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

BULLETIN 338. AUGUST 1, 1939.

1. ALCOHOL - SALES TO CONSUMERS - SPECIAL PERMITS - NOTICE.

July 28, 1939.

P.L. 1939, Chapter 173, Bulletin 333, Item 4, prohibits both possession and sale of alcohol by the holders of retail liquor licenses, and also the sale of alcohol at retail by all other persons, except pursuant to special permit.

Special permits have been prepared issuable to holders of retail liquor licenses and owners of registered pharmacies.

The objective of the legislation is to wipe out illicit activity in the home manufacture and rectification of alcoholic beverages. Hence, the permits will authorize the sale of alcohol for non-beverage purposes ONLY. Thus, the sale of such alcohol, so far as liquor licensees are concerned, constitutes other mercantile business. Therefore, no permits are issuable to holders of plenary or seasonal retail consumption licenses, or to holders of plenary retail distribution licenses in municipalities which prohibit, by ordinance, the conduct of other mercantile business by such licensees.

The permit fee is $10.00 per annum, without proration. The term of the permit is from July 1st each year, to the following June 30th.

Each permit will be issued subject to the following conditions:

"1. Alcohol may be sold for non-beverage purposes only.

"2. Alcohol may be possessed and sold only in containers of not less than four ounces nor more than thirty-two ounces.

"3. Not less than four ounces nor more than thirty-two ounces of alcohol may be sold to any one person in any consecutive period of twenty-four hours.

"4. Each container shall have affixed thereto a printed label, in type not smaller than 6-point, bearing the brand name, type of alcohol, proof, net contents in ounces, name and address of bottler, and a cautionary statement, reading:

'This is non-beverage alcohol. Its use by any person without proper license or permit for the manufacture of alcoholic beverages, by the addition of flavoring extract or otherwise, is in violation of R.S. 33:1-2 and subjects the violator to a maximum penalty of imprisonment for three years and a fine of $1,000.'

The cautionary statement may appear on a separate label. Nothing on any label shall, directly or indirectly, represent the contents of the container to be palatable, potable, or otherwise suitable for internal consumption or beverage use.

"5. Permittee shall not sell any alcohol to consumers except in the original sealed container received from the manufacturer, bottler or wholesaler.

"6. Permittee shall not sell or deliver, nor allow, permit or suffer the sale or delivery of alcohol, directly or indirectly, to any person actually or apparently intoxicated, or to any person under the age of twenty-one years.

"7. Permittee shall demand and receive from the purchaser, with respect to each purchase of alcohol, a certificate signed by the purchaser that the alcohol is intended for non-beverage use. Said certificates shall be consecutively numbered and executed in triplicate in form prescribed by the State Tax Commissioner. One copy of each executed certificate shall be retained by permittee in a permanent binding and kept at all times at the above premises. The original and one copy of each executed certificate received during each month shall be transmitted to the State Tax Commissioner not later than fifteen days after the last day of that month.

"8. Permittee shall maintain a register of his purchases of alcohol in a permanently bound book which shall be kept at all times at the above premises. Said register shall contain, with respect to each purchase of alcohol, the name and address of the manufacturer, bottler, or wholesaler from whom the alcohol is purchased, the name and address of the bottler, the brand name, the type of alcohol, the proof, the quantity purchased in wine gallons, the number of containers, the net contents in ounces per container, the strip stamp numbers, the date of purchase, and the date of delivery. Permittee shall report in duplicate to the State Tax Commissioner, on forms to be supplied by him, not later than fifteen days after the last day of each month during the term of this permit, such information with respect to his purchases of alcohol, as said Commissioner shall from time to time require."

By the acceptance of the permit, the permittee will confer upon the State Commissioner of Alcoholic Beverage Control, and the State Tax Commissioner, and their and each of their investigators and agents, the authority to investigate at any

time any purchase and any sale of alcohol made hereunder, and further, will consent to the amendment of the conditions of the permit by the State Commissioner of Alcoholic Beverage Control, and the imposition of such additional conditions as said Commissioner may from time to time deem necessary or desirable.

The permit will be subject to cancellation by the State Commissioner of Alcoholic Beverage Control in his absolute discretion.

Licensees who have alcohol in stock but are ineligible for the permit, or who wish to discontinue the sale of alcohol, or who possess alcohol in non-conforming containers, may return said alcohol to the manufacturer or wholesaler from whom it was purchased, without special permit, provided the return is effected prior to September 1, 1939. Otherwise a special disposal permit will have to be obtained, the expense of which can be obviated by effecting return as aforesaid within time. No disposition of alcohol, other than by such return, may be made except pursuant to permit to sell at retail, or pursuant to disposal permit.

Application forms both for permits to possess and sell and also for disposal permits are available on request.

William H. Osborne, Jr., Acting Director of the Beverage Tax Division of the State Tax Department, has volunteered to mail without request to each holder of a Special Permit to possess and sell alcohol a copy of the prescribed form of certificate of non-beverage use (above referred to in condition 7) as soon as the issuance of such permit is certified to him by this Department.

No special form of register is required under condition 8 provided that it complies with the requisites therein set forth.

D. FREDERICK BURNETT,
Commissioner.

2. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of R.S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938)	:	CONCLUSIONS AND ORDER
Case No. 61.	:	

Joseph L. Kaplan, Esq., Attorney for the Petitioner.

BY THE COMMISSIONER:

In 1912 petitioner, then fifteen years old, was convicted of "breaking and entering;" in 1914 he was convicted on a similar charge; in 1925 he was convicted of "breaking, entering, and larceny." In all three instances he was placed on probation.

In 1929 he was convicted of disorderly conduct (resulting from argument with a police officer over parking of his car) and given a suspended sentence.

Petitioner testified that, since his conviction in 1925, his home has been in Newark except for a period of about a year and

a half (apparently between 1934 and 1936) when it was in East Orange; that he was in the retail produce business until 1933; that, unaware of any disqualification by reason of any of his convictions, he then managed a tavern in Newark for a year; that, thereafter, he operated a bar-and-restaurant in Florida during the "winter" seasons (November to April) until 1937; that, during the "winter" season of 1937-8, he worked as manager for Kleiger Fruit Shippers at Miami Beach; that, during the following summer, he worked with his brother in the junk business in Irvington; that, during the "winter" season of 1938-9, he was employed as a mutuel clerk at a Florida race-track. He further testified that, although having thus gone down to Florida during the "winter" season for the last five years, he always returned to New Jersey after the season.

Petitioner produced three character witnesses on his behalf - a proprietor of two well-known restaurants in Newark, who has known him since 1929; a second-hand automobile dealer in Newark, who has known him for ten years; and a haberdasher in Newark, previously a radio singer, who has known him "ever since I can remember."

These witnesses testified that petitioner has been leading an honest and law-abiding life since 1929 and has a good reputation.

Petitioner's fingerprint record and report from the Newark Police Department confirm that he has been in no trouble since 1929.

Normally, I would conclude that petitioner has been leading an honest and law-abiding life for at least five years last past warranting removal of any disqualification resulting from conviction of a crime involving moral turpitude. What gives me slight pause is that, while apparently disqualified, he managed a tavern in Newark for a year, back in 1934. Petitioner swears that he was unaware of any such disqualification. Ignorance of the law would not excuse him if this were a criminal or a disciplinary proceeding. But knowledge of the law is not a necessary ingredient of the good faith essential in these rehabilitation proceedings. I believe him and, because of his good record since 1929, will lift his present disqualification.

It is, therefore, on this 25th day of July, 1939,

ORDERED that petitioner's disqualification from holding a license, or being employed by a licensee, because of the convictions referred to herein, be and the same is hereby removed, in accordance with R.S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938).

D. FREDERICK BURNETT,
Commissioner.

3. STEAMER BASKETS - GROCERS' ARTISTRY - PACKING A PUNCH WITH THE FRUIT.

Dear Commissioner Burnett:

Clients of mine are the owners of a large grocery business, specializing in packing fancy fruit and steamer baskets. At various times throughout the year, and more especially during the holiday seasons, they are asked to include in the baskets bottles of liquor. This liquor is bought by their customers and brought to their store, sometimes in quantities as large as seven or eight cases. The liquor remains in their store until it is packed in the baskets which the customer calls for. My clients do not deliver nor transport any of these baskets or packages containing liquor.

My clients do not have a liquor license. We would like to know whether or not we are permitted to continue this practice without violating the law.

Yours very truly,
Harold R. Sandford

July 31, 1939

Harold R. Sandford, Esq.,
Paterson, N. J.

My dear Mr. Sandford:

Technically, there is nothing in the Alcoholic Beverage Law which would prohibit the grocer from packing the bottles of liquor in the steamer baskets, providing he does not transport the basket or package containing the liquor.

I cordially recommend, however, that your client desist from the practice because it gives the appearance of unlicensed dabbling in liquor, and may lead to unpleasantness if the local police or my men cause his arrest because of such appearances.

I note that at times he has seven or eight cases on hand. His shoppe must look like a miniature warehouse. There's a license for that!

Those who play with fire-water without a license are apt to get their fingers burned!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - KASEN v. ORANGE.

DANIEL G. KASEN, Trustee in Bankruptcy for Walter M. Holderness,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE,

Respondent

ON APPEAL
CONCLUSIONS

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LIQUOR STORES, INC.,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ORANGE,

Respondent

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Daniel G. Kasen, Esq. and Hodes & Hodes, Esqs., by William Hodes, Esq., Attorneys for Appellant, Daniel G. Kasen, Trustee.
Charles Robinson, Esq., Attorney for Appellant, Liquor Stores, Inc.
Edmond J. Dwyer, Esq. by Joseph F. Zeller, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The above appeals were heard together and, since the entire matter may be disposed of herein, both cases will be decided together.

Appellant, Daniel G. Kasen, Trustee, appeals from denial of his request for an extension of Plenary Retail Consumption License No. C-74, heretofore issued to the bankrupt, Walter M. Holderness, and appellant, Liquor Stores, Inc. appeals from denial of transfer of said license from Daniel G. Kasen, Trustee, to itself. The premises in question are located at 10-10A-12 North Center Street, Orange.

License No. C-74 for the fiscal year just closed was issued to Walter M. Holderness, who was adjudged a bankrupt in the latter part of January 1939. Daniel G. Kasen was appointed receiver in bankruptcy for Walter M. Holderness on January 26, 1939 and later became trustee in bankruptcy. On April 5, 1939 appellant, Liquor Stores, Inc., a newly organized corporation, filed an application for transfer of the Holderness license to itself, which application bore the consent of Daniel G. Kasen, trustee in bankruptcy of said Walter M. Holderness. On April 21, 1939 the trustee in bankruptcy requested respondent to extend License No. C-74 to him. Both the request for extension and the application for transfer were denied by respondent on May 5, 1939.

The minutes of respondent's meeting held on May 5, 1939 disclose that the request for extension and the application for transfer were denied:

> "because this license has been inoperative for the past several months without demand to reopen and, in view of the local ordinance limiting the number of taverns to fifty, whereas actually seventy-eight are in operation, the application should be denied. Further, it is the opinion of the Board that the financial failure of the licensee is evidence that there are too many taverns operating in the City and is one of the elements considered by the Board in its action."

At the outset, the question arises as to my jurisdiction to entertain the appeal of Daniel G. Kasen, trustee in bankruptcy. R. S. 33:1-26 provides that:

> "In case of *** bankruptcy *** of the licensee, *** the Commissioner or other issuing authority may, in his or its discretion, extend said license for a limited time not exceeding its term to the *** trustee ***."

The same section provides for an appeal from refusal to grant a transfer to a different place or person, and R. S. 33:1-22 provides for an appeal after a license has been denied. There is, however, no provision in Title 33, Ch. 1, for an appeal by a trustee from the refusal of an issuing authority to extend the license to him. I conclude, therefore, that, however desirable on general principles, that there should be some right of review via appeal, I have no jurisdiction to entertain such an appeal. The appeal of the Trustee must, therefore, be dismissed.

A liquor license, until extended to the trustee, belongs to the bankrupt. Re Ewing, Bulletin 312, Item 13. The very section that confers discretionary power to extend the license to the trustee, R. S. 33:1-26, immediately thereafter declares:

> "Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this chapter."

Since the license has not been so extended, the consent to the transfer signed by the trustee in bankruptcy passed nothing to Liquor Stores, Inc. and, hence, having neither legal nor equitable interest in the license, its appeal must also be dismissed.

The action of respondent in each of the above cases is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 30, 1939.

5. MINORS - EMPLOYMENT ON LICENSED PREMISES - PARKING CARS.

July 31, 1939

Mr. Walter Cowan,
West Point Pleasant, N. J.

Dear Mr. Cowan:

The situation, I understand, is that your 14 year old son parks cars on a side street near the Idle Hour, a licensed liquor establishment, and also on the premises of this licensed corporation.

In so far as his parking cars on the side street or anywhere off the licensed premises is concerned, this Department has no objection thereto.

The Alcoholic Beverage Law provides that no person under 21 years of age shall be employed by or connected in any business capacity whatsoever with the licensee except pursuant to a special permit issued by this Department, and, even then, only under condition that such employee does not serve, sell or solicit the sale of alcoholic beverages. In addition, I have heretofore ruled that no minor under the age of 15 years may be employed in any manner whatsoever by a licensee. See Bulletin 169, Item 15. It may be true, in the instant case, that your son is not paid by the licensee for parking cars on the licensed premises and that his only compensation is the tips given to him by customers. This service which is rendered by your son would, however, constitute employment on the licensed premises within the contemplation of the Alcoholic Beverage Law.

Hence, since he is under 15 years of age, he cannot park cars or perform any other duties on the licensed premises irrespective of how he is compensated.

I'm sorry to have to stop the kid from picking up clean money and certainly admire his desire to paddle his own canoe. If I made any exceptions, I would in his case. But I don't because exceptions merely fritter down and eventually destroy the salutary rule itself. That's why I treat all alike. Give my respects to your boy and tell him next year when he is 15 that I'll be glad to give him a permit. Meanwhile he can park cars to his heart's content on the side streets.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - HOSTESSES - NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against

FRANK J. AGOSTINO,
T/a Two Towers,
349 Halsey Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-761, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

ORDER

Julius Kwalick, Esq., Attorney for the Licensee.
Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

It appearing that, on February 17, 1939, charges were served on the licensee alleging that, on February 4, 1939 and divers days prior thereto, he employed as hostesses certain females named Jeannine _____, Betty _____, and Helena _____, and permitted them to act in a similar capacity on his licensed premises, contrary to a resolution of the Municipal Board of Alcoholic Beverage Control of the City of Newark; and

It further appearing that, on February 23, 1939, a hearing was scheduled to be held at which Betty _____ appeared as a witness under a subpoena duly served upon her, at which time an adjournment was granted because of the illness of the attorney for the licensee, and the witness Betty _____ instructed to appear without further subpoena at the adjourned hearing; and

It further appearing that, at the adjourned hearing scheduled to be held on March 13, 1939, none of the witnesses appeared, although there was testimony that a subpoena had been served upon Helena _____, whereupon said hearing was further adjourned to April 17, 1939; and

It further appearing that, between March 14, 1939 and April 17, 1939, efforts were made to serve subpoenas upon the three material witnesses by an agent of this Department and by the Newark Police but that none of said witnesses could be located after a diligent inquiry, and, further, that it is impossible to prove the charges without the testimony of said witnesses; and

It further appearing that neither the Newark Police nor any of the investigators of this Department have any personal knowledge of the facts,

It is, on this 30th day of July, 1939,

ORDERED that the above case be nolle prossed.

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - DRINKS TO MINORS AND IMMORAL ACTIVITIES - 60 DAYS.

In the Matter of Disciplinary Proceedings against ALBERT FINKEL, 457 High Street, Newark, New Jersey, Holder of Plenary Retail Consumption License No. C-926, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark for the fiscal year expiring June 30, 1939, and presently operating under Special Permit Al No. 47 issued by the Commissioner of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

James L. McKenna, Esq., Attorney for Defendant-Licensee.
Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant is charged with:

(1) & (2) Selling and serving drinks to three minors on January 3, 1939, contrary to R. S. 33:1-77 and Rule 1 of State Regulations No. 20;

(3) Permitting lewdness and immoral activities at his licensed premises on January 3, 1939, contrary to Rule 5 of State Regulations No. 20;

(4) Knowingly employing a minor on January 3, 1939 and divers days prior thereto, contrary to R. S. 33:1-26 and Rule 1 of State Regulations No. 11; and

(5) Selling liquor at his licensed premises after 3:00 A.M. on January 3, 1939, contrary to Newark Ordinance No. 3930.

The defendant operates a barroom located in the front of the Biltmore Hotel. The room, although having its own separate street entrance, also communicates with the hotel lobby.

As to (1) and (2): It appears from the testimony of two young men and two girls that they, as a party of unmarried merrymakers, after having been drinking at other places (see Re Stolz, Bulletin 302, Item 1; Re Bachman, Bulletin 302, Item 2), entered the defendant's barroom between 2:00 and 2:20 A.M. on Tuesday, January 3, 1939; that the ages of the youths were then 24 and 20, and of the girls 18 and 17; that they remained in the defendant's barroom until 3:00 A.M. and there had two rounds of drinks (all taking beer except one of the girls who, instead, ordered a Tom Collins on each round, although drinking only one); that these drinks were served by the bartender.

Defendant testified that he was not on the premises at the time. His nephew, while stating that he was acting as bartender at such time, denied having sold any liquor to the two couples.

I see no reason for believing that these youths and girls have, without any apparent reason, merely concocted a story, realistic and complete in all details, out of thin air.

I find the defendant guilty on charges (1) and (2).

As to (3): When the two young couples left the barroom at 3:00 A.M., they went directly into the hotel lobby. There the twenty-four year old youth approached the night desk clerk, registered each of the two couples as man and wife, and engaged two rooms for them for the night. An elevator boy brought them to their rooms on the second floor and, apparently on order of the twenty-four year old youth, soon delivered a pint bottle of whiskey to them while they were congregated in one of the rooms. After drinks were indulged in, each couple retired for the night to its respective room, where one couple engaged and the other couple tried to engage, in sexual intercourse.

The night desk clerk was subsequently convicted in criminal court of hiring the rooms to the two young couples for immoral purposes in violation of R. S. 2:158-2.

The defendant testified that he is a month-to-month tenant of the bar (and sitting) room and has nothing to do with operation of the hotel; that the desk clerk and the elevator boy are not his employees but only the hotel's. His testimony was confirmed by those persons.

However, the defendant, in his application for the license under which he was operating on January 3, 1939, described the premises to be used in his alcoholic beverage business as "Bar room and sitting room liquor served in entire hotel." He admits that, under his license, he actually served liquor in the hotel at large, although characterizing such occasions as being "very seldom."

A liquor license should not be issued for premises over which the applicant lacks possession and control. It was a mistake to have issued a license to the defendant permitting him to serve liquor (or to conduct any other liquor business) in the hotel at large, since his possession and control extended over only the bar and sitting room. Re Sebold, Bulletin 326, Item 7; Re Fedner & Davis, Bulletin 329, Item 5; Re Handler, Bulletin 334, Item 14. The value and aptness of these rulings are forcibly demonstrated by this case where the licensee, after illegal conduct by his customers has been discovered in the hotel, immediately disclaims all responsibility therefor on the protest that he has no control over the hotel or its business.

However, where, as here, a person applies for and is issued, albeit erroneously, a license covering premises over part of which he lacks possession and control, and actually exercises the privileges of that license throughout the entire premises, he will be held accountable for all violations which occur there. Having taken the benefit of the license, he must shoulder its burdens.

Hence, the immoral activity which the hotel's night desk clerk obviously permitted (in hiring two rooms at 3:00 A.M. to two

young couples stepping out of the barroom without bag or baggage, and for which he was later convicted) is chargeable to the defendant.

I therefore find him guilty on charge (3).

As to (4): It is alleged by the Department that the elevator boy was a 19-year old minor knowingly employed by the defendant on the licensed premises. However, even assuming him to have been such a minor and that the defendant is chargeable with his employment by the hotel, nevertheless there is no indication that the defendant knew of his minority and consequent disqualification.

Since the statute (R. S. 33:1-26) requires knowledge in such instance in order to constitute a violation, charge (4) is dismissed.

As to (5): The basis of this charge is that, although the defendant's barroom was apparently closed by 3:00 A.M. (the local curfew hour), nevertheless the elevator boy, as already described, sold a pint bottle of whiskey in the hotel after that hour.

However, so far as appears, the elevator boy sold the whiskey entirely on his own and apart from the defendant's business, and, for such conduct, was later convicted in criminal court of selling liquor without a license in violation of the Alcoholic Beverage Control Law. While ordinarily a licensee is strictly responsible for any sale of liquor by an employee on the licensed premises after the permissible hour, where, as here, it is made by one who is not working for him and occurs apart from the licensee's business and after he has closed, the licensee, in fairness, should not be held accountable therefor.

Charge (5) is dismissed.

As to penalty: For sale and service of liquor to the three minors of 17, 18 and 20 (and who thereafter engaged in immoral activity in the hotel), the defendant's license will be suspended for 30 days. For the occurrence of such immoral activity in the hotel, and for which the defendant must be held accountable, his license will be suspended for an additional 30 days, making a total of 60 days. Were he more directly concerned or chargeable with that immoral conduct, his license would be revoked outright.

This proceeding, though instituted during the last licensing term (which expired June 30, 1939), does not abate but remains effective against the special permit under which the defendant is presently operating pending determination by the Municipal Board of Alcoholic Beverage Control of the City of Newark on his application for renewal of his license for the current term, and also remains effective against that application for renewal. See Re Laurence Brook Country Club, Bulletin 335, Item 6.

Accordingly, it is, on this 30th day of July, 1939,

ORDERED, that Special Permit Al No. 47, heretofore issued by the Commissioner of Alcoholic Beverage Control to Albert Finkel, be and the same is hereby cancelled effective August 3, 1939 at midnight (Daylight Saving Time), and that no renewal or other license shall be issued to Albert Finkel or for said premises prior to October 3, 1939.

D. FREDERICK BURNETT,
Commissioner.

8. TRANSFER - NECESSITY OF ADJUDICATION BY LICENSE ISSUING AUTHORITY BEFORE THE LICENSE LAPSES - HEREIN OF ADJOURNMENTS AND THE REQUIREMENTS OF SUCH ADJUDICATION.

Dear Mr. Burnett:

The holder of License C-30 in the Township of North Bergen for the year just past was the Woodcliff Casino, Inc., located at 908 Broadway. This licensee was a corporation which, from time to time, found itself in difficulty in connection with liquor law violations.

On June 15, 1939, this license was suspended, as a result of certain violations, for a period of thirty days. The judgment of the Board was that the license be suspended for the balance of the term, and that no renewal thereof could take effect before July 15, 1939.

During such suspension, on June 21, 1939, one Robert Liffers made an application for the transfer of the license from the Woodcliff Casino, Inc. to himself, which application was in due and regular form. The application for transfer was duly advertised on June 22nd and June 29th, 1939. At the same time, the said Robert Liffers made an application for renewal of the license for the year 1939-1940. This application was likewise in proper form and the license fee duly tendered and paid. Objection was made to the issuance of the transfer and renewal of said license by Cyril McCauley, attorney for the Husex Beverage Company. As a result, the local Board of Alcoholic Beverage Control met on Friday, June 30, 1939 to consider the said objections. After testimony had been taken, motion was made, seconded and carried that the hearing be adjourned and decision postponed for two weeks.

On July 14, 1939, there was a further hearing and the Board was about to announce the decision, when it was suggested by the Clerk of the Board that some intimation had come from your department that the license for the years 1938-1939 having expired, any decision we might make would be moot, and that we had lost jurisdiction in the matter.

Under the circumstances, I wish to submit the following points in favor of the jurisdiction of the Board:

1. I might say, in the very first place, that there is no reason as far as the transferee, Robert Liffers, is concerned, that the transfer and renewal should not be granted. About the only problem as far as the Board is concerned is that arising out of the reputation of the place. Thus, the Commissioner, in Mulligan v. Lyndhurst, Bulletin 146, Item 6, says:

> "The reputation of the premises sought to be licensed is a proper factor to be considered by the issuing authority in determining whether to issue a license. Zito v. Newark, Bulletin 69, Item 14; MacGrath v. Haddon, Bulletin 44, Item 9; Alexander v. Trenton, Bulletin 37, Item 13; Lalliker v. New Milford, Bulletin 141, Item 8."

2. The applications for the transfer and renewal were both timely.

3. Since the transferee made an application for renewal for the then coming year, the question is not moot, within the

meaning of those cases which hold that jurisdiction may be lost by lapse of time, where the relief sought becomes futile, unless it be a matter of public interest. Quite obviously, the approval of the transfer, in view of the application for renewal, would affect existing privileges. Besides, under our ordinance, application for a renewal could be filed at any time, "not more than fifteen days after the expiration date of the old license."

4. Lastly, and most important, since the local Alcoholic Beverage Control Board sits in a quasi-judicial capacity, and was solely responsible for the failure to act, the situation is controlled by the case of Mitchell v. Overman, 103 U.S. 62. In that case, the complainant had died subsequent to hearing and before decree. As the decree was entered as of the term to which the hearing was held, it was held that such decree cannot be impeached by reason of his death. The Court promulgated this rule:

> "The adjudged cases are very numerous in which have been considered the circumstances under which courts may properly enter a judgment or a decree as of a date anterior to that on which it was in fact rendered. It is unnecessary to present an analysis of them, some of which are cited in a note to this opinion. We content ourselves with saying that the rule established by the general concurrence of the American and English Courts is, that where the delay in rendering a judgment or a decree arises from the act of the court, that is, where the delay has been caused either for its convenience, or by the multiplicity or press of business, either the intricacy of the questions involved, or of any other cause not attributable to the laches of the parties, the judgment or the decree may be entered retrospectively, as of a time when it should or might have been entered up. In such cases, upon the maxim actus curiae neminem gravabit,-- which has been well said to be founded in right and good sense, and to afford a safe and certain guide for the administration of justice, -- it is the duty of the court to see that the parties shall not suffer by the delay. A nunc pro tunc order should be granted or refused, as justice may require in view of the circumstances of the particular case. These principles control the present case. Stutzman was alive when it was argued and submitted. He was entitled at that time, or at the term of submission, to claim its final disposition. A decree was not then entered because the case, after argument, was taken under advisement. The delay was altogether the act of the court. Its duty was to order a decree nunc pro tunc, so as to avoid entering an erroneous decree."

Therefore, is my conclusion that we have jurisdiction correct?

Respectfully yours,
Nicholas S. Schloeder,
Corporation Counsel,
North Bergen

July 31, 1939

Nicholas S. Schloeder, Esq.,
Corporation Counsel, North Bergen,
Union City, N. J.

My dear Mr. Schloeder:

Generally speaking, unless the application for transfer is filed, the fee paid, and the matter adjudicated by the municipal license issuing authority before the expiration of the license, the license cannot be transferred. The reason is that if the license is allowed to lapse without such adjudication, there is nothing left to transfer.

The application for transfer in the instant case, having been filed on June 21st, was timely. The Board acted upon the application, on June 30th, by taking testimony on the objections, thereafter laying the matter over for two weeks for further hearing and decision. I have no reason to question the necessity for or correctness of this adjournment. Adjournment for good cause is undoubtedly wholly proper.

I therefore rule that the action taken by the Board was sufficient to carry over into the new year and preserve the application, and that the Board still has jurisdiction to pass upon the application and transfer the license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. CONSUMPTION LICENSEES - OTHER MERCANTILE BUSINESS - FRUIT CONCENTRATE IN CRYSTAL FORM IS NOT AN ACCESSORY BEVERAGE AND MAY NOT BE SOLD BY SUCH LICENSEES.

July 31, 1939

General Fruit Products Company,
Point Pleasant, N. J.

Gentlemen:

I have yours of July 21st, in reply to mine of the 18th, and understand that your product, "Cramor's Lem-in Crystals", is a lemon concentrate in crystal form which, when mixed with water, produces a fruit juice.

The holders of plenary retail consumption licenses, as I wrote you on the 18th, are prohibited by the statute from conducting on the licensed premises any mercantile business except the sale of alcoholic beverages, cigars and cigarettes as an accommodation to patrons and non-alcoholic accessory beverages. The license is issuable only to taverns, hotels and restaurants and not for any premises on which any other mercantile business is carried on. R. S. 33:1-12.

You may, so far as the foregoing is concerned, sell your product to taverns for use in the tavern. Taverns, however, may not resell it. I do not see that it is within either of the exceptions afforded by the statute. It appears to be a concentrate in crystal form. It is not a beverage at all.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. RETAIL LICENSES - APPLICATIONS - OBJECTIONS IF RECEIVED BEFORE ISSUANCE OF LICENSE IS AUTHORIZED, ARE TIMELY AND MUST BE HEARD NOTWITHSTANDING THE LENGTH OF TIME THAT HAS ELAPSED AFTER SECOND PUBLICATION OF NOTICE.

Dear Mr. Burnett:

Application was made to the Township Committee of East Windsor for a Plenary Retail Consumption License, fee paid $250.00, advertised in the local paper (Hightstown Gazette) on June 29, 1939 and July 6, 1939. Applicant was given to understand that the license would be granted and the Committee was to meet and grant same on July 25, 1939.

On Sunday, July 23, 1939, Clerk received a petition of eight (8) signatures, protesting the granting of this license, four of whom are not property owners.

The Committee wishes to know, did this petition arrive too late and would they have been within the law in granting this license July 25, 1939?

Very respectfully yours,
A. G. Conover,
Clerk of East Windsor Township.

July 31, 1939

A. G. Conover,
Clerk of East Windsor Township,
Hightstown, N. J.

My dear Mr. Conover:

I have yours of July 25th, regarding the application for plenary retail consumption license presently pending before the Township Committee.

The notice having been advertised on June 29th and July 6th, it does seem that the objections you received on July 23rd were somewhat delayed. It would not do, however, to disregard them. It may very well be that the application did not come to the objectors' attention through the notice, but from some other source. If the license had already been issued, the Township Committee would have no jurisdiction to reconsider it. In such case, if something wrong subsequently turned up, your recourse would be by disciplinary proceedings or by appeal. But as the issuance of the license has not yet been authorized, the Township Committee must hear the objections on the merits. It may be prejudicial to the applicant and it may not. That, of course, depends on what the objectors offer. Every opportunity must be afforded and every reasonable step taken to assure that the applicant is a fit person and that the premises are suitable.

It is not necessary that objectors be property owners to have their objections considered.

The objections, although delayed, were timely and should be heard.

Very truly yours,
Frederick Burnett
Commissioner.