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

BULLETIN 247 MAY 26, 1938

1. APPELLATE DECISIONS - MANNING vs. TRENTON

PEYTON L. MANNING,)
Appellant,)
-vs-) ON APPEAL
CITY COUNCIL OF THE CITY OF TRENTON,) CONCLUSIONS
Respondent)
. . . . . .

Crawford Jamieson, Esq., Attorney for the Appellant
Adolph F. Kunca, Esq., Attorney for the Respondent

BY THE COMMISSIONER:

This appeal is from the refusal to grant a person-to-person transfer of a plenary retail consumption license from John C. Ritter, Jr. (a white person) to appellant (a negro) for premises at 531 Perry Street, Trenton.

The licensed premises are located in a business or light industrial section, with residences interspersed therein. Although the immediate vicinity is in general occupied by a white population, nevertheless next door to the licensed premises is the Asbury Methodist Episcopal Church (a religious organization of negroes), with a 2-family negro residence immediately beyond the Church. One or possibly 2 blocks away is a large negro section, where it is estimated that 1,500 to 3,000 colored persons reside.

Respondent first contends that the transfer was validly denied because, if granted, it will tend to convert the immediate vicinity in question into part of the nearby "black belt". This view rests upon the natural assumption that appellant, being colored, will draw a colored patronage.

I have already ruled that the privilege to hold a liquor license may not be denied to an applicant merely because of his color. Sears Roebuck vs. Absecon and Jones, Bulletin 185, Item 10. It follows that the privilege may not be refused merely because of the color of the patronage which the applicant is likely to attract. We have not reached the stage in this country where any race, creed or color is to be restricted to the confines of ghettos beyond which trespass is "verboten"!

Respondent next contends that it validly refused the transfer because of the objection of the Trustees of the Asbury

Methodist Episcopal Church, located immediately next door to the licensed premises, that their church services will be disturbed if appellant obtains the present license.

Because of this close proximity, it is first necessary to determine whether the Asbury Methodist Episcopal Church may claim any benefit under R. S. 33:1-76 (Control Act, Sec. 76), which, subject to certain exceptions here not material, prohibits the issuance of a liquor license for premises within 200 feet of a "church".

At the hearing, both appellant and respondent stipulated that the Asbury Methodist Episcopal Church is merely a religious organization and not a "church" within the meaning of the statute. This, however, is not binding upon the Trustees of the Church who, although nominally appearing as witnesses for the respondent, in reality occupy the status of objectors. Neither does it preclude the State Commissioner from inquiring into the actual facts upon this issue, irrespective of any stipulation entered into by the parties.

Indubitably, the Church is a religious organization. It was established at its present site in 1928. It has a regular pastor, conducts regular church services and activities, has a membership of 168 persons, and belongs to the Methodist Episcopal Conference. The building in which it is located, which it owns, however, is an ordinary 2-story frame dwelling house. The partitions on the first floor have been removed so as to form an auditorium, where the religious services and activities are conducted. On the second floor, there are 4 rooms in which the pastor resided from 1928 until the beginning of the summer of 1937. These rooms were then rented to a tenant who occupied them during that summer (when the present license was issued). From that time they have remained idle, and are now being repaired. It is the intention of the religious organization to continue to rent out these rooms or else to allow their pastor to live there.

The word "church" may designate either a religious congregation or an edifice of worship, according to the context. See Trustees, etc. vs. Fisher, 18 N.J.L. 254, 257 (Sup. Ct. 1841); Newark Athletic Club vs. Board of Adjustment, 7 N.J. Misc. 55, 59 (Sup. Ct. 1929). As used in the Alcoholic Beverage Control Act, it means a "recognized edifice devoted permanently to the worship of God". Bulletin 5, Item 3. That an edifice is what is meant appears from the fact that the yardstick in the statute is a distance of 200 feet, to be measured between "the nearest entrance of said church" and "the nearest entrance of the premises sought to be licensed." Hence, being a religious body is not of itself sufficient to invoke the benefit of the statute. Cf. George vs. Board of Excise, 73 N.J. L. 366 (Sup. Ct. 1906) aff'd. 74 N.J.L. 816 (E. & A. 1907), where the Court said: "The Legislature clearly did not intend that wherever religiously inclined persons meet together for Bible study and the like, a church existed within the meaning of this excise regulation". The mere fact, therefore, that a religious organization calls itself a "church" does not make it a church within the meaning of Section 76 of the Control Act, R.S. 33:1-76.

While I am committed to the view that the liquor law is to be liberally construed in favor of churches and schools, St.

Mary's Greek Catholic Church vs. Manville, Bulletin 187, Item 1, (the 200 feet distance is not to be pieced out by transparent artificialities for the purpose of getting around the law); Memorial Presbyterian Church vs. Newark, Bulletin 191, Item 8, (the salutary statutory protection to churches is not to be frittered away); Re Simon, Bulletin 238, Item 6, (subterfuge or evasion designed to circumvent the 200 feet rule will not be tolerated); Trustees of the First Particular Baptist Church of Paterson vs. Silver Rod Stores, Inc., Bulletin 245, Item 8, (a fire door installed to comply with a municipal ordinance cannot do the double duty of protecting a liquor store from the operation of the law designed for the benefit of churches), nevertheless these provisions should receive a reasonable interpretation and not be construed beyond their fair meaning to cases which the law did not contemplate.

In the instant case, no one would recognize this ordinary dwelling house as being a church. The most anyone could say is that it is used to some extent like a church. It is not used exclusively for the worship of God. It was not built with that in mind. The second floor of this dwelling house is nothing but a flat to be rented out to tenants. The Church Trustee (who testified on behalf of all the Trustees) himself talks of the "church downstairs". A house divided against itself into a place of worship and an ordinary flat is not, within the contemplation of the statute, a church edifice. See George vs. Board of Excise, supra; Re Rupp, 55 Misc. 314, 106 N.Y.S. 483; Re Finley, 58 Misc. 639, 110 N.Y.S. 71; State vs. Midgett, 85 N.C. 538; Starks vs. Presque Isle Circuit Court 173 Mich. 474, 139 N.W. 29, 43 L.R.A. (N.S.) 1142. Cf. Beverley vs. Newark, Bulletin 188, Item 6, where I held that the fact that a vocational school occupied the third floor did not make a building a public schoolhouse within the meaning of the Control Act when it appeared that the first floor was occupied by a finance company, a motor vehicle agency and an undertaker and the second floor was rented out to an advertising agency and a dentist.

The general objection that, if the transfer is granted, the religious services will be disturbed is of small moment. The license has already been issued despite the proximity of the so-called Church. There is nothing to indicate that the appellant, if granted the transfer, will conduct his business improperly on the licensed premises or in any manner other than as a normal consumption establishment. If he should, adequate remedy is available by disciplinary action against him and by refusal to renew his license. Cf. Sears Roebuck vs. Absecon and Jones, supra.

The action of respondent is therefore reversed. Respondent is directed to issue the transfer forthwith.

May 23, 1938.

D. FREDERICK BURNETT
Commissioner

2. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - PERMITTING GANGSTERS AND OTHER PERSONS OF ILL REPUTE UPON LICENSED PREMISES - THE CASE DISTINGUISHED FROM THOSE IN WHICH REVOCATION IS WARRANTED BUT THE PENALTY INTENSIFIED BECAUSE OF THE LICENSEE BEING A SECOND OFFENDER - 45 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against JULIUS KAPLAN, 115 Broome Street, Newark, New Jersey, Holder of Plenary Retail Consumption license No. C-1019, issued by the Municipal Board of Alcoholic Beverage Control of Newark.	CONCLUSIONS AND ORDER

. . . . . .

Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.
Leon E. Greenhouse, Esq., and George R. Sommer, Esq., Attorneys for Julius Kaplan, Licensee.

BY THE COMMISSIONER:

Charges were duly preferred and the licensee was served with notice to show cause why his license should not be suspended or revoked on the ground that he had permitted known criminals, gangsters, racketeers or other persons of ill repute in or upon his licensed premises in violation of Rule 4 of Regulations No. 20 promulgated by the Department of Alcoholic Beverage Control and had harbored criminals, lawless and immoral individuals in violation of municipal regulations governing the sale of alcoholic beverages in Newark. Upon the return day of the notice, a hearing was held and testimony was taken in support of the charges and on behalf of the licensee.

There is no substantial dispute that Ernest Hampton, alias "Pistol Pete" and James Washington, alias Jack Wade, frequented the licensed premises. Hampton was at the premises three or four times a week from October 1937 to December 6, 1937; Washington was a frequent visitor from October 1937 through January 1938 and during part of that time was there employed as a porter.

Similarly, there is no substantial dispute that Hampton and Washington are criminals and persons of ill repute. Hampton has been arrested approximately fifteen times. In 1930 he was convicted for breaking and entering into a store; in 1932 there were two convictions against him, one for breaking and entering and the other for malicious mischief; and in 1937 there were likewise two convictions against him, one for breaking and entering and the other for bigamy. Washington has been arrested approximately ten times. He was convicted in 1929 for grand larceny, in 1931 for breaking and entering, and on three occasions in 1936 for disorderly conduct.

The licensee rests his defense upon the contention that he did not know that either Hampton or Washington was a

criminal or a person of ill repute until after they had discontinued frequenting his place of business. The significant testimony bearing on this issue, introduced at the hearing, was as follows:

The licensee testified that he learned of Hampton's criminal record in January 1938 when Detective Norris and Sergeant Hemmer of the Newark Police Force showed him a picture of Hampton, whom they were seeking. Detective Norris was then called to the stand and testified that during the months of October and November 1937 he had looked in the licensee's premises for Hampton, who was wanted for a "stick up"; that he told the licensee why Hampton was wanted and that on several occasions the licensee or his bartender told him that since Norris' last visit Hampton had been in the premises and had gone. The licensee was then recalled for further testimony and acknowledged that he knew the police were looking for Hampton in November 1937 but denied that Hampton had at any time thereafter been in his premises. Hampton, however, testified that he had frequented the licensed premises until December 6, 1937.

The licensee asserts that he first became aware that Washington was a criminal and a person of ill repute in April 1938. He admits, however, that in November 1937 he had purchased a gun from Washington, who had no permit therefor. Although the licensee knew that a permit was essential and indeed had himself applied for a permit, he testified that he did not ask Washington whether he had a permit and that he did not think it was unusual for a man to be carrying a gun without a permit.

Detective Bailey of the Newark Police Force testified that Hampton and Washington, in the presence of the licensee, had asserted that they were accustomed to leaving guns which they carried in the custody of the licensee or his bartender. Signed statements by Hampton and Washington to that effect were repudiated by them at the hearing. The licensee likewise denied that they had ever left their guns in his custody, although the licensee did say in a signed statement that on one occasion he saw a gun, in addition to his own, in a cabinet under his bar and that his bartender told him that it belonged to Washington, from whom he had taken it to avoid trouble. There is no dispute that Washington continued to visit the premises after this alleged occurrence.

The weight of the evidence leads unavoidably to the conclusion that the licensee knew that Hampton and Washington were criminals and persons of ill repute, but nevertheless permitted them to frequent the licensed premises. In so far as Hampton is concerned, the testimony of Detective Norris is sufficient to indicate that the licensee knew of his ill repute for a substantial period of time before Hampton ceased frequenting the licensed premises; indeed, the licensee himself acknowledged that in November 1937 he knew that Hampton was being sought by the police, whereas Hampton testified that he continued to visit the licensed premises until December 6, 1937. In so far as Washington is concerned, the testimony with respect to the guns is wholly sufficient to indicate that the licensee's denial of knowledge of his character is not entitled to credit.

Ordinarily, a finding that the licensee has knowingly permitted criminals and persons of ill repute to

frequent the licensed premises might well justify outright revocation of the license, especially if the licensed premises were used as a "hang out" to "cook up" or otherwise devise evil deeds, or were used to harbor or to hide or give asylum to fugitives or others wanted by the police. In the instant situation, however, such drastic action does not appear to be warranted. Notwithstanding that the premises are in what may be termed as a "tough" neighborhood, there is no evidence that any disturbances have occurred at the licensed premises; nor is there any evidence that the licensee was warned by local police authorities that either Hampton or Washington or indeed any other patrons should be excluded from the licensed premises. While such lack of admonitory notification does not constitute a legal defense, it may properly be considered in mitigation of punishment.

On the other hand, this is not the first offense adjudicated against this licensee. His license was previously suspended by the Newark Municipal Board of Alcoholic Beverage Control for a period of two weeks, after a finding of guilt on a charge of selling to a minor. The suspension was affirmed on appeal. Kaplan vs. Newark, Bulletin #232, Item 12. Taking all these circumstances into consideration, I conclude that this license must be suspended for a period of forty-five days.

Accordingly, it is, on this 23rd day of May, 1938 ORDERED that, effective 3:00 A. M. (Daylight Saving Time) on May 27, 1938, plenary retail consumption license No. C-1019, issued to Julius Kaplan by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and hereby is suspended for the balance of its term, expiring midnight, June 30, 1938.

And it is further ORDERED that no renewal or other license under the Alcoholic Beverage Control Act (R.S. Title 33, Chapter 1) be issued to said Julius Kaplan before the 10th day of July, 1938.

D.FREDERICK BURNETT
Commissioner

3. APPELLATE DECISIONS - COCCIOLONE vs. WEST DEPTFORD TOWNSHIP and TROVATO vs. WEST DEPTFORD TOWNSHIP

MICHAEL COCCIOLONE,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WEST DEPTFORD,
Respondent
-and-
MARY CONTI TROVATO,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WEST DEPTFORD,
Respondent

ON APPEAL

CONCLUSIONS

Fred A. Gravino, Esq., Attorney for the Appellant, Michael Cocciolone.
Herbert H. Butler, Esq., and James Avis, Esq., Attorneys for the Appellant, Mary Conti Trovato
Frank Sahl, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

These are sister appeals which, because of common issues of law and fact, were heard together with consent of counsel.

Appellant Cocciolone appeals from the denial of a plenary retail consumption license for premises located on the easterly side of Salem Pike, north of Mantua Creek, in Mantua Grove, West Deptford Township. Appellant Trovato appeals from the denial of a similar license for premises located in the Township a short distance north of Cocciolone's site.

On January 24, 1938, in an appeal previously instituted by Cocciolone, I voided the plenary retail consumption license of one Bafile on the ground that he was not a 5-years' resident of the State. See Cocciolone vs. West Deptford, Bulletin 227, Item 8. This voidance created a vacancy in the then outstanding quota of 10 consumption licenses for the Township. Accordingly, on January 25, appellant Cocciolone filed application for license for premises within a short distance of the Bafile location, and on January 27, appellant Trovato filed application for that site itself.

Both applications came up for consideration on February 7, and were laid over until February 9. They were then denied by reason of an ordinance, first introduced February 7 (but not finally adopted until February 23), which reduced the quota of consumption licenses for West Deptford from 10 to 9 and which thus eliminated the existent vacancy.

Appellants contend that the ordinance is ineffective as to them because it was introduced after their applications had been filed and was not yet finally adopted when their applications were denied.

A similar situation occurred in Franklin Stores vs. Elizabeth, Bulletin 61, Item 1. In that case, too, the application was made and denied before the ordinance was enacted. It was there contended by the appellant that such subsequently enacted ordinance did not validate denial of the application; that such an ordinance could not have any retroactive effect; that the appeal must be adjudicated on the factual situation as it existed at the time of the denial of the application.

I there ruled against such contention, saying:

> "The spirit and not the letter of the law should dominate. Sound public policy requires that if a special privilege is to be given, the grant must be consonant with such policy at the time the grant is made. Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by

> strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW.....True, the ordinance had not been adopted at the time of the denial, but it was in actual, bona fide contemplation. The good faith of respondents is demonstrated by the actual adoption of such ordinance the month following the denial. I find, as fact, that the policy existed at the time the application was denied even though it was not formally manifested until a later date. The contention of appellant fails, not because the application was barred by the ordinance but rather because to grant it now would be in defiance of the local policy manifested by the ordinance in active, bona fide contemplation at the time the application was denied."

See, also, Widlansky vs. Highland Park, Bulletin 209, Item 7 and cases therein cited.

So, in the instant cases, I conclude that the municipal policy, exhibited by the West Deptford ordinance, which has been in force as a formal regulation since February 23, is the true criterion on which this decision must be based.

Appellants next contend that a quota of 9 consumption licenses is an unreasonable limitation for the Township as a whole. The evidence, however, fails to sustain this claim. West Deptford (area, 15 square miles; population, 4,000) is rural in character. It contains 5 unofficial communities or sections, 3 being small "villages" ranging in population from 800 to 1,200, and 2 being farming sections with a scattered population of 250 and 500 respectively. It is traversed by State Highways #44 and #45, both well-trafficked roads, and seemingly by 2 or more county highways, of which Salem Pike is one. It further appears that several years ago the quota of consumption licenses for the Township was 12, which on August 23, 1937 was reduced to 10.

These facts do not persuade me that 9 consumption places are necessarily insufficient to service the resident and traveling public. Nor is respondent, by having once allowed a greater quota, now estopped from reducing it to the present number. Indeed, municipalities very properly guide themselves by actual experience.

Each appellant last contends that the quota is unreasonable in its application to him or her, and to the vicinity in question. Their premises are located in Mantua Grove (the more sparsely settled of the 2 farming sections) in admittedly open country. The only buildings located therein are 5 or 6 residences (inclusive of both premises in question), 7 or perhaps more bungalows along Mantua Creek, and various scattered farm places. Although the nearest consumption establishments are located 2½ miles away from appellants' locations, public need for such an establishment in this sparsely settled area is not made apparent.

Of the 9 outstanding consumption licenses in the Township, 5 are located along State Highway #44 and the remaining 4 along State Highway #45; none, however, is located along Salem Pike, a fairly-trafficked road, upon which both appellants' premises are located. This fact, however, does not reflect discrimination against the vicinity in question. The two State Highways are

the great arteries of traffic in the Township, and along their routes are located West Deptford's various "villages"; Salem Pike itself, after traversing part of the Township, leads into State Highway #45.

It is true that Bafile operated a consumption establishment in this vicinity from July, 1935, until January, 1938, when I set aside his license. But appellants have no claim to be the beneficiaries of that voided license. A municipality is not obliged to issue a license in a particular neighborhood merely because a license was once previously outstanding there. Here, respondent has exhibited (and its members have expressed) a policy of actively reducing the number of consumption establishments in the Township. In August, 1937, it reduced the quota from 12 to 10. When presented with a vacancy in January 1938 by the voidance of a renewal license for premises in this sparsely settled area, it acted neither in bad faith nor unreasonably in reducing the quota accordingly.

I find no error in the denial of the present applications by reason of the ordinance.

It is therefore unnecessary to consider the other points raised in the Cocciolone appeal.

The action of respondent in each case is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: May 23, 1938.

4. MUNICIPAL REGULATIONS - LICENSE FEES - REVISIONS OF LICENSE FEES EFFECTIVE FOR THE ENSUING FISCAL YEAR SHOULD APPLY TO ALL LICENSES ISSUED FOR THAT YEAR AND NOT SOLELY TO THOSE FOR WHICH APPLICATIONS ARE FILED AFTER JULY FIRST.

May 23, 1938.

Robert V. Peabody,
Clerk of Pennsauken Township,
Merchantville, N. J.

My dear Mr. Peabody:

I have before me resolution fixing plenary and seasonal retail consumption, plenary retail distribution and club license fees, effective on and after July 1, 1938, adopted by the Township Committee on April 25, 1938.

It provides, I note, "that on and after July 1, 1938, the license fees to be paid for alcoholic beverage licenses" in Pennsauken Township shall be as thereinafter set forth.

When you say that the fees shall be effective on and after July 1, 1938, it means that they may be charged only with respect to applications filed on and after that date. Applications for licenses for the 1938-39 period which are filed before July 1st need only be accompanied by the lower fees

imposed in the June 28, 1937 resolution. I take it, however, that what the Township Committee meant was that the new fees should apply to all licenses for the ensuing year. If that is the case, the resolution should be amended by striking out the first sentence of the resolution and in its place inserting "....that for all retail licenses issued in the Township of Pennsauken for the fiscal year commencing July 1, 1938 and thereafter, the annual fees shall be as follows:".

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - OBSCENE, LASCIVIOUS OR DISGUSTING ADVERTISING CARDS - THIRTY DAYS SUSPENSION.

In the Matter of Disciplinary Proceedings against	)	
ROXY BAR & GRILL, INC., 421 High Street, Newark, New Jersey,	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License No. C-743.	)	
	)	

. . . . . .

Fast & Fast, Esqs., by Louis A. Fast, Esq., Attorneys for Licensee.
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

State Regulations No. 20, Rule 17, provides:

"No licensee shall allow, permit or suffer on or about the licensed premises or have in his possession or distribute or cause to be distributed any advertising matter containing any obscene, indecent, filthy, lewd, lascivious or disgusting printing, writing, picture or other such representation."

The evidence shows that a thousand business cards advertising the Roxy Bar & Grill, as hereinafter mentioned, were ordered to be printed and were paid for about a year and a half ago by Sampson Librizzi, an agent of the licensee; that on March 16th of this year a second batch was likewise printed and paid for; that nearly all the cards had been given out on the licensed premises to its patrons by Librizzi; that only ten or twelve cards were left when Deputy Police Chief Sebold stepped into the picture and commanded their discontinuance at a time when Librizzi was about to have more printed.

On the face of the card appears an advertisement of the Roxy Bar & Grill, described as an "Italian-American Restaurant", and stating its address, telephone number and the names of its proprietor and manager, and bearing the words "Music and Entertainment."

On the back of the card appears what purports to be a letter addressed by a man to a woman and her reply. This supposed correspondence is insufferably stupid and inane. But - if the right half of the back of this card is covered, the remaining portion is indecent, filthy, utterly revolting and constitutes a painfully plain violation of the rule against obscene cards.

In defense, Sampson Librizzi testified that at the time he made the purchase he picked this card from a number of cards shown to him by the printer. Asked how he happened to select this particular card, he replied: "I just seen it; I didn't pick it out for no reason." When asked if there was anything about the back of the card that advertises his tavern, his testimony was:

"A. No, sir.
Q. Is there any reason you had for picking out these two letters to appear on the back of your card?
A. No, sir; just to read something.
Q. They have no meaning?
A. Not that I know of.
Q. To you, do these letters mean anything at all?
A. No, sir.
Q. And yet you went back and ordered a second batch of 500 or 1000 with material on the back of your advertising card that means nothing?
A. The front has my name; the back means nothing."

The naive Mr. Librizzi testified that he did not know that one could get "something nasty" by covering half the card with a piece of paper until Chief Sebold told him so.

It is inconceivable that Librizzi, over a period of more than a year, did not know what the Police discovered on bare inspection and what everybody else knew or would quickly learn if they had any of the curiosity which the card was deliberately calculated to provoke. If any new patron, bored to tears by the vacuous language of the supposed correspondence, asked the natural question: "Well, what's funny about that?", presumably there would be a host of sophisticates and initiates to supply the cue that, by covering half the card, the dirt was instantly and unmistakably brought to the surface.

It is not necessary, under the Regulation, that a licensee know that the advertising matter is obscene, or lewd, or disgusting, or agrees or admits that it is. If such is the fact, the mere presence or possession or distribution is sufficient to constitute the offense. If he did not know what it all meant, it was his duty to find out. In any event, he knew from the repeat orders he gave for the cards that the advertisement "took"!

Smut is so contagious!!

I find the licensee guilty as charged.

Accordingly, it is on this 24th day of May, 1938 ORDERED that Plenary Retail Consumption License No. C-743, heretofore issued to Roxy Bar & Grill, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of thirty (30) days, commencing May 28, 1938 at 3:00 A. M. (Daylight Saving Time).

D. FREDERICK BURNETT
Commissioner

6. MUNICIPAL REGULATIONS - LIMITATION OF LICENSES - TRANSFERS - MUNICIPAL REGULATION REQUIRING THAT TRANSFER BE MADE WITHIN 30 DAYS OF LOSS OF INTEREST IN LICENSED PREMISES, TENTATIVELY APPROVED.

May 23, 1938.

Leon E. McElroy, Esq.,
Township Attorney,
Woodbridge, N. J.

My dear Mr. McElroy:

I have before me proposed ordinance for the Township of Woodbridge limiting the number of plenary retail consumption and plenary retail distribution licenses.

As the ordinance limits the number of licenses, it does not for the reasons stated in Bulletin 43, Item 2, need my approval in the first instance in order to be effective.

It is, instead, as provided in R.S. 33:1-41 (Control Act, Sec. 38), subject to review on appeal, after which it may be set aside, amended or otherwise modified as the Commissioner may order.

Section 5, which requires that applications for renewals be filed with the Clerk not later than July 15th of the license year for which the renewal is sought, and that all applications filed after that date shall be deemed to be applications for new licenses, for the reasons given in Re Bayonne, Bulletin 216, Item 3, I deem to be wholly proper.

Section 6, dealing with transfers, provides:

> "Should a licensee lose or surrender his interest in the licensed premises, the license, which was issued to said licensee for said premises, shall not be transferred to another person or another premises unless application for a transfer is filed with the Township Clerk within thirty days from the date when said loss or surrender of of interest occurred."

The right of transfer which is conferred by the statute cannot, in general, be nullified, postponed or otherwise diminished by municipal regulation. That is why municipal ordinances purporting to prohibit all transfers from person to person (Re Kessel, Bulletin 160, Item 5) or from place to place (Van Schoick v. Howell, Bulletin 120, Item 6) have been disapproved. That does not mean, however, that proper regulation cannot be sustained. All regulation is a diminution to some extent of privileges that otherwise would be enjoyed. If reasonable, and for a proper purpose, it is not invalid.

My records indicate that there are presently outstanding in the Township seventy plenary retail consumption and five plenary retail distribution licenses. The ordinance seeks to reduce the quotas to fifty and three, respectively. That is surely enough for a municipality of 25,000 inhabitants. What we need is fewer licenses, not more.

The regulation does not nullify the statutory right to transfer (Re Kessel, Bulletin 160, Item 5), nor postpone it (Re Wismer, Bulletin 96, Item 4). Hence, it is not objectionable

on that score. The regulations in the Kessel and Wismer rulings diminish the right because they imposed rules, the effect of which the licensee, however prompt or however careful, could not overcome. Under your Section 6, the only way that anyone could be deprived of his substantive right would be through his own fault, i.e., through failure to apply for the transfer within the allotted time.

If licenses are to be cut down, the way to begin is to begin. A journey of a thousand miles begins with one step. In the light of the purpose of the ordinance and the desirability of reducing the number, I believe the regulation to be sound. It is therefore tenatively approved, subject to the usual right of appeal.

The ordinance appears to be in proper form.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PROSTITUTION - REVOCATION INDICATED AND EFFECTED.

May 25, 1938.

Arthur C. Malone City Clerk,
City Hall,
Hoboken, N. J.

Dear Mr. Malone:

I have staff report and your certification of the proceedings before the Board of Commissioners of Hoboken against Cornelius J. Bos, Jr., t/a Dutch Mill Inn, charged with (a) permitting gambling on the licensed premises in violation of State Rule, (b) permitting prostitutes and persons of ill-repute on the licensed premises in violation of State Rule and (c) permitting the assembling of females on the licensed premises for the purpose of enticing customers or making assignations for improper purposes in violation of local regulation.

The staff reports the facts as follows:

"On January 27, 1938, Investigators Palmieri, Hulin and Kane visited the above licensed premises at about 11:00 P. M. They observed the licensee rolling dice for drinks with a male patron. A woman who answered to the name of Mabel approached the patron and asked him to buy her a drink. He bought her a glass of beer. This woman also asked the investigators to buy her a drink. They refused.

"On February 2, 1938, at about 11:15 P. M., Investigators Flynn and King visited the licensed premises and found the licensee tending bar and a woman, described as a blonde about 25 years old, standing in front of the bar drinking with about five men. This woman later approached the investigators and asked them to buy her a drink. They did so and during a conversation with her she gave her name and informed the investigators that she sits with men customers and urges them to buy her drinks. She also told Investigator King that if he wanted to see her "privately" he could call a certain drug store and ask for "May Smith."

This woman did not hesitate to ask for a drink when she wanted it at the expense of the investigators and the licensee counted himself in each time taking a drink himself even though Investigator King complained about his participation in the drinks. The licensee reminded the investigators that in other places, the girls drink water and a drop of whiskey or wine but that in his place, May's drinks were liquor straight and that there is no profit for him in her drinks.

"On February 16, 1938, these investigators again visited the licensed premises but there was very little activity.

"On March 16, 1938, at about 11:45 P.M., the investigators again returned to the licensed premises and found the licensee, known as "Connie" tending bar. There were several men, the licensee's wife and another woman who was later identified as May Kane at the bar. After serving the investigators, the licensee approached the woman and suggested that she come over and talk to the boys as they were good fellows and would buy her drinks. At about 12:30 A. M. the next morning, this woman approached the investigators at the bar and took a seat alongside of King. She asked him to buy her a drink, which he did. The licensee served himself a drink at the same time, to which King objected. At about 12:45 A. M., another girl came in and sat at the bar. May greeted her as Betty and the licensee then motioned to Betty to join the party, which she did, and thereupon ordered a Scotch and Soda. The bartender served the entire party and treated himself again over King's protest. Investigator Flynn and Betty engaged in conversation and Betty expressed readiness to take Flynn to her room. The licensee engaged in a general filthy conversation with the women and the investigators. He recommended the women to the investigators for immoral purposes. The women gave their addresses and telephone numbers to the investigators.

"On March 29, 1938, Inspector Tapner and Investigator King conferred with Inspector Garrick of the Hoboken Police Department with reference to the foregoing, as a result of which the two women above mentioned were arrested and charged with soliciting. They were both found guilty before Judge Romano in the Hoboken Police Court and sentenced to serve ninety days in the Hudson County Jail. The licensee himself was later arrested by the Hoboken Police, found guilty as a disorderly person for permitting the activities of these women on his licensed premises and was fined $50.00.

"At the hearing, the investigators testified as to the above occurrences at the licensed premises."

I note the licensee was adjudicated guilty of these charges and that the license was revoked effective May 24, 1938.

Expressing no opinion on the merits of the case because it might come before me by way of an appeal, I wish to extend to the members of the Board of Commissioners of Hoboken and to City Attorney Horace Allen, sincere appreciation for their prompt and effective action in this case.

Your Board has done its work well in stamping out vice conditions in licensed premises unflinchingly.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

8. DISCIPLINARY PROCEEDINGS - CLUB LICENSEES - SALE TO NON-MEMBERS - 10 DAYS' SUSPENSION.

May 25, 1938.

A. D. Bolton,
City Clerk,
Passaic, N. J.

Dear Mr. Bolton:

I have staff report of the proceedings before the Board of Commissioners of Passaic against Russian Consolidated Aid Society of America, Branch #38, charged with having sold alcoholic beverages to non-members in violation of the terms of its club license.

I note the licensee pleaded guilty to the charge and that the license was suspended for ten days.

Please extend to the members of the Board of Commissioners my appreciation for their prompt and effective action. Club licensees must be brought to the realization that their sales of alcoholic beverages must be confined strictly within the terms of their license. To allow any leeway in the enforcement of this provision of the law would be manifestly unfair to the holders of Plenary Retail Consumption Licenses who pay a much higher fee for the additional privilege which permits them to serve to the public at large.

If the Russian Consolidated Aid Society of America desires to sell to the public at large, it should take out a Plenary Retail Consumption License.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - PROSTITUTION - THE UNHOLY UNION OF VICE AND LIQUOR WILL NOT BE TOLERATED ON LICENSED PREMISES.

In the Matter of Disciplinary Proceedings against

SAMUEL SNYDER
17 Center Street
Newark, N. J.

holder of plenary retail consumption license #C-83, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

. . . . . .

CONCLUSIONS AND ORDER

Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

George R. Sommer, Esq., Attorney for Samuel Snyder, Licensee.

BY THE COMMISSIONER:

Charges were duly preferred and the licensee was served with notice to show cause why his license should not be suspended

or revoked on the ground, among others, that he had permitted prostitutes or other persons of ill repute in or upon his premises in violation of Rule 4 of Regulations No. 20 promulgated by the Department of Alcoholic Beverage Control. Upon the return day of the notice, a hearing was held and testimony was taken in support of the charges and on behalf of the licensee.

There is no substantial dispute that Hazel M_____, a prostitute, frequented the premises over a substantial period of time. However, there is a denial by the licensee that he knew she was a prostitute and his defense is apparently rested thereon. Cf. Re Kaas, Bulletin 239, Item 1.

Two investigators of the Department testified that on April 8, 1938, they visited the licensed premises and that, in the presence of the licensee's bartender, who joined in the discussion, Hazel M_____solicited them to have sexual intercourse in one of the rooms of the "hotel" being operated by the licensee above his tavern. It would be distasteful to review in detail the actual conversation and conduct and no purpose would be served thereby. Suffice it to state, that on the following Saturday the Newark Police, in the company of the investigators, raided the licensed premises and found Hazel M_____unclothed and a young man in one of the rooms upstairs. Both were arrested. The licensee was in the licensed premises at the time of this raid.

Hazel M_____testified that she and another prostitute had frequented the licensed premises; that for a period of two months prior to her arrest she visited the premises three or four times a week; that she had an understanding with the licensee that, upon receiving an affirmative nod from either the licensee or his bartender, she could take men upstairs for immoral purposes; and that on many occasions she did so following her solicitation in the tavern.

Notwithstanding the licensee's denial, I am satisfied from the evidence that the licensee and his bartender knew that Hazel M_____ was a prostitute and knowingly permitted her to solicit male patrons of the licensed premises for immoral purposes and to use the hotel rooms operated by the licensee above his tavern for effectuating such purposes and that she did so. I so find the fact to be.

The unholy union of vice and liquor will not be tolerated on licensed premises.

Accordingly, it is, on this 25th day of May, 1938,

ORDERED that, effective May 27th, 1938, at midnight, plenary retail consumption license C-83, issued to Samuel Snyder by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and hereby is revoked.

Frederick Burnett

Commissioner