

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

BULLETIN 622

JUNE 12, 1944.

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

BULLETIN 622

JUNE 12, 1944.

1. APPELLATE DECISIONS - SAMALONIS v. PENNSAUKEN TOWNSHIP.

RAYMOND SAMALONIS,)

Appellant,)

-vs-

TOWNSHIP COMMITTEE OF)
PENNSAUKEN TOWNSHIP,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Edward J. Inglesby, Esq., Attorney for the Appellant.
Thomas F. Salter, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application to transfer his plenary retail consumption license from premises 6502 Park Avenue, Pennsauken Township, to 6508-10 Park Avenue, in the same municipality. The appellant has held successive plenary retail consumption licenses for his present premises since 1939.

Following the filing of appellant's application, some 271 residents of the neighborhood presented a petition to the respondent objecting to the transfer.

The Township Committee, following a hearing when a considerable number of witnesses pro and con were heard, denied the transfer for the following reasons:

- (a) There is no public necessity or desire for the increase in size of the facilities for the dispensing of alcoholic beverages by the applicant;
- (b) The granting of the transfer is socially undesirable and is obnoxious to the residents of the neighborhood to which the license is proposed to be transferred;
- (c) The granting of the transfer would increase traffic hazards and traffic congestion in the immediate vicinity of the premises;
- (d) The granting of the transfer would increase certain nuisances attendant in the operation of the licensed premises;
- (e) The granting of the transfer would move the licensed premises closer to the residential area adjacent to the same, which is obnoxious to the residents of the neighborhood;
- (f) The granting of the transfer would further depreciate the value of residential properties in the neighborhood.

The reasons assigned by the respondent for its refusal to transfer the license set forth in general the objections to the transfer advanced by residents in the neighborhood before the local issuing authority.

We can immediately dispose of two of respondent's reasons for denial, namely, (c) and (f). There does not appear to be any evidence in the record supporting these reasons.

The appellant's present licensed premises are on the south side of Park Avenue, approximately 21 feet from the corner of Park Avenue and Cove Road in Pennsauken Township. The proposed premises are on the same side of Park Avenue and are distant approximately 55 feet from the corner, being separated from the present premises by a 14 foot, 8 inch alley. The present premises have a frontage of approximately 18 feet and a depth of 58 feet. The building to which appellant seeks to transfer his license has a frontage of 32 feet and an average depth of approximately 64 feet. The application for the transfer discloses that the license, if transferred, will cover the first floor and basement of the proposed premises.

For a distance of about 500 feet, in an easterly direction from its intersection with Cove Road, both sides of Park Avenue are zoned for business. On the south side of Park Avenue within the area zoned for business there are located four properties or stores devoted to business (including the present and proposed licensed premises). The second floor of at least two, and possibly four, of these properties are or may be used for residential purposes. In addition, there are two dwellings now used in part for business without any material alteration in the appearance of the structures having been made. In the rear of one of these dwellings there is a small garage. There are also five dwellings used exclusively for residential purposes. Across the street, on the north side of Park Avenue within the area zoned for business, there is a grocery store on the corner of Cove Road. The remainder of the properties within the area are residential. The business properties are, in general, occupied by small neighborhood stores.

Accordingly, while this portion of Park Avenue is zoned for business, it does not appear from the record and the exhibits to be a general business section. The appellant's contention that the neighborhood is a business one is not supported by the testimony. I find that the area involved is a mixed business and residential neighborhood and that the residential use prevails. It has heretofore been held by Commissioner Burnett, in O'Rourke v. Fort Lee, Bulletin 189, Item 14, that "The fact that the vicinity is zoned for business does not preclude it from being residential in character. Mulligan v. Lyndhurst, Bulletin 146, Item 6; Borkowski v. Clifton, Bulletin 139, Item 5, and cases therein cited."

A transfer of a liquor license is not a right inherent in the license, but is rather a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. Where the transfer is denied on reasonable grounds, such action will be affirmed. Van Schoick v. Howell, Bulletin 120, Item 6. The burden of proof is upon appellant to show that the action of respondent in denying the transfer was arbitrary or unreasonable. Henderson v. Gloucester, Bulletin 542, Item 2.

Where the neighborhood is mixed residential and business, it is within the sound discretion of the issuing authority to determine

whether or not public convenience and necessity warrants the granting of a new license or the transfer of an old license. The public welfare must take precedence over any question of private advantage. Re Fichner v. Elizabeth, Bulletin 379, Item 9. The basic question presented by the instant application is somewhat analogous to that presented when an application is made for an additional license, thereby increasing the tavern facilities in the neighborhood. Cf. Hill v. Montville, Bulletin 148, Item 9.

General objections to a transfer within a business neighborhood are ordinarily not sufficient reason for denying a transfer. DeChristie v. Gloucester, Bulletin 121, Item 10; Conn v. Kearny, Bulletin 173, Item 1. However, where the transfer is sought in an area which is of a mixed residential and business character, the denial of the transfer on the ground that it would unnecessarily increase facilities for the sale of alcoholic beverages or place licensed premises in closer proximity to dwelling houses does not constitute an abuse of respondent's discretion. Cf. Drucker v. Trenton, Bulletin 474, Item 9. Respondent's conclusion that existing tavern facilities are sufficient to serve the needs of those residing in the area is entitled to great weight.

While the appellant, in his testimony, states that there would be little increase in the space devoted by him to the sale and service of alcoholic beverages if the transfer is granted, the fact is that the extent of his licensed premises would be substantially increased. Further, the proof discloses that the proposed premises, while only separated from existing premises by the width of a narrow alley, are nonetheless to that extent closer to the dwelling houses on Park Avenue.

Apparently, the respondent, having in mind the character of the neighborhood and the objections of a considerable group of citizens, did not wish to increase the potential facilities for the sale and service of alcoholic beverages within the area, particularly where there was no proof that the additional facilities were required to satisfy the needs of residents in the immediate vicinity of the premises. It is also apparent that respondent was opposed to moving the licensed premises any closer to the private homes. Under the circumstances, it is not necessary for me to discuss the other reasons given by the respondent for its failure to grant the transfer.

The reasonable inference to be drawn from the testimony is that a portion of appellant's business comes from persons who do not reside in the immediate neighborhood and that the enlargement of his premises would tend to further increase this business.

There is nothing in the record before me to show that the Township Committee has abused the discretionary authority vested in it by the Alcoholic Beverage Law. Its decision seems to have been based upon a fair consideration of all of the issues involved. It appears to have weighed the advantages of the transfer to the licensee against that of the public welfare. My proper function on appeals of the character now before me is not to substitute my opinion for that of the issuing authority, but rather to determine whether the decision of the latter may reasonably be supported and, if so, to affirm.

Appellant, having failed to sustain the burden of proving that the action of respondent was arbitrary and unreasonable, the decision of the latter will be affirmed.

Accordingly, it is, on this 1st day of June, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

THE COZY TAVERN, INC.)
T/a COZY TAVERN)
Boonton Road)
Wayne Township)
P. O. Mountain View, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-26, issued by the Township Committee of the Township of Wayne.)

Edward G. Weiss, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded not guilty to the following charges:

"1. On Saturday night, January 15, 1944, and later during the early hours of Sunday morning, January 16, 1944, you sold alcoholic beverages at your licensed premises to Lawrence ---, Joseph --- and Thomas ---, minors, in violation of R. S. 33:1-77.

"2. On the aforesaid occasions, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages at your licensed premises to Lawrence ---, Joseph --- and Thomas ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20."

The minors, aged seventeen, fifteen and eighteen years, respectively, made several visits, on January 15, 1944, to other licensed premises, resulting in charges against two other licensees. In one of these places, at least one of the minors was involved in the theft of a lady's handbag. From their testimony, it is apparent that they had visited other places and had had several drinks of alcoholic beverages before their alleged first visit to the licensee's place of business.

A careful review of the record discloses many discrepancies in the testimony of the minors. Joseph --- stated he was not certain whether he was in the Cozy Tavern once or twice during the evening in question and stated, on cross-examination, that he "might have had" birch beer and was "not sure about beer." Thomas --- stated that while he picked out Paul Chesney as the one who had served him, "I would not say I could identify him as the one served me", and further stated, "I said that looked like the man; but I still say I would not swear to it." Lawrence --- testified that he could not identify the person who had served him. When asked as to what he was served he said, "I guess it was beer; but I will not swear to it."

He further stated, "I was tired all night and don't recall what happened." The alleged sales of alcoholic beverages were not otherwise corroborated. The case, therefore, presents a square conflict between the testimony of the three minors and the testimony given by various credible witnesses produced by defendant.

Paul Chesney, President of defendant corporation, testified that he was at defendant's place of business all evening and did not recall seeing the boys in the place. His testimony is supported by that of other witnesses, one of whom is a public official of the municipality, and none of whom appears to be interested in any way whatever. Further, Edward F. Davis, an employee of the licensee, testified that he and Paul Chesney were working that evening and that each took care of one section of the bar; that he tended that section where hamburgers were served; that during the evening, Thomas ---, one of the minors, came in and asked him for three hamburgers and a glass of birch beer, which he served him; that he knows who Thomas --- is, as they live on the same street, and that he had seen him on occasional visits in the licensee's place of business.

Licensee has no prior record. After considering all of the testimony, I conclude that the Department has failed to sustain the burden of proof necessary to warrant a finding of guilt and, for that reason, the charges should be dismissed.

Accordingly, it is, on this 2nd day of June, 1944,

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

3. LICENSEES - EMPLOYEES - POLICE OFFICER DISQUALIFIED FROM BEING PART-TIME BARTENDER ANYWHERE IN THE STATE.

May 31, 1944

Dear Mr. Kennedy:

I have your letter of May 25th in which you state that you are a police officer in _____ City and that you wish to be advised as to the "necessary permit" to work as a part-time bartender in _____ municipality.

I appreciate your sincerity in writing to the Department in this matter. However, the truth is that, being a regular member of a police force in this State, you are necessarily disqualified from working at any liquor premises in New Jersey, even outside the municipality where you are serving as police officer. Sound reasons of public policy demand such a rule. For some of these reasons see Re DuPree, Bulletin 156, Item 11. There is no permit which I or anyone else can give you which will remove this disqualification.

In net, you must choose whether you wish to continue as a police officer or want to become a bartender. You cannot be both.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

4. APPELLATE DECISIONS - VASTO v. ATLANTIC HIGHLANDS.

COSMO VASTO,)
)
 Appellant,)
)
 -vs-)
)
 BOROUGH COUNCIL OF THE)
 BOROUGH OF ATLANTIC HIGHLANDS,)
)
 Respondent.)
 - - - - -)

ON APPEAL
CONCLUSIONS AND ORDER

Frankel & Frankel, Esqs., by Charles Frankel, Esq.,
 Attorneys for Appellant.
 Snyder, Roberts & Pillsbury, Esqs., by John M. Pillsbury, Esq.,
 Attorneys for Respondent.

BY THE COMMISSIONER:

This appeal is from the refusal to renew a plenary retail consumption license for premises located at 179 First Avenue, Atlantic Highlands, where appellant has conducted a licensed business since July 12, 1939. Upon the filing of the appeal, the license for the fiscal year 1942-43 was extended pursuant to the provisions of R. S. 33:1-22.

Respondent contends that its action was proper because the licensed premises were improperly conducted during the year 1942-43.

It lies within the sound discretion of an issuing authority, as limited by the Alcoholic Beverage Law and the State Regulations, to determine whether an applicant is worthy of a renewal license; for no licensee enjoys a vested right to a renewal. American Legion v. Beverly, Bulletin 200, Item 14. However, the determination must be founded upon substantial grounds. Jones v. Absecon, Bulletin 218, Item 1.

Where a license has been renewed from year to year, and where no disciplinary proceedings have been instituted for alleged misconduct during the current license year, and the licensee has been thereby encouraged to make a substantial investment in the business, common fairness requires that the refusal to renew be supported by valid reasons.

The witnesses produced by respondent testified that they had observed intoxicated persons in the vicinity of appellant's premises and that they had heard unnecessary noises consisting of loud talking and profane language in the licensed premises. A licensee is responsible for conditions in and outside of his licensed premises which are caused by his patrons. Conte v. Princeton, Bulletin 139, Item 8.

Appellant testified, however, that he conducted his licensed premises in an orderly manner. He admits that on two occasions he called members of the local police department to eject certain patrons who refused to leave after they were ordered to do so. On behalf of the appellant, a number of persons who live in the immediate vicinity testified that they had heard no objectionable noises emanating from the tavern and that the licensed premises were properly conducted. There is no direct evidence linking the appellant or his premises with the alleged intoxicated persons. The licensee appears to have cooperated with the local police.

Appellant has held a license for four years, and no charges of any kind have apparently ever been preferred against him. The licensee has been operating for a substantial period under the extension of his license, and no complaints have been called to my attention during that time as to the manner in which the premises have been conducted. Appellant has paid the respondent the full fee for the present fiscal year.

After considering all the evidence on this appeal, I have concluded to reverse the action of the respondent and to order it to issue a license to the appellant for the present fiscal year. Appellant has thus been given a further opportunity to demonstrate his worthiness to hold a license. Freeland v. Roselle, Bulletin 352, Item 5; R & F Inc. v. Teaneck, Bulletin 467, Item 3. The conclusion which I have reached herein applies merely to the renewal for the present license year. Respondent will have a full opportunity to consider the manner in which the premises have been conducted for the current year and, in the exercise of its reasonable discretion, to determine whether it is warranted in further renewing the license if and when an application is filed for renewal of the license for the fiscal year beginning July 1, 1944.

Accordingly, it is, on this 2nd day of June, 1944,

ORDERED, that the action of respondent be and it hereby is reversed, and respondent is directed to issue to appellant a license for the present fiscal year as applied for.

ALFRED E. DRISCOLL,
Commissioner.

5. APPELLATE DECISIONS - WRIGHT v. GLOUCESTER TOWNSHIP.

EDWARD F. WRIGHT,)
trading as WRIGHT'S CAFE,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF GLOUCESTER)
(Camden County),)
Respondent.)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Harry H. Teitelman, Esq., Attorney for Appellant.
George D. Rothermel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the refusal to renew a plenary retail consumption license for premises located a short distance north of Church Street on the west side of Black Horse Pike in Gloucester Township, Camden County, New Jersey, where appellant has conducted a tavern since December 12, 1933.

In 1937 the Township Committee, by appropriate action, limited the number of plenary retail consumption licenses that may be outstanding in the Township to twelve. Nine plenary retail consumption licenses were issued by the Township Committee for the current license year.

Respondent gives five reasons for its action denying the Wright application, which may be summarized as follows: (a) Petitions were filed with respondent requesting that said application be denied and at the hearing held June 28, 1943, numerous objectors appeared; (b) on two different occasions appellant was convicted of violations and, on a third occasion, appellant was acquitted by reason of the quantum of proof; (c) there have been various complaints, including complaints of excessive noise caused by orchestras and phonographic equipment at and after midnight, and complaints of various disturbances occurring in the licensed premises; (d) despite the fact that police authorities called his attention to these complaints, appellant has in fact refused and neglected to show any spirit of cooperation.

It lies within the sound discretion of an issuing authority, as limited by the Alcoholic Beverage Law and the State regulations, to determine whether an applicant is worthy of a renewal license; for no licensee enjoys a vested right to a renewal. Zicherman v. Newark, Bulletin 227, Item 7. However, where a license has been renewed from year to year, the determination not to renew should be founded upon valid and substantial grounds supported by the weight of the evidence.

The petitions of the objectors are general in character. They contain 123 names. The petitions filed by the appellant contain 133 names. Unless petitions are supported by competent evidence, they can be given little weight.

Appellant has held a license (granted each year by the Township Committee -- until July 1, 1943) since Repeal. His premises are located in a block of about ten stores situated on the west side of the Black Horse Pike, a short distance north of Church Street. The neighborhood may be described as being of a mixed business and residential character, primarily devoted to business on the Black Horse Pike with the residences located on the side streets.

On behalf of the respondent, five residents of the Township testified as to alleged conditions in and near the licensed premises. One of these residents, who lives about 250 to 300 feet from appellant's premises, testified that he has been disturbed by noise, which consists of loud talking, loud laughter and applause. This witness admits that during the year prior to the hearing there was no orchestra on appellant's premises. A second resident testified that she has always been against the liquor business* and that she personally dislikes Mr. Wright. A third resident testified that she objects primarily to the business itself and she objects further to the licensed premises being open until 2:00 A.M., which is the legal

*Objections to the liquor industry per se are not relevant to the issues raised by this appeal. Objections of this character should be addressed to the municipal issuing authority, which, in the exercise of its sound discretion, may determine, in the first instance, whether licenses should be granted within the municipality. Once a municipality has determined to issue liquor licenses, it is bound by the rules of fair play.

closing hour fixed by the respondent municipality.* A fourth resident testified that she objects to the noise especially on Friday and Saturday, but admits that the music box "has been very much cut." A fifth resident testified that he found an intoxicated man some distance from appellant's premises but was unable to state the man had come from Wright's Cafe.

Halsey Cade, a member of the Township Committee, testified that after Mr. Wright had promised that he would eliminate the objectionable noise, the members of the Committee received further complaints (at unspecified times --- and apparently not a matter of record) from residents on the same subject. Raymond N. Howard, who has been a member of the Township Committee since January 1, 1943, testified that he received numerous complaints of excessive noise emanating from the licensed premises. Neither of the Committeemen appeared to have had any personal knowledge supporting the complaints. Nor is there any evidence in the record that any action was taken by the local police as a result of any of these complaints.

On behalf of appellant, the licensee and his wife testified that, following receipt of the complaints, the orchestra and floor show were discontinued in July of 1942, and that since that time the music box has been shut off at twelve midnight. The wife of the licensee testified that her neighbors have never made any complaint of objectionable noise emanating from the tavern. A woman who lives above the premises testified that she had never heard any fights or disturbances downstairs and that the sound of the music box was no "different than a radio next door." Another witness, who lives two squares from appellant's premises, testified that she had never observed any disturbances or heard any objectionable noise.

The evidence presented on the question of the music and noise, while perhaps sufficient to subject the license to a special condition limiting the hours when the music box may be played, standing ~~alone~~ and taking into consideration the character of the immediate neighborhood, does not appear to be sufficient to warrant a denial of the application to renew.

*R. S. 33:1-40 provides: "The governing board or body of each municipality may, as regards said municipality, by ordinance, limit the number of licenses to sell alcoholic beverages at retail.***" The same section also provides: "The governing board or body of each municipality may, as regards said municipality, by ordinance ***, limit the hours between which the sale of alcoholic beverages at retail may be made, prohibit the retail sale of alcoholic beverages on Sunday***." (Emphasis ours). Municipalities have been urged by the Commissioner to adopt earlier closing hours where local conditions warrant this action.

In February of 1938* appellant's license was suspended by the local issuing authority for a period of thirty days for selling alcoholic beverages in violation of the local ordinance. On June 29, 1942* appellant's license was again suspended by the local issuing authority for a period of thirty days for the same type of violation. Notwithstanding these violations, respondent renewed appellant's license for 1942-43. During the 1942-43 license year, appellant was charged* with selling alcoholic beverages to a person actually or apparently intoxicated. On May 19, 1943 the respondent found the licensee not guilty of the charge.

The respondent, in June of 1942, following the licensee's second conviction, had the choice of suspending or revoking appellant's license. Likewise, the respondent, when it was called upon to pass on the fitness of the appellant to hold a license for 1942-43, might well have refused to renew appellant's license. The finding that violations of the liquor law or regulations have been committed during the preceding license year is sufficient to justify denial of renewal. Kaplan v. Newark, Bulletin 269, Item 6; Beam v. Caldwell, Bulletin 380, Item 3. But the respondent, instead of denying the renewal for 1942-43 when it had an opportunity to do so, granted the license.

The violations by the licensee in 1938 and 1942 are not sufficient cause for denial of the application for the license for the year 1943-44, since renewals were granted by the respondent despite these violations. Zicherman v. Newark, supra.

The respondent may not now rely upon the previous violations after having condoned them. On the other hand, if the previous violations were coupled with a new violation, either of the same or a different kind, during the 1942-43 license year, it would have been proper for the respondent to consider the old violations along with the new as part of the proof of general unworthiness. Thus, if the licensee had been found guilty in the 1943 disciplinary proceedings, instituted at the request of the Department, respondent would have been fully justified in refusing to renew the license for the current year. In view of the fact that the licensee was found not guilty, that door was closed by the respondent.

The appellant has a poor record, one that I do not condone. I have repeatedly urged municipalities to deny renewal to licensees where previous convictions for violating the Alcoholic Beverage Law and the regulations demonstrate their unworthiness to hold a license. In the instant case, however, a renewal license having been issued by the respondent for the 1942-43 license year, the licensee must be judged on his conduct subsequent to the renewal.

The conclusion which I have reached herein with respect to the appellant's conduct subsequent to renewal in June of 1942 is limited to the renewal for the present fiscal year. In other words, the appellant has been given one more opportunity to demonstrate his worthiness to hold a license. The objectors are privileged to request respondent to institute disciplinary proceedings whenever the facts warrant and they may, of course, object to the renewal for the next license year if unsatisfactory conditions have resulted from the continued operation of appellant's place of business.

*These proceedings were brought at the request of the State Department of Alcoholic Beverage Control.

Accordingly, it is, on this 5th day of June, 1944,

ORDERED, that the action of respondent in refusing to renew plenary retail consumption license for the year 1943-44 to Edward F. Wright, trading as Wright's Cafe, for premises located on the west side of Black Horse Pike in Gloucester Township, be and the same is hereby reversed, and respondent is directed to issue forthwith the license applied for by appellant.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE, IN VIOLATION OF R. S. 33:1-52 - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
PETER PAUL LAGOMARSINO, JR.
101 Clements Bridge Road
Barrington, N. J.,
Holder of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Barrington, and transferred during the pendency of these proceedings to
PETER PAUL LAGOMARSINO, JR. and
JOSEPH MOSCONI, t/a THE BARRINGTON CAFE,
for the same premises.

CONCLUSIONS
AND ORDER

Vincent DeP. Costello, Esq., Attorney for Defendant-Licensee.
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to charges alleging that (1) he falsified his application for a plenary retail consumption license by concealing the fact that Joseph Mosconi was an equal partner in the said licensed business; (2) that said Joseph Mosconi was paid fifty per cent of the profits derived from the said business, in violation of R. S. 33:1-25; and (3) ever since August 8, 1934 he knowingly aided and abetted Joseph Mosconi to exercise the rights and privileges of the license, in violation of R.S. 33:1-52.

An investigation by agents of the Alcoholic Beverage Control Department revealed that defendant and one Joseph Mosconi, who became a resident of New Jersey in 1934, were operating the licensed premises as partners, which fact had not been disclosed in the application for the current license. Reports of the investigators and data obtained show, among other things, that both the defendant and Mosconi share profits equally, and checks drawn on the bank wherein the business account is maintained require the signatures of both defendant and Mosconi.

The local issuing authority has notified me that, on May 18, 1944, the license was transferred to both defendant and Mosconi. Even though the proper correction appears to have been made, it does not excuse the violation of the law. The license issued to the present licensees is still subject to suspension.

Inasmuch as the defendant has no previous adjudicated record, a minimum suspension of the license for ten days will be imposed herein.

Accordingly, it is, on this 6th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued by the Borough Council of the Borough of Barrington to Peter Paul Lagomarsino, Jr., for premises 101 Clements Bridge Road, Borough of Barrington, and transferred during the pendency of these proceedings to Peter Paul Lagomarsino, Jr. and Joseph Mosconi, t/a The Barrington Cafe, for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A. M. June 12, 1944, and terminating at 1:00 A. M. June 22, 1944.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS ON ELECTION DAY, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
THE SYLVAN INC.
T/a THE SYLVAN
Sylvan Avenue & Dillingham Place
Englewood Cliffs
P.O. Coytesville, N. J.,
Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Englewood Cliffs.

CONCLUSIONS
AND ORDER

William Greenberg, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to a charge alleging that, on Tuesday, May 16, 1944, Primary Election Day, it sold alcoholic beverages while the polls were open for voting, in violation of Rule 2 of State Regulations No. 20.

In the absence, as here, of any previous record or any aggravating circumstances attending the violation, the normal penalty of fifteen days will be imposed. Five days will be remitted for the guilty plea, leaving a net suspension of ten days. Re Albeitz, Bulletin 595, Item 5.

Accordingly, it is, on this 6th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued by the Borough Council of the Borough of Englewood Cliffs to The Sylvan Inc., t/a The Sylvan, for premises Sylvan Avenue and Dillingham Place, Englewood Cliffs, be and the same is hereby suspended for a period of ten (10) days, commencing at 4:00 A. M. June 12, 1944 and terminating at 4:00 A.M. June 22, 1944.

ALFRED E. DRISCOLL
Commissioner.

8. APPELLATE DECISIONS - MALAGA v. CLARK TOWNSHIP.

JACK MALAGA,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE)	
TOWNSHIP OF CLARK,)	
)	
Respondent)	

George R. Sommer, Esq., Attorney for Appellant.
David Armstrong, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a decision by the Board of Commissioners of the Township of Clark finding the appellant guilty of charges alleging that the licensed premises were, on November 21, 1943, open at 3:08 A. M. Eastern War Time, and again on November 21, 1943, at 4:30 A. M. Eastern War Time, in violation of Section 8 of a local ordinance, as amended, regulating the sale and distribution of alcoholic beverages. On January 13, 1944 the respondent Board suspended the appellant's license for the balance of its term (a period of 151 days), effective February 1, 1944.

The pertinent provisions of Section 8, as amended, are as follows:

"No licensee shall serve, deliver or allow, permit or suffer, the sale, service or delivery of any Alcoholic Beverage, or allow the consumption of any Alcoholic Beverage on licensed premises on New Year's Day between the hours of 5 A.M. and 9 A.M. On all other days between the hours of 3 A.M. and 7 A.M. During the hours that Sales, Service, Delivery and consumption of All Alcoholic Beverages are prohibited, the entire licensed premises shall be closed.***"

Two police officers of Clark Township testified that, on the morning in question, they were inspecting taverns and, when they arrived at appellant's place at 3:08 A. M., they noticed there were five lights burning downstairs. They opened the door leading to the barroom and noticed a woman, evidently an employee, standing inside. They inquired of her why the place was not closed. She replied that the licensee was "down below" (on the highway) where a fight was in progress. The officers proceeded to the scene of the fight and found the licensee. Acting upon a complaint, the officers took one of the participants in the fight to the Rahway Police Headquarters. The licensee appeared there shortly thereafter, at which time the

officers gave him a summons for an "after hours" violation. The officers later decided to recheck the appellant's place of business and arrived there about 4:30 A. M. when, they report, they found the front door open and the licensee there with two women and a man. These were later identified as two employees of the licensee and the husband of one of them. The licensee told the officers that he was waiting for them as he had 'phoned the residence of one of the officers to ascertain why he had received a summons and, while he was waiting for the officers, he decided to have some coffee. The officers testified that they gave the licensee an additional summons and left the premises.

The licensee testified that he left the licensed premises about 2:45 A. M. to investigate a disturbance down the road and had told one of his employees to close the place. He admits going to the Rahway Police Headquarters and, while there, receiving a "ticket" from one of the officers. He then returned to his place, which he states was closed at the time, and found his two employees with the husband of one, waiting for him in his living quarters. He testified that he then noticed what the summons was for and telephoned the home of one of the officers to ascertain if a mistake had not been made; and that he was advised by the officer's wife that she would send her husband around as soon as he came home. The licensee testified further that he decided to make some coffee while waiting for the officers and that he and his party were in the kitchen when the officers arrived about 4:00 A. M.; that he unlocked the front door and admitted them. He denies that the licensed premises were open after 3:00 A.M. and alleges that no intoxicating beverages were sold after that hour. In this respect his testimony is supported by that of his employees.

The primary purpose of closing-of-premises requirements in municipal regulations is to provide effective enforcement against sale, service, delivery and consumption of alcoholic beverages on the licensed premises during designated hours. Under the evidence in the instant case, this primary purpose of Clark Township's closing hour provision was not violated by the appellant, his employees or agents. According to the evidence herein, no alcoholic beverages were sold, served, delivered or consumed on the licensed premises after the established closing hour. Furthermore, the peculiar circumstances here present -- the fight "down the road" with its naturally attendant excitement and the developments thereafter -- indicate that the appellant's premises may not have been kept open in deliberate intentional violation of the closing requirement or in attempted circumvention thereof. At the same time, and strictly, the evidence herein shows that the front door of the licensed premises was not locked, at least on the first occasion when the police officers called at 3:08 A.M. on November 21, 1943. In Re Scudder, Bulletin 108, Item 1, the Commissioner approved the following definition for closed premises: "one where all doors are locked, the lights are out and no patrons are in the place or on the premises connected therewith." The definition is clear-cut and should be understandable to enforcement officers and licensees alike. It meets with my approval. I am unable to conclude, therefore, that the Board of Commissioners was unjustified in finding the appellant guilty of violating the "closing" requirement of the Township ordinance and, in this respect, I shall affirm the conviction.

Appellant also contends that the penalty is excessive. The licensee has a record of two prior convictions. One involved a "front" (see Bulletin 464, Item 7). In the other proceeding the local Board, on July 19, 1943, suspended appellant's license for five days for selling during prohibited hours. This, therefore, is the third offense and, while the violation in question was of the character

described, nevertheless the municipality was justified in imposing a substantial penalty. As hereinbefore stated, the penalty imposed by the municipality was suspension for the remainder of the license period or, in effect, 151 days. When this appeal was filed, I entered an order staying the suspension until further order. R. S. 33:1-31.

I hesitate to moderate any penalty inflicted by any issuing authority, and will do so only in those cases where it clearly appears that the suspension imposed is excessive. The penalty imposed herein appears to be unduly harsh in view of the circumstances of the offense. Allowing reasonable latitude for differences of opinion, forty-five days would appear to be a sufficient suspension. I shall, therefore, modify the penalty imposed by the local issuing authority and impose a suspension of the license for a period of forty-five days.

The present license will expire by its terms before the expiration of the suspension herein imposed.

Accordingly, it is, on this 6th day of June, 1944,

ORDERED, that the action of respondent in finding licensee guilty is affirmed; and it is further

ORDERED, that the penalty heretofore imposed be and the same is hereby modified to commence at 3:00 A.M. June 12, 1944, and to continue in effect until the expiration of the present license at midnight on June 30, 1944; and it is further

ORDERED, that if any license be issued to this licensee or to any other person for the premises in question for the fiscal year 1944-45, such license shall be subject to said suspension until 3:00 A. M. July 27, 1944.

ALFRED E. DRISCOLL
Commissioner.

9. MORAL TURPITUDE - CRIME OF LARCENY FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)
Case No. 339.)
-----)

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

After several minor arrests as a juvenile delinquent, petitioner was convicted, in May 1931, of assault and battery and attempted highway robbery and was placed upon probation for one year. In June 1934 petitioner was convicted of the crime of larceny on two separate complaints involving the theft of several automobile tires and tubes valued at \$42.50. He was sentenced to the reformatory for one year and released after he served about nine months of that sentence.

The seriousness of the crime of larceny of which petitioner was convicted as aforesaid is evidenced by the severity of the sentence imposed upon him by the court. This crime involves the element of moral turpitude.

Since the latter conviction, petitioner has not been concerned in any further difficulties with any law enforcement agencies. The chief of police of the municipality in which the petitioner resides has advised that there are no pending complaints or investigations against him.

After his release from the reformatory, petitioner obtained employment as a crane operator and is still so employed. Three responsible businessmen, who have known petitioner for upwards of nine years, testified that he is sober and industrious and bears a good reputation in his community for being an honest and law-abiding citizen. He is married and maintains a home for his wife and three children.

In view of the foregoing, it appears that petitioner's association with the alcoholic beverage industry will not be detrimental to the public interest. The prayer of the petition will, therefore, be granted.

Accordingly, it is, on this 6th day of June, 1944,

ORDERED, that petitioner's disqualification resulting from the conviction as aforesaid be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

Alfred E. Griswold
Commissioner.