

Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 128.

July 3, 1936.

1. TIED HOUSES - APPLICATION OF RULE #1 GOVERNING ADVERTISING MATTER - HEREIN OF "TAPSTERS" (A COPPER-PLATED RECEPTACLE RESEMBLING A SMALL COFFEE POT OR MAPLE SYRUP PITCHER WITHIN WHICH IS PLACED FOR DISPENSATION A CAN OF BEER - A COMBINED CAN OPENER AND SERVICE CONTAINER - HENCE NOT RELATED TO BUNGSTARTERS).

June 27, 1936.

Dear Sir:

A sample of a Tapster has been left with you. This device is to provide a more practical and convenient method of opening a flat top type of beer can and dispensing it into a glass. Please note that this facility will become available for the public's use in connection not only with cans of malt beverage of our manufacture, but for opening and serving malt beverage manufactured by a large number of other brewers who market their products in cans of the type manufactured by the American Can Company and the National Can Company.

This device is manufactured by the Revere Brass & Copper Co. Rome, N.Y. and we propose to purchase quantities of this device from them, as per sample you have and sell same to licensees, who in turn will resell same to their consumer customers.

Before proceeding with the distribution of the Tapsters to the retail off-premise trade, we would appreciate a ruling from you on the following questions:

I. May the Brewery under the Act and Regulations sell this device to licensees in any quantity for resale by same to consumers?

II. May the off-premise licensee purchase and resell this device to their consumer customers?

The above refers to the Tapster as per sample you have and we respectfully ask the same questions as to the sale of the Tapster should it bear our Brewery's Trade Mark or reference to our name.

Also, may we under the Act and your Regulations sell the Tapster as per sample you have to on-premise retail licensees?

Yours very truly,
G. KRUEGER BREWING COMPANY

W. L. NASON,
Controller.

New Jersey State Library

June 27, 1936.

G. Krueger Brewing Company,
Newark, N.J.

Att: Mr. W. L. Nason,
Controller.

Gentlemen:

I have your letter of June 27th.

The provisions of the Control Act evidence a clear legislative intent to eliminate "tied houses" and devices calculated to place retail establishments under obligation to sell a particular brand of alcoholic beverage. Cf. Bulletin #78, Item #1. The Rules Governing Signs and Other Advertising Matter were drafted with a view towards effectuating the foregoing purpose. Accordingly, under rule #1 thereof a manufacturer or wholesaler is prohibited from delivering, to a retail licensee, by sale, loan, gift or otherwise, "signs or other advertising matter" exceeding \$100.00 in value during each license year. This rule must be liberally construed in the light of its purpose.

Your distribution to retail licensees of "Tapsters" is calculated to advertise Krueger's beer in cans and place the retailer under moral obligation to sell this product. This is true whether or not the "Tapster" bears the brewery's name or trade mark.

Accordingly, the Commissioner has ruled that no brewery may deliver "Tapsters" or similar articles to retail licensees, by sale, gift or otherwise, except within the \$100.00 limitation fixed by rule #1 of the Rules Governing Signs and Other Advertising Matter.

There is nothing in the Act or in the regulations of the Department which would prohibit a retail licensee authorized to engage in another mercantile business at the licensed premises from purchasing for resale "Tapsters" from sources not in anywise connected with the wholesaling or manufacturing of alcoholic beverages and thereafter selling them at the licensed premises. Retail consumption licensees, however, are restricted under the provisions of section 13(1) of the Control Act from engaging in another mercantile business (except the keeping of a hotel or restaurant), and in certain municipalities a similar restriction has been adopted with respect to retail distribution licensees. The sale of "Tapsters" by a retail licensee would constitute the conduct of another mercantile business and consequently may not be engaged in by retail consumption licensees or by retail distribution licensees in municipalities which have adopted such restriction pursuant to section 13 (3)A.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

2. SOLICITORS' PERMITS - SALES OF OTHER MERCHANDISE - NO PROHIBITION AGAINST ENGAGING IN OTHER BUSINESS BUT SUCH OTHER SALES MUST NOT CONSTITUTE INDIRECT VIOLATION OF THE CONTROL ACT.

June 29, 1936.

G. Krueger Brewing Co.,
Newark, N.J.

Attention: Thomas F. Bryce, Vice President.

Gentlemen:

A solicitor's permit confers authority to solicit orders for alcoholic beverages to the extent that the licensee by whom he is employed is licensed to sell. As heretofore stated, Bulletin 81, item 1: "The law was not designed as a revenue but as a measure to control an important phase of the liquor traffic. Hence, a solicitor may obtain one permit to represent several 'lines' or houses'."

Solicitors are not prohibited from engaging in other business. Just as they may represent several different "lines" of beverages, so they may represent several different industries. Thus, a solicitor may, as a side line, lawfully solicit sales of accessories, or of groceries, or of tornado insurance, for that matter.

Of course, no solicitor may do indirectly what his employer could not do directly. Thus, if a solicitor also sells accessories, he must sell to all comers at the established price irrespective of whether or not they purchase much, little, or no alcoholic beverages, - or whose.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. APPELLATE DECISIONS - CASSIE vs. EAST ORANGE.

ANTHONY CASSIE,)	
Appellant)	
-vs-)	ON APPEAL
)	CONCLUSIONS.
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF EAST ORANGE.)	
Respondent.)	
.....)	

Edmond J. Dwyer, Esq., Attorney for Appellant.
Herman E. Hillenbach, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a revocation of appellant's re-tail consumption license for premises located at 180 North Park Street, East Orange, for violation of the Control Act.

At the hearing it appeared that two investigators of this Department inspected the licensed premises on February 21, 1936. On the back bar the investigators found and seized four open bottles, each of which was labeled as a different brand of blended whiskey. Tests disclosed that two of the bottles contained straight whiskey and that all four varied in proof from the label specifications, one of them being 8.4 off proof.

Subsequent to the seizure, appellant was indicted, tried and convicted of possessing illicit liquor.

At the hearing before respondent, the appellant was found guilty of the following charge:

"That on February 21, 1936, and on divers days prior thereto he did possess with intent to sell illicit alcoholic beverages contrary to provisions of Section 2, 13 (subdivision 1) and 48 of 'An Act Concerning Alcoholic Beverages' and in violation of the rights granted him under and by virtue of his license."

Respondent thereupon revoked appellant's license.

Appellant denies any knowledge of the adulteration and suggests that it was done by a disgruntled employee whom he discharged a week prior to the inspection of February 21. The whiskey seized was all of popular brands and there is evidence to indicate that at least two bottles had been opened after the dismissal of the employee in question. The sealed bottles on the premises showed no irregularities. The employee has not been seen on the premises since the day of his discharge.

That the beverages were illicit is sufficiently proved by the fact that they were not as represented on the labels. See Yates v. Mulrooney, 281 N.Y. Supp. 216 (A.D. 1935). From the position of the bottles when seized, on the back bar, it is clear that the contents were intended for sale, and this is not denied by the appellant. He urges, however, that he did not intend to sell illicit alcoholic beverages because he did not know the beverages were illicit. Section 48 of the Control Act prohibits possession or sale of any illicit beverage. Intent is immaterial. Respondent has clearly charged a violation of the Control Act and the evidence amply sustains the charge.

At a supplemental hearing held today, the appellant's wife, for the first time, testified that the night before the investigators arrived, she cleaned out an accumulation of bottles behind the bar; that in doing so, she emptied the contents of several of these bottles into larger bottles which were already in use on the bar. Presumably these were the bottles which the investigators of this Department seized the next morning. The witness testified that she had not disclosed this before because she was afraid of her husband. This belated testimony does not relieve Cassie from civil responsibility or call for reversal of the decision made by the local excise Board. The licensee is responsible for the presence of illicit beverages on the licensed premises. Virgilio v. Orange, Bulletin #127, item 8. He is responsible for what his brother does on the licensed premises. Re: Kneller, Bulletin #49, item 4. So, also, for his wife.

The testimony brought out at the supplemental hearing, while it does not affect the licensee's personal responsibility, is, however, matter which may properly be addressed to the local excise Board, in mitigation of the penalty it inflicted. The disciplinary proceedings provided by Section 28 should result in such penalty as fits the facts of the particular case. While the local issuing authority may not reverse a final adjudication of guilt, it may in its discretion modify the punishment or remit the penalty previously inflicted. Re: Bischoff, Bulletin #53, item 5. There is nothing to prevent such an application to the local excise Board despite my affirmance of its adjudication.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 27, 1936.

4. APPELLATE DECISIONS - VRABEL vs. FLORENCE TOWNSHIP.

EDWARD VRABEL,)	
Appellant)	
-vs-)	ON APPEAL
TOWNSHIP COMMITTEE OF THE)	CONCLUSIONS
TOWNSHIP OF FLORENCE,)	
Respondent.)	
.....)	

Romulus P. Rimo, Esq., Attorney for Appellant
Howard Eastwood, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a Plenary Retail Consumption License at premises #14 Alden Avenue, Roebling, in the Township of Florence. Respondent denied the application by reason of a resolution adopted April 10, 1935 limiting the number of such licenses to eleven and the issuance of the allotted number. In addition to this the Township Committee determined that there were already too many similar licenses issued in the vicinity of the premises in question, and further that the premises were not suited for use as a retail liquor establishment.

The appellant contends that the resolution limiting the number of licenses is unreasonable both in its adoption and in its present application. The evidence does not support either of these contentions. Florence Township has approximately 7800 residents. There are now issued and outstanding 11 retail consumption licenses and 2 club licenses. Seven of these licenses are issued in the immediate section of the Township where the premises in question are located. It is urged that no saloons are permitted in an adjoining residential part of the Township, and that this necessitates a concentration of licensed premises in one place. However, no congestion in existing taverns nor any necessity for an additional one has been shown.

The right of a municipality to deny an application where the issuance thereof would result in too many licensed premises is well settled. Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935); Lackowitz v. Waterford, Bulletin #125, item 12; Palmer v. Englishtown, Bulletin #116, item 4.

No licenses have been issued by the respondent Township since the adoption of the resolution referred to. So long as a municipality maintains a resolution limiting the number of licenses of record on its books, that resolution is binding not only on licensed applicants but also on the municipality itself. Sosnow Drug Co. v. Freehold, Bulletin #68, item 13. Appellant has failed to show any unreasonableness or lack of good faith on the part of the issuing authority in the denial of his application. See In re: Roselle Park, Bulletin #115, item 8; Blum v. Pompton Lakes, Bulletin #126, item #4.

In view of the foregoing, it is unnecessary to consider respondent's contention that the premises in question are not suited for tavern purposes.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 29, 1936.

5. APPELLATE DECISIONS - ROADSIDE GRILLS, INC. vs. ROCKAWAY.

ROADSIDE GRILLS, INC., a)
corporation of the State of)
New Jersey,)

Appellant,)

-vs-

MAYOR AND COUNCIL OF THE)
BOROUGH OF ROCKAWAY,)

Respondent.)

.

ON APPEAL

CONCLUSIONS

Rubinson & Bornstein, Esqs., By Robert Friedlander, Esq.,
Attorneys for Appellant.

William A. Hegarty, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises located on State Highway #6, Rockaway, N.J. Respondent denied the application by reason of the fact that the premises in question had been declared ineligible to become the subject of any further license of any kind or class under the Control Act for a period of two years.

The premises in question were formerly licensed in the name of Harry Ginsberg. As the result of a violation of a local resolution, the respondent on October 11, 1935, revoked his license and declared the premises ineligible for a period of two years.

On appeal this action was sustained. Ginsberg v. Rockaway, Bulletin #100, item 14, dated December 22, 1935. On January 8, 1936, a final decree of foreclosure against the premises was entered in the Court of Chancery in favor of Jacob Levitt, holder of the first mortgage. Prior to sheriff's sale, however, Levitt sold his interest in the decree to Reliance Agency, Inc., a corporation acting as agent for the following: Max Wank, proprietor of a roadstand located about half a mile from the premises; Morris Ginsberg, a brother-in-law of Harry Ginsberg and employed by Wank; Clarence R. Martineau, related to and also employed by Wank; and Jules L. Rubinson, Wank's attorney. These four immediately formed another corporation, the appellant Roadside Grills, Inc., for the purpose of leasing and operating the premises. The Reliance Agency, Inc. satisfied the second mortgagee and purchased the property at the foreclosure sale. A lease was thereupon executed between it and the other and on March 17th Roadside Grills, Inc. made application to respondent for a plenary retail consumption license. All formal requisites were complied with.

A hearing was held on the application on March 31, at which time the ineligibility of the premises was mentioned. One of the Borough Councilmen asked how this ban could be lifted, and the Borough Attorney explained that a new resolution would be necessary. It was also stated at this hearing that it was the intention of the appellant to employ Ginsberg on the premises in question. The legality of such employment was doubted. On April 4 the Borough Clerk, pursuant to instructions of the Mayor and Council, wrote me, in part, as follows:

"Roadside Grills, Inc., have made due application for a license to sell alcoholic beverages and have requested the Mayor and Council to rescind so much of the resolution of October 10, 1935 which declared the premises ineligible for license, and to resolve and order that the premises are now eligible for license.

"The Mayor and Council have withheld action on the application due to the fact that Mr. Ginsberg is employed in the roadstand and restaurant.

"The Mayor and Council desire to have your ruling on the following questions:

"2. Can Mr. Ginsberg, who's license has been revoked for two years, be employed on the premises?

"Because action on the application has been deferred until your ruling on the above questions have been received, the Mayor and Council would greatly appreciate an early reply so that definite action can be taken on the application."

By letter of April 8, the Chief Deputy Commissioner and Counsel, Mr. Nathan L. Jacobs, advised the Borough Clerk that Ginsberg could not be employed by another licensee for two years from the revocation.

On April 10 the Borough Clerk notified the appellant that the license had been refused, and, in explanation, attached a copy of the letter from Mr. Jacobs. The appellant thereupon discharged Ginsberg from its employ and so notified the Borough Clerk by letter dated April 14. This letter states that the dismissal of Ginsberg was the result of a suggestion made by the Mayor and Council of the Borough. The letter also requests that the application for a license be reconsidered. On April 16 the Borough Clerk advised Mr. Rubinson, Secretary of the appellant corporation, that it would be necessary to make a new application and to advertise in the regular way. It appears from the testimony that this letter was written after consultation with the Mayor and Borough Attorney and that a copy of the letter was approved by the Mayor. Appellant endeavored to comply with these instructions but on April 22 received a letter from the Borough Clerk in which four irregularities in the application were pointed out and calling attention to the fact that these must be corrected before the meeting of the Borough Council to be held on May 14th following. This letter was sent at the suggestion of the Mayor.

At the meeting held on May 14 the Mayor stated to the Borough Council that they could not hold a hearing on the application because of the ban on the premises. Accordingly, a motion was adopted to return the application and fee to the appellant. The question of lifting the ban was not discussed.

At the hearing on this appeal, the Mayor testified:

"Q. On the 14th of May you told them they could not have a license because there was a ban?

"A. I told them they could not call a hearing on it.

* * * * *

"Q. Now, when you received the second application and it was returned to you corrected, can you tell me why you didn't call a hearing on that application?

"A. Yes, I can tell you if you give me a little time.

"Q. Tell me?

"A. Our regular meeting is on the 14th of May, and we have had so many meetings for little things the councilmen are tired of calling a meeting for everything. I took it on myself to ask five or six of the councilmen whether I should call a special meeting, and they said 'No'. If four asked me call a meeting I would have called it.

"Q. Did you ever call a meeting on the second application?

"A. Yes, a regular meeting, when the application came up.

"Q. What happened to the application at that time?

"A. We could not grant a hearing on it because of the ban on the place.

"Q. Weren't you informed that your Council had the right to revoke the ban, if they saw fit?

"A. They could if they wanted to.

"Q. Yet you could not hold a hearing?

"A. You could not hold a hearing while there was a ban.

"Q. Couldn't you hold a hearing to revoke the ban?

"A. No, we would have to pass a resolution.

"Q. Was such a resolution passed? A. No."

It is apparent from the foregoing that there is a confusion of expression, if not of thought. In view of the previous declaration of the ineligibility of the premises, the Mayor and Council, as the issuing authority, are not obliged to hold any hearing at all, if they desire to stand on such declaration, for that of itself, unless and until changed, is dispositive against any application. They have, however, the power to do so if they choose. They may hold, if they please, a hearing on the merits of the new application without first resolving to cancel the ban of ineligibility. Of course, if they decide to grant the new application, they must, of necessity, thereupon pave the way for it by lifting the ban, but there is no reason why the ban must first be cancelled as a condition precedent to holding a hearing. The ultimate action of the Mayor and Council in respect to the ban can be held in abeyance until they determine the merits of the new application. If thereafter they are still opposed to it, they may stand on their ban. No estoppel results from the fact of considering the new application because nobody has relied on it or has a right to rely on it.

The case is, therefore, remanded to the respondent Mayor and Council to consider and determine:

First: Whether they desire to stand on the declaration of ineligibility of the premises previously determined without regard to the merits of the present application, which, as aforesaid, is within their power to do if they choose.

Second: If, however, they desire to hear the merits of the application of appellant, then to do so with assurance that by conducting such hearing the ban of ineligibility is not thereby waived or dispensed with or otherwise prejudiced.

In view of the facts above recited, the second alternative appears to be the more fair.

All questions on the merits are reserved until the decision or decisions of the Mayor and Council are made pursuant to this remand.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 30, 1936.

6. MORAL TURPITUDE - PERSON CONVICTED FOR CRIME INVOLVING MORAL TURPITUDE MAY NOT BE EMPLOYED BY LICENSEE - ASSAULT AND BATTERY UNDER PARTICULAR CIRCUMSTANCES PRESENTED HELD TO INVOLVE MORAL TURPITUDE.

June 25, 1936.

John H. Kafes, Esq.,
Trenton, New Jersey.

Dear Sir:

Your letter of June 17th and the petition of James Sciarrotta therein enclosed have been carefully considered.

The petition sets forth that in 1923 petitioner was indicted for carrying concealed weapons and was also indicted for atrocious assault and battery; that he pleaded non vult to the indictment charging him with carrying concealed weapons and that a plea of non vult to the charge of assault and battery was accepted on the other indictment; that on May 2, 1924 he was sentenced to serve a term of one year on each charge, the sentences to run concurrently; and that on October 17, 1924 he was placed on probation. Petitioner prays for permission to be employed in retail licensed premises operated by his wife.

Under the provisions of sections 22 and 23 of the Control Act, a person convicted of a crime involving moral turpitude may not be employed by a licensee. Consequently, the question to be determined is whether either of the above mentioned convictions involved moral turpitude. The courts have generally defined a crime involving moral turpitude as something immoral in itself regardless of the fact that it is punished by law. The guiding principles are well set forth in Rudolph vs. United States, 6 F. (2d) 487 (App. D.C. 1925), Cert. denied 46 Sup. Ct. 20 (1925), where the court said:

"There is no hard and fast rule as to what constitutes moral turpitude. It cannot be measured by the nature or character of the offense, unless, of course it be an offense, inherently criminal, the very commission of which implies a base and depraved nature. The circumstances attendant upon the commission of the offense usually furnish the best guide. For example, an assault and battery may involve moral turpitude on the part of the assailant in one case and not in another. Intent, malice, knowledge of the gravity of the offense, and the provocation, are all elements to be considered."

Petitioner's version of the facts resulting in the convictions, as set forth in the petition, is as follows: Nicholas Messini, Petitioner's brother-in-law, had accused him of having had improper relations with Messini's wife and on June 20, 1923 had fired two shots from a revolver at petitioner. Thereafter, petitioner obtained a revolver and in the language of the petition "determined that the next time he saw Messini lurking about his premises he would scare him enough not to come back there again". On June 26, 1923, petitioner saw Messini "peering through the windows of his home". What then happened is set forth in the petition in the following language:

"when he started after him Messini ran across the lots with petitioner following. While in pursuit, your petitioner fired five shots from the revolver which he had in his hand, but denies that he meant to do Messini bodily harm for he could easily have hit him if he had aimed the revolver toward his body. Petitioner says he shot to the ground and merely for the purpose of frightening Messini and deterring him from coming back to his home and place of business".

No useful purpose could be served by any extended comment on the foregoing. Petitioner's conduct was deliberate and premeditated and the suggestion that the five shots fired at a man who was running away were fired without intent to do bodily harm is incredible.

The Commissioner has concluded that the conviction for assault and battery involved moral turpitude and that consequently the petitioner is disqualified from being employed by a licensee under the Control Act.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

#7. LICENSES - ISSUANCE - BY WHOM - DETERMINED BY REASONABLE INTENDMENT OF MUNICIPAL ISSUING AUTHORITY AS SHOWN BY THEIR ENACTMENTS WHETHER OF RESOLUTION OR OF ORDINANCE - HEREIN OF THE INTERPRETATION OF LATER MUNICIPAL ORDINANCE IN THE LIGHT OF PREVIOUS MUNICIPAL RESOLUTION.

June 19, 1936.

Dear Commissioner:

I desire to bring to your attention a matter in connection with the issuing of our Alcoholic Beverage Licenses for the year 1936-37. Heretofore these licenses have been signed by the Director of Public Safety, Director of Revenue and Finance, and attested by the Town Clerk. This is provided for in a resolution adopted February 2nd, 1934, a copy of which is inclosed. I am also enclosing a copy of Ordinance #1403 which does not specify who shall sign the licenses already referred to.

The new form of licenses have been printed Town Comptroller. My point is, is this official?

Sincerely yours,

W. H. JAMOUNEAU
Town Clerk.

June 30, 1936.

W. H. Jamouneau,
Town Clerk,
Irvington, N. J.

Dear Mr. Jamouneau:

I have yours of the 19th.

The resolution of January 30th, 1934 provides for the issuance of two classes of licenses, viz: Plenary Retail Consumption and Plenary Retail Distribution. Section 4 provides that the licenses shall be issued in the name of and under the seal of the Town and shall be "signed by the Commissioner of Revenue and Finance, the Commissioner of Public Safety and countersigned by the Town Clerk".

Ordinance 1403, adopted August 14, 1934 provides for the issuance of four classes of licenses, viz: Plenary Retail Consumption, Seasonal Retail Consumption, Plenary Retail Distribution and Club. No provision is made as to how the licenses shall be issued or by whom they shall be signed. It does, however, provide "that all resolutions, ordinances or parts of resolutions or parts of ordinances, inconsistent with the provisions of this Ordinance, be and the same are hereby repealed". (Italics mine).

Since the ordinance is silent as to "who" and "how" on the issuance of licenses, it is not inconsistent with the previous resolution, which, therefore, on that point, remains in full force and effect.

It is true that the previous resolution expressly provides for the issuance of but two classes of licenses, whereas the later ordinance provides for four. But this is not material to the point under consideration for the Town Commissioners, having indicated by the resolution that all licenses authorized to be issued, shall be issued in a certain manner and signed by certain designated officers, have thereby signified their intention that this is the accepted and only proper form for all liquor licenses subsequently authorized unless and until they otherwise direct. This is the reasonable intendment. Otherwise, the unnecessary burden would be placed upon the Town Commissioners of re-specifying mechanics of issuance which they had good right to believe had already been accurately indicated.

Since the ordinance is silent as aforesaid, there is nothing to prevent the Commissioners from making a re-designation of the officers by whom licenses are to be signed pursuant to later resolution, but until such resolution is enacted and a change made, it follows that all licenses should be signed by the Commissioner of Revenue and Finance, the Commissioner of Public Safety and countersigned by the Town Clerk.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. APPELLATE DECISIONS - GOODMAN vs. ATLANTIC CITY.

LILLIAN L. GOODMAN, :
 Appellant, :
 -vs- :
 ON APPEAL
 BOARD OF COMMISSIONERS :
 OF THE CITY OF ATLANTIC :
 CITY, :
 Respondent. :

Paul M. Salsburg, Esq., Attorney for Appellant.
 Samuel Backer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from refusal to transfer a plenary retail consumption license from Abe Sherman for premises 2031 Atlantic Avenue to Lillian L. Goodman for premises at 12 North North Carolina Avenue, Atlantic City.

The premises to which the transfer is sought are located about two and one-half blocks north of the boardwalk, in a section of Atlantic City which has been described as "Back Town". To the south of the premises is a large apartment house, and to the north are three three-story buildings used for residential purposes. There is a small vacant space between the licensed premises and the buildings to the north and south. The section, however, is not strictly residential, because there is a garage and a printing office across the street, and apparently many of the houses on both sides of the street are used as rooming houses.

The premises to which the transfer is sought were occupied by a former licensee, one Mulholland, from the time of Repeal to February 27, 1936, when he obtained a transfer to another neighborhood.

Officer Louis Arnheim of the Police Department testified that the Mulholland establishment had been "the same type as you will find back town - black and tan, white and colored. **** There was, of course, a great deal of noise and drunks, including Mulholland himself. **** It has tamed down considerably, on the few occasions I have been around since Mulholland moved out. We haven't had occasion to go around as often as we did in that neighborhood, but you can see conditions have changed".

Mrs. Jessie Salmon, owner of the adjoining property, 14-16-18 North North Carolina Avenue, asked whether there had been any material change in the character of the neighborhood since the Mulholland saloon was disposed of, testified "Yes, there has, because I have been able to rent the first floor of #14; during the eight years Mulholland was there it was vacant for a few months on account of the noise. The radio would go until two and three in the morning."

Madeline Davis, residing at 16 North North Carolina Avenue, declared the conduct of the saloon when Mulholland had it was "so bad, if they kept the saloon there, we would have to move out. There was another lady and I coming from prayer meeting and a fight started in the saloon and beer bottles were thrown out on the sidewalk"; that the noise used to continue until three or four in the morning; that she observed people under the influence of liquor: "Yes, on my property, and I had to throw them off because they insisted they lived there"; that since the Mulholland saloon went out of business at that place, "It has been quiet and orderly. We don't want a saloon there - a drunk is a drunk"; that she had not been annoyed by men on her porch since then.

Carrie Palmer, living at 18 North North Carolina Avenue, testified that when Mulholland conducted the saloon "He used to get drunk and come on the porch and he threw a bottle through the window and it came into the second floor next door; there was always hollering and yelling all hours of the night and day, and drunks would come on the porches to use them to vomit and the alleys as common toilets"; that since the saloon went out "It is all right, I am not afraid to come home at night and before I was".

Thomas J. Sweeney, Inspector of Liquor Licenses and Applications, detailed from the Police Department, testified that Mulholland, prior to December, 1933 had a 3.2 beer license; that in December, 1933 he was granted a liquor license for 12 North North Carolina Avenue, which was renewed in February of 1934 and again in June, 1934 and again in June, 1935; that since he had left the premises now under consideration, the residential character of the neighborhood has not changed, but there have not been any complaints since he went out.

Frank Fiore, President of the Liquor Dealers Association, testified that when Mulholland had a license at 12 North North Carolina Avenue, it was operated as a "dive"; that in his opinion, the neighborhood is already sufficiently supplied or serviced by saloons.

Mayor White testified: "The reports to my office about Mulholland's and Mrs. Goodman's place - the place on Arctic Avenue - (Mrs. Goodman's place will be considered hereinafter) were unsatisfactory, very bad. I mean by that they were places of the lowest type of saloon; places where there was lots of drunkenness and sometimes worse." Asked what place, he replied "Mulholland's. And the place at Arctic Avenue, which the young lady's mother conducts. At the present time we have a great deal of trouble with it on account of the mixture of colors and the men and women who frequent it".

The testimony concerning the manner in which Mulholland ran his place is of evidential value on this appeal only to the extent that it throws light on the question of the good faith of the license issuing authority in refusing the transfer sought by appellant. It would be wholly unfair to hold her at all responsible for the manner in which the premises were conducted by the former licensee. The evidence, therefore, is of moment only so far as it shows what has happened in the past and what might be expected to happen in the future because of the mixture of colors and the type of patronage which would probably be attracted again by a licensed premises in this neighborhood.

The appellant herself is twenty-two years old; a graduate

of the Atlantic City High School. There is nothing against her character or conduct whatsoever. She has been employed as a stenographer for the past year at a salary of \$15.00 a week. She is engaged to be married, and would have been married if the application had been granted, as she was depending on it for a livelihood for herself and husband. She paid the sum of \$55.00 to the City at the time she filed the application for transfer. Her mother, however, furnished the money paid to Abe Sherman for the transfer of his license now under consideration and has also paid the rent of \$100.00 a month for the premises in question since January, 1936, and testified that she had expended \$2500.00 in renovating them. The mother resides on the premises with the daughter, but the lease is in the name of the daughter. The mother is a present licensee at Atlantic City, conducting a place on Arctic Avenue about one and one-half blocks from 12 North North Carolina Avenue. In addition to what the Mayor testified about the mother's place on Arctic Avenue, as above quoted, the Mayor testified that he didn't believe the young lady "if she is going to conduct it herself, is fit to conduct it - no aspersion against her character, but on account of her youth"; that "I think the background, the place her mother runs - it creates a grave suspicion in my mind that she is not alone in this matter"; that while he does not know of any charges made against the mother, he declared: "The place on Arctic Avenue is known as a 'dump', one of the worst in Atlantic City". Officer Arnheim testified that the establishment operated by Mrs. Goodman on Arctic Avenue is "typically a back town saloon, it is frequented by white and colored, habitual drunks, the type you see in speakeasies, men and women."

To offset the evidence indicating an interest of the mother in the licensed premises, both mother and daughter testified that the monies advanced to the daughter, in connection with the purchase of the license and the rent and the renovation of the premises constituted a dowry - a wedding gift for the daughter, engaged as previously mentioned, to be married. Perhaps - nay probably - this is true. But a bride adorned for her husband with a liquor license is cause for pause. She herself knows but little about that business. Her intended husband knows nothing. In fact, he couldn't qualify for lack of residence. Her mother knows everything. The apprehensions of the Atlantic City Commissioners that the daughter is only the nominal and the mother the substantial applicant, - that the mother has material as well as maternal interest in the premises sought to be licensed, are far from being wholly groundless. The evidence fails to prove that the daughter is a "front" for the mother. It suffices, however, to demonstrate that the issuing authority were not acting capriciously or arbitrarily in withholding the transfer of a liquor license to this very young girl.

Without pausing to wonder why the Mulholland license was successively renewed year after year, or why he was ever allowed to transfer it, I find that the Atlantic City Commissioners, without regard to the mistakes of the past, have had a change of heart in their present effort to rid this area of objectionable saloons, and having gotten them out, to keep them out, or, at least, that they haven't the heart to inflict upon the long suffering residents of North North Carolina Avenue the probability, as the Commissioners now feel, of a recurrence of the discomfort and distress caused by the previous operation of a saloon in that neighborhood. It is not that the neighborhood has changed, but that it has quieted since the exit of Mulholland. It is evident that the Commissioners

deem that the peace should continue unbroken.

I find, therefore, nothing unreasonable or arbitrary in the action of the Board of Commissioners in refusing to grant this transfer. Hence their action is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 30, 1936.

9. APPELLATE DECISIONS - RECAPITULATION OF RESULTS.

MEMO. TO: COMMISSIONER BURNETT
FROM: N. L. JACOBS

All appeals from municipal action pertaining to licenses for the period expiring midnight, June 30th, 1936, have been decided. During the past fiscal year 150 appeals were decided as follows:

Affirmed - - - - -	68
Dismissed - - - - -	28
Remanded - - - - -	4
Reversed - - - - -	37
Reversed on condition- - -	4
Reversed and remanded- - -	1
Withdrawn - - - - -	8

TOTAL 150

Dated: July 1, 1936.

10. APPRECIATION.

June 30, 1936.

11:45 p.m.

TO THE MEN, TO THE WOMEN, TO THE "BOYS" -- EVERY ONE OF YOU:

I am mighty proud of you all. The fiscal year is slipping out fast. It has but fifteen minutes to go. But the work is completed and we are all on top of it. If you are tired, if you are weary, you have the consciousness of work well done, and of appreciation which sticks.

One of the things which pleases most in nervous, trying days like these is the presence of a smile in eyes, in voice, and in action. This has lessened the tension, eased the burden, and welded us together as a departmental family.

I hope the day will soon come, with returning prosperity, when the State will requite in material salary increases the faithful, determined and effective work of the men and women to whose teamwork the stature of this Department in public service and in public esteem is due.

New Jersey State Library

Sincerely yours,

D. Frederick Burnett
Commissioner.