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

BULLETIN 425 OCTOBER 2, 1940.

1. APPELLATE DECISIONS - PURPURO v. PASSAIC.

JAMES VINCENT PURPURO,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOARD OF COMMISSIONERS OF THE)
CITY OF PASSAIC,)
Respondent)
- - - - - - - - - - - - - - - - -)

John O. McGuire, Esq., Attorney for Appellant.
Thomas E. Duffy, Esq., Attorney for Respondent.
John Hammersma, Jr., Attorney for Northside Christian Reformed Church.

Appellant, who has held a plenary retail consumption license since Repeal, for premises which he owns at 119 Myrtle Avenue, Passaic, filed two applications with respondent on the 6th day of June, 1940. The first application requested a transfer of the license he then held from 119 Myrtle Avenue to 243-45 Myrtle Avenue, Passaic. The second application requested renewal of his license for the present fiscal year for 119 Myrtle Avenue, Passaic. Respondent, by an unanimous vote, denied the first application because of the proximity of the Northside Christian Reformed Church, but granted the application for renewal of the license at 119 Myrtle Avenue, where appellant is now operating. Appellant thereupon appealed from respondent's action in denying transfer of the license to 243-45 Myrtle Avenue, Passaic.

Although the license sought to be transferred expired on June 30, 1940, and hence no effective order could now be entered herein as to such transfer, the parties requested a decision on the merits. Such decisions have heretofore been rendered so that the specific issue raised could be disposed of without the necessity for a further appeal. Shelby v. Trenton, Bulletin 129, Item 1; Crest Tavern, Inc. v. Wildwood Crest, Bulletin 415, Item 13; Felzot v. Palmyra, Bulletin 421, Item 9.

Northside Christian Reformed Church has been located for approximately thirty-five years at the southwest corner of Myrtle Avenue and Burgess Place. The premises to which appellant seeks to transfer his license are located in a row of one-story business buildings, at the northwest corner of Myrtle Avenue and Burgess Place. It has been stipulated that the distance between the nearest entrance to the church and the nearest entrance to the proposed premises is two hundred and twelve feet. There is testimony that this section of the city was at one time residential but is now a mixed residential and business district, with gas stations, a used car lot, and a live poultry market in close proximity to the church; and, also, that the proposed premises are located in the business zone.

A transfer to other premises is a privilege not inherent in appellant's license. The issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Van Schoick v. Howell, Bulletin 120, Item 6.

The proposed premises are more than two hundred feet from the church, and hence transfer was not barred by the provisions of R. S. 33:1-76. Nevertheless, an issuing authority may decline to issue licenses for premises reasonably considered by it as being too near churches or schools but nevertheless beyond two hundred feet. Staciewicz v. Trenton, Bulletin 35, Item 10; Serafin v. Bayonne, Bulletin 107, Item 3; Hill v. Montville, Bulletin 148, Item 9; Rafalowski v. Trenton, Bulletin 155, Item 8; and Wenzel v. Maywood, Bulletin 310, Item 3.

Appellant testified that he sought the transfer because the neighborhood surrounding his present licensed premises is changing from white to colored, with the result that his business has seriously decreased. On the other hand, respondent had before it written and verbal protests of the church authorities, which were renewed by seven members of the church who appeared at the hearing of the appeal.

Under all the circumstances, I conclude that appellant has not sustained the burden of proof in showing that respondent abused its discretion by denying the transfer because of the proximity of the proposed premises to the Northside Christian Reformed Church.

The action of respondent is, therefore, affirmed.

E. W. GARRETT,
Acting Commissioner.

Dated: September 23, 1940.

2. BULLETIN ITEM CORRECTION.

The caption of Item 7 of Bulletin 423 is erroneous in that it indicates the number of days suspension as "10". It should have read "30 DAYS' SUSPENSION ON PLEA OF GUILT."

3. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

September 28, 1940

Re: Case No. 343

Petitioner requested a determination of whether the crime of desertion, for which he was convicted in 1940, involved moral turpitude, thus disqualifying him from holding a liquor license or being employed by a liquor licensee in this State. R.S.33:1-25, 26.

At the hearing he testified that because of trouble at home with his wife, he left her; that although he was making voluntary weekly payments to her, she caused him to be arrested, and since May 1940 (the time of his trial), he has been paying her $15.00 weekly as a result of the order of the court. Petitioner's fingerprint record discloses no other convictions.

The crime of desertion may or may not involve moral turpitude, depending upon the circumstances surrounding the commission of the offense. See Re Ulhich, Bulletin 70, Item 2. The case at hand does not present any such aggravating circumstances as to warrant a finding that the element of moral turpitude is here involved.

It is recommended that the applicant be declared not disqualified by reason of the aforesaid conviction from holding a liquor license or being employed by a liquor licensee in this State.

Abraham Merin,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against	)
ABRAHAM H. DAVIDSON & EZRA DAVIDSON, T/A DAVIDSON BROS., 45 Paterson St., New Brunswick, N. J.,	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Distribution License D-1, issued by the Board of Commissioners of the City of New Brunswick.	)

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.
John J. Rafferty, Esq., Attorney for Defendant-Licensees.

The licensees have pleaded guilty to a charge of selling nine one-quart bottles of Wilson "That's All" Whiskey and three one-quart bottles of Calvert's "Special" Blended Whiskey below the minimum consumer price published in Bulletin 350 of this Department, in violation of Rule 6 of State Regulations 30.

By entering this plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. The license will be suspended for a period of five (5) days instead of ten (10) days.

Accordingly, it is, on this 27th day of September, 1940,

ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Abraham H. Davidson & Ezra Davidson, T/a Davidson Bros., by the Board of Commissioners of the City of New Brunswick, be and the same is hereby suspended for a period of five (5) days, effective September 30, 1940, at 6:00 A.M.

E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - MACK'S LONG BAR, INC. v. NEWARK.

MACK'S LONG BAR, INC.,)
Appellant,)
-vs-) ON APPEAL
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,) CONCLUSIONS AND ORDER
Respondent)

Sidney Simandl, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent.

Appellant is the holder of a plenary retail consumption license for premises located at 126 Market Street, Newark.

In an application for said license filed with respondent for the fiscal year beginning July 1, 1939, it set forth that its principal business is the "sale of alcoholic beverages." Thereafter, on February 7, 1940, it petitioned respondent for leave to amend said application so as to change its designated principal business during the rush hours, (namely, from 11 A.M. to 6 P.M. excluding Sunday), from "sale of alcoholic beverages" to "restaurant." On February 29, 1940, respondent denied the petition for the reason that "it had no legal right to grant same." Thereupon appellant filed this appeal.

Resolution No. 4889, adopted by the Board of Commissioners of the City of Newark on May 24, 1939, provides:

> "It shall not be permissible for the holder of a plenary retail consumption license to allow or employ any female **** to tend bar, sell or serve alcoholic beverages to patrons where the principal business is the sale of alcoholic beverages ***."

Appellant says that its purpose in attempting to amend its application was to permit it to employ waitresses to sell and serve alcoholic beverages to its patrons.

R. S. 33:1-22 provides for an appeal to the Commissioner from the denial or granting of a license; R. S. 33:1-31 provides for an appeal to the Commissioner from the suspension or revocation of a license; and R. S. 33:1-38 empowers the Commissioner to hear and conduct all appeals provided for by this chapter. There is no authority in the Alcoholic Beverage Law for an appeal to the Commissioner from the denial of the instant or a similar petition, and hence the appeal might well be dismissed on this ground alone.

Appellant contends, however, that it is unfair to require it to test the reasonableness of the Newark resolution by employing waitresses to sell and serve alcoholic beverages, thus subjecting itself to disciplinary proceedings in which unquestionably the reasonableness of the resolution would have to be determined. Therefore, it asks, in effect, that the appeal be considered as a request for a review, under the procedure followed in

Crystal Lunch, Inc. v. Perth Amboy, Bulletin 274, Item 9, of the Commissioner's ex parte approval of Newark resolution No. 4889, which was given in Re Reichenstein, Bulletin 319, Item 10, and a request for a special ruling authorized by R. S. 33:1-39.

Appellant contends, in the first place, that the resolution is discriminatory. This contention seems to be based upon the fact that, while the resolution prohibits a licensee whose principal business is the sale of alcoholic beverages from employing waitresses to sell and serve alcoholic beverages to patrons, it does permit licensees who, for example, conduct restaurants or hotels where the principal business is not the sale of alcoholic beverages to employ waitresses who may sell or serve alcoholic beverages to patrons. There is, however, a well recognized and substantial difference between places which are solely or primarily taverns and those which are conducted principally as restaurants or hotels in so far as the sale and service of liquor by females upon the licensed premises is concerned. In taverns such sale and service is the principal business; in hotels and restaurants such sale and service is merely incidental to other service rendered. A municipality, in seeking to curb the risk of immorality, may reasonably prohibit female employees from selling or serving liquor in taverns and yet permit such practice in restaurants and hotels. Experience has demonstrated the wisdom of the distinction between the various types of business in so far as female employees are concerned and, since the resolution applies to all licensees within the same classification, it cannot be said that the resolution is discriminatory.

Appellant further contends that the Newark resolution, since setting forth no specific test by which a plenary retail consumption place may be deemed principally engaged in the business of selling alcoholic beverages, is fatally indefinite and hence invalid. See, for example, State v. Powles, 90 Wash. 112, 155, p. 774; State v. Levitan, 190 Wis. 646, 210 N.W. 111.

I do not agree with this view. The test "where the principal business is the sale of alcoholic beverages" is itself reasonably and sufficiently concrete. Under such test the inquiry is whether or not a reasonable person would consider the establishment as primarily a tavern in view of all the pertinent facts, such as the physical layout of the premises; the receipts derived from the sale of liquor; and those derived from whatever other business is conducted at the establishment; the equipment for the sale of liquor and for such other business; the number of patrons who enter to buy or drink liquor and those who do not; etc.

It is quite apparent that no one or more of these facts can be singled out as furnishing a hard and fast test in all cases, since what might be a prevailing factor in one establishment might not have such effect in another.

Indeed, the Alcoholic Beverage Law itself, at R.S.33:1-1(t), employs this same type of general test. In there defining what shall be deemed "restaurant" for the purpose of such Law, it furnishes as one of the tests:

> "An establishment regularly and principally used for the purpose of providing meals to the public...." (underscoring mine).

Until the courts in this State declare such a test (viz., the use to which an establishment is "principally" devoted) to be invalid, the State Commissioner should, in view of its use in the Alcoholic Beverage Law, deem it sufficient.

Appellant further contends that, despite its primary character as a tavern (65% liquor and 35% food), it is nevertheless unreasonable to deny it the privilege of employing waitresses for the sale and service of liquor during those particular hours when it is chiefly engaged in the restaurant business. It may well be that, during the hours from 11 A.M. to 6 P.M., appellant's principal business, considered from a standpoint of volume thereof, is the sale of food. As a practical matter of enforcement, however, it would be impossible to make rules applicable to individual licensees depending upon the type of business conducted one or more hours of the day. Such plan would result in the utmost confusion. The only workable rule is one which considers the nature of the business, taken in its entirety.

For the reasons aforesaid, it appears that the resolution is valid and reasonable and no reason appears why the ex parte approval heretofore given should be modified or rescinded or why appellant should be exempted from the effect of the resolution.

Accordingly, it is, on this 28th day of September, 1940,

ORDERED, that the proceedings be and the same are hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

6. APPELLATE DECISIONS - MUNCEY v. MILLVILLE.

JAMES B. MUNCEY,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF MILLVILLE,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Henry O. Burt, Esq., Attorney for the Appellant.
Harry K. Waltman, Esq., by S. J. Salvo, Esq., Attorney for the Respondent.

Appellant appeals the denial of his application for transfer of plenary retail consumption license from Jacob Hager to himself for premises 1021 South Second Street, Millville.

In his application for license, appellant disclosed that he had been convicted of the crime of carrying a concealed deadly weapon. Respondent denied his application for the stated reason that appellant was not a qualified person.

It is unnecessary to examine the circumstances surrounding the commission of the crime in order to determine whether it involved moral turpitude and hence mandatorily disqualified appellant from the holding of a liquor license. Respondent has the

power, and is under the duty to examine the character and fitness of applicants for licenses and to deny the applications of those who are determined to be unfit. On appeal, such determination will be given great weight, and if reasonable, will be sustained. Moss & Convery v. Trenton, Bulletin 29, Item 12; Sylvester v. South Belmar, Bulletin 38, Item 15; Orofino v. Millburn, Bulletin 45, Item 15; Hodanish v. Trenton, Bulletin 121, Item 6; Spitz v. Pemberton, Bulletin 379, Item 8.

There is sufficient in the record to show that respondent's determination was not unreasonable.

The action of the respondent is therefore affirmed.

Accordingly, it is, on this 28th day of September, 1940,

ORDERED, that the petition of appeal be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

7. APPELLATE DECISIONS - FRANCO ET AL. v. PHILLIPSBURG ET AL. - ORDER TO SHOW CAUSE - RENEWAL LICENSES CANCELLED AFTER SUPREME COURT AFFIRMS THE SETTING ASIDE OF THE ORIGINAL LICENSES.

HERBERT J. FRANCO and WILLIAM H. SWICK,

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE TOWN OF PHILLIPSBURG, ROY HUFF, and JACOB NUSSMAN,

Respondents.

ON APPEAL
ON ORDER TO SHOW CAUSE
CONCLUSIONS AND ORDER

Robert S. Meyner, Esq., Attorney for Appellants.
Saul N. Schecter, Esq., Attorney for Respondent, Jacob Nussman.
Lewis S. Beers, Esq., Attorney for Respondent, Roy Huff.
Commissioners of the Town of Phillipsburg, Pro Se.

On March 11, 1940 the State Commissioner entered Conclusions and Order herein setting aside, inter alia, plenary retail distribution licenses issued to Huff and Nussman respectively for the fiscal year 1939-40. Franco et al. v. Phillipsburg et al., Bulletin 392, Item 5. Thereafter, certiorari was taken to the Supreme Court to review the State Commissioner's order.

Pending the Supreme Court's decision in such certiorari proceedings, the Phillipsburg Board of Commissioners issued renewal licenses to Huff and Nussman for the current fiscal year (beginning July 1, 1940), but apparently on the express understanding or condition that such renewals stand or fall in accordance with whatever decision would be reached by the Supreme Court as to the original licenses.

Thereafter, the Supreme Court (although reversing so much of the State Commissioner's order as vacated an ordinance of the Town of Phillipsburg) affirmed the State Commissioner's cancellation of the original Huff and Nussman licenses. Phillipsburg v. Burnett, 125 N. J. L. 157 (Sup. Ct. 1940); Bulletin 419, Item 6. Thereupon, an order was served upon Huff and Nussman to show cause why their respective renewal licenses for the current fiscal year should not be cancelled.

On return of such order, counsel for Huff and Nussman consented to the cancellation of their renewal licenses.

Accordingly, it is, on this 27th day of September, 1940,

ORDERED, that the plenary retail distribution licenses heretofore issued for the current fiscal year by the Phillipsburg Board of Commissioners to Roy Huff and Jacob Nussman, respectively, be and the same are hereby set aside and cancelled, and that all operations under such licenses terminate and cease forthwith.

E. W. GARRETT,
Acting Commissioner.

8. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

September 30, 1940.

Re: Case No. 544

In November 1935, applicant was found guilty of possessing lottery slips, placed on probation for three years and sentenced to pay a $250.00 fine.

At the hearing herein, applicant testified that he is now and has been for many years employed at his trade of shoemaker except for short periods when business was bad; that, during a period of unemployment in 1935, the police found a number of lottery slips in his car and placed him under arrest. Fingerprint returns disclose that he has never been convicted of any other crime.

Under the circumstances, I believe that the crime does not involve moral turpitude. Case No. 28, Bulletin 115, Item 10.

It is recommended that applicant be advised that he is not disqualified from holding a license or being employed on licensed premises.

Edward J. Dorton,
Deputy Commissioner and
Counsel.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - SLOT MACHINE ON LICENSED PREMISES - 5 DAYS' SUSPENSION ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against WILLIAM ZEIGLER (or ZIEGLER), T/a Zeiglers Restaurant, State Highway 35, Madison Township, P.O. Cliffwood Beach, N.J., Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of Madison Township.	CONCLUSIONS AND ORDER

Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.
William Ziegler, Pro Se.

The licensee has pleaded guilty to a charge that, on August 7, 1940, he possessed, allowed, permitted or suffered on his licensed premises a slot machine or a device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing, in violation of Rule 8 of State Regulations No. 20.

The penalty for this violation is ten days. Re Morrisey & Walker, Inc., Bulletin 425, Item 8.

By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five days instead of ten.

Accordingly, it is, on this 30th day of September, 1940,

ORDERED, that Plenary Retail Consumption License C-12, heretofore issued to William Zeigler (or Ziegler), trading as Zeiglers Restaurant, by the Township Committee of Madison Township, be and the same is hereby suspended for five (5) days, effective October 7, 1940, at 4:00 A.M.

E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION AND EMPLOYING PERSON DISQUALIFIED BY AGE, RESIDENCE AND CITIZENSHIP - TOTAL SUSPENSION OF 8 DAYS ON PLEA OF GUILTY.

In the Matter of Disciplinary Proceedings against NICK DeSANTIS, Holly and Marion Streets, P.O. Port Reading, Woodbridge Township, N. J., Holder of Plenary Retail Consumption License C-62, issued by the Township Committee of the Township of Woodbridge.	CONCLUSIONS AND ORDER

Nick DeSantis, Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of (1) selling liquor at less than the Fair Trade price at the licensed premises on August 3, 1940, in violation of Rule 6 of State Regulations No. 30; and (2) employing a minor, who is also an alien and has not resided continuously in the State of New Jersey for five years, contrary to Rule 1 of State Regulations No. 11.

The usual penalty for the first charge is ten days and for the second charge, five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five days on the first charge and three days on the second charge, making a total of eight (8) days.

Accordingly, it is, on this 30th day of September, 1940,

ORDERED, that Plenary Retail Consumption License C-62, heretofore issued to Nick DeSantis by the Township Committee of the Township of Woodbridge, be and the same is hereby suspended for a period of eight (8) days, effective October 5, 1940, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

11. ENFORCEMENT DIVISION ACTIVITY REPORT FOR SEPTEMBER, 1940.

To: E. W. Garrett, Acting Commissioner.

ARRESTS: Total number of persons - - - - - - - - - - - - - - 30
Licensees - 0 Non-licensees - 30

SEIZURES: Stills - total number seized - - - - - - - - - - - 10
Capacity 1 to 50 Gallons - - - - - - - - 5
Capacity 50 Gallons and over - - - - - - 5

Motor Vehicles - Total number seized - - - - - - - 7
Trucks - 0 Passenger cars - 7

Alcohol
Beverage Alcohol - - - - - - - - - - - -130 Gallons

Mash - total number of gallons - - - - 6650

Alcoholic Beverages

Beer, Ale, etc. - - - - - - - - - - - -	59	Gallons
Wine - - - - - - - - - - - - - - - - - -	322	"
Whiskies and other hard liquor - - -	334	"

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - - - -		1711
Illicit (bootleg) liquor - - - - - - -	9	
Gambling violations - - - - - - - - - -	5	
Sign violations - - - - - - - - - - - -	14	
Unqualified employees - - - - - - - -	117	
Other mercantile business - - - - -	2	
Disposal permits necessary - - - -	14	
"Front" violations - - - - - - - -	7	
Improper beer markers - - - - - - - -	3	
Other violations found - - - - - - - -	15	
Total violations found - - - - - - - -		186
Total number of bottles gauged - - - -		16320

STATE LICENSEES:

Plant Control Inspections Completed - - - -	104
License applications investigated - - - - -	8

COMPLAINTS:

Investigated and closed - - - - - - - - - -	298
Investigated, pending completion - - - - - -	345

LABORATORY:

Analyses made - - - - - - - - - - - - - - - -	120
Alcohol and water and artificial coloring cases	25
Poison and denaturant cases - - - - - - - - - -	2

Respectfully submitted,

S. B. White,
Chief Inspector.

12. APPELLATE DECISIONS - PARKER v. NEWARK ET AL.

ETHELWYN HOYT PARKER,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, GAETANO RISPOLI, ANNA PAGLUCA and MARY MIELE,

Respondents.

ON APPEAL
CONCLUSIONS

McCarter, English & Egner, Esqs., by Gerald McLaughlin, Esq., Attorneys for Appellant.
Joseph Sugrue, Esq., Attorney for Respondent, Municipal Board of Alcoholic Beverage Control.
J. Victor D'Aloia, Esq., Attorney for Respondent-Licensees, Gaetano Rispoli, Anna Pagluca and Mary Miele.
Leo Cluesmann, Esq., Pro Se as an Objector, and also Attorney for Objector, Lincoln Holding Co.
Saul W. Arkus, Esq., Attorney for Objector, Randolph Estates, Inc.
Herbert W. Brahms, Esq., Attorney for Objector, North Newark Civic Association and Broadway Association.
Child, Riker, Marsh & Shipman, Esqs., by John C. Demos, Esq., Attorneys for Objector, Cecelia B. Mills.

On July 10, 1940, Gaetano Rispoli, Anna Pagluca and Mary Miele applied to the Newark Board of Alcoholic Beverage Control for transfer of Rispoli's plenary retail consumption license to all three applicants jointly, and also for simultaneous transfer of such license from 187 South Street to 148 Lincoln Avenue, Newark.

The applicants advertised notice of their application in the "New Jersey State Times", on July 12th and 19th.

On July 18, the day before the second publication of notice, the Newark Board granted the application, but, in accordance with the procedure heretofore approved by this Department in Re Novack, Bulletin 174, Item 6, only on the condition, inter alia, that the transfer not become actually effective until and unless two full days had elapsed after the second publication without any objection being on file against the transfer. No such protest appearing by that time, the transfer was, on July 22, endorsed on the license, thereby becoming effective.

However, soon thereafter the Newark Board received numerous protests from residents in the general neighborhood to which the transfer was made, apparently since such neighborhood is highly residential in character. As a result, that Board, on August 5, held a hearing on such protests and, although going on record to state that it would not have granted the transfer had it originally known of such protests, rightly concluded that it had lost jurisdiction over the matter. Dilkes v. Pancoast, 53 N. J. L. 553 (Sup. Ct. 1891); Plager v. Atlantic City et al.,

Bulletin 80, Item 11; Emmons et als. v. Eatontown et als., Bulletin 362, Item 7.

Thereafter, the instant appeal from the transfer was filed with this Department on August 9, 1940 by a resident and property owner in the vicinity.

Although appellant contends, inter alia, that the "New Jersey State Times", in which the respondent licensees published their notice of application was not a satisfactory medium to actually bring such notice home to possible objectors of the proposed transfer, such issue need not here be determined since the notice was, irrespective of any question as to fitness of the newspaper, nevertheless fatally defective.

The Alcoholic Beverage Law, in requiring an applicant for issuance or transfer of a retail liquor license to twice publish notice of his application, specifically empowers the State Commissioner to fix, by regulation, the form of such notice. See R. S. 33:1-25, 26. As regards transfer, the Commissioner has fixed such form in Rule 4 of State Regulations No. 3 as follows (with certain minor variations as to clubs, corporations, etc. here not material):

" - NOTICE -

"Take notice that application has been made to
.....of.....
(Name of Issuing Authority) (Municipality)

to transfer to.....
(Name of Transferee)

trading as.....for
(Trade Name, if any)

premises located at.....
(Address of premises to which
.....the.....
transfer is sought) (Type of License and Number)

heretofore issued to.....
(Name of Licensee in full)

trading as.....for the premises
(Trade Name, if any)

located at.....
(No.) (Street) (Municipality)

"Objections, if any, should be made immediately in writing to:.....of .....
(Municipal Clerk) (Municipality)

.....
(Name of Applicant)

.....
(Address of Applicant)"

Rule 6 of the same State Regulations No. 5 expressly provides that such notice, in listing the type of license, "must be worded strictly in accordance with the statutory language" - viz., in the instant case, a "plenary retail consumption license." See R. S. 33:1-12(1).

However, the respondent licensees, instead of the above form, used the following:

> "Take notice that Gaetano Rispoli has applied for transfer of license from 187 South St., to Gaetano Rispoli, Anne J. Pagluca, and Mary Miele, at 148 Lincoln Ave., Newark, N. J.
>
> "Objections, if any, should be made immediately in writing to H. S. Reichenstein, City Clerk of Newark, N. J.
>
> "(Signed) Gaetano Rispoli,
> 185 South St., Newark, N. J.
> Anne J. Pagluca,
> 75 Bedford Street, East Orange, N. J.
> Mary Miele,
> 145 Mt. Pleasant Ave., West Orange, N. J."

Now, the obvious purpose for requiring publication of a notice of application is to apprize the public at large, in plain and direct language, of just what application is being made so that possible objectors, realizing what is at hand, may, if they see fit, come forward to be heard. The respondent-licensees' notice singularly fails to do this. For such notice, in referring only to a "license", fails to state the type of liquor license in question or even to indicate the all-important fact that any liquor license at all was involved. Its further failure to state that the application was being made to the Newark Board of Alcoholic Beverage Control, perhaps an otherwise inconsequential defect, becomes here highly important since such failure helps to strip the notice of any indication that the "license" there mentioned is a liquor license.

In consequence, the notice in question is substantially defective. Since a proper notice is a jurisdictional requisite, such defect is, therefore, necessarily fatal and voids the respondent-licensees' application even though such defect may have been unintentional and even though the Newark Board apparently granted the transfer despite such defect. See Trotto v. Trenton, Bulletin 46, Item 11; Re Disbrow, Bulletin 77, Item 7; Methodist Episcopal Church v. Verona et als., Bulletin 101, Item 5; Re McEwen, Bulletin 230, Item 11; Emmons et als. v. Eatontown et als., supra.

Hence the faulty notice in question of itself calls for reversal in this case.

Consideration of the merits leads to the same result.

The tavern to which transfer was made is located at the corner of Lincoln and Delevan Avenues in a building which contains five store premises, two of which were combined to constitute the licensed premises. However, despite this building, the general vicinity is, as already stated, nevertheless highly residential in character and is, in fact, zoned under City ordinance of January 8, 1930 as a residential district, but with the building in question apparently taking the benefit of a non-conforming use and being able (under the express terms of Sec. 13 of the Ordinance) to

change such use to that of a tavern.

In addition to various homes and apartment houses in the area, there is an orphanage diagonally across the street from the tavern in question and also several churches in the neighborhood, the tavern, however, apparently being beyond the 200 foot statutory minimum (R. S. 33:1-76) from any such church. Lincoln Avenue is, at least in this neighborhood, restricted against use by trucks.

Some sixty residents in the neighborhood, the president of the North Newark Civic Association and also the Broadway Association, and the Rectors of two of the churches, appeared at the hearing on appeal in protest against the tavern.

A highly residential neighborhood, where the inhabitants thus object to a liquor place in their midst, is clearly not (at least in absence, as here, of any public need therefor) a proper locale for a tavern. Re Passaic Elks, Bulletin 95, Item 4; Re Konke, Bulletin 212, Item 6; Emmons et als. v. Eatontown et als., supra.

The fact that the premises in question may, under benefit of a non-conforming use, continue to be mercantile premises although the area is zoned as a residential district, is no warrant that a liquor license may, therefore, be validly issued for such premises despite the highly residential character of the general neighborhood and the sentiment of residents there against having a tavern in their midst. Cf. the analogous decisions as to residential neighborhoods in business zones. Vannozzi v. Trenton, Bulletin 35, Item 7; Mills v. East Brunswick, Bulletin 141, Item 1; O'Rourke v. Fort Lee, Bulletin 189, Item 14. Also cf. Lojewski v. Bayonne, Bulletin 201, Item 1; Krug v. Paramus, Bulletin 215, Item 8; Morrovitz v. Bellmawr, Bulletin 329, Item 9.

However, the respondent-licensees contend, in effect, that appellant, since not having filed protest with the Newark Board before their transfer became effective, either lacks technical standing to press this appeal (see R. S. 33:1-22 and 26) or else should, in any event, be deemed in laches.

Such contention is without merit. For, even assuming (but by no means deciding) that ordinarily an objector must, to have technical standing or be heard on appeal, have protested to the local issuing authority before it took definitive action, necessarily such an assumed rule would not apply where, as here, the applicant failed to properly put possible objectors on notice of his application. Otherwise, an applicant could seek to preclude the possibility of an appeal by potential objectors by merely failing to publish an adequate "notice of intention" and hence not apprizing them of what is going on.

Furthermore, in any event, the State Commissioner may, on his own motion in this proceeding, and irrespective of appellant's standing, set aside the transfer in question, at least in so far as such transfer, in being granted despite the fatally defective "notice of intention", was thus granted contrary to the jurisdictional requisites of law. For analogous cases cf. Haines v. Burlington et al., Bulletin 223, Item 5; East Brunswick Board of Adjustment v. Township of East Brunswick, Bulletin 223, Item 5; Cocciolone v. West Deptford and Bafile, Bulletin 258, Item 3;

The Trustees of The First Particular Baptist Church of Paterson v. Paterson et al., Bulletin 245, Item 8; Caledonian Club et al. v. Paterson et al., Bulletin 269, Item 12.

Although the respondent-licensees further contend that they have invested considerable money in their new establishment, such investment was necessarily made under risk that they had properly applied for their transfer and that such would not be set aside on appeal duly taken, as here, within the thirty-day period fixed by the Alcoholic Beverage Law (R. S. 33:1-26). Cf. Emmons et als. v. Eatontown et als., supra.

In view of the foregoing and without need of inquiring into additional issues raised by appellant, the action of the Newark Board, in granting the said transfer, must be reversed.

Accordingly, it is, on this 30th day of September, 1940,

ORDERED, that the action of the Newark Board of Alcoholic Beverage Control in granting a transfer of a plenary retail consumption license from Gaetano Rispoli for 187 South Street to himself, Anna Pagluca and Mary Miele for 148 Lincoln Avenue in Newark, be and is hereby set aside; and it is further

ORDERED, that all operations under such transfer cease forthwith.

E. W. Burnett

Acting Commissioner.