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

BULLETIN NUMBER 190 JUNE 28, 1937.

1. SPECIAL PERMITS - NOT ISSUABLE AS A SUBSTITUTE FOR A REGULAR LICENSE - HEREIN OF ACCOMMODATIONS FOR THE PRESS INCIDENT TO THE TRAINING OF A CHAMPION.

June 17, 1937.

Dear Sir:

Regarding Liquor License No. C9, Lola Bier, 75 Perrin Avenue, Pompton Lakes, N. J. -

Mrs. Bier operates a training camp and the bar is only opened while the camp is in use. She does not feel she wants to take out a license for the full year and asks for a seasonal license.

Our ordinance does not provide for seasonal licenses and the Mayor and Council are not inclined to amend the ordinance. Mrs. Bier advises us sometime this fall she is going to have Joe Louis train at her camp and the newspaper men and the management demand that the bar be used in this connection. She has an idea she can apply directly to you for the permit to be used during the period the camp will be in use.

I would appreciate hearing from you in this regard.

Very truly yours,

ARTHUR T. RIEDEL
Clerk

June 24, 1937.

Arthur T. Riedel, Borough Clerk,
Pompton Lakes, New Jersey.

Dear Mr. Riedel:

I have yours of the 17th.

Mrs. Bier has the wrong idea if she thinks I am going to cut under your Mayor and Council. Special Permits are not granted to individuals for private profit (Bulletin 92, Item 1) or in cases tantamount to a regular license (Bulletin 118, Item 4).

If Mrs. Bier desires to quench the insistent thirsts incident to the training of a world's champion, why doesn't she renew her present plenary license? Not all newspaper men are teetotalers! The fee would seem comparatively negligible in view of the alleged importunities of the press and the progressive management. At least Mrs. Bier should have a reasonable chance to break even. Many would be willing to stake even more on the Brown Bomber.

Very truly yours,

D. Frederick Burnett
Commissioner

2. APPELLATE DECISIONS - CORADO v. CAMDEN.

FRANK CORADO,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF CAMDEN and FRANK MAIESE,)
Respondents)

Herbert J. Koehler, Esq., Attorney for Appellant.
Edward V. Martino, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control of the City of Camden.
William B. Knight, Jr., Esq., Attorney for Respondent Frank Maiese.

BY THE COMMISSIONER:

The parties to this appeal and the premises in question are the same as those considered in an appeal under the same name reported in Bulletin 159, Item 13.

In accordance with the decision in the former case, a hearing was subsequently held by the Municipal Board of Alcoholic Beverage Control of the City of Camden. The attorney for appellant appeared at such hearing and stated that he would insist that the license was void, because not properly advertised in accordance with the statute, and that he would confine himself solely to that issue. Apparently he offered no testimony before that Board to sustain his client's original point "that the locality was amply supplied with licensed places of business." The Board thereupon decided that the objection which was urged was without merit.

On this appeal, appellant's contention is that the license was void because granted before second publication of the notice of intention. This is the only issue presented.

Respondent Maiese caused his notice of intention to be published on June 25, and July 3, 1936. Hence he complied with the statutory requirement. The minutes of the meeting of the local Board held on July 2nd, 1936 concerning Maiese's application read:-

> "This license approved this date but not to be issued until after second insertion in newspaper which will appear tomorrow, July 3, 1936."

The license certificate was not issued to Maiese until July 7, 1936.

In the absence of compliance with statutory requirements, a local issuing authority has no jurisdiction to grant a license. Where appellant failed to cause a notice of intention to be published, it was decided that no license could be issued. Rosania v. Readington, Bulletin 37, Item 3. So also, where notice of intention, as published, did not comply with rules and regulations. Trotto v. Trenton, Bulletin 46, Item 11; Methodist Episcopal Church v. Verona, Bulletin 101, Item 5. Nor can an issuing authority waive strict compliance with statutory requirements. Andreach v. Keansburg, Bulletin 73, Item 14.

The sole question presented by this case is whether the local Board had jurisdiction to approve the application prior but subject to the second newspaper insertion.

If there were a requirement in the Control Act that an application for a license should not be considered prior to second publication, then, of course, the local Board would have had no jurisdiction to approve the Maiese application on July 2nd. Dufford v. Nolan, 46 N. J. L. 87. There is, however, no such requirement. The object of the publication of notice of intention is to insure that anyone deeming good reason exists for the denial of the license may have the opportunity of filing objections and a chance to be heard. Re Novack, Bulletin 174, Item 6. Hence, if objectors are allowed a reasonable time after publication of the second notice in which to file their protests and, if they do, are afforded an opportunity to be heard before the license is actually issued, no one is harmed and the work of the local issuing authority is expedited. After all, their main function is to pass on the character and qualifications of the person and the suitability of the place. They cannot be expected to convene in daily sessions like a Court. If, after application is filed, they determine to approve it, there is no fair reason why they should not do so conditioned upon completion of the statutory requisites. I have heretofore approved such procedure. Re Garfield, Bulletin 92, Item 3; Re Hudson County Retail Liquor Stores Ass'n v. Terminal Wine and Liquors, Inc., Bulletin 127, Item 1; Re Novack, Bulletin 174, Item 6. In the latter case I devised a form of special condition, to be made a part of the municipal resolution, providing among other things, that the license which had been approved should not be actually issued until two whole days shall have elapsed after the second publication of notice of intention, but that if within such period or any time before the license is actually issued, an objection or protest is filed, the license shall not be issued until the further determination of the Board or governing body.

In the instant case the Camden Board held up the issuance of the license for four days after the second publication or twice the minimum time prescribed. No one has been injured. Appellant has had the opportunity on this appeal to present any objection he chose on the merits but he has contented himself with the invocation of a bare technicality to which there is no merit and in respect to which he has not been prejudiced. Cf. Meyers v. Plainfield, Bulletin 164, Item 2, and Dufford v. Hoagland, reported sub nom Dufford v. Nolan, 46 N. J. L. 87, at page 92, and Wilson v. Jersey City, 94 N. J. L. 119.

The action of respondent Municipal Board of Alcoholic Beverage Control of the City of Camden is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 24, 1937.

RETAIL TRANSIT LICENSES - SALES AND SERVICE ON TRAINS - THE EXTENT AND LIMITS OF THE PRIVILEGE CONFERRED.

Dear Sir:

We are receiving a considerable number of criticisms from our passengers on account of our refusing to serve liquor in the coaches and Pullman cars attached to our trains on which there is a licensed dining or club car.

In order to straighten me out in this matter will you kindly let me know if it is permissible in the State of New Jersey to serve alcoholic drinks from the licensed club or dining car to passengers occupying seats in the coaches or Pullman cars? In

other words, does the license issued to a club or dining car carry with it the privilege of serving alcoholic beverages to patrons in any other part of the train?

Yours truly,
P. A. Ellerman,
Supt. Dining Car Service,
Lehigh Valley Railroad Company.

June 24, 1937

Lehigh Valley Railroad Company,
Easton, Pa.

Att: Mr. P. A. Ellerman, Supt.
Dining Car Service.

Gentlemen:

The plenary retail transit license which you hold confers the privilege, subject to rules and regulations, to sell alcoholic beverages for consumption on railroad trains while in transit. The license covers for a single fee "all dining and club cars..... operated.....within the State of New Jersey."

The statute does not in express terms confine sales to dining and club cars. Specific mention of such cars, however, shows that the Legislature had such cars in mind as examples of the parts of the train where alcoholic beverages could be sold or consumed. Your inquiry makes it necessary to rule whether the license carries the privilege of serving alcoholic beverages in other parts of the train.

Using a club or buffet car as a sample:- Everyone who sits in such a car reasonably expects not only that passengers may smoke therein but also may drink. So, a person who has taken a drawing room or compartment, separated as it is in privacy from the rest of the passengers, may also reasonably have the same expectation. The private consumption of liquor in such drawing rooms or compartments in nowise offends the other passengers.

It is otherwise when liquor is served for consumption to passengers occupying seats in the coaches or open Pullman or parlor car seats. Service here is not only inappropriate to the place but might well become wholly obnoxious to fellow passengers. If one doesn't like it in a club car, he can retire to his own seat or berth in another car. But those in the coaches or open parlor cars have no other place to go.

I rule, therefore, that under your transit license you may sell or serve alcoholic beverages for consumption in club, dining and buffet cars, and also in drawing rooms or closed compartments in other cars, but that you may not sell or serve in any other part of your regular trains. You may, however, sell or serve in such other cars, the whole seating capacity of which shall have been specially chartered by some association or organization if its credentialed officials may desire such sale or service. The exception applies also in principle to special or private trains or cars chartered for the occasion.

This rule is effective immediately.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - WHOLESALERS - AIDING AND ABETTING UNLAWFUL SALES AND PURCHASING ALCOHOLIC BEVERAGES FROM UNLICENSED SOLICITORS.

In the Matter of Disciplinary Proceedings against

WHITE EAGLE DISTRIBUTING CO., 85 E. 21st Street, Bayonne, New Jersey,

Holder of Plenary Wholesale License No. W-68

CONCLUSIONS AND ORDER

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Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

Stephen F. Sladowski, Esq., and John J. Meehan, Esq., Attorneys for Licensee.

Stephen F. Sladowski, Esq., Attorney for C. M. & J. Realty Company, Owner of Licensed Premises.

BY THE COMMISSIONER:

Charges were served upon the above named licensee alleging: (1) that it did violate Section 50 of the Control Act in that it did knowingly aid and abet Reidemeister and Ulrichs Corporation, of New York City, in making unlawful sales of alcoholic beverages in the State of New Jersey in violation of Section 2 of the Control Act; (2) that it did place orders within this State for the purchase of alcoholic beverages with individuals not possessed of solicitors' permits in violation of Rule 7 of Rules Governing Solicitors' Permits.

As to (1): On January 9, 1937 Chester Kosakowski, Manager for licensee, gave a statement in writing to Investigator James Clinch, of this Department, with reference to business relations between Reidemeister and Ulrichs Corporation and White Eagle Distributing Co. Therein he stated:

> "About the middle of November 1936, Mr. Heidebrook, President of Reidemeister & Ulrich Corp., visited our premises at 85 East 21st Street, Bayonne, and made a proposition for us to handle their business in New Jersey. His salesman to do all the selling of their product and we would receive a copy of each sale when shipment was made and at the end of the month they would send a statement of all the sales together with a check in the amount of the Tax and a check for commissions. At no time have any of our salesmen taken orders for Reidemeister & Ulrichs Corp. all the solicitation for orders and sales were made by their salesman."

At the hearing Mr. Kosakowski testified that salesmen for Reidemeister and Ulrichs Corporation picked up the orders within this State; that delivery of the alcoholic beverages was made by White Eagle Distributing Co.; that such sales were billed to the purchaser by Reidemeister and Ulrichs Corporation and payment made directly to the latter concern; that New Jersey State taxes on such sales and a commission of fifty cents a case were subsequently paid by Reidemeister and Ulrichs Corporation to White Eagle Distributing Co., who in turn reported such sales as having been made by it and paid the New Jersey State taxes and retained the commission. This arrangement continued during the months of November and December 1936, and at that time Reidemeister and Ulrichs Corporation did not have a license in New Jersey.

The evidence shows that in fact the sales were not made by White Eagle Distributing Co. and that the arrangement was merely a blind to permit a non-licensee to effect sales within this State.

I find the White Eagle Distributing Co. guilty on the first charge.

As to the second charge, Mr. Kosakowski admitted in written statements, and also at the hearing, that in October 1936 Mr. Rosenberg, representing Sherwood Distilling Co., solicited a sale and obtained an order for alcoholic beverages at the licensee's premises. Sherwood Distilling Co. is not a New Jersey licensee, and Mr. Rosenberg did not possess a solicitor's permit. He admitted also that D. J. Capellupo, representing the Swiss Colony Vineyards, solicited from and received orders for alcoholic beverages from the licensee at the licensed premises over a period of three months. Swiss Colony Vineyards is not a New Jersey licensee, and Mr. Capellupo did not possess a solicitor's permit. He further admitted that in September 1936 Mr. M. G. Weil, representing Ownings Mills Dist., Inc., New York City, obtained an order from the licensee at the licensed premises. Ownings Mills Dist., Inc. is not a New Jersey licensee, and M. G. Weil is not the holder of a solicitor's permit. He further testified that in October 1936 a salesman representing Aliviri, Inc., New York City, solicited and obtained an order for alcoholic beverages from the licensee at the licensed premises. Aliviri, Inc. is not a New Jersey licensee and, hence, none of its salesmen could possess solicitors' permits. From this evidence it is clear that licensee is guilty on the second charge.

The only explanation given by the representative of the licensee with reference to placing the above orders was that the various salesmen assured him that he had nothing to worry about.

In fixing a penalty I am taking into consideration the fact that White Eagle Distributing Co. discontinued the arrangement with Reidemeister and Ulrichs Corporation when it was informed that such arrangement was illegal, and that it has also promised to insist that hereafter solicitors display a proper permit.

Accordingly, it is on this 24th day of June, 1937, ORDERED, that plenary wholesale license No. W-68, heretofore issued to White Eagle Distributing Co. by the Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended until the end of its term, effective June 27, 1937.

Since a penalty as severe as revocation is not indicated, no action will be taken against the licensed premises.

D. FREDERICK BURNETT,
Commissioner.

5. STATE LICENSEES - ACTIVITIES ON SUNDAY - CONFORMATION TO LOCAL SENTIMENT - CONDITIONS IMPOSED.

In the Matter of the Application of)
John Sacca, t/a Palmyra Beer Distributors, S. E. corner of New Jersey)
Avenue and Broad Street, Palmyra, New Jersey, for renewal of his State) RECOMMENDATIONS
Beverage Distributor's License.)
- -)

Julius Rosenberg, Esq., Attorney for Applicant.
No appearance by objector.

A written objection was filed by James J. Flynn, Sr. of Palmyra, to the renewal of this license. Therein he set forth that

notwithstanding the fact Palmyra is a "closed town" on Sundays - no amusements of any kind allowed - this licensee continues his business under the privileges allowed him by his State Beverage Distributor's License; that he loads and unloads beer trucks in a residential section to the accompaniment of much noise.

The objector, Mr. Flynn, did not appear to testify at the hearing held on Monday, June 21, 1937 at this Department.

However, testimony was taken from the applicant, John Sacca who admitted that he has been making a practice of loading and unloading beer on Sundays at his licensed place of business in Palmyra. He, however, denied that it was done with any degree of noise and disputed the charge that his business is in a residential section of Palmyra. On the contrary, he testified that truck loadings were confined within the yard of his licensed business which is located close to the railroad station, where, he alleges, the trains make a great deal more noise than he does. Mr. Sacca further stated he did not do a great deal of business on Sundays and was very careful to conscientiously abide by the resolution passed by the Borough Council and confined his sales and deliveries on Sunday outside of Palmyra.

The resolution referred to and in effect in Palmyra is as follows:

> "Be it Resolved that establishments for the retail consumption and retail distribution of alcoholic beverages be closed to all business on Sundays."

Hence, notwithstanding the fact that there is no testimony on the record due to the non-appearance of Mr. Flynn or any other objectors, to prove undue noises or the nature of the neighborhood in which the licensed premises are located, we are confronted with a situation where a protest has been filed by a citizen of Palmyra based upon the resolution above set forth. Mr. Flynn's written argument is that it is unfair to have this business activity continue on Sundays and in a residential section. There is no proof on the record as to the residential feature of the neighborhood containing the licensed premises except the testimony of the licensee that it is not of a high-class residential character. He pointed out the nearness of several factories and its close proximity to the railroad station. Our records also indicate that a license has been issued for that location since Repeal.

There is, however, much merit in the contention that it is unfair to citizens of Palmyra to have this alcoholic beverage activity in the licensed premises of Sacca even though all sales and deliveries are outside of Palmyra and notwithstanding the fact that the resolution is not legally effective against Sacca in the wholesale feature of his business.

It is the evident desire of the Borough Council of Palmyra to confine alcoholic beverage activity within its border to six days a week as evidenced by its resolution above. The wishes of the citizens of such a community should, in my opinion, always be afforded great weight in the interest of respect for law and proper control of the liquor traffic. And this should be so, even though some economic loss may thereby be suffered by this licensee. His personal interest must fall against the greater interests of the citizens of the community of Palmyra.

Consequently, I recommend that the license be granted to John Sacca, t/a Palmyra Beer Distributors, conditioned, however,

that all alcoholic beverage activity conducted under this license, be discontinued on Sundays from midnight to midnight.

Jerome B. McKenna,
Attorney.

June 24, 1937.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - PLENARY RETAIL DISTRIBUTION LICENSEE - AIDING AND ABETTING UNLAWFUL SALES.

In the Matter of Disciplinary Proceedings against

CHARLES E. VERNON, trading as C. E. VERNON'S PHARMACY, 75 Broadway, Newark, New Jersey,

Holder of Plenary Retail Distribution License No. D-82, issued by Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

Charles E. Vernon, Pro Se.

BY THE COMMISSIONER:

Charges were served upon the above named licensee alleging that he did violate Section 50 of the Control Act in that he did knowingly aid and abet Reidemeister and Ulrichs Corporation, of New York City, in making unlawful sales of alcoholic beverages in the State of New Jersey in violation of Section 2 of the Control Act.

Violations occurred between March 1936 and December 1936, and during that time Reidemeister and Ulrichs Corporation, of New York City, were not licensed to do business in the State of New Jersey.

The evidence shows that R. Heller, connected in business with R. Heller Co., then the holder of plenary wholesale license No. W-28, approached Mr. Vernon in the Spring of 1936 and requested him as a personal favor to agree to clear retail sales in New Jersey for Reidemeister and Ulrichs Corporation. Subsequently a representative of the latter concern called on Mr. Vernon and agreed to pay him a commission of One Dollar ($1.00) a case on any sales that were made in New Jersey by Reidemeister and Ulrichs Corporation and which would be cleared through Vernon and R.Heller Co. Agreement was confirmed by a letter dated March 14, 1936 and which was introduced in evidence.

Thereafter deliveries were made by Reidemeister and Ulrichs Corporation directly to consumers in New Jersey through licensed transporters but Heller reported such sales as having been made to him as a wholesaler and he in turn notified Vernon, who reported to the State Tax Commissioner that he had purchased these

items from R. Heller Co. and sold to said consumers. As a matter of fact, Vernon's only interest was in collecting his commission. He didn't know the people to whom the merchandise was sold; he never saw the merchandise; he never collected the money for the merchandise. Vernon testified that he saw nothing wrong with the transaction because Heller was paying the taxes due to the State of New Jersey.

The evidence clearly shows that Vernon was aiding and abetting Reidemeister and Ulrichs Corporation in making sales and deliveries in New Jersey, although they were not licensed to do business in this State. Hence I find Vernon guilty as charged.

In fixing a penalty I am taking into consideration the fact that the licensee, Vernon, promptly discontinued the arrangement after Investigator Clinch of this Department interviewed him on December 19, 1936.

Accordingly, it is on this 24th day of June, 1937, ORDERED, that plenary retail distribution license No. D-82, heretofore issued to Charles E. Vernon, t/a C. E. Vernon's Pharmacy, 75 Broadway, Newark, New Jersey, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for the period of three days, effective June 28, 1937.

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PROSTITUTION - OUTRIGHT REVOCATION PLUS TWO-YEAR DISQUALIFICATION OF PREMISES.

June 25, 1937

Albert E. Cowling, Esq.,
Borough Clerk,
Union Beach, N. J.

Dear Mr. Cowling:

I have staff report of the proceedings before the Borough Council of Union Beach against Emma Lerner, t/a Stone Tavern (formerly known as "Old Heidelberg"), charged with having permitted prostitutes to carry on their trade in the licensed premises and having permitted the licensed premises to be conducted as an "out and out" house of prostitution.

I note the licensee surrendered her license but notwithstanding that fact a hearing was held, an adjudication of guilt entered, the license revoked and the licensed premises rendered ineligible for a period of two years.

Of course, I can express no opinion on the merits of the case because it might come before me by way of appeal. However, I wish again, as I did only last month, to thank the members of the Council and its attorney, Ezra W. Karkus, Esq., for their prompt and effective action; also, your Chief and Captain of Police for cooperation. It would certainly appear that Union Beach is well rid of such a foul den of vice. The activities that have been going on in these licensed premises, both under the present licensee and her predecessors, Emma Davies and Edward I. Traphagen, should not and will not be tolerated.

The two-year disqualification is entirely right and proper in view of the history of this place. There is no use

temporizing with places of this kind. After a place remains vacant a couple of years, the landlord will be on his toes to see to it that a sink of iniquity is not allowed whatever the rent paid.

Stand by your guns and don't weaken.

The double-barreled action of your Council is a credit to Monmouth County and the State.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

8. LICENSES - ADVERTISING - LEGAL NEWSPAPERS - WHAT CONSTITUTES.

In the Matter of Application for a Club License by

PLAYERS BOAT CLUB, INC.,
925 River Road,
Fair Haven, New Jersey.

RECOMMENDATIONS

Ernest Otto, Appearing for Applicant.
John P. Ryan, Appearing for "Fair Haven Chat," a newspaper.

Written objections were filed to the granting of this application because, as alleged, notice of intention was not properly published.

It appears that a notice of intention was properly published in the "Red Bank Register," a weekly, published at Red Bank. Applicant published its notice of intention in the same paper in 1935 and 1936, without objection. Objector contends that there is a legal newspaper published in Fair Haven, known as "Fair Haven Chat," and hence that the publication already made was not in compliance with Section 22 of the Control Act. North Hudson Yacht Club, Inc. v. Edgewater, Bulletin 95, Item 1.

"Fair Haven Chat" was entered as second class mail matter in 1926 at Fair Haven Post Office. It is a weekly with paid circulation in Fair Haven of about two hundred. During the past year it maintained an office at 43 DeNormandie Avenue, Fair Haven, until about April 1937. During that period the paper was printed in Asbury Park but issued at its office. It is not disqualified solely because printed elsewhere. In Re East Orange, Bulletin 79, Item 12.

In April 1937 its office was removed to 799 River Road, Fair Haven, and it has been printed at and issued from that address since that time.

During the first quarter of 1937 it failed to publish two weekly issues. Chapter 208, P. L. 1936, provides, among other things, that a legal newspaper "shall have been published continuously for not less than one year." The "Chat" does not comply with that provision.

Objector relies on P. L. 1880, p. 100, as amended P. L. 1881, p. 58 and P. L. 1888, p. 175, providing as follows:

"Whereas, the publication of certain newspapers in this State has been temporarily suspended; and

whereas, such temporary suspension has been considered a bar to their right to publish the State and other legal printing; therefore, be it enacted:

"That such temporary suspension shall not be regarded as an invalidation of the legal age of said newspapers, but that upon their resumption of publication within twelve weeks of their suspension as aforesaid, such papers shall be considered, as to age, as dating from their first publication, and they shall be as fully entitled to the state and other legal printing the same as though such suspension had never occurred."

The above statutes affect only the age of newspapers which is not in question here. They refer, also, only to past suspension and are silent as to the effect of suspension after passage of the Acts . The meaning of Chapter 208, P. L. 1936 is clear and not in conflict with the earlier statutes. "Fair Haven Chat" is not a legal newspaper under provisions of the later Act.

It is recommended, therefore, that the objections filed shall not prevent issuance of the license applied for.

Edward J. Dorton,
Attorney-in-Chief.

Dated: June 25, 1937.

Approved:

D. FREDERICK BURNETT,
Commissioner.

9. APPELLATE DECISIONS - SHOR and REIBEL v. LINDEN.

MORRIS SHOR and MAX REIBEL, trading as SHOR'S PHARMACY,
Appellants,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF LINDEN,
Respondent

ON APPEAL
CONCLUSIONS

Louis Rakin, Esq., Attorney for Appellants.
Lewis Winetsky, Esq., Attorney for Respondent.
Henry F. Keiler, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellants appeal from the denial of a plenary retail distribution license for premises located at 101 North Wood Avenue, Linden.

The reason stated by respondent for denial was that there are a sufficient number of licenses in the vicinity for which the license is sought.

The answer states as additional reasons (1) that appellants, in 1932, sold liquor by improper prescription and were penalized therefor; (2) that circumstances existing in and upon the premises sought to be licensed were found to require the denial.

Considering first the additional reasons, it appears that Morris Shor was penalized $100.00 in 1932 by the Federal government when investigation disclosed that some liquor sold on doctors' prescriptions was not purchased by persons named in said prescriptions. At the hearing Shor insisted that he was innocent on said charge, but admitted that he had paid the fine. In view of numerous rulings that a single violation of the Prohibition law, where no aggravating circumstances are shown, does not involve moral turpitude, this matter is not sufficient to disqualify this applicant. There is abundant evidence that both Mr. Shor and Mr. Reibel are of good character.

The circumstances existing in and upon the premises are that the place is a drug store and that liquor will be displayed near a soda fountain. Suppose it is! What of it!! Liquor in a sealed package, so long as the cork is not drawn, never did any one any harm. The objection to licensing a drug store, none of which are presently licensed, is that drug stores are permitted to remain open on Sunday whereas all places licensed to sell liquor in Linden are required to close on Sunday. This objection has no force because if these premises were licensed then they, like all other licensed places, must close on Sunday. Peck v. West Orange, Bulletin 171, Item 10.

There remains to be considered the allegation that there are a sufficient number of licenses already issued in the vicinity. The evidence shows that distribution or package goods licenses have been issued for 120 North Wood Avenue and 228 North Wood Avenue, both nearby, and that the holder of a consumption license at 119 North Wood Avenue features the sale of package goods. Petitions containing seventy-four names in favor of and one hundred twenty-one names against the issuance of the license were presented to respondent. Appellant has shown that many objectors are competitors and that others have since withdrawn their objections. However, the weight to be given to petitions is within the discretion of the Board. Dunster v. Bernards, Bulletin 99, Item 1. Both members of the Board who voted against the issuance of the license testified that they had made their decision as a result of their own investigation. Considering the existence of the other nearby licensed places, I cannot say that respondent's determination on this issue was arbitrary or unreasonable. Rapp v. Linden, Bulletin 185, Item 9, and cases therein cited.

Appellant argues further that there were at one time three distribution licenses outstanding and that he is entitled to a license because now there are only two. Premises at 119 North Wood Avenue were formerly licensed for distribution but that license was cancelled and a consumption license issued to the same licensee. Said licensee still has the right to sell for off-premises consumption.

No new distribution licenses have been issued in Linden since June 1936, so that appellants cannot complain of discrimination.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 25, 1937.

10. APPELLATE DECISIONS - PALMAROZZA v. KEANSBURG.

JOHN PALMAROZZA,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
MAYOR AND COUNCIL OF THE BOROUGH OF KEANSBURG,)
Respondent)
- - - - - - - - - - - - - - - - - -)

John C. Giordano, Esq., Attorney for Appellant.
Howard W. Roberts, Esq. and John M. Pillsbury, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a transfer of a plenary retail consumption license covering premises located at 97 Carr Avenue to premises located at 127 Carr Avenue (corner of Carr Avenue and West Shore Street), Borough of Keansburg.

Carr Avenue is a wide thoroughfare leading from Seeley Avenue to the Beachway, a distance of approximately quarter of a mile or more. Intersecting it along this route are seven side streets, all narrow, four of which are through streets and three of which are dead-end at Carr Avenue. Because that avenue is the most important of the three business sections of the Borough and is also a main thoroughfare to the Beachway, a road which parallels the Keansburg boardwalk, its traffic problem during the summer months is very serious. Especially serious is the congestion in the narrow side streets where, when automobiles are parked on either side, insufficient room remains for a safe thoroughfare.

To alleviate this parking problem, the Borough has rigidly adhered for the last few years to the policy of permitting only one licensed place at any intersection of Carr Avenue. The same policy has been consistently followed not only in this congested area but also in the two other main business streets in the Borough, both of which parallel Carr Avenue and also lead into the Beachway.

The proposed premises being located at the intersection of Carr Avenue and West Shore Street, where a licensed place is already established, the respondent, in adherence to its established policy, denied appellant's application for a transfer.

Appellant contends that this policy is without force since not promulgated in the form of a resolution or ordinance. However, a valid municipal policy governing the location of licensed premises may be adopted without benefit of resolution or ordinance. See Patnick Bros. v. Belmar, Bulletin 45, Item 16; Dann v. Manasquan, Bulletin 37, Item 12. Undoubtedly, a municipal policy reasonably designed to control or curb traffic congestion is valid. See Welstead v. Matawan, Bulletin 133, Item 2; Reed v. Way, Bulletin 78, Item 2.

Appellant contends that the policy against more than one licensed place at an intersection is unreasonable since it has not prohibited the concentration of several licensed premises near (though not at) the important intersection of Beachway and Carr Avenue. However, that intersection does not present the peculiar type of traffic problem which respondent's policy is designed to correct, namely, the problem of parking on the narrow side streets which lead into Carr Avenue. The Beachway is a wide

and important thoroughfare into which Carr Avenue runs, and the intersection of those two streets is specially policed by several traffic officers during the summer. The intersection of Carr Avenue and West Shore Street presents an entirely different situation.

Appellant similarly contends that the policy is unreasonable because it does not limit the number of licensed premises elsewhere on Carr Avenue and thus does not eliminate the traffic problem on the side streets. This argument, however, relies upon a non sequitur. The policy of disapproving of more than one place at an intersection on Carr Avenue does not require that an application for a license elsewhere on the avenue must be granted. Respondent, in its discretion, may still deny an application for any location on the ground that the proposed premises will create an undue traffic hazard. See Welstead v. Matawan, supra; Reed v. Way, supra. The policy with reference to intersections is merely a handy and a general rule, soundly based in reason.

Appellant fails to show that the policy is unreasonable, or that it has been unreasonably or arbitrarily applied with reference to his application, or that the public necessity and convenience require the policy be disregarded.

In view of the foregoing, it is unnecessary to consider the other reasons assigned by respondent in justification of its denial.

The action of respondent is therefore affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 25, 1937.

11. LICENSE APPLICATION HEARING - RE MANASQUAN RIVER YACHT CLUB.

In the Matter of the Application of MANASQUAN RIVER YACHT CLUB of Brielle, N. J. for a Club License, to the Commissioner, under Section *18A of the Control Act.) CONCLUSIONS

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Owen C. Pearce, Esq., Attorney for Applicant, Manasquan River Yacht Club.
Mrs. T. T. Tutcher, Mrs. Edith Mahle, Mrs. Chas. R. Pelgram, Miss Edith Fischer, Mrs. T. T. Fischer, Frederick N. Watts, Henry D. Scudder, Edward A. Carpenter, Mrs. Albert H. Ellis, Richard N. Watts, Objectors, Pro Se.

BY THE COMMISSIONER:

This application for club license is made to the Commissioner because several of the members of the Borough Council of Brielle are members of the applicant, Manasquan River Yacht Club, which is located in that Borough. P. L. 1934, c. 44.

Applicant has failed to obtain from the Borough Council a resolution showing no opposition by that body to the granting of license. Bulletin 75, Item 13. To the contrary, the Borough Council has passed a resolution expressly opposing the present application.

I have several times ruled that a resolution by the local authorities opposing an application for a license which has been made to me is cause for denial of that application if the resolution is founded in reason. Re Cranford Veterans Holding Company, Inc., Bulletin 126, Item 11; Re Woodstown Lodge of Moose, Bulletin 107, Item 4; Re Passaic Lodge of Elks, Bulletin 95, Item 4; Re Cranford American Legion Holding Co., Inc., Bulletin 83, Item 3; and cf. Bulletin 86, Item 9.

The resolution adopted in disapproval of the present application recites that it is predicated upon a prior resolution of November 30, 1934. That prior resolution declares that for the public good of the Borough no additional liquor licenses shall be issued. At that time there was outstanding in the Borough eight plenary retail consumption licenses, one plenary retail distribution license, and one club license.

Applicant contends that the 1934 resolution has been disregarded on individual occasions subsequent to its adoption and is therefore being arbitrarily and discriminatorily applied to applicant. Applicant points out the case of the Manasquan River Golf and Country Club. The records of this Department, however, show that a license was first issued to that club in May, 1934, or six months before the limiting resolution. The Mayor and two members of the Borough Council testified that the resolution of 1934 has always been strictly adhered to.

However, even if the 1934 resolution has been violated in individual instances in the past, the undisputed testimony shows that the Borough Council is now firmly committed to the policy and belief that the licenses now outstanding are entirely sufficient for the municipality and that additional licenses will be socially undesirable. Cf. Crisonino v. Bayonne, Bulletin 101, Item 6. The right of a municipality to refuse to issue a license where a sufficient number has already been issued, even in the absence of a formal limitation of number of licenses to be issued, is settled. Dunster v. Bernards, Bulletin 121, Item 11; Haycock v. Roxbury, Bulletin 101, Item 3, and cases therein cited.

A municipal resolution or policy restricting the number of licenses for sale to the public is valid if reasonable, and the burden falls upon a contestant of that resolution or policy to show that it is unreasonable. Bell's Drug Store, Inc. v. Cranford, Bulletin 141, Item 12. The shoe is on the other foot, however, in the case of a club license. Villaalba v. Trenton, Bulletin 41, Item 5; Woodrow Wilson Democratic Club, Inc. v. Passaic, Bulletin 56, Item 3. The burden has been sustained.

The Borough of Brielle is a residential community with a winter population of approximately 800 and a summer population of approximately 1,600 or 1,700. There are no more than 10 stores in the community, all located near each other on a main highway through the Borough. The club is located in a thoroughly residential section of the Borough. Within a radius of approximately quarter of a mile there are no stores or business establishments, but many residences. The nearest residence is but 12 or 15 feet from the club property; the next nearest, about 50 to 75 feet. On the same block there are a number of residences. This section has been described as being the "better part" of the Borough. Five of the most immediate residents in the vicinity appeared at the hearing on this application and voiced strenuous objections. I have ruled that I will deny an application made to me for a club license in a highly residential neighborhood whose inhabitants voice objection. Re Passaic Lodge of Elks, supra. The municipal resolution opposing the application upon the ground that the vicinity in question is of

a high residential character, is wholly reasonable. Re Cranford Veterans Holding Company, Inc., supra; Re Cranford American Legion Holding Co., Inc., supra; and see Re Passaic Lodge of Elks, supra.

Applicant does not show that public necessity or convenience require that a license should nevertheless be granted. The avowed purpose for the license is to better control the drinking of liquor on the premises and to attract older members to the club. The club has a membership of approximately 172, of which 40 to 45 are minors and therefore cannot be served with liquor. The members of the club are in sharp conflict on the desirability of having a bar on the premises.

In view of the foregoing findings, it is unnecessary to consider the additional reasons advanced by the objectors against granting the license applied for.

The application for club license is denied.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 26, 1937.

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

June 25, 1937.

In re: Hearing No. 157.

In his application for permit, which he now holds, solicitor swore that he had never been convicted of a crime. Fingerprint records disclosed that he was arrested on October 24th, 1934 and on March 7th, 1935, charged both times with violation of Section 48 of the Control Act.

On October 24th, 1934 solicitor was President of a corporation operating licensed retail consumption premises. He was also acting as bartender in the licensed premises. Investigators from this Department made inspection of the premises, on said date, and found a number of bottles of whiskey without proper tax stamps. Solicitor and others were arrested, held for the Grand Jury, and later indicted.

On March 7th, 1935, our Investigators found a large quantity of illicit liquor on same licensed premises. Arrests were made of those on the premises. Our files show that solicitor was not on the premises at that time but was arrested elsewhere on the same day because he was still the President of the corporate licensee. He was again held for the Grand Jury and indicted a second time.

At the hearing solicitor testified that he had given up his employment at the licensed premises in November 1934 and knew nothing of the operations of the Corporation after that time; that he pleaded with those who controlled the corporation to permit him to resign but was told "it would cost too much;" that he knew nothing of the violations which caused his arrest on March 7th, 1935.

Both indictments were tried on July 1, 1935 and on advice of counsel, solicitor pleaded non vult to both. On July 26th, 1935 he was sentenced to pay a fine of $125.00 and placed on probation for two years.

The Control Act provides that no license can be issued to an individual "who has committed two or more violations of this Act." Although this solicitor pleaded non vult to both indictments

at the same time, I do not believe that he has been guilty of two violations of the Act. I do not feel that his single violation should forever bar him. True, he was nominally President of the corporation and held a few shares of stock but actually he was "bartender," receiving only a small salary. The license of the corporation was subsequently revoked. Solicitor otherwise has a clean record.

It appears that solicitor has filed an application for a permit for the coming fiscal year. He again swears in his application that he was never convicted of a crime. At the hearing already held, solicitor stated that he believed he had not been convicted because he had been placed on probation. Both affidavits are false.

It is recommended that permit for coming fiscal year be issued but that issuance of permit be withheld for ten days because of false affidavits.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

Frederick P. Burnett

Commissioner.