

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 842

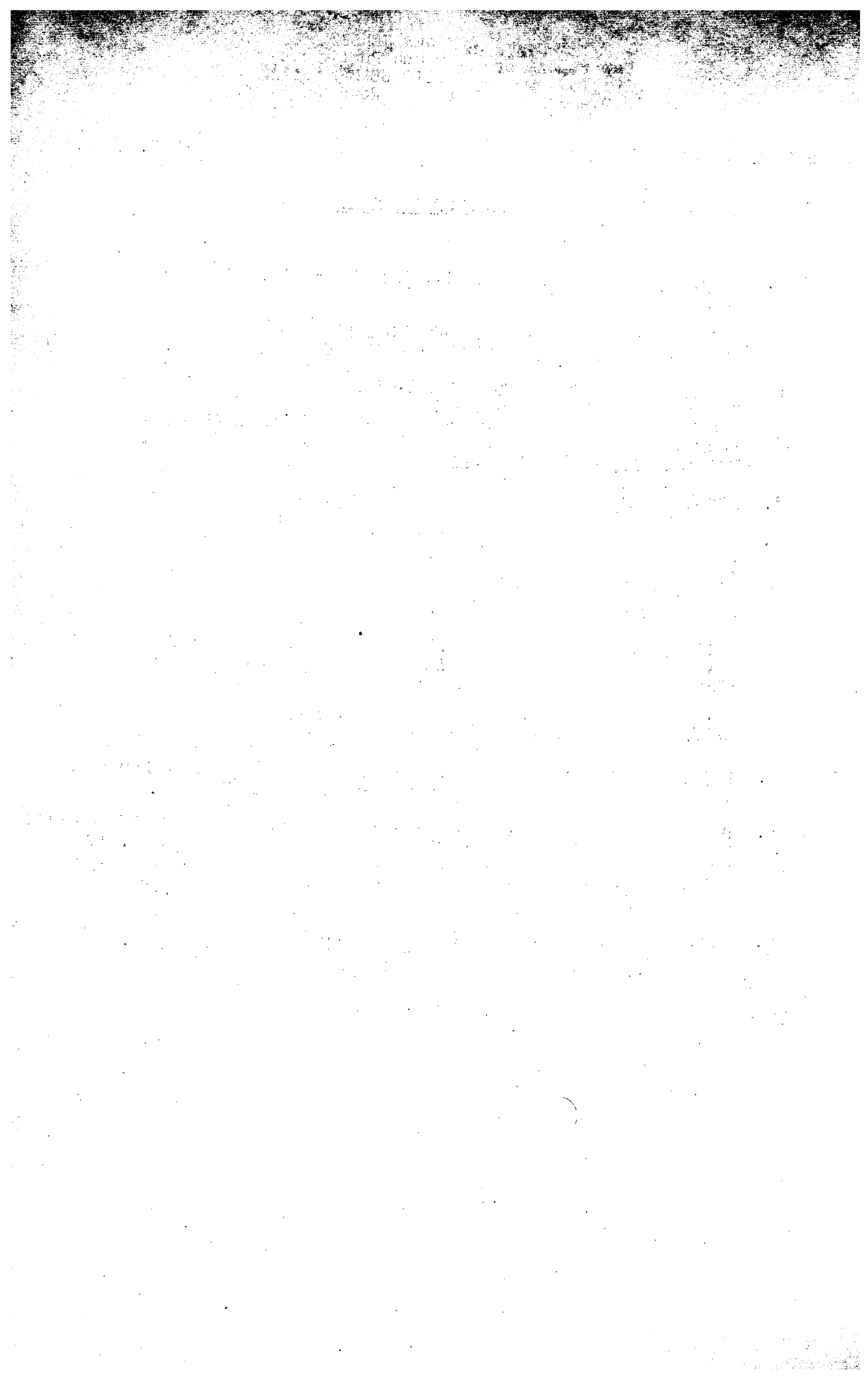
MAY 5, 1949.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 842

MAY 5, 1949.

1. MORAL TURPITUDE - CRIME OF LARCENY UNDER FACTS OF CASE FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS NOT HAVING BEEN SHOWN, APPLICATION TO LIFT DENIED.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to)
R. S. 33:1-31.2.)

CONCLUSIONS

Case No. 733.
-----)

BY THE DIRECTOR:

On June 11, 1915, petitioner was arraigned in a Police Court and after pleading guilty to a charge of larceny, apparently reduced from a charge of breaking and entering, was sentenced to a term of six months in a county penitentiary. Petitioner testified that he remained in the penal institution for a period of four months and five days.

Unquestionably, the crime involved moral turpitude within the meaning of the disqualification provisions of our Alcoholic Beverage Law. See Re Case No. 249, Bulletin 303, Item 8. (See, also, Re Case No. 231, Bulletin 271, Item 10; Re Case No. 200, Bulletin 226, Item 10; Re Case No. 179, Bulletin 206, Item 12.)

Petitioner admitted that the offense of which he was convicted was stealing lead pipe from a closed tavern. He held a retail alcoholic beverage license in New Jersey from 1934 until 1947 and in all of his applications for license answered "No" to the question whether he had ever been convicted of a crime. He testified, in attempted explanation at the instant hearing, that he "didn't think it was a crime" -- that he was "under the impression that this was merely a local police situation". The "explanation" is altogether unconvincing.

In 1938, petitioner received a three-day suspension of license upon a plea of guilty to a charge of selling alcoholic beverages during primary election polling hours.

In 1944, petitioner's license was suspended for fifteen days on a charge of selling to minors.

In 1946, petitioner's license was suspended for five days on a plea of guilty to the charge of selling alcoholic beverages by the bottle for off-premises consumption -- in violation of State Regulations No. 38.

In 1947, petitioner's license was suspended for sixty days after he had plead non vult to a charge of possessing illicit liquor.

The petition is denied.

ERWIN B. HOCK.
Director.

Dated: April 22, 1949.

2. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN APPLICATION AND AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ANGELINA GENTILE 612 Palisade Avenue Union City, N. J., Holder of Plenary Retail Consumption License C-54, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS AND ORDER

McGlynn, Weintraub & Stein, Esqs., by Anthony C. Stein, Esq., Attorneys for Defendant-licensee. William F. Wood, Esq., Attorney for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The following charges were preferred against the defendant herein:

"1. In your application dated June 15, 1948, filed with the Board of Commissioners of Union City, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual...., other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Louis Gentile (a person whose prior license in Jersey City had been suspended on several occasions for violations of liquor laws and regulations and also who had been convicted on or about June 11, 1915 of the crime of breaking and entering) had such an interest in that he was co-owner with you of the said business; said false statement being in violation of R. S. 33:1-25.

"2. From April 15, 1948 until the present time, you knowingly aided and abetted Louis Gentile to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R. S. 33:1-52.

"3. On March 21, 1949, you sold at retail a 4/5 quart bottle of Hiram Walker's London Dry Gin, an alcoholic beverage, at less than the price thereof listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30."

Defendant pleaded not guilty to charges 1 and 2 and non vult to charge 3.

Charges 1 and 2 aforementioned were predicated on written statements given to an ABC inspector by the licensee, Angelina Gentile, and her husband, Louis Gentile, respectively.

The records in this Division disclose that Louis Gentile held a liquor license from July 1, 1935 to May 5, 1947; Angelina Gentile held a license for premises 297 Monticello Avenue, Jersey City from July 21, 1947 to November 24, 1947 and has held the Union City license from April 15, 1948 to the present time.

At the hearing defendant testified that she was living apart from her husband at the time he sold his business in May 1947. Nevertheless, defendant testified he gave her part of the price received to compensate her for services rendered by her during the period he operated the liquor establishment. This money, according to defendant, was used to purchase the Monticello Avenue premises. Defendant further testified that money received from the sale of the latter place and money received from the payment of two mortgages held by her were used toward the purchase of the present licensed premises.

An examination by an ABC inspector disclosed that the documents, accounts, bank account and other papers are in defendant's name. The trade name "Lou Gentile's Riverview Inn" registered in the County Clerk's office indicates that Angelina Gentile is the sole person interested in the business. Louis Gentile corroborated defendant's testimony and disclaimed any interest in the present licensed premises. The attorney who represented the vendor of the present business testified that the negotiations relative to the sale were with Angelina Gentile who told him that she and her husband were separated from one another. He further testified that Louis Gentile came to his office and inquired regarding the transaction and remarked, "I have been separated from my wife for over a year **** If my wife can get this place of business, maybe I can get to go back to her."

Michael F. Kelly, a certified public accountant, testified that he was retained by defendant when she purchased the present business to take care of the books and accounts relating thereto. He further testified that he never discussed the affairs of the business with anyone but Angelina Gentile, the defendant herein.

The written statements of the licensee and her husband, Louis Gentile, would, if unexplained, sustain a conclusion that the husband has an undisclosed interest in his wife's licensed business. I have concluded, however, that the explanation given at the time of the within hearing by the licensee, her husband, and the two witnesses is sufficient to lead me to conclude that defendant is the sole owner of the licensed business. Under the circumstances, charges 1 and 2 are dismissed.

As to charge 3: It appears that on March 21, 1949 the licensee sold a 4/5 quart bottle of Hiram Walker's London Dry Gin to an ABC agent for the sum of \$3.25, whereas the minimum resale price of said item, as established in Bulletin 825, effective January 4, 1949, was \$3.27.

Defendant has no previous adjudicated record. I shall impose the minimum ten-day suspension, remitting five days thereof for the plea entered herein, leaving a net suspension of five days. Re Formisano, Bulletin 782, Item 1.

Accordingly, it is, on this 22nd day of April, 1949,

ORDERED that Plenary Retail Consumption License C-54, issued by the Board of Commissioners of the City of Union City to Angelina Gentile, for premises 612 Palisade Avenue, Union City, be and the same is hereby suspended for a period of five (5) days, commencing at 3:00 a.m. May 2, 1949, and terminating at 3:00 a.m. May 7, 1949.

ERWIN B. HOCK
Director.

3. APPELLATE DECISIONS - BANK v. BRIDGEWATER TOWNSHIP.

MICHAEL BANK, SR.,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE TOWNSHIP)
 OF BRIDGEWATER,)
)
 Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

 Milton A. Weiss, Esq. and Anthony Giuliano, Esq., Attorneys for
 Appellant.
 Charles A. Reid, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the denial of an application for a plenary retail distribution license for premises on Easton Turnpike, opposite Manville Park Boulevard, Township of Bridgewater.

Four Township Committeemen were present when the application was acted upon and the denial thereof was by a vote of three to one.

The answer herein alleges that the application was denied because there are already sufficient licensed premises existing in the section wherein appellant's premises are located to supply the needs of the people in that part of the community. Appellant, however, contends that this reason is without weight because at the present time no plenary retail distribution license is in existence within the limits of the township.

The population of the township according to the Federal census of 1940 was 4,934. No plenary retail distribution license has been issued in the township. However, according to the evidence, five of the twenty-six plenary retail consumption licenses outstanding in the township are located within a short distance of the premises in question.

Determination of the number of retail alcoholic beverage establishments to be permitted in any particular community is a matter confided to the sound discretion of the local issuing authority. In determining whether a plenary retail distribution license should be issued, a local issuing authority may properly take into consideration the number of retail consumption licenses, which licenses, subject now to P.L. 1948, c. 98, carry the privilege of selling alcoholic beverages in original containers for off-premises consumption. See Boody v. Gloucester, Bulletin 300, Item 11.

The burden of proving that respondent's action was unreasonable or in abuse of its discretionary authority has not been sustained. The respondent's action is, therefore, affirmed.

Accordingly, it is, on this 25th day of April, 1949,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

4. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM DISMISSED - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SOL AMSTER)
T/a PROSPECT TAVERN)
Prospect Street)
Waldwick, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 for the 1947-1948)
and 1948-1949 fiscal years, issued)
by the Mayor and Council of the)
Borough of Waldwick.)

-----)
Sol Amster, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The following charges were preferred against the defendant:

"1. On Saturday, June 12, 1948, at about 11:05 P.M. and again at 11:50 P.M., without first having obtained special permits so to do, you sold a 4/5 quart bottle of Schenley Reserve Blended Whiskey below the minimum consumer price published in Bulletin 805 of this Department; in violation of Rule 6 of State Regulations No. 30.

"2. On each of the occasions aforesaid, you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage at retail in its original container for consumption off the licensed premises, thereby violating Rule 1 of State Regulations No. 38, which prohibits any such sale or delivery before 9 A.M. or after 10 P.M. on weekdays."

The defendant pleaded not guilty to Charge (1) and entered a plea of non vult to Charge (2).

On June 25, 1948 the hearing was held on Charge (1) at which time the testimony was recorded by Anthony J. Weiss, a Certified Shorthand Reporter employed by this Division. Shortly thereafter Mr. Weiss became gravely ill, which illness resulted in his death on April 15, 1949. The record of the within proceedings held on June 25, 1948 could not be transcribed. Inspector Paul Wagi, who made the purchase of the bottle of liquor at the time in question, has also died since the hearing. Under the circumstances, I am unable to consider the testimony given at the original hearing and the Division is unable to produce again the necessary evidence to prosecute Charge (1). Said charge will, therefore, be dismissed.

As to Charge (2): the minimum penalty for an hours violation is fifteen days. Re Martin, Bulletin 766, Item 6. Defendant has a prior adjudicated record. Effective October 9, 1939 defendant's then plenary retail distribution license was suspended by the local issuing authority for one day for sale of bottle beer for consumption on licensed premises. Effective January 5, 1942 the license of the defendant was suspended for three days after he was adjudged guilty

by the local issuing authority of sale of alcoholic beverages during prohibited hours on Sunday. Ordinarily I would not consider a prior suspension imposed more than six years ago in aggravation of a current violation where offenses are dissimilar. Here, however, the last suspension of defendant's license was imposed for an hours violation. Under all of the circumstances, I shall suspend the defendant's license for a period of twenty-five days, of which five days will be remitted for the plea of non vult entered herein with reference to Charge (2).

Although this proceeding was instituted during the 1947-1948 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1948-1949. State Regulations No. 16.

Accordingly, it is, on this 25th day of April, 1949,

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Waldwick to Sol Amster, t/a Prospect Tavern, for premises on Prospect Street, Waldwick, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. May 4, 1949, and terminating at 2:00 a.m. May 24, 1949.

ERWIN B. HOCK
Director.

5. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES BY SOCIAL CLUB - ALCOHOLIC AND OTHER BEVERAGES, FIXTURES AND FURNISHINGS IN CLUB ORDERED FORFEITED.

In the Matter of the Seizure on) Case No. 7356
December 10, 1948 of a quantity of)
alcoholic beverages, various fixtures,)
furnishings and equipment, in the) ON HEARING
club quarters of the Lower Penns) CONCLUSIONS AND ORDER
Neck Republican Club, located on)
South River Drive and Cornell Road,)
Lower Penns Neck Township, County)
of Salem and State of New Jersey.)

Joseph Narrow, Esq. and Burton D. Zehner, Esq., Attorneys for Lower Penns Neck Republican Club.
Harry Castelbaum, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages and various fixtures, furnishings and equipment, itemized in a schedule attached hereto, seized on December 10, 1948 in the club quarters of the Lower Penns Neck Republican Club, located on South River Drive and Cornell Road, Lower Penns Neck Township, Salem County, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, counsel entered an appearance for the club, which opposed forfeiture of the seized property.

It is admitted by the club that what occurred is as follows:

On December 1, 1948, ABC agents visited the club quarters and there met one Arthur Del Duca, who told them that he was employed by the club as janitor and bartender. When the agents asked him for drinks of whiskey, he said that he could only sell to members of the club. After discussing with him how they could become members, the agents left.

The agents returned on December 10, 1948 and one of the agents entered the place while the other agents remained outside. Del Duca and a number of other persons were there. The agent told Del Duca he wished to become a member. Del Duca left the bar and came back with Robert Chambers, president and treasurer of the club.

The agent told Chambers that he wished to become a member in order to be able to buy drinks of alcoholic beverages. Chambers then obtained a membership application and a membership card and handed the card to the agent after the agent paid him \$5.00 as dues and initiation fee. Chambers then introduced the agent to the other persons standing at the bar. The agent purchased a drink of alcoholic beverages for himself and a round of such drinks for the persons at the bar. The agent paid Chambers for these drinks and Chambers placed the money in the cash drawer. The agent observed other persons purchase and pay Chambers for drinks of alcoholic beverages, which money Chambers also placed in the cash drawer.

Other agents entered the place and observed the first agent order from and pay Chambers for another drink of whiskey and a bottle of beer. The agents then disclosed their identity and arrested Chambers on charge of violating the liquor laws because neither Chambers nor the club held any license authorizing him or the club to sell or serve alcoholic beverages.

The agents seized a large quantity of beer, some other alcoholic beverages, the equipment and furnishings of the club and the cash receipts.

Chambers told the agents that the practice of the club in dispensing alcoholic beverages was that members ordered whiskey and beer and one of the members took the order to a licensed tavern in Salem which delivered the alcoholic beverages and received payment about a month later. In Chambers' words, "That way each of the members has his own drinks at the club and when he comes in to drink he pays for each drink. Anything over we use for the shuffleboard, television, etc." According to Chambers, it was his alcoholic beverages that he sold and served to the agent, because he was a new member and did not have a chance to order his own.

At the hearing, Chambers further explained that when the club was organized there had been a meeting of the members of the club, who were aware that they could not sell alcoholic beverages without a license. A plan was devised, which they thought was legal, whereby each member signed an order blank for specific alcoholic beverages but did not pay for them either in advance or thereafter; instead, the member paid for whatever alcoholic beverages were actually served to him. The cash received was accumulated and used to pay for the alcoholic beverages. He says that the sale of alcoholic beverages at the place was designed as an attraction to hold the men there, with any profit from the sale of alcoholic beverages applied to benefit various club activities. He characterized the transaction as one wherein a member "was buying his own stock back". He did not consult any liquor law enforcement agency, or any attorney, to determine whether such a plan did in effect comply with the liquor laws.

On cross-examination, Chambers stated that he had consulted an attorney about six weeks prior to the seizure as to the possibility

of obtaining a liquor license for the club, under the mistaken assumption that the club would be qualified for a license after it had been in existence for two years, instead of three years.

Chambers further testified that when alcoholic beverages were delivered to the club they would be placed behind the bar, as in any other cafe, without marking any member's name on any bottle. The alcoholic beverages were served over the bar from whatever bottle of the brand named there was at hand. Chambers, as treasurer, kept the cash receipts at his home.

At the time of the seizure, the club had about 150 members. The dues were \$3.00 a year. The club in a period of less than two years accumulated about \$2,000.00 from dues and liquor profits and used this money to purchase equipment.

The facts speak for themselves. To step up to the club bar and order and pay for a drink of alcoholic beverages cannot be regarded by any reasonable person as other than a sale. The delivery of an alcoholic beverage otherwise than by purely gratuitous title is defined by R. S. 33:1-1(w) as a sale. The alcoholic beverages were sold to the ABC agent and to the others for whom he purchased drinks. Alcoholic beverages were likewise sold on other occasions when members were served drinks in the manner described by Chambers.

It therefore follows that all of the alcoholic beverages seized in the club were intended for like unlawful sale and are illicit. R. S. 33:1-1(i). Cause for forfeiture has, therefore, been established. The illicit alcoholic beverages and all personal property seized therewith in the club quarters are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

I have the discretionary authority to waive forfeiture if it is established to my satisfaction that the unlawful sales of alcoholic beverages were made in good faith and in unknowing violation of the law. R. S. 33:1-66(e).

On this score, it is urged, in substance, that I should find that Chambers and the other members of the club honestly believed that the plan devised by them was legally sufficient to avoid the necessity of obtaining a license to sell alcoholic beverages at the club.

Similar contentions by clubs, or like organizations, which have engaged in the unlicensed sale of alcoholic beverages under some device intended to circumvent the law have uniformly been rejected, even though it appeared likely that such sales were not made for personal profit, but to advance the general welfare of the organization. Seizure Case No. 6870, Bulletin 704, Item 4; Seizure Case No. 7131, Bulletin 800, Item 2; Seizure Case No. 7139, Bulletin 807, Item 4.

In the instant case, the representation that the alcoholic beverages on the premises were individually owned by the members is a mere pretense, which could not and did not mislead the members of the club or anyone else into believing that such was the actual fact. The alcoholic beverages were ordered and delivered to the club as such, which so far as it appears was responsible for the payment thereof. The alcoholic beverages, when received, were not allocated to or reserved for any individual member, but were placed in stock and sold to any member. It was a shallow evasion of the law. If the members honestly believed that such a scheme was permissible, it would have been simple for them, or one of them, to inquire of this Division or any other liquor law enforcing agency whether their plan complied with the law. Instead, seemingly, they chose to take a chance, apparently hoping to obtain a liquor license at the earliest possible time.

It is urged that the club merits relief because the club members are reputable and eminent persons in the community. However, as I said in Seizure Case No. 7139, supra, an organization, although

otherwise of high character, may feel that it is compelled to have alcoholic beverages available for sale to its members as an added incentive to attendance even though it holds no license. However, no matter how praiseworthy its intention, no club or similar organization can resort to the sale of alcoholic beverages without a license, even if limited to members only.

I have carefully considered the entire record and cannot conscientiously find that the members or officers of the club acted in good faith or unknowingly violated the law. Forfeiture of the seized property must, therefore, follow as a matter of course.

Accordingly, it is DETERMINED and ORDERED that the seized property, including whatever currency has been seized, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the State Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: April 26, 1949.

SCHEDULE "A"

2 - 30' shuffleboards
 16 - shuffleboard weights
 2 - shuffleboard scoreboards
 2 - canvas shuffleboard covers
 1 - radio
 1 - 5 qt. enamel white pan
 1 - upright piano
 1 - piano stool
 55 - wireback chairs
 4 - square-topped wooden tables
 1 - dartboard
 6 - darts
 1 - juke box
 1 - portable radio
 1 - double Coca Cola cooler (electric)
 1 - single Coca Cola cooler
 1 - electric clock
 1 - kitchen cabinet
 1 - icebox
 21 - assorted whiskey glasses
 1 - 22 caliber single shot rifle
 7 - 4/5 quart bottles of whiskey
 1 - 4/5 quart bottle of gin
 1 - 4/5 quart bottle 1/2 full of alleged whiskey
 1 - 4/5 quart bottle 2/3 full of alleged gin
 214 - 12-ounce bottles of beer
 293 - 12-ounce bottles of Coca Cola and assorted soda
 1 - case of quart bottles of lemon soda
 1 - television set
 1 - Veu-scope for television set
 1 - electric beer sign
 1 - wooden bar
 16 - cases of empty beer bottles
 \$67.70 in cash

6. SEIZURE - FORFEITURE PROCEEDINGS - VEHICLE USED FOR TRANSPORTATION OF ALCOHOLIC BEVERAGES SOLD WITHOUT A LICENSE ORDERED FORFEITED.

In the Matter of the Seizure) Case No. 7247
 on May 14, 1948 of a Chevrolet)
 sedan, in the vicinity of)
 40 Union Street, City of Newark,)
 County of Essex and State of New)
 Jersey.) ON HEARING
 CONCLUSIONS AND ORDER

-----)
 Michael Petolino, Pro Se.
 Harry Castelbaum, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether Michael Petolino's Chevrolet sedan, seized on May 14, 1948 in the vicinity of 40 Union Street, Newark, New Jersey, constitutes unlawful property and should be forfeited.

It appears that on April 9, 1948, William H. Costley, an elevator operator at a tannery in Newark, was arrested for selling beer there to an ABC agent and other persons, without a license. Costley stated that he had obtained the beer from Michael Petolino, also employed in the tannery. Petolino admitted that this was a fact and said he had purchased the beer from his mother, a tavern owner, and brought it to the tannery, a case at a time, in his Chevrolet sedan.

Neither Costley nor Petolino held any license authorizing either of them to sell or serve alcoholic beverages and, hence, they were arrested and charged with violating the Alcoholic Beverage Law.

The ABC agents continued the investigation, to develop the background of the case, and obtained signed statements from Costley and Petolino. Costley says that he sold about three cases of beer a week for two or three weeks; that he paid Petolino for the beer after it was sold, usually on Friday of each week; that he made two cents profit on a small bottle and four cents profit on a large bottle of the beer, and that Petolino knew that Costley was selling the beer.

Petolino, in his statement dated April 9, admitted that he sold cases of beer to Costley, but claimed that he did not know what Costley was going to do with them and had nothing to do with the resale of the beer. In a subsequent statement, dated May 14th, Petolino said, "I knew that he (Costley) was distributing it among the workers at the plant for practically at cost price and therefore I delivered Costley the beer for accommodation." Petolino says that he did not know that the aforesaid transportation of the beer in his car was unlawful.

After obtaining this statement, Petolino's Chevrolet sedan was seized by the ABC agents, Pending the seizure hearing in this case, the car was returned to Petolino upon payment by him to the State Director of Alcoholic Beverage Control of its appraised retail value of \$400.00, under protest, pursuant to R. S. 33:1-66. Petolino has stipulated that said Director shall determine in this proceeding whether this money shall be forfeited or returned to him.

When the matter came on for hearing pursuant to R. S. 33:1-66, and the aforesaid stipulation, Petolino appeared and sought return of the aforesaid sum of \$400.00.

At such hearing, Petolino testified that it was not a "business proposition"; that the fellows said "bring some beer down"; that there was no restaurant or lunchroom there; that Costley instead of Petolino

distributed the beer because Costley had more free time; and that Petolino did not realize he was doing any wrong by bringing down a case of beer for them. Petolino further says that he has been employed at the plant for about twenty-two years. He also worked occasionally as bartender at his mother's tavern.

The transportation of alcoholic beverages for other than personal consumption is unlawful unless the vehicle is licensed for that purpose. R. S. 33:1-2. Petolino's car was not licensed to transport alcoholic beverages. The beer which he transported, or most of it, was not intended for either his or Costley's personal consumption.

The unlawful transportation of the beer by Petolino subjects his car to forfeiture, even though there was no beer in the car at the time of its seizure. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66; Re Seizure Case No. 7070, Bulletin 768, Item 8.

I am authorized to return the car, or its equivalent, the sum of \$400.00 deposited, to Petolino if he establishes to my satisfaction that he acted in good faith and unknowingly violated the law. R. S. 33:1-66(e).

Even if I were to accept Petolino's statement that he did not know that it was unlawful to transport the beer, it must appear that the intended use of the beer was lawful; that is, that he was engaged in a legitimate enterprise. Seizure Case No. 7318, Bulletin 829, Item 1.

Petolino sold the beer to Costley and knew that Costley, in turn, was likewise selling it. These activities clearly were unlawful. It is extremely unlikely, at this late date, that Petolino was not, in fact, aware that such sales were illegal; indeed, Petolino as a bartender, presumably thereby became familiar with the liquor laws. It was not a single transaction, but continued for a period of at least two or three weeks.

A person cannot honestly assume that a license is not required to cover a particular sale of alcoholic beverages, especially where he has some contact with the liquor industry, unless he at least inquires of a liquor law enforcement agency whether such is the fact. Petolino made no such inquiry.

Under the facts above outlined, I cannot find that Petolino acted in good faith and unknowingly violated the law, and hence his application for the return of the \$400.00 is denied.

Accordingly, it is DETERMINED and ORDERED that the Chevrolet sedan, described in Schedule "A" attached hereto, constitutes unlawful property, and the sum of \$400.00 representing the retail value thereof, paid under protest to the State Director of Alcoholic Beverage Control by Michael Petolino, be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with law.

ERWIN B. HOCK
Director.

Dated: April 26, 1949.

SCHEDULE "A"

- 1 - Chevrolet sedan - N. J. 1948 Registration
FY-68-F, Serial Number 2KA0666884, Engine
Number 3587945

7. DISCIPLINARY PROCEEDINGS - CHARGE OF FALSE ANSWER IN LICENSE APPLICATION AS TO RESIDENCE, DISMISSED.

In the Matter of Disciplinary Proceedings against

ANDREW CORNAGLIA & PHILLIP CORCIONE
823 Bay Avenue
Somers Point, N. J.,

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-7 for the licensing year 1947-1948, and Plenary Retail Consumption License C-5 for the licensing year 1948-1949, issued by the Common Council of the City of Somers Point.

Augustus S. Goetz, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded not guilty to a charge as follows:

"In the application dated May 20, 1947 filed with the Common Council of Somers Point, upon which the current plenary retail consumption license for premises at 823 Bay Avenue, Somers Point, was granted to you, Andrew Cornaglia, and in the application dated April 16, 1948 filed with said Common Council, upon which said license was transferred to both of you, you falsely listed your residences in answer to Question 3 in said applications as Somers Point, New Jersey, and you also falsely stated 'Yes' in answer to Question 27(a) which asks: 'Are you and all persons mentioned in this application actual and bona fide residents of the State of New Jersey at the present time?', whereas in truth and fact you, Andrew Cornaglia resided at such times at 1837 South 15th Street, Philadelphia, Pa. and you, Phillip Corcione resided at 1643 South 15th Street, Philadelphia, Pa.; said false statements being in violation of R. S. 33:1-25."

Defendants also appeared in opposition to a rule to show cause as to why their license or any renewal thereof should not be cancelled and declared null and void because said license was issued and transferred at a time when said defendants were not bona fide residents of New Jersey, contrary to the provisions of R. S. 33:1-25.

Immediately after the hearing in this case, the stenographer who took the testimony became seriously ill and has recently died without preparing a transcript thereof. From a report of the proceedings furnished to me by the Hearer, I am satisfied that a substantial doubt exists concerning the truth of the allegations contained in the charge. It appears that the testimony, if transcribed, would fall short of establishing the defendants' guilt by a preponderance of the evidence. Under the circumstances it would be manifestly unfair to the defendants, and serve no useful purpose, to require, at this late date, a retrial of the entire proceedings. Although not necessarily controlling, I am fortified in my decision to dismiss the charge by the significant fact that both defendants have been registered voters in this state ever since September 1947.

It might be well to point out that the Alcoholic Beverage Law provides that lack of the requisite residential qualifications,

whether at the time of submission of the application or at any time thereafter, is ground for suspension or revocation of the license. R. S. 33:1-25. If subsequent investigation should disclose any evidence indicating that either or both of the defendants are non-residents of this state, appropriate disciplinary proceedings will then be instituted.

Accordingly, it is, on this 27th day of April, 1949,

ORDERED that the charge herein and the rule to show cause herein be and the same are hereby dismissed.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 REQUIRING BONA FIDE INVOICES OR MANIFESTS COVERING SHIPMENT - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MORRIS LUBER, SAMUEL KAROL and)
SIDNEY LUBER)
T/a STANLEY LIQUOR STORE)
4 South Pearl Street)
Bridgeton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-1, issued by the City Council of the City of Bridgeton.)
-----)

David L. Horuvitz, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendants plead non vult to the following charges:

"1. On March 5, 1949 and on divers days prior thereto, you used your licensed vehicle bearing transportation insignia to deliver alcoholic beverages without the driver having in his possession bona fide invoices or manifests stating the names of the purchaser of each item of alcoholic beverages and the kind and quantity of alcoholic beverages being delivered in said vehicle to each of said purchasers; in violation of Rule 3 of State Regulations No. 17.

"2. On the occasions aforesaid, you peddled, bartered and otherwise sold alcoholic beverages from a vehicle at various places in and about Commercial Township, N. J.; in violation of Rule 3 of State Regulations No. 17.

"3. On the occasions aforesaid, you sold alcoholic beverages off your licensed premises at various places in and about Commercial Township, N. J., contrary to R. S. 33:1-26; in violation of R. S. 33:1-2."

The file in the instant case discloses that on March 5, 1949, Sidney Luber, one of the defendants herein, was the operator of an automobile bearing a transportation insignia and containing assorted quantities of alcoholic beverages. Upon returning to his car after

a delivery of beer to a "customer", ABC agents identified themselves to Sidney Luber and examined the invoices which he had in his possession. The alcoholic beverages indicated on the invoices tallied with the quantity contained in the automobile. However, upon interrogating the prospective customers listed on the invoices, in the presence of Sidney Luber, several customers denied under oath that they ordered the alcoholic beverages charged to them.

Such overstating of quantities of alcoholic beverages on delivery slips or invoices and falsification of invoices for the purpose of evading the rules and regulations of this Division will not be tolerated. It indicates a deliberate attempt on the part of the licensees to evade the law.

Defendants have no previous adjudicated record. Under the circumstances, and because of the aggravated circumstances surrounding the violation, I shall suspend defendants' license for a period of twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 29th day of April, 1949,

ORDERED that Plenary Retail Distribution License D-1, issued by the City Council of the City of Bridgeton to Morris Luber, Samuel Karol and Sidney Luber, t/a Stanley Liquor Store, for premises 4 South Pearl Street, Bridgeton, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a .m. May 9, 1949, and terminating at 9:00 a.m. May 24, 1949.

ERWIN B. HOCK
Director.

9. STATE REGULATIONS NO. 32 - PETITION FOR RELIEF UNDER RULE 5 - RELIEF GRANTED AND LOCAL ISSUING AUTHORITY AUTHORIZED TO ENDORSE "BROAD PACKAGE PRIVILEGE" ON PETITIONERS' LICENSE.

In the Matter of a Petition by)
FRANK CAGGIANO and LOUISE)
CAGGIANO)
T/a CAGGY'S TAVERN)
100 East Elizabeth Avenue)
Linden, N. J.,)

ON PETITION
O R D E R

For Relief under the Provisions of Rule 5 of State Regulations No. 32.)

Stephen Orlando, Esq. and Sidney Simandl, Esq., Attorneys for Petitioners.

Julius R. Pollatschek, Esq., Attorney for Union County Retail Liquor Stores Association, appearing in opposition to the relief requested in petition.

BY THE DIRECTOR:

Petitioners herein, after complying with the provisions of Rules 1 and 2 of State Regulations No. 32, were previously granted "broad package privileges" by the Municipal Board of Alcoholic Beverage Control of the City of Linden for premises which they then occupied at 114 West Elizabeth Avenue. Subsequently, they duly obtained a transfer of their license from 114 West Elizabeth Avenue to a newly-erected building at 100 East Elizabeth Avenue. The "broad package privileges" would have applied to the new premises because P.L. 1948, ch. 98 provides in effect that the privilege shall continue notwithstanding the

renewal or transfer of the license either from person to person or place to place. However, an appeal was taken from the action of the Municipal Board in granting the privileges and, on March 17, 1949, I entered an order in said appeal whereby the action of the Municipal Board was reversed and, as a result of said order, petitioners, since March 17, 1949, have been permitted to sell package goods only from the public barroom of their new premises at 100 East Elizabeth Avenue. Union County Retail Liquor Stores Ass'n v. Linden and Caggiano, Bulletin 837, Item 8.

My conclusions in the appeal case were based solely upon the finding that the "liquor store" as previously set up at 114 West Elizabeth Avenue was not upon a portion of the licensed premises other than the public barroom.

Petitioners have filed a verified petition which in no way disputes the finding of fact in the appeal case, but which seeks relief upon the ground that they could have originally obtained the "broad package privileges" for their licensed premises if they had applied to me under the provisions of Rule 5 of State Regulations No. 32 instead of applying to the Municipal Board for such privileges under the provisions of Rules 1 and 2 of State Regulations No. 32.

The facts as set forth in the verified petition and the testimony given at the hearing are as follows: Petitioners purchased the property at 100 East Elizabeth Avenue in the early part of 1946. In December 1947, at their request, Albert F. Weber, architect, prepared plans for a large building to be erected upon said premises. The plans disclose that petitioners intended to provide for a lunch room, kitchen and tavern and a "liquor store" to be established upon a portion of the licensed premises other than the public barroom. On January 10, 1948, petitioners applied to the Municipal Board for a transfer of their license from 114 West Elizabeth Avenue to 100 East Elizabeth Avenue, subject to the completion of the new building in accordance with the aforesaid plans. Subsequently they were advised by the Municipal Board to withdraw this application with the understanding that they could file a similar application for transfer after the license had been renewed on July 1, 1948, for premises at 114 West Elizabeth Avenue. At a meeting of the Municipal Board on May 11, 1948, a resolution was adopted permitting withdrawal of the application for transfer pursuant to a request received from the petitioners. In the meantime, during March and April, 1948, petitioners cleared the new site, engaged a contractor and had a surveyor stake out the lines of the new building.

It seems to be evident that after P.L. 1948, ch. 98 became effective on May 28, 1948, petitioners were in some doubt as to whether they should proceed under the provisions of Rules 1 and 2 or Rule 5 of State Regulations No. 32. On June 8, 1948, they received a letter from the Municipal Board advising that the members thereof "are satisfied that Licensees Frank and Louise Caggiano should be given relief under rule 5 of Regulations #32, in view of the fact that the licensees declared their intention of conducting a packaged goods department and the Board had knowledge of the same under date of January 10th, 1948." However, they finally decided to proceed under the provisions of Rules 1 and 2 and obtained "broad package privileges" from the Municipal Board, which action, as stated above, was later reversed on appeal.

I am satisfied from the evidence that, if petitioners had applied to me, they would have been entitled to relief under the provisions of Rule 5(b) of said Regulations on the ground that they "had actually undertaken alteration or construction of the licensed premises or premises to be licensed, intending and making provision thereon for the sale of alcoholic beverages in original containers for

off-premises consumption from a portion of the premises other than the public barroom ***". This is admitted by the attorney for Union County Retail Liquor Stores Association. While it is true that this petition was filed after June 18, 1948, I have decided, under the unusual circumstances of this case, to waive this provision of Rule 5 and to grant the relief requested, despite the fact that the petition has been filed out of time.

Accordingly, it is, on this 29th day of April, 1949,

ORDERED that the Municipal Board of Alcoholic Beverage Control of the City of Linden is authorized to endorse forthwith upon the license certificate now held by Frank Caggiano and Louise Caggiano, t/a Caggie's Tavern, the following notation:

"This license permits sale of alcoholic beverages in original containers for consumption off the licensed premises from portions of the licensed premises other than the public barroom, pursuant to P. L. 1948, ch. 98, and State Regulations No. 32."

It is further ORDERED that, if necessary, the petitioners shall have leave to amend their application for the current license in the manner set forth in Rule 2 of State Regulations No. 32.

ERWIN B. HOCK
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Anthony Gambrino
130 Baldwin St.
Newark, N. J.

Application for Transportation License filed May 3, 1949.

Barbey's, Inc.
N.W. Cor. W. Elm & Gordon Sts.
Reading, Pa.

Application for Limited Wholesale License filed May 3, 1949.

Robert F. Stegmeier
R. D. 3
Tamaqua, Pa.

Application for Transportation License filed May 5, 1949.

Erwin B. Hock
Director.