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

BULLETIN 475 SEPTEMBER 10, 1941.

1. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS - OPEN DURING PROHIBITED HOURS - SALES TO A MINOR - THIRD VIOLATION OF HOURS REGULATION WITH A FOURTH OCCURRING SINCE THE HEARING, SHOWING UTTER DISREGARD FOR THE LAW - LICENSE REVOKED - HEREIN OF THE PROTECTION TO BE AFFORDED LAW-ABIDING LICENSEES AND THE TREATMENT TO BE GIVEN HABITUAL VIOLATORS.

In the Matter of Disciplinary Proceedings against PATSY CALABRESE, 299 Morris Ave., Newark, N. J., Holder of Plenary Retail Consumption License C-607 for the fiscal year 1940-41 (expiring June 30, 1941) issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, and extended by order of the State Department of Alcoholic Beverage Control upon appeal filed from the refusal to renew such license.	CONCLUSIONS AND ORDER

Frank Calabrese, Esq., Attorney for the Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to charges that:

> "1. At or about 4:00 A.M. on June 16, 1941 you sold and served alcoholic beverages in violation of Section 1 of Ordinance No. 3930 adopted by the Board of Commissioners of the City of Newark on December 21, 1938, which ordinance prohibits the sale of alcoholic beverages between the hours of 3:00 A.M. and 7:00 A.M.
>
> "2. At or about 4:00 A.M. on June 16, 1941 your licensed premises, where the principal business is the sale of alcoholic beverages, were open in violation of Section 1 of the aforesaid ordinance, which requires that establishments where the principal business is the sale of alcoholic beverages be closed during hours when sales are prohibited.",

and not guilty to charges that:

> "3. On or about June 16, 1941 you sold alcoholic beverages to Alfreda Grace Simmons, also known as Inez Simmons, a minor, in violation of R. S. 33:1-77.

"4. On or about the date aforesaid you sold, served, delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to Alfreda Grace Simmons, also known as Inez Simmons, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by said person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

This is the third time this defendant has been charged in disciplinary proceedings with sales during prohibited hours. On July 22, 1937 the local authority suspended his license for three days. On February 4, 1939 this Department imposed a ten-day suspension against his license. See Bulletin 298, Item 4. This latter suspension would undoubtedly have been greater except that the prior violation had not then been certified to this Department by the local Board and thus, so far as it was then disclosed by the Department's records, it appeared that Calabrese had no previous record of any violation.

Nor is this all. On August 17, 1941, but two days after his hearing in the instant proceeding, Calabrese was again arrested and charged in Police Court with remaining open during prohibited hours in violation of local ordinance. To this charge, the defendant pleaded guilty and was fined $100.00.

There is no excuse for this type of infraction - not even on the first occasion. Any grade school child can tell time. Much less is there any excuse for a recurrence of such violation. When it happens a third time, it can mean only that the violator has an utter disregard for the liquor laws and that he is unworthy of the priviliges of a license. I am entirely in accord with the sentiments of the late Commissioner who, in commenting on a penalty imposed for a second hours violation, said:

"This is Cartwright's second offense. His license was suspended for two weeks for a similar violation in 1937. If he does it again, revoke his license outright and let somebody else have a chance. There are hundreds who would enjoy and respect the privilege. One who can't tell time isn't fit to be a licensee." Re Conover, Bulletin 387, Item 7.

In the conduct of this defendant there is every indication of a continued and persistent practice to deliberately and flagrantly defy the hours of sales regulation. This is patently discernible from the naive admission of the bartender that during prohibited hours the regular price of ten cents for a glass of beer was jacked up to fifteen cents!

The decent licensee is entitled to be protected against this form of unfair competition and I am determined to give every law-abiding licensee the protection to which he is entitled by an impartial enforcement of the law. Certainly, he has no desire to cater to the undesirables who are pleasure bent during the wee hours of the morning. It is this carousing after permissible hours that brings the liquor business into disrepute. Any self-respecting citizen will agree, I am sure, that three o'clock in the morning is plenty late enough for taverns to remain open. This defendant, however, has shown by his conduct that he is of a different opinion. There is no place for him in the liquor business.

The unlawful activities of Calabrese are a perfect illustration of how the chiselers and habitual violators of the law jeopardize the position of the great majority of law-abiding licensees. The activities of this defendant may well and probably will result in this Department's refusal to permit licensees with records from continuing operations under stays within certain limitations to be imposed by me in the near future.

Revocation is indicated and will be effected immediately.

Although, in view of the foregoing, it becomes unnecessary to make any determination with respect to charges 3 and 4 herein, nevertheless, I have examined the testimony and record with care and, suffice it to say, I am satisfied that he is guilty as charged.

This defendant was refused a renewal of his 1940-41 license. He has appealed from such refusal and is presently operating under an extension of his prior license granted upon the filing of his appeal. The action of the Newark Board in denying such renewal is being affirmed by decision rendered simultaneously herewith, and the aforesaid extension is being vacated at once. See Bulletin 475, Item 2. He will, therefore, have to cease operations immediately.

However, an order revoking the 1940-41 license will be entered since it will result in mandatorily disqualifying Calabrese from holding a liquor license for a period of two years from the date hereof. R. S. 33:1-31; see Re Roninger, Bulletin 421, Item 10.

Accordingly, it is, on this 22nd day of August, 1941,

ORDERED that plenary retail consumption license C-607, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, to Patsy Calabrese for premises 299 Morris Avenue, Newark, N.J., for the fiscal year 1940-41, be and the same is hereby revoked.

ALFRED E. DRISCOLL,
Commissioner.

2. APPELLATE DECISIONS - CALABRESE v. NEWARK.

APPLICATION DENIED BECAUSE APPLICANT WAS NOT A PROPER PERSON TO BE LICENSED - DENIAL AFFIRMED.

PATSY CALABRESE,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Frank Calabrese, Esq., Attorney for the Appellant.
Thomas F. Guthrie, Esq., Attorney for the Respondent.

Respondent denied appellant's application for renewal of his plenary retail consumption license for premises 299 Morris Avenue, Newark, N. J. Hence, this appeal.

In its answer to the petition of appeal, respondent alleges that it denied the application because appellant is "not a proper person to be a licensee."

I agree. By his repeated violations of the local ordinance concerning the hours during which sales of alcoholic beverages may be made, appellant has stamped himself as being unfit to hold a liquor license. See the Conclusions and Order in disciplinary proceedings entered simultaneously herewith which resulted in revocation of appellant's 1940-41 license, with consequent mandatory disqualification against his holding a liquor license for two years from the date thereof. Re Calabrese, Bulletin 475, Item 1.

The action of respondent is affirmed.

Accordingly, it is, on this 22nd day of August, 1941,

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

ORDERED that the order entered herein on July 3, 1941, extending the term of appellant's plenary retail consumption license C-607 issued to him by the Municipal Board of Alcoholic Beverage Control of the City of Newark, for premises 299 Morris Avenue, Newark, N. J., for the fiscal year 1940-41, be and the same is hereby vacated, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - INADEQUATE TWO-DAY SUSPENSION FOR POSSESSION OF TWO REFILLED BOTTLES - UNIFORM MINIMUM OF TEN DAYS' SUSPENSION RECOMMENDED TO ALL MUNICIPALITIES IN ILLICIT LIQUOR CASES.

August 26, 1941

Francis M. Seaman, Esq.,
City Attorney,
Perth Amboy, N. J.

My dear Mr. Seaman:

There has just been handed to me a copy of our staff report and your letter of August 21st re disciplinary proceedings conducted by the Board of Commissioners against The Canteen, Limited, 584-6 Amboy Avenue, charged with refilling whiskey bottles. I note that the licensee was found guilty and its license suspended for two days.

While I am glad that this matter has been disposed of, and hope you will express to the Mayor and Board of Commissioners my appreciation for their cooperation, I think it only fair to say that I am not particularly impressed with the fact that the suspension in this case was limited to two days, in view of the clear evidence of the licensee's guilt. This mild spanking is made easier for the licensee to take when it is borne in mind that the suspension was set for a Monday and Tuesday, presumably days least likely to interfere with the licensee's business.

According to my staff report, the licensee possessed two bottles of a popular brand of whiskey, the contents of which in no way, except proof, compared with those of a sealed bottle similarly labeled.

Unquestionably, the seized bottles had been refilled, and refilling from one container to another constitutes bottling within the meaning of R. S. 33:1-78. For this the licensee is directly accountable, regardless of personal innocence. Re Heuring, Bulletin 445, Item 12, Re Wnoroski, Bulletin 454, Item 6.

In the interest of uniformity and to facilitate the enforcement of the law, this Department has, from time to time, recommended the imposition of certain minimum penalties. In a case of this particular type, we have consistently held that the minimum penalty that should be imposed, in the absence of aggravated circumstances and where it is the licensee's first offense, is a suspension of ten days. It is my hope that in the future all municipalities will impose at least minimum penalties as previously recommended by this Department, thereby continuing our established policy.

I will therefore appreciate it if, in the future, your Board of Commissioners will bear in mind the recommendations heretofore made, or hereafter to be made, by this Department, regarding penalties.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

4. APPELLATE DECISIONS - NEUSCHWENDER v. FORT LEE.

LICENSE DENIED BECAUSE OF PROXIMITY TO SCHOOL - BONA FIDE CHANGE OF MUNICIPAL POLICY SINCE PREMISES LAST LICENSED - PUBLIC NECESSITY AND CONVENIENCE NOT SHOWN - DENIAL AFFIRMED.

LOUIS NEUSCHWENDER,)
Appellant,)
-vs-)
MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF FORT LEE,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

G. Frank Shanley, Esq., Attorney for Appellant.
Lawrence A. Cavinato, Esq., Attorney for Respondent.

This appeal is from respondent's refusal to issue a seasonal retail consumption license to appellant for the term May 1 to November 1, 1941, for his combination roadstand and restaurant at 2199 Lemoine Avenue (Route 9W), Borough of Fort Lee.

Respondent denied such license for the reason, inter alia, that appellant's premises are located across the road from the nearby Fort Lee Junior-Senior High School (in a neighborhood which is otherwise open country). It appears, among other things, that 775 students attended this school during the last year; that, of these, approximately 240 passed appellant's premises daily in walking to and from school; further, that various students visit appellant's premises during the school's three lunch periods, some being truants who have left the school grounds without permission.

Respondent admits (and a survey in evidence shows) that appellant's place is actually not barred by R. S. 33:1-76, the well-known provision in the Alcoholic Beverage Law which prohibits premises within 200 feet of a school or church from being licensed for the sale of liquor. That provision specifically requires that measurement be made from entrance to entrance along the normal route a person would properly walk. Hence, measuring from their nearest respective entrances, the distance between appellant's place and the High School, whether measurement be on a direct air-line or via a nearby crossing at Coolidge Avenue, is apparently more (albeit not considerably more) than the requisite 200 feet.

However, such 200-feet rule is merely a basic minimum for proximity of liquor places to schools or churches. It does not, by inference or otherwise, mean that premises within the neighborhood of a school or church, but beyond the 200 feet, acquire any right to be licensed. Whether a license shall be issued in such a case despite the proximity of a church or school is, like other general questions concerning issuance of license, left to the sound and bona fide discretion of the issuing authority. As was said in Staciewicz v. Trenton, Bulletin 35, Item 10:

> "Section 76 (now R. S. 33:1-76) expresses a legislative policy against licensing premises near churches and schools. The 200 feet provision was included in the statute as a workable minimum requirement. The Legislature did not contemplate depriving issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but, nevertheless, beyond 200 feet."

Also see Gross v. Landis Township, Bulletin 386, Item 5, and cases there cited.

Hence, in the present case, in view of the close proximity of the High School and the visits of the students to appellant's premises, I would normally have no hesitancy in fully sustaining respondent's action as being a proper, and indeed laudable, exercise of its discretion.

The fact that the license which appellant is seeking is a so-called "summer" seasonal and not a year-round license does not alter this conclusion; for, among other things, such seasonal license extends from May 1 to November 1 and hence actually includes several school months.

However, what does give me pause is the fact that respondent in past years issued a series of retail liquor licenses for these premises to one Joseph Burgard. The last, a plenary retail consumption license, was transferred in December 1940 to another section in the Borough and the premises in question have remained without license since that time.

On close scrutiny, I am satisfied that respondent, with the premises thus having been cleared of license since last December, sincerely does not wish to restore any license there because of the proximity of the school, and has now actually adopted a bona fide and uniform policy to that effect. Cf. Serafin v. Bayonne, Bulletin 107, Item 3; Goldberg v. Livingston, Bulletin 163, Item 2. Apparently a major reason for such change in attitude is the fact that the Board of Education (and apparently two local civic organizations) have now for the first time protested against licensing these premises. One of the Borough councilmen, who testified at the hearing

on appeal, frankly stated that the past licenses were actually a "mistake."

I am heartily in sympathy with this open admission of past error and see no reason why, with that mistake having been corrected since last December, respondent should now be compelled to repeat it all over again. See Crisonio v. Bayonne, Bulletin 101, Item 6; Great Eastern Super Markets v. Orange, Bulletin 227, Item 6.

Certainly there is no evidence that public necessity and convenience require any such restoration of license. Although Lemoine Avenue (Route 9W) is a well-traveled highway, a licensed restaurant which is located on that road about one-quarter of a mile to the south, and another which is just around the bend at a traffic circle there, would seem ample to cope with the thirsty wayfarers in this general vicinity.

In view of the foregoing, I conclude that respondent's refusal to issue appellant's license should be affirmed. It is unnecessary to consider the additional grounds urged by respondent as justification for its action.

Accordingly, it is, on this 28th day of August, 1941,

ORDERED that the present appeal be and hereby is dismissed.

ALFRED E. DRISCOLL,
Commissioner.

5. ELIGIBILITY - PETTY LARCENY - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

August 28, 1941

Re: Case No. 389

In June 1933 applicant was convicted in a criminal court on a charge of petty larceny and was placed on probation for one year. Information received from a probation officer discloses that one month later the sentence was revoked by the court.

At the hearing herein, applicant testified that he and his brother-in-law were arrested by police officers when they were discovered removing some gasoline from an automobile for use in their own car, which had run out of gas. His testimony has been corroborated by independent investigation.

Petty larceny may or may not involve moral turpitude. Applicant has never been convicted of any other crime, and under all the circumstances of this case I believe that the crime of which he was convicted did not involve moral turpitude.

It is recommended, therefore, that applicant be advised that he is not disqualified by statute from holding a license or being employed by a liquor licensee in the State of New Jersey.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

6. DISQUALIFICATION - APPLICATION TO LIFT - PETITION HERETOFORE DENIED WITH LEAVE TO REAPPLY ON OR AFTER AUGUST 3, 1941 - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.	ON HEARING CONCLUSIONS AND ORDER
Case No. 171	

In Re Case No. 112, Bulletin 445, Item 6, petitioner's application for removal of his statutory disqualification resulting from conviction of a crime was denied because five years had not then elapsed from the date of conviction. Leave to reapply on or after August 3, 1941 was therein granted.

Pursuant to said leave, petitioner, on August 7, 1941, again made application for removal of his disqualification.

At the hearing herein, petitioner testified that since the time of the original hearing, he has resided in the same municipality; that, until May 1941, he was employed as a machinist by a large manufacturing company and since that time has operated a lunch room in the municipality where he resides.

His fingerprint records show that he has not been convicted of any crime since June 1936. Report from the Chief of Police of the municipality in which he lives and conducts business discloses no pending complaints against or investigations concerning him.

It now appearing to my satisfaction that he has conducted himself in a law-abiding manner for more than five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest,

It is, on this 3rd day of September, 1941,

ORDERED, that petitioner's statutory disqualification because of the conviction described in Re Case No. 112, supra, be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

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

7.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1st, 1941 TO JULY 31st, 1941, AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption No. Issued	Plenary Retail Consumption Fees Paid	Plenary Retail Distribution No. Issued	Plenary Retail Distribution Fees Paid	Club No. Issued	Club Fees Paid	Limited Retail Distribution No. Issued	Limited Retail Distribution Fees Paid	Seasonal Retail Consumption No. Issued	Seasonal Retail Consumption Fees Paid	Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
Atlantic	464	173,561.15	60	21,050.00	10	950.00			2	259.24		536	195,820.39
Bergen	814	268,414.32	238	56,968.00	46	4,344.25	34	1,540.00	5	962.04		1137	332,228.61
Burlington	191	61,460.00	17	4,050.00	30	3,621.85	1	25.00				239	69,156.85
Camden	436	186,227.10	53	19,205.00	58	5,389.59			1	164.19		548	210,985.88
Cape May	124	51,350.00	11	3,150.00	5	500.00						140	55,000.00
Cumberland	79	23,750.00	7	1,700.00	26	2,748.97						112	28,198.97
Essex	1396	700,396.92	353	167,058.00	79	10,350.00	20	999.18	1	235.71		1849	879,039.81
Gloucester	111	29,550.00	9	1,150.00	6	300.00						126	31,000.00
Hudson	1610	664,376.42	271	108,040.00	39	4,998.36	52	2,100.00				1972	779,514.78
Hunterdon	81	21,195.00	1	300.00	1	150.00			1	125.70		84	21,770.70
Mercer	434	182,850.00	44	11,200.00	34	4,290.00						512	198,340.00
Middlesex	606	234,599.00	43	11,946.76	32	2,675.00	1	25.00	3	488.94		685	249,734.70
Monmouth	487	197,735.57	72	20,409.00	22	2,323.37	6	225.00	27	8,401.99		614	229,094.93
Morris	335	94,736.09	71	17,250.00	28	2,350.00	1	25.00	15	2,134.68		450	116,495.77
Ocean	166	74,367.12	27	9,435.00	7	965.00						200	84,767.12
Passaic	896	344,935.00	124	35,315.04	26	3,073.89	15	675.00	2	326.97		1063	384,325.90
Salem	50	15,750.00	4	550.00	10	868.42						64	17,168.42
Somerset	188	65,009.21	24	5,575.00	9	875.00						221	71,459.21
Sussex	154	32,988.01	13	2,015.00	4	210.00			3	450.00		174	35,663.01
Union	553	272,250.00	124	41,633.37	56	6,647.12	18	804.17	1	375.00	1	751	321,709.66
Warren	135	37,359.27	13	2,307.50	16	1,716.31	1	35.00	6	855.00		171	42,273.08
TOTALS	9310	$3,732,860.18	1579	$540,307.67	544	$59,347.13	149	$6,453.35	67	$14,779.46	1	11648	$4,353,747.79

ERWIN B. HOCK,
Deputy Commissioner.

8. ACTIVITY REPORT FOR AUGUST, 1941

TO: Alfred E. Driscoll, Commissioner

ARRESTS:	Licensees	0 Bootleggers 15	
	Total number of persons arrested		15
SEIZURES:	Stills - 1 to 50 gallons daily capacity	3	
	50 gallons and more daily capacity	4	
	Total number of stills seized		7
	Mash - gallons		2,150
	Motor vehicles - Trucks	0	
	Passenger cars	0	
	Total number of motor vehicles seized		0
	Beverage alcohol - gallons		0
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons		8.85
	Wine - gallons		14.07
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons		6.66

RETAIL LICENSEES: Number of premises in which were found:

Illicit (bootleg) liquor	2	"Fronts" (concealed ownership)	1
Gambling devices	10	Improper beer tap markers	0
Prohibited signs	7	Stock disposal permits nec.	18
Unqualified employees	109	Other types of violations	9

Total number of premises where violations were found	156
Total number of premises inspected	1,467
Total number of unqualified employees found	158
Total number of bottles gauged	12,565

STATE LICENSEES:	Premises inspected	114
	License applications investigated	12
COMPLAINTS:	Investigated, reviewed and closed	248
	Investigation assigned, not yet completed	496
LABORATORY:	Analyses made	92
	"Shake-up" cases (alcohol, water and artificial coloring)	10
	Liquor found to be not genuine as labeled	4

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	28
Persons fingerprinted for non-criminal purposes	66
Identification contacts with other enforcement agencies	219
Motor vehicle identifications via N. J. State Police Teletype	68

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	23
Cases instituted at Department	16
CANCELLATION PROCEEDINGS	1

HEARINGS HELD AT DEPARTMENT:

Appeals	7	Eligibility	10
Disciplinary Proceedings	12	Noise complaint	1
Seizures	3		
Total number of hearings held			33

PERMITS ISSUED:

Unqualified employees	772
Solicitors	104
Social affairs	344
Home manufacture of wine	43
Disposal of alcoholic beverages	116
Miscellaneous permits	107
Total number of permits issued	1,486

Respectfully submitted,
S. B. WHITE,
Chief Inspector.

9. CITY OF NEWARK - RESUMPTION OF RESPONSIBILITIES - DISCIPLINARY POWERS HERETOFORE TAKEN OVER BY THE STATE COMMISSIONER RETURNED TO THE MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL.

September 4, 1941

Hon. John B. Keenan,
Director, Department of Public Safety,
Newark, N. J.

My dear Commissioner:

I have before me your letter of August 27th, together with a copy of a letter addressed to you under date of August 25th by Daniel V. Crosta, Chairman of the Newark Municipal Board of Alcoholic Beverage Control.

I have read with interest the report submitted by Mr. Crosta to you covering the activities of the present Board from the date of its appointment in June, 1941, to August 1st of this year.

In your letter to me, you recommend that the disciplinary powers taken away from the Newark Board in 1938 by my predecessor, be restored.

For several weeks I have been engaged in a careful study of the record of liquor control in Newark under previous Boards. This record, which in no way involves the present Board, does not make pleasant reading.

It may not be amiss at this time to review briefly the events leading up to the withdrawal in 1938 of the disciplinary powers from the Newark Board. You will undoubtedly remember that in 1936, Commissioner Burnett, in a letter addressed to H. S. Reichenstein, Secretary of the Municipal Board of Alcoholic Beverage Control, severely criticised that Board for its dismissal of case after case of liquor law violations where the record indicated that there should have been either suspension or revocation of license.

A further examination of the record discloses that during this period the rank and file of the Newark Police force were diligent in the performance of their duty. In most instances the responsibility for laxity in law enforcement rested with those whose duty it was to back up the Police.

The wholesale dismissals by the old Board of charges of possession of illicit liquor, sale of liquor to minors, sale of liquor on Sunday during closed hours, and other violations even more serious, encouraged further flouting of the law during that period. Licensees were led to believe that even though they violated the law, nothing much would happen. This apparently wilful failure of the representatives of the City of Newark to assume the full measure of their responsibility culminated, in April of 1938, in a presentment of the Grand Jury in which it was stated:

"We feel that the control and regulation of the sale of alcoholic beverages contemplated by our state A.B.C. act in creating a municipal board of A.B.C. finds completely inadequate expression in the present function of the Newark board. Continued practices such as the many violations which the Municipal A.B.C. Board apparently condoned, or is unable to cope with, give expression to the fears put forth by ardent prohibitionists.

"Ample testimony was given before us to justify a conclusion that not only are licensees inadequately restricted but that license renewals are granted with little or no consideration given to past violations.

"It must be apparent that lax enforcement encourages violations and works a hardship on that portion of our 1,060 Newark licensees who try to operate orderly establishments and who comply with the law. The failure of the board to properly back up the police department must necessarily discourage and hamper any effort by the police to preserve order and decency in the City of Newark."

This presentment was followed immediately by a decision on the part of my predecessor not to refer disciplinary matters to the Newark Board any longer, and to request the Newark Police to turn over to him for direct action all complaints which warranted revocation or suspension of license. This drastic step, in my opinion, was necessary in order to terminate an intolerable situation.

I am glad that in your letter to me you acknowledged the propriety of the action taken by Commissioner Burnett. The record clearly shows that his decision was provoked by a chronic disregard for the law and for the rules and regulations of this Department, which made such action imperative.

As I have reviewed the record, I find myself in complete agreement with the action taken and if confronted with a similar situation I will promptly take the same action notwithstanding the additional burdens which such a step imposes upon me.

The control of this phase of the liquor business, however, properly is the function of the local municipal governing body. The State alcoholic beverage law gives to local government wide powers. As is true in every case where power is given, there accompanies it an equal measure of responsibility for the prudent exercise of that power.

The local enforcing agencies, alcoholic beverage boards, and city commissions or councils, as the case may be, are our first line of defense against flagrant violations of a law intimately related to the lives and welfare of all of us. My Department has neither the time nor the personnel to enable it to assume full responsibility for the enforcement of our ABC laws and municipal ordinances in every municipality of the State. We must necessarily depend upon the wholehearted cooperation of the various local agencies to which I have referred.

I should withhold disciplinary power from local boards under the broad powers vested in me by the State law only for such minimum length of time as may be necessary, under the circumstances, to secure adequate enforcement of the law.

A study of the record of the present Newark Board of Alcoholic Beverage Control convinces me that this body has to date handled a difficult task in a thoroughly commendable manner. I am convinced that the Board, as presently constituted, is anxious to do a good job and that it will properly back up and support the various law enforcing agencies. The members of the Board will need the support of yourself and your associates, and I am delighted that in your letter to me you stated:

> "The Board is cognizant of my determination to keep the taverns of the city of Newark clean, wholesome, and free from all incumbrances of vice, rackets, sale of liquor to minors, and all features that are contrary to law, order, and the public interest."

You have my wholehearted support in this declaration of policy.

Therefore, effective as of this date, I am restoring to the local Alcoholic Beverage Board the disciplinary powers withdrawn by the late Commissioner Burnett.

All disciplinary matters in which charges have been preferred will be brought to completion by me. Those reports of Police investigations recently transmitted by you with respect to which charges have not yet been preferred will be returned to you for transmission to the Municipal Board of Alcoholic Beverage Control. All future disciplinary matters should, in the first instance, be referred to the Newark Board and the Police will no longer be required to refer to me complaints which they believe warrant revocation or suspension. Such complaints should be referred to the local Board for determination by it.

I have written at length because the problem before me, while it has direct application to the City of Newark, is common to every municipality in the State of New Jersey. In returning to Newark the responsibility which rightfully belongs to its local ABC Board, I am confident that this Board will give Newark a fearless and impartial administration of the alcoholic beverage law, the rules and regulations of this Department, and local ordinances. Anything less will, of course, require prompt reconsideration of the action now taken.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

10. APPELLATE DECISIONS - LEO'S 29 CLUB, INC. v. MOUNTAINSIDE.

TRANSFER DENIED ALLEGING UNSUITABILITY OF PREMISES, TRAFFIC HAZARD AND POLICING PROBLEM - OTHER DWELLING HOUSES LICENSED IN MUNICIPALITY - TRAFFIC HAZARD NOT SHOWN - NO MEASURES UNDERTAKEN TO ELIMINATE THE SAME POLICING PROBLEM WITH RESPECT TO EXISTING PLACES - DENIAL REVERSED.

APPLICATIONS FOR LICENSES - DENIALS - REASONS SHOULD BE STATED.

LEO'S 29 CLUB, INC.,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF MOUNTAINSIDE,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Nathan L. Jacobs, Esq., Attorney for the Appellant.
Charles N. Thorn, Jr., Esq., Attorney for the Respondent Borough Council.
Joseph Weintraub, Esq., Attorney for Hoppe Farms, an Objector.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to grant a person to person and place to place transfer of a plenary retail consumption license issued for the fiscal year 1940-1941.

The premises from which the license was sought to be transferred had been conducted as a diner on State Highway Route 29 (Exhibit A-4), in the Borough of Mountainside. The premises, known as the Voorhees property (Exhibit A-2), to which transfer was sought, are located on the same State Highway between 500 and 1,000 feet from the licensed diner.

The application for transfer was unanimously denied. No reasons for this denial were given by the respondent at the time the transfer was denied. In fairness to appellant, the Borough Council should have, at that time, stated its reasons for the denial of the application. Rosenvinge v. Metuchen, Bulletin 249, Item 6; Paini v. Bloomsbury, Bulletin 300, Item 13.

It should be noted that the "American way" of dealing with one's fellow man in a judicial capacity is not only to give him a chance to be heard, but, when it becomes necessary to render an adverse decision, to state the reasons for so doing. This policy will tend to discourage applications by persons who are not in a position to stand adverse publicity in the event of an unfavorable decision. Fair-minded men who are convinced that their decision is correct need not fear to take a definite stand or to give their reasons for that stand. I therefore recommend that in every instance the license issuing authority state its reasons for its adverse decision at the time it is rendered. This practice is not only in accord with sound judicial precedent, but has the added advantage of eliminating criticism to the effect that the local issuing authority, after rendering its decision, tailors its reasons therefor at its leisure in an effort to justify its previous action.

Nothing herein stated is to be taken as a reflection upon the respondent in this case whose action and previous policy on this point, I am convinced, was based upon a sincere desire to protect the sensibilities of those who were called upon to appear before it.

This is essentially a judicial proceeding and the decision in this case, as in every other similar case, must be based upon the record presented at the time of hearing. Appellant contends that respondent's action in refusing the transfer was arbitrary and

unreasonable. Respondent denies this and gives as its reason for denying the transfer that the building to which the transfer is sought is "an ordinary dwelling house" not suitable for the sale of alcoholic beverages, set back approximately one hundred feet from the highway, and that a license at the new location would "create an additional traffic hazard" and policing problem.

A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; Van Schoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Masarik v. Milltown, Bulletin 283, Item 10.

On the other hand, where it appears that the refusal of a transfer is arbitrary or unreasonable, the action of respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Miller v. Paterson, Bulletin 219, Item 6; Rucereto v. Dumont, Bulletin 253, Item 6; Shapley v. Delaware, Bulletin 294, Item 7.

Respondent's most important objection to the licensing of the dwelling house premises is that the rooms on the upper floors are susceptible to improper use and that therefore it is an undesirable type of building to be licensed. The force of this objection is weakened considerably by the fact that there are at least four similar structures with rooms on the upper floors for which similar licenses have been issued.

I would have been more impressed if the respondent had met the above stated problem by taking some affirmative step which would have been applicable to all the licensed premises having these allegedly objectionable features. It does not appear from the record that any such affirmative steps have been taken.

Any policy of general application, looking toward the elimination of improper conduct on licensed premises, will receive my support.

I cannot anticipate that appellant will break the law, and in the absence of a general regulation or policy by the municipality applicable to all licensees alike, I cannot assume that there is a greater likelihood of such violation in this case than in the other cases now under supervision of the respondent.

Respondent further urges that the building is objectionable because it sets back some one hundred feet from the highway and the police would have to enter the premises to observe whether the licensee was complying with the closing hour or other regulations, whereas other licensed premises can be observed by the police from the highway. It is to be noted that the testimony indicates that there is at least one other licensed premises approximately seventy-five feet back from the highway. In any event, it is doubtful whether police officers should rely on a fleeting inspection of the exterior of a licensed premises in order to determine whether the same were being properly conducted.

As to the objection that licensing the premises in question would create a traffic hazard, it appears that the traffic situation at the Voorhees property is little different from that which exists at other licensed premises. Indeed, photographs offered in evidence indicate that if anything the view of traffic seems to be less obstructed at the Voorhees property than at the diner, and that there will be less tendency on the part of prospective customers to park cars on the highway at the Voorhees property than at the diner. The fear that the new highway construction contemplated, or in progress at the time, will materially increase the traffic hazard at the Voorhees property does not appear well-founded, since the evidence indicates that whatever effect the new construction will have will be felt directly by those licensed premises near the scene of such construction as well as by the Voorhees property.

Respondent's stated objections to the licensing of private dwellings with upper floors and in other ways difficult to police finds in me a sympathetic response. The difficulty that I have with respondent's position is to the method employed to accomplish its wholly desirable and proper purpose. That objection lies in the absence of uniformity in the application of the announced policy to all licensees within the Borough.

The municipality has it within its power to control the situation by the creation of proper general regulations, e.g., limiting licenses to buildings of one story, or located within a certain distance of the highway.

Such policy, however, in addition to being reasonable, must be fairly and uniformly applied. McConnell v. Trenton, Bulletin 35, Item 12; Vonella v. Long Branch, Bulletin 71, Item 12; DeChristie v. Gloucester, Bulletin 121, Item 10.

If it be said that the respondent sought to establish a policy for the first time in this case with respect to setback from the highway and the use of dwelling houses for licensed premises, there was no evidence that this new policy was to be applied uniformly to all licensed premises in the Borough. In the absence of such general regulation, or policy, I must, with considerable reluctance, hold that respondent's action in the instant case appears to be arbitrary and unreasonable, and its refusal to transfer must therefore be reversed.

Normally, I would order respondent to transfer the license as applied for. In view that said license has already expired, such an order would be an idle gesture. Shelby v. Trenton, Bulletin 129, Item 1; Gross v. Landis, Bulletin 386, Item 5. However, this decision does not, for this reason, become academic. It appears that there is a limitation of licenses in the Borough and a single vacancy thereunder for the present fiscal year. I am informed that two applications, filed during July 1941, are pending before respondent to fill this vacancy, one filed by appellant herein for the Voorhees property and the other filed by another applicant for the diner described herein. As between these applicants, since appellant's transfer should have been granted on June 10, 1941, it is but equitable that appellant now be viewed as being a renewal applicant for the Voorhees property. P.L. 1939, c. 281.

Accordingly, it is, on this 9th day of September, 1941,

ORDERED, that the action of respondent be and the same is hereby reversed, and that respondent be guided by this decision in considering the pending applications. Nothing contained herein shall preclude respondent from considering issues not discussed herein.

Alfred E. Driscoll
Commissioner.

Bulletin 476 was issued in advance of this Bulletin in order that subscribers might have the new Fair Trade prices at as early a date as possible.