Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 138. September 18, 1936

1. APPELLATE DECISIONS - THALER vs. TRENTON.

JOHN THALER, )
Appellant, )
-vs- ) ON APPEAL
CITY COUNCIL OF THE CITY OF TRENTON, ) CONCLUSIONS
Respondent. )
- - - - - - - - - - - - - - - - -

Frank I. Casey, Esq., Attorney for Appellant.

Adolph F. Kunca, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a renewal of plenary retail consumption license for premises located at 24 South Warren Street, Trenton, New Jersey.

The testimony shows that prostitutes were permitted to frequent and to solicit upon the premises; that women were ejected for making indecent overtures to male patrons but allowed to return after Mrs. Edith Moore, the City Investigator, who made the complaint, had ostensibly gone; that appellant had been warned both by the City Investigator and the local police about permitting persons of unsavory reputation on the premises; that numerous complaints were made and frequent check-ups were necessary; that the place was commonly known as the "Barbary Coast".

The testimony further shows that both the appellant and his bartender were found by the City Investigator in an intoxicated condition on many occasions, the appellant 8 or 10 times.

Patrolman Raymond R. Butcher testified:

"I can add one false alarm--about 1:45 in the morning, there was supposed to be a fight taking place and Sergeant Stanley and I were at the beat and at the time I was standing not 200 feet away and there was supposed to be a fight inside and I saw no fight from where I was standing. So Sergeant Stanley and I talked to Thaler and he said three men caused a disturbance in the place but that they had gone away. We questioned Mr. Thaler and he seemed under the influence of liquor himself and seemed to have the "rants"--there was no fight there at all. We questioned people outside the place and there wasn't any fight at all."

In answer to the question: "Have you observed any drunkenness about the premises, the patrons?", the patrolman testified:

> "On several occasions we picked them up outside the door, and placed them under arrest. They were so drunk that they fell down on the sidewalk. They were put out at closing time."

A license is a privilege. The privilege has been abused. It should not be renewed.

The action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: September 11, 1936.

2. LICENSED PLACES - NOISE - THE PROBLEM AND AN ATTEMPTED ADJUSTMENT.

SPECIAL CONDITIONS - TIME LIMIT ON INSTRUMENTAL AND VOCAL EXERCISES.

September 11, 1936.

Mrs. Florence R. Morey
Town Clerk,
Belleville, New Jersey.

Dear Madam:

I have before me the resolution adopted by your Board of Commissioners authorizing the issuance of a plenary retail consumption license to Chateau Company, Inc. for premises 170 Washington Avenue, subject to the special condition that all musical apparatus and singing be discontinued on the licensed premises from 11:30 P. M. until legal closing time.

Noise, whether of the shouting and the tumult so often incident to alcoholic beverage, or of instrumental or vocal exercises, sometimes generously called music and singing, has caused discomfort and irritation to the immediate neighbors of many saloons throughout the State. It is a vexed problem how to control it. Some adjustment must be made. It should be fair both to the licensee and his patrons engendering conviviality under more or less bright lights, as well as to the non-belligerents sitting in neighborhood gloom with growing bitterness. Generalities about "excessive" noise do not suffice. Noise is not necessarily nuisance. It depends on the time, the place, and the degree. Definite, concrete rules are the first essential of real enforcement. Fixing a specific hour at which the tuneful merry-making is to cease will help to make living conditions of nearby residents more tolerable. It is a reasonable and fair step toward solution. The special condition to the Chateau Company, Inc. license is approved as submitted.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. LICENSEES - SALES TO MINORS - PROHIBITED

LICENSED PREMISES - PRESENCE OF MINORS - NOT PROHIBITED

CONSUMPTION LICENSEES - SALES FOR CONSUMPTION ON PREMISES - MAY BE MADE IN ORIGINAL CONTAINERS IF DESIRED ALTHOUGH THE STATUTE DOES NOT EXPRESSLY CONFER SUCH PERMISSION

September 11, 1936

Mr. H. J. Thurston,
Hammonton, New Jersey.

Dear Mr. Thurston:

You are absolutely right in refusing either to serve alcoholic beverages to minors or to serve to adults in order that they in turn may give the alcoholic beverages to minors on your licensed premises. It is against the law. Section 77 of the Alcoholic Beverage Control Act declares that anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor and punished accordingly. And Rule 1 of the State Rules Concerning Conduct of Licensees and Use of Licensed Premises (Compiled Rules, Regulations and Instructions, March, 1936, Page 55) expressly prohibits not only sales or service to minors but also the consumption of any alcoholic beverages by minors on the licensed premises. It provides:

> "No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

The rule prohibits sales or service of alcoholic beverages by a licensee directly to a minor. It also prohibits the delivery of any alcoholic beverage to an adult for consumption on the licensed premises by a minor. It is your duty as a licensee to see that on your premises the rule is strictly obeyed.

I can well appreciate that some patrons will be hard to convince that such sales are unlawful and, hence, should not be made. I have had similar complaints from licensees before. Re Finnel, Bulletin 110, item 2. As I told Mr. Finnel in reply to his inquiry, the only proper thing for you to do is to refuse. The law prohibits sales or service to minors and if you disobey, you risk the penalty of losing your license. Your license is worth much more to you than the few patrons who don't want and don't try to understand the consequences of violating the law and that no exceptions in their favor can be made.

As regards your second question: There is nothing in the Alcoholic Beverage Control Act or in the rules and regulations of this Department prohibiting minors from being in barrooms or on licensed premises. The statute and the State rule go no farther than to prohibit sales, service or delivery of alcoholic beverages to minors or the consumption of alcoholic beverages by minors on the

licensed premises. See Re Trenton, Bulletin 50, Item 1 and Re Grubb, Bulletin 125, Item 6. But there may, however, be some local municipal resolution or ordinance which would control. As to this, make inquiry directly of the Municipal Clerk of the municipality in which the licensed premises is situated.

Lastly, you ask if under your plenary retail consumption license, you may sell a bottle of gin or whiskey in the original container for consumption on the licensed premises.

The Control Act, Section 13, sub. 1, says that plenary retail consumption licensees may sell for consumption on premises by the glass or other open receptacle, also for consumption off the licensed premises in original containers.

The question is whether the permission to sell for consumption on premises "by the glass or other open receptacle" confines such sales to such containers and thereby prohibits such sales in the original containers.

If such had been the legislative intent, it would have been easy to express it, for instance: "but only by the glass" etc. or "but not in the original container". There is no express prohibition. No useful purpose is served by endeavoring to imply one. True, if alcoholic beverages are sold for consumption off the licensed premises they must be sold in the original container. But that is because the statute expressly says so. You, as contrasted with a distribution licensee, may sell either for off or on premises consumption. As regards the latter, the statute allows you to break bulk. That is the distinguishing feature of the difference between consumption and distribution licensees - between taverns and package goods stores. Since you can break bulk and nevertheless sell, you may also sell without breaking bulk if you choose.

If this ruling were otherwise, it would be unlawful for a consumption licensee to sell for on premises consumption a bottle of champagne or other wine or even bottled beer. That, of itself demonstrates that the legislative intent was not to confine on premises consumption to sales "by the glass or other open receptacle" but rather to illustrate the extent to which the original container could be dispensed with.

Except indirectly in Re Lenz, Bulletin 130, item 6, this question has not arisen heretofore, presumably because of the diminished profit motive when sales of gin or whiskey for on premises consumption are made in original containers.

It is ruled, therefore, that alcoholic beverages which are sold for consumption on the licensed premises may be sold by the glass or other open receptacle or in the original container.

Very truly yours,

D. FREDERICK BURNETT

Commissioner.

4. POLICE - INSTRUCTIONS TO ORANGE POLICE DEPARTMENT CONCERNING ENFORCEMENT OF LOCAL ALCOHOLIC BEVERAGE ORDINANCE BY DIRECTOR OF PUBLIC SAFETY.

September 11, 1936.

Hon. John M. Drabell,
Director of Public Safety,
Orange, New Jersey.

Dear Mr. Drabell:

Yours of July 21st came in while I was in the throes of clearing up old matters preparatory to vacation, during which I read your P. D. order No. 13 with interest and profit. If rigidly enforced, it should be highly productive of results. Believing your instructions to the Orange Police will be helpful to others, I am putting them into the current bulletin. Your cooperation is heartening. Thanks for the copy.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

P.D. ORDER No. 13.
July 21st., 1936.

TO ALL MEMBERS OF THE POLICE DEPARTMENT:

Attached is copy of a City Ordinance regulating the sale and distribution of alcoholic beverages and the fixing of a penalty for violations of the provisions thereof. This ordinance constitutes a part of this order which shall apply to all members of the Police Department, including chancemen assigned to patrol duty.

The order and ordinance shall be studied by all concerned in order that they may become familiar with those provisions of the latter which it is the duty of the Police Department to enforce.

Particular attention is called to the following sections of the ordinance: To section 8, which prohibits the presence on licensed premises of, or to, persons under the age of 21 years, intoxicated persons, habitual drunkards, known mental defectives, prostitutes, female impersonators and/or any group or gathering of thieves, burglars, pick-pockets, swindlers, confidence men or other classes of criminals; to section 9, which prohibits the licensee to permit brawls and other disturbances upon licensed premises or to permit the premises to become disorderly; to section 10, which prohibits upon licensed premises any form of gambling or gambling devices or lottery or number slips; to section 11, which fixes the hours during which licensed premises may do business; to section 12, which prohibits the doing of business by a licensee during the hours when polls are open on election days; to Sections 13 and 14, which include provisions regarding the views of interiors of licensed premises, to section 15, which prohibits the serving of females at any bar; and to section 16, which prohibits the sale of alcoholic beverages except by those to whom licenses have been issued by the Municipal Board of Alcoholic Beverage Control.

It is the duty of the Police Department to enforce the provisions of this ordinance with the exception of those sections which refer

to the issuance of licenses and which outline the duties and powers of the Municipal Board of Alcoholic Beverage Control, and as a matter of convenience, those sections which affect the Police Department have been pointed out in this order. Therefore, it shall be the duty of each member of the Police Department, including chancemen assigned to patrol duty, to see that all provisions of this ordinance affecting police powers are rigidly enforced, particularly those sections hereinbefore referred to.

Patrolmen in whose districts licensed premises are located, and chancemen acting for patrolmen in said districts, shall be held responsible for the enforcement of the provisions of this orinance during their respective tours of duty. They shall be assisted by Sergeants and Patrolmen assigned to auto patrol duty, and also Sergeants assigned to walking duty insofar as the district covered by those Sergeants are concerned.

In order to make the provisions of this ordinance effective, the Chief of Police or Acting Chief of Police, shall arrange for an immediate inspection of each and every licensed place in order to determine whether all provisions of the ordinance are being complied with, particular attention being given to the provisions respecting gambling, gambling devices, and lottery or number slips. The Chief of Police, or Acting Chief of Police, shall also arrange with the Chief of the Fire Department for assistance of Inspectors from the Bureau of Fire Prevention to cooperate with the Police in combing the city for the purpose of uncovering any possible illicit sale or manufacture of alcoholic beverages.

Thereafter, it shall be the duty of patrolmen, Sergeants and other members of the Department to make periodic inspections of licensed premises for the purpose of determining whether any of the provisions aforementioned are being violated. In all cases, arrests shall be made where necessary, and when there is any question of doubt, superior officers shall be consulted.

The ordinance makes no specific mention of the manufacture and sale of illicit liquor for the reasons that this phase is covered by the State statutes, but it shall be the duty of all members of the Police Department to enforce the State law with respect to the illicit manufacture of liquor, by a means commonly known as a "still" and also to enforce the law with respect to the sale of liquor whether legal or illicit on any premises not covered by a license issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.

With respect to opening and closing hours, there is to be no deviation from the terms of the ordinance, that is, licensed premises cannot be open for business on Sundays prior to 1 P. M. and must close on each morning of the week promptly at 2 A. M. With respect to taverns, this means that the tavern must be closed and all patrons must be out of the premises promptly at 2 A. M.

For the purpose of the enforcement of this ordinance, that part of Rule 17 of the Rules and Regulations for the Government of the Officers and Members of the Orange Police Department which reads, "All members of the police force shall be considered to be always on duty," shall apply.

JOHN M. DRABELL,
Director of Public Safety
City of Orange.

5. LICENSEES - WOMEN - HAVE SAME RIGHTS AS MEN AND ARE SUBJECT TO SAME DUTY TO PREVENT CONVERSION OF ENTERPRISE INTO NUISANCE - HEREIN OF FOUL CURSES AND THE RAISING OF PUPS AND THE REMEDIES OF INVOLUNTARY AUDITORS.

Dear Sir:

1. Can a Tavern be run by a woman alone?
2. Can she serve liquor at her bar?
3. May she sit at the same table and eat with her guests?
4. May she have boarders?
5. Can she raise dogs and puppies besides?
6. May she be allowed to burn colored electric lights in the rear windows of her Tavern that prevent proper rest of her next neighbor (property privately owned American born family).
7. May these electric lights burn all night and early mornings 4-5 a. m.?
8. Can these electric light fixtures (left over Christmas variety 1934) be of the home-made type?
9. May she curse in foul language at her neighbor, who objected to her music bands far into night, and the barking of her numerous dogs?
10. Can she secure a liquor license after her arrest due to her dogs making a public nuisance in the community?
11. May she or can she secure a liquor license despite the objections of several objectors?

Kindly do not reveal my name or address for then there will be more foul language on the part of the party mentioned.

Respectfully yours,

_____

September 12, 1936.

Dear Mrs. _____:

A woman may operate her own tavern, serve liquor over her bar, and consort with her guests the same as a man.

Nor is it against the law to take in boarders or raise pups or illuminate her place with ancient colored lights or make her own fixtures.

Her arrest because of the barking of her numerous dogs, even if followed by a conviction, is not a statutory barrier to granting her a liquor license.

If, however, she conducts her several enterprises and punctuates her dissentient retorts to those who object in such manner as to constitute a nuisance, your remedy is to complain to the local municipal governing board requesting the giving of warning or the institution of disciplinary action. Or, consult your own attorney as to civil action or having the indefatigable lady bound over to keep the peace.

Very truly yours,

D. FREDERICK BURNETT

6. MUNICIPAL OFFICIALS - WHEN DISQUALIFIED TO PARTICIPATE IN ALCOHOLIC BEVERAGE MATTERS - MEMBER OF ISSUING AUTHORITY IS NOT DISQUALIFIED FROM PARTICIPATING IN MATTERS RELATING TO ALCOHOLIC BEVERAGE CONTROL SOLELY BECAUSE HE IS AGENT FOR A BAR FIXTURE CONCERN.

September 11, 1936.

Vincent L. Gallaher, Esq.,
Camden, N. J.

Dear Sir:

I have your letter pertaining to the validity of licenses issued by an issuing authority, one member of which is employed as agent for a bar fixture concern. The specific inquiry has not previously been presented to the Commissioner for determination.

It is evident that a member of a governing body should be disqualified from participating in all proceedings before such body which directly affect his personal interests. This conclusion is supported by ample judicial authority and is dictated by principles of fairness and impartiality. See Stevens vs. Hausserman, 113 N. J. L. 162; 172 Atl. 178 (1934). Applying the foregoing, the Commissioner has ruled, on numerous occasions, that where a member of an issuing authority is interested in the liquor business or a licensed liquor establishment, he may not vote or participate in the authority's deliberations in matters pertaining to alcoholic beverage control. See Bulletin #76, Item #2; Bulletin #84, Item #17; Bulletin #89, Item #9; and Bulletin #95, Item #11.

Different considerations apply where a municipal official is not financially interested in the liquor business or in any liquor establishment, but merely deals, in the regular course of his private business, with retail licensees. Here his interest is legally remote and in the light of modern business relationships, a disqualification on such ground would be highly impracticable. Consequently, in Bulletin #124, item #7, the Commissioner ruled that a member of an issuing authority is not disqualified from voting on applications solely because he acted as a real estate agent in the letting of premises sought to be licensed where the letting was not contingent upon the issuance of the license, and further, that such official was not disqualified because he placed insurance on the premises of the licensee. The sale by a municipal official in the course of his private business of food, fuel, etc. to a retail licensee would not constitute a disqualification, and it would seem that a similar conclusion should be reached with respect to bar fixtures, despite their particular relationship to the liquor business. The line is properly drawn between an interest in the liquor business itself or in the premises in which the liquor business is conducted, which must be deemed direct and other relationships which, in general, must be deemed legally remote. Cf. Wakefield vs. Mayor, etc. Caldwell, 9 N. J. Misc. 44 (Sup.Ct. 1930).

Accordingly, it is the Commissioner's ruling that a member of an issuing authority is not disqualified from participating in matters relating to alcoholic beverage control solely because he is employed as an agent for a bar fixture concern.

Very truly yours,
D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

7. FORFEITURE PROCEEDINGS - APPLICATION FOR RETURN OF WINE UNLAWFULLY MANUFACTURED, ALLEGEDLY FOR PERSONAL CONSUMPTION, WILL, IN ANY EVENT, BE DENIED WHERE ILLICIT ALCOHOL WAS FOUND WITH THE WINE.

#2646

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|---|---|
| In the Matter of the Seizure of a quantity of wine and other alcoholic beverages found in the possession of Carlos Basile on premises known and designated as No. 361 New Street in the City of Newark, County of Essex and State of New Jersey. | On Hearing<br>CONCLUSIONS, DETERMINATION AND ORDER |

Anthony Calandra, Esq., for Carlos Basile

Investigators of this Department, in conjunction with Police Officers of Newark, seized 9 barrels of wine, a five-gallon can of alcohol, a gallon jug one-half full of an alcoholic beverage and a quart bottle three-quarters full of an alcoholic beverage from premises located at #361 New Street, Newark. The seized property was in the possession of Carlos Basile, who was arrested and charged with possession of illicit beverages in violation of the Control Act.

In accordance with the provisions of the Act, a hearing was held to determine whether the seized property constituted unlawful property and should be forfeited to the State. The five-gallon can contained 183 proof alcohol, fit for beverage purposes when diluted with water; the gallon jug contained a beverage consisting of 78 proof alcohol, water and coloring matter; the quart bottle, which was labeled "Golden Wedding Pure Rye Whiskey, 100 proof" contained a cordial consisting of water, alcohol, coloring and flavoring matter; and the 9 barrels contained approximately 400 gallons of home-made wine. At the time of the seizure several empty five-gallon cans bearing an alcoholic odor and similar to the five-gallon can referred to above were found in the yard adjacent to the premises occupied by Carlos Basile.

The containers of the alcohol bore no evidence of tax payment and it is evident that their contents were illicit. The testimony by Carlos Basile that the five-gallon can of alcohol was purchased for $10.00 by his wife for "rubbing purposes" is incredible. Furthermore, it is not disputed that the wine was manufactured without special permit in violation of the Control Act. The contention is advanced, however, that the wine was manufactured for personal consumption without knowledge that a permit was required and application is made for its return.

Under section 64(a) of the Control Act all interests in seized property terminate upon forfeiture. However, the Act affords to the Commissioner authority to return forfeited property where it appears that the person whose property has been seized acted in good faith and unknowingly violated the Act. In previous cases the Commissioner has ordered the return of wine manufactured for personal consumption without knowledge that a permit was required under the Act, upon the condition that

proper permit be obtained. In these cases no illicit distilled spirits, for which a permit could not have been obtained in any event, were found with the seized wine. The Commissioner has consistently declined to direct the return of wine allegedly manufactured for home consumption without a permit where bootleg liquor was found with the wine. The mere possession of the bootleg liquor constituted a misdemeanor under the Control Act and is sufficient to compel the denial of Carlos Basile's application, addressed to the discretion of the Commissioner, for the return of the wine.

It is, on this 1st day of September, 1936, ADJUDGED AND DETERMINED that all of the seized property referred to above constitutes unlawful property and is hereby declared forfeited; and it is

ORDERED that all said property shall be retained for the use of hospitals and State, county and municipal institutions, or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner

8. PRICE STABILIZATION - NO SUCH POWER HAS BEEN DELEGATED TO THE COMMISSIONER - THE JURISDICTION CANNOT BE ATTAINED BY CONSENT.

P E T I T I O N

To Commissioner D. Frederick Burnett
New Jersey Alcoholic Beverage Control

We, The undersigned retail alcoholic beverage licensees of the State of New Jersey, respectfully urge that we be controlled or supervised by the New Jersey Alcoholic Beverage Department in the matter of price stablization - i.e., an equal opportunity be afforded each of us to purchase liquor commodities at equal prices and be constrained to sell them not below minimum prices that shall be equal throughout this State. Our reasons follow:-

1 - There is no agency of control now operating in this State with regard to liquor merchandising principles or practice. In those fields of control with which your department has concerned itself great general and detailed effective results are obtained.

2 - The need of price control in this special type of business becomes increasingly necessary and is now and periodically an emergency.

3 - The consumers, the public, cannot maintain respect for a system which carelessly allows us as licensees to erratically flounder in a situation where haphazard, greatly divergent prices prevail with a penalty of needless uncertainty to the consumer. We wish to and must honor our license privilege yet present conditions stigmatize us.

4 - The State performs a service for the public by regulating almost completely the sales outlets for alcoholic beverages with one exception - the price a consumer may expect to pay with safety.

(This petition was signed by 126 Consumption and 113 Distribution Licensees).

* * * * * * * * * * *

September 14, 1936.

Gentlemen:

I have your Petition for price stabilization.

The momentous questions of public policy involved require that such a power be plainly granted. It is not a proper matter for implication or inference. Rules and regulations, to be sure, may aid existing powers, but may not be invoked to acquire new powers. No powers concerning prices have been expressly delegated. Therefore I am clear that no such power exists.

Such jurisdiction cannot be attained by agreement for even though all to be affected consent, such consent is only good till cancelled. If someone violates the pact - runs out on the others--then what? Control begins where power to enforce exists irrespective of consent and independent of dissent.

Unless, therefore, the Legislature shall deem it sound policy to amend the law and confer the power, price fixing and price maintenance are none of my business.

In reaching this adverse conclusion, I am not unsympathetic with the economic difficulties which confront you or insensitive to the confidence you repose.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. TRANSFERS - STATUTE AUTHORIZES TRANSFER OF LICENSE EVEN THOUGH NOT ACCOMPANIED BY TRANSFER OF ANY BUSINESS - WHETHER A DENIAL OF SUCH TRANSFER IN AID OF A MUNICIPAL POLICY TOWARDS REDUCTION OF THE NUMBER OF LICENSES OUTSTANDING IS REASONABLE, WILL NOT BE DETERMINED EXCEPT PURSUANT TO AN APPEAL DULY TAKEN - INSUBSTANTIAL DEFECTS IN NOTICE OF INTENTION MAY BE DISREGARDED.

September 15, 1936.

Meyer Q. Kessel, Esq.,
Newark, N. J.

Dear Sir:

Your letter of August 21st has been carefully considered.

The second paragraph of Section 23 of the Control Act in its original form (P.L. 1935, c.436) provided that licenses shall not be subject to sale, transfer or other disposition "except to the extent expressly provided by this Act". The third paragraph thereof, authorized the transfer of a license, upon proper application therefor, to a different place of business, but contained no authority for a transfer from person to person. In 1935, a new paragraph was inserted in Section 23 providing that upon proper application to the issuing authority a license may be transferred from person to person (P. L. 1935, c. 257). Consequently transfers, pursuant to proper application and after compliance with statutory prerequisites, may now be effected from person to person and place to place and the rules of the Commissioner provide that "transfers of licenses, both as to person and place, may be applied for simultaneously and in a single application" (see Pamphlet, Rules, Regulations and Instructions, p.33).

Your letter inquires whether license #C-36 held by Louis Jurke for premises located at #739 Springfield Avenue may be transferred to S. Schmukler, Inc. for premises located at #1305-1307 Springfield Avenue, even though no business was ever operated under the license and the proposed transfer is of the license alone. Although every license must be referable to a particular licensed premises described therein, there is nothing in the Act which renders the license void because of the licensee's failure to conduct business thereunder. Cf. Bulletin #116, Item #6. Nor is there any express language in Section 23 which prohibits a transfer of the license on that ground. The Act says that a license may be transferred, provided the statutory requisites are complied with and no requirement is imposed for the concurrent transfer of a business operated under the license. Administrative limitation of the statutory language by the imposition of such requirement would clearly be unwarranted, particularly in the light of the adjudicated cases to the effect that a license may be transferred pursuant to statutory authority authorizing transfers generally, despite the absence of a transfer of the business covered by the license. Cf. In Re Marshall, 160 N. Y. Supp. 698, affirmed sub nom Marshall v. Green, 161 N.Y. Supp. 1134 (App. Div. 1916); People vs. Clement, 128 N. Y. Supp. 573 (1910); Appeal of Cordano, 91 Conn. 718, 101 Atl. 55 (1917). While the Commissioner believes that indiscriminate trafficking in licenses is undesirable and should be eliminated, further legislative action will be necessary to insure this result.

Reference is made to the ordinance adopted by the Board of Commissioners of Irvington on August 14, 1934, prohibiting transfers from person to person and providing that no new licenses may be issued until the present number of licenses is reduced to 60, except that new licenses may be issued "upon the sale or transfer of a business" etc. The absolute prohibition against transfers from person to person was merely intended to state then existing law and has been nullified by the 1935 amendment to Section 23 of the Control Act. The other provision has, under its express terms, no relation to an application for transfer of an existing license.

None of the views expressed above should be construed as a direction that the pending application for transfer be granted. Although there is no statutory restriction against transfers of licenses unaccompanied by transfers of businesses

conducted thereunder, the statute nevertheless vests discretion in the issuing authority to determine whether any particular application for transfer should be granted. See Bulletin #95, Item #5. Its exercise of discretion is reviewable on appeal, but, if reasonable, will be sustained. The Board may possibly conclude that transfers should be granted sparingly, if at all, as an aid towards achieving the policy of limitation expressed in the ordinance, and that the pending application for transfer of the Jurke license should consequently be denied, particularly in view of its non-use. Whether, in the event of denial and appeal therefrom, such exercise of discretion would be held to be reasonable, will not be determined except after formal hearing on appeal pursuant to the Act.

The final inquiry contained in your letter is whether an application for transfer is fatally defective because the advertisement described the application as being for a new license rather than for a transfer of an existing license. Assuming that the advertisement accurately named the applicant, described the type of license and the premises sought to be licensed, thus affording ample notice to persons desiring to file objections, the defect would appear to be insubstantial.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

10. APPELLATE DECISIONS - SCHELF vs. WEEHAWKEN.

JOSEPH SCHELF, )
Appellant, )
-vs- )
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WEEHAWKEN, ) On Appeal
Respondent. ) CONCLUSIONS.
- - - - - - - - - - - - - - - - - - )

Joseph Schelf, Appellant, Pro Se.

John N. Platoff, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a renewal of a plenary retail consumption license for premises located at #572 Palisade Avenue, Weehawken, N. J.

Respondent denied the renewal because (1) the license fee which accompanied the application had been levied upon by a judgment creditor of the applicant; (2) the alleged improper manner in which the premises were conducted in the past.

On June 16, 1936, appellant deposited with the Township Clerk the annual license fee amounting to $350.00. On June 23, 1936, a levy was made upon this sum by the sergeant-at-arms of a local district court. There was also served upon the Township Clerk a rule to show cause why the license fee, or so much thereof as might be necessary to satisfy a judgment in the sum of $278.29, should not be paid over by the respondent-township to the sergeant-at-arms. On June 30th, the return date of the rule to show cause, an order was entered by the District Court requiring the municipality to make such payment. The municipality therefore contends that the balance of $71.71 left in its possession is insufficient to satisfy the required license fee.

A license fee while in the hands of the license issuing authority, is not subject to garnishment. The deposit of the fee vested in the municipality a conditional right to it which would ripen into an absolute right if the application were granted. Tindall v. Rust, 67 N. J. L. 159, 50 Atl. 349 (Supreme Court 1901). A garnishee is not liable unless it be shown that he was indebted to the defendant at the time of the commencement of the garnishee proceedings. A levying creditor acquires no greater right in the property levied upon than his debtor himself had at the time of the levy. Reigelhaupt v. Russo, 13 N. J. Misc. 278, 177 Atl. 878 (Hudson County Circuit Court 1935). At that time, Schelf, subject to one exception hereinafter noted, had no right to or control over the deposit he had made with the municipality. If the license was granted the entire fee belonged to the municipality; if rejected, then it was entitled to 10% of the fee. The exception above noted might have occurred if Schelf had withdrawn his application in which event he would have been entitled to 90% of the fee. But, Schelf, so far from withdrawing his application is prosecuting this appeal because of respondent's denial thereof. So long as the application is pending, and until the question whether the license is to be granted or not is finally decided, the municipality may not lawfully be required to honor any levy upon a deposited license fee. Hence, the district court erred in making the order upon which the respondent relied. It follows that the fee was fully paid, and the money belonged to the municipality subject only to statutory refunds. While those refunds, if any, are subject to garnishment or other levy, the deposited license fee is immune.

Respondent's first point is therefore not well taken.

On the merits, the evidence establishes that the premises remained open on several occasions after the two o'clock closing hour; that neighboring residents have been repeatedly annoyed by the boisterous conduct of the patrons during the late hours of the night and the early hours of the morning; that there have been more than 20 complaints to the Police Department within the past seven or eight months. The

objectionable conduct of the premises seems to be related to the design of the premises. In the fall of 1935, they were altered to simulate the interior of a prison and are known as the "Prison Inn". One realistic feature of the "ornaments" is an electric chair, rigged with a battery, capable of imparting mild shocks to unsuspecting patrons and their successor victims. The sleepless neighbors are wholly out of sympathy with this third rail humor and the ensuing screams and curses. Several of them testified to the constant annoyance resulting from the excessive noise and profanity permitted on and about the premises. There was also unprintable testimony as to indecencies by patrons in the adjacent alleyway.

Appellant testified that after he had been warned against operating during closed hours, he was asked by the Mayor and a member of the Township Committee to contribute $100 "to the campaign"; that "they asked me to donate toward the campaign; they didn't ask for $100 graft. I told them I would see what I could do if the business warranted, and I never did --------I told the neighborhood they wanted $100 for the campaign, and they were closing me at two because I didn't give it."

While this is meager testimony upon which to base such a serious charge, it might well be the subject of further inquiry if the only complaint against him were that he did not close on time. The stress of the charges against him, however, was not on that ground but because of the nuisance to the neighborhood caused by excessive noise and the tolerance of improper conduct.

Whether a renewal should be granted or not, is, like the original issuance of the license, a matter to be decided in the light of the best common interest of the public at large. Re Marritz, Bulletin #61, Item #8; Malone v. Bordentown, Bulletin #129, Item #8. Improper conduct under a prior license warrants the denial of a renewal application. Thaler v. Trenton, Bulletin #138, Item #1.

The objectionable conduct which appears in the record reasonably sustains the determination of the issuing authority to refuse a renewal license. The facts which were proved are not refuted by mere counter-charge that such determination was of political motivation.

Accordingly, the action of respondent is affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: September 17, 1936.