

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 671

JUNE 18, 1945.

1. APPELLATE DECISIONS - WASKO v. TRENTON.

ANDREW J. WASKO,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF)
THE CITY OF TRENTON,)

Respondent)
-----)

George Pellettieri, Esq., Attorney for Appellant.

Louis Josephson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of application for the transfer of License C-242 from Arthur I. DiGuisseppi to appellant herein, and from premises 559 Emory Avenue to 1112 Chestnut Avenue, Trenton.

The appeal has been submitted upon an agreed statement of facts in accordance with Rule 8 of State Regulations No. 15.

It appears from the statement of facts that there is "no objection to *** Andrew J. Wasko holding a liquor license", and that there is no objection to the licensing of premises known as 1112 Chestnut Avenue, which had previously been a licensed premises and had been established as a saloon premises for upwards of fifty years.

A resolution to grant the transfer as applied for failed of adoption when two members of respondent Board voted in favor of the resolution and two members of respondent Board voted against the resolution. A fifth member of the respondent Board refrained from voting. The City Counsel advised one of the Commissioners that the application should not be denied merely because its purpose was to secure the transfer of a license from one place to another. Nevertheless, this Commissioner voted against the resolution and, in doing so, stated "he did not think that the law of the State was fair and that he was against a law permitting a licensee to transfer a license from one premise to another and so work a hardship on the landlord." The other Commissioner who voted against the resolution stated that "he was opposed to any law which would permit a licensee to move the license from a premises without the consent of the landlord of the place from which the license was being transferred."

It is well settled that the privilege of transfer is not inherent in a liquor license. If the refusal to transfer is based upon reasonable grounds, it will be sustained upon appeal. However, if the application for a transfer is arbitrarily or unreasonably denied, the denial of the transfer must be reversed. VanSchoick v. Howell, Bulletin 120, Item 6; Willner's v. Camden, Bulletin 669, Item 14. In other words, the transfer privilege (R. S. 33:1-26) may not be nullified or otherwise diminished by municipal regulation, or denied except for good cause. Good cause is that which is related directly to the objectives which the Alcoholic Beverage Law seeks to accomplish.

In Walsh v. Bradley, 121 N. J. Eq. 359 (Ct. of Ch. 1937), Vice Chancellor Bigelow dismissed a bill of complaint wherein a landlord sought to enjoin his tenant from transferring his liquor license to anyone else and to compel his tenant specifically to perform a prior agreement to transfer the license to the landlord. In that case, referring to the agreement, Vice Chancellor Bigelow said:

"This scheme is contrary to the policy of the law. The purpose of the legislature is clear that licensees should hold their licenses free from any device which would subject the licenses to control of other persons."

See also Lachow v. Alper, 130 N. J. Eq. 588 (Ct. of Ch. 1942); Alper v. Paterson, Bulletin 312, Item 11.

In Re DeYoe, Bulletin 278, Item 8, the Commissioner disapproved a provision in a municipal ordinance permitting the municipal issuing authority, on an application for the transfer of a license, to "require the consent of the owner of the property for which said premises was granted." In his opinion, the Commissioner, while conceding that a local issuing authority may deny an application for a transfer for good cause, stated:

"But it is a far cry from this to requiring the consent of the owner of the property from which the license is to be transferred. That doesn't carry out the objects of the Act. It serves only the private interests of the owners by giving them strangle holds on their tenants whereby refusal to give consent could be made the means of exacting an exorbitant rent."

In Re Zabriskie, Bulletin 355, Item 3, the Commissioner ruled that a protest by a landlord against the transfer of his tenant's license to other premises because of loss to the landlord's investment is not valid ground for denying the transfer.

A complete discussion of this problem will be found in Re Konesky, Bulletin 217, Item 7, wherein it is said that "No one place is entitled to a license more than another."

Since the Alcoholic Beverage Law as construed provides that liquor licenses shall not be subject to the control of any person other than the licensee, and that no particular premises has any preferential rights so far as a liquor license is concerned, it follows that a transfer may not be denied merely because the consent of the landlord of the old premises has not been obtained. The two members of the local issuing authority who voted to deny the resolution were bound to follow the provision of the law as construed even if they disagreed with the wisdom of the provisions of the law. Under the circumstances, it appears that their action was unreasonable and improper. Hence I must reverse the action of the respondent in denying the transfer.

Accordingly, it is, on this 7th day of June, 1945,

ORDERED, that the action of respondent in denying the transfer be and the same is hereby reversed. Respondent is directed to issue the transfer as applied for.

ALFRED E. DRISCOLL
Commissioner.

2. MUNICIPAL REGULATIONS - TRANSFER OF LICENSES - ORDINANCE MAY NOT PROHIBIT TRANSFERS - ISSUING AUTHORITY HAS DISCRETIONARY POWER TO REFUSE TRANSFER TO UNSUITABLE PREMISES OR TO LOCALITY WHERE SUFFICIENT LICENSES EXIST.

DISTANCE BETWEEN PREMISES - HEREIN OF ORDINANCE TO PROHIBIT TRANSFERS WITHIN DESIGNATED DISTANCE FROM EXISTING LICENSED PREMISES.

June 7, 1945

Eric V. Disbrow
Clerk of Jefferson Township
Oak Ridge, N. J.

Dear Mr. Disbrow:

In your letter of June 5th you inform me that the Township Committee is about to pass a numerical limitation ordinance applicable throughout the Township in place of the existing limitation operative only in the Second Voting District; and you ask whether or not I would refuse to approve a provision, in the contemplated ordinance, which would prohibit the transfer of licenses from place to place.

Municipal regulations purporting to prohibit, altogether, transfers from place to place conflict with the Alcoholic Beverage Law (Revised Statutes 33:1-26) and are disapproved. (See Van Schoick v. Howell, Bulletin 120, Item 6).

As you know, it is the duty of each municipal issuing authority to investigate premises sought to be licensed (Revised Statutes 33:1-24), and a municipal authority may, in the exercise of its discretionary powers, refuse to grant an application for transfer to unsuitable premises. Similarly, a place-to-place transfer may be denied, in the first instance, where there are sufficient licenses in the vicinity of the premises sought to be licensed. (See Baselici v. Asbury Park, Bulletin 381, Item 4).

Many of our municipalities have, for the purpose of guarding against too many liquor establishments in the same locality, adopted ordinances prescribing a minimum distance between licensed premises. The distances vary. Some municipalities have fixed 300 feet; some 500; and some 1,000 or more. Perhaps the Township Committee will be interested in considering for adoption an ordinance provision reading in the following manner:

"No alcoholic beverage license shall hereafter be issued for, or transferred to, premises within _____ feet of premises for which an alcoholic beverage license is outstanding, provided, however, that this limitation shall not prevent the renewal or person-to-person transfer of a license for premises licensed when this ordinance becomes effective. The _____ feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of the licensed premises to the nearest entrance of the premises sought to be licensed."

I shall appreciate your sending a copy of the contemplated ordinance before it is introduced.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - ORDER MODIFYING PREVIOUS REVOCATION ORDER TO SUSPENSION FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

WOODROW WILSON DEMOCRATIC CLUB OF CAMDEN, N. J. 1181 Liberty Street Camden, N. J.,)

ON APPLICATION FOR MODIFICATION OF ORDER OF REVOCATION

Holder of Club License CB-9 for the fiscal year 1943-44, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

O R D E R

-----)
Walter Budniak, appearing for Defendant-licensee.

BY THE COMMISSIONER:

On April 17, 1944 I revoked a club license issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Woodrow Wilson Democratic Club of Camden, N. J., for premises 1181 Liberty Street, Camden.

The revocation rendered the Club ineligible to hold or receive any license for a period of two years from the effective date of the Order. R. S. 33:1-31.

An application has now been filed by the Club for modification of my previous Order revoking its license. An officer of the Club, in its behalf, states that the Club has learned its lesson and that, if granted an opportunity to apply to the local issuing authority for a license and in the event the Municipal Board of Alcoholic Beverage Control of the City of Camden, in the exercise of its sound discretion, determines to grant such license, it (the Club) will scrupulously obey the Alcoholic Beverage Law, the Rules and Regulations, and local ordinances. In its application the Club has again urged me to consider the extenuating circumstances which its members apparently sincerely believe existed at the time of the last violation of the local ordinance culminating in my revocation Order.

The Club has a poor record! Despite this fact, however, I have carefully re-examined the record and, in particular, the testimony of the ABC agents. Their testimony clearly sustains the decision reached in the disciplinary proceedings. There do, however, appear to be some extenuating circumstances. Accordingly, I have decided to modify my previous Order to one of suspension for the balance of the term. This will give the local issuing authority an opportunity to consider, on its merits, any application that may be filed by the Club for a license. In the event that this Club is ever again found guilty of a violation of the Alcoholic Beverage Law, the Rules and Regulations, or a local ordinance, it may expect to have its license speedily revoked. It is being given its last chance!

Accordingly, it is, on this 5th day of June, 1945,

ORDERED, that the Order heretofore entered on April 17, 1944, revoking Club License CB-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Woodrow Wilson Democratic Club of Camden, N. J. for premises 1181 Liberty Street, Camden, be and the same is hereby modified to a suspension of the license for the balance of its term.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against GEORGE OLSON N/S East Washington Street Dover Township P.O. Toms River, N.J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Dover.

William C. Egan, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging the sale and consumption of alcoholic beverages on his licensed premises as late as 12:30 a.m. of Wednesday, May 9, 1945, in violation of Rule 1 of State Regulations No. 40.

When an ABC agent entered the defendant's tavern at the time aforesaid, there were some twenty patrons there, most of whom were still consuming alcoholic beverages. The premises were well lighted and there was no apparent attempt to conceal the fact that the defendant was open and doing business. An exterior neon electric sign, which had been turned on at 12:10 a.m., was still illuminated.

It will be recalled that V-E Day had been officially proclaimed on Tuesday, May 8, 1945. In a written statement given to the agent at the time of the violation, the defendant said that he "thought" that the regulation "had expired on V-E Day" because that was his "interpretation of radio messages I heard today."

In a subsequent letter submitted when entering his plea, the defendant enclosed a newspaper clipping, under a Washington D.C. date line, stating: "Official announcement that the brownout will be lifted on V-E Day brought renewed assurance tonight (May 5th) that the....midnight curfew will be suspended at the same time." The defendant "interpreted the information contained in the clipping to mean that all restrictions were off with the (V-E) declaration."

The language used in the clipping does not justify the "interpretation" placed upon it by the defendant. Nor could the defendant have reasonably been misled by my notice of February 26, 1945 (Bulletin 655, Item 1), where I said:

"The regulations will remain in force until modified or abrogated by the Commissioner. This will occur immediately following any announcement of a change in national policy."

Pursuant thereto, the regulations were abrogated by me, effective at midnight, Wednesday, May 9, 1945. See Bulletin 666, Item 15.

In any event, if a licensee voluntarily assumes to "interpret" newspaper reports and "radio messages", without seeking official confirmation from an authoritative source, he may not complain if he is called upon to answer for a wrongful and unjustified "interpretation." A licensee must be held to assume the risk when he gratuitously places an unwarranted construction upon information of the type upon which he allegedly relied in this case. Cf. Re Soccol, Bulletin 669, Item 7.

This is the defendant's second curfew violation. In January 1939 his license was suspended by the local authorities for a net period of ten days upon his guilty plea to selling after hours. For the instant violation, the usual fifteen-day penalty would normally be doubled. However, because of the circumstances attending the instant offense and the lapse of more than six years since the initial suspension, I shall herein impose a suspension for twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 8th day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Dover to George Olson, for premises on N/S East Washington Street, Dover Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. June 13, 1945, and terminating at 2:00 a.m. June 28, 1945.

ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - HEARTY, WEBER AND BRITNEY v. LIBERTY TOWNSHIP AND JAMISON.

JOHANNA HEARTY, JOHN WEBER and)
STATE OF GEORGE V. BRITNEY,)
MAY BRITNEY, Executrix,)

Appellants,)

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF LIBERTY and WILLIE JAMISON,)
t/a ANGLER'S INN,)

Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

Anthony M. Hauck, Jr., Esq., Attorney for Appellants.
Clark C. Bowers, Esq., Attorney for Respondent Township Committee.
Saul N. Schechter, Esq., Attorney for Respondent, Willie Jamison.

BY THE COMMISSIONER:

This is an appeal filed by appellant-licensees from the action of respondent Township Committee granting a plenary retail consumption license to respondent, Willie Jamison, trading as Angler's Inn.

The application for the license here in question was the fourth application filed by Jamison. Three prior applications were denied and the applicant appealed from each denial. The first appeal was withdrawn. (Jamison v. Liberty, Bulletin 610, Item 6). The second appeal was decided ex parte. There was no appearance on

behalf of the respondent and the minutes of the meeting at which the application was denied disclosed that the respondent's action had been taken "for the reason that other applicants had heretofore been rejected." The Commissioner, finding that the reason assigned was without merit, reversed the municipal action and ordered respondent to issue the license. (Jamison v. Liberty, Bulletin 626, Item 3). The license was not issued, however, and the Township Committee later denied Jamison's application for a license for the present license year. The appeal from this denial was fully contested and resulted in the Commissioner's Conclusions and Order affirming the Township Committee's action. (Jamison v. Liberty, Bulletin 640, Item 7).

On January 1, 1945 Committeeman Zitzmann took office replacing Mr. Petty, and Committeemen Cummins and Tichenor remained in office. Jamison's fourth application was granted by a vote of two to one -- Committeemen Zitzmann and Tichenor voting for and Committeemen Cummins voting against the issuance.

In the three prior appeals the burden was upon the appellant Jamison to show that the discretionary powers of the Township Committee in denying his applications had been unreasonably exercised. In the present case the situation is reversed. The issuing authority has granted the license and the burden is now upon the present appellants to show that the Committee's action was arbitrary or unreasonable. Unless this burden is met, the action of the issuing authority must be considered reasonable, at least in the absence of any charge and proof of bad faith against any member of the issuing authority.

A recapitulation of the Committeemen's positions on Jamison's four applications shows that Cummins voted against all four; Zitzmann, who voted for the present license, has replaced Petty, who favored the three previous applications; and Tichenor, who voted against the first three applications, reversed his position when he voted in favor of the fourth.

In Northend Tavern, Inc. v. Northvale, Bulletin 493, Item 5, I said:

"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."

"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."

In light of the peculiar circumstances of the present case -- Committeeman Tichenor voted for Jamison's license after having voted

three times for denial -- I have considered Tichenor's testimony with particular care. As was pointed out in the last appeal (Jamison v. Liberty, Bulletin 640, Item 7), the testimony of Committeemen Tichenor and Cummins was confusing because both frequently stated therein that they would have no objection if the State Commissioner issued the license in question. It is true that Tichenor testified in the prior appeal that in his then opinion there were too many licensed places on Route 6. But in the present appeal, Tichenor testified that he voted in favor of the license because ninety-nine per cent of the residents favor the issuance of the license and because some of the other places on Route 6 are closed part of the time. He testified, further, that he changed his mind of his own free will and that no one influenced his vote -- that when he voted for the Jamison license he felt that the licensed place was a necessary and proper place of business in the Township. Committeeman Zitzmann testified, similarly, that in his opinion the license issued to Jamison serves the public need.

It is apparent that all of the Township's licensees on Route 6 depend, to a large extent, on transient trade; and there is evidence in these proceedings, quite apart from the testimony of Committeemen Tichenor and Zitzmann, indicating some need for the license of Jamison, who caters principally to fishermen and other transient customers. I am unable to conclude from the record before me that Tichenor's affirmative vote (or the vote of the two other Committeemen) on the fourth application was prompted by bad faith or improper motive.

The number of licenses which should be permitted in any given section of a municipality is to be determined in the sound discretion of the local issuing authority. It is my conclusion, under the circumstances of this case, that the appellants have failed to sustain the burden of proof establishing that the respondent Committee abused its discretionary power. I shall affirm the action of the respondent Township Committee.

Accordingly, it is, on this 13th day of June, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

ERNEST A. GOLDSCHMIDT
T/a ROCK SPRING CORRAL INN
481 Northfield Avenue
West Orange, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-41, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange.

Ernest A. Goldschmidt, Defendant-licensee, Pro Se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleads guilty to a charge alleging that on Wednesday, May 9, 1945, between midnight and 6:00 a.m., he permitted the consumption of alcoholic beverages on his licensed premises, in violation of Rule 1 of State Regulations No. 40.

Agents of the Department of Alcoholic Beverage Control, about 12:30 a.m. on that day, noticed the premises fully lighted and observed patrons inside the premises. They knocked at the side door, which was locked. The wife of the proprietor came to the door and stated the place was closed but, upon identification, permitted the agents to enter. They found five patrons inside, two of whom were at the bar consuming glasses of beer. No other persons were observed being served. The licensee states he endeavored to close at midnight but because of the commotion of V-E Day was unable to do so, and that the customers themselves insisted upon finishing their drinks. He states no one was served after midnight.

Licensee operates a bona fide restaurant. He has no prior record. Nevertheless, he did keep his place open after midnight and permitted patrons to consume liquor on the premises after that hour. Violations of this nature should not go unpunished, in fairness to the other patriotic licensees who scrupulously observed the provisions of Regulations No. 40. Re Soccol, Bulletin 669, Item 7.

After considering all the circumstances, I shall suspend the license for a period of ten days, less five days for the plea, making a net suspension of five days.

Since it appears that defendant conducts a bona fide restaurant, I shall nolle pros the additional charge of being open during prohibited hours, in violation of Rule 2 of Regulations No. 40.

Accordingly, it is, on this 12th day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-41, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange to Ernest A. Goldschmidt, t/a Rock Spring Corral Inn, for premises 481 Northfield Avenue, West Orange, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. June 18, 1945, and terminating at 2:00 a.m. June 23, 1945.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES (A PORTION THEREOF STOLEN) BY RETAIL LICENSEE OTHER THAN FROM A NEW JERSEY MANUFACTURER OR WHOLESALER, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 90 DAYS.

In the Matter of Disciplinary Proceedings against)

CHARLES L. WIPFLER)
107 - 48th Street)
Union City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-221, issued by the Board of Commissioners of the City of Union City.)
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A. Michael Lepore, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he purchased alcoholic beverages (1) from non-licensees and (2) from other retail licensees.

On three separate occasions in October 1944, the defendant's bartender purchased stolen alcoholic beverages from a private individual. The defendant, who is also the operator of a taxicab, denies any knowledge of these purchases. His claim is that he spent very little time at the tavern and left its management almost completely in charge of his bartenders. The defendant's responsibility for the violations is not lessened by his failure to take an active participation in the conduct of his business. He remains liable for all infractions of the State Alcoholic Beverage Law and Regulations committed on the licensed premises.

The defendant admits the purchase of a case of whiskey from a retail licensee. In addition, the investigation discloses the sale of a greater quantity of liquor at the tavern than would be warranted by the defendant's purchase invoices. It is more than likely that a portion of this liquor was also purchased from other retail licensees.

The only thing that saves the defendant from an outright revocation of his license is the fact that there is nothing to indicate that he was aware of the purchases of the stolen liquor by his bartender. While his lack of personal participation in those unlawful transactions does not serve to excuse them, it is a factor which I shall consider in meting out the penalty. Under all of the circumstances, I shall suspend the license for a period of ninety days.

Accordingly, it is, on this 12th day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-221, issued by the Board of Commissioners of the City of Union City to Charles L. Wipfler for premises 107 - 48th Street, Union City, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 19, 1945; and it is further

ORDERED, that if any license be issued to this licensee or any other person for the premises in question for the 1945-46 fiscal year, such license shall be under suspension until 3:00 a.m. September 17, 1945.

ALFRED E. DRISCOLL
Commissioner.

- 8. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES CONTRARY TO LOCAL REFERENDUM - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED FOR 6 DAYS BY LOCAL BOARD - FACTS EXAMINED - APPLICATION TO LIFT GRANTED UPON TERMINATION OF AN ADDITIONAL 9 DAYS' SUSPENSION.

In the Matter of the Petition of)
 DONALD JAMES CROCAMO)
 733 South Main Street)
 Phillipsburg, N. J.,)
 To Lift the Automatic Suspension)
 of Plenary Retail Consumption)
 License C-161 issued by the Board)
 of Commissioners of the Town of)
 Phillipsburg.)
 - - - - -)

ON PETITION
CONCLUSIONS AND ORDER

Robert E. Frederick, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from the petition filed herein that, on June 6, 1945, petitioner pleaded non vult in the Court of Special Sessions of Warren County to an indictment alleging that he had unlawfully sold alcoholic beverages contrary to a local referendum which prohibited any Sunday sales of alcoholic beverages. On the same day petitioner was fined the sum of \$100.00, which was paid. On June 11, 1945 agents of the Department of Alcoholic Beverage Control picked up petitioner's license and no business has been conducted thereunder since that time.

It further appears from the petition and from the records of the Department of Alcoholic Beverage Control that, on January 24, 1945, the Board of Commissioners of the Town of Phillipsburg suspended petitioner's license from midnight January 27, 1945 to 7:00 a.m. February 3, 1945, after he had pleaded non vult in disciplinary proceedings to charges alleging, in substance, that he had sold alcoholic beverages on Sunday, December 3, 1944, in violation of the local referendum.

The indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. Because of his conviction in the criminal proceedings, petitioner's license has been automatically suspended for the balance of its term. R. S. 33:1-31.1. The petition herein prays that the automatic suspension of the license may be lifted.

The penalty imposed in the disciplinary proceedings was clearly inadequate. Even with the non vult plea, a minimum suspension for a period of at least fifteen days should have been imposed. Hence I shall not lift the automatic suspension at this time. The purpose of the automatic suspension is to insure that, when a licensee is convicted in a criminal court, there is swift and sure penalty against his license. In view of such purpose, it has been the policy of the Commissioner to lift a suspension when, and only

when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4. I shall not lift the automatic suspension until 7:00 a.m. June 20, 1945. Thus the licensee will have suffered a total suspension of fifteen days.

Accordingly, it is, on this 13th day of June, 1945,

ORDERED, that the automatic suspension of the license aforesaid be lifted, effective at 7:00 a.m. June 20, 1945. Until then the license stands suspended.

ALFRED E. DRISCOLL
Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF MUNICIPAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS, IN VIOLATION OF RULE 8 OF STATE REGULATIONS NO. 7 - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
FRATERNAL ORDER OF EAGLES,)
SALEM AERIE 1966)
232 East Broadway)
Salem, N. J.,)
Holder of Club License CB-127,)
issued by the State Commissioner)
of Alcoholic Beverage Control.)
-----)

CONCLUSIONS
AND ORDER

Defendant-licensee, by Thomas J. Maxwell, Secretary, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges alleging that (1) it sold alcoholic beverages on Sunday, in violation of a local ordinance, and (2) it sold alcoholic beverages to persons other than bona fide members and their bona fide guests, in violation of Rule 8 of State Regulations No. 7 and R. S. 33:1-2.

The report of the investigation herein shows that two investigators of the State Department of Alcoholic Beverage Control entered defendant's premises at about 10:45 a.m. on Sunday, May 27, 1945, purchased and were sold and served alcoholic beverages. Neither investigator was a member or a guest of a member of defendant, holder of a "club" license. At least four other persons in the licensed premises were drinking alcoholic beverages.

Defendant has no prior adjudicated record. I shall, therefore, suspend the license for the usual minimum period of fifteen days for the unlawful sale on Sunday (Cf. Madison Lodge B.P.O.E., etc., Bulletin 623, Item 14), and a further period of fifteen days for the sales to non-members (Cf. Penns Grove Lodge, etc., Bulletin 615, Item 2). Five days will be remitted for the plea, making a net suspension of twenty-five days.

Accordingly, it is, on this 13th day of June, 1945,

ORDERED, that Club License CB-127, issued by the State Commissioner of Alcoholic Beverage Control to Fraternal Order of Eagles, Salem Aerie 1966, for premises 232 East Broadway, Salem, be and the same is hereby suspended for the balance of its term, effective at 12:01 a.m. June 19, 1945; and it is further

ORDERED, that if any license be issued to this licensee for the premises in question, for the 1945-46 fiscal year, such license shall be inoperative until 12:01 a.m. July 14, 1945.

ALFRED E. DRISCOLL
Commissioner.

- 10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS, IN VIOLATION OF RULE 8 OF STATE REGULATIONS NO. 7 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS. 20 -

In the Matter of Disciplinary Proceedings against)
)
 LABOR TEMPLE ASSOCIATION, INC.)
 538 Broadway)
 Camden, N. J.,)
)
 Holder of Club License CB-22,)
 issued by the Municipal Board of)
 Alcoholic Beverage Control of the)
 City of Camden.)
 -----)

CONCLUSIONS
AND ORDER

Albert K. Plone, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging the sale of alcoholic beverages (1) to non-members and (2) to a minor, in violation of the State Regulations and the Alcoholic Beverage Law. See Rule 8 of State Regulations No. 7; R. S. 33:1-12(5); R.S. 33:1-2; R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On Saturday, May 5, 1945, several ABC investigators visited the licensed premises. One of the agents entered at about 10:00 p.m. and purchased a ticket for a dance which was being held on the second floor. He observed about 200 youthful-appearing persons in the dance hall. Proceeding to the barroom, also located on the second floor, the agent, who is not a member of the club nor was he then a guest of any member, was served two glasses of beer by the bartender without being questioned.

Another agent entered at about 10:30 p.m. and, after noting the crowd of dancing youngsters, went to the barroom and ordered a drink of liquor. This time the bartender asked the agent whether he had a "Union card" and, upon receiving a negative answer, nevertheless served the drink, with the remark, "Oh, you're with the dance."

Many of the young persons patronized the barroom throughout the evening. Some were served soft drinks and others were served with

alcoholic beverages. So far as could be observed, none of the young people were refused service because of non-membership of the club. Because of the congestion, and the excitement resulting after the agents identified themselves (they were somewhat man-handled by the crowd and the drinks which they seized were spilled from their hands) the agents were able to verify the age of only one person, who was learned to be twenty years of age. This minor admitted that he had attended dances at the club for more than a year and had been served alcoholic beverages there without being questioned concerning his age.

The bartender admits the service of the liquor to the minor and also to the agents. He claims, however, that, about a year ago, the minor had informed him that he was over twenty-one but that he had never signed a written statement to that effect. See R. S. 33:1-77. As to the service to the agents, the apparent contention is that anyone attending the dances at the club, to which anyone paying the required fee may gain admittance, may be considered as bona fide guests. This contention is so devoid of merit as not to require any answer.

This is the third time that the defendant has faced disciplinary proceedings. In May 1942 I suspended its license for a net period of five days after it had pleaded guilty to possessing slot machines on its licensed premises. Bulletin 509, Item 5. In September 1942 the club pleaded guilty to sales to non-members and received a fifteen-day penalty, less five for the plea. Bulletin 529, Item 2. Since the defendant has now committed four separate infractions within a three-year period, two of which are similar, an outright revocation of its license would not be unnecessarily severe. Because of its frank admission of guilt in these proceedings, however, and giving due consideration to all of the attendant circumstances, I shall suspend the license for a period of sixty days.

The defendant will heed my advice to refrain from any further violations if it desires to retain the privileges of dispensing alcoholic beverages at its club.

Accordingly, it is, on this 15th day of June, 1945,

ORDERED, that Club License CB-22, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Labor Temple Association, Inc., for premises 538 Broadway, Camden, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 25, 1945; and it is further

ORDERED, that if any license be issued to this licensee or any other person for the premises in question for the 1945-46 fiscal year, such license shall be under suspension until 2:00 a.m. August 24, 1945.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ROD KELLER, INC.)
T/a ROD'S)
525 Northfield Ave.)
West Orange, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-39 issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange.)

Howe & Davis, Esqs., by Wm. Howe Davis, Esq., Attorneys for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult to a charge alleging that on Wednesday, May 9, 1945, between midnight and 6:00 a.m., it permitted the consumption of alcoholic beverages on its licensed premises, in violation of Rule 1 of State Regulations No. 40.

Agents of the Department of Alcoholic Beverage Control report that, about 12:15 a.m. on May 9, 1945, they entered the licensed premises and found approximately eight persons inside, five of them seated in the booth, one standing near the bar and the other two at the bar. One of the latter two, later identified as the chef, had a highball in front of him, presumably served by the licensee.

The explanation of the licensee is that it was V-E Day; that the help had worked overtime; that it was very difficult to clear the premises by midnight; and that the chef, who had just finished his work, was having a late "snack" and had obtained the drink himself from behind the bar. The proprietor stated the other occupants of the premises were members of his family.

The fact that it was V-E Day did not abrogate Regulations No. 40, which were still in full force. Violations of this nature must be punished, in fairness to the overwhelming number of patriotic licensees who scrupulously obeyed the provisions of Regulations No. 40. Re Soccol, Bulletin 669, Item 7.

The licensee maintains a bona fide restaurant. It has no prior record. In Re Tomarchio, Bulletin 661, Item 6, where it appeared that no drinks were sold, served or delivered after midnight, and in Re Wagner, Bulletin 663, Item 3, where it appeared that only employees were served after hours, I imposed a ten-day suspension.

Under all the circumstances, I feel that a similar penalty should be imposed in this case. I will, therefore, suspend the license for a period of ten days, less five days for the plea, making a net suspension of five days.

Since it appears that defendant conducts a bona fide restaurant I shall nolle pros the additional charge of being open during prohibited hours, in violation of Rule 2 of Regulations No. 40.

Accordingly, it is, on this 15th day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-39, issued by the Municipal Board of Alcoholic Beverage Control of the Town of West Orange to Rod Keller, Inc., t/a Rod's, for premises 525 Northfield Avenue, West Orange, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. June 25, 1945, and terminating at 2:00 a.m. June 30, 1945.

Alfred C. Buswell
Commissioner.