

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

BULLETIN 722

AUGUST 7, 1946.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (North Bergen) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.
2. APPELLATE DECISIONS - CROCAMO v. PHILLIPSBURG (CASE NO. 2).
CROCAMO v. PHILLIPSBURG AND HUGHES
GRUHLER AND EDWARDS v. PHILLIPSBURG (CASE NO. 2)
GRUHLER AND EDWARDS v. PHILLIPSBURG AND MEYERS.
ORDER REMANDING.
3. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES OBTAINED IN NEW JERSEY FOR IMPORTATION INTO ANOTHER STATE - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN THIS STATE IN VEHICLE NOT LICENSED FOR THAT PURPOSE OR AUTHORIZED BY SPECIAL PERMIT, AND WITHOUT WAYBILL - VEHICLE AND ALCOHOLIC BEVERAGES SUBJECT TO SEIZURE AND FORFEITURE - OWNER ESTABLISHED "GOOD FAITH" AND THAT ALCOHOLIC BEVERAGES MAY BE LAWFULLY DELIVERED TO THEIR OUT-OF-STATE DESTINATION - VEHICLE AND ALCOHOLIC BEVERAGES ORDERED RETURNED.
4. DISCIPLINARY PROCEEDINGS (Irvington) - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.
5. APPELLATE DECISIONS - HARTY v. DELAWARE TOWNSHIP (CAMDEN COUNTY) (CASE NO. 2).
6. APPELLATE DECISIONS - HARTY v. DELAWARE TOWNSHIP (CAMDEN COUNTY) AND COACH.
7. LIMITATION OF NUMBER OF RETAIL LICENSES - STATE LIMITATION LAW (P. L. 1946, CHAPTER 147) - EXCEPTION IN SECTION 8 OF NEW LAW PERMITTING ISSUANCE OF NEW LICENSE TO EX-LICENSEE VETERAN - SECTION 8 APPLICABLE ONLY TO A PERSON WHO FORMERLY HELD A LICENSE - LICENSE ISSUED TO A CORPORATION IS HELD BY THE CORPORATION AS A SEPARATE AND DISTINCT LEGAL ENTITY, THUS EXCEPTION IS NOT APPLICABLE TO VETERANS WHO WERE MEMBERS OF A FORMERLY LICENSED CORPORATION.
8. APPEAL CASES - JULY 1, 1945 THROUGH JUNE 30, 1946.
9. ACTIVITY REPORT FOR JULY, 1946.
10. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1945 TO JUNE 30, 1946 AS REPORTED TO THE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R. S. 33:1-19.
11. APPELLATE DECISIONS - MININSOHN v. LAKEWOOD AND PULCRANO.
12. APPELLATE DECISIONS - KLEIN v. SEASIDE HEIGHTS.
13. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 722

AUGUST 7, 1946.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

KOENIG'S HOFBRAU, INC.
T/a SKY LINE INN
8802-10 Boulevard East
North Bergen, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-46 for the licensing year 1945-46, and C-72 for the licensing year 1946-47, issued by the Board of Commissioners of the Township of North Bergen.

William C: Egan, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that, on May 1, 1946, it possessed two 4/5 quart bottles of "Carstairs White Seal Blended Whiskey", both of which bottles contained alcoholic beverages not genuine as labeled, in violation of R.S. 33:1-50.

The two bottles in question were part of the defendant's stock of 136 open bottles tested by an ABC agent on May 1, 1946.

The fact that the violation resulted because of tampering by a bartender and that the responsible officers of the corporate licensee had no knowledge thereof does not constitute a defense. Re Kurian, Bulletin 517, Item 2.

The defendant has no previous record. Under all the circumstances, I shall impose the usual penalty of fifteen days. Re Nurse, Bulletin 680, Item 7.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the licensing year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 30th day of July, 1946,

ORDERED, that Plenary Retail Consumption License C-72, issued for the 1946-47 licensing year to Koenig's Hofbrau, Inc., t/a Sky Line Inn, for premises 8802-10 Boulevard East, North Bergen, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. August 5, 1946, and terminating at 3:00 a.m. August 20, 1946.

ERWIN B. HOCK
Deputy Commissioner.

2. APPELLATE DECISIONS - CROCAMO v. PHILLIPSBURG (CASE NO. 2)
CROCAMO v. PHILLIPSBURG AND HUGHES
GRUHLER AND EDWARDS v. PHILLIPSBURG (CASE NO. 2)
GRUHLER AND EDWARDS v. PHILLIPSBURG AND MEYERS
ORDER REMANDING.

Case #2
DONALD JAMES CROCAMO,
Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE
TOWN OF PHILLIPSBURG,
Respondent

DONALD JAMES CROCAMO,
Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE
TOWN OF PHILLIPSBURG and
JOSEPH F. HUGHES,
Respondents

ON APPEAL

CONCLUSIONS AND ORDER

Case #2
ANNA GRUHLER and WALLACE EDWARDS,
Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE
TOWN OF PHILLIPSBURG,
Respondent

ANNA GRUHLER and WALLACE EDWARDS,
Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE
TOWN OF PHILLIPSBURG and
LOUIS MEYERS,
Respondents

Lyness & Bedell, Esqs., Attorneys for Appellants.
Frank J. Kingfield, Esq., Attorney for Respondent Board of
Commissioners.
Robert B. Meyner, Esq., Attorney for Respondents, Joseph F. Hughes
and Louis Meyers.

The respondent Board of Commissioners denied renewal licenses to
Crocamo for premises 733 South Main Street and to Gruhler and
Edwards for premises 38 Market Street, both located in the Town of
Phillipsburg. New licenses were thereupon issued to Meyers for
799 South Main Street and to Hughes for premises 733 South Main
Street, both in the Town of Phillipsburg.

The parties hereto have amicably adjusted their differences and
the respondents, Meyers and Hughes, have submitted to the municipal-
ity, for cancellation, their new licenses, which appear to have been

issued in violation of P. L. 1946, c. 147. Pursuant to the agreement of the parties and to effectuate the settlement, the respondent Board of Commissioners has adopted a resolution requesting that all four appeals be remanded to it for the following purposes:

"(1) to grant a license pursuant to the application filed on June 11, 1946 to Donald James Crocamo for premises at No. 733 South Main Street; (2) to grant a person-to-person transfer from Donald James Crocamo to Joseph F. Hughes, providing, of course, the formalities of a transfer as provided by law are duly observed; (3) to grant a license pursuant to the application filed on June 11, 1946 to Wallace Edwards and Anna Gruhler for premises at No. 38 Market Street; and (4) to grant a person-to-person and place-to-place transfer from Wallace Edwards and Anna Gruhler to Anton Boronyi or Louis J. Meyers from No. 38 Market Street to No. 799 South Main Street, providing, of course, the formalities of a transfer as provided by law are duly observed."

Since no reason appears to the contrary, these appeals will be remanded to the respondent Board of Commissioners for further action consistent with law and the aforesaid resolution.

Accordingly, it is, on this 29th day of July, 1946,

ORDERED, that the proceedings herein be and the same are hereby remanded to the respondent, Board of Commissioners of the Town of Phillipsburg, for its further consideration consistent with law and the aforesaid resolution.

ERWIN B. HOCK
Deputy Commissioner.

- 3. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES OBTAINED IN NEW JERSEY FOR IMPORTATION INTO ANOTHER STATE - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN THIS STATE IN VEHICLE NOT LICENSED FOR THAT PURPOSE OR AUTHORIZED BY SPECIAL PERMIT, AND WITHOUT WAYBILL - VEHICLE AND ALCOHOLIC BEVERAGES SUBJECT TO SEIZURE AND FORFEITURE - OWNER ESTABLISHED "GOOD FAITH" AND THAT ALCOHOLIC BEVERAGES MAY BE LAWFULLY DELIVERED TO THEIR OUT-OF-STATE DESTINATION - VEHICLE AND ALCOHOLIC BEVERAGES ORDERED RETURNED.

In the Matter of the Seizure on)
March 3, 1946, of a Dodge coupe and)
one hundred thirteen (113) bottles)
of alcoholic beverages, on Route 6,)
in the Borough of Rockaway, County)
of Morris and State of New Jersey.)
- - - - -)

Case No. 6959

ON HEARING
CONCLUSIONS AND ORDER

Peter P. Zangara, Esq., Attorney for John DeSarro.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages and a Dodge coupe in which they were transported, described in a schedule attached hereto, seized on March 3, 1946, on Route 6, Rockaway, New Jersey, constitute unlawful property and should be forfeited.

The automobile was being driven by its owner, John DeSarro, a resident of Ohio, when he was stopped by New Jersey State Troopers because there was a cardboard, instead of a metal, license plate on the car. DeSarro, his wife and brother-in-law were in the car. The

Troopers discovered that DeSarro was transporting the alcoholic beverages in question. DeSarro told the Troopers that he was transporting the beverages through New Jersey to his home in Ohio.

The State Department of Alcoholic Beverage Control was notified, and the car and alcoholic beverages turned over to the Department.

The motor vehicle was not licensed by this Department to transport alcoholic beverages, DeSarro had not obtained a special permit authorizing such transportation, did not have in his possession a bona fide waybill or similar document covering the transportation of such beverages, and the quantity was in excess of that permitted to be transported for personal consumption in an unlicensed vehicle. These are the requirements of Rule 2 of State Regulations No. 18.

It therefore was incumbent upon DeSarro to demonstrate (1) that the alcoholic beverages were not intended for delivery in New Jersey, and (2) that the interstate transportation is a part of a bona fide lawful enterprise. Otherwise, the transportation is unlawful and the alcoholic beverages and motor vehicle subject to forfeiture. See Re Seizure Case No. 6534, Bulletin 656, Item 9; R. S. 33:1-1(1) and (y); R. S. 33:1-2; R. S. 33:1-66.

In other words, the motor vehicle will be returned to DeSarro only in the event that he can establish that he did not plan to violate any liquor laws, and the alcoholic beverages will be returned to him only if he can establish that he can lawfully import them into his home state. Cf. Seizure Case No. 6544, Bulletin 657, Item 6.

Mr. DeSarro testified that he came to New Jersey about ten days before the seizure to visit a close friend who resides in Paterson for the purpose of attending the marriage of his friend's daughter, and that, while here, he purchased part of the alcoholic beverages at various liquor stores in Paterson, and received part as a gift from his friend. The alcoholic beverages were all tax-paid. There is nothing to indicate that DeSarro intended to deliver any of the alcoholic beverages in New Jersey.

The Department of Liquor Control of the State of Ohio has advised that DeSarro has made application to that Department for a consent to import the alcoholic beverages in question into that state, and that such Department intends to grant DeSarro's request. This evidences that the Ohio liquor authorities are satisfied that DeSarro should be permitted to import the liquor into that state.

Accordingly, it is DETERMINED and ORDERED that the Dodge coupe be returned to John DeSarro forthwith, provided that on or before the 5th day of August, 1946 he pays the costs incurred in the seizure and storage of such motor vehicle; and it is further

ORDERED, that the alcoholic beverages seized in this case be returned to John DeSarro upon presentation by him of a consent to the importation thereof from the Department of Liquor Control of the State of Ohio, and upon the further condition that DeSarro pay the costs of the seizure and storage of the alcoholic beverages. In the event that such consent is not presented, or the costs paid, on or before the 26th day of August, 1946, an appropriate order will be entered declaring such alcoholic beverages forfeited.

Dated: July 29, 1946

ERWIN B. HOCK
Deputy Commissioner.

SCHEDULE "A"

113 - bottles of alcoholic beverages
1 - 1941 Dodge coupe, Serial No. 30494078,
Engine No. D19-148921, 1945 Ohio registration
S-792X

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)

THOMAS BIONDI & MEYER FIRSCHBAUM)
T/a LYON TAVERN)
554 Lyons Avenue)
Irvington, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6 for the 1945-46 and 1946-47 licensing years, issued by the Board of Commissioners of the Town of Irvington.)
-----)

Anthony A. Calandra, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendants pleaded non vult to a charge alleging that, on May 13, 1946, they possessed two 4/5 quart bottles of "Canadian Club Blended Canadian Whisky" and three 4/5 quart bottles of "Schenley Reserve Blended Whiskey", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The five bottles in question formed part of the defendants' open stock of thirty-six bottles tested by a Federal ATU agent on May 13, 1946.

The defendants' explanation that they did not personally participate in the violation and that it resulted from the acts of a dishonest employee, even if true, constitutes no defense herein. Re Kurian, Bulletin 517, Item 2.

The defendants' previous record includes a five-day suspension imposed upon them by the local issuing authority in May, 1945, upon a charge of selling alcoholic beverages during prohibited hours. Under the circumstances, I shall impose a penalty of thirty days for the violation herein. Cf. Re Marrone, Bulletin 719, Item 4.

Although this proceeding was instituted during the licensing year 1945-46, it does not abate but remains fully effective against the renewal license for the licensing year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 1st day of August, 1946,

ORDERED, that Plenary Retail Consumption License C-6, issued by the Board of Commissioners of the Town of Irvington to Thomas Biondi and Meyer Firschbaum, t/a Lyon Tavern, for premises 554 Lyons Avenue, Irvington, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. August 6, 1946, and terminating at 2:00 a.m. September 5, 1946.

ERWIN B. HOCK
Deputy Commissioner.

5. APPELLATE DECISIONS - HARTY v. DELAWARE TOWNSHIP (CAMDEN COUNTY) (CASE NO. 2).

Case No. 2
 EDWARD WILLIAM HARTY,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF DELAWARE)
 (CAMDEN COUNTY),)
)
 Respondent)
 - - - - -)

ON APPEAL
CONCLUSIONS AND ORDER

Mark Marritz, Esq., Attorney for Appellant.
Bruce A. Wallace, Esq., Attorney for Respondent.

This is the second appeal filed from the denial of appellant's application for a plenary retail consumption license for the fiscal year 1945-46. The premises in question are located on Route 40 and Grove Street, Delaware Township.

The application considered herein was originally denied by respondent on February 11, 1946. Appellant appealed from the first denial and, after a hearing held therein, the matter was remanded to respondent on May 16, 1946 for its further consideration consistent with law and said opinion. Harty v. Delaware, Bulletin 711, Item 9. The Conclusions in the first case expressly stated:

"Under the circumstances, I shall remand the case to respondent for the purpose of reconsidering the application upon the evidence as to the right of possession now available to respondent.

"I find no merit in the other reasons for denial set forth in respondent's answer."

The testimony herein indicates that on May 27, 1946, at the first meeting held by respondent Committee following the remanding of the proceedings, appellant with his counsel appeared and inquired as to his application. He was informed that the matter would be held until the next meeting on June 10. At the meeting held on June 10th the application of the appellant was peremptorily denied and, immediately thereafter, the application of one Chester Coach for a plenary retail consumption license for premises at Sayres Avenue, Route 40, was granted.

The record herein indicates that no testimony was received by respondent from appellant as to his right of possession of the proposed licensed premises, and it is quite evident that no opportunity was afforded him to present any such testimony in accordance with the Conclusions entered in the first appeal.

I am satisfied from the testimony produced on this appeal that appellant is in complete possession and control of the premises sought to be licensed. Respondent offers nothing new in the present appeal. The defenses it sets up in its answer were disposed of in the prior appeal and decision. It now admits that it has no proof that appellant does not have a right to possession of the premises involved.

It is apparent that the respondent's denial of appellant's application was discriminatory, arbitrary, and without reason. The action of respondent must, therefore, be reversed.

Accordingly, it is, on this 1st day of August, 1946,

ORDERED, that the action of respondent be and the same is hereby reversed. Since the 1945-46 licensing year has expired, it would be a mere empty gesture to require respondent to issue a license as applied for. However, the order of reversal herein gives the appellant the standing of a licensee as of June 30, 1946, and any application filed by him for the 1946-47 licensing year for the same premises must be considered by respondent as an application for renewal of the license which should have been issued to him on June 10, 1946.

ERWIN B. HOCK
Deputy Commissioner.

6. APPELLATE DECISIONS - HARTY v. DELAWARE TOWNSHIP (CAMDEN COUNTY) AND COACH.

EDWARD WILLIAM HARTY,)	
Appellant,)	
-vs-)	ON APPEAL
TOWNSHIP COMMITTEE OF THE)	CONCLUSIONS AND ORDER
TOWNSHIP OF DELAWARE and)	
CHESTER STANLEY COACH,)	
Respondents)	

Mark Marritz, Esq., Attorney for Appellant.
 Bruce A. Wallace, Esq., Attorney for Respondent Township Committee.
 Irvin M. Lichtenstein, Esq., Attorney for Respondent
 Chester Stanley Coach.

This is an appeal from the granting of a plenary retail consumption license for the fiscal year 1945-46 by respondent Township Committee to respondent Chester Stanley Coach. At the time Coach filed his application, namely, on March 20, 1946, the premises sought to be licensed consisted of a vacant plot of land at the intersection of Sayres Avenue and Marlton Pike, Township of Delaware. The application for the license was accompanied by plans and specifications for a building to be erected.

This appeal was heard together with another appeal by the same appellant against the respondent municipality, and both appeals are being decided at the same time.

Briefly, the facts are as follows: On February 11, 1946, the respondent municipality denied the application of the appellant for a plenary retail consumption license for premises located at Grove Street and Route 40. An appeal was taken to this Department and, after the hearing on the appeal, the proceedings were remanded to the municipality on May 16, 1946 to consider the question of whether or not the Township Committee was satisfied that the appellant therein had control, custody and jurisdiction over the premises sought to be licensed. Harty v. Delaware, Bulletin 711, Item 9.

The instant record indicates that thereafter the Township Committee adjourned consideration of appellant's application to the meeting of June 10th, at which time, without further ado, it denied the application of the appellant and, in turn, granted a plenary

retail consumption license to respondent Coach, apparently subject to a condition that he should erect a building in accordance with his plans and specifications before issuance of the license.

The situation which existed on June 10, 1946 was that 29 plenary retail consumption licenses were already issued and outstanding, leaving but one license available, the ordinance of the said municipality providing for the issuance of 30 plenary retail consumption licenses. In order to grant the application of Coach it was necessary to deny the pending application of the appellant herein. This the respondent municipality proceeded to do in a completely arbitrary and discriminatory manner and for no apparent reason. See Harty v. Delaware, decided herewith. If the respondent municipality had granted the application of the appellant, which it should have done, no license could have been granted to Coach for the reason that the quota provided for in the ordinance would have been filled.

The appeal taken by the appellant on the denial of his license has been decided in his favor and the action of the respondent municipality has been reversed. While the reversal of the municipality is advisory only, and carries with it no direction to issue a license to the appellant, this is due only to the fact that the licensing period expired June 30, 1946. If the Conclusions had been entered prior to that date, it would have carried such a direction and the carrying out thereof would have resulted in the issuance to the appellant of the only license available under the ordinance. It would necessarily have followed that the granting of the license to the respondent Coach would be of no force and effect for the very definite reason that the number of licenses would then have exceeded the legal limit fixed by the ordinance. The appellant is clearly entitled to a license. The application filed by Coach should have been denied for the reason set forth herein.

The action of the respondent municipality in granting a license to respondent Chester Stanley Coach will therefore be reversed.

Accordingly, it is, on this 1st day of August, 1946,

ORDERED, that the action of respondent Township Committee of the Township of Delaware, granting a plenary retail consumption license to Chester Stanley Coach for premises located at the intersection of Sayres Avenue and Marlton Pike, Delaware, be and the same is hereby reversed. Since the 1945-46 licensing period has expired, no order will be entered herein to cancel the license erroneously issued to Coach, if such a license has been issued, but his application for renewal for the 1946-47 fiscal year must be considered as an application for a new license, and not as an application for renewal of a license. Action thereon must accord with the provisions of P. L. 1946, c. 147.

ERWIN B. HOCK
Deputy Commissioner.

7. LIMITATION OF NUMBER OF RETAIL LICENSES - STATE LIMITATION LAW (P. L. 1946, CHAPTER 147) - EXCEPTION IN SECTION 8 OF NEW LAW PERMITTING ISSUANCE OF NEW LICENSE TO EX-LICENSEE VETERAN - SECTION 8 APPLICABLE ONLY TO A PERSON WHO FORMERLY HELD A LICENSE - LICENSE ISSUED TO A CORPORATION IS HELD BY THE CORPORATION AS A SEPARATE AND DISTINCT LEGAL ENTITY, THUS EXCEPTION IS NOT APPLICABLE TO VETERANS WHO WERE MEMBERS OF A FORMERLY LICENSED CORPORATION.

July 23, 1946

Arthur W. Herrigel, Esq.
Newark 2, N. J.

Dear Mr. Herrigel:

I have your letter of July 12th concerning the desire of Anthony and Francis Angele to secure a new plenary retail consumption license in Union Township. Specifically, you inquire as to the possibility of the issuance of such new license under Sections 8, 9 or 10 of the State Limitation Law -- Chapter 147 of the Laws of 1946.

Sections 9 (seasonal licenses in resort areas) and 10 (hotels with fifty or more sleeping rooms) appear plainly inapplicable to the instant situation and, thus, the only section considered herein is Section 8 (exception in favor of ex-licensee veterans).

According to our records, License C-9, effective July 1, 1941, was issued to Angele's Grove, Inc. -- Matt Angele, President. After Matt Angele's death the business was continued for the remainder of the license year 1941-1942 with Catherine Angele as President. The license was renewed as License C-2, effective July 1, 1942, and expired on June 30, 1943.

Your letter advises of the following "setup of the directors and officers at the time the license was permitted to lapse:

"Catherine Angele	-	President	-	7 shares
Anthony Angele	-	Vice-pres.	-	1 "
Helen Zorn	-	Secretary &		
		Treasurer	-	1 "
Francis J. Angele	-		-	1 " "

Section 8 of the State Limitation Law reads:

"8. Nothing in this act shall prevent the issuance, in a municipality of a new license to a person who, having held a license of the same class in the municipality, surrendered his license or permitted it to expire because of his induction into or service in the armed forces of the United States; provided, however, that such ex-licensee shall have filed the application for a new license within one year from the completion of his active service in said armed forces." (My underscoring).

Where an applicant qualifies as an ex-licensee veteran within the meaning of Section 8, it is for the municipal issuing authority to determine, in the first instance, whether in fact the applicant surrendered his former license or permitted it to expire because of his induction into the armed forces; and a municipal issuing authority's action granting or denying an application is appealable to the State Commissioner pursuant to R. S. 33:1-22.

Apart from the matter of a municipal authority's determination as to the indicated question of fact, it would seem clear that the exception provided in Section 8, as presently worded, does not contemplate or permit issuance of a new license where the former license was a corporate one.

It is true that the term "person" is defined in the Alcoholic Beverage Law to include a corporation (R. S. 33:1-1-r), and that the word "his" may include and apply to bodies corporate as well as individuals (R. S. 1:1-2); but Section 8 of the State Limitation Law plainly and expressly applies the veterans' exception to a person who formerly held a license. A license issued to a corporation is held by the corporation as a separate and distinct legal entity, not by the individuals who compose it.

It is apparent, of course, that a corporation could not qualify as an ex-licensee veteran within the intendment and meaning of Section 8.

Very truly yours,
ERWIN B. HOCK
Deputy Commissioner.

8. APPEAL CASES - JULY 1, 1945 THROUGH JUNE 30, 1946.

Cases undecided - June 30, 1945.	13
Cases filed for period July 1, 1945 through June 30, 1946	<u>139</u>
Total	152

DISPOSITION

Affirmed	83
Modification of penalty	1
Remanded	6
Reversed	26
Discontinued after hearing	5
Withdrawn	11
Not decided	<u>20</u>
Total	152

Edward J. Dorton
Deputy Commissioner.

9. ACTIVITY REPORT FOR JULY, 1946

ARRESTS:

Total number of persons arrested -- bootleggers ----- 23

SEIZURES:

Stills - under 50 gallons ----- 2
 over 50 gallons ----- 1
 Motor Vehicles - cars ----- 1
 trucks ----- 7
 Alcohol - gallons ----- 388.33
 Brewed malt alcoholic beverages (beer, ale, etc.) - gallons ----- 277.82
 Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons ----- 407.29
 Wine - gallons ----- 198.21
 Mash - gallons ----- 6.2

RETAIL LICENSEES:

Total number of premises inspected ----- 1380
 Total number of premises where alcoholic beverages were gauged ----- 550
 Total number of bottles gauged ----- 8539
 Total number of premises where violations were found ----- 157
 Total number of violations found ----- 217
 Type of violations found:
 Prohibited signs ----- 12
 Unqualified employees ----- 51
 Probable fronts ----- 7
 Improper beer taps ----- 4
 Regulations #38 sign not posted ----- 74
 Other Mercantile business ----- 1
 Price pamphlet not displayed ----- 23
 Disposal permit necessary ----- 7
 Illicit liquor - bottles ----- 36
 Other violations ----- 2

STATE LICENSEES:

Premises inspected ----- 2
 License applications investigated ----- 33

COMPLAINTS

Complaints assigned for investigation ----- 509
 Complaints investigated, reviewed and closed ----- 336
 Investigations completed - not closed administratively ----- 54
 Investigations assigned, not yet completed ----- 173

LABORATORY:

Analyses made ----- 84
 "Shake up" cases (alcohol, water and artificial coloring) ----- 6
 Liquor found to be not genuine as labeled - bottles ----- 17

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made ----- 17
 Persons fingerprinted for non-criminal purposes ----- 316
 Identification contacts made with other enforcement agencies ----- 351
 Motor vehicle identifications via N.J. State Police Teletype ----- 9

DISCIPLINARY PROCEEDINGS INSTITUTED:

Cases transmitted to municipalities ----- 11
 Violations involved:
 Sale during prohibited hours ----- 5
 Sale to minors ----- 2
 Bookmaking ----- 2
 Gambling (cards) ----- 1
 Gambling (numbers) ----- 1
 Sale to non-members by club ----- 1
 Unqualified employee ----- 1
 Cases instituted at Department ----- 27
 Violations involved:
 Illicit liquor ----- 10
 Purchase from improper source ----- 8
 Sale outside scope of license ----- 4
 Fraud and front ----- 3
 Hindering investigation ----- 2
 Sale during prohibited hours ----- 2
 Brawls ----- 1
 Mislabeled beer tap ----- 1
 Sale to minors ----- 1
 Slot machines ----- 1
 Storage of licensed premises ----- 1
 Unqualified employee ----- 1
 Cases brought by municipalities on own initiative and reported to Department ----- 5
 Violations involved:
 Brawls ----- 1
 Business conducted as a nuisance ----- 1
 Inadequate view into premises during closing hours ----- 1
 Persons of ill repute ----- 1
 Licensee working while drunk ----- 1
 Sale during prohibited hours ----- 1
 Sale to minors ----- 1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held ----- 51
 Appeals ----- 12
 Disciplinary proceedings ----- 18
 Eligibility ----- 9
 Seizures ----- 7
 Applications for license ----- 5

PERMITS ISSUED:

Total number of permits issued ----- 4807
 Employment ----- 1606
 Solicitors ----- 2185
 Social affairs ----- 221
 Disposal of alcoholic beverages ----- 152
 Special Wine ----- 29
 Miscellaneous permits ----- 614

10. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1945 TO JUNE 30, 1946 AS REPORTED TO THE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R. S. 33:1-19.

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	482	\$ 173,676.12	63	\$ 20,522.41	10	\$ 950.00					1	554	\$ 195,148.53
Bergen	813	268,190.51	282	63,679.81	48	4,209.67	28	\$1,194.93	9	\$1,848.75	6	1174	339,123.67
Burlington	182	61,039.01	21	4,894.93	31	3,804.73	1	25.00				235	69,763.67
Camden	458	197,749.31	72	23,035.25	60	5,340.41			7	1,218.69	12	585	227,343.66
Cape May	127	56,350.41	10	2,950.00	12	1,064.11						149	60,364.52
Cumberland	81	30,950.00	12	2,743.16	27	3,560.00						120	37,253.16
Essex	1376	691,809.63	349	163,291.64	78	10,092.47	24	1,033.30			2	1825	866,227.04
Gloucester	108	30,375.00	11	1,675.00	6	366.30						125	32,416.30
Hudson	1561	671,842.15	287	111,441.74	59	7,110.54	52	1,790.80			4	1955	792,185.23
Hunterdon	80	19,887.81	1	200.00	3	561.78			1	100.00	2	83	20,749.59
Mercer	424	178,189.18	45	11,291.50	39	4,853.56			1	94.54	1	508	194,428.78
Middlesex	624	238,154.59	55	14,356.44	39	3,286.74			1	25.00	2	717	255,822.77
Monmouth	536	212,223.40	100	26,005.74	25	2,882.43	6	199.57	47	16,187.15	25	689	257,498.29
Morris	331	97,168.18	82	19,376.26	31	2,468.45	1	25.00	14	2,296.85	9	450	121,334.74
Ocean	180	80,657.88	33	12,039.80	9	763.57					2	220	93,461.25
Passaic	877	335,375.30	146	37,803.97	27	3,370.00	11	453.42			2	1059	377,002.69
Salem	50	15,900.00	5	700.00	9	756.78						64	17,356.78
Somerset	189	63,718.20	32	6,616.66	10	1,017.11						231	71,351.97
Sussex	153	32,302.06	12	1,792.00	4	127.89			4	640.17	3	175	34,862.12
Union	543	267,380.97	136	44,815.84	54	6,300.00	17	722.74			1	749	319,219.55
Warren	143	36,025.08	15	2,605.10	22	2,195.28	3	376.37			2	181	41,202.33
TOTALS	9323	\$3,758,964.79	1769	\$571,837.25	603	\$65,081.82	143	\$5,821.63	84	\$22,411.15	74	11,848	\$4,424,116.64

ERWIN B. HOCK, Deputy Commissioner.

Respectfully submitted,
E. K. Leuzarder
Adm. Inspector

11. APPELLATE DECISIONS - MININSOHN v. LAKEWOOD AND PULCRANO.

CELIA MININSOHN,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF LAKEWOOD and)
 LOUIS C. PULCRANO, JR.,)
 t/a LAKEWOOD PACKAGE STORE,)
)
 Respondents)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Ewart & Bennett, Esqs., by Howard Ewart, Esq., Attorneys for Appellant.
J. Elmer Matthews, Esq., Attorney for Respondent Township Committee.
James J. Myers, Esq., Attorney for Respondent Louis C. Pulcrano, Jr.

This case comes before me on appeal from the action of the Township Committee of the Township of Lakewood granting a plenary retail distribution license to Louis C. Pulcrano, Jr. for premises at 139 East Fourth Street, Lakewood, for the license year 1945-46.

Appellant contends that the action of the respondent Township Committee was erroneous in that there was no public need or necessity for an additional plenary retail distribution license in the Township of Lakewood, and that the issuance of the license to respondent Pulcrano was contrary to the policy voiced publicly by the Chairman of the Township Committee and theretofore adhered to by three other members of said Committee. The fifth member of the Township Committee was absent at all times herein mentioned, being in the armed forces of the United States.

The issuance of the license to respondent Pulcrano filled the quota of ten such licenses permitted by an ordinance then in effect in the Township. The Federal census discloses that in 1940 Lakewood had an all-year-round population of 8,502 persons. Edward K. Burdge, one of the Township Committeemen, testified that at present the population is about 12,000. George Garon, Township Clerk, testified that, beginning in the month of September each year and until April of the following year, the population of Lakewood increases by 20,000. This increase, Garon stated, is reflected in the section of the Township known as East Lakewood, where the licensed premises in question are located. There are four premises licensed for the sale of alcoholic beverages in this area, including respondent Pulcrano's. Two of these premises are occupied by "package stores" and two are taverns. The "package store" operated by appellant is located about fifty or sixty feet from Pulcrano's store, and the two plenary retail consumption licensed premises are located eighty feet and two hundred feet, respectively, from the premises in question. All of these licensees appear to be located in a neighborhood devoted to business.

Committeeman Burdge testified that the Chairman did not speak for him when he announced at a public hearing that enough plenary retail distribution licenses were issued and outstanding in the Township. Burdge stated that he was of the opinion, following a lengthy discussion with members of the Township Committee, that an additional license was needed in the East Lakewood section of the municipality. He further testified that he had previously voted against the issuance of a "package goods" license to another applicant on the ground that there was no need or necessity for a liquor store in the particular section of the municipality for which that license was sought.

Cf. Houtkin v. Lakewood, Bulletin 646, Item 1. It is apparent that there was a change in the policy of the respondent municipality. In the Conclusions in the last mentioned case the Commissioner made the following suggestions:

"However, it is well to point out that the (Lakewood) ordinance should be amended to reduce the number of plenary retail distribution licenses to nine. In that way the sincerity of the position of the Township Committee will be further demonstrated. To permit the ordinance to stand unamended invites further difficulties."

The ordinance was not amended!

Appellant, a distribution licensee located fifty or sixty feet away from the premises of respondent Pulcrano, contends that respondent issuing authority abused its discretion in placing a second distribution license in such close proximity to her premises and the two consumption licensees located in the same block. I have pointed out, however, on many occasions, that the number of licensed premises to be permitted in any particular area is a matter confided in the first instance to the sound discretion of the local issuing authority and that the burden rests with the appellant to show that such discretion has been unreasonably exercised.

Were I a member of the issuing authority I might well have cast my vote against the granting of the instant application. However, there is room for latitude of opinion in this case. My function on appeals of the type now before me is not to inflict or substitute my opinion on or for the license issuing authority but, rather, to determine if reasonable cause exists for theirs and, if so, to affirm whatever their view irrespective of my own. Cf. Re Rafalowski v. Trenton, Bulletin 155, Item 8; Curry v. Margate City, Bulletin 460, Item 9.

After consideration of the testimony in the instant case, I find that appellant has failed to sustain the burden imposed upon her. The record discloses that the Chairman and three Township Committeemen voted to grant the application. Committeeman Burdge stated that the members of the Township Committee were satisfied that there was an overwhelming sentiment among the residents of the East Lakewood section in favor of issuing the license. Under those conditions I cannot rightfully say that the only conclusion open to the local issuing authority was to deny the application. Neither can I say that the action of the members of the Township Committee in voting to grant the application was so arbitrary and unreasonable as to amount to an abuse of discretion warranting a reversal of its action.

The action of respondent Township Committee in issuing a plenary retail distribution license for the fiscal year 1945-46 to respondent Pulcrano is hereby affirmed.

Accordingly, it is, on this 6th day of August, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

12. APPELLATE DECISIONS - KLEIN v. SEASIDE HEIGHTS.

JOSEPH KLEIN,)
)
 Appellant,)
)
 -vs-)
)
 MAYOR AND COUNCIL OF THE)
 BOROUGH OF SEASIDE HEIGHTS,)
)
 Respondent)
)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Joseph A. Citta, Esq., Attorney for Appellant.
Percy Camp, Esq., Attorney for Respondent.

This is an appeal from the action of respondent in denying the application of appellant for a plenary retail distribution license for the 1945-46 fiscal year for premises at 419 Boulevard, Borough of Seaside Heights. The application was denied on April 3, 1946.

The testimony given at the hearing held herein indicates that, prior to April 15, 1943, appellant was the holder of a plenary retail distribution license for other premises in the Borough. At that time he accepted a position with the United States Government Army Civilian Corps and surrendered his license. On said date an existing ordinance of the Borough prohibited, in effect, the issuance of any additional licenses.

On May 3, 1944, the Borough passed on final reading an amendment to the previously existing ordinance providing that the limiting provisions of said ordinance shall not apply to

"Any license or licenses where the licensee or licensees thereof are presently or in the future shall be in the armed forces of our nation or actually engaged in bona fide national defense work during the present war and for six months thereafter; provided that this shall apply only during the time such licensee or licensees are in the armed forces or national defense work."

The general purpose of the original ordinance was to limit the number of licenses in the municipality, and the stated purpose of the amendment mentioned above, and a prior amendment dated April 21, 1943, was to permit any licensee who surrendered his license during the time of hostilities and entered the service of the country or became engaged in bona fide defense work, to make application for a license within six months after discharge from the armed forces of the country or within six months after termination of the defense work in which the licensee was engaged.

Appellant remained in the Army Civilian Corps until March 22, 1946. Prior to April 1, 1946, he made application to the respondent municipality for the same type of license that he held prior to entering the civilian service of this country. The application was for other premises than formerly occupied by him, the reason being that the former premises were no longer available. The application was denied. From said denial the appellant appeals. After the taking of the testimony had been completed, the respondent municipality advised this Department that it did not desire to contest the appeal any further and would consent to a reversal of its action.

No good reason appearing to the contrary, the action of respondent will be reversed.

Accordingly, it is, on this 7th day of August, 1946,

ORDERED, that the action of the respondent municipality is hereby reversed. Since the 1945-46 licensing year has expired, it would be a mere empty gesture to require respondent to issue a license as applied for. However, the order of reversal herein gives appellant the standing of a licensee, as of June 30, 1946, and will permit respondent to consider a pending application filed by appellant for the 1946-47 fiscal year as an application for renewal of the license which should have been granted to appellant on April 3, 1946.

ERWIN B. HOCK
Deputy Commissioner.

13. STATE LICENSES - NEW APPLICATIONS FILED.

A. Louis Schlesinger, t/a South Jersey Distributors
119 - Rear 121 North Connecticut Ave., Atlantic City, N. J.
Application filed July 29, 1946 for transfer of Limited
Wholesale License WL-1 from South Jersey Distributors, Inc.

Glenroy Ltd., Rooms 1401-1402, 60 Park Place, Newark, N. J.
Applications filed July 30, 1946 for transfer of Plenary
Wholesale License W-31 and Warehouse Receipts License WR-20
from Alvin S. Loeb, t/a Glenroy Ltd.

Saccone & Speed (U.S.A.), Inc., 303 Park Ave., New York, N. Y.
Application for Plenary Wholesale License filed July 30, 1946.

David C. Krumm, t/a Krumm's Winery, Rear 563 Central Ave.
Linwood, N. J.
Application for Limited Winery License filed August 1, 1946.

South Jersey Bottling Co., 811-13-15 So. 3rd St.;
262-64-66 Pine St., Camden, N. J.
Application filed August 5, 1946 for transfer of State
Beverage Distributor's License SBD-8 from Ursula, Vito,
Lawrence J. & Frank P. Moles, t/a South Jersey Bottling Co.

Riss & Company, Inc., 121 Adams St., Hoboken, N. J.
Application for Transportation License filed August 5, 1946.

T and D Trading Co. (a partnership), 500 Harrison Ave.
Harrison, N. J.
Application for Limited Wholesale License filed August 5, 1946.

Cesto Chiesa, t/a "C. C.", 1114-1116 - 21st St., North Bergen, N.J.
Application for Wine Wholesale License filed August 5, 1946.

C. B. Baker Company, Inc., 807-808 Military Park Bldg.
60 Park Place, Newark, N. J.
Applications for Plenary Wholesale and Warehouse Receipts
Licenses filed August 6, 1946.

Evaristo Barbero and Henry C. Barbero, t/a E. Barbero & Son
1109 New York Ave., Union City, N. J.
Application for Transportation License filed July 29, 1946.
Transportation License T-104 issued August 6, 1946.

Erwin B. Hock

Deputy Commissioner.