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

BULLETIN 241 APRIL 25, 1938

1. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - GAMBLING - 5 DAYS' SUSPENSION - HEREIN OF RUMMY AND MONEY.

In the Matter of Disciplinary Proceedings against

CONRAD SCHWARTZ,
552 Ferry Street,
Newark, New Jersey,

Holder of License No. C-229, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Anthony Giuliano, Esq., Attorney for Licensee.
Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were duly served upon the licensee alleging that on March 19th and 20th, 1938, he permitted gambling on his licensed premises contrary to Rule 7 of Regulations No. 20 (Rules Concerning Conduct of Licensees and Use of Licensed Premises).

At the hearing, it was stipulated that Investigators Arts and Miller entered the licensed premises about midnight on March 19th and found three men seated at a table near the bar, six to eight feet away, playing "rummy" for money; that the licensee was then behind and tending the bar; that the Investigators summoned Detectives White and Silverman of the Public Morals Bureau of the City of Newark; that when the detectives entered, the cards and $8.75 cash from the card table were seized and the licensee and the players arrested.

The licensee, pleading non vult, admits the game was being played, but alleges that he did not know the players were gambling. He further admits that he had served drinks four or five times at the table and that he saw money on the table but believed the money was change which he had made when he served the drinks. He thought they were "just playing to pass the time away." He said there were others, besides the players, around the table.

The evidence is convincing that the licensee knew just what was going on at the table six to eight feet away from him. If he didn't, he should have made it his business to find out. Everybody else knew what was going on. The by-standers knew. The detectives and my men had no difficulty finding out.

I find as the fact that the licensee knew and permitted the gambling. He is, therefore, guilty of violating the rule aforesaid.

In pleading for mitigation of punishment, the attorney for the licensee stresses that his client was not "cutting in" on the stakes and that there is no question of commercialized gambling involved. That is true. Otherwise the suspension would be so much the longer.

Accordingly, it is on this 18th day of April, 1938, ORDERED that License No. C-229, heretofore issued to Conrad Schwartz

by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for five (5) days, effective at 3:00 A. M. April 21, 1938.

D. FREDERICK BURNETT,
Commissioner.

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

April 16, 1938

Re: Case #218

Because of his criminal record, a hearing was held to determine whether respondent, a truck driver in the employ of a licensed transportation company, is disqualified from his employment under R. S. Secs. 33:1-25, 26 (Control Act, Secs. 22, 23). Those sections, taken together, provide that no person convicted of a crime involving moral turpitude shall be employed by a liquor licensee in this State.

In 1930, respondent and 4 other men "hi-jacked" a truck at 3:30 A. M. on a Kearny highway. These 5 men, one being armed with a gun, forced the driver from the truck, which was loaded with beef; drove the truck to Newark; and there (according to respondent) abandoned the truck since it contained nothing of value for them. As a result of this criminal behavior, respondent was convicted of grand larceny and sentenced to 7 years' imprisonment, being released on parole after serving 3 years of that term.

Grand larceny, such as here appears, is indubitably a crime involving moral turpitude within the meaning of the aforementioned sections. See Re Case 61, Bulletin 193, Item 2. Respondent is therefore disqualified by those sections from employment by a liquor licensee in this State.

In view of this determination, it is unnecessary to consider whether the crime of burglary or breaking, entering and larceny, of which respondent was convicted in 1916, but about which he recalls no specific details, is a crime involving moral turpitude within the meaning of the aforementioned sections.

It is recommended that respondent be declared disqualified from his present employment and also from any employment by a liquor licensee in this State.

Nathan Davis,
Attorney.

Approved:
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SERVICE OF BEER AND KEEPING PLACE OPEN AFTER HOURS CONTRARY TO MUNICIPAL ORDINANCE - FIVE DAYS' SUSPENSION FOR EACH OFFENSE - HEREIN OF THE RISK INCURRED BY LICENSEES IN WAITING UNTIL THE LAST HORN BLOWS BEFORE CLOSING THE PLACE AS REQUIRED BY ORDINANCE.

In the Matter of Disciplinary Proceedings against

WILLIAM F. VANDERZEE, trading as THE TOP HAT TAVERN, 333-335 Halsey Street, Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-712.

CONCLUSIONS AND ORDER

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

Saul C. Schutzman, Esq., Attorney for Respondent-Licensee.

BY THE COMMISSIONER:

The licensee is charged with sale and service of beer on his licensed premises, on Sunday, March 27, 1938, at 3:43 A. M., in violation of Newark Ordinance No. 6579, which forbids the sale or service of alcoholic beverages between 3:00 A. M. and 7:00 A. M. on weekdays and 3:00 A. M. and 12:00 Noon on Sundays, and which further forbids licensed premises, subject to certain exceptions not here material, to be open during the prohibited hours.

The defendant pleaded "not guilty" to the charge of sale and service during prohibited hours and "non vult" to the charge of keeping the premises open after 3:00 A. M.

At the hearing, Sergeant James J. McGowan, of the Newark Police, testified that at 3:42 A. M. that Sunday morning he and Detectives Petroll and Galasso entered The Top Hat Tavern; that it has two bars, one at the front, the other at the rear; that no one was at the front bar but some twenty-five persons were at the rear bar, which was dimly ("It was pretty dark in there" - testified the Sergeant) lighted; that he immediately went to the rear bar; that, as he arrived, he heard a girl order a glass of Bock beer; that the bartender thereupon drew a beer and served it to her at just 3:43 A. M.; that the licensee was on the premises at the time; that they, Sergeant McGowan and his men, arrested the bartender and the licensee and confiscated the beer; that the bartender and the licensee were arraigned in the Newark First Criminal Court for violating the above ordinance, found guilty as charged, and fined $25.00 and $10.00 respectively.

The bartender testified that he did not recall the service of beer about which the Sergeant testified, but was positive that he didn't take any money for it; that it was possible that he merely put a "head" on a partly consumed glass of beer which had grown flat by standing. On cross-examination, when asked why he was behind the bar three-quarters of an hour after closing time, he replied: "As the people were getting through with their glasses, I was taking them off the bar." Asked why people were still in the place long after closing time, he answered "We were trying to get them out one or two at a time. They got beer and tried to stall for time. They are customers and you don't like to abuse them."

The licensee testified that at 3:00 o'clock he put the blinds up, locked the door, read the cash register and stationed himself at the door to tell people who might try to get in that the

place was closed; that he tried to get the people out and kept "hollering": "Get out, closing time!" He admitted, however, that he let the Sergeant in as he was letting a customer out; that he did not know the Sergeant but had seen him before, "but that hour of the morning it is dark;" that "the crowds are exceptionally heavy Saturday night and sometimes get unruly - factions, families and sweethearts, and I don't want to put them on the street all at once;" that this particular Saturday night was "an exceptionally heavy night and they were feeling quite 'high' .....I imagine they wanted to stay the rest of the night if they could."

The testimony of the police is clear and convincing. If anything more were needed, the defendant's witnesses have supplied it. Service was made of the beer whether it was paid for or not. The place, instead of being closed, was open. When an ordinance says that a licensed place is not to be open during certain hours, it means just that. It does not mean that the place may be open for an indefinite time after the prescribed closing hour within which to urge factions, families and sweethearts to get out or to put heads on stale beer. As the Sergeant replied, when asked if he didn't allow any time after 3:00: "We haven't got the authority." Neither has the licensee! If he chooses to wait until the last moment, the risk is upon his own head.

I find the licensee guilty both of serving beer during prohibited hours on Sunday and also of keeping the licensed premises open during those hours. The penalty will be five (5) days for each offense.

Accordingly, it is on this 20th day of April, 1938, ORDERED that plenary retail consumption license No. C-712, heretofore issued to William F. Vanderzee, trading as The Top Hat Tavern, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing April 23, 1938 at 3:00 A. M.

D. FREDERICK BURNETT,
Commissioner.

4. RETAIL LICENSES - CONVERSION - WHEN PERMISSIBLE.

CLUB LICENSE - CONVERSION INTO PLENARY RETAIL CONSUMPTION.

April 20, 1938

Jacob Van Hook,
Borough Clerk,
Wallington, N. J.

My dear Mr. Van Hook:

I have your letter re the Polish People's Home.

It is good policy for clubs holding club licenses to take out plenary retail consumption licenses in their place. I have advocated such conversions (Re Keevil, Bulletin 158, Item 11; Re Lewis, Bulletin 126, Item 15), and have approved municipal regulations limiting the number of licenses which contain exceptions for that purpose (Re Perry, Bulletin 199, Item 3).

The procedure requires, however, application and advertisement, and compliance with all requirements the same as if a new plenary retail consumption license were being applied for. See

Re Roberts, Bulletin 162, Item 9.

Upon such conversion, the unearned portion of the fee for the club license may be credited upon the plenary retail consumption license. See Re Keevil, supra.

I note that since June 30, 1935 you have had no limitation on the number of licenses in Wallington. It therefore appears that the conversion will not be contrary to any local limitation. Cf. Re Swensen, Bulletin 235, Item 16.

Conversion from club to plenary retail consumption is the only retail conversion presently permitted. Plenary retail consumption licenses are not convertible into club licenses (Re Duffy, Bulletin 25, Item 4); seasonal retail consumption are not convertible into plenary retail consumption licenses (Re Bright, Bulletin 45, Item 6); plenary retail consumption licenses are not convertible into plenary retail distribution licenses (Re Duffy, Bulletin 103, Item 1) nor are plenary retail distribution licenses convertible into plenary retail consumption licenses (Re Boyce, Bulletin 224, Item 9).

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. UNLICENSED DANCE HALL AND RESTAURANT - THE PRACTICE OF FURNISHING SET-UPS FOR PATRONS WHO BRING THEIR OWN LIQUOR DISAPPROVED - HEREIN OF THE CONSEQUENCES OF SUCH CONDUCT.

April 20, 1938

Mr. Louis Marton, Jr.,
Passaic, N. J.

My dear Mr. Marton:

I understand that your friends desire to operate a dance hall at a summer resort, furnish music for dancing, tables to sit at, and set-ups with which patrons will mix their own liquor, all for a minimum charge of fifty cents.

It certainly should bring people flocking to the place! But there's a fly in the ointment.

If it should happen that one of the patrons brought in bootleg liquor, and it were seized on the premises, the operators of the place might be arrested and convicted for possession of illicit alcoholic beverages. Moreover, the mere presence of liquor on the tables would make it look as though unlawful sales of liquor were being made. Both are misdemeanors, and subject the offender to a maximum penalty of $1,000.00 fine or imprisonment for three years on each charge, or both.

Raids by the police or my men might be a trifle embarrassing, to say the least, to both business and patrons.

Enclosed herewith is a copy of Re Trenton Chamber of Commerce, Bulletin 231, Item 10, a ruling recently made by me which discusses the great risks that non-licensees run by permitting patrons to bring their own liquor.

Licensees pay substantial sums for the privilege of engaging in the liquor business. Non-licensees who dabble in liquor are apt to get their fingers burned.

My earnest advice to your friends is - Don't do it! If they want to have anything to do with liquor, they should take out a license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. LICENSED PREMISES - PUBLIC VIEW - NO STATE REQUIREMENT.

LICENSES - DENIAL - LACK OF PUBLIC VIEW - CONSIDERATIONS APPLICABLE

MUNICIPAL ORDINANCES - PUBLIC VIEW - COMPETENT FOR MUNICIPAL GOVERNING BODIES TO ADOPT SUCH REGULATIONS.

April 20, 1938

Leo J. Warwick, Esq.,
City Solicitor,
Long Branch, N. J.

My dear Mr. Warwick:

There is nothing in the State law or the State regulations requiring that licensed premises be so arranged as to permit view of the interior from the public thoroughfare.

This, however, does not mean that licensees must necessarily be allowed to conceal their premises completely from public view. On the contrary, it is fully competent for municipal governing bodies to enact regulations in this regard. If they do so, and the regulations are duly approved by me as required by the statute, they must be obeyed by all licensees in the municipality.

Where they have been reasonable and proper, I have approved all such municipal regulations submitted. They are now in effect in many municipalities. My records do not show that there is any such regulation in Long Branch.

Licenses may, of course, be denied by the municipal license issuing authority on the ground that the premises are unsuitable, and such denials, if proper, will be affirmed. While I have heard and decided three appeals involving a municipal regulation requiring public view, and denied one application because of non-compliance with such a requirement (Retail Liquor Dealers v. Plainfield, Bulletin 70, Item 1; Barone v. Paterson, Bulletin 86, Item 5; In Re Loyal Order of Moose, Bulletin 107, Item 4; Buonanno v. Westfield, Bulletin 124, Item 2), no case has yet come before me involving the denial of a license for the reason that the premises were not open to public view, where there was no general municipal regulation requiring it. Whether or not in the absence of a general regulation the denial would be affirmed, would depend, of course, on the particular facts presented. The least that could be said, however, would be that very good and sufficient cause would have to be shown.

If it is the desire of the Board of Commissioners that all premises be open to public view, the thing to do is adopt a general regulation applicable to all, in advance of the denial of any particular application. For form of regulation and discussion of certain defects in those which have been submitted see Re Hillery, Bulletin 53, Item 9 (Sheet 12), Retail Liquor Dealers v. Plainfield, supra, Re Handelman, Bulletin 227, Item 9, and Re Bormuth, Bulletin 236, Item 1.

I shall be glad to go over any regulation that you may prepare prior to formal introduction to offer whatever comments or suggestions appear necessary.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. SEASONAL RETAIL CONSUMPTION LICENSES - PRIVILEGES - TERMS - FEES - APPLICATION FORM - LICENSE CERTIFICATE.

April 20, 1938

Councilman Anthony Stansley,
Manville, N. J.

My dear Mr. Stansley:

I have your letter re seasonal retail consumption licenses.

You will find description of the seasonal license in R. S. 33:1-12 (Control Act, Sec. 13-2).

Seasonal licenses confer the same privileges as plenary retail consumption licenses, except for a shorter term. There are two types, one for winter and one for summer. The summer term is from May 1st until November 1st inclusive, the winter term from November 15th until April 15th inclusive.

While there is nothing in the text of the statute concerning seasonal retail consumption licenses, such as there is with respect to plenary retail consumption, which forbids their issuance for premises in which a grocery, delicatessen, drug store or other mercantile business is carried on, I have ruled that this restriction applies equally to seasonal licenses. See Bulletin 21, Item 14.

The fee for the seasonal license must be fixed by the municipal governing body at seventy-five per cent of the fee fixed for the plenary retail consumption license. This is mandatory. As your plenary retail consumption license fee is $365.00, the seasonal fee will, therefore, be $273.75. The fees for winter and summer seasonal terms are the same despite the fact that the former runs for five months and the latter for six. If a seasonal license is issued during the seasonal term, the fee is prorated from date of issuance to the end of the term.

If it is the thought of the Council to fix the seasonal fee by amending the alcoholic beverage ordinance, the amendment will, of course, have to be made by ordinance. Otherwise, there is no objection to fixing the fee by resolution.

The same application form may be used for seasonal license as is used for plenary retail consumption. See Bulletin 237, Item 2. The form of the license certificate is in Bulletin 237, Item 6.

Seasonal licensees must, of course, obey the law and abide by all of the rules the same as any other licensees.

If there are any other questions, I shall expect you to write me further.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. LICENSED PREMISES - WHAT CONSTITUTES - BUILDINGS LYING ON OPPOSITE SIDES OF PUBLIC HIGHWAY.

April 20, 1938

George B. Dodd, Special Investigator,
Court of Common Pleas,
Toms River, N. J.

My dear Mr. Dodd:

I have before me your letter re the Russian Consolidated Mutual Aid Society, Jackson Township.

I understand that the Society's property lies on both sides of the Cassville-Trenton Road and that it has two social halls, one on the west side of the highway which is used in the summer and one on the east side which is used in winter.

You inquire if the Society can obtain one license for the entire premises and thus avoid the necessity of transferring the license to the west hall in the summer and the east hall in winter.

Where two separate buildings constitute the premises sought to be licensed, separate licenses will in general be necessary The reason is that generally speaking each building will constitute a separate place of business. For each specific place of business (R. S. 33:1-26; Control Act, Sec. 23), a separate license is required. But it does not necessarily follow that merely because there are separate buildings, separate licenses will be necessary. The buildings may be so arranged and operated that they could be said to constitute a single place of business within the meaning of the statute.

See by way of illustration Re Beisch, Bulletin 81, Item 10, which contemplates the licensing under one license of separate buildings in an amusement park.

The same principle may be applied, notwithstanding the premises are divided by a public highway, if the whole thing is arranged in such manner that it could be said to constitute a single licensed premises and be managed as a single enterprise.

It all depends on the facts and on how the respective buildings are used. I can conceive of situations, such as the one you present, where in the case of a club or a society it might be permissible, while if a commercial proposition merely seeking to obtain two licensed premises for the price of one, it would not. The question is largely one of good faith.

Of course, the properties must all comprise the same tract. Barring public roads, they must be adjacent. Two pieces of property could not be said to constitute the same premises where property belonging to others intervened.

If in the light of the foregoing you find from all of the pertinent facts that the whole thing is conducted as a single business enterprise and could be considered one licensed premises, there would be no objection to the issuance of the license to cover the entire tract.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

9. APPELLATE DECISIONS - EASTON v. GALLOWAY TOWNSHIP and BENSEL.

GEORGE EASTON, JR.,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF GALLOWAY and FRANK BENSEL,
Respondents

ON APPEAL
CONCLUSIONS

Edison Hedges, Esq., Attorney for Appellant.
Enoch A. Higbee, Jr., Esq., Attorney for Respondent, Township Committee of the Township of Galloway.
Emanuel Hurst, Esq., Attorney for Respondent, Frank Bensel.

BY THE COMMISSIONER:

Pursuant to application duly made, the respondent, Township Committee, transferred license C-20 issued to Jacob Goos for premises located at 2696 White Horse Pike, to respondent, Frank Bensel, for premises located at 1399 White Horse Pike, Galloway Township. Thereafter, an appeal was taken by the appellant, George Easton, who contended that the respondent Bensel's premises are located within 500 feet of his licensed place of business and that the transfer was, therefore, in violation of the following municipal ordinance adopted on June 19, 1937:

> "1. That not more than twenty-seven Plenary Retail Consumption Licenses, nor more than one Club License shall be issued during any licensing year in Galloway Township, Atlantic County, N. J.
>
> "Provided, however, that present licenses may be transferred or new licenses issued for present licensed premises within the total limit of 27.
>
> "Be It Further Resolved, that no new license shall be granted to any premises not now licensed within 500 feet of an existing licensed premises.

The evidence introduced by the respective parties is in direct conflict as to whether the respondent Bensel's premises are actually within 500 feet of the appellant's licensed place of business. However, no determination need be made on this issue since I have reached the conclusion that the restriction against licensing premises within 500 feet of existing places of business is, under the express terms of the ordinance, confined to "new" licenses and is inapplicable to transfers of existing licenses.

The phrase "new license", in its ordinary sense, is accepted to mean a license issued pursuant to an original application as distinguished from an application for renewal or transfer of an existing license. Cf. Beringer v. Camden, Bulletin 144, Item 5, where the matter there reviewed was referred to as an application "for a new license and not for a renewal or a transfer." Indeed, the ordinance here under consideration expressly recognizes this distinction between "new" licenses and transfers of existing licenses. The first sentence fixes a limitation of 27; the second sentence permits existing licenses to be "transferred" and "new licenses" to be issued for presently licensed premises within the limitation of 27; the final sentence, however, contains no mention of transfers, although it prohibits the issuance of "new licenses" for premises not now licensed within 500 feet of existing places of

business. Since the effect of the language used in the ordinance is clear, I am not at liberty to seek a hidden intention and adopt a construction on the basis thereof. See In Re Galloway, Bulletin 206, Item 15. Cf. Public Service Coordinated Transport v. State Board of Tax Appeals, 115 N. J. L. 97, 103 (Sup. Ct. 1935); Leeds v. Atlantic City, 13 N. J. Misc. 868, 871 (Circ. Ct. 1935).

The ordinance being inapplicable to the respondent Bensel's application for transfer of an existing license and no other objection to the transfer having been advanced, the action of the respondent Township Committee is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 21, 1938.

10. TRANSPORTATION OF ALCOHOLIC BEVERAGES - FOR PERSONAL CONSUMPTION - NECESSITY FOR SPECIAL PERMIT IF STATUTORY QUOTA IS EXCEEDED.

SERVICE OF ALCOHOLIC BEVERAGES - AT SOCIAL GATHERING - NECESSITY FOR SPECIAL PERMIT IF THE MANNER OF SERVICE CONSTITUTES A SALE.

Dear Sir:

We are seeking information as to transporting a barrel or two of beer on a charter trip to Brielle, N. J.

This party wishes to charter our bus to take them to the above mentioned place where they are going for a fishing trip.

This beer will not be served on the bus, but they wish to take it aboard the fishing boat.

Kindly advise us as soon as possible if we are permitted to transport the beer with us.

Very truly yours,
Elizabeth-Union-Hillside-
Irvington Line, Inc.

April 20, 1938

Elizabeth-Union-Hillside-Irvington Line, Inc.,
Newark, N. J.

Gentlemen:

The New Jersey law (R. S. 33:1-2; Control Act, Sec. 2), so far as pertinent to your inquiry, prohibits the transportation of beer, without proper license, in excess of one-half barrel or two cases containing not in excess of twenty-four quarts within any consecutive period of twenty-four hours.

This applies to transportation for personal consumption as well as for purposes of resale. Transportation for personal consumption in excess of the foregoing quantities may be made only pursuant to special permit issued by this Department.

For what happens to people who transport illegally see Re Brown, Bulletin 203, Item 6, copy enclosed.

Furthermore, if the manner in which the beer will be dispensed to the members of the party constitutes a sale, that also must be covered by a permit. It is only if alcoholic beverages are given away absolutely gratuitously in every respect that no license or permit is required.

My suggestion is that you have the persons who are getting up the party write to me and tell me exactly how much beer they wish to take, how they propose to serve the beer and obtain the money to buy it, so that I can tell them whether or not permits are necessary and send them the appropriate applications.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. SALES - WHOLESALERS AND MANUFACTURERS MAY CHARGE FOR THEIR PRODUCTS AS MUCH OR AS LITTLE AS THEY WISH OR GIVE THEM AWAY, IF THEY CHOOSE, TO LICENSEES AND PERMITTEES.

SPECIAL PERMITS - DONATION OF ALCOHOLIC BEVERAGES BY WHOLESALERS AND MANUFACTURERS TO HOLDERS OF SPECIAL PERMITS IS PERMISSIBLE.

April 22, 1938

Mr. William R. Kohler, Co-Chairman,
Trenton Bartenders' Union, Local No. 124,
Trenton, N. J.

My dear Mr. Kohler:

I have your letter of the 19th re the Fourth Annual Bartenders' Ball to be held on the 25th.

The permit (17208) to sell alcoholic beverages which the Local has obtained, specifically authorizes you to purchase alcoholic beverages for use at the affair from any licensed New Jersey retailer, wholesaler or manufacturer. Since such suppliers may charge as much or as little for what they sell to the Local - or nothing at all for that matter - they may donate alcoholic beverages to the Local, since it is a permittee, if they so choose.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. STATE BEVERAGE DISTRIBUTOR - TRANSFER OF LICENSED PREMISES - CONCLUSIONS.

In the Matter of Application by)
FRANK D. M. CURCIO, trading as)
IDEAL BEVERAGE SUPPLY CO.,) RECOMMENDATIONS
)
Transfer of State Beverage Distributor's License No. SBD-41 to South Side)
of Chestnut Avenue, between State St.)
and Columbia Ave., in the Township of)
Landis, Cumberland County.)
- -)

Daniel J. Brosso, Esq., Attorney for Applicant.
John Milstead, Esq., Attorney for Township Committee of the Township of Landis.
Edwin F. Miller, Esq., Attorney for Objectors.

Applicant seeks to transfer his licensed premises from Newfield to the premises set forth above. A Petition and Remonstrance signed by approximately one hundred eighty-two residents of the Township of Landis objecting to the said transfer has been filed herein. A hearing on said Petition and Remonstrance has been held.

Chestnut Avenue, in the Township of Landis, runs east and west. It is a paved highway, and the traffic thereon is quite heavy. The section of the Township to the north of Chestnut Avenue is a high class residential section. The majority of the objectors reside to the North of Chestnut Avenue, on the streets which run into and terminate at Chestnut Avenue. The section of the Township south of Chestnut Avenue is farming land, with the exception of a few streets which have been developed about six hundred fifty feet to the west of applicant's premises and which run in a southerly direction from Chestnut Avenue. Many of the objectors reside on these streets.

The applicant has purchased the land upon which his warehouse is erected from a Mr. Harris, who retains ownership of his twenty acre farm on which he raises pigs. Mr. Harris' farm originally extended nearly five hundred fifty feet along the southerly side of Chestnut Avenue, and the portion of his premises which he sold to applicant has a frontage of fifty feet on the Avenue on the extreme east side of the Harris farm. To the east of applicant's premises, on the same side of the Avenue, is a large plot of ground described as being owned by Mr. Hess, on which is built a house and a barn which has been used as a repair shop for automobiles. Further east is a mushroom farm and beyond that Stern's poultry farm. Mr. Harris favors the granting of the application. No one residing at the Hess place, the mushroom farm or Stern's farm has filed objections herein.

The nearest objector resides on the north side of Chestnut Avenue, some distance east of applicant's warehouse. She objects because of the odor from beer, the hazard to children and the fact that trucks will be coming in and out at all hours of the night. Applicant's place of business is too far removed from her residence to justify a fear of any odor from beer. The applicant now has three trucks, which leave his present licensed premises at 8:00 A. M. and return about 5:00 P. M. or 6:00 P. M. Considering these facts, and the further fact that the warehouse is at least thirty feet from the roadway, I do not feel that there is any real basis for a fear that a hazard to children would be created or that there would be any noise during the hours of the night.

Township Committeeman Mullen testified that the members of the Township Committee are opposed to the granting of this application. They object because they do not favor the issuance of a liquor license in that section of the Township and because they believe it would be detrimental to the growth of the Township to permit any warehouse south of Chestnut Avenue.

The first objection of the Township Committee would have great weight if this were an application for a retail license. However, the granting of this application will not permit consumption of alcoholic beverages on the licensed premises and, while sales to consumers for off-premises consumption will be permitted, such sales are restricted to unchilled malt alcoholic beverages in original containers only in quantities of not less than one hundred forty-four fluid ounces. The granting of this application would not tend to create the objectionable features which might be present in the establishment of a saloon or even a package goods store. The first objection seems to be without merit.

The second objection is without weight because there is no restriction in the building code of the Township which would

prevent the erection of a warehouse of this type in this section of the Township. While Ordinance No. 184 mentions certain types of buildings that cannot be erected without submitting the question to the people of the neighborhood, it is admitted that this ordinance does not apply to a warehouse of this type, the nearest type of warehouse mentioned in said ordinance being a warehouse for the storage of hides. Moreover, the building inspector has issued the necessary building permit, and the erection of the warehouse has been nearly completed.

Objection is also made on the ground that the premises to which the license was sought to be transferred is near Newcomb Hospital. The Hospital, however, is at least one thousand feet away, and it is difficult to believe that the granting of the application could in anywise be a detriment to the hospital.

For these reasons it is recommended that, despite the filing of Petition and Remonstrance herein, the application for transfer be granted.

Edward J. Dorton.

Dated: April 19, 1938.

Approved.
D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SALES TO GIRLS 14 AND 16 YEARS OLD FOLLOWED BY CRIMINAL ASSAULT.

April 23, 1938

Mr. William C. Morris,
Township Clerk of Lopatcong Township,
Phillipsburg, R. D. 2, N. J.

Dear Mr. Morris:

I have staff report and your certification of the proceedings before the Township Committee of Lopatcong Township against Walter Tony Skears, t/a Air Port Inn, charged with having served alcoholic beverages to two minors - girls fourteen and sixteen years old.

I note the licensee was adjudicated guilty and that the license was suspended for four days. I further note the following statement attached to the resolution which suspended the license:

> "The Airport Inn for years past had had a bad reputation and because of this and many reports concerning it, the Township Committee upon the transfer to Walter Tony Skears, the present licensee, had watched the place carefully. In considering the testimony offered on behalf of the complainants and the defendants, the Committee could not help but consider the general favorable reports made concerning the new management, the reputation of the place and the owner and his manner of conducting business. Because of his efforts to exclude minors from his establishment, the licensee was forced to give up his Saturday night orchestra. In the past, the Township Committee has been familiar with his efforts to exclude minbrs and the Committee feels that the violation occurring on January 29, 1938 was one arising from carelessness and from no criminal intent. It has

been pointed out to the Committee that carelessness is no excuse to a charge of this sort and after full consideration of the charges, facts and surrounding circumstances, a resolution was offered by Mr. Arthur Hamlen calling for the suspension of the license of Walter Tony Skears for a period of four days. This resolution more fully appearing in the Resolution and Order heretofore set forth was unanimously adopted by the entire Township Committee."

I hope this case will have a salutary effect, but candidly think the penalty too small in view of the tender age of the girls which must have been self-evident to the woman who served them.

These girls testified that before they were criminally assaulted by the men who took them to this tavern, they had been served Tom Collinses, Whiskey Sours, Sloe Gin Fizzes and beer by the wife of the licensee. What happened afterwards is what one would expect when young girls are plied with liquor.

There is no excuse for selling liquor to girls 14 and 16 years old. Anyone with half an eye would know they were minors.

I am appreciative of the prompt action by the Township Committee and their conscientious consideration of the case. In all friendliness, however, I sincerely believe that as their experience grows they will come to the conclusion that carelessness by licensees in selling drinks to children of tender age is thoroughly reprehensible and that stiff punishments are the best means of making licensees conscious of their duties to every mother's sons and daughters.

Let's work together to break up the practice.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - TEN DAYS' SUSPENSION.

April 23, 1938

Mr. Ernest T. Lawrence,
Clerk of Randolph Township,
Dover, R. D. 1, N. J.

Dear Mr. Lawrence:

I have staff report of the proceedings before the Township Committee of Randolph against Charles Frick, charged with having sold an alcoholic beverage to a minor eighteen years of age, and note that the licensee was adjudicated guilty and that his license was suspended for ten days.

Expressing no opinion on the merits of the case because it might come before me by way of an appeal, I wish to extend to the members of the Committee my sincere appreciation for the substantial penalty. It should go a long way to inculcate respect for law and order in your community. Licensees soon know when a governing body means business. We have been having much trouble all along the line with sales to boys and girls under age.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. MUNICIPAL ORDINANCES - REGULATION DECLARING PREMISES FOR WHICH THE LICENSE HAS TWICE BEEN SURRENDERED OR REVOKED INELIGIBLE FOR ANY LICENSE IN THE FUTURE, DISAPPROVED.

April 20, 1938

Charles L. Smith,
Clerk of Egg Harbor Township,
R. D. Mays Landing, N. J.

My dear Mr. Smith:

I have before me copy of proposed ordinance to limit the number of licenses in Egg Harbor Township.

It appears to be in proper form with the exception of Section 4.

Section 4 provides:

> "That since it has been determined that a necessity shall be shown for a need of a plenary retail consumption license at a given point to satisfy the local needs and the traveling public, and where such a place has been operating under a license and has not shown sufficient remuneration to make it profitable to the licensee and he or she surrender his or her license for that cause, or when said license has been revoked for cause in any event of this occurring twice at the same place, it shall be determined sufficient reason for a licensed place not being required at such place and no license shall be issued to any applicant for such place."

The effect of the section is to declare ineligible for license, any premises for which the license has been twice surrendered or revoked.

Merely because two people have failed to make a go of it in a certain place is no reason why someone else shouldn't be given the chance.

Merely because two people have violated the law and conducted a place improperly is no reason why the place should be forever disqualified and no one else allowed the opportunity of conducting a legitimate business there in the future.

The arbitrary disqualification could well operate to prevent the licensing and use of the premises for an eminently desirable enterprise, to the disadvantage of the entire community.

I suggest that Section 4 be omitted entirely, leaving the Township Committee with free hand to deal with each application on the merits.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

16. EMPLOYEES - NECESSITY FOR SPECIAL PERMITS BY THOSE WHO HAVE NOT BEEN RESIDENTS OF NEW JERSEY FOR FIVE YEARS - HEREIN OF THE HOMING INSTINCT.

My dear Mr. Burnett:

If a man goes to Florida and registers there and votes is he entitled to come back to New Jersey and go to work before some of us who stay here all winter and are also property owners and taxpayers? I wish you would give me a ruling on this, and oblige,

Yours sincerely,
Wm. Murray

April 24, 1938

Mr. William Murray,
31 South Maryland Ave.,
Atlantic City, N. J.

Dear Mr. Murray:

I can't make out from your letter just what you are driving at. I am not in favor, any more than you, of giving a plutocrat who can afford to go to Florida any preference over us stay-at-homes. I don't blame him, however, for wanting to get back to New Jersey, and, if he obeys the homing impulse, see no reason why he shouldn't go back to work. We property owners and taxpayers carry a big enough load, as it is, without supporting him in idleness.

If what you have in mind is the employment of the pilgrim in a place licensed for the sale of liquor, he must, if not a resident for five years continuously preceding his employment in New Jersey, obtain a special permit from the State Commissioner. If he is of full age and a citizen and otherwise free from disqualification, such special permit will allow him to be so employed.

Yours very truly,

L. Frederick Burnett

Commissioner.