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

BULLETIN NUMBER 188. JUNE 22, 1937.

1. LICENSEES - "FRONTS" - WHEN A SON RENTS LICENSED PREMISES FROM HIS FATHER AND ALSO ENGAGES HIM AS BARTENDER, CAREFUL INVESTIGATION SHOULD BE MADE TO ASCERTAIN IF THE SON IS MERELY A "FRONT" OR COVER FOR THE FATHER.

ALIENS - THE PRINCIPLES RESTATED - HEREIN OF ALIENS WHO HAVE THE SAME RIGHTS AND PRIVILEGES AS AMERICAN CITIZENS BECAUSE OF RECIPROCAL TRADE TREATIES.

SPECIAL PERMITS - ALIENS - EXTENT OF PERMISSIBLE PRIVILEGES.

Pattenburg, N. J.
June 12, 1937

Dear Sir:

I am writing you concerning what Bulletin I can find the minimum and maximum price for the Committee to charge for issuing the Seasonal and Club Licenses? Also they want to know if it is right to issue license to a son when the father owns the building and does the most of the selling over the bar but is not naturalized. We have two such cases but I am informed one is taking out his naturalization papers.

Very truly yours,
G. Edward Dalrymple,
Township Clerk.

June 17, 1937

Mr. G. Edward Dalrymple,
Union Township Clerk,
Pattenburg, N. J.

Dear Mr. Dalrymple:

Kindly refer to yours of the 12th and our acknowledgment of the 15th.

The fees for the Seasonal and Club Licenses are set forth in Sections 13(2) and 13(5) of the Control Act respectively.

The fee for the Seasonal License must be seventy-five per cent of the fee your Township has fixed for Plenary Retail Consumption Licenses which I understand is $250.00 per annum. Therefore, the fee for a Seasonal License must be $187.50.

The fee for Club License must be not less than $50.00 nor more than $150.00.

I note your inquiry as to whether it is right to issue license to a son when the father owns the building and does most of the selling over the bar but is not naturalized. Instantly this raises a question in my mind as to whether the son is a mere "front" for the father. If he is such a mere cover or blind for the father, and if the business really belongs to the father and the license is taken out in the name of the son simply because the father himself couldn't get a license, then if you find that to be the fact the license application must be denied. For, if the license were granted and it later turned out that the son was a

mere cover for his father, both of them would be subject to arrest for a misdemeanor and the license would have to be revoked.

On the other hand, if the business really belongs to the son and the father has no financial interest in it whatsoever except that he owns the building and happens to be employed as bartender then it would be proper to issue the license to the son. In such an event, the mere fact that the son pays rent to the father as landlord and pays salary to him as bartender, does not, as a matter of law, prohibit the son from having a license.

You see, therefore, that it is largely a question of fact which your Township Committee should decide, after making careful, thorough inquiry and subjecting both father and son to close questioning.

One more thought, you tell me that the father is not naturalized. That fact of itself prima facie disqualifies him from tending bar. For, in order for the father to be employed by a licensee the father would have to be able to qualify as a licensee himself and one of the requisites is that no license shall be issued to any alien. In spite of being an alien, however, it may happen that the father is a subject of one of the foreign nations which have made reciprocal trade treaties with the United States and which treaties extend to alien nationals of such countries the same rights and privileges here as if they were American citizens. In Bulletin 130, Item 5, is set forth a list of such foreign nations. If the father happens to come from a country which is protected by such a treaty, then he may be employed by a licensee or could, for that matter, take out a license in his own name provided, of course, he qualifies in every other respect save citizenship.

Even if the father comes from a country not listed as aforesaid he may be employed on or about the licensed premises, although not as a bartender, provided that he first applies to me as Commissioner and receives a Special Permit but even pursuant to such permit, he could not act as bartender or waiter or in any manner serve, sell or solicit the sale of alcoholic beverages.

If we can be of any service to you in this or any other matter, do not hesitate to write us.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

2. APPELLATE DECISIONS - KALINE and THERINGER v. BURLINGTON.

JEROME KALINE and RAYMOND THERINGER,
Appellants,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BURLINGTON,
Respondent

ON APPEAL
CONCLUSIONS

Christopher N. Peditto, Esq., Attorney for Appellant.
Alexander Denbo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for plenary retail consumption license for premises located at 19th

Street, Springside, Burlington Township.

Sylvan Lakes Park is a residential area located within the Township of Burlington and bordering on Sylvan Lakes. Approximately 25 families live in the park area and efforts have been made by a development company to increase the park population. Following the repeal of the Prohibition amendment, petitions were received by the Township Committee from the Sylvan Lakes Community Club, the local fire company and various taxpayers objecting to any tavern in the Sylvan Lakes Park area. No license has, at any time, been issued for the Sylvan Lakes Park area, although two plenary retail consumption licenses have been issued within the Township, the nearest being a mile distant. The population of the entire township is approximately 2500 residents. Since repeal, the township has been troubled by unlicensed sales and disturbances generally in the park area but evidently considerable progress has been made to date in eliminating the undesirable elements.

In April, 1937, the appellants applied to the Township Committee for a plenary retail consumption license for premises in the Sylvan Lakes Park area. Objections to the granting of the application were made to the Township Committee by representatives of the Springside Sunday School, the local fire company and the Sylvan Lakes Community Club. In view of these objections and because of the belief by a majority of the Township Committee that the presence of a licensed place of business would retard their efforts to improve the park area, the application was denied.

A municipal issuing authority is justified in keeping a residential and recreational area free from taverns and the accompanying danger of disturbing activity. Cf. Jennings v. Township of Vernon, Bulletin 186, Item 13. Appellants contend that the problem of illicit sales at the park area which has heretofore confronted the Township Committee, could better be handled by granting a license, so that all sales would be made in the open and under conditions within the direct control of the Committee. Although there is much to this contention, it merely presents one of the many elements properly considered by the Committee in the exercise of its discretion as to whether a given license should issue or not. The Chairman of the Township Committee testified that efforts had been made to clean up the park area and that he didn't believe that putting a licensed place there would "help matters." I cannot say, in the light of all of the considerations incident to the maintenance of a tavern in any particular vicinity, that this belief was unreasonable.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 18, 1937.

3. APPELLATE DECISIONS - NABED v. FAIR LAWN.

ABE NABED,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF FAIR LAWN,
Respondent

ON APPEAL
CONCLUSIONS

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Maurice D. Emont, Esq., Attorney for Appellant.
James N. Wright, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises located at 7-15 Fair Lawn Avenue, Borough of Fair Lawn.

Respondent denied the license solely because of a resolution which it had adopted on June 29, 1936 limiting the number of licenses, and reading:

> "Be it further resolved that the number of licenses to be issued by the Borough of Fair Lawn, for the sale of alcoholic beverages, within the territorial limits of the Borough, be and the same is hereby fixed as follows: Not more than a total of eleven (11) licenses shall be issued, of which not more than eight (8) plenary retail consumption licenses shall be issued, and not more than three (3) plenary retail distribution licenses shall be issued; provided, however, that plenary retail distribution licenses may, in the discretion of the Mayor and Council, be issued to all registered drug stores upon application in accordance with the Law after having fully complied with all other Federal and State Laws."

Appellant contends that the resolution is void because of the proviso reserving the right to respondent to issue plenary retail distribution licenses to all registered drug stores.

This case does not require a determination as to the validity of the proviso purporting to reserve to the Borough the right to pull the string and increase the number of distribution licenses at any time so far as drug stores are concerned. Just why drug stores should be favored and singled out for this exceptional honor, I am not aware. I do know that exceptions which are not solidly grounded in social policy are, in effect, grants of special privileges as favors to certain groups at the expense of others. I do not approve them, unless public policy demands them. Retail Liquor Distributors v. Atlantic City and Blatt, Bulletin 99, Item 4; In Re Brooks, Bulletin 105, Item 5. I am spared that inquiry in this case because, assuming, for argument's sake, that the proviso is void, the resolution treating the proviso as if wholly exscinded would prevent, nevertheless, the issuance of the license. This assumption may be made because the proviso is merely the attempted reservation of a right to increase the number whereas the operative words of the resolution itself declare a present restriction of the number. The proviso is not, therefore, so essentially connected with the resolution itself that its elimination would destroy the entire resolution. Despite the knife of the surgeon-at-law, the patient survives. In McGlynn v. Grosso (Sup. Ct. 1935), 114 N. J. L. 540, the Court said:

> "The rule applicable is that if part of the resolution be void, other essential and connected parts are also void; but where that part which is bad is independent and not essentially connected with the remainder, the latter will stand. Landis v. Vineland, 54 N. J. L. 75; Avis v. same, 55 Id. 285; Passaic Water Co. v. Paterson, 65 Id. 472."

In the present case respondent has issued only three distribution licenses. It has acted consistently because it has heretofore denied two other applications for distribution licenses because of the existence of this resolution.

Appellant further contends that, since one of the outstanding distribution licenses has been issued to a drug store, his application must, therefore, be granted. Not so! For, if the proviso be valid, the resolution does not require that three such licenses be issued in addition to those granted to drug stores. On the other hand, if the proviso be void, appellant's argument collapses.

Appellant attempted to show that the resolution was unreasonable because there exist no places with distribution licenses in the business section of the Borough in which his store is located. He produced two witnesses who testified as to necessity and offered a petition with one hundred five names which was excluded from evidence on objection that it was hearsay. Two consumption licenses, however, have been issued for premises both of which are within half a block of appellant's place of business. There are eight consumption licenses and three distribution licenses outstanding in the Borough, which has a population of about seventy-two hundred (7200). Under the circumstances, these appear to be sufficient. In Colonna v. Montclair, Bulletin 39, Item 8, I said:

> "The burden of proof requisite to demonstrate that a community needs or will be more properly or conveniently serviced by another liquor store is difficult to sustain, especially in the case of a distribution license for off-premises consumption. For, with telephone and transportation facilities, such a store can properly service an area of much greater ambit than a consumption license. It is very largely a matter for the exercise of sound discretion by the governing body of the particular municipality. Its decision may be reversed if it fails in the ultimate test of public necessity and convenience."

Appellant has not sustained the burden of proof in showing that public necessity and convenience require the issuance of a fourth distribution license.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 18, 1937.

4. SPECIAL PERMITS - PERSONS DISQUALIFIED BY REASON OF LACK OF AGE, RESIDENCE OR CITIZENSHIP - CHANGES MADE BY THE NEW LAW EXPLAINED - HEREIN OF BLANKET PERMITS FOR TEMPORARY EMPLOYMENT.

Dear Sir:

We have been consulted by a client who operates a restaurant and roadstand business, having also a bar and serving alcoholic beverages to his patrons. He employs girls as waitresses, dishwashers, and for general duties about the premises. His trade is not regular, but it depends to a large extent on week end and other sporadic business, necessitating several girls on some occasions and just one at other times to serve transient parties.

He finds it difficult in this locality to obtain the services of qualified girls and on many occasions finds it necessary

to employ girls under the age of twenty-one years, but since they are employed irregularly, usually only for a day or so, he has no other choice in the matter. These girls wait on the tables, but do not solicit, handle or serve any alcoholic beverages whatsoever. If an occasion does arise whereby a patron should request an alcoholic drink, these waitresses call some person qualified to serve the party. The girls who act as dishwashers do not handle the drinks.

This client has been disturbed by a provision in the rules covering the employment by licensee of persons failing to qualify as to age, residence or citizenship which states specifically, "No person who would fail to qualify as a licensee should be knowingly employed by or connected in any business capacity whatsoever with a licensee except that persons failing to qualify as to age ** may be so employed, subject to these rules and regulations, provided that a permit from the State Commissioner shall have been first obtained." The regulations further provide that such a permit must be obtained for each such person employed and provides for questionnaires, photographs, etc. to be submitted for each permit.

The said client desires to know whether these girls who act as waitresses and as dishwashers come within the provisions of this language, inasmuch as they do not handle, serve or solicit drinks in anywise. If in the affirmative as to both, this would cause considerable inconvenience to him, since girls are employed according to their availability at busy times. In many cases, therefore, it would be impossible for him to obtain such a permit before employment, without hurting his business.

Would you therefore kindly give us an opinion on this matter, particularly, as to each of the respective types of employment set forth herein. We should appreciate this as soon as convenient, since the said client desires to follow regulations and not jeopardize his license in any way.

Very truly yours,
Dolan and Dolan,
By - John T. Madden.

June 18, 1937

John T. Madden, Esq.,
Dolan and Dolan,
Newton, N. J.

Dear Mr. Madden:

Both waitresses and dishwashers come within Section 23 of the Control Act. Hence, if disqualified by lack of age, or residence, or citizenship, they cannot lawfully be employed in any capacity on licensed premises unless they first obtain a special permit.

Prior to Chapter 124 of the Laws of 1937, which became effective June 2, 1937, all such special permits were conditioned because of the law as it then stood, against sale or service of alcoholic beverages with the result that, while a girl might wait on a table in a restaurant with a liquor license, she could not take or deliver orders for alcoholic beverages or serve or handle them in any way.

The only change made by the new Statute applies to residence and then only to a limited extent. It does not wipe out the statutory disqualification by lack of residence in New Jersey.

Special permits are still required. All it does is to lift the previous requirement that the special permit must be conditioned against the sale, service and solicitation of alcoholic beverages.

In other words, a person who does not have the required residence must still obtain a special permit before he may be employed by any retail licensee, but henceforth, if he is of age and a citizen and if otherwise qualified and if such special permit is obtained, he may sell, serve, solicit, etc. alcoholic beverages. (Bulletin 185, Item 1).

To illustrate: On and after June 2, 1937, a waitress, who is an American citizen and at least 21 years of age, may get a special permit to work for a liquor licensee in New Jersey even though she herself is a resident of New York or Pennsylvania, or had resided in New Jersey less than the required minimum five years. So far, that's the old law. Now the new Statute comes in at this point and allows her, if she gets a Special Permit, to sell, serve or deliver alcoholic beverages which could not have been done under the old law even if she had a Special Permit.

At the expense of being boresome, let me remind you that everything I have said applies only to those disqualified by our Statute because of lack of age, or residence, or citizenship. If not so disqualified, no Special Permit is needed.

The situation as to infants and aliens remains the same as before. For a concrete illustration of the operation of the disqualification by lack of citizenship, see Re Dalrymple, Bulletin 188, Item 1. That ruling will call your attention to the reciprocal trade treaties which have extended to alien nationals of certain countries the same rights and privileges here as if they were American citizens and thereby, to that extent, cut down the statutory disqualification enacted by the New Jersey Statute since not only the Federal Constitution, but treaties made pursuant to it, are the supreme law of the land.

I realize the practical difficulties confronting employers in respect to obtaining permits for persons only specially and temporarily employed, and have met that by the ruling heretofore made Re Childs Company, Bulletin 100, Item 10, which provides for the issuance of a blanket special permit, authorizing such special and temporary employment providing, however, that employment pursuant thereto shall in no event exceed one week. That ruling, when made on December 14th, 1935, applied, of course, only to the law as it then stood and hence was available only in respect to employment of persons not engaged in selling or soliciting the sale of alcoholic beverages. By virtue of Chapter 124 of the Laws of 1937, the principles of the Childs Company ruling and the blanket permit are hereby extended to authorize employment of persons who are engaged in selling or soliciting the sale of alcoholic beverages provided, however, that the only disqualification is because of lack of residence in New Jersey.

I believe that this blanket special permit is a specific for the problem confronting your client.

Application for such permit should be made to me in the form of a verified petition setting forth:

1. Name, address, type of license and license number.

2. Kind of employments for which permit is applied for.

3. The estimated number of persons to be employed under such permit during the fiscal year.

4. A statement that persons disqualified by age or citizenship will not serve, sell or solicit the sale of alcoholic beverages.

5. A statement that none of the persons employed pursuant to such permit will be employed for more than a week. (If any person is to be employed longer than one week, the proper, and much more economical, procedure is to take out an individual special permit for the particular employee, for such individual permit is good for the whole of the fiscal year in which it is issued and costs but a dollar).

6. Statement that no person whose presence on the licensed premises is prohibited by the Control Act or State Rules will be employed.

7. A statement that adequate records of employments will be kept at the licensed premises and available for inspection.

The fee for such permit is $25.00. If issued, it will allow the employment of 50 persons thereunder, but no one of them for more than one week.

As soon as the fifty employments are used up, the licensee must, of course, obtain a new blanket permit if he wishes to continue such temporary employments.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. LICENSES - PROCEDURE WHEN LICENSEE IS PHYSICALLY UNABLE TO SIGN RENEWAL APPLICATION - SPECIAL PERMIT DEVISED TO FIT THE EMERGENCY.

June 18, 1937

John Rosenbaum, Esq.,
Boonton, N. J.

Dear Mr. Rosenbaum:

Your letter states that Mr. Rosenbaum is critically ill and, therefore, he will be unable to file the renewal application for his license. I am very sorry to hear it. You are correct in stating that the application for license must be signed by Mr. Rosenbaum, as licensee, and not by an agent because the application contains an affidavit which must be sworn to by the applicant personally.

The instant case, however, is an emergent situation. Section 75 of the Control Act provides that the Commissioner may for special cause shown, issue temporary permits to provide for contingencies where it would be appropriate and consonant with the spirit of the Act to issue a license but the contingency has not been expressly provided for.

Under the circumstances, I will entertain application for a Special Permit by a duly although verbally authorized agent of Mr. Rosenbaum to continue the conduct of the business until such time as Mr. Rosenbaum is able to execute an application for license. As a prerequisite to such application for Special Permit, however,

the agent should file with the local municipal issuing authority an application form filled out completely with the exception of the affidavit to be signed by Mr. Rosenbaum; the full annual fee for the license applied for; the required Federal Stamp or Stamps; the affidavit required by the State Tax Department, Beverage Tax Division, in respect to tax reports and taxes paid and Proof of Publication as required under the Control Act and State Rules.

The application for Special Permit should be addressed to me in the form of a petition signed and sworn to by the agent, setting forth:

1. The name and address of the licensee.
2. The type of license applied for.
3. A statement that application for renewal with the exception of the signature of Mr. Rosenbaum, has been filed with the local issuing authority.
4. The reason for applying for Special Permit.
5. The authority conferred upon the agent.
6. Anticipated period for which permit will be necessary.

This application should be forwarded to this Department accompanied by a fee of $10.00 in cash, money order or certified check, drawn to the order of D. FREDERICK BURNETT, Commissioner; the consent in writing of the local issuing authority to the issuance of such Special Permit and evidence of the proper Federal Stamp or Stamps for the next fiscal year.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. APPELLATE DECISIONS - BEVERLEY v. NEWARK.

PAGE M. BEVERLEY,)
Appellant,)
-vs-) ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK and PAUL WEISSER,) CONCLUSIONS
Respondents)

Charles Frankel, Esq., Attorney for Appellant.
Frank A. Boettner, Esq., by Raymond Schroeder, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control of the City of Newark.
Jacob Rokoon, Esq., Attorney for Respondent Paul Weisser.

BY THE COMMISSIONER:

Appellant appeals from the issuance of a plenary retail distribution license to respondent Paul Weisser for premises located at 155 West Market Street, Newark.

Appellant contends that the licensed premises are within two hundred feet of a school.

The evidence shows that an annex of the Essex County Vocational School for Girls is located on the third floor of a business building known as the "Cotton Building," located at the northeast corner of West Market Street and Newark Street. There are two entrances to the Cotton Building. The one located on Newark Street

is within two hundred twenty feet of the entrance to the licensed premises. The other, located on West Market Street, is within one hundred eighty feet of the entrance to the licensed premises measuring the distance between said entrances in the manner laid down in Aldarelli v. Asbury Park, Bulletin 186, Item 12.

However, despite the fact that the distance between the nearest entrance to the licensed premises and the nearest entrance to the Cotton Building is less than two hundred feet, I do not find that the Cotton Building is a "public school house" within the meaning of Section 76 of the Control Act. It is true that the Essex County Vocational School for Girls occupies the third floor of the Cotton Building, but the first floor of this building is occupied by an undertaker, a finance company and a motor vehicle agency. The second floor of the building is rented out as a dentist's office and an advertising agency, and the entrance to the dentist's office and advertising agency is through the West Market Street entrance to the building. The Cotton Building is owned by a private individual, although the County of Essex maintains the Vocational School and rents the third floor of the building for that purpose. The existence of the Vocational School, however, does not make this office building a public school house within the meaning of Section 76 of the Control Act.

Reaching this conclusion, it is unnecessary to determine whether the main entrance to the Vocational School is on Newark Street, as contended by the licensee, or on West Market Street, as contended by appellant. Wherever the entrance to the Vocational School may be, the entrance to the licensed premises is not within two hundred feet of a public school house and, inasmuch as this was the sole objection raised to the issuance of the license, it appears that the license was properly issued.

The action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 19, 1937.

7. APPELLATE DECISIONS - NOVITT v. SPOTSWOOD.

ADAM NOVITT,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF SPOTSWOOD,
Respondent

ON APPEAL
CONCLUSIONS

Stanley S. Dickerson, Esq., Attorney for Appellant.
J. Randolph Appleby, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of a transfer to him of the license No. C-2 of Charles Cook, for premises located on the south side of Main Street, Borough of Spotswood.

Respondent denied the transfer for the following stated reason:

"On November 30th, 1936 the said respondent passed a resolution limiting the number of plenary retail

consumption licenses to not more than two in number."

The answer alleged "that during the time that the licensed premises were operated, many complaints were made * * * on account of the improper manner in which said premises were operated. * * * On account of the complaints aforesaid, and the abandonment of said premises, the Borough Council of the Borough of Spotswood on November 30th, 1936 passed the resolution referred to."

The evidence shows that the premises in question were licensed to one Flanagan from March 8th, 1934 to July 16th, 1934; to one Steele from July 16th, 1934 to July 1st, 1936, and that the license now under consideration was issued to Cook for the current fiscal year 1936-1937. Cook continued in possession until November 11th, 1936, when he abandoned the premises. No disciplinary proceedings were instituted against Cook, nor were any criminal complaints ever filed against him, but the Mayor testified that he had been called, through the police, "about twenty times in reference to this Cook place, all hours, from two to four, to come down and close them up;" that he used to go to Cook's and tell him about the complaints; that on receiving Cook's promise to take care of the matter, no further action was taken; that Cook finally disappeared; that "he would have had his license revoked if he stayed much longer." The Mayor testified that they had the same trouble when Steele conducted the business. The Mayor further testified that the Council knew about the complaints, and gave it as his opinion that Council passed the resolution on November 30th, 1936 because of the complaints. The evidence further shows that appellant, who owns these premises, did not obtain Cook's consent to the transfer of the license until December 21st, 1936 and did not file his application for transfer of the license until February 28th, 1937.

Respondent concedes that the resolution of November 30th, 1936 does not refer to transfers of licenses, but contends that, even if the resolution alone is not sufficient to sustain the denial of the transfer, nevertheless such denial was proper because of the improper manner in which the premises were previously conducted and because respondent believes, as indicated by its resolution, that the two other outstanding consumption licenses are sufficient to supply the needs of the community.

I indicated in Re Morton, Bulletin 126, Item 14, that where there are no charges pending against a transferor, and the transferee is personally qualified and the place is suitable and appropriate, that it would be inequitable to deny a transfer even though made with the laudable purpose of reducing the number of licenses. I there said that a denial would not reward a licensee who has obeyed the law in all respects by enabling him to cash in on his franchise but, on the converse, it would place him in the same category as those licensees who had cheated and been punished. The situation here, however, is different. Cook apparently did not run his place in a proper manner and had abandoned his business before the date upon which the resolution reducing the number of licenses was passed. Appellant said he paid Cook for the transfer but he is in no position to complain because he did not obtain Cook's consent until twenty-one days after respondent had indicated its opinion that the number should be reduced, and did not file his application for transfer until more than two months thereafter.

Even if respondent had not adopted its resolution on November 30th,1936, respondent could have denied the transfer because of the manner in which the premises were formerly conducted. The right to transfer is not inherent in a license. It is at most a privilege which the issuing authority may grant or deny in the

exercise of a reasonable discretion. Fafalak v. Bayonne, Bulletin 95, Item 5. There is sufficient evidence to show that, aside from the resolution, the action in denying the transfer was not unreasonable. The resolution was an expression of opinion by the members of the Council who, at the time the resolution was adopted, considered the improper manner in which the premises had been previously conducted and the abandonment by Cook, and reached a decision to cut down the number of licenses for the best interest of the community.

I find no discrimination against appellant in refusing to transfer the license.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 19,1937.

8. DISCIPLINARY PROCEEDINGS - LIMITED RETAIL DISTRIBUTION LICENSE - SALE OF WINE - SUSPENSION FOR BALANCE OF TERM JUST RIGHT.

June 17, 1937

William A. Miller, Esq.,
City Manager,
Clifton, New Jersey.

Dear Mr. Miller:

I have staff report of the proceedings before the Municipal Council of Clifton against Milton Glassman, charged with having sold wine on his licensed premises contrary to the terms of his limited retail distribution license - his sales being restricted by his license to unchilled malt alcoholic beverages in quantity not less than seventy-two (72) fluid ounces.

I note Glassman pleaded guilty and that his license was immediately suspended for the balance of its term - just right!

Please thank the members of the Council for their prompt and effective action. It is extremely important that this type of licensee confine his sales strictly within the terms of the license obtained at a small nominal fee. To adopt any other course would be manifestly unfair to the retail consumption and distribution licensees of Clifton who pay $300.00 more than Glassman's license cost, for the additional privileges accorded them. It would be rank unfair competition if holders of limited retail distribution licenses were permitted to violate in any way the express terms of their licenses.

If the Council desires to cut down the number of licenses in Clifton for the year which begins on July 1st, here is a proven violation that could very well be taken into consideration.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. LICENSEES - REFUSAL TO SELL OR SERVE LIQUOR - NO OBLIGATION TO SELL TO OR SERVE ANY PERSON PROVIDED THE DISCRIMINATION IS NOT ON ACCOUNT OF RACE, CREED OR COLOR - HEREIN OF THE CIVIL RIGHTS ACT WHICH HAS NO APPLICATION TO SALE OR SERVICE OF LIQUOR UNLESS THE REFUSAL TO SELL WAS BECAUSE OF THE RACE, CREED OR COLOR OF THE PATRON.

May 28, 1937.

Dear Sir: Re: Plaza Hotel - O'Leary

My clients, the owners of the Plaza Hotel, have referred to me a matter upon which I would appreciate having the advice of your Office. The facts under consideration are as follows:

The Plaza Hotel is a four or five story Hotel Building, at Fifth & Cooper Streets, in Camden, and operates, in connection with its other business, a cocktail room or tap room.

A short time ago one of their former employees stopped in their cocktail room and became more or less intoxicated and created quite a disturbance before they were finally able to get him out. The Manager of the Hotel subsequently instructed the bartender that no liquor hereafter should be served to this particular individual in their bar room. He now threatens suit against the owners of the Hotel, by reason of their failure to serve him liquor and threatens to attempt to have the license of the Hotel revoked.

Will you kindly advise me whether or not, under the circumstances, my clients have been guilty of a violation of any regulations of your Department and if there are any regulations requiring a tap room or licensed place to serve all persons who stand ready to pay for their orders or whether a licensed place may refuse to serve anyone who has previously created a disturbance on the premises.

Respectfully yours,

ROBERT J. TAIT PAUL

June 9, 1937.

Dear Sir: Re: Plaza Hotel - O'Leary

Under date of May 28th I wrote your Office concerning a problem confronting my client, Plaza Hotel, and I now have more information which I desire to lay before you in considering this problem.

It appears that on one or two occasions prior to May 21st, 1937, one of the patrons of the cocktail room or bar connected with the Plaza Hotel had some altercation with some others in the tap room and the bartender was required to caution Mr. O'Leary, with the others, as to the continuance of the disturbance.

Subsequently Mr. O'Leary met the Manager of the Hotel at another gathering off the premises and endeavored to continue his discussion or criticism of the conduct of some of the people about the Hotel. Their discussion finally terminated in a threat on the part of Mr. O'Leary that he was going to go down to the Hotel and raise H---. The following day the Manager of the Hotel spoke to the bartender and instructed him that he was not to serve Mr. O'Leary any intoxicating liquors and later on on that day, May 21st, Mr. O'Leary came into the bar room and asked for a beer and the bartender advised him that he was instructed not to serve him any intoxicating liquors and Mr. O'Leary then left.

Mr. O'Leary now brings suit against my clients under the Civil Rights Act as set forth in Compiled Statutes, 1911-1924 Supplement, Volume 1, page 573, alleging a breach of his rights by refusal of the bartender to serve him on May 21, 1937.

In looking over your rulings on various questions touching serving over the bar to adult persons who are sober, you seem to indicate that this is a matter for the judgment of the individual licensee. (Bulletin 135-8, Bulletin 135-9, Bulletin 94-8, concluding paragraph 2.).

In your letter to Judge Clark, as set out in Bulletin 94-8, concluding paragraph 2, you indicate: "A tavern is under no obligation to serve anyone", but it would seem that the Civil Rights Act would impose upon licensees the obligation to serve, unless there are some provisions which I have overlooked. Of course, your rules for the conduct of licensees and the use of licensed places covers an intoxicated person and it is possible that paragraph 5 of those same rules would justify a licensee to take steps as, in his judgment, might seem proper to prevent a breach of paragraph 5 where there has been a threat indicating an intention to create a disturbance.

It seems to me that this matter is of sufficient importance to the general industry to lay the facts before you so that we can have the benefit of your broader experience in the interpretation of the rights of a licensee to refuse to serve beverages to a person who is presently sober, with the thought of preventing some disturbance which might occur after the particular customer had indulged his appetites to the point where he might seek to create a disturbance.

I am prompted also to lay this matter before you at the suggestion of the City Clerk of Camden, Mr. Reesman, who is interested in the duties and obligations of the licensees under the particular circumstances recited in this letter.

Very truly yours,

ROBERT J. TAIT PAUL

P.S. On May 21st when Mr. O'Leary entered the bar room he created no disturbance and he was sober so far as we knew.

R. J. T. P.

June 21, 1937.

Robert J. Tait Paul, Esq.,
Camden, N. J.

Dear Mr. Paul: Re: Plaza Hotel - O'Leary

I have before me yours of May 28th and June 9th.

As regards suit under the Civil Rights Act: Assuming, though doubting, that for its violation a civil action for damages will lie as well as action for the penalty provided in that Act, the complaint is wholly groundless unless it avers that plaintiff was refused service of liquor because of his race, creed or color, or previous condition of servitude, or for some cause or reason not "applicable alike to all citizens of every race, creed and color, and regardless of race, creed or color, or of previous condition of servitude." Shubert vs. Nixon Amusement Co. 83 N.J.L. 101 (Sup. Ct. 1912). Just how can a man by the name of O'Leary invoke such a statute!

The purpose of the act is plain. It forbids discrimination in accommodations and privileges when based on race, creed or color. That is as far as it goes. It includes, among other places of public resort, inns, taverns, hotels, restaurants, and any place where beverages of any kind are retailed for consumption on the premises. But it has no application unless there is discrimination based on race, creed or color, or previous condition of servitude. Whatever is applicable to all citizens is outside the Civil Rights Act.

I make this comment not because of your case, but in order to remove any doubt in the minds of licensees throughout the State as to the existence of their right to refuse to sell or serve liquor to anybody, provided only that the refusal is not made on account of race, creed or color. As regards the propriety of your client's action in the instant case, I neither express nor entertain any opinion.

I have already ruled that, aside from the discrimination forbidden by the Civil Rights Act, a licensee has the right to refuse to sell to any person. This is true although the patron is sober and over twenty-one years of age. Re Dorflinger, Bulletin 136, Item 12. I there said:

> "The reason for this is that tavern keepers, like all liquor licensees, have great responsibilities under the law. They cannot sell to minors; they cannot sell to persons who are intoxicated; they must keep order on the licensed premises. It is no excuse for a violation of any of these duties that the licensee may have thought the purchaser was over twenty-one or was sober. They have been repeatedly warned that in case of doubt they are not to sell, and this is the only safe advice for them to follow if they want to keep their licenses. Since a tavern keeper is absolutely responsible for such violations, it is but fair that he be given a correspondingly wide discretion in determining whether or not to sell to any particular person. He who takes the risk must be given the right to decide."

See also re Meyers, Bulletin 155, Item 2.

Licensees are forbidden to allow or suffer upon licensed premises any disturbances, brawls or unnecessary noises, or permit it to be conducted in such manner as to become a nuisance. Hence, as I said in re Rollka, Bulletin 142, Item 4: "The licensee is Master of his tavern. He who is responsible for the conduct of it has the right to decide for himself what behavior he shall permit."

By the same token, when a licensee has reasonable grounds to believe that service of alcoholic beverages to any particular person will eventually result in "arguments," brawls or an ugly drunk, or even disturbances reasonably offensive to other patrons, he is wholly justified in refusing to serve such a customer.

I am assuming the good faith of the licensee. He could not, of course, justify refusal on this ostensible ground if his real reason was because of race, creed or color. The Civil Rights Act is to be honored to the full extent to which it goes.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALES AFTER CLOSING HOUR - FIVE DAY PENALTY URGED.

June 19, 1937

Francis J. McDonald, Esq.,
Town Clerk,
Harrison, New Jersey.

Dear Mr. McDonald:

I have staff report and your certification of the proceedings before the Town Council of Harrison against James Martin, charged with sale of alcoholic beverages after your 3:00 A. M. closing hour.

I note he was found guilty and his license suspended for a period of two days.

Expressing no opinion on the merits of the case because it might come before me by way of appeal, I regret that the Council did not impose a five day penalty. Licensees are deadly conscious that they are taking chances. According to his own admission, "You got me, boys - I am guilty as Hell."

It is unfair to honest licensees to allow the cheaters to get away with it.

I urge that hereafter your Council give a five days' penalty for the first closing hour violation, twice that for the second offense; and revocation upon the third. If you will do that, your Council won't have so many disciplinary proceedings to dispose of and the business will last longer.

Very truly yours,

D. Frederick Burnett

D. Frederick Burnett,
Commissioner.

Inspected by:
J. L. ARTS
and found O. K.