

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

BULLETIN 244.

MAY 13, 1938.

1. ADVERTISING -- WINDOW DISPLAY OF DOGS.

Dear Sir:

As per our telephone conversation, I wish to inquire whether or not it would be against any rules or regulations of your Department for us to display two dogs in one of our windows in conjunction with an advertising idea we have in mind.

We have already received the approval of the S.P.C.A. Department and a showing of these dogs will be under the supervision of an authorized Kennel.

Very truly yours,

WESTON & CO. INC.

May 9th, 1938.

Weston & Co., Inc.,  
Newark, N. J.

Gentlemen:

Your purposed window display appears permissible. I assume the dogs will have plenty of cool water in these warm days to do their pump priming, and that the rest of the advertising idea will be as innocuous as the dogs. Remember, they are entitled to their first bite -- a privilege denied to licensees.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

2. BITTERS - WHEN UNFIT FOR BEVERAGE USE - THE FEDERAL STANDARDS.

May 2, 1938.

Sirs:

Reference is made to your letter dated April 18, 1938, regarding the requirements for extracts and bitters which are classified as unfit for beverage use and exempt from internal revenue tax.

With respect to flavoring extracts, the standards of the Food and Drug Administration of the Department of Agriculture as expressed in Federal Drug Regulations #2 are accepted by this office as being sufficient to render them unfit for beverage use. Any alcoholic preparation which is classed as nonbeverage or unfit for beverage use must contain no more alcohol than is necessary for the solution and extraction of the materials contained therein and for the preservation of the finished product.

New Jersey State Library

Bitters classed as unfit for beverage use are divided into two general classes: 1. Medicinal Bitters. 2. Flavoring Bitters.

Medicinal Bitters to be exempt from internal revenue tax must contain at least two U.S.P. doses of drugs of recognized therapeutic value per fluid ounce, with aromatic substances which render the products insusceptible of beverage use.

Flavoring Bitters should show upon analysis:

- 1.6 grams of non-sugar solids per 100 cc, with a plus or minus tolerance of 0.1 gram
- .2 gram of chloroform ether extract per 100 cc
- .4% oil by volume,

all derived from the aromatic drugs used in compounding the preparations.

When the above standards are not adequate to cover a given case, and the tax status of the product is in doubt, it is suggested that samples of the preparation be submitted to the laboratory of this Bureau for analysis and comment.

Respectfully,

STEWART BEEKSHIRE,  
Deputy Commissioner

### 3. HOURS OF SALE - EXTENSION BEYOND 3:00 A.M. DISAPPROVED.

Dear Sir:

Due to the fact that several of the Tavern Owners have requested the Wayne Township Committee for an extension of the closing time, the Committee is contemplating the introduction of an amendment to the liquor Ordinance, on May 10th, whereby the closing hour will be changed from 3 A. M. to 4 A. M. (Prevailing Time). However, the Committee wish to cooperate in every way with your Department, and would like your opinion in the matter before taking any action.

Ordinarily most of the licensed places are closed at 1 or 2 A. M., but, on Saturday nights or times when large parties are being held they have been requested to remain open one hour longer.

Trusting to receive a reply as to your opinion in the matter of the closing hour, before the meeting on May 10th, I remain,

Very truly yours,

PETER MacDONALD  
Wayne Township Clerk

May 9, 1938.

Peter MacDonald, Clerk,  
Wayne Township,  
Mountain View, N. J.

My dear Mr. MacDonald:

I have yours dated April 28th and appreciate the courtesy and confidence of the Wayne Township Committee.

Candidly, I think it is a mistake to extend the closing hour from 3:00 to 4:00. Three o'clock is plenty late for any self-respecting citizen to be prowling around pleasure bent. It is this early morning carousing which brings the liquor traffic into disrespect. These are the hours when decency vanishes, revelry becomes debauch and futures are blighted, not to speak of broken bones and saddened homes.

Licensees who advocate such an extension must be stone blind.

We, who are charged with the protection of the public interest, must turn a deaf ear to the importunities of those whose cash registers have paralyzed their judgment. If one can't get his fill of liquor by 3:00 o'clock in the morning, he'll have to stagger away and drink another day.

I cordially advise your Township Committee against any extension whatsoever beyond 3:00 A. M.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

4. LICENSES - FINGERPRINTING OF APPLICANTS - MUNICIPAL REGULATION.  
REQUIRING ALL APPLICANTS FOR LICENSES TO BE FINGERPRINTED.

May 9th, 1938.

W. W. Friberger,  
Township Clerk,  
Union, N. J.

My dear Mr. Friberger:

I have before me resolution adopted by the Township Committee on April 26, 1938, which provides:

"BE IT RESOLVED by the Township Committee of the Township of Union in the County of Union as follows:

"Whenever application shall be made for any alcoholic beverage license issuable by the Township Committee, including plenary retail consumption license, seasonal retail consumption license, plenary retail distribution license, limited retail distribution license, club license, or any other form of license which may be issued by the Township Committee, and before any such license shall be granted, the applicant, in addition to supplying all other information in the manner required by the Statutes and local ordinances governing the subject, shall also furnish and file with the Police Department of the Township a full and adequate set of fingerprints of the applicant within three days from the time of the presentation of the application. Such fingerprinting shall be done by the Police Department of the Township. If the applicant be a corporation, then this requirement shall apply to the officers of said corporation and those stockholders holding at least twenty-five per

cent. of the stock thereof. Before the time set for consideration of the application, the Police Department shall report in writing to the Township Committee whether or not the requisite fingerprinting has been completed as herein provided, and shall report any facts concerning the subject which may be pertinent to the granting or refusal of the application."

The Township Committee has the power under the Act to require applicants for licenses to be fingerprinted. It is conferred by R.S. 33:1-35 (Control Act, Sec. 32), which authorizes, among other things, such investigations of applicants as shall be deemed necessary and proper in the administration of the Act.

It will undoubtedly be of material help in the selection of better qualified licensees.

It is approved as submitted.

The approval is subject, of course, as in the case of all ex parte approvals, to review on appeal. See Re Hauck & Felter, Bulletin 130, Item 3, and the items cited therein.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

5. APPELLATE DECISIONS - LUZZI vs. NUTLEY.

|                               |   |             |
|-------------------------------|---|-------------|
| Joseph Luzzi and Luzzi, Inc., | ) |             |
| a New Jersey corporation,     | ) |             |
|                               | ) |             |
| Appellants,                   | ) |             |
|                               | ) |             |
| -vs-                          | ) | On Appeal   |
|                               | ) |             |
| Board of Commissioners of the | ) | CONCLUSIONS |
| Town of Nutley,               | ) |             |
|                               | ) |             |
| Respondent.                   | ) |             |
|                               | ) |             |

Hodes & Hodes, Esqs., by Irving L. Hodes, Esq., Attorney for Appellants

Edwin J. C. Joerg, Esq., Attorney for Respondent

BY THE COMMISSIONER:

The appellants, Joseph Luzzi and Luzzi, Inc., filed Notice and Petition of Appeal from an alleged determination by the respondent Board of Commissioners of the Town of Nutley, that a transfer of license from the individual appellant to the corporate

appellant was prohibited by the terms of Section 18 of an ordinance regulating the sale of alcoholic beverages in Nutley.

At the hearing on appeal it appeared that no formal application for transfer was filed by the appellants until after their appeal was taken; that the respondent has withheld action on the formal application for transfer pending the Commissioner's decision on the appeal; and that the appellants are really seeking to have reviewed a preliminary opinion rendered by the respondent to the appellants as to the effect of Section 18 of the ordinance. It is evident that the respondent has not taken any action which constitutes a denial of transfer, appealable pursuant to Section 23 of the Control Act (now R.S. Sec. 33:1-26). Ordinarily, this fact would, without more, lead to dismissal of the appeal. However, the matter has been fully heard and counsel for all parties have expressly requested that the single legal issue presented be determined. To avoid unnecessary expense and delay, this will be done.

Section 18 of the ordinance, adopted by the respondent on November 5, 1934, provides:

"The number of Plenary Retail Consumption licenses in the Town of Nutley shall be limited to twenty licenses provided, however, that this limitation shall not apply to any applications now pending before the Board of Excise Control of the Town of Nutley, nor shall it affect the Plenary Retail Consumption Licenses now in effect in said Town of Nutley, nor to the transfer of Club licenses to Plenary Retail Consumption Licenses as at present licensed, or vice versa."

At the time of the adoption of the ordinance, there were 26 plenary retail consumption licenses in force, including the plenary retail consumption license now held by the appellant, Joseph Luzzi and which he seeks to transfer to the corporation aforesaid in which he owns 90% of the stock. All of these licenses have been renewed annually and are still outstanding. Under the express terms of Section 18, the limitation embodied therein does not, in anywise, "affect" these 26 licenses - consequently, all of the statutory privileges incident to these licenses and renewals thereof, including the authority to transfer, must be construed to continue as theretofore. Indeed, if the ordinance were to receive a contrary construction, it would be invalid under previous rulings to the effect that a municipality has no power to adopt an absolute restriction against transfers, notwithstanding that the restriction purports to be in aid of a general limitation of licenses. See Re: Kessel, Bulletin 160, Item 5, Van Schoick vs. Howell, Bulletin 120, Item 6.

Accordingly, the respondent is directed to proceed with its consideration of the merits of the pending application for transfer of license from Joseph Luzzi to Luzzi, Inc., in the light of the determination herein made that the limitation contained in Section 18 is not applicable thereto.

D. FREDERICK BURNETT  
Commissioner

Dated: May 9, 1938.

6. APPELLATE DECISIONS - WOJFACHNIO vs. BLOOMFIELD.

|                          |   |             |
|--------------------------|---|-------------|
| KAROLINE G. WOJFACHNIO,  | ) |             |
|                          | ) |             |
| Appellant,               | ) |             |
|                          | ) |             |
| -vs-                     | ) | ON APPEAL   |
|                          | ) |             |
| TOWN COUNCIL OF THE TOWN | ) | CONCLUSIONS |
| OF BLOOMFIELD,           | ) |             |
|                          | ) |             |
| Respondent.              | ) |             |
|                          | ) |             |

.....

Thomas Brunetto, Esq., Attorney for the Appellant  
Edward C. Pettit, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail distribution license for premises located at 419 Broad Street, Town of Bloomfield.

On December 6, 1936, respondent adopted a resolution limiting the number of plenary retail distribution licenses to be outstanding at any one time in the Town to 14. On July 8, 1937, when appellant filed her application for license, this quota had already been exhausted. Nevertheless, respondent deferred final action upon the application pending the outcome of an appeal then before me in which one Solomon, as appellant, attacked the reasonableness of the limitation and its application to Solomon's store in the same neighborhood now in question. The decision in that matter on October 22, 1937 was rendered on grounds which did not involve either the reasonableness of the limitation or its application to the particular neighborhood. Solomon vs. Bloomfield, Bulletin 209, Item 4. Thereafter, on December 6, 1937, respondent denied the present application because of the still exhausted quota. At the same meeting, it introduced an ordinance (adopted December 20, 1937) in which the limitation on the number of plenary retail distribution licenses was re-enacted.

Appellant first contends that a maximum of 14 plenary retail distribution licenses is an unreasonable limitation for the Town as a whole. This contention, however, is not sustained by the evidence. Bloomfield has an approximate population of 45,000 persons. Besides the 14 licenses for package goods stores above-mentioned, there are 33 plenary retail consumption licenses and 24 limited retail distribution licenses issued and outstanding. There is no indication that the quota on plenary retail distribution licenses provides an inadequate number of package stores for the Town as a whole.

Appellant's main contention is that the quota is unreasonable in its application to her and to the neighborhood in question. Her proposed store is located in a business section which extends some five blocks along Broad Street. Across the street from her premises and in the section but a few hundred feet to the south, are 2 package goods establishments, one an "A. & P." store and the other a "liquor" store. Within 2 or 2½ blocks of the proposed site are also 3 taverns and 2 limited distribution stores.

To prove that public necessity and convenience require the issuance of her license despite the existing liquor places in

the area, appellant has produced evidence (1) that the nearby "A. & P." store is closed on weekday evenings and also on Sundays (thus leaving it unavailable for the purchase of liquor during the permissible hours of retail sale in Bloomfield on weekday evenings and on Sunday afternoons and evenings); (2) that the proprietor of the nearby "liquor" store is disliked by various residents in the vicinity; (3) that these 2 distribution establishments are located on the west side of Broad Street, which is a heavily trafficked thoroughfare, whereas appellant's proposed package store is located on the east side; and (4) that petitions allegedly bearing the signatures of 224 persons were filed with respondent in favor of appellant's application.

(1) The fact that the "A. & P." store is not open during all the hours when liquor may be sold at retail in the Town is of little consequence. 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.

(2) Appellant has produced several nearby residents who declare that, for personal reasons, they dislike the proprietor of the "liquor" store and are therefore reluctant to do business at his place. This private distaste or personal disfavor furnishes no compelling reason why a third distribution establishment is necessary in a neighborhood already well supplied. Licenses need not be issued until every resident is assured a liquor purveyor who suits his fancy.

(3) While it is true that the present package goods stores are located on the opposite side of Broad Street, which is a heavily trafficked thoroughfare, there is no indication that traffic has reached such alarming proportions that persons east of Broad Street are barred from reasonable access to the "A. & P." and the "liquor" store on the west side. It is still possible for a child to cross in safety. While prospective patrons, desirous of purchasing package liquor in a hurry, may be annoyed at the prospect of having to wait for a favorable moment or to count ten before crossing Broad Street to reach those stores, such annoyance is not legally persuasive of public necessity and convenience. Blum vs. Pompton Lakes, Bulletin 126, Item 4.

(4) Nor do the petitions favoring appellant's application require the establishment of an additional package store in this area. The weight to be given to those petitions is a matter lying within the sound discretion of the issuing authority. Goff vs. Piscataway, Bulletin 234, Item 5, and cases therein cited. In the instant case, respondent, in view of the municipal limitation upon the number of distribution licenses and the number of liquor places already existing at the vicinity in question, cannot be said to be unreasonable in acting counter to the favoring petitions.

Appellant further contends that to deny an additional package store in the business section in question (where only 2 exist) is discriminatory, inasmuch as 8 such establishments exist in Bloomfield Center, a business section of the Town located approximately 1 mile away. This difference in the number

of package stores in the two business sections of the Town reveals no unreasonable discrimination. Bloomfield Center is the major business section and attracts trade from all parts of Bloomfield and from the outside as well. The vicinity in question is a "neighborhood" business section or local shopping district. With the exception of Bloomfield Center, it contains more package stores and more liquor establishments than any other section in the Town.

The action of respondent is affirmed.

D. FREDERICK BURNETT  
Commissioner

Dated: May 10, 1938.

7. APPELLATE DECISIONS - MARSTELLER vs. SOMERS POINT and HAGENBUCHER.

ANNA C. MARSTELLER, )

Appellant, )

-vs-

ON APPEAL

COMMON COUNCIL of the CITY )

OF SOMERS POINT, and RICHARD )

J. HAGENBUCHER, )

Respondents. )

.....

Edison Hedges, Esq., Attorney for Appellant.

Enoch A. Higbee, Jr., Esq., Attorney for Respondents.

BY THE COMMISSIONER:

This is an appeal from the granting of a plenary retail consumption license by respondent Common Council to respondent Richard J. Hagenbucher for vacant premises at the corner of Maryland Avenue and Sunny Avenue, in the City of Somers Point.

The petition alleges many reasons why the granting of the license was improper. These reasons may be summarized as follows: (1) that no hearing was held upon objections filed to the granting of said license by Hower T. Marsteller; (2) that respondent Hagenbucher is not a fit person to hold a license; (3) that licenses in excess of a reasonable number have already been issued in Somers Point; (4) that the plot of ground for which this license was granted is within one thousand feet of appellant's home, which has been ruled by the Commissioner to be in a residential section; (5) that the license was granted for a vacant lot; (6) that the application was not made in good faith.

As to (1): Hower T. Marsteller, who had filed written objections to the granting of this license, in which he set forth practically the same reasons contained in the petition of appeal, died on or about December 14, 1937. On December 18, 1937, Mr. Marsteller's attorney, who is also attorney for appellant herein, the wife of the late Hower T. Marsteller, wrote to the members of the Common Council requesting that the matter be continued so

that he could properly prepare papers to oppose the granting of any license to Richard J. Hagenbucher in the neighborhood of the Marsteller home. Despite the receipt of this letter, Common Council granted the license at its meeting held on December 20, at which meeting no one appeared personally to object to the granting of the license. Ordinarily, failure to hold a hearing after the due filing of written objection would require that the entire matter be remitted to the issuing authority for further proceedings, in accordance with the State rules and regulations. Retail Liquor Distributors Assn. of Atlantic City vs. Atlantic City and Kornblau, Bulletin 88, Item 11; Greifinger vs. Newark and Alboum; Bulletin 89, Item 2. In this case, however, the sole objector had died about a week before the hearing at which the application was granted. The objection, being personal in nature, died with the objector. Hence, technically, when the license was granted there was no objection on file which required consideration.

Whether the Common Council should have granted an adjournment as requested was within the reasonable discretion of the Common Council. An adjournment, if granted, is a matter of grace and not of right. Meyers vs. Plainfield and Lang, Bulletin 164, Item 2. Full opportunity has been afforded to appellant, and to another neighbor who likewise filed no objection below, to be heard on this appeal which, as usual, has been heard *de novo*. Appellant's rights, therefore, have been fully protected on this appeal. She cannot complain because no hearing was held on objections filed by her husband.

As to (2): Respondent Hagenbucher is the same person named in previous appeals entitled Marsteller vs. Hagenbucher, Bulletin 95, Item 10 and Hagenbucher vs. Somers Point, Bulletin 192, Item 6. It has been stipulated that the records in both of said cases shall be considered as part of the record herein. In the case first cited, a renewal of a license granted to Hagenbucher for the fiscal year 1935-1936 was reversed on the grounds that a member of the local issuing authority was employed by Hagenbucher, and that Hagenbucher had knowingly misstated in his application that he had never been convicted of a crime. In the second case, the denial of a license to Hagenbucher and his wife for premises located at 528 Shore Road, Somers Point, was upheld upon the ground that the neighborhood was residential in character and because the evidence revealed that Hagenbucher had previously conducted his licensed premises in an objectionable manner. In the application filed for the present license Hagenbucher discloses that on February 20, 1934 he pleaded non vult to an indictment charging him with possession of a slot machine and received suspended sentence. That of itself did not involve moral turpitude. Appellant does not contend that Hagenbucher has any other criminal record.

The mere fact that a licensee has at one time improperly conducted his business does not necessarily disqualify him forever from receiving a license unless the misconduct was so gross as to involve moral turpitude or to demonstrate permanent unworthiness ever to be entrusted with a license. Granger vs. Oakland, Bulletin 91, Item 1. A review of the testimony of the previous cases shows that Hagenbucher violated closing hours, permitted boisterous and disgusting conduct by his patrons in and about his licensed premises and sold to minors. All of these facts were well known to the members of Common Council when they granted him his present license. If they had denied this application because of

his past record, I would have affirmed their decision as I did in the case of Hagenbucher vs. Somers Point, supra. From the record, however, I cannot say that his conduct was so bad as to require a reversal in this case. Common Council evidently believes that he has learned his lesson and that they have nothing to fear as to his future conduct. Should he relapse into his old ways, there is an adequate remedy which may be invoked in proceedings to suspend or revoke his license. The Common Council have made themselves his moral endorsers. It is their special responsibility, under the circumstances, to see to it that, if he lapses, punishment is sure and swift.

As to (3): There are more than twenty consumption licenses outstanding in the City of Somers Point, which has a permanent population of between 1700 and 2000. That appears to be entirely too many licenses. According to the testimony, however, in the previous cases, the City has a considerably larger summer population. It appears that a consumption license had for many years been granted for a building directly behind the plot of ground for which the present license was granted. Said license was not renewed for the current fiscal year. The question as to the number of licenses which may be outstanding in any municipality is very largely a matter for the exercise of sound discretion by the governing body of a particular municipality. Where, as here, an attack is made upon the exercise of that discretion, the burden rests upon appellant to prove an abuse of that discretion by clear and convincing evidence. Weiss and Kushner vs. Clifton and Peters, Bulletin #215, Item 10. If I were sitting as a member of the Common Council, I would have voted to deny this license because there are already too many. Sitting as a judge on appeal, I cannot say that the action of the Council was so arbitrary and unreasonable that it must be set aside. Allowing reasonable latitude for difference of opinion based on the summer influx and the fact that the present license replaces one previously outstanding in the same vicinity, I cannot say that the evidence is susceptible of but one conclusion and that contrary to the result reached by the local Common Council.

As to (4): The evidence shows that the property for which the license was granted is located on Maryland Avenue in a section containing timberland and small bushes. It is one thousand feet from appellant's home and cannot be seen from her property. The nearest house to the place for which the license was granted is two hundred feet away, and the next nearest house about five hundred feet away. In the opposite direction from appellant's home there are four gasoline stations on Maryland Avenue. It is true that it has been decided that the neighborhood in which Hagenbucher previously conducted his business at 528 Shore Road, in close proximity to the Marsteller home, is residential in character, but I do not find that the premises for which the present license was granted is located in a residential district.

As to (5) and (6): About November 15, 1937 Hagenbucher filed his first application, together with plans and specifications for a building to be erected thereon. Subsequently he advised the City Clerk that he intended to change the specifications and that the new building would be larger and different from the first one. The Clerk thereupon returned the first application and received a second application on November 23, together with new plans and specifications. At the meeting of the Common Council, held on December 6, 1937, the City Clerk reported the filing of this application, together with the new plans, and the application was apparently laid over until the meeting of December

20, when the license was granted by the following resolution:

"BE IT RESOLVED by the Common Council of Somers Point that a plenary retail consumption license be granted to Richard J. Hagenbucher for premises described on tax map as lots 100, 101, 102, Somers Point, located east corner of Sunny and Maryland Avenues on the following terms and conditions only.

"First, the building described in this plan submitted with the application, and as described in the application, shall be first constructed and after being inspected by the building and plumbing inspector of said city, be approved, both as to construction and in accordance with said plans as submitted. No orchestra or piano music or entertainment shall be permitted in said premises. Radio, victrola, and dancing by patrons shall be permitted; which conditions were substantially agreed to by the applicant. Objections against adopting this resolution were asked for, and no one responded. The roll was then called. Mr. Bosley was excused from voting. Mr. Edwards -- voted yes; Mr. Ellis -- yes; Mr. Koerner -- yes; and Mr. Thompson -- yes. The resolution was then declared adopted."

The conditions set forth in said resolution were subsequently submitted to me and approved as submitted subject, of course, as with all ex parte rulings, to review on appeal. The plans and specifications filed with the present application provide for a substantial-looking building containing a bar room, dining room and kitchen. The resolution granting the license provides that the building shall be first constructed and then approved by the building and plumbing inspector of said City. Of course, the license itself cannot be issued until after the condition precedent is complied with. Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8. The action of respondent Common Council in granting this license subject to the condition precedent is unobjectionable within the cases just cited.

Appellant's contention that the granting of the license is a mere subterfuge so as to permit Hagenbucher to obtain a transfer of said license to his Shore Road premises, near her home, is not sustained by any evidence. If such transfer were attempted, it would have to be done on a new application which would require advertising of notice of intention and, thus, appellant would be afforded an opportunity to file her objection thereto. There is nothing in the case which would lead me to believe that the application was not made in good faith.

The action of respondent Common Council of the City of Somers Point, in granting said license to Richard J. Hagenbucher is, therefore, affirmed.

D. FREDERICK BURNETT  
Commissioner

Dated: May 10, 1938.

## 8. LICENSES - HUNTERDON COUNTY - SUNDAY REGULATIONS.

May 11, 1938

Rev. H. A. Curtis, Jr., Pastor,  
Baptistown Baptist Church,  
Baptistown, N. J.

My dear Mr. Curtis:

In reply to yours of April 23rd, following is schedule indicating, so far as our records show, the number of retail liquor places and the Sunday regulations in the municipalities in Hunterdon County.

The first column on the left lists the municipalities. The second column will give you the number of plenary retail consumption licenses. This is the kind of license that restaurants and taverns obtain to sell alcoholic beverages for on-premises consumption. The third column gives the number of plenary retail distribution licenses. This is the license pursuant to which the package goods and grocery stores sell bottled liquor for consumption off the premises. The fourth column gives the number of club licenses allowing sales only to club members and guests for consumption on the premises. The fifth column will give you, briefly, the gist of the local regulation dealing with sales on Sundays.

|              | <u>P.R.C.</u> | <u>P.R.D.</u> | <u>Club</u>  |
|--------------|---------------|---------------|--|
| Alexandria   | 2             |               | All sales are prohibited and licensed premises must be closed from 12:00 midnight Saturday night until 1:00 P.M. Sunday. |
| Bethlehem    | 5             |               | No Sunday regulations.   |
| Bloomsbury   |               |               | No retail licenses issued - no Sunday regulations.   |
| Califon      |               |               | No retail licenses issued - no Sunday regulations.   |
| Clinton Town | 1             |               | Sales are prohibited all day Sundays except in dining rooms with meals.  |
| Clinton Twp. | 10            |               | All sales are prohibited from 1:00 A. M. Sunday until 12:00 noon.  |
| Delaware     | 2             |               | Sales are prohibited all day Sundays.  |
| East Amwell  | 1             |               | Sales are prohibited all day Sundays.  |
| Flemington   | 3             | 1             | Sales are prohibited all day Sundays.  |
| Franklin     | 1             |               | All sales are prohibited from 1:00 A. M. Sunday until 1:00 P.M.  |
| Frenchtown   | 2             |               | Sales are prohibited all day Sundays.  |
| Glen Gardner | 1             |               | Sales are prohibited all day Sundays.  |

|              | <u>P.R.C.</u> | <u>P.R.D.</u> | <u>Club</u> |   |
|--------------|---------------|---------------|-------------|---|
| Hampton      | 3             |               |             | All sales are prohibited and licensed premises must be closed from 12:00 midnight Saturday night until 1:00 P.M. Sunday. No sales may be made over the bar.   |
| High Bridge  | 6             |               |             | All sales are prohibited from 12:00 P. M. Saturday until noon Sunday. No alcoholic beverages may be served over the bar.  |
| Holland      |               |               |             | No retail licenses issued - No Sunday regulations.  |
| Kingwood     | 4             |               |             | All licensed premises must be closed from 2:00 A. M. to 6:00 A. M. Sundays. No dancing or target shooting is permitted on licensed premises on Sundays.   |
| Lambertville | 11            |               | 1           | All sales are prohibited from 2:00 A. M. until 12:00 o'clock midnight on Sundays.   |
| Lebanon Boro | 1             |               |             | Sales are prohibited all day Sundays except from 1:00 P.M. until 8:00 P.M. at tables with meals.  |
| Lebanon Twp. | 7             |               |             | All licensed premises must be closed from 1:00 A. M. to 7:00 A. M. Sundays.   |
| Milford      | 3             |               |             | Sales are prohibited all day Sundays.   |
| Raritan      | 5             |               |             | All sales are prohibited from 12:00 midnight Saturday night until Sunday noon. After Sunday noon, sales may be made only in hotel dining rooms or restaurants with meals and only for on-premises consumption. Barrooms must remain closed. |
| Readington   | 6             |               |             | Sales are prohibited all day Sundays.   |
| Stockton     | 1             |               |             | All sales are prohibited from 2:00 A. M. to 7:00 A. M. Sundays.   |

|             | <u>P.R.C.</u> | <u>P.R.D.</u> | <u>Club</u> |   |
|-------------|---------------|---------------|-------------|---|
| Tewksbury   | 1             |               |             | Sales are prohibited all day Sundays.                                     |
| Union       | 4             |               |             | All sales are prohibited from 12:00 P.M. Saturday until 1:00 P.M. Sunday. |
| West Amwell |               |               |             | No retail licenses issued - no Sunday regulations.                        |

The number of plenary retail consumption licenses in Bethlehem Township indicated above, is exclusive of license issued in the Township to Robert E. West, who discontinued business on October 1, 1937. The formal surrender of the license, however, has not yet been reported to the Department by the Township Clerk.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

By: Maurice E. Ash,  
Senior Inspector.

9. APPELLATE DECISIONS - ZAPPULLA, T/A W.J.Z.LONG BAR AND GRILL v. NEWARK and W.J.Z. TAVERN, INC.

WILLIAM J. ZAPPULLA, trading as )  
W.J.Z. LONG BAR AND GRILL, )  
Appellant, )

-vs-

MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY OF )  
NEWARK, and W.J.Z. TAVERN, INC., )  
Respondents. )  
- - - - - )

ON APPEAL  
CONCLUSIONS

Braff & Litvak, Esqs., by Joseph N. Braff, Esq.,  
Attorneys for Appellant.  
Joseph B. Sugrue, Esq., Attorney for Respondent Municipal Board of  
Alcoholic Beverage Control of the City of Newark.  
Irving Mandelbaum, Esq., Attorney for Respondent-Licensee W.J.Z.  
Tavern, Inc.

BY THE COMMISSIONER:

Appellant appeals from the transfer of a plenary retail consumption license from person to person and from place to place, viz., to W. J. Z. Tavern, Inc., at premises 535 Springfield Avenue, Newark.

Appellant filed objections with respondent Board to the transfer of the license, alleging that the application was made fraudulently and that, since the Municipal Board had previously granted a license to appellant, trading as W. J. Z. Long Bar and Grill, it could not, under the statutes and ordinances, grant another license to an applicant of a similar name.

On June 4, 1935 appellant filed a certificate under "An Act to Regulate the Use of Business Names" in the office of the Essex County Clerk, which states that appellant thereafter intended to transact business as W.J.Z. Long Bar and Grill; that the business to be conducted is that of tavern and restaurant at 535 Springfield Avenue, Newark. Appellant claims to have used the name W.J.Z. Tavern prior to the date on which the certificate was filed but,

for the present purposes, it will be sufficient to consider the use of the name "W.J.Z. Long Bar and Grill" since June 4, 1935. After appellant filed said certificate, and until he discontinued doing business at 535 Springfield Avenue on October 18, 1937, he maintained on said premises a large electric sign reading "W.J.Z. Long Bar and Grill." He issued business cards reading "W.J.Z. Long Bar and Grill"; he used glasses with the initials "W.J.Z." in white letters and he and his employees wore coats and aprons on which appeared the phrase "W.J.Z. Tavern." Appellant's lease of the premises at 535 Springfield Avenue expired on November 1, 1937. At or about that time he obtained a transfer of his license to a building located at 506 Springfield Avenue, where he now conducts his business under the same name which he had used at his prior location.

The certificate of incorporation of W.J.Z. Tavern, Inc. was filed in the Essex County Clerk's office on September 27, 1937 and in the office of the Secretary of State on the following day. The transfer of the license which is the subject of this appeal was granted on October 21, 1937 and W. J. Z. Tavern, Inc. began business at 535 Springfield Avenue on November 5, 1937. It has placed a sign on its place of business reading "W.J.Z. Tavern"; it uses glasses with the letters "W.J.Z." thereon, and the uniforms worn by its employees bear the initials "W.J.Z." Its President testified:

- "Q Why did you take the name W.J.Z.? A Happened to look around for a name and picked it out.  
 Q The mere fact W.J.Z. Bar and Grill had been there since 1932 had nothing to do with your taking the name?  
 A No, sir.  
 Q Do you like the station W.J.Z.? A I could take W.O.R. I like W.J.Z., so I took it.  
 Q Why do you like W.J.Z.? A I happened to pick it out.  
 Q Why did you pick W.J.Z. instead of some other name?  
 A Because I happened to think of that."

The fraud which appears to have been perpetrated on appellant's right to his trade name needs no comment. Appellant, however, has mistaken his forum. There was no fraud perpetrated upon the license issuing authority. The application for transfer was filed by W.J.Z. Tavern, Inc. in its corporate name and, so far as appears, no material facts were concealed. That all the facts were well known to respondent Municipal Board appears from a letter addressed to me on October 18, 1937 by the attorney for said Municipal Board outlining the salient points of the case and requesting an opinion as to whether the transfer should be allowed. On October 20, 1937 said attorney was advised that in my opinion the objections advanced may be overruled because:

"Such objection does not relate to the qualifications of the applicant or the physical suitability of the premises to be licensed, nor does it involve any considerations of liquor control. It presents a civil controversy, private in nature, which should rest exclusively within the determination of the courts."

Appellant cites R. S. 33:1-25 (Section 22 of the Control Act) making fraud a ground for revocation. The word "fraud" as used in said Section is to be interpreted according to its context. The entire sentence to which appellant refers is as follows:

"Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for revocation."

As so used, "fraud" means one practiced upon the issuing authority, not one on the rights of third parties.

Appellant cites no authority to support its contention that the transfer could not have been granted because the Municipal Board had previously granted another license to an applicant of a similar name. There is no merit to this contention.

Appellant contends, finally, that, under the broad powers granted by R. S. 33:1-39 (Section 36 of the Control Act) concerning unfair competition, the action of the Municipal Board in granting the transfer should be reversed. I have not promulgated any general rules or regulations under said Section covering the subject of unfair competition. While the Section provides that I may make special rulings and findings, nevertheless, such rulings and findings should be such as are necessary for the proper regulation and control of the manufacture, sale or distribution of alcoholic beverages or the enforcement of the Control Act, and not in aid of mere private rights.

The appellant cites a long list of cases in which a Court of Chancery has, in cases of a similar nature, enjoined a defendant from unlawfully interfering with a complainant's right to a trade name or enjoined the use of a corporate title. Appellant is apparently attempting to seek in this proceeding the type of relief granted in the Chancery cases. Whatever may be the final adjudication in that Court as to the right to use the trade name in question, or any similar name thereto, as between appellant and respondent W. J. Z. Tavern, Inc., I find no error in the action of respondent Municipal Board of Alcoholic Beverage Control in granting the transfer.

The action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark in granting the transfer applied for is, therefore, affirmed.

  
Commissioner.

Dated: May 12, 1938.