Director Davis
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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street, Newark 2, N. J.

July 26, 1955

BULLETIN 1074

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ITEM

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1. APPELLATE DECISIONS - Pasquale and Heenan v. Tenafly

Peter J. Pasquale, Jr. and Helen Heenan, trading as Tenakill Restaurant,	)	
Appellants,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Borough Council of the Borough of Tenafly.	)	
Respondent.	)	

Harry L. Towe, Esq. and Edward J. O'Mara, Esq., Attorneys for Appellants.
Morrison, Lloyd & Griggs, Esqs., by George A. Brown, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action on December 14, 1954 whereby it denied, by a 3 to 2 vote, appellants' application for a place-to-place transfer (with restrictions hereinafter set forth) of their 1954-1955 plenary retail consumption license from 22 Jersey Avenue to 37 River Edge Road.

In their petition of appeal, appellants pointed out that, in their application for transfer the denial which is the subject of this appeal, they submitted to the restriction of the license so that alcoholic beverages could be sold only to persons purchasing and consuming food on the premises and contended that respondent's denial of the said application, with such restrictions, was erroneous in that, (1) The premises to which the transfer is sought is located in a district zoned for business; (2) appellants are presently and for some time past have conducted a restaurant at that address; (3) the action requested by appellants is permissible under the local ordinance; and (4) the denial of the application was arbitrary, capricious and constituted an abuse of discretion.

In its answer respondent set forth an abstract from the minutes of the regular meeting of the Mayor and Council held December 14, 1954, as follows:

> "Mayor Fleet asked the Councilmen what their pleasure is in respect to granting the Plenary Retail Consumption License to Peter J. Pasquale, Jr. and Helen Heenan.
>
> "Motion by Councilman Davee, seconded by Councilman Booth, and unanimously carried, that the Council be polled:

"COUNCILMAN DAVEE: Voted NO - remarked that Mr. Towe, the applicant's attorney, was misinformed as to a liquor license being a right instead of a privilege. He felt he should go along with Chief Campbell's report.

"COUNCILMAN BOOTH: Voted NO - remarked he could frankly see no difference in the application, and he doubted, if the Council granted the license, whether the State Alcoholic Beverage Control Commission would approve it.

"COUNCILMAN KNOWLTON: Voted NO - remarked he hoped he would never again be faced with such an unpleasant task, since his vote was against his personal desires, and against people he had known and liked for years.

"COUNCILMAN SEIDEL: Voted YES - remarked he was not a Crusader for saloons and was not changing his mind, as he did not vote the other times, and his opinion remains the same. The traffic light was installed regardless as to whether a restaurant was there or not.

"COUNCILMAN BRICK: Voted YES - remarked the omission of a bar to be a material fact. The morals of the children are more affected by conditions in the home and family. Suggested a license might be given for a one year period as a trial period.

"Mayor Fleet stated these are the honest and sincere opinions of the elected Officials of this Community. They should not be criticized for the stand they have taken in this issue. A great deal of time and thought has been given at this time and previous applications. Regardless of the disappointment of some in this vote of 3 - 2, denying this application, I hope it will be taken in the right spirit and realize it has not been done hurriedly. I might say, as of 12 o'clock last night, we could not come to a decision.

"Therefore the vote of three - two, we must deny this application."

An earlier application for place-to-place transfer of the license then held by appellant Pasquale, individually, from 268 County Road to 37 River Edge Road, was denied on November 24, 1953 by unanimous vote and such denial was affirmed by me on appeal, on April 13, 1954. Pasquale v. Tenafly, Bulletin 1012, Item 1.

The reasons assigned for the denial of said prior application were summarized in Pasquale v. Tenafly, supra as follows:

"(a) The place was formerly operated as a restaurant, ice cream and soda business which was frequented by large numbers of children of high school and grade school age,

"(b) The proposed location is located on the northeasterly corner of the intersection of River Edge Road and Tenafly Road, and on the southeasterly corner of

said intersection is a tract of land of approximately twenty-nine acres owned by the Board of Education of Tenafly and known as Roosevelt Common.

"1. Part thereof has been set apart and maintained as an athletic field for the public schools of the municipality, on which site the physical education and athletic programs of the schools are held and in addition thereto, there are numerous recreational programs, including many children's events and activities;

"2. During many months of the year large numbers of students attending the high school, when en route to Roosevelt Common, pass the proposed location;

"3. The section is heavily traveled, and the traffic problems are further complicated by the pedestrian travel aforementioned;

"4. That within twelve to fifteen feet of the proposed entrance to the proposed premises is a manually operated control box to regulate traffic lights which the students operate when traveling from the high school to Roosevelt Common;

"5. The Board of Education is engaged in making test borings in various parts of Roosevelt Common in contemplation of theerection of a new school building."

At the hearing on the instant appeal both appellants appeared and testified to the following effect. Their family has resided in Tenafly for a great many years. Appellant Pasquale still resides in Tenafly and appellant Heenan, his sister, resides in a nearby community. The license was originally acquired by appellant Pasquale in May 1953 for premises on County Road, which was leased from the owner thereof. When the previous application to transfer the license place-to-place was denied, Pasquale purchased vacant land at 22 Jersey Avenue and applied for a place-to-place transfer to the Jersey Avenue property which was granted subject to a special condition for the erection and completion of premises. The premises at 37 River Edge Road consists of a cinder block and stucco, colonial type building where appellants formerly conducted a sandwich shop and soda fountain until November 1953. The building was then reconstructed and remodeled and, since August 1954, appellants have conducted a restaurant business at the River Edge Road address where they now have two dining rooms seating between 135 and 150 people and a large kitchen. Appellants serve lunches ranging in price from $1.35 to $2.00, between noon and 2:30 p.m. and dinners ranging in price from $2.00 to $4.00, between 5 p.m. and 9 p.m., Sunday dinners are served from 1 p.m. to 9 p.m. and the premises are closed on Mondays. There was introduced into evidence a full and complete menu including prices.

Appellants further testified that they seek to restrict the privileges of the license to the extent that there will be no public bar and they will not be permitted to have a "package store" but will merely serve alcoholic beverages at tables together with the service of food. In addition, they would merely erect a sign on the outside bearing the legend "Tenakill Restaurant."

Appellant Heenan testified that instead of having a bar they wished to conduct a high-class restaurant with the "finer type

of patronage"; that the proposed location is located at a business site "in the town" but "not quite in the center of town." She also testified that while a park known as "Roosevelt Common" is across the street, on the other corner there is a gasoline service station and that, nearby, there are two real estate offices; a Grand Union store and a Masonic Lodge.

Appellant Pasquale testified that he believed that some of the local people were misled to believe that they intended to have a soda fountain in one room and a bar in another room, but that they had no such intention. He further testified that there are no licenses of the same class near the proposed new location and that the nearest such license is three blocks away. He expressed it as his opinion that there was a need for such a license and testified that he had had inquiries from patrons as to whether or not he could serve alcoholic beverages.

The two Councilmen (Brick and Seidel) who voted in favor of the transfer testified on behalf of appellants. The former testified that the business of selling alcoholic beverages was a legal business and people are privileged to consume such beverages; that he saw no harm to children at that location; that while the proposed premises are opposite the park another large restaurant is opposite a church and a school and one of the bars in town is right alongside of a moving picture theater. In this connection, he further testified, "I have never heard of either of those places corrupting the morals of children." He also testified that he knows the restaurant and the locality and feels that there is a need for a restaurant with a license at that location, since there is only one restaurant in the municipality, "of any stature whatsoever" and another good restaurant would be an asset to the community.

On cross-examination he testified that he was aware of the fact that a high school is contemplated on "Roosevelt Common and that he was familiar with the 200 foot rule."

Councilman Seidel testified that he had not been present when the earlier application was discussed; that the applicants have a good reputation; that petitions favoring the grant of the application outweighed those in opposition to it, but that he was not influenced by such petitions. He observed that only those who have some particular reason attend the public hearings on applications of this kind. He further testified that he could see no harm to children from the granting of the application; that the original application had been without restriction while the current application was for a "limited license"; that, in his opinion, it does not make much difference whether the license is limited or not; that if a licensee is to conduct his business in a proper manner he will do so regardless of the type of license; and that the Police Department could take care of the situation. He further testified that while he saw no harm to the children they did not have to pass any particular corner; that the traffic light was placed at that corner because the Police Department requested it, not because of the restaurant which was not then in business and that he viewed this not as a new license, but as the transfer of an existing license. He further expressed the opinion that there was plenty of public traffic so that people could see whether or not the place was being properly conducted. He also testified that the proposed new school buildings would be at a considerable distance from the licensed premises; that the particular field opposite the restaurant consisted of twenty-nine acres and that the school buildings would be "several blocks" from the proposed new premises.

On cross-examination he admitted that if the new school were erected the licensed premises would be between two schools; that when he had previously voted to deny the earlier application for transfer to River Edge Road he had not been present when the deliberations had begun and had had no opportunity to study the situation; that because of unanimous vote in opposition to the transfer and not knowing anything more of the facts he concurred in the vote of the Council which had been unanimous; that on the present "limited application" he believed that the applicants had shown good faith and that he felt differently after he had studied the case.

On redirect examination he testified that neither school would be within two blocks of the licensed premises.

Several other witnesses who had resided in Tenafly for a considerable period of time testified that they believed that there was need for a well conducted restaurant in the municipality.

On behalf of respondents, Borough Engineer Blackwell, Superintendent of Schools Johnson and Chief of Police Campbell appeared and testified. Engineer Blackwell testified with respect to certain maps, instruments and other documents and also testified that there had been no change in the use of the Roosevelt Common since the last appeal; the ponds are used for iceskating in the wintertime; and he further testified with respect to the sidewalks and foot paths in the general location of the proposed new location.

Superintendent of Schools Johnson testified with respect to the use of Roosevelt Common by youth groups for their youth athletic programs and by civic and municipal bodies. With respect to the area used by the Boy Scouts once or twice a year he admitted that it was approximately 600 feet from the proposed new location.

Chief of Police Campbell testified with respect to his report recommending denial of the application. He identified various photographs and pointed out the relative positions of the proposed new premises, the playground, the skating pond, the traffic light and other locations. He explained the uses for the "Roosevelt Common" including supervised athletic exercises and outdoor training between 9 a.m. and 2 p.m. and expressed it as his opinion that the location of the licensed premises at the proposed new premises would be harmful to the school children. On cross-examination he admitted that he had not taken into consideration the fact that almost all of the students who would pass the proposed premises would do so before noontime and admitted that the situation might be different if the restaurant did not open until noon. He contended, however, that some of the students particularly high school boys formerly went to the proposed new premises for sandwiches and might continue to go to the premises. He further admitted that at another tavern in the center of town, near a moving picture theater, children line up in front of the tavern while waiting to purchase theater tickets and that there have been no harmful effects arising out of that situation. He further testified that he believed that a limited license would create an enforcement problem and that it would be a "wedge" for a later "full license."

In addition, ten residents who live at varying distances from the proposed new premises, some as much as a mile away, appeared at the hearing and voiced their objection. Two of these objectors were ministers of local churches, while another was secretary of another church which is two blocks from the proposed new premises. The three members of respondent Borough Council

who voted to deny the current application did not appear at the hearing on this appeal.

Memoranda were filed by Counsel for appellants and Counsel for respondent and both appeared before the Director in oral argument.

The principal contentions on behalf of appellants are: (1) the present application, unlike the previous application, is for a restricted license to permit the sale of alcoholic beverages only in connection with the sale of food consumed on the licensed premises while the former application was for a "full license" to permit the conduct of a bar and the sale of package goods off the licensed premises; (2) the previous application had been denied by unanimous vote while the present application was rejected by a three to two vote; (3) the two Councilmen who voted to grant the application testified at the hearing and gave their reasons for their action while the three who opposed it did not appear; (4) the reasons by the three Councilmen who voted to deny the current application are inadequate; and (5) the reasons stated by Chief Campbell for his opposition to the granting of the application are lacking in substance.

On behalf of respondent it was contended that: (1) there has been no change in conditions or circumstances warranting a reversal of the previous dispositions of appellants' applications by respondent and this Division; (2) there is no evidence to sustain the contention that respondent's action was arbitrary or capricious and (3) there is no provision in the Alcoholic Beverage Law for a conditional or limited plenary retail consumption license.

Appellants answering respondent's last contention contend that authority exists for the issuance of a restricted or conditional license, citing Kelly v. Margate City, Bulletin 472, Item 7.

The burden of establishing that respondent's action was erroneous and should be reversed rests with the appellants. Rule 6 of State Regulations No. 15.

Obviously the instant case differs from the previous case (Pasquale v. Tenafly, supra). In that earlier case appellant Pasquale sought a transfer of his plenary retail consumption license to the proposed new premises without restriction of any kind. If that application had been granted, Pasquale would have been privileged to conduct at his licensed premises a public bar and to sell alcoholic beverages in original containers for off-premises consumption. If the present application were granted the license would be issued subject to special conditions that alcoholic beverages would be served only from a service bar; no alcoholic beverages would be served except with food; no alcoholic beverages in original containers for consumption off the licensed premises would be sold; and no alcoholic beverages would be served over a bar. Since appellants would have no "public barroom" sale of alcoholic beverages in original containers for off-premises consumption would be prohibited under the terms of the "Broad Package Privilege" Act (P.L. 1948, c. 98) and State Regulations No. 32. Contrary to respondent's contention such a special condition would be valid. Kelly v. Margate City, supra; Van Horn v. Manalapan Township, Bulletin 735, Item 9; Hudson Bergen County Retail Liquor Stores Association v. Hoboken and Marotta, Bulletin 787, Item 5.

Another difference between the instant case and Pasquale v. Tenafly, supra is the fact that the previous denial of the "full license" was unanimous. In the instant case the denial was by the close vote of three to two. Furthermore, in Pasquale v. Tenafly, supra respondent adopted a comprehensive resolution setting forth at length its reasons for denying the application. In the instant case the only indication of the reasons for denial are contained in the transcript of the meeting of December 14, 1954. Councilman Davee in casting his negative vote merely commented that a liquor license is a privilege not a right and said that he felt he "should go along with Chief Campbell's report." Councilman Booth stated that he saw no difference in the application and he doubted whether this Division would approve the license if granted. Councilman Knowlton stated that he hoped he would never again be faced with such an unpleasant task since his "vote was against his personal desires, and against people he had known and liked for years." While it may be supposed that the three Councilmen aforementioned may have opposed the application in the instant case on at least some of the grounds set forth in the resolution denying the earlier application, the record in the instant case does not clearly show this to be the fact. The three Councilmen aforementioned didnot appear at the hearing in the instant case and thus I have not the benefit of their testimony on direct or cross-examination. It is entirely possible that, as in the case of Chief Campbell, they too, on cross-examination would have recognized the difference between the situation which existed on the prior application and the situation which exists in this case where the licensees propose to conduct a restaurant which opens at 12 o'clock noon with service of alcoholic beverages at tables with meals.

As requested by Counsel for both parties, I personally visited and viewed the proposed new location and the surrounding area for many blocks in all directions. The existing school building is a very considerable distance from the proposed new location and, from all that appears, the proposed new school will be at least 500 or 600 feet therefrom. The building at the proposed new location would appear to be suited to use as a restaurant and is in a business zone. Next door is a real estate office. Across the street is a gasoline service station and nearby there is a building which houses several businesses and a dentist's office. While it is true that Roosevelt Common, which is a large area devoted at least in part to recreational activities for children and while some of these children might pass the licensed premises, such facts standing alone would not warrant the denial of the application. Indeed, it was admitted that the existence of a plenary retail consumption license at premises almost next door to a moving picture theater where children of school age lined up in front of the premises to purchase theater tickets had no harmful results.

Under all of the facts and circumstances of this case and more particularly in view of the nature of the business to be conducted under the proposed special conditions, I find that no reasonable cause has been shown for the denial of the application and I find that respondent's action was arbitrary and unreasonable. Its action will be reversed with the distinct understanding that special conditions will be imposedupon the license restricting the privileges of the license as hereinabove indicated.

Accordingly, it is, on this 29th day of June 1955,

ORDERED that respondent's action in denying appellants' application for place-to-place transfer of the license from 22 Jersey Avenue to 37 River Edge Road, be and the same is hereby reversed and respondent is hereby ordered and directed to grant said transfer subject to special conditions as hereinabove indicated.

William Howe Davis,
Director.

2. APPELLATE DECISIONS - Florence Methodist Church et als. v. Florence and Christy

The Florence Methodist Church, et als., Appellants,	)	On Appeal
v.	)	Conclusions and Order
The Township Committee of the Township of Florence and Gertrude Christy, Respondents.	)	

Dimon, Haines and Bunting, Esqs., by John E. Dimon, Esq., Attorneys for Appellants.
Martin J. Queenan, Esq., Attorney for Respondent Township Committee.
George Pellettieri, Esq., Attorney for Respondent Gertrude Christy.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee (hereinafter referred to as the respondent Committee) whereby it approved by a 6-to-5 vote respondent Gertrude Christy's application for a person-to-person and place-to-place transfer of a plenary retail consumption license from Charles G. Kovacs, Jr., and from premises 20-22 Alden Avenue to premises No. 1 Front and Broad Streets, Florence Township.

The application of respondent Gertrude Christy was originally approved by respondent Committee at a hearing on March 16, 1955. An appeal from said action was heard at this Division on May 2, 1955. It appears that, because of an alleged defect in the publication of the notice of application by respondent Gertrude Christy to apply for the transfer herein, a corrected notice was published, returnable before the respondent Committee on May 4, 1955. On said date the respondent Committee approved the transfer as it had done at the hearing on March 16, 1955, by a vote of 6-to-5. The attorneys of record and other interested parties were notified by me that the testimony taken at the appeal hearing on May 2, 1955, would be considered in the matter unless within ten days from receipt of the notice thereof they indicated a desire for a supplemental hearing in order to present additional evidence. No request was made for such a hearing. Under the circumstances the evidence presented at the time of the appeal hearing on May 2, 1955, will be used as the basis for the determination of the within appeal.

In their petition of appeal appellants set forth various grounds upon which they urge reversal of the action of respondent Committee. These grounds may be summarized in substance as follows:

(1) There is no need for a license at the premises in question as there is a plenary retail consumption license within three hundred feet thereof;

(2) The building for which the license is sought is located near two churches and the municipal building, and school children pass the premises when going to and coming from their respective schools;

(3) Respondent Gertrude Christy is ineligible to hold a license because her husband, James E. Christy, is ineligible to be associated with the alcoholic beverage industry;

(4) Respondent Gertrude Christy failed to file plans and specifications with the local issuing authority at the time application for transfer was filed, and failed to indicate in the publication of the notice of application to apply for transfer that plans and specifications might be examined in the municipal Clerk's office;

(5) The members of the respondent Committee failed to inspect said proposed premises;

(6) The resolution of the respondent Committee dated March 16, 1955, wherein it stated that "WHEREAS, Charles G. Kovacs has agreed to sell said licenses to Gertrude Christy for premises situated at #1 Front and Broad Streets., Florence, New Jersey ***", is defective as contrary to N.J.S.A. 33:1-26;

(7) The real property located in the neighborhood wherein the transfer is sought, being residential in character, will depreciate in value;

(8) The transfer to the proposed location will create a traffic hazard;

(9) The refusal of the Mayor who presided at the hearing below, as well as the other members of the respondent Committee, to permit the cross-examination of respondent Gertrude Christy by appellants' attorney;

(10) The respondent Committee refused to give proper weight to petitions containing the signatures of three hundred thirty residents who opposed the transfer in question.

Respondent Committee did not file an answer in the matter now under consideration, but its attorney was present at the time of the hearing of the appeal. An answer was filed, however, on behalf of respondent Gertrude Christy denying the allegations contained in the petition of appeal and alleging that the respondent Committee did not abuse its discretion in the matter.

Reverend Sherman Robinson, Pastor of the Florence Methodist Church, testified that "When the church originally sent its letter

in to the Township Committee to state its objections the objections included, of course, first of all the proximity of the church; also the fact that it is a rather concentrated residential area, it is a residential area section; it is a very busy part of the town, it's one of the centers of the town providing a bus stop where many people must wait there to get the bus, board the bus. Of course, the matter of children and young people who pass by the location. So they were some of the reasons why the church took its action in protesting."

It was stipulated by the attorneys for the parties herein that, if Reverend Richard Pettitt, Pastor of the First Baptist Church, and Reverend Orrin Hopper, Pastor of the Bustleton Presbyterian Church, who were present at the hearing, were called as witnesses, their testimony would be substantially similar to that of Reverend Sherman Robinson.

The respondent Committee, on May 4, 1955, adopted the following resolution:

"WHEREAS, the Florence Township Committee on Wednesday March 16, 1955, at a regular stated meeting adopted the following resolution:

"'WHEREAS, Retail Consumption license #C-7 was issued to Charles G. Kovacs, Jr., for premises situated at 20-22 Alden Avenue, Roebling, New Jersey, and

"'WHEREAS, Charles G. Kovacs has agreed to sell said licenses to Gertrude Christy for premises situated at #1 Front and Broad Streets., Florence, New Jersey.

"'NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Florence, Burlington County, New Jersey, that License #C-7 be transferred to the said Gertrude Christy for premises situated at #1 Front and Broad Streets, Florence, New Jersey.

"'BE IT FURTHER RESOLVED, that the Township Clerk be authorized to make this transfer, with the proper notation on License.'

"NOW, THEREFORE BE IT RESOVED, By the Township Committee of the Township of Florence, Burlington County, New Jersey, that the aforesaid resolution be and is hereby amended to provide as follows:

"WHEREAS, Retail Consumption License #C-7 was issued to Charles G. Kovacs, Jr., for premises situated at 20-22 Alden Avenue, Roebling, New Jersey, and

"WHEREAS, Charles G. Kovacs, Jr., has consented to the transfer of said license to Gertrude Christy and said Gertrude Christy has filed the proper application with the Clerk of Florence Township and the said Gertrude Christy has published in the Florence Township News, two succeeding weeks a notice of said application and included in said notice a statement concerning plans and specification examinable at the office of the Clerk of Florence Township.

"NOW, THEREFORE BE IT RESOLVED, By the Township Committee of the Township of Florence, Burlington County, New Jersey, that license #C-7 be transferred from Charles G. Kovacs, Jr., 20-22 Alden Avenue, Roebling, New Jersey to Gertrude Christy.

"BE IT FURTHER RESOLVED, that said License #C-7 is hereby transferred from premises known as 20-22 Alden Avenue, Roebling, New Jersey, to premises situate at #1 Front and Broad Streets, Florence, New Jersey, on condition however, that said transfer shall not be effective until said building has been constructed in accordance with plans and specifications now on file with the Township Clerk, and said construction has been inspected and approved by said Township Committee, and the Township Clerk shall not endorse said transfer on said license, until said inspection and approval of said Township Committee."

In view of the adoption of the aforesaid amended resolution, it is unnecessary to consider grounds (4), (5) and (6) of the petition of appeal.

Records of the convictions and sentences of James E. Christy, aforementioned, certified by the Clerk of the Burlington County Court and marked Exhibit A-2 in evidence, disclose the following:

Court of Special Quarter Session, October 16, 1924, allegation - larceny.

"The prisoner on being placed at the bar to plead and being charged by the court entered a plea of non vult thereto. Thereupon the Court sentenced him to be placed in charge of the Probation Officer for period of 2 years."

Burlington County Court of Quarter Sessions, July 30, 1936, indictment for possession of lottery tickets.

"The prisoner, James Edward Christy, was placed at the bar for sentence; thereupon the Court sentenced him to pay a fine of $75.00 and stand committed until paid ***."

Burlington County Court of Quarter Sessions, December 23, 1937, indictment for maintaining a lottery.

"The prisoner James E. Christy, was placed at the bar for sentence; thereupon the Court sentenced him to pay a fine of $200.00 and further stand committed until paid."

Burlington County Court, January 30, 1953, indictment for atrocious assault and battery.

"Christy sentenced to not less than one and one-half years, nor more than three years in the N.J. State Prison."

Burlington County Court, February 27, 1953, criminal contempt of court.

"Court adjudicated defendant guilty of criminal contempt of Court. Sentenced to New Jersey State Prison for a term of one to one and one-half years; sentence suspended. Fined $1,000.00, to be paid to Probation Department within a three month period ***."

Burlington County Court, February 5, 1954, indictment for atrocious assault and battery.

"James E. Christy sentenced to be committed to the New Jersey State Prison for a term not exceeding one and one-half years, nor less than one year."

Violation of probation on the same day.

"Sentenced to the New Jersey State Prison for a term not exceeding one and one-half years nor less than one year. This sentence is to run concurrently [with that mentioned immediately above]."

Respondent Gertrude Christy testified that she has been married to James E. Christy for the past twenty years and that they reside on the second and third floors of the building No. 1 Front and Broad Streets. I perceive from the transcript of the evidence certain testimony of respondent Gertrude Christy which to a large extent will contribute to the manner in which this appeal should be determined. I shall set forth the following excerpts from her testimony:

"Q Did you work before you were married?
A I never worked.

"Q You have never worked in your life?
A That's right.

"Q Now, when you married your husband, was he employed?
A He had a pool room.

"Q He had a pool room. He was not employed gainfully by another employer, is that right?
A Not that I know of.

"Q Has he ever been during your married life gainfully employed by another employer?
A Not that I know of.

"Q In 1940 you purchased the present premises, is that right?
A I did not; '42.

* * * *

"Q How much did you pay?
A $1,000.

"Q A $1,000. And where did you get the money from?
A My husband.

"Q He gave it to you?
A That's right.

* * * *

"Q Now, you testified you never worked in your life?
A That's right, I haven't.

"Q Where did you get the money from?
A My husband had made the money, I made no money, John Dimon.

"Q And from what sources did your husband get his money?
A I never asked no questions.

"Q You knew your husband was in the gambling business?
A Could have been.

"Q Did you know that?
A Could have been. I never asked no questions.

"Q Now, Mrs. Christy, you lived with your husband as husband and wife since 1935 and you never asked him any questions as to where he got his money.
A No, I never asked him nothing.

* * * *

"Q All right. Now, you bought the Broad and Front Street property in 1942. Did you rent shortly thereafter?
A I think it was rented a couple of years later, I don't remember, to the Florence Athletic Club.

* * * *

"Q Your husband was a member of the Florence AC?
A I don't know that either.

* * * *

"Q Did you visit the place from time to time?
A Oh, I go in once in a while, have a drink there, not too often.

"Q You were the owner of the place. Did you inspect the premises?
A I did not.

* * * *

"Q Did you ever inspect them for repairs or maintenance?
A No, they didn't ask for no repairs.

"Q Did you ever have any knowledge that there was gambling going on in the premises?
A I did not.

* * * *

"Q Your husband came to the Florence AC constantly, did he not?
A I don't know.

* * * *

"Q Did you know, as a matter of fact, that extensive repairs had been made on the second and third floors?
A No.

* * * *

"Q Now, did you know there was a steel door at the second floor landing?
A I don't know anything about that.

"Q Buzzer there?
A I don't know.

"Q You don't know anything that went on in your building, yet you were the owner all these years?
A That's right. I got my rent every month.

"Q Did you ever ask your husband about this building?
A I never asked him nothing.

* * * *

"Q Well, your husband has been convicted of a number of crimes, has he not?
A I think so.

"Q Bookmaking?
A I don't know anything about bookmaking.

"Q Astrocious assault and battery?
A That's right.

"Q Twice astrocious assault and battery?
A I think so.

"Q Contempt of court several times?
A Yes, could be."

Respondent Gertrude Christy testified that her father sold property in another State and that he furnished her with the money needed to purchase and establish the licensed business in question.

It is apparent from an examination of the testimony of said respondent Gertrude Christy that she was not only evasive in her answers but also did not adhere strictly to the truth. She admitted that she never worked in her life; nor during her married life was her husband gainfully employed by another employer. When asked whether or not she knew her husband was engaged in the gambling business, she answered that "Could have been. I never asked no questions." Furthermore, when asked if she asked him as to what source he may have obtained his money, she answered "No. I never asked him nothing." She furthermore disclaimed knowledge of the fact that, during the time the Florence Athletic Club was a tenant in the premises owned by her at No. 1 Front and Broad Streets, such premises were used for the purpose of bookmaking. When questioned as to whether she know that a steel door was installed at the second floor landing, and also whether or not there was a buzzer there, she answered, "I don't know anything about that." She said that she visited the barroom for an occasional drink but did not go through the building.

I am certainly not impressed with her testimony. I would have to be naive, indeed, to believe that a woman married for a period of twenty years, and who lived with her husband during the greater part of that time, was not aware of the business in which her husband was engaged. She admitted that her husband bestowed expensive gifts upon her; that she traveled extensively and, as she expressed it, "I live good;" and that she had no knowledge where he had obtained his money, remarking "I never pried into his business."

Although there is no direct evidence to indicate that James E. Christy has an interest in the licensed business, inferences to be drawn from the testimony of respondent Gertrude Christy are sufficient to establish that James E. Christy has now and will continue to have a vital and substantial interest in the liquor business. Respondent Gertrude Christy's purchasing the licensed business in her name gives her husband (who apparently is disqualified by statute from being associated with the alcoholic beverage industry) the opportunity to surreptitiously engage in the liquor business. I am also mindful that there was a tie vote in this matter by the members of the respondent Committee (five voting for, and five voting against the transfer), which tie was broken when the Mayor cast his vote in favor of the transfer. I conclude from the testimony herein that respondent Gertrude Christy is acting as a "front" for her husband.

Public welfare must always be of primary consideration in determining the qualifications and fitness of persons who seek to become licensees. The public interest, in my opinion, will not be served by permitting Gertrude Christy to engage in the liquor business.

In view of this decision it will be unnecessary for me to consider the remaining grounds set forth by the appellants in their

petition of appeal. The action of the respondent Committee in transferring the license in question will be reversed.

Accordingly, it is, on this 7th day of July, 1955,

ORDERED that the action of the respondent Township Committee be and the same is hereby reversed.

William Howe Davis,
Director.

3. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against GIANT LIQUORS, INC., 7913-19 Bergenline Avenue, North Bergen, New Jersey. Holder of Plenary Retail Distribution License D-14 for the 1954-55 and 1955-56 licensing years, issued by the Board of Commissioners of the Township of North Bergen.	CONCLUSIONS AND ORDER

Platoff, Platoff & Heftler, Esqs., by Marvel S. Platoff, Esq., Attorneys for Defendant-licensee.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold alcoholic beverages at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that at 8:30 p.m. June 2, 1955, an ABC agent entered defendant's licensed premises, followed shortly thereafter by a second agent who remained near at hand. The first agent asked the clerk behind the counter for two 4/5—quarts of "Canadian Club" and one 4/5-quart of "Southern Comfort." The clerk put the requested liquors in a paper bag and handed them to the agent who inquired "How much?" "$18.69" (the correct total price of the merchandise) replied the clerk. After the agent told the clerk that "Max sent me", the clerk said"$16.75, all right;" accepted a $20 bill from the agent, and returned $3.25. Both agents then identified themselves to the clerk who refused to give a signed statement.

Defendant has a prior adjudicated record. Effective May 22, 1950, its license was suspended for five days by this Division for a sale below the minimum resale price. Re Giant Liquors, Inc. Bulletin 876, Item 9. The minimum suspension imposed for a violation as set forth in the charge herein is ten days. Ordinarily the suspension is doubled for a second similar violation. However, since

the prior similar violation occurred more than five years ago, I shall suspend defendant's license for fifteen days. Re Stein, Bulletin 1067, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 5th day of July, 1955

ORDERED that plenary retail distribution license D-14 for the 1955-56 licensing year, issued by the Board of Commissioners of the Township of North Bergen to Giant Liquors, Inc. for premises 7913-19 Bergenline Avenue, North Bergen, be and the same is hereby suspended for ten (10) days, commencing at 9 a.m. July 11, 1955, and terminating at 9 a.m. July 21, 1955.

William Howe Davis,
Director.

4. STATE LICENSES - NEW APPLICATIONS FILED.

Robert F. Stegmeier
R.D. 3
Tamaqua, Pennsylvania
Application filed July 19, 1955 for Transportation License.

Joseph D'Agata
706 Mountain Street
Philadelphia, Pennsylvania
Application filed July 19, 1955 for Transportation License.

John J. Barry
1-7 Foye Place, Room #8 and
70 Gautier Avenue, Rear Garage Building
Jersey City 6, New Jersey
Application filed July 22, 1955 for place to place transfer of Plenary Wholesale License W-24 from John J. Barry, 1-7 Foye Place, Room #8, Jersey City 6, New Jersey

Joseph Cohen & Robert Dickman
t/a Lake Beverage Distributors
143 Roseland Avenue
Caldwell, New Jersey
Application filed for State Beverage Distributor's License July 19, 1955.

William Howe Davis
Director.