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

BULLETIN 232 MARCH 2, 1938.

1. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of Chapter 76, P. L. 1937 --Case No. 17. Popek

CONCLUSIONS AND ORDER

Frederic M. P. Pearse, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

At a hearing held on application filed herein, it appeared that petitioner, then nineteen years old, was convicted in 1914 on an indictment for larceny and receiving stolen goods and sentenced to a reformatory where he remained for about one year. Said crime clearly involves moral turpitude.

Following his release from the reformatory, petitioner engaged in the plumbing business for a few years. During the World War, he spent a year in the army, part of the time in France. After the war he worked for his father in the trucking business until his father's death in 1921, when the trucking business was taken over by petitioner and his brothers and conducted by them until 1933.

Records of previous investigations made by this Department show that in May 1933 petitioner's brothers organized a corporation and that, in December 1933, a share of stock in said corporation was transferred to petitioner. In February 1934 said corporation made application to this Department for a limited wholesale license, which was denied because petitioner was ineligible to be a shareholder in said corporation because of the conviction mentioned above. In April 1934 petitioner transferred his share of stock and, in June 1934, a limited wholesale license was granted to the corporation. In each subsequent year said corporation obtained a state beverage distributor's license.

The purpose of outlining the result of departmental investigation concerns petitioner's activities since 1933. He testified that, in 1933, he transferred his interest in the trucking equipment to the corporation or to one of his brothers. Since that time he has been doing odd jobs of plumbing but has received his support mainly from this brother who is a stockholder in the licensed corporation. Petitioner testified that he has been receiving $25. to $40. weekly from his brother, but denies that he himself has any interest in the licensed business. In the course of the investigation referred to above, the brother made an affidavit, in June, 1934, wherein he alleged that petitioner had no interest, directly or indirectly, in the business, was not an officer or stockholder or employee and stood only in the position of a creditor of the company because of a loan of $3,712. made to the company in June 1933 and which

was being repaid in small sums from time to time. In his testimony given at the present hearing, petitioner made no reference to the fact that he was a creditor of the company. In addition thereto, petitioner testified that, for a period of approximately three weeks before the hearing, he had been employed as a truck driver by the licensed corporation, although his ineligibility had not been removed.

Petitioner has conducted himself in a law abiding manner since his release from the reformatory. This is corroborated by the testimony of two of his neighbors who have known him respectively for eleven and sixteen years, and by his fingerprint records which show that he has not been convicted of a crime since 1914.

Chapter 76, P. L. 1937, however, provides that the Commissioner must be satisifed that petitioner's "association with the alcoholic beverage industry will not be contrary to the public interest." That point remains to be considered. There is some evidence which might lead to the conclusion that petitioner has and has had an indirect interest in a licensed business despite his disqualification. If so, I could not reach the conclusion that petitioner's association with the alcoholic beverage industry would not be contrary to public interest. On the other hand, there is nothing in the departmental investigation which would show that the transfer of the trucking equipment in 1936 was not a bona fide transaction, and, if this be so, the voluntary contributions to petitioner's support made by his brother, who is interested in the licensed corporation, while a suspicious circumstance, would not show that petitioner was interested indirectly in the licensed corporation. Aside from this, there is nothing in the case to show that petitioner's associationwith the alcoholic beverage industry would be contrary to the public interest.

The fact that petitioner went to work for the licensed corporation three weeks before the hearing, and approximately two weeks before the filing of the petition herein, cannot go unnoticed. I shall remove the disqualification but make the order effective April 1, 1938.

It is, therefore, on this 22nd day of February, 1938, ORDERED that petitioner's disqualification from obtaining or holding a license or permit, or being employed by a licensee because of the conviction of the crime of larceny and receiving stolen goods, be and the same is hereby removed in accordance with the provisions of Chapter 76, P.L.1937, but this order shall not be effective until April 1, 1938. In the meantime, petitioner may not be employed in any business capacity by any licensee.

D. FREDERICK BURNETT,
Commissioner.

2. FOOD PRODUCTS - SPECIAL PERMIT AUTHORIZING THE PURCHASE OF ALCOHOLIC BEVERAGES FOR USE IN THE MANUFACTURE OF FOOD PRODUCTS APPLIES TO ALL FOOD PRODUCTS UNFIT IN FACT FOR BEVERAGE PURPOSES - WHETHER UNFIT IN FACT FOR BEVERAGE PURPOSES WILL BE DETERMINED UPON SUBMISSION OF SAMPLES FOR ANALYSIS.

February 25, 1938

Mrs. Ruth Mouquin,
Convent, New Jersey.

My dear Mrs. Mouquin:

I have before me your letter of the 14th re Special Permit No. 15539.

The permit authorizes the purchase of alcoholic beverages by you in the quantities specified therein, for use in the manufacture of food products unfit in fact for beverage purposes.

You may, therefore, make Newburg, Bercy and Bordelaise Sauces under the permit provided they are not suitable for beverage use. I should hardly think so, but just to make sure, deem it best that you submit samples for analysis. The very mention of these appetizing relishes makes one think more of dinner than drink.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. PRACTICES DESIGNED UNDULY TO INCREASE CONSUMPTION - PROMOTIONAL OFFERS OF UNLIMITED QUANTITIES OF LIQUOR FOR A FIXED PRICE WHETHER COUPLED WITH FOOD OR NOT ARE PROHIBITED - HEREIN OF SANDWICHES ON THE BOUNCE.

February 26, 1938

Joseph B. Sugrue,
Assistant Corporation Counsel,
City Hall,
Newark, N. J.

My dear Mr. Sugrue:

Thanks very much for calling to my attention the advertisement:

"All the beer or rickeys you can drink for $1. (including a Roast Beef Sandwich)".

I have permitted licensees to give free lunch (Re Norton, Bulletin 126, Item 7). But in giving this permission, I said:

> "Please, however, caution your client not to let his 'generosity' run away with him. Up to a certain point what he gives away free is his own affair and I have no inclination to interfere with his doing so. Time honored customs like free lunch won't prejudice control if kept within reasonable bounds.
>
> "The statute confers upon me the power and responsibility to make rules and regulations against practices designed unduly to increase the consumption of alcoholic beverages and concerning gifts of * * * things of value. If it becomes necessary for me to exercise that power in the public interest, I shall not hesitate to do so. I suggest you advise your client to do nothing in his desire to attract customers which would overplay the hand."

On the other hand, I have forbidden beer drinking contests of all kinds. Re Play Boy, Bulletin 201, Item 6.

There is a vast difference between the excessive consumption of food on the one hand and of alcohol on the other. One may produce personal discomfort - the other usually creates a social disturbance.

The offer of all the beer or highballs one can drink for a dollar is a promotional scheme designed unduly to increase consumption. The sandwich, I suppose, is thrown in for a bounce like

its patronymic under the Raines Law. Presumably, everyone who planks down a dollar is going to make sure of getting his share and more of the liquor. The tendency is excessive drinking. This is the stuff whence comes drunken driving.

Pursuant to the power conferred to make such special rulings and findings as may be necessary to prevent practices designed unduly to increase the consumption of alcoholic beverages, all promotional schemes of this nature are hereby prohibited. This ruling includes all offers of unlimited quantities of alcoholic beverages for a fixed price, whether coupled with food or not. Violation of this rule is cause for revocation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. RETAIL LICENSES - WHEN ISSUED TO CORPORATIONS - REQUIREMENTS.

February 25, 1938

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

Dear Mr. Epstein:

New Jersey law prohibits the issuance of any retail license to a natural person who has not been a resident of this State for at least five years continuously immediately prior to the submission of the application for license. Hence, your clients, either in their individual capacity or under a partnership arrangement, cannot obtain a retail license in this State.

In respect to corporations, R. S. Sec. 33:1-~~22~~ 12.1 (Control Act, Sec. *22A) provides:

> "No class C license shall be issued to any corporation, except for premises operated as a bona fide hotel, unless each owner, directly or indirectly, of more than ten per cent of its stock qualifies in all respects as an individual applicant, anything to the contrary contained in this chapter notwithstanding. This section shall not apply to the renewal of any license."

The licensed premises in the instant case, you say, would be a roadhouse, operated primarily as an eating place with the service of alcoholic beverages as secondary. Hence, the exception in the above Section in respect to hotels would not apply.

In view of the above, no corporation can obtain a retail license in this State if any holder of 10% or more of the stock thereof has not been a resident of the State of New Jersey for five years continuously immediately prior to the application for license. It follows that, if any one of your clients is to hold, directly or indirectly, 10% or more of the stock of the corporation referred to in your letter, such corporation cannot obtain a retail license in New Jersey.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - UNIFORMLY INADEQUATE PENALTIES RAISE QUESTION.

February 28, 1938

Charles Swenson, Township Clerk,
Municipal Building,
West New York, N. J.

Dear Mr. Swenson:

I have staff report and your certification of the proceedings before the Board of Commissioners of West New York against

1. Siegfried & Herman Mansfield, charged with having possessed slot machines on the licensed premises. The report states that notwithstanding definite instructions from this Department to remove this violation, the licensee continued to permit the operation of such machines. I note a plea of guilty was entered to the charge and that the license was suspended for one day.

2. Bernard Fassler, charged with (a) having permitted a lottery to be conducted on the licensed premises - the operation of punchboards to raffle off prizes - and (b) having sold beer in quantity less than 72 fluid ounces in violation of a limited retail distribution license. The report sets forth that this licensee had been warned to discontinue the practice of running the lottery on the licensed premises but saw fit to disregard the warning and to persist in the violation. I note the licensee pleaded guilty to the charges and that your Board imposed a one-day penalty.

3. The Blue Flame, Inc., charged with (a) having sold alcoholic beverages during prohibited hours - after 3:00 A. M. - in flagrant violation of your local regulation, and (b) having permitted loud and unnecessary noises on the licensed premises in violation of State Rule. I note that this licensee also pleaded guilty to the charges and that again a one-day suspension of the license was imposed as a penalty.

Frankly, the one-day suspensions handed out appear to be woefully inadequate. Shall I take it that hereafter your Board prefers that I handle these matters direct?

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

February 15, 1938

In Re Case #213.

This is to determine whether applicant is disqualified under R. S., Sec. 33:1-25 (Control Act, Sec. 22) from being employed by a licensee in this State by reason of conviction of a crime involving moral turpitude.

Applicant has been convicted of three criminal offenses.

In October 1931, he was convicted before a Police Recorder in this State for the crime of assault and battery, and

fined $15.00. He testifies that at the time of the assault and battery he was employed in a cafe-and-restaurant; that a patron entered the premises, loudly swearing; that applicant asked him to cease his misconduct or leave; that this resulted in an altercation and fight between them; that applicant succeeded in forcibly ejecting this patron, who then filed a complaint of assault and battery against him; that the only physical damage suffered by the ejected patron was a "black-eye"; that the Recorder who heard the matter declared that applicant had used excessive force and was therefore guilty as charged.

Simple assault and battery is not a crime which per se involves moral turpitude. Re Hearing No. 166, Bulletin 180, Item 7; Zicherman v. Newark, Bulletin 227, Item 7. When, as here, it is the result of unpremeditated excessive force in ejecting an objectionable patron, the element of moral turpitude is not present. Federko v. Piscataway, Bulletin 85, Item 4; Gale v. Newark, Bulletin 95, Item 6.

In September 1932, applicant was convicted in this State for violation of a city gaming ordinance because of possession of a slot machine, and was fined $105.00. Violation of a municipal ordinance is, however, not a crime within the meaning of R. S., Sec. 33:1-25 (Control Act, Sec. 22). Re Hearing No. 173, Bulletin 193, Item 10; Zicherman v. Newark, supra.

In November 1932, applicant and a co-defendant were convicted in a Criminal Judicial District Court of this State on a charge of larceny of four bags of coal, valued at $2.00, and were each given a ten-day suspended sentence. Applicant testifies that the co-defendant was an old and impoverished man; that he asked applicant to transport some coal he had gathered from the loose coal lying about the local railroad tracks; that applicant acceded to this request, and during the morning drove his automobile to the tracks where the old man had gathered four bags of coal; that while they were putting these bags into applicant's automobile, a railroad detective came up and arrested them; that applicant did not know whether the old man had permission to gather the coal but knew that the coal-gathering at the tracks was a practice engaged in by many persons; that he was unaware that the old man was legally committing larceny in picking up the loose coal, and that he himself was aiding in the larceny by helping him to transport it; that the coal was not to be used for applicant's benefit but for the benefit of the old man.

R. S., Sec. 2:145-2 (originally Sec. 158 of the Crimes Act of 1898; 2 C. S. 1792), in interdicting theft as criminal, preserves the fundamental distinction existent at the common law between petty and grand larceny. It provides that the theft of goods worth less than $20.00 shall constitute a misdemeanor whereas the theft of goods worth $20.00 or more shall constitute a high misdemeanor. Since the coal which applicant was convicted of having unlawfully taken was worth but $2.00, his crime corresponds to petty larceny at the common law.

Petty larceny is not a crime which per se involves moral turpitude. Whether it involves that element in an individual case depends upon the particular facts. Re Hearing No. 107, Bulletin 147, Item 13; Re Case No. 205, Bulletin 226, Item 8. In light of applicant's testimony, which is substantiated by the lenient penalty imposed upon him, it does not appear that moral turpitude was here present.

Since applicant has not been convicted of a crime involving moral turpitude within the meaning of R. S., Sec.33:1-25 (Control Act, Sec. 22), it is recommended that he be declared qualified for employment by a licensee in this State.

Approved:
D. FREDERICK BURNETT,
Commissioner.

NATHAN DAVIS,
Attorney.

7. LICENSES - PARTNERSHIP - PROCEDURE IN EVENT OF DEATH OF PARTNER.

Dear Sir:

I wish to hereby report the death of my father. He and I are the holders of a Plenary Retail Liquor Consumption License issued to us by the City of Clifton.

Will you kindly advise me as to what is the necessary procedure for me to follow in order to have the license in my name only.

Very truly yours,
Louis Turi, Jr.

February 25, 1938

Mr. Louis Turi, Jr.,
Clifton, N. J.

Dear Sir:

I have your letter of February 19th and desire to extend to you my sincere sympathy upon the death of your father.

I take it that you and your father operated the business conducted under the license as partners. If that is correct, all you have to do is to notify the Clifton Municipal Clerk and have the fact of your father's death noted upon his records.

As the surviving partner, you have a right to continue operating under the license granted in both names since your qualifications were duly passed upon when the license was issued.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. PLENARY RETAIL CONSUMPTION LICENSEES - MAY SELL FOR ON-PREMISES CONSUMPTION, OFF-PREMISES CONSUMPTION, EITHER OR BOTH.

MUNICIPAL ORDINANCES - REGULATION PROHIBITING CONSUMPTION LICENSEES FROM CONDUCTING PACKAGE GOODS BUSINESS EXCLUSIVELY AND REQUIRING BAR OR OTHER FACILITIES FOR ON-PREMISES CONSUMPTION, DISAPPROVED.

MUNICIPAL ORDINANCES - PLENARY RETAIL DISTRIBUTION LICENSES - REQUIREMENT THAT LICENSED PREMISES BE 250 FEET APART, TENTATIVELY APPROVED.

February 28, 1938

John F. Lee,
City Clerk,
Bayonne, N. J.

My dear Mr. Lee:

I have before me two proposed ordinances, one to supplement the alcoholic beverage ordinance of June 2, 1936 with a section to be known as Section 21, and the other to amend Section 6 thereof.

The proposed Section 21 provides:

"No premises for which a plenary retail consumption license shall be issued and outstanding shall be exclusively devoted to or used for the sale of alcoholic beverages in packages for consumption off the premises; and no such premises shall, by partition, doorway, separate entrance or other method, be divided so that a part thereof may be exclusively used for or devoted to the sale of alcoholic beverages in packages for consumption off the licensed premises. In all such premises there shall be a suitable bar equipped with paraphernalia necessary for the service of vinous, spirituous or malt alcoholic beverages by the glass or otherwise for consumption on the licensed premises, or in lieu of such bar, or in addition thereto there shall be provided tables and chairs for such service.

"This section shall apply only to premises not operating under a plenary retail consumption license on the 1st day of March, 1938."

A consumption licensee may confine his business to either on-premises sales, or off-premises sales, or he may do both. That is his privilege under the statute (R. S. 33:1-12; Control Act, Sec. 13-1, 2). These privileges are permissive, not mandatory. Re Solomon, Bulletin 159, Item 6. There is nothing in the law which requires that he maintain a bar. Many restaurants conduct their liquor business without a bar. Re Boyce, Bulletin 183, Item 5. He may arrange his premises in such manner that part is operated as a bar, and part as a package goods store (Re Koehler, Bulletin 59, Item 13), so long as the premises, as so arranged, are operated, managed, and constitute a single business enterprise. Re Beisch, Bulletin 81, Item 10.

The rulings made in Re Schlenger, Bulletin 165, Item 11, and Blum v. Pompton Lakes, Bulletin 177, Item 3, illustrate the converse principle. The tavern and package store there concerned were separated from each other by a living room and a hallway and were conducted as separate establishments. They therefore required separate licenses.

Privileges conferred by statute may not be diminished by municipal action. See Bulletin 4, Item 3; Re Mead, Bulletin 38, Item 10; Re Birch, Bulletin 57, Item 2; Re Kessel, Bulletin 160, Item 5. An express right created by statute cannot be nullified, postponed or otherwise restricted by municipal ordinance.

Accordingly, the proposed supplement is disapproved.

The proposed amendment to Section 6 reads:

"Neither a Plenary Retail Consumption License nor a Plenary Retail Distribution License shall be issued for, or transferred to any premises located within 250 feet of any other premises for which a Plenary Retail Consumption License or a Plenary Retail Distribution License shall then be issued and outstanding, provided, however, where licensed premises are now located within 250 feet of any other licensed premises, the license for the same may be transferred to any other location within the said 250 feet of the said other licensed premises."

I have heretofore approved such regulations so far as they applied to consumption licenses. See Montgomery v. Teaneck, Bulletin 58, Item 9; Re Christiansen, Bulletin 79, Item 3; Re Sakin, Bulletin 96, Item 14. Cf. Gural and Toplovich v. Elizabeth, Bulletin 153, Item 7; Re Guenther, Bulletin 206, Item 15; New Jersey Licensed Beverage Association v. Camden, Bulletin 215, Item 5. Much can be said in justification of a policy designed to avoid congestion of taverns. Whether those considerations apply with equal or sufficient force to distribution licenses, is a question reserved

for decision upon subsequent appeal when both sides may be heard. In the meantime, the amendment will be approved when enacted.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. SALES - MINORS - PROTEST FROM ONE MISTAKEN TO BE A MINOR - HEREIN OF THE DISCONTENT OF YOUTH.

Gentlemen:

I would appreciate your reply to the following question. Recently I went to a dance and my age was questioned by the bartender when I asked for a glass of beer. He stated that he didn't think I was of age. I then took out my driver's license and showed him that I am 24 years of age. He claimed that the driver's license didn't mean anything and refused to give me a drink of beer. I was very embarrassed as this happened before a few of my friends, both male and female.

I would appreciate your telling me what evidence I have to carry around to prove my age. I can't help it if I look younger than I am. I should think a driver's license would be evidence enough. I will look to some information from you, for which I thank you in advance.

Yours very truly,
Wm. A. Houlik.

March 1, 1938

Mr. William A. Houlik,
Little Ferry, N. J.

My dear Mr. Houlik:

I appreciate your embarrassment when the bartender refused to serve you because of your youthful appearance. But think of the bartender! Imagine his embarrassment if he had served you and then it turned out that you were a minor. When you get hot with indignation, think of him in the cooler, doing penance. Some day you'll be treating those who tell you that you do not look your age!

The law is very strict on sales to minors and rightfully so. It is one of our most serious problems. The only safe course when there is any doubt of a customer's age is to refuse to sell him. The bartender was therefore wholly within his rights.

A driver's license is not positive proof of age. Unscrupulous people have been known to present licenses of others. If your trouble continues, you'll have to carry a birth certificate around with you - or else grow a beard.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. MUNICIPAL ORDINANCES - HOURS - REGULATIONS PURPORTING TO LIMIT HOURS OF SALE MUST BE MANDATORY - REGULATIONS WHICH ARE MERELY PERMISSIVE HAVE NO LIMITING EFFECT.

February 28, 1938

Mrs. Beatrice C. Ennis,
Borough Clerk,
Monmouth Beach, N. J.

My dear Mrs. Ennis:

I have before me ordinance adopted by the Board of Commissioners on June 29, 1937, amending Section 5 of ordinance concerning alcoholic beverages adopted June 9, 1936.

Section 5, as amended, now provides:

> "The hours between which sales of alcoholic beverages at retail may be made.....shall be as follows:
>
> "On week days between the hours of 8:00 a. m. and 4:00 a. m. of the morning following and on Sundays between the hours of 1:00 p. m. and 4:00 a. m. of the morning following."

As presently worded, Section 5 merely gives licensees permission to sell during the specified hours. It does not prohibit sales during other hours. It does not follow, from permitting licensees to sell during certain hours, that during the other hours they are prohibited from doing so, because regulations for violations of which penalties may be imposed are strictly construed. It follows that there are no regulations restricting hours of sale presently in effect in your Borough. See Re Franco, Bulletin 231, Item 5.

I therefore suggest that at earliest moment you again amend Section 5 to reinstate the two concluding paragraphs which appeared in the section as originally enacted but were struck out by the amendment, viz.:

> "Alcoholic beverages as defined in said Act shall not be sold at any other time at retail in the Borough of Monmouth Beach.
>
> "Nothing herein contained shall be construed to permit the sale of alcoholic beverages on any days when otherwise prohibited by law."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. MILITARY EXCHANGES - NO LICENSE OR PERMIT REQUIRED FOR THE SALE OF ALCOHOLIC BEVERAGES AT DULY ORGANIZED MILITARY EXCHANGES.

STATE LICENSEES - MAY NOT SELL ALCOHOLIC BEVERAGES FOR RESALE OUTSIDE OF TERRITORIAL JURISDICTION OF THE STATE BY OTHERS THAN DULY ORGANIZED MILITARY EXCHANGES, UNLESS A SPECIAL PERMIT IS FIRST OBTAINED.

Dear Commissioner:

We had one of the officers of the Machine Gun Squad, 7th Batt. United States Naval Reserve, visit us at our office in an

attempt to purchase some beer for their affair that will be held on Saturday, March 12th aboard the U. S. S. Newton, Foot of Washington Street, Jersey City, N. J.

We informed the officer that we would first have to get a ruling from your office, as to whether or not they would need a special permit, which is usually the case, before we could give them an answer. We are holding our reply subject to your decision.

These people claim exemption from any State and Federal tax, and since it is the initial request of its kind from us, we would kindly ask you to give us a ruling as to whether or not we shall be permitted to sell to them and whether or not they will have to have a special permit for the affair.

Incidentally, the affair has an admission charge of 50¢ for gentlemen and 35¢ for ladies.

Yours very truly,
Schultz Brewing Co., Inc.
By - A. B. Johns, Sales Manager.

February 28, 1938

Schultz Brewing Co., Inc.,
Union City, N. J.

Att: Mr. A. B. Johns, Sales Manager.

Gentlemen:

I understand that the Machine Gun Squad of the 7th Battalion, United States Naval Reserve, desires to buy from you the beer to be served at the dance to be held aboard the U.S.S. Newton on March 12th.

As the holder of a limited brewery license, you may sell the beer without special permit only if it is to be resold through the ship's store, or some other equivalent of the camp, post or regimental exchange duly organized under the regulations of the United States Navy, referred to in R. S. 33:1-27 (Control Act, Section 24).

If, on the other hand, the beer will be resold by the Machine Gun Squad instead of by the duly organized ship's exchange, then before you may sell the beer to the Machine Gun Squad, either the brewery must take out a permit in accordance with Re Ballantine, Bulletin 99, Item 9 (copy enclosed), or the Machine Gun Squad must take out the regular social affair permit, an application for which is also enclosed.

In either case, application for the permit is made to this office. The permit fee is $10.00 and must accompany the application.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. APPELLATE DECISIONS - KAPLAN v. NEWARK.

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

George R. Sommer, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the action of respondent taken on December 13, 1937 in suspending his plenary retail consumption license, for premises 115 Broome Street, Newark, for a period of two weeks.

The license was suspended for violation of Rule 1 of Rules Concerning Conduct of Licensees and Use of Licensed Premises, which rule provides as follows:

> "No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

The alleged violation occurred on the opening night of appellant's premises, known as "Cuban Club." On that night a young white girl, slightly more than seventeen years of age, who had run away from home, picked up a colored man and entered appellant's premises with him. This man was not produced at the hearing. The girl testified that they entered the premises about 10:45 P.M., sat at the bar a couple of hours, during which time she was served with three glasses of beer and then entered the back room; that, while in the back room, she was served with two glasses of beer before she left the premises at about 2:45 the following morning. Later that morning the girl was arrested and was being confined in a house of detention at the time of the hearing.

Appellant and his witnesses testified that the girl and the colored man entered the premises about 2:30 A. M., went directly to the rear room and were served nothing at the bar. Appellant testified that he caters principally to colored trade and that he had issued instructions to his employees not to serve minors or mixed couples. A waiter, who was working in the rear room, said that he served two glasses of beer at a table at which a girl and two colored men were seated; that he had served nothing directly to the girl.

Even if the evidence as to the sale at the bar be disregarded, I am satisfied that the finding of guilt was proper under the evidence as to what occurred in the rear room. While the colored man who bought the drinks was not produced, another colored man, who was seated at the table when the beer was served, testified as follows:

"Q What drinks were served at your table? A When I first went in I bought one bottle of wine and drank it, and continued to sit there and looked at the dances, and when she came over this boy ordered two glasses of beer.

Q And what happened to the beer? A The waiter came in and the boy said he wants the beer and the fellow who ordered it paid him for it.

Q The boy gave her a glass of beer? A Yes.
Q And she drank it? A Yes.
Q Was that the only beer served to her? A That is the only one I seen."

This evidence sufficiently corroborates the girl's story that she was served or permitted to consume alcoholic beverages in the rear room. It is not contended that appellant or his employees made any inquiry as to the girl's age. She appeared to be very young. The evidence clearly shows appellant's guilt.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 1, 1938.

13. APPELLATE DECISIONS - LEWIS v. PHILLIPSBURG.

GABRIEL LEWIS, Jr. and GABRIEL LEWIS, (Owner of premises),

Appellants,

-vs-

BOARD OF COMMISSIONERS OF THE TOWN OF PHILLIPSBURG,

Respondent.

ON APPEAL
CONCLUSIONS

- - - - - - - - - - - - - - - - - - - -

Lewis S. Beers, Esq. and George R. Bock, Esq., Attorneys for Appellants.
Sylvester C. Smith, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located at 502-4 South Main Street, Town of Phillipsburg.

On May 22, 1935, the Board of Commissioners of Phillipsburg adopted a resolution, providing in part:

"Resolved, that any of the present licenses heretofore issued and granted and not suspended or revoked may be renewed for the premises now licensed but no new license....shall be hereafter issued for any new premises until the number of plenary retail consumption licenses issued and outstanding shall be reduced by revocation or surrender to twenty.....; provided further that any premises now licensed may be licensed, upon surrender of license if such premises shall not have been without a license for more than sixty days."

When this resolution was adopted, a considerable number of consumption licenses were outstanding in the Town, of which 38 are still in existence as renewals.

Subsequent to the adoption of the above resolution, respondent revoked the 1935-6 consumption license of one Anthony Celia, covering the premises now in question, and also declared the premises ineligible to become the subject of any further liquor license of any other kind or class for a period of two years to and including September 30, 1937. The following proviso (apparently with the limiting resolution in mind) was made part of the disqualification:

> "....provided however at the expiration of said ineligible period the owner of said property or any qualified person may make application to conduct a business under the Control Act provided however that said application is made within the period of sixty days."

Within 60 days after expiration of the two-year period of disqualification, to wit, October 22, 1937, appellant Gabriel Lewis, Jr., applied for a consumption license for the premises in question and was denied on the ground that there are a sufficient number of liquor establishments in the Town. Hence, this appeal by him and by appellant Gabriel Lewis, his father and owner of the premises.

Appellants contend that under the proviso, last above quoted, respondent committed itself to approve the present application, at least on the issue of sufficiency of licenses in the Town; that in this respect the proviso "was the judgment of a quasi-judicial body and they are in honor bound to live up to it."

Such a conclusion does not follow, from the language of the proviso. All it purports to do is to reserve permission to the owner or any qualified person, to make application within a certain time. Nothing is promised whether the application so made will be granted or not. There is not a word in the proviso of any obligation upon the Board of Commissioners.

Even if there were, such a commitment would have been void both because unauthorized and also as against public policy. It would have been unauthorized because no Board has the right to tie the hands of its successors or to handcuff itself concerning any matter which involves, in its final analysis, an exercise of Police Power. It would have been against public policy because no Board may jeopardize the public interest by guaranteeing that any particular application for a liquor license will be granted two years later, irrespective of public necessity and convenience at that future time.

The maximum effect which may be imputed to the proviso is that it exempts the premises in question from the limiting effect, if any, of the resolution of May 22, 1935. But this does not bar respondent from denying the present application on the ground that sufficient liquor places exist in the Town. The limiting resolution prohibits the issuance of new consumption licenses until the existing number of such licenses in the municipality has been reduced to 20. Cf. Ignatz v. Phillipsburg, Bulletin 167, Item 16. Since 38 renewal consumption licenses are still outstanding, the present case does not fall within the decisions holding that if a vacancy exists in a quota fixed by a municipality, the local issuing authority, while that quota remains unaltered, cannot deny an application for a license on the mere general ground that sufficient liquor establishments are existent in the municipality. See Sosnow v. Freehold, Bulletin 68, Item 13; Levy v. Mt. Ephraim, Bulletin 189, Item 3;

Re Cliffside Park, Bulletin 224, Item 7, and cases therein cited. Rather, the present case falls within the often repeated rule that a local issuing authority in the exercise of its sound discretion may validly deny a license when a sufficient number of liquor establishments are outstanding in the municipality. Bumball v. Burnett, 115 N. J. L. 254 (Sup. Ct. 1935); Haycock v. Roxbury, Bulletin 101, Item 3; Lysaght v. Denville, Bulletin 163, Item 13; Levitt v. Liberty, Bulletin 169, Item 4; Widlansky v. Highland Park, Bulletin 209, Item 7.

Nothing appears in the evidence to indicate that respondent's judgment in this respect was unreasonably exercised. Although the premises in question are located in the main business section, nevertheless within 1½ blocks (800 feet) thereof, there are six consumption places, two being within 200-300 feet. The place sought to be licensed is apparently a combined rooming house and restaurant. There is a licensed restaurant within 300 feet and another within 800 feet. It is not shown that public necessity or convenience require that the restaurant at the premises in question also be licensed.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 1, 1938.

14. APPELLATE DECISIONS - LAND v. WAY.

NORMAN L. LAND, trading as LAND'S CAFE,
Appellant,
-vs-
HONORABLE PALMER M. WAY, JUDGE OF THE COURT OF COMMON PLEAS OF CAPE MAY COUNTY AND ISSUING AUTHORITY,
Respondent.

ON APPEAL
CONCLUSIONS

Irving Shenberg, Esq., Attorney for Appellant.
No Appearance on behalf of Respondent.
Samuel Eldredge, Esq., Attorney for Joseph Bradway, an Objector.

BY THE COMMISSIONER:

Appellant appeals from the denial of a transfer of his consumption license from 127 East Oak Avenue to 217-219 East Oak Avenue, Wildwood.

At No. 127 appellant formerly conducted a rooming house. His wife died last summer and he found it inconvenient thereafter to conduct that type of business. He has rented the three-story building at No. 217-219 and intends to conduct a bar room on the first floor (which will constitute the licensed premises), using the second floor as his living quarters and renting the apartment on the third floor.

Both the old and new premises are located on a section of East Oak Avenue between the railroad station and the beach. That section of East Oak Avenue is of a mixed business and residential character with business slightly predominating. Many of the residences on this street are used as rooming houses during the summer season.

The transfer, if effected, will permit appellant to locate his business on the same side of the street, a distance of five hundred sixty feet from his old location. There is a great deal of

testimony as to the number of licensed places already existing in this section of Wildwood, but the evidence shows that, whereas appellant's old location was situated within one hundred sixty feet of the nearest licensed place, his new location would be approximately two hundred seventy feet away from the nearest licensed place.

The objectors reside on East Wildwood Avenue. Two objectors who appeared at the hearing on appeal testified that the rear of their home is within 68.8 feet of the rear of the premises to which appellant seeks to transfer his license. They fear depreciation of the value of their property. They also base their objection upon the possibility of the recurrence of unsatisfactory conditions which obtained in 1933 when appellant's new premises were licensed to another person for the sale of beer.

While the transfer of a liquor license is not an inherent privilege, nevertheless, if no question is made of the personal character of the applicant or the suitability of the premises to which he desires transfer, the refusal to transfer may not be arbitrary. VanSchoick v. Howell, Bulletin 120, Item 6.

From the evidence, it cannot be said that the neighborhood to which appellant seeks to transfer his license is of such a residential character as to be unfavorably affected by the license transfer. Conn v. Kearny, Bulletin 173, Item 1, and cases therein cited.

I find from the evidence that the section to which appellant seeks to transfer his license is predominantly of a business character and, hence, mere general objections filed by those living on residential streets in the vicinity do not justify an issuing authority in refusing to grant the transfer. Guenther v. Parsippany, Bulletin 121, Item 8; DeChristie v. Gloucester, Bulletin 121, Item 10.

The objection based upon improper conduct in 1933 by a person who held a beer license and apparently conducted a gambling establishment at 217-219 East Oak Avenue is not a sufficient reason for denying the transfer. There is no evidence that appellant has improperly conducted his place of business at 127 East Oak Avenue and no reason to believe that he will violate the law in his new premises. The sins of four years ago of some one else ought not to be visited upon one who is innocent. The objectors have an adequate remedy if appellant's place of business is not properly conducted hereafter. Conn v. Kearny, supra.

The attorney for the objector finally contends that the granting of the transfer sought would constitute a violation of rules and regulations promulgated by respondent on April 5, 1937. It is not contended that the transfer would violate the wording of said rules and regulations but, rather, that it would be contrary to the spirit of Section 6 thereof concerning limitation of licenses. Said Section, in effect, provides that no more consumption or distribution licenses shall be issued in Wildwood until the number of licenses outstanding in each class shall be less than the number in existence on the effective date of the rules and regulations. Admitting that the transfer does not increase the number of licenses, the contention is made that said transfer would upset the desirable plan of properly distributing licensees throughout the municipality. If the transfer were sought to another section of the municipality, the contention might have some weight. In this case, however, I find that the transfer is sought in the same locality and to premises located only a short distance away from the old location. Each case of this nature must depend upon its own facts. I find no merit to this contention under the present circumstances.

The action of respondent in denying the transfer is, therefore, reversed and respondent is directed to transfer the license as applied for.

Dated: March 1, 1938

Commissioner

HENDRICKSON