

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, N. J.

BULLETIN 493

FEBRUARY 11, 1942

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DEFENDANT'S FIRST
CONVICTION - ABSENCE OF AGGRAVATING CIRCUMSTANCES - 10 DAYS'
SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

PHILIP LEININGER,)
1425 N. Broad Street,)
Hillside, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-2, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the Township)
of Hillside (and transferred by)
said Board to AMOS FREEMAN ALLEN)
for the same premises during the)
pendency of these proceedings).)

CONCLUSIONS
AND ORDER

John M. Kerner, Esq. and Ellsworth J. Sterner, Esq.,
Attorneys for Defendant-Licensee.
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant (Philip Leininger) has pleaded guilty to
the charge of possessing illicit liquor in violation of the Alco-
holic Beverage Law. See R. S. 33:1-50.

On April 7, 1941 a federal agent, on testing thirty-one
open bottles of liquor at the defendant's tavern, seized five such
bottles which contained liquor unduly low in proof and which sub-
sequent analysis by the federal chemist has indicated to be genuine
liquor diluted with water.

Since such doctored liquor constitutes an illicit beverage,
its mere possession by a licensee is, without more, a violation.
Re Orbach, Bulletin 406, Item 10; Re Wildwood Golf Club, Bulletin
409, Item 8. Also see Re Moritko, Bulletin 490, Item 4, and cases
there cited.

In mitigation the defendant asserts he was actually unaware
that anything was wrong with the liquor in these five bottles until
they were seized by the federal agent.

This claim of personal innocence finds support in the fact
that, on mathematically calculating the water necessary to account
for the underproofages in question, the respective amounts seem com-
paratively small. Such fact does not normally bespeak the action
of a licensee who is chiseling on the public by deliberately selling
doctored liquor, but rather the action of an employee who has been
"sneaking drinks on the boss" and replacing them with water to keep
the liquor line on the bottle at its original level.

Although the defendant suggests that the blame may lay elsewhere, the evidence discloses that the drinks were most likely pilfered by a bartender whom the defendant fired in January 1941 (a few months before the occasion in question) because of excessive drinking, and also by a porter with whom the defendant had similar trouble and whom he eventually fired some six or eight weeks after the occasion in question.

Licenses are strictly accountable for their liquor stock. Re Moritko, supra. It is their responsibility to see that their employees do not tamper with that stock in any way or for whatsoever purpose. Re 12 East Park Street Tavern Inc., Bulletin 481, Item 9, and cases there cited. Doctored liquor presents so serious a menace to sound liquor control that licensees, as "masters of their house," must rigorously be held to this strict accountability even though they may be personally innocent of the tampering. See Re Cutter, Bulletin 479, Item 12.

Since this is the defendant's first conviction and there are no aggravating or other attendant circumstances warranting a more substantial penalty, the license in question will, in line with my past decisions, be suspended for ten days. See Re Moritko, supra, and cases there cited.

To be distinguished are those cases where it was fairly inferable (from the number of bottles involved and the lack of a satisfactory explanation) that an actual business practice of "refills" had been followed at the tavern. Such an aggravated case warrants at least a thirty-day penalty. Re Gypsy Camp Inc., Bulletin 454, Item 2; Re Kish, Bulletin 454, Item 3; Re Reeves, Bulletin 461, Item 4; Re 12 East Park Street Tavern Inc., supra. Cf. Re Smith, Bulletin 482, Item 1.

Although the defendant's license was transferred to Amos Freeman Allen during the pendency of these proceedings, the present penalty is effective against the transferee by virtue of State Regulations 15. Moreover; the local issuing authority apparently granted the transfer on the express condition that it be subject to the outcome of these proceedings. See Re Byer, Bulletin 477, Item 4.

Accordingly, it is, on this 31st day of January, 1942,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the Township of Hillside to Philip Leininger for 1425 N. Broad Street, Hillside, and later transferred by said Board to Amos Freeman Allen, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A. M. February 4, 1942, and concluding at 3:00 A. M. February 14, 1942.

ALFRED E. DRISCOLL,
Commissioner.

2. ACTIVITY REPORT FOR JANUARY, 1942

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees - - - - - 0 Bootleggers - - - - - 16
 Total number of persons arrested - - - - - 16

SEIZURES: Stills - 1 to 50 gallons daily capacity- - - - - 3
 50 gallons and more daily capacity- - - - - 4
 Total number of stills seized- - - - - 7
 Mash - gallons - - - - - 1,325
 Motor vehicles - Trucks- - - - - 0
 Passenger cars- - - - - 2
 Total number of motor vehicles seized- - - - - 2
 Beverage alcohol - gallons - - - - - 7.75
 Brewed malt alcoholic beverages (beer, ale, etc.) - gallons- - 4.75
 Wine - gallons - - - - - 154.50
 Distilled alcoholic beverages (whiskey, brandy, etc.)-gallons- 7.08

RETAIL LICENSEES:

Number of premises in which were found:
 Illicit (bootleg) liquor - 5 "Fronts" (concealed ownership)- 4
 Gambling devices - - - - - 6 Improper beer tap markers - - - 2
 Prohibited signs - - - - - 3 Stock disposal permits necessary 11
 Unqualified employees- - -91 Other types of violations - - - 6
 Total number of premises where violations were found - - - - - 123
 Total number of premises inspected - - - - - 1,716
 Total number of unqualified employees found- - - - - 124
 Total number of bottles gauged - - - - - 14,549

STATE LICENSEES:

Premises inspected - - - - - 58
 License applications investigated- - - - - 9

COMPLAINTS:

Investigated, reviewed and closed- - - - - 190
 Investigation assigned, not yet completed- - - - - 590

LABORATORY:

Analyses made- - - - - 153
 "Shake-up" cases (alcohol, water and artificial coloring)- - - 30
 Liquor found to be not genuine as labeled- - - - - 32

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made- - - - - 24
 Persons fingerprinted for non-criminal purposes- - - - - 58
 Identification contacts with other enforcement agencies- - - - 204
 Motor vehicle identifications via N.J. State Police Teletype - 63

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities- - - - - 48
 Cases instituted at Department - - - - - 14

HEARINGS HELD AT DEPARTMENT:

Appeals- - - - - 3 Application for special permit - 1
 Disciplinary Proceedings - 24 Eligibility- - - - - 10
 Seizures - - - - - 19 Tax revocation - - - - - 1
 Total number of hearings held - - - - - 58

PERMITS ISSUED:

Unqualified employees - - - - - 354
 Solicitors - - - - - 78
 Social affairs- - - - - 156
 Home manufacture of wine- - - - - 296
 Disposal of alcoholic beverages - - - - - 66
 Miscellaneous permits - - - - - 65
 Total number of permits issued- - - - - 1,015

Respectfully submitted,

E. W. GARRETT,

Chief Deputy Commissioner.

3. STOCKHOLDERS - RIGHTS WHERE CORPORATE LICENSE HAS BEEN SUSPENDED OR REVOKED - THOSE ENGAGED IN THE LIQUOR BUSINESS TAKING ADVANTAGE OF THE CORPORATION ACT TAKE THE BITTER WITH THE SWEET - STOCKHOLDERS AND DIRECTORS SHOULD BE CHOSEN WITH UTMOST CARE - COMMISSIONER CANNOT AFFORD RELIEF TO INDIVIDUAL STOCKHOLDER WHERE THE CORPORATE LICENSE HAS BEEN SUSPENDED OR REVOKED.

February 2, 1942

Mr. David Breit,
Newark, N. J.

Dear Mr. Breit:

I have before me your letter of January 27th, asking me to reconsider my decision in Re Twelve East Park Street Tavern, Inc., Bulletin 490, Item 5. In that case, the license of the corporation was revoked.

In your letter you suggest that, as a stockholder and "despite the evidence," you have been made "an innocent victim of circumstances." It is also suggested that your creditors and the owner of the building occupied by you are all made to unduly suffer as a result of the decision.

It is apparent from your letter that you have confused your position as a stockholder in the corporation, with the position of the corporation itself when it was before me in disciplinary proceedings.

The corporation itself pleaded nolo contendere to the charge of having falsely answered questions in its application and permitting Samuel Gietter, a non-licensee, to exercise the rights and privileges of its license contrary to statute. In other words, the corporation was charged with being a front for Gietter, who was disqualified by reason of a criminal record.

Therefore, it was not your business that was before me, nor are the creditors of the corporation presumably your creditors. The business belonged to the corporation. The debts were owed by the corporation and it was the defendant in the proceedings before me, as it was in previous cases when it was found guilty in August of 1939 and again in October of 1941.

Where private citizens desire to take advantage of the Corporation Act and secure from the State a corporate charter, possibly for the purpose of protecting themselves against personal liability, they must assume the responsibilities that accompany that method of doing business. In other words, they take the bitter with the sweet. If some of their fellow stockholders get the corporation into difficulties, they have no one but themselves to blame. The old adage of being known by the company you keep is particularly true in the liquor business. Those who choose to adopt the corporate fiction must likewise choose their fellow stockholders and directors with the utmost of care.

Therefore, if you were an innocent victim, as you suggest, the wolf was not the State but the corporation, and its officers and directors, who permitted it to pursue a course of conduct contrary to the statute and the regulations of this Department, resulting in its stock becoming valueless. These are the persons to whom you must look for help.

You suggest in your letter that you are "entitled to a chance." Of course you are. No charges have been preferred against you individually as a result of the activities of the corporation. The corporate device has spared you from personal criticism and perhaps from personal liability in so far as the creditors of the corporation are concerned.

I regret that under the circumstances it is not possible to accede to your prayer for help. In the future, perhaps, a sober but wiser man will avoid association with stockholders of dubious background and remember that, perhaps in this business, he travels the safest who travels alone.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT SUSPENSION
TEMPORARILY - GRANTED.

In the Matter of Disciplinary)
Proceedings against)

PHILIP LEININGER,
1425 N. Broad Street,
Hillside, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

Holder of Plenary Retail Consump-)
tion License C-2, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the Township)
of Hillside (and transferred by)
said Board to AMOS FREEMAN ALLEN)
for the same premises during the)
pendency of these proceedings).)

Alan Bruce Conlin, Esq., Attorney for the Licensee,
Amos Freeman Allen.

BY THE COMMISSIONER:

On January 31, 1942 this Department suspended the plenary retail consumption license for the tavern in question for ten days, beginning 3:00 A. M. February 4, 1942 and ending 3:00 A.M. February 14, 1942, because illicit liquor had been found at the tavern. Although the violation took place while the license was held by Philip Leininger, the suspension was nevertheless effective against the transferee and present holder of that license, Amos Freeman Allen. See Re Leininger, Bulletin 493, Item 1.

The present licensee has now filed a verified petition requesting that the period of suspension be postponed.

This petition shows that, prior to entry of the order of suspension (and hence before any knowledge of the period to be covered thereby), arrangements had been completed for two large private affairs to be held at the licensed premises on dates which now fall within the period of suspension. The first such affair (a party of 50) is to be held on February 5, 1942, and the latter (a party of 45) on February 12, 1942, both apparently being farewell parties to friends going into military service.

Since I see no reason for needlessly penalizing the innocent persons connected with these two affairs, I shall, in fairness, postpone the suspension until after they have been held. For similar decisions, see Re Bohemian Benevolent & Literary Association, Bulletin 304, Item 11; Re Gallagher, Bulletin 304, Item 12; Re Minski, Bulletin 313, Item 3.

Accordingly, it is, on this 3rd day of February, 1942,

ORDERED, that the ten-day suspension of license heretofore imposed in this case shall, in lieu of the period originally fixed, commence at 3:00 A. M. February 16, 1942 and conclude at 3:00 A. M. February 26, 1942.

ALFRED E. DRISCOLL,
Commissioner.

5. APPELLATE DECISIONS - NORTHEND TAVERN, INC. v. NORTHVALE AND PAYNE.

Case #1)
NORTHEND TAVERN, INC., a cor-)
poration of the State of New)
Jersey,)
Appellant,)

-vs-

MAYOR AND COUNCIL OF THE)
BOROUGH OF NORTHVALE, and)
MARGHERITA IDEA PAYNE,)
Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Case #2)
NORTHEND TAVERN, INC.,)
a corporation of the State of)
New Jersey,)
Appellant,)

-vs-

MAYOR AND COUNCIL OF THE)
BOROUGH OF NORTHVALE, and)
MARGHERITA IDEA PAYNE,)
Respondents.)
-----)

Landau & Mehler, Esqs., by John M. Mehler, Esq.,
Attorneys for Appellant.
Lawrence A. Cavinato, Esq., Attorney for Respondent, Mayor and
Council of the Borough of Northvale.
Chandless, Weller & Kramer, Esqs., by Julius E. Kramer, Esq.,
Attorneys for Respondent, Margherita Idea Payne.

BY THE COMMISSIONER:

These two appeals are, respectively, from the issuance of a plenary retail consumption license to respondent Margherita Idea Payne for the last term, and from a renewal thereof for this term, for premises on the northwest corner of Paris and Livingston Streets in the Borough of Northvale.

The Borough of Northvale is a small residential community with a population of approximately 1500. Of the six consumption licenses now outstanding in the municipality, three, including respondent's, are now located at the intersection of Paris and Livingston Streets. This intersection is situated in the heart of the Borough's only business section.

In July 1940 respondent issuing authority denied an application made by Payne for a consumption license for the same premises. On appeal taken to the Commissioner, its decision was sustained. Payne et al. v. Northvale, Bulletin 433, Item 1. Thereafter, in December 1940 Payne again applied for a license for the same premises and this application was also refused. No appeal, however, was taken from this action. Payne's third application, filed in January 1941, was granted by respondent and constitutes the subject of the present appeal.

Appellant, a consumption licensee located on the northeast corner of the intersection in question, contends that respondent issuing authority abused its discretion in placing a third consumption license in such close proximity to the other two already located at that intersection.

In the prior appeal decided by the then Acting Commissioner in November 1940 (Bulletin 433, Item 1), it was there pointed out that the number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the local issuing authority and that the burden rested with the appellant in that case (Payne) to show that such discretion had been unreasonably exercised. After considering all of the evidence, it was held that the testimony "falls short of that necessary to show that the two existing licensed establishments located at the intersection in question do not adequately supply the needs of the public in that area."

In this case, the situation is reversed. The issuing authority has granted the license and the burden is now on the present appellant to show that there is no public need and necessity for such license at the premises in question. Unless this burden is met, the action of the issuing authority must be considered reasonable, at least in the absence, as here, of any charge of discrimination, or bad faith against the members of the issuing authority.

Were I a member of the issuing authority, I might well have cast my vote against the granting of the instant application. However, there is room for latitude of opinion in cases of this kind. My function on appeals of the type now before me is not to inflict or substitute my opinion on or for the license issuing authority but rather to determine if reasonable cause exists for theirs, and if so, to affirm whatever their view and irrespective of my own. Cf. Rafalowski v. Trenton, Bulletin 155, Item 8; Curry v. Margate City, Bulletin 460, Item 9.

That there was undoubtedly a reasonable difference of opinion among the members of the local body concerning the desirability of issuing the license for Payne's premises may be gleaned from the vote of its members on the three applications. In July 1940 the vote was four against to two in favor; in December 1940 (one of the Councilmen having resigned) the vote was three against to two in favor; in January 1941, when the instant application was approved, the vote was two to two (two Councilmen being absent) with the decisive vote being that of the Mayor, who votes only in case of a tie vote of the Councilmen.

Appellant argues that prior to January 1941, and at least throughout 1940, respondent Council had adopted a policy against concentrating three licenses at the intersection of Paris and Livingston Streets. That is apparently true. The testimony in the prior appeal case of the members of the Council as constituted in 1940 is corroborative of this. It might well follow that if respondent's members in January 1941 were the same as those in 1940 cogent evidence would be required to sustain a change in such policy. However, it appears from the evidence that only four of the members of the Council in January 1941 were hold-overs with three, including the Mayor, having been newly elected and inducted into office as of January 1, 1941. Of the hold-overs, one voted "yes," two voted "no" and one was absent; of the new members, the Mayor and one Councilman voted "yes" with the other being absent. It thus appears that at least two of the recent incumbents were not in sympathy with any such policy as was theretofore adopted by the 1940 Council. Of the two absent Councilmen it appears that one is opposed to the issuance of Payne's license, and, as to the other, there is no indication of his attitude in the record.

While, in the interest of uniformity, it might be desirable that a succeeding governing body adhere as closely as possible to the policies theretofore enunciated by a former body, it cannot be said that a deviation from those policies is necessarily arbitrary or unreasonable. On the contrary, the general rule of law is that no governing body may tie the hands of its successors in matters involving the exercise of discretion. Cf. Rafalowski v. Trenton, supra; Lewis v. Phillipsburg, Bulletin 232, Item 13.

A somewhat analogous case is that of Howard v. Somers Point and Manypenny, Bulletin 193, Item 1. There, the Common Council had denied an application of Sam Karpf Co. in 1936 on the ground that there were a sufficient number of licenses then outstanding in the municipality. Upon appeal taken from that denial (Sam Karpf Co. v. Somers Point, Bulletin 137, Item 4), it was held that the appellant "had not sustained the burden of proof requisite to demonstrate that the residents of Somers Point need or will be more properly serviced by the issuance of a distribution license to him for his presently proposed location." In 1937 a license was issued to Manypenny for premises adjoining those of Karpf. In the appeal taken from such issuance (Bulletin 193, Item 1), Commissioner Burnett, after pointing out the reason for sustaining the refusal to issue a license to Karpf, said:

"In other words, the principle of home rule was given full and proper rein by holding that the applicant (Karpf) could not force the municipality against its will to issue to him a liquor license of any kind unless he demonstrated that public convenience and necessity would be served by the issuance of such a license and this he failed to do. In the instant case, the shoe is on the other foot. The municipality has changed its mind and granted to another the very kind of license which it previously denied to Karpf.*** The instant question is not whether the Karpf license was improperly denied but whether the Manypenny license was properly issued. The burden of proof, as in any appeal case, rests upon appellant and it is not sustained in this case by showing that respondent had previously done something wrong in another case. *** But in passing, I note that the application of the Sam Karpf Co. for a distribution license was denied by the Common Council by

a vote of four against and three in favor; that the membership of the Common Council, however, has changed since 1936; that two new members have been elected and of the hold-over members three had voted in 1936 against the Karpf license and two in favor; that the vote in favor of the issuance of the present license was unanimous. Hence, despite the natural suspicion aroused by such a sudden change of front, the changes in the membership of the Board may be quite sufficient to explain the conclusion they reached in the instant case. Certainly, there is no evidence of any fraudulent action by the members of the Common Council either now or as constituted in 1936."

In the instant case, I find that appellant has failed to sustain the burden imposed upon it. The record discloses that the Mayor and the Councilmen who voted to grant the application testified that they had before them a petition containing the signatures of 363 residents favoring the issuance of the license. These gentlemen further testified before me that they were satisfied that there was an overwhelming sentiment among the residents of the community in favor of issuing the license. From Repeal until July 1, 1939, they state, there had always been three licensed establishments at the intersection in question; that, in their opinion, the most appropriate location for an additional liquor license, despite the existence of the other two, was at the corner of Paris and Livingston Streets since that corner was the hub of its only business center. With these facts before them, I cannot say that the only conclusion open to the local board was to deny the application. That being so, neither can I say that their action in voting to grant the application was so arbitrary and unreasonable as to amount to an abuse of discretion warranting a reversal of its action.

Appellant also argues that because of the congestion of traffic at this busy intersection, a hazard will be created because of the additional cars parked there by patrons of Payne's premises. The proofs show, however, that a local traffic regulation prohibits the parking of any automobiles in front of the premises and that, in addition, there is room for the parking of about 20 automobiles in the rear of the premises.

The action of respondent issuing authority in issuing a plenary retail consumption license to Margherita Idea Payne and also granting her a renewal of such license is hereby affirmed.

Accordingly, it is, on this 4th day of February, 1942,

ORDERED, that the petitions of appeal be and the same are hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - 30 DAYS' SUSPENSION WITH LEAVE TO PETITION TO LIFT ON EXPIRATION OF 21 DAYS AND THE TRANSFER OF LICENSE TO BONA FIDE AND QUALIFIED PURCHASER AND TRANSFER OF LICENSE BY THE MUNICIPALITY - 21 DAYS ELAPSED - PETITION BY TRANSFEREE TO LIFT AS AFORESAID GRANTED.

In the Matter of Disciplinary
Proceedings against

JAMES R. McClyment,
549 S. Broadway,
Gloucester City, N. J.,

ON PETITION
ORDER

Holder of Plenary Retail Consump-
tion License C-11 issued by the
Common Council of Gloucester City.

Barney B. Brown, Esq., Attorney for Petitioners Harry J. Mote and
Albert H. Villy.

BY THE COMMISSIONER:

On January 16, 1942 I suspended the license of the defendant herein for thirty days, effective January 18, 1942, after he had been found guilty of various violations of the Alcoholic Beverage Law, the State Regulations and the Gloucester City ordinance. Leave was given in said order to a bona fide and duly qualified purchaser or purchasers, if and when transfer of the license was granted, to make application to me to vacate said suspension upon the expiration of at least twenty-one days from the effective date thereof. Re McClyment et al., Bulletin 491, Item 3. Pursuant to said leave, Harry J. Mote and Albert H. Villy have filed a verified petition wherein they set forth that they have purchased the property in question from Hollywood Cafe, Inc., the owner of the real estate in which the licensed premises is located; that they are qualified in all respects to hold a license; and that on February 5, 1942 the Common Council of the City of Gloucester City transferred the license of James R. McClyment to them, subject to a special condition that any penalty imposed against the licensed premises as a result of the disciplinary proceedings theretofore instituted against James R. McClyment shall be imposed against the licensed premises notwithstanding the granting of the transfer.

Since it appears from said petition and a certified copy of the resolution of the Common Council of the City of Gloucester City dated February 5, 1942 that the license herein has been transferred to duly qualified persons, and since it further appears that on Sunday, February 8th next, twenty-one days will have elapsed since the suspension became effective,

It is, on this 6th day of February, 1942,

ORDERED, that the suspension heretofore imposed be and the same is hereby lifted, and that Plenary Retail Consumption License C-11, heretofore issued to James R. McClyment by the Common Council of the City of Gloucester City for premises 549 S. Broadway, Gloucester City, and transferred by the said Common Council to Harry J. Mote and Albert H. Villy on February 5, 1942 for the same premises, be and the same is hereby restored to full force and effect, effective Sunday, February 8, 1942, at 3:00 P. M.

ALFRED E. DRISCOLL,
Commissioner.

7. NEW LEGISLATION - WAR TIME - COMMENCING FEBRUARY 9, 1942, at 2:00 A. M. STANDARD TIME WILL BE ADVANCED ONE HOUR.

TO ALL MUNICIPAL ISSUING AUTHORITIES, LAW ENFORCEMENT OFFICERS AND AGENCIES, AND LICENSEES:

The enactment and approval by the Governor of Chapter 7, P. L. 1942, results in a new standard of time for this State one hour in advance of the old, commencing on February 9th at 2:00 A. M.

It is to be noted that this legislation provides for a standard time in conformity with that recently established by Congress and which is in no way to be confused with nor referred to as Daylight Saving Time. The new standard time has been appropriately designated by both the President of the United States and by the Governor of this State as "War Time."

The passage of this legislation makes it unnecessary for municipalities to amend existing ordinances regulating hours of sale and the opening and closing of licensed premises, provided, of course, the present existing regulations are satisfactory.

Chapter 7, Laws of 1942, reads as follows:

"AN ACT to provide for a standard of time in the State of New Jersey, and amending section 1:1-2.3 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 1:1-2.3 of the Revised Statutes is hereby amended to read as follows:

"1:1-2.3. The standard time of this State shall be one hour in advance of the time of the seventy-fifth meridian west from Greenwich, and wherever time is named within this State, in any manner whatsoever, it shall be deemed and taken to be such standard time except where otherwise expressed.

"2. This act shall take effect at two o'clock ante meridian on the ninth day of February, one thousand nine hundred and forty-two, and this act shall cease to be in effect six months after the termination of the present war or at such earlier date as the Congress of the United States shall by concurrent resolution or otherwise designate that the standard of time shall be returned to the mean astronomical time of the degree of longitude governing the standard of time for the first zone established pursuant to an act of Congress entitled 'An act to save daylight and to provide standard time for the United States,' approved March nineteenth, one thousand nine hundred and eighteen, as amended, and at two o'clock ante meridian of the last Sunday in the calendar month following the calendar month during which this act ceases to be in effect the standard time of this State shall be the time of the seventy-fifth meridian west from Greenwich, and thenceforth wherever time is named within this State, in any manner whatsoever, it shall be deemed and taken to be such standard time except where otherwise expressed."

ALFRED E. DRISCOLL,
Commissioner.

Dated: February 6, 1942.

8. ELIGIBILITY - POSSESSION OF LOTTERY SLIPS - NOT MORAL TURPITUDE -
APPLICANT NOT DISQUALIFIED.

February 7, 1942

Case No. 409

On January 7, 1942 applicant was convicted of possessing lottery slips and placed on probation for three years. His record is otherwise clear.

Applicant testified at the hearing herein that, at the time of his arrest, the police found a number of lottery slips in his possession. He admits that for a few months prior to his arrest he had been selling numbers on a commission basis because he was then unemployed. He stated that his commissions averaged about \$6.00 per week. Since applicant was a minor employee and not one of the principals engaged in the unlawful enterprise, I conclude that the crime does not involve moral turpitude. Re Case No. 392, Bulletin 479, Item 11, and cases therein cited.

It is recommended that applicant be advised that he is not disqualified by statute from being employed by a liquor licensee in this State.

APPROVED:

ALFRED E. DRISCOLL,
Commissioner.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

9. MANUFACTURERS, WHOLESALERS AND SOLICITORS - BONUSES, ALLOWANCES
AND OTHER SIMILAR INDUCEMENTS - REGULATIONS NO. 35 - CONTESTS -
DEFENSE BONDS AND STAMPS.

TO ALL MEMBERS OF THE LIQUOR AND WINE INDUSTRY IN NEW JERSEY:

Heretofore I have prohibited contests in which the prize was cash, or anything readily or easily converted into cash. This was done upon the theory that such contests too readily lend themselves to the circumvention and possible violation of Regulations Nos. 34 and 35.

Experience in recent months indicates that there has been a tendency on the part of some wholesalers to abuse the privileges heretofore given with respect to contests in which the prize has been Defense Bonds and Stamps. Therefore, I have decided to expand my previous ruling to include Defense Bonds and Stamps.

In line with this decision, I have ruled that after February 15, 1942, Defense Bonds and Stamps may not be used as awards or prizes for contests by manufacturers and wholesalers or as an allowance or inducement or otherwise to solicitors, in connection with the sale of alcoholic beverages.

ALFRED E. DRISCOLL,
Commissioner.

Dated: February 9, 1942.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DELIBERATE AND INTENTIONAL VIOLATION - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

SAMUEL VOGEL, INC.,)
267 South Orange Avenue,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License No. D-140, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Robert Freund, Esq., Attorney for the Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to the charge of selling liquor below the established Fair Trade price in violation of Rule 6 of State Regulations No. 30.

The facts are that, on November 21, 1941, Irving Feldman, the defendant's president, sold a quart bottle of Schenley's Red Label Whiskey to an investigator of this Department for \$2.88 although the Fair Trade price for such item was then \$2.98. See Bulletin 480.

From the reports of this agent and a fellow investigator, it appears that Feldman knew he was selling ten cents below the permissible price.

In amplification of what I recently set forth in Re Park Liquors Corp., Bulletin 492, Item 5, I shall, in accepting a guilty plea for a first Fair Trade violation, impose the minimum penalty of ten days, less five for the plea, only in those cases where there is nothing to show a deliberate violation. But where, as here, it appears that the violation is actually deliberate, the minimum penalty will be fifteen days, less five for the plea.

Since the defendant has no past record and there are no other aggravating circumstances, its license will hence be suspended for fifteen days, less five, or a net of ten days.

Accordingly, it is, on this 9th day of February, 1942,

ORDERED, that Plenary Retail Distribution License No. D-140, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Samuel Vogel, Inc. for 267 South Orange Avenue, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing February 16, 1942, at 3:00 A.M., and ending at 3:00 A. M. February 26, 1942.

ALFRED E. DRISCOLL,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FRONT FOR DISQUALIFIED PERSON BY REASON OF CRIMINAL RECORD - LICENSE REVOKED.

In the Matter of Disciplinary
Proceedings against

LOUIS VINCENT BOSESKI,
273 Grand Street,
Jersey City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-354, issued by the
Board of Commissioners of the City
of Jersey City.

William C. Egan, Esq. and Robert H. Wall, Esq., Attorneys for
Defendant-Licensee.

G. George Addonizio, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleads not guilty to the charges that:

- (1) When applying for license for 1940-1 and 1941-2, he deliberately concealed the interest of Stanley John Boseski, alias John Burke, in the tavern in question, in violation of R. S. 33:1-25.
- (2) He permitted the said Stanley John Boseski to exercise the rights and privileges of the respective licenses, in violation of R. S. 33:1-26, 52.

The defendant, now about twenty-three years of age, obtained his first license for the tavern in February 1941. When questioned thereafter by investigators of this Department, he admitted, in a signed statement, that the money for the tavern was put up by his father, Stanley John Boseski, alias John Burke, and that his father furnished such money to become an undisclosed "partner" in the business.

At the hearing in the case the defendant sought to repudiate this written admission and asserted that his father had given him a wedding gift of \$500.00 to buy the tavern and that the tavern is actually and solely his (defendant's).

I am not swayed by this disclaimer of the defendant's signed statement to the investigators. The case is filled with tell-tale facts which support the confession of "front" implicit in that statement. Among such facts is the ignorance displayed by the defendant at the hearing about significant details in the purchase of the tavern, transfer of the license from the prior owner and leasing of the premises from the landlord; the defendant's testimony that his father is the manager of the tavern, and the latter's claim that he (the father) is not even employed there but just walks around the place; the fact that the father has no income other than moneys which he derives from this tavern; the further fact that the defendant has, at least since last May, been working at the Federal Shipyards in Kearny; and the minor but pertinent detail that the public telephone at the tavern, and bills for various merchandise, are in the father's name.

Similarly, the purpose for the "front" is readily apparent. Boseski, the father, is disqualified from obtaining any license in his own name because of his criminal record, which includes conviction for at least one crime involving moral turpitude. See R. S. 33:1-25. A petition which he filed with this Department in May 1941 for a removal of that disqualification was denied in Re Case No. 146, Bulletin 479, Item 2.

Being amply convinced that the father is an undisclosed proprietor operating the tavern with the defendant's connivance, I find the defendant guilty as charged.

Persons criminally disqualified from engaging in the liquor industry in this State may not play with this Department or the public interest by seeking to operate a tavern through the guise of a "front." Where, as here, such fraud is further aggravated by an unregenerate effort to brazen the case out, it is clear that the only proper penalty is outright revocation of the license.

Accordingly, it is, on this 9th day of February, 1942,

ORDERED, that Plenary Retail Consumption License C-354, heretofore issued to Louis Vincent Boseski by the Board of Commissioners of the City of Jersey City for premises 273 Grand Street, Jersey City, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - NO EVIDENCE OF DELIBERATE VIOLATION - PRIOR CONVICTION OF DISSIMILAR OFFENSE - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

WILLIAM and PIETRA ZAPPULLA,
506 Springfield Ave.,
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-
tion License C-341 issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Newark.

William Zappulla, Esq., appearing for defendant-licensees, pro se.
G. George Addonizio, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendants were served with charge alleging that:

"On or about November 8, 1941, without having first obtained a special permit so to do, you sold a quart bottle of Chateau Martin Red Label Sweet Wine below the minimum consumer price published in Bulletin 480 of this Department, in violation of Rule 6 of State Regulations No. 30."

On November 8, 1941, investigators of this Department visited the licensed premises and purchased from the bartender one quart

bottle of Chateau Martin Brand Pure California Royal Port Wine, Red Label, for the sum of fifty cents. The minimum consumer price of said item was, at that time, fifty-nine cents, as established by Bulletin 480, effective October 10, 1941.

Licensee, William Zappulla, testified that he did not receive a copy of Bulletin 480, which changed the price of the item. That is no excuse. Re Aronow, Bulletin 382, Item 4.

Licensee, William Zappulla, further testified that he and his partner had sold only thirteen quarts of this brand of wine over a period of seven months. While this fact may be taken into consideration in fixing a penalty, it does not excuse the violation. Re Anzevino, Bulletin 433, Item 4.

I find the licensees guilty as charged.

As to penalty: On September 19, 1939, licensees pleaded guilty to charges of employing two females, one of whom was the wife of one of the licensees, in violation of a local resolution. At that time, the license was suspended for seven days. Re Zappulla, Bulletin 345, Item 10.

I shall accept the explanation that the violation was due to carelessness in not checking the price of a "slow mover" and not due to a deliberate intent to "chisel." Under these circumstances I shall impose a ten-day suspension instead of a more severe penalty which the prior record for a dissimilar offense would otherwise warrant.

Accordingly, it is, on this 9th day of February, 1942,

ORDERED, that Plenary Retail Consumption License C-341, heretofore issued to William and Pietra Zappulla for premises at 506 Springfield Avenue, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing February 16, 1942, at 3:00 A.M., and concluding February 26, 1942, at 3:00 A. M.

Alfred E. Discol
Commissioner.

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