

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

BULLETIN 267

AUGUST 25, 1938.

1. SALES TO MINORS -- WHEN ABETTED BY PARENTS -- A NEW
PHASE OF THE PROBLEM.

Dear Mr. Burnett:

In the past and up to the present time we have been annoyed by certain State Officials of all ranks insisting that we serve their children drinks regardless if they are minors. In most cases they cite their official status and sort of insinuate that they are thus, being State Officials, invulnerable to the Laws of the Alcoholic Beverage Control Commission. We, in the meantime, holding our grounds on the sanctity of the Law and having quite a time with most of them. One in particular was insistent enough to claim that their presence with him (the State Official) entitle them, his children (minors) to be served alcoholic drinks.. And still we held our grounds.

We know that we cannot serve alcoholic drinks to minors, ANY MINOR, regardless of who their parents might be. We know that our placard "NO MINORS SERVED" is our shield against any argument, but we feel certain that if we only have a letter from you, signed by you emphatically instructing us NOT to sell to minors IRREGARDLESS of who their parents might be, State Officials or otherwise, we feel sure that we could put an end to all this nonsense.

Thanking you, we remain,

Yours truly

LE DEAUVILLE INN
Francis Dubac

August 18, 1938.

Mr. Francis Dubac,
Le Deauville Inn,
Belmar, N. J.

Dear Mr. Dubac:

You are 100% right. No one could say it more emphatically than you.

Of course, it makes no difference who one happens to have for parents. Gold badges and low license plates are not carte blanche in any tavern. So far from being invulnerable, those of us in brief authority should set the example of strict obedience to the rules. I believe most of them try to.

You won't have difficulty with any State Officials once you get the idea over that you are not favoring some against

others; that your inn is your castle; that you are not going to break the law for anyone and — NO EXCEPTIONS. The bigger the man really is, the easier your job to convince him that you mean it. Or, if you will send me names and addresses, I will be glad to explain the matter to them personally.

I am glad you held your ground.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - GAMBLING - 95 DAYS FOR SECOND OFFENSE.

August 18, 1938

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

My dear Mr. Markey:

I have before me your report that on August 11th, the Board suspended the license of Stephen Muzyka, 1591 Main Street, for 95 days, for permitting gambling on the licensed premises.

According to my records, this is Muzyka's second violation of the same kind, his license having been suspended for 40 days during April and May of this year.

Please express to the members of the Board deep appreciation for their initiative and vigorous action. Severe penalties meted out to habitual violators will impress licensees that the Board is possessed of a real weapon ever in readiness to punish those who flout the law and the regulations.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. COURT DECISIONS - NEW JERSEY SUPREME COURT - FRANKLIN STORES CO. v. BURNETT, COMMISSIONER.

NEW JERSEY SUPREME COURT

FRANKLIN STORES CO.,)
Prosecutor,))
-vs-)
D. FREDERICK BURNETT,)
COMMISSIONER, etc.,)
Defendant.)

Submitted May 3rd, 1938; decided
On writ of certiorari.
Before Justices Case, Donges and Porter.
For the prosecutor: Louis B. Englander, Esq.
For the defendant: Nathan L. Jacobs, Esq.
The opinion of the court was delivered by

DONGES, J.

In this proceeding prosecutor challenges a rule promulgated by the Commissioner of Alcoholic Beverages prohibiting the

sale on licensed premises of certain substances which may be used for the manufacture of alcoholic drinks.

Prosecutor moves to strike certain affidavits from the return. Without passing upon the propriety of including the affidavits in the return, we think they may remain in the record because of the following stipulation entered into at the time of the taking of depositions:

"It is stipulated that the matter set forth in the Commissioner's return to the writ including the affidavits which form part thereof shall be considered as though having been given on direct examination under oath here reserving to the prosecutor his rights to object to the competency, materiality, and relevancy of the affiants' testimony, and reserving to the prosecutor the right of cross-examining said witnesses and providing further that the prosecutor reserves the right to object to the offer of any testimony on behalf of the defendant at that time on the ground that after the filing of his return the defendant has no right to take testimony in support thereof."

Insofar as they may be incompetent, immaterial and irrelevant, the affidavits will not be considered. Prosecutor apparently has not pursued his right to cross-examination of the affiants, and must be presumed to have waived it. As to the last objection, it is well settled that a defendant in certiorari has an equal right with a prosecutor to present proofs in this court.

Rule 18 of the Commissioner, which is under attack, provides:

"No licensee shall sell or possess, or allow, permit or suffer on or about the licensed premises, any malt, hops, oak shavings or chips, flavoring or coloring agents, cordial or liquor extracts, essences or syrups, or any ingredient, compound or preparation of similar nature."

By section 64(d) of the Control Act, R. S. 1937, 33:1-66d, the legislature has declared unlawful the sale, manufacture, advertising, etc., of "any contrivance, preparation, compound, tablet, substance or recipe advertised, designed or intended for use in the manufacture of alcoholic beverages for personal consumption or otherwise." The contention seems to be that the statute makes these things unlawful only when intended for improper use, and the rule goes beyond this and contains an absolute prohibition against their sale on licensed premises for any purpose.

However, we are of the opinion that the defendant is not limited in his control over the conduct of licensees in any such way as is suggested by the prosecutor. By section 39 of the act he is given broad power to promulgate rules and regulations concerning the conduct of the business. That such power may be delegated to such an officer by the legislature has been settled. *State Board of Milk Control v. Newark Milk Company*, 118 N. J. Eq. 504. The liquor business is one peculiarly subject to strict governmental control. "The right to regulate the sale of intoxicating liquors by the legislature, or by municipal or other authority under legislative power given, is within the police power of the state, and is practically limitless." *Meehan v. Excise Commissioners*, 72 N.J.L. 382, 75 Id. 557.

We think the defendant had ample power to make the regulation in question and furthermore that it is entirely reasonable and proper. There is evidence to the effect that clerks in stores of the prosecutor sold grain alcohol and flavoring ingredients and gave

the customers oral instructions for the manufacture of liquors therefrom. Employees of prosecutor naively testified that they understood such ingredients as rye and scotch flavoring were used for cooking purposes, and that they knew of no other use for them.

The writ is dismissed, with costs.

4. SOLICITOR'S PERMIT - DISCIPLINARY PROCEEDINGS - CONCLUSIONS.

In the Matter of Proceedings To)
 Revoke or Cancel Solicitor's)
 Permit #1841 Issued for 1937-8 to)

CONCLUSIONS

AMANDUS BRAUER,)
 9 Wegman Parkway,)
 Jersey City, New Jersey.)

 Jerome B. McKenna, Esq., Attorney for the State Department of
 Alcoholic Beverage Control.
 Amandus Brauer, Pro Se.

BY THE COMMISSIONER:

On July 1, 1937, a permit was issued to the defendant to solicit business in this State for the Eagle Distillery Co., a distillery and winery licensee. Thereafter, charges were duly served on the defendant to revoke or cancel this permit on the grounds:

1. and 2. - That he was stockholder, director, president and managing officer of the Brauer Liquor Co. when that company committed certain violations resulting in the revocation of its 1936-7 rectifier and blender license.
3. - That although his employer, the Eagle Distillery Co., terminated his employment to solicit business for it in New Jersey, he nevertheless failed to file with the State Commissioner written notice of said termination of employment and failed to surrender his permit for cancellation, in violation of Rule 11 of State Regulations #12.

This proceeding, though instituted during the last licensing term (which expired on June 30, 1938) does not abate. See Rule 1 of State Regulations #15.

As to charges 1 and 2: On June 16, 1937, the rectifier and blender license of the Brauer Liquor Co. was revoked for (a) selling warehouse receipts without a license therefor, (b) selling in original containers various alcoholic beverages which were not its own product, and (c) allowing one Morris Safronski to solicit for it in this State without a solicitor's permit. The violations appear in detail in Re Brauer Liquor Co., Bulletin 187, Item 12, and need not here be repeated.

The defendant, according to his testimony, after having first been connected with the Brauer Liquor Co. as a salesman, nevertheless by November 1936 had become dominant stockholder, director, president and managing officer of that company. As managing officer, he sold the following warehouse receipts in this State to C. B. Baker Co. of New Jersey, without authority of license therefor: on November 12, 1936, covering 15 barrels of rye; on December 24,

1936, covering 201 barrels of rye; on January 7, 1937, covering 163 barrels of whiskey; and on January 8, 1937, covering 296 barrels of whiskey.

The defendant states that he made the sales for the company because of "forced liquidation"; that the company was being pressed by a creditor; that the warehouse receipts were sold to the C. B. Baker Co. in a three-cornered transaction whereby the C. B. Baker Co. paid for the receipts by discharging the debts of the Brauer Liquor Co. to the pressing creditor; that he thought a license was unnecessary to make the sales in view of their "forced" nature and in view of the fact that the Brauer Liquor Co. derived no profit therefrom. This explanation, though admitting the offense, fails to exculpate the defendant.

Likewise, while the defendant was dominant stockholder, director, president and managing officer of the Brauer Liquor Co., that company had in its employ a salesman, Morris Safronski, who solicited business for it in this State without a solicitor's permit.

The defendant testified that when he assumed control of the company, some 15 or 16 salesmen were in its employ, Safronski being one; that he was unaware of the fact that Safronski, as distinguished from the remaining salesmen, did not have a solicitor's permit. This plea of ignorance, however, cannot be entertained. As president and managing officer, it was clearly the defendant's duty to ascertain that the company's salesmen in this State were covered by solicitors' permits. He must be held accountable for Safronski's lack of permit.

I therefore find the defendant guilty of the first two charges by reason of the unlicensed sales of warehouse receipts and the employment of Safronski as a salesman in New Jersey without permit. There is no evidence that he is responsible for the other violations which resulted in the revocation of the license of the Brauer Liquor Co. See Re Brauer Liquor Co., supra.

As to charge 3: The president of the Eagle Distillery Co. notified the Commissioner (by letter of October 19, 1937) that the defendant was no longer in its employ. Thereafter, and through December 31, 1938, a correspondence ensued wherein the president of the Eagle Distillery Co. stated to Deputy Commissioner Hock of this Department that the defendant was merely an out-of-state salesman and requested that his solicitor's permit be cancelled.

The defendant testified that he never received notice, formal or otherwise, that the Eagle Distillery Co. had terminated his employment as a salesman in this State. However, despite evident confusion as to what transpired between the defendant and the Eagle Distillery Co., it adequately appears that he knew of the termination of his employment to act as a solicitor in New Jersey. He was aware of and participated in the above-mentioned correspondence and also actually ceased soliciting business in this State for the Eagle Distillery Co. at the beginning of the present year.

Since the defendant failed to give written notice to the Commissioner of that termination of employment and to surrender his solicitor's permit, I find him guilty of the third charge.

As to the penalty: The defendant, since July 1, 1938, has withheld filing application for a solicitor's permit for the current term for a new employer because of the pendency of this proceeding. He may file such application immediately; but, in

addition to the time which he has already lost because of the pendency of this suit, his application will not be acted upon until 30 days shall have expired from the date of filing of his application with this Department.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 18, 1938.

5. APPELLATE DECISIONS - CONWAY v. HADDON TOWNSHIP.

FRANKIE CONWAY,)	
)	
Appellant,)	
)	ON APPEAL
-vs-)	CONCLUSIONS
)	
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF HADDON,)	
)	
Respondent)	
-----))	

Frank M. Lario, Esq., Attorney for Appellant.
Mark Marritz, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the refusal to renew appellant's plenary retail consumption license for premises at 18 Cuthbert Road, Haddon Township.

The respondent rests its denial upon the contentions (1) that the vicinity around appellant's tavern is residential in character, with various inhabitants therein and elsewhere being in protest against the renewal; (2) that the renewal will create a traffic hazard in the vicinity; (3) that appellant, since totally blind, is personally unfit to hold a liquor license; and (4) that appellant's application, being in his then assumed name of "Frankie Conway" instead of his christened name of "Nicholas Peter Icovalli", was fatally defective.

The first two contentions were disposed of adversely to respondent in previous appeals, viz.: Conway v. Haddon, Bulletin 191, Item 9, and Bulletin 251, Item 3. There is nothing in the present record to justify any change in the conclusions on these points heretofore rendered.

As to the third ground: Respondent contends that appellant, since totally blind, is personally unqualified to give to a liquor establishment that care and scrutiny which is so desirable in a business fraught with social dangers. While I might have accepted this contention if it were originally advanced by respondent at the time of appellant's first application in the Township, I cannot accept it at this late date in justification of respondent's refusal to renew his license. When respondent acted upon appellant's previous applications (in fact, granting him a license of its own volition for both 1936-7 and 1937-8), it accepted appellant's blindness as merely an infirmity and not a disqualification. There is no indication that this blindness has resulted in any improper operation of appellant's liquor business. As in the past, so too in the future, faithful help may be his eyes. It is his responsibility to procure such help. Any liquor violation by himself or

his employees is under control either by suspension or revocation of his license or by refusal to renew.

As to the fourth ground: Appellant designated himself in his application as "Frankie Conway", whereas his true name at that time was "Nicholas Peter Icovalli." However, it is undisputed that for 23 years he has conducted all his business and has been known as "Frankie Conway." There is no assertion that he ever perpetrated or intended any fraud by his use of that name.

Apparently, respondent relies on the ruling in Re Bert Sykes, Bulletin 252, Item 5, wherein I declared that an application for license should be made in the applicant's true name. That ruling, however, is not necessarily fatal to the validity of the application. Since appellant has (from August 15, 1938, onward) changed his legal name to "Frankie Conway", no reason now remains to apply the rule in Re Sykes.

The action of the respondent is reversed. Respondent is directed to issue a license forthwith to appellant as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 19, 1938.

7. CLUB LICENSES - QUALIFICATION OF CONSTITUENT UNITS IN NATIONAL OR STATE ORDERS.

August 19, 1938

Daniel J. Lane,
City Clerk,
Gloucester City, N.J.

My dear Mr. Lane:

I have yours re application of the Townsend C. Young Post #3620, Veterans of Foreign Wars, for a club license.

You inquire if the Post, which was organized on June 5, 1937, and hence has not been in existence for three years, can, nevertheless, qualify for a club license by virtue of State Regulations No. 7, Rule 2 (Pamphlet Rules, page 48), which provides:

".....and provided further that nothing in this section shall prevent the issuance of a club license to any constituent unit, chartered or otherwise duly enfranchised chapter or member club of a national or state order, organization or association, which order, organization or association shall have been in active operation in the State of New Jersey for at least three years continuously, immediately prior to the submission of said application, and which unit, chapter or member club shall have been duly credentialed by said national or state order, organization or association to and approved by the Commissioner."

Undoubtedly, the State organization of the Veterans of Foreign Wars has the three years' existence required by the exception.

If the State organization will so certify to me, and further, that the Townsend C. Young Post #3620 was duly organized and credentialed by the State organization on June 5, 1937 and is at

present an active Post in exclusive possession of club quarters, I shall approve the Post, in which event compliance with the requirement that the Post shall have been in active operation and exclusive, continuous possession and use of a club house or club quarters for three years will not be necessary.

The approval aforesaid will waive, of course, only the requirement of three years' existence. The Post must fully comply with the requisites of licensing in all other respects.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. RETAIL LICENSEES - FURNISHING OF GIFTS OR SIMILAR INDUCEMENTS WITH SALES OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION IS PROHIBITED.

August 19, 1938

Coca-Cola Bottling Company of N.Y., Inc.,
New York City.

Gentlemen:

Your plan, I note, is to provide retailers with sample cartons of Coca-Cola for free distribution.

Rule 20 of State Regulations No. 20 prohibits retail licensees from offering or furnishing any gifts or similar inducements with the sale of any alcoholic beverage for consumption off the licensed premises, excepting only advertising novelties of nominal value.

It would, therefore, not be permissible for package liquor stores in New Jersey to participate in your sampling plan. It makes no difference that the Coca-Cola Company will bear the expense. The offering or furnishing of the gifts by the licensee would be cause for the suspension or revocation of the license. See by way of illustration Re Atlantic County Bottling Co., Inc., Bulletin 223, Item 2, which deals with a similar situation.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. APPELLATE DECISIONS - FINFER v. MORRISTOWN and EMBASSY FOOD SHOP.

HARRY FINFER,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF MORRISTOWN,)	
N. J. and EMBASSY FOOD SHOP, a)	
corporation of New Jersey,)	
)	
Respondents)	

Harry Shuback, Esq., Attorney for Appellant.
 C. Franklin Wilson, Esq., Attorney for Respondent Municipal Board.
 I. Ezra Newmark, Esq., Attorney for Respondent-Licensee Embassy
 Food Shop.

BY THE COMMISSIONER:

Appellant appeals from the action of respondent Municipal Board in granting to respondent Embassy Food Shop a transfer of its plenary retail distribution license for the fiscal year 1937-1938, from 96 Elm Street to 167 South Street, Morristown.

In his amended petition of appeal, appellant sets forth numerous reasons why transfer of said license was improper, but at the hearing evidence was presented only as to three, which will now be considered, viz.:

1. Respondent, the Municipal Board of Alcoholic Beverage Control of Morristown, New Jersey, arbitrarily, discriminatorily and with improper motives granted a transfer of license to Embassy Food Shop, a corporation, after having previously denied a transfer to said corporation and with no additional reasons or grounds stated that would justify the granting of same;

3. That over three hundred people, resident in the neighborhood, protested against the granting of the license on the first application;

6. That it was arbitrary discretion on the part of the Municipal Board of Alcoholic Beverage Control of Morristown, New Jersey, to grant the transfer of said license when there were sufficient stores of a similar nature in the same neighborhood to cater to the wants and needs of the public.

On February 10, 1938 the Embassy Food Shop filed with the Municipal Board an application for transfer of a distribution license from 96 Elm Street to 167 South Street. Written objections to such transfer having been filed, a hearing was held on February 23, 1938, at which a petition was presented containing

the names of three hundred thirty-two persons opposing and three hundred ninety-five persons in favor of the transfer. The matter was laid over for further consideration and, on May 12, 1938, the application was denied for the following stated reasons:

1. There is no need for an additional license of this nature at this location;
2. In view of the protests received, by the many residents of the neighborhood, who feel that it would be detrimental to the neighborhood to have an additional store of this kind at this location.

No more had the transfer been turned down than on May 18, 1938 a new application for the same transfer was filed and, four written objections having been received, a hearing was held before the Municipal Board on June 1, 1938. On the same day the Board resolved:

"That the plenary retail license D-15, issued to said Embassy Food Shop, be transferred for the remainder of the license period ending June 30th next, in view of the new evidence submitted, and the Clerk is authorized to issue said license and deliver same on behalf of the Board."

Such a sudden change of front naturally arouses suspicion as to the motive which prompted it.

Mr. Oliver B. Jacobs, a member of said Board, voted against the first application but did not vote on the second application although present. Asked "Did your attitude or feeling change towards this application, from the time of the first hearing to the time of the second application?", he answered: "Not completely; it modified slightly."

Chairman Dominick Bontempo did not vote on the first application but voted in favor of the second application. Questioned as to his reason for voting favorably on the second application, he testified:

"My reasons are: This is a business neighborhood, one of the principal business streets in Morristown. It contains about twenty-five or twenty-six stores and altogether we have very few vacancies there and, in my opinion and in the opinion I have gathered from some of the prominent citizens, there was no reason why we should not grant the transfer of this license. I feel, and a great number of the prominent citizens feel, that this is an added asset to this principal business district in Morristown and that is just why I voted in favor of granting this transfer."

Mr. John P. Koyce, the third member of the Board, voted against the first application but in favor of the second application. He testified:

"Q. Please tell the Commissioner what led you to change your mind?

A The people had come to my office and asked me about this thing and were in favor of it owing to the fact that the Embassy Food Shop was going to represent one of the best food shops in the east, Charles &

Company. And there was no regulation as to distance between these stores.

"CROSS-EXAMINATION BY MR. SHUBACK:

- Q Did I understand you to say that you changed your mind because you learned from the time of the first denial to the time of the second application that the Embassy Food Shop was going to have one of the best foods?
 A Representing one of the best food companies in the east, and there was no regulation regulating the distance between such stores."

The reasons advanced for the change of front are far from convincing.

On the other hand, aside from the apparent assurance of the Embassy Food Shop in filing a new application for the very same transfer which had been turned down but six days before, and the sudden change of official attitude, there is an entire absence of any evidence showing that any of the three members of the Board were improperly motivated. Appellant's suspicions are not a substitute for legal proof.

The only question, therefore, for me to decide is whether there was an abuse of discretion in permitting the transfer. The evidence shows that there were two package goods stores at 163 South Street, one of which was held by appellant, Finfer, and the other by the Great Atlantic and Pacific Tea Company. These two stores are located in the same building. The premises occupied by Embassy Food Shop, at 167 South Street, is located in a building containing three stores. The residence of Dr. Allaben, one of the objectors, is located at 165 South Street, between stores occupied by appellant and the Embassy Shop. There are a number of other stores in the immediate neighborhood. This section of South Street is zoned for business. It is now a business neighborhood in which but a few residences remain. The number of licenses which shall be issued especially in a business district of this type is peculiarly within the discretion of the issuing authority. Kalish v. Linden, Bulletin 71, Item 14; Sobocienski v. Newark and International Liquor Co., Bulletin 239, Item 8. While it is true that granting of the transfer herein has resulted in the placing of three distribution licenses within close proximity to each other, that fact standing alone is not sufficient to show any abuse of discretion.

For aught that appears in the record, the final decision of the Board may well have been the better discretion by encouraging competition but confining it to a neighborhood store section such as has become a practical necessity in many towns in Morris County because of lack of parking facilities. On the other hand, Finfer himself is not prosecuting this appeal in the right of the public. He testified, on cross-examination:

- "Q Do you believe that this store contemplated to be opened would do you injury? A Yes.
 Q Your objection to this is a private objection -- your main objection is a private objection? A No.
 Q You are objecting to this because it might do your business injury? A Yes.
 Q And that is your main interest, isn't it? A Yes.
 Q And that is practically the only reason why you object?
 A That is right."

I find in the record no proof of abuse of discretion.

The action of the respondent Municipal Board is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 19, 1938.

9. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - OBSCURING VIEW BY FAILURE TO DRAW SIDE CURTAINS OR SCREENS.

In the Matter of Disciplinary Proceedings against

PETER J. FOX,
992 South Orange Avenue,
Newark, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License No. C-880, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.
Anthony Giuliano, Esq., Attorney for Licensee.

BY THE COMMISSIONER:

The licensee was charged with failing to provide an unobstructed public view of his licensed premises, in violation of Section 1 of Newark ordinance adopted December 23, 1936, which provides:

"That all establishments selling alcoholic beverages by virtue of a Plenary Retail Consumption License shall be required to draw aside the curtains or screens obscuring the view from the street to the interior at three o'clock A.M., the closing hour designated, and keep same open at least until seven o'clock A.M. on weekdays and twelve o'clock, noon, on Sundays, so that a free and unobstructed view may be afforded the public from the street to the interior during the above prohibited hours."

It appears that on July 10th, at 3:25 A.M., three Newark policemen on patrol passed the licensed premises and observed them lighted. Wood partitions in the windows, flanking the center door, their tops six to seven feet above the sidewalk, prevented a view of the interior from either the sidewalk or the doorstep. The door itself was curtained from top to bottom. There is no substantial dispute that under these conditions the interior of the premises could not be seen from the street. On gaining admittance, they found the bartender and two other men in the barroom.

The licensee declared that he had instructed his bartender to draw aside the door curtains and open the shutters in the center of the window partitions. The bartender admits that he left the curtains closed from 3:00 A. M. until the officers arrived.

No effort was made to deny the violation, but the licensee came fortified with an alibi, as usual, viz.: It seems that in the early morning, just before closing time, two strangers entered, one of whom had to be ejected bodily at 3 A.M. Resentful at this

invasion of his supposed prerogative, he promised the bartender that he would "get" him outside. The latter, mindful of the threat, and suddenly recollecting that the place had been robbed a couple of years before and that as late as four weeks previously a couple of prowlers had been seen in the adjoining alley, prudently asked two of his regular customers to tarry a while, and that was the reason why the curtains were drawn so no one could see through while he counted the day's receipts.

However, the ordinance makes no provision for occasions when it is optionable to disregard its requirements. The fear-of-bodily-harm story has a reminiscent ring. It was offered before. But

".....fear of a beating and permanent injuries is admittedly not a pleasing prospect to contemplate, but the Police are wholly competent to escort the recalcitrant clientele to the sidewalk, and to teach the first lesson in parliamentary law that a motion to adjourn is not debatable." Re Four Hundred Social Club, Inc., Bulletin 242, Item 8.

By the same token, apprehension of burglarious bullies or larcenous loiterers is no excuse for keeping the licensed premises cloistered after closing time.

I find the licensee guilty as charged.

It is, therefore,

ORDERED, that plenary retail consumption license C-880, issued to Peter J. Fox, for premises 992 South Orange Avenue, by the Newark Municipal Board of Alcoholic Beverage Control be, and it is hereby suspended for five days beginning August 23, 1938.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 20, 1938.

10. APPELLATE DECISIONS - SUDOL v. WALLINGTON.

LOUIS SUDOL,)
Appellant,)
-vs-)
MAYOR AND BOROUGH COUNCIL OF THE)
BOROUGH OF WALLINGTON,)
Respondent)

ON APPEAL
CONCLUSIONS

Chandless, Weller & Selser, Esqs., by Julius Kramer, Esq.,
for Appellant.
Louis A. Schiffman, Esq., for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises at 128 Locust Avenue, Wallington, on the alleged ground that there are sufficient liquor places in the vicinity.

From July 1934 until October 1936, appellant operated a licensed tavern at 134 Locust Avenue, a few doors from his presently

proposed site. He then obtained a transfer of his license to 181 Hatheway Street, a nearby location, and there operated a tavern through June 30, 1938, when the landlord forced him to quit. The landlord has now obtained a license for the current 1938-9 term to operate a tavern at the Hatheway address. All other taverns in the vicinity are being operated by renewal licensees.

The vicinity is of a mixed residential and business character. Within a three-block radius of appellant's proposed site there are 9 consumption establishments in present operation. Two taverns, one on Locust Avenue and another on Tuttle Avenue, are within half a block; another, the aforementioned place on Hatheway Street, is within a block and a half; another is on Strong Street within a similar distance; another, at the corner of Strong Street and Pulaski Avenue, approximately two blocks away; the four remaining places are on Locust Avenue, ranging from somewhat over a block to three blocks from the proposed site.

Determination of the number of liquor establishments to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Mita v. Orange, Bulletin 266, Item 10. Clearly, respondent did not abuse that discretion in determining that no new tavern should be permitted in an already crowded vicinity.

The fact that respondent granted a license for the current term to appellant's former landlord at 181 Hatheway Street, does not prove that its denial of appellant's application for his new site is either arbitrary or unreasonably discriminatory. A tavern (albeit appellant's at the time) had been located at 181 Hatheway Street through the last term. Although appellant's past landlord has thus succeeded in replacing appellant, the paramount consideration in deciding between them must be, not their private disputes or their financial investments at stake, but the general public interest and welfare.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 21, 1938.

11. APPELLATE DECISIONS - BOOTH v. WAY.

LOUISA M. BOOTH,)
Appellant,)

-vs-

HONORABLE PALMER M. WAY, JUDGE)
OF THE COURT OF COMMON PLEAS IN)
AND FOR THE COUNTY OF CAPE MAY,)
AND ISSUING AUTHORITY,)
Respondent.)

ON APPEAL
CONCLUSIONS

Robert Bright, Esq. and A. J. Cafiero, Esq., Attorneys for Appellant.
Samuel F. Eldredge, Esq., Attorney for Objectors.
No Appearance on behalf of Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises at 1800 Surf Avenue, City of North Wildwood.

Respondent denied appellant's application on the ground that those premises are located in a residential vicinity, many of whose inhabitants are in protest against the issuance of the license being applied for.

Appellant previously has held a plenary retail consumption license in the City during 1934-5-6-7-8 for premises at 419 West 19th Street, known as the Chateau Monterey. There she conducted an attractive establishment specializing in sea food, containing a bar and cocktail lounge, and also serving as a supper or night club. Fire destroyed that place on May 14, 1938, exposing appellant to a ruinous loss of \$30,000.00. Her license for those premises having expired on June 30, 1938, appellant is now seeking to make a fresh start for herself by securing a license for 1800 Surf Avenue (in lieu of the destroyed premises) and there operating an establishment similar to the Chateau Monterey.

Sentiment in the vicinity of 1800 Surf Avenue is about evenly divided on the question of licensing the premises at that address for the sale of liquor. Protesting and favoring petitions, containing the signatures of 70-odd persons on each side, were filed below with the respondent. At the hearing on appeal, approximately a score of persons appeared on each side.

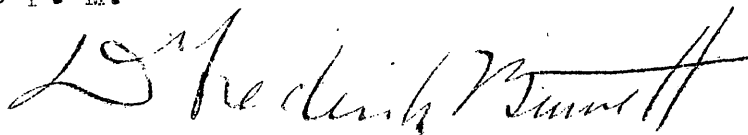
It is clear from the record:

- (1) That the vicinity is residential;
- (2) That reasonable public necessity and convenience for the establishment in this vicinity of a high class restaurant, specializing in sea food, has been shown. Many places rent out rooms and apartments. The nearest restaurant is a mile away. The testimony of Henry C. Lapidus, the local Director of Publicity, as to such necessity and convenience, is convincing. It is backed by the memorial of the Mayor and Common Council of North Wildwood;
- (3) That the proposed premises are in keeping with the residential character of the neighborhood and are admirably adapted to the use to which the appellant purposes to devote them.

With a sea food restaurant there should reasonably go a consumption license, even as bacon with eggs or as cabbage with Corrigan turkey.

But that is as far as I shall go in a residential neighborhood. There is no good reason shown for inflicting it with a night club.

The action of the respondent is, therefore, reversed to the end that the license applied for by appellant shall be issued forthwith, expressly conditioned, however, that all cabaret and music upon the licensed premises shall cease each night, except Saturday, not later than 11:00 P. M.



Commissioner.

Dated: August 22, 1938.