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

BULLETIN 213 NOVEMBER 15,1937

1. WINE PERMITS - MANUFACTURE FOR HOME CONSUMPTION - EXTENT OF THE PRIVILEGE - WINE SO MANUFACTURED MAY NOT BE GIVEN AWAY FOR CONSUMPTION OFF THE PREMISES OF THE PERMIT HOLDER - HEREIN OF GLORIFIED BARTER.

November 4, 1937.

Gentlemen:

I received the return of one dollar and application blanks for wine making for my own use. You call this manufacture of wine, well, I am far from that. I make about 75 gallon in two years. It is made all by hand and is the same as a woman would put up jelly in her own kitchen, which you cannot call manufacture.

I make this wine as a hobby, drinking very little myself and not selling any but giving it away to my friends during the holidays. If I understand correctly I cannot give any away to my friends to take home. Now, if I cannot give this away and I do not care to break the law, I do not see any other thing to do but stop making it.

I do not object to paying the fee to make it but I do object to not being able to give it away. Will you kindly let me know if I understand the application blank right.

Yours very truly,

Charles E. Reber

November 9, 1937.

Mr. Charles E. Reber,
Camden, N. J.

My dear Mr. Reber:

I have yours of the 4th re Wine Permits.

These permits are not as narrow as you imagine. It is true that the emphasis is placed upon personal consumption. But that means for general family use and so you can serve home-made wine to your bona fide guests gratuitously, just as you might a cup of coffee, or a sandwich, or a course dinner, if you will. Enclosed is copy of Re Carney, Bulletin 212, Item 7, which gives you the rulings on this point, both State and Federal.

As regards giving bottles of wine to your friends to take home with them, that is quite different. The permit is to enable one to make wine for his own family consumption and that of his guests, but not to furnish a supply for his friends and their guests. It is one thing to entertain at one's own home, and quite another to stock up a friend with wine to be used at another home. If the friend wants home-made wine, he may take

out a special permit for a mere dollar, just like you. If he doesn't want to make it, but would like to have wine on hand, he can buy it from a regular licensee like everybody else. I see no reason for extending the permit beyond the reasonable intendment of its purpose.

There is nothing intrinsically wrong, of course, about giving a bottle of wine to a friend, but if this were permitted in respect to these family permits, the whole set-up would quickly get out of control. Possession of unstamped, unidentified wine would soon be widespread without any objective test by which to check its manufacture or distribution. "Given me by a friend" would become an all too easy password. One might give a bottle of home-made wine to his friend who would feel impelled to return a chicken, or give a cask and win a calf. Such reciprocal "gratuities" would soon become glorified barter.

I must, therefore, deny your request for permission to give bottles of your home-made wine to your friends to take home with them.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. BULLETIN ITEM SUPERSEDED - BULLETIN 163, ITEM 3 REVISED SO AS NOT TO PERMIT HOLDERS OF PERMITS FOR MANUFACTURE OF WINE FOR PERSONAL CONSUMPTION TO GIVE SUCH WINE IN BOTTLES FOR A FRIEND OR GUEST TO TAKE HOME.

Re de Valliere, Bulletin 163, Item 3, so far as it allows holders of permits for the manufacture of wine for personal consumption to give such wine in bottles to a friend or guest to take home is superseded by Re Reber, Bulletin 213, Item 1.

The provision made by the Legislature for such manufacture of wine is sufficiently liberal without construing it to warrant flooding the State with such wine in competition with that made or sold by regular licensees who pay a high fee for the privilege.

The later and revised ruling was made after reconsideration of the practical difficulties which confronted enforcement under the earlier ruling.

D. FREDERICK BURNETT
Commissioner

3. REFERENDUM - WHERE HOURS OF SUNDAY SALE HAVE BEEN FIXED BY A REFERENDUM, A SALE OUTSIDE OF SUCH HOURS IS NOT ONLY CAUSE FOR DISCIPLINARY PROCEEDINGS BUT ALSO CONSTITUTES A MISDEMEANOR - HEREIN OF ABUSES OF LIBERAL SUNDAY PRIVILEGES.

November 10, 1937

Harlan P. Ross,
Borough Clerk,
Bogota, N. J.

My dear Mr. Ross:

I have before me your letter of the 4th certifying that at the general election held in the Borough of Bogota on November 2, 1937, there was submitted the question: "Shall the sale of all alcoholic beverages be permitted on Sunday, except between the hours of 3 A. M. and 12 o'clock Noon?" and that the vote on the question was "Yes" 1460, "no" 1325.

According to my records, Section 7 of the ordinance concerning alcoholic beverages adopted by the Borough Council on February 27, 1936, prohibited all sales of alcoholic beverages on Sunday. The referendum supersedes the ordinance so far as Sunday sales are concerned. Henceforth, alcoholic beverages may be sold at retail on Sundays in Bogota at any time otherwise than between the hours of 3:00 a. m. and noon.

It should be noted, in this connection, that Section *44A of the Act (C. 254, P. L. 1935) provides, if a majority of the voters shall vote affirmatively on the question, that the retail sale of alcoholic beverages may be made only within the hours so fixed and that sales at any other time shall be unlawful and "constitute a violation of this Act."

This raises an important distinction, so far as your municipality is concerned, between sales made on week days and those made on Sundays.

Sales made on week days outside of the hours fixed by your local regulations may be punished, as provided in the ordinance, and constitute cause for revocation or suspension of the license as well.

But sales made on Sundays, except between the hours fixed by the referendum, are not only cause for revocation or suspension but also, because they constitute a violation of the Alcoholic Beverage Control Act, are misdemeanors and subject the offender to arrest, indictment and conviction for a crime. The punishment for such misdemeanor is fixed by Section 48 of the Act, viz.:

> "by a fine of not less than one hundred dollars ($100.00) and not more than one thousand dollars $1,000.00) or imprisonment for not less than thirty days and not more than three years, or by both such fine and imprisonment, in the discretion of the court."

The police should be instructed accordingly and pains taken to arrest promptly any licensee who abuses the liberal Sunday privilege granted by the electorate of Bogota.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. CLUB LICENSES - PRIVILEGES CONFERRED - BONA FIDE GUESTS - SALES TO NON-MEMBERS - WHEN SPECIAL PERMITS ARE REQUIRED.

Dear Sir:

We are the holder of a club license, CB-3, issued by the City of Perth Amboy. It has never been clearly specified to us just what powers we have under it. We would appreciate it very much if you will kindly answer the following questions:

Can the club have a social affair at which admission is charged, all benefits derived going to the club's treasury, and sell liquor under its own license or does the organization have to get a special permit?

If the club runs a picnic at the grounds where a license is held do we need another permit or is our license sufficient?

If an outside organization or individual runs a social affair in our premises at which admission is charged and benefits are to go to them, do they have to get a special permit or does our license cover the affair?

Yours very truly,

PETER BADOLATO,
President, Perth Amboy
Calabrese Social Club.

November 4, 1937.

The Perth Amboy Calabrese Social Club,
Perth Amboy,
New Jersey.

Gentlemen: Att: Peter Badolato, President

Your club license permits you to sell all alcoholic beverages, but only for immediate consumption on your licensed premises and only to bona fide club members and their guests.

Guests are persons expressly invited to the club by a member and who, on arrival at the club, are not only sponsored but personally attended by their respective hosts. Re Club Licenses, Bulletin 100, Item 3. If non-members are compelled to buy tickets for the function the club will hold, or pay an admission charge, they clearly are not bona fide guests. Re Hausmann, Bulletin 141, Item 5; Re Hungarian-American Athletic Club, Bulletin 159, Item 1. Cf. Re Rockefeller, Bulletin 63, Item 10; Re Club Licenses, Bulletin 109, Item 10; Re McCormack, Bulletin 143, Item 7; Re Peditto, Bulletin 179, Item 7; Re Keyport Yacht Club, Bulletin 200, Item 6.

Now, specifically to answer your questions:

If your club is holding a social affair at which admission is charged but only bona fide members are admitted, no special permit is necessary. Sales of alcoholic beverages may be

made to the members, to the extent the license allows, under your club license. If, however, outsiders are admitted, then the fact that an admission is charged removes them from the category of bona fide guests and a special permit from this Department must first be obtained.

Sales under your club license may be made anywhere on the licensed premises. The licensed premises comprises those parts of your property which were described in your application for license as such. If the grounds surrounding your clubhouse were included in the description of the licensed premises, then you may sell to members and guests at picnics on those grounds under your club license, to the extent, of course, that the license allows. If, however, the public is being admitted to the picnic, or an admission is charged and non-members are allowed to participate, then, for the reasons given above, a special permit must first be obtained.

Your license does not permit you to sell to outside organizations which run social affairs on your premises for which admission is charged, or to the persons who attend those affairs, unless, perchance, those persons happen to be at the same time members of your club. Before these outside organizations may sell or the people attending their affairs may purchase from the club, a special permit must first be obtained. Individuals running social affairs for which admission is charged are not entitled to special permits. Special permits are not issued for an individual's private profit. Re Bier, Bulletin 190, Item 1; Re Bey, Bulletin 205, Item 1. Before they are allowed to sell liquor, they must take out one of the regular commercial licenses.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. REFUNDS - FEDERAL TAX STAMPS - PROCEDURE.

Dear Sir:

We have had on file an application for a plenary retail consumption license. The Township Committee has decided that this application should not be granted and this firm has decided to withdraw their application. They have purchased a Federal Tax Stamp and have asked us if it is possible to have the fee for same refunded. Will you please inform us as to whether or not this can be done so that we may in turn inform them.

Yours very truly,

M. P. INGALSBE
Chairman

November 6, 1937.

Maurice P. Ingalsbe, Chairman,
Township Committee,
Scotch Plains, N.J.

Dear Mr. Ingalsbe:

I have inquired from and am informed by the Alcohol Tax Unit of the U.S. Treasury Department that refunds are some-

times made by the Collector of Internal Revenue in respect to Internal Revenue Stamps(U.S. Redemption of Stamps Act of May 12, 1900 -- 31 Stat. 177).

I therefore suggest that your applicants make their request for refund of the amount paid for their Federal Tax Stamp direct to William H. Kelly, Esq., Collector of Internal Revenue, Fifth District of New Jersey, Post Office Building, Newark, New Jersey.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. WINES - THE DIFFERENCE BETWEEN NATURALLY FERMENTED AND FORTIFIED WINES - HEREIN OF CHAMPAGNE.

Dear Sir:

Replying to your letter of Oct. 18th, requesting methods to be used in the manufacture of champagne. I herewith submit two methods, either of which I propose to use if allowed.

1. Crush pure grapes and allow to ferment naturally in barrels.
When wine is beginning to clarify add to every five liters of wine fifty to one hundred grams of syrup made from three parts of sugar and one part of water.
Then bottle in regular champagne bottles and store to age.

2. Crush pure grapes and allow natural fermentation.
Then add pure culture grape wine yeast mixed with pure sterile grape juice.
Then bottle and store in temperate 70 tp 80 degrees to age.

Either of these wines will produce champagne running about 11 to 13.5 per cent alcohol by volume.

Very truly yours,

Annie Tomasello

November 5, 1937.

Dear Mrs. Tomasello:

Champagnes, manufactured pursuant to either of the processes outlined in your letter would not be classified as naturally fermented wines within the meaning of the Control Act. In both instances, the champagne would be classified as fortified wine, in the first, because of the addition of syrup and, in the second, because of the addition of culture grape wine yeast.

Hence, a Plenary Winery License would be necessary to manufacture champagne under either of the processes.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. LICENSED PREMISES - CORRECTION OF ADDRESS - FORMAL TRANSFER REQUIRED.

November 4, 1937.

Simon Blum,
Town Clerk,
Nutley, N. J.

My dear Mr. Blum:

I have your letter re Joseph Luzzi.

I understand that Luzzi's premises has entrances on both Walnut and East Center Streets. Last year his license was for 10 Walnut Street. This year his application, advertisement, and license described the premises as 8 East Center Street. Now, claiming that the use of the East Center Street address was a mistake, he asks the Board to correct his address to read "10 Walnut Street" and the Board has adopted a resolution to that effect.

Where a license has been issued for one address, it cannot be changed to another except in the manner provided for the transfer of licenses from one place to another in the statute and the State rules. See Re Bolton, Bulletin 179, Item 3. It makes no difference that the contemplated change will not affect the premises except as to designation. The advertisement setting forth the East Center Street address may not have called forth objections. The publication of 10 Walnut Street might.

It is my suggestion that the Board's resolution authorizing the correction of the address be rescinded as having been inadvertently adopted.

If Mr. Luzzi wishes to have his premises designated in the license as 10 Walnut Street, he will first have to apply for a transfer, pay the $5.00 fee, publish his notice of application setting forth the new address, and have his Federal Tax Stamps changed, in accordance with the Rules Governing Transfers which you will find commencing on page 31 of the Pamphlet Rules.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. APPELLATE DECISIONS - KRUG vs. PARAMUS.

ALBERT KRUG,)
Appellant,)
-vs-)
ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH OF PARAMUS,)
CONCLUSIONS
Respondent.)

Irving Dincin, Esq., Attorney for Appellant
Charles Schmidt, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises known as "Chick & Charlie's," located on Paramus Road north of Route 4, Borough of Paramus.

Paramus is a municipality covering 10½ square miles and containing 3,000 inhabitants or less. The premises in question are located in a vicinity that is residential in character. This latter fact having been in dispute, the Hearer (with consent of counsel) took a personal view of the vicinity and found that, although not closely populated and although running along a traffic artery, it is nevertheless predominantly occupied by one-family homes, generally of an attractive character, and has a prevailing residential atmosphere. It is true that there are also certain businesses in the neighborhood, such as a gasoline station, a general store, a roadway restaurant, and the like; but these, for the most part, are located in buildings of a residential type and do not transmute the vicinity from being essentially residential into commercial.

Formerly an important highway was routed over Paramus Road, bringing in its wake a great flow of traffic and the advent of roadside stands and commercial enterprises. That highway, however, having been routed elsewhere, traffic on Paramus Road has lessened considerably, the roadside stands have well-nigh disappeared, and the trend is now toward residential properties.

Already outstanding along Paramus Road are 8 consumption establishments, located from approximately 1/4 mile to 1 mile from the premises in question. Several of these establishments are at local Golf and Country Clubs; others are at roadway restaurants. No objections were lodged against the issuance of any of these licenses.

However, a dozen or more residents in the vicinity filed objection below against the present application. Several of the objectors appeared and voiced their protest at the hearing on this appeal. Appellant, although asserting that some of the nearby residents favored his application, produced none of those persons to testify on his behalf.

Where, as here, a vicinity, even though not closely developed, is nevertheless residential in character and residents therein are in protest and a sufficient number of licensed places exist in the general area, denial of a license in that vicinity cannot be said to be unreasonable. Butler vs. Middletown, Bulletin 210, Item 6, and cases therein cited. The presence of business properties which do not alter the essential character of the area is immaterial. Lojewski vs. Bayonne, Bulletin 201, Item 1, and cases therein cited.

Appellant, however, contends that it is unreasonable and discriminatory to deny appellant's application inasmuch as in previous years a consumption license had been issued to other persons or person for the premises in question. However, it appears that the objecting residents made no protest against

the issuance of those previous licenses; that their objection against the present application is the first that they have lodged against any application for a license at these premises; and that the reason for lodging such protest despite their former silence is because of the apparent return of the neighborhood to solely residential tendencies and because of their discomfort caused by the noise and drunkenness accompanying the conduct of the premises under previous licenses. In view of such protest and the altered circumstances, respondent was justified in treating appellant's application differently from the applications which had been filed in previous years.

I find nothing arbitrary, unreasonable,or discriminatory in the denial in this case. Nor do I find that the public interest or convenience requires that the license which is applied for be issued.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

November 7, 1937.

9. APPELLATE DECISIONS - BERGER vs. CARTERET

MOLLIE BERGER,)
Appellant,)
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH OF CARTERET,) CONCLUSIONS
Respondent.)

Harry Lubern, Esq., Attorney for Appellant.
A.D. Glass, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located at 45 Pershing Avenue, Borough of Carteret.

On November 18, 1935, the Common Council adopted a resolution (later amended in an immaterial respect) which restricted the number of plenary retail consumption licenses in the municipality to two for each thousand of population under the last Federal census, excepting however, the then outstanding licenses or renewals thereof.

Respondent contends that appellant is barred because the quota of licenses fixed by this resolution has been exhausted. Appellant maintains, however that she is an applicant for the renewal of a license outstanding when the resolution was adopted and that she therefore falls within the exception.

The ruling heretofore made in Re Perry, Bulletin 199, item 1, which involved the same parties and the same point,

was made ex parte and is therefore not dispositive of the present appeal. Since the appellant is justly entitled to her day in court I have considered the matter de novo.

The evidence at the hearing disclosed that appellant held a consumption license for the premises in question from February 4, 1934, through June 30, 1935; that her husband then obtained a similar license for the same premises from July 1, 1935, through June 30, 1936; that thereafter no license has been obtained for these premises. The present application was filed on July 6, 1937.

On these facts the conclusion is inevitable that appellant is seeking a new license and not the renewal of an existing one for two reasons:

1. It was her husband who held the last previous license, not she. A license granted to a different person is not a renewal. Beringer vs. Camden, Bulletin 144, Item 5; Appeal of Stavolo, 81 Conn. 454, 71 Atl. 549; Kidd vs. Board of Excise, 78 N.J.L. 218 (Sup. Ct. 1909).

2. Even if she, not he, had held the license sought to be "renewed" by her, the last previous license expired more than a year before her application was filed. It is true that a mere gap between the expiration of an old license and the issuance of a new one will not necessarily in and of itself bar the latter from being considered as a renewal. Re Deighan, Bulletin 141, Item 2. For instance, a licensee may unduly delay publication with result that the new license is not actually issued until after the old license has expired. As said in the case last cited:

> "Here it is evident that there is no intent to abandon the business and the license ultimately issued can properly be treated as a renewal. Cf. Presbyterian Church vs. Miller, 85 N.J.L. 463 (Sup. Ct. 1914). On the other hand, where a license expired and there is an actual abandonment of the business by the licensee, the license can no longer be 'renewed'; an application thereafter made will be for a new license even though made by the same person for the same premises."

While the Deighan case fixed no arbitrary time limit but declared the intent of the licensee to preserve and continue the same business operated under the expired license as the governing factor, it is obvious that the intent so called for may not be the secret undisclosed intention of the licensee, to be invoked or not at his will accordingly as it serves his purpose, but, rather the reasonably presumable intent gathered from the facts of the particular case, actions speaking at times so much louder than words! Without attempting in this case to fix any precise time within which the application must be filed after an old license has expired in order to constitute it a renewal license, which time if arbitrarily fixed would in effect constitute so many days "of grace", it is clear that after a whole licensing period has gone by the chain has been broken and therefore the present application is not for renewal. Whatever the actual intent or the explanation may be, the liberal doctrine laid down in Re Deighan cannot be invoked, as was said therein, except during the license

period immediately following the expiration of the old license.

Appellant contends, however, that on three occasions in the past the local limitation has been violated, and that it is therefore discriminatory to apply it against appellant. She relies upon the following instances:

(1) On May 19, 1936, a consumption license was granted to one Anton Brechka. However, when the limiting resolution was adopted an application by Brechka for renewal of his previous license was still pending. The resolution expressly excepted renewals. The granting of that application was, therefore, pursuant to the resolution and not in defiance of it.

(2) On March 1, 1937, respondent again issued a consumption license to Brechka although his last mentioned license had expired on June 30, 1936. But Brechka had applied for renewal and his application had been denied, which denial was reversed on appeal. Hence, the license so issued to Brechka was in obedience to the Commissioner's order in that case. Brechka vs. Carteret, Bulletin 161, Item 4. Hence, this license was proper.

(3) On June 28, 1937, respondent adopted a resolution granting the renewal application of one Michael Florin although the requisite license fee had not then been paid, it being arranged that the license would not actually issue until said fee was fully paid, which occurred on July 8 or 10, 1937. While such procedure is irregular in that the fee should have accompanied the application, it is clear that the license, as actually issued, was a renewal and, therefore, not in derogation of the local limitation.

Appellant's further contention that the limiting regulation is void because adopted in the form of a resolution instead of an ordinance is without merit. When the regulation was adopted, Section 37 of the Control Act expressly permitted such regulation by way of resolution as well as ordinance. The amendment, P.L. 1937, c. 136, which requires that a limitation of the number of licenses must be effected by ordinance, expressly provides: "that any such limitation heretofore adopted by ordinance or resolution shall continue in full force and effect until repealed, amended or otherwise altered by ordinance."

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: November 9, 1937.

10. REVOCATION PROCEEDINGS - PETITION TO LIFT INELIGIBILITY - PETITION GRANTED.

In the Matter of Revocation Proceedings against Karl Bluschke, holder of Plenary Retail Consumption License C-11, issued by the Township Committee of Franklin Township (Somerset County) for premises known as Kingston Bar and Grill, located on Lincoln Highway #1, Kingston, Franklin Township.	On Petition to Modify Order of May 13, 1936 CONCLUSIONS AND ORDER

William C. Egan, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

The Order of May 13, 1936, declared the premises ineligible for any further liquor license for two years from that date.

Kingston Holding Company, owner of the premises, again petitions to lift the Order of ineligibility. A prior petition was dismissed by the Commissioner on December 7, 1936 -- without prejudice to renewal of same after a six-month period had elapsed. In Re Bluschke, Bulletin 151, Item 6.

The present petition sets forth that on October 7, 1937, petitioner agreed with Raymond Bromley of Asbury Park to lease to him the premises, conditioned however, upon obtaining a modification of the disqualification order; that Bromley has filed application with the Township Committee of Franklin Township and completed the requisite advertisement of notice of intention; that the rental agreement to be entered into with Bromley is to contain an option to purchase the property -- all to be conditioned upon the obtaining of a modification of the disqualification order and the grant of a plenary retail consumption license to Bromley; that it is the purpose of petitioner constantly to supervise the premises by weekly inspections; that the property has yielded no income to the petitioner since May 15, 1936, and the loss of the right to lease same to a liquor licensee has established the fact that the property is apparently of little value except for use as an inn and restaurant licensed to serve alcoholic beverages; that inquiries made as to the prospective lessee and licensee, Bromley, convices petitioner that the premises will be conducted in an honest, law-abiding, and proper manner; that investigation has disclosed Mr. Bromley to be president of a corporation which is a liquor licensee, now operating premises in Asbury Park known as the Shore Grill at 429 Cookman Avenue, and which petitioner states has a perfect record for law obedience; that Bromley is also an officer and general manager of the Wesley Amusement Company, a concern which has operated several amusement concessions granted to it by Asbury Park and the Ocean Grove Camp Meeting Association, during the summer months; that Mr. Bromley has been apprised of the conditions that existed at the licensed premises heretofore and assures petitioner that he will do all in his power to prevent such recurrences; further, that petitioner is now fully cognizant of its duty and responsibility as a landlord to see that its premises are leased to dependable tenants when the business of that tenant involves the sale of alcoholic beverages; that while admitting its negligence so far as the prior tenants are concerned, petitioner states it is now fully prepared to undertake any and all of its obligations as a landlord to a liquor licensee; that it was in no position at the hearing conducted against the prior licensees to dispute any of the charges which had been preferred against them; that its passive attitude in connection with those hearings was more the result of ignorance of its responsibilities than any intent on its part to minimize its obligations as a landlord.

Attached to the petition is an affidavit of the prospective tenant and licensee, Raymond Bromley. Mr. Bromley states that he is desirous of conducting a licensed retail establishment at the premises in question; that while cognizant of the violations committed by prior licensees at these premises, he is confident of

his ability properly to supervise same in the event he is granted a license, to see that the same violations do not recur under his supervision; that he is president of the Shore Grill, Inc., a liquor licensee of Asbury Park and vice-president and general manager of the Wesley Amusement Company, a corporation operating several concessions in Asbury Park and Ocean Grove; that he has never had any trouble concerning sales of alcoholic beverages to minors nor has he been charged with any other violations at the Shore Grill in Asbury Park, even though thousands of young people frequent this resort during the summer season; that "if a license is granted to me for the Kingston Hotel, I propose to see that minors do not congregate in my establishment. It will only take a week or two for the word to spread that they are not wanted and then they won't even come near the premises, much less try to be served"; that it is his intention to at all times cooperate with this Department and will welcome the cooperation of the authorities of Princeton University, especially inviting them to make inspections at the licensed premises at any time during the day or night to guard against sales to minors from that institution; that he is of the opinion the property for which he seeks a license has no value without a liquor license; that it is his desire eventually to purchase this property.

Bromley further states that he has no connection whatsoever with either of the prior licensees who conducted the business at the premises for which he seeks a license.

The Petitioner has now been deprived of revenue from its property for a period of about one year and a half. That brings home in no uncertain manner the responsibility imposed by law upon a landlord to see that its premises are not used for unlawful purposes and are conducted in a proper manner by a holder of a liquor license. A landlord should acquaint himself with the moral and law-abiding character and reputation of licensee tenants. That is the object of the law which grants the drastic power to the Commissioner or other issuing authority to render a licensed premises ineligible to become the subject of further licenses for a period of two years after a violation has been discovered and a licensee adjudicated guilty.

All prior trouble at this licensed premises resulted from indiscriminate sales by the then licensees to minors from Princeton University.

Inherent dangers that confront the holder of a liquor license for the premises in question are well summarized by Dean Christian Gauss of Princeton University (Bulletin 155, Item 11) in his following comments on the denial of the former application to lift the disqualification of the premises:

> "Our community has one special character. Within a radius of ten or twelve miles from Princeton there are probably more young men, the majority of them minors, in schools than in any other section of the state. Our district of course includes the Lawrenceville School, the Hun School, Peddie Institute, Mercer Junior College, as well as Princeton University. The students in these schools are away from home and they are in a sense guests of the state and also of the institutions which they are attending. The people who send their sons to this educational

center expect of us in the way of living conditions, conditions that are of a somewhat higher order than might obtain elsewhere. It is our responsibility to see that we live up to this implied obligation and I consider it one of the responsibilities of my office to do so.

"There are a number of persons who have been licensed to sell liquor in this community with whom we have never interfered. These places do not make it a business to cater to undergraduates and do not sell to students to the point of intoxication. We have always objected and shall always object to any holder of a license who makes it a practice to invite minors to drink and who is interested only in drawing profits from them regardless of consequences."

I hope this landlord has learned its lesson and believe that no useful purpose will be served at this time in denying the petition to remove this disqualification. In the event a license is granted by the Township Committee of Franklin, it behooves both petitioner and its tenant to see that at all times the law and the rules and regulations concerning the sale and service of alcoholic beverages are scrupulously obeyed -- particularly must this licensee be ever alert to see that no sales of alcoholic beverages are made to minors and to conduct his business as do those licensees who are praised by Dean Gauss.

The prayer of the petitioner is granted.

Accordingly, it is on this 12th day of November, 1937, ORDERED that the decree of ineligibility entered on May 13, 1936, against premises known as Kingston Bar and Grill, located on Lincoln Highway #1, Kingston, Franklin Township, be and the same is hereby lifted.

D. FREDERICK BURNETT
Commissioner

11. APPELLATE DECISIONS - SCHICK vs. SOMERS POINT.

KATHERINE SCHICK,)
Appellant,)
-vs-)
MAYOR AND COMMON COUNCIL OF THE CITY OF SOMERS POINT,)
Respondent.)

ON APPEAL

CONCLUSIONS

Augustine A. Repetto, Esq., Attorney for Appellant.
No Appearance for Respondent.
Enoch A. Higbee, Esq., Attorney for Amanda M. Diether, an Objector.

BY THE COMMISSIONER:

Written charges were served by respondent upon appellant licensee wherein she was charged with violating Rules 1 and 5 of

Rules Concerning Conduct of Licensees and Use of Licensed Premises. After hearing, respondent suspended her license for two days, whence this appeal.

There was no substantial evidence given on appeal to support a finding that appellant violated Rule 1; hence, I find appellant not guilty on that count.

Rule 5 provides:

> "No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls, or unnecessary noises, or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

At the hearing on appeal, the only witness who testified against appellant was Mrs. Diether, who resides next door to the licensed premises and whose home is separated therefrom by an alley, about eight or ten feet wide. Briefly, she testified that on June 7, 1937, at about 1:30 A. M., two men came from the licensed premises making noise and using foul language and that Mr. Schick, who has died since that time, helped one of the men into an auto; that on July 24, 1937, at about the same time, four men engaged in a fight in Schick's place which ended on the street, after one of the men was thrown into an auto; that on July 26, 1937, a drunken man came out of Schick's at 4 A. M., although the closing hour is 3 A.M.; that on numerous occasions the licensed place was open until 3:30 A.M.; that she frequently telephoned the licensee to abate the noise and music and that thereafter "they would sing and holler a lot worse to defy me."

On behalf of appellant three employees and two customers, as well as appellant, testified that the premises had never been open beyond the closing hour; that the place had always been properly conducted and that there were no unusual noises. An employee admitted that he was one of the men referred to in the incident occurring on June 7th; that he was intoxicated, but was off duty and had not had a drink in Schick's. Another employee referred to the incident of July 24th as "horse-play" between four customers who had had a couple of beers in Schick's but were not drunk. The employees admitted receiving several 'phone calls from Mrs. Diether to stop the noise. One of the customers testified that, on Saturday nights, more than 100 people would gather in the back room singing German and popular songs. The licensee employs two musicians and a singing waiter. The Chief of Police, who likewise testified for appellant, said that he had heard no loud noises while passing the place but that, on Saturday nights, he was stationed too far away to hear any noises.

This is a difficult case to decide because it is hard to determine when there is unnecessary noise, especially in a place located near other licensed places conducting the same type of entertainment and all located in a section where there is a great amount of traffic. However, in view of the numerous complaints made by Mrs. Diether and the apparent inability or

unwillingness on the part of the licensee to lessen the noises, I find the licensee guilty of permitting unnecessary noises on the licensed premises. The proof also leads me to conclude that there were brawls in and about the premises. Caso v. Belleville, Bulletin 101, Item 8.

The action of respondent is, therefore, affirmed.

Dated: November 12, 1937.

D. FREDERICK BURNETT
Commissioner

12. RETAIL LICENSES - APPLICATIONS - FILING - WHAT CONSTITUTES

Dear Sir:

Under the rules governing transfers of State and Municipal Retail Licenses as set forth in the book of rules and regulations, it is stated that application for transfer must be filed with the Commissioner or other issuing authority, as the case may be, at or before the first insertion of the advertisement.

As a matter of information, I would appreciate your advising whether an application is considered filed with the issuing authority when it is presented to the municipal clerk, or do the rules require that the application be actually presented at a regular meeting of the issuing authority (Borough Council) before it is to be considered filed in compliance with the rules.

Yours very truly,
Theo. J. Brassel, Jr.,
Mayor, Borough of Cresskill.

November 12, 1937.

Hon. Theo. J. Brassel, Jr.,
Cresskill, N. J.

My dear Mayor Brassel:

I am glad you have raised the question as the Rules do speak of applications being filed with the issuing authority.

An application is filed when it is submitted by the applicant to the municipal official whose duty it is to keep the records of the license issuing authority.

Ordinarily, applications are presented to the Municipal Clerk or, in cases where there is a local excise board, to the secretary of that board. In the absence of any provision for a contrary procedure, the application is considered filed when lodged for record with the clerk or secretary, as the case may be.

Very truly yours,

D. Frederick Burnett

Commissioner