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

BULLETIN 236 APRIL 5, 1938

1. MUNICIPAL ORDINANCES - THE CONTROL ACT, HERETOFORE REFERRED TO AS "AN ACT CONCERNING ALCOHOLIC BEVERAGES, C.436, P.L. 1933, AS AMENDED AND SUPPLEMENTED", SHOULD HENCEFORTH BE CITED AS "REVISED STATUTES, TITLE 33, CHAPTER 1, AS AMENDED AND SUPPLEMENTED."

MUNICIPAL ORDINANCES - SCREENS - PUBLIC VIEW - MUNICIPAL REGULATION REQUIRING VIEW OF INTERIOR OF LICENSED PREMISES MUST PROVIDE A REASONABLE AND ADEQUATE STANDARD BY WHICH COMPLIANCE CAN BE MEASURED.

MUNICIPAL ORDINANCES - FEMALE EMPLOYEES - MUNICIPAL REGULATION PROHIBITING FEMALE EMPLOYEES EXCEPT MEMBERS OF IMMEDIATE FAMILY OF THE LICENSEE, DISAPPROVED FOR INDEFINITENESS - THE CLASSES OF RELATIVES MUST BE SPECIFIED.

March 27, 1938.

John F. Bormuth,
Borough Clerk,
Butler, N. J.

My dear Mr. Bormuth:

I have before me proposed ordinance concerning alcoholic beverages.

* * * * *

Section 2 provides that before licenses may be issued application shall be made as required by "'An act concerning Alcoholic Beverages', Chapter 436 of the laws of 1933." The Control Act, however, has been reenacted as a part of the Revised Statutes and consequently should be cited by its new title. I therefore suggest that prior to the final adoption of the ordinance, the Council amend Section 2 by resolution striking out the phrase above quoted and in its place inserting "the Revised Statutes, Title 33, Chapter 1."

* * * * *

Section 4-D requires that all premises in which alcoholic beverages are sold shall have reasonable access of light from the public highway. The proposed test is whether or not a normal sized adult can, on inspection from the exterior, view the interior. I don't know how tall a normal sized adult is. Furthermore, I doubt that anyone else does. I think, therefore, that the section as presently worded is bad for indefiniteness and, as a practical matter, is unenforceable. See Re Handelman, Bulletin 227, Item 9. The only way your licensees could comply with, or the police could enforce, such a regulation would be for the regulation itself to specify the exact height from the public highway at which full view was required. You would then have an adequate standard by which to measure compliance. As it stands, I do not approve it.

Section 4-F is designed, I note, to prohibit females, except the licensee or members of the immediate family of the licensee over the age of twenty-one years, from serving, selling or dispensing alcoholic beverages.

The exception "members of the immediate family" is likewise bad for indefiniteness and is therefore disapproved. Just what the term "immediate family" encompasses is uncertain. Does it mean wives and daughters? Or, does it also include aunts, and nieces, and the wife's relations who may be living with the licensee? The proper way is to specify the classes of relatives to which it is the intention that the exception shall apply, e.g., wives, daughters, sisters, etc.

I suggest that Section 4-F be revised to read: "No licensee shall allow, permit or suffer any female to serve, sell, or in any manner engage in the actual dispensing of alcoholic beverages, except the licensee and" thereinafter indicating the classes of relatives to which the exception applies.

* * * * *

Very truly yours,

D. Frederick Burnett
Commissioner

2. MUNICIPAL ORDINANCES - A MUNICIPAL REGULATION WHICH PERMITS TRANSFERS OF LICENSES TO PREMISES PREVIOUSLY LICENSED DOES NOT BY IMPLICATION PROHIBIT TRANSFERS TO PREMISES NOT PREVIOUSLY LICENSED IN A CASE WHERE THERE IS NO POWER AT ALL IN THE MUNICIPALITY TO RESTRICT TRANSFERS ON ANY SUCH GROUND.

LICENSES - LICENSE NOT TERMINATED BY LOSS OF INTEREST IN LICENSED PREMISES.

LICENSEES - INTEREST IN LICENSED PREMISES - WHILE NOT REQUIRED AT TIME APPLICATION IS MADE, MUST ARISE BY THE EFFECTIVE DATE OF THE LICENSE OR TRANSFER.

March 27, 1938.

Mr. Murtland Strotbeck,
Margate, N. J.

My dear Mr. Strotbeck:

I have before me your letter of the 3rd and copy of Ordinance No. 386 adopted by the Margate City Board of Commissioners on August 12, 1937.

An existing licensed premises within the meaning of the concluding sentence of Section 1 which provides "This shall not prevent the transfer of a license to an existing licensed premise" is a premises for which a license was outstanding at the time the ordinance was adopted.

It is not essential under the ordinance, however, that the premises to which the transfer of license is sought shall have been licensed when the ordinance was adopted because there is nothing in the ordinance restricting transfers in this manner. It does not follow from permitting transfers to certain premises that transfers to others are prohibited. As the ordinance now stands, transfers of licenses may be made from place to place without restriction, except, of course, the general requirements applicable to all issuances and transfers of proper person and place.

The concluding sentence of the section, while it does no harm, is superfluous and really not necessary. It has no prohibiting effect.

It is possible for a person to hold a license without having a premises upon which to conduct his business. A licensee may give up his business or he may lease or relinquish his interest in the licensed premises and it is not essential that in such case the license be surrendered. He may still hold the license, although no use of it could then be made because of the absence of a licensed premises, and he is entitled to apply to the local license issuing authority for its transfer to a new premises, if he wishes. See Re Morrissey, Bulletin 228, Item 7; Re Kappelmann, Bulletin 211, Item 1; Re Boettiger, Bulletin 98, Item 11.

A person may apply for transfer of license to premises of which he does not have legal possession and may advertise his notice of application in the newspaper, but the municipality may not grant the transfer unless he will have at the time it is to take effect a sufficient interest to give him an enforceable right to possession thereof. See Gruner v. Washington, Bulletin 149, Item 6; Re Schmidt, Bulletin 137, Item 1; Beekwilder v. Wayne, Bulletin 122, Item 5 and the items cited therein and Re Fisher, Bulletin 107, Item 8.

Very truly yours,

D. FREDERICK BURNETT
Commissioner.

3. MUNICIPAL ORDINANCES - NO POWER IN MUNICIPALITIES TO RESTRICT TRANSFERS OF LICENSES TO PREMISES WHICH HAVE THERETOFORE BEEN LICENSED - WHETHER ONE PREMISES IS PREFERABLE TO ANOTHER IS A MATTER TO BE DETERMINED ACCORDING TO THE FACTS OF EACH PARTICULAR CASE.

MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - REDUCTION - A PROVISION ENABLING THE MUNICIPALITY TO REDUCE THE QUOTA, AT RENEWAL TIME, BY THOSE LICENSES WHICH MAY HAVE BEEN SURRENDERED, SUSPENDED OR REVOKED, SHOULD APPLY TO ALL LICENSES AND NOT MERELY THOSE EXISTING AT THE TIME THE REGULATION WAS ADOPTED.

March 27, 1938.

Russell H. Denny,
City Clerk,
Margate City, N. J.

My dear Mr. Denny:

I have before me your letters of March 9th and 18th and copy of Ordinance No. 586 adopted by the Board of Commissioners on August 12, 1937.

I also have inquiry from Mr. Murtland Strotbeck, regarding the ordinance.

With the exception of the concluding sentence in Section 1 which, as you will see from the discussion thereof in my letter to Mr. Strotbeck (Bulletin 236, Item 2), is of no force or effect, and a further provision in Section 1 to which I shall presently refer, the ordinance appears to be in proper form.

The Board of Commissioners has no power to restrict transfers of licenses to premises which have theretofore been licensed. No one place is entitled to a license any more than another. The mere fact that a place has once been licensed does not entitle it to a preference. It is entirely possible other places may be more desirable from the licensing standpoint. Whether one is preferable to another is a matter which must be determined by the local license issuing authority in each particular case. See Re Konesky, Bulletin 217, Item 7.

I want to compliment Margate City on the excellent vision displayed by inserting in Section 1 of this ordinance the clause: "Any plenary retail consumption license existing at the present time, however, that shall be revoked or suspended for violation of the Alcoholic Beverage Control Act or of the Rules, Regulations and Instructions promulgated by the Department of Alcoholic Beverage Control, or for violation of City ordinance regulating or pertaining to the sale of alcoholic beverages, or which shall be surrendered, shall not be renewed nor another license issued in its place when the number of plenary retail consumption licenses outstanding and not revoked or suspended is twelve or more."

That constitutes a standing, stiff warning to licensees that if it becomes necessary to discipline them for disobedience to the law, the rules or the ordinances, that their licenses will not be renewed. There is, however, an unfortunate defect in its wording. It applies by its terms only to those licenses "existing at the present time." That means the date when the ordinance was adopted, viz.: August 12, 1937. All licenses existing at that time will automatically expire on June 30, 1938. Consequently, on and after July 1st next, the ordinance, in this respect, becomes wholly inoperative, for it does not apply by its terms to future licenses or renewals but only to those which happened to be in existence on August 12, 1937.

All you have to do to cure this defect is to amend the ordinance by striking out the words "existing at the present time." Then the ordinance by its terms will apply to all licenses in the future, whenever issued and irrespective of whether they were in existence on August 12th last or not.

Cordially yours,

D. FREDERICA BURNETT
Commissioner

4. LICENSES - SPECIAL CONDITIONS - CONDITIONS THAT ARE MERELY RE-STATEMENTS OF GENERAL REGULATIONS, WHILE NOT OBJECTIONABLE, ARE UNNECESSARY.

March 28, 1938.

Frank Gordon,
Clerk of Kingwood Township,
Baptistown, N. J.

My dear Mr. Gordon:

I have before me your letter of March 19th quoting resolution adopted by the Township Committee on the 19th, granting plenary retail consumption license to Vittorio Scuitto, effective April 1, 1938, subject to special condition: "Open from 6:00 A. M. to 2:00 A. M. the following morning including Sundays. No dancing or target shooting on Sunday."

My records indicate that the special condition is a mere restatement of general regulations adopted by resolution of the Township Committee on June 19, 1937 and approved by me on July 1, 1937. Consequently, the special condition is wholly superfluous because the regulations require exactly the same things. I have no objection if the Township Committee wishes to repeat them in the form of a condition on the face of the license, but submit that the preferable practice is to omit what the regulations themselves declare. See Re Fitzsimmons, Bulletin 207, Item 3.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. SPECIAL CONDITIONS - A NOTICE OR WARNING THAT UPON THE EXPIRATION OF THE PRESENT LICENSE NO FURTHER LICENSE WILL BE GRANTED FOR THE PREMISES, IS NOT A SPECIAL CONDITION WITHIN THE CONTEMPLATION OF THE CONTROL ACT.

March 28, 1938.

Thomas Quinn,
Clerk of Deptford Township,
Westville, N. J.

My dear Mr. Quinn:

I have before me your letter of March 23rd and copies of resolutions adopted by the Township Committee on the 21st extending plenary retail consumption license No. 3 from Louis Hansford to Mary Hansford, Administratrix, and transferring same from Mary Hansford, Administratrix, to Ezra Held, subject to the following condition:

> "That after the expiration date of the present license June 30, 1938, no Alcoholic Beverage License will be granted by the local issuing authority for the premises above licensed."

The purported condition is hardly a special condition within the contemplation of R.S. 33:1-52 (Control Act, Sec. 29). It appears, rather, to be in the nature of a notice or warning to the licensee that upon the expiration of the present license no further license will be granted for the premises. I am, therefore, not considering its validity at the present time.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - DISMISSAL FOR ALLEGED LACK OF EVIDENCE DEPLORED IN CASE WHERE THE EVIDENCE WAS SUFFICIENT TO CONVICT.

March 29, 1938.

Harry S. Reichenstein, Secretary,
Municipal Board of Alcoholic Beverage Control,
Newark, N. J.

Dear Mr. Reichenstein:

I have before me staff report and the Orders entered by your Board in disciplinary proceedings against:

1. Louis Sengebush, charged with (a) employing females to serve alcoholic beverages, (b) employing hostesses and (c) permitting gambling.

I note the Board's statement that "as a result of the testimony in this matter *** the charges be dismissed for lack of evidence." However, there is no statement which sets forth wherein or why the testimony of my men fell short of the necessary proof.

The staff report indicates that this licensed premises had no restaurant license and that my men were served alcoholic beverages by two waitresses.

As regards employment of hostesses: I note the girls carefully refrained from asking the investigators for a drink, "Jean" saying, "You did not ask us to have a drink. We will take one if you ask us but we will not ask you for one." Smart girl! Well trained!! House broken, so to speak!!! I wonder if this is the formula she used when she drank with the other patrons that the report mentions. Apparently, she had no hesitancy in taking the initiative in approaching the tables and sitting down with male patrons even if she did demurely wait for them to suggest the drink. I see that "Jean" was actively on the job, not only on October 15th, but also on October 21st, October 30th and November 5th. If not a hostess, she seemed to be pretty much at home!

As to the charge of gambling, I am also disappointed. Here was testimony that the bagatelle machine was played and each time the player made a "hit" the bartender paid him in nickels. What more evidence of gambling do you want? Here's a machine which is played against the house, the pay-off made, and yet, you dismiss the case on the old Prohibition-era formula of "lack of evidence." Why not just say "indisposed"!

2. James Marinello, Jr., charged with having permitted gambling on the results of horse-racing in his licensed premises. I note this licensee was adjudicated guilty and that his license was suspended for three days. Expressing no opinion on the merits of the case because it might come before me by way of an appeal, I wish to thank the Board for the penalty imposed. Gambling is out of order on licensed premises and licensees must realize that this rule was made to be obeyed. More drastic punishment is indicated in future cases of its kind.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 31st, 1938.

RE: Case No. 215

During the time that applicant was temporarily employed by a licensee, he filed a questionnaire in which he admitted that, in June 1929, he had been convicted of the crime of embezzlement. At the hearing applicant stated that he was out of employ, but requested a determination as to his eligibility to be re-employed by a licensee within the State of New Jersey.

At the time of his arrest, applicant worked in a department store as a packer of rugs. He testified that for some time prior to his arrest his foreman, who was an assistant buyer, and two rug salesmen employed in the store had been falsifying delivery slips so that, when a rug had been sold for cash, the records purported to show the sale of a cheaper rug, the difference being retained by the assistant buyer and the salesmen. He also testified that he knew of this irregularity for some time but that he was afraid to complain for fear of losing his position; that the only money he ever received as a result of falsification of the records was the sum of Nine Dollars, which was paid to him about two weeks before his arrest.

On the advice of his attorney, applicant pleaded non-vult, in a Court of Special Sessions, to an indictment for embezzling $174.82 from the department store, and was placed on probation for five years, to pay fifty cents per week. According to a report received from the Probation Officer, he was discharged from probation, with improvement, in June 1931, his conduct and behavior being satisfactory.

The Probation Officer also advised that, according to his records, applicant had explained the facts leading up to his arrest as follows:

> Three months before his arrest he was asked to pack some floor covering and send it without the necessary slips and that he would be given a few dollars extra. He did as advised and was given a few dollars. He repeated this a number of times.

Ordinarily the crime of embezzlement involves moral turpitude but, despite the plea of non vult, it is doubtful if the facts disclosed in this case show that applicant was guilty of the statutory crime of embezzlement. The facts do not show that applicant retained or appropriated to himself any money belonging to his employer. Applicant's participation in this transaction was morally wrong but did not constitute embezzlement within the definition of that crime. Hence, while a conviction for embezzlement would, ordinarily, involve moral turpitude where the elements of that crime were shown to exist, I believe that the conviction under the facts of this case should be held not to involve moral turpitude.

It is recommended, therefore, that applicant be advised that he is eligible to be employed by a licensee.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL - CITY OF NEWARK - PRESENTMENT OF GRAND JURY - DISCIPLINARY PROCEEDINGS IN NEWARK HENCEFORTH WILL BE HANDLED DIRECT UNTIL THE COMMISSIONER IS SATISFIED THAT THEY WILL BE TREATED BY THE LOCAL AUTHORITIES IN A MANNER TO COMMAND RESPECT AND CONFIDENCE.

April 1, 1938.

"This Grand Jury had occasion to hear a very revolting case, involving a 21-year old Negro and a 14-year-old white girl, the charge being carnal abuse. In the course of the testimony, it developed that the two frequented, danced and were served drinks in a tavern in Rutgers Street, Newark. We inquired further and found that Deputy Chief Sebold had investigated the place, and the following letter was written by him to Police Commissioner Kaas February 24, 1938:

"'Attached herewith you will find reports submitted by Detective Raffaele Capodanno of my command * * * pertaining to the disgraceful manner in which the licensed tavern of Esposito, Inc. License C-932, Morton Salzman, president and treasurer, located at 47 Rutgers Street, is being conducted.

"'Our investigation revealed that minor white school girls are sold and served liquor, that they are permitted to co-habit, mingle and dance with colored men.***

"SPECIAL POLICE OFFICER.

"'There is a colored special police officer employed by this licensee, which is in violation of the rules and regulations promulgated by State Beverage Commissioner Burnett. The special officer, whose name is Matthew Knighton, shield No. 46, permitted these young people to frequent this filthy tavern night after night and indulge in their unwonted behavior, and it is therefore that I request that his commission of a special police officer is revoked as he is a menace to society, rather than beneficial.

"'I also request that the dance hall license of this tavern be revoked.

"'In view of the facts stated above and set forth in attached report and statements, I respectfully urge that the Municipal Board of Alcoholic Beverage Control (the Excise Board) not suspend the license of the above tavern but revoke it immediately, as this tavern is a wicked and vile hangout and without a doubt should be erased from this city. If places like the above tavern are permitted to operate in a like manner, it will bring disgrace upon this city, and will also make such licensees fearless of the law, giving them untold courage to defy the law and to carry on their ignorable traffic until great harm befalls society beyond redemption.'"

"The letter and statements were forwarded by Commissioner Kaas to Commissioner Duffy, accompanied by a letter dated February 25, 1938, in which Kaas says.

"'In view of these facts in this case, recommendation is strongly made that the Excise Board revoke this tavern license.'"

"SUSPENDED 30 DAYS

"The matter apparently took its usual course. A hearing was held before the board. The recommendations of Sebold and Kaas were before the board. The board found as a fact that the licensee was guilty of selling alcoholic beverages to minors in violation of the law and on March 18, 1938 suspended the license of this tavern for 30 days effective March 28.

"This Grand Jury was shocked at the apparent inadequacy of the penalty and decided to investigate further the activities of the board.

"The Grand Jury called for the records of the Police Department and the board for the current license year and these records were examined. We found that numerous requests from Chief Sebold for revocation of licenses in cases as flagrant as the one above recited, and in not one single case did we find that the board had revoked a license.

"Where they did impose penalties, they were trivial. The only case in which the board had ever revoked a license as a result of police recommendation, as far as our witnesses could recall, was some years ago in the matter of the tavern in which Dutch Schultz was killed.

"FEARS EXPRESSED

"We feel that the control and regulation of the sale of alcoholic beverages contemplated by our state A.B.C. act in creating a municipal board of A.B.C. finds completely inadequate expression in the present function of the Newark board. Continued practices such as the many violations which the Municipal A.B.C. Board apparently condoned, or is unable to cope with, give expression to the fears put forth by ardent prohibitionists.

"Ample testimony was given before us to justify a conclusion that not only are licensees inadequately restricted but that license renewals are granted with little or no consideration given to past violations.

"It must be apparent that lax enforcement encourages violations and works a hardship on that portion of our 1,060 Newark licensees who try to operate orderly establishments and who comply with the law. The failure of the board to properly back up the police department must necessarily discourage and hamper any effort by the police to preserve order and decency in the City of Newark.

"This Grand Jury in making this presentment strongly condemns the conduct of the Newark Board of Alcoholic Beverage Control and urges that State Commissioner Burnett and the Newark City Commission take immediate action to the end that this intolerable condition may be corrected."

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April 1, 1938.

Hon. Michael P. Duffy,
Department of Public Safety,
Newark, N. J.

My dear Commissioner:

In view of the presentment made by the Grand Jury today against the local Excise Board which, so far as concerns inadequate

penalties in many cases and the dismissals of other well-founded cases for alleged "lack of evidence", coincides with my own experience, I shall not refer any further disciplinary matters to the Newark Board but will handle them henceforth direct until I am satisfied that they will be treated by the local authorities in a manner to command respect and confidence.

I request that your Police turn in to me for similar direct action all substantiated complaints which they believe warrant revocation or suspension.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

April 1, 1938.

My dear Commissioner:

In answer to your communication dated April 1, 1938 I hereby advise that I will comply with the request contained therein and any other request which you may make of me. I have also notified the Police Department to comply with your request.

Very truly yours,

MICHAEL P. DUFFY
Director of Public Safety

April 2, 1938.

Hon. Michael P. Duffy,
Director of Public Safety,
Newark, N. J.

My dear Director:

Thanks very much for your prompt compliance. It is heartening to virile law enforcement.

Now for action!

Sincerely yours,

D. FREDERICK BURNETT
Commissioner

). LICENSES - INCORPORATION OF LICENSEE SUBSEQUENT TO ISSUANCE OF LICENSE - NECESSITY FOR TRANSFER OF LICENSE - HEREIN OF THE POSSIBILITY OF SPECIAL PERMITS IN SUCH CASES.

Gentlemen:

On June 30th, 1937, Plenary Retail Consumption License C-7, was issued to J & B Saunders for premises located at 302 East Ninth Avenue, Roselle.

On or about December 31st, 1937, one Jacob Saunders acquired his brother's interests and the business has since been conducted by Jacob Saunders under the same license.

It now appears that this business has been incorporated and is to be known as the Alpha Bar and Grill.

Will you be kind enough to advise me at once as to the proper procedure with respect to the transfer of this license and whether re-advertising is necessary or can the business continue on until the expiration date and then issued in the name of the corporation?

Very truly yours,

J. F. OSTRANDER,
Borough Clerk.

April 1st, 1938.

J. F. Ostrander, Clerk,
Borough of Roselle, N. J.

Dear Mr. Ostrander:

Replying to your letter of March 29th, our records show that you previously advised that the partnership between J.& B. Saunders was dissolved on December 31st, 1937 and that the business was being carried on by Jacob Saunders, one of the partners. Under those circumstances, no transfer of license was necessary. The character and eligibility of both of the partners was necessarily passed upon and approved by your Borough Council when it issued the original license to the partners. Consequently, if one partner dropped out, the other was still qualified to carry on the business. It was sufficient to note the change on the stub in your license book, endorse the license and notify this Department. Re Baumgartner, Bulletin #165, Item 10 and cases therein cited.

Now, however, the situation is different. The corporation is neither the same thing as the partnership nor the surviving or continuing partner. It is a new group associated in business enterprise and is treated in the law as if it were itself a person separate and distinct from its members. The personnel of the Corporation has not been passed on or approved. The corporation has no license and, consequently, cannot sell liquor or otherwise lawfully conduct any business which requires a liquor license. I take it that, when you say that the business has been incorporated, it is the Corporation

which now owns and runs the business. It cannot lawfully do this under the personal license held by Jacob Saunders. He cannot be a "front" for the corporation.

In order to transfer the license from Saunders to the Corporation, it is necessary to comply with all the requirements concerning transfers including advertisement of notice of intention. Until the transfer is granted and the license properly endorsed, the Corporation cannot conduct the licensed business. Re Duffy, Bulletin 229, Item 9.

Therefore, on the facts as you state them, the place should be closed down at once until the transfer is obtained.

If Jacob Saunders is the majority stockholder of this new Corporation, and substantially the owner of all the stock therein except minor qualifying shares, I will entertain an application for a special permit to the Corporation since the premises have already been passed upon and, on the hypothesis stated, the transfer to the new Corporation is merely technical. No such application will be entertained, however, unless your Borough Council first approves of such special permit being issued by me.

I therefore reserve decision on the issuance of such Permit until application is made and the facts are duly presented to me, together with consent of the Borough.

In the meantime, if it is the fact that the business has been transferred to the Corporation and it is the Corporation that is now operating under Saunders' individual license, all sales of alcoholic beverages must stop forthwith.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. DISCIPLINARY PROCEEDINGS - GAMBLING - FORTY DAYS PENALTY.

April 2, 1958.

J. Donald Markey, Clerk,
Municipal Board of Alcoholic Beverage Control,
Rahway, N. J.

Dear Mr. Markey:-

I have staff report of the proceedings before the Municipal Board of Alcoholic Beverage Control of Rahway against Stephen Muzyka, charged with permitting gambling on his licensed premises and note that he pleaded guilty and his license was suspended for forty days.

These proceedings followed receipt of a complaint from a gentlewoman that her husband and eleven year old son spent the night in the tavern - the father playing cards and losing his whole week's salary, while the boy slept.

The gaming table all too often works bitter hardship upon the dependents of those who can ill afford to lose. The sooner taverns are divorced from gambling, the better. The rules forbid it. The penalty is severe but will be applauded by everyone who believes that the law was made to be obeyed.

Please extend my thanks to your Board for their salutary action.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. REMOVAL OF DISQUALIFICATION BECAUSE OF PREVIOUS CONVICTION - LIFTING ORDER MADE BUT EFFECTIVE DATE POSTPONED - HEREIN OF LIES AND LYING.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of R.S. 33:1-31.2 (Chapter 76, P.L. 1937) -- Case No. 22.

CONCLUSIONS AND ORDER

. . . . . .

Anthony D. Rinaldo, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Petitioner was arrested on November 15, 1924 and pleaded non vult on February 2, 1925 to the crime of assault with intent to kill. He was fined $500. as a result of said conviction but was not sentenced to jail. The facts concerning this case are set forth fully in Re Application for Solicitor's Permit, Case No. 17, Bulletin 116, Item 5.

Petitioner is forty-three years old. For more than twenty years last past he has been employed three days a week during the summer and one day a week during the winter by his brothers who conduct a stand in an open air market selling farmers' produce. He has had no other source of income except such sums of money as his brothers voluntarily give him from time to time, and such money as he earns selling Christmas trees during the holidays. Since last June he has been permitted by the other members of his family to reside rent free in a home which was devised by his mother to all of her sons.

Petitioner has not been convicted of any crime since 1925. He was arrested in 1936 and fined $100. for violation of the Motor Vehicle Act, at which time he was accused of striking a pedestrian with his automobile and leaving the scene of the accident. One of his brothers testified as to petitioner's good conduct during the past ten years, and two other individuals, who were also engaged in the produce business, corroborated this testimony. These individuals have known petitioner for 20 and 10 years respectively. Petitioner's fingerprint records disclose no convictions other than those set forth herein.

Because the conviction for violation of the Motor Vehicle Act is not a conviction of a crime, Re Hearing No. 133, Bulle-

tin 170, Item 7, it appears that at least ten years have elapsed from the date of his conviction of a crime. From the evidence I conclude also that petitioner has conducted himself in a law abiding manner during the past ten years.

There remains to be considered the question as to whether his association with the alcoholic beverage industry will not be contrary to the public interest. I have had some hesitancy in reaching a decision on this question because a natural suspicion arises that a person gainfully employed only one day a week during at least half the time for many years last past may have been engaged in illegal activities to supplement his income. This is denied by petitioner and his witnesses. I shall believe petitioner's testimony, that he has been helped by the other members of his family and has thus been able to support himself and his wife.

I cannot, however, overlook the fact that petitioner gave false testimony at the hearing held on his application for a solicitor's permit. Re Application for Solicitor's Permit, Case No. 17, supra. I realize and sympathize with the situation confronting men who have been convicted of crime. If they make an honest, frank statement in their application for employment, they are damned by their own candor. After repeated failures to get employment due to their frank disclosure of a previous conviction, the economic situation presses them to lie in the hope that they will get by. No permanent success, however, can be built upon misrepresentation and falsehood. The lie will always find them out. This Department will deal fairly, even liberally, with those who tell the truth but public policy forbids that those who lie to the State to obtain privileges shall go unscathed. I shall remove the disqualification but, because of such false testimony, the order will become effective July 1, 1938.

It is, therefore, on this 3rd day of April, 1938, ORDERED that petitioner's disqualification from obtaining or holding a solicitor's permit, or being employed by a licensee, because of the conviction of the crime of assault with intent to kill, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2 (Chapter 76, P.L. 1937), but this order shall not be effective until July 1, 1938.

D. FREDERICK BURNETT
Commissioner

12. APPELLATE DECISIONS - DUFFIELD vs. ALLENHURST.

LEROY BANKS DUFFIELD,)
Appellant,)
-vs-)
) ON APPEAL
BOARD OF COMMISSIONERS OF)
THE BOROUGH OF ALLENHURST,) CONCLUSIONS
Respondent.)
)

. . . . . .

Lester C. Leonard, Esq., Attorney for Appellant.
Richard W. Stout, Esq., by William J. O'Hagan, Esq.,
Attorney for Respondent.

BY THE COMMISSIONER:

The parties to this appeal and the premises in question are the same as those in Duffield vs. Allenhurst, Bulletin 202, Item 1. The present appeal, however, concerns denial of a plenary retail consumption license for the current licensing period, thereas the prior appeal concerned denial of such a license for the previous licensing period.

The prior case was decided adversely to appellant because of an ordinance which provided "that no plenary retail consumption license shall be granted within the Borough of Allenhurst."

The ordinance is still in full force and effect.

So long as that ordinance remains effective, respondent cannot lawfully issue the license applied for. Bachman vs. Phillipsburg, 68 N. J.L. 552; Franklin Stores Co. vs. Belleville, Bulletin 102, Item 2 and cases therein cited; Blum vs. Pompton Lakes, Bulletin 126, Item 4.

Appellant contends, however, that this ordinance should not affect his application because the application was filed prior to the adoption of the ordinance. This point, however, was raised in the previous appeal and, for the reasons therein stated, was overruled. That decision completely disposes of this claim.

Appellant's main contention is that the ordinance was improperly motivated and designed to coerce the owners of the premises in question to enlarge them, thereby increasing the tax revenues and creating other advantages of less holy import. I have read the transcript carefully but do not find any improper motivation. It is true that opinion was expressed by members of the respondent Board of Commissioners that they would favor the granting of a liquor license if the existing building were converted into a bona fide hotel. Apparently the Board is afraid that because of the history of the Allenhurst Inn, under the management of a former licensee, the place must necessarily be conducted as a night club and they have, therefore, refused to accept the assurance of appellant that he has no intention of conducting a night club but only a high-class restaurant to which the place seems admirably adapted. In this there is nothing wrong. The Commissioners have good right, from past performances, to fear the return of a night club. If, however, this is the real and the only bone of contention, it could readily be solved by imposing special conditions upon the license as to the use to be made of the place; the kind of entertainment to be provided -- or, if all entertainment is to be prohibited, then the formulation of a condition to that effect. So as to music, dancing, noise, hours of sale, etc. etc. I don't see why the parties do not get together and compose their differences. All that is required, on this score, to insure what the respondent deems desirable without reliance upon any one's assurance, is a determination of what the special conditions shall be, their formulation in specific terms, and thereupon their embodiment in the license -- in short, the cardinal difference between relying on a promise and being protected by a condition. Of course, it cannot be accomplished by continuing to talk in generalities of a night club as to which there is no definition.

The difficulty, as the case stands before me, is deeper. Even if the parties get together and settle this matter in a fair, common-sense way, yet until the present ordinance is re-

pealed, no plenary retail consumption license whatever may be issued.

I have heretofore decided, in Tenenbaum vs. City of Salem, Bulletin 109, Item 1, that I have no jurisdiction to review the reasonableness of an ordinance enacted by a governing body of a municipality pursuant to R.S. 33:1-12 (Control Act, Section 13). This section provides: "The governing board or body of each municipality may, by ordinance, enact that no plenary retail consumption license shall be granted within its respective municipality." Whether there shall be such an ordinance or not is a decision of local policy which has been confided exclusively to the discretion of the local governing board. The Board of Commissioners of Allenhurst, pursuant to the power vested in them, have duly enacted just such an ordinance. I have, therefore, no jurisdiction to review either its reasonableness or its motivation.

I have carefully considered the four exceptions taken by the attorney for the appellant, and the two taken by the attorney of the respondent, to the rulings made by the Hearer, but have concluded that no decision is necessary in respect to any of these exceptions because what was admitted or excluded, as the case may be, in nowise affects my decision that, for the reasons aforesaid, the action of the respondent must be and it is hereby affirmed.

Dated: April 5, 1938.

Frederick M. Burnett
Commissioner