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

BULLETIN 280 NOVEMBER 14, 1938

1. APPELLATE DECISIONS - CAHILL HOSPITAL v. NEWARK and JOHN F. MONAHAN ASSOCIATION.

CAHILL HOSPITAL (Dr. L.A. Cahill),)

Appellant,)

-vs-) ON APPEAL
CONCLUSIONS

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and JOHN F. MONAHAN ASSOCIATION,)

Respondents)

Meehan & Meehan, Esqs., by Frank J. Turner, Esq. and John J. Meehan, Esq., Attorneys for Appellant.
Armstrong & Mullen, Esqs., by Arthur C. Mullen, Esq., Attorneys for Respondent, John F. Monahan Association.
Joseph B. Sugrue, Esq., Attorney for Respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark.

BY THE COMMISSIONER:

This appeal was taken during the last fiscal year (1937-8) from the issuance of a plenary retail consumption license for that year to the John F. Monahan Association for its club quarters at 355-7 Lafayette Street, Newark.

The John F. Monahan Association is a political and social Club organized in 1899 and incorporated as a non-pecuniary association in 1916. It has owned and occupied its present quarters, a large three-story building, continuously since 1924. It held a club license for the building from 1934 until July 1, 1937, and thereafter obtained the plenary retail consumption license in question. Its bar room is located among the rooms on the ground floor; a small hall (and adjoining room fitted with kitchen facilities and bar) is located on the second floor, and a large hall on the third floor, where dances and various affairs are held.

Appellant is a physician who operates a private hospital (accommodating 25 patients) at the corner of Lafayette and Merchant Streets, two doors away from the Club. The entrances to the two places are about 70 feet apart. The hospital was located at its present site in 1928.

Appellant, for many years a member and frequenter of the Club, broke with it in 1931 after a quarrel with John F. Monahan, its "standard bearer."

The grounds of appeal may, for convenience, be set forth as follows:

(1) That the Club made false statements in its application for its 1937-8 license in that John F. Monahan was the real holder of the license and the real owner of the licensed business;

(2) That it was improper to issue a license to the Club in view of the residential aspect of the neighborhood and the proximity of appellant's hospital two doors away and a church across the street;

(3) That the Club, because of its misconduct, was not qualified to receive a license.

There is no substantive evidence in support of the first ground. Although it appears that John F. Monahan, one of the founders of the club, its "standard bearer", and a dominant personality therein, has advanced $3,000.00 to it within the last three years to relieve it of financial difficulty, there is no sign that the Club is merely a subterfuge through which he actually conducts a liquor business or that he derives any financial gain whatsoever from it. So far as the testimony reveals, the Club functions in all respects as a normal organization of its kind.

Nor is there merit to the second ground. The fact that a church is located across the street from the Club, with less than 80 feet from door to door, does not disqualify this Club from a liquor license. The law (R. S. 33:1-76; Control Act, Sec. 76), in prohibiting licensed premises from being located within 200 feet of a church, expressly excepts "clubs which own or are actually in possession of the licensed premises at the time this act becomes effective (viz., December 6, 1933)." Since the Club by reason of having owned and occupied its present quarters continuously since 1924 falls within this exception, a license may lawfully be issued to it. As to the proximity of appellant's private hospital, no provision in the law mandatorily forbids licensed premises from being located near such an institution.

The claim that the neighborhood is residential in character is unsupported by any evidence whatsoever. However, the Hearer personally viewed the vicinity, and reports that it is of a mixed residential and business character and subject to heavy automobile traffic. It lies within the sound discretion of the issuing authority to determine whether a municipal liquor license shall be issued for premises located in such a vicinity. Jones v. Camden and Caromano, Bulletin 121, Item 4; McDonald v. Paterson and Ferraro, Bulletin 155, Item 10. I cannot say that respondent abused its discretion.

Appellant's case rests mainly upon the third ground of appeal, viz., misconduct of the Club. The alleged misconduct relates to unauthorized sales of liquor; connection with the "numbers racket"; and noise and disturbances.

It is undisputed that in May and June 1937, while the Club was still operating under a club license, drinks on six occasions were sold and served in the bar room by its bartender to persons who were neither members nor bona fide guests.

On June 25, 1937, the same bartender (who was thereafter discharged) was discovered with lottery tickets and with four envelopes containing small sums of money for winners in a numbers lottery allegedly conducted by an organization in Monmouth County. However, this misconduct cannot be charged against the Club, since there is nothing to show that it knew of or engaged in the lottery in any way. See Re K. & K. Co., Inc., Bulletin 250, Item 6. Appellant's testimony that, on various Thursdays, when driving by the Club at noontime, he witnessed a small group of men at the Club entrance passing money, is insufficient to furnish such evidence.

As to alleged noise and disorderliness by the Club, concededly no such misconduct occurred prior to the winter or early spring of 1935. A major incident upon which appellant relies - the firing of three shots by a policeman - occurred on or about May 11 of that year. The nurse who at that time was on night duty at the hospital testified that on that occasion a dance was being held at the Club; that at 2:00 A.M. she heard "loud talking, a lot of commotion" and then the three shots; that she ran to the window and saw "quite a crowd gathered" outside and a man with a torn and bloody shirt "running along the sidewalk in front of the hospital" and another man, showing similar signs of violence, led down the street by a policeman. The only evidence as to who these men were or where they came from is the testimony by one of the Club's trustees that they were not Club members; that the commotion did not occur in front of the Club itself; that "parties outside started to fight, whether from the Polish Hall or some other hall, I don't know. The cop got excited and shot in the air."

As to noise and disorderliness, the nurse further testified - "They (the Club) used to have quite a few dances there at night, until all hours of the morning. Most of the time they were quite young couples, boys and girls that would attend these dances and they wouldn't leave until around half-past two or three o'clock in the morning. Most of the time they were intoxicated, sometimes leaving with their dresses torn, by putting their feet through them...."; that dances were held at the Club almost every week; that during the week there was "music playing and loud talking and laughing" at night; that she had to call the police "sometimes two or three times a week"; that when she called the police, the Club would "quiet down for a while, but lots of times they started up again after they had gone"; that "two or three times a week" she saw drunken persons either enter or leave the Club; that persons at the Club threw bottles out into the alleyway adjoining the hospital, "mostly on Saturday nights"; that the noise from the Club kept the patients in the hospital from sleeping.

When pressed for specific instances of misconduct, the witness stated that the first such instance was at a dance conducted in March 1935. After sweepingly declaring that "they had this terrible dance there, and they had been drinking a good deal", she identified the disturbance as "talking and laughing and all that" until 1:30 or 2:00 A.M., and admitted that she could not tell whether persons in the Club or at the dance were drinking. She further admitted that thereafter "things ran along quite smoothly" until the occasion of a dance in April 1935; that on that occasion what she observed was that, shortly after midnight, young persons ("16 years of age") were out on and running up and down the Club's fire escape with one such person throwing bottles "up and down the fire escape" and a young pair sitting there "with a bottle"; that nothing further (other than the above shooting incident) occurred in 1935 - that "things really quieted down"; that the next incident occurred in February 1936, when a fraternal dance was held at the Club, at which young persons attended; that the disturbance on this occasion was that these young persons came out of the Club at 2:30 A.M. "making a lot of noise" and with the dresses of three girls being torn; that thereafter "things went on very smoothly" until she left the appellant's employ in June 1936. She further testified that, on various occasions during 1935, persons rang the hospital's doorbell or trespassed on its front fire escape, but that she does not know who these persons were or where they came from.

This witness stated that she remembered the specific instances of the Club's misconduct because she, pursuant to appellant's directions, noted them in a small book as they occurred. This book was submitted in evidence. Her entire testimony is severely shaken, if not destroyed, by the fact that I search this book in vain for any such notations.

The nurse on night duty at the hospital since June 1936 testified that "during the summer, when the windows were open, it (the Club) was always noisy with loud talking, and when they would have the dances on the weekends, loud music, loud stamping of feet, people on the street always making noise and waking the patients up"; that these noises occurred "practically every weekend, Saturday night and Friday night"; that "sometimes on Thursday nights the crowd seemed to get noisy there"; that she saw "several couples leave and get in their cars and stand and talk loud several times" and "several couples that I would say were not walking straight"; that she was "disturbed plenty with people on the street in front of the hospital"; that, pursuant to the appellant's instructions, she made notes of unusual disturbances when they occurred.

As to such specific instances, she related that at 4:00 A.M. on April 19, 1937, she heard loud singing under the windows of the hospital on the Merchant Street side (away from the Club) and then the hospital's bell ring, but does not know who caused this disturbance; that on May 25, 1937, she heard disturbances at the Club from 1:00 to 3:20 A.M. - "only just loud noises" and automobile horns; that on June 19, 1937, from 2:30 to 3:00 A.M. there was "loud talking" in the Club "and every once in a while someone would burst out in loud singing"; that on June 28, 1937, there was "loud talking and loud singing" from 1:30 to 3:00 A.M.; that on July 9, 1937, "the noise was terrible" from midnight until 1:40 A.M., subsided after she complained to the police, but later "began again and lasted a while"; that in March 1938, she heard a "slight" sound ("like a 'twenty-two'.....that the boys use") and discovered two bullet holes in a window of the hospital on the Merchant Street side, but does not know who fired the shots.

Appellant's superintendent at the hospital (there during the day and occasionally at night) testified that appellant's tenants at 83 Merchant Street (the rear of which building is near the rear of the Club) complained about misconduct at the Club; that she herself was annoyed during the day with beer trucks parking in front of the hospital and beer barrels being rolled on the sidewalk; that on one occasion the window in the hospital's front door was broken and on various occasions the hospital's neon sign was tampered with, but that she does not know who caused this damage.

One of the tenants living at 83 Merchant Street since May 1932 testified that there has been noise at the Club in the early morning hours, especially on Wednesday, Friday, Saturday and Sunday; that the noise has disturbed her husband who must arise at 4:00 A.M. for work; that on one occasion, in May 1936, he was disturbed by the noise and shouted to persons in the Club to "shut up"; that one person yelled back and another threw a bottle which struck the hospital; that, on occasions, she witnessed girls and boys on the Club's fire escape from 2:00 until 4:00 A.M. She admits that the noise from the Club has disturbed her and her husband only in the summer "when the windows are open", and not in the winter "when the windows are closed."

The Pastor of the Church across the street from the Club testified that he slept in the rear room of the church on weekends during the summer for the last three years; that on occasions in the summer of 1937 he was disturbed by music from the Club until the early hours of the morning; that sometimes the noise from the Club is audible during the Sunday evening services in the church; that on one occasion the noise was so loud it disturbed the services.

The appellant testified that the Club is run in a noisy and disorderly manner, with dances being given "practically every night";

that he saw evidences in the alleyway adjoining the hospital that it had been used as a toilet and that bottles had been thrown into it; that on six or more occasions he stayed in the hospital at night to check on the noises; that on those occasions "the east side of the building (i.e., the Club) was lighted like a lighthouse"; that he saw men and women on the Club's fire escape; that he heard singing and playing of a piano, and a band on the third floor; that the affairs at the Club were "very noisy" and sometimes lasted until 4:00 A.M.; that on July 12, 1937, "they raised the devil all night long"; that the parking of cars prevents ambulances from drawing up at his hospital; that, in his opinion, the noise from the Club is harmful to the patients in the hospital.

Another witness testified that he was a patient at the hospital from July 5 until the middle of July, 1937; that on July 9, at about 11:00 P.M., he was unable to sleep because of noise; that he heard singing from 1:00 A.M. to 2:00 A.M.; that the noise quieted for three-quarters of an hour but then began again until 3:00 A.M.; that he "insisted on being removed from the hospital, because I wanted to go home, and I left there the latter part of the following week."

The Club produced various of its members and trustees who testified that they never observed any misconduct in the Club; that 75 to 85 per cent of the time the Club's hall is rented out, free, to churches for affairs by them; that various other affairs are conducted at the hall, such as an annual minstrel show, opera, etc.; that the Club never received any complaints from appellant, his nurses, or anyone in the neighborhood; that the police have never had occasion to come to the premises.

The Pastor of a church two blocks away testified that his church has run dances and concerts at the Club; that he has never observed any disorders there and considers it to be a fit place for holding church affairs. A funeral director who for the last six or seven years lived and conducted his place of business next door to the Club (on the side away from the hospital) testified that the Club has a good reputation in the neighborhood; that he conducts funeral services and wakes at his premises; that neither he nor these services have been disturbed by any noise from the Club. A tenant on the second floor of a two-family house standing between the Club and appellant's hospital testified that he has been living at his present place for the last four years; that he arises at 4:30 A.M. for work; that he has never been disturbed by noise from the Club. A resident three doors away from the Club testified that she has lived at her present address for the last 15 years; that the Club has a good reputation in the neighborhood; that although she occasionally hears music from the Club she is never disturbed by anything going on there; that she has never witnessed disorders at the Club. This witness, however, admittedly worked for the Club on the occasion of last New Year's Eve.

In the present case, I cannot say that respondent abused its discretion in determining the Club fit for the license in question. The case presents direct evidence that the Club, while operating under a club license, sold to unauthorized persons on six occasions, and a square conflict in testimony as to noise and disturbance. The disturbance and shooting affray on May 11, 1935, and the malicious mischief of ringing the hospital's doorbell, playing with its fire escape, shooting two bullets through its window, breaking its front door window, and tampering with the hospital's neon sign - all instances unrelated to the Club - bespeak a noisy neighborhood. In such a posture, I cannot say that no reasonable person would issue a license to the Club.

The action of the respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark, in issuing a plenary retail consumption license to respondent, John F. Monahan Association, for the last fiscal year (1937-8) is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 5, 1938.

2. ADVERTISING - OUTDOOR ANIMATED SIGNS ADVERTISING THE PRICE OF LIQUOR FOR RETAIL SALE ARE FORBIDDEN.

Sir:

Is it permissible within the terms of the Control Act to advertise the prices of liquor for sale at retail on an outdoor animated sign board, which is on the roof of a building, and will be visible from the street?

Very truly yours,
Morris Harris,
Secretary.

November 7, 1938

Quality House Wine & Liquor, Inc.,
Big Bear Liquor Departments,
Passaic, N. J.

Att: Morris Harris, Secretary.

Gentlemen:

Regulations 21, Rule 3, provides that retail licensees may not advertise the price of any alcoholic beverage "on the exterior of the licensed premises."

As written, the prohibition is confined to advertising on the outside part of the licensed premises as distinguished from the interior or inside part.

Technically, therefore, outdoor display or sign board advertising is not within the rule. Mr. Gene Tunney, at the recent advertising conference in Washington, expressed strong views against any billboard advertising. I do not go so far as his sweeping aversion to all outdoor signs.

But, I have no hesitancy in declaring against an outdoor animated sign which advertises the price of liquor for retail sale. Billboards are disquieting enough without flashing the price of liquor. So far as alcoholic beverages are concerned, no public policy is served by lessening consumer resistance in such a bizarre and striking way.

I therefore rule that it is not permissible to advertise retail liquor prices by outdoor animated signs.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF CHILLED BEER CONTRARY TO LICENSE, AND EMPLOYMENT OF 13 YEAR OLD MINOR - HEREIN OF THE BROAD SHOULDERS OF EVE.

November 7, 1938

William A. Miller,
City Clerk,
Clifton, N. J.

My dear Mr. Miller:

I have before me staff report and your letter of November 1st enclosing resolution and order adopted by the Municipal Council on October 31, 1938 in disciplinary proceedings against Joseph Davis, 7 Market Street.

I note that Davis was charged with sale of chilled beer, in violation of the restrictions of his limited retail distribution license, and employing a 13 year old boy in his licensed business; that he pleaded guilty, whereupon his license was suspended for one day.

According to the staff report, his "out" was that although he was familiar with the rules and regulations prohibiting sales of chilled beer in quantities less than 72 fluid ounces, his wife was not, and that it was she who had made the sale. The now hackneyed alibi of putting the blame on Eve overlooks entirely the presence of nine bottles of beer in the kitchen icebox and five in the ice cream freezer. I suppose that the licensee's wife put them there to prevent them collecting dust! And what of the employment of the 13 year old minor? Was the good wife also responsible for that?

I am disappointed in the meagre one-day suspension - a Monday at that!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - MAJESKI v. EAST HANOVER TOWNSHIP.

EDWARD MAJESKI,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EAST HANOVER,)
Respondent.)

William A. Hegarty, Esq., Attorney for Appellant.
Harry Amsterdam, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a denial of a seasonal retail consumption license for premises located at River Road, Township of East Hanover, Morris County, New Jersey.

Respondent denied the application for the following stated reason:

> "That there were ten plenary retail consumption licenses already issued in the Township and that they would not issue any more of any kind until some one of the present licensees gave up and surrendered his license and reduced the number below ten."

It is stipulated that an ordinance to regulate the sale of alcoholic beverages in the Township of East Hanover, which became effective on July 6, 1934, remains effective at the present time. Said ordinance, among other things, fixes the fee for plenary retail consumption licenses at $250.00 per annum, and the fee for seasonal retail consumption licenses at $187.50 per annum. It has been further stipulated that there is no ordinance or effective resolution limiting the number of licenses to be issued by respondent.

The argument of appellant seems to be based upon the contention that, since the ordinance effective July 6, 1934 provides for the issuance of seasonal retail consumption licenses and no such licenses have been issued, there is nothing to prevent the issuance of the license to appellant, whose qualifications are not questioned. The mere fact, however, that a municipal regulation provides for the issuance of any particular type of license does not require a local issuing authority to issue a license without a consideration of all the facts involved in the case. It is a far cry from "may" to "must." It is unnecessary to cite the numerous cases in which it has been held that a local issuing authority may refuse to issue a license where the issuance thereof would result in the existence of an excessive number of licenses in the municipality.

There are outstanding ten plenary retail consumption licenses in the Township of East Hanover, which has a population of approximately one thousand persons and consists of an area of approximately forty-five hundred acres. There are two premises licensed for plenary retail consumption within approximately twenty-five hundred feet of appellant's premises. Respondent was justified in considering the number of plenary retail consumption licenses outstanding in determining whether a seasonal retail consumption license should be issued. In Asarnow v. Warren, Bulletin 249, Item 8, I said:

> "A seasonal license is just as plenary in its nature as the so-called 'plenary retail consumption license.' It confers exactly the same privileges. The only difference is that one is good for a year, the other for only six months. Both are consumption licenses. Both are retail. Both are plenary in scope."

The only evidence as to necessity was given by appellant himself, who testified that his premises contain picnic grounds located on the Passaic River and that he plans to permit clubs and organizations to conduct picnics upon his grounds. In view of the large number of plenary retail consumption licenses outstanding, this evidence is not sufficient to show the need for another licensed place within the Township. Berry v. Clementon, Bulletin 258, Item 4; Puri v. Warren, Bulletin 266, Item 2.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 6, 1938.

5. APPELLATE DECISIONS - CHATEAU COMPANY, INC. v. BELLEVILLE.

CHATEAU COMPANY, INC.,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE TOWN OF BELLEVILLE,
Respondent.

ON APPEAL
CONCLUSIONS

Edward J. Abromson, Esq., Attorney for Appellant.
Lawrence E. Keenan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, the holder of a plenary retail consumption license for premises located at 170 Washington Avenue, Belleville, appeals from the following conditions imposed upon said license at the time of its renewal for the present fiscal year:

"(a) That all noise and all music, singing and other forms of entertainment whatsoever shall cease at 12:00 midnight, except Sunday morning when it would cease at 2:00 A.M. and not be resumed until the hour fixed by local regulations when sales of alcoholic beverages may be made again.

"(b) That all sales and service of alcoholic beverages be confined to the interior of the premises."

The premises in question are located in a section of Washington Avenue which formerly was residential, but which is now a mixed residential and business district; five buildings on this block being devoted to business and seven buildings used as residences. The Town Hall is located on the same block. The premises in question are located between a two-story residence on the south, and a two-story building used as a store and residence on the north.

The members of the family residing on the second floor of the building on the north have made numerous complaints to the Belleville Police over a period of years against the present licensee and prior licensees, because of alleged unnecessary noise. As to the majority of these complaints, police reports show that no violations were found to exist when the officers arrived, but it does not follow that the complaints were, therefore, entirely without foundation. It appears that, as a result of said complaints, the following condition was inserted in appellant's license for the fiscal year 1936-1937:

"This license is granted on condition that all musical apparatus and singing be discontinued on the licensed premises from 11:30 P.M. until legal closing time."

The same condition was imposed for the fiscal year 1937-1938. Appellant took no appeal from the condition imposed in 1936 and 1937. It should be noted that the condition imposed for the present fiscal year extends the time when music and singing may be permitted on the licensed premises by one-half hour on six days of the week and by two and one-half hours on Saturday night and Sunday morning beyond that previously allowed.

Appellant contends that the first condition is unfair because it reflects upon the management and forces some of its patrons

to leave early for the purpose of visiting other taverns in Belleville which are unrestricted as to noise, music, singing and entertainment. It produced witnesses who reside in the home to the south of the licensed premises who testified that they have not been annoyed by the manner in which the premises were conducted. I have no hesitancy in believing that appellant conducts a high class place of business. The evidence clearly shows that it does. The sole question is whether the condition imposed as to conduct of appellant's place after 12:00 o'clock midnight on every week day is reasonable under the circumstances. In view of the close proximity of the building to the north, I cannot say that the first condition is unreasonable. Clearly, it is intended to permit the residents of said building to obtain necessary peace and quiet during the early hours of the morning. The fact that other persons in the neighborhood do not complain is immaterial. Complaints as to noise are subjective, rather than objective. What annoys one may not disturb another. The extent to which a local issuing authority may go in attempting to adjust the delicate question as to what action should be taken to protect the rights of a single objecting neighbor is largely a matter of discretion, and a restriction imposed upon licensed premises for the purpose of protecting the peace and quiet of a single objector will not be set aside unless it appears to be wholly unreasonable. I find that there is a reasonable basis for imposing the first condition in this case and, therefore, the action of respondent as to the first condition is affirmed.

As to (b): The purpose of this restriction is to confine sales to the interior of the licensed premises and forbid sales in a so-called beer garden which exists between the front line of the building and the street line. The beer garden was formerly conducted by appellant but was voluntarily discontinued in 1935, apparently as a result of complaints as to noise. In addition to the testimony of members of the family residing in the building on the north, one witness who resides across the street testified at the hearing on appeal that, while the beer garden was in operation, she was annoyed by unnecessary noises. A resolution of the Board of Commissioners, adopted on July 24, 1934, referring to beer gardens, provides:

> "That no beverages shall be disposed, nor patrons shall be permitted to use any of the aforesaid Beer Gardens after the hour of 11:30 P.M. This resolution shall not prohibit licensed premises to which the aforesaid Beer Gardens are an adjunct from operating indoors until the hours prohibited by ordinance."

In view of the resolution referred to, the type of place operated by appellant and the character of the neighborhood, I believe that condition (b) imposed upon the license is unnecessarily restrictive. The beer garden cannot be operated after 11:30 P.M. Up to that hour the operation of the beer garden should not unduly interfere with the peace and quiet of adjoining neighbors. Restriction (b) will, therefore, be set aside as unreasonable.

The action of respondent Board of Commissioners of the Town of Belleville in imposing condition (a) is hereby affirmed, and its action in imposing condition (b) is hereby reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 7, 1938.

6. FAIR TRADE - REGULATIONS - THE OBJECTIVE IS TO ELIMINATE CIVIL WAR IN THE INDUSTRY.

November 4, 1938

Dear Commissioner:

I wish to take this means of letting you know that I as an individual merchant in the retailing of liquor by packages, wish to congratulate you and your Department on the fine work that has been accomplished by the new regulation concerning price control of National Advertised Products.

Our concern has been in business since the inception of Repeal. Since that date we have from time to time had to meet the most chaotic conditions. Therefore, as I have stated previously, we wish to go on record with you personally as being 100% satisfied with the improvement that your new regulation has brought about.

I wish to close with many thanks to you and your Department in wishing you continued success in your endeavor.

Very truly yours,
WESTON & CO., INC.,
Alfred Eisen

November 9, 1938

Weston & Co., Inc.,
Newark, N. J.

Att: Alfred Eisen.

Gentlemen:

I have yours of the 4th. It is gratifying to learn that the trade feels that the Price Regulations, instead of being just so much more governmental red tape, are really doing some good. The effort was to make them practical, common sense, fair. To that extent, perhaps, the Department is entitled to credit.

The success of the experiment depends upon wholehearted cooperation by all manufacturers and retailers for whatever is outside of Fair Trade listing is beyond my jurisdiction. Unless substantially all items which were targets in former price cuttings are listed, there will be sporadic outbursts from time to time. The only cure is to list them all. The attitude of the retailers will, in general, adumbrate the action taken by manufacturers and wholesalers.

The objective and the hope is to eliminate civil war in the industry.

Sincerely yours,

D. FREDERICK BURNETT,
Commissioner.

7. WHOLESALERS -- EXTENT OF LICENSE -- PARTNERS MAY NOT WITHDRAW WHISKEY OUT OF STOCK FOR PERSONAL USE.

Dear Commissioner:

Is it permissible for the partners of this firm to take whiskey out of stock for their personal consumption?

The whiskey so taken to be charged out as samples and the State tax paid thereon.

Very truly yours,

J. & J. DISTRIBUTING CO.

Jerome J. Blumberg

November 9, 1938.

J. & J. Distributing Co.,
Newark, N. J.

Attention: Mr. Jerome J. Blumberg

Gentlemen:

Your plenary export wholesale license authorizes you to distribute and sell in New Jersey only to wholesalers and retailers.

The correct answer, therefore, is that it is not permissible for the partners of your firm to take whiskey out of stock for their personal use.

It seems, at first blush, highly technical and quite preposterous that a wholesale merchant cannot take goods out of his own stock for his own personal use. If that is as far as it would go, I should rule that the statute be given a liberal construction.

But rulings must anticipate what would reasonably follow and ought not to be made to apply only to a single situation even though there is no question of good faith in the particular case.

Looking forward, it is clear that, if this were allowed, the lid would be off Pandora's box. Through a partner's withdrawals, his own immediate family, at least, would be supplied, to say nothing of his cousins and uncles and aunts. Just where is the line to be drawn? What would be the limit on quantity? Just what is a partner's capacity for personal consumption? What is there to prevent withdrawals by unscrupulous wholesalers to supply employees and friends and an ever widening list of friends of friends provided only that it is withdrawn in the name of a partner and charged as a taxpaid sample? The best way to stop exceptions which will grow like chain letters is to stamp them out in the beginning.

The statute will therefore be given a strict construction. Hence, if a wholesaler would a consumer be, he will have to comply with the A.B.C.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. FAIR TRADE - SPECIAL PERMITS - DISCONTINUANCE MUST BE OUTRIGHT AND GENUINE - THE OBJECT OF A SPECIAL PERMIT IS TO AMELIORATE BUT NOT TO WEAKEN THE REGULATIONS - IF AN OLD LINE IS CLOSED OUT UNDER A SPECIAL PERMIT, NEW ITEMS CARRYING THE SAME GENERAL TRADE OR BRAND NAMES AS THE OLD MAY NOT BE HANDLED.

Dear Sir:

Please send us a permit to close out the following liquor items:

Schenley's Golden Wedding blended whiskey
Rye or Bourbon 90 proof old style label.

Schenley's Mayflower Bourbon whiskey 100 proof
1 yr. Old.

Schenley's Old Quaker straight Rye whiskey
2 yrs. old 90 proof.

Please advise us as to our future status in the handling and selling of these items as there is now sold in the trade a better blend of Schenley's Golden Wedding with an entirely new label. Also please advise us after we close out the other two liquors will we be able to handle Schenley's Old Quaker Rye 3 yrs. old 90 proof and Schenley's Mayflower Straight Rye Whiskey 13 months old 90 proof.

Yours truly,
Brooks Cut Rate Drug Co.

November 7, 1938

Brooks Cut Rate Drug Co.,
Hackensack, N. J.

Gentlemen:

Regulations No. 30, Rule 7 provides four grounds upon which an application for a special permit to sell below the established prices will be entertained. You are concerned, I take it, with the second ground, i. e., where the retailer purposes to discontinue further deliveries of such products.

As regards the goods now carried in stock: If you close them out under a special permit, you could not then turn around and deal with those same items again. This is so because the discontinuance contemplated by the rule means not mere interruption or loss of continuity but rather an affirmative putting an end to the line - a termination. The discontinuance must be outright and genuine. The object of a special permit is to ameliorate but not to weaken the Fair Trade Regulations.

As regards the goods you desire to carry: You will not be able to take on this new line regardless of the different age or label of the items because Schenley Distributors, Inc. have protected their brands generally and have not specified in their Fair Trade listing (Bulletin 275, Item 32) any particular age or label distinction in the products referred to in your letter. Hence, if you

close out the old line under a special permit, you could not handle the new items because they carry the same general trade or brand names as the old.

I doubt, therefore, whether under these rulings you will desire any special permit. If, however, you still do, let me know and I will advise you as to the matters which the application should set out.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. APPELLATE DECISIONS - CICALESE v. NEWARK.

ANTHONY CICALESE,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,)
Respondent.)

Anthony J. Calandra, Esq., Attorney for Appellant.
No Appearance on behalf of Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of renewal of a plenary retail consumption license for premises 311 Chestnut Street, Newark.

Appellant held License No. C-527 for the same premises for the fiscal year 1937-1938. His application for renewal of said license for the current fiscal year was denied. A letter which was sent to appellant by respondent Board, advising him that his renewal had been denied, did not set forth any reason for said denial.

Respondent filed no answer herein and did not appear at the hearing.

In accordance with provisions of Rule 10, State Regulations No. 14, appellant was permitted to proceed ex parte at the hearing held. He testified that he is fully qualified, unless convictions hereinafter considered disqualify him; that he has complied with all statutory requirements as to the renewal of his license; that no disciplinary proceedings have been instituted against him; that he has always conducted the premises in a law-abiding manner.

Appellant admits that, in 1928, when he was sixteen years and three months of age, he was convicted of breaking, entry and larceny and receiving, at which time he was placed on probation for three years; that, in 1931, he was convicted as a disorderly person and received a suspended sentence; that, in March 1937, he was fined $10.00 for violating the Motor Vehicle Act; that, in September 1937, he was fined $5.00 for violating a provision of the New Jersey Bottle Act against refilling ice cream boxes.

The conviction in 1928 was unquestionably for a crime which involves moral turpitude but, in view of appellant's youth and the fact that he was not sentenced to prison, I shall give him the benefit of the ruling of strict construction made in cases of crimes

committed by youngsters under 18, Bulletin 149, Item 1, and hold that in view of his tender age at the time of the commission of the offense, his crime did not involve moral turpitude. The convictions in 1931 and March 1937 are not convictions of crimes. Case No. 65, Bulletin 193, Item 11; Hearing No. 133, Bulletin 170, Item 7. Hence, appellant is not mandatorily disqualified by his record.

Respondent granted a license to appellant in July 1937, and thus put him to the test of future behavior. In common fairness to appellant, who has invested time and money in reliance upon his previous license, respondent must be taken to have condoned appellant's previous record. Sudol v. Wallington, Bulletin 276, Item 7.

As the record stands, there appears to be no sufficient reason why respondent refused to renew the license.

The action of respondent is, therefore, reversed. Respondent is directed to issue the license to appellant forthwith as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 9, 1938.

10. MUNICIPAL REGULATIONS - HOURS OF SALE - TO ALLOW SALES TWENTY-FOUR HOURS A DAY EVERY DAY IN THE WEEK IS A MISTAKE.

November 10, 1938

John Dobnack,
Clerk of Weymouth Township,
Dorothy, N. J.

My dear Mr. Dobnack:

I have before me resolution adopted by the Township Committee on September 1, 1938, declaring that plenary retail consumption licensees in Weymouth Township "may remain open for the sale of alcoholic beverages the whole twenty-four hours, each and every day."

I am indeed sorry that despite my letters of July 21st and August 8th, the Township Committee has seen fit to do this. I think it is a big mistake. If legalized liquor is to be permanent, those who exercise control and administer the law must enact and enforce appropriate regulations. It is shorter, not longer, hours that we need.

I cannot help but feel that your Township Committee missed an opportunity to render a distinct public service.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. APPELLATE DECISIONS - SOBOLEWSKI v. FAIRVIEW.

MARY SOBOLEWSKI,)
Appellant,)
-vs-) ON APPEAL CONCLUSIONS
BOROUGH COUNCIL OF THE BOROUGH OF FAIRVIEW,)
Respondent)

Milton K. Chapman, Esq., Attorney for Appellant.
Harry A. Accomando, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located at 477 Walker Street, Borough of Fairview, Bergen County.

There is no objection to appellant's fitness to hold a license or to the suitability of her premises. Her application was denied at the same time an application made by Thomas DeLucca was denied and for the same reason, namely, that the taverns now in existence are sufficient in the Borough.

In DeLucca v. Fairview, Bulletin 279, Item 12, respondent's action in denying the license was reversed because it appeared that a resolution dated June 19, 1934 was still in effect, providing that consumption licenses "shall be limited to 30." The issuance of the DeLucca license leaves three vacancies existing. Under these circumstances, it is unfair to appellant herein to deny her license because of an informal opinion of respondent that there are sufficient consumption licenses already issued. The question as to the effect of the allegedly contemplated ordinance to reduce the number of licenses was disposed of adversely to respondent in DeLucca v. Fairview, supra.

The action of respondent is, therefore, reversed. Respondent is directed to issue a license to appellant forthwith as applied for.

Commissioner.

Dated: November 9, 1938.