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

BULLETIN NUMBER 186 JUNE 15, 1937.

1. HOTELS - UNLICENSED - MAY NOT DABBLE IN LIQUOR UNDER ANY PRETEXT - HEREIN OF A PLACE OF BUSINESS SERVING ALCOHOLIC BEVERAGES UNDER PRETENSE THAT THEY ARE "ONLY FOR RELIGIOUS PURPOSES."

Dear Sir:

Will you please advise me whether the following needs a state license, a permit, or no liquor license or permit whatsoever.

A hotel operates a dining room whereby wines and liquors are included in the meal, with no extra charge.

Another item whose status I wish you would advise me on is a place of business which serves alcoholic beverages only for religious purposes. This latter instance is where certain prayers and other religious ceremonies require the drinking of wines, etc.

Very truly yours,
Martin Shamberg.

June 12, 1937

Mr. Martin Shamberg,
Atlantic City, N. J.

Dear Sir:

Unlicensed hotels may not sell or serve alcoholic beverages or dabble therein with or without extra charge or under any other pretext. Re Frommelt, Bulletin 123, Item 5; Re Vaccaro, Bulletin 87, Item 2; Re Murnane, Bulletin 153, Item 5; Re Bashover, Bulletin 184, Item 2.

As regards a "place of business" serving alcoholic beverages "only for religious purposes": that won't work either. That's what they all say!

Holy sacraments of established churches are not to be desecrated to mercenary levels. Please don't speak of them in connection with places of business.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. MUNICIPAL ORDINANCES - REQUIREMENTS OF RESIDENCE WITHIN MUNICIPALITY AS A CONDITION TO ISSUANCE OF LICENSE - MUST APPLY TO ALL CLASSES OF LICENSES - APPROVED AS TO INDIVIDUALS - DISAPPROVED AS TO CORPORATIONS.

June 10, 1937

Clay W. Reesman,
City Clerk,
Camden, New Jersey.

My dear Mr. Reesman:

I have before me the ordinance concerning alcoholic beverages adopted by the Board of Commissioners on July 9, 1936,

amending Section 7 of ordinance adopted December 27, 1934 and supplementing same with three new sections Nos. 19, 20 and 21, which Mr. Braun, your predecessor, has submitted for my approval.

According to Section 37 of the Control Act, my approval is required only of municipal regulations which deal with the conduct of licensed businesses or the nature and condition of licensed premises. As none of the sections in the amendment deals with such matters, my approval is not necessary for the ordinance to be effective. So long as it has been duly enacted in accordance with the statutes, it becomes legally operative without it. I feel, however, that as a matter of courtesy I should give you my thoughts in connection with Sections 20 and 21. In the interest of improving the ordinance, I offer these comments for your consideration.

Section 21 declares:

> "No plenary retail distribution license shall hereafter be granted to any applicant who has not been a bona fide resident of this City for at least one year prior to the filing of the license application. If said applicant is a corporation, then such corporation shall have been in existence for a period of at least one (1) year prior to the filing of such application. Satisfactory proof of such residence and existence, in affidavit form, must be submitted with every such application."

First of all, why limit it to distribution licenses? Why not include plenary retail consumption licenses as well? The first regulation prohibiting the issuance of licenses to anyone who had not been a resident of Camden for one year, which I approved in letter of December 21, 1935, addressed to Assistant City Counsel Sakin, applied to both. A regulation requiring residence within a municipality of <u>all</u> individual applicants for licenses, would be reasonable. See <u>Iamello v. Rumson,</u> Bulletin 77, Item 9. Unquestionably, individuals would become better known to the local authorities by reason of this residence. It would be of substantial help in the selection of better qualified licensees. But I see no reason why it should apply to distribution licenses and not to consumption. Both sell alcoholic beverages to the general public for private gain. If the regulation is deemed necessary with respect to one, why is it not with respect to the other?

As regards the requirement that corporations shall have been in existence for a period of at least one year prior to the filing of the application, I have grave doubts.

A corporation could be in existence for years without doing any business and hence, not provide you with any means of judging its character and reputation. There is no requirement that any of its officers, directors or shareholders be residents of Camden.

Moreover, if the Board had two applications for licenses before it, one from an individual who had been a resident of Camden for only one year and the other from a corporation newly-formed but composed of lifelong residents, it would be forced to issue the license to the former and deny it to the latter, notwithstanding the lifelong Camden residence and excellent reputations of the incorporators. The result would be obviously arbitrary and unfair.

Furthermore, a group incorporated and in existence for a year in Florida or in New Mexico or California could qualify under your regulation. True, under Section *22A (C. 254, P. L. 1935,

supplementing C. 436, P. L. 1933), each holder of more than ten per cent of the stock must be a resident of New Jersey. But you would have to go to great lengths to study the corporation's operations in these distant States. Yet because it had been in existence, it could qualify as a corporate applicant under your regulation whereas the corporation composed of lifelong residents of Camden, until it had been in existence for a year, could not.

As I have heretofore pointed out, Section 21 does not require my approval. I do, nevertheless, commend these matters to your attention in order that you may consider them, make such revisions as you deem necessary and thus, possibly save the inconvenience and expense of appeals. While the section is not subject to my approval first obtained, it is reviewable on appeal after which it may be affirmed or set aside as the particular facts may indicate.

The statute already imposes stringent requirements upon corporate applicants. I think that they go far enough. The statute which contemplates careful investigation of corporate, as well as other applicants, in order to determine that the corporation as an organization of persons is qualified, fully protects you in any event. Re Bogota, Bulletin 106, Item 5.

I am sending you herewith for the information of your Board of Commissioners copy of letter of even date to Edward J. Santoro, Bulletin 185, Item 12, who inquired as to the effect of Section 19 of the South Plainfield Ordinance which is somewhat similar to Section 21 of your ordinance.

Herewith is copy of letter of even date addressed to J. Ford Flagg, Clerk of Highland Park, Bulletin 185, Item 11, which deals with a regulation similar to your Section 21.

I commend the thoughts expressed in my letter to Mr. Flagg to the Board's attention and suggest, therefore, that you cut out all reference in your ordinance to corporations or associations for there is grave doubt as to its validity in that respect.

I suggest that Section 21 be amended (1) so as to apply to both plenary retail consumption and distribution licenses and (2) so that it requires the one year's residence in Camden only of individual applicants for licenses. The net result would be a section reading somewhat as follows:

> "Section 21. No plenary retail consumption or plenary retail distribution license shall hereafter be granted to any individual who has not been a bona fide resident of this City for at least one year prior to the filing of the license application. Satisfactory proof of such residence, in affidavit form, must be submitted with every such application."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. LICENSEES - RESIDENCE - WHAT CONSTITUTES.

LICENSEES - MANAGERS - LICENSEES MAY EMPLOY MANAGERS BUT THE LICENSEE MUST BE THE ACTUAL OWNER AND IS FULLY RESPONSIBLE FOR THE CONDUCT OF THE BUSINESS - ABSENTEE OWNERSHIP DEPRECATED IN GENERAL.

Gentlemen:

We have an application coming before our Township Committee. This being an unusual circumstance I would like your

opinion and advice before granting the license.

The applicant owning the premises is an army officer or field clerk living for the past few years at Fort Hamilton, Brooklyn, New York. As the law states that applicants must be a resident of this State for the past five years we would like to have your advice on just how to act in this circumstance; to grant the license or reject it. It is evident the applicant will employ a bartender or manager. As an Enlisted United States Army employee has he a legal right to claim his residence on these premises?

Very truly yours,
Zachary Potter,
Member, Township Committee,
New Hanover Township.

June 10, 1937

Mr. Zachary Potter,
Pointville, New Jersey.

Dear Mr. Potter:

Whether Mr. Tresing can be considered a resident of New Jersey and for the length of time sufficient to qualify him for a license, depends on the facts. Residence is largely a matter of intent. As generally used it means domicile, the place where a person maintains his permanent home and to which, whenever he is absent, he has the intention of returning. If a person residing in New Jersey leaves the State with no intention of returning he loses his residence, and if at some future time he does return, the five year continuous residence he needs to qualify him for a license, must date from his return. On the other hand, mere temporary or even protracted absence may not necessarily interrupt the continuity of his residence if while he was away he did nothing evidencing an intent to give it up.

Residence is not acquired merely by the ownership of property.

You will find a comprehensive discussion of residence and what it involves in re Conover, Bulletin 16, Item 4. For rulings in particular situations see re Orland, Bulletin 143, Item 6; re Osborn, Bulletin 174, Item 16; in re Case No. 53, Bulletin 173, Item 3. Mr. Ellis, the Township Clerk, has these bulletins in his files. I suggest that you get them from Mr. Ellis and examine them. They will give you the general principles applicable. Then, if there is any doubt as to whether or not Tresing has been a resident for five years, send me complete details as to his activities and I will endeavor to help you on it.

I note that it is your belief that Tresing, if he gets the license, will employ a manager. Now, there is no objection to a retail licensee employing a manager provided the manager is fully qualified to hold a license in his own right. The licensee himself, however, must be the real party in interest, the actual proprietor of the business, and not merely a front for the so-called manager. If the manager is the real owner, then the manager, not Tresing, should hold the license. Re Scudder, Bulletin 67, Item 12.

Frankly, I don't like the idea of absentee ownership in connection with liquor businesses. Especially so in this case where Tresing, being in the Army, may on moment's notice be transferred to any part of the world. It is better that licensees run their own

businesses and not take chances with managers. The employment of a manager does not relieve them of any responsibility. A licensee is held fully accountable for all that happens on his premises, for all of the acts or omissions of his employees or agents and for any violation which may occur whether committed with his knowledge or in his presence or not. It is true that under our statute notice may be given the licensee by registered mail addressed to him at the licensed premises. As a matter of practical enforcement, however, it is desirable that the licensee be where we can find him. We can't get hold of him if he is in China or Timbuctoo or even Brooklyn.

I give you these thoughts by way of illustration of the particular points involved in the case you have before you. If the applicant for the license and the manager comply in all respects with the requirements of the law there is, technically, nothing which would prevent the issuance of the license and the employment of the manager. The policy, however, should be most carefully considered.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. MUNICIPAL ORDINANCES - HOURS OF SALE - WHERE ORDINANCE EXPRESSLY STATES THAT THE TIME SHALL BE EASTERN STANDARD TIME, A PROCLAMATION ADOPTING DAYLIGHT SAVING TIME DOES NOT CHANGE IT.

June 10, 1937

Mr. John Kane,
South Plainfield, N. J.

Dear Mr.Kane:

According to my records Section 17 of "An Ordinance to Regulate the Sale of Alcoholic Beverages in the Borough of South Plainfield," adopted by the Mayor and Council on September 19, 1935, so far as pertinent to your inquiry provides:

> "Section 17. No licensee shall permit the sale of alcoholic beverages nor shall any licensee including licensees having both an alcoholic beverage license and a restaurant license for its place of business, open between the hours of 1:00 A. M. to 7:00 A. M. EST on weekdays, nor between the hours of 1:00 A. M. to 12:00 noon EST on Sundays...."

The ordinance expressly states that the time shall be Eastern Standard Time.

Daylight Saving time, I find, was adopted in South Plainfield by proclamation published by Mayor Leddan on April 21st, 1937, to be effective from 2:00 A. M. on the morning of April 25th until 2:00 A. M. on the last Sunday in September.

The time which shall control is expressly stated in the ordinance. The proclamation cannot change it. The ordinance may be amended only by another ordinance.

Ruling made in <u>re Wagner,</u> Bulletin 58, Item 4, which held that the adoption by the municipality of Daylight Saving Time converted the hours referred to in the municipal regulations to Daylight Saving Time does not apply in your case. The local regulations referred to in the Wagner ruling did not specifically state which time should govern.

As the South Plainfield ordinance now stands you are prohibited from selling on weekdays from 1:00 A. M. until 7:00 A.M. Eastern Standard time, which is from 2:00 A. M. to 8:00 A. M. Daylight Saving Time; and on Sundays from 1:00 A. M. until noon Eastern Standard Time, which is from 2:00 A. M. until 1:00 P. M. Daylight Saving Time.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. MUNICIPAL ORDINANCES - HOURS OF SALE - AMENDMENT PROVIDING THAT EASTERN STANDARD TIME OR DAYLIGHT SAVING TIME, WHICHEVER IS OFFICIALLY IN EFFECT, SHALL CONTROL.

June 10, 1937

Mr. Charles A. Carone,
Borough Clerk,
South Plainfield, N. J.

Dear Mr. Carone:

I am sending you herewith for the information of your Borough Council copy of letter of even date, Bulletin 186, Item 4, to John Kane, 240 Hamilton Boulevard, South Plainfield, who has inquired whether the local regulation fixing opening and closing hours refers to Standard or Daylight Saving Time.

If the Council wishes to make the hours Daylight Saving Time during the period when Daylight Saving Time is in effect, it is my suggestion that Section 17 of the ordinance be amended by striking out the reference to Eastern Standard Time wherever it appears and by supplementing same with a proviso reading: "The hours hereinabove referred to shall be Eastern Standard Time or Daylight Saving Time, whichever shall be the official time for the Borough."

If Section 17 is amended as above suggested, Section 18 which applies to distribution licenses should be corrected in similar manner.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. MUNICIPAL ORDINANCES - PROHIBITION OF SUNDAY SALES - EXCEPTIONS ALLOWING SALES IN BONA FIDE HOTELS OR RESTAURANTS WITH MEALS - NOT SUBJECT TO COMMISSIONER'S APPROVAL FIRST OBTAINED BUT REVIEWABLE ON APPEAL.

June 10, 1937

Wm. C. Vandewater, Esq.,
Princeton, New Jersey.

Dear Mr. Vandewater: Re: Borough of Princeton.

I have before me your letter of May 29th; also, the proposed amendment to Section 10 of the Council's alcoholic beverage ordinance, reading:

"Section 10. No alcoholic beverage, as described in said Act, shall be sold, served or delivered, nor shall any licensee suffer or permit the sale, service or delivery of any alcoholic beverage, directly or indirectly, upon the licensed premises on Sunday; except in bona fide hotels or restaurants with meals, and then only during the following hours; namely from Twelve o'clock Noon to Three o'clock P. M. and from Five o'clock P. M. to Nine o'clock P. M.

"The hours above mentioned shall be construed to indicate Standard Time or Daylight Saving Time during such periods when each shall be in effect in this Municipality."

Municipalities have the power under Section 37 of the Control Act to limit the hours between which the sale of alcoholic beverages at retail may be made and such regulations are not subject to the Commissioner's approval first obtained. They are, however, as provided in Section 38, subject to review on appeal after which they may be amended, set aside or otherwise modified as the Commissioner may order.

The regulation does not need my approval in order to be effective. When duly enacted in accordance with the statutes, it will become legally operative without it.

The exception, as you have worded it, appears to avoid the pitfalls pointed out in ruling re Bowers, Bulletin 170, Item 11.

Opinion as to the propriety of the exception or the reasonableness of the hours fixed is expressly reserved pending appeal.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. LICENSES - EXTENSION TO EXECUTOR OR ADMINISTRATOR - SPECIAL PERMITS ISSUABLE PENDING QUALIFICATION - RULING EXTENDED TO STATE LICENSES.

June 10, 1937

Mrs. Clare M. Cascioli,
Phillipsburg, New Jersey.

My dear Mrs. Cascioli:

When you qualify as the Executrix of your husband's Estate you may, pursuant to Section 23 of the Control Act, apply to me for an extension of his State Beverage Distributor's license to you as Executrix. Such extension, however, can be granted only until the end of the present license term, only until June 30th next. Hence, if you wish to continue the business after July 1st next, you will have to obtain a new license in your own name. Such application may be made as individual or as Executrix.

Until you qualify as Executrix and the license is duly extended to you, no business may be conducted unless you first obtain a special permit. Application for such special permit should be addressed to me in the form of a Petition setting forth the same matters and things with respect to the State license and the qualifications of the Petitioner as are required in re Paterson, Bulletin 183, Item 9, (copy enclosed) in connection with municipal retail licenses.

The $10.00 permit fee in cash, money order or certified check, drawn to my order as Commissioner, must accompany the Petition. Of course, in the case of a State license no municipal consent is necessary.

The ruling in re Paterson referred to above, will give you complete information.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. RETAIL LICENSEES - LEASE OF SUITE OF ROOMS TO PRIVATE CLUBS - SALES MAY BE MADE ONLY TO CONSUMERS DIRECT AND NOT TO CLUBS FOR RESALE.

Gentlemen:

I am the attorney for a hotel enjoying a license permitting the sale of alcoholic beverages for consumption on the premises.

The hotel proposes to lease a suite of rooms to a group of gentlemen who propose to maintain a private club within that suite. It is the understanding between the club and the hotel that the hotel will supply such liquor as may be consumed by the club members and their guests - restricted of course to consumption within the club premises.

In view of my unfamiliarity with New Jersey beverage control regulations, I write to ask whether the proposed relations between the hotel and the club, insofar as the sale of liquor by the hotel is concerned, violate either the New Jersey statutes or regulations of your Commission.

Very truly yours,
Nathan B. Bernstein.

June 10, 1937

Nathan B. Bernstein, Esq.,
New York City, N. Y.

My dear Mr. Bernstein:

The plenary retail consumption license which I assume the hotel holds, permits it to sell to consumers in open containers for on-premises consumption and also in original containers for off-premises consumption. The hotel may, therefore, sell and serve liquor to the club members and their guests, for they are consumers, in the club quarters if the club quarters are part of the hotel's licensed premises.

The hotel may not, however, sell the liquor to the club for the club in turn to resell it to its members. That would be a wholesale sale on the part of the hotel, for purposes of resale, which is allowed only of licensed wholesalers, not of retailers such as the hotel. Moreover, the club before it could sell to its members would first have to obtain a license in its own name.

So long as the hotel makes the sales to the club members and guests and no sales are made by the club, the proposed arrangements will not violate the rules.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

June 11, 1937

In re: Case No. 48.

An application for a solicitor's permit was filed in which applicant admitted that about 1929 he had been convicted of a crime. Thereafter his present employer advised the Department, by telegram, that said application had been filed without its knowledge or consent. Correspondence with said employer discloses that it desires to employ applicant as a salesman of non-alcoholic beverages only and that it does not desire that he be authorized to sell liquor. A solicitor's permit cannot be issued to an employee unless his employer consents thereto and, hence, this application must be denied.

Because a conviction has been disclosed, however, a ruling should be made as to whether or not applicant is eligible to be employed in any capacity by the licensee.

A hearing has been held, at which applicant testified that he had been arrested in 1929 after some sections of a still were found in a garage attached to a house which he rented; that there was no pot or boiler there and no means of manufacturing liquor; that he had permitted a friend of his, who was a bootlegger, to store these parts in his garage. A report from the Prosecutor's Office shows that applicant was indicted for illegal sale of alcoholic beverages, pleaded guilty and was fined $100.00. Applicant admits the conviction and says that he paid the fine. He testified that he had never been convicted of any other crime.

This conviction does not involve moral turpitude. In Re Hearing No. 145, Bulletin 167, Item 5.

Fingerprint records of applicant taken subsequent to the hearing showed that he was arrested in 1932 under a different name. The arrest was made after police stopped an automobile in which applicant and three other men were riding and found an empty revolver in the automobile. Applicant and the others were charged with carrying a concealed weapon. The Grand Jury did not return an indictment. The Police Report in that case shows that applicant at that time was suspected of aiding bootleggers. However, since no conviction followed his arrest, applicant has answered correctly in disclosing the only conviction against him.

It is, therefore, recommended that applicant be advised that his permit cannot be issued because of the absence of his employer's consent thereto, but that he is eligible to be employed by the licensee despite the conviction which he disclosed.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

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

June 11, 1937.

In re: Case No. 49.

Applicant admitted in his questionnaire and application that he had been convicted for embezzlement. Investigation showed that, in November 1935, he pleaded non vult to an indictment for embezzlement and was sentenced to six months in a County Jail; that the sentence was suspended; that he was placed on probation for two years and ordered to pay costs.

Applicant testified at a hearing duly held that during all of the year 1934 he was employed as a salesman by a wholesale liquor dealer in New Jersey; that in January 1935 this wholesaler, discovering a shortage of $373.00 in his accounts, discharged him and caused his arrest.

At the hearing he first attempted to explain that the shortage arose because salesmen were permitted to spend money for expenses; that the entire amount of the shortage was collected from cash customers and spent as expenses in obtaining new business for his former employer; that the shortage reached this large figure because of lax accounting methods. If this were all, it might follow that, although applicant was technically guilty of embezzlement, nevertheless he had no intent to misappropriate his former employer's money.

Later, at the hearing, after admitting that there was no specific agreement permitting him to spend for expenses the money he collected, he testified as follows:

"Q Did you feel that you were justified in withholding this money that you were collecting?

A No; I admit that I was doing the wrong thing, just in hopes that I could cover it up. I realized it was wrong and, in the meantime, I had a lot of time to think about it. There is no person in the world realized more than I did that I had done wrong."

Thus, by applicant's own admission, appears guilty intent at the time the crime was committed as distinguished from mere misunderstanding as to his right to spend his former employer's money for expenses. Hence, the crime involved moral turpitude.

The money embezzled was partly repaid by applicant's father and applicant is repaying the balance in small amounts. This explains, probably, why sentence was suspended but does not lessen the degree of guilt.

Applicant testified he was once quite wealthy; subsequently lost his money and was forced to accept a small salary from his former employer. These facts do not show excuse for the commission of the crime. It is recommended that the permit be denied.

Edward J. Dorton,
Attorney-in-Chief.

Approved as to result. The conviction was of a crime involving moral turpitude. Hence,

although I believe his repentance to be genuine I cannot grant him a permit now. His only hope for employment in the liquor industry is the new legislation set forth in Bulletin 185, Item 2, which enables him to live it down.

D. FREDERICK BURNETT,
Commissioner.

11. MUNICIPAL CLERKS - NECESSITY OF PRESERVATION OF RECORDS.

Please refer to Bulletin 183, Item 12.

Dr. Carlos E. Godfrey, Director of the PUBLIC RECORD OFFICE of Trenton, has advised me that paragraph 2 of the original enactment, contained in Chapter 205 of the Laws of 1928, is still in force and reads:

"Whoever unlawfully keeps in his possession any public record, or alters, defaces, mutilates or destroys with malicious intent any public record shall be guilty of a high misdemeanor."

Also, that Chapter 135 of the Laws of 1924, which is a supplement to the Act establishing a Public Record Office, provides:

"1. In construing the provisions of this act and other statutes appertaining thereto, the words 'public records' shall, unless a contrary intention clearly appears, mean any written or printed book, document or paper, map or plan, which is the property of the State, or of any county, city, town, township, borough or village or part thereof, and in or on which any entry has been made or is required to be made by law, or which any officer or employee of the State or of a county, city, town, township, borough or village has received or is required to receive for recording or filing.

"2. No officer of the State or of any county, city, town, township, borough, village or other political subdivision of the State, or of any institution or society created under any law of the State, shall destroy, sell or otherwise dispose of any public record, or of any archives or printed public documents, in his care or custody or under his control, or which are no longer in current use, without first having advised the public record office of their nature, and obtained its written consent. But nothing herein contained shall be construed to allow or permit the destruction of any board minutes, official records of meetings, maps, plans or papers having to do with legal titles."

Kindly be governed accordingly.

D. FREDERICK BURNETT,
Commissioner.

12. APPELLATE DECISIONS - ALDARELLI v. ASBURY PARK.

NICHOLAS ROLF ALDARELLI,

Appellant,

-vs-

CITY COUNCIL OF THE CITY OF ASBURY PARK,

Respondent.

ON APPEAL

CONCLUSIONS

. . . . . .

Tumen & Tumen, Esqs., by David H. Davis, Esq.,
Attorneys for Appellant.

No Appearance for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of plenary retail consumption license for premises located at 1311 Springwood Avenue, Asbury Park.

Respondent denied the application "on the grounds of the proximity of the premises to a church, Mt. Pisgah Baptist Temple."

The only question to be determined is whether the premises are within 200 feet of the Church. In the face of the objection made by the Church, the respondent did not want to accept the responsibility of determining the close measurement involved in the instant case and so rejected the application. Hence this appeal.

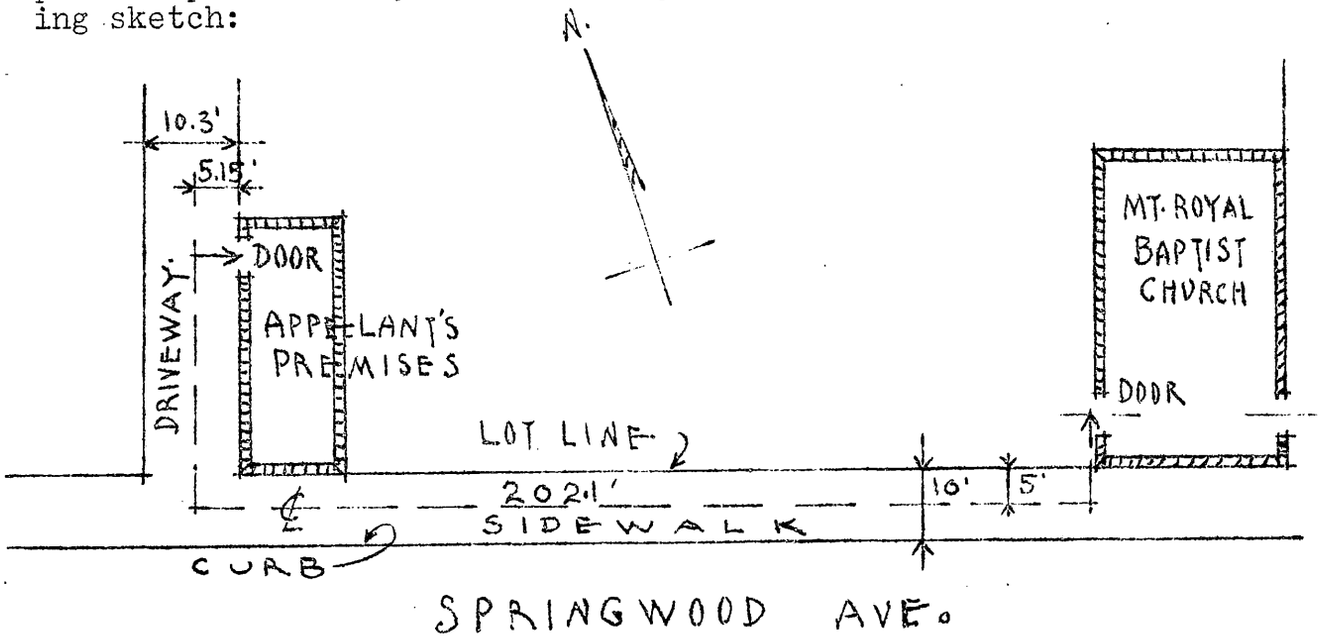
The Control Act, Section 76, provides:

> ".....no license shall be issued for the sale of alcoholic beverages within two hundred (200) feet of any church or public school house or private school house not conducted for pecuniary profit ..... and provided further, that said two hundred (200) feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed."

There are three doors to appellant's premises, two of which are clearly within two hundred (200) feet of the nearest entrance to the Mt. Royal Baptist Church (which, apparently, is the church referred to in respondent's resolution denying the application). Appellant testified that he has boarded up and closed permanently both of these two doors. At the rear of the premises the third door opens upon a driveway, ten and three-

tenths feet wide (10.3'), between appellant's building and the building to the west.

Without attempt to draw to scale, the measuring problem presented by this case may be visualized by the following sketch:



The survey in evidence purports to show that the distance from the rear door, through the driveway and along Springwood Avenue to the nearest entrance to the church, is two hundred two and one-tenth feet (202.1'). In computing this distance, however, the surveyor started at the center of the rear door of appellant's premises, measured to the middle of the driveway; thence along the center line of the driveway to the middle of the sidewalk on the avenue; thence along the center line of the sidewalk to a point where the continuation of the westerly wall of the church would, if extended, intersect the center line of the sidewalk, and thence to center line of the nearest door of the church.

It is obvious that such computation presents the measurement in the most favorable light possible for appellant for, irrespective of the questions arising in connection with the driveway, it is quite impossible, of course, for any human being, however fine his concept of a geometrical line or whatever his prowess as a pedestrian, to walk on the westerly wall of the church! Giving the appellant's surveyor the widest possible latitude, there is a margin of but two and one-tenth feet (2.1') in excess of the statutory minimum.

The method of measurement employed is incorrect.

The normal way in which a person would walk from the tavern to the temple would be the shortest way, that is along the nearest side of the licensed premises. He would not march from the tavern five feet in direction opposite to the church and out to the center of the driveway, then turn at right angles and tramp along the center of the driveway five feet past the sidewalk line and up to the very center of the sidewalk, and there again wheel at right angles with military precision and proceed along the center of the sidewalk to the church be-

fore essaying the difficult feat aforesaid of travelling along on the very line of the church wall. Such a journey would be quite unnecessary for, measuring along the building lines of the driveway and street just as the surveyor did along the wall of the church, the distance would be about one hundred eighty-two feet (182'). The difference of twenty feet between this measurement and that employed by the surveyor is accounted for thus: 5.15 feet from the tavern door to the center of the driveway; 5.15 feet back again to the building line of the tavern (observing as we go that the surveyor has thus added the entire width of the driveway on the furthest side of the licensed premises in computing the nearest distance to the church, and learning, as we thus observe, that by the application of this formula premises on the west side of the driveway may be made to appear as being the same distance from the church as those on the east side - a result quite contrary to the fact because the premises on the west side of the driveway are at least ten feet further from the church than those on the east thereof); 5 feet from the street building line to the middle of the sidewalk, and 5 feet back again (thus working into the calculation for good measure the entire width of the sidewalk), a total of 20.30 feet. I said "about" 182 feet. Of course, no pedestrian could walk on the actual building lines, nor could he reasonably be expected to scrape his shoulders on the walls, but neither would he exhibit the veneration for center lines as did the surveyor.

It is apparent from the foregoing analysis that the premises now under consideration are within 200 feet of the church for the scanty excess aforesaid of two and one-tenth feet which was created by the addition of wholly unnecessary distances, aggregating more than twenty feet, is wholly extinguished if measured in the normal way that a pedestrian would walk.

This case shows the necessity from the practical standpoint of having some method formally declared and set down so that issuing authorities will not be forever vexed with the problem of just how to compute the distances and so that applicants for licenses may be able to know and determine by their own measurements and before they make their applications whether the proposed licensed premises are within or without the minimum two hundred feet. Even the surveyors may welcome a uniform standard instead of endeavoring to compute distances flush with walls or else at offsets, according to the exigencies of the particular client.

The statute, as originally enacted in December 1933, provided merely that if the premises to be licensed were within two hundred feet of any church or public schoolhouse, the tavern was barred from a license. Instantly, question arose as to how the two hundred feet was to be measured, whether by traversing public thoroughfares or in an airline. Since we were dealing with ordinary human problems and not with hypothetical, geometrical designs, the rule was made that the distance should be measured in the shortest way that an ordinary, reasonable person would walk on the street from the nearest entrance of the church or school to the nearest entrance of the premises to be licensed. Bulletin 3, item 8. Substantially the same provision was subsequently incorporated in the statute when on April 13, 1934, Section 76 of the Act was amended by Chapter 85, P. L. 1934, so as to provide "that said two hundred (200) feet shall be measured in the normal way that a pedestrian

would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed." Bulletin 21, Item 71.

In providing that the measurement be made in the normal way that a pedestrian would properly walk, the statute contemplates a reasonable, sensible solution. It indicates the direction in which the distance is to be computed. A pedestrian walking properly would not go cross-lots or through backyards or in an airline or trespass on private property. Nor would he be a jaywalker and cross streets on the diagonal. His walking would be confined to the public thoroughfare and he would cross streets at the crosswalks. Cf. Bulletin 3, Item 8. Thus, if church and tavern premises were situated back to back, one on a residential street and the other on a business thoroughfare, although the rear of each are contiguous, the tavern would not fall within the prohibited distance unless that distance, measured along the public sidewalk, were less than two hundred feet. Actually, the distance from church to tavern in such a case, assuming each to be in the middle of its respective block, would be a full half-block around. Being on different streets and possibly in different types of neighborhoods, presumably they would not interfere.

Finally, the statute declares that the distance is to be measured from the nearest entrance of the church or school to the nearest entrance of the premises sought to be licensed, thus indicating that churches and schools are to be protected to the full limit of the law. Re F & A Distributing Co., Bulletin 127, Item 4. As early as Bulletin 3, Item 7, I ruled that Section 76 was enacted expressly for the benefit of churches and schools. Although they have the power to waive the protection it affords them, whether or not they shall do so is exclusively at the discretion of the church or school authorities. Bulletin 7, Item 3. The policy has been consistently followed. Balzarett v. Paterson, Bulletin 37, Item 9; Ackerman v. Paterson, Bulletin 48, Item 11; Anthony v. Branchville and Howell, Bulletin 80, Item 9; Re F & A Distributing Co., Bulletin 127, Item 4; Goldberg v. Little Falls, Bulletin 177, Item 4. The same principle applies to schools. Stacewicz v. Trenton, Bulletin 148, Item 2.

In order to accord with the obvious aim of the statute and to afford churches and schools the maximum benefit of its protection and to formulate a simple objective test which any one can apply, the rule hereafter will be that the measurement will be made in the direction indicated by the statute in straight lines along the side of walls and street lines nearest to church (or school) and tavern thus to get the shortest distance between them. The courses will commence and terminate at the nearest point on the nearest doors of the respective premises. That is the place where the pedestrian would leave or enter, taking the shortest course, if the door were open.

The premises in the instant case being within two hundred feet of the Mount Royal Baptist Church, as above measured, the action of respondent in denying the application is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 12, 1937.

13. APPELLATE DECISIONS - JENNINGS v. VERNON.

LESTER W. JENNINGS,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF VERNON,
Respondent.

ON APPEAL
CONCLUSIONS

Hommell & Hommell, Esqs., by Adrien B. Hommell, Esq., Attorneys for Appellant.
Marshal Hunt, Esq., Attorney for Respondent.
Vincent C. Duffy, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from denial of an application for plenary retail consumption license for premises located on a road leading from Vernon to Wawayanda Lake in the Township of Vernon.

Respondent denied the application at the time for the assigned reason:-

> "The Township Committee of the Township of Vernon feels at this time that the revenue from the development known as Highland Lakes to be of much greater benefit to the taxpayers at large than the issuance of said license, and feels that the time is not at hand to warrant the issuance of licenses in that particular vicinity."

Its contention on appeal was that the issuance of such a license would be socially undesirable and detrimental to the neighborhood.

The premises for which appellant seeks a license is an eight room frame dwelling situated about a mile and a half from the nearest home of any permanent resident of the Township. The nearest summer residence is about a quarter of a mile away. In this section of the Township a tract of fifteen hundred acres is being developed, known as Highland Lakes. An artificial lake has been created. During 1936 forty bungalows were erected. The main entrance is located upon the same road on which appellant's place is situated, about three or four hundred feet therefrom.

There is nothing wrong about either the person or the place of appellant. The mention of comparative revenue beclouds rather than clarifies the issue. The real thought concerns the prospects who may locate in the development and, by becoming home owners in the Township, therefore contribute to its taxes. The sole question is one of social desirability.

Objections to the issuance of the license were filed by the developers of Highland Lakes and by some persons who own bungalows located in that development. At the hearing three officials of the development company testified that the issuance of the license would be objectionable to many persons who had already purchased lots from them and would interfere with the subsequent development of the property. Two owners of property at Highland Lakes who appeared at the hearing testified that they were opposed to the issuance of the license because of the close proximity of appellant's premises to the aforesaid development.

Against this, appellant's evidence as to public necessity and convenience is meager. Appellant's property is not on the main highway but about a mile and a half from the main road which leads from Vernon to Stockholm. Lake Wawayanda, at the end of the road on which appellant's premises are located, has only about fifteen bungalows. It is difficult to conjecture where appellant intends to get his trade if not from persons living at Highland Lakes. The people there do not want it. The Township Committee believe it will keep others away.

Appellant now holds a plenary retail consumption license at McAfee, Township of Vernon. It is one of the six in this Township which has a population of but twelve hundred seventy-nine.

I do not find that the denial by respondent was unreasonable or unfairly discriminatory. Its action is, therefore, affirmed.

D. Frederick Burnett,
Commissioner.

Dated: June 13, 1937.