

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

BULLETIN 718

JULY 8, 1946

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

BULLETIN 718

JULY 8, 1946.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -
AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF
90 DAYS.

In the Matter of Disciplinary)
Proceedings against)

REBECCA KRAVIS)
T/a THE PADDOCK INTERNATIONAL)
1643 Atlantic Ave.)
Atlantic City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-188, issued by the)
Board of Commissioners of the City)
of Atlantic City.)

Louis Kravis, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

The defendant has pleaded non vult to a charge alleging that she possessed three 4/5 quart bottles labeled "Canadian Club Blended Canadian Whisky", all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The bottles in question were seized by a Federal ATU agent, on October 23, 1945, after testing all of the open liquor stock at the defendant's tavern. Subsequent analysis by the Federal chemist revealed that all three bottles differed substantially in acid, solid and color content from a genuine sample of the same product. It also appears from the similarity of the chemist's findings concerning the bottles that the same whiskey was used to refill all three bottles.

Defendant disclaims "any knowledge that the liquor in the bottles were not as indicated on same" and places the blame upon a bartender "who has since the date of the offense as charged, been discharged for dishonesty and drinking on the job."

The defendant's lack of personal participation in the offense constitutes no defense. A licensee must be held to strict accountability for the condition of the liquor stock. Cf. Re Kurian, Bulletin 517, Item 2.

This defendant has held the license for the premises in question since June 8, 1944, when it was transferred to her by her son, Edward Kravis. While the latter was the licensee, his license was suspended by the local issuing authority on three separate occasions. In December 1939 he received a ten-day suspension upon charges that he permitted a lewd performance upon the licensed premises. In August 1943 his license was suspended for a ninety-day period on a similar charge. The third suspension resulted from charges that he had permitted disturbances and unnecessary noises upon the premises, whereupon he received a thirty-day suspension commencing in November 1943.

The gravity of the circumstances surrounding the second suspension may be gleaned not only from the penalty imposed, but also from the fact that, as an outgrowth thereof, Edward Kravis was indicted for the crime of aiding and abetting in lewd and lascivious entertainment and convicted thereon on December 10, 1943.

Despite such conviction, Edward Kravis continued to hold his license until June 8, 1944, when he transferred it to his mother, the present licensee. At the same time, she hired her son as manager of the licensed premises and continued to so employ him until March 1, 1946.

In addition to the imposing record compiled by Edward Kravis, the present licensee has also suffered a ten-day suspension of her license in March, 1945 (five days of which were remitted for her non vult plea), upon a charge that she had served alcoholic beverages to a minor.

It thus appears that this is the fifth time within a period of approximately six years that the license covering the premises in question has been the subject of disciplinary action. The present licensee must be held responsible, not only for her previous record, but as well for the serious record of infractions committed by her son, the former licensee. In choosing to hire him as manager of the tavern despite such record and his criminal conviction, she placed herself in a position whereby any violations thereafter occurring at the premises must be viewed in the light of the previous background of infractions committed by her manager while he held the license at the premises. Sheer realism and the public interest in sound liquor control require no less. Cf. Re Davolos, Bulletin 563, Item 2; Re Ballerino, Bulletin 660, Item 3.

In the stated situation, the license might well be revoked outright. However, I am constrained to give the defendant, who has held the license for only two years, one further opportunity to demonstrate her fitness to operate a licensed business. This means, succinctly, that any future violation will result in a complete deprivation of her license privileges.

A consideration of all the attendant circumstances leads to the imposition of a ninety-day penalty.

The effective date of the suspension is July 1, 1946, the first day of the next licensing period for which the defendant has been granted Plenary Retail Consumption License C-150. The suspension will, therefore, operate against such renewal license. See State Regulations No. 16.

Accordingly, it is, on this 25th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-150, issued for the 1946-47 fiscal year by the Board of Commissioners of the City of Atlantic City to Rebecca Kravis, t/a The Paddock International, for premises 1643 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for a period of ninety (90) days, commencing at 12:01 a.m. July 1, 1946, and terminating at 12:01 a.m. September 29, 1946.

ERWIN B. HOCK
Deputy Commissioner.

2. APPELLATE DECISIONS - GORDON v. NORTH HANOVER TOWNSHIP.

EARL B. GORDON,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF NORTH HANOVER,)
)
 Respondent)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Felcone & Felcone, Esqs., by Michael Felcone, Esq.,
 Attorneys for Appellant.
 Powell & Parker, Esqs., by Robert W. Criscuolo, Esq.,
 Attorneys for Respondent.

This is the second appeal from the refusal, by respondent, to transfer appellant's plenary retail consumption license from premises on the E/S of Main Street, Cookstown, to premises on the N/S of the New Egypt-Cookstown Road, Township of North Hanover.

On March 6, 1946, the first refusal was affirmed by the Commissioner after an appeal from said action had been duly filed. Gordon v. North Hanover, Bulletin 701, Item 7.

On May 29, 1946, appellant again applied to respondent for a similar transfer of his license and, on June 7, 1946, his second application was denied. Hence this appeal.

At the hearing herein it was stipulated that the transcript of the testimony taken at the previous hearing would be considered as part of the record in this case, and additional testimony was introduced by both parties.

Appellant testified at the hearing herein that he has removed the two gasoline pumps from the premises to which he seeks to transfer his license, and that he does not intend to conduct the sale of gasoline at said premises. He testified that his proposed place of business is on the road between Fort Dix and New Egypt and that residents of Cookstown who shop in New Egypt would have to pass his door. He admitted that there are licensed liquor establishments in New Egypt. Appellant also produced three residents of Cookstown who testified that the premises to which the transfer was sought would be just as convenient to them as the premises presently licensed in appellant's name. On behalf of respondent, Township Committeeman Horner testified that there has been no change in the situation since the first application was denied and that, at a hearing held upon the second application, no further evidence was presented as to the necessity for a license in the section of the township to which appellant seeks a transfer.

As pointed out in the previous appeal, a liquor license does not carry with it any inherent right of transfer. Considering the evidence presented at the two appeals, appellant has failed to show that respondent abused its discretion in refusing to transfer the license to a "wooded" and "very sparsely inhabited" section of the township nearly three-quarters of a mile from its present location. No one is entitled to a license, or transfer of a license, as a matter of right. Appellant has failed to establish herein that the members of respondent Township Committee abused their discretion in refusing the transfer of his license. Hence I must affirm respondent's action.

Accordingly, it is, on this 25th day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

3. APPELLATE DECISIONS - GRUHLER AND EDWARDS v. PHILLIPSBURG.

ANNA GRUHLER and WALLACE)
 EDWARDS,)
)
 Appellants,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 TOWN OF PHILLIPSBURG,)
)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Lyness and Bedell, Esqs., by Joseph I. Bedell, Esq.,
 Attorneys for Appellants.
 Frank J. Kingfield, Esq., Attorney for Respondent.
 Robert B. Meyner, Esq., Attorney for Objectors.

Appellants appeal from denial of the transfer of their plenary retail consumption license from 799 South Main Street to 38 Market Street, Town of Phillipsburg.

The answer sets forth that the transfer was denied because (a) the transfer would be contrary to a resolution of the Town of Phillipsburg adopted May 22, 1935; (b) the transfer would be contrary to the policy of respondent not to change the location of licensed premises; (c) the premises to which transfer was sought are not suitable; and (d) the grant of the transfer would not serve public convenience and necessity.

It has been held that the resolution of May 22, 1935 does not prevent the transfer of a license. Ignatz v. Phillipsburg, Bulletin 167, Item 16. It has also been determined that no one place is entitled to a license more than another. Re Konesky, Bulletin 217, Item 7. Hence, the reasons set forth herein as (a) and (b) are not sufficient to sustain the action of respondent in refusing to transfer the license.

As to (c) and (d): The licensed premises at 799 South Main Street are located on the ground floor of a three-story frame building located in the southerly section of the Town of Phillipsburg. Many years ago the entire building was operated as a hotel, but it has long since ceased to be used for that purpose. At the present time three other consumption licensees are operating in this section of the town.

The building to which appellants seek to transfer the license is a three-story shingled building located at the corner of Market and Stryker Streets in the westerly part of the Town of Phillipsburg, more than a mile from the premises presently licensed. The premises for which the transfer is sought are located on the first floor of this building known as 38 Market Street. To the north and east this section of the town is heavily populated, although the section to the south is devoted almost entirely to railroad purposes, and the Delaware River is located only a short distance to the west. A number of club licenses and plenary retail distribution licenses have been issued in this section of the town, but the nearest premises for which a plenary retail consumption license has been issued are located two squares away on South Main Street, which is the principal

business street of the town. Two similar places are located further away in an opposite direction, also on South Main Street. No. 38 Market Street was licensed for consumption of alcoholic beverages for a period of approximately seven years following Repeal, but has not been licensed during recent years. Aside from the fact that it is near a railroad crossing, no evidence was presented which would tend to show that the premises to which transfer is sought are not fit and proper for the sale of alcoholic beverages. The evidence shows that the crossing is guarded twenty-four hours a day by watchmen and, hence, the mere existence of the crossing, if that were considered at all by the issuing authority, would not appear to be a sufficient reason for denying the transfer.

The right to transfer a license from place to place is not inherent in the license. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If the denial of the transfer is arbitrary or unreasonable, the action of respondent must be reversed. If the transfer is denied for good cause, the action of respondent must be affirmed. Such cause, generally speaking, is that which would be necessary and proper to accomplish the object of the Alcoholic Beverage Law and secure compliance with its provisions, e.g., that the premises are unsuitable, or that there are already too many licenses in the vicinity. Cf. Cielukowski v. Jersey City, Bulletin 716, Item 6.

In the present case the evidence shows that the premises to which the transfer is sought are suitable; that they were previously licensed for the sale of alcoholic beverages, and that there are no similar licenses in the immediate vicinity of the premises to which the transfer is sought. It follows that the action of respondent, in refusing to transfer the license, was unreasonable under the circumstances of this case, and hence the action of respondent must be reversed.

Accordingly, it is, on this 25th day of June, 1946,

ORDERED, that the action of respondent be and the same is hereby reversed, and respondent is directed to issue the transfer as applied for. Under the provisions of R. S. 33:1-39, I hereby make a special ruling that this order shall become effective on June 30, 1946, unless respondent transfers the license prior to said date.

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -
LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against
 R. & F. INC.
 T/a CASA MANA
 659 Cedar Lane and rear portion of 653 Cedar Lane
 Teaneck, N. J.,
 Holder of Plenary Retail Consumption License C-10, issued by the Township Council of the Township of Teaneck.

CONCLUSIONS
AND ORDER

Mackay and Freint, Esqs., Attorneys for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that it possessed four 4/5 quart bottles of "Canadian Club Blended Canadian Whiskey", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The violation was discovered by an ABC agent on April 5, 1946, when he tested the defendant's open stock of 71 bottles of liquor and seized the four bottles in question. Chemical analysis confirmed the agent's field test and disclosed that all four bottles had been refilled with other alcoholic beverages.

The licensee's lack of personal participation in the offense and its inability to explain how it occurred presents no defense, since the mere possession of the four bottles on the licensed premises constituted a violation of the law. See R. S. 33:1-50; cf. Re Kurian, Bulletin 517, Item 2.

The defendant's previous record includes a ten-day suspension for selling alcoholic beverages to minors. See Bulletin 585, Item 14, where the suspension was affirmed on appeal. Under the circumstances, the penalty herein will be fixed at a period of twenty-five days. Cf. Re Hencinski, Bulletin 706, Item 9.

The suspension, which becomes effective on July 1, 1946, will operate against the renewal license issued to the defendant for the next licensing year. See State Regulations No. 16.

Accordingly, it is, on this 25th day of June, 1946,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Township Council of the Township of Teaneck to R. & F., Inc., t/a Casa Mana, for premises 659 Cedar Lane and rear portion of 653 Cedar Lane, Teaneck, for the year 1946-47, be and the same is hereby suspended for a period of twenty-five (25) days, effective at 2:00 a.m. July 1, 1946, and terminating at 2:00 a.m. July 26, 1946.

ERWIN B. HOCK
Deputy Commissioner.

5. APPELLATE DECISIONS - JURASKA v. PERTH AMBOY (CASE NO. 2).

Case No. 2)
 CHARLES J. JURASKA,)

Appellant,)

-vs-)

ON APPEAL
 CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE)
 CITY OF PERTH AMBOY,)

Respondent)
 -----)

John C. Stockel, Esq., Attorney for Appellant.
 Francis M. Seaman, Esq., Attorney for Respondent.

This is a second appeal (following a prior remand reported in Juraska v. Perth Amboy, Bulletin 699, Item 11) from respondent's denial of appellant's application for transfer of his plenary retail consumption license from premises 697 Charles Street to premises 667 Charles Street, Perth Amboy.

In remanding the case to respondent it was determined on the prior appeal that:

"There is sufficient testimony in the instant case to support the allegations of appellant that the building occupied by him was in such disrepair at the time the application for transfer was filed as to render it untenable. The premises sought to be licensed are, according to the testimony of appellant, within 500 feet of his present licensed premises. This being so, a transfer of the license to the building for which application was made does not violate any local ordinance. No valid reason was given by respondent for the denial of appellant's application. However, there is no evidence that respondent considered the questions as to whether the proposed premises are suitable to be used as licensed premises or whether the character of the neighborhood is such to warrant the transfer of the license to the proposed premises.

"Since it is thus manifest that in disposing of the matter below the Board gave no consideration to the suitability of the proposed premises, the case must be remanded to the Board in order that it may make its personal findings upon the issues which have not been decided herein."

Following the remand, respondent Board of Commissioners made findings in which it determined not only that the premises sought to be licensed were unsuitable for use as a licensed premises and that the character of the neighborhood did not warrant the granting of the transfer but, in addition, determined that the granting of the transfer would be violative of Perth Amboy Ordinance No. C-332, adopted June 6, 1945 (regulating minimum distance between licensed premises) and also that the granting of the transfer would not serve any public need or convenience. In its answer filed herein respondent assigned as reasons for its denial of appellant's application that:

"(1) It is not desirable to have two taverns within 500 feet of each other in a neighborhood almost 100% residential in character.

- "(2) The granting of a transfer will not serve any public need or convenience.
- "(3) The proposed premises are unsuitable.
- "(4) The applicant has failed to convince the Board that his present premises are untenable."

As to (1) and (2): In so far as the character of the neighborhood is concerned, it appears that the new premises are approximately 400 feet from the old premises, on the same side of the street and in the same block, the general area being composed of homes with stores and taverns interspersed. It cannot be concluded that the transfer of the license from the old to the new premises would alter the character of the neighborhood, especially since the neighborhood was deemed suitable for a licensed premises at the time of the original issuance of the license for the old premises.

As to (3): Respondent's determination that the new premises are unsuitable for license was based on an inspection of those premises by a City Health Officer who reported the premises unsuitable because, at the time of his inspection, he found one cellar wall wet and damp due to seepage, the cellar steps in need of repair because of rot and breakage, no connection between the drain from the bar to the cellar drain, and plumbing and electrical fixtures in need of repair. Considering that the premises had been vacant for several years past, this minor deterioration is understandable. However, it falls far short of rendering the premises unsuitable for license, especially in view of the fact that appellant has filed with respondent plans and specifications for the correction of these deficiencies, which correction would, of course, be made before the license was actually transferred. In contrast to appellant's present licensed premises, which are located in a vermin-infested frame building in need of repair, the new premises, situated as they are in a brick building with tile floor, would appear to be eminently more desirable from a standpoint of sanitation.

It is, therefore, concluded that respondent's determination that the premises sought to be licensed were unsuitable was unreasonable.

As to (4): The evidence in the present case leads to the same conclusion reached in the first case, namely, that the premises at 697 are untenable. The transfer does not violate the terms of Ordinance C-332.

In view of the foregoing, the action of respondent in denying appellant's application for transfer will be reversed.

Accordingly, it is, on this 26th day of June, 1946,

ORDERED, that the action of respondent be reversed, and respondent is directed to transfer the license as applied for, effective June 30, 1946, for the purpose of permitting an application for renewal to be filed for premises at 667 Charles Street. Under the provisions of R. S. 33:1-39, I hereby make a special ruling that this Order shall become effective, in any event, on June 30, 1946; and it is further

ORDERED that, if a renewal license be granted for the fiscal year 1946-47 for premises at 667 Charles Street, the granting thereof shall be subject to a special condition reading as follows:

"PROVIDED, however, that this license shall not be actually issued until the changes described in the plans and specifications heretofore submitted shall be completed."

ERWIN B. HOCK
Deputy Commissioner.

6. APPELLATE DECISIONS - ESSEX COUNTY RETAIL LIQUOR STORES ASSOCIATION v. CALDWELL AND COHEN.

ESSEX COUNTY RETAIL LIQUOR STORES ASSOCIATION,)
)
 Appellant,)
)
 -vs-)
)
 BOROUGH COUNCIL OF THE BOROUGH OF CALDWELL and FRED COHEN,)
)
 Respondents)

ON APPEAL
 CONCLUSIONS AND ORDER

Herman C. Silverstein, Esq., Attorney for Appellant.
 Julius Y. Krill, Esq., Attorney for Respondent Borough Council.
 Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq.,
 Attorneys for Respondent Fred Cohen.

This is an appeal from the issuance of a distribution license to the respondent Fred Cohen for premises 363 Bloomfield Avenue, Caldwell.

The Borough of Caldwell has a population, according to the last Federal census, of 4932. Including the license involved herein, the Council has issued nine distribution licenses in the municipality, all of which are located on Bloomfield Avenue. This thoroughfare is the main business street of the municipality and the bulk of its commercial establishments is confined within a distance of less than one mile.

Limited to the ratio of the number of licenses to population, it would appear that there was no warrant for the issuance of a ninth distribution license to the individual respondent herein. The recent statutory enactment (P. L. 1946, c. 147), effective April 24, 1946, provides the norm of one such license to every 3,000 of population and makes mandatory the application of the ratio which theretofore had been recommended merely as a guide to local issuing authorities. The license in question, however, is not subject to this enactment since it was issued on March 18, 1946.

The meritorious question, therefore, is whether the grant of this distribution license may be sustained as a reasonable exercise of the discretion lodged in the respondent Council to determine, in the first instance, the number of licenses that may be outstanding in its municipality.

The license was granted upon the unanimous vote of the five councilmen attending the meeting of March 18, 1946. Four of them testified at the hearing on appeal. In sum, they stated that the Borough is a growing community, located in the midst of many outlying municipalities, most of which are without distribution establishments. As a result, the respondent Borough draws from these municipalities a shopping population estimated at a minimum of 30,000 persons. In addition, the municipality services a large transient population en route to various nearby lake resorts.

The individual respondent holds a consumption license in premises immediately adjoining the premises for which he received a distribution license, and he testified that he intends to operate the latter establishment exclusively for the sale of packaged liquors for off-premises consumption. It appears that, of the other distribution licenses, five of them conduct additional businesses, such as drugs and delicatessen, in conjunction with their liquor businesses.

While there is no dearth of "package stores" either in the vicinity of the respondent's premises or in the municipality as a whole, I cannot say, upon the record presented, that the grant of the additional distribution license is so unreasonable that it must be reversed. My vote, were I a member of the Council, might well have been cast against the issuance. However, in cases of this kind, my personal opinion is not to be substituted for that of the issuing authority. Cf. Williams et al. v. Atlantic Highlands et al., Bulletin 700, Item 1. Where it appears that the issuing authority has given careful consideration to the question of public necessity and convenience, and has arrived at a decision based upon evidence neither arbitrary nor illusory, the decision will be affirmed, regardless of my private opinion. The evidence herein presents a situation upon which reasonable minds may differ and, accordingly, the action of the Council may not be reversed.

Appellant also contends that it was not afforded an opportunity to be heard before the Council on its objections to the issuance of the license. The record is not entirely clear on this issue. It does appear, however, that the Council did consider the subject matter of the objections made by the appellant and fully aired at the appeal hearing. In this essential respect the case differs from that of Corado v. Camden et al., Bulletin 159, Item 13, where the determination of the issuing authority was made without giving any consideration to a pertinent issue raised by the objectors. Under the circumstances, it would be sacrificing substance to form to require the Council to reconsider issues to which full reflection had been given before the vote on the application was taken. Cf. Fanel Realty Co. v. Newark, Bulletin 284, Item 10.

The action of the respondent Council is affirmed.

Accordingly, it is, on this 26th day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

7. APPELLATE DECISIONS - HOPKINS, JR. ET ALS. v. MOUNT EPHRAIM AND BOCCHICCHIO.

PHILIP H. HOPKINS, JR., et als.,)

Appellants,)

-vs-

BOARD OF COMMISSIONERS OF THE)
BOROUGH OF MOUNT EPHRAIM and)
ANTHONY BOCCHICCHIO,)

Respondents)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

A. Moulton McNutt, Esq., Attorney for Appellants.
George D. Rothermel, Esq., Attorney for Respondent Board of Commissioners.
William J. Shepp, Esq., Attorney for Respondent Anthony Bocchicchio.

This is an appeal from the issuance, by respondent Board of Commissioners, of a plenary retail distribution license to respondent Anthony Bocchicchio for premises known as 4 Kings Highway, Borough of Mt. Ephraim.

The notice of appeal was signed by Philip H. Hopkins, Jr. and by twenty-one other individuals who apparently are residents of the Borough of Mt. Ephraim.

The reasons for reversal set forth in the petition of appeal may be summarized as follows:

- (a) The number of plenary retail consumption licenses issued and outstanding in the Borough is six, and they are sufficient adequately to take care of the needs of the residents of the Borough;
- (b) The Board of Commissioners recently refused to grant a plenary retail distribution license to another applicant;
- (c) The number of licensed places for the sale of alcoholic beverages is greatly out of proportion to the policy adopted by the Legislature for this year.

The evidence herein discloses that six plenary retail consumption licenses have been issued in the Borough, but that the only plenary retail distribution license which has been issued is that held by respondent Bocchicchio. His licensed premises are located in a store on a street which contains a number of other business places and some residences.

At the hearing of the appeal five residents of the Borough appeared and testified that in their opinion there were more than enough licensed places in the Borough. They also objected because the premises were near a post office and because ice cream and soda were being sold on the licensed premises. It was stipulated that twelve other residents would, if called, testify to the same effect.

It has been determined that a local issuing authority may consider the number of plenary retail consumption licenses which are in existence in determining the question as to whether or not there is need for a plenary retail distribution license. Boody v. Gloucester, Bulletin 300, Item 11. However, it has also been determined that a package goods license fills a need quite distinct from that supplied

by the tavern, and it may well be an important matter of social convenience and necessity that such a license be granted. Budd Lake Market v. Mt. Olive, Bulletin 160, Item 6. It follows, therefore, that the question as to whether a plenary retail distribution license should be issued to respondent Bocchicchio is a matter confided to the sound discretion of the local issuing authority. The fact that a post office is located nearby would appear to be no valid reason for denying the license, and respondent Bocchicchio has agreed to discontinue the sale of ice cream and soda. Under the circumstances, appellants have failed to sustain the burden of proof in showing that respondent Board abused its discretion in issuing the license in question.

The fact that respondent Board recently refused to grant a plenary retail distribution license to another applicant would appear to be immaterial. An appeal entitled Miraglia v. Mt. Ephraim, concerning the denial of that license, is decided herewith. In the present appeal, the premises in question are located in the small business section of the Borough.

The issuance of a plenary retail distribution license to respondent Bocchicchio was not barred by the provisions of P.L. 1946, c.147. That Act provides that no new plenary retail distribution license shall be issued in a municipality unless and until the number of such licenses existing in a municipality is fewer than one for each 3,000 of its population as shown by the last then preceding census. However, the Act also provides that nothing in this Act shall prevent the issuance of one plenary retail distribution license in a municipality whose population is less than 1,000.

For the reasons aforesaid, the action of respondent Board of Commissioners is affirmed.

Accordingly, it is, on this 26th day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

8. APPELLATE DECISIONS - MIRAGLIA v. MOUNT EPHRAIM.

PAUL G. MIRAGLIA,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 BOROUGH OF MOUNT EPHRAIM,)
)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

N. Thomas Smaldore, Esq., Attorney for Appellant.
George D. Rothermel, Esq., Attorney for Respondent.

This is an appeal from the action of the respondent Board of Commissioners in denying appellant's application for a plenary retail distribution license for premises at 509 Black Horse Pike, Mount Ephraim.

Appellant operates a gasoline filling and automobile service station at the address for which the distribution license was denied. He intended, at the time the application was filed, to divide the building located on the service station premises, using half of it for his automobile business and the other half for the package store. The application was denied for several reasons, but the only ones that need consideration in view of the result herein are: (1) the premises were considered improper because of their proposed joint use as a liquor store and gasoline filling station and (2) the said premises are located in a section where it would not well serve the Borough's population of about 2200 people.

The determination by respondent that appellant's premises are not suitable because of their current use and the admitted use to which appellant intended to put them was certainly not unreasonable. This would be true even if appellant divided his building. It has long been determined that "gasoline and liquor" and "drinking and driving" do not mix. See Dunn v. Allentown, Bulletin 38, Item 8; Barlow Grocery Company v. Trenton, Bulletin 34, Item 7; Re Conover, Bulletin 76, Item 14.

The evidence herein shows also that appellant's premises are located about three blocks north of the Borough's small business section. I can find no evidence that the respondent was arbitrary in its determination that the proposed premises were not properly located to best serve the need and convenience of the residents of the Borough, nor can I find any evidence that the respondent has in any way abused the discretionary powers vested in it by the law.

In the absence of the finding of any arbitrary or improper exercise of the respondent's discretion, it becomes necessary that the appellant carry the burden of proof that the license applied for is one the granting of which would serve public convenience and necessity. State Regulations No. 15, Rule 6. Cf. Hoffman v. Ridgefield Park, Bulletin 334, Item 12. Appellant has failed to produce any evidence that public convenience and necessity requires the issuance of a license for his premises.

The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 26th day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

9.

ACTIVITY REPORT FOR JUNE, 1946

<u>ARRESTS:</u>		Licensees and employees - - - - -	2	Bootleggers - - - - -	18	
		Total number of persons arrested - - - - -				20
<u>SEIZURES:</u>		Total number of stills seized (Under 50 gallons) - - - - -				2
		Brewed malt beverages (gallons) - - - - -				112.14
		Total number of motor vehicles seized- (Trucks) - - - - -				2
		Alcohol - gallons - - - - -				1.06
		Wine - gallons - - - - -				238.06
		Distilled alcoholic beverages (whiskey, brandy, etc.) - - - - -				6.98
<u>RETAIL LICENSEES:</u>		Total number of premises inspected - - - - -				816
		Total number of premises where alcoholic beverages were gauged - - - - -				747
		Total number of bottles gauged - - - - -				10,404
		Total number of premises where violations were found - - - - -				69
		Total number of violations found - - - - -				90
		Disposal Permit necessary - - - - -	6	Probable Front - - - - -	1	
		Illicit Liquor - - - - -	20	Prohibited Signs - - - - -	6	
		Improper Beer Taps - - - - -	1	Reg. 38 Sign Not Posted - - - - -	16	
		Other Mercantile Business - - - - -	3	Unqualified Employees - - - - -	21	
		Price Pamphlet Not Displayed - - - - -	13	Other Violations - - - - -	3	
<u>STATE LICENSEES:</u>		Premises inspected - - - - -				5
		License applications investigated - - - - -				645
<u>COMPLAINTS:</u>		Investigated, reviewed and closed - - - - -				330
		Investigations assigned, not yet completed - - - - -				128
<u>LABORATORY:</u>		Analyses made - - - - -				140
		"Shake-up" cases (alcohol, water and artificial coloring) - - - - -				12
		Liquor found to be not genuine as labeled - bottles - - - - -				32
<u>IDENTIFICATION BUREAU:</u>		Criminal fingerprint identifications made - - - - -				14
		Persons fingerprinted for non-criminal purposes - - - - -				216
		Identification contacts with other enforcement agencies - - - - -				261
		Motor vehicle identifications via N.J. State Police Teletype - - - - -				6
<u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u>		Cases transmitted to municipalities - - - - -				6
		Violations involved:				
		Sale to minors - - - - -	3	Mislabeled beer tap - - - - -	1	
		Sale during prohibited hours - - - - -	2			
		Cases instituted by Department - - - - -				19
		Violations involved:				
		Illicit liquor - - - - -	10	Unqualified employee - - - - -	2	
		Sale on Election Day - - - - -	4	Sale during prohibited hours - - - - -	1	
		Fraud and Front - - - - -	3	Women served at a bar - - - - -	1	
				Act or happening - - - - -	1	
		Cases brought by municipalities on own initiative and reported to Department - - - - -				4
		Violations involved:				
		Brawls - - - - -	1	Inadequate view into premises - - - - -		
		Hindering investigation - - - - -	1	during closing hours - - - - -	1	
		Immoral activity - - - - -	1	Sale during prohibited hours - - - - -	1	
				Sale to minors - - - - -	1	
<u>HEARINGS HELD AT DEPARTMENT:</u>		Total number of hearings held - - - - -				54
		Appeals - - - - -	17	Seizures - - - - -	9	
		Disciplinary Proceedings - - - - -	15	Applications for License - - - - -	6	
		Eligibility - - - - -	7			
<u>PERMITS ISSUED:</u>		* Total number of permits issued - - - - -				613
		Unqualified employees - - - - -			78	
		Solicitors - - - - -			34	
		Social affairs - - - - -			213	
		Disposal of alcoholic beverages - - - - -			177	
		Miscellaneous permits - - - - -			111	

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary Proceedings against

C. A. R. CORPORATION
T/a BLACK HORSE FARMS
4th Avenue & Black Horse Pike
Mount Ephraim, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-6 for the fiscal year 1945-46, and C-1 for the fiscal year 1946-47, issued by the Board of Commissioners of the Borough of Mount Ephraim.

Robert C. Hendrickson, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant-licensee pleaded non vult to a charge that it possessed two 4/5 quart bottles labeled "Canadian Club Blended Canadian Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On February 7, 1946 an investigator of the State Department of Alcoholic Beverage Control seized the above described two bottles of whiskey when preliminary field test thereof indicated that the contents of the said bottles were different in characteristics from the whiskey named on the labels. Subsequent analysis confirmed the fact that said seized whiskey was not genuine as labeled.

Sophie Schillig, president of defendant corporation, denies any knowledge whatsoever of the violation. Nevertheless, a licensee is held strictly accountable for any "refills" found in its stock of liquor. Cf. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. I shall suspend defendant's license for a period of fifteen days. Cf. Re Baker, Bulletin 682, Item 3.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 2nd day of July, 1946,

ORDERED, that Plenary Retail Consumption License C-1, issued for the 1946-47 fiscal year by the Board of Commissioners of the Borough of Mount Ephraim to C. A. R. Corporation, t/a Black Horse Farms, for premises on 4th Avenue & Black Horse Pike, Mount Ephraim, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. July 9, 1946, and terminating at 3:00 a.m. July 24, 1946.

ERWIN B. HOCK
Deputy Commissioner.

11. APPELLATE DECISIONS - OCEAN COUNTY TAVERN ASS'N ET ALS. v. DOVER TOWNSHIP (OCEAN COUNTY) AND MAIMONE - DISMISSED.

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

Appellants,)

-vs-

ON APPEAL
ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF DOVER (Ocean County) and)
PHILIP MAIMONE, t/a WINDING RIVER)
RANCH,)

Respondents)

-----)
William C. Egan, Esq., Attorney for Appellants.
Percy Camp, Esq., Attorney for Respondent Township Committee.
Joseph A. Citta, Esq., Attorney for Respondent Philip Maimone.

This is an appeal from the action of respondent Township Committee whereby it granted a plenary retail consumption license to respondent Philip Maimone for premises on the N/S of Route 37 west of the Stream of Toms River, Township of Dover, Ocean County.

Prior to date of hearing, the attorney for appellants advised, by telephone, that appellants desired to withdraw the appeal but, to date, no stipulation of discontinuance has been received. On the date fixed for hearing no one appeared. I shall dismiss the appeal for failure to prosecute. Rule 10 of State Regulations No. 15.

Accordingly, it is, on this 26th day of June, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Dominic A. Donio, M. D. and Michael A. Donio
T/a Donio Brothers Beer Distributors
20-22 North Mississippi Ave.
Atlantic City, N. J.

Application for State Beverage Distributor's
License filed July 8, 1946.

Carolina Beverage Co.
109-111 N. South Carolina Ave.
Atlantic City, N. J.

Application for Plenary Wholesale License
filed July 8, 1946.