

COMMISSIONER BURNETT  
SENT TO REGULAR MAILING LIST  
STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
744 Broad Street Newark, N. J.

BULLETIN NUMBER 97.

December 4, 1935

1. RULES CONCERNING THE SIZE OF CONTAINERS OF ALCOHOLIC BEVERAGES -  
ADDITIONAL RULES

Recent intensive sales promotion, on a national scale, of whiskey in half pints has been brought to my attention. The sale of such undersized containers, boldly advertised to "fit the pocket and the purse" and cheaply priced for off-premises consumption, works havoc with our younger generation. Sales propaganda to popularize the pocket flask is a throw-back to the days of prohibition. The misguided effort to intrigue women to "carry their own" in handy sized containers is particularly demoralizing. The hip pocket totter is bad enough. The purse is worse. Society will suffer all along the line. Suffice, for illustration, that a study of the causes of horrible accidents in drunken driver cases shows all too often that the personal flask is the accessory before the fact.

Such sales have heretofore been prohibited in this State. To meet the developing situation, the following additional rules are hereby promulgated:

(4) No retail licensee shall purchase, possess or sell within this State any whiskey or other distilled spirits, as defined in the rules concerning the size of containers of alcoholic beverages, Bulletin #36, Item #5, in containers of less than one-tenth (1/10) gallon (sometimes known as a half-fifth or four-fifth pint); except, however, that retail licensees authorized to sell alcoholic beverages for consumption on the licensed premises may purchase, possess and sell such alcoholic beverages in containers of not more than two (2) ounces for consumption on the licensed premises, providing that said beverages are not consumed elsewhere.

(5) No licensed manufacturer or wholesaler shall sell or deliver any such alcoholic beverage to any retail licensee where the purchase, possession or sale thereof by the retail licensee is prohibited by the foregoing rule.

(6) These additional rules shall take effect December 1, 1935.

D. FREDERICK BURNETT  
Commissioner

2. RULES GOVERNING SIGNS - RULE 3 - AMENDMENT

November 25, 1935.

Complaint has been made that the Rules Governing Signs and Other Advertising Matter discriminate unfairly against consumption licensees in so far as they are prohibited from displaying the price of alcoholic beverages sold for consumption off the licensed premises. Investigation, while establishing the merit of the complaint, discloses price advertisements by retail distribution licensees which are grossly excessive in nature.

To eliminate the discrimination complained about and to remove objectionable price advertisements by retail distribution licensees, rule #3 of the rules governing signs and

other advertising matter (Bulletin 69, Item 8) is modified to read as follows, effective December 6, 1935:

"3. No retail licensee shall directly or indirectly advertise or permit or suffer the advertising of the price of any alcoholic beverage or relative size of the container thereof on the exterior of the licensed premises or in the show window or door thereof or in the interior thereof when visible from the street; except, however, that placards not exceeding  $1\frac{1}{2}$  inches by  $1\frac{1}{2}$  inches and advertising the price of alcoholic beverages being sold in original containers for consumption off the licensed premises may be displayed within the show window of the licensed premises."

D. FREDERICK BURNETT  
Commissioner

3. PLENARY WHOLESALE LICENSE - MAY BE CONVERTED INTO PLENARY EXPORT WHOLESALE LICENSE UPON PAYMENT OF PRORATED PORTION OF ADDITIONAL FEE.

November 21, 1935

Gooderhan & Worts, Ltd.,  
c/o Hiran Walker Incorporated,  
Jersey City, N. J.

Gentlemen:

I have considered your inquiry as to whether you will be permitted to convert your plenary wholesale license into a plenary export wholesale license.

In Bulletin #45, Item #6, the Commissioner ruled that seasonal retail consumption licenses may not be converted into plenary retail consumption licenses. This ruling rested mainly upon the ground that by the seasonal license the Legislature afforded a privilege for a limited time at a cheaper price and that authority to convert would permit a licensee to gamble on business conditions at the expense of the municipality. These considerations do not apply to the instant inquiry and therefore the foregoing ruling is not controlling.

When the Control Act was originally enacted it contained no provision with respect to export wholesale licenses and New Jersey wholesale licensees were subjected to the payment of taxes on sales made outside this State. In order to afford exemption from payment of taxes on sales outside the State, the Legislature created the export wholesale license at a higher fee than that payable for a wholesale license and provided in the Alcoholic Beverage Tax Act that such licensees shall be exempt from the payment of taxes on sales made outside this State. In all other regards the export wholesale license has been considered identical with the wholesale license. No legislative policy appears against conversions of their licenses by wholesale licensees who desire to avail themselves of the statutory exemption from taxation on sales made outside the State.

It is the Commissioner's ruling that a wholesale license may be converted into an export wholesale license upon proper application and payment of the prorated portion of the statutory

differential in license fees for the period from the date of conversion to the date of expiration of the license.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

By: Nathan L. Jacobs,  
Chief Deputy Commissioner  
and Counsel.

4. SUPPLEMENTARY LISTS OF HOLDERS OF MUNICIPAL ALCOHOLIC BEVERAGE LICENSES.

November 2, 1935.

MEMORANDUM TO: D. FREDERICK BURNETT, Commissioner.

FROM: ERWIN B. HOCK

RE: Issuance of Retail Lists

The Licensing Division is now prepared to issue supplemental lists each month showing additional licenses, surrenders, transfers, revocations or any other changes in the original list. It is planned to set up the supplemental lists by counties. This supplemental list will be issued over a period of seven months, including May. I do not believe it will be necessary to issue a supplemental list for June because it will be of little value at that time to a purchaser, in view of the proximity of the new licensing period. This entails cost of materials and some labor each month for which I believe the State should be compensated.

Therefore, I recommend that a fee of \$10.00 be charged for the complete issuance of supplemental lists, covering the entire State for the seven months period. I further recommend that those who wish the issuance of supplemental lists for particular counties be charged a fee of 50% of the original fee paid for counties with a minimum fee of \$1.00. This, I believe would reimburse the State for cost and at the same time would give a valuable service to licensees.

Respectfully submitted.

ERWIN B. HOCK,  
Deputy Commissioner

APPROVED

D. FREDERICK BURNETT  
Commissioner

## 5. LICENSEES - BARKEEPERS - WOMEN.

November 22, 1935

New Jersey State Hotel Association,  
Newark, New Jersey.

Attention: Victor Jacoby, Secretary

Gentlemen:

I have before me your letter of November 18th transmitting the inquiry of a member hotel: "May my wife be in the Bar, mix drinks and handle the beer?"

There is nothing in the Alcoholic Beverage Control Act or in State regulations which would prevent a licensee from employing his wife in his bar providing she is an adult, a citizen of the United States and is otherwise not disqualified to hold a license in her own right.

However, there may be a local municipal resolution or ordinance which would prohibit same. As to this, your correspondent should inquire of the municipal clerk of the municipality in which the licensed premises are situated.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 6. REFERENDUM - INVALID IF NOT HELD AS REQUIRED BY STATUTE - THE ADVISORY RESULT, HOWEVER MAY BE EFFECTUATED BY RESOLUTION OR ORDINANCE

November 25, 1935

Mr. George M. Wilson,  
Borough Clerk,  
Allendale, N. J.

Dear Sir:-

I have before me the resolution adopted by your Borough Council on July 11, 1935, fixing until September 10, 1935 the hours between which alcoholic beverages may be sold; also, your letter of October 10, 1935 advising that fees for the licenses presently outstanding in Your Borough were fixed by resolution of June 21, 1934 and that at the primary election held on September 17th last, the question "Shall the sale of Alcoholic Beverages, at retail, be permitted in this Municipality on Sundays except between the hours of 2 A.M. and 12 Noon?" was submitted on referendum and was voted in the affirmative.

The referendum held on September 17th appears to have been worded with the intention of complying with Section 44A of the Control Act (c.254, P.L. 1935) which authorizes referenda upon any proposed questions as to the hours between which the sale of alcoholic beverages at retail may be made. So far as the question itself is concerned, well and good. But your referendum was held at a primary election. The Control Act requires that referenda in pursuance thereof be held at a general election. So unless there is some other enabling statute per-

taining to your Borough, as to which your Borough Attorney should advise, your referendum, while it may be considered advisory, would seem to have no binding effect. Cf. Re Rutherford, Bulletin 63, item 1. The limitation of the hours of sale, which the referendum purports to impose, would not, therefore, be legally enforceable unless subsequently adopted by the Borough Council in a formal resolution or ordinance.

My records do not show that any such resolution or ordinance has been adopted. Without one or the other, the hours sought to be fixed by the referendum are not effective. Nor do the hours of sale established in the resolution of July 11, 1935 control. That resolution, by its terms, became inoperative on September 10, 1935. The only regulation now in effect in Allendale which deals with hours of sale is in the resolution of December 14, 1933 which prohibits all sales on Sundays. Otherwise all wraps are off. If the Borough Council wants to fix hours of Sunday sales in accordance with the referendum, it should adopt a resolution or ordinance amending the December 14, 1933 resolution so to provide. And if it is desired to continue in effect the hours of weekday sales fixed in the resolution of July 11, 1935, a resolution or ordinance so doing should likewise be passed.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

7. MUNICIPAL ORDINANCES - SCREENING OFF THE BAR IS NOT SUFFICIENT TO CHANGE A BAR ROOM INTO A DINING ROOM.

November 25, 1935.

Wm. C. Morris  
Clerk of Lopatcong Township  
Morris Park  
Phillipsburg, New Jersey

Dear Sir:

I have your letter asking if a licensee who places a temporary partition or screen in front of his bar and serves alcoholic beverages at tables in his tap room rather than at tables in his regular dining room, is complying with Section 3 of the Township Committee's resolution of June 8, 1935 which provides: "That the sale of Alcoholic Beverages be prohibited in Tap Rooms between the hours of 1 o'clock P. M. Sundays and 1 o'clock A. M. Mondays, but may be sold during these hours if served at tables in dining rooms."

He is not.

Any sale or service of alcoholic beverages on Sunday in a tap room is a violation of the letter as well as the spirit of your rule. The temporary partition or screen is a mere contemptuous subterfuge. The room is still a tap room, however many screens it contains. A tap room which is a bar room six days of the week and a dining room only on Sunday and then solely for the purpose of evading a regulation, is not a dining room at all. The action of the licensee shows defiance, not compliance.

Go get him.

Very truly yours,  
D. FREDERICK BURNETT  
Commissioner

8. MUNICIPAL ORDINANCES - PERMISSION TO SERVE ALCOHOLIC BEVERAGES ON FLOORS OTHER THAN THAT ON WHICH THE BAR IS LOCATED IS NOT NECESSARILY CONTRARY TO SOUND CONTROL AND MAY IN PROPER INSTANCES BE CONDUCTIVE THERETO - POWERS AND POLICIES CONSIDERED.

November 12th, 1935.

My dear Commissioner:

I should like your opinion on the following situation which the Township Committee is favorably considering, subject to your approval:

There are several establishments, duly licensed by the Township of Haddon, to dispense alcoholic beverages in their establishments, which have no room on the first floor with the exception of the place occupied by the bar, and it is the desire of these establishments to establish a large dining hall on the second floor where they would like to dispense alcoholic beverages with their food.

All of these institutions have been licensed for a period of two years and have proven themselves to be respectable establishments where business is conducted on a high standard. The Committee sees no cause why such permission should not be granted, if it meets with your approval.

It is, of course, specifically understood that there are to be no small private dining rooms but only one large room where food will be dispensed to the general public, who may wish a beverage with their eatables.

Our present Ordinance provides that no alcoholic beverage should be dispensed on any other floor save the first floor where the bar is situated, but the Committee is willing to amend this section of the Ordinance, providing the same meets with your approval.

Yours very truly,

(signed) Mark Marritz

MARK MARRITZ  
SOLICITOR OF THE TOWNSHIP OF HADDON

November 25, 1935.

Mark Marritz, Esq.,  
Solicitor of Haddon Township  
Westmont, New Jersey

Dear Sir:

I have yours of November 12th re contemplated amendment to the Haddon Township ordinance of July 3, 1934.

That ordinance does not, by its express words, require alcoholic beverages to be served exclusively on the ground floor. Such result, perhaps, may have been intended by Section 20 which requires that all premises in which alcoholic beverages are sold or

dispensed, except those operating under club licenses, shall have reasonable access of light from the public highway which reasonable access is defined as such that a normal sized adult can, on inspection from the exterior, view the interior. But such intention was not accomplished by the ordinance for its requirement was one merely of sufficient light. The definition of what constituted reasonable access of light was not confined to a person standing on the public highway. In fact, that definition did not involve the public highway at all and may be satisfied with any access of light such that the interior could be viewed from the exterior. That could be true of the second, third, twentieth or any floor. It is my duty to construe the language actually used--to ascertain what the Township authorities meant by what they did say as distinguished from what they meant to have said. There is no express restriction of sales to the ground floor and there is no necessary implication which achieves that result without saying so in plain language. In fact, Section 24 of your same ordinance negatives the idea of excluding all sales except on the ground floor for it expressly provides that no alcoholic beverages may be sold or served "on any floor of the licensed premises except on the floor where the bar or service counter is situated." That section certainly contemplates sales on any floor and the only restriction is that the bar must be on the same floor. If the intention was to confine sales to the ground floor, then why speak of "any floor" or of the floor on which the bar is located?

I conclude, therefore, that your ordinance does not require that alcoholic beverages may be dispensed only on the ground floor. It does not require, therefore, any amendment of Section 20 to accomplish the present objective outlined in your letter.

There is nothing in the Alcoholic Beverage Control Act or in the State rules and regulations which requires that alcoholic beverages be served only on the first or ground floor of the licensed premises or that the licensed premises itself be confined to the first or ground floor of the building. So far as the State Act is concerned, alcoholic beverages may be served anywhere on the licensed premises (re Berkoley-Carteret Hotel, Bulletin 78, item 10). The licensed premises are the premises described in the application and in the license (re North Bergen, Bulletin 81, item 10).

Your ordinance of July 3, 1934 does, however, by Section 24, define the premises on which liquor may be dispensed as that floor and only that floor on which the bar or service counter is situated. That restriction, so long as your present ordinance stands, is, in legal contemplation, written into every local license granted, for all such licenses are issued subject to all approved local ordinances. In effect, therefore, Section 24 of your ordinance which has heretofore been approved, defines what the term "licensed premises" means in your municipality. It follows, therefore, that to accomplish your objective, Section 24 will have to be amended by excising the provision prohibiting sales being made on any floor except that on which the bar is located.

I have no objection to such amendment. The true objective of control is to attain and maintain clean, decent, self-respecting places where alcoholic beverages may be dispensed and consumed in thoroughly respectable and wholesome surroundings. That can be done on the second, third or twentieth floor irrespective of whether the bar or service counter is on the first or any other floor. In fact, even better. There is no compelling reason why customers who desire beverage with their food must be served in the same room or the same floor as the bar is located. Conceivably, many customers, particularly women, would prefer such separation. Regulation built on perpetuating

the glamour and mystery attendant about a bar misses the point. The rules should be designed to prevent the licensed place from becoming a dive--from allowing the back room evil to exist--from encouraging secrecy and its associated tendencies. Whatever the rule, the heavy fist of law enforcement must strike whenever the establishment becomes, in fact, indecent, unwholesome or a nuisance. There is nothing in the factual situation you portray which contemplates anything except clean, open, wholesome conditions. I therefore agree whole-heartedly with your Township Committee that there is no reason why such permission should not be granted. It will be conducive and not contrary to sound, sane control of the traffic.

Your Township Committee have nothing to fear by taking this forward step. They will always have it in their power to define in the license itself just what part or parts of the building are licensed. They do not have to grant a license generally for "100 Main Street". They may prescribe that the license is granted for such floor or such rooms in 100 Main Street as they decide are proper. If it is desirable to exclude the service of liquor from certain private rooms or certain so-called back rooms, it can be accomplished either by express exclusion thereof or, what will have the same effect, by naming the parts of the building in which liquor may be sold for thereby the places so named become the only places. If the privilege is abused in spite of their foresight, the Committee always have the power to revoke or suspend or refuse to renew. Licensees soon know when municipal authorities mean business.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner.

9. APPELLATE DECISIONS - NORTON v. CITY OF CAMDEN.

WILLIAM C. NORTON, )  
Appellant, )  
-vs- )  
BOARD OF COMMISSIONERS OF THE )  
CITY OF CAMDEN (CAMDEN COUNTY), )  
Respondent. )  
----- )

ON APPEAL  
CONCLUSIONS

John Ruck, Esq., Attorney for Appellant.

Meyer L. Sakin, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located at #2961 Yorkship Square, Camden.

Respondent contends the application was properly denied because the character of the neighborhood, coupled with the objections of the residents in the vicinity, rendered the issuance

of a license for these premises socially undesirable.

The premises consist of a store in a two-story brick building on the west side of Yorkship Square in the section known as Fairview or Yorkship Village. The so-called village was laid out and developed in 1918 by the United States Government to provide homes for workers in the shipyards. The Square consists of an open tract several blocks long and wide. Around the outside are located small stores which serve the adjoining residential neighborhood. Inside is a large grass plot, sectored by paths along which are public benches. The Square is used as a communal center for social intercourse and recreation and is in the nature of a public park. Within a short distance from appellant's premises is a public library. There are churches nearby and a school and playground are two blocks away. The school bus loads and unloads its passengers directly in front of appellant's premises, and, as a result, a large number of young people frequently congregate there.

Behind appellant's premises is a street known as West America Road, the commonly accepted entrance to which consists of two narrow alleyways, one of either side of appellant's premises. These alleys are often used by young children as well as adults.

Some 300 persons object to the issuance of a license for these premises because of their close proximity to the residential neighborhood, the public character of the Square, and the necessity for children using the alleyways to come into close contact with the premises. Respondent has never issued any liquor licenses for premises located on the Square and has on one other occasion denied an application therefor.

In determining whether to issue a license, an issuing authority may properly consider the character of the neighborhood and the public sentiment of the residents. Shinn v. Camden, Bulletin #64, Item #8; Sanford Drug Co. v. Maplewood, Bulletin #71, Item #6.

The premises in question are in a type of suburban business district, difficult to define but easily recognized and commonly understood. The type consists, in general, of a group of so-called neighborhood or community stores, separated from the town or city, not by artificial political division but rather by intervening residences or undeveloped land, and which stores service the day to day grocery, meat, bakery, drug, delicatessen and kindred immediate needs of the neighborhood as distinguished from the transaction of business generally -- stores where women "go to market" instead of "shop" -- stores where countless household purchases are made by children running errands for the family. These stores are convenient, if not practically necessary, adjuncts of such residential communities and, while business in nature, nevertheless "fit" the neighborhood. A place for the consumption of liquor is not appropriate to nor does it fit into a community of homes. While the store itself is in a technical business district, the immediate neighborhood is highly residential. A jealous regard for the preservation of a strictly home atmosphere in neighborhoods essentially residential is not unreasonable.

The action of respondent is affirmed.

D. FREDERICK BURNETT  
Commissioner

Dated: November 29, 1935.

## 10. SOLICITORS' PERMITS - MORAL TURPITUDE--FACTS EXAMINED --CONCLUSIONS

November 30th, 1935.

RE: Application for Solicitor's Permit - Case No. 18.

Application was filed for solicitor's permit pursuant to the provisions of P.L. 1935, c.256. In his questionnaire applicant admitted that he had been convicted about 1896 in the Federal Courts for sending illegal circulars through the mail; also in 1914 in the Federal Courts "in connection with Jewelers Art School". Notice was served upon him to show cause why his application should not be denied upon the ground that he had been convicted of crimes involving moral turpitude, and a hearing was duly held.

From the testimony it appears that in 1896 the applicant was a young man lately arrived in this country and unfamiliar with the English language. At that time he was employed as an office boy by an individual who had prepared the illegal matter for distribution through the mail. The applicant testified that he had had no part in the preparation of the circulars, but that he had actually placed them in the mail. After a complaint had been made, the office where applicant was employed was raided; his employer escaped and was never apprehended. Applicant was arrested and sentenced to jail for thirty (30) days. Under the circumstances of this case I believe there was no moral turpitude involved.

Our investigation of the second conviction admitted in the questionnaire discloses that the applicant and another were indicted in 1913 in the Federal Courts for using the mails to defraud individuals. The case was tried before a jury in 1915. Applicant was found guilty on Counts 1 and 2 of the indictment, with a recommendation of mercy; his co-defendant was found not guilty. Applicant was fined \$500.00 and sentenced to and served seven (7) months imprisonment in a county penitentiary.

I have examined Count 1 of the indictment and find that it sets forth that applicant and his co-defendant mailed to an individual circulars and letters containing false representations and promises in connection with a course of instruction in a jeweler's art school, intending thereby to defraud said person by obtaining money and property by means of false and fraudulent pretenses. The second count is identical except that it refers to another individual.

At the hearing the applicant contended that his arrest and conviction were due to the fact solely that he had inserted advertisements in newspaper in connection with this school, which advertisements had promised positions to students, and that he had been unable to obtain positions for the complainants because they had not finished the course of instruction. In the indictment however, a copy of a lengthy letter is set forth and this letter

contains many statements, each of which, the indictment alleges, was knowingly false and fraudulent. The appellant was found guilty on the two counts set forth in the indictment after a trial which according to the docket, continued for a period of about ten (10) days. There is nothing in appellant's testimony given at the hearing which would in anywise lessen the degree of guilt as determined by the jury after this lengthy trial.

Using the mails to defraud is a crime involving moral turpitude. Ponzi vs. Ward, 7 Fed. Sup. 736.

In view of the applicant's subsequent clean record and his accomplishments during the past twenty (20) years, it is with a great deal of reluctance that I am forced to recommend that the application for solicitor's permit be denied.

Edward J. Dorton,  
Attorney-in-Chief

Approved:  
D. FREDERICK BURNETT  
Commissioner

11. APPELLATE DECISIONS - TUCCILLO vs. PRINCETON.

CHARLES C. TUCCILLO,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
MAYOR AND BOROUGH COUNCIL OF THE	)	
BOROUGH OF PRINCETON (MERCER COUNTY),	)	
	)	
Respondent.	)	

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William H. Geraghty, Esq., by Frank V. Introcaso, Esq.,  
Attorney for Appellant

William C. Vandewater, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license at #10 Lytle Street, Princeton.

Respondent contends that the application was properly denied because it had determined that applicant did not meet respondent's standard of fitness, and that the issuance of a license to him would be contrary to the municipal policy previously adopted.

The underlying basis for this contention is best summarized in the language of the Chairman of the Licensing Committee of the Borough Council of Princeton, who testified as follows:

"We took into consideration in this case the man. We were doubtful about his residence. When living in Princeton he was a minor working for his father and going back and forth. Also there was a dispute over the ownership of the building; they may have had a perfect right to the building, but it was under dispute. The tenant of the building up until July 1st didn't renew his license - - one of the reasons was because of the dispute and the condition of the building, so old. We took those things into con-

sideration; also the age of the boy. We realize a minor can move and declare his residence; but he is very young, unmarried - that showed no responsibility. We consider giving a license to those that are responsible. The licensing of a saloon is more or less a serious matter and has to be well considered, and we like to have a man definitely settled and have shown previously that he is settled before we grant a license. Those broad things, the combination of those things, is what we turned him down on."

The record reasonably sustains respondent's finding that appellant is financially irresponsible and that he is not definitely settled in Princeton. At the time the application was denied he was 21 years of age, unmarried, and unemployed. He has had little business experience. For a time he assisted his father, who is a building contractor, and more recently he occasionally helped out a Trenton consumption licensee by tending bar when the licensee went away on Sundays. He admits he has no money, but testified that he intended to get financial backing from his father. He did not reside in Princeton until five days before he filed his application, at which time he hired a room in a boarding house simply for the purpose of filing his application. Upon the denial thereof he went back to live in Trenton.

The situation is not the same as Skwara and Proneska v. Trenton, Bulletin #57, Item #7, where the denial of the application was sought to be justified on the ground that the applicants were twenty-three years of age. That contention was overruled. There the mere youth of the applicants was held not a sufficient reason for denying a license; here it is merely one of the considerations which, with the other factors involved, led respondent to determine that appellant was not sufficiently mature in age, experience, and background.

Furthermore, respondent has adopted a policy not to issue licenses except to bona fide residents of Princeton. Such a policy is reasonable (Iamello v. Rumson, Bulletin #77, Item #9) even in the absence of formal enactment. Dann v. Manasquan, Bulletin #37, Item #12. One who rents a room in a boarding house in a certain municipality simply for the purpose of filing an application for a liquor license five days before the application is filed is not what the law contemplates by a bona fide resident of that municipality.

As was said in the Iamello case, supra:

"The dispensation of alcoholic beverages from time immemorial has been recognized as impregnated with public interest. The character of the persons to whom the privilege of making such sales is entrusted is of utmost importance - - perhaps in the long run the most effective safeguard against abuses."

While a license confers the privilege of selling alcoholic beverages, it also imposes corresponding responsibilities and duties upon the licensee. The requirements of general stability and local residence bear directly on the proper performance of these responsibilities and duties.

The denial of appellant's application was not unreasonable.

The action of respondent is affirmed.

D. FREDERICK BURNETT  
Commissioner

12. APPELLATE DECISIONS - KISZONAK v. CLIFTON.

CHARLES KISZONAK, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 MAYOR AND CITY COUNCIL OF THE )  
 CITY OF CLIFTON, )  
 )  
 Respondent. )  
 )  
 - - - - - )

ON APPEAL  
CONCLUSIONS

Harry Kampelman, Esq., Attorney for Appellant.

John C. Barbour, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises known as #31 Lakeview Avenue, Clifton.

Respondent contends that the application was properly denied because of objections filed by persons residing in the vicinity of the premises sought to be licensed.

The validity of this contention depends upon whether the grounds upon which the objections rest are sound. These grounds are: (a) The issuance of the license will depreciate the value of objectors' property and cause the loss of tenants; and (b) Liquor is sold at the present time within 250 feet from the premises sought to be licensed.

Appellant's premises are located on a street zoned for business. Immediately adjoining and on the northeast corner of the intersection of Lakeview Avenue and Clifton Avenue is a gasoline station. On the southwest corner of the same intersection is a lunch wagon, in the rear of which is a bar and grill licensed by respondent. On the northwest corner is a gas station, alongside of which, on Lakeview Avenue, is a factory approximately one block long. A short distance away on the same avenue is another factory which covers three blocks. Lakeview Avenue is traversed by streetcars and constitutes one of the principal traffic arteries. There are some residences on the avenue but, on the whole, it is clearly a business district. Cf. Sweeney v. Camden, Bulletin #64, Item #7. The objectors reside principally along the side streets, which are admitted to be residential.

In February, 1934, a plenary retail consumption license was issued by the then governing body and license issuing authority of Clifton to the owner of the land upon which the building now sought to be licensed is located. This license was issued with the following express conditions: "Subject to erection of building within a reasonable length of time." Pursuant thereto, the owner undertook the construction of a building. In the early summer of 1934 he went to see the City Manager about a renewal of his license, but was told that inasmuch as the building was not yet completed it was hardly any use, and that he could apply when the building was more nearly completed. Thereafter he continued with the erection of the building, which has now been completed at a cost of approximately \$6,000.00. It was designed expressly for the sale of alcoholic beverages for on-premises consumption and is peculiarly suited therefor. Instead of applying for a license in his own name, however, the owner leased the same to appellant.

It is not suggested that appellant is unfit to receive a license or that the objections upon which respondent denied appellant's application would not have been filed against the owner

of the property. The objections are not directed against appellant but against the issuance of any license for this building or in this vicinity.

(a) It has heretofore been held that general objections to the issuance of any licenses for premises located in a business neighborhood do not justify the denial of an application. Bunks v. Atlantic City, Bulletin #45, Item #14; Seashore Beverage Co. v. Way, Bulletin #47, Item #12; Elias v. Trenton, Bulletin #54, Item #12; Sweeney v. Camden, Bulletin #64, Item #7. As was said in Bunks v. Atlantic City, supra:

"In a crowded urban community, almost any business use of property involves, to a certain extent, some interference with the enjoyment of neighboring property. Unless the interference is unduly burdensome, it should be regarded as merely an incident of our economic system and social set-up."

Accordingly, the claim that the issuance of a license to appellant would deteriorate the value of the adjacent property afforded no reasonable basis for the denial of his application.

(b) We come now to the objection that liquor is sold at the present time within 250 feet from the premises sought to be licensed, and respondent's contention that there is no necessity for another saloon in the vicinity. Both the objection and the contention overlook the important fact that a license has once been issued, from all that appears without any objection having been filed, and a \$6,000 building constructed upon the express representation by respondent's predecessors in office that a license would be issued. Furthermore, in Kirchies v. Clifton, Bulletin #66, Item #1, it clearly appeared that no policy had been adopted in the City of Clifton to withhold licenses because of the existence of a sufficient number of places in the vicinity of the premises sought to be licensed. There is no evidence whatsoever to indicate that since that time respondent has adopted any such policy or that there has been any change in the municipal policy under which the original license for appellant's present location was issued. In the absence of the adoption and uniform application of a municipal policy to avoid excessive places in any given vicinity it is unreasonable to deny any particular application on this ground. Kirchies v. Clifton, supra.

The action of respondent is reversed.

D. FREDERICK BURNETT  
Commissioner

Dated: December 2, 1935.

13. APPELLATE DECISIONS - WHITE CASTLE INC. v. CLIFTON and SAMUEL M. WEISS.

WHITE CASTLE INC.,	)	
Appellant,	)	
-vs-	)	
MAYOR AND COMMON COUNCIL OF THE	)	ON APPEAL
CITY OF CLIFTON, (PASSAIC COUNTY),	)	CONCLUSIONS
and SAMUEL M. WEISS,	)	
Respondents.	)	

Maurice H. Pressler, Esq. and Sam Weiss, Esq.,  
Attorneys for Appellant.

Irving L. Werksman, Esq., Attorney for Respondent Samuel M. Weiss.

John C. Barbour, Esq., Attorney for Respondent, Mayor and Common  
Council of the City of Clifton.

BY THE COMMISSIONER:

This is an appeal from the issuance on October 1, 1935 of a plenary retail consumption license to respondent Weiss for premises located at #175 River Road, Clifton.

Both respondents moved for a dismissal of the appeal on the ground that appellant is not a "taxpayer or other aggrieved person" within Section 19 and therefore has no standing to prosecute this appeal. It appears by the records that appellant had applied for a plenary retail consumption license for the same premises and that its application had been denied solely because of the issuance of the license to respondent Weiss. It cannot be successfully contended that appellant is not aggrieved by the very action which blocks its attempt to obtain a license. The motion is dismissed.

Appellant contends that the license was improperly issued in that respondent Weiss had no interest in the premises sought to be licensed.

The record shows that the owner of the licensed premises is Essential Petroleum Products Corp.; that by lease of May 11, 1935, right to possession was vested in Weiss; that due to his failure to pay the rent, judgment for possession was entered against him on August 13, 1935, pursuant to summary dispossess proceedings instituted in the Clifton District Court; that a warrant for removal was issued and returned executed on September 11, 1935.

It thus appears that the lease which Weiss at one time held for the premises sought to be licensed had been terminated and he had been ousted from possession and had no interest whatsoever therein at the time he filed his application for this license on September 18, 1935. Nor has he ever since acquired any interest. He testified that shortly before filing his application he had a conversation with one Harry Katler, who managed the property for the Essential Petroleum Products Corp., and who agreed to let Weiss have the place if the license was issued. Katler denied any such conversation and disclaimed any authority to make any such arrangement on behalf of the Essential Petroleum Products Corp. The President of said corporation likewise testified to Katler's lack of authority. The transcript shows that appellant and Essential Petroleum Products Corp. completed negotiations on September 12th for a five year lease for these premises. This lease was actually executed on September 27th as of September 12th, and pursuant thereto appellant has taken possession of the premises. Thus, at the present time, the respondent Weiss has neither legal nor equitable interest in the premises sought to be licensed and this has been true at all times since the application was filed.

In Procoli v. Trenton, Bulletin #28, Item #6, it was held that no license could be issued to an applicant who has no interest of any kind in the premises sought to be licensed. So where, pending an appeal, the applicant lost his interest in the premises sought to be licensed by adjudication of bankruptcy. Caplan v.



the issuance of a license to Weiss was reversed, the present case be remanded to respondent for consideration on the merits since it had been denied solely because of the reason above stated.

The motion is granted. It is not only within the power but it is the duty of the license issuing authority to pass on the character and worthiness of the appellant and its compliance with the law and the merits of the application generally.

The case is remanded to respondent for determination of appellant's application on the merits.

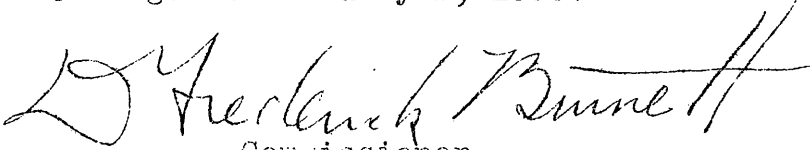
D. FREDERICK BURNETT  
Commissioner

Dated: December 3, 1935.

15. RULES CONCERNING THE SIZE OF CONTAINERS OF ALCOHOLIC BEVERAGES - TIME EXTENSION.

November 30, 1935.

The rules recently promulgated prohibiting possession or sale of one-half ( $\frac{1}{2}$ ) pints by retail licensees take effect, under their terms, tomorrow, December 1, 1935. Consequently, retail consumption licensees have been returning to wholesale licensees one-half ( $\frac{1}{2}$ ) pints heretofore lawfully purchased. Complaints are being received from wholesale licensees that they will suffer a serious loss because of their inability to dispose of the returned merchandise under the rules. To avoid economic waste, the Commissioner has extended the effective date of Rule #4 and #5 of the Rules Concerning Size of Containers of Alcoholic Beverages to January 1, 1936.

  
Commissioner