STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 68 April 6, 1935

1. APPELLATE DECISIONS - HICKEY VS. LOPATCONG

EDWARD C. HICKEY,)
Appellant)
-vs-)
) ON APPEAL
THE TOWNSHIP COMMITTEE OF) CONCLUSIONS
THE TOWNSHIP OF LOPATCONG)
(WARREN COUNTY),)
Respondent)
- - - - - - - - - - - - - - - - -)

F. J. Kingfield, Esq., Attorney for Appellant
Herbert W. Palmer, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located on the Washington Highway between Sixth Street and Red School House Lane, Morris Park, Lopatcong Township.

Respondent contends the application was properly denied because the premises sought to be licensed are located in a residential neighborhood and the issuance of a license therein is opposed by a great number of residents.

It has been held that a municipal issuing authority may properly refuse to issue a license for premises located in a residential neighborhood. Vannozzi vs. Trenton, Bulletin #35, Item #7; Apgar vs. Tewksbury, Bulletin #66, Item #2. The Township of Lopatcong is an agricultural community with a population of approximately 1269. Between 200 and 300 persons reside in Morris Park which is one of the two centers of population in the Township and is residential in character. The only industry in the vicinity, besides a few local stores, is a silk factory approximately 1000 feet from appellant's premises. Appellant admitted his premises are located in a strictly residential neighborhood. Many residents of this section of the Township objected to the granting of appellant's application. These objections, coupled with the residential nature of the community, reasonably sustain the denial of the application. Apgar vs. Tewksbury, supra.

Appellant claims that respondent discriminated against him because three licenses were issued in the Township prior to the denial of his application. It appears, however, that these three licenses were issued for premises located in farming neighborhoods along public highways and not in either of the two centers of population in the Township or in a residential neighborhood. Appellant's claim of unreasonable discrimination is, therefore, unsound in fact.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Dated: April 2, 1935 Commissioner

2. FOREIGN DEALERS - RULES GOVERNING TRANSPORTATION INTO NEW JERSEY - SALESMEN

CODE AUTHORITY
ALCOHOLIC BEVERAGES IMPORTING INDUSTRY
Washington, D. C.

D. Frederick Burnett, Commissioner.

Dear Sir:

A number of questions have come to the attention of this office and I shall appreciate it very much if you will let us have your opinion on them.

1. May an importer, wholesale liquor dealer, or manufacturer located outside the state of New Jersey solicit business in New Jersey without taking out a state license or county license of any sort and without the payment of a state or county license fee?

2. May an importer, wholesaler, or manufacturer located outside the state of New Jersey ship alcoholic beverages into the state of New Jersey without having had issued to him a state or county license of some sort?

3. May an importer, wholesaler, or manufacturer located outside the state of New Jersey sell to consumers in the state of New Jersey or must he sell only to distributors and/or vendors?

4. Is there any restriction imposed upon an importer, wholesaler, or manufacturer soliciting business in alcoholic beverages by mail from persons located within the state of New Jersey?

5. Is a license required for salesmen employed by an importer, wholesaler, or manufacturer located outside the state of New Jersey who solicits business in the state of New Jersey?

6. Are there any restrictions imposed by the state of New Jersey on an importer, wholesaler, or manufacturer located outside the state of New Jersey regarding shipments of alcoholic beverages by the latter to persons (consumers, distributors, or vendors) in the state of New Jersey if an order for alcoholic beverages has been placed by the person located within the state of New Jersey with the shipper located outside the state?

I shall be very grateful to you, indeed, for your opinions on the questions above. Innumerable questions concerning the laws and regulations of the state of New Jersey have been directed to this office but so far we have not been able to reply to them satisfactorily, therefore your answers to the above questions will be of very material aid to us.

Very truly yours,
HARRY L. LOURIE
Executive Secretary

March 27, 1935

Harry L. Lourie, Executive Secretary,
Code Authority, Alcoholic Beverages Importing Industry,
Washington, D. C.

Dear Sir:-

I have considered the inquiries set forth in your letter of March 14th, and they are herewith answered seriatim:

(1) A foreign dealer or manufacturer may deal with licensed New Jersey wholesalers and manufacturers, but may not otherwise do business in New Jersey without first obtaining a proper New Jersey license.

(2) Under the rules governing the transportation of alcoholic beverages into New Jersey, a copy of which, together with modifications, is enclosed, a foreign dealer may ship alcoholic beverages to licensed New Jersey manufacturers and wholesalers through licensed transporters.

(3) A foreign dealer not holding a New Jersey license may not sell to consumers. Aside from limited wineries and State beverage distributors, only licensed retailers may sell to consumers.

(4) No regulations with respect to mail advertising have as yet been promulgated.

(5) Salesmen, as such, are not licensed in New Jersey, although there is a bill pending before the legislature requiring salesmen to be licensed. A salesman employed by a licensee is entitled to solicit sales on behalf of his employer to the extent permitted by the license.

(6) The regulations referred to in answer to your inquiry #2 make no distinctions based upon the place where the order is taken. Regardless of where the order is taken, the foreign dealer may not ship alcoholic beverages to New Jersey except to licensed wholesalers and manufacturers through a licensed transporter.

I anticipate that further regulations will be promulgated shortly with respect to solicitation by foreign dealers in this State. Upon the promulgation of any such regulations, I shall be pleased to advise you.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

3. NEW LEGISLATION - POISONED ALCOHOL

Chapter 138 of the laws of 1935, approved by the Governor March 26, 1935, effective immediately, makes it a misdemeanor (which means that it is punishable by three (3) years imprisonment or a fine not exceeding one thousand dollars ($1000.00) or both) to manufacture, transport, sell or possess alcoholic beverages containing poisonous substances.

Herewith is the complete text:

Supplement to an act entitled "An act for the punishment of crime" (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Any person, corporation, partnership or member of any association or any agent, servant or employee of any person, corporation, partnership or member of any association who shall manufacture, transport, possess, sell, barter, give away, furnish or otherwise dispose of any alcohol for internal consumption, any whiskey, gin, brandy, wine or any other alcoholic beverage of any nature whatsoever containing any poisonous chemical or chemicals or any poisonous ingredients of any description whatsoever which, if taken internally, will injuriously affect the health or bodily condition of any person or which will cause the death of any person shall be guilty of a misdemeanor.

2. This act shall take effect immediately.

4. NEW LEGISLATION - POISONED ALCOHOL

Chapter 139 of the laws of 1935, approved by the Governor March 26, 1935, effective immediately, makes it a high misdemeanor punishable by ten (10) years imprisonment at hard labor or a fine not exceeding two thousand dollars ($2000.00) or both, to sell poisoned liquor causing death or serious injury.

Herewith is the complete text:

Supplement to an act entitled "An act for the punishment of crime" (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Any person, corporation, partnership or member of any association or any agent, servant or employee of any person, corporation, partnership or member of any association who shall have sold, bartered, given away, furnished or otherwise disposed of to any person whatsoever any alcohol for internal consumption, whiskey, gin, brandy, wine or any other alcoholic beverage of any nature whatsoever containing any poisonous chemical or chemicals or any poisonous ingredients of any description whatsoever which shall have caused serious injury to the health or bodily condition of any person or shall have caused the death of any person shall be guilty of a high misdemeanor and shall be punishable by a fine of not exceeding two thousand dollars ($2,000.00), or imprisonment at hard labor or otherwise not exceeding ten years, or both.

2. Nothing in this act is intended to diminish, alter or in anywise change or in anywise affect the provisions of section one hundred and six, the provisions of section one hundred and seven, the provisions of section one hundred and

eight, the provisions of section one hundred and nine of "An act for the punishment of crimes" (Revision of 1898), chapter two hundred and thirty-five, Pamphlet Laws one thousand eight hundred and ninety-eight, or any amendments or supplements to section one hundred and six, section one hundred and seven, section one hundred and eight, section one hundred and nine of "An act for the punishment of crimes" (Revision of 1898), chapter two hundred and thirty-five, Pamphlet Laws one thousand eight hundred and ninety-eight.

3. This act shall take effect immediately.

5. NEW REGULATIONS - POISONED LIQUOR

Where a bootlegger sells poisoned liquor, he should be punished to the very limit of the law. Where a licensee sells poisoned bootleg liquor, not only should he be prosecuted criminally but the cloak of legality under which he operates should also be removed. Revocation, in such cases, should follow as a matter of course. Accordingly, the following regulation is promulgated, effective immediately:

(1) No licensee shall manufacture, transport, possess, sell, barter, give away, offer for sale or furnish any alcoholic beverage adulterated with methanol, alkaloids, acetone, phenols, formaldehyde, isopropyl alcohol or other poisonous substance whatsoever.

(2) Violation of this regulation shall be cause for revocation.

L. Kerlin Burnett

Commissioner

Dated: April 3, 1935

6. APPEALS - PROCEDURE - APPELLANT NEED NOT BE REPRESENTED BY COUNSEL

March 25, 1935

My dear Mr. Burnett:

Relative to the appeal from the action of the Board of Commissioners of Trenton in granting St. Stephens Club a license:

Can a layman in our church prepare the papers for appeal without violating any courtesy or law pertaining to legal profession? As a matter of fact we want to avoid any expense to the church if possible.

Can a member of the church or the pastor represent the church at the appeal hearing?

Very truly yours,
G. M. RILEY
Minister

April 3, 1935

Rev. G. M. Riley,
Calvary Baptist Church,
Trenton, N. J.

Dear Sir:

I have your letter of March 25th.

Section 19 of the Control Act provides that where a municipal issuing authority issues a license, any taxpayer or other aggrieved person opposing its issuance may, within 30 days thereafter, appeal to the Commissioner. Since the action sought to be reviewed in this matter was taken on March 8th, a notice and petition of appeal must be filed with this Department and copies thereof served upon the issuing authority and the licensee on or before April 8th.

There is no requirement in the act or in the rules of this Department that an appellant be represented by counsel. The Practice Act provides that "no person, except in his own case or in the case of an infant, shall be permitted to appear and prosecute or defend any action in any court unless he is a licensed attorney at law of the Supreme Court of this State, who shall be under the direction of the court in which he acts." 3 C.S. p.4055. Under this provision, an individual may prosecute his own cause in a proceeding before a court, but a corporation must act through an attorney at law. See Black & White Operating Co. vs. Grosbart, 107 N.J.L. 63 (E. & A. 1930).

Proceedings before an administrative body, such as this Department, are not, however, proceedings in a court within the meaning of the foregoing statutory provision. Furthermore, appearance before an administrative tribunal is not the "practice of law". See Croker National Fire Co. vs. Harlem Works Co., 132 N.Y.Misc. 687, 230 N.Y.S. 670 (1927); Traffic Bureau vs. Haworth Marble Co., 40 Ohio App. 255, 178 N.E. 703 (1931). Administrative tribunals are, by their very nature and purpose, less formal than courts of law. This is generally accepted to be one of their advantages and throughout his administration the Commissioner has sought to simplify the conduct of appeals to the end that an aggrieved person will obtain a hearing and determination without delay, technicality or expense.

A notice and petition of appeal setting forth the facts pertaining to the action sought to be reviewed must, of course, be filed with the Department in order to institute the proceedings. For your convenience, forms of such notice and petition of appeal are enclosed, together with rules governing appeals. Following the filing of a notice and petition of appeal, notices of hearing are sent to the interested parties and thereafter a hearing is held at the offices of this Department. At the hearing all material facts should be introduced so that the Commissioner will be furnished with an adequate basis for the proper determination of the controverted issue. An attorney is not necessary in connection with any of the foregoing, although his training, experience and familiarity with such proceedings would undoubtedly be of assistance.

Accordingly, it is the ruling of the Commissioner that an individual and a corporation, through its officers, may prosecute their own respective appeals without an attorney at law.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

7. APPELLATE DECISIONS - OWL DRUG COMPANY VS. ELIZABETH AND WHELAN DRUG CO., INC.

OWL DRUG COMPANY,
Appellant
-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL, BOARD OF PUBLIC WORKS OF THE CITY OF ELIZABETH and WHELAN DRUG CO., INC.,
Respondents.

ON APPEAL
CONCLUSIONS

Kanter & Kanter, Esqs., by Charles Kanter, Esq., Attorneys for Appellant
Edward Nugent, Esq., Attorney for Respondents, Municipal Board of Alcoholic Beverage Control and Board of Public Works of the City of Elizabeth
Abe J. David, Esq., Attorney for Respondent, Whelan Drug Co., Inc.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail distribution license to Whelan Drug Co., Inc. for premises located at 1216½ E. Grand Street, Elizabeth.

Appellant contends that the license was improperly issued because in violation of an ordinance enacted by the governing body of the City of Elizabeth reading:

> "That on and after July 1st, 1934, when a plenary retail distribution license under the provisions of the Alcoholic Beverage Act is granted, the licensee shall not be permitted to sell any alcoholic beverage in or upon any premises in which any other mercantile business is carried on in this City."

This ordinance was adopted pursuant to Section 13 (3) of the Control Act which deals with plenary retail distribution licenses and provides:

> "***the governing board or body of each municipality may, by ordinance, enact that on and after July first, one thousand nine hundred and thirty-four, this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on."

Respondent, Whelan Drug Co., Inc. conducts a drug business in a corner store at the intersection of East Grand and Broad Streets, Elizabeth known as 125 Broad Street, at which it had a distribution license for the period expiring June 30, 1934. After the enactment of the above ordinance, the drug company partitioned off a portion of this store and constructed a separate entrance fronting on East Grand Street and known as 1216½ East Grand Street which are the premises presently licensed. The partitions consist of metal for a distance of 6 feet from the floor, above which is transparent glass set in metal frames reaching to the ceiling. There are no doors leading from the licensed premises to the drug store. The only en-

trance and exit is a door opening on the street.

Appellant contends that the partitions do not effectually separate the licensed premises from the drug store; that they are in substance part of the drug store and hence the licensed premises are not devoted exclusively to the sale of alcoholic beverages.

If this is true in fact, appellant's conclusion is sound.

In considering whether another mercantile business was being conducted upon licensed premises the Commissioner said:

> "The question is not whether two different businesses are conducted under the same roof, but whether the premises on which the consumption license is exercised are substantially separate and distinct from the premises on which the delicatessen store is conducted. It is a question of fact in each instance." Re Wismer, Bulletin #39, Item #11.

To the same effect are Re City of Millville, Bulletin #35, Item #15; Re City of Newark, Bulletin #38, Item #6.

In the instant case there is a solid partition which physically separates the licensed premises from the premises in which the drug business is being conducted. There are no means of physical communication between the two rooms and in order to pass from one to the other it is necessary to go outside. A solid partition rendered the premises entirely separate and distinct in Sportland vs. Loder, Bulletin #41, Item #4 where the Commissioner said:

> "The solid partition without any access through it would render such premises entirely separate and distinct from the premises on the boardwalk within the principles heretofore laid down in Shapiro vs. Trenton, Bulletin #34, Item #8; in the Millville case, Bulletin #35, Item #15; and in the City of Newark, Bulletin #38, Item #6, where it was said: 'whether a prohibited business is being conducted in or upon the licensed premises, will depend on whether the conduct of the respective businesses and their independence of location renders them substantially separate and distinct.'"

The only distinction between the partition declared sufficient in the Sportland case and that involved in the instant case is that here the partition consists in part of glass which permits an open view from one store into the other. Although glass permits an open view, nevertheless, glass is just as effective to separate premises as is wood, steel or plaster. This is particularly so, where, as here, the partition for a distance of 6 feet from the floor contains no glass at all but consists of solid metal. The partitions are sufficient to render the licensed premises substantially separate and distinct from the premises in which the drug business is carried on.

The action of the issuing authority is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: April 4, 1935

8. APPELLATE DECISIONS - OWL DRUG COMPANY VS. ELIZABETH

OWL DRUG COMPANY,)
Appellant
-vs-)

MUNICIPAL BOARD OF ALCOHOLIC) ON APPEAL
BEVERAGE CONTROL AND BOARD OF) CONCLUSIONS
PUBLIC WORKS OF THE CITY OF)
ELIZABETH,
Respondents)
- - - - - - - - - - - - - - - - -

Kanter & Kanter, Esqs., by Charles Kanter, Esq., Attorneys for Appellant
Edward Nugent, Esq., Attorney for Respondents

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail distribution license for premises located at #555 Westminster Avenue, Elizabeth.

Respondents assert that the application was properly denied by virtue of an ordinance adopted by the governing body of the City of Elizabeth, and reading:

> "That on and after July 1st, 1934, when a Plenary Retail Distribution License under the provisions of the Alcoholic Beverage Control Act is granted, the Licensee shall not be permitted to sell any alcoholic beverages in or upon any premises in which any other mercantile business is carried on in this City."

Appellant conducts a drug store on the premises sought to be licensed and in conjunction therewith sells all the articles which are commonly sold in a so-called drug store including soda, ice-cream, candy, cosmetics, rubber goods - but why continue the inventory - it is a miniature department store. Appellant argues, however, that the conduct of a drug store is a profession and not a mercantile business.

The phrase "mercantile business" in its generally accepted sense, refers to the buying and selling of goods and merchandise, or the dealing in the purchase and sale of commodities. Re Hillery & Young, Bulletin #47, Item #6. The compounding of prescriptions is, of course, not a mercantile business. If that were all - if this were an old fashioned pharmacy - if appellant were an apothecary and nothing more - the decision herein would be just the opposite. But the sale of candy, ice-cream, cosmetics, rubber goods and the like, clearly does constitute a mercantile business. Appellant does not confine itself to practice of a profession but conducts a mercantile business as well. It is therefore within the prohibition of respondents' ordinance.

Appellant claims that inasmuch as it had a license for the period expiring June 30, 1934 and has been left with a stock of alcoholic beverages which it cannot sell because of its inability to receive a license as a result of respondents' ordinance that the ordinance confiscates appellant's property. This contention overlooks the fact that the Commissioner has

provided for the issuance of special permits to permit licensees to dispose of alcoholic beverages at the expiration of a license. See Rules governing the issuance of special permits to dispose of alcoholic beverages at expiration of license, Bulletin #40, Item #13.

Appellant finally contends that respondents in denying appellant's application have discriminated against it because prior to the denial respondents issued licenses for premises on which other mercantile businesses were conducted notwithstanding the existence of the ordinance. It points to three licenses issued, (a) to a partnership consisting of Edward Coplan and Frank Stamm, (b) to one Traubman, and (c) to Whelan Drug Co.,Inc.

The Coplan and Stamm license was issued upon the understanding that no other mercantile business would be conducted on the licensed premises and the license has since been surrendered because of the failure to comply with the ordinance. The Traubman license was testified to be for premises entirely separate and distinct from those in which mercantile business was conducted. The Whelan license has been considered in another opinion filed this day wherein it was held that the license was properly issued because in fact no other mercantile business was being conducted upon the licensed premises. Owl Drug Co. vs. Elizabeth, Bulletin #68, Item #7. Appellant's claim of discrimination is, therefore, without merit, particularly since it refused to comply with respondents' offer to grant appellant's application in the event appellant made alterations and set up partitions similar to those made by Whelan Drug Co., Inc. It thus appears that respondents have applied the ordinance uniformly.

The action of respondents is affirmed.

D. FREDERICK BURNETT,
Dated: April 4, 1935 Commissioner

9. APPELLATE DECISIONS - SCIARROTTA VS. TRENTON

JENNIE SCIARROTTA,)
Appellant
-vs-)
ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC) CONCLUSIONS
BEVERAGE CONTROL OF TRENTON,
Respondent.)
- - - - - - - - - - - - - - - - -

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

BY THE COMMISSIONER:

This is the second or supplemental hearing upon an appeal from the denial of appellant's application for a plenary retail consumption license.

At the original hearing on December 18, 1934, no one appeared on behalf of respondent. No reason appearing why the application should be denied conclusions were filed (see Bulletin #60, Item #12) ordering the issuance of a license to appellant.

Thereafter a petition was filed by the Board of Commis-

sioners of the City of Trenton, showing that the original respondent, Municipal Board of Alcoholic Beverage Control of Trenton, had been abolished on or about December 14, 1954, and that the functions and duties of said Board had been assumed on said date by the Board of Commissioners of the City of Trenton; that said Board of Commissioners had no notice in fact of the hearing. The petition prayed to have the case reopened to afford the Board of Commissioners an opportunity to be heard in opposition to the application.

The Commissioner thereupon entered an order reopening the matter and setting the same down for a supplemental hearing on conditions, among which the supplemental hearing was to be confined to the objections made by the original respondent.

At the supplemental hearing, it appeared that appellant was neither a native born nor a naturalized citizen of the United States but that she claimed citizenship on the basis of her husband's naturalization which occurred on October 5, 1923.

Some sixty years ago, Congress provided (Sec. 1994, U.S.Rev.Stat. of 1874):

> "Any woman who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized shall be deemed a citizen."

This provision remained in force until repealed on September 22, 1922, (42 Stat. 1022, c. 411, sec. 6; 8 U.S.C.A. sec. 10). Section 2 of the repealing act, (8 U.S.C.A. sec.368) provided:

> "Any woman who marries a citizen of the United States after September 22, 1922, or any woman whose husband is naturalized after that date shall not become a citizen of the United States by reason of such marriage or naturalization; ***."

This provision was amended on May 24, 1934, (48 Stat. 797, c. 344, sec. 4) to read:

> "An alien who marries a citizen of the United States after May 24, 1934, or an alien whose husband or wife is naturalized after May 24, 1954, shall not become a citizen of the United States by reason of such marriage or naturalization; ***."

Thus since September 22, 1922 a woman whose husband is naturalized does not thereby become a citizen of the United States. In order to become such a citizen she must herself be naturalized. Accordingly, appellant did not become a citizen by reason of her husband's naturalization on October 5, 1923. She therefore remains an alien.

While this objection was not among the points raised by the original respondent and hence not within the scope of the supplemental hearing, it did come to light and hence the Commissioner, on his own motion, must deny the license because to order it issued now would be in contravention of Section 22 of the Control Act which provides:

"No retail license shall be issued to a natural person unless he is a citizen of the United States ****."

The appeal is therefore dismissed.

D. FREDERICK BURNETT,
Commissioner

Dated: April 3, 1935

10. RECTIFIER'S LICENSE - SCOPE AND EFFECT - BOTTLING AND SALE OF APPLE BRANDY MANUFACTURED UNDER PREVIOUS DISTILLERY LICENSE IS PERMISSIBLE UNDER RECTIFIER'S LICENSE

Dear Sir:

We distilled all our raw material during the winter of 1933-34 under a plenary license and then, since we no longer had need for manufacturing, obtained a limited distiller's license to cover our bottling operations. We believe that this is not the proper license, yet do not wish to apply for a rectifier's license as we do not rectify or blend our product.

We desire your opinion as to whether we hold the proper license to bottle our product distilled prior to June 30, 1934 or whether we should obtain a rectifier's license, although we neither rectify nor blend our product, but bottle it "straight".

Respectfully,
DISTILLED LIQUORS CORPORATION
W. H. Hildick, President

April 4, 1935

Distilled Liquors Corporation,
New York City.

Gentlemen: Att: W.H.Hildick, Pres.

I have carefully considered your inquiry as to the proper type of license you should hold under the following circumstances.

Prior to June 30, 1934, you were the holder of a plenary distillery license, during the continuance of which you manufactured apple brandy in excess of sales. On June 30, 1934, you had on hand a quantity of apple brandy which you contemplated would meet your requirements for the forthcoming license year and your desire was not to manufacture but to bottle and sell the apple brandy on hand. Under date of June 30, 1934, you obtained, pursuant to an application theretofore filed, a limited distillery license which authorized you to manufacture not in excess of 10,000 gallons of alcoholic beverages distilled from fruit juices and to rectify, blend, treat, mix and distribute your said products.

The limited distillery license authorized you to bottle and sell 10,000 gallons of your apple brandy then on hand. Cf. Bulletin #67, Item #8. This license expired, however, upon your sale of 10,000 gallons of apple brandy and thereafter it became essential for you to obtain an additional license. Another limited distillery license would authorize you to bottle and sell an additional amount not in excess of the license limit. If your aggregate amount of sales would exceed the limit of such additional license, your interests would seem to be better

served by a rectifier and blender license. Bottling is included among the processes permitted by a rectifier and blender license; it is not essential that the licensee rectify and blend his product. See Bulletin #7, Item #8; Bulletin #55, Item #4. A rectifier and blender license will permit you, under the rulings of the Commissioner in Bulletin #55, Items #4 and #5, to bottle and sell apple brandy, manufactured prior to July 1, 1934 under your plenary distillery license, during the term of the license without limit as to amount.

Our records disclose that you have filed an application for a rectifier and blender license, but have not completed all statutory requisites pertaining thereto. Will you kindly do so forthwith.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner
By:
Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

11. SPECIAL PERMITS - SALE OF ALCOHOLIC BEVERAGES AT SOCIAL FUNCTIONS NOT ISSUABLE TO BOY SCOUTS

April 5, 1955

Philip Dunn, Chairman,
Menlo Park, N. J.

My dear Mr. Dunn:

I have your application as Chairman of Troop #73, Boy Scouts of America, of Menlo Park, for a Special Permit to sell alcoholic beverages at a card party and dance for the benefit of the Troop, on April 6th.

The application discloses that the Boy Scouts are to get the entire proceeds; that no alcoholic beverages will be sold or served to minors. On the other hand, it also appears that beer, wine and whiskey are to be sold; that minors are to be admitted without being accompanied by an adult.

I am a great admirer of the Boy Scouts and the good work that they do, and would like to help their cause along proper lines, but I will not grant any Special Permit for the dispensation of liquor to you as their Chairman, for that is substantially a permit being given to the Boy Scouts themselves which, despite the worthy objective, is quite unthinkable.

If an entirely distinct organization of which the Boy Scouts are not members should apply for a permit for a social function to be held for the benefit of the Scouts, at which the Scouts themselves would not be admitted, that would be an entirely different question.

As it is, the application for the Special Permit is denied.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner

12. APPELLATE DECISIONS - EISEN VS. PLAINFIELD

ARNOLD EISEN,)
Appellant
-vs-)
ON APPEAL
COMMON COUNCIL OF THE CITY) CONCLUSIONS
OF PLAINFIELD (UNION COUNTY),
Respondent)
- - - - - - - - - - - - - - - - -

Avidan & Avidan, Esqs., by Alex. Avidan, Esq., Attorneys for Appellant
William Newcorn, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail distribution license for premises located at #101 E. Front Street, Plainfield.

Respondent in denying the application purported to do so solely because in its opinion a sufficient number of plenary retail distribution licenses had been issued in the city. No question was raised as to appellant's character, the suitability of the premises sought to be licensed or appellant's compliance with the statutory requirements pertaining to his application.

Pursuant to the provisions of Section 37 of the Control Act, respondent on September 7, 1934, by ordinance, limited the number of plenary retail distribution licenses to be issued in Plainfield to twenty. This provision has not been repealed or amended. Seventeen such licenses have been issued. Accordingly, there are three vacancies.

Under this ordinance an applicant who is personally fit and whose premises are suitable and properly located should receive a license so long as the maximum number fixed by the ordinance has not been issued. To deny it without cause against person or place of appellant would be arbitrary and unreasonable. To deny it because of the opinion of an issuing authority that a sufficient number of licenses have already been issued is improper when that opinion conflicts with an ordinance. The ordinance, so long as it is in force, cannot be amended by opinion. A resolution will not suffice. American Malleables Co. vs. Bloomfield, 83 N.J.L. 728. The ordinance may be changed only by acts--notice, publication, successive readings, opportunity to be heard--of like formality to those requisite to the enactment of the original ordinance.

If there had been no ordinance in effect, it would have been within the power of the Common Council of Plainfield to have declared and effectuated their limitation that no more licenses should be issued. This was done in Bumball vs. Bernardsville, Bulletin #66, Item #9. That would have been equivalent to a limitation that no more than seventeen licenses should be issued. But the trouble here is that the ordinance says that no more than twenty licenses shall be issued. The limitation attempted to be invoked in the instant case although subsequent in time to the ordinance is plainly in conflict with it. The ordinance therefore governs. To say that the municipality has changed its mind is not sufficient. It has not changed its ordinance. When the ordinance was recently amended on April 1st, the limitation of

twenty distribution licensees was left intact.

The action of respondent is therefore reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: April 5, 1935

13. APPELLATE DECISIONS - SOSNOW DRUG COMPANY VS. FREEHOLD

SOSNOW DRUG COMPANY,
Appellant
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF FREEHOLD,
Respondent

ON APPEAL
CONCLUSIONS

Appearances:
Harry A. Sosnow, Esq., Attorney for Appellant.
McDermott & Finegold, Esqs., by Max Finegold, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail distribution license for premises located at #2 West Main Street, Freehold.

No question was raised as to the character of the persons interested in appellant corporation, the suitability of the premises sought to be licensed, or appellant's compliance with the statutory requirements pertaining to its application.

In denying the application, respondent gave no reasons, but at the hearing on this appeal sought to justify the denial on the ground that the one distribution license which had been issued was sufficient.

The municipal resolution now in effect provides that "not more than two plenary retail distribution licenses be issued." One such license has been issued. Accordingly there is one vacancy.

The situation is thus similar to that in Eisen vs. Plainfield, Bulletin 68, Item 12. The main difference is that the limitation of the number of licenses in the Plainfield case was determined by ordinance whereas here it was fixed by resolution. Therefore, if the Freehold limiting resolution had been amended by a later resolution, the difficulties inherent in the Plainfield case would not appear. In that case, it was held that the Plainfield ordinance could not be amended by a resolution but only by a later ordinance of equal solemnity. In this case, the Freehold resolution could have been amended by a later resolution without any formality. The trouble in this case is that the Freehold resolution has never been amended but still stands on the books of the municipality in full force and effect. It could have been amended even after the appellant's application was filed. Franklin Stores vs. Elizabeth, Bulletin #61, Item #1. It could have been amended even as late as the day that the application was denied. Bumball

vs. Bernardsville, Bulletin #66, Item #9. But the fact is that the Freehold resolution was not amended and it never has been amended. It still stands of record. Hence as long as the resolution stands of record, the vacancy can be filled at any time despite the current opinions proffered at the hearing that a sufficient number of licenses has been granted. It may well be that the members of the Freehold issuing body had all this in mind, but the trouble is they did not express it on the municipal records. It is not that an act was done without proper formality, but rather that there was no act done at all. So long as a municipality maintains a resolution limiting the number of licenses of record on its books, that resolution is binding not only on license applicants but also upon the municipality itself.

In this case a vacancy still exists. There is no complaint against the person or the place of the applicant. It is but fair therefore to fill that vacancy.

Other reasons in support of the denial were set up in the answer but no proof thereof was introduced and therefore such matters will not be considered.

The action of respondent is therefore reversed on condition that the fee heretofore returned to appellant be repaid to the municipality prior to the issuance of the license.

Dated: April 8, 1935 Commissioner