

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

BULLETIN 437

JANUARY 9, 1941.

1. APPELLATE DECISIONS - VIRGILIO v. ORANGE.
TREZZA and HOLZBERG v. ORANGE.

AN APPLICATION FOR LICENSE IS NOT FILED UNTIL THE FEE IS PAID -
IF FILED MORE THAN 30 DAYS AFTER COMMENCEMENT OF NEW LICENSE
TERM, IT IS NOT AN APPLICATION FOR RENEWAL - NEW LICENSES BARRED
BY LIMITATION - DENIALS AFFIRMED.

JOHN E. VIRGILIO,)

Appellant,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF ORANGE,)

Respondent,)

-and-

FRANK N. TREZZA and MAX HOLZBERG,)
Appellants,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEV-)
ERAGE CONTROL OF THE CITY OF)
ORANGE,)

Respondent.)

ON APPEAL
CONCLUSIONS

Louis J. Goldberg, Esq. and Charles Robinson, Esq.,
Attorneys for Appellants.
Edmond J. Dwyer, Esq., Attorney for Respondent.

These appeals were heard and are being decided together
because they involve common issues.

On August 19, 1940 the Municipal Board of Alcoholic Bev-
erage Control of the City of Orange denied John E. Virgilio's
application for renewal of his plenary retail consumption license
for 61 South Day Street; denied Frank N. Trezza's application for
renewal of his plenary retail consumption license for 120 Hickory
Street; and, by such denials, ipso facto refused then pending ap-
plications for transfer of the sought licenses.

The present appeals were taken from such action of the
Board.

Respondent, in resisting these appeals, contends, inter
alia, that on January 18, 1938 the City of Orange adopted an ordi-
nance which fixes a quota of fifty plenary retail consumption licen-
ses with exception that the eighty-odd such licenses then existing
could be renewed; that, of these eighty-odd licenses, seventy-one
have been successfully renewed through the present term, thus
leaving no vacancy in the quota for any new license; that, although

Virgilio and Trezza were actually among the original eighty-odd licensees and continuously renewed their licenses to the present term, they then, as to such current term, filed their applications too late to be viewed as applicants for renewal licenses; that, since they were thus applicants for new and not renewal licenses for the current term, they were therefore necessarily barred by the quota; further, that their applications for license being thus correctly denied, the applications for transfer of such anticipated licenses necessarily fell.

Appellants, in answer to this contention, admit the existence of the ordinance and the various licenses outstanding in the City but assert (1) that, since they held plenary retail consumption licenses when the ordinance was adopted, the quota, by reason of its particular wording, actually does not bar them even though they be viewed as applicants for new licenses for the current term; and (2) that, in any event, they actually qualify as applicants for renewal and hence come within the quota's express exception as to renewals.

As to (1): The ordinance in question (January 8, 1938) provides, so far as pertinent, that:

"The number of Plenary Retail Consumption licenses issued and outstanding in the City of Orange at the same time shall not exceed fifty (50).....provided, however, that the aforesaid limitation shall not prevent the issuance of renewals of.....Plenary Retail Consumption licenses.....to persons holding such licenses at the time this ordinance is adopted; and further, provided, that the aforesaid limitation shall not prevent the transfer of licenses or the renewal thereof, according to law. No new Plenary Retail Consumption licenses shall be issued to any one not holding such license at the time this ordinance is adopted, until the number of such licenses outstanding shall be reduced by surrender, revocation, non-renewal or otherwise, to less than fifty (50)....."

It is apparently appellants' contention that the second sentence in this provision expressly permits that, even though more than fifty plenary retail consumption licenses be outstanding, a new license may nevertheless be issued to any person who happened to have held such a license when the ordinance was adopted (whatever his status thereafter); that Virgilio and Trezza actually fall within this category since they were plenary retail consumption licensees at adoption of the ordinance; further, that, if such a category be deemed arbitrary and hence invalid, then the entire quota itself falls and appellants need not come within any exception thereto.

Now, the first sentence in the provision clearly and specifically sets forth a definite quota of fifty plenary retail consumption licenses for the City with proviso that such quota shall not bar renewals of any then existing licenses (whether the renewal be by the original licensee or a transferee). In view of such unequivocal clarity, I think it wholly apparent that the second sentence, no matter how such sentence might be construed if standing alone, must here be reasonably interpreted as no more than an attempted working out of some of the consequences of the established quota and proviso. Such being the fact, I conclude that the second sentence does not in any wise seek to or actually change the

quota and proviso so pointedly established in the first sentence and hence may be treated as mere surplusage.

Moreover, even if it be deemed that such second sentence must, whatever its actual intent, be construed as providing that new licenses may be issued, over and above the quota, at any future date, to any person who happened to have held a license when the quota was adopted, such a provision would indeed be arbitrary and hence necessarily invalid. Since such second sentence is wholly severable from the first, which fixes the obviously intended actual quota for the City, that first sentence, being self-sufficient, continues in valid existence. Prinz v. Paramus, 120 N.J.L. 72 (Sup. Ct. 1938). Distinguish Buechler v. Perth Amboy, Bulletin 339, Item 6 (where a quota, which contained an inseparable and actually intended exception, fell when the exception proved to be invalid).

Appellants raise no further question as regards the construction or validity of the quota.

Hence I find that Virgilio and Trezza are necessarily barred by the already filled quota of fifty in Orange unless they qualify as applicants for renewal for the current term and thus come within the quota's sole exception.

As to (2), viz., appellants' contention that Virgilio and Trezza actually do qualify as such renewal applicants: Virgilio posted his application for current license with the Orange Board on June 18, 1940 and Trezza on July 12, 1940. However, although the Alcoholic Beverage Law (and also a local ordinance in Orange) mandatorily requires that the license fee "must" accompany every application for license (R. S. 33:1-25, Boдрато v. Northvale, Bulletin 344, Item 1), Virgilio and Trezza presented their fees, not when submitting their applications, but on August 7 or 8 - such fees then being finally accepted (after some argument) on August 16, three days before the Board's denial of the applications.

Now, it may perhaps be that, since the fees were actually received before the Board took definitive action, the applications should not be deemed as nugatory. See Jones v. Absecon, Bulletin 218, Item 1. However, in view of the express statutory requirement as to fees, such applications may not possibly be viewed as validly filed until August 7 or 8 at earliest, when the fees were first presented. Cf. Re Terhune, Bulletin 386, Item 1.

Such being the case, the applications were thus, at best, not actually "filed" until almost forty days had elapsed after expiration of Virgilio's and Trezza's last license (June 30, 1940).

Under the original ruling of this Department, the test whether this break in time between expiration of their old licenses and filing of applications for the current term converted Virgilio and Trezza into applicants for new rather than renewal licenses would depend upon whether there had been an intent to abandon the business during that lapse. See Re Hall, Bulletin 356, Item 2, and cases there cited.

However, the Alcoholic Beverage Law, by a supplement in 1939, has changed this test and now specifically requires that the holder of an expiring or expired license must, to qualify for renewal of that license for the ensuing term, actually file his "application for said renewal.....not later than thirty days after the commencement" of the renewal term - viz., not later than thirty days after July 1. See P.L. 1939, c. 281. Also see Re New Legislation, Bulletin 344, Item 10.

Since the Virgilio and Trezza applications for current license were filed beyond this statutory 30-day period of grace, they must hence necessarily be viewed as applications not for renewal but for new licenses.

I see no merit to appellants' claim that their attorney, who was handling their applications for them, was misled by an informal talk with a member of respondent into believing that their fees could legally be posted beyond the thirty-day period without prejudicing their standing as renewal applicants, or to their claim that respondent, when considering their applications, agreed to look upon Virgilio and Trezza as such renewal applicants. I question whether the facts actually sustain this claim. However, in any event, the statutory requirement is mandatory and the burden of complying therewith falls squarely upon the applicant and may not be waived or modified by a local issuing authority or any of its members.

Since, in view of the foregoing, it thus appears that Orange has a formal quota of plenary retail consumption licenses in which no vacancy exists and that Virgilio and Trezza failed to come within the sole exception as to renewals, their applications for license for the current term were necessarily barred by that quota and hence the denial of such applications must be affirmed.

It follows perforce that respondent's action in not granting the applications for transfer of the sought licenses must likewise be sustained.

Accordingly, it is, on this 4th day of January, 1941,

ORDERED, that these appeals be and hereby are dismissed.

E. W. GARRETT,
Acting Commissioner.

2. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2 (as amended)
by Chapter 350, P.L. 1938).)

CONCLUSIONS
AND ORDER

Case No. 126)
-----)

In 1920 the petitioner, then about twenty-one years of age, was convicted on a charge of carrying concealed weapons and was sentenced to the State House of Correction, Marquette, Michigan; in 1922 he was convicted in the Passaic Quarter Sessions Court on a charge of unlawful possession and transportation of liquor and was fined \$150.00; in 1925 he was found guilty of carrying a concealed weapon and was fined \$25.00; in 1927 he was convicted of selling liquor and was fined \$250.00; in 1934 he was convicted of a charge of conspiracy involving slot machines, was fined \$1,000.00 and sentenced to State's Prison at Trenton for a term of two years and six months to three years, and was released on probation on December 7, 1935.

At the hearing petitioner testified that he has resided for the last five years, with his wife and child, in the municipality wherein he now lives; that he owns his own home and that during the past five years he has been and is now employed as a cigar salesman in an adjacent municipality where most of his relatives live and where the greater part of his business and social activities take place.

On behalf of the petitioner, three character witnesses, his present employer, a captain of detectives and a lawyer, all residing in the adjacent municipality, testified that petitioner had been leading an honest and law-abiding life during the last past five years. All three witnesses testified that petitioner, after his release in December 1935, has turned over a new leaf.

Petitioner's fingerprint record shows that he has not been arrested on any occasion or convicted of any crime since 1934. The Chief of Police in the municipality wherein petitioner resides has certified that there are no pending complaints or investigations against him.

It is concluded, despite his unsavory past record, that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

It is, therefore, on this 3rd day of January, 1941,

ORDERED, that his statutory disqualification because of the convictions described herein be and the same is hereby lifted in accordance with the provisions of R. S. 35:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

3. APPELLATE DECISIONS - PURSEL v. PHILLIPSBURG and TIRRELL.

NOTICE OF APPLICATION IMPROPERLY ADVERTISED - ISSUANCE REVERSED.

JOHN H. PURSEL,)
Appellant,)
-vs-)
BOARD OF COMMISSIONERS OF THE)
TOWN OF PHILLIPSBURG and JAMES)
E. TIRRELL (trading as MEADOW)
VIEW RESTAURANT),)
Respondents.)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

John H. Pursel, Esq., Pro Se.
Frank J. Kingfield, Esq., by Robert B. Meyner, Esq., Attorney
for Respondent, James E. Tirrell.
No Appearance for Respondent, Board of Commissioners.

On August 31, 1940 James E. Tirrell, on application therefor, obtained a plenary retail consumption license from the Phillipsburg Board of Commissioners for 58 Market Street, Phillipsburg. Several days later Tirrell applied for, and on September 18 was granted, transfer of this license to the corner of North Main

and Third Streets in the Town. Thereafter, on September 24, John H. Pursel, a resident and taxpayer in the Town who had objected to the issuance of Tirrell's license (but not to the transfer), filed the instant appeal which is solely from the issuance.

However, it is not fatal that appellant, in thus taking appeal, did not likewise appeal from transfer of the license. Under the Alcoholic Beverage Law he had full thirty days within which to appeal from issuance of the license. See R. S. 33:1-22. Such statutory right of appeal is not destroyed by the licensee's obtaining, within that thirty-day period, a transfer of the license. If Pursel's appeal from the issuance be well taken, the license must be reversed and ipso facto the transfer of such license necessarily falls.

Appellant, in attacking such issuance, contends, inter alia, that Tirrell, when applying for the license, failed to comply with the requirement in the Alcoholic Beverage Law that such applicant advertise notice of his application once a week, for two weeks successively, in a qualified newspaper. See R. S. 33:1-25.

Actually, Tirrell, at best, properly advertised notice of that application only on August 29, when he placed such advertisement in the "Phillipsburger", a weekly newspaper in the Town with a circulation there of six thousand copies. Although he had previously attempted to advertise on August 28 as well, nevertheless, when seeking to put such notice in the "Phillipsburger" on that date, he discovered that he was too late to make the weekly paper's only edition. Thereupon, to save time, Tirrell, through his uncle, arranged with the publisher of the paper to print a special late edition of some four or five hundred copies on that same date containing the identical make-up as the regular edition with the exception that a marriage item was deleted and Tirrell's notice inserted in its place. The uncle paid the publisher for this job, was given all the copies, left some ten or fifteen such copies at the Phillipsburg Town Hall, and avowedly gave the remainder to three boys (one a newsboy) to distribute as they saw fit, but, so far as appears, he does not know what they actually did with them.

It is readily apparent that publication of the notice in this "special edition" may by no means be deemed a proper advertisement. The plain purpose of the statute in requiring the advertising of notice in a newspaper is to bring home to the public at large notice of the application being made. In view of such purpose it is clear that the statute, by reasonable construction, requires that the advertisement appear in a regular edition which the newspaper puts out and distributes and not, as here, in a "freak" or special limited edition of comparatively few copies which it prints as a private job for a particular person and delivers over in toto to him.

Hence Tirrell failed to comply with the statutory requisite of two proper advertisements of notice of intention.

There is no merit to the claim that, since Tirrell in any event properly advertised notice as to transfer of the license with no one lodging protest, the defect in advertisement on the original application for license should therefore be viewed as having apparently misled or prejudiced no one and hence be deemed inconsequential or else as having been substantially corrected by the proper advertisement on the application for transfer.

The fallacy in such claim is that, by possibility, persons, on seeing Tirrell's notice of application for transfer and thus realizing that he had already obtained a license, might not have objected to such transfer, whereas they would, had they been originally apprised of his application for the license itself, have made vigorous protest against its issuance. In view that there is no way of tallying every person in the public at large to determine whether he was thus actually prejudiced, the possibility of such prejudice can never be adequately dispelled.

It thus appears that Tirrell's defective advertisement of notice on his original application must be viewed as substantial. Since proper advertisement of notice is a jurisdictional requisite, such defect is, therefore, necessarily fatal to Tirrell's original application even though Tirrell may not have deliberately intended any fraud upon the public by it and even though the Phillipsburg Board apparently granted the license despite such defect. See Parker v. Newark et als., Bulletin 425, Item 12, and items there cited.

In view of the foregoing, and without need of inquiring into additional issues raised by appellant or suggested by the facts, the action of the Phillipsburg Board in granting Tirrell's license (and in later transferring such license) must necessarily be reversed.

Accordingly, it is, on this 4th day of January, 1941,

ORDERED, that the action herein of the Board of Commissioners of the Town of Phillipsburg, in granting a plenary retail consumption license to James E. Tirrell for 38 Market Street and transferring such license to the corner of North Main and Third Streets, in Phillipsburg, be and is hereby set aside, effective immediately; and it is further

ORDERED, that all operations under said license cease forthwith.

E. W. GARRETT,
Acting Commissioner.

4. SEIZURES - CONFISCATION PROCEEDINGS ARE "IN REM", AGAINST THE SEIZED PROPERTY, AND ARE UNAFFECTED BY A "NOLLE PROS" IN THE CRIMINAL CASE - ALCOHOLIC BEVERAGES FORFEITED.

In the Matter of the Seizure on) Case No. 5439
June 3, 1939 of a 50-gallon)
barrel of wine from Vincent) ORDER
Barcellona, at 641 - 15th Ave.,)
in the City of Newark, County)
of Essex and State of New Jersey.)
-----)

Bozza & Bozza, Esqs., by Samuel D. Bozza, Esq., Attorneys
for Vincent Barcellona.
Harry Castelbaum, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

On June 10, 1940 an order was entered confiscating a quantity of wine which had been seized from Vincent Barcellona at 641 - 15th Avenue, Newark. The order had been entered because no

one had appeared at the original hearing to contest forfeiture and because no permit or license had been issued to him to manufacture or sell wine. Thereafter, and before the wine had been disposed of, Barcellona requested an opportunity to present his defense to the confiscation of the wine. Such request was granted and a hearing was held.

A motion was made by counsel that the Department should return the seized property to Barcellona because the criminal case involving the alleged sale of the wine had been "nolle prossed"; because the "nolle pros" is conclusive, a termination of all proceedings, and, therefore, res adjudicata as to the alleged sale of alcoholic beverages. The "nolle pros" was entered after the jury had disagreed.

This contention is without merit, since this is a separate proceeding, entirely apart from any criminal proceeding. The sole purpose of this proceeding, under the Alcoholic Beverage Law, is to determine whether the seized property should be confiscated because it is unlawful property. R. S. 33:1-66. In the case of Severall Items of Personal Property, etc. v. United States of America, 282 U. S. 577, 75 Law Ed. 558, the court said:

"A forfeiture proceeding is in rem. It is the property which is proceeded against, and, by resort to a legal fiction, held guilty and condemned as though it was conscious instead of inanimate and insentient. In a criminal prosecution it is the wrongdoer in person who is proceeded against, convicted and punished. The forfeiture is no part of the punishment for the criminal offense. The provision of the 5th amendment to the Constitution in respect of double jeopardy does not apply."

The effect of a "nolle pros" in the criminal proceeding is to put the defendant without day; but it does not operate as an acquittal. He may afterwards be reindicted. Without deciding whether an acquittal in the criminal proceeding would constitute res adjudicata in this proceeding "in rem", it is sufficient to point out that Barcellona was never acquitted.

The motion will be denied.

Testimony developed that the wine was seized on June 3, 1939 as a result of a search warrant issued and based on an affidavit that a "buy" of wine had been made at the above address on May 25, 1939. The investigator who made the "buy" testified that on that date he, having become a customer at Barcellona's meat store, had expressed a desire to obtain some good wine and as a result, had been invited by Barcellona to accompany him to his home nearby to partake of some; that he went to Barcellona's home and in the cellar drank two glasses of wine, and, after expressing a desire to Barcellona to purchase some of the wine, did buy a quart from him for fifty cents.

Barcellona denied that he sold the investigator any wine at any time; he stated that he gave the investigator a quart of wine as a gift; that the 35 gallons of wine which were seized were the remainder of some 175 gallons of wine which he had made in 1932; that he has never sold any wine and has never been arrested or convicted of any crime.

It seems improbable that Barcellona would invite a total stranger, albeit a customer, into his home, and there, after giving him free drinks, further offer to him a bottle to take home. I do not believe that Barcellona manufactured the wine in 1932 (before Repeal), but assuming that he did manufacture the wine in 1932, then the wine is illicit because of the unlawful sale which he made to the investigator. Hence Barcellona has shown no good reason why the wine should be returned to him.

The wine will be confiscated in conformance with the order of June 10, 1940.

E. W. GARRETT,
Acting Commissioner.

Dated: January 4, 1941.

5. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

COHANZICK COUNTRY CLUB,
W/S Bridgeton to Fairton Co. Road,
Fairfield Township,
P.O. Bridgeton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-1, issued by the Township Committee of the Township of Fairfield.)
-----)

George H. Stanger, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges that on November 20, 1940 it possessed five jack-pot slot machines which may be used for the purpose of playing for money or other valuable thing, devices designed for the purpose of gambling, in violation of Rules 7 and 8 of State Regulations No. 20.

The Department file discloses that the jack-pot machines in the instant case are substantially identical with the Mills Jackpot slot machine described in Re Ukrainian National Home, Bulletin 433, Item 10, and the Keystone Jackpot slot machine described in Re Atlantic City Tuna Club, Bulletin 433, Item 11. In the present case, however, the investigators did not play the machine. Whether or not the machine was actually used for gambling purposes is immaterial. Re Silberberg, Bulletin 436, Item 9, and the cases therein cited.

The license will, therefore, be suspended for a period of ten days.

By entering a guilty plea in ample time before the date set for hearing, the licensee has saved the Department the time and expense of proving its case, for which five days of the penalty will be remitted.

Accordingly, it is, on this 6th day of January, 1941,

ORDERED, that Club License CB-1, heretofore issued to Cohanzick Country Club by the Township Committee of the Township of Fairfield, be and the same is hereby suspended for a period of five (5) days, effective January 13, 1941, at 7:00 A.M.

E. W. GARRETT,
Acting Commissioner.

6. ACTIVITY REPORT FOR DECEMBER, 1940

To: E. W. Garrett, Acting Commissioner

ARRESTS: Total number of persons - - - - - 30
Licensees - 1 Non-licensees - 29

SEIZURES: Stills - total number seized- - - - - 9
Capacity 1 to 50 Gallons- - - - - 2
Capacity 50 Gallons and over- - - - - 7

Motor Vehicles - total number seized- - - - - 5
Trucks - 1 Passenger cars - 4

Alcohol
Beverage Alcohol- - - - - 176 Gallons

Mash - total number of gallons- - - - - 30550

Alcoholic Beverages
Beer, Ale, etc. - - - - - 22 Gallons
Wine- - - - - 1680 "
Whiskies and other hard liquor- - - - - 267 "

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1540

Violations disclosed:

Illicit (bootleg) liquor- - - - - 5
Gambling violations - - - - - 3
Sign violations - - - - - 13
Unqualified employees - - - - - 78
Other mercantile business - - - - - 3
Disposal permits necessary- - - - - 4
"Front" violations- - - - - 5
Improper beer markers - - - - - 4
Other violations found- - - - - 10

Total violations found- - - - - 125

Total number of bottles gauged- - - - - -12758

STATE LICENSEES:

Plant Control inspections completed - - - - - 59
License applications investigated - - - - - 7

COMPLAINTS:

Investigated and closed - - - - - 224
Investigated, pending completion- - - - - 411

LABORATORY:

Analyses made - - - - - 103
Alcohol and water and artificial coloring
cases- - - - - 16
Poison and denaturant cases - - - - - 0

HEARINGS HELD:

Appeals - - - - - 6
Disciplinary proceedings- - - - - 21
Seizure - - - - - 15
Eligibility - - - - - 15

Respectfully submitted,
S. B. White,
Chief Inspector.

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

7. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1st, 1940
TO DECEMBER 31st, 1940 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail <u>Consumption</u>		Plenary Retail <u>Distribution</u>		<u>Club</u>	Limited Retail <u>Distribution</u>		Seasonal Retail <u>Consumption</u>		Number Surren- dered Revoked Expired	Number Licen- ses in Effect	Total Fees Paid	
	No. Issued	Fees Paid	No. Issued	Fees Paid		No. Issued	Fees Paid	No. Issued	Fees Paid				
Atlantic	465	172,777.67	60	21,050.00	14	1,258.76			3	407.61	4	538	195,494.04
Bergen	815	269,369.75	239	58,033.41	49	4,602.06	35	1,585.00	6	1,134.96	6	1138	334,725.18
Burlington	187	59,220.76	17	3,612.72	29	3,425.27	1	25.00			1	233	66,283.75
Camden	447	188,416.25	51	18,643.28	57	5,387.40			4	890.94	4	555	213,337.87
Cape May	125	43,748.08	12	3,050.00	5	500.00					2	140	47,298.08
Cumberland	75	21,445.89	8	1,823.35	26	2,739.03						109	26,008.27
Essex	1422	714,370.64	353	167,133.80	83	10,693.80	19	942.14	1	224.68	1	1877	893,365.06
Gloucester	112	30,974.67	9	1,237.63	7	430.69						128	32,642.99
Hudson	1629	669,771.03	279	111,241.59	49	6,004.10	52	2,120.69			1	2008	789,137.41
Hunterdon	85	22,466.78	1	200.00	1	150.00					1	86	22,816.78
Mercer	440	184,646.60	43	11,100.00	35	4,440.00			1	97.20	1	518	200,283.80
Middlesex	615	239,116.36	42	11,628.41	34	2,690.21	1	25.00	3	491.52	5	690	253,951.50
Monmouth	515	208,368.48	73	20,511.63	22	2,493.84	9	317.71	32	9,091.90	38	613	240,783.56
Morris	341	100,890.83	71	17,761.50	29	2,276.03	1	25.00	12	1,797.42	14	440	122,750.78
Ocean	181	88,629.00	30	10,760.00	7	699.45						218	100,088.45
Passaic	901	346,033.69	123	35,178.60	28	3,425.00	18	797.81	2	327.77	5	1067	385,762.87
Salem	50	15,750.00	4	550.00	9	725.00						63	17,025.00
Somerset	189	64,636.75	22	5,025.00	10	972.26						221	70,634.01
Sussex	153	33,741.19	12	1,868.12	4	210.00			4	548.92	5	173	36,368.23
Union	556	273,367.60	125	41,857.88	61	7,150.00	19	875.00	2	592.57	5	758	323,843.05
Warren	137	38,006.61	15	2,529.79	17	1,819.18	1	35.00	4	517.50	6	168	42,908.08
TOTALS	9445	3,785,748.63	1589	544,796.71	576	62,092.08	156	6,748.35	74	16,122.99	99	11741	4,415,508.76

E. W. GARRETT, Acting Commissioner

Report for six month period ending December 31, 1940.

Respectfully submitted,
Erwin B. Hock,
Deputy Commissioner.

8. NEW LEGISLATION - TIED HOUSES - MORATORIUM EXTENDED TO
JUNE 6, 1941.

Senate Bill No. 356 was approved by the Governor on December 20, 1940, and thereupon became Chapter 234, P.L. 1940.

It is effective immediately.

It reads:

"AN ACT concerning alcoholic beverages, and amending section 33:1-43 of the Revised Statutes.

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

"1. Section 33:1-43 of the Revised Statutes is hereby amended to read as follows:

"33:1-43. It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever interested in any way whatsoever in any brewery, winery, distillery or rectifying and blending plant, or any wholesaler of alcoholic beverages, to conduct, own either in whole or in part, or be directly or indirectly interested in the retailing of any alcoholic beverages except as provided in this chapter, and such interest shall include any payments or delivery of money or property by way of loan or otherwise accompanied by an agreement to sell the product of said brewery, winery, distillery, rectifying and blending plant or wholesaler. Prior to June sixth, one thousand nine hundred and forty-one, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages. On and after June sixth, one thousand nine hundred and forty-one, the ownership of or mortgage upon or any other interest in licensed premises if such ownership, mortgage or interest existed on December sixth, one thousand nine hundred and thirty-three, shall not be deemed to be an interest in the retailing of alcoholic beverages; provided, none of the products of the brewery, winery, distillery, rectifying and blending plant, or wholesaler, is sold directly or indirectly at the licensed premises.

"It shall be unlawful for any owner, part owner, stockholder or officer or director of any corporation, or any other person whatsoever, interested in any way whatsoever in the retailing of alcoholic beverages to conduct, own either in whole or in part, or to be a shareholder, officer or director of a corporation or association, directly or indirectly, interested in any brewery, winery, distillery, rectifying and blending plant, or wholesaling or importing interests of any kind whatsoever outside of the State.

"No interest in the retailing of alcoholic beverages shall be deemed to exist by reason of the ownership, delivery or loan of interior signs designed for and exclusively used for advertising the product of or product offered for sale by such brewery, winery, distillery or rectifying and blending plant or wholesaler.

"2. This act shall take effect immediately."

9. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - FATHER AND SON - BOTH QUALIFIED - NO APPARENT FRAUDULENT PURPOSE OR INTENT - 5 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

FRANK SOWA,)
Bordentown Amboy Turnpike,)
P.O. Old Bridge, N.J.,)

Holder of Plenary Retail Consumption Licenses C-16 for fiscal years 1939-40 and 1940-41, issued by the Borough Council of the Borough of Sayreville, and transferred during the pendency of these proceedings to)

HARRY SOWA,)
Bordentown Amboy Turnpike,)
Sayreville,)
P.O. Old Bridge, N.J.)

CONCLUSIONS AND ORDER

Stanton J. MacIntosh, Esq., Attorney for the State Department of Alcoholic Beverage Control.

Frank Sowa, Pro Se.

The defendant-licensee, Frank Sowa, is charged (1) with falsely stating in his application for license for the licensing year 1939-40 that no individual other than himself had any interest in the license applied for or in the business to be conducted under the license, whereas, in fact, his father, Harry Sowa, had such an interest, and (2) with aiding and abetting said Harry Sowa, a non-licensee, to exercise the rights and privileges of his license.

Harry Sowa, owner of the premises and father of the present licensee, operated the licensed business at the above address, under licenses issued in his name, from 1934 to July 1, 1939. He testified that, because he was getting old and infirm, he decided, some time in 1939, to turn the business over to his son, Frank; that he decided, however, that actual transfer of the financial interest in the business would be deferred until the son, who was but twenty-two years of age, had acquired experience, under the tutelage of his father, in the operation of the business.

License for the year 1939-40, thereupon, was taken out in the name of the son and his "apprenticeship" was started. The father, however, continued to exercise dominion over the business - retaining ownership and control over the premises, fixtures and stock, and continuing to support the family, including the licensee, with the proceeds taken in by the business.

Although both father and son testified that they had not considered the former's control and financial interest, due to the close family relationship and the planned succession of the son to the business, to have constituted an undisclosed "interest" in the license or licensed business, it is clear from the foregoing that Harry Sowa did have such an interest and that Frank Sowa aided and abetted his father, a non-licensee, to exercise the rights and privileges of his license.

I find the defendant-licensee guilty as charged.

As to penalty: There is nothing in the record which would indicate that the placing of the liquor license in the son's name was motivated by any fraudulent purpose or intent. The father was a former licensee and, apparently, fully qualified during the time that the license was in the son's name. I am satisfied, after reviewing the entire record, that the arrangement was purely a family affair, designed to accomplish family purposes.

Subsequent to issuance of the renewal license for the current licensing year, the license was transferred from the son back to the father. This transfer has corrected the situation.

Technical "front" cases, such as the instant case, involving the non-disclosure, without intent to deceive or defraud, of the interest of other close members of a family, who are fully qualified in their own right, have been treated in a lenient manner where correction has been made or is contemplated. Where, under these circumstances, the license has been obtained in the name of a wife without disclosing the interest of her husband, "front" charges have been dismissed upon correction of the situation. Re Waldman, Bulletin 404, Item 11; Re Mascolo, Bulletin 427, Item 7. But where, under similar circumstances, the interest of another qualified member, or members, of a family, other than a husband or wife, has not been disclosed, suspension of license for five days has been imposed. Re DiGiovanni (brothers), Bulletin 401, Item 6.

A five-day suspension, therefore, will be imposed in the instant case.

This proceeding, although instituted during the last licensing term which expired June 30, 1940, does not abate but remains effective against the defendant-licensee's successor in interest. State Regulations No. 15.

Accordingly, it is, on this 6th day of January, 1941,

ORDERED; that Plenary Retail Consumption License C-16, heretofore issued to Frank Sowa by the Borough Council of the Borough of Sayreville, and transferred during the pendency of these proceedings to Harry Sowa, be and the same is hereby suspended for five (5) days, effective January 13, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

10. RECAPITULATION OF ENFORCEMENT DIVISION ACTIVITY FOR PERIOD FROM JULY 1ST
TO DECEMBER 31ST, 1940, INCL.

To: E. W. Garrett, Acting Commissioner

<u>ARRESTS</u>	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>OCT.</u>	<u>NOV.</u>	<u>DEC.</u>	<u>TOTALS</u>
Licensees	0	2	0	3	0	1	6
Non-licensees	26	35	30	22	16	29	158
Total number	26	37	30	25	16	30	164
<u>SEIZURES</u>							
<u>Stills</u>							
1 to 50 Gal. capacity	9	5	5	4	2	2	27
Over 50 Gal. capacity	5	2	5	5	5	7	29
Total number	14	7	10	9	7	9	56
<u>Motor Vehicles</u>							
Trucks	1	1	0	0	2	1	5
Passenger Cars	2	6	7	4	1	4	24
Total number	3	7	7	4	3	5	29
<u>Alcohol</u>							
Beverage alcohol (Gal.)	3	259	130	43	13	176	624
<u>Mash</u>							
Total number gallons	3615	1715	6650	8704	19394	30550	70628
<u>Alcoholic Beverages</u>							
Beer, Ale, etc. (Gal.)	35	603	59	10	18	22	747
Wine (Gal.)	806	31	322	10	133	1680	2982
Whiskies and "hard liquor"	60	151	334	89	54	267	935
<u>RETAIL INSPECTIONS</u>							
Licensed premises inspected	1348	1891	1711	2123	1625	1540	10238
Illicit (bootleg) liquor	7	13	9	12	7	5	53
Gambling violations	1	8	5	5	9	3	31
Sign violations	19	32	14	26	20	13	124
Unqualified employees	225	287	117	150	207	78	1064
Other mercantile business	11	10	2	5	7	3	38
Disposal permits necessary	8	16	14	10	14	4	66
"Front" violations	9	6	7	6	3	5	36
Improper beer markers	6	0	3	6	3	4	22
Other violations found	2	7	15	13	11	10	58
Total violations found	288	379	186	233	281	125	1492
Number of bottles gauged	12606	19258	16320	18289	13980	12758	93211
<u>STATE LICENSEES</u>							
Plant Control inspections completed	92	144	104	90	54	59	543
License applications investigated	17	13	8	10	13	7	68
<u>COMPLAINTS</u>							
Investigated and closed	218	274	298	230	172	224	1416*
<u>LABORATORY</u>							
Analyses made	73	167	120	101	101	103	665
Alcohol and water and artificial coloring	21	23	25	22	17	16	124
Poison and denaturant cases	0	0	2	1	1	0	4

Respectfully submitted,

S. B. White,
Chief Inspector.

*411 complaint investigations
pending at end of year.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN PROOF, COLOR AND SOLID CONTENT - FIRST CONVICTION AFTER PREVIOUS WARNING - 15 DAYS' SUSPENSION, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

HENRY KALFUS, 147 Mulberry Street, Newark, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-479, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

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Daniel G. Kasen, Esq., Attorney for the Defendant-Licensee. Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

On November 19, 1940 Federal agents took four partly filled bottles of assorted brands of alcoholic beverages from the back bar of licensee's tavern. The Federal Chemist, from his analysis of the contents of those bottles, concluded that the liquor contained in one of the bottles varied from genuine samples similarly labeled used for comparative purposes, in proof, color and solid content, and the other three bottles contained alcoholic beverages which were lower in proof than labeled.

The "refilled" liquors constituted illicit beverages. Re Haney, Bulletin 304, Item 13. Hence the defendant's mere possession of such at his tavern was a violation of the Alcoholic Beverage Law (R. S. 33:1-50), for which he is strictly accountable, even though he be personally innocent of the refilling.

The licensee is unable to account for the fact that the bottles contained liquor not genuine as labeled. Nevertheless it does not relieve him from his responsibility for the violation.

Under these circumstances the licensee has pleaded guilty to the charge preferred against him.

As to the penalty: There is no evidence that the licensee himself refilled the bottles or acquiesced in the refilling. Ordinarily the defendant's license would, in view of the principles set forth in Re Orbach, Bulletin 406, Item 10, be suspended for ten days. However, since the licensee had been warned by this Department about allegedly refilled liquor found at his tavern, his license will be suspended for fifteen (15) days. Re Novack, Bulletin 406, Item 11.

Accordingly, it is, on this 6th day of January, 1941,

ORDERED, that Plenary Retail Consumption License C-479, heretofore issued to Henry Kalfus by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of fifteen (15) days, effective January 13, 1941, at 3:00 A.M.

New Jersey State Library E.W. Barrett Acting Commissioner.