

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

BULLETIN NUMBER 129.

July 14, 1936.

1. APPELLATE DECISIONS -- SHELBY VS. TRENTON.

JAMES E. SHELBY, :  
Appellant, :  
-vs- : ON APPEAL  
CITY COUNCIL OF THE CITY : CONCLUSIONS.  
OF TRENTON, :  
Respondent. :

1. Herbert Levy, Esq., Attorney for Appellant.  
Adolph F. Kunca, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal, heard yesterday, from refusal to transfer plenary retail consumption license No. C-234 from the rear of 801 Prospect Street to the front of 801 Prospect Street, Trenton.

Respondent denied the application because "the premises to which appellant seeks a transfer are socially undesirable".

The premises consist of a lot twenty-five (25) feet wide, fronting on Prospect Street, by one hundred twenty-five (125) feet deep on Oakland Street. On it is a two-story brick residence facing Prospect Street, set back about twenty (20) feet from the building line. At present the appellant is conducting business in a small frame building on the rear of this lot. The frame building is separated from the dwelling just described and has an entrance on Oakland Street. Appellant now plans to alter the brick dwelling on the front of the lot by lowering the first floor and by erecting a new one-story brick addition between the present front and the building line on Prospect Street, so that then he will have a large store on the corner of Prospect and Oakland Streets. He intends to conduct a restaurant and, therefore, seeks a transfer of his license from the separate premises in the rear to the new premises to be erected in the front. Several persons residing on Prospect Street, in the immediate vicinity objected to the transfer and respondent, after a hearing, denied the application for the transfer. Hence this appeal.

The lots facing on the westerly side of Prospect Street, between Oakland Street and Pennington Avenue (which is the block on which the premises are located) are in Business Zone #1. The easterly side of Prospect Street, from the railroad to Pennington Avenue, is a heavy industrial zone. The southerly side of Oakland Avenue is likewise a heavy industrial zone. On the westerly side of Prospect Street, approximately one hundred fifty (150) feet north of the premises, is an auto service station. Directly across the street is a business building occupied by the Fischer Baking Company, and on the southwesterly corner of Prospect and Oakland Streets there is now being erected a building to be used by the New York Telephone Company, which building extends out to the building lines on both streets. There are

also a number of large factories on Prospect Street in the immediate vicinity. Whatever may have been the past history of this section, it clearly appears that at the present time the neighborhood is not only zoned but is actually devoted to business, with the exception of the few homes in which the objectors reside and a few scattering residences.

The objections raised are not against appellant, nor against the way he has conducted his business, but because, as is claimed, a saloon at the corner will cut off the view of those residing nearby, and also reduce the valuation of their properties. These general objections are not valid in the case of premises located in a business district. Sullivan vs. Ocean, Bulletin #38, item 14; Elias vs. Trenton, Bulletin #54, item 12; Vonnella vs. Long Branch, Bulletin #71, item 12; Jones vs. Camden, Bulletin #121, item 4. The objections raised against the extension proposed to be erected in front of the building at 801 Prospect Street are understandable, but these objections would have no weight if the proposed extension were built for the purposes of carrying on any other legitimate business. They have, therefore, nothing to do with the question of whether a liquor license shall be issued or not.

I find, therefore, that the requested transfer should have been made. The decision below is, therefore, reversed.

It appears that respondent has issued to appellant a renewal of his license for the premises in the rear of 801 Prospect Street for the period from July 1, 1936 to June 30, 1937 inclusive. To order a transfer of a license for the period expiring at midnight tonight would be an idle gesture. On the other hand, to dismiss this case with an academic adjudication on the merits without direction of any appropriate action is unfair to the appellant. As the objections to the transfer of the old license have been fully considered at the hearing before the local issuing authorities, and upon the hearing of the appeal, it would be sacrificing substance to form to require the present appellant to again file an appeal and hold a hearing before me on these same objections. Cf. Granger vs. Oakland, Bulletin #91, item 1. Appellant, therefore, may make application to transfer his new license to the front part of 801 Prospect Street, and upon compliance with all the statutory requirements, the transfer shall be granted unless valid objections different in kind from those heretofore raised shall be presented.

The local issuing authority may grant such transfer, if it so decides, upon condition that the entrance to the licensed premises be located upon Oakland Street, and that there be no entrance to them from Prospect Street, the purpose of the condition being to preserve, as far as possible, the very slight vestiges of residential character remaining in the latter street.

While the action of respondent is reversed, nevertheless, as the license period will expire in three hours, no order requiring the issuing authorities to transfer the present license will be entered herein.

D. FREDERICK BURNETT,  
Commissioner.

Dated: June 30, 1936.

2. MISLEADING TRADE NAMES - ITALIAN LICENSEE NOT BARRED FROM CALLING HIS PLACE "MULDOON'S" - HEREIN OF THE USE OF NAMES REMINISCENT OF THE OULD SOD.

July 6, 1936.

Miss -----  
Asbury Park, New Jersey.

Dear Miss ----- :

There is nothing in the law which would prevent a saloon operated by an Italian licensee from advertising itself as "Muldoon's". It's a subtle compliment to the Irish. We could hardly expect him to name it "Selassie's Retreat". If Levitsky can change overnight to McNamara, there is nothing to prevent Pasquale, in equal emulation, from calling his place "Muldoon's". He was a wrestler of note if not of spaghetti.

The State Rules Concerning Misleading Trade Names prohibit licensees from using names which convey the impression that the licensee is owned or operated by or enjoys official sanction from the Federal or State or any Municipal Government or names which are misleading as to the actual type of business being conducted. They stop at that point. There is no presumption in law, even if there is in fact, that the names of the sons of Erin are always official.

If, however, you have evidence of actual violations on the premises to which you refer, if the business is not conducted by the person or organization to whom the license was issued or if the premises are run in an objectionable or improper manner, then give me the full facts and I will see that investigation is made at once.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

3. EXECUTORS AND ADMINISTRATORS - EXTENSION OF LICENSE - APPLICATION FOR NEW LICENSE BY LEGAL REPRESENTATIVE OF DECEASED LICENSEE MAY BE MADE EITHER INDIVIDUALLY OR "AS ADMINISTRATOR" ETC. - BUT IN EITHER EVENT THE LEGAL REPRESENTATIVE IS PERSONALLY LIABLE FOR CONDUCT OF THE BUSINESS - POLICE RECORDER MAY NOT HOLD LIQUOR LICENSE.

Telegram - June 16, 1936.

Dear Comm Mrs Anna M Branigan of 823 Bay Ave Somerspoint NJ Atlantic County present holder of Plenary Retail Consumption License files application on June first for 1936-37 license Same accompanied by all requirements Mrs Branigan passed away June 11 and was buried today Tonite the governing body met and extended her present license until June 30th in the name of the Estate of Anna M Branigan Will it be proper for the governing body to grant the new license in the name of the estate It is the desire of the administrator to continue said license under the name of the deceased due to the outstanding debts Will you kindly inform me of the proper procedure in this most delicate matter Your immediate reply by Westernunion at my cost will be greatly appreciated Are there any objections to a Police Recorder holding Plenary Retail Consumption License

L. F. Branigan

June 17th, 1936.

Mr. L. F. Branigan,  
Somers Point, N. J.

Dear Sir:

Receipt of your telegram of June 16th is hereby acknowledged.

Section 23 of the Control Act permits the extension of a license for a limited period not exceeding its term to the legal representative of the deceased licensee. A new application for the ensuing term, however, may not be made in the name of the estate. An estate is not a legal entity and may not hold a liquor license. If the legal representative has authority to continue the operation of the business, he may make application for a license in his own name. Cf. Bulletin #20, Item #6, enclosed herewith. The license may be issued to the legal representative in his individual capacity or as "administrator", "executor", etc. In either event, the legal representative will be personally responsible for the operation of the business, will be subject personally to criminal proceedings in the event of violation of the Act and will be subject personally to revocation proceedings in the event of violation of the Act or the rules and regulations promulgated pursuant thereto. Cf. Liabe vs. Ferry, 32 N.J.Eq. 790 (E. & A. 1880); Doolittle vs. Willet, 57 N.J.L. 398 (E. & A. 1894).

Under the principles set forth in Bulletin #113, Item #9 and Bulletin #116, Item #1, enclosed herewith, a Police Recorder may not hold a liquor license.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

By: Nathan L. Jacobs,  
Chief Deputy Commissioner  
and Counsel.

4. WINERIES - PLENARY WINERY LICENSEE MAY BOTTLE ALL TYPES OF WINE - LIMITED WINERY LICENSEE MAY NOT BOTTLE OR SELL FORTIFIED WINE.

June 1, 1936,

Dear Commissioner:

Mr. John Schuster has just been in the office to consult me about a difficulty he is having with your department.

You may remember that Schuster has a small winery up in Egg Harbor. He has been in business for close to fifty years and has always made some very excellent still wines. In addition, before Prohibition it was customary to buy such wines as sherries and ports which are not produced here in order to serve his customers. After the passage of the 1934 Act he took out a limited winery license. The business is small, probably not averaging anything like a hundred gallons a month. Most of the business is to individuals who drop by the winery and get two or three bottles or less at a time.

Shortly after the act was passed Mr. Schuster inquired from your department whether or not his limited winery license

entitled him to buy and resell ports and sherries. He received a letter from Maurice Ash stating that under his license in addition to manufacturing his own wines he might purchase wines for the sole purpose of reselling them.

One of the inspectors called at the winery the other day and insisted that Mr. Schuster could not buy and sell port and sherry, on the theory that these are fortified wines, unless he took out a plenary winery license. From reading the statute I cannot see how this position would be tenable. The statute says that in the case of a plenary winery license:

"The holder of this license shall be entitled, subject to rules and regulations, to manufacture any fermented wines, and to blend, fortify and treat wines, and to distribute and sell his products..."

In the case of the limited winery license the statute reads:

"The holder of this license shall be entitled, subject to rules and regulations, to manufacture for sale any naturally fermented wines and fruit juices in a quantity dependent upon the following fees, etc., .... and to distribute and sell his products to wholesalers and retailers respectively licensed in accordance with this act, and to consumers, and to sell and distribute ..."

It would seem to me that if the statute were to be strictly construed neither a plenary or a limited license would permit of the purchase for resale of a wine such as port or sherry. The contention that to "blend, fortify, and treat" would not cover the purchase and resale of the wine to which nothing was done, nor would it specifically authorize the purchase and resale of wines not manufactured by the winery. To this extent both the plenary and limited licenses stand on the same footing.

It seems to me therefore that it is necessary to go back to a rule of reason based upon the practice in vogue before Prohibition, and in the light of what was current practice in a winery, to permit the purchase and resale of wines not manufactured by the winery itself where it is part of the current business.

Mr. Schuster's business is much too limited to warrant his taking out a \$500 plenary license. In view of Mr. Ash's former rule can you not see your way clear to continue the same interpretation of the act which he gives? Mr. Schuster is, of course, very anxious to do nothing that will offend against the law or which would put him on bad terms with your department.

Cordially yours,

Emerson Richards.

June 18, 1936.

Hon. Emerson Richards,  
Atlantic City, N. J.

Dear Senator Richards:

Your letter of June 1st with respect to John Schuster & Son has been carefully considered.

Section 11 of the Control Act authorizes a plenary winery licensee to manufacture fermented wines and to blend, fortify and treat wines and to distribute and sell his products to wholesalers and retailers and to churches for religious purposes. Within the foregoing section, a plenary winery licensee may purchase wine, and blend, fortify, treat or subject it to some other process pursuant to his license. Included among the permitted processes are bottling and rebottling for sale. See Bulletin #55, Item #4, enclosed herewith. Accordingly, a plenary winery licensee may purchase all types of wine and bottle same for resale.

Different considerations apply, however, to a limited winery licensee. The Act does not confer upon such licensee authority to blend, fortify or treat wines. On the contrary, his authority is expressly confined to the manufacture for sale of "naturally fermented wines and fruit juices". Since the Legislature has not conferred upon such licensee authority either to manufacture or sell fortified wines, the Commissioner is not at liberty to permit such operations.

In view of the general language in the Act to the effect that limited winery licensees may manufacture naturally fermented wines, the Commissioner has reached the conclusion that such licensees may purchase naturally fermented wines for the purposes of bottling and rebottling. This determination, however, hardly furnishes any basis for the contention that the Act may be construed to afford limited winery licensees authority to bottle fortified wines for purposes of resale.

I regret that, in the absence of further legislative action, nothing can be done to enable John Schuster & Son to sell fortified wine pursuant to a limited winery license.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

By:

Nathan L. Jacobs,  
Chief Deputy Commissioner  
and Counsel.

5. LICENSED PREMISES - LOSS OF PORTION OF LICENSED PREMISES IS NOT GENERALLY CAUSE FOR REVOCATION - WHETHER LICENSES SHOULD BE ISSUED TO SEPARATE APPLICANTS FOR ADJACENT PREMISES RESTS, IN FIRST INSTANCE, WITHIN THE DETERMINATION OF THE MUNICIPAL ISSUING AUTHORITY - ATTEMPTED WITHDRAWAL BY TRANSFEROR OF HIS DULY FILED CONSENT TO TRANSFER DOES NOT AFFECT JURISDICTION OF MUNICIPAL ISSUING AUTHORITY. *See Schuler re Township of Middletown Bulletin 234. See*

June 11th, 1936. 4.

Dear Sir:

The Township Committee of the Township of Middletown, has directed me to submit the following matter to you, viz:

Frank Markstein in 1935 was granted a license for the Bayside Inn at East Keansburg. Enclosed herewith is a copy of his Application, marked Exhibit A.

The same was inspected and an Inspection Report was made and filed with the Township Committee, a copy of which report is enclosed herewith and marked Exhibit B.

This Bayside Inn is located on four lots at the corner of Seabreeze and Bray Avenues. Enclosed herewith and marked Exhibit C, is a Survey of the property. The two lots on the corner of Seabreeze and Bray Avenues are owned by the Building and Loan Association in Newark. The remaining two lots are owned by Frank Markstein.

The main building is located on the two lots owned by the Building and Loan, and the building extending over on the adjoining two lots is a one story frame addition.

Carl Bachstadt applied for a transfer of the license from Markstein to him, in April, 1936; and enclosed herewith is a copy of his Application, marked Exhibit D.

At the same time there was a memorandum signed by Frank Markstein agreeing to transfer his license to Carl Bachstadt, which copy of same is enclosed herewith and marked Exhibit E.

All the preliminaries were completed, such as advertising, Federal stamp, deposit fee, etc., by the said Carl Bachstadt.

This matter was first presented at a meeting of the Township Committee of the Township of Middletown held on April 9th, 1936. The minutes of that meeting recite the facts, and the matter was laid over as follows:

"After somewhat of discussion, the application was laid over to the next regular meeting of the Township Committee of the Township of Middletown to be held on Thursday afternoon, April 23rd, 1936."

At a meeting of the Township Committee held on April 23rd, 1936, the minutes concerning this license read as follows:

"The application of Carl Bachstadt for the transfer of the license of Frank Markstein was brought up. The following letter was read from Frank Markstein, viz:

East Keansburg, N. J.  
April 22, 1936.

Township Committee

Gentlemen:

Please disregard my request for a transfer of my liquor license on Bray Avenue, East Keansburg. I desire license to be left as is.

Yours truly,  
Frank Markstein.

The matter was laid over to the next regular meeting of the Township Committee to be held at the Committee rooms at Middletown on Thursday afternoon, May 14th, 1936."

At the meeting on May 14th, 1936 the matter was discussed. The Township Committee seemed to be of the opinion that as Mr. Markstein had changed his mind, and didn't want to transfer his license, they could not force the transfer.

Mr. Markstein said he was operating his license in the one story frame addition, which was owned by him, and that his bar was in that portion of the building; and that at the time the license was granted to him in 1935 his bar was located in its present location, and was in the portion of the building which he still owns; and that he did not want to transfer his license to Mr. Bachstadt, but wanted to continue on.

Mr. Kaiser, representing Mr. Bachstadt, insisted that inasmuch as Markstein said he would agree to transfer the license he should be prepared to go on with the same.

The Township Committee replied that until the transfer was finally consummated and consented to by them, if Markstein wanted to withdraw they did not see where they could approve of a transfer; and that if there were any legal matters between Markstein and Bachstadt they would have to be settled through law.

Mr. Kaiser as attorney for Bachstadt then made the following points: That the Building and Loan is in possession of the building located on the two lots on the corner of Seabreeze and Bray Avenues as shown on the enclosed Survey marked Exhibit C; that they had partitioned off the room in the building on their property line, leaving just a portion of the one story building addition still on the property of Frank Markstein and where his bar was located and where he was operating.

Mr. Kaiser contended that if the Township Committee would not approve of the transfer from Markstein to Bachstadt, that they should revoke Markstein's license and prohibit him from doing further business; for the reason that when he obtained a license to operate it was for premises located on the corner of Seabreeze and Bray Avenues, and that the original Application filed by Markstein and the Inspection report indicated a certain size building and certain accommodations that went with the license; and he having been deprived of the major portion of the building he was not operating according to the physical status of the premises where he had obtained a license and therefore his license should be revoked.

The Township Committee replied that they did not see where they should take any action in the matter, and that even though they granted the license to Markstein for certain premises and he had been deprived of a portion of the premises, that they did not see where they would have a right to revoke Markstein's license and prevent him from continuing his business.

After somewhat of discussion it was voted that the Township Committee would submit the matter to the Department of Alcoholic Beverage Control and ask a ruling in the matter, as the Township Committee wants to do whatever is the proper thing, and it seems to be more of a legal matter than one of policy.

Carrying out the request of the Township Committee, I am writing you the above facts in the case, and would respectfully ask your ruling and advice in the matter.

I am sending a copy of this letter to Mr. Nicholas W. Kaiser at his office at 786 Broad Street, Newark, New Jersey, as he is interested from the standpoint of Mr. Bachstadt, and also the owner of the building located on the two corner lots.

I might say that since the above Applications are now filed by Bachstadt for a new license for the year beginning July 1, 1936 for the building located on the two lots on the corner; and Mr. Markstein has filed an Application for the renewal of his license to be located in the building one story frame addition located on the two lots next to the corner.

The Township Committee will be confronted with a situation to decide on the granting of a new license.

They have notified all applicants for licenses that they will hold a public hearing on every license whether new or renewals, at the regular meeting to be held on June 25th, 1936.

I suppose matters of policy will have to be decided by the Township Committee. Any matter of law you could advise them on would be greatly appreciated, and they would also appreciate any advice you could give them as to a matter of policy.

I am,

Very truly yours,

(signed) Howard W. Roberts  
Township Clerk.

June 18, 1936.

Howard W. Roberts, Esq.,  
Clerk of Middletown Township,  
Atlantic Highlands, N. J.

Dear Sir:

The various legal issues presented by your letter of June 11th have been carefully considered.

1. Where a licensee's interest in a portion of the licensed premises terminates, he nevertheless retains the privileges of his license in the remaining portion of the premises. In general, such change of circumstances will not warrant revocation of the license. However, in the event application for renewal is made, the issuing authority must, in the first instance, determine whether the premises in which the licensee desires to continue business are suitable, and if there is a negative determination the application for renewal should be denied. Cf. Bulletin #114, Item #4.

2. There is nothing in the Control Act or the regulations of this Department which prevents the municipal issuing authority from considering an application by the licensee for the period commencing July 1st, 1936 for the portion of the premises in which his interest continues and a separate application by another person interested in the remaining portion of the premises, provided the respective premises have been rendered physically separate and distinct by proper partitions or other alterations. Whether the respective premises are suitable and whether two separate licenses should be issued for adjacent premises are matters of policy resting in the first instance within the determination of the municipal issuing authority. Cf. Bulletin #57, Item #4.

3. Upon the filing of an application for transfer together with the consent in writing of the licensee to the transfer, in accordance with Section 23, the municipal issuing authority should consider the application in the same manner as original

applications are considered. Where the consent is defective on its face or has been declared invalid by a court of competent jurisdiction, it should be disregarded. Otherwise, however, any attempted withdrawal by the transferor of his duly filed consent is of no effect in so far as the jurisdiction of the municipal issuing authority is concerned. Cf. Bachman v. Town of Phillipsburg, 68 N.J.L. 552 (Sup. Ct. 1902); Sullivan v. Mayor and Council of the Borough of Ransey, 105 N.J.L. 142 (E. & A. 1928). Any contrary view would raise difficult questions of administration and would involve consideration of private issues inter partes which should rest entirely within the determination of the courts.

Very truly yours,

D. FREDERICK BURNETT,  
Commissioner.

By: Nathan L. Jacobs,  
Chief Deputy Commissioner  
and Counsel.

6. LICENSES - SURRENDER - FORM OF RESOLUTION ACCEPTING SURRENDER AND CANCELLING LICENSE.

July 8, 1936.

Simon Blum,  
Town Clerk,  
Nutley, N. J.

Dear Mr. Blum:

I have yours of July 1st reading:

"At the regular meeting of the Board of Commissioners held June 23rd, 1936, a letter was received from Mr. Newton H. Porter, Jr., Attorney for The Nutley Colonial Club, Inc. surrendering the Club license previously issued to The Nutley Colonial Club, Inc. (CB 3).

"On motion unanimously adopted, the Board of Commissioners moved this license, as surrendered be received and the same be revoked."

I understand the thought intended to be conveyed but suggest hereafter that the operative language of such resolutions be changed to read:

"Moved, the surrender of this license be accepted and the license be thereupon cancelled."

To "accept" show smental assent, whereas to "receive" merely signifies physical delivery. So again, "revoked" is a technical term with legal prerequisites and legal effects quite different from "cancelled". Therefore, I submit the above wording as preferable.

Very truly yours,

D. FREDERICK BURNETT  
Commissioner

*Appellate Decisions - Sassinsky vs. Way*

7. HENRY J. SASSINSKY, :  
 Appellant, :  
 -vs- :  
 HONORABLE PALMER M. WAY, : ON APPEAL  
 Judge of the Court of Common :  
 Pleas of Cape May County, : CONCLUSIONS  
 Respondent :  
 :

T. Millet Hand, Esq., Attorney for Appellant.  
 Rex A. Donnelly, Esq., Attorney for Respondent.  
 Charles A. Bonnell, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from the denial of a plenary retail consumption license for premises located at 329-331 East Oak Avenue, Wildwood.

The premises are a one-story brick building on the north side of Oak Avenue, between Atlantic Avenue and the Boardwalk. Directly opposite, and on the south side of Oak Avenue, there is a structure known as the "Arcade". The floor of this structure is raised a considerable distance above the street level and is on the same level as the Boardwalk. There is a ramp from Atlantic Avenue to the Arcade and also stairways to it rising from Oak Avenue. The Arcade has the typical sea-side amusement attractions such as "Dodgem Juniors", "Custer Cars", "Bowling Alleys", "The Pretzel", "Merry-Go-Round" and "Peter Rabbit".

Several generalities were stated in the pleadings in support of the denial, but at the hearing, the issues boiled down to just two. Unless allegations of pleadings are admitted, I consider, on the hearing of appeals, only those which are supported by testimony or, if matter of law, are stressed in the argument. My duty is to determine what the fight is about and then to decide on their merits the issues as actually fought out.

Those issues were:

(1) That the arcade caters during the day time and early evening mainly to the games and amusements of children; that it is the principal play center for children in the City of Wildwood; that, during the season, hundreds of children daily visit the Arcade; that the proximity of the Arcade is therefore fatal to the application of appellant.

If the Arcade were seeking a liquor license, the fact that it is a carnival center for children would be dispositive against such application on its part.

The premises sought to be licensed, however, are on the other side of the street - sixty feet broad at that point. Moreover, the Arcade is not on the same level. It is elevated above the rest of the street to the level of the Boardwalk. It is reached by walking into it flush from the Boardwalk, or by ascending the ramp from Atlantic Avenue. To reach it from Oak Avenue, it is necessary to climb the stairs. It is apparent that the bulk of its visitors would naturally approach it either from the Boardwalk or the Atlantic Avenue ramp. It is a substantially different place than the Oak Avenue street level. It is rather an appendage of the Boardwalk than an adjunct of Oak Avenue. It is not Oak Avenue that is the playground or where the merrymaking is done. All that is in the Arcade on the upper level. Now, down on the street level, between the proposed licensed premises and the Boardwalk, there are two restaurants and a Public Service Bus Terminal -- nothing in the way of attraction to children at all comparable to the lure of the "Dodgems", the "Custers", the "Pretzels" and "Rabbits" across the street, free to look at if not to try out. Anxious to protect childhood, I find nothing in the facts before me to engender any well-founded fear for them, so far as granting this license is concerned. "Look out for the kiddies!" is the only right attitude when there is real cause to command it, but the lofty phrase is academic unless it fits the facts. Last year there were 55 and this year there are 46 retail consumption licensed places in the City of Wildwood, many of which were and will be passed by children on their way to play. That is the most that can be said of the present objection. Their natural instincts will take the children quickly to their chosen playground without tarrying - probably without looking. In these matters, they need neither urge nor warning. What counts, so far as the instant case is concerned, is not the presence of the licensed premises, but the way it is conducted. If it shall become a menace or an "attractive nuisance" to children, that will be a different matter. It will be at all times under strict control. Nothing appears wrong with it now.

(2) That the proposed premises are too near the Boardwalk and the Boardwalk approaches; that if the application were granted, it would in effect be voiding the stand that has been taken to keep the Boardwalk business and the liquor traffic separate and apart.

It is a reasonable and salutary exercise of police power to exclude liquor sales from ocean front walks, which are essential parts of our beach playgrounds. Morton vs. Way, Bulletin 81, Item 16. Boardwalks at New Jersey seashore resorts have become an institution. Sportland vs. Loder, Bulletin 41, Item 4. A Boardwalk is in essence a seashore public park. Platnick vs. Belmar, Bulletin 45, Item 16. Municipal regulations prohibiting the sale of alcoholic beverages on boardwalks or a reasonable distance thereof have been uniformly approved. Re Atlantic City, Bulletin 20, Item 4; Dann v. Manasquan, Bulletin 37, Item 12; Platnick vs. Belmar, Bulletin 45, Item 16; Leggett vs. Manasquan, Bulletin 79, Item 13.

Respondent promulgated rules and regulations, which were approved by me on June 28th, 1935.

Rule III g. reads:

"No firm, corporation or person shall be granted a retail license to sell any alcoholic beverage on, under or within one hundred (100) feet, on the land

side, of any boardwalk, or within one hundred (100) feet of any approaches or connections to said boardwalk, which said boardwalk extends along the Atlantic Ocean in this County. 'Approaches and connections' mean that portion of any walk or passage way, publicly or privately owned, and connecting the boardwalk with the sidewalk, ground or street. Provided, however, where there is at the present time any public highway or any public street parallel with any such boardwalk and adjacent thereto, and approaches or connections of said boardwalk extending thereto, nothing in the above regulations shall prevent the granting of a license on the side of said street opposite to the said boardwalk."

The proposed licensed premises are distant 211 feet from the Boardwalk, 178 feet from the Boardwalk Bench area, and 137 feet from the ramp on Oak Avenue leading to the Boardwalk. They are, therefore, entirely out of the 100 foot area. The argument is advanced, however, that, since there is a ramp from Atlantic Avenue to the Arcade and stairways from Oak Avenue, both of which are regularly used by the public to reach the Boardwalk, therefore the entire Arcade comes within the meaning of "approaches and connections to said boardwalk", and that since the licensed premises are within sixty feet of the Arcade, they therefore come under the ban of the Regulation.

The argument is so broad that it defeats itself. The object of the rule as I understood it was to keep liquor off the boardwalk and a hundred feet away from it. This has been wholly accomplished by appellant just as in Sportland, Inc. v. Loder, Bulletin 41, Item 4. Now as to "approaches and connections", Rule III g, as submitted for approval, was to be generally applied to the whole county of Cape May. I saw no objection in protecting the boardwalks to adding "approaches and connections", but it is no afterthought to say that what I had in mind was something that was not only physically connected to the boardwalk, but also that which might be fairly considered an integral part of it, for instance, the ramp to the boardwalk from Oak Avenue. If it means that the 100 ft. rule is to be stretched to undefined distances according to the accidents of construction, then I disapprove it for there is no fair reason why territory normally outside the proscribed area should be disfranchised because of a freak of construction. To say that the Arcade is the boardwalk, or part of it, is contrary to fact. To say that it is an approach or connection to the boardwalk because it happens to extend back a whole block or about 500 feet, adds nothing but confusion and ambiguity. Certainly it would destroy the clarity and precision which a workable rule should carry. I find as fact that the Atlantic Avenue ramp and the side stairs on Oak Avenue are entrances to the Arcade as distinguished from approaches to the boardwalk.

Without pausing, therefore, to attempt accurate delineation of the term "approaches and connections", or to rescind in whole or in part approval of Rule III g, I am clear that the regulation, appropriately construed, has no application to the present controversy.

The personal qualifications of the applicant being admitted on the record, and there being no sustainable objection on the issues presented to the place sought to be licensed, it follows that a license should have been issued to the appellant.

The decision of respondent is therefore reversed with directions to issue appellant's license forthwith.

D. FREDERICK BURNETT,  
Commissioner.

Dated: July 8, 1936.

8. APPELLATE DECISIONS - MALONE vs. BORDENTOWN.

WILLIAM J. MALONE,	:	
Appellant,	:	
-vs-	:	ON APPEAL
TOWNSHIP COMMITTEE OF	:	CONCLUSIONS
BORDENTOWN TOWNSHIP,	:	
Respondent.	:	

Irving H. Lewis, Esq., Attorney for Appellant.  
Samuel F. Garrison, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a renewal of plenary retail consumption license for the period expiring June 30, 1937, for premises located at Star Route, Bordentown-Chesterfield Road, Bordentown Township.

Parties and premises are the same as those considered in a previous appeal. Malone vs. Bordentown, Bulletin #90, item 12.

In its answer filed in the previous appeal, respondent contended that it had denied the license because of alleged improper conduct by appellant under a license held by him during the previous year in Hamilton Township. At the hearing of that appeal, however, respondent failed to appear, and appellant proceeded ex parte to deny each and every charge of misconduct which had been set forth in the filed answer. Later, respondent stated in writing that its objections to the issuance of the license had been withdrawn and, hence, because nothing appeared against the character or conduct of appellant, the action of respondent in denying that license was reversed.

Subsequently, on the evening of May 9th, 1936, investigators from this Department visited appellant's premises for the purpose of making an inspection thereof. They remained on the licensed premises from about 11:30 P.M. until about 1:00 A. M. the following morning. Investigators Holman and Chinery both testified that they saw two drunken persons asleep at tables in the barroom; that many intoxicated people had been served with liquor in their presence; that two fights among the patrons had occurred while they were on the licensed premises. Investigator

Chinery said that about half of the people in the barroom were drunk, and that the language used by a woman who came from the dining room into the barroom while he was present was so foul that he did not want to repeat it. Both testified that while they were present a minor had been served with intoxicating liquors. The minor, a boy eighteen years of age, of a very youthful appearance, testified at the hearing that he had been present in the barroom on the night of May 9th and that he had been served liquor at the bar. After the investigators had called the State Police, Malone was arrested on a charge of selling alcoholic beverages to a minor, brought before a Justice of the Peace and held in bail for the action of the Grand Jury. The Grand Jury has not yet considered the case.

In attempted explanation of the sale to the minor, appellant testified that more than a year ago, while he was conducting business in Hamilton Township, this same young man was questioned as to his age and told appellant that he was then twenty-one years of age. The minor, however, denied that he had ever been in appellant's saloon in Hamilton Township.

On May 29th, 1936, a synopsis of our investigators' reports was forwarded to respondent, with the recommendation that proceedings be instituted so that the above charges against the licensee might be tried out. No formal action was taken on this recommendation but respondent, on June 23rd, 1936, denied appellant's application for renewal of his license because "the members of the Township Committee had investigated said charges and believed them to be true".

Appellant is not entitled to a renewal of his license as a matter of right. As I said in re Marritz, Bulletin #61, item 8:

"Licenses are good, at the maximum, for the term of one year only. All rights conferred by the license cease upon its termination. While a licensee who has lived up to the law and complied with all requirements ought, in fairness, to have first consideration when renewals are determined, nevertheless it is overstating the principle to conclude that he is, therefore, 'entitled' to a renewal. No one has a vested right to a renewal. Whether a renewal should be granted or not is, like the original issuance of the license, a matter to be decided in the light of what is then determined as the best common interest of the public at large."

On the previous appeal appellant and his wife contended that the alleged disturbances took place outside of their licensed premises and that they were blamed for it because their place in Hamilton Township was located in a bad neighborhood. They explained that they intended to operate in Bordentown a restaurant and a country hotel, the inference being that they could conduct a high class place in better surroundings. They admitted on this appeal that, during the past year, they did not conduct a restaurant and hotel because, as the wife explained, she discovered that it would cost too much money. During the past year, apparently, they have conducted practically the same type of place which got them into difficulties in Hamilton Township. They have had one chance to make good. Under the circumstances, I do not think they are entitled to another.

The evidence produced at the hearing of this appeal satisfies me that appellant has been guilty of selling alcoholic beverages to a minor in violation of Section 77 of the Control Act, and that he has likewise violated Rule 1 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises in selling and serving alcoholic beverages to persons actually or apparently intoxicated, and in allowing the consumption of alcoholic beverages by such persons upon the licensed premises.

There is, therefore, ample evidence in the record to support the refusal of respondent to renew appellant's license. As said in Ford vs. Knowlton, Bulletin #84, item 5:

"A determination by a municipal issuing authority that the licensed business has been conducted improperly in the past will be sustained if founded upon substantial evidence."

The action of respondent is, therefore, affirmed.

On June 30, 1936, an Order was entered herein extending appellant's old license pending the determination of this appeal and until further order. That order is herewith vacated. Appellant shall cease doing business immediately. In accordance with the terms of said order, respondent shall retain, in addition to the statutory investigation fee, the prorated portion of the license fee for the period during which the extension of the license remained in effect.



Commissioner.

Dated: July 10, 1936.