otyped rule can be laid down. (First Dillon's Municipal Corporations, Sec. 100, 4th Ed.)

It is apparent from the act under consideration that the intention of the legislature in conferring on the Council the power to regulate the sale of liquor was to enable that body to protect society from the evils attending it. The benefit of the dealer was not the chief end. Therefore the duty of the Council with respect to him must depend largely on the good of the neighborhood. It follows that it is the duty as well as the right of the Council, to use all reasonable means to give such protection as the public welfare demands. We are of the opinion that the Council in the regulation of the business has a wide discretion, but it is not arbitrary discretion. Under the power to regulate, the business may not be prohibited. The authority is delegated to the councilmen as reasonable men and with the expectation that they will employ reasonable means.

To entrust the privilege of selling of intoxicating liquors to persons whose antecedents, habits and characters are such as to inspire confidence in them and warrant the belief that they would not violate the law by selling to minors, habitual drunkards or intoxicated persons and would be likely to conduct their business in other respects with

DUE REGARD TO GOOD MORALS

and the peace and happiness of society would appear to be within that discretion included in the right to regulate. The exercise of a reasonable discretion as to the localities in which the business shall be carried on would appear to be within the power to regulate. A saloon along side of a schoolhouse or a church would be very undesirable. And to establish one along side of a man's home would be regarded as very objectionable. To authorize the retailing of liquors in the midst of the homes of the people would be palpably wrong. Neighborhoods infected with liquor saloons are not suitable communities for boys and girls to grow up in. And so a limitation of the number of places for retailing intoxicating liquors in a city would be a reasonable regulation. Because the council may be authorized to license liquor sellers, it does not follow that they must license all who may apply. The powers delegated to the legislative departments of municipal governments are usually exercised by ordinance. The council grants the license by a vote; in that way the power is expressed. When the application is made it would appear to be

A SUITABLE TIME TO INQUIRE

and decide as to whether the applicant is a suitable man to be entrusted with the business. And as to the determination of the place and as to whether more licenses should be granted, general tests might be established by ordinance by which to determine the fitness of persons to be entrusted with the business or selling liquor and ordinances be adopted designating localities in which the business may be conducted and limiting the number. But we are not prepared to say that the business may not be regulated in such respects, without ordinance. The charter confers the power to regulate the traffic upon the city without expressly requiring it to be exercised by ordinance. But it is said that the councilmen may act from mere whims, caprice, partiality or prejudice unless the regulation is by ordinance. The court should assume that public officers will act from proper motives until the contrary appears. It is also claimed that the court must presume that the council acted arbitrarily or without sufficient reasons appearing upon its record. The court will not assume that the council refused the licence

ARBITRARILY AND WITHOUT REASON

without some proof. Being public officers and acting under the sanction of an oath, the court will assume that they acted lawfully until the contrary appears.

We have been referred to a decision of the Supreme Court of the United States involving the validity of an ordinance of the city of San Francisco in which this language is found: "The sale of such liquors in this way has therefore been at all times, by the courts of every State, considered as the proper subject of legislative regulation. Not only may a license be exacted from the keeper of the saloon before a glass of his liquors can be disposed of, but restrictions may be imposed as to the character of persons to whom, and the hours of the day, and the days of the week on which the saloons may be opened. Their sale in that form may be absolutely prohibited. It is a question of public expediency and public morality. There is no inherent right in a citizen to thus sell intoxicating liquors by retail; it is not a privilege of a citizen of the State or of a citizen of the United States. As it is a business attended with danger to the community it may, as already said, be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils. The manner and extent of regulation rest in the discretion of the governing authority. That authority may vest in such officers as it may deem proper the power of passing upon applications for permission to carry it on to issue license for that purpose."—Lawyer's Co-operative Publishing Company, December, 1890, p. 86-95.

The case of State ex rel. Riger vs. Holt Co. 39 Mo. 521, was an application for a writ of mandate to compel the county court to issue a license. The statute provided that if the court shall be of the opinion that the applicant is a person of good character,

THE COURT MAY GRANT A LICENSE FOR SIX MONTHS.

This fact was admitted. The application was made in conformity with the requirements in all respects of the statute governing licenses. And the county court refused to grant the license, the court holding that although a party applying for a dram shop license may show himself to possess all the qualifications requisite for the issuing of a license under the statute, the county court may still, in the exercise of its discretion, refuse to grant such license.

Miller vs. Commissioners, 89 N. C. 172, application for mandamus.

The statute involved in the case provided that the applicant might obtain a license from the county commissioners to retail liquor upon proving a good moral character. The court held that such commissioners were not bound to license an applicant, though he be qualified by proof of good moral character; that they had a limited legal discretion and in passing upon an application they have a right to take into consideration the question whether the demands of the public require an increase of such accommodations and whether the place proposed to establish bar-room at would be a suitable one. o the same effect is Attorney-General, c., vs. the

Justices of Guildford County, 5 Id. 3 5:

Petition of Wallace G. Rudenbusch, 120 Pa. St., 328;

Schlandecker vs. Marshall et al., 72 Id., 200;

Toole's appeal, 90 Id., 376;

The statutes providing for licenses construed in those cases differ in some respects from the Utah statute; but

THE PRINCIPLES LAID DOWN IN THEM ARE SIMILAR IN EFFECT

to the North Carolina cases. Parker vs. Portland, 54 Michigan, 308, was a petition for mandamus to compel the board of trustees of the village of Portland to approve a liquor bond. The power to regulate the business had not been granted by the legislature to the board. Their simple duty was to determine the sufficiency of the bond; the discretion only extended to that duty. The court held that a mandamus to compel a village board to approve a liquor bond will be denied if there is nothing to show that the refusal to approve it was capricious, or to rebut the presumption that the board had fairly passed upon all the questions which determine the sufficiency of the bond and the reliability of the sureties. Patten vs. Village of Homer, 59, Michigan 8, and Ampirre City of Kalamazoo are also mandamus cases, involving a construction of the same law as the last case. In Patten vs. Village of Homer, the court held that the village council in approving the bond had the same discretion, and no more than is possessed by other persons called on to approve sureties. We do not regard the Michigan cases as analagous to the one n hand.

The plaintiff also relies upon Zanoue vs. Mound City, 103 Ills., 552. The court held that the village council under the power to regulate the liquor traffic might refuse to license persons of such habits and character as rendered them unfit to be licensed, and to limit the number of dramshop keepers, but held that the discretion should be exercised by ordinance in order to avoid favoritism and monopoly.

From this opinion three of the seven judges dissented.

After a careful consideration of the statutes, the ordinances and the cases cited, we hold that

THE DEFENDANT POSSESSES THE POWER

to license, regulate and tax the liquor business, and that in the use of such authority it may exercise a reasonable discretion in determining who are suitable persons to entrust the business to; the places where it may be conducted, and the number of licenses it will issue. And that the Council may exercise that discretion when the application is made when it has not done so by ordinance before. And that the