

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

BULLETIN NUMBER 167

March 20, 1937

1. ADVERTISING - PANDERING DISPLAYS OFFENSIVE TO COMMON DECENCY ARE
CAUSE FOR REVOCATION

March 10, 1937.

Mr. Henry Morchower,
Newark, N. J.

Dear Sir:

I have before me a card bearing your name advertising nightly dancing and entertainment at your tavern, through which is surcharged a sketch of a nude and exuberant female lying on her back and holding a cocktail glass aloft.

You are directed to destroy forthwith all such cards and to give me your solemn pledge that no advertising of an obscene nature will be circulated or permitted by you in the future.

Instinctive common decency and intelligent self-interest should not require enactment of a formal rule prohibiting licensees from circulating lewd advertising. This special ruling should suffice. It applies to you and all other licensees who need rules. Violation will be cause for revocation.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. SPECIAL PERMITS - RETURN OF MERCHANDISE BY RETAILER TO WHOLESALER
MAY BE EFFECTED WITHOUT SPECIAL PERMIT.

Dear Sir:

We are contemplating returning some merchandise of which we have an excess stock to one of our Wholesalers. The Wholesaler, however, advises us that it is necessary to secure a permit in order to transfer this merchandise from our Warehouse to his place of business. Will you advise us whether or not such a permit is necessary to return tax-paid merchandise to our licensed Wholesaler?

The merchandise in question is in original cases only and is to be returned for only one reason, namely, - we are overstocked.

Very truly yours,

The Great Atlantic & Pacific Tea Company

March 9th, 1937.

The Great Atlantic & Pacific Tea Company,
Paterson, N. J.

*But see rule 4259
copy.*

Gentlemen:

The Control Act contains no express provision governing the return of merchandise by a retailer to a wholesaler. Technically, it might be urged that such return constitutes a sale beyond the terms of the retailer's license and that consequently a special permit is required. This interpretation, however, would be contrary to a trade practice which is customary and unobjectionable from a control standpoint. Cf. Bulletin #87, Item 14. A more reasonable interpretation would be to sanction such return without special permit as constituting a rescission, by mutual consent, of the original sale rather than a resale.

You are therefore advised that where a retailer desires to return, in the ordinary course of business and for legitimate trade purposes, alcoholic beverages purchased from a wholesaler, and the wholesaler will accept such return, no special permit from this Department is required to consummate the transaction

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

3. SPECIAL PERMITS - WHEN PERMIT AMOUNTS TO A TEMPORARY EXTENSION OF A CLUB LICENSE, THE PERMIT MUST BE OBTAINED BY THE CLUB.

SPECIAL PERMITS - APPROVAL - APPROVAL MAY BE MADE IN MUNICIPALITIES WHICH HAVE A POLICE COMMISSIONER OR DIRECTOR OF PUBLIC SAFETY WHO IS THE IMMEDIATE SUPERIOR OF THE CHIEF OF POLICE AS WELL AS BY THE CHIEF.

Dear Sir:

I would like to have your ruling as to who should apply for license for a social affair on the following set of facts:

The Middlesex Borough Police Association have a license to hold a dance on Friday evening, March 12th, at the Dunellen Lodge of Elks, Dunellen, New Jersey.

The Elks Club is the holder of a Club license.

All liquors which will be dispensed on that occasion will be sold under the exclusive management of the Elks Club and all profits received from such sale will be retained by the Elks Club.

I would also like to know whether or not it is permissible to have the Police Commissioner or the Mayor sign these applications in place of the Chief of Police.

Very truly yours,
Henry Handleman.

March 10, 1937

Henry Handleman, Esq.,
Borough Attorney,
Dunellen, New Jersey.

Dear Mr. Handelman:

Since the association will merely conduct the dance and will have no connection whatsoever with the dispensing or sale of alcoholic beverages, the permit is, in substance, the extension of a special temporary privilege to the Elks Club to sell alcoholic beverages to persons who are neither members of the club nor their bona fide guests.

Under the circumstances, it is the Commissioner's ruling that the Elks Club must obtain such Special Permit.

You also inquire whether or not it is permissible to have the police commissioner or the mayor approve applications for Special Permits in place of the chief of police. The object of having these applications approved by the chief of police is that he who is officially charged with the duty of enforcing the Alcoholic Beverage Control Act may pass upon the worthiness and responsibility of the applicant and know in advance that such an affair is to be held so that he may later check on it and see that Special Permit has, in fact, been obtained and that whatever is done is within the express terms of the permit.

In municipalities which have a police commissioner or a director of public safety, who is the immediate superior of the chief of police, approval will be acceptable, if made by such commissioner or director.

The mayor of a municipality is not as such charged with specific police duties and there is no presumption as in the case of a police commissioner or director that what he approves will be immediately transmitted in regular course to the police staff. Hence approval by the mayor will not suffice.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Erwin B. Hock,
Deputy Commissioner.

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

March 11, 1937.

In Re: Hearing No. 146.

In his questionnaire employee admitted two convictions in a police court in 1929. A hearing was held to determine whether he was eligible to be employed by a licensee.

At the hearing employee admitted that in June, 1929 he had been arrested and fined \$200. by a police judge, after he had taken an automobile, used it for a "joy ride" and abandoned the car in the street. A month later he was arrested on the same charge and given a suspended sentence. The Chief of Police of the city in which these offenses occurred corroborates these facts. Employee testified that in both instances the autos were recovered by the police and returned to the owners.

At the time of the first offense, employee was sixteen years of age, and at the time of the second offense had just passed his seventeenth birthday. He is employed as a driver by a licensee holding a transportation license, has a clean record otherwise and made a very favorable impression at the hearing.

Following the rule laid down in re Application for A.R.C. Permit Case No. 36, Bulletin #149, Item 1, I believe that his youthfulness at the time of the commission of the offense should be taken into consideration, and that it should be determined that, under the circumstances, the crimes did not involve moral turpitude.

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

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

5. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS.

March 10, 1937

In Re: Hearing No. 145

In his questionnaire and application, solicitor swore he had never been convicted of a crime. Fingerprinting disclosed that he had been convicted in 1932 on a charge of transporting and possessing alcoholic beverages in violation of Volstead Act.

At a hearing held pursuant to notice thereof served upon solicitor, he testified that at the time of his arrest he had been engaged in the business of hauling produce; that in the course of his business he had been employed to transport a shipment of merchandise described to him as near-beer; that while transporting said shipment his truck was seized and he was placed under arrest when it was discovered that the near-beer was in reality illegal alcoholic beverages. He admitted that he had served a thirty day sentence and paid a fine of \$100.00 after conviction on the charge set forth above. He testified that he has never been convicted of any other crime.

There appear to be no aggravating circumstances and, in the absence thereof, a conviction for violation of the National Prohibition Act does not involve moral turpitude. In re Application for Solicitor's Permit Case No. 27, Bulletin #110, Item 7.

As to his false affidavit, solicitor testified that he had been told by an agent of his employer that the charge on which he had been convicted did not constitute a crime. While this may be considered in mitigation, it is, of course, no defense. In re Bade, Bulletin #127, Item 6.

It is recommended that solicitor's permit be suspended for thirty (30) days because of his false application.

Solicitor is employed as a truck driver and solicitor by a brewery. It is further recommended that he be advised that he may continue his employment as driver, since he has not been convicted of a crime involving turpitude, but that he may not solicit orders during said suspension period.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

6. SOLICITOR'S PERMIT - MORAL TURPITUDE - SUSPENSION OF PERMIT.

March 11, 1937

In Re: Case No. 154.

After solicitor's permit was issued in the above case, his fingerprints were taken and, as a result thereof, it was disclosed that in 1926 he was convicted of larceny and sentenced to serve from one to two years. Solicitor had sworn in his application that he had never been convicted of any crime.

Solicitor was notified to appear on January 12, 1937 to explain his conviction, but he failed to appear on that day. Subsequently he was notified to appear on February 17, 1937 but advised the Department that he was unable to appear on said date because of injuries suffered in an automobile accident. Thereafter he was notified that the matter had been adjourned to March 10, 1937, but solicitor again failed to appear or offer any further excuse.

It is recommended that solicitor's permit be suspended for the balance of the licensing period, with privilege to apply to reopen the suspension upon submitting proper proof that he has never been convicted of a crime involving moral turpitude.

It is further recommended that solicitor's employer be advised that said permit has been suspended, in order that solicitor may be prohibited by his employer from exercising any rights under said permit during the period of suspension.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,
Commissioner.

7. LICENSEES - CUSTOMERS - LICENSEES MAY CHOOSE THEIR OWN CUSTOMERS PROVIDING NO DISCRIMINATION IS MADE ON ACCOUNT OF RACE, CREED OR COLOR.

Dear Commissioner Burnett:

Please give us the ruling on the following:

Does the law read that it is compulsory for us to sell beer to a new D licensee whose place of business is three doors from an already active D account of ours, or if we prefer, refuse to sell the new licensee beer?

Very truly yours,
A. J. McIntyre,
President.

March 12, 1937

Liebmann Breweries,
New Brunswick, N. J.

Attention: A. J. McIntyre, President.

Gentlemen:

There is no obligation upon you, like a company rendering public service, to furnish your products to anyone. You may choose your customers as you please. It is merely a matter of business

policy for your own determination. Of course, no discrimination may be made on account of race, creed or color. Re Dorflinger, Bulletin 136, Item 12. Otherwise, a licensee may refuse to sell to any person.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. MUNICIPAL TAXES - REAL OR PERSONAL - COLLECTION MAY NOT BE FORCED, UNDER PRESENT LAW, BY REFUSING TO ISSUE OR TRANSFER LICENSES.

LICENSES - ISSUANCE - TRANSFER - NON-PAYMENT OF REAL OR PERSONAL TAXES IS NOT PROPER GROUND FOR REFUSAL TO ISSUE OR TRANSFER A LICENSE.

SPECIAL CONDITIONS - PREPAYMENT OF REAL OR PERSONAL TAXES MAY NOT BE IMPOSED ON THE ISSUANCE OR TRANSFER OF LICENSES.

March 13, 1937

William A. Miller,
City Manager,
Clifton, N. J.

Dear Mr. Miller:

The specific question is whether a municipality may lawfully condition a transfer of license upon payment of personal taxes due the municipality.

It has heretofore been decided that the issuance of a license may not be conditioned upon payment of taxes on the real property. Re Denville, Bulletin 23, Item 1. In that case I said:

"I am in hearty sympathy with the natural desire of your Township Committee to use every proper means to force the payment of taxes in your municipality. The question before me, however, is not the worthiness of the motive but whether the power exists. The resolution does not impose the above condition to accomplish the objects of the Control Act (Sec. 29). Neither does it regulate the conduct of the business nor the nature and conditions of the licensed premises (Sec. 37). Its avowed purpose is the collection of municipal taxes, which objective, however laudable, has nothing in common with Liquor Control.

"The resolution cannot be grounded on Section 30. The back taxes which an applicant must pay to be entitled to a license are there stated to be those taxes 'which shall have accrued pursuant to the provisions' of certain named Acts providing for taxes on sales of alcoholic beverages. The express specification of those taxes excludes by implication all other taxes from the operation of that Section."

See also re Schmidt, Bulletin 137, Item 1.

You write: "I would like to explain that the reason we included in the resolution a provision that all monies due the municipality have been paid was to overcome disagreeable situations as to the collection of personal taxes levied upon the fixtures in the establishment. You are, of course, familiar with the State law as to ~~the~~ powers of the municipality to collect

personal taxes, and I am sure that if you realize that if we permit transfers to be made without the payment of the personal taxes by the person making the transfer, it is impractical in most cases to collect after the transfer is made. . . . Where a personal tax is levied on the fixtures used in the conduct of liquor business, I respectfully submit that this type of tax being on fixtures used in the liquor business should be paid to the municipality before a transfer is issued on the same ground that money due the State should be paid before transfer."

You put it strongly. I, too, believe that each municipality should be able to force payment of personal taxes due it from a licensee as a condition precedent either to issuance or to transfer of his license. The trouble is that the law does not so provide. The very fact that the Statute goes out of its way expressly to specify that State Taxes must be paid before a license is issued excludes by implication all other taxes from this "must" category. I have no option, therefore, except to disapprove special conditions requiring payment of personal taxes to the municipality, not because I am out of sympathy with such provision, but simply because the power does not exist. The remedy is to supplement the law by expressly conferring such power upon municipalities. It would not be fair, however, to include in such supplement a provision requiring payment of real estate taxes because this would prevent a licensee who had rented his premises from getting a license if his landlord had failed to pay the real estate taxes, and this without any fault on the part of the licensee.

It follows that, as the law now stands, a resolution authorizing transfer of license but inserting a special condition "that this transfer shall not be effective until such time as the City receives a certificate that all monies due the municipality have been received, and that all monies due to the State have been paid" cannot be approved so far as the underscored words are concerned.

On the other hand, the condition that the transfer shall not be effective until a release is received from the Beverage Tax Division of the State Tax Department is proper.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. ACCESSORIES - CONDIMENTS - NO CLOSED SEASON ON MULLIGAN.

March 3, 1937

Dear Sir:

Kindly inform me if it is legal to use Mulligan at this time. I thank you.

Mr. Thomas J. Predmore.

March 15, 1937

Mr. Thomas Predmore,
237 Haledon Avenue,
Haledon, N. J.

Dear Mr. Predmore:

I have yours of the 3rd. You must anticipate a late Spring!

There is no closed season on Mulligan. It is legal any time if you like it.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. MUNICIPAL ORDINANCES - WOMEN- PROHIBITION OF SALE OF LIQUOR TO WOMEN OVER THE BAR

March 15, 1937

Frederic P. Reichey, Esq.,
Borough Clerk,
Bradley Beach, N. J.

Dear Mr. Reichey:

I have your letter of the 10th; also, the resolution adopted by the Board of Commissioners on the 9th which provides that:

".....no woman shall be served with alcoholic beverages directly over any bar, it being the intention of the Board of Commissioners that women shall be allowed to consume alcoholic beverages only at tables."

Whether or not women shall be served with alcoholic beverages in Bradley Beach directly over the bar is a matter wholly in the judgment and discretion of the Commissioners. They have the legal authority to prohibit it if they choose. Re Bocca, Bulletin 105, Item 7. The regulation is, therefore, approved as submitted subject, of course, as with all municipal regulations given ex parte approval, to review on appeal. See in this connection Bulletin 43, item 12 and Bulletin 34, item 5.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

1. LICENSEES - EMPLOYMENT OF MINORS - SPECIAL PERMITS TO EMPLOY MINORS DO NOT ALLOW MINORS TO SELL OR SERVE ALCOHOLIC BEVERAGES - IT MAKES NO DIFFERENCE THAT THE MINOR IS THE SON OF THE PROPRIETOR.

March 17, 1937.

Mr. Philip Bitterman,
Passaic, N. J.

Dear Mr. Bitterman:

You inquire whether a boy of eighteen years of age may go behind a bar and serve drinks, if he is the son of the proprietor.

A boy of eighteen years may not under any circumstances serve or sell alcoholic beverages whether or not he

is the son of the proprietor.

No minors may be employed by any liquor licensee except pursuant to a special permit first obtained from the State Commissioner, but such a permit, while allowing the employment of the minor in menial capacities on or about the licensed premises will not suffer him or her to serve or sell alcoholic beverages.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. LICENSES - INVESTIGATION FEES - UPON REVERSAL OF A DENIAL OF AN APPLICATION, THE INVESTIGATION FEE IS NOT EARNED AND HENCE MUST BE CREDITED UPON THE PRORATED FEE PAYABLE.

Dear Sir:

Please be advised that pursuant to your instructions, the Borough Council issued:

Plenary Retail Consumption License #C-5 to Gertrude E. Olsen, for premises situated at #265 Queen Anne Road, Bogota, N. J., fee received for same \$122.50

In this connection, Mrs. Olsen thinks that the 10% of her deposit placed with her original application, which was retained by the Borough in accordance with the Alcoholic Beverage Control Act, when her application was denied, should be returned to her.

The Borough Council have asked me to request you to rule on this contention.

To me it seems it should, but I was unable to obtain a ruling from anyone in authority.

Very truly yours,

HARLAN P. ROSS,
Borough Clerk

March 17th, 1937.

Harlan P. Ross,
Borough Clerk,
Bogota, N. J.

Dear Mr. Ross:

Section 22 of the Control Act provides that upon denial of an application, 90% of the fee deposited with the application shall be returned and the remaining 10% retained as an investigation fee.

It was entirely proper for your Borough Council to retain 10% of the fee deposited by Mrs. Olsen at the time of the denial of application by your Council. However, when Mrs. Olsen filed an appeal of your Council's decision, the matter was reopened and the fee was not earned until or unless the Commissioner affirmed the Council's decision. The reversal

of that decision extinguished all claim of your Borough Council to the investigation fee. The amount of it should therefore have been credited upon the prorated fee of \$122.50 as of the date of issuance.

Hence, if any part of Mrs. Olsen's original application fee was retained over and above the \$122.50 which she should pay, such excess should be refunded to her in full.

In other words, an investigation fee retained by a license-issuing authority upon denial of an application is not earned if the denial is reversed on appeal. Therefore, upon reversal and the issuance of the license, the amount so retained must be credited upon the prorated fee payable on the issuance of the license.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

13. IMPORTATION OF ALCOHOLIC BEVERAGES FOR PERSONAL CONSUMPTION - UNITED STATES CUSTOMS AND NEW JERSEY STATE REGULATIONS SET FORTH WITH RESPECT TO SUCH IMPORTATIONS BY NEW JERSEY RESIDENTS RETURNING FROM VISITS TO FOREIGN COUNTRIES

March 17th, 1937

Public Service Coordinated Transport,
Public Service Travel Bureau,
Newark, N. J.

Gentlemen:

Your letter inquiring as to the regulations governing importation of alcoholic beverages by tourists returning from other countries, has been referred to me for attention.

A resident of New Jersey returning from the West Indies or foreign countries and bringing with him alcoholic beverages, must comply not only with United States Customs regulations but also with requirements imposed by the State of New Jersey, namely:

(1) In so far as Customs regulations are concerned, a returning resident may include an aggregate of one gallon of distilled spirits, wines and malt liquors within his \$100.00 exemption from duty and internal revenue tax.

(2) In so far as State requirements are concerned, he may bring with him into this State as part of his personal baggage in a vehicle under his control, without obtaining any State permit or paying any State tax, one-quarter barrel (or one case) of malt beverages and one gallon of wine and two quarts of other alcoholic beverages.

(a) If he desires to bring into this State quantities in excess of the foregoing, he may do so pursuant to special permit which may readily be obtained upon application to the Department of Alcoholic Beverage Control, #744 Broad Street, Newark, and payment of the statutory permit fee of \$5.00.

(b) In addition, if the alcoholic beverages are not being brought in by the returning resident as part of his personal baggage in a vehicle under his control, but are being delivered to him, a State tax will be payable thereon directly to the State Tax Department, Beverage Tax Division, #28 West State Street, Trenton.

Your cooperation in bringing the foregoing to the attention of passengers and prospective passengers will be greatly appreciated.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel.

14. APPELLATE DECISIONS - JONES v. SEA GIRT

EMMA M. JONES,	:	
Appellant,	:	
-vs-	:	ON APPEAL
MAYOR and COUNCIL of the	:	CONCLUSIONS
BOROUGH OF SEA GIRT,	:	
Respondent.	:	

Paul R. Cranmer, Esq., Attorney for Appellant.
Joseph R. Megill, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located at 507 Washington Boulevard, Sea Girt.

Respondent denied the license, among other reasons, because (1) respondent previously issued License No. C-2 for the current fiscal year to Horace Brown for the same premises, which license is still in full force and effect, and the said Horace Brown claims possession of the said licensed premises; (2) appellant has not been a resident of the State of New Jersey during five years immediately preceding the date of the application.

It is admitted that respondent issued License No. C-2 for the present fiscal year to Horace Brown for the premises in question. Title to these premises is held by one Charles A. Lemp, of Missouri, who acquired title in June 1933 with money advanced to him for that purpose by appellant, and who apparently holds the title in trust for appellant. A corporation known as "Emellon Tavern, Inc." was organized in June 1935, of which appellant was Secretary-Treasurer. The corporation later obtained a consumption license for the premises in question. It operated thereunder until approximately May 1936, when its equipment was sold at a constable's sale. At that sale Mr. Lemp bought the fixtures, furniture and kitchen equipment, and Mr. Brown, a former employee of the corporation, bought the liquor and bar equipment with money loaned to him by Mr. Lemp. Mr. Brown then obtained a license for the premises in question, and Emellon Tavern, Inc. surrendered its license. The license issued to Brown in May 1936 was renewed for the current fiscal year.

There is a grave dispute as to the circumstances under which Mr. Brown entered into possession of the licensed premises. He testified that in May 1936 he entered into a two year oral lease with Mr. Lemp, under the terms of which he was to pay \$75.00 a month during the summer and \$50.00 a month during the winter. He states that he had the privilege of terminating his lease by moving out but he denied that he has ever moved out of the premises. He claims that, despite the fact that he has no rent receipts, his monthly rent was actually paid to Mrs. Jones in cash, in the manner following, viz.: from time to time Mrs. Jones would take money from the cash register and leave a slip in its place. She admits taking money out and leaving such slips; also that bills were paid out of the cash till. She testified that there was no oral lease, but that there was an agreement between Lemp and Brown whereby Brown could stay as long as he conducted and managed the business and that, when he left, his right to possession terminated. As to the rent, she testified:

"The Hearer: Wasn't there some arrangement whereby he would have to pay rent to somebody?
 The Witness: No, there was no arrangement about paying rent.
 The Hearer: You are really the owner of that building?
 The Witness: Yes.
 The Hearer: And this man was running his own business in there?
 The Witness: Yes.
 The Hearer: And there was no agreement for rent?
 The Witness: No agreement verbally or otherwise.
 The Hearer: He was rent free?
 The Witness: I don't know -- there was no agreement for rent."

She claims Brown was to pay her \$25.00 a week for managing the kitchen and apartments upstairs.

Brown was in actual possession of the licensed premises until November 9, 1936. At that time he walked out, locked the door and took the license with him, so, as he alleges, Mrs. Jones could not operate under his license as he declares she desired. He testified that he at no time intended to abandon possession, and claims that he tried to enter the premises in the latter part of November but was unable to do so because he had been locked out. On December 1, 1936, appellant entered into a written

lease with Lemp "for the term of month to month to commence on the first day of December, 1936, at the monthly rental of \$100.00 a month." On December 7, 1936, attorney for appellant served the following notice upon Brown:

"November 27, 1936.

"TO: HORACE G. BROWN, 211 Newark Avenue, Bradley Beach, N.J.

NOTICE is hereby given that any rights of possession that you may have in and to any part of the premises known as 507 Washington Boulevard, in the Borough of Sea Girt, Monmouth County, New Jersey, as lessee, tenant, occupant or otherwise; which premises have been vacated and abandoned by you; are hereby terminated as of this date and your surrender and abandonment of said premises is hereby accepted.

By (signed) Paul R. Cranmer
Attorney for Charles A. Lemp,
Owner."

So far as appears, no action has ever been taken in any court to dispossess Brown.

The only thing that is clear in this case is the confusion.

Whatever the actual arrangements were, between Lemp, Jones and Brown, and whether or not Brown was a mere "front" for Jones, and whatever may be the eventual legal right of Jones, if any, to oust Brown from possession, it is unnecessary to determine because the fact remains that there is now outstanding and in full force and effect a license issued to Brown in respect to the very same premises for which Jones now applies for license and to which premises Brown claims possession. It is no function of a license issuing authority to adjudicate the conflicting possessory rights of Brown and Jones. This is not a proceeding to revoke or cancel or otherwise invalidate the outstanding license of Brown. Any such determination in this proceeding would not be binding on Brown for the elementary reason that he is not a party to it.

The only question for me to decide is whether the action of the Mayor and Council of Sea Girt in refusing a license to Jones was arbitrary and unreasonable. Cases such as In re Pennsauken, Bulletin #48, Item 8, and In re Hackettstown, Bulletin #98, Item 11, are not in point for they are predicated on the facts, stipulated or satisfactorily proven, that the previous licensee was out of actual possession and had no right to possession. In this case there is a real dispute between the applicant and the person who holds the present license. So, far from acting unreasonably, the Sea Girt authorities showed good judgment in refusing to license the appellant until at least the disputed right of possession to the licensed premises was settled by a court of competent jurisdiction.

So concluding, it is unnecessary to determine whether appellant is qualified as to residence.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 18, 1937.

15. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 18, 1937.

IN RE: Application for Solicitor's Permit - Case No. 47.

Applicant having admitted in his questionnaire that he had been convicted for non-support in November 1934 and sentenced to sixty days, a hearing was held to determine whether the crime involves moral turpitude. Appellant testified that his wife left him and their two children November 1933, and that she had him arrested in April 1934 for non-support. At that time he was ordered to pay his wife \$15.00 a week and later this sum was reduced to \$8.00 a week. Solicitor testified that he was unable to make the payments ordered by the court and was re-arrested in November 1934 when his arrearages amounted to \$72.00. At that time he was ordered to obtain a bond for \$200.00 or serve sixty days in jail. He further testifies that he was unable to obtain the bond and, hence, served the sixty days sentence.

Solicitor produced a letter which he testifies was written to him by his wife and which was apparently received by him some time in December 1933. In the letter she asks for a divorce so that she may marry another man, and says "Divorce or no divorce, I will not go back to you." He further testifies that the two children are living with him and that he does not know where his wife is living at the present time.

Under these circumstances, it appears that no moral turpitude is involved in the crime for which he is convicted.

It is recommended that the permit be granted.

Edward J. Dorton, Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT, Commissioner.

6. APPELLATE DECISIONS - IGNATZ vs. PHILLIPSBURG.

STEVE IGNATZ,)
Appellant,)
-vs-)
BOARD OF COMMISSIONERS OF)
THE TOWN OF PHILLIPSBURG,)
Respondent.)

ON APPEAL
CONCLUSIONS

Frank J. Kingfield, Esq., Attorney for Appellant.
Sylvester C. Smith, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of transfer of a consumption license from 373 South Main Street to 768 South Main Street, Phillipsburg.

It is conceded that the premises at 768 South Main Street, owned by appellant, are suitable, and that there are no personal objections against appellant. Respondent denied the transfer on the ground that granting it would have the effect of increasing the number of licenses outstanding, thus contravening its resolved policy of reducing the number of licenses.

The resolution, adopted May 22, 1935, reads:

"RESOLVED, that any of the present licenses heretofore issued and granted and not suspended or revoked may be renewed for the premises now licensed but no new license of any class authorized to be issued shall be hereafter issued for any new premises until the number of plenary retail consumption licenses issued and outstanding shall be reduced by revocation or surrender to twenty. * * * provided further that any premises now licensed may be licensed, upon surrender of license if such premises shall not have been without a license for more than sixty days.

"RESOLVED, that upon the sale or transfer of a business and application for transfer of license, a license may be issued to the purchaser or transferee of such licensed beverage business;
* * *"

Since there are thirty-nine consumption licenses now outstanding, this resolution would clearly be applicable if appellant were seeking a new license.

The resolution, however, does not prohibit the transfer of appellant's existing license to a suitable place not previously licensed. If it did, it would be unreasonable as arbitrarily creating a privileged class of premises, quite as objectionable as establishing a family dynasty of licensees. Cf. Giberti vs. Franklin, Bulletin #150, Item 3.

Hence, if nothing appeared in this case except that appellant held a consumption license which he sought to transfer to his own premises, admittedly suitable, the transfer should have been granted.

Respondent justifies the denial, however, not on the text of the resolution but, rather, upon the destructive effect the grant of the instant transfer would have upon that resolution.

On May 27, 1936, appellant obtained, by transfer, a license for the premises he now conducts at 373 South Main Street, known as the Osborne House, and established for many years as a hotel. His license for those premises was renewed for the current fiscal year. He seeks the instant transfer because he was served with a notice on November 27, 1936 to vacate the Osborne House.

On these facts, respondent contends:

(1) That, since the Osborne House is an established hotel, respondent could not deny an application made in respect to it by any duly qualified applicant who applies hereafter, despite its aforesaid resolution; Petrusha vs. Mine Hill, Bulletin 146, Item 8;

(2) Hence, if the transfer sought by appellant is

granted, it will or may be required subsequently to issue a license for the Osborne House, and thus the number of consumption licenses will be increased from thirty-nine to forty, notwithstanding respondent's declared policy to reduce the number of such licenses to twenty.

Appellant admits that, prior to the time he took over the Osborne House, he inquired if he could obtain a new license for his building at 768 South Main Street and was told that he could not because of the resolution.

Respondent frankly concedes that appellant took over the Osborne House license in good faith and not merely as a planned preliminary or subterfuge to enable subsequent transfer of the license to his own premises.

This case, therefore, presents a clean cut problem in the much mooted subject of limitation of licenses. The presence of good faith and the absence of fault in the licensee make it a painful duty to have to decide this case against him. Limitation of licenses, so eagerly sought by licensees in the belief that it is a panacea for all their economic ills, may become, as in this case, a two-edged sword. The prime object of limitation is the protection of the public interest and not the creation of private monopoly. When the governing body of a municipality solemnly resolves that it is to the public interest that no more licenses shall be issued and that the present number shall be cut down as rapidly and as fairly as may be done, such policy, honestly declared and fairly executed, should be honored, however onerously it may bear upon some applicant or licensee, who, in the absence of such policy, would otherwise be entitled to a license or a transfer.

To grant the transfer in the instant case will eventually increase instead of ultimately diminish the number of licenses. The effect is, therefore, contrary to the objective sought by the municipal resolution and declared thereby to be the best policy for that community.

Appellant relies upon what I said in Re Morton, Bulletin #126, Item 14, viz.:

"Assuming, for convenience, the facts as he alleges them, to wit, that there are no charges pending against the transferor and that the transferee is personally qualified, and that the place to which he seeks transfer is suitable and appropriate, I cordially advise against denial of such an application even though made with the laudable purpose of reducing the number of licenses. For such a denial would not reward a licensee who has obeyed the law in all respects by enabling him to cash in on his franchise but, on the converse, it would place him in the same category as those licensees who had cheated and been punished."

But in that case, I also said:

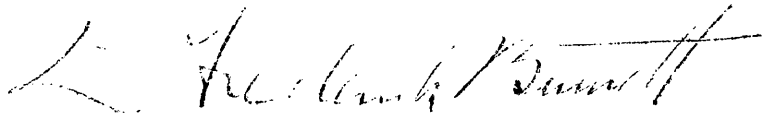
"Of course, I am not in this one-sided manner making any adjudication whatsoever as to your power to refuse such transfer, for such adjudication can only be made after hearing and both sides have had full opportunity to present their argument. My present impression is that such power exists. I am talking only about the policy of its exercise."

So, in the instant case, respondent had the power to transfer the license but, under the circumstances set forth above, was justified in refusing to exercise its power and transfer the license in derogation of its declared policy concerning the limitation of licenses. A transfer to other premises is not an inherent privilege. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. VanSchoick vs. Howell, Bulletin #120, Item 6.

Reviewing the facts, I do not find that respondent has abused its discretion.

The action of respondent is, therefore, affirmed.

Dated: March 19, 1937.



Commissioner.