STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N.J.

BULLETIN NUMBER 41. July 28, 1934

1. BAR - SERVICE OF BEVERAGES TO WOMEN - "OVER THE BAR" CONSTRUED
APPEALS - MUNICIPAL REGULATIONS - APPEALABLE WHEN APPROVAL BY STATE COMMISSIONER IS EX PARTE

July 13, 1934

Louis Foster, Manager,
Berkeley Carteret Hotel Co.,
Asbury Park, N. J.

Dear Sir:

I have your telegram requesting ruling on municipal resolution of Asbury Park reading: "No woman shall be served with alcoholic beverages directly over any bar."

If your question relates to the effect of the approval made of this resolution on July 9th, the answer is that while I believed it as a valid exercise of police power and therefore approved it, it is nevertheless appealable because such approval was ex parte and hence should not prejudice anyone who has not had opportunity to be heard. If appeal is made, both sides will be heard and an adjudication made unaffected by the previous ex parte approval.

If your question relates to the interpretation or operation of the regulation, it means that no alcoholic beverages shall be served, passed out or otherwise delivered directly from any bar to any woman who is standing or otherwise present at the bar to receive, directly or indirectly, the beverage. It does not prohibit service to a woman who is seated at a table in the barroom providing that she is not standing at the bar.

These municipal regulations must be given a common sense interpretation consistent with the reasonably presumable intent of those who enacted the resolution. That intent was plainly to prohibit service to women at the bar. Whether a woman is standing at the bar is a mere question of fact and no different or more difficult than to determine whether a man is "at the bar". He may be standing in the outer ranks, three or four deep, unable physically to touch the bar, and still you and I would agree that he was standing "at the bar". So may she.

Very truly yours,
D. Frederick Burnett,
Commissioner

2. MUNICIPAL ORDINANCES - VALIDITY - OTHER MERCANTILE BUSINESS
OTHER MERCANTILE BUSINESS - WHAT CONSTITUTES - SALE OF ACCESSORIES.

A municipal ordinance was submitted for approval reading:

"That no Plenary Retail Distribution license shall be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on; provided, however, that the holder of any such license shall be permitted to sell non-alcoholic beverages, in original containers, for consumption off the licensed premises."

The Commissioner approved the ordinance and ruled that the proviso, excepting non-alcoholic beverages, was merely a saving clause to insure that sale of ordinary accessories to alcoholic beverages was not to be interpreted as other mercantile business, but rather as part of the same business.

3. APPELLATE DECISIONS - FOXWELL VS. ATLANTIC CITY

LOUIS N. FOXWELL,)
Appellant)
-vs-)
BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY,) ON APPEAL
Respondent.) CONCLUSIONS

Hon. Emerson L. Richards, Attorney for Appellant.
Hon. Anthony J. Siracusa, Attorney for Respondent.
Clarence L. Cole, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellant filed application for a Plenary Retail Consumption License for premises located at 153 South Carolina Avenue, Atlantic City and thereafter the application was denied. An appeal was duly filed from the denial and has come on for hearing.

When appellant applied for a license for the previous fiscal year, an objection was filed on behalf of Leeds and Lippincott Company, the owner of certain property on South Carolina Avenue, on the ground that it opposed any sale of alcoholic beverages near its property.

Believing that he could not obtain his license unless this objection were withdrawn, appellant signed a statement to the effect that he would not apply for any license for the present fiscal year if the objection to his then pending application were withdrawn. Upon receipt of this statement, the objection was withdrawn and respondent issued a license expiring June 30, 1934, to the appellant.

Respondent's first contention is that this signed statement bars appellant from maintaining his present application for a license for the period commencing July 1, 1934. This contention is unsound. While it is the duty of respondent to consider the character and fitness of the applicant, the suitability of the premises sought to be licensed, and other elements which will assist in a determination as to the social desirability of granting the application, it may not reject an application solely because of a private agreement between the applicant and a third person. Our courts have indicated that such private agreements are not material in determining whether a license for the sale of alcoholic beverages should be granted. See Barnegat Beach Association vs. Busby, 44 N. J. L. 27; Gamble vs. Board of Commissioners of the Borough of Avon-By-the-Sea, Bulletin #35, Item #6. Whatever rights the third person may have under the agreement, if any, must be pursued in the courts of law.

The second contention of respondent is that the application was justifiably denied under its resolution adopted June 25th, 1934, to the effect that only one license shall be issued on South Carolina Avenue south of Pacific Avenue. The same resolution provides that not exceeding six licenses shall be issued on Virginia Avenue, not exceeding three on Tennessee Avenue, and not exceeding five each on New York and Kentucky Avenue:

It may be contended that the limitation adopted by respondent is authorized by Section 37 of the Control Act, which provides that a municipality may limit the number of licenses, subject to appeal to the Commissioner. The limitation referred to in Section 37, is a numerical limitation for the entire municipality. Respondent has not adopted a numerical limitation for Atlantic City, and, consequently, no reliance may be placed upon the express provision contained in Section 37 with respect to the limitation of the number of licenses.

Even in the absence of an express provision authorizing a numerical limitation, a municipality may deny an application where it reasonably appears that the premises sought to be licensed are in a vicinity adequately provided for and the granting of an additional license in such vicinity would be socially undesirable. No such conditions were established, however, by the testimony introduced in the present proceedings. South Carolina Avenue from Pacific Avenue to the Boardwalk is composed almost entirely of hotels, boarding houses, and restaurants. It is in the heart of the business section of Atlantic City, and is considered as one of its busy streets. It is frequented by numerous people during the day and night. Its character is substantially the same as Virginia Avenue, Tennessee Avenue and others on which licenses substantially in excess of one were granted. Under the foregoing circumstances, the limitation of one for South Carolina Avenue south of Pacific Avenue cannot be sustained. Indeed, respondent has heretofore issued a license for premises located at South Carolina Avenue and the Boardwalk, the entrance to the bar thereof being, however, located on South Carolina Avenue, in addition to the license allotted to South Carolina Avenue.

The remaining contention of respondent is grounded upon the objections of certain owners of properties located on South Carolina Avenue. These objections are, in the main, not directed against the character and fitness of appellant or the suitability of his premises, but are based upon the desire of the objectors to forbid the sale of any alcoholic beverages on South Carolina Avenue south of Pacific Avenue. It is their contention that the sale of alcoholic beverages results in excessive noise to the annoyance of themselves and their guests. The objectors conceded in their testimony, however, that the street in question is well traveled and generally noisy. They failed to establish that the noise was attributable to the appellant's place of business or that the appellant's place of business had not been properly conducted while licensed during the previous year or that any unnecessary or unusual disturbances took place there.

The action of the respondent is reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: July 18th, 1934.

4. APPELLATE DECISIONS - SPORTLAND VS. LODER

SPORTLAND, INC.,
Appellant

-vs-

HON. LEROY W. LODER, BY DESIGNATION, JUDGE OF THE COURT OF COMMON PLEAS, CAPE MAY COUNTY,
Respondent.

ON APPEAL
CONCLUSIONS

Anthony J. Cafiero and Aaron Marder, Esqs., Attorneys for Appellant.

Hon. Leroy W. Loder, Attorney Pro Se.

BY THE COMMISSIONER:

Appellant filed application for a Seasonal Retail Consumption License for premises 421 East 24th Street, North Wildwood, New Jersey. On June 13, 1954, the application was denied. Hence this appeal.

There is no question raised as to compliance with the requirements of the Control Act or as to the character and fitness of the persons operating the appellant company. Meyer Davis, the owner of substantially all of its stock, testified that he had been in the amusement field for many years; that his bands have played at the White House for the last five Presidents, with the exception of President Coolidge, and at many of the leading hotels in the country, including the Waldorf Astoria, New York; Copley Plaza, Boston, and Lido Country Club. Mayor George A. Redding of North Wildwood testified that Mr. Davis' reputation is excellent, and that he and the Council of North Wildwood favored the granting of appellant's application.

The only issue therefore presented for decision is respondent's contention that the application was properly denied because the premises sought to be licensed are "within the spirit of the rules" contained in the regulation, adopted by the respondent and approved by the Commissioner, that "no firm, corporation, or person shall be granted a retail license to sell any alcoholic beverage within one hundred (100) feet of any Boardwalk, or approach thereto, in this County, which said Boardwalk extends along the Atlantic Ocean."

The premises in question consist of a building on the boardwalk at North Wildwood, extending from 23rd Avenue to 24th Avenue, and an outdoor dance floor in the rear thereof. The present entrance is from the boardwalk, but appellant contemplates closing this entrance and constructing a ramp from a side street at a point 102 feet from the boardwalk. The ramp is to be the sole entrance to the licensed premises. In addition, appellant has offered to erect a solid partition from 23rd Avenue to 24th Avenue, parallel to the boardwalk at a point one hundred feet therefrom. Prior to the denial of its application, appellant informed respondent of its willingness to make the changes described above.

Boardwalks at New Jersey seashore resorts have become an institution. Municipal regulations prohibiting the sale of alcoholic beverages on boardwalks or within a reasonable distance thereof have been uniformly approved by the Commissioner.

In Bulletin #20, item #4, the validity of an Atlantic City ordinance prohibiting the display of liquor and of liquor signs within 135 feet of the Northerly side of the boardwalk was upheld.

In Bulletin #34, item #5, the policy of the Department was declared to uphold the prohibition of licenses within a reasonably restricted area adjacent to the beach and boardwalk at Long Branch.

In Dann v. Manasquan, Bulletin #37, item #12, the respondent board was upheld in refusing to issue a license on the boardwalk, although no resolution was ever actually passed, because a uniform policy had been adopted and maintained by the issuing authorities against the sale of alcoholic beverages on or adjacent to the boardwalk.

These principles have been uniformly applied in several unreported decisions and in numerous approvals of local regulations likewise not printed in the Bulletin. Thus, the Cape May County regulation first above quoted was approved.

Hence if Sportland were located on the North Wildwood boardwalk or within 100 feet thereof or the access thereto were, as at present, directly from the boardwalk, the refusal to issue the license would be affirmed.

The question therefore boils down to the inquiry whether the proposed erection of a solid partition parallel to the boardwalk and a hundred feet therefrom takes the premises sought to be licensed outside the local regulation.

The solid partition without any access through it would render such premises entirely separate and distinct from the premises on the boardwalk within the principles heretofore laid down in Shapiro v. Trenton, Bulletin #34, item #8; in the Millville case, Bulletin #35, item #15; and in re City of Newark, Bulletin #38, item #6, where it was said; "whether a prohibited business is being conducted in or upon the licensed premises, will depend on whether the conduct of the respective businesses and their independence of location renders them substantially separate and distinct."

It is plain therefore that the premises sought to be licensed are not within the text of the local regulation. They are wholly outside the proscribed area.

It is contended, however, that they are "within the spirit of the rules". This indefinite phrase might have legitimate operation where the public policy was at the time itself undefined as in the Dann case, supra, but where, as in the County of Cape May, the issuing authority has definitely fixed the line of cleavage at one hundred feet, how can that which is actually out of bounds be declared inside because of the spirit which motivated the rule? If intention, rather than action, is to govern, how far does the sphere of influence extend? To uphold the vague and indefinable so-called spirit would produce confusion and not certainty. In spite of a definite rule, there would be no yardstick by which either original or appellate authority could determine its application.

The spirit, as distinguished from the letter, of the law may well be invoked in cases of evasion which, while making nominal compliance, exalts form at the expense of substance and actually results in the very evil which the rule was designed to govern. But here there is no evasion. It is one thing to evade but quite another to avoid. Appellant's purposed

changes will put the licensed premises entirely outside the prohibited area so that no liquor whatsoever will be sold at any place within 100 feet of the boardwalk. This is compliance, not defiance.

The action of the respondent is reversed, upon condition, however, (1) that the sole entrance to the licensed premises be located at a point in excess of 100 feet from the approach to the boardwalk; (2) that a solid partition without any access through it be erected between 23rd and 24th Avenues parallel to the boardwalk at a point not less than 100 feet therefrom.

D. FREDERICK BURNETT,
Commissioner

Dated: July 18, 1934.

5. APPELLATE DECISIONS - SOCIETA OPERAIA DI MUTUO SUCCORSO VILLAALBA VS. TRENTON.

SOCIETA OPERAIA DI MUTUO SUCCORSO VILLAALBA,
Appellant
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS

Hon. J. Conner French, Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, organized in 1903 for charitable and fraternal purposes and having a membership of 265, applied on June 9, 1934 for a Club License. On May 31, 1934, respondent adopted a resolution limiting the number of Club Licenses to be issued in Trenton to 25. Thirty-three applications for Club Licenses were filed. Respondent examined these applications and first excluded several applications, including appellant's, which were defective in form. On June 30, 1934, although the defect in appellant's application had been previously remedied, respondent issued licenses to 25 clubs whose applications were originally in proper form and rejected the remaining applications for Club Licenses, including appellant's.

The only question involved is the validity of this numerical limitation.

Section 37 of the Control Act authorizes municipal issuing authorities to limit the number of licenses to sell alcoholic beverages at retail. But the numerical limitation is subject to appeal by anyone aggrieved thereby. Section 38. What should be the attitude of the appellate tribunal in attempting to solve this delicately difficult problem? The first step, often dispositive, is to determine upon whom rests the burden of proof.

Independent of economic considerations, the social justification for a limitation of Retail Consumption Licenses is evident. Consequently, such a limitation was sustained on appeal, because the appellant failed to establish that it was unreasonable. Ryman vs. Branchburg Township Committee, Bulletin #37, Item #18. So the burden of proof is upon the appellant in the case of a Retail Distribution

License to demonstrate that a community needs or will be more properly serviced by another liquor store. Colonna vs. Montclair, Bulletin #39, Item #8.

Should the same principle apply to club licenses?

Consumption and distribution licenses do not stand on the same footing as club licenses. In the former, the objective is commercial, in the latter fraternal. The Legislature has recognized this by providing a special license for benevolent, charitable, fraternal, social, religious, recreational and athletic organizations, if not operated for private gain. The club may not sell to the public generally but only to bona fide members and guests and then only for immediate consumption. As against maximum and minimum fees of $2,000. and $200. for consumption licenses, the respective limits for club licenses are but $150. and $50. The obvious purpose was to recognize these clubs as a natural outlet for man's innate desire for fellowship with his own kind and to afford them the opportunity to furnish their bona fide members and guests with alcoholic beverages for a nominal fee amidst self-regulated, decent, home-like surroundings. It would be utterly un-American to allow some citizens special privilege to drink in their homes and refuse it to others. The club is but an association of several citizens; the clubhouse is in the nature of a common home. To grant the beverage privilege to one club and deny it to another, equally qualified, is unfair. It lacks both economic and social justification. True, a municipality has the power to limit the number of club licenses but the burden of proof to justify such a numerical limitation should be placed upon the municipality. It is so held.

Has the burden of proof been sustained?

Respondent does not contend that the limitation of 25 was reasonable in its adoption. Two of the three members thereof testified that they did not consider the limitation socially desirable or justifiable. The third testified that if any club licenses are issued, there should be no numerical limitation thereof. Respondent selected the number 25 in the belief that it was sufficiently large to admit all future applicants for club licenses. Why any limitation at all was adopted under such circumstances was not satisfactorily explained.

The respondent board has signally failed to sustain the burden of proof in justifying the numerical limitation. Such limitation was unreasonable in its adoption. The action of the respondent board in denying appellant's application solely on the basis thereof is therefore reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: July 25, 1934.

6. APPELLATE DECISIONS - BRIGHTON HOTEL COMPANY VS. LODER

BRIGHTON HOTEL COMPANY,)
Appellant
-vs-)
ON APPEAL
HON. LEROY W. LODER, by desig-) CONCLUSIONS
nation, JUDGE OF THE CAPE MAY
COUNTY COURT OF COMMON PLEAS,)
Respondent.
- - - - - - - - - - - - - - - - - -

Irving Shenberg, Esq., Attorney for Appellant.
Hon. Leroy W. Loder, Attorney Pro Se.
Ernest Lloyd, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This appeal was submitted by stipulation. It appears therefrom that appellant applied for a plenary retail consumption license for premises in the First Ward of the City of Wildwood; that it has complied with all the requirements of the Control Act; that the character of the persons operating the appellant company, and the suitability of the premises are unquestioned.

It further appears that a hearing was held on this application before the respondent at which time a petition was filed by 394 residents of the First Ward, 126 being property owners, in favor of the granting of licenses in the First Ward, and by 87 residents of which 83 were property owners, per contra; that the application was denied by respondent for the following reasons:

> "I am doing the best I can to deal with a most difficult situation, coming here from another County as I do, and have had imposed upon me the duty of dealing with the license situation. I am informed and have informed myself, that with the exception of several beer licenses that were granted a year or so ago, that there has never been a liquor license granted in the First Ward of the City of Wildwood. I have inspected the place and I have listened to those who desired to speak on the matter. In addition to that I personally went to Wildwood and drove around the First Ward of the City of Wildwood. I have decided, under all the circumstances, that for the present I will not issue licenses in the First Ward of the City of Wildwood; I will leave that matter until Judge Way, who is a lifelong resident of the County, is sufficiently able to return to the bench and he can deal with the matter as he deems right and proper. But, so far as I am concerned, at the present time, I will not grant any licenses in the First Ward. This decision applies to all those applications for license in the First Ward which are to be heard today, as well as those cases where application has been made and the hearing pending."

It is further stipulated that, in addition to the beer licenses mentioned by the Judge, it was later learned that the Board of Commissioners of the City of Wildwood issued six consumption licenses in the First Ward for the term expiring June 30, 1934.

The record shows that the respondent has issued licenses in the Second and Third Wards of said city for the current period. The record also shows and the exhibits confirm that the premises for which a license is sought are located in a business section, and not in a residential neighborhood.

While Section 37 of the Control Act confers power upon the issuing authority to regulate the conduct of any business licensed to sell alcoholic beverages at retail, and the nature and condition of the premises upon which any such business is to be conducted, the issuing authority has no power to subdivide any municipality and grant the privilege of a license to applicants in one Ward, and exclude applicants of another Ward. Mere ward lines bear no reasonable relation to inherent police power and afford no basis for discrimination. This is substantially the ruling made by the respondent in another and later case and heretofore affirmed. See In re Strathmere, Bulletin 40, Item 5.

The mere fact that objections were filed by a considerable number of residents to the issuance of any licenses in the First Ward where heretofore licenses had been issued, while it does give pause to any issuing authority, even though the objectors be in the minority, does not afford a legal basis for refusing to issue a license where the applicant is qualified, the premises are suitable, and there is no permissible discrimination based on inherent police power. Sweeney vs. Mayor & Council of the City of Asbury Park, Bulletin 39, Item 9; Sullivan vs. Township Committee of Ocean, Bulletin 38, Item 14.

At the hearing, counsel for the objectors contended that the premises in question were subject to an oral convenant against the sale of alcoholic beverages. Without considering the legality of such a covenant, it has been held that restrictive covenants are cognizable only in the courts, and do not concern the issuing authority. Gamble vs. Avon-by-the-Sea, Bulletin 35, Item 6.

The action of the respondent in denying the application of the appellant is therefore reversed.

D. FREDERICK BURNETT,
Commissioner

Dated: July 26, 1934

7. APPELLATE DECISIONS - LICOVSKY VS. BLOOMFIELD

ROSE LICOVSKY,
Appellant

-vs-

TOWN COUNCIL OF THE TOWN OF BLOOMFIELD (ESSEX COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Samuel A. Larner, Esq., Attorney for Appellant.
Edward C. Pettit, Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a Limited Retail Distribution License for premises, located at #67 Franklin Street, Bloomfield, and conducted as a confectionery store and ice cream parlor. The application was denied upon the ground that respondent had adopted a uniform policy to prohibit the sale of any alcoholic beverages in connection with the conduct of such businesses. An appeal was duly filed from the denial and has come on for hearing.

The Commissioner has repeatedly ruled that the prohibition of licenses to candy stores and similar places of business where children generally congregate, constitutes a reasonable regulation. See Shapiro vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #34, Item #8; Barber vs. Bridgeton, Bulletin #31, Item #1; Bulletin #8, Item #9. Appellant contends,

however, that the above cited rulings are inapplicable since they related to Plenary Retail Consumption and Distribution Licenses and not to Limited Distribution Licenses, which afford the holders thereof the limited privilege of selling unchilled malt alcoholic beverages in quantities of not less than 72 fluid ounces, for consumption off the licensed premises.

The issue here presented is not whether the restriction is desirable but whether a reasonable basis exists therefor. If a reasonable basis does exist, the restriction will be sustained on appeal. See Bulletin #16, Item #8. The display and sale of any alcoholic beverages, even in the limited manner permitted by a Limited Distribution License, may change the complexion of a confectionery store and ice cream parlor and deprive it of accepted standards which render it suitable for the patronage of children. Consequently, it cannot be said that the application by respondent of its uniform restrictive policy to Limited Distribution Licenses is entirely without reasonable basis.

At the hearing, it appeared that respondent has issued Limited Retail Distribution Licenses to grocery and delicatessen stores. Appellant contends that the respondent's action in differentiating grocery and delicatessen stores from confectionery stores and ice cream parlors is arbitrary and without any reasonable basis. With this contention we cannot agree. Confectionery stores and ice cream parlors are peculiarly attractive for the continued attendance and congregation of children in connection with purchases for their own purposes. Grocery and delicatessen stores, although visited by children in connection with purchases of particular articles for their parents for home delivery, do not come within such classification. The evil sought to be obviated by respondent's restriction is evidently greater in the former types of business than the latter. Furthermore, the practice of selling malt beverages in connection with food in its narrow sense, as distinguished from ice cream and candy, which may be considered food in its broader sense, has long been accepted.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: July 27, 1934

8. CLUB LICENSES - HONORARY MEMBERSHIPS - AS SHAM TO COVER COMMERCIAL BUSINESS.

July 27, 1934

William G. Slider, Pres.
Council of Estel-Manor
R. D., Tuckahoe Road,
May's Landing, N. J.

Dear Sir:

I have yours of July 1st with reference to clubs issuing honorary memberships.

Your view point is absolutely correct. The promiscuous issuance of "Honorary Memberships" as a sham or pretence under which to transact in substance a retail business for profit certainly violates the law and is absolutely contrary to the purpose for which Club Licenses were created.

We recommend that you institute revocation proceedings.

Very truly yours,
D. Frederick Burnett,
Commissioner
By: Sydney B. White,
Inspector-in-Chief

9. APPELLATE DECISIONS - KAPLAN VS. TRENTON

MORRIS D. KAPLAN,)
Appellant
-vs-) ON APPEAL
CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF TRENTON,
Respondent.)

John H. Kafes, Esq., Attorney for Appellant.
Romulus P. Rimo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a Plenary Retail Consumption License for the period commencing July 1, 1934, for premises located at #13 North Willow Street, Trenton. On July 2, 1934, the application was denied. An appeal was duly filed from the denial and has come on for hearing.

Appellant complied with all the formal requirements pertaining to his application. His character and fitness and the suitability of the premises are unquestioned. Respondent in its answer, however, asserts that the application was properly denied (1) because of a resolution adopted on May 31, 1934, limiting the number of Plenary Retail Consumption Licenses to be issued in the City of Trenton to 250, and (2) because an adequate number of licenses had been issued in the vicinity of the premises sought to be licensed and an additional license was socially undesirable.

In December, 1933, appellant applied for a Plenary Retail Consumption License for the period expiring June 30, 1934. His application was denied and an appeal was duly taken from the denial. Under date of June 25th, 1934, the action of the respondent in denying appellant's application was reversed. See Kaplan vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #37, Item #17. Thereafter, respondent issued a license to appellant to expire June 30, 1934, and appellant conducted business thereunder until the expiration thereof.

Prior to June 30, 1934, respondent had issued approximately 284 Plenary Retail Consumption Licenses. Thirty-one represented licenses issued pursuant to orders of the Commissioner entered after hearings on appeals. The remaining 253 were issued by respondent in the first instance. Approximately 330 applications for Plenary Retail Consumption Licenses for the period commencing July 1, 1934, were filed with respondent. On June 30, 1934, and prior thereto, 250 licenses were issued by respondent and the remaining applications were thereafter denied.

The method used by respondent in selecting the applications to be granted within the 250 quota was fully described in the testimony of the President of the respondent Board. He testified that 242 of the 253 persons holding licenses issued by respondent in the first instance, filed applications for the period commencing July 1, 1934. Two hundred and forty of these applications were granted prior to the consideration of any other applications. The remaining ten were then issued in the manner described in the following testimony of the Presi-

dent of the respondent Board, and the balance of the applications were rejected without any individual consideration, investigation, or determination:

> "Board member Hutchins suggested, in order to facilitate matters, that each member of the Board choose three and the others agreed to go along with them. I immediately agreed to the proposition, Mrs. Moore agreed, Mr. Hutchins chose three and we all voted in favor of those three. After that was done the name of a man who had had a distribution license was brought up. One member said 'I believe we could all three agree on that licensee', and as a result we did, and Mrs. Moore named three, and we agreed to go along with her, and I named three, and that reached the 250."

Among the ten applicants who were selected in the foregoing manner, seven held no licenses prior to July 1, 1934. The remaining three obtained licenses after having prevailed on appeal. Two of the seven had been convicted of violations of the National Prohibition Act and had served jail sentences therefor. One of the seven had filed an application for different premises for the period expiring June 30, 1934, and had been rejected. On appeal the rejection was sustained on the basis of respondent's testimony that the premises sought to be licensed were "unclean and generally unsanitary". The three who held licenses prior to July 1, 1934, included an applicant who admitted possession of slot machines prior to the enactment of the Control Act, but, nevertheless, had prevailed on appeal after his character and fitness were attested to by members of the respondent Board; another, whose application was excluded by respondent from the original group of 250 granted for the period expiring June 30, 1934, because he was aged and infirm; and another who, unlike most of the other appellants who obtained licenses under order of the Commissioner, had never conducted business or expended money for improvements on the basis of a temporary license or the equivalent thereof. Cf. Berkelhammer vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #28, Item #5.

All of the foregoing would seem to establish beyond a doubt that the limitation of 250 in its application to the appellant was unreasonable. Appellant is admittedly better fitted to conduct a licensed place of business than numerous applicants who obtained licenses. Likewise, his premises are admittedly more suitable for the purpose contemplated than many of the licensed premises in Trenton. A member of respondent Board testified that appellant's place of business was of a "high type".

After appellant obtained his license under order of the Commissioner, he was entitled to the same privileges and consideration as were licensees who obtained their licenses originally from respondent. Assuming that the limitation of 250 was valid in its adoption, respondent was, nevertheless, under a duty to select the applications to be granted in a reasonable manner. From the 284 holding licenses at the close of June 30, 1934, a reasonable selection required full consideration of the character and fitness of each of the 284 applicants, the suitability of his premises, the character of the neighborhood in which the premises are located, and all other pertinent elements which would aid in a proper determination as to which applications should be granted. This the respondent did not do. Instead, it discriminated against applicants who held licenses under order of the Commissioner and in favor of new appli-

cants; it rejected such applicants despite the fact that their character and fitness were beyond question, in favor of persons convicted of crimes and otherwise of questioned fitness; it rejected such applicants without any consideration of their individual cases and granted applications on the basis of an improper agreement between members of the respondent Board, resulting in the unlawful exclusion of entirely qualified applicants. The application of the 250 limitation to the exclusion of the appellant was unreasonable, arbitrary, and disriminatory, and cannot be sustained.

The second contention advanced by respondent to the effect that an additional license in the vicinity of the premises sought to be licensed was socially undesirable, finds no basis in the testimony. Appellant's premises are located in one of the busiest districts of Trenton. The nearest licensed place, of a character similar to appellant's place of business, is approximately one block away. In view of the fact that respondent has licensed as many as five or six premises in one block, it is difficult to justify its assertion in this case, that the granting of an additional license for the premises in question would be socially undesirable.

The action of the respondent is reversed.

D. FREDERICK BURNETT
Commissioner

Dated: July 26, 1934

10. CLUB LICENSES - GUESTS - LICENSE MUST INCLUDE GUESTS AS WELL AS MEMBERS.

July 27, 1934

E. LeRoy Grant, City Clerk
City of Beverly, New Jersey

Dear Sir:

I have yours of June 15th inquiring "Can a municipality grant a Club License and limit it to Club members only and bar "Bona-fide Guests".

The Control Act (section 13, sub. 5) provides that "the holders of club licenses shall be entitled, subject to rules and regulations, to sell to bona fide club members and their guests".

Your municipality may not, therefore, issue the license in a manner which would curtail the statutory privileges given under that license.

Yours very truly,
D. Frederick Burnett,
Commissioner

By:
Sydney B. White,
Inspector-in-Chief

10-a MISLEADING TRADE NAMES - VIOLATION - REVOCATION PROCEEDINGS

In the matter of Revocation proceedings against SOLOMON A. KONVITZ 23 North Warren Street, Trenton, New Jersey.	CONCLUSIONS and ORDER

Appearances:

John J. Meehan, Esq., Attorney for Department.
M. R. Konvitz, Esq., Attorney for Solomon A. Konvitz.

BY THE COMMISSIONER:

A notice to show cause, returnable July 17, 1934, was duly served on Solomon A. Konvitz, directing respondent to show cause why Plenary Retail Distribution License #D-10 issued to him by the Municipal Board of Alcoholic Beverage Control of the City of Trenton should not be revoked or suspended for violation of the provisions of Chapter 436 of the laws of 1933 as amended and supplemented, and for violation of rules and regulations concerning misleading trade names, promulgated June 1, 1934 by the State Commissioner of Alcoholic Beverage Control effective June 30, 1934.

Respondent had been previously granted a license which expired June 30, 1934 and his present license is a renewal thereof. On May 1, he caused to be incorporated "State Liquor Store, Inc.," of which 18 shares of stock were held by him, one by his wife and one by his brother-in-law. This corporation never applied for any liquor license, yet all business transacted by Konvitz was done in the name of the corporation. It made all purchases of alcoholic beverages and maintained a banking account through which the financial matters concerning the licensed premises were cared for. Said account still remains in the name of State Liquor Store, Inc. Respondent has not since May 1, 1934 maintained a banking account in his name individually. In other words respondent was granted the license but State Liquor Store, Inc. operated thereunder.

Usually a corporation is looked upon by the law as an artificial person having the rights and duties of an ordinary individual and its existence is separate and distinct from that of the members who compose it. Jackson v. Hooper, 76 N.J.Eq. 592 (E. & A. 1910). It makes no difference that it is beneficially owned by but one person for the corporation is still deemed a separate entity. Salomon v. Salomon & Co., Ltd.,(1897) A.C. 22. Respondent virtually transferred his license to the corporation which under Section 23 of the Control Act is not permitted. State Liquor Store, Inc. was in fact guilty of violating said section. Solomon A. Konvitz was guilty of aiding and abetting said violation.

Respondent was expressly advised by the Commissioner on June 23, 1934 that he must desist from his use of the name State Liquor Store, Inc. on and after June 30, 1934 in order to comply with the aforesaid rules and regulations to become effective on that date.

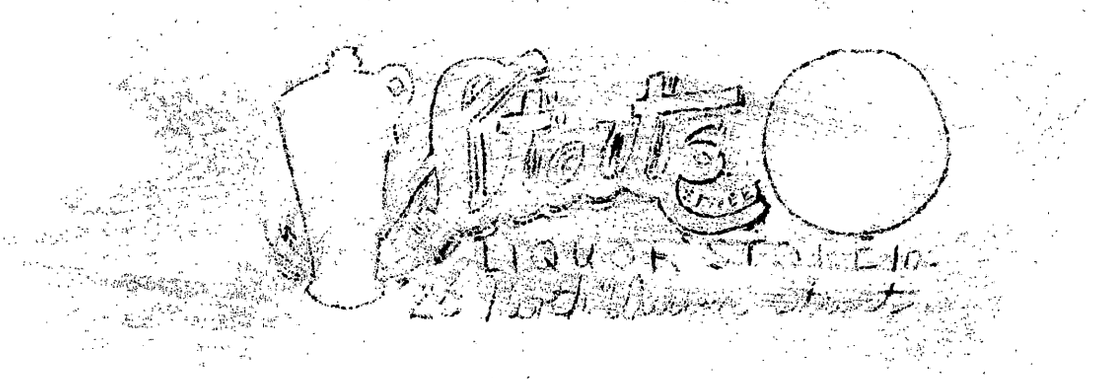
These regulations provided:

"1. No licensee of any class shall use any corporate name, trade name, or other name, sign or symbol, which is calculated to or may convey the false impression that the licensee is owned or operated by or enjoys some special or official sanction from the United States Government, the State of New Jersey or any municipality thereof.

"3. Violation of the provisions of either of the preceding paragraphs shall be cause for revocation."

The licensed premises at 23 North Warren Street, Trenton, are approximately 200 to 250 ft. from State Street. There is no entrance thereto from State Street. Respondent maintained in the front window of said premises a Neon sign advertising "State Liquor Store, Inc." constructed as follows: At the left a large "S" 19 inches high followed at the top by the letters "T A T E" each 9 inches high; parallel and directly beneath was the word "LIQUOR" in letters 3½ inches high; immediately beneath this and parallel the word "STORE" in letters 3½ inches high; following the letter "E" in "STATE" and painted on the window of said store were the letters "ST.", 1½ inches high. The only explanation given by respondent for painting letters designating the abbreviation for "STREET" on the window was that he could not afford to buy another sign. No reason was given for making said abbreviation so small except that respondent felt this complied with the order of the Commissioner dated June 23, 1934. There can be no question but that he deliberately tried to and did do indirectly thatwhich under rules and regulations he could not do directly.

The particular subterfuge which caused the institution of these proceedings was the insertion by respondent in a Trenton newspaper on July 6, 1934 of an advertisement substantially in manner shown by the following tracing:



The subterfuge is apparent. Comment is superfluous.

It is, therefore, on this 27th day of July, 1934, ORDERED that Plenary Retail Distribution License #D-10 issued by the Municipal Board of Alcoholic Beverage Control of the City of Trenton to Solomon A. Konvitz to sell at 23 North Warren Street, Trenton, be and the same is hereby suspended for thirty days beginning July 30, 1934; and

It is further ORDERED that said Solomon A. Konvitz be and he is hereby restrained from selling or otherwise disposing of any literature, wrapping paper or the like, or any alcoholic beverages in containers which carry any label, marker, tag or other insignia whereon the name State Liquor Store, Inc. or State Street Liquor Store appear.

Commissioner