

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

BULLETIN 426

OCTOBER 9, 1940.

1. DISCRIMINATORY PRICES AND DISCOUNTS - REGULATIONS NO. 34
CONSTRUED, INTERPRETED AND AMENDED.

(1). FILING PRICE AND DISCOUNT LISTS.

Only those licensees who sell to retail licensees alcoholic beverages other than malt beverages are required to file a list of prices and statement of discounts at this office. A private brand need not be listed in the schedule of prices and discounts so filed, provided that such specific private brand is sold to one retail licensee only. "One retail licensee" will be liberally construed to mean any or all of the licensed retail outlets under common ownership, whether individual, partnership or corporate.

(2). DISCOUNT SCHEDULES.

A manufacturer or wholesaler may decide for himself whether to grant a discount. However, if a discount is granted, it may not exceed the limits established in Rules 5 and 6. He may, for instance, prefer to grant only two per cent (2%) up to a two hundred dollar purchase order and begin at that point the application of the three per cent (3%) discount. Similarly, he may sell his merchandise net, or sell some items net and others at a discount.

However, when the price list and discount statement is filed at this office, the manufacturer or wholesaler must sell in accordance therewith until the list is formally changed in the manner prescribed by Rules 1 and 2.

Private brands, as already described, need not be listed at this Department nor any price or discount list concerning them be served upon the retailer. A wholesaler or manufacturer may not, however, when selling private brands or net merchandise, include these items with other items in the same sale in computing the gross total upon which the permissive discount may be allowed.

As regards the manner in which a discount must be stated, it is necessary in the interest of simplicity and applicability to require that all discount statements be listed in terms of percentage of the purchase price as indicated in Rules 5 and 6 of Regulations No. 34. Discounts expressed in terms of merchandise (for example, 1% on five cases, 2% on ten cases) will not be accepted in lieu of those expressed in terms of percentage of the purchase price. Such procedure would be at variance with the rule, would cause confusion and would require conversion into percentage of the purchase price to make the rates comparable. There would be no objection, however, if the manufacturer or wholesaler were to choose to state his discounts in terms of percentage of the purchase price and to show immediately thereafter the equivalent discounts in terms of merchandise.

(3). STANDARD CASE.

A standard case for containers of a half-fifth to one-quart capacity inclusive shall be as follows: A standard case of quarts shall consist of twelve (12) quarts; a case of fifths (each bottle a fifth of a gallon), twelve (12) fifths; a case of pints, twenty-four (24) pints; a case of half-fifths (each bottle a tenth of a gallon), twenty-four (24) half-fifths.

Quotations on cases of containers with a capacity in excess of one quart must be followed by a statement of the number and capacity of units comprising the case.

Except as to wines and malt beverages, a case lot as hereinabove defined shall consist of units identical as to brand or trade name, capacity of containers, nature of contents, and age and proof where stated on label.

(4). SINGLE, COMPLETE DELIVERY.

A purchase order, completely invoiced before delivery commences, which is delivered in its entirety by a licensed transporter to a retailer on one or more occasions during any one business day or the next business day thereafter, will be considered to constitute a single, complete delivery.

A back order which does not come within these permissible limits will not be considered a single, complete delivery.

(5). FULL CASH PAYMENT.

In order that the full or any part of the permissible discount may be allowed as set forth in Rules 5 and 6, full payment must be made before the expiration of the thirtieth day from the date of the single, complete delivery. A check or money order placed in the United States Mail and postmarked not later than the thirtieth day from the delivery date will satisfy these requirements.

As to cash payments on purchases under one hundred dollars (\$100.00) where such payment must be immediate upon delivery in order to merit the discount, a check, to be deemed such cash payment, must be postmarked or delivered to a representative of the wholesaler or manufacturer on the same business day that delivery is made.

A check tendered by a retailer in payment for merchandise must be cashed or deposited for clearance within five (5) days after its receipt by a manufacturer or wholesaler.

Where payment in full of an invoice is not made within thirty (30) days of the delivery date, but a part payment in cash is made, such part of the discount as is permissible under Rules 5 and 6 may be allowed as is proportionate to the cash actually paid.

A check drawn on insufficient, uncollected, or non-existent funds and honored subsequent to the expiration of the thirty (30) day period may not be considered as payment within time.

(6). RETURNS.

Full credit may be allowed for all returns, provided, however, that the appropriate discount adjustment is made. Adjustments for breakage will be made by means of replacements.

(7). INVOICE DISCOUNT RECORDS.

No model invoice record has been prescribed. Whether net, discount and wine items are separately invoiced or even separated physically from each other in a single invoice is, at present, a matter of preference for the seller to decide. The record must be clear, readable and understandable.

(8). RULE 7 AMENDED.

In order that Rule 7 of Regulations No. 34 may be applicable to all manufacturers and wholesalers whose licenses entitle them to sell to retailers, this Rule is revised and amended to read as follows:

"7. Each licensee privileged to sell to retailers alcoholic beverages other than malt beverages shall prepare and execute, not later than the tenth of each month and covering the previous calendar month, a complete itemized affidavit of all salaries, commissions, expenses, allowances, gifts, and all other things of value allowed or given by the licensee to each of its stockholders, officers, directors, solicitors, missionary men, or other employees or representatives of the licensee who contact directly or indirectly the retailers to whom the licensee is privileged to sell alcoholic beverages other than malt alcoholic beverages. Such affidavits shall be kept on the licensed premises and shall be available at all reasonable times for a period of one year from the date of the affidavit for inspection by duly accredited representatives of this Department.

"Upon demand, any retailer may be required to submit affidavit to this Department relative to any of the details of any purchase of alcoholic beverages made by such retailer from any manufacturer or wholesaler."

Dated: September 20, 1940.

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

AUGUST LOUIS LUTWIN, 184 Front Street, Elizabeth, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-242, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.)

-----)

August Louis Lutwin, Pro Se. Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on August 23, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten 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.

Accordingly, it is, on this 2nd day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-242, heretofore issued to August Louis Lutwin by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, be and the same is hereby suspended for a period of five (5) days, effective October 7, 1940, at 2:00 A. M.

E. W. GARRETT, Acting Commissioner.

3. 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. 110)

-----)

In a petition filed with this Department, petitioner asked removal of his disqualification resulting from a conviction, in 1930, on a charge of living off earnings of a prostitute.

Shortly after his conviction, petitioner took up his residence in New Jersey, and was employed for about a year in a

billiard parlor, for the next three years as a waiter, and then went into the restaurant business, first in the borough where he now resides, and thereafter in neighboring municipalities.

At the hearing, petitioner produced a neighbor who has known him for four and one-half or five years, and his landlord, who has known him for seven years, both of whom testified that petitioner has been conducting himself as a law-abiding citizen, and that his reputation is good.

Fingerprint returns disclose, however, that, on September 20, 1936 petitioner was held as a material witness in a murder case, and that in 1939 he was arrested and paid a small fine on a disorderly charge involving gambling.

The murder was committed in a tavern then licensed in the name of petitioner's wife. After the murder, said license was revoked upon a number of charges, one of which was that the petitioner had been employed by or connected in a business capacity with the licensee, despite the fact that he was disqualified by reason of his conviction set forth above. Petitioner's connection with these premises in violation of the provisions of the Alcoholic Beverage Law must be considered in deciding whether the discretionary power to lift the disqualification should be exercised. I am not satisfied from the record that petitioner has been law-abiding for the past five years, nor am I satisfied at this time that petitioner's association with the industry would be consonant with the public interest.

The petition is, therefore, denied, with leave to renew after September 20, 1941.

E. W. GARRETT,
Acting Commissioner.

Dated: October 1, 1940.

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL KOSSAK,)
T/a Kossak's Tavern,)
215 First Street,)
Elizabeth, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-140, issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Elizabeth.)
-----)

George R. Walsh, Esq., Attorney for Michael Kossak.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on August 23, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten 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.

Accordingly, it is, on this 2nd day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-140, heretofore issued to Michael Kossak, T/a Kossak's Tavern, by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, be and the same is hereby suspended for a period of five (5) days, effective October 7, 1940, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

JEFFRIES ALEXANDER,)
278 Jackson Avenue,)
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-7, issued by the Board of Commissioners of the City of Jersey City.)

Jeffries Alexander, Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on August 25, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten 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.

Accordingly, it is, on this 2nd day of October, 1940,

ORDERED, that Plenary Retail Distribution License D-7, heretofore issued to Jeffries Alexander by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of five (5) days, effective October 7, 1940, at 2:00 A. M.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

GEORGE MINTZ,)
286-288 Sixteenth Avenue,)
Newark, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-326, issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)

Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

George Mintz, Pro Se.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at the licensed premises on August 23, 1940, in violation of Rule 6 of State Regulations No. 30.

The usual penalty for this violation is ten days.

By entering the plea, the licensee has saved the Department the time and expense of proving its case. The license, therefore, will be suspended for five days instead of ten days.

Accordingly, it is, on this 1st day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-326, heretofore issued to George Mintz 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 October 7, 1940, at 3:00 A. M.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - PERMITTING BRAWL - PERMITTING KNOWN CRIMINALS, PROSTITUTES AND PERSONS OF ILL REPUTE ON PREMISES - 15 DAYS' SUSPENSION ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against)

JOSEPH MALGERI,)
139 N. J. Railroad Avenue,)
Newark, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-943, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Harry D. Gross, Esq., Attorney for Joseph Malgeri.
Charles Basile, Esq., Attorney for State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of (1) having allowed, permitted and suffered a brawl and disturbance in and upon the licensed premises on June 29, 1940, in violation of Rule 5 of State Regulations No. 20, and (2) and (3) of having allowed, permitted and suffered known criminals and prostitutes and persons of ill repute in and upon the licensed premises on the same date and divers days prior thereto, in violation of Rule 4 of State Regulations No. 20.

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; hence, a lesser penalty than usually provided for violations of this nature will be imposed.

I shall suspend the license for twenty days, less five days because of the guilty plea, making a total of fifteen days.

Accordingly, it is, on this 4th day of October, 1940,

ORDERED, that Plenary Retail Consumption License No. C-943, heretofore issued to Joseph Malgeri by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of fifteen (15) days, effective October 7, 1940, at 3:00 A. M.

E. W. GARRETT,
Acting Commissioner.

8. APPELLATE DECISIONS - LACKOWITZ v. WATERFORD.

MARTHA LACKOWITZ,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF WATERFORD,)
)
 Respondent)
 - - - - -)

ON APPEAL
CONCLUSIONS
AND ORDER

Bruce A. Wallace, Esq., Attorney for the Appellant.
 Norman Heine, Esq., Attorney for the Respondent.

As a result of disciplinary proceedings brought by respondent against appellant, holder of a plenary retail distribution license, she was found guilty of permitting the presence of open containers of alcoholic beverages on her licensed premises, in violation of Rule 14 of State Regulations 20. Respondent thereupon revoked appellant's license and declared her premises ineligible to become the subject of any further liquor license for a period of two years. See R. S. 33:1-31. Respondent also denied her a renewal of her license for the current fiscal year.

This appeal is from the penalty of revocation of appellant's license and disqualification of the premises, and also from the refusal to renew.

Appellant's premises is a private dwelling of frame construction, containing nine rooms and having a large enclosed front porch. On June 25, 1940, at about 10:00 P.M., two police officers of the respondent municipality visited the licensed premises pursuant to complaint that alcoholic beverages were there being sold for consumption on the premises. One proceeded to the front door and the other to the rear. The latter entered the rear door which opens into a small outside shed off the kitchen, just as the other officer knocked on the front door. Simultaneously with the knock, the officer at the rear door heard appellant's daughter say, "If there is any money on the table get it off", whereupon he entered the kitchen and observed seven male residents of the Township seated around the table drinking beer and whiskey. A further search of the premises revealed sixty-eight bottles of beer in the refrigerator in the kitchen, fourteen open bottles of whiskey in the dining room and another open bottle of whiskey in a small room on the second floor.

Appellant first contends that the kitchen and dining room are not part of the licensed premises, and hence that the charge should be dismissed. In her application for license, appellant described her licensed premises generally as being located on Atco Avenue, Waterford Township, and, in answer to question 7 therein, reading: "Describe in detail the floors, rooms and grounds where alcoholic beverages are to be sold, served or stored", she more particularly specified "from enclosed porch". This answer is, of course, ambiguous. While appellant may have intended that sales were to be made "from enclosed porch", she certainly did not mean that she would store her liquors "from enclosed porch".

Since the licensed premises is not clearly defined in the application, resort may be had to the licensee's actions thereunder in determining what constitutes the licensed premises. Appellant admitted storing alcoholic beverages in the cellar and also keeping beer in her refrigerator in the kitchen. A large quantity of liquor bottles were found in the dining room and kitchen. Where, as here, a licensee assumes the benefits of using certain portions of the premises for the sale and storage of alcoholic beverages, she should, for the purpose herein, be visited with the burdens resulting therefrom. As was said in Re Cohen, Bulletin 295, Item 3:

"Where the licensee describes his licensed premises as being located at a certain address he may, of course, limit the portion of said premises which are to be licensed but where, as here, he fails to clearly limit the extent of the premises, the situation must be governed by the street address in proceedings against the licensee. In any event, licensee herein admitted that he considered the storeroom as part of his licensed premises and, in fact, had stored beer therein."

I find that the kitchen and dining room, where open containers of alcoholic beverages were found, are part of appellant's licensed premises.

Appellant further contends that the penalty imposed by respondent is too severe. As aforesaid, the record discloses that the premises has the outward appearance of being a private home and is, hence, not at all desirable as a place for the sale of alcoholic beverages. Where, as in this case, the premises is scarcely suitable for the issuance of a liquor license and the licensee, holder of a plenary retail distribution license, illegally assumes the privileges of a plenary retail consumption license, I cannot say that a revocation of the license and a two year disqualification of the premises is so harsh as to necessarily amount to an abuse of the discretion lodged in the municipality to determine for itself the penalty that fits the offense.

Since under the Alcoholic Beverage Law (R. S. 33:1-31), a revocation renders the licensee ineligible to hold or receive a liquor license for a period of two years from the effective date thereof, respondent was clearly right in denying her application for renewal of her license.

Appellant has been doing business under an extension of her 1939-40 license granted to her by order of this Department dated July 13, 1940.

Accordingly, it is, on this 4th day of October, 1940,

ORDERED, that the order of July 13, 1940 be and the same is hereby vacated and set aside; and it is further

ORDERED, that the revocation of appellant's plenary retail distribution license D-1 for the fiscal year 1939-40 for premises located on Atco Avenue, Waterford Township, P.O. Atco, and the direction that said premises shall be ineligible to become the subject of any further license of any kind under the Alcoholic Beverage Law for a period of two years, be and the same are hereby restored to full force, effective immediately; and it is further

ORDERED, that the action of the respondent in refusing to renew appellant's plenary retail distribution license for the current fiscal year be and the same is hereby affirmed.

E. W. GARRETT,
Acting Commissioner.

9. RETAIL LICENSES - APPLICATIONS - THE COMMISSIONER MAY ENTERTAIN ORIGINAL APPLICATIONS FOR RETAIL LICENSES ONLY IF THE APPLICANT IS A MEMBER OF THE LOCAL LICENSE ISSUING AUTHORITY OR A CORPORATION, ORGANIZATION OR ASSOCIATION IN WHICH A MEMBER IS INTERESTED - THE MEMBER'S INTEREST IN OR OWNERSHIP OF THE PREMISES DOES NOT DIVEST THE MUNICIPALITY OF JURISDICTION OVER THE APPLICATION BUT DOES DISQUALIFY THE MEMBER FROM PARTICIPATING IN ALCOHOLIC BEVERAGE MATTERS.

October 4, 1940

Mr. Mario Farias,
Beverly, N. J.

My dear Mr. Farias:

I understand that you are presently a member of the Beverly City Council and Secretary of T. Farias, Inc., which corporation owns the premises at 209 Broad Street, Beverly, for which your uncle, Antonio Farias, holds a plenary retail consumption license.

It has been ruled in Re Bailey, Bulletin 70, Item 5, that applications for retail licenses, where the premises sought to be licensed are owned by a member of the local license issuing authority, must be made to the State Commissioner. From that, it would logically follow that if the application were for premises owned by a corporation in which a member of the local license issuing authority was interested, it must also be made to the State Commissioner.

The section of the law on which the ruling was based is Section 33:1-20. It provides that no license shall be issued by any municipal license issuing authority to any member thereof or to any corporation, organization or association in which any such member is interested, directly or indirectly, but that in such case, the application shall be made directly to the Commissioner.

The scope of the section is very clearly defined. The Commissioner's jurisdiction to entertain original applications for municipal retail licenses exists only where the applicant is a member of the issuing authority or a corporation, organization or association in which a member is interested. In situations other than the foregoing, the Commissioner has no such jurisdiction. The ruling in Re Bailey is to that extent superseded. It follows that your interest as secretary of the corporation owning the premises does not divest the Council of jurisdiction to entertain and act upon your uncle's application for retail license at such premises.

There is a further question.

Where the premises sought to be licensed are owned by a member of the municipal license issuing authority, such member is disqualified from participating in any alcoholic beverage matters

coming before the Municipal Board. See Re Kerner, Bulletin 298, Item 9, and the rulings therein cited. For the reasons in Re Milask, Bulletin 392, Item 14, it makes no difference that the premises are owned by a corporation and that the interested member of the Municipal Board is merely the secretary of such corporation. It is, to all intents and purposes, the same as if he owned the premises as an individual. Hence, so long as your uncle continues to hold his license for premises owned by the corporation of which you are secretary, you will be disqualified from participating in any alcoholic beverage matters coming before the Council.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - IMMORAL ACTIVITIES ON LICENSED PREMISES - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
MRS. ANNA KIELB,
15 Wallington Avenue,
Wallington, N. J.,
Holder of Plenary Retail Consumption License No. C-39 (fiscal year 1939-40), issued by Borough Council of the Borough of Wallington.

CONCLUSIONS
AND ORDER

Manfield M. G. Amlicke, Esq., Attorney for Licensee.
Charles Basile, Esq., Attorney for State Department of Alcoholic Beverage Control.

The following charges were served upon the licensee:

"1. On or about May 17, 1940, you allowed, permitted and suffered immoral activities in and about your licensed premises in that you procured a female for the purpose of prostitution, in violation of Rule 5 of State Regulations No. 20.

"2. On or about May 17, 1940, you allowed, permitted and suffered a known prostitute in or upon your licensed premises, in violation of Rule 4 of State Regulations No. 20."

Investigator Wagi of this Department testified that on May 10, 1940 he visited the licensed premises, which were then in charge of the licensee; that, during the course of his visit, licensee asked him if he wished to have sexual intercourse with either of two women then on the premises and told him that if he would return on the following Friday afternoon at two o'clock she would have a "lady from Passaic there."

On the following Friday afternoon, namely, May 17, 1940, Investigator Finzel entered the licensed premises at about 2:00 P.M. At that time the licensee was tending bar and a woman, later identified as Mrs. G., a resident of Passaic, was standing at the end of the bar. On the same day, Wagi entered at about 2:30 P.M. and purchased several drinks. Finzel testified that the licensee then said

to Wagi, "Come on, I will show you the room I got for you", and left with Wagi, returning in a few minutes; that later Wagi and Mrs. G. left the barroom.

Investigator Wagi testified that, when he returned to the licensed premises on May 17, the licensee, who was behind the bar, said to him, "When you are ready to go upstairs on second floor, bed is ready for you"; that thereupon she took him out in the hallway, half up the stairway, and pointed out where the bedroom was; that they returned to the barroom and that later he accompanied Mrs. G. to the upstairs bedroom, where she began to undress; that within a short time both returned to the barroom, where, after some conversation with Mr. Wagi, the licensee told him, "I will talk to Mrs. G. - it may cost you more money"; that, thereafter, Wagi and Mrs. G. returned to the upstairs bedroom, where she undressed; that shortly thereafter police detectives arrived and found them in the bedroom.

The licensee denied the conversation with Wagi, which was alleged to have been held on May 10th, says that she made no arrangements to have Mrs. G. visit the licensed premises, and that she never made any arrangement to permit any part of her premises to be used for immoral purposes. She testified that, on the afternoon of May 17th, she was cleaning the upstairs room and called Mrs. G. from the barroom for the purpose of showing her a dress; that Wagi followed Mrs. G. to the bedroom; that he gave Mrs. G. some money to buy her children stockings and a dress, and offered to get Mrs. G. a job. Licensee says that, after she went downstairs, the detectives came.

Mrs. G. testified that she is married and the mother of six children. Her story as to the happenings on May 17th is substantially the same as that told by the licensee except that, in addition, she testified that Wagi attempted to attack her before the detectives arrived.

I do not believe the testimony given by either the licensee or Mrs. G. The latter's testimony varied substantially from that given in her statement made at the Prosecutor's office of Passaic County immediately after her arrest. In that statement she says, in substance, that the licensee asked her if she wished "to go upstairs and talk to him and I said, 'Well, I don't know the man so well and I'll leave it up to you'". She admits that when the detectives arrived she had the money which had been given to her by the investigator. She admits also that she made no criminal complaint against Wagi for the alleged attack. I am satisfied that she went to the upper bedroom for the purpose of having sexual intercourse with the investigator and that the arrangements had been made by the licensee in the barroom of the licensed premises although the bedroom itself happened to be off the licensed premises. Under the circumstances, the licensee is guilty as to the first charge. I shall suspend the license for thirty days.

There is no evidence that Mrs. G. was a known prostitute. Hence the second charge is dismissed.

Subsequent to the institution of these proceedings the above mentioned license has expired and has been renewed by the issuance of License No. C-40 for the current fiscal year.

Accordingly, it is, on this 4th day of October, 1940,

ORDERED, that Plenary Retail Consumption License No. C-40 for the current fiscal year, heretofore issued to Anna Kielb by the Borough Council of the Borough of Wallington, be and the same is hereby suspended for a period of thirty (30) days, effective October 7, 1940, at 3:00 A. M.

E. W. GARRETT,
Acting Commissioner.

11. APPELLATE DECISIONS - BRUMMER v. NORTH ARLINGTON.

KARL BRUMMER, T/a Prospect Tavern,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS AND ORDER
-vs-)	
)	
MAYOR AND COUNCIL OF THE BOROUGH OF NORTH ARLINGTON,)	
)	
Respondent)	

William Ward Wimmer, Esq., Attorney for Appellant.
Bruck & Bigel, Esqs., by Joseph Bigel, Esq., Attorneys for Respondent.

Appellant appeals the denial of a transfer of his plenary retail consumption license from premises 201 Prospect Avenue, North Arlington, to premises 12 River Road, North Arlington.

Although giving no reasons therefor at the time of denial, respondent alleges in its answer herein that it denied the application for the reasons that (1) the proposed licensed premises abuts a residential neighborhood; (2) the licensing of the premises would depreciate the value of neighboring property; (3) the vicinity is adequately supplied with taverns.

While it is true that the proposed licensed premises adjoins a residential neighborhood consisting of one-family dwelling houses, the premises are in an area zoned for and actually devoted to business. The proposed premises face on a county highway and are flanked on one side by a commercial garage and on the other by a gasoline filling station. Across the street is a diner and large gasoline storage tanks. Residents of dwellings in the residential zone, which is contiguous to the business zone wherein the proposed premises is located, objected to the licensing of the premises because of apprehended excessive noise and disturbance. However, from their testimony, it appears that at the time they established their residences they were aware that their property immediately adjoined a business zone. If the premises are properly conducted, they should be no more objectionable to the neighbors than any other business property. If improperly conducted, the neighbors may cause disciplinary proceedings to be instituted upon written complaint to the issuing authority. The first alleged reason is insufficient to justify respondent's action.

As for the depreciation in value of neighboring property: Doubt has been expressed heretofore as to whether this constitutes a valid reason for denial. See Dashefsky v. Orange, Bulletin 407, Item 9; Gross v. Landis, Bulletin 386, Item 5; Licata v. Camden,

Bulletin 342, Item 1. The question of future depreciation of property values is usually speculative, resting frequently in merely the exaggerated fears of neighboring property owners on the one hand, and mere unsupported deprecation of those fears by the applicant for a license on the other hand, so that any determination is more a pure conjecture than a finding of fact.

In any event, in the instant case appellant produced a real estate expert who testified that in his opinion the value of the adjoining home properties would be in no way impaired by the operation of any additional business nearby, for the reason that one more business should not change the status of the neighborhood wherein there is business already.

As for the sufficiency of licenses in the vicinity: This ground, although set up in the answer, was neither urged by the objectors nor considered by the issuing authority at the time the application was under consideration. Nor was it urged at the hearing herein. It appears that the application was denied, not because the vicinity was adequately supplied with licensed places, but because the neighbors objected. However, mere general objections of persons who reside on side residential streets are not sufficient to justify refusal of a transfer to premises which are located in a business neighborhood. Guenther v. Parsippany-Troy Hills, Bulletin 121, Item 8; DeChristie v. Gloucester, Bulletin 121, Item 10; Conn v. Kearny, Bulletin 173, Item 1; Conway v. Haddon, Bulletin 191, Item 9; Fords Tavern, Inc. v. Bergenfield, Bulletin 230, Item 17; Land v. Way, Bulletin 232, Item 14; Temperino v. Vineland, Bulletin 240, Item 8.

Under the circumstances, it is apparent that the third alleged reason for denial deserves no serious consideration, especially in view of the proposed location of the licensed premises, which is in a business zone at the intersection of River Road and Belleville Turnpike, both of which are heavily traveled county highways, the nearest licensed premises being twenty-two hundred and twenty-five hundred feet distant.

The action of the respondent is therefore reversed.

Accordingly, it is, on this 7th day of October, 1940,

ORDERED, that the respondent grant the transfer for which application was made.

E. W. GARRETT,
Acting Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN CALLAHAN,)
256 Warren Street,)
Newark, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-932, issued by the)
Municipal Board of Alcoholic Beverage Control of the City)
of Newark.)

-----)

Leslie H. Cohen, Esq., Attorney for the Defendant-Licensee.
Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that on or about August 18, 1940 he sold alcoholic beverages to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The usual penalty for this violation is ten days.

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

Accordingly, it is, on this 8th day of October, 1940,

ORDERED, that Plenary Retail Consumption License C-932, heretofore issued to John Callahan 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 October 14, 1940, at 3:00 A.M.

E. W. Garrett

Acting Commissioner.

20