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

BULLETIN NUMBER 189 JUNE 24, 1937

1. PLENARY RETAIL CONSUMPTION LICENSES - FEES - THERE IS BUT ONE KIND OF SUCH LICENSE FOR WHICH A SINGLE UNIFORM FEE MUST BE CHARGED - HEREIN OF A SLIDING SCALE OF FEES.

June 21, 1937

Louis Ostermeier,
Clerk of the Borough of Englewood Cliffs,
Coytesville, New Jersey.

My dear Mr. Ostermeier:

I have before me the resolution adopted by the Mayor and Council on the 10th fixing license fees, regulating hours and limiting the distance between licensed establishments.

As regards the fees the resolution provides:

> "RESOLVED by the Mayor and Council of the Borough Englewood Cliffs, New Jersey, that the fee for maintenance of an establishment serving liquors for consumption on the premises be and the same hereby is fixed at Three Hundred Dollars ($300.) per annum, effective July 1st, 1937; and, be it further
>
> "RESOLVED that the license fee for such establishments furnishing liquor for consumption on the premises and having entertainment and/or amusements shall be the sum of Four Hundred Dollars ($400.) per annum, effective July 1st, 1937;"

The Council can fix but one fee for plenary retail consumption licenses. Having determined that fee by the first resolution, the second is beyond the power of the Mayor and Council. If it were valid, then, by the same token, different fees could be devised on a grand sliding scale for licenses dependent upon whether the liquor was to be furnished with music or dominoes or caviar and these in turn with respective subdivisions such as contrapuntal, or solid ivory, or with or without onions — in fact, every differentiation which the ingenuity of the human mind could conceive.

The Control Act contemplates, however, but one kind of plenary retail consumption license and a single fee for it uniform throughout the particular municipality.

The second resolution is, therefore, disapproved.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SUPPRESSION OF MATERIAL FACTS IN APPLICATION FOR LICENSE - SUSPENSION FOR BALANCE OF THE TERM INDICATED AS MINIMUM PENALTY FOR SUCH AN OFFENSE.

June 21, 1937

William E. De Nike, Esq.,
Borough Clerk,
East Rutherford, New Jersey.

Dear Mr. De Nike:

I have staff report and your letter of June 16 re proceedings before the Mayor and Council of East Rutherford against William F. Duehring, holder of plenary retail consumption license C-12 for premises 170 Union Avenue, East Rutherford, New Jersey.

The report reads as follows:

"On May 7, 1937, Investigators King and Best visited the licensed premises. They interviewed Frank Ocello who stated he was bartender and in charge; that he had been employed by Duehring for four years at $25.00 a week and is in full control of the licensed premises; that he owns the building containing the licensed premises; that Duehring is sick and confined in the Hackensack Hospital; that Duehring pays him rent of $50.00 a month.

"On May 10, 1937, the investigators interviewed Duehring who stated that Ocello had requested him to take out the license in his name for the above tavern; that he was to receive $25.00 in cash and $10.00 a week as an employee; that while the license is in his name, the business belongs to Frank Ocello.

"A copy of the application was obtained and disclosed Duehring had stated therein that no one other than himself had any interest in the licensed business.

"Ocello further stated to the investigators that he is not a citizen but an Italian national. (Note: Ocello would not have been disqualified from having the license in his own name as we have a trade treaty with Italy).

"The records of the Department disclose the license has been in Duehring's name since February 6, 1934.

"A letter from the Borough Clerk reveals the following:

"'This matter was referred to the Mayor and Council, who ordered Mr. Duehring to appear before them. Mr. Duehring is in the Hackensack Hospital, and I don't believe he will ever leave there.

"'He signed a statement surrendering his license that day which was Monday, June 7, 1937. Mr. Frank Ocello then made application for a license in his name at the same premises. Mr. Ocello was then informed by the Council that he had made misrepresentation and misstatements, which was a very

serious offense, but due to his long residence in the Borough, and having no trouble with him, the Council voted to have the premises at 170 Union Avenue, closed from Monday, June 7th, until midnight, June 17th, as a penalty, and further warned him that if there is any trouble at his place of business after we grant him a new license, that it will be revoked for good.

"'Trusting the above meets with your approval, I beg to remain,

Yours very truly,
Wm. E. DeNike,
Borough Clerk.'

"In effect, the above constitutes a ten-day suspension of the license issued in the name of William F. Duehring for the business owned by Frank Ocello."

I think it would have been preferable if the Mayor and Council had suspended the license for the balance of the term. In fact, outright revocation would have been wholly within their power because of the fraud perpetrated upon them by Ocello.

I am therefore pleased to note that while he was let off this time quite easily he was warned that if there is any trouble at his place after his new license is granted, that it will be revoked for good.

Please thank the Mayor and Council for their cooperation.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

3. APPELLATE DECISIONS - LEVY v. MT. EPHRAIM.

NELLIE LEVY,)
Appellant,)
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE) CONCLUSIONS
BOROUGH OF MT. EPHRAIM (CAMDEN)
COUNTY),)
Respondent)
- - - - - - - - - - - - - - - - - -

Morrissey & Dzick, Esqs., by Benjamin Dzick, Esq.,
Attorneys for Appellant.
No appearance on behalf of Respondent.
Mrs. Hazel Cowherd and Mrs. Ethel Paul, appearing for Objectors.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail consumption license for premises known as Spread Eagle Inn, at Kings Highway and Market Street, Mt. Ephraim.

The license was denied because respondent felt that there were sufficient consumption licenses outstanding.

The evidence shows that the Borough Council in office on December 26, 1933 adopted a resolution, on that date, limiting

the number of consumption licenses to eight. There are five such licenses outstanding. Hence there are three vacancies.

Respondent's answer sets up that "the Board of Commissioners (sic) of respondent assumed office on June 1st, 1935 and by agreement, decided that five plenary retail consumption licenses were sufficient for the Borough of Mt. Ephraim." The present Borough Clerk testified with reference to the resolution of December 26, 1933 as follows:

"Q That resolution has never been changed or altered?
A It has been changed with reference to fees.
Q But, so far as the number?
A Not that I know of.

THE HEARER: When was that resolution adopted?

THE WITNESS: December 26th, 1933. Now, whether there was anything between 1933 and 1935, I could not say, because I was not Borough Clerk, and I haven't had a chance to go over the records.

Q But, so far as you know, nothing has been brought up that would state there has been a change in the number of licenses?
A No."

In October 1936 a petition was presented to the present Council and, at that time, respondent told the petitioners that no additional licenses would be issued. However, as appears from the Clerk's evidence above, no resolution was ever adopted to reduce the limitation of number of licenses from that fixed originally.

This case, therefore, falls squarely within the rule laid down in Sosnow v. Freehold, Bulletin 68, Item 13:

> "So long as a municipality maintains a resolution limiting the number of licenses of record on its books, that resolution is binding not only on license applicants but also upon the municipality itself."

Appellant is personally qualified. It is true that a charge was made at the hearing that her husband was accused of selling to a minor while he was a licensee in Camden. No evidence of this was presented, however, despite the fact that the objectors were notified that a supplemental hearing would be held, if they desired, to present such testimony. They failed to respond to the offer. Subsequently, attorney for appellant advised me by letter that appellant's husband had been arrested on this charge, but that he had been found "not guilty."

No objection was made at the hearing as to the premises. They have been used as an inn for forty years. They consist of a large three-story frame building; the owner testified he has invested $18,000.00 in the property and will have to raze the building to save taxes, if the license is not granted.

These are the same premises which were considered in Thorman v. Mt. Ephraim, Bulletin 169, Item 7. In that case it appeared that, on December 30, 1936, respondent revoked the Thorman license for failure to make repairs to the licensed premises and for failure to file tax report. At the present hearing, the owner testified that he has made all necessary repairs and that the fire chief of the Borough, who had condemned the property, has since approved it. The Borough Clerk testified that his official records did not show that the fire chief had approved the building.

The action of respondent is, therefore, reversed, upon condition that appellant furnishes to respondent a certificate from the fire chief of the Borough stating that the fire hazard has been removed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 21, 1937.

4. MUNICIPAL ORDINANCES - LIMITATION OF LICENSES - CONFLICTING PROVISIONS CONSTRUED.

June 21, 1937

Thomas F. Salter, Esq.,
Solicitor for Pennsauken Township,
Camden, New Jersey.

Dear Mr. Salter:

According to my records, the limitation imposed in Section 1 (a) and (b) of resolution adopted by the Township Committee on July 27, 1936 provides:

> "Section 1. (a) No more than forty licenses to sell alcoholic beverages at retail for consumption on the licensed premises, shall be in effect in the Township of Pennsauken at any time.
>
> "(b) No more than ten plenary retail distribution licenses and five Club licenses shall be in effect in the Township of Pennsauken at any time."

Section 1 (a) was subsequently amended by resolution of December 14, 1936. It now reads:

> "(a) No new licenses to sell alcoholic beverages at retail for consumption on the licensed premises shall be hereafter issued in the Township of Pennsauken, unless and until the number of said licenses shall be less than thirty; provided, however, that this shall not prevent the renewal, from time to time, of existing licenses, nor the transfer of said licenses as provided by law."

Section 1 (b) still stands as originally enacted.

There is, as you say, a fair question as to whether there is a conflict between sub-sections (a) and (b).

If the words "sell alcoholic beverages at retail for consumption on the licensed premises" were isolated from their context, they would ex vi termini include both plenary and seasonal consumption and club licenses as well for each of these three classes permit such sale at retail for on-premises consumption.

The fact, however, that specific mention was made of club licenses in section (b) and specific provision made for the limitation of their number, demonstrates that it was not the intent to include this class of licenses in the general words of section (a).

Since the revised section (a) is a mere substitute for the original, the construction should be the same.

I therefore rule that the limitation of the number of licenses set forth in section (a) as revised on December 14, 1936, does not include the club licenses referred to in section (b).

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. SPECIAL PERMITS - LICENSEE UNABLE TO ACQUIRE POSSESSION OF NEWLY LICENSED PREMISES BECAUSE OF FAILURE TO SECURE SIGNATURES TO TITLE DEEDS - INTERIM PERMIT TO REMAIN AT PREMISES PREVIOUSLY LICENSED MAY BE GRANTED.

June 18, 1937

Dear Sir:

Will you kindly give me your ruling on the following matter:

Mr. Michael Sabo in the Town of Phillipsburg is the holder of a Plenary Consumption License located at 375 So. Main Street. He has been ordered to vacate and has been negotiating for a place at 395 So. Main St. This place he has advertised to continue effective July 1st, 1937 and the governing body has investigated and no complaints have been filed. There has been a delay in securing the necessary signatures to the deed which will cause a delay of at least 10 or 15 days before the necessary alterations can be made.

Mr. Sabo desires to know if he can continue at #375 under his new license until the place is ready to occupy. If it meets with your approval the Board of Commissioners are satisfied with the transaction.

Will you kindly advise me at your earliest opportunity.

Very truly yours,
Harvey G. Wismer,
Town Clerk.

June 21, 1937

Mr. Harvey G. Wismer,
Town Clerk,
Phillipsburg, N. J.

Dear Mr. Wismer:

I have yours of the 18th re Michael Sabo.

In view of the facts certified by your letter, you may advise Mr. Sabo that I will entertain an application for a Special Permit to continue at 375 South Main Street, until he can get his deed for the premises at 395 South Main Street, but not to exceed thirty days.

The application for Special Permit should be made in the form of a verified petition setting forth:

1. Name of applicant, present address of licensed premises, and type of license held.
2. Address of premises to be licensed after June 30th.

3. Reason for continuing conduct of business after June 30th at present licensed premises.
4. Photostatic copy of Federal Stamp or Stamps or other evidence in lieu thereof to show that applicant has authority to conduct business pursuant to license at present premises.
5. Statement that application for license for new premises with full annual fee, Proof of Publication of Notice of Intention and affidavit in respect to tax reports and payment of taxes have been filed with municipal authorities.
6. Statement giving the reason for applying for permit and approximate time for which permit will be necessary.

The application must be accompanied by a fee of $10.00 in cash, money order or certified check drawn to the order of D. FREDERICK BURNETT, Commissioner, and the written consent of the local issuing authority to the issuance of the Special Permit.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. APPELLATE DECISIONS - CROCIATA v. CLIFTON.

SEBASTIAN THOMAS CROCIATA,
Appellant,
-vs-
MAYOR AND COMMON COUNCIL OF THE CITY OF CLIFTON,
Respondent

ON APPEAL
CONCLUSIONS

Milton Werksman, Esq., Attorney for Appellant.
John G. Dluhy, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail distribution license for premises located at 721 Main Avenue, Clifton.

The resolution denying the license did not set forth any reasons but respondent's answer claimed that its action was proper because (1) there was no further demand or need for such business; (2) issuance of such license would result in too many licensed premises in the neighborhood.

Our records show that on December 15, 1936 a resolution limiting the number of plenary retail consumption licenses was adopted by respondent. No ordinance or resolution limits the number of plenary retail distribution licenses.

At the hearing appellant attempted to meet the issues raised in the answer. He was his only witness. As to demands and need, he testified that he was formerly employed by a distribution licensee, whose store is located on the same block, and that he knew his former employer had a large liquor trade. As to the issue of sufficient licensed premises in the neighborhood, he testified that his premises are located in the heart of a business district of Clifton; that Main Avenue is used by two bus lines and trolley cars and is the principal thoroughfare between Passaic and Paterson.

On the other hand, he testified that his former employer's store is on the same side of Main Avenue and within one hundred feet of his premises; that there is another distribution place on the opposite side of Main Avenue a little more than two blocks away; that a consumption license has been issued for premises directly across the street and also for a bowling alley located on the second floor of the same building; that a consumption license has been issued for a store on the same side of Main Avenue about one block to the south, and also to a hotel on the opposite side of Main Avenue within two blocks to the south; that a consumption license has been issued for premises on Clifton Avenue, which is the next street to the south, within approximately one hundred feet of Main Avenue.

No evidence was given on behalf of respondent.

Appellant contends that he should prevail because respondent's resolution did not set forth any reason for denying the license; because no evidence has been introduced herein that the license was denied because of the reasons set forth in respondent's answer.

"The purpose of the pleadings is to define the issue. The burden of establishing that the action of the respondent issuing authority was erroneous rests with appellant. (Rules Governing Appeals, 6). Until the appellant meets that issue and makes a prima facie case, there is no reason for the introduction of any evidence by the respondent. The mere fact that the municipal resolution did not, as it should in fairness, assign any reason for denying the license does not shift either the ultimate burden of proof or the onus of initiative in establishing a prima facie case that the respondent's action was improper. The appellant had the right to show at the hearing, if he could, that the reasons alleged in the answer were not the true reasons for denying the application but he introduced no evidence of this nature. Instead, he proceeded to meet the issue as raised by the pleadings. His evidence was not sufficient to show any need for another distribution premises, or that there are not too many licensed places in the neighborhood."

On the record as presented, I find that appellant has not sustained the burden of proof in showing that respondent's action was arbitrary or unreasonable.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 22, 1937.

7. LICENSES - MUNICIPALLY OWNED BUILDINGS - PROCEDURE.

My dear Sir:

Application has been made to the City of Long Branch for a Seasonal Retail Consumption License for premises located at the southwest corner of Broadway and Ocean Avenue, in the City of Long Branch, which is City owned property, by one VanDaalen.

Kindly advise procedure as to the method of obtaining such license due to the fact that it is on City owned property.

Respectfully,
J. Arthur Wooding,
City Clerk.

June 22, 1937

J. Arthur Wooding,
City Clerk,
Long Branch, N. J.

My dear Mr. Wooding:

The proper procedure in such a case is for your Board of Commissioners to determine whether the license should be issued to the applicant for the premises in question in exactly the same manner as if the fact that the property was owned by the City was not involved.

If your Board comes to the conclusion that the license should not be issued, that is the end of the case.

If your Board comes to the conclusion that the license should be issued, then, because the premises sought to be licensed happens to be a public building belonging to or under the control of your municipality, the approval of the State Commissioner is also required (Control Act Section 39).

In such event, the resolution of the local issuing authority, after directing the issuance of the license in the usual form, should be followed by a proviso reading:

> "provided, however, that this license shall not be issued unless and until the State Commissioner shall approve the same."

The applicant should, of course, be promptly informed of the text of the resolution and directed to petition the State Commissioner for such approval. His petition should be accompanied by a certified copy of the local resolution aforesaid and of his application on file with the local Clerk, together with a fee of $10.00 in cash, money order or certified check to the order of "D. Frederick Burnett, Commissioner."

Thereupon, immediate investigation will be made by me to determine whether such approval should be granted or not. If it is approved, that fact will be certified in writing to you, whereupon the license may be issued. If disapproved, the local resolution, of course, by its own terms becomes ineffective.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - WHOLESALERS - DEALINGS WITH UNLICENSED SOLICITORS.

In the Matter of Disciplinary Proceedings against)
BENJAMIN STONE, trading as PENN BEVERAGE COMPANY, 611-613-615 Atlantic Avenue, Atlantic City, New Jersey,) CONCLUSIONS AND ORDER
Holder of Plenary Wholesale License No. W-45.)

Joseph Altman, Esq., Attorney for Licensee.
Jerome B. McKenna, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were filed against above licensee alleging that he placed orders within this State for the purchase of alcoholic beverages with three individuals, viz.: Abe Waxman, Col. Myers and Mr. Schwartz, none of whom had solicitors' permits, contrary to Rule 7 of Rules Governing Solicitors' Permits.

It is admitted that none of the three individuals possessed such permits.

On March 4th Investigators Soeder and Arentzen made inspection of licensee's premises and examined licensee's accounts. At that time licensee signed three statements, which may be summarized as follows:

> Statement (1): Mr. Abe Waxman, representative of Superior Wine and Spirits Co., 15 Lombard Street, Philadelphia, Pa., has called upon me personally and actually sold me products of said Company as represented by the following invoices accounted for representing purchases for the year 1936.
>
> (Here follow seventeen invoices for liquor dated January 10, 1936 to August 17, 1936).

> Statement (2): At various times Colonel Myers, representative of Ostrucon Distilled Products Co., 601 West 26th Street, New York City, has called upon me and promoted and sold me the products of this concern. Recently, however, I have placed orders by mail. I cannot state definitely which of these orders were placed with Colonel Myers and which were mail orders.
>
> (Here follow twenty-one invoices for liquor dated February 20, 1936 to December 28, 1936).

> Statement (3): Mr. Schwartz, representative of Siboney Distilling Corporation, Shackamaxon St., Philadelphia, Pa., called upon me in person and actually sold me the products of this concern as per the accounting of invoices listed herewith.
>
> (Here follow nine invoices for liquor dated May 29, 1936 to December 17, 1936).

At the hearing licensee contended that the contents of his statements were not accurate; that the statements were signed hurriedly by licensee and that in fact he had given no orders to these solicitors in New Jersey.

As to the first statement, licensee testified that he gave Louis Waxman an order in the presence of Abe Waxman; that the Waxman brothers were formerly licensees trading under the name of Majestic Wine & Spirits; that he was surprised to learn later that the partnership had been dissolved; that the order referred to was later billed to licensee by Superior Wine & Spirits Company, of Philadelphia; that subsequent orders were 'phoned to the latter company and picked up by licensee's trucks in Philadelphia. To corroborate this explanation, records of Superior Wine & Spirits Company were introduced, which showed that all orders during the period in question were written up on office order forms. According to a letter sent to the licensee by Superior Wine & Spirits Company, this "would indicate that these orders were received by telephone conversation or else by your visit to our office." That evidence, however, is not conclusive. It merely tends to indicate that if orders were solicited by Abe Waxman, he did not turn them in to his Philadelphia employer on his order book form. Licensee's written statement,

dated March 24, 1937, however, removes all doubt of his guilt. Therein he says:

> "Supplementing my statement under date of March 4th in reference to purchases made as per list contained in the statement of that date would say that Mr. Abe Waxman representing the Superior Wine & Spirits Co., 15 Lombard St., Phila., Pa., personally solicited the sales listed.
>
> "The solicitations occurred on my licensed premises located at that time at number 27 N. Virginia Ave., Atlantic City, New Jersey."

I find the licensee guilty of placing orders within this State for the purchase of alcoholic beverages with Abe Waxman.

As to his second statement, which does not conclusively show solicitation in New Jersey, licensee says he placed his first order with one Colonel Myers at a New York hotel; that no orders were placed with Colonel Myers in this State; that orders were 'phoned to Ostrucon Distilled Products Co., in New York, and picked up there.

I find the licensee not guilty as to placing orders with Colonel Myers.

As to his third statement, licensee alleges that his first order with Siboney was placed at a New York hotel; that all other orders were "pick-up orders" sent to Philadelphia and picked up as needed. Licensee's written statement, dated March 24, 1937, however, removes all doubt of his guilt. Therein he says:

> "Supplementing my statement under date of March 4th in reference to purchases made as per list contained in the statement of that date would say that Mr. Schwartz of the Siboney Distilling Corporation, Shackamaxon St., Phila., Pa., personally solicited the sales listed.
>
> "The solicitations occurred on my licensed premises located at that time at number 27 N. Virginia Ave., Atlantic City, New Jersey."

I find the licensee guilty of placing orders within this State for the purchase of alcoholic beverages with Mr. Schwartz.

At the hearing licensee frankly said:

> "I think most of us have been a little lax in not asking every solicitor to let us see their permits. Had we done that we would be sure of everything. While we were possibly wrong, it has not been our intention to violate any law, but we have neglected to do it because of rush of business. I will say this, that since this thing has come up, unless they show us a solicitor's permit, no matter if the man was in last week and comes in again, he must show us his solicitor's permit."

This is a case of first impression. The licensee has co-operated fully with our Investigators. His candor as to laxness commands respect. He has learned his lesson. I have given appropriate weight to these facts in fixing the penalty.

Accordingly, it is on this 22nd day of June, 1937, ORDERED, that Plenary Wholesale License No. W-45, heretofore issued

to Benjamin Stone, trading as Penn Beverage Company, be and the same is hereby suspended for the period of one day, effective midnight (Daylight Saving Time) June 29, 1937.

D. FREDERICK BURNETT,
Commissioner.

9. LICENSEES - QUALIFICATION - INDICTMENT IS NOT A DISQUALIFICATION - SUBSEQUENT CONVICTION MAY, HOWEVER, BE CAUSE FOR REVOCATION.

Dear Sir:

There has been filed with me an application for a plenary retail consumption license by a woman, who at the present time, is under an indictment in this county on a charge of performing an illegal operation.

The trial has not been moved because one of the State's important witnesses is now in another state. Inasmuch as the applicant for the license is under indictment can the Borough Council grant her a license for 1937-38?

Sincerely yours,
George A. Bowen,
Borough Clerk.

June 23, 1937

George A. Bowen,
Borough Clerk,
South River, New Jersey.

My dear Mr. Bowen:

I have your letter of June 16th, inquiring whether a license may be issued to an applicant under indictment for performing an illegal operation.

If the applicant is otherwise qualified, the pending indictment is no bar to the grant of the license. The Control Act, by Section 22, requires that the applicant shall not have been convicted of a crime involving moral turpitude. Indictment is not conviction. Indictment is made by a Grand Jury after hearing only one side of the case; conviction is an adjudication of guilt after the accused has had opportunity to defend. Everybody is presumed innocent until he is found to be guilty.

Therefore, until conviction, your Council should not permit any indictment to influence its disposition of the application. It does not suffice to say that where there is smoke there must be fire. Catch phrases which may literally be true often convey a false innuendo. The crucible test of the truth comes only when both sides of the story have been told. The presumption of innocence is one of our cherished heritages. The Council should give the accused applicant the full benefit of that presumption.

The municipality is fully protected. For, if the license be granted, and thereafter the licensee should be convicted of the crime charged, revocation may be had for any act or happening occurring after the time of making application, which if it had occurred before, would have prevented the issuance of the license. Control Act, Section 28. A revocation of this kind was accomplished in Re Coyle, Bulletin 165, Item 7, which illustrates the flexibility

and adequacy of the Control Act to deal effectively with cases out of the ordinary run.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. ELECTIONS - LICENSED PREMISES - USE OF LICENSED PREMISES FOR POLLING PLACES PROHIBITED - THIS INCLUDES CLUBS WITH LIQUOR LICENSES.

Dear Sir:

Bulletin 166 shows that you are very emphatic in your objections to having polling places for elections in licensed premises. My inquiry is in regard to Club Licenses. Do you also object to holding elections in club houses licensed under Club Licenses for the sale of alcoholic beverages.

It is extremely difficult to secure suitable polling places in this borough and clubs having had the polling places for years do not relish the idea of losing the rent received for this use. I would like a personal letter from you to me explaining your rule on this matter so as to assure the members of these clubs that I am in no way responsible for removing the polling places.

Respectfully yours,
Alexander Clifford,
Borough Clerk.

June 22, 1937

Alexander Clifford,
Borough Clerk,
Haledon, New Jersey.

My dear Mr. Clifford:

The use of premises licensed to sell liquor for polling places is prohibited. See Re Lehman, Bulletin 146, Item 1; Re Lisa, Bulletin 166, Item 12.

The rule applies to all licensed premises and to those operated under club licenses as well as to those holding the regular commercial licenses. The reasons are set forth in the foregoing citations.

The only fair way is to apply the rule uniformly to all liquor licensees irrespective of the particular kind of license they happen to hold.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. PLENARY RETAIL CONSUMPTION LICENSES - OTHER MERCANTILE BUSINESS - MAY SELL CIGARS AND CIGARETTES AS ACCOMMODATION TO PATRONS BUT NOT RUN A FULL-FLEDGED CIGAR STORE - WHAT CONSTITUTES INCIDENTAL BUSINESS DEPENDS ON THE FACTS.

Dear Commissioner:

I should like to get your ruling governing the sale of cigars and cigarettes in a store selling bottle goods for consumption

off the premises, which is a subdivision of the Cocktail Room of this Hotel.

Respectfully yours,
Plaza Hotel.
By: F. W. Dawson, Mgr.

June 22, 1937

Plaza Hotel,
Camden, New Jersey.

Att: Frank W. Dawson, Manager.

Gentlemen:

According to my records, the Plaza Operating Co. holds plenary retail consumption license No. 84 for premises 5th and Cooper Streets, Camden.

The statute prohibits the issuance of plenary retail consumption licenses for premises on which any mercantile business other than the sale of alcoholic beverages (except the sale of cigars and cigarettes at retail as an accommodation to patrons or the retail sale of non-alcoholic beverages as accessory beverages to alcoholic beverages) is carried on. Section 13, sub. 1. Rules and Regulations, page 20.

You may sell cigars and cigarettes in the Cocktail Room or the adjacent package goods department to the extent reasonably necessary to accommodate the persons who come in to purchase alcoholic beverages. You may not, however, conduct in the Cocktail Room or package goods department a full-fledged cigar store for general sales to the outside public for that would constitute the conduct of another mercantile business which the statute prohibits. What constitutes an incidental as distinguished from an independent business is a question to be determined on all the facts of the particular case.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

12. RETAIL LICENSEES - SALES MAY BE MADE ONLY FROM THE LICENSED PREMISES - DELIVERIES MAY BE MADE IN LICENSED VEHICLES ANYWHERE IN THE STATE PROVIDED THERE IS NO REGULATION IN THE OTHER MUNICIPALITY PROHIBITING IT.

June 23, 1937

Quality Liquor Co., Inc.,
Camden, New Jersey.

Gentlemen:

Sales under your plenary retail distribution license may be made only from your licensed premises at 1011 Broadway, Camden.

Deliveries, however, may be made, provided there is no local regulation prohibiting them, to consumers anywhere in the State (1) by your own truck if it bears the required transportation insignia or (2) by any licensed transporter.

Where delivery is essential to the completion of the transaction, the sale is made at the place of delivery. You may not, therefore, make deliveries in any municipality during the

hours when retail sales are prohibited in that municipality by resolution, ordinance or referendum.

Enclosed is copy of ruling made in re Weston, Bulletin 171, Item 1, which will give you the reasons.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

13. TWO HUNDRED FEET RULE - WAIVERS - A WAIVER IS GOOD ONLY FOR THE FISCAL YEAR FOR WHICH IT IS GIVEN - THE FACT THAT IT IS GIVEN ONCE IS NO REASON WHY IT MUST BE GIVEN AGAIN.

My dear Commissioner:

I represent Gordon-O'Neill Co., Inc., holding rectifiers' and wholesalers' licenses.

My client is contemplating the purchase of its own building, which is located within 200 feet of a Jewish synagogue. For the purpose of obtaining our licenses for the year 1937-38 we obtained the necessary consents or waivers on the forms supplied by your department. Since securing these waivers we have learned that some of the members of the congregation are opposed to our engaging in business at the premises in question, and now feel that we may meet with such opposition as to make it highly probable that we will not be able to obtain the necessary consents and waivers at the expiration of the 1937-38 license period, in which event, as I understand the statute, we would be in the position of owning a building equipped for the operation of our business, but would be precluded from so doing by reason of the fact that, lacking such consents and waivers, your department would refuse to issue the necessary licenses.

I would like to know, in view of the factual situation hereinbefore set forth, whether you have the power and inclination to invoke an equitable estoppel against the synagogue, if, after having relied upon their consent obtained for the 1937-38 license period, we make the investment of purchasing this building, they should refuse to execute further waivers at future renewal dates.

This situation, as you can no doubt appreciate, is of such grave importance to us, that I would appreciate obtaining your ruling at your earliest opportunity.

Yours very truly,

Joseph A. Davis.

June 23, 1937

Joseph A. Davis, Esq.,
Jersey City, N. J.

My dear Mr. Davis:

You understand the Statute very well. When it declares that the 200 feet protection may be waived at the issuance of the license "and at each renewal thereafter. . . .such waiver to be effective until the date of the next renewal of the license," it means just that, and, as you surmise, if your client lacks the waiver next year, it could not get a license at that place.

I take it, therefore, that your client seeks to rely on some expression of mine rather than the equitable estoppel, whatever that may be, you seek to invoke.

I would not be so inclined, even if I had the power. All churches of whatever creed are to be protected to the full extent of the law. The requirement of annual renewal of the waiver is a most excellent check upon the manner in which business is conducted on the licensed premises. The consent will probably be forthcoming again if the place is properly run. No assurance, however, can be given. The Synagogue has the absolute right, without assignment of reasons, to determine for itself whether it will renew the consent or not. Temporary privileges conferred as a matter of generosity are not the stuff on which permanent rights may be founded, either by adverse possession or estoppel or otherwise.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. APPELLATE DECISIONS - O'ROURKE v. FORT LEE.

WILLIAM O'ROURKE,)
Appellant,
-vs-) ON APPEAL
BOROUGH COUNCIL OF THE) CONCLUSIONS
BOROUGH OF FORT LEE,)
Respondent)

Vincent J. Aiken, Esq., Attorney for Appellant.
Lawrence A. Cavinato, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises located at 2153 Hudson Terrace, Borough of Fort Lee.

At the hearing objection was made by appellant that respondent's answer was served upon him 15 days out of time (Rule 4 of Rules Governing Appeals). Appellant, however, has not been prejudiced by this delay. The record shows the complete situation on which to determine the issues. I shall consider, therefore, the merits.

The proposed tavern is located on the corner of Hudson Terrace and Sylvan Street, about one-half mile south of the business heart of the Borough, and about 1000 feet from the Palisades. The vicinity, although zoned for business, is nevertheless of a residential character. In the immediate neighborhood, west of Hudson Terrace, there are some 14 residences, most of which are occupied. To the east of Hudson Terrace there is the Interstate Park. With the exception of a tavern known as the "Old Homestead," on the corner of Hudson Terrace and Merkle Street, a block away, and another some four or five blocks away, there are no business premises within an area of several blocks.

At the hearing below, a petition representing all but a few of the residents in the immediate neighborhood was filed in protest of appellant's application.

Where, as here, an issuing authority denies a license in a vicinity of a residential character on the ground that residents therein have objected and on the further ground that there is an adequate number of licensed premises already located in the general area, such denial will not be reversed unless arbitrary or

unreasonable or unless the public convenience and necessity require it. Farley v. High Bridge, Bulletin 151, Item 13, and cases therein cited; Schick v. Millville, Bulletin 133, Item 8. The fact that the vicinity is zoned for business does not preclude it from being residential in character. Mulligan v. Lyndhurst, Bulletin 146, Item 6; Borkowski v. Clifton, Bulletin 139, Item 5, and cases therein cited.

Appellant has not shown that public necessity and convenience require the issuance of the license, or that respondent's action in denying the license was unreasonable.

The contention that respondent has arbitrarily discriminated against him by granting a license to the "Old Homestead" is without merit. That license not only involves a better type of building than the one which appellant proposes to use, but also was granted prior to the hearing on appellant's application and without any protest of residents.

Equally unsound is the argument that after denial of the present application a license was granted to the "Riviera." That establishment is located near the Interstate Park, some 500 feet away from the proposed tavern, and is admittedly an entirely different type of establishment, in no sense to be classed as a saloon, and in which the service of liquor is merely incidental to the entertainment there sought by the high class clientele to which it caters.

In view of the foregoing finding, it is unnecessary to consider the other points on which respondent sought to justify its denial.

The action of respondent is therefore affirmed.

D. Frederick Burnett,
Commissioner.

Dated: June 23, 1937.