

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

BULLETIN 230.

FEBRUARY 21, 1938

1. LICENSES - TRANSFER - ISSUANCE OF NEW LICENSE NOT NECESSARY WHERE LICENSEE TAKES IN A PARTNER - THE ORIGINAL LICENSE MAY BE TRANSFERRED TO THE PARTNERSHIP.

February 7, 1938.

Harry Sohl, Chairman,  
Warren Township Committee,  
R.D. 2, Millington, N. J.

My dear Mr. Sohl:

It is not essential to issue a new license where a licensee takes in a partner. All that is necessary is that the old license be transferred from the original licensee to the original licensee and the new man as partners.

Before the transfer may be granted, the Township Committee must investigate to ascertain that the new partner is fully qualified to hold a license. No license may be issued or transferred to a partnership unless all of the partners qualify as individual applicants. R.S. 33:1-25 (Control Act, Section 22).

The transfer is made in the same manner as all other transfers of licenses from person to person. You will find the procedure set out at length in State Regulations No. 3 (Pamphlet Rules, January 1938, pages 37 through 43). The fee is ten per cent of the annual fee for the license to be transferred, which in the case of a plenary retail consumption license in Warren Township is \$21.90, and must be paid at the time the application is filed. See Rule 16.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

2. DISCIPLINARY PROCEEDINGS - CUT RATE SIGNS AND USE OF COUPONS - ALSO SALES VIOLATIONS.

February 8, 1938.

Eugene Ertle,  
City Clerk,  
Jersey City, N. J.

Dear Mr. Ertle:

I have staff report and your certification of the proceedings before the Board of Commissioners of the Mayor and Aldermen of Jersey City against:

New Jersey State Library

1. Sinders Corp., charged with having violated (a) State Rule #20 of Rules Concerning Conduct of Licensees and Use of Licensed Premises, in that it advertised a sale of liquor at a reduced rate provided a coupon appearing in a newspaper was presented at the time the purchase was made; and (b) State Rule #3 of Rules Concerning Signs and Other Advertising Matter, in that a sign bearing the words "Sinders Cut Rate" was allowed to remain pasted on a window wherein alcoholic beverages were displayed. I note this licensee was adjudicated guilty and that the license was suspended for ten days.

2. Anthony Cavello

3. Michael Chunka, and

4. Joseph Lullo,

all charged with having sold alcoholic beverages before 1:00 P. M. on Sunday in violation of your local regulation. I note these licensees were also adjudicated guilty and that each license was suspended for a period of two days.

Your letter certifying the penalties imposed in the above cases also sets forth that charges preferred by the Board of Commissioners of Jersey City, on its own initiative, against four other licensees were dismissed; that the license of Bert Zaremba was revoked outright. Our records have been so noted.

Expressing no opinion on the merits of any of the cases in the event they may come before me by way of an appeal, I wish to thank the members of the Board for their continued fine cooperation in the interest of proper enforcement of the law and the rules and regulations governing the conduct of licensees in connection with disciplinary proceedings against Jersey City licensees.

Cordially yours,

D. FREDERICK BURNETT  
Commissioner

3. DISCIPLINARY PROCEEDINGS - ILLICIT BEVERAGES - FIVE DAYS SUSPENSION TOO MEAGER A PENALTY FOR SALE OF "SHAKE UP".

February 8, 1938.

Wilfred G. Turner, City Clerk,  
City Hall,  
Union City, N. J.

Dear Mr. Turner:

I have staff report of the proceedings before the Board of Commissioners of Union City against Paul Marrone, t/a Belmont Bar & Grill, charged with (a) having possessed illicit alcoholic beverages known as "Shake Up" -- two bottles containing whiskey other than as represented by their labels -- and (b) having employed non-residents without special permits.

I note the licensee pleaded guilty to the charges and that the license was suspended for five days.

While my records indicate the consistently fine cooperative spirit by your Board in past disciplinary matters, frankly, it is my opinion that the punishment in this case hardly fits the offense. It is too late a day for licensees to be palming off "bootleg" liquor or liquor not as represented by the label on the bottle from which it is poured. Customers are entitled to be served what they order. Cheating licensees have no place in the present order of things.

I therefore cordially recommend to your Board that in all future cases involving the possession of illicit liquor, my suggested minimum of thirty days' suspension of the license be imposed.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

4. CONTRACEPTIVES - THE RULE WILL NOT BE CHANGED SO FAR AS TAVERNS ARE CONCERNED TO PERMIT THE NATION-WIDE DRIVE AGAINST SYPHILIS TO BE CAPITALIZED FOR PRIVATE PROFIT.

Dear Sir:

Will you please advise us if the sale of Prophylactic goods, through sanitary vending machines placed in the men's room, is prohibited in tap rooms in this State.

In other words, these machines are to be put in the men's rooms in tap rooms, by a vending machine operator, who services the machines, keeps them supplied with merchandise, in sanitary condition, and handles the money that is received. The tap room owner, or his agents will have nothing to do with the machines in any manner.

No doubt you are aware of the fact that at present a nation-wide drive is being conducted against Syphilis and other diseases of that kind. Nothing could be more worthwhile than helping to prevent the spread of matters of this kind. That is the aim of the responsible companies that are willing to invest considerable money in machines of this kind.

Yours very truly,

KEANE and COMPANY

Keane and Company,  
Camden, N. J.

February 10, 1938.

Gentlemen:

If, by "prophylactic goods", you mean contraceptive devices, the answer is NO.

I am wholly in accord with the drive by high-minded men and women to stamp out a dreaded disease, but they will undoubtedly resent any effort to capitalize their civic work for private profit. Taverns are not to be exploited for any such thing.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

5. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS AND PERMITTING FEMALE ENTERTAINERS TO BE SERVED WITH PATRONS - FIVE DAYS SUSPENSION.

February 5, 1938.

Walter A. Bredder,  
Borough Clerk,  
East Paterson, N. J.

Dear Mr. Bredder:

I have staff report of the proceedings before the Borough Council of East Paterson against Swanee Club, Inc. charged with (a) having sold alcoholic beverages during prohibited hours -- after 3:00 A. M. -- and (b) having permitted female entertainers to be served alcoholic beverages with patrons; both in violation of your local regulations.

I note the licensee pleaded guilty to the charges and that the license was suspended for five days.

Please extend to the members of the Council my sincere appreciation for their prompt and effective action in this case. Sales during prohibited hours and the use of female entertainers to accelerate trade are practices about which honest and conscientious licensees justly complain and with which they find it extremely hard or impossible to compete. A continuation of such short-sighted conduct on the part of a few misguided licensees will have the effect of bringing the whole liquor industry into disrepute. Such practices, when discovered, should be stamped out unflinchingly.

The penalty imposed in this case should put licensees on notice that such conditions will not be tolerated in East Paterson.

Cordially yours,

D. FREDERICK BURNETT  
Commissioner

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

February 11, 1938.

In Re: Case No. 212

Applicant requested a ruling as to his eligibility to be employed by a licensee.

At a hearing duly held, he admitted that in 1928 he had been convicted by a jury on an indictment for breaking, entry and larceny and sentenced to seven years in States Prison, of which he actually served five years and four months.

Subsequent investigation discloses that he was twenty years of age at the time of his arrest and that he was convicted of entering a building and stealing goods to the value of \$275. Investigation also shows that in

1925 he was convicted of Grand Larceny; in 1926, of larceny from person, and that he is now awaiting sentence after pleading non vult to an indictment for robbery committed in 1937.

It is recommended that applicant be advised that he is not eligible to be employed by a licensee.

Edward J. Dorton  
Attorney-in-Chief

Approved

D. FREDERICK BURNETT  
Commissioner

7. REGULATIONS 20, RULE 2 - ELECTION DAY CLOSING - THE RULE APPLIES TO RECALL ELECTIONS OF CITY COMMISSIONERS.

February 14, 1938. 238-10

Oakford M. Cobb, Chief of Police,  
Wildwood, N. J.

My dear Chief Cobb:

Thanks for the certification of your City Clerk to the effect that a petition has been filed for the recall of Doris W. Bradway and Frederick W. McMurray, City Commissioners of Wildwood, and that an election to determine if the said Commissioners shall be recalled and if so, to elect their successors, will be held on February 18th next.

Regulations 20, Rule 2, provides:

"2. No licensee shall sell or offer for sale at retail or deliver to any consumer, any alcoholic beverages in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

The reason for the rule applies to elections for recall of commissioners provided by R. S. 40:75-25 et seq. I therefore construe it to apply to such special elections.

The decision heretofore made that the Rule does not apply to school elections, Re Bugnon, Bulletin 106, Item 9, still holds good, but the reasoning by which that result was reached -- viz: that school elections are not specifically set forth in the General Election Law, Revision of 1930 -- is hereby superseded. After all, the scope and application of any Rule should be as broad as the reasons for the existence of the Rule. The selection of school trustees is a horse of an entirely different color from the election of City Commissioners. Since the original municipal election, by which the latter were voted into office, required the closing of taverns while the polls were open, so does the subsequent recall election, even though the procedure therefor happens not to have been set forth in the General Election Law.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

8. TWO HUNDRED FEET RULE - CHURCH - MEANS THE PLACE OF WORSHIP ITSELF.

RETAIL LICENSES - LICENSES MAY BE DENIED FOR PREMISES TOO CLOSE TO CHURCHES ALTHOUGH AT A GREATER DISTANCE THAN TWO HUNDRED FEET.

TWO HUNDRED FEET RULE - APPLIES EQUALLY TO PLENARY RETAIL CONSUMPTION AND PLENARY RETAIL DISTRIBUTION LICENSES.

RETAIL LICENSES - APPLICATION - OBJECTION BY COMPETITORS OR ON GROUND THAT THERE ARE TOO MANY IN VICINITY - CONSIDERATIONS APPLICABLE.

Dear Sir:

An application has been made for a Plenary Retail Distribution license. The place for which this application is made is located 341 feet from the St. Lawrence Church and 192 feet from the Convent of this Church where services are also held.

Will you kindly advise if the Convent constitutes a church and must be 200 feet from the place licensed as stated in the Alcoholic Beverage laws; also, if this ruling applies to a Plenary Retail Distribution license the same as a Plenary Retail Consumption license. May Council reject a license of this kind on objections made by those holding Plenary Retail Consumption licenses, as they state it would take so much of their business that probably some of them would have to close.

Very truly yours,

GEORGE W. CARR  
Borough Clerk.

February 15, 1938.

George W. Carr  
Borough Clerk  
Lindenwold, N. J.

My dear Mr. Carr:

I understand that there is before the Council an application for a plenary retail distribution license for premises 341 feet from the St. Lawrence Church and 192 feet from the convent of the church.

The convent is not a church within the meaning of the Act. This is true regardless of whether or not services may be held in the convent. R.S. 33:1-76 (Control Act, Sec. 76), in referring to churches, means the place of worship itself, not property merely owned by the church or affiliated with the church not constituting the church edifice. See Re Meyerson, Bulletin 78, Item 12; see also Bulletin 5, Item 3.

As the proposed licensed premises is located more than two hundred feet from the church, the issuance of the license would not be barred by Section 76.

This does not mean, however, that, all other requirements being met, the license must be granted. Issuance is not mandatory merely because the premises is outside of the two hundred feet. Licenses have been denied because the premises were too close to churches or schools, although at a greater distance than the statutory two hundred feet. It is a matter of discretion with the local license issuing authority. I have affirmed such denials where the conclusion was reasonable and proper and the policy uniformly applied, holding that Section 76 expressed a legislative policy against the licensing of premises too near to churches and schools, that it stipulated merely the minimum requirements and that the Legislature, by doing so, did not contemplate depriving issuing authorities of the right to refuse licenses for premises reasonably considered by them as being too close to churches although at a greater distance than two hundred feet. See Goldberg v. Livingston, Bulletin 163, Item 2, Rafalowski v. Trenton, Bulletin 155, Item 8, Re Wuytack, Bulletin 154, Item 10, Re Yeomans, Bulletin 77, Item 6 and the items cited therein. Cf. McDonald v. Clayton, Bulletin 161, Item 5, Hill v. Montville, Bulletin 148, Item 9, DeChristie v. Gloucester, Bulletin 121, Item 10 and Serafin v. Bayonne, Bulletin 107, Item 3.

The law does not distinguish between plenary retail consumption and plenary retail distribution licenses so far as Section 76 is concerned. The section applies equally to both types. Stacewicz v. Trenton, Bulletin 148, Item 2.

I note that objection is raised by the consumption licensees that the issuance of the distribution license will have an adverse effect on their business. It is an understandable objection. Naturally, it would have an effect on their business. In considering it, the Council should give due weight to the fact that it is motivated, to some extent at least, by self-interest. Whether it is valid, or whether the issuance of the distribution license would result in the presence of too many licenses in the vicinity, are questions confided in the first instance to the sound discretion of the municipal license issuing authority. Weiss v. Clifton, Bulletin 215, Item 10. A number of cases have already come before me where applications for licenses have been denied because there were too many licensed places already in the vicinity of the premises sought to be licensed, and where such was shown to be in fact the case, the denials have been affirmed. In others, I have been compelled to reverse the municipality because of its failure to show good cause. See Re Abrams, Bulletin 224, Item 7, and the items therein cited.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

9. RETAIL LICENSEES--LIQUOR-BY-WIRE--LIQUOR-BY-WIRE TRANSACTIONS DO NOT VIOLATE CONTROL ACT AND RETAIL LICENSEES MAY PARTICIPATE THEREIN.

February 15, 1938.

David Weitzman, President,  
New Jersey Retail Liquor Stores Ass'n.,  
Camden, N. J.

Dear Sir:--

Re: "Liquor-by-wire"

Kindly refer to our previous correspondence pertaining to the above entitled matter.

In Bulletin 155, Item 1, the Commissioner disapproved a proposed plan relating to deliveries of alcoholic beverages "by wire" which would operate as follows:

"Jones in Boston, Massachusetts, desirous of sending liquor to Smith in Newark, New Jersey, will place his order with a retailer in Boston, who is a member of the Service and will pay the list price therefor; the Boston member will wire a New Jersey retailer, who is likewise a member of the Service, who will in turn deliver the purchased alcoholic beverages to Smith in New Jersey; the Boston retailer will then remit the purchase price to the New Jersey retailer, less a commission of 10% or 15%."

Thereafter, requests were received from New Jersey licensees for modification of the above ruling, interested parties were heard and the general subject was reexamined. Two questions are involved: (1) does the law itself prohibit the proposed plan, and (2) if it does not, should participation by New Jersey licensees in the plan be prohibited by regulation.

(1) In the bulletin item cited above, the thought was expressed that the plan involves participation by foreign dealers in retail sales within this State, in violation of the Control Act. Upon further consideration, it seems equally reasonable to view the foreign dealer, not as a seller, but rather as an agent for the buyer. There is no express statutory language which is helpful and it is not at all clear that the Legislature contemplated an absolute prohibition against liquor-by-wire transactions. It would appear appropriate, therefore, that in the absence of further legislative expression, the problems presented should remain subject to the broad regulatory powers of the Commissioner afforded by R.S. Sec. 33:1-39 (Control Act Sec. 36), which ought not be curbed by implying rigid legislative restrictions.

(2) There is but limited evidence available with respect to the actual operation in other States of the liquor-by-wire plan. Such evidence as has been presented indicates the absence of any substantial abuses. There is widespread belief that the plan will afford a valuable service to the consuming public, will aid the economic interests of licensees and will not prejudice the interests of temperance. It should be afforded a reasonable trial and its continuance must rest upon actual experiences in administration.

Accordingly, the Commissioner has ruled that New Jersey retail licensees may, until further ruling to the contrary, participate in liquor-by-wire transactions hereinabove described.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

By Nathan L. Jacobs  
Chief Deputy Commissioner  
and Counsel

10. BULLETIN ITEMS - BULLETIN ITEM SUPERSEDED.

The ruling contained in Bulletin 155, Item 1, with reference to the first plan therein described, is hereby superseded by Bulletin 230, Item 9.

11. LICENSES - ADVERTISING - THE FACT THAT AN APPLICANT IS FREE FROM PERSONAL FAULT IN RESPECT TO DEFECTIVE ADVERTISING WILL NOT JUSTIFY THE ISSUANCE OF A LICENSE - THE INTENTION TO COMPLY WITH THE ADVERTISING REQUIREMENTS IS NOT A SUBSTITUTE FOR COMPLETION THEREOF.

February 15, 1938.

William J. McEwen, Clerk,  
West Deptford Township,  
Woodbury, N. J.

Dear Mr. McEwen:

My attention has been called to a possible error in the advertising of the Coccicolone application.

I wrote the party inquiring:

"As to whether the advertisement, as inserted, was sufficient I would not care to express an opinion at this time for it may be that the matter will come to me by way of an appeal and decision on that point would be made only after all the facts were fully presented at the hearing on appeal.

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"As between Mr. Coccicolone and the Township, the question of whose error it is is immaterial so far as the Township is concerned if in fact it was an error. For it isn't a matter of good intentions or freedom from fault or having a good excuse. The Township Committee has no jurisdiction to issue any license if the advertisement was erroneous. The Township Committee cannot waive or forego the positive provisions of law intended to give a proper notice to the citizenry. Unless the advertising is done correctly, the license would have to be denied on that ground alone.

"If, as I surmise from the correspondence, Cocciolone was applying for a consumption license but the advertisement stated that he was applying for a distribution license, the advertising is fatally defective. For there is a vast and substantial difference between a package goods store and a saloon. Citizens might well consent to one and object to the latter. The fact that he intended to advertise properly is beside the point. The law requires proper advertisement in fact."

I thought perhaps the foregoing excerpts might be helpful to your Township Committee. Hence, this letter.

Cordially yours,

D. FREDERICK BURNETT  
Commissioner

12. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - FIVE DAYS' SUSPENSION APPRECIATED BUT MORE INDICATED.

February 18, 1938.

James P. Knox, Esq.,  
Borough Clerk,  
Metuchen, N. J.

Dear Mr. Knox:

I have your letter of February 15, 1938, certifying the result of disciplinary proceedings had before your Borough Council against Morris Green, a package goods licensee, charged with having sold alcoholic beverages to minors.

I note the licensee pleaded guilty and that his license was suspended for five days.

I am appreciative of the fact that your Borough Council acted promptly and properly and took these proceedings on its own initiative and therefore am grateful for their cooperation.

I hope, however, that in the next case to come before you, a more severe penalty will be imposed. A dealer who sells to high school boys doesn't deserve much consideration.

In a recent case in Mercer County, Judge Turp sentenced to a nine-month term in the workhouse a bartender who served three drinks to a seventeen-year-old girl. Judge Turp said: "It doesn't take much imagination to know what happened after she drank them."

"Sale of liquor to minors is one of the causes for criminality in later life and I'm not going to be a part of it by shirking my duty in dealing with such cases that come before me."

I hope the example set by Judge Turp will be followed throughout the State.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

## 13. LICENSES - SUSPENSION - CONTEMPT PROCEEDINGS.

Joseph Bastek,  
Paterson, N. J.

S I R:

I am informed that you were charged by the Board of Aldermen of Paterson with employing hostesses and permitting female employees to stand at the bar with patrons and drink alcoholic beverages in violation of the Paterson liquor regulations; that a trial was duly held before the Board at which a verdict of "Guilty" was rendered against you and that your license was thereupon suspended for two weeks commencing February 9, 1938.

I am further informed that one of my men checked your premises to ascertain compliance with the order of the Board of Aldermen. He reports that your place was closed but that there was a large sign displayed in the window, approximately 2-1/2 feet by 2-1/2 feet reading:

"This place will open February 23rd  
after alterations are completed."

You know full well that your place was not closed for alterations or for any other reason except that you were found guilty of employing hostesses and permitting them to solicit drinks from male patrons. A sign to that effect will be immediately placed on your licensed premises so that the public will not be misled as to the reason why you were closed down. That sign will remain there until further order.

The sign which you have put up appears to be in open contempt of the Board which imposed the suspension. You will take it down immediately.

TAKE FURTHER NOTICE that you are hereby ordered to appear before me at the Department of Alcoholic Beverage Control, Room 807, 744 Broad Street, Newark, on Wednesday, February 23rd, at 11:00 A. M., at which time and place you will be afforded opportunity to be heard on the foregoing charges and to show cause, if any you have, why your license should not be further suspended or revoked outright.

D. FREDERICK BURNETT  
Commissioner

Dated, February 18, 1938.

## 14. DISCIPLINARY PROCEEDINGS - MASQUERADING UNDER FALSE FRONTS - TWO WEEKS' SUSPENSION.

February 18, 1938.

Hon. Percy Camp,  
Judge of the Court of Common Pleas  
and Issuing Authority for Ocean County  
Toms River, N. J.

My dear Judge:

I have staff report and your Determination of Facts and Decisions in disciplinary proceedings against:

1. Milton Klein, charged with (a) having concealed in his application for a license the fact that he had a partner and (b) having aided and abetted said partner to engage in the liquor business without a license. I note Klein was adjudicated guilty and that the license was suspended for two weeks; further, that the licensed premises may not be reopened until the proper transfer of license is obtained.

2. Millard Gurley and Arthur Wardell, charged with (a) having aided and abetted a non-licensee to engage in the liquor business under license held in their name and (b) having failed to notify the issuing authority of a material change in the facts as set forth in the application for the license. I note these licensees were adjudicated guilty of having committed a technical violation of the law; that due to the factual circumstances as disclosed by the evidence, sentence was suspended with the added proviso that these licensees must present, within ten days after February 10, 1938, proof satisfactory to you that the interest of the non-licensee in their business has been terminated.

Expressing no opinion on the merits of the cases because they may come before me by way of an appeal, I wish to extend my ~~sincere~~ appreciation for the splendid manner in which they were carried to a conclusion. The written opinions present clear, concise, and complete pictures of the factual situations and the reasons for your decisions. Such an effective manner of handling disciplinary matters is bound to have a decided effect in the interest of proper enforcement of the law and the rules and regulations governing the conduct of licensees in your County.

Cordially yours,

D. FREDERICK BURNETT  
Commissioner

15. GAMBLING - PUNCH BOARDS - ILLEGAL TO SELL CHANCES ON PUNCH BOARDS EVEN IF EVERY PUNCH RECEIVES A PRIZE.

February 19, 1938.

Mr. Steven Novac,  
Raritan, N. J.

My dear Mr. Novac:

You inquire if it is legal to sell chances on punch boards to the liquor trade "where every punch receives a prize."

Punch boards are lotteries. They are, therefore, prohibited. It would be a violation of Rule 6 of Regulations 20 (Pamphlet Rules, page 62) for a liquor licensee to allow punch boards to be used on his premises, and cause for the suspension or revocation of the license.

It makes no difference that a prize is awarded with every punch. Even Joe Louis wouldn't expect that! It would still be a violation. It is obvious that everyone who takes a chance on your board hopes his punch will turn out to be the big "K.O." and not the usual dud. Your scheme makes it none the less a lottery. How many punches do you suppose you would sell if the prizes were uniform and known in advance?

Don't do it!

I am sending you herewith Re Scudder, Bulletin 164, Item 4 which will show you what happens to licensees who disobey the rule.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

16. DISQUALIFICATION -- REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In the Matter of an Application to )	
Remove Disqualification because of )	
a Conviction, Pursuant to the )	
Provisions of R.S. Sec. 33:1-31.2 )	CONCLUSIONS
(Chapter 76, P.L. 1937) -- )	AND
Case No. 21 )	ORDER
<i>Meehan</i> )	
)	
.....	

John J. Meehan, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In 1922 petitioner, then about seventeen years old, was convicted of breaking, entering, larceny and receiving stolen goods. At that time he and a co-defendant pleaded guilty to breaking into a restaurant and stealing property valued at \$152. Petitioner was sentenced to a reformatory, where he remained about sixteen months.

After his release petitioner worked for various printing companies for about two years and thereafter worked in various lunch rooms until 1930. From 1930 until 1935 he was the owner of a "luncheonette", conducting business in his own name for one year and in partnership with another for four years. Thereafter he obtained employment as a waiter and was so employed until shortly before the hearing. He testified that municipal authorities ordered his discharge from his last place of employment, a restaurant having a consumption license, because fingerprints taken by the municipal authorities disclosed his criminal record.

Petitioner's fingerprint records show no conviction of a crime subsequent to 1922. They do show that in 1926 he was

held for violating his parole but that sixteen days later he was again paroled for a period of three years. Petitioner testified that in 1926 he was arrested on a disorderly conduct charge as a result of a fist fight; that he was returned to the reformatory for violating his parole but that he was released a short time later and thereafter reported to a probation officer until 1929.

Three witnesses testified as to petitioner's conduct since 1926. One, a post-office employee, has known him since boyhood; the second, employed for many years by a meat packing company, has known him for twenty-five years; the third, the owner of a construction business, has known him for twelve years. The last mentioned witness is a brother-in-law of petitioner. All testified that petitioner's associates for the past ten years have been persons of good character.

I am satisfied from the evidence that petitioner, who is married and the father of one child, has conducted himself in a law abiding manner for the past ten years and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 19th day of February, 1938, ORDERED that petitioner's disqualification from obtaining or holding a license, or being employed by a licensee, because of the conviction of the crime of breaking, entering and larceny and receiving stolen goods, be and the same is hereby removed, in accordance with the provisions of R.S. Sec. 33:1-31.2 (Chapter 76, P. L. 1937).

D. FREDERICK BURNETT  
Commissioner.

17. APPELLATE DECISIONS - FORD'S TAVERN, INC. vs. BERGENFIELD

FORD'S TAVERN, INC.,	)	
Appellant,	)	
-vs-	)	ON APPEAL
BOROUGH of the	)	CONCLUSIONS
BOROUGH of BERGENFIELD,	)	
Respondent.	)	
.....	)	

Francis P. Attorney for Appellant.  
Pierce H. Esq., Attorney for Respondent.

BY THE COMMISSIONER

This ..... from denial of a transfer of a  
plenary retail c..... ense from 220 South Washington  
Avenue to 205 Sou..... Avenue, Bergenfield.

Respondent's answer sets forth that, prior to the first meeting at which the application was considered, petitions opposing and favoring the transfer had been filed; that the opposing petition contained fifty-seven names requesting denial because of excessive and unnecessary noise in the place previously licensed; that the favoring petition contained approximately one hundred signatures; that investigation disclosed that many persons who signed the favoring petition did not reside in the vicinity and sets forth that:

"The Mayor and Council believe that, based upon past results, the location of a tavern in this neighborhood is undesirable, and that in refusing the transfer it acted in the best interest of the majority of the people residing in the neighborhood."

It appears from the evidence taken at the hearing that appellant obtained its first consumption license for premises 220 South Washington Avenue in May 1935, and that its license for said premises was renewed each year thereafter without any objections being filed thereto. From May 1935 to September 1937 appellant conducted a restaurant with a floor space for dancing at said premises. It lost possession of said building in September 1937 and has not been operating since that time. Its application to transfer the license to 205 South Washington Avenue was denied. Hence, this appeal.

Prior to May 1937 appellant employed an orchestra on Saturday nights, and sometimes on Wednesday nights. From May 1937 until September 1937 it employed only a so-called Hawaiian orchestra, playing string instruments. All of appellant's witnesses denied that there were ever any excessive or unnecessary noises in or about the licensed premises. The Chief of Police testified that in the latter part of 1936 he spent two weeks investigating a complaint as to noise, and that he could find no reason for any complaint, and that in the early part of 1937 he investigated a similar complaint, which was also unfounded.

It has been stipulated that no objectors appeared at the hearing below. One objector appeared at the hearing on appeal. She testified that her objection was based not upon the manner in which the former place of business had been conducted, but because the new place of business would be within about sixty-two feet of her home.

The place to which appellant seeks to transfer its license is a small store about fourteen feet wide by forty feet deep, being the central one of three stores located in a one-story structure. This business building adjoins a large plot of ground upon which the objector's home is located. All of this section of South Washington Avenue is zoned for business purposes and there are a number of business places in the immediate vicinity, although some residences remain. General objections to transfer within a business neighborhood are not sufficient reason for denying the transfer. Guenther vs. Parsippany, Bulletin 121, Item 8; DeChristie vs. Gloucester, Bulletin 121, Item 10; Conn vs. Kearny, Bulletin 173, Item 1.

The evidence is insufficient to convince me that appellant has so conducted its former premises as to warrant a denial of the transfer sought. The annoyance to the neighbors, if any has been shown, seems to be due to the fact that dancing

was permitted and music played on the licensed premises. The place to which appellant seeks transfer is so small that it cannot be used for dancing, and appellant has agreed that dancing or music, other than radio, will not be permitted.

The action of respondent is, therefore, reversed. Respondent is directed to transfer the license as applied for, subject to the following condition:

"This transfer is granted on condition that no dancing or music other than radio be permitted upon the licensed premises."

Dated: February 19, 1938.

D. FREDERICK BURNETT  
Commissioner

18. REFERENDUM - SUNDAY SALES - A REFERENDUM PROHIBITING SUNDAY SALES BARS ALL SALES AT ANY TIME ON SUNDAY UNTIL SUPERSEDED BY A LATER REFERENDUM.

February 19, 1938.

Mr. R. H. Bradford,  
Paulsboro, N. J.

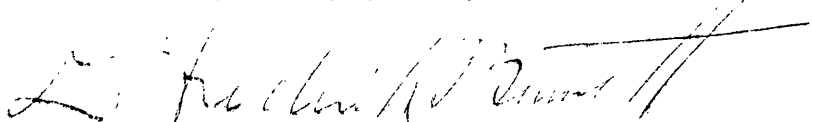
My dear Mr. Bradford:

My records indicate that on November 6, 1934, referendum was held in the Borough of Paulsboro on the question: "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?" and that a majority voted in the negative.

Consequently, no sales may be made on Sunday, and until the referendum is superseded by another referendum any ordinance, resolution, or regulation inconsistent with the result of the referendum is ineffective.

The Borough Council has no power to permit sales until 2:00 a.m. or at any other time on Sunday.

Very truly yours,

  
Commissioner

