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

BULLETIN 716 JUNE 24, 1946.

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ITEM

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

BULLETIN 716 JUNE 24, 1946.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS.

In the Matter of Disciplinary Proceedings against ARTHUR A. THERRIEN T/a ART'S TAVERN South Pemberton Road Pemberton Township P.O. Browns Mills, N. J., Holder of Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Pemberton.	CONCLUSIONS AND ORDER

Arthur A. Therrien, Defendant-licensee, Pro se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded guilty to charges alleging that (1) and (2) he sold and served alcoholic beverages to minors, and (3) he falsified his current license application by revealing only one of two prior suspensions suffered by him as a licensee.

As to (1) and (2): Two minor females, one eighteen and the other nineteen years of age, were served alcoholic beverages at the defendant's tavern on numerous occasions during July and August, 1945.

As to (3): Only one of the defendant's two prior suspensions was disclosed in his application for the license now held by him. Although the defendant revealed that his license had been suspended in August, 1944 because of a mislabeled beer spigot, he neglected to include a five-day suspension imposed against him in August, 1937 upon a charge of selling alcoholic beverages during prohibited hours.

A consideration of all the attendant circumstances, including the guilty pleas entered to the charges herein, leads to the conclusion that a forty-day penalty should be imposed. Such will be the order.

Accordingly, it is, on this 14th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Pemberton to Arthur A. Therrien, t/a Art's Tavern, for premises on South Pemberton Road, Pemberton Township, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 19, 1946; and it is further

ORDERED, that if any license be issued to this licensee, or any other person, for the premises in question for the 1946-47 fiscal year, such license shall remain under suspension until 2:00 a.m. July 29, 1946.

ERWIN B. HOCK
Deputy Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 90 DAYS.

In the Matter of Disciplinary Proceedings against)

CAMILLO CARABELLI)
W/S Fort Dix Road
Wrightstown, N. J.,) CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Wrightstown.)

Sido L. Ridolfi, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to charges alleging that (1) and (2) he sold and served alcoholic beverages to minors, and (3) he falsified his current license application by denying that he had theretofore suffered any suspensions of licenses held by him.

As to (1) and (2): On numerous occasions during the months of July, August and September, 1945, two female minors, one eighteen and the other nineteen years of age, were served alcoholic beverages at the defendant's tavern.

As to (3): The defendant is presently the holder of a liquor license in Pemberton Township, New Jersey. At those premises he received a suspension on a gambling charge during February, 1940.

The defendant also formerly held a liquor license, in partnership with one Philip Scott, in New Hanover Township, New Jersey. This license was suspended in September, 1942, for the balance of that licensing year, amounting to a suspension of more than nine months. This suspension resulted from the very serious charges of employing and permitting a known prostitute on the licensed premises. See Re Scott and Carabelli, Bulletin 531, Item 1.

It is the failure to reveal these two former violations that forms the basis of the third charge herein. The defendant's explanation for this neglect is that the local clerk filled out the application for him and, apparently, he signed the application without reading it. Although information received from the clerk does not completely support this explanation, the evidence on this issue is too meager upon which to predicate a finding that the offense was deliberately motivated.

Nevertheless, when coupled with the background of the previous offenses, and the numerous occasions upon which the two female minors were served with alcoholic beverages, the instant violations would normally lead to an outright revocation of the license. This result would undoubtedly have been reached if it appeared that the defendant had been personally connected with the offenses committed while the defendant was in partnership with Philip Scott. See Re Scott and Carabelli, supra. In that decision, however, it was determined:

> "The evidence before me fails to disclose that the defendant, Camillo Carabelli, had any actual knowledge either of the employment of Dorothy, her previous record or her presence on the premises. He is, however, chargeable with the knowledge of his partner.

"It has been indicated in previous cases that the proper penalty for permitting known prostitutes on licensed premises is, ordinarily, revocation of the license. However, revocation, carrying with it, as it does, a statutory disqualification of both licensees for a two-year period, would be unduly harsh as to defendant Carabelli. I will, therefore, suspend the license for the balance of its term."

In view of that determination, the defendant will escape a revocation in this case. However, a substantial penalty is indicated and will be imposed, to wit, a suspension for a period of ninety days.

Accordingly, it is, on this 14th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Wrightstown to Camillo Carabelli, for premises on W/S Fort Dix Road, Wrightstown, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 19, 1946; and it is further

ORDERED, that if any license be issued to this licensee, or any other person, for the premises in question for the 1946-47 fiscal year, such license shall remain under suspension until 2:00 a.m. September 17, 1946.

ERWIN B. HOCK
Deputy Commissioner.

3. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND JUKE BOX IN SPEAKEASY LOCATED IN PRIVATE RESIDENCE ORDERED FORFEITED - FAILURE OF LESSOR OF JUKE BOX TO ESTABLISH GOOD FAITH AND REASONABLE PRUDENCE - APPLICATION FOR RETURN OF MACHINE DENIED.

In the Matter of the Seizure on August 11, 1945, of a quantity of alcoholic beverages and a music machine at premises located on West Avenue, Claysville, in the Township of Mannington, County of Salem and State of New Jersey.	Case No. 6875 ON HEARING CONCLUSIONS AND ORDER

Stanger & Howell, Esqs., by Robert G. Howell, Esq.,
Attorneys for Edwin F. Loechner, Jr.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, and a music machine, itemized in a schedule attached hereto, seized on August 11, 1945 at premises located on West Avenue, Claysville, Mannington Township, N. J. constitute unlawful property and should be forfeited.

On August 11, 1945, at about 12:30 a.m., an ABC agent purchased bottles of beer and drinks of corn whiskey for himself and three other men in the kitchen of a dwelling at the premises, after being admitted into the building by John Little. Eleanor Simmons sold the alcoholic beverages to the agent and also sold alcoholic beverages to other patrons in the kitchen. John Little was selling alcoholic beverages to patrons in the front room.

The building in which the speakeasy activities were carried on is a two-story frame dwelling with a living room and kitchen on the first floor and two bedrooms on the second floor.

Other ABC agents entered the building while the first agent was holding a bottle of beer and other patrons were drinking alcoholic beverages. Thereupon the agents seized bottles of beer in a cooler in the kitchen, other bottles of beer in the living room closet, a bottle of whiskey in a kitchen closet, three jugs of bootleg corn whiskey in a bedroom closet, and a music machine in the living room.

The agents obtained signed statements from George Newman, John Little and Eleanor Simmons. Newman, in his statement, admitted that he had been previously arrested on a charge of possessing illicit liquor; that he is the tenant of the premises; and that John Little and Eleanor Simmons reside there and for some months were employed by him to sell alcoholic beverages. John Little and Eleanor Simmons confirm Newman's statements, and admit that they sold alcoholic beverages to the ABC agent and other persons on the morning in question.

John Little, Eleanor Simmons and George Newman were arrested on charge of violating the liquor laws inasmuch as neither Newman, Little nor Simmons held a license authorizing any of them to sell or serve alcoholic beverages.

George Newman's fingerprint records disclose that he was convicted in 1941 and sentenced to imprisonment for a year and a day by a Federal Court for violating the Federal liquor laws. Newman, Little and Simmons pleaded guilty in Salem County Special Sessions Court to the criminal charges in the instant case. Newman was sentenced to serve six months in jail and pay a fine of $100.00. Simmons and Little were each sentenced to pay a fine of $25.00 and to imprisonment for three months, the prison sentence being suspended.

It is evident that the seized alcoholic beverages were intended for sale at this speakeasy, and hence are illicit. Such illicit alcoholic beverages, together with the music machine and the coins therein, seized in such building, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(i) and (y), R.S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, Mr. Loechner appeared and sought return of the music machine. No one appeared to oppose forfeiture of the alcoholic beverages.

Mr. Loechner testified that he operates three electrical appliance stores located respectively in Pennsville, Salem and Bridgeton, N. J., and also is the owner of over 100 music machines which he places in locations on a profit-sharing basis; that some of these machines are placed in what he describes as permanent locations, such as commercial establishments, and others are rented for an evening or a weekend; and that the machine on the premises in question was a weekend rental.

Mr. Loechner explains that there was an order in his Salem store to place a machine in John Little's premises for a weekend, and that he personally brought the machine there. He talked with John Little and placed the machine in the living room, where there were some chairs, a couch, and a stove. He did not make any inquiry as to Little's background or character because, in his words, "If it is a private home, they all look alike to me."

Loechner claims that although it was merely a weekend rental, he left the music machine there for three successive weekends at Little's request; that he was at the premises on two occasions to service the

machine and collect his share of the receipts and that thereafter, for a period of two or three weeks, and until the seizure, he did not visit the premises because he was "busy and did not get around."

Mr. Loechner further testified that for the past three years it has been customary for him to place music machines on weekend rentals in private homes, although he could not recollect having any machine in any other private home at the time of the seizure.

Under R. S. 33:1-66(e) and (f), I have discretionary authority to return property subject to forfeiture to a person who has satisfied me that he acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use.

A person who seeks return of a music machine seized in a speakeasy must establish (1) that he exercised reasonable prudence when placing the machine, and (2) that subsequent events in no way induced belief that it was a speakeasy. Cf. Re Seizure Case No. 6927, Bulletin 697, Item 4, where the premises appeared to be and were in fact a restaurant as well as a speakeasy.

Without expressing any opinion as to whether there is a legitimate field for the rental of coin operated music machines on a profit-sharing basis for use in a private residence for a single evening or weekend, it is certainly clear that when the installation is made in an apparently non-commercial location, the owner of the machine must establish by the most convincing evidence that he had no reason to suspect that the place was actually a speakeasy or that the person to whom he loaned the machine was a speakeasy operator.

In the instant case, assuming that the original placement may have been reasonable, Mr. Loechner's testimony that the machine was in the premises for five or six weeks indicates that the machine was there for purposes other than a temporary weekend rental for social purposes. Sheer curiosity, if nothing else, would have led a reasonable prudent person to inquire as to what activities were being carried on at the premises. All private homes may look alike to Loechner when he is on a social visit, but he cannot rely merely upon a surface impression when placing a machine there. His attitude seemingly was of utter indifference to the activities at the place where he left his machine, or the character of the person to whom it was rented, merely because the place was a private residence, whereas that fact should have made him more cautious. It may be well to reiterate that persons who have failed to make any reasonable effort to prevent the improper use of their property, seized and subject to forfeiture under the Alcoholic Beverage Law, cannot obtain its return. Re Seizure Case No. 6898, Bulletin 687, Item 1.

Mr. Loechner has not established to my satisfaction that he acted in good faith and as a reasonably prudent person. Hence, his request for return of the music machine is denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, including the sum of $22.85 which was in the music machine, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: June 20, 1946.

SCHEDULE "A"

1 - 5-gallon jug of alcoholic beverages
2 - 1-gallon jugs of alcoholic beverages
1 - quart bottle of alcoholic beverages
144 - bottles of beer
1 - automatic music machine (Seeburg Symphonola #1400) with $22.85 in currency therein

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - POSSESSION OF OBSCENE PICTURES ON LICENSED PREMISES - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - FAILURE TO DISPLAY SIGN STATING LEGAL HOURS OF SALE OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary proceedings against

JOSEPH FIMIANI
T/a WASHINGTON CAFE
422 South 3rd St.
Camden, N. J.,

Holder of Plenary Retail Consumption License C-103, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

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William T. Cahill, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The charges served upon the defendant herein allege that:

(1) On December 12, 1945, he possessed a 4/5 quart bottle of "Four Roses Fine American Whiskey A Blend of Straight Whiskies", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

(2) and (3) On February 1, 8 and 9, 1946, he permitted lewdness and immoral activities, and possessed obscene pictures, on the licensed premises, in violation of Rules 5 and 17 of State Regulations No. 20.

(4) On February 9, 1946, he sold a pint bottle of whiskey after 10:00 p.m., in violation of Rule 1 of State Regulations No. 38; and

(5) On the latter date, he failed to keep displayed a sign stating the legal hours of sale of alcoholic beverages in original containers, in violation of Rule 3 of State Regulations No. 38.

The defendant pleaded non vult to charges 1, 4 and 5, and not guilty to charges 2 and 3.

With respect to the latter two charges, the testimony discloses that two ABC agents visited the premises on February 1, 1946, and were

shown an album of photographs by the licensee's son, Gene, who was acting as bartender. On February 8, 1946 they returned to the tavern, accompanied by a third ABC agent, and all three agents viewed the pictures. In addition, Gene voluntarily exhibited them to a patron at the bar. The next evening, four ABC agents looked through the album.

These photographs, about one hundred in number, depict men and women in the nude committing acts of sexual perversion. They are commonly referred to as "French pictures", and, to describe them as obscene, lewd and lascivious is to attribute a mild connotation to them.

The defendant contends that the pictures were exhibited only after the agents had first requested Gene to do so. Even were this the fact, it would not present any defense to the violation. The record is clear, however, that the agents had no knowledge of the pictures when they first visited the tavern, and that Gene produced them from a drawer in the back bar after some discussion about women, remarking at the same time, "See how you like these blondes."

Nor does the defendant's allegation that he was unaware that his son Gene had placed the album in the drawer of the back bar and had exhibited the pictures at the tavern absolve the defendant of liability. It is fundamental that a licensee is responsible for all violations committed by his agents and employees on the licensed premises. Moreover, the defendant, who was present at the tavern on each of the three occasions upon which the agents viewed the photographs at the bar, cannot avoid responsibility for the offense by pleading ignorance of what occurred at the premises. Indeed, his failure to observe the events at the bar, far from affording him an escape from the consequences of the violation, is good ground for additional censure. Cf. Re Silverstein, Bulletin 637, Item 11; Engel v. Belleville, Bulletin 694, Item 5; Pawlukovich v. Newark, Bulletin 697, Item 9.

I find the defendant guilty of charges 2 and 3.

In addition to the illicit liquor charge, this is the defendant's fourth hours violation and his second offense of possessing obscene matter on the licensed premises. See Bulletin 662, Item 7. The instant charges, standing alone, would merit a most substantial penalty, if not outright revocation. Reflected against the background of the previous record, however, there is no question but that a revocation of the license is the only appropriate penalty that may now be imposed.

Accordingly, it is, on this 20th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-103, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Joseph Fimiani, t/a Washington Cafe, for premises 422 South 3rd Street, Camden, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary Proceedings against ABRAHAM FINKELSTEIN 21 Market Street Newark 2, N. J., Holder of Plenary Retail Consumption License C-757, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Abraham Finkelstein, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that he possessed a 4/5 quart bottle of "The Blended Scotch Whisky of the White Horse Cellar", which bottle contained an alcoholic beverage not genuine as labeled in violation of R. S. 33:1-50.

An ABC agent, on routine inspection at the defendant's premises on May 13, 1946, seized the bottle in question after testing the open liquor stock consisting of thirteen bottles. The contents of the questionable bottle were found, upon chemical analysis, to vary substantially from a genuine sample of the same product.

The only prior penalty suffered by the defendant occurred as a result of violations discovered more than seven years ago. See Bulletin 338, Item 7, sub nom Albert Finkelstein, the name by which the defendant was formerly known. Because of the defendant's clear record since that time, the previous suspension, involving offenses dissimilar from that charged herein, will not now be considered in fixing a penalty in the instant case. Cf. Re Delano, Bulletin 705, Item 9.

The usual fifteen-day penalty will be imposed. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 20th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-757, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Abraham Finkelstein, for premises 21 Market Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 25, 1946; and it is further

ORDERED, that if any license be issued to this licensee, or anyone else, for the premises in question for the 1946-47 fiscal year, such license shall be under suspension until 2:00 a.m. July 10, 1946.

ERWIN B. HOCK
Deputy Commissioner.

6. APPELLATE DECISIONS - CIELUKOWSKI v. JERSEY CITY.

JOHN CIELUKOWSKI,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

William L. Johnston, Esq., Attorney for Appellant.
Charles A. Rooney, Esq., by John J. Meehan, Esq., Attorney for Respondent Board of Commissioners.
Edward A. Kaplan, Esq., Attorney for Objectors.

Appellant appeals from the denial of a transfer of his plenary retail consumption license from 56 VanWinkle Avenue to 54 VanWinkle Avenue, Jersey City.

The facts presented in the instant case disclose that appellant has operated a tavern at 56 VanWinkle Avenue for the past thirteen years. A short time ago appellant purchased the building next door to his licensed premises and renovated same for use as a tavern. Application for transfer to the new premises was denied by respondent Board, giving as its reasons that "the granting of this application for transfer will appreciably aggravate the geographical distribution of licenses in that vicinity. Public necessity and convenience require that the city's policy against setting up 'rum rows' be invoked in the denial of this application to transfer." The answer filed by respondent sets up substantially the aforementioned reasons for denial.

No question concerning the fitness of either appellant or the premises for which application to transfer has been made is presented herein. In fact, the report (Exhibit A-2) of the police investigator, Lieutenant Leo Steinle, discloses that the premises known as 56 VanWinkle Avenue wherein appellant conducts his tavern at the present time is a frame building consisting of one story in the front and two stories in the rear. There is a half-cellar in the front part of the building. There is no heating system, gas or any device to make hot water. The entrance of the tavern is four steps from the street level. The premises for which transfer has been requested, known as 54 VanWinkle Avenue, is a frame building three stories in height, consisting of a cellar, electric and gas facilities, and a hot water heating system. The proposed licensed premises is on the level with the street. The building has recently been shingled and all the fixtures in the store are modern. A comparison of the two buildings for use as licensed premises obviously weighs in favor of the premises for which a transfer is sought. However, there is an ordinance in effect in Jersey City, enacted on October 5, 1937, and amended April 1, 1941, entitled "An Ordinance to Limit the Number of Plenary Retail Consumption Licenses and Plenary Retail Distribution Licenses to Sell Alcoholic Beverages at Retail in the City of Jersey City." The pertinent section is as follows:

> "Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the

entrance of an existing licensed premises covered by a Plenary Retail Consumption License, provided, however, that if any licensee holding a Plenary Retail Consumption License at the time of the passage of this ordinance shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said licensee may, in the discretion of the Board of Commissioners of the City of Jersey City be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated. The provisions of this section relating to distances between licensed premises shall not apply to the issuance or transfer of any license to premises which will be operated by the licensee as a Bowling Academy. A premises shall be deemed to be operated as a Bowling Academy if it contains four or more pairs of bowling alleys."

The right to transfer a license from place to place, which the statute affords, cannot be nullified or otherwise diminished by municipal regulation, or denied, except for good cause. Such cause, generally speaking, is that which could be said to be necessary and proper to accomplish the objects of the Alcoholic Beverage Law and secure compliance with its provisions; e.g., that the applicant for the transfer had no enforceable right to possession of the premises to which the transfer was sought, or that the premises were unsuitable or that there were already too many licenses in the vicinity. See Craig v. Orange, Bulletin 251, Item 4; Re McElroy, Bulletin 247, Item 6; VanSchoick v. Howell, Bulletin 120, Item 6. Cf. Kirschhoff v. Millville and Beckett, Bulletin 254, Item 2; Luzzi v. Nutley, Bulletin 244, Item 5; Re Kessel, Bulletin 160, Item 5.

In the instant case appellant is merely seeking to transfer his business next door to its present location. By so doing, the number of licenses issued and outstanding will not be increased or the geographical distribution of licenses in that vicinity disturbed. Neither will it create a so-called "rum row", as the nearest tavern to the proposed licensed premises is four hundred seventy feet therefrom and located on a different street.

If the word "action" in the local ordinance is construed to mean "misconduct" on the part of the licensee, that portion of the ordinance would appear to be reasonable. Cf. Fafalak v. Bayonne, Bulletin 95, Item 5. Otherwise, that portion of the ordinance would appear to be unduly restrictive on the right to transfer and, hence, unreasonable. Furthermore, the requiring of the consent of the owner of the property from which a license is to be transferred does not carry out the objects of the Alcoholic Beverage Law. It serves only the private interests of the owners by giving them strangle holds on their tenants whereby refusal to give consent could be made the means of exacting an exorbitant rent. Re DeYoe, Bulletin 278, Item 8. That portion of the ordinance requiring consent of the owners is clearly unreasonable and completely without relation to the purposes of distance regulations.

I conclude that the transfer, under the facts disclosed in the instant case, should have been approved. In keeping with the conclusions herein, I must reverse the action of the respondent Board.

Accordingly, it is, on this 20th day of June, 1946,

ORDERED, that the action of respondent in denying the application for transfer herein be and the same is hereby reversed, and respondent is directed to transfer the license as requested.

ERWIN B. HOCK
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS.

In the Matter of Disciplinary Proceedings against

JOHN GAVLAK
T/a MAIN STOP GRILL
35 Main Avenue
Wallington, N. J.,

Holder of Plenary Retail Consumption License C-15, issued by the Mayor and Council of the Borough of Wallington.

CONCLUSIONS AND ORDER

John Stothers, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that he possessed sixteen bottles of assorted brands of alcoholic beverages, all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The bottles in question were part of the defendant's open stock of forty-six bottles of liquor tested by an ABC agent on March 28, 1946. The defendant admitted to the agent that he had refilled all sixteen bottles because of the current difficulty in obtaining the more popular brands of liquor.

The facts plainly bespeak a careless and deliberate fraud upon the defendant's patrons. To fit the punishment to the offense requires the imposition of a sixty-day suspension. In thus fixing the penalty, consideration has been given to the defendant's otherwise clear record since he first became a licensee in March 1941. Cf. Re Rulli, Bulletin 677, Item 9; Re Gutt, Bulletin 678, Item 13.

Accordingly, it is, on this 20th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-15, issued by the Mayor and Council of the Borough of Wallington to John Gavlak, t/a Main Stop Grill, for premises 35 Main Avenue, Wallington, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 25, 1946; and it is further

ORDERED, that if any license be issued to this licensee, or anyone else, for the premises in question for the 1946-47 fiscal year, such license shall be under suspension until 3:00 a.m. August 24, 1946.

ERWIN B. HOCK
Deputy Commissioner.

8. APPELLATE DECISIONS - OCEAN COUNTY TAVERN ASSOCIATION ET AL. v. TUCKERTON AND MOTT - DISCONTINUED.

OCEAN COUNTY TAVERN ASSOCIATION, NEW JERSEY TAVERN ASSOCIATION, THOMAS GIANATOS and WILLIAM D. DALY,

Appellants,

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF TUCKERTON, and JOSEPH E. MOTT and J. ELMER MOTT,

Respondents

On Appeal

O R D E R

William C. Egan, Esq., Attorney for Appellants.
Herman M. Gerber, Esq., Attorney for Respondents.

This is an appeal from the action of respondent Mayor and Council, whereby it granted a plenary retail consumption license to respondents Joseph E. Mott and J. Elmer Mott for premises at Maple Avenue and Main Street in the Borough of Tuckerton.

The parties to this appeal have stipulated, and agreed in writing, that the matter be withdrawn and discontinued.

The petition of appeal herein recites that the granting of the license was erroneous in numerous ways which concern the discretionary power of the local issuing authority. As to these matters, there is no reason why the present appeal may not be discontinued. It is noted, however, that the petition of appeal alleges also that the granting of the license was contrary to the provisions of P.L. 1946, c. 147. If subsequent investigation discloses that the license was granted or issued in violation of this recently enacted statute, appropriate steps may be taken by this Department despite the discontinuance of this appeal. No reason appearing to the contrary,

It is, on this 20th day of June, 1946,

ORDERED, that the within appeal be and the same is hereby discontinued.

ERWIN B. HOCK
Deputy Commissioner.

9. APPELLATE DECISIONS -- PISANIELLO v. WASHINGTON TOWNSHIP (WARREN COUNTY).

BENNY PISANIELLO,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WASHINGTON (WARREN COUNTY),

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

George J. Miller, Esq., Attorney for Appellant.
Edward E. Stover, Esq., Attorney for Respondent.

This is an appeal from the action of the respondent in denying the application of appellant for a plenary retail consumption license for premises located on Washburn Avenue, Township of Washington, Warren County.

Six grounds for reversal are advanced by appellant, namely, (1) that appellant is willing to make any necessary changes in the premises so as to comply with local requirements; (2) that there are no similar licensed premises for a considerable distance from the proposed licensed premises; (3) that the proposed licensed premises are located in an agricultural section and away from any educational or religious institutions; (4) that any objectors reside at a considerable distance from the proposed licensed premises; (5) that there is a need for such an establishment, and (6) that, at the same time appellant's application was denied, another application was approved.

Factually the situation is as follows: On February 5, 1946 appellant's application was denied by the respondent municipality for the following reason, as expressed in the resolution: "premises is (are) unsuitable." At the same meeting the application for one Adrian Keet for a plenary retail consumption license for premises located on Route 30 was granted. On March 5, 1946 respondent granted the application of Jack Gnau for a plenary retail consumption license for premises on Route 30. On April 3, 1946 respondent granted a plenary retail consumption license to Adelaide D. Hall, and approved an application for a similar license by John A. Lundy, which application was filed with the State Commissioner pursuant to State Regulations No. 4 because the applicant was a member of the Township Committee. No appeal was taken from the granting of the Keet or the Hall licenses, nor was any objection to the granting of the Lundy application filed with the State Commissioner by the appellant herein. An appeal from the granting of the Gnau license was dismissed in Pisaniello v. Washington and Gnau, decided herewith. The Lundy application was granted by the State Commissioner on April 17, 1946.

Appellant seeks a plenary retail consumption license for a dwelling which, in its present condition, is not suitable as a licensed premises. Although appellant testified that it was and is his intention, if the license be granted, to remodel the premises, the application was not accompanied by plans and specifications for remodeling and no plans were offered at the hearing before the Township Committee. The most that appellant has done is to offer at the hearing herein a sketch showing, in some detail, the alterations he proposes to make, coupled with an offer to make any change necessary to satisfy "local requirements."

However, the unsuitability of the premises in their present condition was not the sole ground for respondent's action. In addition, respondent denied the application because the location of the premises was unsuitable and the neighboring residents protested. With respect to these grounds, a member of the Township Committee testified that appellant's premises are located on a narrow secondary road about twenty feet wide; that eighteen or nineteen objectors appeared at the hearing and protested the granting of the license, and that these factors, coupled with the unsuitability of the premises, actuated the Township Committee in denying the application.

Notwithstanding the fact that three similar licenses were granted by the Township Committee, and a fourth by the State Commissioner following prior approval by the Township Committee, within a period of approximately two months, during which period of time appellant's application was denied, it does not necessarily follow that the issuing authority showed partiality or favoritism to the successful applicants or discriminated against appellant. In so far as two of the applicants are concerned, no appeal was taken and, consequently, the surrounding circumstances are not before me. All that was brought before me was the granting of the Gnau license, which was issued for premises designed for tavern purposes and almost completely constructed, situated on a well-traveled State Highway, whereas appellant's premises comprise a building unsuited for use as a tavern, situated on a little-traveled, narrow side road in a sparsely settled agricultural section of the municipality. This differentiation of premises and location is sufficient to overcome any possible inference of discrimination against appellant by the granting of the Gnau application.

The burden of establishing that the action of the issuing authority was erroneous and should be reversed rests with the appellant. State Regulations No. 15, Rule 6. Where, as here, appellant's principal contention is that the issuing authority granted a license for other premises, while at the same time it denied an application for appellant's premises, he signally fails to meet the burden of proof that is his.

Moreover, the municipality, with its population of 1,320 according to the 1940 Federal census, would seem to be adequately serviced by the six plenary retail consumption licenses presently outstanding. So far as the vicinity of the premises sought to be licensed is concerned, in view of its rural nature, its remote location, and the protests of persons who reside in that section of the Township, it cannot be concluded that public convenience and necessity require the granting of an additional license in this particular vicinity.

Accordingly, it is, on this 21st day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

10. APPELLATE DECISIONS - PISANIELLO v. WASHINGTON TOWNSHIP (WARREN COUNTY) AND GNAU.

BENNY PISANIELLO,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WASHINGTON (WARREN COUNTY), and JACK GNAU,
Respondents

CONCLUSIONS AND ORDER

George J. Miller, Esq., Attorney for Appellant.
Edward E. Stover, Esq., Attorney for Respondents, Township Committee and Jack Gnau.

Appellant appeals from the action of the respondent municipality in granting the application of Jack Gnau for a plenary retail consumption license for premises located on State Highway Route No. 30 in the said Township of Washington.

The reasons advanced for the reversal of the action of the municipality are five in number, namely, (1) that there is no necessity for the granting of the license, (2) the license exceeds "the usual number allowed for a governmental unit with the population of Washington Township", (3) that the municipality lacked the power to grant a license upon any condition subsequent, (4) that the granting of the said license "cuts off every possibility of the appellant's securing a license" and is "prejudicial to his vested rights", and (5) that the granting of the license was an abuse of discretion.

The Answers of the two respondents deny all these allegations and in addition ask that the appeal be dismissed for the reason that appellant interposed no objection at the hearing before the local governing body at the time the application was granted and hence is estopped.

The motion to dismiss the appeal must be denied. The statute is quite plain in its provision that appeals may be taken by any taxpayer or other aggrieved person within thirty days of the action of the issuing authority. R. S. 33:1-22. It is not necessary to raise any formal objection at the hearing before the local issuing authority.

Washington Township is a municipality having a population of 1,232 persons, according to the last Federal census. The testimony indicates it is a rural community, composed principally of several built-up sections. Appellant lives on Washburn Avenue in what is known as the Port Colden section. Respondent-licensee's premises are located on State Highway Route No. 30, another section of the township, about two and one-half to three miles distant. No local ordinance is in effect regulating the number of licenses which may be issued.

On February 5, 1946 there were two licenses issued and outstanding. On that date the Township Committee approved the application of one Adrian Keet for a plenary retail consumption license and denied the application of appellant for a similar license at his aforesaid premises. The denial of appellant's application is the subject of another appeal. On March 5, 1946 the application of the respondent-licensee was granted on the following conditions: "The applicant is given 90 days to complete the tavern and same must pass the sanitary regulations required by our local Board of Health."

Prior to the enactment of P. L. 1946, ch. 147, and in the absence of any local limitation, the question as to the number of licenses was

confided to the sound discretion of the issuing authority. This is equally so as to the question of the necessity of the license. In the absence of any testimony as to abuse of discretion, it has been the policy of this Department not to disturb the finding of the local Board. No such abuse of discretion appears in this case. Gnau's premises are located on a "much traveled" highway. Apparently, the members of respondent Township Committee decided that another license was necessary in that section of the township. So far as any "vested rights" of the appellant being affected by the denial of his application, such is not the case. A license is a privilege, not a right. Bumball v. Burnett, 115 N. J. L. 254; Zicherman v. Driscoll, 133 N.J.L. 586.

As to imposing a condition requiring the completion of the building within 90 days and that it meet the requirements of the local Board of Health, such a condition does not appear unreasonable. Testimony indicates that the building has already been started and was almost completed at the time of the hearing. The same question has been passed upon in Re Harris, Bulletin 183, Item 11. No license will issue until all requirements are met. A careful reading of the record shows no indication of the local Board exceeding its legal authority in granting the license subject to the condition imposed.

I am satisfied from all the testimony that appellant has not sustained the burden of proof in showing that respondent abused its discretion or otherwise acted improperly in granting the license to Gnau. Hence, this appeal must be dismissed.

Accordingly, it is, on this 21st day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

11. STATE LICENSES - NEW APPLICATIONS.

For an experimental period, effective July 1st, applications for new State licenses (in contrast to applications for renewals) and also applications for transfers of State licenses, will be listed in the next departmental bulletin following the filing of the application.

Since departmental bulletins are published from time to time as material warrants, the Department does not guarantee that the listing will appear in time to permit objections to be filed as required by the regulations. Accordingly, persons interested in wholesale licenses should continue to rely upon advertisement of notice of application as required by R. S. 33:1-25.

Erwin B. Hock
Deputy Commissioner.