

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

BULLETIN 693

FEBRUARY 7, 1946

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STATE OF MISSISSIPPI
DEPARTMENT OF REVENUE
TAXATION

1940

MISSISSIPPI



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

BULLETIN 693

FEBRUARY 7, 1946

1. SEIZURE - FORFEITURE PROCEEDINGS - SPECIAL PERMIT MUST BE OBTAINED PRIOR TO HOME MANUFACTURE OF WINE - HOME-MADE WINE MAY IN NO EVENT BE SOLD OR USED FOR COMMERCIAL PURPOSES IN RESTAURANTS - SUPPLY OF HOME-MADE WINE, OTHER ALCOHOLIC BEVERAGES AND PERSONAL PROPERTY SUBJECT TO SEIZURE AND FORFEITURE - FAILURE OF APPLICANT FOR RETURN OF SEIZED PROPERTY TO ESTABLISH GOOD FAITH AND THAT THE VIOLATION WAS UNWITTING - WINE, OTHER ALCOHOLIC BEVERAGES AND PERSONAL PROPERTY DECLARED UNLAWFUL PROPERTY AND ORDERED FORFEITED.

Seizure Case #6917

In the Matter of the Seizure on)
November 21, 1945 of about 1200)
gallons of home made wine, beer,)
soda, and various fixtures, fur-)
nishings and foodstuffs, at 22-24)
Ferry Street, in the City of)
Newark, County of Essex and State)
of New Jersey.)

On Hearing

CONCLUSIONS AND ORDER

Seizure Case #6919

In the Matter of the Seizure on)
November 26, 1945, of about 750)
gallons of home made wine and 19 -)
50 gallon barrels of wine mash at)
101-103 Union Street, in the City)
of Newark, County of Essex and)
State of New Jersey.)

Joseph C. Braelow, Esq., Attorney for Jose Castro.
Harry Castelbaum, Esq., Appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

These are related cases, and hence will be decided together.

These matters come before me pursuant to the provisions of Title 33, Chapter 1, of the Revised Statutes, to determine whether about 1200 gallons of home made wine, and other alcoholic beverages, restaurant equipment and a stock of foodstuffs, itemized in a schedule hereinafter referred to, seized on November 21, 1945 at Jose Castro's boarding house and restaurant located at 22-24 Ferry Street, and about 750 gallons of home made wine and 19 - 50 gallon barrels of wine mash owned by Castro, seized on November 26, 1945 at 101-103 Union Street, both in the City of Newark, New Jersey, constitute unlawful property and should be forfeited.

Jose Castro catered to patrons of Portuguese or Spanish ancestry. The State Department of Alcoholic Beverage Control received a complaint that Castro was selling wine in his restaurant, although he held no license authorizing him to sell or serve alcoholic beverages.

Accordingly, an ABC agent entered the restaurant on November 20, 1945 and ordered a meal. He observed pitchers of wine or bottles of beer in front of other diners. During the course of his meal, the

agent ordered a bottle of beer which was served to him by Manuel Martinez, a waiter, whom he paid for the beer, as well as the dinner.

The agent returned the following day and was again served a meal and a bottle of beer by the same waiter. Other ABC agents, in company with Federal Alcohol Tax Unit agents, entered the restaurant and disclosed their identity. At this time they observed the bottle of beer in front of the agent, as well as other bottles of beer and drinks of wine in front of some of the other patrons.

Castro, Martinez, the waiter, and some of the patrons gave written statements to the officers. From these statements it appears that Castro had made a practice of serving his boarders wine with their meals. Castro said that this practice was pursuant to an "old Spanish custom".

Castro claimed that he charged \$11.00 per week for room and board and \$9.50 per week for meals alone, and on Sundays charged \$1.00 for a meal which included beer or wine. He also admitted that he sold wine by the glass and 1/2 gallon container, on various occasions; that his supply of wine consisted of 24 - 50 gallon barrels which were in the cellar of the premises; and that he had manufactured this wine in 1945 without any license or permit issued by the State Department of Alcoholic Beverage Control.

The agents seized these 24 barrels of wine, 212 bottles of beer, the restaurant equipment, and Castro's stock of foodstuffs.

Castro was arrested and charged with possessing illicit alcoholic beverages and possessing alcoholic beverages with intent to sell such beverages in violation of the law. Manuel Martinez was arrested and charged with unlawful sale of alcoholic beverages.

Thereafter, while making further investigation in the case, the ABC agents received information that Castro had wine stored at the Union Street address. Accordingly, on November 26, 1945, they went to these premises. Euclides Lopez Pinto, who operates a boarding house there, told the agents that he had permitted his friend Castro, as a convenience, to store wine in his cellar. The agents then seized 15 - 50 gallon barrels of wine and 19 - 50 gallon barrels of wine mash which they found there. This wine was likewise manufactured by Castro without any license or permit.

Jose Castro was again arrested and charged with possessing, manufacturing and storing illicit alcoholic beverages. Pinto was arrested and charged with aiding and abetting the manufacture of illicit alcoholic beverages.

When the matters came on for seizure hearing, pursuant to R.S. 33:1-66, Castro appeared with counsel. He admitted that the facts are as above stated but sought return of various items of restaurant equipment and foodstuffs. His claim is that operating the boarding house and serving meals was his principal business and that the service of wine was merely incidental and the custom of his people. Hence, he urged, that he should not be penalized by the forfeiture of his restaurant equipment or foodstuffs.

The explanation that Castro was merely following a Spanish or Portuguese custom is immaterial. Residents of this country must conform to our laws. See Seizure Case No. 6256, Bulletin 526, Item 11.

All of the wine is illicit because it was not manufactured pursuant to a license or permit. R.S. 33:1-2, R.S. 33:1-1(i). Castro could not have obtained a permit for its manufacture, under the provisions of R. S. 33:1-75, because such wine was not intended for his personal consumption, and exceeded the limit of 200 gallons which may

be manufactured for that purpose. See Seizure Case No. 6800, Bulletin 670, Item 4, for the discussion of the principles governing the manufacture of wine for home consumption. The wine is likewise illicit because Castro possessed it for the purpose of illegal sale. The illicit wine, and the beer, restaurant equipment, foodstuffs and other property seized therewith on the premises constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-66.

Under the provisions of R.S. 33:1-66(e) I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he has acted in good faith and has unknowingly violated the law.

Castro served his boarders and other patrons of his restaurant with whatever alcoholic beverages they desired, for the most part wine, despite the fact that he held no license, in complete disregard of the law. It was a speakeasy, even though he merely catered to a particular class of patrons.

In 1942, about the time that Castro purchased his boarding house and restaurant, the Department of Alcoholic Beverage Control seized wine in two restaurants which catered to Brazilian patrons, located in his vicinity. There, too, the Department rejected the explanation of the restaurant owners that in selling and serving wine to their patrons they were following an ancient custom. See Seizure Case No. 6256, Bulletin 526, Item 11 and Seizure Case No. 6258. Restaurant owners who cater to this type of clientele should by this time be fully aware that they cannot follow customs which are contrary to the law of the land. It is extremely doubtful that Castro did not fully understand the risks he was running when carrying on his speakeasy activities.

Hence, Castro has not established that he acted in good faith and unknowingly violated the law and therefore I am compelled to deny his request for return of the restaurant equipment and foodstuffs. In this connection it may be well to point out that the law makes no distinction between alcoholic beverages seized for violation of the Alcoholic Beverage Law and other personal property seized therewith. Both are subject to forfeiture and neither type of property can be returned to a person who has not established his good faith and innocence of intentional wrongdoing.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that 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 Commissioner.

Dated: January 30, 1946

ALFRED E. DRISCOLL
Commissioner

SCHEDULE "A"

24 - 50 gallon barrels of wine	1 - cash register
4 - 50 gallon barrels of wine mash	1 - scale
2 - 5 gallon cans of wine	1 - meat slicer
13 - 1 gallon bottles of wine	roll of linoleum
1/2 pint of wine	stock of miscellaneous
212 - bottles of beer	foodstuffs
24 - bottles of soda	15 - 50 gallon barrels of wine
	19 - 50 gallon barrels of wine
	mash

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
GEORGE KUNZ,)
t/a Washington Grove,)
N/S Linwood Avenue)
Washington Township,)
P. O. Westwood, N. J.,)
)
Holder of Plenary Retail Consumption License C-1, issued by the)
Township Committee of the Township)
of Washington.)

CONCLUSIONS AND ORDER

George Kunz, Defendant-licensee, Pro Se.
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to charges alleging (1) that he sold alcoholic beverages in their original containers for consumption off the licensed premises after 10:00 p. m., in violation of Rule 1 of State Regulations No. 38; and (2) that he sold a 4/5 quart bottle of whiskey below the minimum consumer price, thus violating Rule 6 of State Regulations No. 30, the "Fair Trade" regulation.

On Friday, December 28, 1945, at about 10:55 p. m., the licensee sold to two agents of the State Department of Alcoholic Beverage Control a 4/5 quart bottle of Calvert Special Blended Whiskey in its original container for off-premises consumption for the price of \$3.45.

Rule 1 of State Regulations No. 38 prohibits the sale of alcoholic beverages at retail in original containers for consumption off the licensed premises on any weekday after 10:00 p. m. The minimum resale price, as contained in the then current "Complete List of Minimum Resale Prices" effective January 1, 1945, was \$3.46. See Bulletin 643. The fact that this sale was no more than one cent less than the minimum resale price does not minimize the offense. Price regulations must be strictly obeyed. See Revallo, Bulletin 303, Item 2.

Defendant's plea in mitigation, that he was upset and worried over the illness of a very dear friend, is appealing to sympathetic consideration by cannot change the fact that both violations occurred.

Defendant has no prior record. I shall, therefore, suspend defendant's license for a period of fifteen days for the violation described in Charge 1 (see Re Van Harken, Bulletin 678, Item 10); and for an additional ten days for the violation described in the second charge. See Re Morielli, Bulletin 684, Item 1. Five days of the total penalty will be remitted because of the plea, making a net suspension of twenty days.

Accordingly, it is, on this 30th day of January, 1946,

ORDERED that Plenary Retail Consumption License C-1, issued by

the Township Committee of the Township of Washington to George Kunz, t/a Washington Grove, for premises on N/S Linwood Avenue, Washington Township, be and the same his hereby suspended for a period of twenty (20) days, commencing at 3:00 a. m. February 6, 1946, and terminating at 3:00 a. m. February 26, 1946.

ALFRED E. DRISCOLL, Commissioner

3. APPELLATE DECISIONS - VELDE v. LYNDEHURST TOWNSHIP

HENRY VELDE, t/a Victory Gables,

Appellant, On Appeal

v. BOARD OF COMMISSIONERS OF THE TOWNSHIP OF LYNDEHURST,

Respondent.

Winne & Banta, Esqs., by John A. Christie, Esq. and Wallace S. DePuy, Esq., Attorneys for Appellant. Joseph Melillo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a denial of an application to transfer appellant's plenary retail consumption license C-18, from 164 Riverside Avenue to 111 Stuyvesant Avenue, Township of Lyndhurst.

Respondent's reasons for denying transfer may be summarized as follows: (1) public convenience and necessity is at present being served by existing nearby licenses, and (2) an additional licensed premises would create or aggravate a congested traffic condition in the area.

The evidence shows that plenary retail consumption licenses are now held by James A Reid for premises at 131-137 Stuyvesant Avenue and by Michael J. Collins for premises 136 Stuyvesant Avenue. The existing licensed premises, located almost directly opposite each other, are respectively 222 feet and 228 feet from the premises to which appellant seeks to transfer his license. Stuyvesant Avenue is 32 feet wide at this point and there is a curve in the avenue in front of appellant's proposed premises. There is testimony that, at times, traffic is now congested in this area because patrons visiting Reid's and Collins' place of business park their cars on Stuyvesant Avenue. Neither Reid nor Collins has any parking space for patrons.

Appellant testified that his rent has been raised at his present premises and that he is threatened with eviction. He has purchased the property known as 111 Stuyvesant Avenue and has an open area 30 feet wide on each side of the building located thereon. A large space in the rear of the building may be used for parking purposes.

On behalf of respondent, Mayor Boyle testified that the vote to deny transfer was unanimous. He stated that, in his opinion, public necessity and convenience were being served by the two existing licenses and that the granting of the transfer would tend to increase the traffic congestion in this section of Stuyvesant Avenue.

The right to transfer is not inherent in a license. The issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Van Schoick v. Howell, Bulletin 120, Item 6.

Reasonable men may differ as to whether the transfer sought herein would increase congestion in view of the fact that appellant appears to have adequate parking facilities adjacent to his proposed premises. However, there are two existing places licensed for consumption in the immediate vicinity and, in the exercise of their discretion, the local issuing authority was justified in refusing to increase the number of licenses from two to three in this section of the township. The fact that a large number of licensed premises exist in close proximity to each other in other sections of the township does not show any undue discrimination against appellant. That condition in other sections has existed for a number of years and respondent should be permitted to eliminate gradually rather than be required to create or perpetuate that unsatisfactory condition in any section of the municipality.

I sympathize with appellant, but I must hold that he has failed to carry the burden of proof in showing that the action of respondent was arbitrary or unreasonable.

Accordingly, it is, on this 30th day of January, 1946,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

4. APPELLATE DECISIONS - MULCAHY AND SWEET v. MAPLEWOOD TOWNSHIP AND TOPF.

Cases Nos. 2 and 3.)

ROBERT E. MULCAHY and BENJAMIN SWEET,)

Appellants,)

On Appeal

v.)

CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF)
MAPLEWOOD AND ERNEST TOPF, t/a Topf's)
Maplewood Pharmacy,)

Respondents.)

Parsonnet, Weitzman & Oransky, Esqs., by Samuel Weitzman, Esq.,
Attorneys for Appellants.

Sidney Simandl, Esq., Attorney for Respondent-licensee, Ernest Topf.
Osborne, Cornish & Scheck, Esqs., by A. H. Cornish, Esq., Attorneys
for Respondent Township Committee.

BY THE COMMISSIONER:

These two appeals are, respectively, from the issuance on May 1, 1945, of a plenary retail distribution license to respondent Ernest Topf, t/a Topf's Maplewood Pharmacy, and from the renewal of said license for the present 1945-46 licensing period.

The issues in both cases are substantially similar and the parties have stipulated and agreed that the testimony presented in Case No. 2, including the transcript of testimony taken before the local issuing authority at the time the application for the license was heard, shall be considered in these appeals.

Appellants allege that the grant and subsequent renewal of the license were improper in that public necessity and convenience did not warrant the granting or renewal of an additional license in the neighborhood as there were two plenary retail distribution licenses already in the immediate vicinity, one immediately next door and the other a few doors beyond on the same side of the avenue.

Respondent Topf operates a drug store, as well as a liquor business in premises on the southwest corner of Prospect Street and Springfield Avenue. Appellant Sweet operates both a delicatessen and liquor business in a store immediately adjacent to and in the same building wherein respondent Topf's premises are located. Sweet's establishment is known and designated as #1887 Springfield Avenue. Another plenary retail distribution licensee named Borman conducts a delicatessen and liquor store several doors west on the same side of Springfield Avenue - his premises being known as #1891.

Appellant Robert E. Mulcahy testified that he is a resident of the Township of Maplewood and that his home is situated approximately 250 feet from respondent Topf's licensed premises.

It further appears from the testimony herein that a few years previous there were three "package goods" stores in the neighborhood. One license for premises located across the street from the proposed premises was subsequently transferred to another part of the community.

The Township of Maplewood, according to the 1940 census, has a population of 23,139. An ordinance, dated August 20, 1940, permits twelve plenary retail distribution licenses to be issued in the Township. The license granted to respondent Topf is the twelfth of that class issued and outstanding at the present time. The testimony is substantially in agreement that Springfield Avenue is one of the principal, if not the main, highway passing through the Township, and that the vicinity wherein the liquor stores are located is one of the leading shopping centers in the municipality. Also, it appears from the testimony of Topf that he had a substantial liquor business between July 1, 1944 and March 14, 1945. On the latter date Topf's license was cancelled by the State Commissioner because of a defect in the advertisement published at the time he made application for the original license. See Bulletin 658, Item 4.

The members of the Township Committee allege that, after a full and open hearing to which each objector was invited by letter to attend, they were convinced that an additional liquor license was warranted to meet the demands of the residents in that section of the municipality. The judgment of the members of the Township Committee determining the number of liquor stores that should be permitted in a given locality must be given weight by the Commissioner on appeal. South Jersey Retail Liquor Dealers Assn. et al. v. Burnett, 125 N.J.L. 105.

The members of the Township Committee voted unanimously both to grant the license to Topf and to renew said license for the current licensing period. Nothing has been presented on the appeal indicating that the members of the Township Committee acted other than with proper motives.

The Commissioner should and does take notice of the particular circumstances surrounding each application, as well as the nature of the area in which the proposed licensed premises are situated. I am satisfied that the members of the respondent Township Committee believed, after due deliberation and study of the evidence presented, that the needs of the residents of the particular section of the Township warranted the issuance of an additional license. It is not my function on appeals of the character now before me to substitute my opinion for that of the issuing authority but, rather, to determine whether the decision of the latter may reasonably be supported and, if so, to affirm its action.

Appellants having failed to sustain the burden of proving that the action of the issuing authority was either arbitrary or unreasonable, and there being some evidence of a public need or convenience to be served by the license, respondent's decision to issue and grant a plenary retail distribution license to respondent Topf will be affirmed.

Accordingly, it is, on this 31st day of January, 1946,

ORDERED that the appeals herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

- 5. SEIZURE - FORFEITURE PROCEEDINGS - HOME MANUFACTURE OF WINE WITHOUT SPECIAL PERMIT - WINE SO MANUFACTURED SUBJECT TO SEIZURE AND FORFEITURE - GOOD FAITH AND UNKNOWING VIOLATION OF THE LAW ESTABLISHED BY APPLICANT FOR RETURN OF WINE - WINE ORDERED RETURNED UPON ISSUANCE OF SPECIAL PERMIT

In the Matter of the Seizure)
on November 27, 1945, of about)
500 gallons of home-made wine)
at 217 East Kinney Street, in)
the City of Newark, County of)
Essex and State of New Jersey.)

Case No. 6923

On Hearing

CONCLUSIONS AND ORDER

Joseph Freda, Esq., Attorney for Carmela Valentino.
Harry Castelbaum, Esq., Appearing for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, of the Revised Statutes, to determine whether about 500 gallons of home-made wine, seized on November 27, 1945, at 217 East Kinney Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

On November 27, 1945, ABC agents, in company with Federal AFU agents, went to the above-mentioned premises to check on specific information that there was a large quantity of home-made wine stored there and being sold unlawfully. The agents identified themselves to Carmela Valentino, who resides at the premises, and she told them that she had wine in the cellar of one of the buildings on the premises.

The agents then seized nine 50 - gallon barrels of wine, one 10 - gallon jug of wine, six 5 - gallon jugs of wine and two 1 - gallon jugs of wine, which they found in this cellar. Mrs. Valentino

claimed ownership of the wine and admitted that she manufactured it without obtaining any license or permit from the State Department of Alcoholic Beverage Control.

The wine was seized because it was suspected that Mrs. Valentino was selling it. Five hundred gallons of wine, seemingly was a quantity which exceeded the personal needs of Mrs. Valentino who is sixty-seven years old and lives practically alone. The inference is that she possessed the wine for some purpose other than for her personal consumption. It did not appear to be a case where a reputable citizen manufactures wine for personal consumption in ignorance of the fact that he is required to obtain a permit, in which case the owner of the wine is given an opportunity to make an application for an appropriate permit in lieu of seizure and forfeiture of the wine. Cf. Seizure Case No. 6800, Bulletin 670, Item 4.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Carmela Valentino appeared with counsel and sought the return of the wine. She claimed that it was the first time she had ever manufactured wine and that she was unaware that she was required to obtain a permit. She asserted that all of the wine was intended for personal consumption by herself and her children at her home.

Mrs. Valentino and three of her children, who were also at the hearing, have convinced me by their testimony that despite the suspicious circumstances, Mrs. Valentino actually possessed the wine for the use of her family and not for sale.

It appears that up to 1944, Mrs. Valentino's husband manufactured wine for his own use and that of his wife and nine children. After his death in 1944, the children continued the custom of frequently visiting their mother and drinking wine at her home. Some time in 1945, Mrs. Valentino and some of her children shared the expense of manufacturing the wine in question. The children did not own any specific portion of the wine; it was merely available for their consumption when visiting their mother.

There is nothing in the background of Mrs. Valentino and her children, as developed at the hearing, which warrants an inference that any of them were inclined to be tlegging activities.

Mrs. Valentino has resided in Newark for thirty-six years, owns three properties free and clear of incumbrances, and with the help of some of her children, carries on a small second-hand furniture business which her husband established. One daughter resides with her and contributes towards her support.

I therefore conclude that Mrs. Valentino acted in good faith and unknowingly violated the law.

Accordingly, it is DETERMINED and ORDERED that, if on or before February 15, 1946, Carmela Valentino applies for and obtains a special storage permit, the fee for which is hereby fixed at fifteen (\$15.00) dollars, and pays the costs of seizure and storage in the case, the wine will be returned to her. In the event that Mrs. Valentino does not comply with these conditions, a further Order will be entered adjudicating the wine to be unlawful property and directing the disposal thereof.

ALFRED E. DRISCOLL
Commissioner

DATED: January 31, 1946.

ACTIVITY REPORT FOR JANUARY, 1946

6.

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees	7	Bootleggers	10	
	Total number of persons arrested				17
<u>SEIZURES:</u>	Brewed malt alcoholic beverages (beer, ale, etc.)		gallons		19
	Wine		gallons		801
	Distilled alcoholic beverages (whiskey, brandy, etc.)		gallons		7.2
<u>RETAIL LICENSEES:</u>	Total number of premises inspected				1,260
	Total number of premises where alcoholic beverages were gauged				814
	Total number of bottles gauged				10,929
	Total number of premises where violations were found				112
	Total number of violations found				146
	Type of violations found:				
	"Fronts" (concealed ownership)	4	Prohibited signs	24	
	Gambling devices	1	Stock disposal permits necessary	10	
	Illicit liquor	15	Unqualified employees	27	
	Improper beer tap markers	1	Other types of violations	40	
	No sign denoting legal sale hours				
	off-premises consumption	24			
<u>STATE LICENSEES:</u>	Premises inspected				15
	License applications investigated				21
<u>COMPLAINTS:</u>	Investigated, reviewed and closed				334
	Investigation assigned, not yet completed				214
<u>LABORATORY:</u>	Analyses made				128
	"Shake-up" cases (alcohol, water and artificial coloring)				8
	Liquor found to be not genuine as labeled				14
<u>IDENTIFICATION BUREAU:</u>	Criminal fingerprint identifications made				21
	Persons fingerprinted for non-criminal purposes				234
	Identification contacts with other enforcement agencies				225
	Motor vehicle identifications via N. J. State Police Teletype				16
<u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u>	Cases transmitted to municipalities				22
	Violations involved:				
	Bookmaking on premises	2	Sale to intoxicated persons	3	
	Failure to post "hours" sign	1	Sale to minors	13	
	Sale during prohibited hours	5	Sale to non-members by clubs	1	
	Cases instituted by Department (5 cases also involving cancellation proceedings)				29
	Violations involved:				
	Act occurring after issuance of license which, if occurring before, would have prevented such issuance	2	Sale during prohibited hours	1	
	Fraud and front	12	Sale under Fair Trade price	3	
	Illicit liquor	10	Tie-in sales	4	
			Unqualified employee	1	
			Club lacking requisite quarters for three years	1	
	Cases brought by municipalities on own initiative and reported to Department				4
	Violations involved:				
	Bookmaking on premises	1	Sale to minors	2	
	Sale during prohibited hours	1			
<u>HEARINGS HELD AT DEPARTMENT:</u>	Total number of hearings held				62
	Appeals	15	Seizures	4	
	Disciplinary proceedings	27	Applications for license	5	
	Eligibility	10	Tax revocation	1	
<u>PERMITS ISSUED:</u>	Total number of permits issued				933
	Unqualified employees				147
	Solicitors				148
	Social affairs				209
	Home manufacture of wine				110
	Disposal of alcoholic beverages				200
	Miscellaneous permits				119

Respectfully submitted,
 ERWIN B. HOCK
 Deputy Commissioner

7. MUNICIPAL REGULATIONS - DISTANCE BETWEEN LICENSED PREMISES - EXCEPTION PERMITTING LICENSEES TO TRANSFER TO ANY LOCATION, AND ENCROACH ON OTHER LICENSEES, PROVIDING THEY MOVE NOT MORE THAN 1000 FEET AT ONE TIME - HEREBY QUESTIONING THE POLICY OF ESTABLISHING SUCH EXCEPTION.

January 31, 1946

John G. Dluhy, Esq.
City Council
Clifton, N. J.

Dear Mr. Dluhy:

This will acknowledge receipt of your letter of January 26th with a copy of a proposed amendatory ordinance for Clifton.

It is noted that proposed ordinance would amend Section 1 of the City's Ordinance No. 2086 as last amended by Ordinance No. 2242 adopted September 7, 1943.

It is noted, further, that paragraph (a) of Section 1, as proposed to be amended, sets forth a numerical limitation of plenary retail consumption licenses identical with the existing limitation in Ordinance No. 2242; and would add thereto a new paragraph reading:

"(b) No plenary retail consumption license shall be issued for or be transferred to any premises within 1000 feet of any other premises for which a Plenary Retail Consumption License is outstanding. The said distances 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. The foregoing shall not prevent the renewal for the same premises of Plenary Retail Consumption licenses outstanding at the time of the adoption of this ordinance nor the transfer of same from person to person and the renewal thereof, nor the transfer of such licenses to other premises within 1000 feet of the premises at which the licensee was located, but if such transfer shall be for other premises more than 1000 feet from the premises at which the licensee was located, no transfer of such license shall be made if the licensee encroaches within 1000 feet of another Plenary Retail Consumption license."

A "distance between premises" ordinance designed to prevent the overcrowding of licensed places in any particular section or area of a municipality appears to have a proper and reasonable public purpose. In some ordinances of this type the only exception from the "distance between premises" requirement is one permitting renewals and person-to-person transfers for premises licensed at the time of the ordinance's adoption. Some other municipalities in adopting such ordinances have deemed it desirable and proper to guard against too great a stricture and, accordingly, have added a further exception permitting licensees to transfer to premises located within a designated distance from their premises licensed at the time of the ordinance's adoption. See, for example, Clifton's own regulation concerning the distance between plenary retail distribution licensed premises. (Ordinance No. 2171, as amended).

The now proposed Clifton ordinance, however, would purport to require a minimum distance of 1,000 feet between plenary retail consumption licensed premises but would, nevertheless and regardless of that 1,000 feet rule, permit the transfer of a plenary retail

consumption license to premises located within 1,000 feet from the premises at which the licensee was located at the time the transfer is sought. It seems clear that this exception would permit a plenary retail consumption licensee to transfer by one or more steps to any location in the City and encroach on any other plenary retail consumption licensee providing only that he did not move more than 1,000 feet at one time. The Commissioner has requested me to point out that this exception would tend to undermine, and in fact might make altogether meaningless, the proper basic "distance between premises" purpose of the ordinance. The Commissioner asks that you kindly convey to the Municipal Council his suggestion that, before proceeding toward action on the submitted ordinance, they give careful thought to the important policy question here raised.

Very truly yours,

ALFRED E. DRISCOLL
Commissioner

By: Harold J. Saum
Asst. Deputy Commissioner

8. ALIENS - HEREIN OF COUNTRIES HAVING TRADE AGREEMENTS WITH THE UNITED STATES - TREATIES RECOGNIZED AS "THE LAW OF THE LAND" AND, WITHIN THEIR RESPECTIVE SPHERES, PREVAIL OVER ALCOHOLIC BEVERAGE LAW.

February 1, 1946

Abram D. Londa, Esq.,
Elizabeth, N. J.

Dear Sir:

We have your letter of January 15, 1946, inquiring as to the foreign countries having reciprocal trade agreements with the United States of America entitling the nationals of said foreign countries to the benefits of State Regulations No. 13, Rule 5, which prohibits the holders of alcoholic beverage licenses in this state from employing aliens not nationals of a country with which the United States has an existing trade treaty affording reciprocal privileges to respective nationals.

By its terms, the Alcoholic Beverage Law provides that aliens may not obtain retail liquor licenses or work for retail liquor licensees in New Jersey. See R. S. 33:1-25, 26. However, treaties between the United States and foreign countries take priority over state law and hence, nationals of countries having reciprocal trade treaties with the United States are not subject to this prohibition. See Re Mc Guigan, Bulletin 228, Item 2, (copy enclosed). The regulations mentioned by you has reference to these countries.

We are advised by the Department of State that, as of November 9, 1945, treaties relating to the rights of aliens to engage in trade or commercial activities were in force between

the United States of America and the following countries:

Argentina	Greece
Belgium	Honduras
Bolivia	Ireland (Eire)
Borneo	Liberia
China	Norway
Colombia	Paraguay
Costa Rica	Poland
Denmark	Spain
El Salvador	Switzerland
Ethiopia	Turkey
Finland	Yugoslavia
Great Britain (British territories in Europe)	

In addition to the foregoing, prior to 1939 the United States had treaties with Estonia, Latvia, Hungary, Germany, Thailand (Siam), and the Free City of Danzig.

The declaration of war upon the United States by Germany, Hungary and Thailand has been construed by the writer as having terminated the treaties. Nationals of those countries are thus not entitled to the privileges heretofore enjoyed by them in this country when the treaties were recognized by the State of New Jersey as being operative. Cf. Karnuth v. Albro, 279 U. S. 231, 73 L. Ed. 677.

It appears that Estonia, Latvia and the Free City of Danzig have been incorporated in the Union of Soviet Socialist Republics, with whom this country does not have a treaty of the above type. In view of this fait accompli, I am constrained to hold that Estonia, Latvia and Danzig nationals do not enjoy the privileges of their former treaties until and unless it is ruled otherwise by the State Department or the courts.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

9. APPELLATE DECISIONS - MOSKOWITZ AND ZIOFSKY v. NEWARK

MORRIS MOSKOWITZ and
HERMAN ZIOFSKY,

Appellants,

ON APPEAL

v.

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY
OF NEWARK,

Respondent.

CONCLUSIONS AND ORDER

Feld & Breitner, Esqs., by Joseph J. Breitner, Esq., Attorneys
for Appellants.

Thomas L. Parsonnet, Esq., By Charles S. Gansler, Esq., Attorneys
for Respondent.

BY THE COMMISSIONER:

Appellants appeal from a decision of the respondent Board, suspending appellants' license for a period of fifteen days after they were found guilty of the following charges:

"1. On or about September 15, 1945, you served, sold and delivered alcoholic beverages to John Costin, a person under the age of 21 years, in violation of Rule 1 of State Regulations #20.

"2. On or about September 15th, 1945, you served, sold and delivered alcoholic beverages to John Costin, a minor in violation of Revised Statute 33:1-77."

The record before the local Board, including exhibits, was admitted in evidence on appeal by consent of counsel, subject to the exceptions and objections noted in the record.

Several reasons were advanced by appellants urging reversal. They may be summarized as follows: (1) legal proof was lacking as to the sale of alcoholic beverages to the minor; (2) legal proof was lacking as to the age of the minor; and (3) the finding of guilt was against the weight of evidence and the result of bias and prejudice.

At the hearing below, the minor in question testified that he was seventeen years of age at the time of the alleged sale and that, on the afternoon of September 15, 1945, at about 5:00 p. m. or 6:00 p. m., he went to the licensed premises and asked Moskowitz, one of the appellants, for a bottle of "Three Feathers". He testified that Moskowitz informed him he had no "Three Feathers" but instead gave him a bottle of "Schenleys" for which he paid Moskowitz "three dollars and something". The minor testified also that, as he was leaving, Moskowitz asked him his age and that he stated he was twenty-one, but that no further questions were asked of him nor was he requested to sign any statement as to his age. The record shows that the minor pleaded guilty in the local police court to misstating his age and was fined for this offense. The minor also testified that, after making the purchase of liquor, he left the licensed premises and went some distance away to the intersection

of New and Lock Streets, Newark, where he opened the bottle and proceeded to drink some of its contents. After drinking some of the contents of the bottle, he dropped it on the sidewalk, causing it to break and then he went "on back home". The minor testified he knew nothing further until "he woke up in the City Hospital".

The record below shows that the mother of the minor testified that he was born on October 17, 1927. She and the grandfather, with whom the minor lived, testified that when the latter came home on the afternoon in question he was intoxicated and created such a disturbance that they were compelled to call the police. Officers of the Newark Police Department testified that when they arrived at the house the mother was "beaten up" and that they found the minor in bed. To use one officer's expression, "he was out like a light". Because of his condition, they decided to remove him to the hospital, which was done, and he remained there for a period of two days. The officers testified as follows: after the minor recovered, they questioned him and, as a result, they took him on a tour in a police car, during which tour the minor picked out the licensees' tavern of his own accord as the place where he purchased the bottle of liquor; the minor then took the officers to the intersection of New and Lock Streets, where he claimed he had drunk the whiskey and dropped the bottle, and the officers found there the fragments of a brown bottle of the type the minor claimed he had purchased; the officers picked up one large fragment containing part of a Schenley label which was admitted into evidence at the hearing before the local Board; the officers then took the minor to the licensees' place of business on three separate occasions; on the first two visits Moskowitz was not present and the minor stated that the party who made the sale to him was not present, but on the third visit Moskowitz was present and the minor identified Moskowitz as the person who made the sale to him.

The defense is a complete denial. Moskowitz, in addition, testified that it was his custom to come on duty around 6:30 or 7:00 p. m. and for that reason he could not have made the sale. Other witnesses of the defendants testified to the same effect. Further testimony was offered that on the particular afternoon, the licensees had an ample stock of Three Feathers on hand. Appellant, Morris Moskowitz, testified that it was his practice to question every doubtful customer about his age and to require slips to be signed attesting to that fact. Several of the slips were offered as evidence.

Taking up the question of the age of the minor, there is ample proof in that respect. While the exemplified copy of the delayed certificate of birth offered in evidence before the local Board may not properly be admitted to prove age (State vs. Horton, 109 N. J. L. 450); nevertheless, it was not needed as the minor testified as to his age and the minor's mother testified both as to the date and place of his birth. Such evidence was clearly admissible and the respondent Board was justified in relying upon the same. State vs. Huggins, 83 N. J. L. 43; State vs. Koettgen, 89 N. J. L. 378; 41 L. R. A. 449; People vs. Slater, 119 Cal. 620; Carter vs. State, 68 Fla. 143 at 148.

As to the sale to the minor and by whom the liquor was sold, these are questions of fact. The minor is illiterate, he can neither read nor write. He was not called as a witness at the hearing on the appeal because, as stated by counsel for appellants, he was no longer in this State and could not be subpoenaed. In the

absence of such personal appearance, I must be guided by the admissible portion of the testimony taken before the respondent Board which was offered herein, as well as the additional testimony offered on the appeal. A careful reading of the minor's testimony and the testimony of the other witnesses satisfies me that there was sufficient legal testimony before the respondent Board upon which it could base its finding of guilt. The additional testimony offered at the hearing herein does not change my opinion in that respect.

The record further fails to disclose any evidence of bias or prejudice.

Appellants have not sustained the burden of proof in showing that the action of respondent was erroneous.

Accordingly, it is, on this 4th day of February, 1946,

ORDERED that the action of respondent be and the same is hereby affirmed and the petition of appeal be and the same is hereby dismissed; and it is further

ORDERED that the stay heretofore granted by order dated December 10, 1945, be and the same is hereby vacated, effective at 2:00 a. m., February 11, 1946; and that Plenary Retail Consumption License C-679, issued by the respondent to the appellants for premises at 254 Orange Street, Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a. m. February 11, 1946, and terminating at 2:00 a. m., February 26, 1946.

Alfred E. Discoll
Commissioner.