

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

BULLETIN 293

JANUARY 12, 1939

1. REPORT OF SPECIAL PERMITS ISSUED DURING THE MONTH OF DECEMBER, 1938, SHOWING COMPARATIVE TOTALS FOR THE FISCAL YEARS 1937-38 AND 1938-39.

SPECIAL PERMITS	Total Issued this month	Total Issued this year to date	Total Issued last year to date
Athletic Clubs	16	84	91
Charitable organizations	1	16	17
Churches and affiliated organizations	34	398	435
Civic Clubs	—	56	54
Clubs fostering citizenship	2	18	10
Country Clubs	4	22	25
County Fair Associations	—	3	1
Dramatic & Singing Societies	8	38	53
Educational Societies	3	15	14
Employees Organizations	1	66	45
Fraternal Orders	26	151	159
Granges & Farmers Protective Associations	—	3	3
Hunt, racing and kennel associations	—	18	15
Labor Unions	5	37	43
Licensed Beverage Dealers Associations	1	12	9
ORGANIZATIONS RENDERING DIRECT PUBLIC SERVICE:			
Fire & Police Departments	—	6	5
Police Benevolent Associations	1	11	11
Firemen's Benevolent Ass'ns	—	11	6
Volunteer Fire Companies	6	129	123
Parent Teachers Associations	—	6	4
Political Organizations	12	188	199
Service Clubs	—	9	4
Sick and Death Benefit Societies	15	170	216
Social Clubs	34	325	336
Sport Clubs	1	22	32
Trade Associations	—	11	7
Veterans Organizations	11	111	83
Yacht Club & Motor Boat Clubs	4	12	12
Musical Organizations	1	11	12
Magistrates Associations	—	—	1
All Others	2	2	7
	<u>188</u>	<u>1961</u>	<u>2032</u>

MISCELLANEOUS PERMITS

To consumer to import for personal consumption	155	306	58
To import to permittee's licensed premises for resale	1	4	12
Disposal of stock of alcoholic beverages where license is transferred	55	353	199
Disposal of stocks of alcoholic beverages where license not renewed	—	—	128

MISCELLANEOUS PERMITS (Cont'd)	Total Issued		Total Issued	
	this month	this year to date	last year to date	
Disposal of stocks of alcoholic beverages where license surrendered	2	2	3	
Disposal of stocks of alcoholic beverages without surrender of license	-	2	5	
HAVING FORCE AND EFFECT OF LICENSE:				
To transport alcoholic beverages	-	3	5	
To licensee pending issuance of State license	-	1	4	
To applicant pending action upon application for retail license and issued at request of Municipal Issuing Authority	3	79	69	
To transport and warehouse alcoholic beverages	1	4	5	
To limited winery licensee to sell wine manufactured prior to repeal or wine of illegal purchase or manufacture	-	1	1	
To store for personal consumption manufactured without permit	19	95	135	
To receivers and trustees to sell stocks of alcoholic beverages	3	11	11	
To wholesale licensee to sell wine for sacramental purposes	-	6	4	
To bailiff to sell for landlord distraining for rent	-	4	4	
To legal representative to carry on business	-	1	7	
To purchase for laboratory, testing and commercial purposes	-	18	11	
In lieu of Solicitors' and ARC permits	-	2	-	
To sell warehouse receipts, certificates, contracts, etc.	1	1	2	
To sell CCC & WPA Camps	-	6	3	
To transport between points outside N.J. and piers of import and export	-	27	30	
To retake, previously sold	-	-	1	
To give, in connection with licensed beverage dealers convention	-	37	-	
To give, demonstration of apparatus	-	4	7	
To transport to points outside of New Jersey	6	185	183	
To transport to New Jersey - Return shipments	2	21	-	
To transport, vehicles scheduled	-	5	6	
Blanket - To employ persons known as Pin Boys	12	171	133	
Blanket - To employ persons disqualified, entertainers, etc.	4	25	13	
Blanket - To employ persons disqualified, caddies	-	18	-	
To give miniatures to guests - out-of-state consumption	-	-	6	
To give alcoholic beverages to employees and guests	1	1	-	

MISCELLANEOUS PERMITS (Cont'd)	Total Issued this month	Total Issued this year to date	Total Issued last year to date
HAVING FORCE AND EFFECT OF LICENSE: (Cont'd)			
To persons, pending letters of administration and action by issuing authority	2	21	25
To employ specialized technical worker	-	3	-
To authorize illegal transportation	-	10	3
To authorize illegal purchase and sales	4	15	22
To applicant pending application for transfer premises	-	1	1
To sheriff or constable to sell under levy of execution upon judgment	1	7	4
To manufacture for experimental purpose	-	-	2
To sell certain designated places as Port Exchange, State Parks, etc.	-	1	2
To carloading and distributing	-	2	2
To purchase from U. S. Customs, transport and sell	-	-	2
To bank, assignment of alcoholic beverages as security for loan pending issuance of warehouse receipts	-	-	1
All Others	1	5	15
	273	1458	1124
TOTAL PERMITS ISSUED	461	3419	3156

INCOME FROM PERMITS:

Total for month of December, 1938	\$ 4,597.60
Total this year to date	36,420.89
Total last year to date	34,570.58

APPLICATIONS FOR SPECIAL PERMITS DENIED	Total this month	Total this year to date	Total last year to date
Application not complete	-	4	4
Objections by licensee and hearing held	-	1	-
Approval of Issuing Authority withheld	-	2	-
Regulations do not permit issue	1	6	3
Ad Interim, not previously licensed	-	1	1
Ad Interim, notice of intention of transfer not published	-	-	1
Premises not eligible	-	-	1
To store on premises prior to transfer of license	-	1	-
To sell - Pending approval and issue by municipal authority	-	-	1
Application filed to replace	-	1	1
Not bona fide organization	2	2	1
Pending transfer of premises	-	-	2
Pending issuance of retail license	-	-	1
Import for resale - Alcoholic beverages can be obtained through New Jersey wholesalers	-	-	2

APPLICATIONS FOR SPECIAL PERMITS - FEES FORFEITED	Total this month	Total this year to date	Total last year to date
Blanket to employ disqualified persons. Employed prior. Permit denied.	-	2	1
For social affair where application and/or fee was not received before period for which affair was to be held	1	4	3
To store wine for personal consumption, period expired prior to issue	-	-	7
No release from Tax Department	-	2	-
Transfer of alcoholic beverages - all requisites not completed	1	8	-
Not approved by Municipal Clerk. Affair held	-	-	1
Illegal operation of business by Executor	-	1	-
Illegal operation of business, absence of licensee	-	-	1
Illegal transportation out of New Jersey	-	-	1
 APPLICATIONS FOR SPECIAL PERMITS WITHDRAWN			
Permit not necessary	1	9	6
Transaction not consummated	2	4	-
Affair not held	-	6	1
Withdrawn prior to issue	-	3	6
Affair postponed	<u>1</u>	<u>1</u>	<u>3</u>
	9	58	48

Respectfully submitted,
Erwin B. Hock,
Deputy Commissioner.

2. MUNICIPAL REGULATIONS - HOURS OF SALE AND CLOSING - HEREIN OF THE PROPER PRACTICE OF PROHIBITING SALES OF ALCOHOLIC BEVERAGES BEFORE 12:00 O'CLOCK NOON ON SUNDAYS.

January 5, 1939.

Wilmer J. Tanier, Jr.,
Borough Clerk,
Somerdale, N. J.

My dear Mr. Tanier:

I have before me resolution adopted by the Council on December 29, 1938, amending Section 4 of resolution adopted December 13, 1933, as amended January 10, 1934, to read:

"Section 4. No licensee hereunder shall operate or keep or permit to be kept open for the sale, distribution or consumption of alcoholic beverages, any place so licensed, between the hours of 2 A.M. and 6 A.M. and from Sunday 2 A.M. until 12 Noon."

According to R. S. 33:1-40 (Control Act, Sec. 37), my approval is required only of municipal regulations which deal with the conduct of licensed businesses and the nature and condition of licensed premises. Regulations limiting hours of sale are expressly excepted. See Bulletin 43, Item 2.

To the extent that the resolution regulates hours when licensed premises must remain closed, it is approved as submitted.

I am glad to see that Council in response to public demand for extension of Sunday hours of sale of alcoholic beverages saw fit to limit the extension to 12:00 noon Sunday. I am very much opposed to sales of alcoholic beverages in the daytime on Sundays before 12:00 noon and have consistently discouraged municipalities from allowing it. There is no reason for saloons to be open and selling during church hours.

The deference shown by the Council to reasonable Sunday hours of sale is both noteworthy and commendable.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. RETAIL LICENSEES - ADVERTISING - SLOGANS - PHRASES CONVEYING PRICE APPEAL DISCOURAGED.

January 6, 1939

Miss Florence Silverstein,
Asbury Park, N. J.

My dear Miss Silverstein:

I have before me yours concerning your purposed slogan:

"Silvers' Saves Your Gold."

which, candidly, does not impress me very favorably.

The use of the slogan as an exterior advertisement, or in the show window, door or any other place where it would be visible from the street, would not be permissible. Regulations No. 21, Rule 3, prohibits all such price advertising, direct or indirect, no matter how it is expressed. See Re Schenley Products Company, Inc., Bulletin 264, Item 1.

What you cannot use in one place or in one connection, I do not think you should use in another.

Please, therefore, if you feel that you must have a slogan, find something that is free from any suggestion of price appeal - something less metallic, if you please.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. MUNICIPAL REGULATIONS - TRANSFERS OF LICENSES - REGULATION PURPORTING TO PROHIBIT TRANSFERS FROM PLACE TO PLACE, AND IN EFFECT TO CONFINE LICENSES TO PREMISES PRESENTLY LICENSED, DISAPPROVED.

January 6, 1939

George D. Rothermel, Esq.,
Attorney, Borough of Mt. Ephraim,
Camden, N. J.

My dear Mr. Rothermel:

I have before me proposed ordinance for the Borough of Mount Ephraim, limiting the number of plenary retail consumption licenses.

Section 1, which imposes the limitation and conforms substantially with that suggested in Re Sahl, Bulletin 198, Item 11, appears to be in proper form.

Section 2 provides:

"Transfer of Plenary Retail Consumption Licenses now issued and outstanding in the Borough of Mount Ephraim may be made from time to time upon due application therefor, from person to person, providing that the premises described in said license shall be the premises now licensed; as far as may be permitted by the Statutes of the State of New Jersey, no transfer of a Plenary Retail Consumption License now issued and outstanding shall be made from one place to another place where presently no such license is outstanding, it being the intent of this regulation to prevent the establishment of Plenary Retail Consumption Licenses in any premises of the Borough of Mount Ephraim other than those presently licensed."

I understand from your letter that the purpose of Section 2 is to give expression to the Council's desire to prevent the establishment of any licensed places in the Borough in excess of the number permitted by Section 1. But it is not necessary to accomplish this, that you prohibit all transfers from person to person or from place to place, except for premises presently licensed. Section 1 is wholly adequate to do this as it stands, without the assistance of Section 2. It declares that there shall be only three plenary retail consumption licenses, excepting renewals. Even if one or more or all of your present licenses were transferred to new premises not presently licensed, the number of licensed premises in the Borough could not be increased. The limitation would prevent it. It is no reason for issuing additional licenses contrary to a limitation, that premises heretofore covered by licenses are now without them (Puri v. Warren, Bulletin 266, Item 2), or because there was theretofore a license in the vicinity (Cocciolone v. West Deptford, Bulletin 247, Item 3), or even because a new and better building has been built on the same premises by a new applicant (Rainbow Grill v. Bordentown, Bulletin 245, Item 4). Cf. Ninety-One Jefferson Street, Passaic, Inc. v. Passaic, Bulletin 255, Item 9, affirming denial of transfer, notwithstanding that the premises had been extensively altered to operate as a night club in anticipation of the issuance of the license, and Krug v. Paramus, Bulletin 213, Item 8, affirming denial of license in absence of express numerical limitation, notwithstanding that the premises had been licensed in previous years.

Why, then, confuse the issue with section 2 when it is not only unnecessary but also of doubtful legality. The Borough does not have the power arbitrarily to forbid transfers from place to place. The right to such transfer, which the statute affords, cannot be nullified or otherwise diminished by municipal regulation, or denied, except for good cause. Such cause, generally speaking, is that which could be said to be necessary and proper to accomplish the objects of the Alcoholic Beverage Law and secure compliance with its provisions; e.g., that the applicant for the transfer had no enforceable right to possession of the premises to which the transfer was sought, or that the premises were unsuitable, or that there were already too many licenses in the vicinity. See Craig v. Orange, Bulletin 251, Item 4; Re McElroy, Bulletin 247, Item 6; Van Schoick v. Howell, Bulletin 120, Item 6. Cf. Kirschhoff v. Millville and Beckett, Bulletin 254, Item 6; Luzzi v. Nutley, Bulletin 244, Item 5; Re Kessel, Bulletin 160, Item 5.

It is a far cry from this to declaring that there may be no transfers except to premises now licensed. It is essentially the same as saying that only presently licensed premises can ever be licensed. That doesn't carry out the objects of the Act. It serves only the private interests of the owners because by giving them a monopoly on licensed premises, you also give them a stranglehold on their tenants and the means of exacting exorbitant rents. I am familiar with the problems confronting owners of property leased for tavern purposes. See Re Konesky, Bulletin 217, Item 7. But every place that may be suitable can't be given a license. The issuance of licenses can't go on forever. No one place is entitled to a license any more than any other, notwithstanding that it was the subject of a license at some time in the past. It is entirely possible that places other than those presently licensed may be eminently more desirable, or new and better places erected in the future.

The fact that a given premises was not the subject of a prior license is not such cause as would support the denial of a transfer. The proviso "as far as may be permitted by the Statutes of the State of New Jersey" cannot, of course, save or validate a regulation which is bad under those statutes in the first place. Section 2 is, therefore, disapproved. It should be excised.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. GAMBLING - NOT PERMISSIBLE TO RUN GAMBLING GAMES ON LICENSED PREMISES - HEREIN OF MILLINERY.

January 7, 1939

Lealcar Corporation,
East Orange, N. J.

Gentlemen:

I have letter from your receptionist, Ruth B. Breder, reading:

"I have organized some simple games for people who drop in at our bar. Such games as dominos, Jack Straws, Bottoms Up, etc.

"The Grace May Dress Shop has offered a \$5.00 hat for the lady holding highest score for the week. As these scores are made, in some instances, with dice, will you be good enough to O.K. this suggestion so that there will be no reflection on our establishment?"

The scheme is disapproved. Your license was given you to serve liquor and not to run simple games for simple people, or supply Dache creations or Molyneux millinery to lucky ladies.

I recognize the old standbys and props, but gambling, as you know, is not to be done on licensed premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALE TO MINOR -
DEFENDANT ACQUITTED.

In the Matter of Disciplinary)
Proceedings against)

ACTIVE DRUG CO., INC.,)
439 Washington Street,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribu-)
tion License No. D-74, issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
-----)

Jerome B. Litvak, Esq., Attorney for the Licensee.
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on September 13, 1938, it sold an alcoholic beverage, namely, a bottle of wine, to Betty Mae _____, a colored girl, aged 17 years, in violation of R. S. 33:1-77 (Control Act, Sec. 77) and Rule 1 of State Regulations No. 20.

The evidence shows that, on September 15, 1938, Marshall Katz, an employee of the licensee, was arrested by a member of the Newark Police Department on a charge of selling alcoholic beverages to a minor after Betty Mae had identified him as the person who sold her a bottle of wine two days previously. The investigation made by the Newark Police Department which led up to the arrest had been made because, on September 13, 1938, Willie May _____, another colored girl, aged 15, had been arrested in the vicinity of High and William Streets, Newark, while acting in a disorderly manner, and subsequently treated for alcoholism.

Betty Mae testified that, on September 13, 1938, at about 1:00 P.M., a colored man visited her home, stayed a while and then left; that shortly thereafter a white man knocked at the door of her apartment and asked her and Willie May if they wanted some wine; that, after obtaining a dollar from the white man, she went alone to the licensee's premises, where she purchased a bottle of white port wine from Marshall Katz, to whom she paid thirty-nine cents; that, after she returned to her home with the bottle of wine, the white man, who had remained in the hall, was given one cup of wine and then left the house.

Apparently Willie May drank most of the wine, became intoxicated, and was subsequently arrested by the Newark Police.

petitioner's licensed premises were closed from November 29, 1938, the date upon which she received a notification of such suspension, until December 16, 1938, at which time she was notified that her suspension was at an end.

Petitioner herein was indicted upon the same charge, and, on December 29, 1938, pleaded non vult to said indictment in the Burlington County Court of Quarter Sessions and was sentenced to pay a fine of \$100.00, which has been paid.

Because of the provisions of R. S. 33:1-31.1, which automatically suspended the license for the balance of its term, Investigator Barrett, of this Department, picked up the license on January 4, 1939.

There do not appear to be any aggravating circumstances concerning the sale to this twenty year old minor. The place has been closed now altogether twenty days. I am of the opinion that, by reason of this period of suspension, coupled with the other penalty set forth above, petitioner has learned her lesson and has now been sufficiently punished.

Accordingly, it is on this 7th day of January, 1939,

ORDERED, that the statutory suspension now in force be lifted, and that Plenary Retail Consumption License No. C-15, heretofore issued to Susie Johnson by the Township Committee of the Township of Pemberton, be and it is hereby declared to be, again in full force and effect.

D. FREDERICK BURNETT,
Commissioner.

8. PIZZERIA - WHAT IT IS AND HOW IT FITS IN WITH LOCAL ORDINANCES -
HEREIN OF ITALIAN TARTS AND ARTS.

Dear Sir:

Will you kindly advise me as to whether a "Pizzaria" establishment is considered as a restaurant or as a tavern within the meaning of the rules of the department of alcoholic beverage control. A local ordinance prohibits the employment of female waitresses in taverns but permits the same in restaurants. However, the ordinance contains no definition as to a "Pizzaria."

Thank you for your attention to this matter.

Very truly yours,
Abner A. Farber

January 9, 1939

Abner A. Farber, Esq.,
Union City, N. J.

Dear Mr. Farber:

In Naples, of course, everyone knows that a "Pizzeria" is a place where dough pies, embroidered with tomatoes, anchovies or mozzarella (a cheese indited to the kid goat), and embellished with peppers and garlic, are made and baked while you wait.

Talking strictly Neapolitan, a pizzeria is a shop specializing in the baking of the pizza to order. The fact that it is

consumed before it cools, does not convert the shop into a restaurant. Rather it is a tribute to gastronomical judgment. Nor does its solubility in wine change a tavern either into a restaurant or a bake shop merely because it installs an oven to serve its patrons.

The pizza follows the flag. Whether it reaches Corsica or crosses the Tunisian frontier is highly controversial. Its peaceful infiltration into Union City is not cause to view with alarm, even if the local regulations do not define it. Ordinances will be streamlined in time. In the meanwhile, I shall hold that it is not so much the name as it is the nature of the establishment which determines whether a pizzeria is a restaurant, or a tavern, or just an ordinary bakeshop.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. SOLICITATION - OUT-OF-STATE BREWERIES - SAMPLES - RECIPROCAL
REGULATION ESTABLISHED WITH NEW YORK STATE.

In Bulletin 290, Item 6, it was ruled that it was unlawful for an out-of-state brewery not licensed in New Jersey to send samples into the State, and that such sending of samples constitutes a solicitation which is unlawful without a New Jersey license.

Concurrently the Commissioner wrote the New York State Liquor Authority:

"I see little difference between sending samples into New Jersey and sending salesmen. Conversely, if representatives of New Jersey licensees seek to do business with your New York licensees or through salesmen or make solicitation via samples, they should be qualified under your law. I will be very glad indeed to learn the reactions of your Board."

Following is the reply:

"January 4, 1939

Dear Sir:

Your letter of December 23, 1938, relative to the shipping of samples of beer by the Greenway Brewery, Inc., of Syracuse, a New York State licensed brewer, into the State of New Jersey, has been handed to me for attention and reply.

The matter contained in your communication was considered by the Members of the Liquor Authority at a meeting held on December 29, 1938. I have been directed to advise you that the Authority is in accord with your interpretation regarding the shipping of samples into your state by persons who are not licensed under the New Jersey Alcoholic Beverage Control Law.

I also wish to advise you that the Greenway Brewery, Inc. will be advised of the decision of the Authority, and requested to comply with your letter sent to them on December 23, 1938.

Very truly,
STATE LIQUOR AUTHORITY
By - Francis V. McHugh,
Counsel.

10. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

January 7, 1939

Re: Case No. 246

Applicant requests a ruling as to his eligibility to be employed on licensed premises.

In 1932 he was convicted of violating the Hobart Act, and fined \$350.00. At the hearing he testified that at that time he conducted a restaurant, and that his arrest and conviction occurred after a few barrels of liquor had been found in his place of business.

In 1935 he pleaded guilty to a charge of bookmaking, and was fined \$350.00. At the hearing he testified that this conviction followed his arrest for maintaining an office where he was taking bets on horse races.

In July 1938 he was found guilty by a jury on a charge of bookmaking, sentenced to one year in State's Prison, and fined \$1,000.00. On December 1, 1938 he was paroled by the Board of Pardons and the \$1,000.00 fine remitted. At the hearing he testified that this conviction followed his arrest for maintaining a room with telephones where he and two others were engaged in taking bets on horse races.

A conviction for commercialized gambling may or may not constitute conviction of a crime involving moral turpitude, depending upon the circumstances of the particular case. In Re Case No. 220, Bulletin 263, Item 8, it was determined that a single conviction for maintaining a disorderly house, based upon a charge that gambling had been permitted therein, did not involve moral turpitude under the circumstances set forth therein. Here, however, the crime of which applicant was convicted in July 1938 was his second offense of the same kind and, as a result of said conviction, he was sentenced to serve a term in State's Prison. Following the reasoning in Case No. 229, Bulletin 269, Item 11, I believe that it should be determined that the last conviction mentioned herein involved moral turpitude.

It is recommended, therefore, that applicant be advised that he is not eligible to be employed by a liquor licensee.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:

The case exhibits a bent of mind - an obtuseness to the rules of organized society - a continued refusal to abide thereby, which is a potent, if not so glaring, form of moral turpitude.

D. FREDERICK BURNETT,
Commissioner.

11. APPELLATE DECISIONS - IRISH AMERICAN ASSOCIATION OF KEARNY, N. J.
v. KEARNY

IRISH AMERICAN ASSOCIATION :
OF KEARNY, N. J., :
Appellant, :
-VS- : ON APPEAL
COMMON COUNCIL OF THE TOWN : CONCLUSIONS
OF KEARNY, :
Respondent. :

Law and Froelich, Esqs., by Richard Froelich, Esq.,
Attorneys for Appellant.
John H. Cooper, Esq., Attorney for Respondent.
Sol J. Chasnoff, Esq., Attorney for Objectors.
William C. Egan, Esq., Amicus Curiae.

BY THE COMMISSIONER:

This is an appeal from denial of a club license for premises known as 95 Kearny Avenue, Town of Kearny.

The sole objection to the issuance of the license was filed by the Kearny Tavern Owners' Association which objected because "there are sufficient taverns and clubs at the present time to take care of all the liquor business that is required in the Town of Kearny."

Respondent unanimously denied the application on the ground as alleged, that there were a sufficient number of licenses in the Town, particularly in that section, and because of a contemplated ordinance restricting the number of club licenses to not more than five. The ordinance was introduced and enacted after the date on which the instant application was denied.

The learned attorney of the respondent argued: "They (the Town Council) feel with six or seven licenses in the immediate neighborhood that is ample to supply the needs of the neighborhood."

This argument would be dispositive of the present controversy if this were an application for a consumption or for a distribution license. In such a case, the action of respondent would be affirmed because the evidence shows the existence of many licenses of both types in the vicinity of appellant's premises.

The object of a club license, however, is not to supply the needs of the neighborhood. The holder of such a license could not lawfully serve the public. Its privileges are confined to members and bona fide guests. The argument, therefore, falls of its own weight so far as a club license is concerned.

In Societa Operaia vs. Trenton, Bulletin #41, Item 5, I said:

"Consumption and distribution licenses do not stand on the same footing as club licenses. In the former, the objective is commercial, in the latter fraternal. The Legislature has recognized this by providing a special license for benevolent, charitable, fraternal, social, religious, recreational and athletic organizations, if not operated for private gain. The club may not sell to the public generally but only to bona fide members and guests and then only for immediate consumption. As against maximum and minimum fees of \$2,000. and \$200. for consumption licenses, the respective limits for club licenses are but \$150. and \$50. The obvious purpose was to recognize these clubs as a natural outlet for man's innate desire for fellowship with his own kind and to afford them the opportunity to furnish their bona fide members and guests with alcoholic beverages for a nominal fee amidst self-regulated, decent, home-like surroundings. It would be utterly un-American to allow some citizens special privilege to drink in their homes and refuse it to others. The club is but an association of several citizens; the clubhouse is in the nature of a common home. To grant the beverage privilege to one club and deny it to another, equally qualified, is unfair. It lacks both economic and social justification. True, a municipality has the power to limit the number of club licenses but the burden of proof to justify such a numerical limitation should be placed upon the municipality. It is so held."

Again, in Re Deull, Bulletin #234, Item 7, I said:

"I am not at all impressed with the numerical limitation of a single club license. If a club is really bona fide and is not operated for commercial gain, why should one social group of men get the privilege and another be denied? Why should there be any limitation at all in respect to club licenses? If it be said that they are not bona fide organizations or are one-man clubs, and then only in name, or that they do not obey the law, the answer is, why not establish that as a fact and then take the appropriate measures to weed out the unworthy and the disobedient? That's something quite different from refusing to give to a worthy group of men who have clubbed together for benevolent, fraternal, social or recreational purposes, any chance at all to dispense liquor in their own club house except they pay the full fee as if they were conducting the enterprise for private gain or commercial exploitation."

Five club licenses have been issued in Kearny, viz.: (1) Kearny Lodge of Elks, (2) Passaic River Yacht Club, (3) Hungarian-American Citizens Club, (4) Ulster Club and (5) Scots American

A. C. The Scots American A. C. was granted its first club license in June 1938, effective July 1, 1938.

The Scots American A. C. is a club of similar character to the appellant. Both belong to the same Soccer League. Appellant's qualifications to hold a club license are admitted. It has been in existence for more than ten years. It has fifty-four members. It has recently moved to its present location from smaller quarters.

If the Scots may have a license, so may the Irish.

The ordinance is unreasonable as applied to appellant.

The action of respondent is, therefore, reversed, and respondent is directed to issue the license as applied for.

Dated: January 8, 1939.

D. FREDERICK BURNETT,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary)	
Proceedings against)	
)	
MARY A. SIVO,)	
54-56 Butler St.,)	CONCLUSIONS
Trenton, New Jersey,)	AND ORDER
)	
Holder of Plenary Retail Consump-)	
tion License #C-226, issued by)	
the City Council of the City of)	
Trenton.)	
- - - - -)	

Stanton J. MacIntosh, Esq., Attorney for the State Department of
Alcoholic Beverage Control.
Defendant-Licensee, Pro Se.

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of selling to an investigator of this Department on December 3, 1938 a quart bottle of Seagram's 5 Crown Blended Whiskey (whose Fair Trade price was \$2.35) for \$2.20, in violation of Rule 6 of State Regulations 30.

Accordingly, it is on this 8th day of January, 1939, ORDERED that Plenary Retail Consumption License C-226, heretofore issued to Mary A. Sivo by the City Council of the City of Trenton, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary)
Proceedings against)

NICOLA CONTE,
884 and rear of 886 S.Broad St.,)
Trenton, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License #C-61, issued by the City)
Council of the City of Trenton.)

- - - - -)

Stanton J. MacIntosh, Esq., Attorney for the State Department of)
Alcoholic Beverage Control.)
Defendant-Licensee, Pro Se.

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of selling to an investigator of this Department on December 3, 1938 a pint bottle of Wilson "That's All" Whiskey (whose Fair Trade price was \$1.16) for \$1.05, in violation of Rule 6 of State Regulations 30.

Although the sale was made by the defendant's daughter and not by the defendant himself, this fact in no way relieves him of responsibility for the sale. A licensee is strictly accountable for violations committed by his employees on the licensed premises.

Accordingly, it is on this 8th day of January, 1939, ORDERED that Plenary Retail Consumption License C-61, heretofore issued to Nicola Conte by the City Council of the City of Trenton, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

19 The Clerk of the Court

Commissioner.