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

BULLETIN 242 MAY 3rd, 1938

1. SPECIAL PERMITS - W.P.A. OR OTHER FEDERAL SUBSIDY CAMPS - HEREIN AN EXPERIMENT IN SOCIAL SERVICE.

My dear Mr. Burnett:

Your letter written to Senator Foran in connection with Camp McMahon has my attention.

I certainly wish that something might be done so that beer could be served to these men in the camp on pay day, which comes twice a month. There are approximately one hundred men in this camp. They are a rough and ready crowd and in months gone by have made a lot of trouble for the County officials on pay day. They are inclined to take what is left of their pay and go down to one of the bars on Route #28 and get themselves gloriously drunk on hard liquor. One man was killed along the highway, several have been picked up along the highway almost dead from exposure and there have been a number of petty crimes in the territory attributed largely to these men. In a number of cases, arrests were made and admissions were made by these men indicating they were at fault. From the standpoint of the Prosecutor's office, I believe it would be greatly to the advantage of the County and to law enforcement in the County if these men were permitted to buy beer, and beer only, in their own camp which is entirely isolated, on pay days.

From a profit standpoint to the operators of the camp, it would, of course, be negligible. These men, I believe, after receiving their W.P.A. pay and paying back their board, have something like $9.00 a month left for themselves. I know it is not as much as $10.00. Out of this they have to provide their clothing, their tobacco and all incidentals. Two days after pay-day, there isn't thirty dollars in the whole camp. If the operators of the camp, who are perfectly reputable men, were permitted to sell beer on pay days, twice a month, there is no question but that it would keep practically all of these fellows in camp because their thirst is all that takes them out apparently.

The loss of business to other licensed places in the County would be entirely negligible and one of our major policing problems would be solved.

If the sole problem here is the matter of some individual making a personal profit, that could be very easily and very honestly circumvented. These men have attempted to set up special funds of one kind and another to provide amusement for themselves. It could be clearly stipulated that any possible profit made out of this venture should go into a fund to provide amusement and entertainment for the workers.

I have, since becoming Prosecutor, done everything I possibly can to cooperate with your representatives as you can ascertain from conversation with Mr. Higgins or any of his boys. We have made, I believe, over fifty liquor arrests and in every single case I have induced them to plead guilty and Judge Prall has assessed fines of $150.00 and in some cases considerably greater amounts. We also have been directly responsible for clean-

ing up two liquor places, The Jungles and the place of John Brost of Rocktown. In other words, I have done everything I possibly can to aid in the enforcement of the liquor law in this County and I am going to continue to do so. We are at the moment planning a campaign to eliminate drunken driving on our highways.

I am of the firm opinion that to permit the sale of beer at Camp McMahon on pay days would go a long way toward aiding us in the proper law enforcement in this County. To that end, I would appreciate greatly any consideration which could be given this problem which would permit the sale of beer on pay days in Camp McMahon.

I will appreciate very much hearing from you at your early convenience.

Sincerely,

C. LLOYD FISHER

April 24, 1938.

Hon. C. Lloyd Fisher,
Prosecutor of the Pleas,
Flemington, N. J.

My dear Mr. Fisher:

I have considered with care your suggestion that a Special Permit be issued to Camp McMahon to cover the sale of beer on the twenty-four days each year on which the men are paid.

Special Permits are issuable to meet contingencies not otherwise expressly provided for and where it would be appropriate and consonant with the spirit of the Alcoholic Beverage Control Act. R.S. 33:1-74 (Control Act, Sec. 75).

They are not issuable to individual promoters or business enterprises in order to exploit liquor for commercial advantage or private gain. Those who wish to do that must take out a regular license and pay the full fee. They cannot pick the choice days under the guise of a Special Permit and escape with payment of only a fraction of the regular license fee. Re Michaels, Bulletin 231, Item 4.

On the other hand, they are issuable to bona fide mutual associations to allow them to sell alcoholic beverages for a temporary occasion as an incident to their general social activities. Such permits, however, are not issued for any lengthy period or on constantly recurring occasions such as once a week, or twice a month, or even as often as once a month. Re Szabo, Bulletin 61, Item 4; Re Brown, Bulletin 118, Item 4; Re Steneck Travel Club, Bulletin 136, Item 11; Re Riedel, Bulletin 190, Item 1; Re Kashner, Bulletin 199, Item 12.

In the instant case the Camp is run as a private enterprise and the permit is sought for recurring periods twice a month. My first impression was therefore adverse.

My investigation discloses, however, that prior to August 1, 1937, the Camp was operated by the Works Progress Administration for the housing of workers on a Federal road

project in Hunterdon County; that since August 1st, the project has been continued with Federal subsidy under the supervision of the County; that out of the Federal subsidy, the County pays the salaries of the men working on the project; that the men pay a certain amount out of their salaries (I believe $25.00 per month) to the Camp Director, for board, maintenance, etc., who operates the Camp for the housing of the workers as a private enterprise and without cost to the County.

Since the Camp, though operated as a private enterprise, serves a public purpose and takes men off the relief rolls by affording employment under supervision of the County, I have determined, in view of your forceful presentation of the problem and your certification that it is in the interest of law enforcement, to try the experiment, although I am not so sanguine that selling beer in the Camp on pay days will keep the men from going to town after a two weeks' isolation. It is worth trying, however, and I hope it will be productive of good.

Accordingly, I will entertain an application from the proprietors of the Camp for a Special Permit to cover the two pay days in May, limited to beer only and conditioned against sale to minors, for which the fee will be $10.00.

If the experiment succeeds, further monthly renewals will be granted, from time to time, providing that you, as Prosecutor, approve.

I am indebted to you for bringing the matter to attention and for the generous cooperation you have rendered in the enforcement of the Alcoholic Beverage Control Act.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. CAMPAIGN POSTERS - DISPLAY IN TAVERNS - REASONS WHY NO RULING HAS BEEN MADE PROHIBITING THE MERE DISPLAY OF SUCH POSTERS.

April 24, 1938

Dear Mr._____:

I have had a conference with two of the opposition candidates and went over the situation with them, pointing out that there was no law or rule against the display in a tavern of a campaign poster; that a man who chose to advertise his allegiance to a political party had a right to do so; that even though they conjectured and felt morally convinced that the licensee was forced to carry the poster rather than doing so as a matter of his own free will and accord, nevertheless, unless the licensee would stand up and swear that such was the fact, there was no ground on which I could act; that I would take instant measures if such coercion did affirmatively appear but I could not base action on mere surmise or suspicion; that to make a new rule forbidding such posters would have to be followed by a whole series of regulations to cope with different situations which would inevitably ensue, for instance, the wearing of a campaign button, stickers on automobiles, political meetings in taverns and so on to the Nth degree of forbidding any political discussions in taverns.

Anticipating this, I have made no rule, the eventual result of which would reduce the whole thing to the absurd.

After all, it is mainly a matter of ethics and good taste.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

3. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

April 22, 1938.

Re: Case No. 219

Applicant admitted in his questionnaire and application that he had been convicted for "immoral connection with a girl - probation three years."

At a hearing, applicant testified that he had been arrested, about five or six years ago, on two charges of seduction; that both charges arose from a complaint made by a girl who was then twenty or twenty-one years of age; that subsequently he was acquitted in a bastardy proceeding and pleaded guilty to a charge of fornication; that, in fact, he never had intercourse with the girl.

Further investigation disclosed that applicant was tried by a jury in a Family Court on a bastardy charge made by this girl, and acquitted. Report from a Probation Department discloses that the girl was nineteen years of age at the time the alleged offense occurred, although twenty years of age at the time of applicant's arrest. This report continues:

> "There was no claim of violence on the part of the complainant. She alleged that the incident occurred while she was keeping company with the young man. She claimed she received an engagement ring from _____ and that he wanted to marry her. Later, after she became pregnant, she tried to persuade _____ to marry her, and there is testimony to the effect that her mother and other relatives attempted to persuade the young man to keep his promise. However, he failed to do so and after the child was born a charge of fornication was made against him.
>
> "_____ was not arrested until almost thirteen months after the date the offense was alleged to have taken place. When interviewed by the probation officer prior to sentence, he insisted the whole affair was a 'frame up', that he never had relations with the girl, and that it was merely an attempt on the part of her people to provide a husband for her. However, he pleaded non vult at the request of his attorney and was placed on probation for a year. Incidentally, some of the statements of the girl regarding her relationship with _____ were of a questionable character."

Since applicant pleaded non vult to the charge of fornication, no determination can or should be made herein as to whether he was, in fact, guilty of that offense. Because of his plea, it must be assumed that he was guilty.

Fornication may or may not involve moral turpitude, depending upon the facts of the case. Re Case No. 66, Bulletin 202, Item 6; Re Case No. 68, Bulletin 203, Item 13.

In view of the age of the girl, the lack of violence, the acquittal by the jury on the bastardy charge and the fact that applicant has never been convicted of any other crime, I believe that, even if he was guilty of the crime of fornication, as we must assume, such crime did not involve moral turpitude under the circumstances of this case.

It is recommended, therefore, that applicant be declared eligible for a solicitor's permit despite such conviction.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SUSPENSION - MITIGATION OF PENALTY - HEREIN OF RECURRING AND NON-RECURRING TYPES OF VIOLATIONS AND THE CONSIDERATIONS UPON WHICH MITIGATION DEPENDS.

April 25, 1938

Frank A. Priest,
Clerk of Hamilton Township,
Trenton, N. J.

My dear Mr. Priest:

I have before me your letter regarding Mrs. Lillian R. Higham, the holder of plenary retail consumption license No. 41.

I note that on March 8, 1938 the Township Committee, after notice and hearing, suspended Mrs. Higham's license, effective March 15, 1938, for the balance of its term, and that now it is the thought of the Committee that because of the severity of the penalty it would be appropriate to mitigate it to forty-five days and reinstate the license on May 1st.

There is no question of the existence of the power of a license issuing authority to mitigate a penalty previously imposed. In Re Bischoff, Bulletin 53, Item 5, I ruled:

> "While for the sake of finality of decision and affording terminal facilities to repeated litigation, no rehearing may be held by a municipal governing body or local excise board after it has once adjudicated facts, or guilt, or innocence (see Re Hendrickson, Bulletin 47, Item 10), there is nothing to prevent the mitigation of a penalty or punishment previously inflicted. It often lends to the cause of enforcement to remit a part of the penalty after the violator has been sufficiently punished and has shown genuine repentance and convinces the issuing authority by his acts as well as his words of his sincere determination thenceforth to comply with the law in all respects. Of course, if mercy is overplayed it may generate disrespect for the law and a belief that penalties imposed are mere gestures to be remitted after nominal punishment. On the other hand, justice is often accomplished by a wise and kindly mercy to first offenders, especially after partial atonement."

The power, therefore, exists. Whether it should be exercised in a given case is a matter for the Township Committee to determine with care and caution. As a matter of policy, the power should be sparingly exercised. Otherwise, the impression will be gotten that all that is necessary, for a licensee to secure a mitigation, is to keep on trying until a weak spot is finally found. See Re Pearse, Bulletin 202, Item 3; Re Reichenstein, Bulletin 175, Item 4; Re Light, Bulletin 122, Item 7; Re MacLeod, Bulletin 112, Item 4.

Whether or not the punishment should be modified is a matter which rests in the sound discretion of your Township Committee. The application for mitigation, being made to the Township Committee, is not subject to my consent or approval. The Township Committee inflicted the penalty and it is up to the members to decide if it should be moderated. It is they who have first-hand knowledge of the facts necessary to such a decision. I know none of these facts, and unless the case came before me on appeal, would have no occasion to inquire into them.

I find, on reviewing the file, that the charges on which Mrs. Higham was found guilty and the license suspended were sale and service of alcoholic beverages on Sunday in violation of referendum and your local ordinance, and failure to disclose in her application that Mr. Higham, and not she, was the true owner of the business.

A suspension of forty-five days for such unlawful sale and service is - in fact, severe! Those violations stopped when the licensee was caught. It is well believable that the punishment inflicted will prevent their recurrence.

The other offense is not so readily dealt with. So long as the license remains in Mrs. Higham's name, the fact that Mr. Higham is the owner of the business will be a continuing violation. That it has been punished does not mean that it has stopped. If you reinstate the license and no change in the ownership has taken place, the violation instantly reoccurs. It follows, therefore, that the suspension should not be lifted, nor any new license granted to Mrs. Higham, unless and until it is shown to the satisfaction of the Township Committee that she is the true and sole owner of the business and that Mr. Higham's interest has been removed, or else the license has been transferred into Higham's own name, where it should have been from the outset.

In mentioning the foregoing, I am expressing no opinion as to the conclusion the Township Committee should reach. That all depends upon the facts and is not my concern until formally before me on appeal. I give you merely the general principles applicable so that the Township Committee may have them in mind when the matter comes officially before it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. LIQUOR TAXES - LICENSEES WHO PAY THEIR TAXES AND PENALTIES, ALBEIT TARDILY, ARE NOT SUBJECT TO REVOCATION.

In the Matter of the Proceedings)
to revoke or suspend Club License
No. CB-31, issued to)

IRONBOUND REPUBLICAN CLUB, INC.,) CONCLUSIONS
137 Delancy Street,
Newark, New Jersey.)

)

. . . . . .

Notice of revocation proceedings for failure to comply with the Alcoholic Beverage Tax Act, P.L. 1933, Ch. 434, as

amended and supplemented, was duly served upon the above mentioned licensee.

At the hearing held upon the return day, the evidence disclosed that report for the month of December 1936, which was due on January 15, 1937, was not filed until January 26, 1937, showing a delinquency of eleven days. A penalty was assessed by the State Tax Commissioner on February 3, 1937 in the amount of Fifty-Five Dollars ($55.00), and the licensee notified thereof. Licensee on the return day paid to the State Tax Commissioner said penalty in full, and a service charge of $5.00 due to this Department on the institution of this proceeding.

At the hearing the State Tax Commissioner recommended that despite payment of the penalty in full, the license be revoked because on four previous occasions licensee paid penalties to him for delinquencies in filing various monthly reports.

The position is not tenable.

Section 501 of the Alcoholic Beverage Tax Act, after providing for the filing of monthly reports by licensees on or before the 15th day of the following month, fixes the following penalty:

> "Any such person who shall fail to file any such report on the day when the same shall be due shall forfeit as a penalty for each day thereafter until said report is filed the sum of Five Dollars ($5.00) to be collected as hereinabove provided."

The statute fixes its own penalty. None other is permissible or desirable. The licensee has paid in full the penalty therein provided.

Section 28 of the Alcoholic Beverage Control Act, under which Section this proceeding was instituted, provides, among other things, as follows:

> "Any license, whether issued by the Commissioner or any other issuing authority, may be suspended or revoked by the Commissioner *** for any of the following causes: ***non-payment of any excise tax or other payment required by law to be paid to the State Tax Commissioner; failure to comply with any of the provisions of an Act entitled 'An Act Imposing Taxes Upon the Sale or Delivery of Alcoholic Beverages and Providing for the Collection Thereof', approved, December fourth, One Thousand Nine Hundred and Thirty-three, as amended and supplemented."

It appearing that licensee has complied, albeit tardily, with the provisions of said Act, and that it has fully paid the amount required by law to be paid to the State Tax Commissioner;

It is, therefore, on this 30th day of June, 1937 ORDERED that the aforesaid proceedings be and the same are hereby dismissed.

D. FREDERICK BURNETT
Commissioner

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS - HEREIN OF THE CHANCES TAKEN BY LICENSEES IN MAKING PERFUNCTORY INQUIRIES AS TO AGE AND RELYING ON INFERENCES, FAVORABLE TO THE CASH REGISTER, DERIVED FROM CASUAL CONVERSATION.

In the Matter of Disciplinary Proceedings against	)	
THE SILVER BALL, INC., 1079 Broad Street, Newark, New Jersey,	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License No. C-978.	)	

. . . . . .

Maurice H. Pressler, Esq., Attorney for the Licensee.
Jerome B. McKenna, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee is charged with sale of alcoholic beverages to two minors -- one a girl; the other a young man -- both nineteen years old.

The girl entered the place on March 20th at 10:30 P.M.; the young man shortly after midnight. The girl, whom he knew, was drinking beer. He sat with her and purchased four or five glasses of beer for himself and the girl. The drinks were served by Joseph Marino, the bartender.

I find the licensee guilty, as charged.

The only question is as to the punishment.

The bartender, Marino, testified that the first time the girl came to the licensed premises was about four or five months ago when she was accompanied by her father; that he asked the father if the girl was twenty-one and the father answered: "Yes." The father, subpoenaed by the licensee, admitted he had brought his daughter to The Silver Ball five or six months ago and that he had a vague recollection that Marino inquired as to her age; that he replied "She's old enough to have a drink with me."

As to the young man:- He is nearly six feet tall, weighs 175, and was frequently served in the Silver Ball. No one inquired as to his actual age. The other bartender, Fraser, testified that the young man told him, last Christmas, that he voted at the municipal election in May 1937. The young man denies the conversation. He admits he was engaged at campaign headquarters of one of the candidates and took an active interest in the campaign. Marino said he heard the conversation referred to and that the young man said he had "put in a vote."

Both minors were present at the hearing and testified. Both of them have been there before and been served with drinks on several occasions. It is not, therefore, an isolated case of an accidental sale to a minor. On the other hand, there was no flagrant, defiant attitude of selling to those who anybody

could tell were under age. While both of them were of youthful appearance, there is nothing about either that would undeniably stamp them as being a minor. Neither of them, however, affirmatively misrepresented their age. The licensee apparently was content with making perfunctory inquiries and relying on inferences, favorable to its cash register, derived from casual conversations. Instead of doing everything a reasonable person might do to make sure that the persons to whom it sold were not minors, the licensee took a chance and was caught.

Taking all the circumstances into consideration, I shall suspend the license for ten days.

Accordingly, it is on this 30th day of April, 1938 ORDERED that plenary retail consumption license No. C-978, heretofore issued to The Silver Ball, Inc., by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing May 4, 1938, at 3:00 A. M. (Daylight Saving Time).

D. FREDERICK BURNETT
Commissioner.

7. APPELLATE DECISIONS - VITALE vs. PATERSON.

GIUSEPPE VITALE,)
Appellant,)
-vs-) ON APPEAL
BOARD OF ALDERMEN OF THE CITY OF PATERSON,) CONCLUSIONS
Respondent.)

. . . . . .

William Sheps, Esq., Attorney for Appellant.
Salvatore D. Viviano, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a transfer of a plenary retail consumption license from 997 Madison Avenue to 47 Cross Street, Paterson.

On October 4, 1937 the application was laid over for two weeks to determine whether the property to which the transfer was sought was within two hundred feet of a school. At respondent's meeting of October 18, 1937, Alderman Pirolo stated that the people in that particular section were opposed to having another tavern operate there. Because of his statement it was decided to lay over the application until the next regular meeting, so that all those who were interested might be heard. It appears that the investigation which had been made between meetings disclosed that 47 Cross Street is slightly more than two hundred feet from the school.

At respondent's meeting of November 15, 1937, appellant presented a petition, signed by thirty-eight people, requesting respondent to grant the transfer. Thirty-six people appeared personally at said meeting to object to the granting of the transfer. A motion to deny the application was carried by a vote of eight

to three. The minutes do not recite the reason for denying the transfer, but do contain a statement by Alderman Horandt that he voted to deny because "there are two already so close by", and a statement by Alderman Tonge that he "was opposed to having three taverns so close."

At the hearing on appeal, Alderman Pirolo testified that he had voted to deny the transfer because there are already sufficient licensed places in that section of the City and because consumption licenses are outstanding for 49 Cross Street and 51 Cross Street, which is the fact. The owner of the building testified that he had conducted a saloon and restaurant in his building before Prohibition; that after Repeal Canger and Lobosco held a consumption license for his building for about two years, until about June 1937, when they transferred their license to 49 Cross Street. Five other people who reside in the immediate neighborhood testified that they favored the granting of the transfer because the section in question is an Italian shopping center, attracting trade from all of northern New Jersey, and also because there were more saloons on Cross Street before Prohibition than there are today. Three people who live in the neighborhood testified that they do not favor the granting of the license because there are too many saloons in the neighborhood. It appears from the record that three other consumption places besides those above mentioned exist on the opposite side of Cross Street in the immediate vicinity, and that there are fourteen other saloons in this section of the City, all of which are within eight hundred feet of the premises to which the transfer is sought.

Since both 49 Cross Street and 51 Cross Street are licensed for consumption, it follows that if the transfer in question is granted there would be three consumption places in a row, and this in a neighborhood already over copiously supplied.

The right to transfer is not inherent in a license. While such an application may not be denied arbitrarily, a respondent's action in denying a transfer because there are sufficient licensed places in the vicinity will be upheld where the evidence is sufficient to sustain such decision. Potansky vs. South River, Bulletin 226, Item 7 and cases therein cited, and particularly so where the granting of the transfer will result in the establishment of three consumption places on adjacent lots. Lingelbach vs. North Caldwell, Bulletin 180, Item 8.

The fact that more licenses existed on this street prior to Prohibition is not any reason for reverting to conditions which contributed to bring it about. The situation prior to Prohibition does not control the issuance of licenses at the present time. Rosania vs. Readington, Bulletin 123, Item 4.

Appellant lastly alleges discrimination in that respondent issued a plenary retail distribution license for premises located at 46 Cross Street after appellant had filed his application to transfer. Alderman Pirolo testified that the distribution license was granted because there are no licenses of this type in the vicinity. Consumption licenses and distribution licenses afford different privileges, as exemplified in Lackowitz vs. Waterford, Bulletin 125, Item 12. The fact that respondent granted a distribution license after appellant's application for transfer of a consumption license had been filed does not show discrimination.

Appellant has not sustained the burden of proof in showing that the action of respondent was arbitrary or unreasonable, or in showing that there is need for another consumption license in the vicinity.

The action of respondent is, therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 1, 1938.

8. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALE OF BEER AND KEEPING PLACE OPEN AFTER HOURS CONTRARY TO MUNICIPAL ORDINANCE - HEREIN OF ALLEGED INTIMIDATION OF LICENSEES BY RECALCITRANT CUSTOMERS AND THE ABILITY OF THE POLICE TO DISSOLVE THE FEAR COMPLEX.

In the Matter of Disciplinary Proceedings Against	)	
FOUR HUNDRED SOCIAL CLUB, INC. 391 Halsey Street Newark, New Jersey	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License #C-469	)	

. . . . . .

Stanton J. MacIntosh, Esq., for the Department
Sidney Simandl, Esq., for the Licensee

BY THE COMMISSIONER:

Licensee is charged with permitting the sale of alcoholic beverages on its licensed premises on Sunday, March 20, 1938, at or about 3:30 a.m., in violation of Newark Ordinance #6579, which forbids the sale or service of alcoholic beverages between 3 a.m. and 7 a.m. on weekdays and 3 a.m. and 12 noon on Sundays, and which further forbids all licensed premises, with certain exceptions here not material, to be open during the prohibited hours.

At the hearing, licensee pleaded non-vult and asserted mitigating circumstances.

The testimony of Investigator George N. Anderson shows that, on the morning in question, he and Investigator Dyrwood B. Williams went to licensee's tavern to investigate a complaint that licensee was operating after closing hours; that Williams entered the tavern at 3:15 a.m., Anderson remaining outside until 3:35 a.m., when he also entered; that Anderson, while waiting outside, observed 5 persons enter the tavern after 3 a.m.; that when he entered, he went to the bar and at about 3:35 a.m. ordered and was sold and served beer by Eugene Freda, the bartender; that at the time there was also a "party" in the rear of the tavern; that Anderson called the bartender's attention to the fact that the tavern was open after 3 a.m.; that the bartender told him "I know. We've got a party over there", and

that "they would close as soon as they (the party) paid their 'tab'"; that Investigator Anderson then stated "I was not of the party, and you served me", whereupon the bartender referred him to Freddie Freda, his brother, who was seated at a table by the door; that Freddie Freda told Investigator Anderson to leave; that the Investigators summoned Officers Galasso, White, and Silverman of the Newark Police Department, who arrested Eugene and Freddie Freda for violation of the above ordinance.

Eugene and Freddie Freda are licensee's managing officers, being treasurer and president respectively. Eugene Freda admitted that he was tending bar on the morning in question and that his brother was present on the premises at the time. He further testified that the tavern was closed "just about 12 minutes before 3 that morning"; that a waiter, when leaving the tavern, "forgot to put the latch on" the door; that a party of 4, 5, or 6 persons (alleged by him to have entered prior to 3 a.m.) remained in the rear of the tavern after the closing hour; that when asked to leave, these persons refused "on account they had a drink, 2 or 3 highballs yet, and as soon as they would finish these drinks they would leave"; that he, Eugene Freda, was afraid to eject this group because he recalled that in 1936, his brother, Freddie Freda, had suffered severe injuries when a patron, who was "feeling pretty good" and was being escorted to his car by Freddie at the closing hour, fell on Freddie and kicked him in resentment for having been put out of the tavern; that this episode resulted in seven months' treated for a fractured hip so that his right leg is now one inch shorter than his left -- an incident which he "never forgot", which is altogether understandable; that he Eugene Freda, had served Investigator Anderson because "Well, I didn't know whether he was with the party in the back, and he walked in from somewheres and believing that he was one of the party in the back, I served him one more drink".

The story of the door which the departing waiter forgot to lock does not explain why Investigators Anderson and Williams were not ordered to leave the tavern the moment they had entered the tavern, the one at 3:15 a.m. and the other at 3:35 a.m., although Eugene Freda was behind the bar and Freddie Freda seated at a table near the door, nor why the "party" in the rear was allowed to remain or why a drink was sold and served to Anderson. Licensees are under a duty to see that their doors remain closed during prohibited hours and that, by the time the closing hour arrives, all customers are out.

Apprehension by a licensee, or a bartender, that he will offend or incense patrons by complying with the law is obviously an inadequate excuse for violating the law. Patronage which is worthwhile will hold no grudge. The rest of the customers will have to be herded out willy nilly. On the other hand, fear of a beating and permanent injuries is admittedly not a pleasing prospect to contemplate, but the Police are wholly competent to escort the recalcitrant clientele to the sidewalk, and to teach the first lesson in parliamentary law that a motion to adjourn is not debatable. A telephone call for a cop will work wonders with plug-uglies. The Police responded right promptly when their assistance was invoked in the instant case by my men. So too they would if the licensee had called them at 3:01. Instead the tavern was open at 3:35.

I find the licensee guilty both of serving beer during prohibited hours on Sunday, and also of keeping the licensed premises open during those hours. The penalty will be five days for each offense.

Accordingly, it is on this 1st day of May, 1938, ORDERED that plenary retail consumption license No. C-469, heretofore issued to Four Hundred Social Club, Inc., by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing May 5, 1938 at 3:00 A. M.

D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - BAKER vs. MARLBORO TOWNSHIP.

PETER BAKER,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF MARLBORO,)
Respondent.

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Frankel & Frankel, Esqs., Attorneys for Appellant.
Joseph E. Wenzel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail consumption license for premises located on State Highway Route #4, between Matawan and Freehold, Marlboro Township.

Respondent denied the license by a vote of one in favor and two against because said license was socially undesirable.

On August 13, 1936 respondent adopted the following resolution, which remains in full force and effect:

> "RESOLVED, that the plenary retail consumption licenses be limited to six on the Matawan-Marlboro Road; one on the Holmdel Road; two on the Morganville-Robertsville Road; and that no others be granted in the Township."

The highway upon which the premises in question are located is the road which is described in the resolution as the "Matawan-Marlboro Road." At the time of the adoption of the resolution six consumption licenses were outstanding for premises located on said road. One of these licenses was in the name of Edward Ludwig. On February 9, 1937 Ludwig's license was revoked for selling alcoholic beverages on Sunday in violation of a referendum duly adopted prohibiting Sunday sales. In Re Magee, Bulletin 162, Item 7. As a result of said revocation, only five consumption licenses were outstanding at the time the present application was made and at the time of the hearing of the appeal herein. Appellant applied for the same premises previously occupied by Ludwig and his application was denied. Hence, this appeal.

At the hearing on appeal one of the Committeemen who voted to deny this license testified that he had not taken into consideration the fact that a license for these premises had been revoked, but testified that he felt that the issuance of the license was socially undesirable because he thought that there were enough places in the Township. The other Committeeman who voted to deny the license testified that the refusal to grant the license had nothing to do with appellant's character or the type of place he was going to run, but that the witness believed that there are too many premises now in Marlboro Township, and, hence,

the granting of this license would be socially undesirable. This witness testified that he had considered the fact that the license for these premises had been revoked.

It does not appear from this testimony that the license was denied because of the improper manner in which the premises had been previously conducted. The only question which requires consideration is whether or not respondent's action was proper in denying a license because there were too many licenses already existing in the Township. The difficulty with respondent's position is that it has not amended in any way its resolution of August 13, 1936. Under said resolution a vacancy exists on the Matawan-Marlboro Road and, hence, respondent cannot deny an application for a license on the mere general ground that a sufficient number of liquor establishments now exist in the municipality. Eisen v. Plainfield, Bulletin 68, Item 12; Sosnow v. Freehold, Bulletin 68, Item 13; Re Cliffside Park, Bulletin 224, Item 7, and cases therein cited. Of course, an issuing authority may deny a license despite a vacancy upon the ground that too many licensed places already exist in the vicinity of the premises sought to be licensed. Re Cliffside Park, supra. In the present case, however, there is no existing licensed place within a mile and a half and the premises in question were previously licensed.

Respondent cites Krause v. Freehold, Bulletin 76, Item 8. This case is not in point because it appeared therein that, before the appeal was heard, respondent amended its resolution and limited the number of consumption licenses to "not more than four", which was the number outstanding exclusive of the Krause application.

Respondent argues that its resolution does not provide that six consumption licenses shall be issued on the Matawan-Marlboro Road but merely that the number of such licenses shall be limited to six on said road. Hence, it contends, it is not required to issue the license applied for. To "limit" means to set bounds to, to restrict, to confine. By adopting such resolution, respondent undoubtedly restricted its future actions so that thereafter it could not issue more than six such licenses on said road. Unquestionably, it reserved to itself certain rights within the limit fixed. Thus it would have a right to deny a sixth license because of objections to the licensee, the condition of the premises or the existence of sufficient places in the neighborhood. However, having set a limit which was binding upon itself and applicants, it cannot within said limits deny a license without just cause and merely because of a belief that too many licensed premises exist in the municipality at the time an application is made. Pelos and McNamara v. Passaic, Bulletin 156, Item 2.

Since it appears that respondent has not issued licenses on the Matawan-Marlboro Road sufficient in number to exhaust the limitation fixed, no good reason appears for denying an application to a qualified applicant in the absence of any showing that the premises are objectionable, or that sufficient places exist in the neighborhood.

At the hearing it appeared that appellant had deposited only the sum of Twenty Dollars ($20.00) with his application, instead of the prorated annual fee which should have been paid at that time. Appellant testified without contradiction that he tendered the required amount to the Township Clerk, but that the Township Clerk advised him that it would be sufficient to pay Twenty Dollars deposit at that time. The Clerk should not have accepted the application without receiving the proper fee. In Re Bell, Bulletin 180, Item 6. Inasmuch as appellant tendered the prorated annual fee, it would be inequitable to penalize him now because the proper fee did not accompany the application.

The action of respondent is reversed, and respondent is directed to issue the license as applied for, on condition that appellant pay the balance of the prorated annual fee before the issuance of the license.

D. FREDERICK BURNETT,
Commissioner.

Dated: May 1, 1938.

10. AUTOMATIC STATUTORY SUSPENSION - ORDER LIFTING.

In the Matter of the Application of Martina Kneute to lift suspension of her license.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

This matter comes before me on a petition by Martina Kneute to lift the suspension now in force against Plenary Retail Consumption License C-9, heretofore issued to her by the Township Committee of Raritan Township, Monmouth County, for premises on Florence Avenue in that Township.

The facts in this case are briefly as follows:

The petitioner, Martina Kneute, was arrested on December 13, 1934 after an inspection of her licensed premises in Raritan Township by investigators from this Department revealed the presence of three 1-gallon bottles of apple whiskey, a 1/2 pint of apple whiskey and a 1-quart bottle 1/4 full of rye whiskey. None of the containers of these alcoholic beverages had affixed thereto the necessary tax stamps. The licensee admitted that the liquor contained in these receptacles was in fact illicit in that it had been in her possession before Repeal. She further stated to the investigators that if she had known there should have been a tax paid on this liquor, she would have declared same and paid the tax when Repeal became effective.

Mrs. Kneute was subsequently indicted by the Grand Jury of Monmouth County on a charge of having possessed illicit alcoholic beverages. On December 22, 1937, she was tried before a jury in the Monmouth County Court of Quarter Sessions, found guilty and fined $100.00 — payable at the rate of $1.00 per week — and placed on probation for two years. Under R. S. 33:1-31.1 (Control Act Reprint, Section *82), the license of Martina Kneute, by reason of her conviction, became suspended for the balance of its term, viz., to June 30, 1938. The license was actually picked up by investigators from this Department on January 5, 1938, and the suspension has been in force since that date.

The records of this Department indicate that Martina Kneute has operated as a licensee in Raritan Township since February 5, 1934; that with the exception of a sign violation which was immediately corrected when called to her attention by investigators from this Department, the records fail to show any transgression by her as a licensee.

There is attached to the petition of Mrs. Kneute, an affidavit by Gilbert T. Van Mater, Clerk of Raritan Township, which

sets forth that the records of that Township show there have been no complaints against this licensee to the Township Committee and that her record as a liquor licensee is good; that she has a good reputation for integrity, honesty, and as a law abiding citizen; that the Township Committee of Raritan Township is of the opinion she has learned her lesson and therefore recommend that her license be restored.

Mrs. Kneute's petition sets forth that she is a widow, fifty-seven years of age; that the business conducted under her liquor license was the sole means of support for herself and her unemployed son; that the closing of her licensed premises has left her in straitened circumstances and unless the license is restored, she will be practically destitute. Petitioner further pledges that in the future she will abide by the law and the rules and regulations governing the conduct of her liquor business.

I am of the opinion that petitioner has now learned her lesson and has been sufficiently punished (a) by her conviction in the Criminal Court with the fine and probation sentence and (b) the present suspension of her license, now in force nearly four months.

Accordingly, it is on this 1st day of May, 1938, ORDERED, that the statutory suspension now in force, be lifted and that Plenary Retail Consumption License C-9, heretofore issued to Martina Kneute by the Township Committee of Raritan Township, be and it is hereby declared to be, again in full force and effect.

Frederick Burnett

Commissioner.