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

BULLETIN 283. NOVEMBER 25, 1938.

1. APPELLATE DECISIONS - ARLINGTON LIQUOR STORE v. PLAINFIELD.

ARLINGTON LIQUOR STORE,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
COMMON COUNCIL OF THE CITY OF PLAINFIELD,)
Respondent)

McDonough & McDonough, Esqs., by Andrew V. McDonough, Esq., Attorneys for Appellant.
William Newcorn, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail distribution license for premises located at 1094 Arlington Avenue, Plainfield.

Respondent denied appellant's application because the City's quota of 14 distribution licenses (fixed by Ordinance of December 30, 1937) was already exhausted.

Appellant contends that the quota is an unreasonable limitation upon "package" stores for the needs of the City as a whole. This contention, however, is without merit. Plainfield has an area of six square miles and a population (under the 1930 Federal census) of 34,400. With the 17 consumption establishments presently outstanding in the City, it cannot be said that Plainfield needs more than 14 "package" stores.

Appellant further contends that the quota is unreasonable and discriminatory in its application to him and to the vicinity in question. His proposed site is one of a small group of neighborhood stores which constitute an isolated business island in an area otherwise wholly residential. Adjoining this residential area on the north is the City's main business section, covering approximately one-quarter of a square mile. The nearest liquor place is about three-quarters of a mile from appellant's premises and stands on the outskirts between the residential area in question and the City's main business section; a "package" store is located a short distance farther.

Where a municipal governing body, in its bona fide discretion, has adopted a local quota of licenses which, as here, is found to be reasonable in its number, serious considerations are necessary to persuade the State Commissioner, on appeal, to compel the local issuing authority to grant a license in excess of that quota. A claim that the quota operates in an unreasonable or discriminatory manner with respect to a particular applicant or neighborhood must be established by clear and convincing proof.

The fact that appellant's proposed store is in a small neighborhood business section which has no liquor place fails to furnish this proof. Liquor is not such a necessitous commodity that every group of neighborhood stores throughout the city must be supplied with a place where liquor is sold.

Nor is adequate proof furnished by the fact that the nearest "package" store is almost a mile away. Many "package" stores are located in the City's large central business section which adjoins the residential area in question. Here, the entire city shops. Furthermore, the "package" store located at the border-line between the business section and the residential area is capable, in these days of telephone and transportation facilities, of adequately servicing liquor to those residents who also shop at the group of neighborhood stores where appellant's premises are located. Cf. Colonna v. Montclair, Bulletin 39, Item 8; Grieb v. Metuchen, Bulletin 217, Item 3.

Appellant contends, however, that ten of the City's fourteen "package" stores are located in the main business section (where there are also four licensed restaurants, three taverns, and a licensed hotel); that it is unreasonable and discriminatory to allow such a large majority of the City's quota of fourteen "package" stores in that section. This contention fails. It is wholly reasonable for a local issuing authority to concentrate its liquor places in the ambit of the municipality's large central business section.

The action of respondent is, therefore, affirmed.

Dated, November 21, 1938.

D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - ELECTION DAY RULES - SALE BY DELICATESSEN STORE.

In the Matter of Disciplinary Proceedings against)
)
LEONARD FRIEDMAN and)
BARNEY SHALK,) CONCLUSIONS
533 Central Avenue,) AND ORDER
Newark, N. J.,)
)
Holders of Plenary Retail Distribution License D-68, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

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Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Braelow & Tepper, Esqs., by Benjamin Braelow, Esq., Attorneys for the Licensee.

BY THE COMMISSIONER:

The defendants are charged with offering for sale, and selling, beer at their delicatessen and liquor store in Newark on Primary Election Day, September 20, 1938, during the voting hours (viz., 8 A.M. to 9 P.M. Daylight Saving Time), contrary to Rule 2 of State Regulations 20.

At 7:40 P.M. on Primary Election Day last, Investigator Quinn of this Department and License Inspector Gewecke of the Newark Police went to the defendant's store to investigate a complaint that beer was there being sold during the voting hours. Quinn, entering first, at 7:45 P.M. observed the defendant Friedman put six bottles of beer into a bag for a purchaser then present, take a bill from the purchaser, ring up a sale on his cash register, and hand back change. Gewecke, who remained a few seconds on

the outside, entered the store at this time and observed the customer with his hand on the purchase. On Gewecke's entry, Friedman suddenly withdrew the bottles of beer, refunded the purchaser's money, and stated to him "I'm sorry, you will have to wait until nine o'clock." The investigator and inspector identified themselves and told Friedman that his change of mind had occurred "too late." Friedman stated to them that he had believed sales of liquor were permissible after 8:00 P.M.

In contradiction of this statement, Friedman testified at the hearing that when he took and filled the purchaser's order for the beer, he believed that sales were permissible after 7:00 P.M. He further testified that he retracted the sale because he remembered sales were permissible only after 9:00 P.M.; that he did not know Quinn at the time but "probably" had seen Gewecke before.

Since Friedman accepted and filled the purchaser's order at 7:45 P.M., there is no doubt that he committed a violation of the State Rule. Nevertheless, were I convinced that he had made a bona fide mistake about the permissible time for sale and, upon realizing this mistake, at once cancelled the transaction before the purchaser left the store, I might regard the violation as being of a technical character and treat the case accordingly.

However, the retraction of the sale immediately upon the entry of Inspector Gewecke (whom Friedman "probably" knew) appears to be more than mere coincidence, and creates the easy inference that Friedman countermanded the sale only because he recognized or suspected the inspector. Indeed, Friedman's statement to Quinn and Gewecke (made before calculating reflection) disproves that the sale - which occurred at 7:45 P.M. - was innocently conceived, inasmuch as he declared in that statement that he erroneously believed 8:00 P.M. to be the permissible hour for sales. His change in story at the hearing (viz., that he believed 7:00 P.M. to be the permissible hour) is a forced and unconvincing effort to establish the sale as an honest error.

I find the defendants guilty as charged, and further find, in view of the circumstances, that the violation was not merely technical.

As to penalty: Licensees must learn that the voting hours on election days are to be kept clear of sales of liquor to the consuming public. "Chiselers" who sell during those hours discredit the liquor industry, subject the law-abiding licensees to unfair competition, and violate the public policy inherent in prohibiting retail sales of liquor on election days. The defendants' license will be suspended for ten (10) days.

Accordingly, it is, on this 19th day of November, 1938, ORDERED, that plenary retail distribution license No. D-68, heretofore issued to Leonard Friedman and Barney Shalk by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and the same is hereby suspended for a period of ten (10) days, commencing November 23, 1938, at 5:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - HEREIN OF CASE WITHOUT ALIBIS.

In the Matter of Disciplinary Proceedings against

GIOVANNI RIVARDO,
126 - 16th Street,
West New York, New Jersey,

Holder of Plenary Retail Consumption License No. C-15 issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

Giovanni Rivardo, Pro Se.

BY THE COMMISSIONER:

The defendant is charged with operating his tavern, and permitting patrons therein, before 1:00 P.M. on Sunday, October 9, 1938, in violation of a West New York resolution which prohibits a licensee from conducting his licensed premises between 4:00 A.M. and 1:00 P.M. on Sundays, and which further forbids him to allow anyone but himself or his employees and agents upon the licensed premises during those hours. (Resolution of December 22, 1936).

The defendant pleaded guilty. He said that times were bad and he "was trying to make a little."

This is the defendant's first offense of record. His license will be suspended for five (5) days for conducting his licensed business during prohibited hours, and for an additional five (5) days for permitting persons other than himself or his employees or agents upon his licensed premises during those hours, less five (5) days for telling the truth and making no alibis.

Accordingly, it is, on this 20th day of November, 1938,

ORDERED, that plenary retail consumption license No. C-15, heretofore issued to Giovanni Rivardo of West New York, N. J., by the Board of Commissioners of the Town of West New York, shall be and the same is hereby suspended for a period of five (5) days, commencing November 24, 1938, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - HEREIN OF ANOTHER CASE WITHOUT AN ALIBI.

In the Matter of Disciplinary Proceedings against

ITALIAN WORKMEN'S COOPERATIVE OF WEST NEW YORK, INC.,
642-644-646 Hudson Ave.,
West New York, N. J.,

Holder of Plenary Retail Consumption License No. C-56, issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Rinaldo Bozzuffi, Secretary of Italian Workmen's Cooperative of West New York, Inc., for the Licensee.

BY THE COMMISSIONER:

The defendant is charged with operating its tavern, and permitting patrons therein, before 1:00 P.M. on Sunday, October 9, 1938, in violation of a West New York resolution which prohibits a licensee from conducting his licensed premises between 4:00 A.M. and 1:00 P.M. on Sundays, and which further forbids him to allow anyone but himself or his employees and agents upon the licensed premises during those hours. (Resolution of December 22, 1936).

The defendant pleaded guilty.

This is the defendant's first offense of record. Its license will be suspended for five (5) days for conducting its licensed business during prohibited hours, and for an additional five (5) days for permitting persons other than its employees or agents upon its licensed premises during those hours, less five (5) days for telling the truth and making no alibis.

Accordingly, it is, on this 20th day of November, 1938, ORDERED, that plenary retail consumption license No. C-56, heretofore issued to Italian Workmen's Cooperative of West New York, Inc. by the Board of Commissioners of the Town of West New York, shall be and the same is hereby suspended for a period of five (5) days, commencing November 24, 1938, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

5. AUTOMATIC SUSPENSION - CONFINED TO CRIMINAL CONVICTIONS - HEREIN THE DIFFERENCE BETWEEN CONVICTION FOR AND COMMISSION OF A VIOLATION.

Dear Commissioner:

I have just finished reading item 4 of Bulletin 276, in paragraph four of which you state:

> "However, even though the Mayor and Council made no finding that the licensee was guilty of sale of alcoholic beverages in violation of the Control Act, still, the finding that a sale of alcoholic beverages to a minor occurred in violation of the regulation and the ordinance, necessarily involves a finding that the sale occurred in violation of the Act. Thus, the licensee has been adjudicated to have committed one violation of the Act. He has one strike on him. One more will bar him permanently from ever holding a license."

Would R. S. 33:1-31.1 be applicable in a case of this kind? Would conviction of a violation of a local ordinance or State regulations involving an act that also offended against the statute controlling alcoholic beverages bring into operation the automatic suspension provision in such statute?

Very truly yours,
John L. Haney,
City Clerk.

November 21, 193

Mr. John L. Haney,
City Clerk,
Trenton, N. J.

Dear Mr. Haney:

I have your letter, and welcome your inquiry.

The answer to the question you ask is in the negative. The reason is that R. S. 33:1-31.1 (Control Act, Sec. *82) applies only to a criminal conviction as distinguished from a civil adjudication. Note its language. It provides that a license shall automatically be suspended "upon conviction of violation of any of the provisions of this chapter (viz., the Alcoholic Beverage Control Law)." Since that provision is penal in nature, it must be strictly construed. Accordingly, the provision must be taken to mean that automatic suspension will occur only when the licensee is convicted in a criminal court on a charge of violating the Alcoholic Beverage Control Law. An adjudication of guilt in a different forum, or for anything other than a violation of the statute, will not result in such suspension. For the scope and reason of the automatic suspension, see Re Jamouneau, Bulletin 165, Item 3.

Re Falconer, Bulletin 276, Item 4, which is the Bulletin item to which your letter refers, involves an entirely different provision of the statute - viz., R. S. 33:1-25 (Control Act, Sec. 22). Note its language. It provides that no person "who has committed two or more violations of this chapter (viz., the Alcoholic Beverage Control Law)" shall hold a liquor license. This provision does not use the word "convicted." All that is necessary is a finding that on two or more occasions the person has "committed" a violation of the statute. Such finding may be made, not only in a criminal court, but also in a disciplinary proceeding by the State Commissioner or a local issuing authority. For the type of proceeding that is adequate, see Re Wizner, Bulletin 251, Item 1.

In short, the difference is between conviction and commission. "Conviction" is a technical term which refers to a criminal charge for having done an act, whereas "commission" merely means the doing of an act. Proof of the commission of a violation of law may be made in any tribunal, civil as well as criminal, which has jurisdiction over the subject matter and the parties, whereas a conviction pertains solely to proceedings in a criminal court. Of course, in a loose sense one may be said to be convicted in a civil court as, for instance, he was "convicted of fraud", or, in a divorce proceeding, "convicted of desertion." But when the term is strictly construed, it applies exclusively to criminal proceedings.

Re Falconer holds that a finding of guilt by a local issuing authority, in a disciplinary proceeding, in that a licensee sold alcoholic beverages to a minor in violation of the State Regulation and a local ordinance was, by necessary inference, a finding that he had also committed a violation of the Alcoholic Beverage Control Law (R. S. 33:1-77; Control Act, Sec. 77), which prohibits sales to a minor; that, therefore, the licensee, as a result of that finding, had "one strike" against him under R. S. 33:1-25 (Control Act, Sec. 22).

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS - CASE DISMISSED.

In the Matter of Disciplinary Proceedings against

JACK WILDSTEIN,
123 South Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-347, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Harold Simandl, Esq., by Sidney Simandl, Esq., Attorney for the Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that on or about August 29, 1938 he sold alcoholic beverages to Felicia ------- and Jennie ------, both minors, in violation of R.S.33:1-77 (Control Act, Sec. 77) and permitted the consumption of alcoholic beverages by said minors on his premises, in violation of Rule 1 of State Regulations No. 20.

The evidence of the alleged sale was given by Felicia ------, age 18, and Jennie ------, age 20, who testified that each of them had been served with two glasses of beer in Wildstein's premises shortly after they had left the premises of James Carlucci, in company with the two young men who had picked them up earlier in the evening. There is no other evidence of the alleged sales.

Officer Friedman, of the Newark Police, testified that he accompanied the two girls to Wildstein's tavern on August 31st, at which time they identified the place but told him that the licensee was not the man who sold the liquor; that the girls told him that the man who made the sale was about fifty-five years old, tall, husky, stout, with gray hair. The licensee is thirty-nine years old, five feet nine inches tall, weighs one hundred eighty pounds and has dark brown hair. He testified that he was working in the premises on the evening of August 29th; that he had never seen either of these girls in his premises; that he was the only person serving drinks that night. The only other employee in the licensed premises was Solly Wildstein, who is forty-five years of age, five feet five and one-half inches tall, and weighs one hundred forty-five pounds. He testified that he was not on duty on the evening of August 29th. Six patrons testified that they were in Wildstein's premises on the evening of August 29th, during the hours the girls are alleged to have visited these premises, and all testified that they saw neither of the girls on the licensed premises.

The evidence of the two girls as to the identification of the person who served the drinks is unsatisfactory. Felicia ------ testified:

"Q Do you know what the person looked like that served you?
A A little taller than Mr. Wildstein and stouter.
******
Q Aren't you sure that it wasn't him that served you?
A I am not sure if it was him or not."

Jennie ------, when asked to identify the man who made the sale, testified:

"Q What did he look like?
A Tall and stout.
Q Do you see him in the hearing room?
A No.

MR. SIMANDL: It should be noted that the defendant is in the court room."

The failure of either girl to identify the person who allegedly sold the drinks weakens the effect of their entire testimony. In view of the positive denial by the licensee, and the testimony of his patrons, I find that there is not sufficient credible evidence in the case upon which to base a finding of guilt.

The charges are dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 23, 1938.

7. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS - CASE DISMISSED.

In the Matter of Disciplinary Proceedings against

JAMES CARLUCCI,
55 Burnett Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-353, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

James L. McKenna, Esq., Attorney for the Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that on or about August 29, 1938 he sold alcoholic beverages to Felicia ------- and Jennie -----, both minors, in violation of R.S.33:1-77 (Control Act, Sec. 77), and permitted the consumption of alcoholic beverages by said minors upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

Evidence as to the alleged sales was given by Felicia ------, eighteen years of age, and Jennie ------, 20 years of age. They testified that, on the evening in question, they were "picked up" by two young men who took them to the rear room of Carlucci's tavern, where each of them was served with two glasses of beer. There is no other evidence of the alleged sales of alcoholic beverages.

The licensee was not on the premises on the evening of August 29, 1938. At that time Joseph Calabrese, an employee of the licensee, was the only person serving drinks in the back room;

another employee, Charles Calabrese, being behind the bar in the front room of the premises.

Joseph Calabrese testified that he never saw either of the girls in the licensed premises; that he "had no four party that night; only had eight, six and three." The identification of Joseph Calabrese by the two girls as the man who sold the alcoholic beverages is very unsatisfactory. At the hearing Felicia ------ testified that Joseph Calabrese looked like the man who served the drinks, but she also testified:

"Q Will you say that is the man that served you (referring to Joseph Calabrese)?
A I don't know."

Jennie ------ testified:

"Q Do you know who served you?
A A man that looks like Calabrese.
MR. SILBERMAN: Will Mr. Calabrese stand up?
Q A man that looked like Joseph Calabrese?
A That man, yes. (Indicating Joseph Calabrese).
Q Do you know whether or not it was Joseph Calabrese?
A Looked just like him, only he appeared to be a little fatter that night."

The testimony of Officers Friedman and Silverman, of the Newark Police, shows that on the morning of August 31st they accompanied the two girls to Carlucci's tavern for the purpose of identifying the person who sold the drinks. At that time they found Joseph Calabrese upon the licensed premises, but the girls failed to identify him as the man who served them. In fact, they told the police officers that they had been served by a fellow by the name of "Charlie" who wore glasses and who had been greeted as "Charlie" by the boys who ordered the drinks. Later the police officers returned to Carlucci's tavern and the same thing occurred. Police officers thereupon instructed Joseph Calabrese to appear at police headquarters, with his brother, Charles Calabrese. When the brothers confronted the girls at police headquarters, both girls said that it wasn't "Charlie", that it must have been Joseph. At the hearing Felicia ------ testified positively that neither Charles Calabrese nor James Carlucci served them with drinks on the evening of August 29th.

The failure of these girls who, according to their testimony, were in the licensed premises for about an hour, to positively identify Joseph Calabrese as the person who sold the drinks, weakens the effect of their entire testimony. In view of the positive denial by Joseph Calabrese, I find that the weight of the testimony is not sufficient on which to base a finding of guilt. In view of the identification of the premises by the two girls, there is a strong suspicion that they were present in Carlucci's tavern on the evening of August 29th, but mere suspicion is not sufficient. In disciplinary proceedings, guilt of the licensee must be shown by a preponderance of the testimony. There is not sufficient credible evidence in this case to show the guilt of the licensee.

The charges are dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 23, 1938.

8. APPELLATE DECISIONS - EAVENSON et al. v. SOUTH ORANGE et al.

MARTIN S. EAVENSON, and TOWN HALL DELICATESSEN, a corporation of New Jersey,

Appellants,

-vs-

BOARD OF TRUSTEES OF THE VILLAGE OF SOUTH ORANGE, and EPICURE, INC.,

Respondents

ON APPEAL
CONCLUSIONS

James L. McKenna, Esq., Attorney for Appellants.
Anthony P. Bianco, Esq., Attorney for Respondent-Licensee, Epicure, Inc.
No Appearance on behalf of Respondent Board of Trustees of the Village of South Orange.

BY THE COMMISSIONER:

Appellants appeal from the issuance of a plenary retail distribution license by respondent Board of Trustees to respondent Epicure, Inc., for premises known as 111-113 South Orange Avenue, Village of South Orange.

Appellants contend, among other reasons, (1) that the licensed premises are within two hundred feet of a church; (2) that respondent Epicure, Inc. does not have such a legal interest in the premises as would entitle the Board of Trustees to issue a license to it.

The premises in question consist of two stores located in an apartment building containing, on the ground floor, three stores designated by street numbers 109-111-113 South Orange Avenue. The entrance to the central store (111) is 216 feet 8 inches from steps leading to the First Presbyterian Church. Appellant Town Hall Delicatessen, a New Jersey corporation (hereafter called Town Hall), formerly held a distribution license at 111 South Orange Avenue which it has transferred to 18 South Orange Avenue. Respondent Epicure, Inc. intends to conduct its business at 111 and 113 and to have an entrance to its licensed premises at 113 South Orange Avenue. That entrance is within two hundred feet of the nearest entrance to the church, but Epicure, Inc. has consented to change the entrance so that it will be beyond the required distance of two hundred feet from the steps leading to the church. If that were all, the issuance of the license could be affirmed on condition that the entrance be so changed. Goldberg v. Livingston, Bulletin 163, Item 2.

As to the second reason: Epicure, Inc. was not in physical possession of the licensed premises at the time the license was granted or at the time the hearing was held on September 29, 1938. Although Town Hall has removed its business to another location, it retains physical possession of the store at 111 South Orange Avenue under a ten-year lease, dated September 10, 1937, executed between it and Orange Valley Holding Co., owner of the building. When the license was issued and on the date of hearing herein, other individuals conducted a vegetable store at 113 South Orange Avenue.

At no time was Epicure, Inc. either the owner or lessee of the licensed premises. Hans Tiedemann, President and principal stockholder of Epicure, Inc. testified that he has an "understanding" with said corporation whereby he will lease the licensed premises to that corporation, if and when he obtains title to the premises.

It appears that a mortgage affecting the premises 109-111-113 South Orange Avenue is now in process of foreclosure. Orange Valley Holding Co., Town Hall and the tenants operating the vegetable store are defendants in said foreclosure. The fact that the rights of these defendants in and to the property may be cut off in said proceedings is immaterial to the issue herein. Final decree in the foreclosure action was entered on September 21, 1938 but no further steps had been taken on the date of the hearing. Tiedemann's only interest arises from the fact that, on June 16, 1938, he entered into an agreement with the complainant in the foreclosure action, whereby Tiedemann agreed to purchase the premises then in process of foreclosure. The agreement reads:

> "that this contract is entered into upon the express condition and understanding that if party of the first part does not acquire title to the within described property at the Sheriff's sale to be held in conjunction with foreclosure proceedings now pending as the result of some other person bidding more than the amount of the decree, *** that this contract shall be void ***."

The operation and effect of every license is confined to the licensed premises. R. S. 33:1-26 (Control Act, Sec. 23). The extent of the licensee's interest in the licensed premises may vary; Yanuzis v. Camden, Bulletin 37, Item 1 (lease); Gruner v. Washington, Bulletin 149, Item 6 (lease from lessor claiming title); Yacula v. Jersey City, Bulletin 144, Item 7 (agreement to purchase from owners); Re Schmidt, Bulletin 137, Item 1 (owner of premises sold for taxes where owner still has right to redeem). However, a license may not be issued to one who has no interest in the premises sought to be licensed. Procoli v. Trenton, Bulletin 28, Item 6; Caplan v. Trenton, Bulletin 29, Item 11; D'Annibale v. Fredon, Bulletin 139, Item 7. If appellant's interest is terminated even after a favorable decision on appeal, but before actual issuance of the license, no license may issue. Re Sakin, Bulletin 67, Item 13. Where it appears that licensee had neither legal nor equitable interest in the premises, the license will be declared void. White Castles, Inc. v. Clifton and Weiss, Bulletin 97, Item 13. As I said in Re Fisher, Bulletin 107, Item 8:

> "A license is not like a 'roving center' on a football team. The license is granted in respect to a definite place. Hence, the licensee must have an interest in that place."

Admittedly, Epicure, Inc. had no legal title or any right to possession at the time the license was issued or at present. There is a mere possibility that, at some future date, complainant in the foreclosure proceeding may obtain title at a sheriff's sale and convey title to Tiedemann who in turn will lease to Epicure, Inc. Such a remote interest is not sufficient to warrant issuance of a license to Epicure, Inc.

The action of the Board of Trustees of the Village of South Orange in issuing the license to Epicure, Inc. is reversed, and the said license is hereby set aside and declared void.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 23, 1938.

9. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - 15 DAYS' SUSPENSION - HEREIN OF SOLICITUDE FOR HILARIOUS COUPLES.

In the Matter of Disciplinary Proceedings against WINTERGARDEN CASINO, INC., 467 Springfield Avenue, Newark, N.J., Holder of Plenary Retail Consumption License C-865, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Joseph B. Stadtmauer, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant is charged with keeping its licensed premises open, selling and serving liquor there, and failing to draw aside its curtains and leave a free view from the street into the interior of its premises, all after 3 A.M. on Sunday, August 14, 1938, in violation of Newark Ordinance 6579, which (with certain exceptions here not material) forbids licensed premises from being open or sales of liquor being made therein between 3 A.M. and noon on Sundays and further requires that curtains on licensed premises be drawn aside during those hours.

The defendant's licensed premises contain a barroom and an adjoining dining or serving room. There are two street entrances into the barroom - one a main and the other a "side" or indirect entrance. Between these entrances stands the barroom's large street display window with draw curtains that reach from the platform of the window to a height seven feet above the sidewalk.

At about 3:20 A.M. of the Sunday in question, Officers Garny and Layton of the Newark Police, while cruising in their radio car, were attracted to the defendant's premises by the fact that the barroom was lighted and the curtains drawn across the display window, barring view into the interior. Officer Garny left the radio car, looked into the window, tried and found the main barroom door locked, and then entered through the "side" entrance as two couples were emerging therefrom. Eight patrons were found in the barroom, standing along the bar. At one end was a hilarious couple, the woman waving a cocktail glass. The officer testified that just before entering the barroom he heard the cash register ring and that as he entered he saw the bartender (also defendant's manager and vice-president) draw and serve a glass of beer to one of the persons at the bar. Officer Layton entered the premises a minute or two later and immediately left to put in a call at a nearby police box for the patrol wagon. Both officers testified that at about 3:30 A.M., when the patrol wagon arrived, the bartender threw open the window curtains.

The bartender denied that he had sold or served any drinks after 3 A.M. He further testified that shortly before that hour he locked the main door into the tavern, pulled open the window curtains

three feet, and instructed the patrons to leave; that the hilarious couple refused; that he was fearful of doing more than asking them to leave because they were good customers and he did not want to insult them. He and one of the defendant's waiters explained that the ring of the cash register which Officer Garny heard was a ten cent check (representing a sale which had occurred in the serving room before 3 A.M.) that the waiter had previously forgotten to give to the bartender. Three of the four persons who were leaving the premises as Officer Garny entered testified that, although they were ready to leave at 3 A.M., the two women in the party went to the "ladies' room"; that when they returned, all four remained in the barroom to watch the hilarious couple and to help persuade them to leave.

I find the defendant guilty as charged. There is no question but that the premises were open after hours under even the defendant's story. The solicitude of the bartender for the good will of the merry and apparently drunken couple did not justify his permitting them to remain in violation of the curfew hour. Even aside from this couple, there is no adequate explanation why he allowed the remaining patrons to stay on. As to sale and service of the beer after hours, and failure to draw the curtains in time, the testimony of the police officers is wholly convincing.

This is the licensee's first offense of record. Its license shall be suspended for five (5) days for keeping its licensed premises open after 3 A.M., for an additional five (5) days for making a sale and service of beer after that hour, and for a further five (5) days for failing to have its window curtains drawn apart at the required time.

Accordingly, it is, on this 23rd day of November, 1938, ORDERED that plenary retail consumption license C-865, heretofore issued to Wintergarden Casino, Inc., by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and the same is hereby suspended for a period of fifteen (15) days, commencing November 27, 1938, at 3 A.M.

D. FREDERICK BURNETT,
Commissioner.

10. APPELLATE DECISIONS - MASARIK et al. v. MILLTOWN.

ETHEL MASARIK and MICHAEL STANKOWICZ,	)	
Appellants,	)	ON APPEAL CONCLUSIONS
-vs-	)	
BOROUGH COUNCIL OF THE BOROUGH OF MILLTOWN,	)	
Respondent.	)	

C. Raymond Lyons, Esq., Attorney for Appellant, Ethel Masarik.
George L. Burton, Esq., Attorney for Appellant, Michael Stankowicz.
Kearney Y. Kuhlthau, Esq., Attorney for Respondent.
Walter C. Sedam, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

Appellants appeal from denial of transfer of a plenary retail consumption license from Ethel Masarik for premises at 28 South Main Street, to Michael Stankowicz for premises at 45 Broad Street, Borough of Milltown.

Appellant, Ethel Masarik, is a proper but not a necessary party to this appeal.

Although no reasons were stated in the resolution denying the transfer, the answer sets up that the transfer was denied for the following reasons: (1) the neighborhood in which applicant seeks to secure a license is primarily residential in character; (2) application for the liquor license in conjunction with the operation of a bowling alley will be detrimental to the health and morals of the residents of the community in that, among other things, minors would be likely to frequent the licensed premises.

Some years ago a large manufacturing company operated a factory in the Borough, but that company has ceased operation and its factory is now used by a number of smaller industries. Excepting this factory, the Borough, which has a population of three thousand, is essentially a residential community. Masarik's tavern is located on Main Street south of Lawrence Brook. Consumption licenses have been issued to two other premises on the south side of Lawrence Brook in close proximity to the premises operated by Masarik. There are also two other consumption licenses outstanding - one issued to Werner, for premises on North Main Street, the other to Pulyer, for premises on Cottage Avenue, both of which are located north of Lawrence Brook, in the same section of the Borough in which the Stankowicz property is located.

A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer, in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2. On the other hand, where it appears that the refusal of a transfer was arbitrary or unreasonable, the action of respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Parker v. Belleville, Bulletin 179, Item 13; Miller v. Paterson, Bulletin 219, Item 6.

It appears from the minutes of the meeting of the Borough Council, at which the transfer was refused, that numerous petitions were considered - those favoring the transfer containing the names of approximately three hundred ten individuals and those objecting to the transfer containing the names of approximately two hundred ninety-two individuals. The number of names on any set of petitions is not a controlling factor. As I said in Re Powell, Bulletin 59, Item 15:

> "Your conclusion that a petition has no legal standing as such is correct. Such petitions may serve, when favorable, to give massed character recommendation, or show economic cause, and, when unfavorable, to serve as a vehicle of protest.

"There is no objection to any person or group presenting a petition. It serves as a convenient medium for presenting to the governing body the views of the group, but the weight to be accorded it, after proper discount for self-interest and the irresponsible way in which petitions are often signed as friendly accommodation without any considered thought of contents or effect or the argument on the other side, depends on what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides.

"A petition is not a substitute for, nor may it in any way dispense with independent investigation to determine that the law has in all respects been complied with and that the licensee is in fact worthy. Neither does it suffice as proof of non-compliance or of unworthiness. Such matters are not proved either way by merely counting noses. If the subject matter concerns local policy, the weight to be accorded to the petition is entirely within the discretion of the Mayor and Council. It is their power and their responsibility."

See also Dunster v. Bernards Township, Bulletin 99, Item 1, and Schwartz v. Carteret, Bulletin 250, Item 4.

I mention the petitions only because they do display a large public interest in the question and seem to indicate that the sentiment of the community is rather evenly divided as to the wisdom of granting the transfer sought herein. Petitions objecting to the transfer request that it be denied for the reasons which are set forth in respondent's answer filed herein.

If the determination of respondent were based solely upon the ground that the neighborhood in which the Stankowicz property is located is primarily residential in character, it would seem that the denial was arbitrary and unreasonable. For, there is no evidence that the Borough Council has adopted any policy in reference to the issuance of consumption licenses in residential sections; in fact, it appears from the photographs and other evidence herein that the Werner license has been issued for premises located in a residential district, and that the Pulyer license was likewise issued for premises located in a residential district despite objections filed to its issuance. Under these circumstances, it would be unfair to deny the instant transfer solely upon that ground, and especially so where it appears that the great majority of the objectors reside some distance away from the Stankowicz property.

It appears, however, that the premises to which Stankowicz seeks to transfer the license consist of a new building erected only a few months ago containing bowling alleys and a bar. In Re Hillery, Bulletin 47, Item 6, I said:

"It may well be that a municipal issuing authority in the exercise of its general police powers and the powers conferred by Section 37 may deny an application for a license for premises on which a bowling alley or similar business is being conducted. The determination of whether such a policy should be adopted rests in the first instance with the municipal issuing authority, subject to appeal to the Commissioner."

In Turner v. Ramsey, Bulletin 37, Item 7, denial of a license was upheld where it appeared, among other reasons, that the denial was based upon the contention that "minors are employed as pin boys and frequent the premises to play pool and billiards." In that case I said:

> "the denial of a license because the premises are used by minors is within the power of the local board and is justified."

Bowling alleys may well attract youths under twenty-one and, if issuing authorities honestly believe that the sale of liquor should not be permitted on premises operated as bowling alleys and uniformly apply such policy, their action will be upheld irrespective of my personal belief that there is nothing intrinsically wrong in granting a license in respect to bowling alleys subject to revocation if sales are made to minors. If the Council had granted this license, I should have had no compunction in affirming its issuance. But that is quite different from concluding that the Council has acted unreasonably merely because they differ with me in a matter of policy.

I therefore find nothing unreasonable in their determination of local policy, especially since it appears that there is a strong community sentiment against the issuance of a license to premises conducted as bowling alleys.

Appellant, Stankowicz, makes the further contention that the denial of the transfer was unfair and unreasonable because the action of the individual members of the Council led him to believe that a license would be issued and thereby induced him to spend the sum of fourteen or fifteen thousand dollars in erecting his premises. This contention is based upon an alleged interview between the son of appellant, Stankowicz, and five members of the Common Council and the Mayor. This interview occurred some time in May 1938, before building was commenced. The son testified that each of the Councilmen who were present, and the Mayor, said they had no objections to the issuance of the license. It is admitted that such a conference was held but the Mayor denied that any assurance had been given that the license would be issued. In the minutes of the meeting of the Borough Council, at which the license was denied, the following appears:

> "Councilman Newton: Mr. Stankowicz never approached me nor did I in any way ever encourage him that he would receive the license.
>
> "Councilman Hofer: I go on record as saying the same thing as Mr. Newton."

At the hearing on the appeal, Councilman Newton testified:

> "Q You were present at the conference in the Borough Hall when Mr. Stankowicz, Mr. Alex Stankowicz, informally questioned the Council about a license?
> A I was.
> Q What did Mr. Stankowicz say to you?
> A He didn't direct anything right to me, but he passed a remark, when it was said if he brought the proper petitions - he passed a remark he would have no trouble getting signers, as most everybody up there owed the old man, anyway, and I asked if he could get the name of the landlord next door. He passed a remark, did he have to get the landlord. I told him the tenants may move out, but the landlord could not move at any time, so I told him it would be a good idea to see the landlord.

"Q Did Mr. Stankowicz say he was going to build a building relying on this conversation?
A No.
Q From the conversation that night, do you feel the Council could have inferred he was going to go ahead -
MR. BURTON: I object to that.
THE HEARER: I sustain the objection.
Q Was anything said about going ahead and building the building, relying on this informal meeting?
A No, sir.
Q Did you hear anybody assure him they would give him a license?
A No.
Q No one actually told him they would not give it either?
A No.
Q Wasn't he told he would have to make an application and see what objections would develop?
A Yes.
Q You told him that, did you not?
A Yes.
Q Did more than one Councilman tell him that?
A Yes, sir."

Councilman Joseph M. DeHart testified that at said conference he had told Stankowicz that he had no objection, as far as he could see, to the license, but that he would be guided by the sentiment of the people in town.

This evidence is not sufficient to work an estoppel. From the record it appears that whatever happened at the conference in May 1938, the members of the Borough Council, before taking formal action, gave careful consideration to the sentiment of the community and finally decided, by a unanimous vote, to deny the transfer because the community sentiment seemed to be opposed to the transfer of the license to premises operated as bowling alleys. I cannot say that said determination was unreasonable.

The action of respondent is therefore affirmed.

Frederick Burnett

Commissioner.

Dated: November 23, 1938.