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

BULLETIN 433 DECEMBER 3, 1940.

1. APPELLATE DECISIONS - BODRATO v. NORTHVALE.
PAYNE v. NORTHVALE.
BODRATO AND PAYNE v. NORTHVALE AND SMITH.

UNLESS A PROPER APPLICATION IS FORMALLY FILED, THERE IS NOTHING UPON WHICH THE ISSUING AUTHORITY CAN ACT AND NO LICENSE CAN BE ISSUED - DENIAL AFFIRMED.

SUFFICIENT LICENSES IN VICINITY - DENIAL AFFIRMED.
LACK OF POSSESSION OF PREMISES - ISSUANCE REVERSED.

ANTHONY BODRATO,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF NORTHVALE,
Respondent,
-and-
MARGHERITA IDEA PAYNE,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF NORTHVALE,
Respondent,
-and-
ANTHONY BODRATO and MARGHERITA IDEA PAYNE,
Appellants,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF NORTHVALE and WALTER A. SMITH,
Respondents.

ON APPEAL

CONCLUSIONS AND ORDER

Chandless, Weller & Kramer, Esqs., by Julius Kramer, Esq., Attorneys for the Appellants.
Lawrence A. Cavinato, Esq., Attorney for the Respondent, Mayor and Council of the Borough of Northvale.
Francis A. Kraus, Esq., Attorney for the Respondent, Walter A. Smith.

It was stipulated by all parties concerned that these three appeals be consolidated into one, and heard and decided together.

Bodrato appeals from the refusal of respondent Borough Council to renew his plenary retail consumption license for premises on the corner of Railroad and Paris Avenues, Northvale, and also from the issuance of such a license to Smith for the current fiscal year for the same premises. Payne appeals from the denial of her application for a plenary retail consumption license for premises on the corner of Paris Avenue and Livingston Street, Northvale.

As to denial of renewal to Bodrato: It appears that Bodrato failed to file an application for renewal of his license for the current fiscal period. What actually occurred was that, on June 27, 1940, at a meeting of respondent Borough Council at which it considered all applications for liquor licenses for the fiscal period 1940-41, Bodrato appeared and, although being there for about two hours, did not attempt to file his application for renewal of his license until after the meeting had been adjourned. He then handed the application, unaccompanied by any license fee or Federal stamp, to the Mayor, who told Bodrato that he could not accept it because the meeting was concluded, whereupon the Mayor handed the application to the Clerk, who returned it to Bodrato.

At respondent's next meeting on July 3, 1940, Bodrato again appeared, this time with his attorney. However, no attempt was then made by Bodrato or his attorney to file the application, nor was it ever done thereafter.

Bodrato's explanation for such failure is that it would have been a futile gesture to have filed the application since, in his opinion, it was apparent that the issuing authority intended to refuse him a renewal of his license. However, even if that were true, such fact does not relieve an applicant from formally presenting an application since, unless an application is filed, there is nothing upon which the issuing authority can act, and nothing whatever to form the basis of an appeal. Stock Amusement Co. v. Seaside Park, Bulletin 409, Item 2.

Moreover, even if the application should be considered as being properly filed, Bodrato's admitted failure to proffer at any time the full license fee as required by statute (R.S.33: 1-25) is fatal to the maintenance of his appeal. The statutory language that the fee "must accompany the license application" is mandatory and not merely directory, and such requirement cannot be waived. The reason is that under the cited statute the municipality is required to retain ten per cent thereof as its investigation fee in the event it rejects an application. If no fee is deposited, there is nothing from which the investigation fee may be retained. Cf. Powell v. Westville, Bulletin 210, Item 5. The facts of this case are, of course, distinguishable from those in Jones v. Absecon, Bulletin 218, Item 1, where the fee, although not accompanying the application, was paid before the issuing authority considered the application.

As to issuance to Smith: Application was made by Smith for a plenary retail consumption license for the same premises then occupied by Bodrato. This application was granted by respondent Council because at its meeting of July 3, 1940 the landlord of the said premises represented that Bodrato was then in arrears for rent and that he intended to oust Bodrato from those premises. The landlord also stated that he had agreed to lease the premises to Smith as soon as Bodrato was removed therefrom. However, it was admitted at the appeal hearing, which was held on August 28, 1940, that Bodrato was still in physical possession of the premises in question and that, in fact, proceedings in dispossession had been instituted only two days before such hearing.

It thus appears that Smith was at no time in possession of the premises, and for aught that appears, may not yet be in possession. All that Smith had was a promise, not reduced to writing, from the landlord, that the premises would be rented to him at some indeterminable date in the future when Bodrato would be dispossessed. Under such circumstances, Smith had not acquired such legal or equitable possession of the premises covered by his application as

would support the issuance of a license to him. Cf. Eavenson et al. v. South Orange et al., Bulletin 283, Item 8; Hindin v. Egg Harbor et als., Bulletin 399, Item 1.

As to denial to Payne: Respondent issuing authority denied Payne's application for a plenary retail consumption license for premises situate on the northwest corner of Paris Avenue and Livingston Street, Northvale, on the ground, among others, that there already are a sufficient number of licensed establishments in that vicinity.

The municipality, with a population of approximately 1500, has a quota of six consumption licenses. Prior to July 1, 1959 there were three licenses located at the intersection in question, since which time there have been two. Several members of the Borough Council testified that the two licenses there were more than sufficient to take care of the needs of that area and that, for some time past, it had been the policy of the Council to spread the licenses throughout the municipality rather than cluster them together in any one section.

The number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11. The burden rests with appellant to show that such discretion was unreasonably exercised and that public necessity and convenience require the issuance of an additional license at the premises for which application has been made.

In an effort to meet such burden, this appellant produced several residents of the municipality at the appeal hearing to testify in her behalf. One of these residents stated that "I think three of them can make a living there"; another that, although the two existing taverns are not insufficient for the vicinity, "another would not hurt"; a third resident that "It is the best corner for three taverns"; still another, that while perhaps not necessary, a third tavern would be "advantageous". Such testimony falls short of that necessary to show that the two existing licensed establishments located at the intersection in question do not adequately supply the needs of the public in that area.

This finding in the Payne appeal renders it unnecessary to consider other reasons assigned by the Borough Council for denying the application of this appellant.

It is, therefore, on this 15th day of November, 1940,

ORDERED, that the action of the respondent, Mayor and Council of the Borough of Northvale, in refusing to grant the applications of Anthony Bodrato and Margherita Idea Payne is hereby affirmed; and

It is further ORDERED, that the action of said respondent in issuing a plenary retail consumption license to Walter A. Smith for premises on the corner of Railroad and Paris Avenues, Northvale, is hereby reversed.

E. W. GARRETT,
Acting Commissioner.

2. ELIGIBILITY - PROHIBITION VIOLATION - SALE OF TWO BOTTLES OF BEER AND HALF PINT OF WHISKEY - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

November 25, 1940

Re: Case No. 351

Applicant requests a determination of whether he is eligible to become a liquor licensee in this State despite his conviction in 1932 of the crime of illegal sale and possession of alcoholic beverages, as a result of which he was fined $50.00 and placed on probation for six months.

Applicant testified that during the prohibition era he had, from time to time, purchased liquor from a nearby resident which he would then resell to persons of his acquaintance. It appears that his conviction arose from a sale of two bottles of beer at fifteen cents each and a half pint of whiskey for seventy-five cents.

The prosecutor of the county in which he was convicted reports that "The case was not a very serious one". Fingerprint returns disclose that applicant has not been convicted of any other crime.

In the absence of aggravating circumstances, a run-of-the-mill Prohibition violation, such as is the case at bar, does not involve moral turpitude. Re Case No. 294, Bulletin 351, Item 5; Re Case No. 337, Bulletin 421, Item 5. No such circumstances are here present.

It is, therefore, recommended that applicant be advised that he is not disqualified from holding a liquor license in this State, despite the aforesaid conviction.

Samuel B. Helfand,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

3. SEIZURES - CONFISCATION PROCEEDINGS - INADEQUATE INVESTIGATION BY LIENOR OF MOTOR VEHICLE - APPLICATION FOR RETURN OF VEHICLE DENIED - ALCOHOL AND VEHICLE FORFEITED.

In the Matter of the Seizure on July 17, 1940 of a Chrysler Coupe and four 5-gallon cans of alcohol found therein, at the intersection of Broad Street and Shadeland Avenue, in the City of Pleasantville, County of Atlantic and State of New Jersey.	Case No. 5802 ON HEARING CONCLUSIONS AND ORDER

Green & Brawer, Esqs., by H. Kermit Green, Esq., Attorneys for C. I. T. Corporation.
Harry Castelbaum, Esq., Attorney for the State Department of Alcoholic Beverage Control.

On July 17, 1940, two Pleasantville police officers arrested Robert Rice while he was transporting four 5-gallon cans of

untaxed alcohol in a Chrysler Coupe, and seized the car and the alcohol.

No claim was made by anyone for the return of the alcohol, which is prima facie illicit. R. S. 33:1-1(i). It will, therefore, be forfeited.

The C. I. T. Corporation, holder of a conditional sales contract covering the automobile, entered an appearance and contended that it was a bona fide lienor thereof and, therefore, entitled to its return.

To sustain such contention, it must appear that the finance company conducted an adequate investigation into Rice's character, identity and employment, and did not discover any facts which would have led a reasonably prudent person to suspect that the automobile would be put to an unlawful use. Cf. Re Case 4968, Bulletin 384, Item 8.

From the evidence, it appears that the claimant received a report from a credit rating concern which, among other things, stated:

> "His personal reputation is generally regarded as being unsatisfactory. According to a newspaper clipping on record in our file dated 4/1/39 he was placed on probation for four years to report once a week, after being found guilty on a statutory charge. Another clipping dated 9/13/39 shows him as being found guilty of accepting relief checks while he was employed. He was fined $25 and placed on probation for six months on that charge."

Upon receipt of this report, the claimant did nothing but make two telephone calls. One was made to Rice, who was asked about the "statutory charge" and who satisfied the claimant with his explanation that "this girl was no good anyway and she was known to run about that neighborhood". The other telephone call was made to the dealer who had sold the car to Rice for the purpose of learning what the dealer knew of Rice's financial ability to pay the balance due on the car.

That was the full extent of claimant's investigation. Although the report showed that Rice had been convicted of accepting relief checks while employed, it did not investigate this charge because it "did not think this was necessary".

Moreover, despite its knowledge of Rice's convictions as set forth in the aforesaid report, it made no inquiry of the enforcement authorities concerning his criminal record which includes two arrests for possession of illicit liquor, one in 1935 at Pleasantville, where he resided, and the other in 1936 at Newport News, Virginia.

It is clear that the C.I.T. Corporation did not make an adequate investigation, and failed to act as a person of ordinary prudence under the circumstances of this case. Cf. Bulletin 116, Item 9; Bulletin 165, Item 7; Bulletin 165, Item 8, and Re Case 4968, supra. Its claim will, therefore, be denied.

Accordingly, it is, on this 23rd day of November, 1940,

ORDERED, that the property set forth in Schedule "A" be and hereby is forfeited, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

E. W. GARRETT,
Acting Commissioner.

SCHEDULE "A"

4 - 5-gallon cans of alcohol
1 - Chrysler Coupe, Serial No. 6888975, Engine No. C 1627555, 1940 N.J. Registration No. AJ-86-N

4. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - ISOLATED VIOLATION IN APPARENT GOOD FAITH - LICENSE SUSPENDED FOR EIGHT DAYS INSTEAD OF THE USUAL TEN.

In the Matter of Disciplinary Proceedings against

HELEN GLAD ANZEVINO,
T/a Old Judge Tavern,
111 Vreeland Avenue,
South Hackensack, N. J.,

Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of South Hackensack.

CONCLUSIONS AND ORDER

Helen Glad Anzevino, Pro Se.
Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

Defendant is charged with selling a quart bottle of Wilson "That's All" Whiskey on July 31, 1940 below the minimum retail price, in violation of State Regulations No. 30.

On July 31, 1940, Investigators Best and Higginbotham of this Department visited the licensed premises. Investigator Higginbotham asked the bartender, Anthony Anzevino, husband of licensee, the price of a quart of Wilson "That's All" Whiskey. Mr. Anzevino quoted the price of $2.25 a quart, stating that this was the old price and that there was a new price but that he didn't know what it was. Mr. Anzevino sold the item in question to Higginbotham for $2.25. Thereupon the investigators made known their identity and obtained a written statement from the bartender, admitting substantially the facts set forth above. The fair trade price of Wilson "That's All" Whiskey on July 31, 1940 was $2.59 a quart, as set forth in Bulletin 416, effective July 22, 1940. The former fair trade price of the item in question was $2.25 per quart. Bulletin 350, effective October 9, 1939.

Licensee does not dispute the fact that the sale took place below the minimum retail price then in effect, but testified that she had not received through the mails a copy of the price pamphlet or bulletin notifying retail licensees of the changes in prices which were to become effective on July 22, 1940. However, evidence was introduced at the hearing which showed that such a price pamphlet had been mailed to her, addressed to the licensed premises where she also resides and that the mail had not been returned by the United States Post Office. The fact that a licensee

does not receive a copy of the price list does not excuse the licensee because Rule 4 of State Regulations No. 30 provides that the prices become effective when published in the official bulletins of the Department. Re Bell, Bulletin 307, Item 6; Re Marcincin, Bulletin 315, Item 5.

Licensee also testified that the bulk of her business consists of sales of liquor by the glass and that she sells only five or six bottles during the entire year. This, of course, is no excuse. I am inclined to think, however, that, despite the ruling in Re Marcincin, supra, this may be considered somewhat of a mitigating circumstance because it is not the usual case where a licensee "chisels" on a large volume of sales. Hence, under all the circumstances of the case, I shall suspend the license for eight days instead of the usual ten.

Accordingly, it is, on this 23rd day of November, 1940,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued to Helen Glad Anzevino, T/a Old Judge Tavern, by the Township Committee of the Township of South Hackensack, be and the same is hereby suspended for a period of eight (8) days, effective November 27, 1940, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - HOHENHAUSEN v. SCOTCH PLAINS.

LIMITATION OF LICENSES - MUNICIPALITY'S POWER TO ADOPT - VALIDITY OF EXCEPTIONS ALLOWING RENEWALS - CONTENTIONS THAT LIMITATION IS UNREASONABLE AS APPLIED TO APPELLANT FOR THE REASON THAT THE PREMISES IS A SPECIALIZING RESTAURANT, THAT THE EXISTING LICENSED PLACE HOLDS A MONOPOLY, AND THAT THE DENIAL OF THE LICENSE ADVERSELY AFFECTS APPELLANT'S PRIVATE INTERESTS, FOUND WITHOUT MERIT - PUBLIC CONVENIENCE AND NECESSITY NOT SHOWN - DENIAL AFFIRMED.

HERMA HOHENHAUSEN,)
Appellant,) ON APPEAL
-vs-) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF SCOTCH PLAINS,)
Respondent.)

Frank P. McCarthy, Esq. and John VanValkenburgh, Esq., Attorneys for Appellant.
Walter L. Hetfield, Jr., Esq., Attorney for Respondent.

This appeal is from the denial of a plenary retail consumption license for the appellant's restaurant, the "Dana Terrace", on Route 29, Township of Scotch Plains.

The Township is 9.3 square miles in area and has a population of some 4,940. On December 7, 1937 respondent, the Township Committee, adopted an ordinance which provides, in effect, that plenary retail consumption licenses in Scotch Plains shall

be limited to ten except that such quota shall not bar renewal of any of the fifteen such licenses then existing. (As to respondent's power to adopt such quota, see R. S. 33:1-40, 41. As to validity of the exception in favor of renewal of licenses in existence when the ordinance was adopted, see Re Dunn, Bulletin 104, Item 9; Mainiero v. Roxbury, Bulletin 246, Item 2).

Fourteen of the licenses which existed when the ordinance was adopted have actually been successively renewed down through the current fiscal year (the fifteenth having lapsed at the end of the 1938-9 year). Because such fourteen licenses necessarily leave no vacancy in the quota, respondent denied appellant's application for license.

In pressing the instant appeal from such denial, the appellant does not impugn respondent's good faith in having adopted the quota, nor does she present substantial claim or evidence that the quota is unreasonable as a whole. Her contention, in sum, is that the quota operates unreasonably in her case in barring the issuance of a license for her restaurant.

The test, to determine whether such claim is well taken, is whether public need and convenience require that her restaurant should, despite the quota, actually be licensed. See Rainbow Grill v. Bordentown, Bulletin 245, Item 4.

Appellant opened her restaurant in August 1938, subsequent to adoption of the limiting ordinance. Her restaurant specializes in Danish "smorgasbord"; seats sixty persons; serves meals (at least during its good seasons) to some two to three hundred customers each week; has a trade which is about equally divided between transients and an established clientele (chiefly from surrounding municipalities) of "conservative, middle aged" folk; is apparently quiet and dignified and has no music or entertainment of any kind.

Appellant's place of business is on a very heavily traveled road, in more or less open rural country in the Township. There is already a liquor licensed restaurant some half-mile to the west, such being the only liquor place on this highway in its two-mile run through Scotch Plains. There is a similarly licensed restaurant on the highway some two and a half miles east and another approximately four miles to the west of appellant's place, both such restaurants, however, being outside the Township.

Appellant and two employees at the restaurant testified that many persons (whom they fix at figures varying from 75 to 150 per week) actually leave when learning that they may not have liquor (especially beer) with their food, or else partake merely of the "smorgasbord" and not the regular meals.

Passing the question as to which of these figures (if any) is the correct one, I find nothing to show that such persons who want alcoholic beverages with their meals are in any way substantially inconvenienced by having to go along the highway either to the licensed restaurant some half mile or to the two licensed restaurants further away. The mere fact that it would be more advantageous to appellant if she could actually retain such business for herself, and not have it pass to competitors, is not the equivalent of a public need for the licensing of her restaurant over the limit of the local quota. While such diversion of patronage is indubitably a personal hardship to appellant, nevertheless where, on question of issuing a liquor license, private and public interests clash, the latter (as here represented by the local quota) must necessarily

prevail. Lewis v. Phillipsburg, Bulletin 232, Item 13; Rainbow Grill v. Bordentown, supra; Santoriello v. Howell, Bulletin 252, Item 8; DeVivo v. Highlands, Bulletin 427, Item 5.

Nor does the fact that appellant's restaurant is the only one thereabouts to specialize in Danish "smorgasbord" create requisite public need to over-ride the local quota and require that the restaurant be licensed. Were it otherwise, every restaurant wanting a liquor license could, by merely specializing in some unique item, wholly defeat any local quota.

Appellant lays stress on the fact that, if she cannot obtain a license for her restaurant, the licensed restaurant some half-mile away on the highway will hence have "a monopoly of the sale of alcoholic beverages on.....Route 29 passing through Scotch Plains."

This contention is without merit. In the first place, it is specious to talk about a "monopoly" on liquor sales along the two-mile stretch of the highway in the Township since there are along that same highway and within several miles of the Township a number of liquor places. The fact that such places are outside Scotch Plains is wholly immaterial since automobilists driving along the highway are in no way restricted to use of only the liquor place in Scotch Plains.

Moreover, even assuming that the nearby restaurant has such "monopoly" as appellant claims, nevertheless, as already stated, there appears no such public need for any additional consumption place along the highway in the Township as to outweigh the local quota and compel respondent to issue an additional license.

The most that appellant has shown is that the quota conflicts with her private interest. She has not sustained the burden of showing that the quota is unreasonable in itself or as applied to her application. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 26th day of November, 1940,

ORDERED, that this appeal be and hereby is dismissed.

E. W. GARRETT,
Acting Commissioner.

6. RETAIL LICENSEES - RAFFLES AND LOTTERIES - PARTICIPATION IN LOTTERIES CONDUCTED BY CHAMBERS OF COMMERCE OR BUSINESS MEN'S ORGANIZATIONS NOT PERMISSIBLE.

Gentlemen:

In conjunction with our plans for Christmas, a free coupon is to be given out with every purchase made at the participating stores. This coupon will carry a number, and if the number appears in the window of one of the participating stores, the holder will be able to claim the free gift offered by that store.

We are writing you to determine whether or not this plan can receive your sanction as far as the liquor stores are concerned in Morristown.

Yours sincerely,
K. E. Kostenbader,
Executive Director.

November 25, 1940

K. E. Kostenbader, Executive Director,
Morristown Celebrations, Inc.,
Morristown, N. J.

My dear Mr. Kostenbader:

I understand that the selection of the winning number, from among the numbered coupons, will be by a drawing.

Generally speaking, it is permissible for the holders of liquor licenses to participate in the activities of the local Chamber of Commerce. They may also share in the advertising, provided, of course, the advertisements are acceptable and conform with the Rules. They may not, however, give away coupons or tickets with purchases either of alcoholic beverages or other merchandise, or engage in any other scheme for their distribution if such tickets enable the holders to take part in any drawing for gifts or prizes. Such drawings are lotteries and to distribute the tickets, or otherwise participate, would be in violation of Rule 6 of State Regulations No. 20. Liquor licensees may have nothing whatsoever to do with lotteries. Discounts are also barred with sales of alcoholic beverages for off-premises consumption as well as most gifts. Rule 20 of Regulations No. 20 prohibits retail licensees from furnishing, among other things, any gifts, premiums, discounts or similar inducements with sales of alcoholic beverages for off-premises consumption, excepting only advertising novelties of nominal value.

Hence the distribution of tickets or coupons for the drawing for prizes is out, so far as liquor licensees are concerned.

Whether the general advertising will be approved depends upon the scheme and what it says. If you will submit the copy and layout, we shall be glad to give you a ruling.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

7. RETAIL LICENSES - APPLICATIONS BY CORPORATIONS - THE STATUTE CONSTRUED TO BAR ISSUANCE, EXCEPT FOR PREMISES OPERATED AS A BONA FIDE HOTEL, UNLESS EACH OWNER OF MORE THAN TEN PER CENT OF THE CONTROLLING OR VOTING STOCK QUALIFIES IN ALL RESPECTS AS AN INDIVIDUAL APPLICANT.

November 26, 1940

Staff Sergeant Manny Burman,
Headquarters Co., 1229th Reception Center,
Fort Dix, N. J.

My dear Sergeant:

The New Jersey Alcoholic Beverage Law provides, in R. S. 33:1-12.1, that no retail license shall be issued to any corporation, except for premises operated as a bona fide hotel, unless each owner, directly or indirectly, of more than ten per cent of the stock qualifies in all respects as an individual applicant.

The purpose of the provision is to prevent the use of the corporate device to secure licenses for disqualified persons, through the medium of corporations controlled by such disqualified persons.

You propose a corporation in which two disqualified persons will hold five shares each of voting common stock and one qualified person will hold ninety shares of non-voting preferred, the common stockholders being entitled to all of the profits with the exception of a prior preferred dividend which, incidentally, under the Corporation Act (R. S. 14:8-1) cannot exceed 8% per annum.

That puts less than ten per cent of the total stock in the hands of each disqualified person, it is true. The catch is the large block of non-voting preferred. But the disqualified persons, through the common holdings, exercise full control to the exclusion of the holder of the preferred. On the basis of voting rights, each has what amounts to fifty per cent of the control.

That would patently be contrary to the purpose of the statute, and it is therefore ruled that stock in the contemplation of R. S. 33:1-12.1 is controlling or voting stock, whether common or preferred, exclusive of such other non-controlling or non-voting common or preferred as may be part of the corporate structure.

You are advised that the corporation, as proposed, is not eligible to receive a New Jersey retail license.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

8. APPELLATE DECISIONS - BERRY v. NEWARK.

APPLICATION TO TRANSFER TO NEW PREMISES DISTINGUISHED FROM APPLICATION FOR TRANSFER SOUGHT MERELY TO ENLARGE EXISTING PREMISES - LACK OF POSSESSION OF PREMISES - DENIAL AFFIRMED.

ELIE BERRY,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Michael Breitkopf, Esq., Attorney for Appellant.
James F. X. O'Brien, Esq., by Joseph B. Sugrue, Esq., Attorney for Respondent.

Appellant appeals the denial of his application for transfer of license from premises 4-6-8 to premises 2-4-6-8 Boston Street, Newark.

Respondent denied the application without stating any reason. In its answer to the petition of appeal, it gave as its reason that "the best interests of the City of Newark would not be served if the said application was granted."

At the hearing it appeared that the application was denied because respondent was "not impressed" with the general neighborhood, the area being "largely colored and largely relief"; that the present premises "seemed to be adequate"; and that further "increase" in the neighborhood was undesirable, taking into consideration the number of taverns in the vicinity.

The reasons which actuated respondent might well have been cogent had this been an application to transfer a license into the area from elsewhere in the city. They have no weight where, as here, the application is merely to enlarge an existing licensed premises.

However, at the hearing herein, appellant testified that he had made no arrangements with the owner with respect to the leasing of premises at 2 Boston Street. Although claiming that the owner had promised to let him have the premises at a rental of $25.00 a month, he nevertheless admitted that there was neither written agreement nor definite understanding as to when the term of the letting would commence. This falls far short of establishing that appellant has such possession and control of the premises sought to be licensed as is requisite. Bodrato v. Northvale, Bulletin 433, Item 1; Hindin v. Egg Harbor, Bulletin 399, Item 1; Eavenson v. South Orange, Bulletin 283, Item 8.

Furthermore, the premises at 2 Boston Street seem to be separated from those at 4-6-8 Boston Street by a solid wall, rendering both premises separate and distinct. A separate license is required for each specific place of business. R. S. 33:1-26. It does not appear that any plans were filed with respondent indicating how the two premises were to be joined to make them single, as in New Jersey Licensed Beverage Association v. Camden, Bulletin 215, Item 5; Samuels' Pharmacy, Inc. v. Newark, Bulletin 381, Item 6; Novelty Bar, Inc. v. Newark, Bulletin 418, Item 9.

Notwithstanding that the considerations which moved respondent to deny the application were lacking in weight, its action must be affirmed for the two reasons last above indicated.

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

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

One further point deserves mention: Following the hearing herein this Department received information by letter that the extension of the license to cover premises at 2 Boston Street would bring the entire premises within the proscribed 200 feet of the Bethany Baptist Church, at 117-119 West Market Street. The issue was not tried, hence the decision herein is not rested on the alleged proximity of said church to the premises sought to be licensed.

However, in the event that new application is made, care should be exercised to see that the licensing of the premises at 2 Boston Street will not be in violation of R. S. 33:1-76.

E. W. GARRETT,
Acting Commissioner.

9. APPELLATE DECISIONS - STEWART v. CHATHAM.

ALLEGED "UN-AMERICAN" DISCRIMINATION AND SPECIAL PRIVILEGES OF COMPETITORS - SUFFICIENT LICENSES IN MUNICIPALITY - DENIAL AFFIRMED.

INEZ STEWART,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE BOROUGH OF CHATHAM,)
Respondent.)

William H. Tallyn, Esq., Attorney for Appellant.
Richard Lum, Esq., Attorney for Respondent.

This is an appeal from denial of a plenary retail distribution license for premises located at 112 Main Street, Chatham.

Respondent denied the application for the stated reasons that: "the needs of the municipality are sufficiently served by the existing licensees and that the granting of an additional license would be contrary to the social welfare."

On September 19, 1940, appellant and her husband, Dewey C. Stewart, opened a delicatessen store at the premises in question, which are located at the northwest corner of Main Street and Passaic Avenue. This is the principal business intersection in the borough. However, when appellant applied for her license there were and now are four plenary retail distribution licenses in existence in this section of the borough; one issued for a drug store on the northeast corner of the intersection of Main Street and Passaic Avenue; a second for a cigar store on the southwest corner of said intersection; a third issued for a grocery store and a fourth issued for a delicatessen store, both of which stores are located on the southerly side of Main Street, a short distance from said intersection.

There is no ordinance or resolution limiting the number of plenary retail distribution licenses which may be issued in the Borough of Chatham. Nevertheless, a local issuing authority may validly refuse to issue a retail liquor license if, at the time, sufficient liquor places are already outstanding in the municipality, even though, as here, there is no formal regulation limiting the number of such licenses. Haycock v. Roxbury, Bulletin 101, Item 3; Dunster v. Bernards, Bulletin 121, Item 11; Widlansky v. Highland Park, Bulletin 209, Item 7; Goff v. Piscataway, Bulletin 234, Item 5; Watts v. Princeton, Bulletin 301, Item 2. With four distribution licenses already in existence in the borough, which has a population of 4863, it appears that there is no need for an additional license, particularly in this case where all of the existing licenses of this type have been issued for premises in the same section of the borough in which appellant's store is located.

One of the main arguments made by appellant is that the action of respondent is "un-American" because, as a result thereof, a special privilege is granted to one businessman and denied to his

competitor. Five written objections to issuance of appellant's license were received and three citizens, including two Ministers, spoke against the issuance of appellant's license at the hearing held upon said objections. The owners of the delicatessen store, who hold a license for their premises located on the south side of Main Street, also presented a petition to the Borough Council signed by a number of persons, requesting that the appellant's application be denied. Two of the Councilmen testified that they were not influenced by the competitors' petition, but that they based their decision on what they thought was best for the interests of the community. After respondent had denied the license, petitions were circulated and signed by more than five hundred individuals, wherein respondent was requested to reconsider and reverse its decision because

> "We, the undersigned, believe in AMERICAN RIGHTS FOR ALL AND SPECIAL PRIVILEGES FOR NONE. We resent any infringement of democratic ideals or American rights."

Without considering the question as to whether the respondent would have had the power to reconsider after deciding the case, and giving full weight to appellant's petition, it appears that it is based upon a misconception of the law. A liquor license is a privilege. No one has a right to a license. The same argument was considered in Bumball v. Burnett, 115 N. J. L. 254 (Sup. Ct. 1935), wherein Justice Parker, speaking for the court, said:

> "Prosecutor argues apparently that a liquor license is to be obtained and is obtainable on the same theory as a license to carry on, say a grocery business, demandable by any respectable citizen on payment of the prescribed fee: but that is not the case. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. 'No one has a right to demand a license: License is a special privilege granted to the few, denied to the many.' Ibid. 596. 'There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the State of the United States.' Meehan v. Board, 29 N.J.L.J. 370; 64 Atl. Rep. 689. See, also, Hagan v. Boonton, 62 N.J.L. 150."

Appellant's argument on this point is without weight. Proper control requires that there must be a limit to the number of retail licenses outstanding in a municipality and the evidence satisfies me that respondent, in denying appellant's application, did not deprive appellant of any of her rights but acted for the best interests of the community. Respondent's action is therefore affirmed.

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

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

E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - 20 DAYS' SUSPENSION FOR SECOND OFFENSE - SALES ON ELECTION DAY - 10 DAYS' SUSPENSION FOR FIRST OFFENSE - TOTAL: 30 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

UKRAINIAN NATIONAL HOME,
214 Fulton St.,
Elizabeth, N. J.,

Holder of Plenary Retail Consumption License C-229 issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

CONCLUSIONS AND ORDER

Abram D. Londa, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that (1) on November 5, 1940 it possessed three Mills Jackpot slot machines which were used for the purpose of playing for money on the licensed premises in violation of Rule 8 of State Regulations 20; and (2) on General Election Day, November 5, 1940 it sold alcoholic beverages to consumers while the polls were open for voting, in violation of Rule 2 of State Regulations 20.

The Department file discloses that the method of operation of the Mills Jackpot machine is as follows: When a coin is inserted into the receiving slot a lever is released. The player then pulls down the handle of this lever, causing three wheels to revolve. The rims of these wheels are visible to the player on the surface of the machine and contain symbols such as fruit, bars and bells. If the wheels come to a stop showing particular combinations of symbols as listed on the machine, the machine automatically ejects into a cup a number of coins equal to the posted odds. In the instant case an investigator succeeded in receiving an automatic cash pay-off through one of the machines. From the method of operation the machines are clearly slot machines, commonly referred to as "One Arm Bandits".

The usual penalty for possessing slot machines is ten days. Re Morrisey & Walker, Inc., Bulletin 425, Item 8. The Department files disclose that on August 9, 1937 slot machines were found on the licensed premises. Disciplinary proceedings were instituted by the local issuing authority and the license was suspended for three days, effective October 11, 1937. Since this is the second adjudicated offense of the same nature, the penalty will be doubled to twenty days on this charge. The usual penalty for sales on Election Day is ten days. Re Vallatese Political Club, Inc., Bulletin 358, Item 15. The total penalty is, therefore, thirty days

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, for which five days off the penalty will be allowed. The license will, therefore, be suspended for twenty-five days instead of the usual thirty days.

Accordingly, it is, on this 29th day of November, 1940,

ORDERED, that Plenary Retail Consumption License C-229, heretofore issued to Ukrainian National Home by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, be and the same is hereby suspended for a period of twenty-five (25) days, effective November 30, 1940, at 2:00 A. M.

E. W. GARRETT,
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
ATLANTIC CITY TUNA CLUB, 741 N. Massachusetts Ave., Atlantic City, N. J.,) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-163, issued by the Board of Commissioners of the City of Atlantic City.)

Vincent S. Haneman, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge that on September 13, 1940 it possessed, allowed, permitted and suffered slot machines on and about the licensed premises, in violation of Rule 8 of State Regulations 20.

The Department file discloses that four Keystone Jackpot pull handle slot machines were found on the licensed premises. The method of operation of these machines is substantially identical with that of the Mills Jackpot machines described in Re Ukrainian National Home, Bulletin 433, Item 10. They are, therefore, slot machines.

The usual penalty for possessing slot machines is ten days. Re Morrisey & Walker, Inc., Bulletin 423, 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 the usual ten days.

Accordingly, it is, on this 29th day of November, 1940,

ORDERED, that Plenary Retail Consumption License C-163, heretofore issued to Atlantic City Tuna Club by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended for a period of five (5) days, effective December 2, 1940, at 9:00 A.M.

E. W. Garrett

Acting Commissioner.