

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

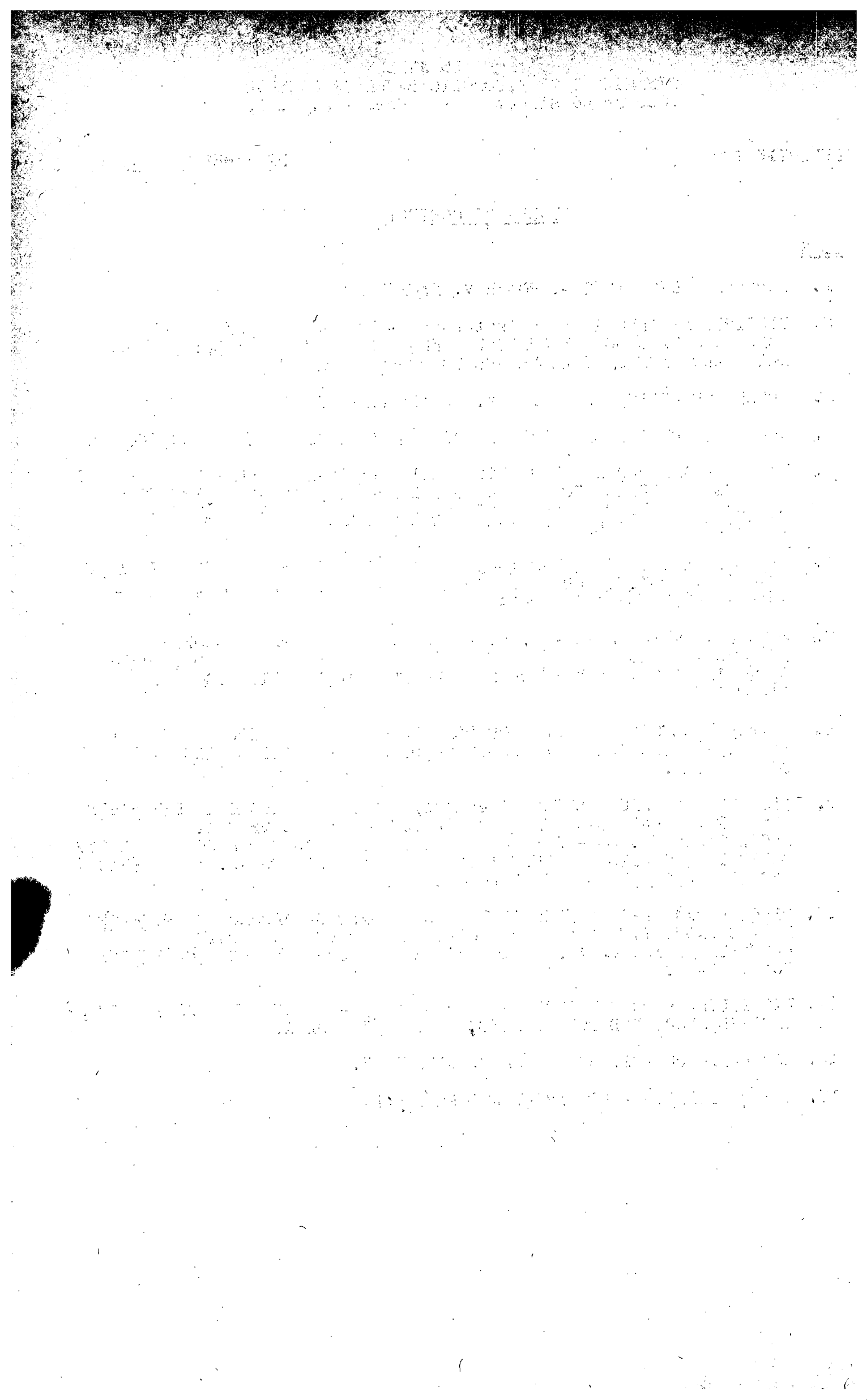
BULLETIN 789

DECEMBER 29, 1947.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 789

DECEMBER 29, 1947.

1. APPELLATE DECISIONS - GROWER v. HACKENSACK.

MORRIS GROWER, trading as)
SUSQUEHANNA TAVERN,)

Appellant,)

-vs-

CITY COUNCIL OF THE CITY OF)
HACKENSACK,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Hein & Smith, Esqs., by Bernard T. Hein, Esq., Attorneys for
Appellant.

Gross, Blumberg, Mehler & Goldberger, Esqs., by Max Mehler, of
Counsel, Attorneys for Appellant.

Ernest Weller, Esq., by Dominick Fondo, Esq., Attorney for Respondent.

Malcolm C. Mercer, Esq., by Herbert F. Myers, Esq., Attorney for
Hackensack Tavern Owners Association, an Objector.

Herbert F. Myers, Esq., Attorney for Hackensack Cafe, an Objector.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal, on September 15, 1947, to transfer appellant's plenary retail consumption license from premises 179 Main Street, Hackensack, to premises 20 Mercer Street, Hackensack.

The City Council's action was apparently predicated upon the existence of two retail consumption licenses in the block on which the proposed premises are located and the grounds that the granting of the appellant's application would be violative of the terms or spirit of the City's distance-between-premises ordinance.

No question concerning the fitness of either the appellant or the premises for which application to transfer has been made is presented herein.

The evidence discloses that appellant has operated a tavern at 179 Main Street for approximately eleven years. Harry L. Schaffer, renting agent of the building wherein the licensed premises were located, testified that appellant was forced to vacate because the owners of the building desired "substantial mercantile tenants, preferably chain stores". The owners, however, constructed a new building on Mercer Street, around the corner from and in the rear of appellant's former licensed premises and leased a portion thereof to appellant for use as a liquor establishment. The denial of appellant's application for a place-to-place transfer to the new location is the basis of the present appeal.

The corner of Main Street and Mercer Street has been described as the busiest intersection in Bergen County. Bus and vehicular traffic is heavy on both thoroughfares. It is conceded by the parties to this appeal that there are several establishments licensed to sell alcoholic beverages on Main Street in the vicinity of appellant's former location and that two plenary retail consumption licensees are situated on Mercer Street a short distance away from appellant's proposed premises.

Councilman Attilio Granito testified that he voted against the transfer because in his opinion the spirit and terms of the ordinance (concerning a minimum distance between licensed premises) would be violated in the event that the application for transfer were approved.

The ordinance referred to has no application to transfers of liquor licenses. The ordinance expressly excepts renewals and transfers. Hackensack Tavern Keepers Assoc. v. Hackensack, Bulletin 289, Item 4. Cf. New Jersey Licensed Beverage Association et al. v. Hackensack et al., Bulletin 637, Item 12.

The transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; Van Schoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Masarik v. Milltown, Bulletin 283, Item 10.

On the other hand, where it appears that refusal of a transfer is arbitrary and unreasonable, the action of respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Miller v. Paterson, Bulletin 219, Item 6; Rucereto v. Dumont, Bulletin 253, Item 6; Shapley v. Delaware, Bulletin 234, Item 7.

The situation in this appeal is closely comparable to that in Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1; Conn v. Kearny, *supra*; and Costa v. Verona, Bulletin 501, Item 2. In the latter case the Commissioner stated:

"Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as is the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained."

Although, as hereinabove indicated, several licensed premises are already located in the vicinity of the appellant's proposed premises, it appears that the granting of the transfer here in question will not aggravate to any appreciable degree the existing concentration of licenses in that area.

Having carefully studied the entire record, I find that respondent's grounds for refusing the transfer are insufficient in that no valid objection to the transfer appears to exist. Consequently, the denial of the transfer appears to be unreasonable and the action of the respondent must, therefore, be reversed.

Accordingly, it is, on this 11th day of December, 1947,

ORDERED that the action of respondent in refusing transfer of the plenary retail consumption license held by appellant from premises 179 Main Street, Hackensack, to premises at 20 Mercer Street, Hackensack, be and the same is hereby reversed and respondent is directed to transfer the license in accordance with the application made by appellant.

ERWIN B. HOCK
Commissioner

2. DISCIPLINARY PROCEEDINGS - TWO HUNDRED FEET RULE - RULE TO SHOW CAUSE DISCHARGED WHERE ALL PARTIES ACTED IN GOOD FAITH AND LICENSE TRANSFERRED TO OTHER PREMISES.

In the Matter of Cancellation)
Proceedings against)

OSCAR J. RUOCCO)
12 Clark Street)
Paterson, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-261 for the fiscal)
year 1944-45, and now holder of)
Plenary Retail Consumption License)
C-261 for premises at)

31 Clark Street)
Paterson, N. J.,)

Both of which licenses were issued)
by the Board of Alcoholic Beverage)
Control of the City of Paterson.)

-----)
Carroll J. Stark, Esq., Attorney for Defendant-licensee.)
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic)
Beverage Control.)

ON RULE TO SHOW CAUSE
O R D E R

BY THE COMMISSIONER:

Defendant was ordered to show cause why his license should not be cancelled and declared null and void for the following reason:

"The issuance of said license was improvident in that it was issued for premises within two hundred (200) feet of a church in violation of R. S. 33:1-76."

In October 1939 defendant-licensee obtained a transfer of a plenary retail consumption license from another individual to himself, and from other premises to a vacant store located at 12 Clark Street, Paterson. At the hearing held herein defendant testified that prior to said transfer he employed a duly licensed surveyor and engineer to measure the distance between the nearest entrance of 12 Clark Street and the nearest entrance of St. Paul's Evangelical Lutheran Church which faces on Smith Street, Paterson. A blueprint was prepared by the surveyor, on which it appeared that the distance between said entrances was 208 feet. After this blueprint had been presented to the local issuing authority, the transfer of the license was granted. I believe that all parties acted in good faith.

It appears that, in March 1945, an investigator employed by the Department of Alcoholic Beverage Control reported that the licensed premises appeared to be within 200 feet of the church. Measurements were subsequently made by another investigator, from which it appeared that the distance between the nearest entrance to the licensed premises and the nearest entrance to the church was 186 feet. Thereafter the Order to Show Cause was served on defendant.

It now appears that the license held by defendant for the current fiscal year has been transferred from 12 Clark Street to 31 Clark Street, and that the latter premises are clearly beyond 200 feet from the church in question. Since all parties acted in good faith, and it appears that the situation has been corrected, I shall discharge the Rule to Show Cause. Cf. Re Grove Liquors, Inc., Bulletin 397, Item 3, and cases therein cited.

Accordingly, it is, on this 15th day of December, 1947,

ORDERED that the rule to show cause herein be and the same is hereby discharged.

ERWIN B. HOCK
Commissioner.

3. APPELLATE DECISIONS - RYLE v. SPRING LAKE HEIGHTS.

JOHN RYLE,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF SPRING LAKE HEIGHTS,

Respondent

ON APPEAL ORDER

Harold Feinberg, Esq., Attorney for Appellant.
Elvin R. Simmill, Esq., Attorney for Respondent.
Ward Kremer, Esq., Attorney for Mayor Peter Tuttle.

BY THE COMMISSIONER:

This is an appeal from the action of respondent which in effect denied appellant's application for a renewal of his plenary retail distribution license for premises at 412 Highway 4-N, Spring Lake Heights.

From the pleadings herein it appears that Mayor Tuttle exercised his alleged power to veto the action of respondent Borough Council in granting appellant's application for renewal of his license, and hence no renewal license for the present fiscal year has been issued to date to the appellant herein. Upon the filing of this appeal an Order was entered herein on July 1, 1947, extending the term of the prior license under the provisions of R. S. 33:1-22.

A written stipulation dated November 26, 1947, signed by the attorneys for the parties interested herein, has now been filed. The stipulation states that it has now been agreed by and between the respective counsel to the parties hereto:

- "1. That the Commissioner of Alcoholic Beverage Control issue an order that the action of the respondent in refusing the renewal of the plenary retail distribution license to John Ryle, appellant, for the premises #412 State Highway 4-N, Borough of Spring Lake Heights, be and the same is hereby reversed;
- "2. That the Commissioner of Alcoholic Beverage Control issue an order directing the respondent to issue forthwith a plenary retail distribution license to appellant for the premises #412 State Highway 4-N, Borough of Spring Lake Heights, for the term of 1947-1948."

No reason appearing to the contrary,

It is, on this 16th day of December, 1947,

ORDERED that the action of respondent be and the same is hereby reversed, and respondent is directed to issue a renewal license to appellant in accordance with the terms of the stipulation.

ERWIN B. HOCK
Commissioner.

4. APPELLATE DECISIONS - LANCAR GOLF AND COUNTRY CLUB v. WASHINGTON.

LANCAR GOLF AND COUNTRY CLUB,)

Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WASHINGTON (Morris)
County),)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDEREdward E. Stover, Esq., Attorney for Appellant.
Elden Mills, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent in denying a person-to-person transfer of Plenary Retail Consumption License C-4 from John J. Fallen and Clifford Youmans, trading as Musconetcong Country Club, to appellant Lancar Golf and Country Club. The premises in question are located on Route No. 24 south of Musconetcong River and on the east side of said Route No. 24.

The reasons advanced for the denial as disclosed by the answer of respondent filed herein are:

- "1. Objections by property owners in the immediate vicinity.
- "2. Certain members of the club objected to the transfer on the grounds that the holder of the license and the club to which the members belong should be one and the same entity.
- "3. That the Committee granted the license in the first instance for the club with the understanding that it was not to be bought and sold as an ordinary license."

The history of the license is as follows: In April 1946 the respondent Township Committee of the Township of Washington issued a plenary retail consumption license to John J. Fallen and Clifford Youmans, trading as Musconetcong Country Club, having first adopted an ordinance increasing the number of such licenses authorized from three (the number then outstanding) to four. The license was renewed for the fiscal years 1946-47 and 1947-48. Shortly after the last renewal, Messrs. Fallen and Youmans sold their business and the premises to appellant Lancar Golf and Country Club, a New Jersey corporation, and consented to a transfer of the license.

As to Reason No. 1: Apparently the business has been operated satisfactorily. No charges have ever been made against the operation, nor in fact has any complaint ever been made to the local issuing authority.

A petition containing the names of nine persons who objected to the transfer of the license was presented to respondent. Actually the premises are in a sparsely settled section of the township. Only one of the objecting property owners appeared at the hearing herein and offered his objection. He is in the business of growing and selling flowers on an adjacent piece of land where he also lives. Any objection by adjacent property owners is worthy of consideration, but none of the present objectors objected to the issuance of the license when it was originally issued, or to the renewals thereof. There is no evidence that the operation of the premises has ever inconvenienced the objectors, and the sole objection seems to be that advertising may attract undesirable people to the licensed premises. Such fears seem to be purely conjectural.

Reason No. 2 advanced in support of the denial fails, first, because no "members" testified here at the time of the appeal, and apparently no "members" actually appeared or objected at the hearing before the respondent Township Committee. There is no evidence of any such "objection".

Reason No. 3 does not appear to find support in any of the evidence. It is also rather questionable if such an agreement would be valid or enforceable. One of the privileges of a plenary retail consumption license is the privilege to transfer from one holder to another, subject to the prior approval of the issuing authority. R. S. 33:1-25.

There being no other reasons advanced, and it being admitted that all the statutory and formal requirements have been met, I must hold that the denial was arbitrary, unreasonable and without just cause. The action of the respondent Township Committee of the Township of Washington is reversed.

Accordingly, it is, on this 15th day of December, 1947,

ORDERED that the action of respondent Township Committee of the Township of Washington be and the same is hereby reversed, and respondent is directed to issue the transfer as applied for.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - FALSE ANSWER IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

BOHEMIAN CLUB)
510 Landis Avenue)
Vineland, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-7)
issued by the Board of Commissioners of the Borough of)
Vineland.)
-----)

Milstead and McElroy, Esqs., by Albert J. McElroy, Esq., Attorneys)
for Defendant-licensee.)
Edward F. Ambrose, Esq., appearing for Department of Alcoholic)
Beverage Control.)

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charges:

"1. In your applications dated June 15, 1945, June 1, 1946, and June 5, 1947, filed with the Vineland Board of Commissioners and upon which you obtained your current and prior club licenses for the respective years, you falsely stated 'No' in answer to Question 29 which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Philip Wardell and John W. George, as partners, and John W. George, individually, were so interested as real and beneficial owners of the licensed business, as follows: Philip Wardell and John W. George, as partners, from May 30, 1945 to

October 20, 1945, and John W. George, individually, from October 20, 1945 and until the present time; said false statements being in violation of R. S. 33:1-25.

"2. In your aforesaid applications for licenses, you falsely stated 'No' in answer to Question 30 which asks: 'Have you agreed to pay the club steward, club manager, any employee, or other person, any percentage of the profits derived from the business to be conducted under the license applied for?'; whereas in truth and fact you had agreed to permit Philip Wardell and John W. George, as partners, and John W. George, individually, to retain all the profits derived from the licensed business as follows: Philip Wardell and John W. George, as partners, from May 30, 1945 to October 20, 1945, and John W. George, individually, from October 20, 1945 and until the present time; said false statements being in violation of R. S. 33:1-25.

"3. From 1940 until May 30, 1945, you knowingly aided and abetted William Ritchie, and from May 30, 1945 until October 20, 1945, you knowingly aided and abetted Philip Wardell and John W. George, as partners, and from October 20, 1945 until the present time, you knowingly aided and abetted the said John W. George, individually, to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive club licenses, thereby yourself violating R. S. 33:1-52."

Defendant club was incorporated in 1933. Shortly after Repeal it obtained a club license. Thereafter it obtained a renewal of its club license for each fiscal year to and including the present fiscal year.

From the file herein it appears that defendant permitted William Ritchie, a member of the club, to operate its bar business from 1940 to May 30, 1945. On the latter date the club permitted Philip Wardell and John W. George, both of whom were club members, to take over the operation of the bar on condition that they would pay the outstanding bills which then totaled the sum of \$1,100.00. Five months later John W. George took over the sole operation of the bar and continued said operation until October 23, 1947. On the latter date a House Committee, consisting of three members of defendant club, assumed operation of the bar and appointed William J. Gladden as steward to conduct the sale of alcoholic beverages on its premises under supervision of the House Committee. It appears from the agreement dated October 23, 1947, entered into between defendant club (party of the first part) and John W. George (party of the second part) that the party of the second part no longer has any interest in the conduct of the licensed business and that he is to be repaid a sum in excess of \$6,000.00 for equipment installed in the club at his own expense since May 30, 1945.

Defendant has recently opened a bank account and arranged to set up proper records concerning the receipts and disbursements of the licensed business. Assurance has been given by the present officers of the club that from now on the operation of the club will be under their strict supervision and in all respects legal and proper.

In the present case it is clear that the club actually farmed out its liquor franchise. Were it not that the defendant apparently granted the liquor "concession" as a financial expedient to relieve itself of any financial worry about the liquor and, further, that the club has immediately terminated the illegal situation, I would revoke the license.

It appears that on March 25, 1946 the local issuing authority suspended defendant's license for a period of twenty days after it had pleaded guilty to charges of selling alcoholic beverages to non-members and selling alcoholic beverages for consumption off the licensed premises. Under all the circumstances, I shall suspend defendant's license for a period of thirty days.

Accordingly, it is, on this 17th day of December, 1947,

ORDERED that Club License CB-7, issued by the Board of Commissioners of the Borough of Vineland to Bohemian Club, for premises 510 Landis Avenue, Vineland, be and the same is hereby suspended for thirty (30) days, commencing at 1:00 a.m. January 5, 1948, and terminating at 1:00 a.m. February 4, 1948.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF MUNICIPAL REGULATION - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary)
Proceedings against)
JOHN BUONOMO)
T/a MEADOW PARK CASINO)
Ft. of Farm Road)
Secaucus, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-12, issued by the)
Town Council of the Town of)
Secaucus.)

John Buonomo, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that on November 15, 1947 he sold and served alcoholic beverages during prohibited hours, in violation of local ordinance.

On the occasion in question, the defendant was still doing a thriving business at 4:00 a.m., or two hours after the local curfew.

In the absence, as here, of any previous record, the license will be suspended for a period of fifteen days, less five days for the plea, leaving a net penalty of ten days. Cf. Re Trombley, Bulletin 784, Item 9.

Accordingly, it is, on this 22nd day of December, 1947,

ORDERED that Plenary Retail Consumption License C-12, issued by the Town Council of the Town of Secaucus to John Buonomo, t/a Meadow Park Casino, Ft. of Farm Road, Secaucus, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 5, 1948, and terminating at 2:00 a.m. January 15, 1948.

ERWIN B. HOCK
Commissioner.

7. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINOR - LICENSE PREVIOUSLY SUSPENDED FOR 5 DAYS BY LOCAL ISSUING AUTHORITY ON SAME FACTS - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)
SAM POLINO & CHARLES GUITTARI)
T/a JEFFERSON TAVERN)
78 Jefferson Street)
Hoboken, N. J.,)
To Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-229 issued by the Board)
of Commissioners of the City of)
Hoboken.)

ON PETITION
CONCLUSIONS AND ORDER

Dominick J. Marrone, Esq., Attorney for Petitioners.

BY THE COMMISSIONER:

It appears from petition filed herein that on December 5, 1947, Charles Guittari, one of the petitioners, was fined the sum of \$50.00 in the Hudson County Court of Quarter Sessions after he had pleaded non vult to a charge of selling alcoholic beverages to a minor. On December 18, 1947, agents of the Department of Alcoholic Beverage Control picked up the license held by the petitioners and no business has been conducted since that time.

It further appears from the records of the Department of Alcoholic Beverage Control that the Board of Commissioners of the City of Hoboken suspended the license held by petitioners for a period of five days, effective from March 17, 1947 to March 22, 1947, after they had been found guilty in a disciplinary proceeding of charges alleging that they had sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. These disciplinary proceedings were instituted by the local issuing authority on its own initiative.

The indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. Since Charles Guittari was a partner in the business conducted by petitioners, his conviction in the criminal proceedings has resulted in an automatic suspension of the license for the balance of its term. R. S. 33:1-31.1.

The petition herein prays that the automatic suspension of the license may be lifted.

Under all the circumstances, the penalty heretofore imposed by the Board of Commissioners of the City of Hoboken would appear to be adequate. Hence the relief sought in the petition will be granted.

Accordingly, it is, on this 18th day of December, 1947,

ORDERED that the automatic suspension of License C-229, held by Sam Polino and Charles Guittari, t/a Jefferson Tavern, issued by the Board of Commissioners of the City of Hoboken for premises 78 Jefferson Street, Hoboken, be lifted and the said license is hereby restored to full force and operation, effective immediately.

ERWIN B. HOCK
Commissioner.

8. RETAIL LICENSEES - HEREIN OF DELUSORY PRICE REDUCTION TO INDUCE DRINKING - PROHIBITED AS PRACTICE UNDULY DESIGNED TO INCREASE CONSUMPTION.

December 19, 1947

Mr. George A. Conte
Camden, N. J.

Dear Sir:

You hold a plenary retail consumption license for your tavern at the above address.

In your letter of December 10th, you enclose a recently publicized newspaper story about a midwestern tavernkeeper who has devised the scheme of selling drinks at reduced prices (such as beer for five cents) to those patrons who will pay him a so-called service fee of \$1.50 per week with a guarantee that they will participate in the scheme for at least four weeks.

You ask whether you may adopt such a scheme at your tavern, and the answer is decidedly NO. I have no objection to any honest-to-goodness reduction in your prices, but I cannot go along with the above undesirable scheme.

To illustrate what this scheme means, let us take the simple case of a beer drinker. He posts the weekly fee of \$1.50 and then becomes entitled to pay five cents instead of ten cents for each drink of beer at your tavern. Although thus "saving" a nickel on each glass of beer, nevertheless he must buy 30 glasses for the week to overcome the service fee of \$1.50 and just break even.

The normal reaction of wanting to be on the long and not the short end of the stick will tend to drive the patron, not only to drink the 30 glasses of beer per week, but also to go as far beyond as possible to assure himself of what a good bargain he has made, and if perchance he is unable to be at your tavern one or more days a week, he must then try to crowd his drinking into the remaining days.

In my opinion, any such scheme which prompts or impels persons to attend a tavern and drink in this way is contrary to the principles of wise liquor control. If the commodity involved were butter or eggs or meat, there might be no reasonable objection to this method of doing business, but when the issue involved is drinking at a tavern, the scheme takes on quite a different color. It militates against the cause of sound temperance, and is a practice unduly designed to increase the consumption of alcoholic beverages. As such, it must necessarily be disapproved and I hereby specially rule that no licensee may engage in this type of scheme in New Jersey (R. S. 33:1-39). Upon reflection, your good sense and judgment will, I am sure, convince you of the soundness of this position.

Very truly yours,
ERWIN B. HOCK
Commissioner.

9. - DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

LEO KEILP)
T/a MIDWAY TAVERN)
248 County Avenue)
Secaucus, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Town Council of the Town of Secaucus.)

-----)
Leo Keilp, Defendant-licensee, Pro Se.)
Edward F. Ambrose, Esc., appearing for Department of Alcoholic Beverage Control.)

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he (1) sold alcoholic beverages below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30, and (2) sold alcoholic beverages during prohibited hours, in violation of Rule 1 of State Regulations No. 38.

On November 15, 1947, at about 1:10 a.m., the defendant's bartender sold an ABC agent, for off-premises consumption, a pint bottle of Carstairs White Seal Blended Whiskey for \$2.25. Rule 1 of State Regulations No. 38 prohibits such sale after 10:00 p.m. The minimum retail price of said whiskey, as established in Bulletin 775, was \$2.26.

The defendant's license was suspended in February 1945 upon his non vult plea to a charge of permitting gambling on his licensed premises. See Bulletin 655, Item 7. Under the circumstances the usual twenty-five day penalty for the violations herein (cf. Re Pecorino, Bulletin 763, Item 2) will be increased to thirty days. Five days will be remitted for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 22nd day of December, 1947,

ORDERED that Plenary Retail Consumption License C-11, issued by the Town Council of the Town of Secaucus to Leo Keilp, t/a Midway Tavern, 248 County Avenue, Secaucus, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. January 5, 1948, and terminating at 2:00 a.m. January 30, 1948.

ERWIN B. HOCK
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 AND MUNICIPAL REGULATIONS - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

ANTHONY J. CALDERONE)
T/a TONY'S OLD MILL)
Ft. of Mill Ridge Road)
Secaucus, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-32, issued by the Town Council of the Town of Secaucus.)
-----)

Anthony J. Calderone, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to charges alleging that he sold alcoholic beverages during prohibited hours (1) in violation of Rule 1 of State Regulations No. 38, and (2) in violation of local ordinance.

On November 15, 1947, shortly before 2:00 a.m., the defendant sold to two ABC agents a pint bottle of whiskey for consumption off the licensed premises. During the next forty minutes the agents were each served three glasses of beer, which they consumed at the bar. Four other patrons were also served alcoholic beverages during that time.

The local curfew is fixed at 2:00 a.m., while the State Regulation prohibits the sale of alcoholic beverages in original containers for consumption off the licensed premises after 10:00 p.m. on any weekday.

For each violation, the license will be suspended for fifteen days. From the total penalty, a remission of five days will be given for the plea, resulting in a net suspension of twenty-five days. Re Trombley, Bulletin 784, Item 9.

Accordingly, it is, on this 22nd day of December, 1947,

ORDERED that Plenary Retail Consumption License C-32, issued by the Town Council of the Town of Secaucus to Anthony J. Calderone, t/a Tony's Old Mill, Ft. of Mill Ridge Road, Secaucus, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. January 5, 1948, and terminating at 2:00 a.m. January 30, 1948.

ERWIN B. HOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

PARK LIQUORS (a corp.))
316 George Street)
New Brunswick, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-50, issued by the Board of Commissioners of the City of New Brunswick.)

Park Liquors (a corp.), by William Stone, President.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that it possessed illicit alcoholic beverages at its licensed premises, in violation of R. S. 33:1-50.

On October 11, 1947, an inspector of the State Department of Alcoholic Beverage Control seized one 4/5 quart bottle labeled "Three Feathers Blended Whiskey Reserve", one 4/5 quart bottle labeled "Philadelphia Blended Whiskey", and one 4/5 quart bottle labeled "Calvert Reserve Blended Whiskey", when his preliminary field tests indicated that the contents of said three bottles were not genuine as labeled. Subsequent analysis by the Department chemist confirmed the fact that each of said bottles contained an alcoholic beverage other than that described on its label.

The defendant has no previous adjudicated record. I shall suspend the license for twenty days (Re Zeidner & Cohen, Bulletin 680 Item 2), and remit five days because of the plea (Re Gelb, Bulletin 741, Item 8), leaving a net suspension of fifteen days.

Accordingly, it is, on this 22nd day of December, 1947,

ORDERED that Plenary Retail Consumption License C-50, issued by the Board of Commissioners of the City of New Brunswick to Park Liquors (a corp.), for premises 316 George Street, New Brunswick, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. January 5, 1948, and terminating at 2:00 a.m. January 20, 1948.

ERWIN B. HOCK
Commissioner.

12. APPELLATE DECISIONS - DEOLA v. MILLVILLE.

JOHN B. DEOLA and DAVID DEOLA,)
Appellants,)

-vs-

BOARD OF COMMISSIONERS OF THE)
CITY OF MILLVILLE,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

D. Joseph Novaria, Esq., Attorney for Appellants.
Harry R. Waltman, Esq., by Charles E. Gant, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the respondent's refusal to transfer to the appellants the plenary retail consumption license held by John S. Heritage for premises, 524 North High Street in the City of Millville.

The appellants have been conducting a tavern in the adjoining municipality of Landis Township since June 1945. The reason for the instant denial was that the appellants' "previous record in Landis Township in the conduct of their certain licensed premises have been found to be unsatisfactory".

The misconduct complained of consists of:

(1) In April 1946 the Landis Township Committee charged the appellants with selling alcoholic beverages to three minors, as a result of which, upon the appellants entering a non vult plea, their license was suspended for a period of ten days, less five days for the plea. It appears from a synopsis of these proceedings, introduced into evidence, that the three minors, one as young as 17 years, had been served alcoholic beverages in the appellants' premises on numerous occasions, and that two of them had been served even after they had acknowledged the fact that they were under twenty-one years of age. After the penalty was given, the Landis Township Committee was advised that "the Department (of Alcoholic Beverage Control) feels that the penalty might well have been greater. Where obvious minors as young as 17 can freely enter a tavern and get drinks without difficulty, the licensee should be called to firm and complete account."

(2) The Landis Township police records contain fourteen separate notations of incidents alleged to have occurred at the appellants' premises between March 1946 and September 1947. Most of the incidents are concerned with fights, drunks, and disorderly persons. In this connection, the township Chief of Police testified that, of all the licensed premises in the municipality, numbering close to thirty, the complaints involving the appellants outnumber those of any other licensee.

(3) In July 1947 the State Commissioner, in writing, notified the appellants of a complaint that music and loud noises emanating from their premises were interfering with the peace and quiet of neighboring residents, and cautioned them to eliminate all such disturbing noises.

The question whether the complaints referred to in (2) and (3), standing alone and without anything in the record to indicate whether they had a factual basis or whether the appellants were guilty of any misfeasance in connection therewith, would be sufficient to sustain the respondent's action, need not be determined, since I am of the opinion that it was within the respondent's sound discretion to predicate its refusal to transfer solely upon the adjudicated violation in (1) aforesaid.

Under the Alcoholic Beverage Law (R. S. 33:1-24), each local issuing authority is enjoined "to investigate applicants" for licenses. The obvious reason for casting such duty and responsibility upon the issuing authority is to insure that the privileges of a liquor license are entrusted only to those who are deemed to be worthy thereof. With particular respect to transfer of licenses, it has been held, as stated in Turf Club Bar, Inc. v. Asbury Park, Bulletin 770, Item 1:

"But no one has a right to the transfer of a license. The issuing authority may grant or deny a transfer application in the exercise of a reasonable discretion. Furthermore, it is entirely competent for a municipal issuing authority to confine its selection of licensees to those who have clearly demonstrated that they are worthy persons to receive the privilege of a license. Hodanish v. Trenton, Bulletin 121, Item 6; Clark v. West Orange, Bulletin 631, Item 7; Re Bielicky, Bulletin 704, Item 5. A determination that just cause exists for denial of an application should, on appeal, be given considerable weight. Orofino v. Millburn, Bulletin 45, Item 15."

There is nothing in the present record to indicate that the respondent's determination is either unreasonable or arbitrary, or that it is the result of improper motivation. On the contrary, it is clear that the substantial violation committed by the appellants while operating their present licensed premises is sufficient warrant for the action taken. Cf. Kuremsky v. Trenton, Bulletin 623, Item 11. In the language of one of the local Board members, the respondent is "rather proud of the way the alcoholic beverage business is conducted in the City of Millville. We did not want to jeopardize that by having it be other than it has been in the past." This statement of local policy is most commendable and strictly in accord with the salutary objectives of the liquor laws.

The action of the respondent is affirmed.

Accordingly, it is, on this 22nd day of December, 1947,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Vincove Winery

675 River St., Paterson, N. J.

Application filed December 17, 1947 for transfer of Plenary Winery License V-47 (with retail privileges) from Vincent F. Coviello, t/a Vincove Winery, 1-3-5 Erie St., Paterson, N. J.

Cesto Chiesa, t/a Chiesa California Wines

1114-1116 - 21st St., North Bergen, N. J.

Application for Plenary Winery License filed December 19, 1947.

Red Top Brewing Company

1747 Central Ave., Cincinnati, Ohio.

Application for Limited Wholesale License filed December 29, 1947.

L and H Transportation Co., Inc.

3212 Smallman St., Pittsburgh, Pa.

Application for Transportation License filed December 29, 1947.

Ewin D. Hook

Commissioner.