STATE OF NEW JERSEY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

744 Broad Street, Newark, N. J.

BULLETIN NUMBER 38. July 2, 1934

1. PUBLIC BUILDINGS - LICENSES - NECESSITY OF STATE PERMISSION - WHEN ISSUABLE.

June 27, 1934

----------Hose Company No. 1,
----------, New Jersey.

Gentlemen:

You have been misinformed as to Section 39 of the Control Act. It is possible for your company to obtain a plenary retail consumption license provided that, if the licensed premises are in any public building belonging to or under the control of the State or any political subdivision thereof, the permission of the State Commissioner is also obtained. I am willing to entertain such application and will make a thorough investigation and grant permission if it is consonant with public policy as soon as you have obtained a license from your local Township Committee. The situation is covered by Bulletin 33, item 10, copy of which is herewith enclosed.

I wish that you would give thought to the question as to whether it would be consonant with public policy to grant a permanent liquor license to organizations such as firemen and policemen who are constantly charged with the performance of duties involving the safety of human lives. Frankly what is bothering me is the thought that if fire should break out in some of those summer hotels along the shore and panic ensue, serious danger to life and limb might be occasioned if a single fireman were inebriated. Cogent and convincing proof of public expediency will, therefore, have to be presented before I would issue any permit.

Very truly yours,

D. Frederick Burnett,
Commissioner

2. APPELLATE DECISIONS - GIBERTI VS. TOWNSHIP OF FRANKLIN

CHARLES GIBERTI, Appellant -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FRANKLIN (WARREN COUNTY), Respondent.	ON APPEAL CONCLUSIONS

Bray & Ely, Esqs., Attorneys for the Appellant.
Clark C. Bowers, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

The respondent Board adopted a resolution limiting the number of licenses to three plenary retail consumption licenses, and issued the allotted number. Application was filed by the appellant for a plenary retail consumption license for

premises situated in the village of New Village, and thereafter the application was denied. An appeal was duly filed from the denial, and has come on for hearing.

Respondent contends that pursuant to the provisions of Section 37 of the Control Act, it limited the number of licenses to be issued and that appellant's application was properly denied in view of this limitation. Although the limitation is subject to appeal, it should not be upset on appeal unless it clearly appears to be unreasonable either in its adoption or its application to the appellant. See Ryman vs. Branchburg Township Committee, Bul. 37, Item 18.

The Township of Franklin is a farming community, made up of three small villages known as Broadway, Asbury and New Village, with approximately 1,200 inhabitants in all. The local Board limited the number of licenses to one in each village.

No substantial evidence was introduced by the appellant in support of the contention that the limitation of three plenary retail consumption licenses was unreasonable. The action of the respondent Board in denying a license is therefore affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 27, 1934

3. SPECIAL PERMITS - TO SELL STOCK ON HAND AT EXPIRATION OF LICENSE - PROCEDURE.

June 27, 1934

M. J. Greenblatt, Esq.,
10 No. 6th St.,
Vineland, N. J.

Dear Sir:

I have yours of the 21st. If your client does not contemplate a renewal of his present license which expires on June 30th, sale of alcoholic beverages by him must cease on that date. He may, however, make application to this Department for a Special Permit in order to dispose of stock on hand after that day. This application may be made by affidavit setting forth therein:

1. His name and address.
2. The location of the premises.
3. The type and number of his present license.
4. By whom issued.
5. An inventory of the alcoholic beverages on hand.
6. The approximate length of time that he will require to dispose of it.

The application must be accompanied by a letter from the issuing authority which granted the license in question to the effect that the applicant for Special Permit has complied in all respects with the law and with all ordinances, resolutions, rules and regulations.

A waiver from the State Tax Department, Beverage Division, showing that there is no tax due from him, must be obtained, but need not accompany the application.

His application will be given my careful consideration.

A reasonable fee to be determined by the Commissioner will be charged for this Special Permit.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

By_____
Herman W. Brams

4. SPECIAL PERMITS - PICNICS AND OUTINGS - PROCEDURE

June 27, 1934

Mr. Elmer E. Brown, Borough Attorney
Carteret, New Jersey

Dear Sir:

I have yours of the 21st. This Department which has the exclusive power under the Act, will issue Special Permits for the sale of alcoholic beverages at picnics or outings conducted by bona fide organizations, provided approval is received from the governing body and head of the police department where the function is desired to be held. A charge of $10.00 is made therefor and this permit gives the holder for one specific day only, the right to sell alcoholic beverages for consumption on the premises only.

The applicant desiring to obtain one of these Special Permits should communicate with this Department setting forth the following:

1. The name and address of the organization.
2. A brief description of its purposes.
3. The time and place where the picnic etc. is to be held.
4. Enclose a certified check or money order for the sum of $10.00 payable to the Department of Alcoholic Beverage Control to cover the fee.

I would suggest, in order to save time, that the consent of the municipal clerk and head of the police department be obtained and forwarded with the application and fee.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner

By_____
Herman W. Brams

5. SPECIAL PERMITS - PLENARY CONSUMPTION LICENSES - WHEN NOT ISSUABLE.

June 27, 1934

Hon. D. Frederick Burnett.

Dear Sir:

As solicitor of the Township of Chester in the County of Burlington, there has been referred to me by one of the Township Committeemen an inquiry from a citizen requesting a special permit to allow beer to be sold by the applicant on his premises only on the occasion of picnics using his property.

You will note by a copy of my letter enclosed, to the

committeeman that my reading of the statute and cases reveals no way for the Township Committee to grant such special licenses. My purpose in writing you, however, is to ascertain if such applicant could properly be entitled to a special permit from you under such a set of facts.

Very truly yours,

Howard R. Yocum.

June 27, 1934

Mr. --------

Dear Sir:

This is in reply to your inquiry respecting the right of an owner of a tract of ground on which he entertains picnics to obtain a license for the sale of beer or liquors other than a plenary retail consumption license.

My examination of the alcoholic beverage control statutes and cases thereunder reveals nothing that could give our municipality the right to grant any permission for the sale on such premises other than by a plenary retail consumption license.

The Commissioner has authority, however, to issue special permits in certain instances and upon the compliance with certain conditions. I notice in the Special Bulletin #35, issued from the Commissioner's office, under Article 4, a special three day permit was issued to a fire company upon terms.

If the applicant you have in mind entertains many picnics throughout the term of the summer, I do not believe that this is one of the instances recognized by the Commissioner as being subject to special licenses. I am, however, writing immediately to the Commissioner requesting his views as to whether it would be proper for him to issue a license in such a case.

Very truly yours,

Howard R. Yocum

June 28, 1934

Howard R. Yocum, Esq.,
540 Cooper St.,
Camden, N. J.

Dear Sir:-

I have yours of the 27th and cordially agree with everything you have written.

Normally these special permits for picnics and outings are good for one day only. It would not be fair to plenary consumption licensees to give one day licenses to a competitor who is to pick particularly profitable days of sale. It would also be unfair to the municipality because depriving it of fees which ought to go into its own treasury. If a person is in the regular business of selling liquor, he will have to take out the regular license from his own municipality. See Bulletin 35, item 3.

Even for high-class, charitable purposes, I have felt it my duty to refuse to issue a special permit for more than a single day. See Bulletin 30, item 4.

The only exception I have from this policy is in favor of fire companies who render a direct public service free of charge to the community. For such a class of public servants, I have not only granted permission for a longer period, but have given them a cheaper rate. See Bulletin 35, item 4.

Your applicant does not come within the reason of the exception and will, therefore, have to take out a regular license.

Very truly yours,

D. Frederick Burnett,
Commissioner

6. LICENSES - OTHER MERCANTILE BUSINESS - WHAT CONSTITUTES

On questions raised by the City of Newark as to Section 13 of the Control Act concerning Plenary Retail Consumption Licenses, which provides that such license "shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on", the Commissioner ruled, effective July 1, 1934:

1 - The licensee must not, in connection or association with the sale of alcoholic beverages, sell any other commodities except those which by general custom and usage have been considered as reasonably incident to the conduct of such business; for instance, cigars and cigarettes.

2 - If the licensed premises are principally devoted to use as a restaurant, the sale of other commodities incidental to the conduct of a restaurant is not forbidden.

3 - On the other hand, if the business is part restaurant and part delicatessen, the mere fact that it is to some extent a restaurant in nowise justifies or permits the sale of delicatessen articles. The delicatessen part of the business must not only be a minor part, but also must be merely incidental to the conduct and operation of the restaurant.

4 - If the licensee conducts a restaurant and also a candy store upon the same premises, the sale of candy is not incidental to a restaurant business but constitutes a separate, independent mercantile business and is therefore forbidden.

5 - If the restaurant is on the second or some other floor of the building, of which the first floor is operated as a candy store by the same licensee, the question as to whether the first and second floors are substantially separate and distinct premises is one of fact to be decided on the principles set forth in Bulletin 35, Item 15, to the effect that the purpose of the Legislature was to forbid the intermingling of the drinking of alcoholic beverages and the conduct of certain businesses, and that whether a prohibited business is being conducted in or upon the licensed premises, will depend on whether the conduct of the respective businesses and their independence of location renders them substantially separate and distinct.

D. FREDERICK BURNETT
Commissioner

Dated: June 28, 1934

7. APPELLATE DECISIONS - BURD VS. MINE HILL TOWNSHIP

CLARA M. BURD,
Appellant
-vs-
TOWNSHIP COMMITTEE OF MINE HILL TOWNSHIP (MORRIS COUNTY),
Respondent.

ON APPEAL

CONCLUSIONS

William H. H. Ely, Esq., Attorney for Appellant.
Lyman M. Smith, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied for a plenary retail consumption license and on February 1, 1934, the application was denied. An appeal was filed and has duly come on for hearing.

At the hearing respondent introduced a resolution, adopted on December 7th, limiting the number of licenses to three, none of which shall be within one-half mile of another. Three licenses have been granted pursuant to this resolution. It appeared, however, that one of the licenses was granted to a sister of the Chairman of the respondent Township Committee for premises located within several hundred feet of the applicant's place of business. The issuance of this license, of course, precluded the issuance of any license to the appellant under the provisions of the resolution adopted by the respondent.

Although the Chairman of the respondent Township Committee testified that he had no interest in his sister's business and received no income therefrom, he admitted that he owned the building, paid taxes thereon, received no rent therefor and often assisted his sister in the conduct of the business.

In view of the interest of the Chairman of the respondent Township Committee in the matter, it may well be questioned whether the denial of appellant's application could be justified upon the resolution adopted by respondent. See Bulletin #18, Items #4 and 5; Bulletin #7, Item #2; Bulletin #5, Item #4. This issue need not, however, be determined since the action of the respondent must be sustained on another ground.

Section 22 of the Control Act, as originally enacted, provided that a photostatic copy of all general licenses, permits and/or stamps necessary to the lawful conduct of the business must accompany the license application. Under a recent amendment, other evidence in lieu thereof, satisfactory to the Commissioner, may be accepted. At the hearing it appeared that the appellant has never paid the necessary fee for a federal stamp. Consequently, no license could be issued by respondent upon the application presented by appellant.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner

Dated: June 28, 1934.

8. APPELLATE DECISIONS - DUNN VS. BOROUGH OF ALLENTOWN

NEIL J. DUNN,
Appellant

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF ALLENTOWN (MONMOUTH COUNTY),
Respondent.

ON APPEAL

CONCLUSIONS

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J. Conner French, Esq., Attorney for Appellant.
James S. Turp, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On April 9, 1934, appellant applied for a plenary retail distribution license for the premises situated at Main Street and Walker Avenue, Allentown. On April 23, 1934, the application was denied. An appeal was duly filed from the denial of the application and has come on for hearing.

Respondent asserts (1) that it has licensed a hotel in Allentown, and in its opinion only one license should be granted; and (2) that the premises sought to be licensed by the appellant are not suitable for the sale of alcoholic beverages. No resolution was adopted by respondent limiting the number of licenses to be issued. The Mayor of the Borough of Allentown testified, however, that the community could not support two licensed places of business and that between appellant and the hotel, respondent considered the granting of a license to the latter to be for the best interests of the community.

It may well be questioned whether the foregoing circumstances furnish sufficient justification for a denial of the application, and it may likewise be questioned whether a resolution, limiting the number of licenses to be issued to one and based exclusively upon the consideration that more than one licensed place of business could not operate with financial success in the community, would be sustained. These issues need not, however, be determined since the action of the respondent must be sustained on another ground.

The evidence discloses that the premises sought to be licensed consist of a service station at which gasoline, oil, candy and cigars are sold. No offer to render the premises suitable accompanied the appellant's application. It cannot be said that the determination by respondent, that the premises sought to be licensed in their present condition are not suitable for the sale of alcoholic beverages, was unreasonable. Cf. Barlow Grocery Company vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin #34, Item #7.

The action of the respondent is affirmed without prejudice, however, to any new application which may be made by appellant after he has rendered, or offered to render, the premises suitable for the sale of alcoholic beverages.

D. FREDERICK BURNETT,
Commissioner

Dated: June 28, 1934.

9. REVOCATION PROCEEDINGS - RE: LAMERDING

In the matter of proceedings to revoke the retail license issued to RUSSELL THOMAS LAMERDING.

CONCLUSIONS

John J. Meehan, Esq., Attorney for the Department.
Henry L. Compton and William C. Egan, Esqs., Attorneys for the Licensee.

BY THE COMMISSIONER:

Notice to show cause was duly served upon Russell Thomas Lamerding, a retail licensee, why his license should not be revoked because of charges set forth in the notice. Upon the return date of the notice, the licensee appeared with counsel in response to the charges.

The evidence introduced at the hearing on the return of the notice to show cause, related to charges based upon the allegation that two prostitutes were knowingly permitted to engage in immoral practices on the licensed premises. Rose Toth and Emily Heithmar, who are admittedly prostitutes, testified in support of the charges. The former testified that although she was not employed by the licensee, she visited the licensed premises "five or six nights a week" during a period of two weeks and engaged in sexual intercourse with men on the premises. The testimony of the latter was of a similar nature.

The licensee testified that at the times the complaining witnesses were permitted in his place of business, he did not know that they were engaging in immoral conduct. He further testified that upon learning their true character he ordered them out of the licensed premises. It was admitted by the complaining witnesses that they were directed by the licensee to keep away from the premises.

The portion of the premises which were allegedly used for sexual intercourse consists of rear rooms having no curtains or doors. The interiors thereof are plainly visible from other parts of the licensed premises and there is no intimation that the licensed place of business was not open to the public at the times the improper conduct is alleged to have taken place.

Although the complaining witnesses, under date of March 20, 1934, signed statements to the effect that they engaged in immoral practices on the licensed premises with the knowledge of the licensee, Rose Toth later signed an instrument which repudiated the contents of the earlier statements and which contained the following: "Any statement that we signed about R. Lamerding's club were done because we did it in spite. My girl friend Emily and I thought he made the complaint that had us arrested and we signed the statement to get even with him."

It is entirely clear that a licensee who knowingly permits prostitution upon the licensed premises is not a fit person to enjoy the privilege of conducting a licensed place of business. Proof of

such conduct will invariably result in revocation of the license. But the charge is serious and must be established by satisfactory evidence. The only evidence introduced in this proceeding to establish the charges was furnished by admitted prostitutes whose testimony was indefinite and one of whom signed a statement entirely repudiating the charges. In addition, the physical situation of the rooms in which the alleged improper conduct took place, casts doubt upon the truth of their testimony. The courts have repeatedly recognized that testimony of persons such as the complaining witnesses must be scrutinized with care and should not be relied upon unless intrinsically probable or supported by other credible evidence. See Whitenack v. Whitenack, 36 N. J. Eq. 474 (ch. 1883); Adams v. Adams, 17 N. J. Eq. 324 (ch. 1866).

In view of the character of the complaining witnesses, the physical situation of the premises, the complete repudiation by one of the witnesses of earlier statements, the denial of the charges by the licensee and the decidedly favorable testimony with respect to his character, it cannot be said that the charges were proved.

The notice to show cause is, therefore, dismissed.

Dated: June 28, 1934.

D. FREDERICK BURNETT
Commissioner

10. PLENARY RETAIL CONSUMPTION LICENSES - IMPROPER TO INFLICT CONDITIONS OR ENTER INTO ANY AGREEMENT WHICH WOULD CUT SUCH LICENSE VIRTUALLY DOWN TO A BEER AND LIGHT WINE LICENSE OR ANYTHING ELSE THAN PLENARY

Hon. Douglas O. Mead,
15 Orient Way,
Rutherford, N. J.

June 28, 1934

Dear Mr. Mead:

I have yours of the 27th. Your conclusion is correct that the law as it stands does not permit issuance of retail licenses for consumption on the premises except plenary licenses (or seasonal which, for present purposes, is a mere abbreviated form of plenary license). There is no beer and light wine license. Hence, if a municipality issues any license, it will have to be plenary.

Herewith copy of my letter of June 14th to Hon. Russell G. Conover, Judge of the Ocean County Common Pleas, and also of the draft of the bill providing for a limited retail consumption license which has since been introduced into the Legislature but has not yet been made a law. Unless and until that bill, or some other substantial substitute therefor, becomes law, it follows that it is not permissible or legal for any municipality to issue directly or indirectly any consumption license except the plenary or to inflict any conditions or to enter into any agreement which might constitute an evasion or subterfuge or be construed as a subterfuge.

Very truly yours,

D. Frederick Burnett,
Commissioner

11. ENFORCEMENT - VIOLATIONS - POLICY OF PENALTIES

The four President Judges of the Court of Common Pleas of Essex County, Dallas Flannagan, Walter D. Van Riper, Daniel J. Brennan and Richard Hartshorne, after conference this afternoon with D. Frederick Burnett, State Commissioner of Alcoholic Beverage Control, unanimously agreed upon the following declaration of policy in respect to punishment to be meted out upon conviction of violations of the Alcoholic Beverage Control Act:

"The judges in conference in regard to sentences applicable to those who may be convicted of violation of the Alcoholic Beverage Control Act have divided defendants into three classes and have adopted as a general policy the following program:

"First class: All first offenders who manufacture for personal consumption only and other first offenders who do not commercialize the violation of the law. Punishment, a fine.

"Second class: All first offenders who commercialize the violation of the law, principals and agents alike. Punishment, imprisonment.

"Third class: All second offenders regardless of the character of the offense and whether they commercialize the violation of the law or not. Punishment, imprisonment."

The Commissioner believes that the action of these judges and the distinctions drawn by them between commercialized crime on the one hand and technical offenses on the other, and between first and second offenders, constitutes a step of the first magnitude toward Enforcement and that their initiative, if emulated throughout the State, brings us to the threshold of real CONTROL of the liquor traffic, both legal and illicit, which will become an accomplished fact when the heavy taxes now imposed by both Federal and State Governments are radically reduced.

The Commissioner expressed keenest appreciation to the Judges for their highly cooperative action in enforcement and for their initiative in asking for such conference.

Earlier this week he expressed similar appreciation to the Hon. Guy Leverne Fake, Judge of the United States District Court of New Jersey in respect to punishment he pronounced upon a conviction under the Federal laws.

D. FREDERICK BURNETT,
June 28, 1934 Commissioner

12. LICENSED PREMISES - MUNICIPALITY MAY ISSUE LICENSE NOTWITHSTANDING PREMISES HAVE BEEN BOUGHT IN BY MUNICIPALITY AT TAX SALE.

June 29, 1934

Marvin A. Pierson, Mayor,
Washington, New Jersey.

Dear Sir:-

It appears that the premises owned by John Farrell

and sought to be licensed were sold this spring for delinquent taxes, and bought in by the Borough which now holds a tax sale certificate.

The only question I am to decide is whether the Borough, having taken the building over for taxes, may issue a license to Farrell.

There is no requirement that the licensee must be the owner of the licensed premises. While he must have an interest (Procoli v. Trenton, Bulletin 28, Item 6; Caplan v. Trenton, Bulletin 29, Item 11), any interest will suffice.

Whether the tax sale certificate divests Farrell of ownership or merely constitutes a lien upon the premises, the fact sufficiently appears that Farrell is in possession of and has an interest in the premises even though under the certificate the Borough may collect the rents, and Farrell's interest constitutes nothing but a tenancy at will. So far as legal interest is concerned, he has it.

Sec. 39 has no bearing on the question because it relates only to public buildings. Purchase by a municipality of a private building at a tax sale does not transform it into a public building.

The supplement, Chap. 44, P.L.1934, is not in point. True, by Sec. 2, no license may be issued by any issuing authority to any member thereof or to any corporation in which any member is interested directly or indirectly. The intent of this Section was to prevent a group of individuals from issuing licenses to themselves, or to one or more of the group. I take it that the members of your Borough Council have no personal, pecuniary or financial interest whatsoever in the premises in question. Their official interest is for the good of the community and is entirely outside the scope and operation of the supplement.

My answer to the above question is in the affirmative.

Very truly yours,

D. Frederick Burnett,
Commissioner

13. CLUB LICENSES - SALES IN ORIGINAL CONTAINERS LEGAL IF SOLD FOR IMMEDIATE CONSUMPTION

June 29, 1934

Major Jones, General Manager,
Baltusrol Golf Club,
Springfield, N. J.

My dear Major:

R. D. Treat, Township Clerk of Springfield has referred to me your request for advice regarding sale to members of alcoholic beverages in bottles.

If Baltusrol has a club license it may sell alcoholic beverages to bona fide members and their bona fide guests, but only for immediate consumption on the licensed premises. It may not sell to the public generally or for off-premises consumption.

The line of cleavage is not whether it is sold by the glass or bottle, but rather whether it is sold for immediate

consumption at Baltusrol. If so, the sale is proper. You have no delivery privileges under a club license because you cannot sell for off-premises consumption. On the other hand, there is nothing to prevent sale by the bottle provided that you are satisfied that it is sold to be immediately consumed on the licensed premises.

Very truly yours,

D. Frederick Burnett,
Commissioner

14. APPELLATE DECISIONS - SULLIVAN VS. TOWNSHIP OF OCEAN

DANIEL SULLIVAN,
Appellant
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF OCEAN, (MONMOUTH COUNTY),
Respondent.

ON APPEAL

CONCLUSIONS

Harry A. Stiles, Esq., Attorney for Appellant.
M. A. Potter, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The record shows that all conditions precedent to issuance of Plenary Retail Consumption license had been complied with by the Appellant; that no question was raised as to his character or the fitness of the premises for which the license was sought; that the application was denied because of a petition filed by a large number of residents and property owners that no license be granted in the Loch Arbor section of the Township.

The record shows and the exhibit confirms that the licensed premises are situated on the main street and in the business section. The veriest glance at the photographic exhibit shows that it is not a residential neighborhood.

Every reason has been shown why the license should have been granted and no adequate reason whatsoever shown why it should be denied. While licenses are a privilege, they do not go by favor.

The action of the Respondent Board is therefore reversed.

D. FREDERICK BURNETT
Commissioner

Dated: June 29, 1934.

15. APPELLATE DECISIONS - SYLVESTER VS. SOUTH BELMAR

DANIEL STEPHEN SYLVESTER,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF SOUTH BELMAR, (MONMOUTH COUNTY),
Respondent.

ON APPEAL

CONCLUSIONS

Joseph Mirne, Esq., Attorney for Appellant.
Gilbert H. Van Note, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant applied to the respondent Board for a Plenary Retail Consumption License. The application was denied and an appeal duly filed.

Respondent asserts that the denial of the application was justified because of the past record of the appellant. The testimony adduced at the hearing shows that the appellant was arrested on seventeen different occasions for various offences. The Legislature never contemplated, when it enacted the Control Act that licenses would be issued to habitual offenders, nor that persons constantly in difficulty with the law should enjoy the rights and privileges of a license. Bulletin 26, Item 5.

In view of the numerous arrests of the appellant, it cannot be said that the respondent exceeded its power in denying the application because of his past record. See Cohen vs. Municipal Board of Alcoholic Beverage Control of Trenton, Bulletin 35, Item 8.

The action of the respondent Board in denying a license to the appellant, is therefore affirmed.

D. FREDERICK BURNETT
Dated: June 29, 1934 Commissioner

16. APPELLATE DECISIONS - BERLANGIERI VS. BOARD OF COMMISSIONERS OF THE CITY OF NEWARK

JAMES BERLANGIERI,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF NEWARK (ESSEX CO.),
Respondent.

ON APPEAL

CONCLUSIONS

Louis R. Auerbacher, Esq., Attorney for Appellant.
Raymond Schroeder, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant was issued a temporary retail consumption license for premises located at 190 - 8th Ave., Newark, N. J. After investigation it appeared that the distance from the entrance of the licensed premises to the entrance of the McKinley School, was within 200 feet. For that reason revocation proceedings were instituted, the license was revoked and an appeal duly filed.

Since the revocation proceedings, Section 76 of the Control Act was amended to provide: "The prohibition contained in this section shall not apply to the renewal of any license where no such church or school house was located within two hundred feet of the licensed premises as aforesaid at the time of the issuance of the license, nor to the issuance and/or re-

newal of any license where such premises have been heretofore licensed for the sale of alcoholic beverages or intoxicating liquors, and such church or school house was constructed and/or established during the time said premises were operated under said previous license."

The appellant asserts that the licensed premises are within this exception, and introduced testimony to show that the McKinley School site at the corner of Factory Street and Eighth Avenue was ordered purchased by the Board of Education from the Board of Street and Water Commissioners at the meeting held December 27, 1914, and that title to the property was taken on December 31, 1914. The contract for excavating and foundation work was awarded by the Board of Education on December 22, 1914. The contract was executed December 31, 1914. The excavating and foundation work was completed and accepted by the Board March 25, 1915. Contracts for the general construction and mechanical work were awarded by the Board January 18, 1915. The work of the heating and ventilating contractors, plumbing contractors, electrical contractors and lighting fixture contractors was completed and accepted by the Board at the meeting held October 13, 1915. The work of the mason and carpenter contractors and roofing and sheet metal contractors was completed and accepted by the Board at its meeting held October 28, 1915. The work of the steel and iron contractors and special lighting fixture contractors was completed and accepted by the Board at its meeting held January 27, 1916. The work of the painting contractors and vacuum cleaning system contractors was completed and accepted by the Board at its meeting held March 30, 1916.

The records of the Excise Board of the City of Newark show that: License #99 granted to Bartelomeo Gaudiose, 190 - 8th Ave., March 28, 1913; License #94 granted to same person, same place, March 20, 1914; License #119 granted to same person, same place, March 26, 1915; License #104 granted to Vincenzo Stio, same address, March 24, 1916.

Mr. Vincenzo Stio testified that he conducted a saloon at this address from 1916 to the first day of July 1921, and from 1921 to 1929, conducted a saloon for the sale of near-beer, cigars and cigarettes. In 1929 to the date of the filing of this application with the City of Newark, the place was operated as a saloon by the appellant.

In view of the foregoing records and testimony, the action of the respondent Board is reversed.

D. FREDERICK BURNETT
Commissioner

Dated: June 29, 1934

17. APPELLATE DECISIONS - MANGO VS. PLAINFIELD.

MICHAEL MANGO,
Appellant,
-vs-
COMMON COUNCIL OF THE CITY OF PLAINFIELD (UNION COUNTY),
Respondent.

ON APPEAL
CONCLUSIONS

Frank Schneider, Esq., Attorney for the Appellant.
William Newcorn, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

In January, 1934, the appellant applied for a Plenary Retail Consumption License, for premises located at 318 Richmond Street, Plainfield, New Jersey. The application was denied and an appeal was duly filed.

The reason assigned by the respondent Board for the denial of the application was the fact that the pro-rated fee required for said license was not deposited with the Clerk at the time of the filing of the application.

It appears from the evidence that the appellant did contract work for the respondent and that when the application was filed, a check in the sum of $454.80 drawn on the account of Clementine Mango, wife of the appellant, was deposited with the application. It was stated at that time that there was no money in the bank to meet the check but as money was due from the municipality for work done, the money would be deposited by the first of February to meet the check. The application was acted upon on January 29, and when the check was presented for payment, payment had been stopped. The records of the bank on which the check was drawn disclose that at no time was there on deposit money to meet the check that had been deposited with the application. The respondent thereupon held up checks that were due the appellant for contract work until the 10% investigation charge was paid.

Section 22 of the Control Act provides that an applicant for a license shall deposit with the application the proper pro-rated annual fee. Bulletin 4, Item 2; Bulletin 2, Item 5.

A fee is a charge fixed by law for a privilege, and under the Control Act must be the equivalent of cash, so that the denial of the application was entirely justified by the failure of the appellant to deposit with his application the proper pro-rated annual fee in cash or its equivalent. The action of the local Board is therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: June 29, 1934

18. APPELLATE DECISIONS - MAC CRACKEN VS. BELVIDERE

RAYMOND MAC CRACKEN,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE TOWN OF BELVIDERE (WARREN COUNTY),
Respondent.

ON APPEAL

CONCLUSIONS

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J. Alexander Pignone, Esq., Attorney for Appellant
Saul N. Schechter, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant applied for a Plenary Retail Consumption

License for premises located at 310 Water Street, Belvidere, N.J. The application was denied and an appeal duly filed.

The local Board limited by resolution "retail consumption licenses to be issued only to those persons or places conducting a general hotel and restaurant business; premises to contain at least 15 rooms for the accommodation of the travelling public". The appellant asserts that the limitation is unreasonable and discriminatory. It is admitted that the premises for which a license is sought is not a hotel.

Section 37 of the Control Act confers express powers upon the issuing authority of the municipality to regulate the conduct of any business licensed to sell alcoholic beverages at retail, and the nature and condition of the premises upon which any such business is to be conducted. Bulletin 16, Item 8. Confining consumption licenses to hotels and restaurants in order to control the enforcement of the liquor law is not unreasonable. DiBono vs. City Council of Bridgeton, Bulletin 30, Item 9. To confine it to a hotel with a restaurant is properly within the police power as much as to confine it to a hotel or a restaurant.

The action of the respondent Board in denying a license to the appellant is therefore affirmed.

Dated: June 30, 1934.

D. FREDERICK BURNETT
Commissioner