

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

BULLETIN 240

APRIL 19, 1938

1. MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - AMENDMENT - ALL AMENDMENTS TO LIMITATIONS, EVEN THOUGH THE ORIGINAL WAS ENACTED BY RESOLUTION, ARE NOW REQUIRED BY STATUTE TO BE MADE BY ORDINANCE.

RETAIL LICENSES - INVALIDITY WHEN ISSUED IN EXCESS OF LOCAL LIMITATION - CORRECTIVE PROCEDURE.

LIMITATION OF LICENSES - EXCEPTION IN FAVOR OF RESTAURANTS - CONTINUANCE OF RESTAURANT BUSINESS REQUIRED - VALIDITY OF REQUIREMENT THAT IN ORDER TO COME WITHIN THE EXCEPTION RESTAURANTS SHALL HAVE BEEN IN CONTINUOUS OPERATION FOR THREE YEARS, QUESTIONED.

April 13, 1938

John W. Knox,
Township Clerk,
Neptune, N. J.

My dear Mr. Knox:

I have before me your letter of April 8th and resolution adopted by the Township Committee on April 5, 1938, amending Section 4 of resolution adopted January 16, 1934, which provides:

"Not more than ten (10) plenary retail consumption licenses, exclusive of bona fide restaurants as defined in Section 1 (ss) of 'An Act concerning alcoholic beverages,' C. 436, P. L. 1933, as amended and supplemented, having been in continuous operation for three (3) years prior to the date of the application, shall be issued and in effect in the Township of Neptune at any time. Restaurants as so defined shall not be subject to the foregoing limitation.

"Not more than three plenary retail distribution licenses shall be issued and in effect in the Township of Neptune at any time."

I note that the amendment of April 5, 1938 has been made by resolution. I appreciate that in doing so the Township Committee has followed the suggestion regarding the amendment made in my letter to you of January 6, 1937. (Re Knox, Bulletin 157, Item 11). But since then the Act has been amended. It now provides (R. S. 33:1-40; Control Act, Sec. 37) that after July 1, 1937, all limitations of licenses must be enacted by ordinance. While the limitation imposed in the resolution of January 16, 1934, as amended May 22 and 29, 1934, would continue in effect so long as then enacted, it may now be amended, repealed or otherwise superseded only by ordinance. Any new limitation which may be imposed must likewise be enacted by ordinance. See Bulletin 185, Item 3.

Hence, although normally a resolution would suffice to amend the previous resolution, it is necessary because of the change in the statute to accomplish the amendment by ordinance. See Re Livelli, Bulletin 235, Item 15.

The resolution of April 5, 1938 is, therefore, of no legal force or effect. For the amendment to the limitation to be legally effective, it must be adopted by ordinance.

It follows that the limitation imposed in Section 4 of resolution adopted January 16, 1934, as amended May 22 and 29, 1934,

New Jersey State Library

is still in full force and effect. The quota of plenary retail consumption licenses is, therefore, ten, with no exceptions in favor of restaurants or anyone else. My records indicate that exclusive of license issued to Mrs. Maud Haas on April 8th, there are ten plenary retail consumption licenses presently outstanding. Mrs. Haas's license has, therefore, been issued in violation of the limitation.

I appreciate that Mrs. Haas's license was issued as the result of a bona fide mistake. It is, nevertheless, essential, in order to give validity to the license, that the Township Committee amend or repeal, by ordinance, the present limitation.

Unless such ordinance is adopted within three weeks from date, I shall be compelled to institute proceedings to cancel the license in accordance with the procedure in Re Loeb, Bulletin 206, Item 14.

The amending ordinance may follow the form of the April 5, 1938 resolution with one exception.

It provides, I note, that no more than ten plenary retail consumption licenses exclusive of bona fide restaurants having been in continuous operation for three (3) years prior to the date of the application, shall be issued.

There is, however, nothing indicating that restaurants for which licenses are issued pursuant to the exception, must continue to be operated as restaurants and, further, that for failure to do so the licenses may be suspended or revoked. Furthermore, there is nothing indicating that the conditions under which restaurant licenses will be issued pursuant to the exception shall continue in the event of their transfer or renewal. I take it that the Township Committee expects the restaurants obtaining licenses pursuant to the exception to continue as restaurants in the future, for to allow them to change would defeat the limitation. I therefore suggest that you supplement the first paragraph of the amendment with a further provision to the effect that licenses issued pursuant to the exception shall be expressly conditioned that the business continue to be operated as a restaurant in the future, that for breach of such condition the license may be suspended or revoked, and that transfers or renewals of such licenses shall be subject to the same terms and conditions as the original issuance.

Such conditions should then be set out in full on the face of the license.

I am somewhat bothered by the requirement that in order to come within the exception restaurants shall have been in continuous operation for three years. A municipal regulation confining consumption licenses to hotels and restaurants which have been in business for a period of one year has come before me and has been upheld. DiBono v. Bridgeton, Bulletin 30, Item 9; Barber v. Bridgeton, Bulletin 31, Item 1. I am not so sure, however, of the correctness of those two decisions. It may well be argued that so much of the regulation as requires restaurants to have been in existence three years before application can be made, is invalid on the ground that if the place is a bona fide restaurant it is a bona fide restaurant whether it's been in business for a year or a day and that the fact that it has been in business for a certain period of time doesn't make it any more so. See Gamble v. Avon-by-the-Sea, Bulletin 45, Item 11.

The limitation itself, for the reasons stated in Bulletin 43, Item 2, does not need my approval in the first instance in order to be effective. It is, instead, as provided in R. S. 33:1-41 (Control Act, Sec. 38), subject to review on appeal. I am, therefore, not considering it for formal approval at the present time. Whether or not the limitation, or the exception, is valid, is reserved until brought up on appeal in the manner the statute provides.

I note that the Haas license is number 12. My records indicate, as above mentioned, that only ten plenary retail consumption licenses have been issued. What has become of number 11? Please let me know at once.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. LICENSES - SPECIAL CONDITIONS - CONDITIONS THAT ARE MERELY RESTATEMENTS OF GENERAL REGULATIONS, WHILE NOT OBJECTIONABLE, ARE UNNECESSARY.

LICENSES - SPECIAL CONDITIONS - CONDITION "FOR RESTAURANT PURPOSES" DISAPPROVED FOR INDEFINITENESS - SPECIAL CONDITIONS MUST BE AS DEFINITE AND CERTAIN AS THE NATURE OF THE CASE WILL PERMIT.

April 13, 1938

John W. Knox,
Township Clerk,
Neptune, N. J.

My dear Mr. Knox:

I have before me your letter of April 8th and certification reporting the issuance of plenary retail consumption license No. 12 to Mrs. Maud Haas, 1920 Corlies Avenue, subject to special conditions:

"Sec. 2. No alcoholic beverages of any kind or description shall be sold, dispensed, or distributed between the hours of 3: A. M. and 7: A. M. on week-days, between the hours of 3: A. M. and 12: noon on Sundays, or on any election day, primary election day or special election day during the hours when the polls are open for balloting. For restaurant purposes."

The condition prescribing hours of sale, according to my records, is a restatement of the general regulation appearing in Section 2 of resolution adopted by the Township Committee on January 16, 1934, as amended August 17, 1937. It is, therefore, wholly superfluous because the regulations required exactly the same thing. I have no objection if the Township Committee wishes to repeat it in the form of a condition on the face of the license, but submit that the preferable practice is to omit what the regulations themselves declare anyway. See Re Gordon, Bulletin 236, Item 4; Re Fitzsimmons, Bulletin 207, Item 3.

The condition "For restaurant purposes" was imposed, I take it, because the license was issued pursuant to the exception contained in resolution of April 5, 1938, the subject of my earlier letter to you of even date, which purported to authorize the issuance of licenses in excess of the limitation to bona fide restaurants.

While I fully understand what the Township Committee intended to accomplish by the condition, I cannot, nevertheless, approve it. It is not sufficiently definite, standing alone, to inform the licensee just exactly what she may or may not do. Violation of a condition, duly imposed and approved, is cause for the suspension or revocation of the license. It must, therefore, be as definite as the nature of the case will permit. See Re Salter, Bulletin 184, Item 8,

Re Friberger, Bulletin 118, Item 7, and the items cited therein. In common fairness to the licensee, she should be told exactly what is required of her. Unless you do so, you do not impose an enforceable regulation.

It is one thing to say "For restaurant purposes." It is another to set forth that, because the license has been issued pursuant to specific exception from the numerical limitation, the business shall continue to be operated as a restaurant in the future, that for breach of such condition the license may be suspended or revoked and that transfers or renewals of such licenses shall be subject to the same terms and conditions as the original issuance.

The resolution imposing the condition on Mrs. Haas's license should be amended in accordance with the foregoing. I shall be glad to consider it for approval, prior to formal adoption. Upon final adoption, the condition, as amended, should be endorsed in full on the license certificate.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATION -
PUNISHMENT INDICATED.

April 13, 1938

William H. Zaun,
Borough Clerk,
National Park, N. J.

Dear Mr. Zaun:

I have staff report and your certification of the proceedings before the Borough Council of National Park against Conrad Bittner, charged with having failed to disclose in his application for his license the fact that he had been convicted in 1932 of having violated the State Liquor Law then in force for which offense he was fined \$300.00.

I note the licensee pleaded non vult to the charge and that his license was suspended for five days.

Please convey my appreciation to the members of the Council for their prompt and effective action in this case. It is incumbent upon all applicants for liquor licenses to disclose the full and true facts in their applications. If the applications are faulty in any respect, punishment is in order.

Sincerely yours,

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ANOTHER MISCARRIAGE - HEREIN OF
"PLAYING HORSE" WITH THE GOVERNING BODY OF A BIG CITY.

April 14, 1938

Edward Du Pree, Esq.
City Clerk
Paterson, New Jersey

Dear Mr. Du Pree:

I have staff report and your certification of the proceedings before the Board of Aldermen of Paterson against John A. Dugan, charged with (a) having sold alcoholic beverages during prohibited hours in violation of your local regulation and (b) having permitted a slot machine on the licensed premises in violation of State Rule. I note the licensee was acquitted on the first count, found guilty on the second and that the punishment was a reprimand. The report reads as follows:

"On February 6, 1938, at about 2:15 A. M., Investigators Kane and Hulin visited the above licensed premises.

"They observed a slot machine described by them as a one ball horse race machine equipped with springs and a pay-off on certain numbers. The coins were inserted in the slot in front of the machine by Investigator Kane and it paid off money to him on four different occasions. Investigator Hulin also won money from this machine. The bartender in charge advised the investigators what numbers won on the machine and showed them how to operate same.

"At 3:00 A. M., the lights in the barroom were turned off. The patrons remained in the sitting room where the investigators were seated. The investigators were served Calvert Whiskey at 3:15, 3:30, and 3:45 A. M. They departed at 4:00 A. M. and report that at that time, about 25 people were still present in the licensed premises. The investigators returned to the licensed premises the same day at about 11:30 A. M. (Sunday). When entering the barroom, they found about 13 patrons present and several men were at the bar drinking beer. The investigators seized the beer and then identified themselves to the bartender. Investigator Kane tasted the contents of the glasses which were before the patrons at the bar and ascertained that it was beer. The local police were called by the investigators and arrived a short time later.

"Investigator Kane's report as to the happenings before the Board of Aldermen reads as follows:

"I appeared before the issuing authorities of Paterson prepared to testify in the above-mentioned case. The following members of the Board were present: President Jacob Goldfarb, Aldermen De Vita, Dutcher, Friend, Garrison, Hardiman, Horandt, Kearny, Pirola, Rhodes.

"City Counsel Viviano represented the City of Paterson. James Murner was counsel for the defense.

"I was the first witness called and testified as stated in my report of February 6, 1938.

"I was asked to identify the man who was behind the bar, and I pointed out John A. Dugan, who was seated next to his attorney.

"The City Counsel asked me in this manner, 'When you first entered, you were served rye whiskey and seltzer?' I said that was correct. He then said, 'You were served drinks after 3:00 A. M.?' My answer was 'Yes.' 'At what time?' '3:15 A. M., 3:30 A. M. and 3:45 A. M.' I also stated how John Dugan instructed me to operate the horse race bagatelle machine and where it paid off.

"The City Counsel then turned me over to the defense counsel who questioned me as follows:

Q How many people were in the place during your time in the tavern?

A About 10 or 15 customers.

Q You are sure this man Dugan was behind the bar?

A Yes.

"I was not cross-examined as to what we found on the morning of February 6 at 11:30 A. M. though I testified there were 13 patrons in the tavern; I tasted some of the beer, had Harry Dugan, who was bartender at the time, initial the bottle after the beer had been poured from the glasses into the bottle, and we secured a signed statement which we were not asked to produce by the City counsel.

"When Investigator Hulin was called, defense attorney Murner stated he would accept his testimony as being the same as mine.

"The City counsel agreed.

"The City counsel stated he rested his case.

"Then defense attorney Murner addressed the Board asking for a dismissal of the first count -- the sales of alcoholic beverages after 3:00 A. M. and on Sunday morning at 11:30 A. M. Murner stated that 'when the investigators testified they stated that drinks were purchased at 3:15 A. M., 3:30 A. M., and 3:45 A. M., but they failed to state what kind of drinks. The only time they said a drink of rye whiskey and seltzer was served to them at 2:15 A. M.; nothing was said what kind of drinks were served after 3:00 A. M. They could have soda for all we know; and on these grounds ask for a dismissal of the first charge.'

"Alderman Rhodes asked that I (Kane) be permitted to return to the stand.

"Defense attorney Murner argued against this on the grounds the City had closed its case. Rhodes then asked for an opinion from the City counsel. Viviano stated this was not a court procedure. President Goldfarb stated he would accept a motion for the Board to go into deliberation on this count. A motion was made by one of the aldermen; then the entire Board recessed to the anti-room.

"Upon their return, a motion was made to dismiss the charges on Sunday sales which was the first count and that testimony be heard on the defense as to the gambling charge.

"The Board voted unanimously.

"The defense then called John A. Dugan, who admitted the horse race bagatelle machine, that he came into the premises on February 5th and it was left in the tavern unknown to him.

"I was then recalled to the stand and was asked by the City counsel to describe the machine which I did. I was questioned by every one of the aldermen as to the operation of the machine, and answered each of their questions.

"Defense attorney Murner asked me to describe the machine as to the type and its operation.

"Turning to the Board said, 'I am satisfied this man is telling the truth and knows what it is all about.' A motion was then made the Board retire for deliberation. Upon their return a motion was made by Alderman Garrison that the defendant be found guilty.

"The Board voted unanimously on this motion. Garrison then made a motion that the licensee be reprimanded. When the vote was called, De Vita stated he was sorry he did not vote to find the licensee guilty on the first count and was not in favor of a complete whitewash, and voted no.

"The others speaking for a penalty were Aldermen Friend, Horandt and Rhodes. The latter criticized the Board severely. He stated a letter should be sent to Commissioner Burnett to keep his agents out of Paterson because this Board does not pay any attention to their findings. He further stated that he did not want to be a party to any whitewash.

"President Goldfarb took exception to Rhodes' remarks by stating they always tried to do their duty and had received complimentary letters from Commissioner Burnett.

"The president of the Board voted yes.

"After the completed vote was taken, the results were six in favor and four against.

"The president of the Board then called the licensee and reprimanded him and stated if he was ever called before the Board again, he would be dealt with more severely."

Frankly, I am deeply disturbed by this proceeding. Surely, your Board should be interested in knowing what goes on in licensed premises. Dismissing a charge that sales were being made during prohibited hours on the technical and debatable ground that an official investigator failed to say that drinks were alcoholic beverages, without recalling that witness when he was right there makes a farce of law enforcement. There are none so blind as those who don't want to see. If the Board haven't the will to do their duty, of course they won't find a way.

While it is true, as President Goldfarb of the Board of Aldermen stated, the past work of your Board in connection with disciplinary matters has been most satisfactory, I am at loss to understand its action in the instant case. Commendation in one case is not intended to be an immunity bath for others, so don't be misled. I don't relish as much as the majority of your Board, being given the "horse laff" by a clever attorney or anyone else.

Don't let it happen again!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. APPELLATE DECISIONS - CHMIELINSKI v. CLIFTON

SOPHIE CHMIELINSKI,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS
MUNICIPAL COUNCIL OF THE)	
CITY OF CLIFTON,)	
)	
Respondent)	

Samuel Rosenfeld, Esq., Attorney for Appellant.
 John G. Dluhy, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of her application for transfer of a plenary retail consumption license from Solkind L. Levenson, Receiver of Club Unique, Inc. to herself, for premises located at 175 River Road, Clifton.

Respondent denied the transfer because, among other reasons, (1) applicant is not a fit person for a license, and (2) said applicant improperly attempted to influence the judgment of one of the members of the Municipal Council of the City of Clifton in the consideration of said application.

Appellant's application came before respondent for action at its meeting held on December 21, 1937. No member of the Council introduced a resolution to grant or deny the license at that meeting and, hence, the matter was laid over until the meeting to be held on January 4, 1938. As to what occurred shortly before and at the meeting held on January 4, 1938, Councilman Meyer testified:

"Q You had some discussion with this appellant? A Yes.
 Q When was it and where and what took place? A That was about ten minutes to eight, at my house, I got a ring on January 4, and my boy answered and said, this lady (referring to Mrs. Chmielinski) and a little girl is outside and wants to see me, and I came out, and found her on the porch. She said the little girl was her niece. And she made an urgent appeal to me to be lenient with her in the way of granting this license, and I might say she made an impression with me. Through my mind, I was thinking about the premises, that here was something only good for such a place, a man paying taxes --

"MR. ROSENFELD: I object to his thoughts.
 "THE HEARER: I will allow it.

"A Continuing) she made a very urgent appeal, and made an impression, she told me how she had been divorced and all that, and this little girl had to stay with her, and she wanted to make a new start. She made a decided impression, and I thought the premises not being good for anything else -- I thought of the receiver -- that went through my mind, -- I didn't know how I was going to vote, but was leaning toward voting for it, because she had no record. But, when she left, she made this crack, 'Mr. Meyer, can I present you with something?' I said to her, 'Not \$1.00 or \$10,000,000.' Then she left. I went down to the council and was boiling over. I got hold of the Mayor. I told the Mayor the

story, and said she said 'Can I present you with something?'; and I said up to that point everything was fine. I said, 'I am telling you this because it is coming up for a vote, and I am voting against it.' He said, 'I think there will be four votes against it now.' And I mentioned to Mr. Birmingham, 'Are you going to vote for it?', and he said 'No.' Mr. Hamil had talked against it the night before. Mr. Ward had argued about limiting saloons, and I felt he would be against it. So I thought I would see the Mayor and Mr. Shershin. The Mayor motioned to me, and said, 'Since Mr. Shershin has talked for this, don't you think you ought to talk to him.' Mr. Shershin came in later, and I went up to him and said, 'Something developed in connection with this that I thought you ought to know.' I said, 'I am not going to tell you the whole story, but I think it is bad enough for you to pass a vote against it.'

At the meeting the application to transfer was denied by the votes of all the Councilmen, although it appears that, prior to Mr. Meyer's report to the members as to his conversation with appellant, the sentiment was divided as to whether or not the transfer should be granted.

Appellant and her niece admitted that they had visited the home of Mr. Meyer before the meeting held on the evening of January 4, but both denied that appellant had said to Mr. Meyer "Can I present you with something?" or any words of similar import.

In Solomon v. Bloomfield, Bulletin 209, Item 4, I said:

"There is no doubt that a municipal issuing authority may, and indeed, should, deny an application for a license where it appears that the applicant has improperly attempted to influence the judgment of the issuing authority or one of its members in the consideration of the application. If the liquor business is to be kept on a decent plane, license privileges must be confined to persons whose ethical standards are wholly incompatible with attempts to corrupt the judgment of the officials charged with its regulation.

"Under the Rules Governing Appeals, the burden of establishing error in the respondent's action rests upon the appellant. Where a municipal issuing authority denies an application on the basis of a fact controverted on appeal, its action will not be upset unless the evidence adduced by the municipal issuing authority does not reasonably sustain its finding. Cf. Granger v. Oakland, Bulletin 91, Item 1; Hodanish v. Trenton, Bulletin 121, Item 6."

In the Solomon case, supra, Councilman Rees reported to his fellow Councilmen that the appellant had attempted to improperly influence him, and testified fully to the same effect during the hearing on the appeal. In this case the situation is the same as to Councilman Meyer. While it is true that there was no evidence of an attempt to influence Councilman Meyer's judgment other than the words spoken by appellant, the fact that she made such a remark to the Councilman is sufficient to sustain the finding by respondent that appellant was not worthy of holding a license. Under the circumstances it is unnecessary to consider any of the other issues involved in this case.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 13, 1938.

6. WINERIES -- WINERIES MAY SELL ONLY THEIR OWN PRODUCTS -- WINE PURCHASED BY THE BOTTLE MUST BE REBOTTLED BEFORE IT MAY BE SOLD.

ALCOHOLIC BEVERAGES -- VERMOUTH -- VERMOUTH IS CLASSED AS A FORTIFIED WINE AND MAY NOT THEREFORE BE SOLD BY THE HOLDER OF A LIMITED WINERY LICENSE.

Honorable Sir:

One of our clients has asked us to clear up the following matters; namely, is a holder of a limited winery license or plenary winery license permitted to bring in wines at any time in bottles; also, whether Vermouth is considered a fortified wine insofar as the term is used in your Bulletin 129, Item 4.

Respectfully yours,
H. S. Dorf & Co., Inc.

April 14, 1938

H. S. Dorf & Co., Inc.,
Newark, N. J.

Gentlemen:

A plenary winery licensee may purchase fortified wines in bottles or otherwise, and rebottle the same for sale. A limited winery licensee may purchase naturally fermented wines and fruit juices in bottles or otherwise, and rebottle the same for sale. The reason is that such rebottling constitutes the wine "his products." Neither licensee, however, may purchase wines in bottles and resell in the original bottles. Such transaction would require a wholesaler's license.

Vermouth is classified as fortified wine because it is made by the mixture of extracts from macerated aromatic flavoring materials with (1) light wine and brandy, (2) fortified wine, or (3) fortified wine and brandy. Clearly, Vermouth could not be classified as a naturally fermented wine and, hence, it cannot be manufactured or bottled by the holder of a limited winery license.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. APPELLATE DECISIONS - ARRINGTON et al. v. ORANGE and COSTA

ALICE B. ARRINGTON, REVEREND J.	:	
N. BULLON and REVEREND W. T.	:	
WATKINS,	:	
	:	ON APPEAL
Appellants,	:	
	:	CONCLUSIONS
-vs-	:	
MUNICIPAL BOARD OF ALCOHOLIC	:	
BEVERAGE CONTROL of the CITY of	:	
ORANGE, and MARGARET COSTA,	:	
	:	
Respondents.	:	
	:	

Joseph C. Paul, Esq., Attorney for Appellants.
 Louis J. Goldberg, Esq., Attorney for Respondent Board.
 Leonard G. Brown, Esq., by Raymond C. Connell, Esq., and
 Edward C. Hillis, Esq., Attorney for Respondent,
 Margaret Costa.

BY THE COMMISSIONER:

This appeal is from the issuance of a plenary retail consumption license to Margaret Costa for a tavern located at 185 Hickory Street, City of Orange .

Appellants contend that the issuance of this license was an abuse of discretion because of the number of taverns and the character of the neighborhood in the vicinity of the Costa premises.

The Costa tavern is located in the City's heavily populated First Ward. As to its immediate environs, the tavern lies in a neighborhood approximately 1/6 of a square mile in area and defined by Main Street, Central Avenue, the Orange-East Orange city line, and South Center Street. In this compact area, whose population has increased 120% during the last six years, dwell five thousand persons, 61% of whom are colored. Exclusive of the Costa place, fourteen taverns exist in this area, all of which, with one exception, were in active operation when the Costa license was granted.

The neighborhood is unmistakably subject to grave social problems. It was surveyed as of June 1937 by an accredited expert, John W. Woelfle, secretary and legal assistant to the Inter-State Crime Commission in New Jersey. Mr. Woelfle has examined slum conditions in leading cities in this country and Europe, and has been affiliated with social reform work in Essex County since 1930.

He testified that this neighborhood is a slum area containing some of the worst slums in the United States; that with the exception of various homes to the west of the Costa tavern, which are described as "comparatively good", the dwellings in

this vicinity are 1, 2 and 3-family houses which date from 1853 to 1890 and which now stand in a dilapidated state of repair; that, over the past six years, housing conditions here have grown consistently worse; that the family income of residents in this area is below that which is necessary for "ordinary living existence"; that "this area can no more afford the number of taverns it has than the worst slum section in New York"; and that it can suitably maintain only two or three such establishments; that this neighborhood contains districts which rank first, third, and fourth in the criminality and delinquency rate in Orange; that the neighborhood, in toto, has a rate two and one-third times greater than the general City rate; that the First Ward, whose rate is lower than the one prevailing in this particular area, nevertheless carries a rate four times greater than the general rate for all the Oranges and Maplewood.

Woelfle's survey subdivides the neighborhood into four districts designated as #572, 573, 574 and 575. The Costa tavern is located on the boundary between #574 and 575, and is, like the remaining taverns in the neighborhood, a contributing factor to all four districts. District #572, 68% negro, has a criminality and delinquency rate of 4029 per 100,000, being the highest in the City, whose rate stands at 343 per 100,000; there are in this district nine juveniles and forty adults who are under penal treatment by the County or State. District #573, 65% negro, has a rate of 2078 per 100,000 (third highest in the City), and contains nine juveniles and seventeen adults under penal treatment. District #574, 34% negro, has a rate of 544 per 100,000, and contains one juvenile and six adults under penal treatment. District #575, 77% negro, has a rate of 2,000 per 100,000 (fourth highest in the City), and contains ten juveniles and twenty adults under penal treatment. In the total four districts, 40% of the criminals are classed as recidivists ("repeaters").

Although the survey attempts no statistical correlation between the number of taverns in the neighborhood and crime, Mr. Woelfle declares that in his opinion the number of taverns in this area is one of the factors contributing to its crime problem and, further, that the establishment of the present tavern will have a "deleterious effect upon the community".

Alice B. Arrington (one of the appellants herein), executive secretary of a branch of the Y.W.C.A., located within a few blocks of the Costa tavern, testifies that the number of taverns in this neighborhood has aggravated its social conditions and has intensified the problems of juvenile character building. Norma Thompson, president of the Orphan Rescue Day Nursery, located diagonally across the street from the Costa tavern, testified that the Nursery, a charity, has an average daily attendance of fifteen to eighteen children, ranging in age from two to twelve years; that the number of taverns in the neighborhood has resulted in drunks and half-drunks lounging around the Nursery.

Assemblyman Hargrave, a doctor of unquestioned standing, testified that the granting of this license would have a bad effect on the morals and health of the people in the neighborhood. He said:

"My observation is that crime has increased instead of decreasing in the last few years, and many of my patients have been disturbed at night by the noise coming from these taverns and it is difficult for school children to get the proper rest and go to school next morning."

A large number of other representative citizens testified in opposition to the grant of the license, including Rev. Marple M. Lewis, J.W. Bowers, William Travis, Rev. J.N. Bullon, Rev. W.T. Watkins, C.L. McGee, Mrs. M.A. Camphor, Mrs. Horace Woodward, Mrs. Helen Lucie, Mary Williams and Mrs. J. H. Hughes.

Against this, about all I find in defense is the testimony of the resigned Chairman of the respondent Board who, on cross-examination, testified:

"Q Wasn't the primary reason for your granting this license a statement to the press by you that the Costas are carrying a considerable mortgage on their property and unable to rent the premises and that the Board would be inflicting a hardship by keeping the place idle. A I made that statement.

Q And that is the reason you issued the license?
A That is as good as any. I will let it go at that.
Q Are you satisfied with that reason? A Yes.
Q And it was true now and then? A Yes.

No more need be said.

The action of the respondent Board, for purely personal and anti-social reasons, in licensing this tavern in an undesirable area, inflicted with poverty and infested with crime, and contrary to its previous salutary policies, openly declared, and on the faith of which I sustained its denials in the Jerome Kahn (Bulletin 173, Item 5) and Great Eastern Super Markets (Bulletin 227, Item 6) applications, constitutes an outright abuse of discretion.

There is nothing against Margaret Costa. For her I am personally sorry, but so I was for the other honest applicants whose licenses were rightfully turned down. She took her license subject to this very appeal. She loses it, not for any personal fault, but because its issuance was contrary to the good of the community.

The action of the Municipal Board of Alcoholic Beverage Control of the City of Orange in issuing the Costa license is reversed, and the said license is hereby set aside and declared void. Margaret Costa is directed to cease doing business under that license on April 18, 1938 at midnight, and at that time to surrender it to the Secretary of the Municipal Board of Alcoholic Beverage Control of the City of Orange.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 14, 1938.

8. APPELLATE DECISIONS - TEMPERINO v. VINELAND.

ANNA TEMPERINO,)
Appellant,)
-vs-) ON APPEAL
BOARD OF COMMISSIONERS OF THE) CONCLUSIONS
BOROUGH OF VINELAND,)
Respondent)

I. Harry Levin, Esq., Attorney for Appellant.
Aaron Brotman, Esq. and Philip Lipman, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of transfer of a consumption license from 17 South 6th Street to the northwest corner of West Railroad Boulevard (hereafter referred to as the Boulevard) and Elmer Street, Borough of Vineland.

Respondent denied the transfer because (1) the vicinity surrounding the location to where the proposed transfer is desired to be made is a residential section and numerous persons residing nearby objected to the transfer, and (2) the neighborhood is served by other licensees.

The objectors reside on Elmer Street, which admittedly is residential in character. The side of the premises to which the transfer is sought contains windows opening on Elmer Street, but the only entrance to the premises is located on the Boulevard. A railroad runs along the Boulevard and freight is unloaded on a plot of ground directly opposite the premises in question. On the same side of the Boulevard, a short distance north of said premises, is a Public Service Bus Terminal and a private house which contains a beauty parlor. On the southwest corner of the Boulevard and Elmer Street is a plumbing shop. While the evidence shows that Elmer Street is unquestionably of a residential character, the Boulevard is devoted to business to such an extent that the premises to which the transfer is sought may be said to be located in a business district. Under these circumstances, general objections by persons residing on a side street which is residential are not sufficient to support the denial of a transfer. Ford's Tavern, Inc. v. Bergenfield, Bulletin 230, Item 17; Land v. Way, Bulletin 232, Item 14, and cases therein cited. If this were all, the transfer should have been granted.

Respondent alleges, as the second reason for refusing to transfer, the fact that the neighborhood is served by other licensees. The evidence shows that on Landis Avenue, which crosses said Boulevard one block north of Elmer Street, a consumption license is outstanding in the name of Sharp. Sharp's place is within five hundred feet of the premises in question. It shows also that on the opposite side of the Boulevard, across the railroad, a consumption license is outstanding to Park View Hotel, which is likewise within five hundred feet of the premises in question.

While it is true that appellant's premises on South 6th Street are in close proximity to an existing licensed place, it does not follow that respondent must perpetuate mistakes of the past by granting a transfer to another section which is adequately serviced by existing licenses.

Transfer of a liquor license is not an inherent privilege. VanSchoick v. Howell, Bulletin 120, Item 6. While a transfer cannot be denied arbitrarily, the action of a respondent in denying a transfer where it appears from the evidence that there are sufficient licensed places in the neighborhood will be sustained. DeBlasio v. Trenton, Bulletin 175, Item 6.

The evidence shows that denial of the transfer, based upon the second reason, was proper.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 15, 1938.

9. RETAIL LICENSES - ISSUANCE TO CORPORATIONS - DISQUALIFIED CORPORATION MAY NOT OBTAIN LICENSE IN THE NAME OF A SO-CALLED CONCESSIONAIRE, OR BY THE SUBTERFUGE OF LEASING PREMISES FROM A QUALIFIED LICENSEE, OR BY THE EMPLOYMENT OF THE MEMBERS OF THE CORPORATION BY A QUALIFIED LICENSEE WITH OPTION TO BUY THE BUSINESS WHEN FIVE YEARS' RESIDENCE IN THE STATE HAS BEEN ACQUIRED.

Dear Sir:

I have received your letter of February 25th (Bulletin 232, Item 4), referring to my letter of the 21st. As the facts in this particular case have been set forth in my letter of February 21st, I will not repeat them.

It will be most appreciative if you would give me your opinion as to the legality of the two following instances:

- 1st - In the event that my clients form a corporation in which all of the members are not residents of the State of New Jersey for a period of five years, would it be possible for such a corporation to purchase a business which is primarily an eating place and to lease out as a concession to some resident of the State of New Jersey the right to sell all alcoholic beverages that may be sold on the premises?
- 2nd - Assuming that a New Jersey corporation has been formed in which all the members have been residents of the State of New Jersey for a period of five years and that the said corporation is operating an eating place and has at the present time a license for the sale of alcoholic beverages, would it be proper for an individual who is not a resident of the State of New Jersey or a corporation composed of stockholders who are not residents of the State of New Jersey, to
- a - Lease the premises for a certain period of time and agree in the lease that the premises shall be operated under the corporate name and license now existing, or
- b - Enter into an agreement with the said New Jersey corporation owning the particular premises whereby the particular individuals will work for the said New Jersey corporation for a period of five years with the option to purchase the said business at the termination of the period of five years.

I might say at this time that my clients, who are interested in purchasing this particular business in New Jersey, have been residents of the State of New Jersey, as I previously stated, and are at the present time reliable and trustworthy business people in New York, and that it is their intention to purchase this business in New Jersey and become residents of the State of New Jersey; and I feel quite certain that these people would be an asset in any community wherein they may reside.

Very truly yours,
Lawrence Epstein.

April 16, 1938

Lawrence Epstein, Esq.,
New York, N. Y.

Dear Mr. Epstein:

I have considered the contents of your letter of March 1st in connection with the previous correspondence. Bulletin 232, Item 4.

As to your first question: It would not be permissible for a corporation which could not qualify as a retail licensee to obtain a license in the name of a so-called concessionaire. A license so obtained would be revoked. William Tell Hotel Corp. v. Ridgewood, Bulletin 65, Item 3; In Re Bodenstein, Bulletin 90, Item 10; In Re Toma & Fraccacreta, Bulletin 170, Item 1.

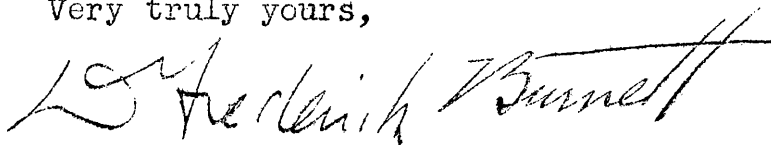
As to Question 2-a: Your plan would be objectionable because, as soon as the licensee executed the lease, it thereupon would lose control of the licensed premises. During the running of the lease the licensee could not sell or serve drinks in the restaurant because, as a matter of law, it would no longer have control over the restaurant premises. The lessee could not sell in the restaurant because it would hold no license. Re Kashner, Bulletin 199, Item 12. Moreover, an agreement by a licensee to permit another to operate under its license would subject the license to instant revocation. In Re Marra, Bulletin 222, Item 2.

Copies of all bulletins mentioned herein are enclosed.

As to Question 2-b: On June 2, 1937 the Alcoholic Beverage Control Act was amended by Chapter 124 of the Laws of 1937 (now R. S. Sec. 33:1-26), so that, since that time, individuals who have not resided in New Jersey for five years may be employed by New Jersey licensees provided such individuals are otherwise fully qualified as licensees of this State, and provided further that these individuals obtain a special permit from this Department to be employed on the licensed premises. The agreement which you outline, however, contemplates more than mere employment since it gives the individuals an option to purchase the licensed premises at the termination of a five year period. Such an option would constitute an interest in a licensed business and would be disapproved because your clients do not qualify as licensees.

It is clear from my letter to you of February 25th (Bulletin 232, Item 4) that your clients are not eligible to obtain a retail license in their individual capacity or under a partnership arrangement or through a corporate device. What they cannot do directly, they cannot do indirectly or by evasion or subterfuge. ✓

Very truly yours,



Commissioner.