there is a school in the middle of it; also, in rural districts where it may be a substantial distance to an intersection. I shall, therefore, rule that where there is a crosswalk otherwise than at the intersection, reasonably necessary in the circumstances and properly indicated, established and policed by the local authorities, that such crosswalk may be used in measuring the 200 feet distance notwithstanding that it is not at an intersection.

If the premises are within 200 feet of the school, in the light of the foregoing, it would be unlawful to issue the license.

Very truly yours,

D.FREDERICK BURNETT
Commissioner

7. APPELLATE DECISIONS - TEDONA vs. HACKENSACK.

VINCENT TEDONA,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	
CITY COUNCIL OF THE CITY OF)	<u>CONCLUSIONS</u>
HACKENSACK,)	
)	
Respondent.)	
)	

Feder and Rinzler, Esqs., by Joseph A. Feder, Esq.,
Attorneys for Appellant.
Donald M. Waesche, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from respondent's action (1) in suspending his plenary retail consumption license No. C-25 for three weeks, (2) ordering appellant to restore the premises to the condition it was in in April 1937, and providing further (3) that, if he does not comply with these requirements, the license be revoked.

These orders have been stayed in accordance with the Statute pending the determination of the appeal.

On September 16, 1935 respondent adopted an ordinance known as Ordinance 226; Section 9 of which provided, among other things:

***that no Plenary Retail Consumption Licenses shall be granted after Sept. 20, 1935, except to restaurants, until such time as the number of licenses shall have dropped below thirty and in no case shall any licenses be granted, except for renewals and restaurant purposes where the total number of licenses so granted totals thirty.

"The term restaurant as used in this ordinance shall be an establishment where the principal business is that of serving food." (*Italics mine*).

In February 1937 appellant applied for a plenary retail consumption license for premises which he described as a restaurant at 169 Hudson Street, Hackensack. At that time the number of such licenses outstanding was substantially more than thirty. Hence, he could obtain a license only by showing that he planned to conduct a restaurant.

With his application appellant submitted a sketch designed as "Floor plan - Hudson Restaurant." This sketch showed a main dining room, thirty feet deep by fifteen feet wide, in the front left part of the licensed premises, to contain eleven tables with a ten foot service bar in the rear of the room. The sketch also shows a smaller dining room, sixteen feet deep by fourteen feet wide, in the right front part, to contain six tables, and a kitchen directly behind the main dining room, and to the right of the kitchen a hall, ladies' room and men's room.

The minutes of respondent's meeting held on April 5, 1937 show that a communication was received from the City Manager stating that "the plans filed for the layout of the restaurant indicate that Mr. Tedona is complying with the City ordinance relative to having the restaurant business the principal business", and that thereupon the respondent granted the license applied for. The vote on the resolution to grant the license was four in favor and one against, and the Mayor and one of the Councilmen qualified their votes by saying that they voted "aye" with the understanding that Mr. Tedona be notified that he cannot serve drinks at the service bar. It does not appear, however, that any such condition was endorsed or otherwise legally imposed upon the original license. In June 1937 appellant's license was renewed unconditionally by a unanimous vote.

The charges which resulted in the instant action allege, in substance, that appellant fraudulently represented in his application that the premises were to be used as a restaurant, whereas he intended to use them and did use them as a saloon, and that appellant made misleading statements and suppressed material facts in order to secure his license. In addition to said charges of fraudulent misrepresentation, the sixth paragraph of said charges reads:

"That the licensed premises at 169 Hudson Street, Hackensack, New Jersey, are not used as a restaurant and Plenary Retail Consumption License #C-25 is, therefore, in violation of Section 9 of Ordinance 226 *** which prohibits the issuance of any plenary retail consumption licenses, except to restaurants, until such time as the number of licenses shall have dropped below thirty (30)."

When appellant started operations in April 1937, his premises apparently were arranged in substantial compliance with the floor plan he had submitted, although he seems to have substituted booths for some of the tables in the main dining room. Shortly thereafter the words "Hudson Restaurant" were placed on both windows at the only entrance which led to the main dining room. The premises remained in that condition when the license was renewed in June 1937.

On July 29, 1937 appellant's attorneys wrote to the State Department stating that their client conducts a restaurant and inquiring whether or not their client has a right to sell over

the bar at his place of business. On the same day a reply was sent to said attorneys advising that:

"Municipal governing bodies have the power under section 37 of the Alcoholic Beverage Control Act, 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.

"The governing body of Hackensack has not submitted to the Commissioner for approval any ordinance or resolution which seeks to prohibit any plenary retail consumption licensees from selling alcoholic beverages at bars. Consequently, there is at present no valid regulation in Hackensack which forbids Mr. Tedona, as the holder of plenary retail consumption license C-25, from selling alcoholic beverages at a bar located within his licensed premises, situated at #169 Hudson Street, Hackensack."

A copy of said letter was sent to the City Manager of Hackensack.

On August 11, 1937 appellant's attorneys again wrote:

"Our client called yesterday and asked us if there are any objections of any kind for his displacing a small bar for a large one. Our own opinion was that we knew of no legal obstacle. However, we felt it best to again communicate with you and inquire if there has been any change of attitude on the part of your department in any way and whether or not we are correct in the advice that we gave him."

On August 18, 1937 the following reply was sent to said attorneys:

"There is nothing in the Control Act or in the regulations of this Department which would prohibit any plenary retail consumption licensee from substituting a larger bar for a smaller one within the licensed premises. However, municipal governing bodies have the power under section 37 of the Alcoholic Beverage Control Act, 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.

"The governing body of Hackensack has not submitted to the Commissioner for approval any ordinance or resolution which seeks to regulate the size or condition of bars within the licensed premises of plenary retail consumption licensees. Consequently, there is at present no valid regulation in Hackensack which forbids Mr. Tedona, as the holder of plenary retail consumption license #C-25 from substituting a larger bar for a smaller one within his licensed premises, situated at #169 Hudson Street, Hackensack."

Copy of this letter was also sent to the City Manager. On August 24, 1937 he acknowledged receipt, and said:

"The license which was issued to Mr. Tedona, last year, was given to him under the provisions of the ordinance which stated that the restaurant business must be the principal business of his establishment. At that time, Mr. Tedona was entirely willing to put in any size bar we required in order to obtain his license. However, as soon as he got his license he immediately started to break his word with us, which of course didn't mean anything to him apparently. It is true, we have no regulation in our ordinance as to size of bars, consequently we can do nothing about it.

"Mr. Tedona and one other licensee, operating under the licenses given to them under the provisions of our ordinance relating to restaurants, have violated their agreements with us and naturally we do not feel particularly kindly toward them. The way these men have conducted themselves is responsible for the amendment we are passing to our present ordinance prohibiting the issuance of any further licenses."

The amendment to the ordinance referred to in said letter was adopted on October 4, 1937 and amended Section 9 referred to above by omitting the exception in favor of restaurants, and making certain other changes, none of which, however, has any bearing upon the present appeal.

After the foregoing correspondence with Tedona's attorneys, appellant remodeled his main dining room. He removed the small service bar and the booths which had previously existed to the right of the room and installed a twenty foot bar along the right side of the room. He installed fifteen stools in front of the bar. Some booths with tables remain to the left of the main dining room. In September the name "Hudson Restaurant" was removed from the windows and "Hackensack Long Bar" substituted therefor. Below the words "Hackensack Long Bar" on both windows there now appear in much smaller letters the words "Quick Lunch." The windows are now decorated with liquor ads. No one would know from the outside that this is a restaurant. Everyone would believe it was a saloon. And this is so despite the fact that appellant maintains a kitchen and that meals may be obtained on the licensed premises.

There is not sufficient evidence to show that appellant fraudulently misrepresented to respondent that he intended to conduct a restaurant whereas he intended to conduct a saloon. The facts lead me to believe that there has been a gradual metamorphosis from one class of business to another, followed by a quick and thorough upheaval in September 1937, after the correspondence with Tedona's attorneys as aforesaid, but the change has been so complete that, had the present conditions existed in April, 1937, the license would never have been granted. It is immaterial whether appellant has adequate kitchen facilities or a chef or waitress. The question is whether his principal business is that of serving food. If so, he is conducting a restaurant within the meaning of the ordinance. If not, he is conducting a saloon. There is no evidence in the record to show the percentages of income received by appellant from the sale of food and from the sale of liquors. It is admitted that appellant buys his foodstuffs, not from wholesalers, but from his sister who conducts a small store in an adjoining property. The evidence shows that he purchases about twenty dollars worth of foodstuffs per week from his

sister. I am satisfied that the principal business presently conducted on the licensed premises is the sale of liquor rather than the sale of food.

Since there is no evidence to sustain the charge of fraudulent misrepresentation in obtaining the license or the renewal thereof, the only ground that remains to be considered is the sixth charge set forth above. R. S. 33:1-31 (Section 28 of the Control Act) provides, among other things, that a license may be suspended or revoked for "any other act or happening occurring after the time of making of an application for a license which, if it had occurred before said time, would have prevented the issuance of the license." This language might perhaps be construed to warrant suspension or revocation of Tedona's license under the facts brought out in this case. If the subsequent act or happening had been the commission of a disqualifying crime or of some grave offense under the Control Act or the State rules and regulations, or anything else which stood out crystal clear as fairly coming within the meaning of this omnibus or catch-all clause, I should have no compunction in affirming the action of respondent. As it is, I feel reluctant to apply it to the particular case. True, the attorneys of appellant had no right whatsoever to assume that, because the governing body of Hackensack had not submitted for approval any ordinance or resolution regulating the size or condition of bars, that they never would or could. True, it does look as if someone had tried to be over-smart in "beating to it" the governing body of Hackensack little realizing that that body had and has it within its power at any time to regulate the size or condition of bars within licensed premises. On the other hand, it never did exercise that power and has not done so even up to the present time. Appellant was within his technical rights in enlarging his bar so long as the municipality did not act, but such right endures only until the municipality does act. In grasping and exercising this temporary advantage, what he has really done is to lose sight of the fact that he has, in substance, converted his restaurant into a saloon. It is the final result which stands out as the real offense and not so much the gradual steps by which it was accomplished. Taking into consideration all circumstances, I think it only fair to set aside the suspension of the license provided, as hereinafter set forth, the licensee does everything herein to be required of him.

The present mode of operation, however, cannot be permitted to continue, as it is clearly in violation of the terms of the ordinance under which the license was granted.

Appellant will be afforded an opportunity to restore the premises to the condition in which they existed in April 1937. Such changes must be made within fifteen (15) days from the date hereof. Appellant must submit proof to me within said time that said changes have been made. If such proof is presented, a further order will be entered reversing respondent's action in suspending the license. Otherwise, an order will be entered suspending not only appellant's license for the current fiscal year, nunc pro tunc, but also any renewal license at the same place that he may obtain for the fiscal year to begin July 1, 1938, for the balance of their respective terms. Respondent is directed to issue a renewal license to appellant subject to the terms of these conclusions, provided, however, that all statutory requisites in respect to the issuance of such license have been or shall be complied with by appellant, and further providing that there is no personal disqualification against him or against the premises in question, other than matters arising out of the controversy at issue herein.

Jurisdiction of this case will be retained subject to the entry of further orders herein.

D. FREDERICK BURNETT
Commissioner

Dated: June 25, 1938.

8. SIGNS - DOOR PUSHERS ADVERTISING THE NAME, BRAND OR TRADE-MARK OF ANY MANUFACTURER OR WHOLESALER OF ALCOHOLIC BEVERAGES MAY NOT BE USED ON THE EXTERIOR OF DOORS TO RETAIL PREMISES.

June 23, 1938.

Mr. Thomas Fornataro,
Atlantic City, N. J.

My dear Mr. Fornataro:

I have your letter re the door pusher bearing the legend "Old Milwaukee Beer."

"Old Milwaukee" is the trade name used by the Booth Bottling Company, Inc., 250 Atlantic Avenue, Camden, the holder of Limited Brewery License No. 9, under which it bottles and distributes Schlitz Beer.

It is not permissible for a retailer to display on the exterior of the licensed premises any sign bearing the name, brand or trade-mark of any manufacturer or wholesaler of alcoholic beverages. State Regulations No. 21, Rule 2 (Pamphlet Rules, page 64).

Door pushers advertising Old Milwaukee Beer may not, therefore, be used, as illustrated in your photograph, on the exterior of doors to retail premises.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. ORDINANCES - HOSTESSES - THE ASSEMBLING OF WOMEN ON LICENSED PREMISES FOR THE PURPOSE OF ENTICING CUSTOMERS - THE PROBLEM AND THE PROPOSED SOLUTION DISCUSSED.

June 26, 1938.

Joseph B. Sugrue, Esq.,
Assistant Corporation Counsel,
Newark, N. J.

My dear Mr. Sugrue:

I have before me your letter of February 25th and the proposed ordinance prohibiting female entertainers, patrons and employees of licensees from soliciting or inducing male patrons to purchase alcoholic beverages.

The proposed ordinance provides:

"1. No female entertainer, female patron, or female employee of any holder of a license issued by the City of Newark for the sale of alcoholic beverages, shall solicit or induce any male patron to purchase alcoholic beverages in or upon any premises licensed

for the sale of alcoholic beverages.

"2. No holder of a license for the sale of alcoholic beverage shall allow, suffer or permit any female entertainer, female patron, or female employee to solicit or induce any male patron to purchase alcoholic beverages in or upon any premises licensed for the sale of alcoholic beverages.

"3. No employee of a holder of a license for the sale of alcoholic beverages, shall allow, suffer or permit any female entertainer, female patron, or female employee to solicit or induce any male patron to purchase alcoholic beverages in or upon the premises licensed for the sale of alcoholic beverages.

"4. Any person who shall violate any of the provisions of this ordinance shall upon conviction thereof, forfeit and pay a fine not exceeding One hundred dollars (\$100.00) or be imprisoned for a period not exceeding thirty (30) days, or both, in the discretion of the court imposing the same."

I am glad that the City Commissioners are contemplating the adoption of an ordinance which is obviously aimed at the hostess racket. I cannot, however, approve it in its present form. In some respects it is so broad that it prohibits conduct in no way reprehensible, and in others it does not go far enough.

For example, the use of the phrase "female patron." If no female patron may induce any male patron to purchase alcoholic beverages, would it not be a violation of Section 1 if, in a tavern, a wife suggested to her husband that they have one more drink before they departed? And how could the tavernkeeper prevent such conduct? Yet if he permits it, it is a violation of Section 2. And his bartender and waitress violate Section 3 if they allow it. The hostess evil has no connection with bona fide patrons soliciting or inducing the purchase of drinks; rather it involves employees who get a percentage of the amount that they can induce the customer to spend. The ordinance should, therefore, be confined to female employees, omitting all reference to female patrons. What you have in mind, I take it, are those women ostensibly on their own but who have secret liaison with the licensees for the payment of commissions. This will have to be worked out by the use of appropriate language to fit the facts. You will find an ordinance which withstood court test set forth in Hoboken vs. Goodman, 68 N.J.L. 217. It forbade the employment in licensed places of any female to sell, offer or distribute alcoholic beverages or as "women conversationalists" (a term of broad import), or for the purpose of attracting persons, and forbidding the assembly of females in such place for the enticement of customers or making assignments for improper purposes. I suggest that you also examine, for constructive ideas, Re Considine, 83 Fed. 157 (D. Wash., 1897); Ex parte Hayes, 98 Cal. 555, 33 P. 337 (1893); State vs. Considine, 16 Wash. 358, 47 P. 755 (1897); Bergman v. Cleveland, 39 Ohio St. 651 (1894); State vs. Reynolds, 14 Mont. 383, 36 P. 449 (1894); 1 Woollen & Thornton, Intoxicating Liquors (1910), sec. 143; Black Intoxicating Liquors (1892), sec. 237. Also see Ex parte Felchin, 96 Cal. 360, 31 P. 224 (1892); Foster v. Board of Police Commissioners, 102 Cal. 483, 37 P. 763 (1894); Walter v. Commonwealth, 88 Pa. St. 137 (1878).

Again, as presently worded, the proposed ordinance refers to "premises licensed for the sale of alcoholic beverages." It would, therefore, prohibit a female employee of a package store from suggesting to a male customer that he take advantage of the reduced price and buy three bottles of beer for a quarter instead of one at ten cents. I do not think it was your intention to prohibit such solicitation or inducement. Accordingly, the ordinance should be restricted to consumption licenses and to beverages to be consumed by the employee as well as the butter and egg man.

Finally, the ordinance prohibits inducement by employees of holders of licenses issued by the City of Newark. But what about municipal retail licenses which may be issued by the State Department pursuant to R.S. 33:1-20 (Control Act, sec. *18A)? Such licensees have the same privileges as others; they should be required to observe the same regulations. Thus the ordinance should apply to holders of all consumption licenses, without the restriction "issued by the City of Newark."

The essence of the hostess problem is that these harpies thrive on the natural desire of the lonely male for companionship and his susceptibility to flattery from feminine lips, albeit over-reddened. Unscrupulous licensees hire hostesses to provide that companionship, and pay them according to their ability to get the patron to spend coin of the realm in the place. Any regulation attempting to cope with the problem must, therefore, strike at its very roots, and prohibit not only the solicitation or inducement of purchases, but also anything calculated to provide the male patron with an opportunity to purchase a drink for the employee. This the proposed ordinance does not do.

In Hoboken vs. Greiner, 68 N.J.L. 592, our New Jersey Supreme Court, referring to the Hoboken ordinance aforesaid, declared: "The only question in this cause is whether the regulation disregarded was a fair one. We think it was. It is difficult to imagine a course of conducting a liquor saloon more deserving of reprobation than the permitting the assembling there of women for the purpose of enticing customers. If, as we have held, the employment of barmaids may be prohibited, much more so may the practice plainly tending to immorality and disorder, of which the conviction before us adjudges the saloon-keeper to be guilty."

I shall be glad to go over any revision you may prepare prior to its formal enactment.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. DISCIPLINARY PROCEEDINGS - CLOSING HOUR VIOLATIONS - MINIMUM PENALTY SHOULD BE FIVE DAYS' SUSPENSION EVEN FOR SO-CALLED FIRST OFFENSE FOR LICENSEES KNOW WELL ENOUGH WHAT THE HOURS ARE.

June 27, 1938.

Edward Du Pree,
City Clerk,
Paterson, N. J.

Dear Mr. Du Pree:

I note from staff report and your certification of the proceedings before the Board of Aldermen of the City of

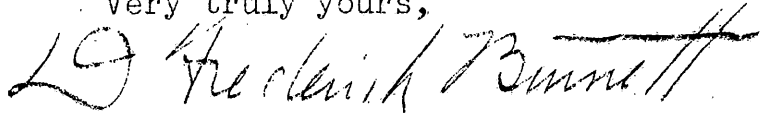
Paterson that Joseph Priore, t/a Crystal Gardens Tavern, charged with the sale of alcoholic beverages during prohibited hours on Sunday, pleaded guilty, and his license was suspended for two days.

I understand that the Board, in meting out the penalty, took into consideration the fact that this was the licensee's first offense. Even so, I respectfully submit that the punishment should have been at least a suspension for five days. These licensees know well enough what the hours are. I am not at all impressed with the plea that it was his first offense. My men did not just happen to be there. They went there because of receipt of complaints that the licensee was doing the very thing at which he was finally caught.

I recommend for this type of infraction, five days for first offenders; double that for second offenses; and outright revocation for third offenders.

It would make for consistency, and aid greatly in stamping out the evil aimed at, if the penalties suggested were followed in future cases of similar violations.

Very truly yours,



Commissioner