

The Commissioner is gone. He who breathed life into the pages of these bulletins will meet with you no more. At Charleston, South Carolina, in the early morning of Monday, April twenty-second, he died after an apparent recovery from a grave illness of a month's duration.

After the dismal era of Prohibition, amid a multitude of problems, he wrote a law, moulded a department into a working whole, taught a staff of men and women his way, and built a nation-wide reputation. He knew that a state department was as good as people thought it was. They believed in him.

These bulletins were in a  
real sense his monument.  
Unit by unit he built it.  
He said often that his pen  
was his sword.

May the future conduct of the department be such that D. FREDERICK BURNETT could hold his head high and be proud of the continuing results of his handiwork.

*E. W. Barrett*  
ACTING COMMISSIONER

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

BULLETIN 398

APRIL 24, 1940.

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

BULLETIN 398

APRIL 24, 1940.

1. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED,  
PADLOCK ORDERED.

In the Matter of the Seizure ) on February 1, 1940 of a still, etc., at 221 North Pennsylvania ) Avenue, in the City of Atlantic ) City, County of Atlantic and ) State of New Jersey. ) ----- )	Case 5671  ON HEARING CONCLUSIONS AND ORDER
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Harry Castelbaum, Esq., Attorney for the Department of  
Alcoholic Beverage Control.

On February 1, 1940, investigators of this Department, in cooperation with Atlantic City Police, seized an unregistered "bootleg" still (in operation), together with a quantity of appurtenant paraphernalia, at 221 North Pennsylvania Avenue, Atlantic City.

At a hearing held to determine whether the seized property should be confiscated and the building padlocked, no one appeared to contest the proceedings.

Thereafter, a firm of attorneys advised that they had been retained by the owner of the premises and requested an opportunity to present such facts as would relieve the owner from the padlock penalty. A supplemental hearing was granted but no one appeared on the day set; instead, a communication was received from counsel stating that they no longer represented the owner and were withdrawing from the case.

Under the Statute, an unregistered still is declared to be unlawful property, R. S. 33:2-2, and, in addition, a padlocking penalty may be imposed upon the premises in or upon which such still was found. R. S. 33:2-5.

It is determined that the seized property constitutes unlawful property. R. S. 33:2-5.

Accordingly, it is ORDERED that the property set forth in Schedule "A" (annexed hereto) be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals, State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

It is further ORDERED that the building erected on premises located at 221 Pennsylvania Avenue, in the City of Atlantic City, County of Atlantic and State of New Jersey, being the premises in which the still was found, shall not be used or

occupied for any purpose whatsoever for a period of six months, commencing the 16th day of May, 1940.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. GARRETT,  
Chief Deputy Commissioner.

Dated: April 16, 1940.

SCHEDULE "A"

1 copper cooker  
1 copper gooseneck  
1 copper dephlegmator  
1 30-gallon wooden cooler with copper coils  
1 copper filter  
1 4-burner Standard gas stove  
1 5-gallon measuring can  
1 10-gallon galvanized receiving tank  
3 metal funnels  
2 5-gallon stone crocks (empty)  
1 gallon of alcoholic beverages  
5 1-pound packages of yeast  
30 pounds of loose rye seed  
9 50-gallon barrels full of rye mash  
miscellaneous pipes, fittings, hose  
and empty pint and quart bottles.

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

April 17, 1940

Re: Case No. 117

On July 29, 1936 respondent was ruled to be disqualified from holding a liquor license or being employed by a liquor licensee in this State by reason of conviction of a crime involving moral turpitude, viz., in Florida in 1930 for "breaking and entering."

However, on March 22, 1938, respondent obtained from the Florida Board of Pardons a "full and complete" pardon for the said conviction.

Since such a pardon wipes out the conviction, that conviction no longer disqualifies respondent. Re Moore, Bulletin 50, Item 1; Re Case No. 8, Bulletin 92, Item 12; Re Howe, Bulletin 156, Item 6; Re Effect of Pardon, Bulletin 160, Item 6.

It is, therefore, recommended that, in view of such pardon, respondent be declared to be no longer disqualified by reason of his conviction in Florida in 1930 from holding a liquor license or working for a liquor licensee in this State.

Nathan Davis,  
Attorney-in-Chief.

APPROVED:  
E. W. GARRETT,  
Chief Deputy Commissioner.

3. SEIZURES - CONFISCATION PROCEEDINGS - WINE AND BEER FORFEITED BECAUSE POSSESSED WITH INTENT TO SELL BY NON-LICENSEE.

In the Matter of the Seizure on )	Case 5703
March 5, 1940, of about 125 gallons )	
of home-made wine at 133 Jefferson )	
Street, and a quantity of beer and )	ON HEARING
wine at 19 Pacific Street, both in )	CONCLUSIONS AND ORDER
the City of Newark, County of Essex )	
and State of New Jersey. )	
-----	

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

On March 5, 1940, at 133 Jefferson Street, Officer Lonergan of the Newark Police apprehended John Perry, who was carrying two 1-gallon jugs of wine which bore no evidence of tax payment. At the police station, Perry stated that the wine belonged to Antonio Abilio, who resided at 133 Jefferson Street; that he was bringing the wine to Abilio's restaurant at 19 Pacific Street; that, for more than a month past, he had been bringing wine daily from Abilio's home to the restaurant where it was served to customers. Thereafter, Abilio came to the police station and, upon questioning by investigators of this Department, it developed that he had made the wine under a permit issued by this Department, which permit authorized the home manufacture of 200 gallons of wine for personal consumption. However, Abilio signed a statement wherein he admitted that he sold beer and his home-made wine to customers in his restaurant, for which premises he had no liquor license.

The investigators then proceeded to both addresses above stated and there seized, as unlawful property, the beer and wine mentioned in Schedule "A" annexed hereto.

At a hearing held to determine whether the seized property should be confiscated, no one appeared to contest the forfeiture.

The admitted unlicensed sales by Abilio of beer and wine at his restaurant, and the statement made by Perry, justifies the inference that the alcoholic beverages seized at both the home and restaurant were also intended for sale. It is determined that the seized property is illicit because possessed with intent to sell in violation of the Alcoholic Beverage Law. R. S. 33:1-1(i).

Accordingly, it is ORDERED that the property set forth in Schedule "A", annexed hereto, be and it hereby is forfeited in accordance with provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. GARRETT,  
Chief Deputy Commissioner.

Dated: April 18, 1940.



It is further ORDERED that the automobile described in said Schedule "A" may be returned to Everett S. Ellis provided he pays, within thirty days of the date hereof, the costs incurred in connection with the seizure herein.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. GARRETT,  
Chief Deputy Commissioner.

Dated: April 18, 1940.

SCHEDULE "A"

- 1 - 5-gallon bottle containing an alcoholic beverage
- 1 - Ford sedan, Serial No. 3655824,  
Engine No. 3655824, 1939 New Jersey  
Registration No. CJ 88 B

5. SOLICITOR'S PERMIT - MORAL TURPITUDE - FACTS EXAMINED -  
CONCLUSIONS.

April 18, 1940

Case No. 323

In his application for a solicitor's permit filed with this Department, applicant admitted that he had been convicted of a crime and gave the details of his conviction as follows:

"Was held as material witness in 1932".

Fingerprint returns disclosed that, in fact, he had then been convicted of the crime of carrying concealed weapons.

It further appears that during the course of an investigation concerning licensed premises, applicant, in August 1939, gave a sworn statement to the police wherein he admitted that the licensee by whom he was then employed had "told me to go home, that I was through because I was drunk". At the hearing herein applicant denied under oath that he had been discharged at that time for being drunk.

It is unnecessary to determine whether the crime of which he was convicted involved moral turpitude. The misstatement in his application and his false testimony at the hearing lead me to believe that he is not a fit person to hold a permit.

It is recommended, therefore, that the application for solicitor's permit be denied.

Edward J. Dorton,  
Deputy Commissioner  
and Counsel.

APPROVED:

E. W. GARRETT,  
Chief Deputy Commissioner.

6. APPELLATE DECISIONS - PERGOLA v. JAMESBURG.

FRANK PERGOLA,	)	
	)	
Appellant,	)	
	)	ON APPEAL
-vs-	)	CONCLUSIONS
	)	
BOROUGH COUNCIL OF THE BOROUGH	)	
OF JAMESBURG,	)	
	)	
Respondent	)	
-----	)	

J. Stanley Herbert, Esq., Attorney for Appellant.  
John P. Kirkpatrick, Esq., Attorney for Respondent.

This appeal is from the denial of a plenary retail consumption license for premises at the corner of railroad Avenue and Forsgate Drive, Borough of Jamesburg.

Appellant's proposed site is at Manalapan Lake in a vicinity which, although described as "business", is not closely developed. A tavern already exists a block or some 200 yards away. In addition, the Borough (population - 2000 to 2500, area - 1 to 1½ square miles) contains three other taverns, or a total of four.

Respondent, by unanimous vote, denied appellant's license because of its resolution of October 4, 1937 (reaffirmed by resolution of January 5, 1940), which purports to limit consumption licenses in the Borough to the presently existing number of four.

Both resolutions are invalid since the Alcoholic Beverage Law requires that all municipal quotas adopted after July 1, 1937 must be by ordinance. R. S. 33:1-40; Landgraff v. North Plainfield, Bulletin 284, Item 9.

However, it does not follow, because of the invalidity of the resolutions, appellant's license must therefore issue. Both resolutions, together with the testimony of five of the six councilmen, lead to the conclusion that respondent is of the actual and bona fide belief that the four consumption places now existing in Jamesburg are sufficient taverns for the Borough.

Such belief, since apparently reasonable both as regards the Borough as a whole and also as regards appellant and his vicinity, still prevails despite the failure of respondent's resolutions and is itself sufficient to sustain respondent's refusal to issue a fifth consumption license in Jamesburg. Landgraff v. North Plainfield, supra; Brost v. East Amwell, Bulletin 304, Item 1. Cf. Haycock v. Roxbury, Bulletin 101, Item 3; Goff v. Piscataway, Bulletin 234, Item 5; Kuller v. Manasquan, Bulletin 319, Item 3.

Appellant contends that he is nevertheless equitably entitled to a license. He testified that his brother applied for a consumption license in July 1938 (although it is not clear whether the application was for the premises in question or other premises); that respondent kept laying over this application (until it was withdrawn in August 1938); that appellant applied for license for the premises in July 1939; that, however, he withdrew this application on request of the then Mayor, who "promised" that, if appellant reapplied after Labor Day, such new application would be granted; that, in reliance upon this promise, appellant fixed up his premises for a license; that, in addition, a councilman, when accosted by appellant, said he would vote for the license, and another declared that "he would try to go along with us."

Such testimony, however, fails to support appellant's contention.

Whatever may have occurred as to the application of appellant's brother in 1938, there is nothing to show that it is germane to the present case which involves a different applicant.

As to the alleged promise of the past Mayor (now not even a member of respondent) and the alleged statements by the two of the six councilmen, such were, even if true, nevertheless incompetent to limit the freedom of the full Council when passing upon any application before it. As was said in Hobbs v. Lower Penns Neck, Bulletin 372, Item 6:

"Counting noses and lining up a favorable majority is often helpful but does not insure results where men do their duty. True, in fairness, members of issuing authorities should refrain from expressing any opinions which might lead wishful thinkers to color with green, as a 'GO' sign, instead of cautionary yellow, which might turn to red. However, a license issuing authority is not bound by any informal remarks made by its members or action taken prior to the hearing on objections filed. Stein v. West New York, Bulletin 101, Item 7; Held v. Deptford, Bulletin 269, Item 4; Granda v. Rockaway, Bulletin 282, Item 7. Cf. Lewis v. Phillipsburg, Bulletin 232, Item 13. It acts only in formal meeting assembled and not on the street. Curbstone opinions of its members are a vain thing for safety. The fact that a municipal official, in advance of a public hearing, may tell an importunate constituent that, as presently informed, he sees no objection, is no reason why he must vote that way after he has heard the other side. That's the object of having a hearing. Government by 'buttonhole' has no standing in a democracy."

Appellant further contends, in essence, that he had, when his previous application of July 1939 was on file, suffered arbitrary discrimination, his argument being that, although three of the consumption licenses granted at that time were to renewal licensees, the fourth was granted to an applicant for a new license in preference to appellant. However, it appears that this new licensee was really taking over the business of a prior licensee and that hence there was actually no undue discrimination against appellant. Moreover, even assuming such discrimination, and ignoring for the moment the fact that appellant later actually withdrew the application there involved, his remedy was to appeal at that time and not to seek to reverse the denial of his present application on the basis of such alleged past discrimination.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. GARRETT,  
Chief Deputy Commissioner.

Dated: April 19, 1940.

7. APPELLATE DECISIONS - MORGAN v. KEARNY.

MARGARET MORGAN, trading as	)	
MORGAN'S TAVERN,	)	
	)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
-vs-	)	
	)	
TOWN COUNCIL OF THE TOWN OF	)	
KEARNY,	)	
	)	
Respondent	)	

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Harold Heller, Esq., Attorney for Appellant.  
 John H. Cooper, Esq., Attorney for Respondent.  
 James W. Gillespie, Esq., Attorney for Crane's Funeral Parlor,  
 an Objector.  
 L. Stanley Ford, Esq., Attorney for Kearny Gospel Chapel, an  
 Objector.

This is an appeal from denial of transfer of appellant's consumption license from 390 Schuyler Avenue to 239 Kearny Avenue, Town of Kearny.

Respondent denied the transfer because (a) the proposed licensed premises were too near to the Kearny Gospel Chapel and (b) the proposed licensed premises are across the street from and too close to the Crane Funeral Home wherein religious services are held on occasion.

Premises known as 239 Kearny Avenue are located on the corner of Kearny Avenue and Bergen Avenue, both of which are important business thoroughfares. The only entrance to 239, which appellant intends to use, is located at the intersection of these avenues. She has agreed to close permanently a side door and a rear door which leads indirectly to Bergen Avenue.

Kearny Gospel Chapel faces on the opposite side of Bergen Avenue with the side of the chapel on Maple Street, which is one block west of Kearny Avenue. It has been stipulated that the distance between the entrance to the proposed premises which appellant intends to use and the entrance to the church is approximately two hundred and fifty feet. The transfer is not prohibited by R. S. 33:1-76. The respondent has adopted no policy with reference to issuing licenses to premises beyond two hundred feet from a church, as appears from the stipulated fact that seven licenses have been issued for various premises which are between two hundred and four hundred feet from a church. The case of Rafalowski v. Trenton, Bulletin 155, Item 8, is distinguished because in that case the proposed licensed premises faced the side of the church where services were held and the policy of denying a license under the circumstances appearing therein was held to be reasonable. It cannot be contended in the present case that appellant's premises will interfere with church services.

The Funeral Home is located on the first floor of an apartment house on the opposite corner of Kearny Avenue and Bergen Avenue. Both places are located in a business area. R.S.33:1-76 does not refer to a Funeral Home. The denial because of the proximity of the Funeral Home, in which religious services are occasionally held, was unreasonable. As the Commissioner said in Bunks v. Atlantic City, Bulletin 45, Item 14:

"When one conducts a funeral parlor in such a neighborhood, he cannot demand that all other legitimate and reasonable business activity cease because it, to some extent although not unduly, interferes with the absolute quiet which is desirable but not practical."

Although not raised below, respondent contended on appeal that denial should be upheld because licensee is a "front" for her husband. The fact that this issue was not a reason for denial might be sufficient reason for refusal to consider it on appeal. In any event, the evidence on that point is not convincing. Both appellant and her husband are fully qualified. The evidence shows that the business was originally purchased, in 1936, with their joint funds; that the license was issued to the husband for a number of years and issued to appellant for the current fiscal year; that appellant claims that she owns the business of which her husband is manager; that liquors are purchased in appellant's name. If subsequent investigation warrants, disciplinary proceedings may be instituted against licensee. In the meantime, however, there appears to be no valid reason why the license should not be transferred.

The action of respondent is, therefore, reversed and respondent is directed to grant the transfer of the license as requested on condition that the only entrance to licensed premises be located at the intersection of Kearny Avenue and Bergen Avenue.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. GARRETT,  
Chief Deputy Commissioner.

Dated: April 19, 1940.

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

April 19, 1940.

Re: Case No. 319.

This proceeding is to determine whether applicant has been convicted of a crime involving moral turpitude, and hence is disqualified under R. S. 33:1-25, 26 from obtaining a liquor license or working for a liquor licensee in this State.

In November 1935 applicant, when 19, pleaded guilty in New York Criminal Court to the charge of knowingly possessing, with intent to sell, a quantity of forged \$1.00 tickets for a boat excursion being run by a church. At the time of his arrest, he and an accomplice were in possession of such tickets at the dock where the boat was to leave. Applicant was given a suspended sentence and placed on probation for an indefinite term, being discharged from such probation in May 1938.

Applicant now states that he was actually innocent of the charge; that some unknown man, whose baggage he had helped to carry at the dock, gave the tickets to applicant and his accomplice; that he (applicant) did not know that they were forged.

However, applicant may not in this collateral proceeding attack or contradict his own confessional plea of guilt pursuant to which he was convicted. Re Case No. 196, Bulletin 219, Item 10; Re Case No. 230, Bulletin 272, Item 3; Re Case No. 247, Bulletin 294, Item 12; Re Case No. 307, Bulletin 373, Item 10; Re Case No. 320, Bulletin 397, Item 7.

Crimes involving perpetration of fraud ordinarily involve moral turpitude. Re Application for Solicitor's Permit, Bulletin 209, Item 12; Re Case No. 293, Bulletin 351, Item 12. No facts here appear which free applicant's crime of that element. Cf. Re Case No. 71, Bulletin 199, Item 9 (ruling that the crime of knowingly possessing and attempting to pass counterfeit money involves moral turpitude).

It is, therefore, recommended that applicant be declared to be disqualified, by reason of his said conviction, from obtaining a liquor license or working for a liquor licensee in this State.

Nathan Davis,  
Attorney-in-Chief.

APPROVED:  
E. W. GARRETT,  
Chief Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - UNDISCLOSED PARTNER - PARTNERSHIP TERMINATED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )

JAY H. MANS, )  
T/a Rumba Bar, )  
109 Beachway, )  
Keansburg, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of Keansburg. )  
-----)

Jay H. Mans, Pro Se.  
J. Garry Keely, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to the following charges: (a) that he failed to file written notice with the local issuing authority within ten (10) days after the occurrence thereof of a change in the facts set forth in his individual application for license for the 1938-39 period, in violation of R. S. 33:1-34; (b) that he, licensee, falsely answered "No" to question 28 of his application for license for 1939-40, which question asks whether any individual, etc. other than the applicant had interest in the license or the business to be conducted thereunder, whereas in fact one Albert Siegel had such an interest; said false answer being in violation of R. S. 33:1-25, and (c) aiding and abetting Albert Siegel, a non-licensee, to exercise the privileges of a license in violation of R. S. 33:1-52.

The Departmental file discloses that in or about May 1939, Albert Siegel invested the sum of five hundred (\$500.00) dollars in the business theretofore conducted solely by the licensee and that under an agreement, at that time made with the licensee, Siegel became entitled to receive as return upon his investment a share in the profits thereafter to be realized. The file does not disclose that Siegel was ineligible to hold a license.

The above mentioned agreement was thereafter terminated and there now exists no business relationship whatever between Siegel and the licensee; nor does Siegel now possess any interest directly or indirectly in the business. There is, therefore, at present, no violation. However, as was said in Re Kloufis and Misthos, Bulletin 396, Item 10, "Licensees must learn that before taking in a partner the license must be properly transferred." Re Bernstein, Bulletin 388, Item 3.

Under the circumstances the defendant's license will be suspended for ten (10) days.

Accordingly, it is, on this 20th day of April 1940,

ORDERED, that Plenary Retail Consumption License C-15, heretofore issued to Jay H. Mans by the Borough Council of the Borough of Keansburg, be and the same is hereby suspended for a period of ten (10) days, effective April 23, 1940, at 4:00 A. M.

D. FREDERICK BURNETT,  
Commissioner.

By: E. W. GARRETT,  
Chief Deputy Commissioner.

10. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application )  
to remove disqualification be- )  
cause of a conviction, pursuant )  
to R. S. 33:1-31.2 (as amended )  
by Chapter 350, P.L. 1938) )

CONCLUSIONS  
AND ORDER

Case No. 74 *Under review* )  
----- )

In Case No. 289, Bulletin 346, Item 11, it was determined that petitioner herein was ineligible to hold a license or be employed by a liquor licensee because of a conviction in 1925 for maintaining a bawdy house and permitting and aiding prostitution.

From the testimony taken herein, it appears that since his release from prison in 1925, petitioner has resided continuously in the city where he now lives; that he was married in 1930 and lives with his wife and two children. It further appears that from 1925 to 1934 he was engaged in the fruit business and thereafter tended bar on licensed premises conducted by his wife until April 1939, when the ruling made in Re Woertendyke, Bulletin 304, Item 8 prevented him from being further employed on licensed premises because he was a citizen of Italy; that since April 1939 he has been unemployed.

An undertaker, formerly coroner, who has known petitioner for six years, testified that his reputation in the neighborhood is very good. The Pastor of the church which petitioner attends testified that he has known petitioner and his family for seven or eight years; that during that time he found petitioner to be law-abiding and did not know of any trouble he had with the police. A neighbor who conducts a fruit business testified that petitioner, whom he has known for six years, bears a good reputation.

Fingerprint returns disclose that, in addition to the conviction set forth above, petitioner was arrested in January 1935 for alleged possession of illicit alcoholic beverages. This case, however, was later dismissed. Certification has been received from the Chief of Police of the city wherein petitioner resides that no charges are pending against him.

It is concluded that petitioner has conducted himself in a law-abiding manner for at least five years last past. In view that the charge made against him in January 1935 was dismissed, it is further concluded that his connection with the alcoholic beverage industry will not be contrary to public interest.

It is, therefore, on this 20th day of April, 1940,

ORDERED, that petitioner's disqualification from holding a license or being employed by a licensee because of the conviction 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.

By: E. W. GARRETT,  
Chief Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - TREATING PATRONS IN VIOLATION OF  
REGULATIONS - SIXTH CLASS COUNTIES - ONE DAY SUSPENSION IMPOSED.

April 23, 1940

Hon. Palmer M. Way,  
Union Bank Building,  
Wildwood, N. J.

My dear Judge Way:

I have before me staff report and your letter of February 23rd re disciplinary proceedings against Palumbo-Avalon Cafe & Hotel Corporation, S. E. Cor. New Jersey & Spruce Aves., North Wildwood, charged with treating patrons to drinks in violation of County regulations formerly in effect, and note that after confession of guilt decision was reserved, but before any penalty was imposed the New Jersey Supreme Court divested the Common Pleas Judges of Sixth Class Counties of licensing and disciplinary powers. Dover v. Van Kirk, Bulletin 371, Item 10.

It is further noted that you had intended to impose a penalty of one day's suspension when the licensee, which had suspended business at the time of the hearing, reopened in June or July.

The facts considered, an order has been entered today, copy enclosed, suspending the license of Palumbo-Avalon Cafe & Hotel Corporation for one day, viz., June 29, 1940.

The information that you have furnished with respect to the observance of the regulation generally and your recommendation as to the penalty to be imposed has been extremely helpful. It is not true, however, that because it was a violation of a local regulation this Department was not very much interested in the case. We believe that all regulations, whether State or local, should be obeyed as long as they are in force. Permitting them to be flouted and to remain on the books breeds disrespect for law.

Very truly yours,  
E. W. GARRETT,  
Acting Commissioner.

In the Matter of Disciplinary Proceedings against  
PALUMBO-AVALON CAFE & HOTEL CORPORATION,  
S. E. Cor. New Jersey & Spruce Aves.,  
North Wildwood, N. J.,  
Holder of Plenary Retail Consumption License C-104 issued by the Hon. Palmer M. Way, Judge of the Court of Common Pleas of Cape May County.  
-----)

ORDER

It appearing that disciplinary proceedings were conducted by the Hon. Palmer M. Way, Judge of the Court of Common Pleas and then issuing authority for the County of Cape May, against Palumbo-Avalon Cafe & Hotel Corporation, the holder of plenary retail consumption license C-104 for premises S. E. Cor. New Jersey & Spruce Aves., North Wildwood, on September 13, 1939, at which time the licensee pleaded guilty to a charge of treating on the licensed premises in violation of paragraph c-1 of Part III (General Regulations) of rules and regulations promulgated and established on March 29, 1937 by the Hon. Palmer M. Way, Judge of the Court of Common Pleas and issuing authority as aforesaid, at which time decision was reserved, and

It further appearing that before the entry of an order of suspension in the disciplinary proceedings the New Jersey Supreme Court declared unconstitutional the provisions of the



Since that decision, the situation with respect to the number or kinds of licenses outstanding either in the municipality, or in the vicinity in question, remains the same, except that another limited distribution license has been issued.

No reason appears why the decision in the prior case should not here be followed. The only new facts adduced by appellant were that Broad Street has been widened, and that there has been an influx of approximately 1200 persons in the Brookdale section which is one and a half miles away from the proposed location. As to the former, no proof was offered that persons on the east side of Broad Street, where appellant seeks to locate are, in the language of the Wojfachnio case, "barred from reasonable access to the 'A. & P.' and the 'liquor' store on the west side". As to the latter, there was no proof that the liquor stores already located on Broad Street could not adequately service the increased population. Moreover, while the additional residents in the Brookdale section might warrant the establishment of another liquor store, if any, in one of the zoned business districts of that section, respondent cannot be said to have been unreasonable in denying appellant the right to transfer to the proposed premises, a mile and a half distant, and where there are already located more package stores and liquor establishments than any other section of the town with the exception of Bloomfield Center, the major business area.

The only proof of public inconvenience was that, on isolated occasions, at least one of which was during the Christmas rush, several residents of the community were unable to obtain prompt deliveries from the present package store in the vicinity. Such proof falls far short of that necessary to sustain the burden of proving that public necessity and convenience requires that an additional distribution license be permitted to move into the vicinity. As was said in the Wojfachnio case, supra:

"Liquor for ordinary drinking purposes is not such a necessity or convenience that it must be readily available for purchase at any hour. The 'A. & P.' (open on weekdays during the daytime) and the 'liquor' store (seemingly open during most or all of the permissible hours) provide the vicinity with ample opportunity for the purpose of package liquor. The 3 nearby taverns are also available for any emergency."

The action of respondent is affirmed.

*C. W. Barrett*

Acting Commissioner.

Dated: April 23, 1940.