

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

BULLETIN 226

JANUARY 20, 1938.

1. REPORT ON MUNICIPAL LIMITATIONS OF THE NUMBER OF RETAIL LICENSES

January 17, 1938

TO THE COMMISSIONER:

Following is schedule of municipal limitations of the number of retail licenses adopted by resolution or ordinance of the municipal governing bodies, so far as the information has been reported to the Department by the respective municipalities.

The absence of a limitation does not necessarily mean that the municipality is issuing that class of license without limit. In some cases, no fee has been fixed for the particular type of license, and hence none are issuable; in others, a municipal prohibition or policy may prevent issuance.

Where the number of licenses presently outstanding in the municipality is in excess of that fixed by the limitation, it is the intention of the local authorities that the number should be eventually reduced to the quota fixed. Such regulations allow the renewal of licenses in existence at the time the regulation was adopted, notwithstanding the limitation.

	<u>Plenary Retail Consumption</u>	<u>Seasonal Retail Consumption</u>	<u>Plenary Retail Distribution</u>	<u>Limited Retail Distribution</u>	<u>Club</u>
Absecon	4		1		1
Allenhurst			4		
Allentown	1				
Alpha	6		1		1
Asbury Park	(1) Limited to 60 plenary retail consumption and plenary retail distribution, exclusive of hotels				
Atlantic	5		2		
Atlantic City	240		25		
Atlantic Highlands	Plenary retail consumption, seasonal retail consumption and plenary retail distribution licenses limited to the number outstanding on 3/10/36				
Avon-by-the-Sea	(1) Limited to total of 2 licenses for the three classes, Plenary Retail Consumption, Seasonal Retail Consumption, and Plenary Retail Distribution			2	
Barrington	2		1		
Bass River	2				
Bayonne	170		12		18
Belleville	1 per 1,000 population		4		
Belmar	8	5	2		4
Bendix	1				
Bergenfield	13		2	5	
Bernards	5				
Bernardsville	Limited to number outstanding on 7/6/36		Limited to number outstanding on 8/17/36		Limited to number outstanding on 1/1/35
Beverly	3				
Bloomfield	33		14	25	
Bloomington	10		3		
Bogota	5				
Boonton (Town)	7		4		
Boonton (Twp)	3		2		
Bordentown (Twp)	8				
Bound Brook	21		2		
Bridgeton	9		6		9
Brielle	Plenary retail consumption, plenary retail distribution, limited retail distribution and club licenses limited to number outstanding on 11/30/34				
Butler	7				
Camden	200		20		
Cape May County	In municipalities where such licenses had theretofore been issued, plenary retail consumption and plenary retail distribution licenses are limited to number outstanding on April 5, 1937, excepting bona fide hotels and restaurants. In those municipalities where no plenary retail distribution licenses have been issued, two such licenses may be issued.				
Carters	2 plenary retail consumption licenses per 1,000 population, excepting club licenses being converted into plenary retail consumption licenses				
Cedar Grove	10		1		
Chatham (Twp)	3		3		
Cinnaminson	2				
Clark	10				
Clayton	2				
Cliffside Park	38	2	13	5	2
Clifton	125 plenary retail consumption licenses, excepting any other license being converted into plenary retail consumption license				
Clinton (Town)	2				

	<u>Plenary Retail Consumption</u>	<u>Seasonal Retail Consumption</u>	<u>Plenary Retail Distribution</u>	<u>Limited Retail Distribution</u>	<u>Club</u>
Closter	9		2		
Corbin City	2				
Cranbury	2				
Cranford	6		4		
Cresskill			1		
Dover (Town)	20		5		
Dunellen	12		3		2
East Hanover	5		5		
East Orange	20		15		2
East Peterson	12				
East Rutherford	23		3		
Edgewater	17		1		1
Egg Harbor (Twp)	(2) 21	(2) 1			(2) 1
Englewood Cliffs	(3) Plenary retail consumption and plenary retail distribution licenses limited to number outstanding on June 28, 1937, except renewals and to premises then licensed				
Ewing	25		5		
Fairfield	5	1	1		1
Fair Lawn	8		(4) 3, excepting registered drug stores		
Fairview	30				
Farmingdale	1		1		
Flemington	3		2		
Florence	11				
Franklin (twp) (Gloucester Co.)			1		1
Franklin (Twp) (Warren Co.)	3				
Franklin Lakes	1				
Fredon	4				
Freehold (Boro)	10		2		
Freehold (Twp)	4				
Frenchtown	2				
Galloway	27				
Garfield	1 per 500 population		1 per 500 population		
Garwood	11		1		
Glassboro	1 per 1,000 population		1		1
Glen Rock	2		3		
Gloucester (Twp)	12				
Green	(1) Limited to 3 plenary retail consumption and plenary retail distribution licenses				
Hackensack	30		15		
Hackettstown	(1) Plenary retail consumption and seasonal retail consumption limited to total of 1 per 500 population		1 per 1,600 population		
Haddon	12		6		1
Haledon	20				
Hamburg	2				
Hamilton (Twp) (Atlantic Co.)	15				
Hamilton (Twp) (Mercer Co.)	55		5		5
Hammonton	12		2		
Hanover	10		2		
Harrison (Town)	Plenary retail consumption licenses limited to number outstanding on 2/6/35				
Hasbrouck Hts.	7		5		
Hawthorne	(5) 19, excepting 3 additional to restaurants		2	2	4
Highland Park	6		2	2	
Hightstown	6		1		
Hillsdale	5		1		
Hillside	19		6		
Holmdel	5		1		
Hopewell (Boro)	(1) Limited to 2 plenary retail consumption and plenary retail distribution licenses				
Howell	15		1	2	2
Irvington	(1) Limited to 60 plenary retail consumption, seasonal retail consumption, plenary retail retail distribution and club licenses				
Jefferson	7				
Kearny			33		
Kenilworth	8	3	2		
Lambertville	12				
Laurel Springs	4		4		4
Lawnside	3		3		
Lawrence (Twp) (Mercer Co.)	(2) 12				
Lebanon (Twp)	7				
Leonia			10		
Liberty	(1) Limited to 6 plenary retail consumption and seasonal retail consumption licenses				
Little Falls	(6) 17				
Livingston	11		3		
Logan	(1) Plenary retail consumption and plenary retail distribution licenses limited to 1 per 1,000 population				

	<u>Plenary Retail Consumption</u>	<u>Seasonal Retail Consumption</u>	<u>Plenary Retail Distribution</u>	<u>Limited Retail Distribution</u>	<u>Club</u>
Longport	2				
Lopatcong	3				
Lower Penns Neck	5		2		2
Lynchurst	Plenary retail consumption licenses limited to number outstanding on 7/1/36				
Madison (Boro)	5		13		
Mansfield	8				
Mansfield (Twp) (Burlington Co.)	4				
Mansfield (Twp) (Warren Co.)	5				
Manville	20		3		
Maplewood	3	1	12		2
Marlboro	10				
Maywood	4				
Medford	(1) Limited to 4 plenary retail consumption and plenary retail distribution licenses				
Mendham (Boro)	2				
Merchantville			3		
Metuchen	1 per 1,000 population				
Millburn	11, excepting clubs		7		
Millstone (Twp)	4				
Millville	10		4		6
Mine Hill	(1) Limited to total of 4 plenary retail consumption, plenary retail distribution, and club licenses				
Monmouth Beach	3		2	2	
Monroe (Twp) (Gloucester Co.)	Limited to number outstanding on 8/6/36	3, provided vacan- cies exist in plenary retail consumption quota	1		
Monroe (Twp) (Middlesex Co.)	9				
Montclair	10		13		2
Montgomery	2				1
Montvale	5		3		
Moonachie	5		3		
Morristown	19		12		4
Mt. Arlington	5	6, summer season only			1
Mt. Ephraim	8		2		
Mt. Holly	7		2		3
Mt. Olive					1
Mountainside	10		3	5	
Neptune	10		3		
Neptune City	5				
Newark	1180				
New Providence (Twp)	4		(1) Limited to total of 1 plenary retail distribution and limited retail distribution license		1
Newton	(1) 9, including seasonal retail consumption licenses		2		2
North Arlington	14		5		2
North Brunswick	17		3		3
Northfield	(7) 1 per ward				
North Plainfield	5		4		1
Northvale	7		2		
Nutley	20, excepting club licenses be- ing converted to plenary retail consumption li- censes		4		3
Oakland	(1) Limited to a total of 7 plenary retail consumption and plenary retail distribution licenses				
Oaklyn	5		2	1	1
Ogdensburg	4		1		
Oradell	2				
Oxford	Limited to number outstanding on 5/18/34		Limited to number outstanding on 5/18/34		
Palmyra	(8) 1 per 1,000 population		2		
Paramus	35				
Parsippany-Troy Hills	30				
Passaic (City)	100, excepting club licenses be- ing converted to plenary retail con- sumption licenses		14		15
Passaic (Twp)	9		1		
Paterson	300				
Paulsboro	12				
Penns Grove	8		2		2
Pennsauken	(1) Limited to total of 30 plenary retail consumption and seasonal retail consumption licenses		10		5

	<u>Plenary retail Consumption</u>	<u>Seasonal Retail Consumption</u>	<u>Plenary Retail Distribution</u>	<u>Limited Retail Distribution</u>	<u>Club</u>
Perth Amboy	(1) Plenary retail consumption and plenary retail distribution limited to total of 1 per 500 population				
Phillipsburg	(9) 20, except old premises may be licensed within 60 days of surrender		(9) 3, except old premises may be licensed within 60 days of surrender		(9) 7, except old premises may be licensed within 60 days of surrender
Pine Hill	6		1		
Plainfield	(10) 16, excepting hotels		14		
Plainsboro	1			1	
Pleasantville	7		3		1
Pompton Lakes	9		4		
Rahway	35				
Ramsey			4	3	
Raritan (Twp) (Middlesex Co.)	30	5	3		5
Readington	8				
Ridgefield	14				
Ridgefield Park	7		10		
Ridgewood	7		13		
River Edge	3	3	3	3	3
River Vale	7	1	1	1	1
Rochelle Park	10				
Rockaway (Boro)	9		4		
Roseland	1 per 1500 population		1 per 1500 population		
Roxbury	8, excepting hotels				
Rutherford			1 per 2500 population		1 per 14,000 population
Saddle River (Twp)	12				
Salem	7				
Scotch Plains	10				
See Bright	12				
See Girt	(10) 3, excepting 30-room hotels	2	(10) 2, excepting 30-room hotels		
Shrewsbury (Boro)	(1) Limited to total of 3 plenary retail consumption and plenary retail distribution licenses				
Shrewsbury (Twp)	9		1		
Somers Point	Plenary retail distribution licenses limited to number outstanding on 4/19/37				
Somerville	18		3		
South Belmar	6		4		
South Bound Brook	3		1		
South Orange	7				
South Plainfield	14		2		
Spotswood	2				
Springfield (Twp) (Union Co.)	8				
Summit	6		12		
Sussex	4				
Wedesboro	1	1, if vacancy exists in plenary retail consumption quota	1		1
Wenonah	(5) Plenary retail consumption licenses limited to number outstanding on 6/24/35, excepting restaurants				
Wenton	316		25		31
Winton Beach	12				
Upper Penns Neck	8				2
Wernon	6				
Wernona	6		4		
Wineland	14				8
Wallington		5	2		
Wanaque	12	2	3		
Warren	8				
Washington (Boro)	6		2		2
Washington (Twp) (Morris Co.)	3				
Waterford	10		2		
Wayne			3		
West Caldwell	1		1		1
West Deptford	10		2		
Westfield	3		6		3
West Milford	45	3			
West New York	70		9		
Westville	(1) Limited to total of 7 plenary retail consumption and plenary retail distribution licenses				
West Windsor	3		1		
Westwood	6		5		3
Westborough	65		1 per 4000 population		
Westbury	3	1, if vacancy exists in plenary retail consumption quota	1		5
Westcliff Lake	5		1		
Westlynne	3		2		3
Westkoff	3		2		

- (1) Licenses must be limited with respect to each particular license class, not in the aggregate of two or more classes. Re Somerville, bulletin 110, Item 6; Re Hightstown, Bulletin 117, Item 5; Re West Deptford, Bulletin 198, Item 11.
- (2) The limitation was adopted by resolution after July 1, 1937, and not by ordinance as required by P. L. 1937, c. 136 (see Bulletin 185, Item 3)
- (3) See Re Meyerson, Bulletin 200, Item 2.
- (4) See Nabel v. Fair Lawn, Bulletin 188, Item 3.
- (5) See Re Dumont, Bulletin 157, Item 7; Re Neptune, Bulletin 157, Item 11.
- (6) Effective July 1, 1938
- (7) See Brighton Hotel v. Loder, Bulletin 41, Item 6; Re Wilson, Bulletin 69, Item 6; Re Scull, Bulletin 125, Item 5; Re Henn, Bulletin 133, Item 6; Re Smith, Bulletin 168, Item 5.
- (8) The limitation was adopted before December 6, 1933, before the effective date of the Control Act.
- (9) See Re Wismer, Bulletin 96, Item 4.
- (10) See Re Bond, Bulletin 125, Item 4; Re Butera, Bulletin 180, Item 3.

Respectfully submitted,

MAURICE E. ASH,
Senior Inspector

2. DISCIPLINARY PROCEEDINGS - PERMITTING IMMORAL ACTIVITIES ON LICENSED PREMISES - REVOCATION INDICATED FOR SECOND OFFENSE OF THIS KIND - WHEN THE PEOPLE VOTED FOR LICENSED LIQUOR THEY DID NOT REGISTER APPROVAL OF LICENTIOUSNESS.

January 15, 1938.

Thomas J. Duffee, Township Clerk,
Caldwell Township,
Caldwell, New Jersey.

My dear Mr. Duffee:

I have staff report and the Committee's Conclusion in connection with disciplinary proceedings against Charles L. Rhinesmith, t/a Brown Stone Terrace. I note the licensee was adjudicated guilty of having permitted immoral activities on the fourth floor of the building containing the licensed premises; and his license was suspended for a period of ten days.

Permit me again to thank the Township Committee for its salutary action.

If this offense is committed again, I suggest the license be revoked outright. It is high time that licensees realized that when the people voted for licensed liquor, they did not register approval of licentiousness.

Sincerely yours,
D. FREDERICK BURNETT
Commissioner

3. DISCIPLINARY PROCEEDINGS - BOOKMAKING AND GAMBLING ON LICENSED PREMISES - TWENTY DAYS SUSPENSION WILL DRIVE THE HORSES OUT OF TAVERNS.

January 17, 1938.

Mr. Elmer C. Hall,
Township Clerk of Howell,
Freehold, New Jersey.

Dear Mr. Hall:

I have staff report of the proceedings before the Township Committee of Howell against Irma Tuzenew, t/a Log Cabin Inn, charged with having allowed and permitted book-making and gambling on her licensed premises in violation of State Rule.

I note the licensee was adjudicated guilty and that her license was suspended for a period of twenty days.

Expressing no opinion on the merits of the case because it might come before me by way of an appeal, I wish to extend to the members of the Township Committee and to their attorney, Max Finegold, Esq., my sincere appreciation for the very thorough manner in which this case was handled.

A few stiff penalties of this kind will drive the horses out of your taverns.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

4. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In the Matter of an Application)	
to Remove Disqualification because)	
of a Conviction, Pursuant to the)	CONCLUSIONS
Provisions of Chapter 76, P. L.)	AND
1937 - Case No. 14. <i>C. H. H.</i>)	ORDER

BY THE COMMISSIONER:

Petitioner was convicted in 1909 of the crimes of breaking, entry and larceny and receiving stolen goods and, in 1917, of the crimes of atrocious assault and battery, breaking, entry and larceny and receiving stolen goods. At the time of his first conviction he was sixteen years of age. Following his first conviction petitioner served a year in a New Jersey Reformatory, and following his second conviction he served eighteen months in States Prison.

Following his release from States Prison, petitioner held various minor positions for a few years and then conducted

a trucking business for a period of about twelve years. He was idle thereafter for a period of about six months and, in 1935, obtained a position as bartender in licensed premises and has held that position ever since. Investigation shows that on November 10, 1926, petitioner obtained a Restoration to Citizenship from the Court of Pardons of the State of New Jersey. Said Restoration to Citizenship, after referring to the conviction of the crime of atrocious assault and battery at the -----County Court of Quarter Sessions at the term of November, 1917, recites that the Court of Pardons did remit the forfeiture of the right of being an elector suffered by said petitioner by reason of his conviction as aforesaid, to the end that he might be and thereby was restored to the right of suffrage, and that he shall and may thereafter enjoy the right of being an elector, notwithstanding his conviction aforesaid. In Re Tanski, Bulletin #164, Item 12, I said:

"Chancellor Walker in In Re Court of Pardons, 3 N.J. Misc. 585 (1925) distinguishes between 'the gracious act of remitting the forfeiture of the right of suffrage to the end that that right might be thereby restored without the pardoning of the offense or remitting any of the other penalties incident to the conviction,' and a full pardon 'the effect of which is to make the offender a new man, to acquit him of all forfeiture annexed to that offense for which he obtains his pardon.' Strictly speaking, the mere restoration of citizenship would not remove the other penalties incident to the conviction and, therefore, in such a case disqualification under Section 22 would still remain."

Petitioner testified that he believed that said Restoration to Citizenship rendered him eligible to be employed in licensed premises. While he was mistaken in his belief, as appears from the ruling in Re Tanski, supra, I am satisfied that he acted in good faith.

On behalf of petitioner, a retired police chief of the municipality in which he resides testified that he has known petitioner for twelve or thirteen years; that he has been law abiding during that time and that his associates have been persons of good character. A former tax assessor and commissioner of said municipality testified that he has known petitioner for fifteen years, that his reputation is very good and that he has not associated with disreputable persons in that period of time. Fingerprint records disclose no criminal record subsequent to 1917. Apparently, he has gone straight from that time on.

After examining the evidence in this case, I am satisfied that the petitioner has conducted himself in a law abiding manner for the past ten years, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 16th day of January, 1938, ORDERED that petitioner's disqualification from obtaining or holding a license or permit, because of the convictions set forth herein, be and the same is hereby removed in accordance with the provisions of Chapter 76, P. L. 1937.

D. FREDERICK BURNETT
Commissioner

5. GAMBLING - CARDS AND DICE - WHILE NOT GAMBLING DEVICES PER SE, THEIR USE IS PROHIBITED FOR ANY GAMBLING PURPOSE - HEREIN OF THEIR QUAINI AND OTHER USES AND OF THE DANGERS WHICH LICENSEES INCUR BY ALLOWING THEM ON THEIR PREMISES.

January 18, 1938

Walter F. Pease, Esq.,
New York City.

My dear Mr. Pease:

I have before me your letter of December 24th re the playing of cards and the use of dice.

Licensees may have cards and dice on the licensed premises and allow them to be used in playing legitimate games, so long as they are not used for gambling. There is no law or rule that bars the possession or the presence of cards and dice upon licensed premises. What is prohibited is the use of cards or dice for gambling purposes. This prohibition is no ruling of mine. It is the law of the State of New Jersey. The Crimes Act (P. L. 1898, p. 811) provides:

"All playing for money or other valuable thing, at cards, dice or other game, with one or more die or dice, or with any other instrument, engine or device, in the nature of dice, having one or more figure or figures, number or numbers thereon, or at billiards, or A.B.C., or E. O. table, pool table, or other tables, or at tennis, bowls, or shuffleboard, or at faro-bank, or other bank of the like kind, under any denomination whatever; and all cock-fightings shall be misdemeanors." (Rev. 1937, 2:135-1).

Accordingly, our courts have held (State v. Brown, 49 N. J. L.61) that playing cards for beer, to be purchased and paid for by the loser, is gaming and that the keeping of a place to which persons may resort for gambling, in any form, is a misdemeanor under P. L. 1898, p. 812 (Rev. 1937, 2:135-3). State v. Flynn, 76 N.J.L. 473.

Consequently, so long as and because these laws are on the books, if cards are played, or dice are rolled, for money or drinks, that is gambling and hence, if permitted on licensed premises, would be not only a misdemeanor under the Crimes Act, as construed and adjudicated by our courts, but also a violation of Rule 7 of the State Rules Concerning Conduct of Licensees and cause for the suspension or revocation of the license.

Cards and dice are not, therefore, in the same category as slot machines, which are gambling devices per se and hence their mere presence on licensed premises is barred.

So much for the law.

As a practical matter, licensees take long chances when they permit either cards or dice upon licensed premises. To be sure, I suppose it is possible to play poker or parchesi without thought of money - just to see who is "high" man or who gets "Home" first, so to speak - but those whose duty it is to enforce the law may draw

other inferences and the consequences are apt to be unpleasant. Trifling with the law is playing with fire. Licensees would, therefore, do well to police their own premises so that revocation of their liquor privilege never comes into question.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - VAN NESS vs. HAMILTON TOWNSHIP

CARL E. VAN NESS,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	
TOWNSHIP COMMITTEE of the)	CONCLUSIONS
TOWNSHIP OF HAMILTON,)	
)	
Respondent.)	

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Frank I. Casey, Esq., Attorney for Appellant.
R. James Stewart, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail consumption license for premises located at Main and Allen Streets, Groveville, Hamilton Township.

At the hearing held below on objections filed, a petition adverse to the application and containing the names of one hundred ninety-five persons was presented to the Township Committee. Letters of protest were also received from the owners of the three factories in the community and from the Board of the Groveville M. E. Church. At that hearing a delegation of residents appeared to oppose the granting of the license. The appellant and his wife were the only persons who appeared in favor of granting the license, but they presented a petition containing approximately seventy names of residents who requested that the license be issued.

At the hearing on this appeal, no one appeared in support of appellant except his wife.

The objections made at the hearing below and at the hearing on appeal are based upon the contentions that the neighborhood is residential in character, and that there is no need for a licensed place in the community.

Groveville is a small industrial and residential community. It has three small factories, a few neighborhood stores and one hundred twenty-eight residences. It has no place licensed for the sale of liquor and has had no such place for more than forty years. It is not located on any principal highway but is located about three-quarters of a mile from State Highway 25, with which it is connected by an improved road.

No question is raised as to appellant's qualifications. The premises for which he seeks the license consists of a large

house on a triangular plot of ground which is five hundred sixteen feet on Main Street, five hundred forty-six feet on Allen Street and two hundred twenty-one feet on an unnamed street which runs along the rear of the plot. The premises have been owned by appellant's wife for about six years, and the testimony shows that he has expended large sums of money in improving the property. He testified that he intends to conduct a high class restaurant.

While the evidence shows that the private interests of appellant might be served by the issuance of the license, the test in cases of this kind is whether the best interests of the community would be served by the issuance of the license. Moran vs. West Orange, Bulletin 143, Item 8.

Although appellant attacked the petition filed by the objectors below, contending that many of these objectors did not reside in Groveville, it appears, nevertheless, that at least one hundred fifty of the one hundred ninety-five names appearing on said petition were names of residents of the community. Considering all the evidence, it appears that the sentiment of the community is clearly against the issuance of any license in Groveville. Despite the existence of three factories, the community has a residential atmosphere. In communities of this type, which have allowed no liquor stores since Repeal, bona fide objections of a large part of the population should be given great weight. See Dries vs. Hainesport, Bulletin 191, Item 6, and cases therein cited.

Appellant fails to prove that public necessity or convenience require that the license should be granted despite the local sentiment. The population of the surrounding area is estimated at five hundred by appellant. He testified that he intends to cater to a large extent to transient trade, but his place of business is far from a principal highway. The evidence shows that there are a number of places already existing on Highway 25 within a short distance of the road leading to Groveville. The burden of proving that public necessity requires the issuance of a license rests upon appellant. This burden he has failed to sustain.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT

Dated: January 16, 1938.

Commissioner.

7. APPELLATE DECISIONS - POTANSKI vs. SOUTH RIVER

THOMAS POTANSKI,)

Appellant,)

-vs-

ON APPEAL

BOROUGH COUNCIL OF THE)
BOROUGH OF SOUTH RIVER,)

CONCLUSIONS

Respondent.)

New Jersey State Library

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J. Randolph Appleby, Jr., Esq., Attorney for Appellant.

George L. Burton, Esq. Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a transfer of his consumption license from premises located on the Causeway to premises known as 20 East Street, Borough of South River.

Appellant alleges that the denial was improper because (1) there were no charges pending against him and the place to which he sought transfer is suitable and appropriate; (2) the action of respondent was arbitrary and without proper basis in fact or in law; (3) appellant was unable to obtain a lease on his present premises which he now occupies on a month to month basis and, therefore, denial of the transfer amounts to depriving him of his property without due process of law.

Appellant's first two contentions will be considered together.

Transfer is not a privilege inherent in appellant's license. Nevertheless, if no fair question is made of the personal character of the applicant or the suitability of the premises to which he desires transfer, the refusal of the transfer may not be arbitrary. Van Schoick vs. Howell, Bulletin 120, Item 6; Miller vs. Paterson, Bulletin 212, Item 6.

Respondent did not base its denial upon any personal objection to appellant, but solely upon the ground that there are a sufficient number of licensed places in the vicinity of the premises to which the transfer is sought. The section of the Borough to which appellant wishes to transfer has a population of about twelve hundred people many of whom are on relief. That section is now served by six consumption licensees. All of the existing places are located on Whitehead Avenue, which parallels East Street and is one block therefrom. Two of the existing places are within five hundred feet of 20 East Street.

Appellant contends that respondent's action was arbitrary because, in February, 1937, two of the present Councilmen had voted to grant a new license to another applicant for 20 East Street, which application, however, was subsequently denied and because three other Councilmen had argued in favor of granting the present application at a preliminary caucus of the members of the Borough Council. Appellant insists that these facts, which are not disputed, show that five of the six Councilmen at one time or another favored the granting of a license for 20 East Street and, therefore, urges that the denial of his present application was arbitrary. No improper motivation is alleged or proven as to any of the Councilmen. The minutes of the meeting at which the present application was denied show that members of the Council present unanimously voted to deny the transfer because there "were a sufficient number of taverns in that section of the Borough and there was no immediate need for another tavern on East Street because the demand of the residents in that section of the Borough could be cared for by the present number of taverns."

At the hearing on appeal four Councilmen and the Mayor testified that in their opinion the transfer had been properly refused for the reasons stated in the minutes. The fifth Councilman testified that he was in favor of granting the transfer. The six Councilman did not appear. The most that has

been shown by appellant is that a number of the Councilmen changed their minds. I can go only by what they did, not by what they at one time thought. Unless what they did was wrong, I cannot reverse them for earlier expressions of different opinion.

Considering all the evidence, I conclude that the action of respondent in denying the transfer because there are sufficient licensed places in the vicinity was not arbitrary or unreasonable but was based upon the facts of the case. Levitt vs. Liberty, Bulletin 169, Item 4; DeBlasio vs. Trenton, Bulletin 175, Item 6.

As to the third contention, the evidence shows that in June 1937 appellant was negotiating for a lease on the Causeway property which he did not obtain, apparently, because the building was sold before the negotiations were concluded. He is now a month to month tenant and the present owner has demanded an increase in rent. Hence, the application for transfer. Appellant argues that if a licensee has trouble with a landlord, a refusal to transfer is unfair and is equivalent to taking licensee's property away without due process of law. The trouble with this argument is that, if sound, it would make transfers mandatory whenever there was a private controversy between landlord and tenant. It is elementary, however, that whether or not a license should be transferred is discretionary - as much so as the issuance of the license in the first place. It is none of the business of the license issuing authority to determine how much or how little rent a tenant should pay to his landlord. The fact that this licensee is having some difficulty with the landlord of his present premises, which are located in a section of the Borough far removed from any other licensed place, is no reason why the Borough Council should be compelled to transfer his license to another section which is already adequately serviced. The licensee is not deprived of any property by the refusal of the license issuing authority to transfer his license. A liquor license is not a contract. It is a mere privilege. Hence, no constitutional question is involved in the action of respondent in denying the transfer. Meehan v. Board of Excise Commissioners, 73 N. J. L. 382, aff'd 75 N. J. L. 557. The claim of lack of due process of law has nothing to support it except the earnestness by which it is said.

The action of respondent in denying the transfer applied for is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 17, 1938.

8. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS.

January 17, 1938

Re: Case No. 205

Solicitor denied he had ever been convicted of a crime. Fingerprint records disclosed that, in 1935, he had been

arrested on a charge of larceny. Subsequent investigation showed that solicitor pleaded non vult in a Criminal Judicial District Court to a charge of larceny of \$10. worth of silk and that he was placed on probation for six months.

Petty larceny may or may not involve moral turpitude, depending on the facts of the case.

At the hearing, solicitor testified that at the time of his arrest he was working in a silk mill and that he had permission of the foreman to take the silk which he described as "waste." The Chief of Police, who made the complaint, states, in a letter, that solicitor had the foreman's permission to take the silk. Solicitor has a clean record, otherwise, and I do not believe that, under these circumstances, the crime of which he was convicted involved moral turpitude.

Solicitor testified that he had not disclosed his conviction because "it might throw me out of my job." The affidavit was false.

It is recommended that solicitor's permit be suspended for ten (10) days because of his false affidavit.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT
Commissioner

9. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

January 17, 1938.

Re: Case No. 206

Solicitor denied he had ever been convicted of a crime. Fingerprint records disclosed that, in 1930, he had been convicted of forgery, in the State of California.

At the hearing, solicitor admitted that he had pleaded guilty to the crime aforesaid but testified:

"Later I went before the Court with new evidence and different circumstances and, on a re-trial and under a plea of 'not guilty', I was acquitted in the same Court in which the original charge was made, and the Court directed that all information held by police agencies against me be destroyed and that I be relieved of all disabilities arising from the charge."

Further investigation has been made by this Department and copies of the Court records have been received from the Clerk of the Court in which the conviction occurred. These

records show (1) an "information" against solicitor for forging two checks, one for \$10., the other for \$25.; (2) Probation order; (3) modified order terminating probation, and (4) Order Dismissing Information against Probationer, all of which bear the same case number.

The order last mentioned, after referring to the probation order, provides:

"IT IS NOW THEREFORE ORDERED that the plea of GUILTY as heretofore entered herein by said defendant be, and the same is hereby set aside and a plea of NOT GUILTY entered; and

"IT IS FURTHER ORDERED ADJUDGED AND DECREED that the above entitled action, and the information filed therein, be and the same is hereby dismissed and said defendant is hereby released and discharged and forever relieved from all penalties and disabilities resulting from the offense of which the said defendant was convicted."

The order of the Court setting aside the plea of Guilty and dismissing the information would seem to wipe out the conviction. In any event, effect must be given to the order of the Court discharging and relieving solicitor from all penalties and disabilities resulting from the offense of which he was convicted.

Solicitor, therefore, is not disqualified from holding a permit. Under the circumstances, I do not believe that solicitor answered falsely in swearing that he had never been convicted of a crime. In Re Case No. 178, Bulletin 206, Item 11.

It is recommended, therefore, that no further action be taken.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:

D. FREDERICK BURNETT
Commissioner

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

RE: Case #200

January 17, 1938.

This is to determine whether applicant is disqualified from employment by a licensee in this State by reason of conviction of a crime involving moral turpitude within Section 22 of the Control Act.

In 1932, applicant was convicted of "breaking, entering and larceny", given a suspended sentence, and released on probation. This conviction resulted from applicant's breaking into a compartment of a barge at night and stealing 15 one-gallon cans of paint valued at either \$30. or \$45. Applicant testifies that at the time of the crime, he was 18 years of age; that the crime was executed by him in concert with several companions of a similar age; that the barge in question was lying off one of the docks in Jersey City; that he and his companions were sometimes allowed aboard the barge; that, however, no one knew that they were on the barge on the night

of the crime.

Although applicant seems to be sincerely repentant, nevertheless his crime of "breaking, entering and larceny", as above described, involves moral turpitude within the meaning of Section 22 and therefore disqualifies him from employment by a licensee in this State. Re Case #186, Bulletin 209, Item 6.

In 1934, applicant was also convicted of atrocious assault and battery and given an indeterminate sentence at Annandale Reformatory, where he remained for 11½ months. It appears that applicant had been seized on perhaps groundless suspicion by Federal Customs Guards at Jersey City and, in breaking away from their custody, "pushed" and injured one of the guards. It is unnecessary to determine the effect of this incident since, as already indicated, applicant's conviction for "breaking, entering and larceny" necessarily disqualifies him under Section 22.

It is therefore recommended that applicant be declared disqualified from employment by a licensee in this State.

Nathan Davis
Attorney.

Approved:

D. FREDERICK BURNETT
Commissioner

11. LICENSED PREMISES - NOT DEFINED AS PUBLIC PLACES - THE TERM IS NOT USED IN THE ALCOHOLIC BEVERAGE CONTROL ACT - THE POLICY OF INTERPRETATION HAS BEEN TO TREAT TAVERNS AS BEING PRIVATE PLACES AND HENCE THEY ARE HELD TO STRICT RESPONSIBILITY WITH COMMENSURATE POWER TO MAINTAIN ORDER AND DECENCY.

January 19, 1938.

Charles H. Dorsey, Commissioner,
Board of Education,
Perth Amboy, N. J.

Dear Sir:

I have yours of the 6th inquiring if a tavern is considered to be a public place.

There is nothing in the Control Act or the rules and regulations on the point. Licensed places are not defined as public places. Neither the term "tavern" nor "saloon" is used in the Act (Re Phillips, Bulletin 200, Item 5), let alone a definition as to whether or not they are public places.

The answer to your question depends upon the context in which the term "public place" is used and the objectives sought to be attained by the statute or ordinance in which such term is employed.

There are very few reported cases. In State vs. Lynch, 23 N.J.L.J. 45, Judge, afterwards Justice, Fort held that a saloon was not a public place within the meaning of that term in "An Act Concerning Disorderly Persons." He said:

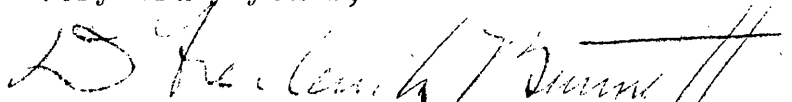
"A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor."

His ruling was followed by Justice Parker in State vs. Colgan (Sup.Ct. 1919) 92 N.J.L. 307. These rulings, however, were due to the language of the Disorderly Persons Act which prohibited certain conduct in "public places of any city, village, borough or township of this State."

On the other hand, in Held vs. Rosenbaum, 173 N.Y. Sup. 410 (1918) it was held that a saloon was a public place within the meaning of an ordinance which prohibited unmuzzled dogs in public places.

So far as the Alcoholic Beverage Control Act is concerned, I have consistently treated taverns as being "private places" and hence have held the proprietor responsible for whatever goes on therein and have sustained his power, commensurate with such responsibility, to maintain order and decency. You will find a discussion of the rights and duties of licensees in this respect in Re Tait, Bulletin 188, Item 9; Re Craster, Bulletin 198, Item 6; Re Griffin, Bulletin 200, Item 7; Re Bascom, Bulletin 203, Item 12. While licensees are to keep order, the use of extreme measures is ill-advised. Re Backer, Bulletin 63, Item 8; Federko vs. Piscataway, Bulletin 85, Item 4; Re Tokarski, Bulletin 112, Item 13.

Very truly yours,


Commissioner