

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

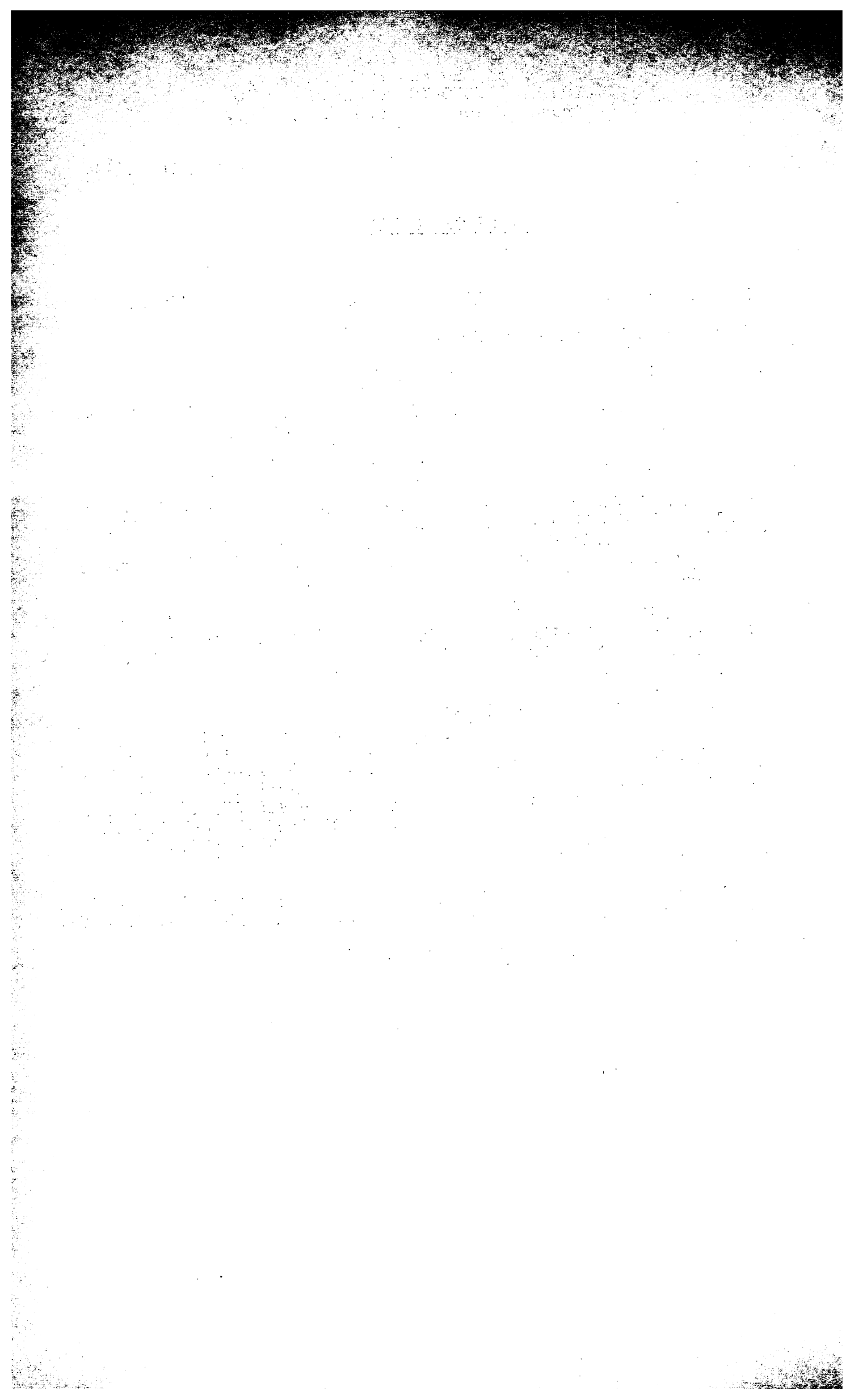
BULLETIN 900

MARCH 16, 1951.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 900

MARCH 16, 1951.

1. APPELLATE DECISIONS - GIANFORTUNO v. BELLMAWR AND RICHARTZ.

ANTHONY GIANFORTUNO,)
Appellant,)
-vs-) ON APPEAL
MAYOR AND COUNCIL OF THE BOROUGH) CONCLUSIONS AND ORDER
OF BELLMAWR, and JOSEPH RICHARTZ,)
t/a JOE'S CAFE,)
Respondents.)

Gene R. Mariano, Esq., Attorney for Appellant.
Carl Auerbach, Esq., Attorney for Respondent Mayor and Council of
the Borough of Bellmawr.
Benjamin Asbell, Esq., Attorney for Respondent Joseph Richartz.
Meyer Sakin, Esq., Attorney for an Objector.

BY THE DIRECTOR:

This is an appeal from the denial of appellant's application for transfer of a plenary retail consumption license, presently held by the respondent Joseph Richartz for premises at 338 So. Black Horse Pike, to premises located at the southwest corner of Maple Avenue and Black Horse Pike, in the Borough of Bellmawr.

The denial was motivated by the proximity of the proposed premises to the Hedding Methodist Church. This church is located on the easterly side of Black Horse Pike, diagonally across the highway from the appellant's premises. Measured in a direct air-line, the church is about 190 feet northerly of the proposed site. Measured in accordance with the statute (R. S. 33:1-76), the appellant's premises escape the ban of the 200-foot requirement by some 20 feet. See Hopkins v. Municipal Bd. etc., Newark, 4 N. J. Super. 484 (App. Div. 1949), where the physical situation was similar to that existing herein.

"Local desire to keep church vicinities free of liquor places is a civic sentiment which commands respect and should be left to the sound discretion of the local issuing authorities. In case after case, the refusal of a municipality to permit a liquor establishment near a church, even though, as here, beyond the statutory 200-foot distance, has been affirmed. As early as 1934, the late Commissioner Burnett said in Staciewicz v. Trenton, Bulletin 35, Item 10:

"Section 76 (now R. S. 33:1-76) expresses a legislative policy against licensing premises near churches and schools. The 200 foot provision was included in the statute as a workable minimum requirement. The Legislature did not contemplate depriving issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but, nevertheless, beyond 200 feet."

This principle has been consistently followed ever since that time. The most recent application of the principle may be found in Moraitis v. Lower Penns Neck, Bulletin 839, Item 11, decided in April, 1949.

The appellant argues, however, that the action of the Borough Council is discriminatory in that it has heretofore licensed a package store and also a saloon in closer proximity to an Episcopal church than the appellant's premises are to the Hedding Methodist Church. The evidence in support of this argument is confusing and I can find no probative proof in the record to substantiate it.

In any event, and assuming, arguendo, a factual basis for the contention, it does not follow that the respondent Board is guilty of any unlawful discrimination. A similar contention was dismissed in Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N. J. Super. 172, 175 (App. Div. 1949), where the court said:

"Assuming, but not conceding, that other licenses were granted under somewhat similar circumstances, it does not follow that the governing body should further perpetuate earlier unwise action. In the case of Potts v. Board of Adjustment of Borough of Princeton, 133 N.J.L. 230 (Sup. Ct. 1945), Mr. Justice Heher, speaking for the Supreme Court, stated:

"***Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified."

"In the comparatively recent case of Greenway Homes v. Borough of River Edge, 137 N.J.L. 453 (Sup. Ct. 1948), Mr. Justice Jacobs stated:

"The record before us does not in any sense establish that type of discriminatory municipal action aimed at prosecutor which might warrant voiding the ordinance as being in violation of the Constitution of the United States under the doctrine of Yick Wo v. Hopkins, 118 U. S. 356; 30 L. Ed. 220 (1886)."

In order to constitute an unlawful discrimination, in violation of constitutional protection, it must appear that the discrimination is intentional or purposeful. See, e.g., Snowden v. Hughes, 321 U. S. 1, 8, 64 S. Ct. 397, 88 L. ed. 497 (1944), where Chief Justice Stone, writing for the court, said:

"The unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination. This may appear on the face of the action taken with respect to a particular class of persons, cf. McFarland v. American Sugar Ref. Co., 241 U. S. 79, 86, 87, 60 L. ed. 899, 904, 36 S. Ct. 498, or it may only be shown by extrinsic evidence showing a discriminatory design to favor one individual or class over another not to be inferred from the action itself, Yick Wo v. Hopkins, 118 U. S. 356, 373, 374, 30 L. ed. 220, 227, 228, 65 S. Ct. 1064. But a discriminatory purpose is not presumed. Tarrance v. Florida, 188 U. S. 519, 520, 47 L. ed. 572, 573, 23 S. Ct. 402, there must be a showing of 'clear and intentional discrimination'" (citing cases).

There is no such proof in this case.

The action of the Borough Council is affirmed.

Accordingly, it is, on this 5th day of March, 1951,

ORDERED that the petition of appeal be and the same is hereby dismissed.

ERWIN B. HOCK

2. APPELLATE DECISIONS - MCGILL v. ORANGE AND DELISA.

HARRY MCGILL,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
ORANGE and JOHN J. DELISA,)
Respondents.)

James A. Palmieri, Esq., Attorney for Appellant.
Felix J. Verlangieri, Esq., Attorney for Respondent Municipal Board
of Alcoholic Beverage Control.
Frank A. Palmieri, Esq., Attorney for Respondent John J. Delisa.

BY THE DIRECTOR:

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control in issuing a plenary retail consumption license to respondent John J. Delisa for premises 616-618 Freeman Street in the City of Orange.

The respondent Board voted unanimously to grant the license to respondent Delisa.

The appellant, President of the Orange Tavern Owners Association, sets forth various grounds for reversal of the action of the respondent Board, which grounds may be summarized as follows: (1) The contents of the verified petition and amended petition filed with the State Director of the Division of Alcoholic Beverage Control by respondent Delisa, pursuant to R. S. 33:1-12.18, are false; (2) the failure by respondent Delisa to make application for a renewal of his 1949-50 license was not due to circumstances beyond his control; and (3) there is no public need or necessity for another liquor establishment at the place in question.

As to reasons (1) and (2): On August 10, 1950 the State Director determined that petitioner's failure to apply for a renewal of his 1949-50 license was due to circumstances beyond his control. See Re Delisa, Bulletin 884, Item 3.

On August 28, 1950, the respondent Board, pursuant to an amendatory ordinance adopted August 1, 1950, granted a license to respondent Delisa for his present premises. The amendment sets forth the following exception from the ordinance provision limiting the number of plenary retail consumption licenses to fifty (50):

"Nothing in this section shall be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the expiration of the license renewal period if the State Commissioner shall first determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control as provided in R. S. 33:1-12.18 (Section 6, Chapter 94 Laws of 1947)."

The official minutes of the meeting of the respondent Board, pertinent to the matter under discussion, provide as follows:

"The Board, having considered the application of John J. Delisa for a consumption license for premises at 616-618 Freeman Street and the objections heard at the public hearings, on motion duly made and seconded, unanimously resolved to grant

plenary retail consumption license #C-2 to John J. Delisa for premises at 616-618 Freeman Street and also the 'broad package privilege' for the following reasons: that the premises are adequate and suitable, in a business district, sufficient distance from churches and schools and locality not thickly populated with taverns, no objections from taverns in the immediate vicinity, petition of objectors is of doubtful sincerity, the considered opinion of the Board that the license expired beyond the control of the licensee, and that the application of licensee was not false nor fraudulent."

It appears from the record in the present appeal that respondent John J. Delisa formerly held a license at 420-422 Washington Street, said license having been transferred to him in June of 1945. At the time when respondent Delisa acquired said license there was a lease in existence which was due to expire February 28, 1949. Respondent Delisa did not assume said lease but became a month-to-month tenant at a rental of \$40.00 per month for the use and occupation of the licensed premises. However, on March 1, 1949 a written lease agreement was entered into between respondent Delisa and Adolph Knoblock, the landlord, for a period of one year, terminating February 28, 1950. This lease provided for a rental of \$70.00 per month for the use and occupation of the licensed premises and, in addition thereto, for payment of one-third of the water rental assessed or imposed upon the demised licensed premises during the term of said agreement. Respondent Delisa vacated the premises on or about February 28, 1950, the expiration date of his tenancy under the terms of the lease. Since March 1, 1950, the premises have been occupied by The City Auto Supply Company.

Adolph Knoblock testified that before respondent Delisa moved from the premises aforementioned, he negotiated with respondent Delisa on divers occasions concerning the renewal of the existing lease, but that they could not come to any agreement with reference to same. The witness contended that respondent Delisa desired a lease for only a period of six months, which term was not agreeable to him. The witness further testified that he agreed to renew the lease although he and respondent Delisa were constantly in disagreement regarding the upkeep and prevailing cleanliness of the licensed premises and its immediate surroundings.

John J. Delisa, the licensee-respondent herein, testified that he complained to Adolph Knoblock two or three times a month concerning the filthy condition of the premises. According to Delisa, nothing was done to remedy or alleviate the condition. Despite this, however, the witness further testified that he spoke to Knoblock concerning a renewal of the lease but that the landlord insisted on a three-year lease with a provision for an increase in rent each succeeding year, and that he, as tenant, take care of everything although there were other tenants in the building. When it became apparent that no agreement could be reached in the matter, Delisa testified he vacated the premises at the expiration of the lease. Thereafter, according to Delisa, he made other applications for transfer but each was formally denied by the local issuing authority or withdrawn when it became apparent that the respondent Board would not be disposed to approve his application.

I am satisfied that respondent Delisa did not practice any fraud or deceit upon me in the petition filed pursuant to R. S. 33:1-12.18, pursuant to which petition I determined that his failure to apply for a renewal of his 1949-50 license for premises 420-422 Washington Street was due to circumstances beyond his control.

As to reason (3): The appellant produced one Marty DeMartino, who testified, "I am a state trustee. I am an officer of the Executive Board in the City -- of the Orange Tavern Owners Association."

The witness said, in answer to a question concerning the objection of the association, "... Now, the association feels that when we allow or the City allows, whether the ABC Board here allows a member to buy a place at a very small price and move to the main street of a town which increases his price three or four times, it isn't fair to the town and it isn't fair to the members and it isn't fair to the citizens. That is the objections to that we have here. Not because he is not a member. I don't care if the man is never a member. That is his privilege. We don't force anybody to be a member. We are in business to protect ourselves and the citizens." The witness stated that, in his opinion, there is no need for a liquor establishment at the place in question.

Edward Strobbridge testified that he is Executive Director of The Orange Valley Social Settlement located at 35-41 Tompkins Street, West Orange, and that the Social Settlement is 75 to 150 feet from the corner of Tompkins Street and Freeman Street and that the tavern is on Freeman Street, approximately within 225 feet of the corner. The principal objections of the witness are: (1) a moral hazard for young people, (2) sufficient liquor outlets in vicinity, and (3) a parking problem. The witness conceded that there is also a tavern on Tompkins Street, West Orange, within 75 feet of the Social Settlement and to his knowledge no objection was ever made on behalf of the Social Settlement to the issuance of a license for said liquor establishment. Mr. Strobbridge testified that a high percentage of the members would ordinarily pass by the tavern in question when coming to or going from the Social Settlement. The witness admitted that there were alternate, but longer, routes that might be followed by the members. Furthermore it was agreed by the witness that the liquor establishment within 75 feet of the Social Settlement had music and entertainment and that there is a free parking lot "one hundred fifty foot square" located on the corner of Tompkins Street and Freeman Street for the convenience of shoppers on Freeman Street.

Robert W. Rossi, Chairman of the respondent Board, upon being examined by the Hearer, testified as follows:

"THE HEARER: You took everything into consideration regarding Mr. Delisa before you approved this application?

"THE WITNESS: That's right.

"THE HEARER: That is the proceeding before the Commissioner and everything else?

"THE WITNESS: That's right.

"THE HEARER: Then you were satisfied that the application was in proper form?

"THE WITNESS: That's right.

"THE HEARER: You voted to grant the license, did you not?

"THE WITNESS: That's right.

"THE HEARER: Why did you vote to grant the license at that particular site?

"THE WITNESS: We made a personal inspection of the place -- the three of us went on an inspection and we looked at the premises.

"We thought it was suitable. We inspected the neighborhood there and we thought it was a business place. We took into

consideration that there were no taverns around in the neighborhood even though they were three or four blocks away from the locality -- no objections.

"Then Mr. Delisa's record as a businessman. He was never before us for any violation. It is away from schools and churches. We thought the petition they filed with us was -- about four hundred names -- wasn't right. We looked over the petition and noticed that one party signed ten to fifteen names -- same writing.

"THE HEARER: You took the petition into consideration?"

"THE WITNESS: Yes.

"THE HEARER: How about -- what was your belief -- speaking for yourself -- as to the needs, in your opinion, or necessity for a license at this place, did you think there was need for neighborhood convenience to be served?"

"THE WITNESS: Yes. It is so thickly populated it was an adequate place."

Appellant's witnesses contend that there are sufficient liquor outlets in the immediate vicinity to supply the wants of the people in that section. There is no dispute, however, that Freeman Street is a business thoroughfare.

The evidence presented fails to disclose that the operation of a liquor establishment at the present premises would constitute a parking problem. Furthermore, the contention that the licensed premises would create a moral hazard for young folks passing by is mere conjecture. If the premises are conducted in a proper law-abiding manner, young people should have nothing to fear. If the premises are not conducted properly, the licensee will have everything to fear.

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; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11; Bodrato v. Northvale, Bulletin 433, Item 1. The burden rests with appellant to show that such discretion was unreasonably exercised. In an effort to meet such burden appellant produced two witnesses who testified the needs or convenience of the people in the neighborhood of Delisa's premises did not warrant the issuance of an additional license. The members of the respondent Municipal Board of Alcoholic Beverage Control of the City of Orange have decided otherwise.

My function on appeals of this type is not to substitute my personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale, Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et al. v. Maplewood et al., Bulletin 658, Item 4.

Under all the circumstances of this case, I am satisfied that the members of the respondent Board of Alcoholic Beverage Control of the City of Orange did not abuse its discretionary power in granting the license to respondent Delisa. Therefore, I cannot hold that the action of the respondent Board was arbitrary or unreasonable so as to require a reversal of its action.

has no jurisdiction to grant a license or transfer in violation thereof. See Bachman v. Phillipsburg, 68 N.J.L. 552 (Sup. Ct. 1902).

The fact that the ordinance was adopted subsequent to the denial of the application herein cannot avail appellant since the immediate question is whether the transfer should now be granted. Cf. Socony-Vacuum Oil Co. v. Mt. Holly, 135 N.J.L. 112 (Sup. Ct. 1947); Franklin Stores v. Elizabeth, Bulletin 61, Item 1; Kitchman v. Mount Laurel, Bulletin 752, Item 10; Price v. East Rutherford, Bulletin 754, Item 8. I have examined the cases cited in argument to the contrary by appellant and I conclude that none of such cases is in point.

In view of the fact that the ordinance would now prohibit respondent's granting of the transfer sought, no order directing such granting may be entered. See Montclair Athletic Club v. Montclair, Bulletin 859, Item 1. The appeal herein will be dismissed.

Consideration of the general merits leads to the same result.

No one place is entitled to a license more than another, no matter how long it may previously have been licensed. Re Konesky, Bulletin 217, Item 7. No person is entitled to a license, or transfer, as a matter of legal right. See Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935). A municipal issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. "If the denial of the transfer is arbitrary or unreasonable, the action of respondent must be reversed. If the transfer is denied for good cause, the action of respondent must be affirmed. Such cause, generally speaking, is that which would be necessary and proper to accomplish the object of the Alcoholic Beverage Law and secure compliance with its provisions, e.g., that the premises are unsuitable, or that there are already too many licenses in the vicinity. Cf. Cielukowski v. Jersey City, Bulletin 716, Item 6." Gruhler and Edwards v. Phillipsburg, Bulletin 718, Item 3.

Several years ago Passaic's Board of Commissioners issued new licenses for premises in the immediate vicinity here involved, thereby increasing the concentration of licensed places in the area. It would appear that the Board then gave substantial consideration to the applicants' status as veterans. More recently, respondent Board granted transfer of a plenary retail distribution license from premises at 3 Hoover Avenue (outside the section here in question) to premises at 49 Market Street. That granting brought the number of licenses in the section to ten plenary retail consumption and three plenary retail distribution licenses. If appellant's application had been granted, the number of respective licenses in the section would have been the same, since one plenary retail distribution license had, during the interval, been transferred to another part of the city. On appeal from the granting of the indicated plenary retail distribution license transfer, respondent Board's action was affirmed. Arlinsky v. Passaic and Dankner, Bulletin 839, Item 6 (March 1949). Three of the Commissioners who voted in favor of the Dankner application voted to deny appellant's application. However, the record contains no evidence whatever that the denial herein constituted a backing and filling in improper discrimination against appellant. There is no evidence herein of any improper motivation on the part of respondent Board or any member thereof. (An unsuccessful attempt, on cross-examination, to obtain one Commissioner's admission that he had made a remark to the effect that he "had to" vote against appellant's application was entirely lacking in probative effect.) To the contrary, so far as the record discloses, the denial of appellant's application was based upon an honest, deliberative reconsideration and a

determination that the existing licenses in the section amply served the public convenience and necessity. The distance-between-premises ordinance, adopted October 17, 1950, bespeaks the Board's general policy with respect to overconcentration of licensed establishments in a given area. The Board's desire to have the denial of appellant's application considered solely on the merits, and apart from the ordinance, is reflected in a resolution adopted by the Board on November 28, 1950, reading:

"...it is and was the intention of the Board of Commissioners of the City of Passaic in the passage of said ordinance that the same should not affect any applications for transfers of plenary retail consumption licenses and plenary retail distribution licenses originally made or filed prior to October 31st, 1950, the effective date of the said ordinance. The ordinance being only intended to apply to applications for transfer of said licenses submitted to the Board of Commissioners subsequent to October 31, 1950."

It is fundamental that a mere resolution will not serve to repeal or modify a duly enacted ordinance. See American Malleables Co. v. Bloomfield, 83 N.J.L. 728 (E. & A. 1912). Thus, the resolution does not remove appellant's application from the legal effect of the ordinance. The resolution's significance rests in the Board's apparent desire hereinabove mentioned to have appellant's case stand or fall, in this appeal, on the general merits. As hereinabove indicated, I am constrained to recognize the binding effect of the ordinance, but I find, also, that on the merits appellant has failed to sustain the burden (Rule 6, State Regulations No. 15) of establishing that respondent's action was erroneous and should be reversed.

Accordingly, it is, on this 6th day of March, 1951,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

4. APPELLATE DECISIONS - OCEAN COUNTY TAVERN ASSOCIATION ET AL. v. LAKEWOOD AND SAMUEL FISCHER AND TILLIE C. FISCHER.

OCEAN COUNTY TAVERN ASSOCIATION,)
a corporation of the State of New)
Jersey, and ANNA BUCKWALD, t/a)
BUCKWALD'S RESTAURANT,)

Appellants,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF LAKEWOOD, and SAMUEL FISCHER and)
TILLIE C. FISCHER, trading as)
FISCHER'S LAKE PLAZA HOTEL,)

Respondents.)

Robert J. Novins, Esq., Attorney for Appellants.
Milton Miller, Esq., Attorney for Respondent Township Committee of
the Township of Lakewood.
J. Elmer Matthews, Esq., Attorney for Respondents Samuel Fischer
and Tillie C. Fischer, t/a Fischer's Lake Plaza Hotel.

BY THE DIRECTOR:

This is an appeal from respondent Committee's granting of a plenary retail consumption license to respondents Samuel and Tillie C. Fischer for premises known as Fischer's Lake Plaza Hotel at 329-331 Main Street, Lakewood.

The license was issued upon the special conditions, which were approved by me: "that there shall be no direct entrance to the hotel bar or cocktail lounge from Main Street, other than through the main entrance to the hotel and any exterior advertising relating thereto shall be confined to the main part of the hotel constructed prior to 1950".

Four members of the Township Committee voted for the license issuance. One Committeeman abstained from voting.

The Petition of Appeal sets forth, in substance: (1) that the premises are located within two hundred feet of a church, and (2) that three taverns are located in the immediate vicinity of the premises and, thus, that there is no public need or convenience to be served by issuance of the additional license.

As to (1): Revised Statutes, 33:1-76 provides, with certain exceptions not here applicable, that no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church or public schoolhouse.... Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed." On the evidence, the distance so measured from the licensed premises to St. Mary's Catholic Church on the opposite side of Main Street is well in excess of two hundred feet. Appellants' contention "(1)" is, therefore, unfounded.

As to (2): A hotel is not entitled to a liquor license as a matter of legal right. (Hosts, Inc. v. Point Pleasant, Bulletin 732, Item 2.) However, the burden on appeal of establishing that the Township Committee's action on a license application (here the granting of a license for a hotel in a resort area) was erroneous and should be reversed rests with the appellant. (Rule 6, State Regulations No. 15.) On the evidence herein appellants have not sustained such burden of proof. (Cf. Williams et al. v. Atlantic Highlands et al., Bulletin 715, Item 7.)

The license here in question was a new license the granting of which was not prohibited by the township's numerical limitation ordinance containing an exception in favor of "bona fide hotels". Issuance of such new license in the Township of Lakewood would be prohibited by Section 2 of the State Limitation Law (P. L. 1947, c. 94) unless, pursuant to Section 8 -- R. S. 33:1-12.20, the premises constituted a hotel containing fifty or more sleeping rooms. It was alleged, for appellants, that Fischer's Lake Plaza Hotel did not contain as many as fifty sleeping rooms. The Preamble of the license-granting resolution states that "applicants are the owners and operators of a bona fide hotel containing more than 50 sleeping rooms as provided for in New Jersey Revised Statutes, 33:1-12.20". The Township Clerk testified at the hearing herein that he had personally inspected the hotel premises and that his actual count indicated sixty-two sleeping rooms therein. From the evidence it appears, therefore, that the statutory requirement was complied with.

For the reasons aforesaid, I shall affirm respondent Township Committee's action.

Accordingly, it is, on this 13th day of March, 1951,

ORDERED that the action of respondent Township Committee issuing the license to respondents Samuel Fischer and Tillie C. Fischer be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

5. APPELLATE DECISIONS - BURGARD AND CONDON v. TOTOWA.

AGNES BURGARD and MARY CONDON,)
Appellants,)
-vs-)
BOROUGH COUNCIL OF THE BOROUGH)
OF TOTOWA,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Samuel Raff, Esq., Attorney for Appellants.
Albert H. Kreamer, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of the Borough Council of the Borough of Totowa in denying a person-to-person transfer of a plenary retail consumption license from Edward L. and Ida Anderson to appellants for premises 384 Totowa Road, Totowa, N. J.

Appellants contend that the action of the respondent "was erroneous in that it was without legal justification, without reason, capricious and an arbitrary abuse of discretion". The answer filed herein by the respondent alleges as the only ground for denial that "Agnes Burgard, *** is not a proper person to whom such license should be issued".

It appears from the record that Agnes Burgard has resided for the past ten years at 15 Main Street, North Haledon, New Jersey, and that prior thereto she resided in Paterson, the city wherein she was

born. She was married twice; has two children by her first husband, both now married, and none by her second husband, William Burgard.

The only testimony presented by the respondent was that of the Chief of Police of the Borough of Haledon, and the Chief of Police of the Borough of North Haledon. Mrs. Burgard was the only witness on behalf of the appellants.

The Chief of Police of Haledon testified that, during the month of June 1943, a police officer from his department was called to the scene of an alleged disturbance in an automobile parked upon a borough thoroughfare. As a result thereof, Mr. Burgard (who was a passenger in the car) and the driver of the car were fined as disorderly persons for violating one of the provisions of a borough ordinance. Mrs. Burgard (who had been a passenger in the car) was not charged or indicted for any infraction of the law in connection with the matter and she was not present upon the arrival of the police officer at the car. Certain details of the testimony of Mrs. Burgard and the Chief of Police do not agree as to this incident, but it is clear that her husband was fined and that she was not charged with any offense.

The Chief of Police of North Haledon testified that, on two occasions in 1949, Mr. Burgard reported that his wife "had left him and that he wanted the missing person alarm sent out". On the first occasion the missing-person-alarm was cancelled on the day following Mr. Burgard's request, and on the second occasion several weeks thereafter. It appears from the record that on both occasions Mrs. Burgard left her home because of family disputes and that she went to visit with a sister.

No testimony was introduced to indicate that Mrs. Burgard does not meet all mandatory statutory qualifications. R. S. 33:1-25. No evidence was produced to show that her reputation was bad. Mrs. Burgard testified that she and her sister held a liquor license about four years ago in Paterson, and no disciplinary proceedings were ever instituted against them.

Proper liquor control dictates that an issuing authority should be free, within the confines of sound discretion, to determine whether or not a person is fit to hold a license. However, the determination of the unfitness must in every case be founded upon valid and substantial grounds. Sudol v. Wallington, Bulletin 276, Item 7.

The objection to the fitness of Mrs. Burgard, based solely upon the conviction of her husband on a charge of being a disorderly person and the two occasions when she left her husband for brief periods as a result of family disputes, cannot be considered as having been founded upon valid and substantial grounds. The decision of the respondent will, therefore, be reversed.

Accordingly, it is, on this 9th day of March, 1951,

ORDERED that the action of the respondent in denying appellant's application for transfer of the plenary retail consumption license held by Edward L. and Ida Anderson, for premises 384 Totowa Road, Totowa, be and the same is hereby reversed, and respondent is directed to issue forth the transfer for which application was made by appellants.

erwin

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - STORING ALCOHOLIC BEVERAGES ON UNLICENSED PREMISES - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLES HUGHES)
52 Spring Street)
Paterson 3, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-189, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
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Charles Hughes, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that on Sunday, January 21, 1951, he (1) failed to keep his licensed premises closed between 3:00 a.m. and 1:00 p.m., in violation of a local ordinance; (2) stored alcoholic beverages on said date in a building not covered by a requisite license or special permit, in violation of Rule 25 of State Regulations No. 20; and (3) hindered and failed to facilitate the investigation made at his licensed premises on said date, in violation of R. S. 33:1-35.

On Sunday, January 21, 1951, at about 10:45 a.m., three ABC agents arrived in the vicinity of defendant's licensed premises. About 11:20 a.m., two of the agents observed a man entering the front door of defendant's licensed premises. The other agent upon being informed of this went to the front door and, peering through the glass panel, observed nine men seated at the bar. Several of the men had drinks in front of them. The agent knocked on the door, which was locked at the time, and in response thereto a man, subsequently identified as defendant-licensee, came to the door. The agent, displaying his ABC badge, requested that he be admitted, but the defendant-licensee refused to abide by the agent's request, remarking that the establishment was closed. The defendant and the patrons left the premises by use of a rear door before the agents arrived at that part of the building.

At 2:00 p.m., the same day, the ABC agents returned to defendant's licensed premises and spoke to defendant-licensee regarding his conduct on their previous visit that morning. The defendant-licensee again repeated that his establishment was closed.

During an inspection of the licensed premises and adjoining buildings, a number of cases of beer, in bottles and cans, as well as a quantity of wine were found in a garage owned by defendant. The liquor license of defendant did not cover the garage wherein the cases of alcoholic beverages were found.

Defendant has no previous adjudicated record. I shall suspend defendant's license for thirty-five days, less five days' remission for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 8th day of March, 1951,

ORDERED that Plenary Retail Consumption License C-189, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Charles Hughes, for premises 52 Spring Street, Paterson, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 a.m. March 19, 1951, and terminating at 3:00 a.m. April 18, 1951.

7. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

EDWARD SUDOL)
T/a E. SUDOL'S CAFE)
100 Passaic Street)
Passaic, N. J.,)

CONCLUSIONS AND ORDER

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

Edward Sudol, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that on Sunday, February 11, 1951, he (1) failed to keep his licensed premises closed between 3:00 a.m. and 1:00 p.m., in violation of a local ordinance; and (2) hindered and failed to facilitate the investigation made at his licensed premises on said date, in violation of R. S. 33:1-35.

It appears from the file in the instant case that an ABC agent entered the back room of the licensed premises at about 10:15 a.m. on Sunday, February 11, 1951. While there, the agent observed four persons seated in booths with glasses of alcoholic beverages in front of them. The ABC agent left and joined two fellow-agents. At about 10:35 a.m., the agents, in the company of two local police officers, returned to the vicinity of the licensed premises. At this time one of the ABC agents and a local police officer gained admittance to the licensed premises by forcing the door which was partly opened by a man subsequently identified as the licensee.

Upon inspection of the premises five empty glasses, some containing a small quantity of beer and one containing a small quantity of wine, were found. In addition thereto, a shot glass full of whiskey was found near one of the beer taps, and as one of the agents prepared to pour the whiskey into a bottle for evidential purposes the licensee knocked the glass from his hand and the whiskey spilled over the bar.

Defendant has no previous adjudicated record. I shall suspend defendant's license on charge (1) for fifteen days, Re Jackson, Bulletin 835, Item 5, and on charge (2) for fifteen days, Re Woodrow Wilson Democratic Club, Bulletin 867, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 8th day of March, 1951,

ORDERED that Plenary Retail Consumption License C-119, issued by the Board of Commissioners of the City of Passaic to Edward Sudol, t/a E. Sudol's Cafe, for premises 100 Passaic Street, Passaic, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 a.m. March 19, 1951, and terminating at 3:00 a.m. April 13, 1951.

ERWIN B. HOCK
Director.

- 8. DISCIPLINARY PROCEEDINGS - WHOLESALE LICENSEE - FURNISHING TO RETAILER A GIFT, REBATE OR ALLOWANCE IN VIOLATION OF RULE 8 OF STATE REGULATIONS NO. 34 - TRANSPORTING ALCOHOLIC BEVERAGES IN A VEHICLE NOT OWNED OR LEASED BY LICENSEE AND HAVING NO TRANSPORTATION INSIGNIA IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 17 - DELIVERING ALCOHOLIC BEVERAGES TO A RETAILER WITHOUT ACCOMPANYING INVOICE, MANIFEST OR SIMILAR DOCUMENT IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 39 - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

F. & A. DISTRIBUTING COMPANY
 235-241 West 1st Street
 Bayonne, N. J.,

CONCLUSIONS
 AND ORDER

Holder of Plenary Wholesale License W-54, issued by the Director of the Division of Alcoholic Beverage Control.

William Rubin, Esq., Attorney for Defendant-licensee.
 Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On or about December 7, 1950, you furnished, directly and indirectly, to a retail licensee a gift, rebate, allowance of money or thing of value, discount and inducement other than a permissible discount, viz., 'free goods' as part of a 'deal', in that you furnished retailers --- and ---, two quart bottles and one pint bottle of Schenley Reserve Whiskey on the date aforesaid in connection with said retailers' purchase from you of five cases of quart bottles of Schenley Reserve Whiskey on or about November 16, 1950; in violation of Rule 8 of State Regulations No. 34.
- "2. On or about December 7, 1950, you transported alcoholic beverages in a vehicle not owned, leased or contracted for by you and having no transportation insignia affixed thereto, in that you transported in and about Haddon Township, N. J., two quart bottles and one pint bottle of Schenley Reserve Whiskey and four cases of 4/5 quart bottles of Medallion Port Wine in an automobile bearing 1950 New Jersey registration C/I-90-A owned by James J. Kelly and operated by Bernard J. Kelly, a solicitor employed by you; in violation of Rule 2 of State Regulations No. 17.
- "3. On or about December 7, 1950, you delivered and transported, directly and indirectly, alcoholic beverages to a retail licensee, not accompanied by a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating requisite information, in that Bernard J. Kelly, employed by you as a solicitor on the date aforesaid, transported and delivered to retail licensee --- two quart bottles and one pint bottle of Schenley Reserve Whiskey unaccompanied by any delivery slip, invoice, manifest, waybill or similar document; in violation of Rule 6 of State Regulations No. 39."

The file herein discloses that on November 16, 1950, an ABC agent who was then in the licensed premises of the retail licensees mentioned in the charges overheard one of the retail licensees conversing with Bernard J. Kelly, a solicitor employed by defendant-licensee. From this conversation it appeared that Kelly offered to

the retail licensee an inducement of \$2.00 per case in merchandise if a five-case order of "Schenley quarts" was placed with him. A five-case order was given and on November 17, 1950, was delivered to the licensed premises of the retail licensees but no free goods were included. However, on December 7, 1950, Kelly drove up to the retailers' licensed premises in an automobile and invited one of the retail licensees to go outside, ostensibly to show him some damage to the automobile. Once outside, however, the solicitor reached into the back seat of the automobile, withdrew a package containing two quart bottles and one pint bottle of Schenley Reserve Whiskey (equivalent, at the wholesale price, to approximately the \$2.00 per case promised if five cases were bought), which he handed to the retailer and which the retailer then carried into the licensed premises. The automobile bore no transportation insignia. The ABC agent obtained from the retailer a sworn statement in which said licensee admitted that the three bottles which Kelly had handed to him represented free goods in consideration of a purchase of five cases of Schenley whiskey on November 17, 1950. Four cases of Medallion wine were also found in the car. Kelly refused to make any explanation for the bottles of Schenley whiskey which he had handed to the retailer and admitted that he had no invoices in his possession covering the wine or the three bottles of whiskey. Defendant is guilty as charged.

Defendant has no prior record. In this case, in addition to the giving of "free goods", defendant also was guilty of illegal transportation of alcoholic beverages and failure to accompany delivery thereof with a bona fide invoice. This illegal conduct had, as its sole purpose, the giving of an inducement by the wholesaler to the retailer over and above legitimate discounts permitted by State Regulations. This practice cannot be countenanced. If it were, the whole object of the regulation would be undermined, if not completely destroyed.

Although the facts surrounding the incident related herein may well give rise to suspicion that this was not the only instance of the giving of "free goods" by the defendant, the case must be decided upon the charges preferred and admitted by the defendant's plea.

After a full and comprehensive review of all of the circumstances, including the plea, I shall suspend defendant's license for a period of twenty days.

Accordingly, it is, on this 7th day of March, 1951,

ORDERED that Plenary Wholesale License W-54, issued by the Director of the Division of Alcoholic Beverage Control to F. & A. Distributing Company, for premises 235-241 West 1st Street, Bayonne, and 4576 Crescent Boulevard, Camden, New Jersey, be and the same is hereby suspended for twenty (20) days, commencing at 7:00 a.m. March 13, 1951, and terminating at 7:00 a.m. April 2, 1951.

ERWIN B. HOCK
Director.

9. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - ENGAGING IN CONDUCT PROHIBITED TO EMPLOYER - PERMIT SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

BERNARD J. KELLY)
1105 Thurman Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Solicitor's Permit #1160, issued by the Director of the Division of Alcoholic Beverage Control.)

William Rubin, Esq., Attorney for Defendant-permittee.
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that, in violation of Rule 12 of State Regulations No. 14, he engaged in conduct prohibited to his employer F. & A. Distributing Company.

The facts concerning said prohibited conduct and the participation of defendant therein are fully set forth in the disciplinary proceedings against F. & A. Distributing Company (decided herewith).

Defendant has no prior record. I shall suspend defendant's permit for a period of twenty days.

Accordingly, it is, on this 7th day of March, 1951,

ORDERED that Solicitor's Permit #1160, issued by the Director of the Division of Alcoholic Beverage Control to Bernard J. Kelly, 1105 Thurman Street, Camden, be and the same is hereby suspended for twenty (20) days, commencing at 7:00 a.m. April 2, 1951, and terminating at 7:00 a.m. April 22, 1951.

ERWIN B. HOCK
Director.

10. STATE LICENSES - NEW APPLICATION FILED.

R. Romano & Son, Inc.
59-75 Imlay Street
Brooklyn, New York.

Application filed March 14, 1951 for Wine Wholesale License.

Erwin B. Hock
Director.