STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 37. June 27, 1934

1. APPELLATE DECISIONS - YANUZIS VS. CAMDEN

TADES V. YANUZIS, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF CAMDEN, Respondent.	ON APPEAL CONCLUSIONS

Charles J. Degnan, Esq., Attorney for Appellant.
Lewis Liberman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In February, 1934, appellant applied for a plenary retail consumption license, and thereafter the application was denied. An appeal was duly filed from the denial and has come on for hearing. At the hearing testimony was introduced with respect to the character and fitness of the appellant and the suitability of the premises sought to be licensed. Appellant complied with all of the formal requirements pertaining to his application and it is not suggested that any false statements were contained therein.

Respondent asserts that the denial of the application was justified because neighboring residents objected. The neighborhood is essentially industrial. The testimony established that prior to the filing of appellant's application, an application was filed by Mr. Cole for premises near the place of business sought to be licensed by appellant. At a public hearing residents in the neighborhood objected to the issuance of a license to Mr. Cole. When the appellant's application was considered no objections were entered thereto, but the respondent assumed that the objections registered in connection with Mr. Cole's application would apply likewise to the appellant's application. This assumption, however, seems unwarranted in view of the testimony by Deputy Clerk Braun that the objections were not to the issuance of a license in the vicinity, but were based upon the unfitness of Mr. Cole. None of the objectors to Mr. Cole's application was present at the hearing on the appeal.

Whether a denial of an application may be justified solely on the ground that neighboring residents, in an essentially industrial section, object to the sale of alcoholic beverages in the vicinity need not be determined. If respondent suspected that the neighboring residents would likewise object to the issuance of a license to the appellant, it was its duty to ascertain this fact and it was not at liberty to carry over the objections against the issuance of a license to Mr. Cole in its consideration of the appellant's application.

Respondent further contends that the appellant has no interest in the premises sought to be licensed. The evidence indicates, however, that the appellant has made arrangements for the leasing of the premises on a monthly basis. This is a sufficient interest to support the issuance of the license.

The action of the respondent board is reversed.

D. FREDERICK BURNETT
Commissioner

Dated: June 21, 1934

New Jersey State Library

2. APPELLATE DECISIONS - MITCHELL, WIZNER AND SCHWARTZ VS. KINGWOOD TOWNSHIP.

JOHN MITCHELL,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF KINGWOOD,
Respondent.

APOLONIA WIZNER,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF KINGWOOD,
Respondent.

STEVE SCHWARTZ,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE VILLAGE OF BAPTISTOWN, TOWNSHIP OF KINGWOOD,
Respondent.

ON APPEAL
CONCLUSIONS

Lloyd Fisher, Esq., Attorney for Appellants, John Mitchell and Apolonia Wizner.
Steve Schwartz, Pro Se.

BY THE COMMISSIONER:

Appellants duly applied to the respondent for a plenary retail consumption license, paid the full license fees and received temporary licenses. Thereafter respondent denied their applications. Appeals were filed and have come on for hearing. No appearance was entered on behalf of the respondent, and with the consent of the appellants the three appeals were consolidated for hearing.

Appellants complied with all the formal requirements pertaining to their applications, and it is not suggested that any false statements were contained therein. Testimony was introduced to establish the character and fitness of the appellants and the suitability of the premises sought to be licensed.

A member of the respondent testified that the appellants were fully qualified to hold licenses. He further testified that there was a change in the personnel of the respondent after issuance of the temporary licenses and that applications were thereafter denied solely because of the personal convictions of the remaining two members of the Township Committee.

Under the Commissioner's rulings in Schwartz v. Millstone Township Committee, Bulletin No. 28, Item No. 4; Berkelhammer v. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin No. 28, Item No. 5, the appellants, having received temporary licenses and being otherwise qualified, were entitled to permanent licenses. The change in personnel of the respondent

clearly could not deprive the appellants of the rights incident to their temporary licenses which were issued by the respondent as then validly constituted.

The action of the respondent Committee in denying the applications of appellants is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 21, 1934.

3. APPELLATE DECISIONS - ROSANIA VS. READINGTON TOWNSHIP

JOSEPH ROSANIA,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF READINGTON TOWNSHIP,
Respondent.

ON APPEAL
CONCLUSIONS

Joseph Rosania, Pro Se.

H. L. Stout, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

In December, 1933, appellant applied for a plenary retail consumption license. Thereafter the application was denied and an appeal was duly filed and has come on for hearing.

Respondent contends that pursuant to the authority contained in Section 37 of the Control Act it limited the number of licenses to three and that appellant's application was properly denied under this limitation. The evidence established the limitation and the issuance of three licenses thereunder. No evidence was introduced to prove that the limitation or its application to appellant was unreasonable. However, this issue need not be determined, since the action of respondent must be sustained on another ground. The appellant failed to cause a notice of intention to be published as prescribed by Section 22 of the Control Act. Consequently no license could properly be issued by respondent on the application filed by appellant.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 21, 1934.

4. APPELLATE DECISIONS - GEIGER VS. READINGTON TOWNSHIP

FRANK W. GEIGER,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF READINGTON TOWNSHIP,
Respondent.

ON APPEAL
CONCLUSIONS

J. Knox Felter, Esq., Attorney for the Appellant.
H. L. Stout, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

In December, 1933, appellant applied to the respondent for a plenary retail consumption license. Thereafter the application was denied and an appeal was duly filed and has come on for hearing.

Respondent asserts that the denial of the application was justified because of the past record of the appellant. At the hearing it appeared that in 1922 the appellant was convicted of the unlawful possession and manufacture of intoxicating liquor; in 1927 he was convicted of the unlawful possession and sale of intoxicating liquor, and in 1934 he was convicted of the unlawful possession of slot machines. The appellant admitted that for many years while the National Prohibition Act was in force, he unlawfully possessed a still and manufactured and sold liquor in violation of the law. In answer to the question "Have you ever been convicted of any crime?" appellant answered, "Yes--of selling beer - about ten years ago." Clearly this answer was not entirely true.

In view of all of the foregoing circumstances it cannot be said that respondent exceeded its powers in denying the application of appellant because of his past record. See Cohen vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #35, Item #8.

The action of the respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 21, 1934.

5. LICENSES - REVOCATION - RE SILVER GRILLE, INC.

In the matter of the proceedings to revoke the retail license issued to Silver Grille, Inc.	CONCLUSIONS

BY THE COMMISSIONER:

Notice to show cause was duly served upon Silver Grille Inc., 5148 Boulevard, West New York, a retail licensee, and upon persons believed to be interested therein, why its license should not be revoked because of various charges set forth in the notice. Included among the charges were allegations that the apparent owners of the licensee were in fact "dummies", and that habitual criminals and racketeers operated the licensed place of business and congregated therein.

Upon the return date of the order to show cause, no appearance was entered on behalf of the licensee.

When application was filed by the licensee with the municipal issuing authority of West New York, its stockholders were listed as Charles Lyons, Frank J. Ellis and Harry A.Gerrish. In February, 1934, these persons transferred their stock to Mr. Charles Connington and his nominee. Connington admitted to members of the Hudson County Prosecutor's staff that he was "simply a dummy" for other persons and that he generally took his salary from the cash register.

On April 22, 1934, representatives of the Prosecutor's office visited the licensed premises, now known as "Vanity Fair". John McGlone, Charles Harrigan, Tony Martini and Jim Murphy were seated at a table in the rear of the premises, and when the Prosecutor's men entered, McGlone dropped something underneath the table. A wallet containing an auto driver's license, issued to John McGlone, and a pearl-handled revolver were found under the table. Another revolver was found on the premises concealed under newspapers. These revolvers had their serial numbers removed, were loaded and one had been fired recently.

McGlone, Harrigan, Martini and Murphy were arrested and the first three named were convicted under the Disorderly Persons Act. At the time of his arrest, McGlone was in possession of the keys of the cash register owned by and located on the premises of the licensee.

McGlone has a long criminal record, including numerous arrests and convictions of robbery, assault and disorderly conduct. Harrigan has a similar criminal record, including many arrests and several convictions of robbery and burglary.

The evidence amply substantiates the charges that the apparent owners are in fact "dummies", and that habitual criminals and racketeers operate the licensed place of business and congregate therein.

It is therefore ORDERED on this 21st day of June, 1934, that the retail license issued by the municipal issuing authority of West New York to Silver Grille, Inc. with respect to the premises located at 5148 Boulevard, West New York, is hereby revoked..

D. FREDERICK BURNETT,
Commissioner

Dated: June 21, 1934

6. APPELLATE DECISIONS - BISANTE VS. CAMDEN

PASQUALE BISANTE,
Appellant,
-vs-
CAMDEN MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL,
Respondent.

ON APPEAL
CONCLUSIONS

Ethan P. Westcott, Esq., Attorney for Appellant,
Lewis Liberman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied to the respondent Board for a Plenary Retail Consumption License for premises located at 3504 Federal Street, Camden, N. J. The application was denied and an appeal was duly filed. Objections were filed to the issuance of a license by approximately 130 residents.

The respondent asserts that the denial of the application was justified because the premises sought to be licensed are in a residential neighborhood. The evidence shows the neighborhood as residential, and for that reason the sale of alcoholic beverages therein is not desirable. See Speake v.

Mayor of the Borough of Closter, decided on April 4, 1934 by the New Jersey Supreme Court. A license to sell alcoholic beverages is not a right but a privilege, which may be denied for a just cause. See Moss & Convery v. Municipal Board of Alcoholic Beverage Control of Trenton, Bul. 29, Item 12.

The residential character of the neighborhood in which the premises sought to be licensed are located, was sufficient cause for the denial of the privilege sought, therefore the action of the respondent Board in denying a license to the appellant is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 23, 1934

7. APPELLATE DECISIONS - TURNER VS. RAMSEY

ROBERT CLINTON TURNER,
Appellant,
-vs-
THE MAYOR AND COUNCIL OF THE BOROUGH OF RAMSEY (BERGEN COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Lloyd Schroeder, Esq., Attorney for Appellant
Walter W. Weber, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant filed an application for a Plenary Retail Consumption License, for premises located at 123 East Main Street, which was denied by the local Board for the following reasons:

1. The premises sought to be licensed did not comply with the resolution passed by said Board, limiting Plenary Retail Consumption Licenses to restaurants or a hotel with a restaurant.

2. Minors are employed as pin-boys, and frequent the premises to play pool and billiards.

It appears from the testimony the premises sought to be licensed are used principally for bowling and billards, with accommodations to serve patrons with lunches, sandwiches, cigars, cigarettes and candy. The appellant has failed to establish that said premises was a restaurant; for the sale of soft drinks, cigars, cigarettes and ice-cream do not make the premises a restaurant. Cecil v. Green, 60 Ill. App. 61. In re Henery 124 Iowa 358. A restaurant being a place where meals and refreshments are served. Standard Brewing Co. v. Weil, 129 Md. 487. Hence, the denial of the license was not unreasonable. See DiBono vs. City Council of Bridgeton, Bul. 30, Item 9, and further, the denial of a license, because the premises are used by minors, is within the power of the local Board, and is justified. Cf. Staciewicz v. Municipal Board of Alcoholic Beverage Control of Trenton, Bul. 35, Item 10.

Therefore, the action of the local Board in denying a license is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 23, 1934

8. APPELLATE DECISIONS - SAFT VS. TOWNSHIP OF UNION.

YETTA SAFT,
Appellant
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF UNION (OCEAN COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

William W. Whitson, Esq., Attorney for Appellant
Francis Tanner, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant applied to the respondent Board for a Plenary Retail Consumption License. Objections to the granting of a license to the appellant was filed with the Clerk by 173 residents of Union Township. The application was denied, and an appeal was duly filed.

The respondent asserts that the denial of the application was justified, because of the past conduct of the applicant. At the hearing, it appeared that in August, 1933, the New Jersey State Police was called by residents, complaining that the people in the premises sought to be licensed, were creating a disturbance, and they were unable to sleep. The State Trooper who answered the call testified: "It was about 1:30 when we arrived at the Inn. There we found a lot of kids drinking beer and all about half-drunk. We ordered Mrs. Saft to close and after some difficulty we finally closed up the place. Most of the people were drunk. There were some children at the bar drinking, by children I mean that they weren't over fifteen years old if they were that. In the back there were some girls and fellows. The girls were sitting on the fellows' laps and some couples were dancing. It was just a general dive. There were couples parked all around the place and in the yard."

In view of the aforegoing circumstances, it cannot be said that the respondent exceeded its powers in denying the application of the appellant, because of the past conduct of the appellant. See Moss & Convery vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bul. 29, Item 12.

The action of the respondent Board in denying a license, is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 23, 1934

9. APPELLATE DECISIONS - BALZARETT VS. PATERSON.

HENRY BALZARETT,
Appellant
-vs-
BOARD OF ALDERMEN OF THE CITY OF PATERSON,
Respondent.

ON APPEAL
CONCLUSIONS

A. Leon Kohlreiter, Esq., Attorney for the Appellant
No appearance for Respondent.

BY THE COMMISSIONER:

Application for a Plenary Retail Consumption License was filed by the appellant for premises situated at 78 Park Avenue.

All the conditions precedent to the issuance of a license have been complied with by the appellant. The local Board denied the application for a license on the grounds that the premises to be licensed were within 200 feet of a church.

The Church of Holy Communion is located on Summer Street, having one entrance in front of said building, being over 200 feet from the entrance of the premises for which license is sought, and another entrance on the side of said building, which is admitted within 200 feet of the entrance of the premises sought to be licensed.

It is contended by the appellant, that the entrance within the 200 feet is an exit, and is never used--the light above the entrance being out of repair for a long time. Exhibits were introduced to show that snow was not removed from said entrance. This testimony was contradicted by the Senior Warden of said church.

An objection was filed to the granting of a license by a neighbor, for the reason that the premises to be licensed were a nuisance. It is unnecessary to consider this objection, due to the finding hereinafter made.

Section 76 provides that no license shall be issued for the sale of alcoholic beverages within 200 feet of a church, and the 200 feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church to the nearest entrance of the premises sought to be licensed.

The case clearly falls within Section 76 of the Control Act, and since the appellant failed to establish that he came within any of the exceptions referred to in Section 76, the action of the respondent Board in denying a license to the appellant, is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 23, 1934.

10. APPELLATE DECISIONS - SWERDLOFF VS. PLAINFIELD.

JULIUS SWERDLOFF,
Appellant
-vs-
COMMON COUNCIL OF THE
CITY OF PLAINFIELD,
(Union County),
Respondent.

ON APPEAL
CONCLUSIONS

Edward Sachar, Esq., Attorney for Appellant
William Newcorn, Esq., Attorney for Respondent

BY THE COMMISSIONER:

The appellant conducted a kosher delicatessen and lunch-room, and was granted a temporary retail consumption license

for premises located at 520 West Third Street, Plainfield. The local Board refused to grant a permanent license in January, and issued a notice to show cause why the temporary license should not be revoked for the reason that the appellant was not a proper person to conduct the business for which a license was granted.

It appears from the evidence that a deputy sheriff of Union County went to the appellant's place of business to serve Mr. Swerdloff with a writ of execution, and was assaulted by the appellant and his family. The appellant was arrested and charged with violating Section 2 of an Ordinance of said city entitled, "An Ordinance relating to the Morals, Peace and Good Order of the City of Plainfield", which Ordinance was approved April 23, A. D. 1874; and was found guilty by the City Council of Plainfield, and sentenced to pay a fine of $100, which sentence and fine was appealed to the Union County Court of Common Pleas and was reversed. The Grand Jury of the County of Union indicted the appellant--one indictment charging assault and battery, and the second, interfering with the service of process. On the indictment charging assault and battery, appellant was found guilty by the judge, sitting without a jury, and fined $100, and on the indictment for obstructing the execution of process, the judge found him guilty and fined him $100.

In view of all the foregoing circumstances, it cannot be said that the respondent exceeded its powers in revoking the appellant's temporary license, and denying the application for a permanent retail consumption license. The action of the respondent Board is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 23, 1934

11. SALES - TO CHARITABLE ORGANIZATIONS - DISTINCTION FROM GIFTS.

June 11, 1934

Dear Sister:

There are two points involved:

1 - Several breweries in Newark have in the past generously made donations of beer to your Home, for the benefit of its inmates and to help you in your highly worthy cause. So far as such donations are concerned, they are pure gifts and hence I rule that there is nothing in the New Jersey law to prevent the continuance of this practice. Breweries may not deliver beer to consumers for the purpose of sale but there is nothing to prevent them making bona fide donations as an out and out gift. It also follows that since no sale is made, there is no tax payable to the State of New Jersey upon such donations.

2 - The breweries cannot, however, lawfully sell any beer to you even though they do so at a reduced price because of your charitable motives. Breweries may only sell to licensed wholesalers and retailers.

It follows that if you have to effect purchases in order to supply the deficiency which still exists after the gifts of beer have been made, you will have to make them from somebody who is licensed to sell to you as a consumer, and

that would be the holder of a retail or seasonal consumption license, or one who holds a state beverage distributors license or, in case of bottled beer, from the holder of a retail distribution license either plenary or limited.

Very truly yours,

D. Frederick Burnett,
Commissioner

12. APPELLATE DECISIONS - DANN VS. MANASQUAN.

WILLIAM G. DANN, Appellant, -vs- BOROUGH COUNCIL OF THE BOROUGH OF MANASQUAN (MONMOUTH COUNTY), Respondent.	ON APPEAL CONCLUSIONS

James R. Laird, Jr., Esq., Attorney for Appellant
Halsted H. Wainwright, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a seasonal retail consumption license, for premises located at 192 First Ave., Manasquan, N. J. The application was denied and an appeal duly filed.

One of the reasons assigned by the respondent Board for the denial of the application, is the location on the boardwalk of the premises sought to be licensed. Although no resolution was ever passed prohibiting the issuance of licenses on the boardwalk, a uniform policy was adopted and maintained by the local Board that the sale of alcoholic beverages on or adjacent to the boardwalk was not desirable.

The respondent's determination that the issuance of a license for the appellant's premises adjacent to the boardwalk was socially undesirable, was justified by the evidence and furnished reasonable cause for the denial of the application. Therefore, the action of the respondent Board is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 25, 1934

13. APPELLATE DECISIONS - ALEXANDER VS. TRENTON.

LOUIS ALEXANDER, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Ernest Glickman, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant filed application for a plenary retail

consumption license for the premises located at #1 Union Street, Trenton, formerly known as the Morton House and now known as the Landers Hotel. The application was thereafter denied. An appeal was duly filed and has come on for hearing.

Respondent asserts that the manner in which the premises sought to be licensed were conducted in the past justifies the denial of the application. Members of the respondent Board testified that the reputation of the Hotel was notoriously bad. Mr. LaBarre, Mayor and Director of Public Safety of Trenton testified to the same effect.

Lieutenant Sigafoos, formerly in charge of the Vice and Liquor Control Division of the Trenton Police Force testified, in response to an inquiry as to whether prostitution was permitted on the premises, that the Morton House was one of the four hotels in Trenton where "women who walked the street would go". Chief of Police Walter, called by appellant as a witness on his behalf, conceded that the reputation of appellant's hotel was "a little shady".

Appellant admitted that he had permitted the maintenance of slot machines on the premises, (Cf. Moss & Convery vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #29, Item #12) and the evidence adequately established that liquor had been sold at the premises in violation of the National Prohibition Act. In 1930 the premises were raided and slot machines and liquor were seized. Evidence was introduced, but denied by appellant, that an indecent performance was knowingly permitted at a smoker held at the hotel.

Authority to dispense alcoholic beverages has at all times been recognized as a privilege, as distinguished from a right, which the issuing authority may deny for just cause. A determination by a municipal issuing authority that just cause exists for the denial of the application should, on appeal, be given considerable weight. See Moss & Convery vs. Municipal Board of Alcoholic Beverage Control of Trenton, supra.

During the hearing on appeal, counsel for appellant conceded that an issuing authority is justified in considering the general reputation of the applicant, or the place of business conducted by him. The general reputation of appellant's hotel coupled with the repeated violations of law by the operation of slot machines and the sale of liquor, was sufficient warrant for respondent's determination that the public interest required a denial of the application.

The action of the respondent Board is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 25, 1934.

14. APPELLATE DECISIONS - SAMOJEDNEY VS. PLAINFIELD.

MARTIN SAMOJEDNEY, Appellant -vs- COMMON COUNCIL OF THE CITY OF PLAINFIELD, Respondent.	ON APPEAL CONCLUSIONS

John P. Owens, Esq., Attorney for Appellant.
Wm. Newcorn, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933 application was filed by appellant for a plenary retail consumption license and thereafter the application was denied. An appeal was filed and has come on for hearing.

Respondent asserts that it denied the application because the appellant was considered "not qualified or desirable". At the hearing on appeal it was stipulated that after the filing of his application, appellant went to the home of Howard Satterfield, the President of the respondent Council, requested favorable action upon his application and tendered a box of cigars, which was refused. Appellant then went to the home of Councilman Thomas Hughes, a member of the Special License Committee of respondent, and likewise requested favorable action on his application and tendered a box of cigars. Upon Mr. Hughes' refusal to accept the box of cigars, appellant threw it on the floor and left. A report of the foregoing incidents was submitted to the Special License Committee which recommended, in view thereof and in view of the general demeanor of the applicant, that the application be denied.

Authority to dispense alcoholic beverages has at all times been recognized as a privilege, as distinguished from a right, which the issuing authority may deny because of the unfitness of the applicant or for other just cause. The determination by the issuing authority that the applicant is unfit should be given considerable weight on appeal. The conduct of appellant, as disclosed by the evidence, was ample warrant for respondent's determination that the application should be denied.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 25, 1934.

15. APPELLATE DECISIONS - SIEGELKOW VS. FREEHOLD TOWNSHIP

CHRISTOPHER SIEGELKOW,
Appellant
-vs-
TOWNSHIP COMMITTEE OF UPPER FREEHOLD TOWNSHIP (MONMOUTH COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Frank J. Backes, Esq., Attorney for Appellant.
J. S. Turp, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied to the respondent for a plenary retail consumption license and thereafter the application was denied. An appeal was filed from this denial and has come on for hearing.

Respondent asserts that Upper Freehold Township has, by ordinance, prohibited the sale of alcoholic beverages and, consequently, the denial of the application was proper. This issue need not be determined since the action of the respondent must be sustained on another ground.

Section 22 of the Control Act, as originally enacted,

provided that a photostatic copy of all general licenses, permits and/or stamps necessary to the lawful conduct of the business must accompany the license application. Under a recent amendment, other evidence in lieu thereof, satisfactory to the Commissioner, may be accepted. At the hearing it appeared that the appellant has never paid the necessary fee for a federal stamp. Consequently, no license could be issued by respondent upon the application presented by appellant.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 25, 1934.

16. APPELLATE DECISIONS - KNIGHTS OF ST. STEPHENS CLUB VS. TRENTON.

KNIGHTS OF ST. STEPHENS CLUB, INC., Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Kenneth J. Dawes, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In February, 1934 respondent issued a plenary retail consumption license to the appellant for the premises located at #232 Genesee Street, Trenton. In April, 1934 appellant made application to the respondent for a transfer of the license to #108 Roebling Avenue, Trenton. This application was denied. An appeal from the denial was filed and has come on for hearing.

At the hearing, Rev. G. M. Riley, Pastor of the Calvary Baptist Church located at Roebling and South Clinton Avenues, Trenton, testified in opposition to the granting of the application. The premises sought to be licensed are located within 140 feet of an entrance to the Church. A member of the respondent Board testified that the application was denied because of the proximity of the premises sought to be licensed to the Church

Although no express appeal from a denial of such an application is provided for in the Control Act, it may be argued that the entire structure of the Act contemplates the allowance of such an appeal. This issue need not, however, be determined since the action of the respondent must be sustained on another ground.

The provisions of Section 23, relating to the transfer of a license to a different place of business, are not mandatory and an application thereunder may, within its discretion, be denied by an issuing authority. Under the evidence presented in this case, it is entirely clear that the respondent did not abuse its discretion or exceed its powers in denying the application, because of the proximity of the premises sought to be licensed to the Calvary Baptist Church. Cf. Staciewicz vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #35. Item #10.

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 25, 1934.

17. APPELLATE DECISIONS - KAPLAN VS. TRENTON.

MORRIS D. KAPLAN,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

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John H. Kafes, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. After the filing of his application and until midnight, February 5, 1934, appellant conducted his business at #13 North Willow Street in regular course, upon the understanding that the filing of his application and the receipt for the payment of the license fee were equivalent to a temporary license.

Although members of the respondent Board were aware that applicants who held receipts evidencing payment of their license fees were conducting their business, they took no notice thereof and acquiesced in the understanding that the applicants could continue to do business until the expiration of temporary licenses.

Appellant complied with all the formal requirements pertaining to his application. It is not suggested that his application contained any false statements. The character and fitness of the applicant are unquestioned. Testimony was introduced to establish the suitability of the premises sought to be licensed and the change of position of appellant in reliance upon the understanding described above.

The Director of the Trenton School of Industrial Arts sent a letter to respondent objecting to the issuance of a license for #13 North Willow Street, on the ground that students on their way to school would generally pass such place of business. The School is not located on the same street as are the premises sought to be licensed and is approximately 280 feet distant. There is a hotel, which is licensed to sell alcoholic beverages, within close proximity to the School. Although the Director of the School was notified of the hearing on appeal, no objections were presented to the Commissioner.

The President of the respondent Board testified that since persons attending school were required to pass almost every licensed place of business in Trenton, the protest was not given considerable weight. He further testified that the application was denied solely because of the resolution adopted on February 3, 1934, limiting the number of licenses to be issued in the City of Trenton to 250.

For the reasons stated in Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5, the limitation could not properly be applied to the appellant, and the action of the respondent Board in denying the application of the appellant is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 25, 1934.

18. APPELLATE DECISIONS - RYMAN VS. BRANCHBURG.

GEORGE MALCOLM RYMAN,
Appellant
-vs-
BRANCHBURG TOWNSHIP COMMITTEE
(SOMERSET COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Anthony M. Hauck, Jr., Esq., Attorney for Appellant.
Daniel H. Beakman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On February 6, 1934, the respondent adopted a resolution limiting the number of licenses to three and issued the allotted number. On the same day application was filed by the appellant for a plenary retail consumption license and thereafter the application was denied.

The premises sought to be licensed consist of a large building known as "Beacon Lodge", formerly occupied as a country residence and containing over twenty rooms including a tavern room recently equipped. It is situated near a stone road called River Road and is not distant from two important state highways. Over two hundred acres of open land surround the building and the nearest house is more than two-thirds of a mile away.

Appellant complied with all of the formal requirements pertaining to his application. His character and fitness were attested to by creditable testimony introduced on his behalf and were not questioned by the members of the respondent Committee. Similarly, the suitability of the building and the equipment therein was admitted.

Respondent asserts that the application of appellant was properly denied in view of its limitation of three and its issuance of the allotted number. At the request of the Commissioner, counsel have submitted briefs on this issue and an examination of the premises sought to be licensed has been made.

Section 37 of the Control Act expressly authorizes municipal issuing authorities to limit the number of licenses to sell alcoholic beverages at retail. Although a determination by a municipal issuing authority that a limitation is socially desirable is subject to appeal, it should not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to the appellant.

Counsel for appellant contends that respondent selected three places of business to be licensed and then unreasonably adopted its limiation in order to exclude other applicants. No evidence was introduced by appellant to establish that the numerical limitation of three was in itself unreasonable.

A member of the Township Committee testified that the North Branch Hotel, the Neshanic Hotel and Louis' Inn had been established for many years, were satisfactorily located and were entirely adequate to meet the needs of the community. Accordingly, respondent issued licenses to the three places abovementioned and adopted its limitation.

Appellant did not reside, nor conduct any business, in respondent Township, nor were the premises sought to be licensed conducted as a hotel or inn prior to January, 1934. It can hardly be said that the licensing of the three established places within the limitation, to the exclusion of appellant's newly established business, resulted in an unreasonable application of the limitation to the appellant.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 25, 1934.

19. APPELLATE DECISIONS — FIMMEL VS. BRANCHBURG.

PAUL FIMMEL,
Appellant
-vs-
BRANCHBURG TOWNSHIP
COMMITTEE (SOMERSET COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

George W. Allgair, Esq., Attorney for Appellant.
Daniel H. Beekman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On February 6, 1934, the respondent adopted a resolution limiting the number of licenses to three and issued the allotted number. On the same day application was filed by the appellant for a plenary retail consumption license and thereafter the application was denied. An appeal was duly filed from the denial and has come on for hearing.

Respondent contends that pursuant to the provisions of Section 37 of the Control Act it limited the number of licenses to be issued and that appellant's application was properly denied in view of this limitation. Although the limitation is subject to appeal, it should not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to the appellant. See Ryman vs. Branchburg Township Committee, Bulletin #37, Item #18.

Although counsel for appellant contends that the limitation of three was in itself unreasonable, no substantial evidence in support of this contention was introduced.

The three licenses issued were issued to two hotels and one Inn having hotel accommodations, which had been established for many years, were satisfactorily located and were considered by respondent to be entirely adequate to meet the needs of the community. One of the licensed places of business is about three-quarters of a mile west of the appellant's premises and another is slightly in excess of one mile east thereof. The premises sought to be licensed consist of a roadstand restaurant, and respondent has denied all applications for such restaurants. The licensing of the two established hotels and the Inn, having hotel accommodations, to the exclusion of the roadstand restaurant in the Township was not an unreasonable application of the limitation.

The action of the respondent is, therefore, affirmed.

Dated: June 25, 1934.

D. Frederick Burnett
Commissioner

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