STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 34. June 8, 1934.

1. APPELLATE DECISIONS - APPLE VS. TRENTON

JOHN E. APPLE,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,

Respondent.

ON APPEAL

CONCLUSIONS

John E. Apple, Pro Se.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. On January 15, 1934, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

The character of the appellant and the suitability of the premises sought to be licensed are not questioned. Appellant complied with all of the formal requirements pertaining to his application, and it is not suggested that any false statements were made therein.

Appellant is sixty-two years of age and infirm. The respondent does not urge the physical condition of the appellant as cause for the denial of the application. It asserts, however, that it limited the number of licenses to be issued in the City of Trenton to 250 and that in selecting the applications to be granted within the allotted number, appellant was excluded because of his physical condition.

It may be that in selecting applications to be granted within a properly adopted limitation, the physical condition of the applicant is a proper factor to be considered. That issue need not be determined. The evidence discloses that, although the members of the respondent Board agreed to limit the number of licenses to 250 when they first began their examination of applications, no resolution was adopted to this effect until February 3, 1934. (See <u>Berkelhammer</u> vs. <u>Municipal Board of Alcoholic Beverage Control of Trenton</u>. Bulletin #28, Item #5). When the application of appellant was denied on January 15, 1934, there was no official final determination limiting the number of licenses to be issued. The denial of appellant's application, being based exclusively upon

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a limitation not yet in force, was erroneous when made and the subsequent resolution should not be permitted to operate retroactively.

The action of the respondent Board in denying the application of the appellant is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 2, 1934

2. APPELLATE DECISIONS - KOSCHEK VS. TRENTON

MARY KOSCHEK, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Adolph F. Kunca, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license. The application was denied and appeal was duly filed.

At the hearing on the appeal, it was stipulated that the premises sought to be licensed were situated within 200 feet of the Broad Street M. E. Church. Section 76 of the Control Act provides that, except in certain situations therein enumerated, no license shall be issued for the sale of alcoholic beverages within 200 feet of any church.

The appellant failed to establish that she came within any of the exceptions referred to in Section 76. Accordingly, the action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 2, 1934

3. APPELLATE DECISIONS - LEVY VS. TRENTON

LOUIS A. LEVY, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Sidney D. Beck, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent

for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. After the filing of his application and until midnight, February 5, 1934, appellant conducted his business at #148 Lamberton Street in regular course, upon the understanding that the filing of his application and the receipt for the payment of the license fee were equivalent to a temporary license.

Although members of the respondent Board were aware that applicants who held receipts evidencing payment of their license fees were conducting their business, they took no notice thereof and acquiesced in the understanding that the applicants could continue to do business until the expiration of temporary licenses.

Appellant complied with all the formal requirements pertaining to his application. It is not suggested that his application contained any false statements. The character and fitness of the applicant are unquestioned. Testimony was introduced to establish the suitability of the premises sought to be licensed and the change of position of appellant in reliance upon the understanding described above.

The premises sought to be licensed had recently been converted from a dwelling house. Respondent does not urge this fact as cause for the denial of the application. It asserts, however, that it limited the number of licenses to be issued in the City of Trenton to 250 and that in selecting the applications to be granted within the allotted number, appellant was excluded because the premises sought to be licensed had been recently converted from a dwelling house.

It may be that in selecting applications to be granted within a properly adopted limitation, the recent conversion of the premises is a proper factor to be considered. That issue need not be determined. For the reasons stated in Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5, the limitation could not properly be applied to the appellant, and the action of the respondent Board in denying the application of the appellant is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 2, 1934.

4. APPELLATE DECISIONS - CUSH VS. TRENTON

NICHOLAS CUSH, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

David Deitz, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent

for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. On January 15, 1934, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act the jurisdiction of the appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

At the hearing, a member of the respondent Board testified that the character and fitness of the appellant are unquestioned, and there was favorable testimony with respect to the suitability of the premises sought to be licensed. Appellant complied with all of the formal requirements pertaining to his application, and it is not suggested that any false statements were made therein.

Respondent contends that it limited the number of licenses to be issued in the City of Trenton to 250 and that appellant's application was properly denied in view of this limitation. It does appear that when, in December, 1933, the members of the respondent Board began their examination of applications, they agreed to limit the number of licenses to 250, but no resolution was adopted to this effect until February 3, 1934. (See Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5). When the application of appellant was denied, on January 15, 1934, there was no official final determination limiting the number of licenses to be issued. The denial of appellant's application, being based exclusively upon a limitation not yet in force, was erroneous when made and the subsequent resolution should not be permitted to operate retroactively.

The action of the respondent Board in denying the application of the appellant is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 2, 1934

5. MUNICIPAL RESOLUTIONS - APPROVAL - PROCEDURE AND EFFECT

June 2, 1934

Giordano, Golden & Hurley,
211 Broadway,
Long Branch, N. J.

Gentlemen:

I have yours of June 1st. The resolutions you mention have not yet come in. The City Clerk heretofore did submit draft of proposed new resolution, which, by earlier letter of today, I have indicated would receive my approval, subject to certain exceptions, not material here, when adopted. It contained a provision, such as you protest, prohibiting the issuing of licenses within a restricted area adjacent to the beach and boardwalk. In view of the nature of this area and the commendable effort of the municipality to maintain high standards therein, the regulations seemed reasonable and fair. Hence I indicated that they would receive my approval.

Such conclusion in nowise prejudices your clients. Nothing that is *ex parte* is final. No adjudication should ever be final until both sides have a chance to be heard. It is my duty to pass on municipal ordinances and resolutions so far as they concern the

administration of the liquor laws. There is no machinery provided for a hearing in advance of such approval. Hence, if the resolutions you mention had already been formally approved, the remedy of your clients, if aggrieved, would be to make application for a license and then, on refusal, appeal. That would open up the whole question as to the propriety and validity of the resolutions and the matter would come on for judicial review _de novo_, entirely unprejudiced by the previous _ex parte_ determination.

The granting of a Chancery rule to show cause containing an interim restraint is apposite. Sufficient _prima facie_ grounds must appear to warrant any _ex parte_ restraint, but when the matter does come up for final hearing, the mere fact that the rule was issued is of no weight at all in determining what should be done on the merits.

So much for the normal procedure.

In the instant case, your request for hearing reaches me before the resolutions have been actually submitted. Hence I will grant you a hearing provided, of course, that it is in the presence of the Long Branch Commissioners so that their side of it is presented at the same time.

Therefore suggest that you at once get in touch with Mr. Brazo, City Clerk, agree upon a time mutually convenient for appearance by both sides, and then jointly arrange for a hearing with my Mr. Ash, Inspector-in-Chief in charge of municipal resolutions, whom I will delegate as Hearer in my behalf. The initiative is up to you, and you will be held strictly accountable for diligence and dispatch.

Very truly yours,

D. Frederick Burnett,
Commissioner

6. APPELLATE DECISIONS - KURPIEWSKI VS. TRENTON

FELIX KURPIEWSKI, Appellant -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Leo Rogers, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license. On December 30, 1933, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

One of the reasons assigned by respondent for the denial of the application was that appellant's cousin, rather than appellant, was believed to be the real owner of the business to be conducted at the premises sought to be licensed. At the hearing, appellant testified that he had no desire to conduct any business at the premises sought to be licensed but would be satisfied if the license sought would be granted to his cousin. He further testified that it was contemplated that future applications would be made by his cousin.

Appellant's testimony furnished sufficient justification for the belief of respondent and for the action taken. (See Pilla vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #30, Item #11.)

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 6, 1934.

7. APPELLATE DECISIONS - BARLOW GROCERY COMPANY VS. TRENTON

BARLOW GROCERY COMPANY,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Sidney S. Stark, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail distribution license. The license was sought for the premises located at 10 North Stockton Street where appellant conducts a grocery store. On December 21, 1933, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

On December 16, 1933, respondent resolved "to confine approval of applications for either consumption or distribution licenses to those businesses or establishments which do not fall in any of the following categories: general department stores(including 5 & 10¢ stores); grocery stores; candy stores; drug stores; any kind of business not commonly considered compatible with the sale or distribution of spirituous brewed or fermented liquors."

Section 37 of the Control Act confers power upon local issuing authorities to regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted. The prohibition of licenses to grocery stores is not unreasonable and is within the respondent's power to regulate. See Barber v. Bridgeton, Bulletin #31, Item #1; Bulletin #8, Item #9.

The appellant relies upon the recent amendment to the Control Act which provides that after July 1, 1934, each municipality may enact by ordinance that no distribution license shall be issued to permit the sale of alcoholic beverages upon premises in which other mercantile business is carried on. This amendment does not purport to have any effect upon licenses issued or applications denied, prior to July 1, 1934. It is not retroactive and cannot render invalid the action of the respondent Board which was valid when taken.

The action of the respondent Board is therefore affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 6, 1934.

8. APPELLATE DECISIONS - SHAPIRO VS. TRENTON

BENJAMIN SHAPIRO,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Samuel Leventhal, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On December 7, 1933, the appellant applied to the respondent for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. After the filing of his application and until midnight, February 5, 1934, appellant conducted his business at #106 West Hanover Street, the premises sought to be licensed by his amended application, in regular course, upon the understanding that the filing of his application and the receipt for the payment of the license fee were equivalent to a temporary license.

Although members of the respondent Board were aware that applicants who held receipts evidencing payment of their license fees were conducting their businesses, they took no notice thereof and acquiesced in the understanding that the applicants could continue to do business until the expiration of temporary licenses.

Appellant complied with all the formal requirements pertaining to his application. It is not suggested that his application contained any false statements. The character and fitness of the applicant are unquestioned. Testimony was introduced to establish the suitability of the premises sought to be licensed and the change of position of appellant in reliance upon the understanding described above.

Appellant conducts a candy store at #104 West Hanover

Street and a lunch room at #106 West Hanover Street. There is an open archway connecting both stores in the rear thereof but the appellant communicated with respondent offering to close the archway and keep the two places of business entirely separate and distinct. A similar offer was made at the hearing on the appeal.

The respondent Board contends that the denial of appellant's application was justified under the resolution adopted on February 3, 1934, limiting the number of licenses to be issued in the City of Trenton to 250. For the reasons stated in Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5, this limitation could not properly be applied to the appellant.

Respondent Board further contends that appellant's application was properly denied under a resolution adopted on December 16, 1933, "to confine approval of applications for either consumption or distribution licenses to those businesses or establishments which do not fall in any of the following categories: general department stores (including 5 & 10¢ stores); grocery stores; candy stores; drug stores; any kind of business not commonly considered compatible with the sale or distribution of spirituous brewed or fermented liquors."

The prohibition of licenses to candy stores, being designed to preclude the sale of alcoholic beverages in places where children generally congregate, clearly constitutes a reasonable regulation of the conduct of said business. (See Barber vs. Bridgeton, Bulletin #31, Item #1; Bulletin #8, Item #9.) And it may be that this regulation, upon its adoption, became binding upon prior temporary licensees as well as upon future licensees within the ruling contained in Bulletin #17, Item #3, where the Commissioner said:

> "The Issuing Authority may adopt reasonable regulations with respect to the conduct of the business of licensees at any time and such regulations when adopted are binding upon prior as well as future licensees. See Woolen and Thornton, The Law of Intoxicating Liquors, Sec. 331.
>
> "'It is the peculiar province of the State, either by constitutional or legislative enactment, or through authority delegated to its municipalities, to exercise its police power for the protection of the lives, health, and property of its citizens, as well as to maintain good order and preserve public morals. It is everywhere conceded that the traffic in intoxicating liquor affects all these subjects and that it is, hence, a proper subject for police regulation. It is essential, therefore, that the power to regulate shall be a continuing one, ever present, and available, to be exercised by the State as the emergency may require. Hence, the rule that neither the State nor any of its agents to whom the power has been delegated, can divest themselves of the right to impose such other additional restrictions upon the sale of intoxicating liquors as the maintenance of good order or the preservation of public morals would seem to require.'"

This issue need not, however, be determined in view of the appellant's offers mentioned above.

The action of the respondent Board in denying the applica-

tion of the appellant is reversed but upon the express conditions, which shall be set forth on the face of the license, that the archway between #104 and #106 West Hanover Street is closed and that the two places of business are kept entirely separate and distinct.

D. FREDERICK BURNETT,
Commissioner

Dated: June 6, 1934.

9. APPELLATE DECISIONS - SIMONKO VS. TRENTON.

LOUIS SIMONKO, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS

Rudolph Eisner, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license, paid the full license fee for the period expiring June 30, 1934, and received a receipt therefor, duly executed by the City Clerk of the City of Trenton. On January 15, 1934, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

Appellant complied with all of the formal requirements pertaining to his application. It is not suggested that his application contained any false statements. The character and fitness of the appellant and the suitability of the premises sought to be licensed are not questioned. Appellant conducts a grocery store at 151 Liberty Street, the premises sought to be licensed. He communicated, however, with the respondent offering to discontinue this business and a similar offer was made at the hearing on the appeal.

Respondent contends that it limited the number of licenses to be issued in the City of Trenton to 250 and that appellant's application was properly denied in view of this limitation. It does appear that when, in December, 1933, the members of the respondent Board began their examination of applications, they agreed to limit the number of licenses to 250, but no resolution was adopted to this effect until February 3, 1934. See <u>Berkelhammer v. Municipal Board of Alcoholic Beverage Control of Trenton</u>, Bulletin #28, Item #5. When the application of appellant was denied, on January 15, 1934, there was no official final determination limiting the number of licenses to be issued. The denial of appellant's application, being based exclusively upon a limitation not yet in force, was erroneous when made and the subsequent resolution should not be permitted to operate retroactively.

At the hearing it appeared that since the denial of

his application appellant has accepted the return of the money accompanying his application. This might well constitute an abandonment by appellant of his application. Respondent, however, at the hearing expressly waived this defense and disclaimed any intent to rely thereon.

The action of the respondent Board in denying the application of the appellant is reversed, but in view of the resolution adopted by the respondent Board on December 16, 1933, and set forth in Shapiro v. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #34, Item #8, such reversal is upon the express condition, which shall be set forth upon the face of the license, that the grocery business being conducted on the premises sought to be licensed shall be discontinued prior to the sale of any alcoholic beverages therein. Such reversal is upon the further express condition that the proper prorated portion of the license fee payable to the respondent be paid by appellant prior to the issuance of the license.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 6, 1934.

10. APPELLATE DECISIONS - MARRIOTT VS. TRENTON.

ETHEL P. MARRIOTT,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

William A. Moore, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

In December, 1933, the appellant applied to the respondent for a plenary retail consumption license. On December 21, 1933, the application was denied and an appeal was filed with the former Alcoholic Beverage Appeals Board. Under the recent amendment to the Control Act, the jurisdiction of the Appeals Board was transferred to the Commissioner and the appeal has come on for hearing.

One of the reasons assigned by the respondent Board for the denial of the application was the unfitness of the premises sought to be licensed. A member of the respondent Board testified that the premises were "in a very dilapidated condition, run down, untidy, and not clean." Appellant, in her testimony, admitted that this description was, in the main, accurate.

The denial of the application was entirely justified by the unsuitability of the premises sought to be licensed. Accordingly, it is unnecessary to consider the remaining reasons urged by the respondent in support of its action.

The action of the respondent Board is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 6, 1934.

11. SPECIAL PERMITS - DURATION - NO RAIN CHECKS

May 23, 1934.

My dear Pastor:

Your request for a special permit to sell alcoholic beverages at the Parish Picnic on May 27, 1934, received.

A special permit may only be issued for a definite day, or a specified term. In no case may the rights and privileges extended to the permittee be postponed, or held in abeyance because of weather conditions.

Very truly yours,

D. Frederick Burnett,
Commissioner

12. TRANSPORTATION PERMIT - NECESSITY TO AVOID ARREST AND SEIZURE - EFFECTIVE JUNE 13, 1934.

1. Except as hereinafter stated, all vehicles transporting alcoholic beverages without a transportation permit of the Department of Alcoholic Beverage Control affixed thereto, and all alcoholic beverages transported therein, are subject to seizure and confiscation.

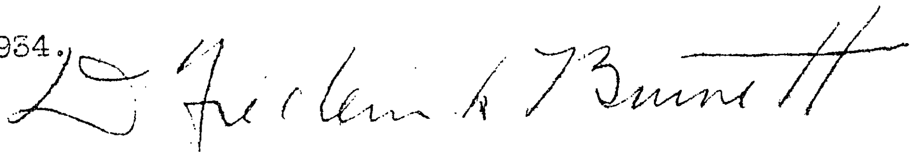
2. All persons transporting alcoholic beverages in a vehicle without such permit affixed thereto, except as hereinafter stated, are engaged in "unlawful alcoholic beverage activity," and will be punished according to law.

Exception 1. A person in good faith may transport without license and without transportation permit for personal consumption in any vehicle, alcoholic beverages to the extent of, not exceeding, one-half barrel (or two cases containing not in excess of twenty-four quarts in all) of beer, ale or porter, and five gallons of wine and twelve quarts of other alcoholic beverages within any consecutive period of twenty-four hours.

Exception 2. A person having a special permit from the Department may transport alcoholic beverages in any vehicle to the extent and subject to the conditions of the permit without any transportation permit.

3. These rules are effective on and after June 13,1934.

Dated: June 8, 1934.



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