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

BULLETIN NUMBER 200. AUGUST 9, 1937.

1. LICENSED PREMISES - SEPARATION OF MERCANTILE BUSINESS FROM LICENSED SALE OF BEVERAGES - WHAT CONSTITUTES PREMISES SUBSTANTIALLY SEPARATE AND DISTINCT.

Dear Sir:

The Borough of Ramsey has adopted an ordinance whereby licenses for plenary retail distribution will be issued only to premises where no other mercantile business is carried on, excluded to sale of accessory non-alcoholic beverages.

One of the applicants whose application has been approved and granted a license has divided his premises into two separate stores, in one of which there is carried on a paper, stationery, tobacco and confectionery establishment. This premise is owned and operated by Joseph Scharf, Inc. The alcoholic beverage licensee is known as Scharf's Liquor Shop, a partnership with entirely different officers from those controlling the stationery store. I note from bulletins issued by your Department that no entrance way between the two premises can be opened so that prospective customers can go directly from one store to the other. In the instant case, a doorway has been cut behind the counter by which Mr. Scharf, his wife, or his sons can go from one store to the other. However, no customers are allowed to pass through this doorway, or are sales completed for alcoholic beverages in the stationery store.

I would like to have your opinion as to whether this rear door, which is only for the convenience of the Scharf family, is permissible under our ordinance.

Very truly yours,
R. E. Rockefeller,
Borough Clerk.

August 4, 1937

Raymond E. Rockefeller, Clerk,
The Borough of Ramsey,
Ramsey, N. J.

Dear Mr. Rockefeller:

The question is whether the liquor store is sufficiently separated from the adjoining stationery store.

The general test whether a prohibited business is being conducted in or upon the licensed premises depends on whether the conduct of the respective businesses and their locations renders them substantially separate and distinct.

Where a solid partition divides premises into two stores, allowing no communication between them, they are independent of each other. Owl Drug Company v. Elizabeth, Bulletin 68, Item 7. In Shapiro v. Trenton, Bulletin 34, Item 8, where an open archway led through the partition at the rear of the premises, the stores were held not separate and distinct. On the other hand, in Retail Liquor Distributors v. Atlantic City, Bulletin 88, Item 5, where a tavern was adjacent to a delicatessen store and a door at the rear of the delicatessen, the premises were held substantially separate and distinct.

An ordinary doorway between the stationery store and the liquor store, at the rear of the premises of both, and behind their respective counters, and used only by the keeper of the stores and his family and not by customers, does not necessarily violate your ordinance. As I understand the facts, they are substantially distinct stores.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. LICENSES - LIMITATION OF NUMBER - EXEMPTION OF PERSONS AND PREMISES AS DISTINGUISHED FROM EXCEPTIONS TO RENEWALS DISAPPROVED.

August 4, 1937

Samuel C. Meyerson, Esq.,
Town Counsel,
Dover, N. J.

Dear Mr. Meyerson:

I have before me the resolution limiting the number of licensees adopted by the Mayor and Board of Aldermen on February 8th.

The resolution provides that the number of distribution licenses shall be limited to five and that the number of consumption licenses shall be limited to twenty. It then goes on to say that licenses now in effect may be transferred from person to person or place to place upon the approval of the Board. So far, so good. However, in conclusion it declares that "any person or premises" now licensed shall not be affected by the limitation until the number of licensed premises shall have been reduced by surrender or otherwise to the aforementioned quota.

I suppose that what you meant to accomplish by the concluding proviso was, that deeming it unfair arbitrarily to deprive five of the present twenty-five consumption licensees of their licenses but your Aldermen at the same time desiring eventually to reduce the number, you endeavored to create an exemption enabling present licensees to obtain renewals. Better to have said so simply with a paragraph reading, for example, as follows:

> "Provided, however, that the foregoing limitation shall not prevent the issuance of renewals of plenary retail consumption or plenary retail distribution licenses to persons holding such licenses at the time this resolution was adopted."

To declare, as does your resolution, that any person or premises now licensed shall not be affected by the limitation defeats the limitation. For instance, if Jones now holds a license for premises 1 Main Street, he could transfer that license to another person for another premises and then himself apply for a new license at a third location and, again, a third party could apply for a license at the original location. Thus your tavern licenses instead of being cut down in number could be multiplied three times under your present resolution. You thus see the great difference between excepting renewals and exempting persons and premises.

I cordially suggest that the resolution be amended as above suggested. All that is necessary is to repeal the last paragraph and insert that quoted above in its place.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. ENFORCEMENT - ENTRAPMENT - WHAT CONSTITUTES.

We are indebted to Hon. George M. Stout, State Liquor Administrator of California, for the excellent discussion of the subject of entrapment which appears in his May Bulletin, and which was prepared for him by Mr. Curtis H. Palmer of his staff:

"ENTRAPMENT

"The rule regarding entrapment is easy to state, but is sometimes difficult to apply.

"To begin, the Supreme Court of this State has said, 'The first duties of the officers of the law are to prevent, not to punish crime. It is not their duty to incite and create crime for the sole purpose of prosecuting and punishing it. While decoys may be used to entrap criminals and to present opportunity to one intending to commit a crime, they are not permitted to ensnare the innocent into the commission of a crime when the criminal design originates not with the accused but is conceived in the minds of the officers, and the accused is by persuasion or inducement lured into a criminal act.' It is further stated, 'When an officer induces a person to commit a crime which he would not have committed without such inducement, the law will not punish the person so lured into the crime.'

"The problem in each case is to determine whether the idea of the crime originated with the officers, or whether the person committing the act had a pre-existing criminal intent. An officer acting as a decoy is justified in soliciting an unlawful sale of liquor if he acts merely as a willing purchaser. Suppose, however, that a decoy goes into an all night drug store about 2:30 in the morning and asks for a pint of whiskey. The clerk refuses to sell. The decoy then offers to purchase at a price out of proportion to the value of the merchandise, say five dollars for an ordinary pint of whiskey; or perhaps he rushes into the store in his shirt sleeves and says, 'Quick, give me a pint of whiskey; my wife's got a fainting spell!' In either case, a sale, if one is made, has been induced by 'persuasion' or 'inducement' not contained in the ordinary transaction between seller and buyer, and entrapment is an element of the case.

"Take a more important case. Suppose that probable cause exists to suspect Jones of operating a still. Close observation of Jones fails to indicate the place of manufacture. A decoy, posing as a laborer in a construction camp, frequents the places Jones hangs out, and in his presence remarks, 'A fellow could sure make some easy dough at the camp peddling hooch. I made myself a new car at Boulder Dam that way, but nobody seems to have any moon around here.' Jones offers to furnish jackass whiskey. The decoy buys a can two or three times, or until he locates the still, when a raid and arrests are engineered. Possession and operation of the still demonstrates a pre-existing criminal intent on the part of Jones and a presumption of entrapment would not arise from the mere solicitation.

"However, suppose Jones did not possess a still, but the decoy's talk of big profits so excited him that he entered into a deal with the decoy to set up a still and furnish alcohol to the decoy who agreed to peddle it. In such case Jones would be lured into criminal acts, and there would be unlawful entrapment.

"Here are a few actual cases demonstrating the principles involved. A decoy hired by the police was directed by them to try to buy 'billies' from a hardware merchant. The decoy went into the

store, said that he was off of a boat, and that he had been told that he could buy billies in this store. The merchant said he didn't have any, but would try to get them. The decoy returned later, purchased three 'billies' and the merchant was arrested and convicted. The court said, 'There is an absolute absence of evidence that any persuasion or inducement was offered.....to make said sale outside of the ordinary transaction of purchase and sale between a willing purchaser and a willing seller.'

"In another case the officers arrested a person for possession of narcotics, and then used him as a decoy. They gave him marked money, searched him to be sure he had no narcotics or any other money in his possession, and then sent him into the suspect's place. The decoy came out with the suspect, who was arrested, and both were searched. The narcotics were found on the decoy and the marked money on the suspect. Conviction was upheld on appeal, the court commenting that there was 'no unusual pressure' put on the suspect to make the sale.

"The appellate court reversed a conviction on those facts: The decoy and the defendant were both drug addicts. The decoy asked the defendant to get him some morphine because his wife was sick. The defendant said he didn't have any. The decoy then asked the defendant to get him some from somebody, and the defendant did. There was no evidence that the defendant had ever dealt in narcotics before. The court thought the persuasion here was too great.

"Here is one illustrating allurement by means of improper inducement: The defendant was a drug addict. The decoy asked him if he wanted to buy some drugs and he said he did not; the decoy then said he would give him a good buy, deliver him two quarts for five dollars, and the defendant accepted. He was arrested for possession. Conviction was reversed on appeal.

"No cases are easier to get than sales to Indians. In one case the federal agents hired an Indian who didn't look like an Indian, to act as decoy. He made an ordinary, over the counter buy in a drug store. The court pointed out that the defendant didn't know he was selling to an Indian, and inasmuch as the decoy didn't dress, talk or act like an Indian, or appear to be one, there was nothing to put the defendant on inquiry, and the government's invitation to make the sale was in the nature of a fraudulent concealment and deceit.

"Remember, an officer carries with him at all times the burden of fair play. He should not break the law to catch a violator. He cannot employ practices contrary to public welfare and morals, as the use of minor decoys. Acts which are inherently indecent, or which tend to disparage the dignity of the State of California, are to be avoided."

4. RETAIL DISTRIBUTION LICENSEES - MAY NOT CARRY LINE OF MALT, HOPS, FLAVORING AGENTS, OR OTHER INGREDIENTS FOR HOME-MADE ALCOHOLIC BEVERAGES - THIS IS A STATE-WIDE RULE INDEPENDENT OF LOCAL ORDINANCE.

Dear Sir:

I read an article in which you rendered a decision to a Union City dealer prohibiting the sale of malt, hops, corks, barrels, bottles, flavoring agents and other like items, and would like to know if this also applies to the Town of Harrison.

For several years before Repeal this store was a malt and hops store and some of the stock was left over.

Your prompt advice as to just what disposition can be made of the above will be appreciated by

Yours very truly,
David Polackoff,
Secretary.

August 5, 1937.

Harrison Products Corporation,
Harrison, N. J.

Gentlemen: Att: David Polackoff, Secretary.

Herewith copy of ruling made in Re Schmidt's Wine & Liquor, Inc., Bulletin 197, Item 12, which undoubtedly is the ruling to which you refer. I am glad you wrote in and inquired, and therefore am granting you the rest of the week to clean up.

The Board of Commissioners of Union City has adopted an ordinance prohibiting plenary retail distribution licensees from conducting on the licensed premises any mercantile business other than the sale of alcoholic beverages. But, according to my records, no such ordinance has been enacted for Harrison. You are, therefore, not prohibited from handling such items because of local ordinance.

You are, however, prohibited by Section 64(d) of the Control Act from possessing any contrivance, preparation, compound, tablet, substance or recipe advertised, designed or intended for use in the manufacture of alcoholic beverages for personal consumption or otherwise in violation of the Act. The items you mention - malt, hops, corks, barrels, bottles, flavoring agents - sound suspiciously like ingredients for home-made alcoholic beverages. I therefore cordially advise that you discontinue that line and remove at once from your store these supplies which give cause or color for violation of the Act. Malt, hops, and flavoring agents have no place in a licensed liquor store whether there is a local ordinance or not. Violation of Section 64(d) is a misdemeanor punishable by fine of not less than $100.00 nor more than $500.00, or imprisonment for not less than thirty days nor more than six months or both, not to speak of revocation of license.

I note you say "for several years before Repeal, this store was a malt and hops store and some of the stock was left over." Get rid of these items just the same and at once. What went during Prohibition doesn't go now. My boys will be around next week to see how well you have cleared out everything objectionable.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. TAVERNS - THE OLD CONCEPTION - AN ATTEMPTED DEFINITION OF THE PRESENT IDEA.

Dear Sir:

At the request of our Mayor I am seeking for New Jersey's legal definition of a tavern and so I am writing you about it. Trusting it is within your province to provide this information, and that it can be done without too much trouble, I am,

Yours truly,

R. C. PHILLIPS

August 5, 1937.

Mr. R. C. Phillips,
Roseland, N. J.

Dear Mr. Phillips:

The Alcoholic Beverage Control Act does not afford any definition of a tavern. Neither the word "tavern" nor "saloon" appears anywhere in the Act. Licenses permitting the sale of alcoholic beverages to the general public are classified according to the manner in which the liquor is sold and not by the person who sells it or the place wherein it is sold except in the single instance of club licenses. Thus, there are plenary and seasonal retail consumption licenses which allow the sale of all alcoholic beverages both for consumption on and off the licensed premises and also plenary and limited retail distribution licenses which allow, in accordance with the respective limitations imposed upon each, only the sale of package goods.

According to the preamble of a New Jersey statute enacted in 1639, "the true use and original design of taverns, inns and ordinaries is for the accommodating of strangers, travelers and other persons; for the benefit of men's meeting together for the dispatch of business, and for entertaining and refreshing mankind in a reasonable manner; and not for the encouragement of gaming, tippling, drunkenness and other vices...." See address of Dean Frank H. Sommer, Bulletin 131, Item 1, and History and Evolution of Inns and Ordinaries, Bulletin 168, Item 1, copies enclosed.

Nowadays, common usage suggests that any place licensed to sell liquors at retail to be consumed on the premises may be called a tavern.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. CLUB LICENSES - BONA FIDE GUESTS - UNDER THE TRADITIONS OF THE SEA A VISITING YACHTSMAN FLYING THE BURGEE OF ANOTHER CLUB IS A BONA FIDE GUEST IF DULY CREDENTIALED BY HIS OWN CLUB

Dear Sir:

We would appreciate it very much if you will set us straight on the privileges we enjoy under our club license as to the sale to non-members. I refer to visiting members of other yacht clubs in this section. In yachting circles it is considered that visiting members of other clubs are guests of this club at any time they visit. However, it might so happen that in the event they wish to patronize the bar they might not be accompanied by a member of our club.

Very truly yours,

KEYPORT YACHT CLUB

August 5, 1937

Keyport Yacht Club,
Keyport, N. J.

Gentlemen:

I understand that it is ancient and established yachting tradition for each club to offer the full use of its

facilities to all visiting yachtsmen flying the burgee of another club.

In actual practice, the reciprocal privileges which this carmaraderie of the sea affords are essentially the same as those given visiting members of our national fraternal and benevolent associations. In Re Veterans of Foreign Wars. Bulletin 109, Item 10, I held that a post of Veterans of Foreign Wars holding a club license may properly serve alcoholic beverages to members of another post of the same order, provided such visiting members carried proper credentials of their membership.

Accordingly, I now rule that duly credentialed visiting members of other yacht clubs may properly be considered bona fide guests of the members of your club within the meaning of the Control Act and the State Rules. Despite the fact that they are not actually accompanied at the time of their visit to the club by an individual holding membership in the club, they may purchase and be served alcoholic beverages by the club provided they carry proper credentials of their memberships in their own clubs.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. MINORS - EXPULSION FROM LICENSED PREMISES FOR VIOLATING THE RULES - NOT AGAINST THE LAW TO RUN A HIGH-CLASS PLACE.

My dear Commissioner:

Recently two young couples came into my place on a busy Saturday night. I was doubtful about the age of one of the girls, and upon questioning her learned that she was only 20 years old. I advised her of the law pertaining to minors and requested her to leave, but after persuasion of her friends I allowed her to stay, as she stated that she did not drink alcoholic drinks. Her friends ordered highballs and she was served with plain ginger ale. This night in particular we had an exceptionally large crowd and I instructed one of the waitresses to watch this young lady. A few minutes later one of the young men ordered a whisky "straight," and after being served same and when the waitress' back was turned this was poured in the ginger ale belonging to the minor. I immediately went to the table and ordered this party out of my place.

I employ three waitresses and do a great deal of business and I want you to know that I intend to do the right thing in obeying the law, but I admit that it is quite impossible to watch for minors as herein stated. My business is so big that I do not have to cater to anyone or anybody that is "shady".

Trusting that I have made myself clear and hoping to have your comments on this case, or any suggestions that you may offer will be greatly appreciated.

Respectfully yours,
C. L. Griffin.

August 5, 1937.

Mr. C. L. Griffin,
Bordentown Township, N. J.

My dear Mr. Griffin:

You did exactly right. If you continue your policy of when-in-doubt-don't-serve, you will never be in difficulty. I understand your problem thoroughly and deem that you handled it in the only proper way. If a minor is accompanied by an adult who purchases a drink, you are responsible if it is consumed by the minor. You are accountable for the conduct of your premises, but you are also the Master. With the responsibility goes the right to choose your patrons. It has never been against the law to run a high-class place!

I am enclosing copy of the ruling in Re Plaza Hotel - O'Leary, Bulletin 188, Item 9, which discusses the rights and duties of licensees. Also bulletin 185, Item 5, which sets forth the new legislation concerning misrepresentation of age by minors. These enclosures may be of assistance to you.

Do not hesitate to present your problems to me. A stitch in time saves many breeches.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner

8. LICENSED PREMISES - DESTRUCTION BY FIRE - NOT NECESSARY TO OBTAIN NEW LICENSE ON REBUILDING.

August 5, 1937.

Mr. John Raupp,
Totowa, N. J.

Dear Sir:

I note the licensed premises have been practically destroyed by fire. A license is good solely for the premises mentioned therein, and hence, is restricted to the place for which it is issued. Destruction of the licensed building, however, does not terminate the license. Hence, it would not be necessary for the licensee to obtain a new license if he rebuilds. He could simply resume business on completion of the building and continue under his license until June 30, 1938.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. LICENSES - EFFECT OF DISPOSSESSION OF TENANT - WHEN NEW LICENSE MAY BE ISSUED IN RESPECT TO PREMISES FROM WHICH LICENSEE HAS BEEN OUSTED

August 5, 1937.

Mr. George Argenti,
Tappan, New York.

Dear Sir:

In reply to yours of the 20th ult, wherein you state that you own the building in Northvale and inquire whether another

license can be issued for your premises for the same year after you dispossess a tenant licensee, I am enclosing copy of Re Boettiger, Bulletin #98, Item 11.

In accordance with the ruling therein, the fact that the tenant was dispossessed would not void his license. He might thereafter apply to the municipal authorities for a transfer of his license to a different place of business. However, after he was legally dispossessed, his license for the premises you own would not be effective because he no longer had any interest in said licensed premises. It would be permissible for the municipal issuing authorities to entertain an application from another person for the property you own if it is proven to their satisfaction that the old licensee no longer has any interest in the licensed premises, and that the new applicant has a sufficient interest therein to support his application. This ruling, of course, presupposes that the new applicant is fully qualified to receive a license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. LICENSEES - ADOPTION OF TRADE NAME - PROCEDURE.

Dear Mr. Burnett:

Having the only Retail Distribution License in my city, my store is known as Absecon Liquor Store, but of course I buy everything as is expected under my own name just as my license calls for. There is a small sign above my door and I would like to know if I could have it painted to read Absecon Liquor Store or if I have to have a permit and what same will cost me to be known as such but I will continue to buy under my present license.

Respectfully,

JOHN BERT CHESSMAN

August 5, 1937.

Mr. John Bert Chessman,
Absecon, N. J.

Dear Sir:

I call your attention to "An Act to Regulate Use of Business Names", which provides in effect that no person shall transact business under any assumed name unless such person shall file a certificate in the County Clerk's Office as provided for in said Act. I advise, therefore, that before using the name "Absecon Liquor Store" you consult your own lawyer and have him prepare and file the required certificate.

There is nothing in the Rules Concerning Misleading Trade Names, copy of which is enclosed, which would prevent you from using the trade name "Absecon Liquor Store" if you are legally entitled to use that name by complying with the provisions of the Act cited above.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. CATERERS - A NON-RESIDENT CATERER MAY NOT FURNISH OR SERVE LIQUOR IN NEW JERSEY WITHOUT A LICENSE.

Gentlemen:

Will you kindly advise us the laws governing catering parties in your state where they are served by a corporation from another city.

For example, we cater to outside parties and would appreciate your advising us just what the procedure is when a resident of your state wishes us to serve liquor on his premises on which we furnish both the liquor and the service.

Cordially yours,

E. L. Stemen,
Auditor.

August 5, 1937.

The Sherry-Netherland,
New York City.

Gentlemen: Att: Mr. E. L. Stemen, Auditor.

Your plan is, in substance, a sale of the liquor. No sales of liquor in this State can be made except by licensees. Inasmuch as The Sherry-Netherland corporation is not a New Jersey retail licensee, it could not lawfully furnish or serve any liquor within this State as a caterer. Violation is a misdemeanor and cause for arrest.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. APPELLATE DECISIONS - SPANIER vs. DENVILLE.

ELIZABETH SPANIER,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DENVILLE,) CONCLUSIONS
Respondent.)

. . . . . .

Avidan & Avidan, Esqs., by Alexander Avidan, Esq., Attorney for Appellant

F. C. Henn, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the refusal to renew a plenary retail consumption license for the "Hillview Tavern", Main and Franklin Roads, Route #6, Denville.

Respondent is a body constituted of five members. A vacancy has temporarily reduced the number to four. The vote of these four members on the present application was evenly divided at 2-2, thus resulting in a denial. Because of this dead-lock, no defense of this appeal was authorized and no answer filed on behalf of respondent. The Township Attorney, however, entered a formal appearance at the hearing, to put appellant to its proof, and to protect respondent's interests in general.

The Township Committeemen who voted in favor of the application appeared at the hearing on this appeal. They testified that no protests or objections had been made against the application; that at the meeting of the Township Committee the other two committeemen proposed that this application and another then pending be voted on together in a joint vote, under threat of voting against the present application; that the testifying committeemen refused, and voted in favor of appellant's application because no objection or other reason whatsoever appeared as ground on which to refuse a renewal; that they had voted against the other application (which, somewhat significantly, was for a new and not a renewal license) because public protests had been made against it; that the other two committeemen (in apparent pursuance of their "If you don't vote with me, I won't vote for you" tactics) therefore voted against appellant's application.

Appellant's son testified that one of the committeemen who voted against the present application, had told the witness that he (the committeeman) would vote for the present application if the witness would get one of the other committeemen to vote for the other application.

Although the petition of appeal in plain language apprised the dissenting committeemen that appellant would present the above type of testimony for reversal, those committeemen saw fit to absent themselves from the hearing. The charges against them stand undenied.

Appellant's application for renewal was arbitrarily refused. No reason appears why it should have been denied. It is unfortunate when liquor licenses are granted or withheld by political chicanery.

The action of respondent is therefore reversed. Respondent is directed to issue the renewal license applied for.

Dated: August 6, 1937.

D. FREDERICK BURNETT
Commissioner

13. APPELLATE DECISIONS - APPLEBEE vs. WINSLOW TOWNSHIP

ELLSWORTH RANDOLPH APPLEBEE,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WINSLOW, CAMDEN COUNTY,) CONCLUSIONS
Respondent.)

. . . . . .

Moe A. Joseph, Esq., Attorney for Appellant
No appearance for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located on the east side of Turnerville Road, one quarter of a mile south of Sicklerville Road, Sicklerville, Township of Winslow.

Respondent is constituted of three members. Their vote on the present application was 2-1 for denial. No answer was filed or appearance entered on behalf of respondent on this appeal.

The Township is approximately 18 miles long and 8 to 10 miles wide, with a population of about 10,000. It is one of the berry-picking localities of the State.

Scattered throughout the Township are small segregated rural communities of the familiar type, containing a collection of residences, some near, some scattered, a few or no stores, etc.

The proposed site is in one of these communities known as Sicklerville, located in the northwestern part of the Township. That community covers about four square miles and has a population given by appellant as about 450 and by the Chairman of the Township Committee as 1000.

The proposed site is set in from Turnerville Road, one of the main traffic arteries in the vicinity. It is a large old-fashioned, 18-room structure, built originally as an inn or hotel. Though at present idle, appellant, having taken the premises on lease, has modernized it and plans to operate it as a hotel. The nearest inn or hotel to these premises is about 10 or 11 miles away.

Apparently the only stores in the community are across the street from the proposed site, one being some 300 feet and the other some 500 feet up the road. Immediately before the farther of these two stores is the local fire-house. Directly across the street from the proposed site is the local post-office. In the immediate vicinity there are very few residences. There are two churches in the community, each about one mile from the proposed site. The local public school is about 3/5's of a mile away.

One tavern is already located in Sicklerville, but on Sicklerville Road, about 3/4's of a mile from appellant's premises. It was testified that this tavern has a poor reputation and that many of the residents of Sicklerville refuse to go there. There is another tavern a short distance outside of Sicklerville and about two miles from appellant's place.

The two Township Committeemen who voted against appellant's application did not appear at the present hearing; nor is any reason suggested why they did not authorize the Township Attorney to defend this appeal.

The Chairman of the Committee, who voted in favor of the application, appeared in appellant's behalf. He testified that the only reason relied upon by the other committeemen for their denial was the fact that two petitions had been filed in protest of the application.

It was testified, however, that the owners of the taverns mentioned above, inspired and circulated those petitions, and that many of the signatures were obtained on the false statement that the present application was to license a colored clubhouse and also that petitions were necessary to enable the respective tavern-keepers to obtain a renewal license. In any event, it appears that the nearest objector is located about 1/5 of a mile from the proposed site. None of the few residents within a radius of 500 feet or more have any objection. In fact, within a radius of 3/5 of a mile, almost all the residents appear to favor the present application. No objectors appeared at the hearing on this appeal or addressed any communication to this Department. Appellant, although he might have remained silent, was forthright in voluntarily revealing the fact of the petitions.

I find, from such evidence as I have before me in this uncontested matter, that the reason upon which respondent relied was not sufficient to deny the present application.

The action of respondent is therefore reversed, and respondent is hereby directed to issue forthwith a license to appellant as applied for.

Dated: August 6, 1937.

D. FREDERICK BURNETT
Commissioner

14. APPELLATE DECISIONS - AMERICAN LEGION vs. BEVERLY

AMERICAN LEGION WILLIAM A. CORTRIGHT POST #115, Appellant, -vs- COMMON COUNCIL OF THE CITY OF BEVERLY, Respondent.	ON APPEAL CONCLUSIONS

Isador Worth, Esq., Attorney for Appellant
Powell & Parker, Esqs., by Albert McCay, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the refusal to renew a plenary retail consumption license for premises located at 222 Cooper Street, City of Beverly. Respondent contends, inter alia, that sales have been made to minors on appellant's premises during the last term.

On respondent's behalf, the local Chief of Police testified that there have been general complaints and rumors about minors being served and getting drunk at appellant's premises during the last term; that he himself has witnessed sales there to various minors on April 4, 1937, and on other

occasions; and that he has spoken to the Commander of appellant's post about this practice. He named and described five minors whom he has seen served with drinks and verified that their birthdates respectively were: November 22, 1919; March 26, 1919, November 24, 1916; July 30, 1916; and July 16, 1916. He further testified that three of these minors were recognizable as such from their appearance.

The Commander of appellant's post testified that he was in general charge of the bar and that to his knowledge sales had not been made to any persons under 21. However, admittedly he was not always present at the bar.

Applicants are not entitled to a renewal license as a matter of right. Malone v. Bordentown, Bulletin #129, item #8. Whether a renewal should be granted or not is, like the original issuance of a license, to be decided in the light of the best common interest of the public at large. Improper conduct under a prior license warrants the denial of a renewal license. Schelf v. Weehawken, Bulletin #138, item #10.

Sales to minors under a prior license, even if made innocently, constitute improper conduct of the licensed premises and furnish adequate ground for refusal to renew the license. Malone v. Bordentown, supra; White v. Bordentown, Bulletin #130 item 4; and see Wellens v. Passaic, Bulletin #134, item #4; Holland v. Bloomfield, Bulletin #142, item #7. Innocent sales to minors are sufficient to justify revocation of the license. Re Rieck, Bulletin #78, item #8; Re O'Brien, Bulletin #93, item #5. What is adequate ground for revocation of a license, is also ground for refusal to renew. To be sure, no revocation proceedings or criminal charges were preferred against appellant. This, however, does not preclude respondent from refusing to renew on the ground of improper conduct.

It was testified by appellant's Commander that the "better element" of the municipality like to come to appellant's premises to drink; that appellant sponsors youth movements; and that appellant's post is financially dependent on the existence of its public bar. I cannot say that this indicates a public necessity and convenience sufficient to over-ride respondent's otherwise reasonable judgment that, because of the sales to minors, the license should not be renewed.

Appellant also points out that respondent is constituted of nine members; that five of the members, a bare quorum, were present at the denial of appellant's application; and that but three of the members, a bare majority of that quorum, voted against the application. The fact that the denial was thus the result of but one-third of respondent's constituency, does not alter its standing as a valid determination.

Respondent, in considering the application to renew, has found that appellant was guilty of making sales to minors under a prior license. There is no contention that appellant did not have a fair opportunity to be heard at the hearing below on this application. Since substantial evidence exists in support of respondent's determination on this point, I must sustain it. See Ford v. Knowlton, Bulletin #84, item #5; Malone v. Bordentown, supra.

Hence, I cannot say that respondent's refusal to renew appellant's license was arbitrary or unlawful.

In view of the foregoing conclusions, it is unnecessary to consider the other grounds assigned by respondent in justification of its refusal to renew.

The action of Respondent is affirmed.

On July 1, 1937, an order was entered under Section 19 of the Control Act, extending appellant's old license pending determination of this appeal. That order is hereby vacated, effective August 10, 1937, midnight, at which time appellant shall cease doing business thereunder. In accordance with the terms of said order, respondent shall retain, in addition to the statutory investigation fee, the prorated portion of the license fee for the period during which the extension of the old license remained in effect.

Dated: August 6, 1937.

D. FREDERICK BURNETT
Commissioner

15. LABELING REGULATIONS - SEPARATE REGULATIONS HERETOFORE PROMULGATED ADOPTING FEDERAL ALCOHOL ADMINISTRATION'S LABELING REGULATIONS PERTAINING TO DISTILLED SPIRITS, WINES AND MALT BEVERAGES ARE HEREWITH REVISED INTO SINGLE REGULATION.

The regulations adopted by the Federal Alcohol Administration with respect to the labeling of distilled spirits, wines and malt beverages were adopted for the State of New Jersey by three separate regulations (Bulletin #137, Item 9, Bulletin #149, Item 7, and Bulletin #151, Item 3), which are herewith revised into the following regulation, effective immediately:

> "Regulations heretofore announced by the Federal Alcohol Administration relating to labeling of distilled spirits, wines and malt beverages packaged for shipment in interstate or foreign commerce, are made a part hereof as though fully set forth and are hereby promulgated with respect to the State of New Jersey; the aforesaid regulations shall apply to distilled spirits, wines and malt beverages packaged purely for intrastate shipment within New Jersey to the same extent as though intended for interstate or foreign shipment."

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner

Dated: May 26, 1937.

16. SIGNS - THE RULES CONCERNING EXTERIOR SIGNS DO NOT APPLY TO WHOLESALERS - HEREIN OF MODERATION IN THE USE OF PRIVILEGES

Dear Commissioner:

A State Beverage Distributor desires to place a neon sign on the outside of his building, the description of which is as follows:

Height - 3 ft. - Width - 5 ft.
Sign reads:-

United Beer Distributors, Inc.

O L D E N G L A N D

A L E - L A G E R

Will you please notify me if such a sign complies with the ABC rules and regulations, in view of the fact that this sign is completed and they have deferred placing same on the building until such time as we receive your reply.

Very truly yours,

Glickenhaus & Glickenhaus

August 6, 1937.

Glickenhaus and Glickenhaus, Esqs.,
Newark, N. J.

Gentlemen:

Rule 2 of Rules Governing Signs and Other Advertising Matter prohibits retail licensees from having signs on the exterior of their licensed premises bearing the name, brand, or trademark of any manufacturer or wholesaler of any alcoholic beverage.

Section 10 of the Alcoholic Beverage Control Act designates Class B licensees as wholesalers. State Beverage Distributors are classified under that heading. Hence, the State rule above would not affect them. Then again, the real vice at which the rule is aimed is the tie-up of the saloonkeeper with the brewery for the furnishing of elaborate signs advertising the latter's products. See Re Bergner, Bulletin #75, Item 10, copy enclosed.

A sign as outlined in your letter would not violate the above rule, and would be permissible on the premises conducted by a State Beverage Distributor.

Even though you have the privilege be moderate and conservative. Don't do anything which would compel me to tighten up the rule.

Very truly yours,

Frederick Burnett

Commissioner