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

BULLETIN 447 MARCH 4, 1941.

1. DISCIPLINARY PROCEEDINGS - SALE BY CLUB LICENSEE TO NON-MEMBER - SECOND OFFENSE - 10 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

FIFTEENTH WARD POLITICAL CLUB OF ESSEX COUNTY, 6 Newark Street, Newark, N. J.,

Holder of Club License CB-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Fifteenth Ward Political Club of Essex County, by Jerry Curatola, Trustee.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant club licensee has pleaded guilty to a charge of selling alcoholic beverages to a non-member, in violation of Rule 5 of State Regulations No. 7.

The Department file shows that on January 21, 1941, Jerry Curatola, custodian and trustee of the defendant club, sold two glasses of beer to a State investigator who was neither a member nor a guest of a member of the club. Curatola, in his statement which he gave at the time of the violation, stated that he had been employed in the club barroom for only two weeks prior thereto, and that he made the sale through ignorance of the law and regulations governing club licensees.

Ignorance of the law or regulations, of course, affords no excuse. Licensees and their employees must know the rules and scrupulously adhere to them. Re Clover Inn, Inc., Bulletin 327, Item 2; Re Ryan and Nunnink, Bulletin 323, Item 4.

The minimum penalty for sale, by a club licensee, to a non-member is five days. Re East End Republican League, Bulletin 441, Item 9; Re Scully-Bozarth, Bulletin 407, Item 11. The instant offense, however, is not the defendant club's first violation of record. In 1940, the defendant club was found guilty on a similar charge of sale to non-members and its license was suspended for five days. Re Fifteenth Ward Political Club, Bulletin 399, Item 6. Since the instant offense involves a second similar violation, the ordinary penalty of five days will be doubled. Cf. Re Weiner, Bulletin 441, Item 13.

By entry of the plea the Department has been saved the time and expense of proving its case. Two days of the doubled penalty will, therefore, be remitted.

Accordingly, it is, on this 21st day of February, 1941,

ORDERED, that Club License CB-49, heretofore issued to Fifteenth Ward Political Club of Essex County by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of eight (8) days, effective February 24, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - THE TRUE OWNER DISQUALIFIED BY LACK OF RESIDENCE IN MUNICIPALITY - FULL AND FRANK DISCLOSURE - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER TEN DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against CARL KASHEAD, T/a THE WINDMILL, State Highway 34, at Collingwood Circle, Howell Township, P.O. Farmingdale, N. J., Holder of Plenary Retail Consumption License C-13, issued by the Township Committee of Howell Township.	CONCLUSIONS AND ORDER

Carl Kashead, Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges (1) making false statement in application for license, in that he failed to disclose the interest of Walter Udeatzky, in violation of R.S.33:1-25, and (2) knowingly aiding and abetting the said Walter Udeatzky, a non-licensee, to exercise the rights and privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

It appears that Walter Udeatzky is the owner of the property which houses the licensed premises; that he also owns considerable property and resides in Wall Township directly opposite the Collingwood Circle where Routes 33 and 34 intersect; that because of an ordinance adopted by the Township Committee of Howell Township on August 1, 1938, which provides, among other things, that "no plenary retail consumption license, plenary retail distribution license, or limited retail distribution license shall be issued or transferred to a natural person unless such person shall have been a bona fide resident of the Township of Howell for at least six calendar months continuously immediately preceding the application for such license or transfer *****", he is disqualified to hold a license in Howell Township.

It appears further that the licensed premises are suited for the type of business licensed; that the former licensee had to be dispossessed for non-payment of rent; and that to save his investment, Udeatzky, through an intermediary, arranged to secure the license, and, because of the ordinance mentioned, had his friend, Carl Kashead, apply for the transfer of the license.

From the inception of the investigation, all parties in interest have fully cooperated and made frank admissions of the true facts, concealing nothing.

The license will be suspended for the balance of the term, with leave to apply to lift said suspension as hereinafter set forth.

Accordingly, it is, on this 24th day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-13, heretofore issued to Carl Kashead by the Township Committee of Howell Township, be and the same is hereby suspended for the balance of its term, effective February 28, 1941, at 2:00 A.M.

It is further ORDERED, that if and when transfer of the license to a duly qualified person is granted by the local issuing authority, application may be made to me to vacate said suspension, provided, however, that in no event will said suspension be vacated prior to the expiration of ten (10) days from the effective date hereof.

E. W. GARRETT,
Acting Commissioner.

3. PENDING LEGISLATION - ASSEMBLY 91 - PROPOSED AMENDMENT TO R. S. 33:1-10 TO ALLOW PLENARY WINERIES TO SELL AT WHOLESALE - DISCRIMINATORY NATURE - THE UNDERLYING PRINCIPLES AND THE RECOMMENDATIONS OF THE COMMISSIONER.

February 24, 1941

Hon. Mario H. Volpe,
Trenton, N. J.

Dear Mr. Volpe:

I am writing further, as promised in mine of January 23rd, regarding the proposed amendment to R. S. 33:1-10, which I understand is Assembly 91.

The license structure framed by our present Alcoholic Beverage Law rests upon the concept that distinct functions are served by the manufacturing, wholesaling and retailing of alcoholic beverages, and that such functions should be separated. The result is a simplification of the license structure and a recognition of the necessity for imposing statutory obstacles to the vertical domination of the industry, or parts thereof, by financially powerful business organizations, thus to insure that the pre-Prohibition abuses arising from the tied house, or the control of wholesale and retail outlets by manufacturers, will not be repeated. Hence, our Class A licenses (R. S. 33:1-10) for the purpose of manufacturing, our Class B licenses (R. S. 33:1-11) for the purpose of wholesaling, and our Class C licenses (R. S. 33:1-12) for the purpose of retailing. Certain exceptions have been made by the Legislature, but only for limited purposes. We have a license to sell malt beverages (state beverage distributor) which, while primarily a wholesale license, has certain limited retail privileges, although such retail privileges are decidedly subordinate to the principal purpose of the license, which is wholesaling. We have a license to manufacture and sell naturally fermented wines and fruit juices (limited winery)

which also, although primarily a manufacturing license, confers limited retail privileges. The purpose of this license was to assist the small New Jersey grape grower and wine producer, who was thought to need the privilege of selling to consumers in order to be able to survive the competition of the large New York State and California producers. When this retailing privilege was conferred without restriction, a number of these licenses was issued; e.g., 51 during the fiscal year ending June 30, 1940, at aggregate fees of $2,675.00. Now that the limited winery must have a producing vineyard actually under cultivation, the grapes from which must be used in the manufacture of wine for the vineyard's retail trade, the subordinate nature of the retailing privilege is demonstrated. This fiscal year only 5 such licenses have been issued at fees aggregating $300.00. Lately, it has been provided by C. 83, P.L. 1940, effective June 10, 1940, that for $100.00 more, plenary wineries may also sell at retail. I hold no brief for these exceptions.

The statutory provision which differentiates manufacturers and wholesalers is the restriction in the manufacturing licenses which confines the manufacturer to the sale of his own products, in other words, to alcoholic beverages manufactured or treated or processed by the manufacturer in some way so as to make them his, as distinguished from someone else's products. This language is to be found, at the present time, in all of the subdivisions of the section dealing with manufacturers' licenses.

It is now proposed to amend subdivision (2)a so that a plenary winery licensee, in addition to selling his products, may also purchase bottled wines of other wineries and sell these products. It is to be noted that it is not necessary that bottled wines be purchased from other wineries. They may be purchased from a winery or from a wholesaler. It gives the plenary winery licensee, in effect, the privilege of unrestricted wine wholesaling, subject only to the further proviso that he maintain a wine manufacturing plant at the same time, which I shall discuss later. Yet no reason appears why he should be given this wholesaling privilege and it should be denied to all other manufacturers; or if he is given it, why it should not also be granted to all other manufacturers. If the latter is the logical result, then what place is there in our license structure for the wholesaler. If he has a proper place, he surely should have an appropriate measure of security.

I submit, therefore, that the proposed change discriminates against our other manufacturers, for it would afford this wholesaling privilege only to the plenary winery licensee and not to any of the other manufacturers, and that it also discriminates against our wholesalers, for it would afford the plenary winery licensee, who would thereby become a wholesaler, the additional privilege of manufacturing, which privilege is not granted any other wholesaler.

We have, among our wholesale licenses, a license for the wholesaling of all types of wines. R. S. 33:1-11-2b. It is called a wine wholesale license. For the fiscal year ending June 30, 1940, 16 such licenses were issued at fees aggregating $15,238.35. So far this year, we have issued 17 such licenses at fees aggregating $16,172.60. It is my understanding that substantially all of these licensees operate wineries in other states. The fee for this license is $1,000.00 per annum. If the proposed bill goes through, the plenary winery license will confer the same wholesaling privilege, plus manufacturing privileges, at a fee of $500.00 per annum. It will confer twice the privileges at half the fee.

I therefore further submit that the proposed change discriminates against the out-of-state winery, for it would allow the in-state winery to do the same wholesale business at half the fee. That, undoubtedly, is in sharp conflict with both the principles and the program of our Commission on Interstate Cooperation, which has worked unceasingly and with so much success to do away with such discriminatory legislation.

It may be suggested that the proviso requiring the plenary winery licensee to maintain and operate a wine manufacturing plant, remedies in some way the otherwise objectionable features. Frankly, I do not see that it does. There is no requirement of the extent of the manufacturing plant which shall be maintained and operated. Thus, maintenance and operation will be present, however small the plant and its production. I further see no practical way that the necessary amount of operation can be specified. Shall there be some minimum established? If so, what is that minimum to be, and what is the logical basis for it? Or shall it be some ratio to the amount of wholesaling business? Or a proportion of the gross? If so, what ratio or proportion, and what is the logical basis for that? It seems to me a wholly artificial and irrelevant requirement.

It is held out that it will allow New Jersey wine manufacturers to compete with out-of-state manufacturers and give their customers a complete line of wines. We already have a license for that, viz., the wine wholesale license. It is also held out that it will give salesmen and other employees full time work and tend to increase employment. It may tend to increase employment in one small group, but I doubt that it will increase employment on the whole. On the contrary, an increase, in one respect, will probably be at the expense of a decrease in another, viz., among the wine wholesale licensees. I venture the opinion that it very possibly may have the practical effect of decreasing State revenues for the reason that it will make available the privilege of wholesaling wine at half of the present fee.

There are certain typographical corrections. In paragraph (2)a, second line, change "regulation" to "regulations", in the sixth line, change "or" to "for", and in the ninth and tenth lines, underline the three commas. In paragraph (2)b, in the nineteenth line, change "state" to "State." In paragraph (3)b, eighth line, take out the comma immediately following "State."

For the reasons aforesaid, I cordially suggest that you do not move the bill.

Yours sincerely,
E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against	)
EDMUND FARYNOWSKI, 38-40 N. Main St., Manville, N. J.,	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-14, issued by the Borough Council of the Borough of Manville.	)

Edmund Farynowski, Pro Se.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The investigation file shows that on January 22 and on January 23, 1941, the defendant-licensee sold a pint bottle of Old Drum Blend Blended Whiskey to an investigator of this Department, charging, on each occasion, the price of $1.00. The minimum consumer price at which pint bottles of this whiskey could have been sold, lawfully, on those dates, was $1.15. Bulletin 416. While the investigators' reports show that the defendant-licensee, upon learning that it was a Department agent to whom he had sold the whiskey; immediately claimed that the full Fair Trade price had been charged and that credit had been extended for the unpaid balance, such contention was abandoned as a defense by entry of the plea.

The minimum penalty for sale below Fair Trade price is ten days. Since the instant offense is the defendant-licensee's first violation of record, the minimum penalty will be imposed.

By the entering of the plea, the Department has been saved the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 26th day of February, 1941,

ORDERED, that Plenary Retail Consumption License No. C-14, heretofore issued to Edmund Farynowski by the Borough Council of the Borough of Manville, be and the same is hereby suspended for a period of five (5) days, effective March 3, 1941, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - GRAND v. EAST ORANGE.

SUFFICIENT LICENSES IN VICINITY - DENIAL AFFIRMED.

WILLIAM GRAND,)

Appellant,)

-vs-) ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF EAST ORANGE,)

Respondent.)

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

Mellinger & Rudenstein, Esqs., by Jacob Mellinger, Esq. and Philip Blank, Esq., Attorneys for Appellant.
Walter C. Ellis, Esq., Attorney for Respondent.
Herman C. Silverstein, Esq., Attorney for Essex and Union County Liquor Stores Association, an objector.

Appellant appeals from denial of transfer of plenary retail distribution license No. D-13 from Whelan Drug Co., Inc. to himself and from 604 Central Avenue to 500 Central Avenue, East Orange.

Respondent alleges in its answer that there is no need for an additional liquor store in the locality to which the transfer is sought and that by reason of the character of the neighborhood and the population residing therein, the community interests would be adversely affected by granting the transfer.

There is no question as to the qualifications or character of appellant who has not previously been engaged in the liquor business; in fact, it is clear that if the business were to be continued at 604 Central Avenue, the person to person transfer would have been granted. Two members of the local board have testified that there would be no objection to appellant's transfer, even to other premises although on Central Avenue, if to a proper place. The sole question, therefore, is whether respondent exercised a reasonable discretion in refusing to transfer the license from place to place.

From the evidence, it appears that 604 Central Avenue is located on the north side of the avenue, between Harrison Street and Evergreen Place; that this block, and the immediate neighborhood, contains large department, chain and other stores and has been developed into a concentrated business center of very high type; that there is a store with a distribution license almost directly opposite 604 Central Avenue.

The store known as 500 Central Avenue is located at the corner of Central Avenue and Amherst Street, three blocks east of Harrison Street and about 1319 feet from the Whelan Drug Co. premises. While the trend of business seems to be toward the east, the evidence indicates that, despite the comparatively short distance, the neighborhoods have not yet merged and that the vicinity of 500 Central Avenue, to which the transfer is sought, is in no manner comparable to the vicinity of 604 Central Avenue, at which location the license is now held. One section is essentially small business; the other proportionately, if not preponderantly, large. In the former the buildings are largely obsolete; in the latter, generally new. That they are substantially different in type,

class and volume of trade is illustrated by undisputed testimony that the liquor store location in one place is now worth $75.00 per month as against $325.00 to $350.00 for similar frontage in the other. The neighborhoods, of course, may merge later, and at that time it may well be demonstrated that there is need for another package store in the vicinity of No. 500, but the neighborhoods are now decidedly different and no such need is presently demonstrated.

Appellant argues that this case is similar to Dame v. Fort Lee, Bulletin 428, Item 5. However, in that case, both premises were in the same type of district, in fact, in the very same neighborhood, separated by a distance of only 200 feet. If the present case had involved a transfer to premises on the block between Harrison Street and Evergreen Place, the situation might have been similar to that considered in the Dame case, but here the transfer is sought to a business district of a different type some distance away and the case cited is not controlling.

On behalf of respondent, Edward J. Hazen and Harry T. Nolan, members of respondent board, testified that the license was denied because the area to the north and south of Central Avenue, along Amherst Street and other side streets, is populated, generally, by poor, colored families, many of whom are on relief and the majority of whom are employed on W.P.A. projects. They testified, further, that they believed there was no need for a license at 500 Central Avenue because a distribution license now outstanding at 457 Central Avenue is sufficient to take care of the needs of this section of the city.

Transfer of a license to other premises is a privilege not inherent in a license. The issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. Van Schoick v. Howell, Bulletin 120, Item 6. The type of neighborhood and the sufficiency of presently existing licensed premises are matters properly to be considered.

I conclude, from the evidence, that appellant has not sustained the burden of proof in showing that respondent abused its discretion.

The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 27th day of February, 1941,

ORDERED, that the appeal be and hereby is dismissed.

E. W. GARRETT,
Acting Commissioner.

6. APPELLATE DECISIONS - ELMER v. EAST ORANGE.

SUFFICIENT LICENSES IN VICINITY - DENIAL AFFIRMED.

THOMAS LEO ELMER, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF EAST ORANGE, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Wesley C. Engisch, Esq., Attorney for Appellant.
Walter C. Ellis, Esq., Attorney for Respondent.

Appellant appeals from denial of transfer of his plenary retail consumption license from 10 Main Street to 336 Main Street, East Orange.

Respondent's answer alleges that there is no need for an additional tavern in this locality and that, by reason of the character of the neighborhood, the community interest would be adversely affected by granting another tavern license in the locality.

Appellant's present premises are located near the Newark city line. He seeks to transfer to premises a considerable distance to the west on the same street and about 150 feet from a plaza where the East Orange station is located. Number 336 Main Street was formerly licensed for consumption to Joseph Murray, but, in December 1940, respondent transferred Murray's license to a building at 342 Main Street, which is located on the plaza, about 400 feet from his former premises. The section around the plaza is a civic centre containing the City Hall and Public Library. The surrounding neighborhood is a high-class residential district with several churches.

Appellant testified that he desired the transfer because there are numerous licensed places in the City of Newark near the East Orange line and he wished to locate in the center of East He, his manager and a resident of the city, testified that twenty-five or thirty of his present customers reside in the neighborhood of the plaza.

On behalf of respondent, Edward L. Hazen and Harry T. Nolan, two of the members of respondent Board testified that, in their opinion, the Murray license was sufficient to take care of the needs of this section of the city and that the existence of two consumption places near the plaza would adversely affect the neighborhood. Mr. Knolhoff, who has resided nearby for many years, and Dr. Cowles, of the Park Avenue Methodist Church, testified to the same effect.

Transfer of a license to other premises is a privilege not inherent in appellant's license. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. Van Schoick v. Howell, Bulletin 120, Item 6. The number of licensed premises to be permitted in any particular area is a matter

confided to the sound discretion of the issuing authority. Baselici v. Asbury Park, Bulletin 381, Item 4.

I conclude, from the evidence, that appellant has not sustained the burden of proof in showing that respondent abused its discretion. The most that has been shown is a mere difference of opinion. There appears to be ample evidence to sustain the denial.

Appellant argues that no one objected to said transfer below. Even in the absence of objections, respondent is under a duty to investigate and determine whether the application should be granted and to reach a decision as a result of its independent investigation. Delbono v. New Brunswick, Bulletin 322, Item 12.

Appellant also argues discrimination in that respondent, some months ago, granted a consumption license to Johnson for premises adjoining Ziegler's, the holder of a consumption license. Both licensees, however, conduct high-type restaurants about a mile away from the plaza and Johnson has merely a service bar. That situation is clearly distinguishable from the present situation where appellant intends to conduct a tavern, and the granting of the Johnson license does not disclose any discrimination against the present appellant.

For the above reasons, the action of respondent is affirmed.

Accordingly, it is, on this 27th day of February, 1941,

ORDERED, that the appeal be and hereby is dismissed.

E. W. GARRETT,
Acting Commissioner.

7. ELIGIBILITY - POSSESSION AND SALE OF PINT OF ILLICIT ALCOHOLIC BEVERAGES - NO AGGRAVATING CIRCUMSTANCES - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

February 27, 1941

Re Case No. 367

Applicant's fingerprint records show no criminal record. She voluntarily disclosed that, in January 1935, she pleaded guilty in a Criminal District Court to possession and sale of one pint of illicit alcoholic beverages and was fined $100.00 and costs.

At the hearing, applicant admitted that she had made a small quantity of liquor for "family use" but denied making any sale. In view of her plea, the question of her guilt or innocence as to the sale cannot be redetermined herein. However, applicant swears that she never engaged in any unlawful liquor activities before or since this violation took place. No aggravating circumstances appear and, in the absence thereof, a single violation of the Alcoholic Beverage Control Law does not involve moral turpitude. Re Case No. 366, Bulletin 445, Item 10.

It is recommended that applicant be advised that she is not disqualified by statute from holding a liquor license or being employed by a liquor licensee, and further, that, if she applies for a license, the question of her fitness to hold a license is a matter to be decided by the issuing authority.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

8. ACTIVITY REPORT FOR FEBRUARY, 1941

To: E. W. Garrett, Acting Commissioner.

ARRESTS: Total number of persons - - - - - - - - - - - - - - - 26
Licensees - 0 Non-licensees - 26

SEIZURES: Stills - total number seized- - - - - - - - - - - - 10
Capacity 1 to 50 Gallons - - - - - - - 3
Capacity 50 Gallons and over - - - - - 7

Motor Vehicles - total number seized- - - - - - - 6
Trucks - 0 Passengar cars - 6

Beverage Alcohol- - - - - - - - - - - - - - - - - - 211 Gallons

Mash - total number of gallons- - - - - - - - - - - 10,715

Alcoholic Beverages
Beer, Ale, etc.- - - - - - - - - - - - - - - - - 10 Gallons
Wine - 78 "
Whiskies and other hard- - - - - - - - - - - - 20 "

RETAIL INSPECTIONS:
Licensed premises inspected - - - - - - - - - - - 1,695
Violations disclosed:

Illicit (bootleg) liquor - - - - - -	32	
Gambling violations- - - - - - - - -	8	
Sign violations- - - - - - - - - - -	20	
Unqualified employees- - - - - - - -	99	
Other mercantile business- - - - - -	3	
Disposal permits necessary - - - - -	5	
"Front" violations - - - - - - - - -	9	
Improper beer markers- - - - - - - -	1	
Other violations found - - - - - - -	16	
Total violations found - - - - - - - -		193
Total number of bottles gauged- - - - - -		16,457

STATE LICENSEES:
Plant Control inspections completed - - - - - 13
License applications investigated - - - - - - 8

COMPLAINTS:
Investigated and closed - - - - - - - - - - - 228
Investigated, pending completion- - - - - - - 414

LABORATORY:
Analyses made - - - - - - - - - - - - - - - - 117
Alcohol and water and artificial coloring cases- - - - - - - - - 16
Poison and denaturant cases - - - - - - - - - 2

HEARINGS HELD:
Appeals - - - - 9 Disciplinary proceedings - 22
Seizure - - - - 7 Eligibility- - - - - - - - 11

PERMITS ISSUED:
Unqualified employees - - - - - - - - - - - - 350
Home manufacture of wine- - - - - - - - - - - 15
Solicitors- - - - - - - - - - - - - - - - - - 77
Social affairs- - - - - - - - - - - - - - - - 277
Disposal of alcoholic beverages - - - - - - - 44
Miscellaneous permits - - - - - - - - - - - - 112
Total - - - - - - - - - - - - - - - - - - 875

Respectfully submitted,

S. B. White,
Chief Inspector.

9. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

March 1, 1941

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will be made on or about Monday, March 24, 1941. New items and changes in old items must be filed at the offices of this Department not later than Saturday, March 8, 1941.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to all retail licensees.

E. W. GARRETT,
Acting Commissioner.

10. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2 (as amended by P.L. 1938, Chapter 350).	CONCLUSIONS AND ORDER
Case No. 132.	

In May 1931 petitioner, then twenty-two years of age, pleaded non vult to a charge of breaking, entering and larceny and was placed on probation for three years and ordered to pay costs. Investigation shows that he was accused of breaking into a store and stealing $6.27 in cash. Although the amount taken was small, the crime of breaking and entering involved moral turpitude.

During the past seven years petitioner has resided with his mother at his present address. For some time after his conviction he was employed as a truck driver and later as a bartender until the question of his eligibility was raised.

Petitioner produced three character witnesses who have known him ten, six and two years respectively and who testified that during the time they have known him he has conducted himself in a law-abiding manner.

Fingerprint records disclose no other conviction. The Chief of Police of the municipality where he resides reports that his files disclose no other arrest or complaints against him.

It is concluded that petitioner has led a law-abiding life for the past five years. I conclude, also, that despite this single misstep, his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 28th day of February, 1941,

ORDERED, that his statutory disqualification because of the conviction herein described be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

11. APPELLATE DECISIONS - ROBERTS v. DELAWARE.

SUFFICIENT LICENSES IN VICINITY, DESPITE VACANCY UNDER MUNICIPAL ORDINANCE LIMITING THE NUMBER - DENIAL AFFIRMED.

FRANCES ROBERTS, Appellant, -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DELAWARE (CAMDEN COUNTY), Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Angelo A. DePersia, Esq., Attorney for the Appellant.
Charles L. Rudd, Esq., Attorney for the Respondent.
Herbert J. Koehler, Esq., Attorney for the Objectors.

This is an appeal from the denial of a plenary retail consumption license to appellant for premises on Wynnewood Avenue near Haddonfield Road, Locustwood, Delaware Township.

The Chairman of the Township Committee testified that appellant's application was denied because, among other reasons, there are already sufficient liquor establishments in the neighborhood of the proposed premises. The vicinity in question is predominantly rural in character, although there are scattered residences located there, with approximately 25 homes within 600 feet of the proposed site. Three taverns are situated nearby at distances of 250 feet, 350 feet and 500 feet from appellant's premises. There are no business sections in the entire municipality.

The residents of the four homes nearest the proposed premises appeared at the hearing and objected to the issuance of a license to appellant. On behalf of appellant, no neighbor was produced to testify as to any need or desire for a liquor license there

The number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the local issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11; Bodrato et als. v. Northvale, Bulletin 433, Item 1. In view of the character of the neighborhood, the close proximity of the three licensed establishments, the protests of neighboring residents and the absence of any testimony from neighbors in favor of the additional license, I cannot say that respondent was arbitrary or unreasonable in refusing to grant appellant's application.

Appellant contends, however, that respondent's action is discriminatory because, on January 13, 1939, this Department reversed the refusal of respondent to transfer a license to premises about 200 feet from those in question, and directed the transfer to be made. See Shapley v. Delaware Township, Bulletin 294, Item 7. However, reference to that decision discloses that the issue of the number of licensed premises in the neighborhood was not raised in

that case. Further, at that time there were only two other liquor licenses in the vicinity. Now there are three.

Appellant further urges discrimination in that a club license had been issued during the fiscal year 1936-37 for the same premises for which she has applied. The increase in the number of liquor places in that area since then is a sufficient answer to such contention. However, in addition, the considerations pertaining to the issuance of club licenses, the privileges of which are confined to members and bona fide guests, are essentially different than those applicable to the issuance of consumption licenses, under which licensees are entitled to sell to the public generally. Cf. Irish American Association v. Kearny, Bulletin 293, Item 11. Moreover, as was said in Turner v. Walpack, Bulletin 418, Item 3:

> "A lessee or owner of premises gains no right to a liquor license for such premises merely because a previous tenant held license there. Although failure to issue a new license to a subsequent tenant may result in hardship to that tenant or the owner, nevertheless where, in the question of issuing liquor licenses, private and public interests conflict, the latter must necessarily prevail. Rainbow Grill v. Bordentown, Bulletin 245, Item 4; Ninety-One Jefferson Street, Passaic, Inc. v. Passaic, Bulletin 255, Item 9; Brost v. East Amwell, Bulletin 304, Item 1; Smith v. Winslow, Bulletin 334, Item 1. Richmond Realty Corp. v. Plainfield, Bulletin 411, Item 1."

Nor does the fact that there is a vacancy in the local quota covering consumption licenses require that respondent issue such license to appellant for her proposed premises. Despite such vacancy, an issuing authority may deny an application for good independent cause. Re Somerville, Bulletin 110, Item 6; Zakarew v. South Bound Brook, Bulletin 216, Item 4; Ander v. Woodbridge, Bulletin 409, Item 11. Even though the quota has not been exhausted, applications may be denied on the ground that the vicinity in which the applicant proposes to operate is already sufficiently supplied with liquor establishments. Young v. Pennsauken, Bulletin 114, Item 2; Berkey v. Pine Hill, Bulletin 262, Item 5; Bernstein v. Hillside, Bulletin 289, Item 7; Wenzel v. Maywood, Bulletin 310, Item 3; Ander v. Woodbridge, supra.

The action of respondent is affirmed.

Accordingly, it is, on this 28th day of February, 1941,

ORDERED, that the petition of appeal be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

12. MORAL TURPITUDE - PANDERING INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 134.

CONCLUSIONS AND ORDER

Petitioner seeks removal of his disqualification resulting from conviction in 1932 of the crime of pandering.

It appears from report of the Wilkes-Barre (Pa.) Police Department that petitioner was arrested on complaint of a girl that she had been transported by him from Atlantic City to Wilkes-Barre and there placed by him in a house of prostitution; that he pleaded guilty to a charge of pandering on the day following his arrest and because he had no previous record he was released on parole on condition that he stay out of further trouble and return to his home. Petitioner claims that his arrest was motivated by complainant's jealousy because petitioner had transferred his attentions from complainant to another girl. Although admitting that complainant had come to Wilkes-Barre from Atlantic City, he denies that he brought her there and claims that she followed him.

The crime of pandering appears from its very nature clearly to involve moral turpitude. In view of petitioner's confessive plea, the question of his guilt or innocence cannot be redetermined herein.

Since his conviction, applicant has been variously employed as an undertaker's assistant, family visitor of the Emergency Relief Administration, file clerk in the Housing Division of the Federal Emergency Administration of Public Works and later the United States Housing Authority, newspaper distributor, railroad dining car waiter and most recently as salesman by a New Jersey liquor wholesaler. Solicitor's permit which had been issued to him pending receipt of fingerprint returns was surrendered immediately following institution of proceedings to cancel or revoke the permit because of his ineligibility resulting from the conviction aforesaid.

Petitioner produced three character witnesses who have known him for five, four and three years respectively, the first of whom had known him casually for the first four years and intimately for the past year. The second and third have come in contact with him fairly regularly as the result of business acquaintanceship. All testified to his good character and reputation and law-abiding conduct during the time that they have known him, testimony corroborated by petitioner's continual occupation in lawful employments.

I am satisfied that petitioner has conducted himself in a law-abiding manner during the more than five years since his conviction in 1932, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 3rd day of March, 1941,

ORDERED, that petitioner's disqualification from obtaining or holding a liquor license or permit because of the conviction aforesaid, be and the same is hereby removed in accordance with R. S. 33:1-31.2.

In the event that petitioner again applies for solicitor's permit, its issuance will not be withheld for any fixed period of time in punishment for the false statement in his previous application. Petitioner claims, and I am convinced both from his testimony and the inherent probabilities of the situation, that it was only after he was fingerprinted by this Department when he made application for solicitor's permit that he learned that he had actually been convicted of crime in 1932. The truth seems to be that he did not know that he had been convicted of crime until he was so informed by this Department. Consequently, he did not wilfully falsify his previous application.

E. W. Garrett

Acting Commissioner.