

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

BULLETIN 560

APRIL 5, 1943.

- 1. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 5 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

TOP ROAD TAVERN
1042-44 Brunswick Ave.
Trenton, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-276 for the fiscal year 1940-41, and now holder of Plenary Retail Consumption License C-276 for the current (1942-43) year, issued by the Board of Commissioners of the City of Trenton.

Nathan L. Jacobs, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

There was served on the licensee a copy of the following charge:

"Since on or about July 1, 1939 and until the present time, you knowingly aided and abetted Alice Amber and Jerry Amber, non-licensees, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

In this case the Department has been greatly handicapped by its inability to secure the testimony of a very important witness, Harry F. Witzel, who has been inducted into the Army. The sole testimony was that offered by the defense, plus some documentary evidence.

The documentary evidence herein and the evidence given at the hearing by Mrs. Wagman seems to confirm the following facts: Mrs. Wagman started the business in order to furnish employment for her son-in-law, Jerry Ambers, the husband of her daughter Alice, who in 1939 being out of employment moved from the State of New York to Trenton. Mrs. Wagman invested all the moneys ever invested in the business and used the corporation front by advice of counsel although she was entirely eligible to hold a license in her individual name and of course could have held all the corporate stock likewise. Said legal advice seems to have been given because of Mrs. Wagman's fear of a possible local ordinance or rule that would prevent one person from holding or being interested in more than one license. I am persuaded that Mrs. Wagman intended at some future date to give her daughter and son-in-law a substantial interest in the business but that she has not to date given effect to this intention.

The explanation of the money withdrawn by the Ambers shortly after the corporation started business as a loan is consistent with all the testimony. All of the moneys advanced were within a short period between July 12, 1939 and October 27, 1939, and there is no evidence that any moneys in addition to salaries have been advanced to the Ambers or withdrawn by them since that time.

The charge of a "front" for the Ambers has not been proved and the record of the Department shows that the Ambers are employed in the licensed premises under an employment permit issued by the Department.

When the corporation was organized, 46 shares were issued in the name of Harry F. Witzel, who thereafter was employed as a bartender on the licensed premises. The applications for the renewal of this license for the years 1939-40 and 1940-41 failed to disclose the interest of Mrs. Wagman in the stock held by Harry Witzel. In the original 1939 application, the amended 1939 application and the 1940 application, question No. 23, "Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest directly or indirectly in the stock held by said stockholders?" was answered in the negative. In fact, Mrs. Wagman (nowhere on the application listed as a stockholder) was the sole owner of at least 96% of the stock. This false answer in the application is a direct violation of R. S. 33:1-25 and for the purpose of these proceedings we will consider the charge to be amended in accordance with the consent of counsel for defendant so that the charge we are considering now will be:

The defendant falsely stated "No" in answer to question No. 23 in the applications filed with the Board of Commissioners of the City of Trenton in 1939 and 1940 when in truth and fact Anna Wagman had such an interest in the shares held by Harry Witzel, said false statement being in violation of R. S. 33:1-25.

We will then consider testimony of Mrs. Wagman and the statement of her attorney in his opening remarks as a plea of guilty to the amended charge.

Mrs. Wagman has always been fully qualified to hold these shares in her own name. She has held retail consumption licenses in this state for some time and until 1940, when she retired from the business now conducted by her son, Joseph Wagman.

The unlawful condition has now been corrected. In fact, the evidence tends to show that the condition was corrected during the course of the Department's investigation, as early as August 1940, when the 48 shares representing 96 per cent of interest in the corporation were transferred from Harry Witzel to Anna Wagman.

The questions asked of applicants in their application are designed purposely to give the licensing authorities all information pertinent to the application and, particularly, to the actual beneficial owners of the license to be issued by virtue of said application. The law requires the application to be sworn to as a further effort to induce the applicants to tell the absolute truth. The Department must insist that a truthful answer to every question asked in the application is essential to the granting of the license.

In view of the correction of the "front" and the fact that Mrs. Wagman was never actually disqualified, and the full admission

and consent of the licensee in amending the charge to fit the evidence, I will find the licensee guilty as in said amended charge and impose a penalty of five days. Re Bressler, Bulletin 525, Item 1, Re Dressler, Bulletin 457, Item 6 and Re Kloeber, Bulletin 453, Item 5.

Although this proceeding was instituted during the 1940-41 licensing period, it does not abate but remains effective against the defendant's renewal license for the current fiscal year. State Regulations No. 15.

Accordingly, it is, on this 25th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-276, issued by the Board of Commissioners of the City of Trenton to Top Road Tavern for premises 1042-44 Brunswick Avenue, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2:00 A. M. March 29, 1943, and terminating at 2:00 A. M. April 3, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 2. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - LICENSEE PAID FINE OF \$50.00 - LICENSE SUSPENDED FOR 35 DAYS IN DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT GRANTED.

In the Matter of Petition to lift the automatic suspension of Plenary Retail Consumption License C-6 issued by the Common Council of the City of Somers Point to
FREDERICK DI ORIO
for premises at
Bass Harbor and Longport Blvd.,
Somers Point, N. J.

ON PETITION
CONCLUSIONS AND ORDER

Joseph Bernard Kauffman, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from the records of this Department, and also from a letter sent to me by the attorney for petitioner, which I shall consider in lieu of a formal petition for relief, that on March 24, 1943 Frederick Di Orio pleaded non vult in the Atlantic County Quarter Sessions Court to an indictment for selling wine to a minor, whereupon the Court sentenced him to six months' imprisonment, suspended the sentence; placed him on probation for one year and ordered him to pay a fine of \$50.00. Because of said conviction, petitioner's license has been automatically suspended. R. S. 33:1-31.1. He now requests me to lift said automatic suspension.

This case concerns the sale of alcoholic beverages to a minor on May 15, 1941. Disciplinary proceedings, because of said sale and because of another unrelated violation, were instituted by me against the petitioner, as a result of which License C-7, which he held for the fiscal year 1941-42, was suspended for forty days, less five days

for a guilty plea, or a net suspension of thirty-five days. This suspension was effective from May 14, 1942 to June 18, 1942. Re Di Orio, Bulletin 509, Item 8.

Petitioner has no other record. In view of the fact that his license has already been suspended for a sufficient period of time because of the violation which subsequently resulted in his conviction in the criminal court, I conclude that the licensee has been sufficiently punished and, hence, I shall lift the automatic suspension of his license, effective immediately.

Accordingly, it is, on this 25th day of March, 1943,

ORDERED, that the automatic suspension of Plenary Retail Consumption License C-6, issued for the present fiscal year by the Common Council of the City of Somers Point to Frederick Di Orio, for premises at Bass Harbor and Longport Boulevard, Somers Point, be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER EXPIRATION OF 25 DAYS AND APPROVAL OF BONA FIDE TRANSFER OF LICENSE BY LOCAL ISSUING AUTHORITY - TRANSFER OF LICENSE APPROVED BY LOCAL ISSUING AUTHORITY - SUSPENSION IN EFFECT FOR 25 DAYS - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against)
)
 IDA RILEY)
 17 Third Avenue)
 Long Branch, N. J.,)
)
 Holder of Plenary Retail Consumption License C-41 issued by the)
 Board of Commissioners of the)
 City of Long Branch.)
 -----)

ON PETITION
ORDER

Frank Squillante, Petitioner, Pro Se.

BY THE COMMISSIONER:

On March 5, 1943 I suspended defendant's license for the balance of its term, effective immediately, after she had pleaded guilty to a charge of allowing a disturbance and brawl upon her licensed premises. The order of suspension provided that, if and when a transfer of said license to Frank Squillante was granted by the local issuing authority, application might be made to me by him to vacate said suspension, and said order provided further that in no event would the suspension be vacated prior to the expiration of twenty-five days from the effective date thereof. Re Riley, Bulletin 557, Item 6.

Pursuant to the provisions of said order, Frank Squillante has filed with me a petition wherein he states, among other things, that on March 23, 1943 the Board of Commissioners of the City of Long Branch transferred License C-41 from Ida Riley to Frank Squillante subject to the suspension heretofore imposed, and wherein he requests that the said suspension be lifted at the expiration of twenty-five

days from the effective date thereof. A certificate received from the City Clerk of the City of Long Branch confirms the facts set forth in the petition as to the transfer of the license.

Twenty-five days of the suspension heretofore imposed will expire on March 30, 1943.

Accordingly, it is, on this 26th day of March, 1943,

ORDERED, that the suspension heretofore imposed by lifted, and that Plenary Retail Consumption License C-41, originally issued to Ida Riley and thereafter transferred to Frank Squillante, be restored to full force and operation, effective at 7:00 A.M. March 31, 1943.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN HOLDER OF EMPLOYMENT PERMIT TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF R.S. 33:1-26 AND RULE 3 OF STATE REGULATIONS NO. 11 - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-26 - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

ANTONI LUDANSKI)
102 Houghton Avenue)
Trenton, N. J.,)

Holder of Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the City of Trenton.)
-----)

CONCLUSIONS
AND
ORDER

In the Matter of Disciplinary Proceedings against)

MARIE KOVRINE)
102 Houghton Avenue)
Trenton, N. J.,)

Holder of Employment Permit No. 6412, issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

Antoni Ludanski, Pro Se.
Marie Kovrine, Pro Se.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of permitting his employee, Marie Kovrine, who holds an employment permit for a person disqualified by reason of being an alien, to sell alcoholic beverages in violation of R. S. 33:1-26 and also in violation of Rule 3 of State Regulations No. 11. The defendant-permittee has pleaded guilty to the charge of selling alcoholic beverages contrary to the condition upon which her employment permit was issued.

Both proceedings will be treated and disposed of herein since they arise out of the same transaction.

It appears that, on January 20, 1943, investigators of this Department were served alcoholic beverages by the defendant-permittee on the premises of the defendant-licensee. The sale is admitted by the licensee and permittee. In mitigation, the licensee stated that the permittee sold the alcoholic beverages just before closing time due to the fact that a short time prior thereto the licensee, who had been tending bar, was notified that his sister was taken suddenly ill and it was necessary for him to leave the premises immediately. The licensee instructed the permittee to close the place.

Since no previous record appears against either licensee or permittee, the usual penalties of five days and thirty days, respectively, will be imposed. Two days of the licensee's suspension and five days of the permittee's suspension will be remitted because of the guilty pleas.

Accordingly, it is, on this 26th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-59, heretofore issued to Antoni Ludanski by the Board of Commissioners of the City of Trenton, for premises 102 Houghton Avenue, Trenton, be and the same is hereby suspended for a period of three (3) days, commencing at 2:00 A.M. March 31, 1943, and concluding at 2:00 A.M. April 3, 1943; and it is further

ORDERED, that Employment Permit No. 6412, heretofore issued to Marie Kovrine by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 A.M. March 31, 1943, and concluding at 2:00 A. M. April 25, 1943.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - REFILLING BOTTLE WITH WINE FOR OFF-PREMISES CONSUMPTION, IN VIOLATION OF R. S. 33:1-78 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

GEORGE WILCOX KIRBY)
T/a KIRBY'S)
419 Federal Street)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-179, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

-----)

George Wilcox Kirby, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to the following amended charge:

"On or about January 25, 1943, and prior thereto, you, not being the holder of any license so to do, bottled an alcoholic beverage for sale, in that you refilled a pint bottle with wine and sold said bottle of wine; such bottling being in violation of R. S. 33:1-78."

The statutory provision against selling alcoholic beverages in other than original containers for off-premises consumption must be adhered to scrupulously. This has been the attitude of the Department since Repeal. It was established early by the late Commissioner Burnett, in Re Simandl, Bulletin 27, Item 2. See also ruling in Re New Jersey Retail Liquor Package Stores Association, Bulletin 539, Item 16.

The act of "rebottling" is made a misdemeanor by the statute cited in the charge, R. S. 33:1-78. Re Rice, Bulletin 559, Item 5, decided March 25, 1943. However, disciplinary action by the Commissioner is provided for under the provisions of R. S. 33:1-31.

As to penalty: This is licensee's first offense of any nature and the present charge was brought before the decision in Re Rice, supra. Defendant has held a license since 1935 and, in view of the record, the guilty plea and the circumstance, I shall remit five days of the usual penalty of ten days and impose a net penalty of five days.

Accordingly, it is, on this 29th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-179, heretofore issued to George Wilcox Kirby by the Municipal Board of Alcoholic Beverage Control of the City of Camden for premises 419 Federal Street, Camden, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A.M. April 5, 1943, and terminating at 2:00 A.M. April 10, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF LICENSE PRIOR TO TRANSFER, IN VIOLATION OF R. S. 33:1-26 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

FRANCIS E. SERVIS)
685-87 North Clinton Ave.)
Trenton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-286, issued by the Board of Commissioners of the City of Trenton.)
-----)

Francis E. Servis, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to the following charge:

"From November 1, 1942, and until December 3, 1942, you exercised the rights and privileges of the plenary retail consumption license then being held by Modesto Angeletti for premises at 685-87 North Clinton Avenue, Trenton, N. J., in violation of R. S. 33:1-26."

The file discloses that on November 19, 1942 an investigator from this Department discovered that the defendant herein was operating the tavern under the license of the former owner. It appears that defendant purchased the business on November 1, 1942, whereas application for transfer of license was made on November 19, 1942. The transfer was actually granted on December 3, 1942. When defendant was originally confronted with the question as to whether or not he was the actual owner of the tavern, he denied his ownership in a signed statement. However, in a later statement, defendant herein admitted that he had purchased and operated the tavern since November 1, 1942.

R. S. 33:1-26 provides, among other things, that "Any person who shall exercise or attempt to exercise, or hold himself out as authorized to exercise, the rights and privileges of a license except the licensee and then only with respect to the licensed premises, shall be guilty of a misdemeanor." Disciplinary proceedings may likewise be instituted for the violation of the foregoing Section of the Control Law. R. S. 33:1-31. It is incumbent upon a licensee engaged in the liquor industry to adhere strictly to the law from the very beginning of his business venture.

As to penalty: Since the unlawful situation has been corrected, I shall suspend the license for a period of ten days. Re Krasilewski, Bulletin 460, Item 3; Re Fromm, Bulletin 500, Item 8; Re Wm. Hoffman & Sons, Inc., Bulletin 533, Item 4.

Accordingly, it is, on this 30th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-286, heretofore issued to Francis E. Servis by the Board of Commissioners of the City of Trenton for premises 685-87 North Clinton Avenue, Trenton, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. April 5, 1943, and terminating at 2:00 A.M. April 15, 1943.

ALFRED E. DRISCOLL
Commissioner.

7. APPELLATE DECISIONS - LEHN v. CALDWELL TOWNSHIP, CASE NO. 2.

ELFRIEDE LOUISE LEHN,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF CALDWELL,)	
Respondent)	
-----)	

Grossman & Kampelman, Esqs., Attorneys for Appellant.
Robert W. Brady, Esq., Attorney for Respondent.

BY THE COMMISSIONER.

Appellant had been previously denied a transfer of her plenary retail consumption license from her former premises at Little Falls Road, which were completely destroyed by fire, to premises on Passaic Avenue. I affirmed that denial for the reason that the area covered by the premises to which she sought transfer was too large for respondent or the applicant to control effectively. See Lehn v. Caldwell, Bulletin 538, Item 9.

Appellant thereupon entered into a new lease for only a portion of the premises on Passaic Avenue and filed another application for transfer. This appeal is from a denial of her second application.

The Township is a rural community, having a permanent resident population of about 1500 persons. Within a mile of the proposed site there is a building of the Curtiss-Wright Corporation, Propeller Division, engaged in the manufacture of equipment necessary for the defense of this country in the present war. This plant has greatly expanded its facilities since December 1941 and it is admitted that it will continue to so expand in the future. It is estimated that there are some 5,000 persons employed at this defense factory and that this number will very likely increase to a large extent. There has also been under construction, since November 1942, a miscellaneous manufacturing building of the Defense Plant Corporation, an instrumentality of the United States Government which, upon its completion, will represent an investment of upwards of three and a half million dollars and will be used by the said Curtiss-Wright Corporation for offices and the manufacture of miscellaneous vital war materials. In addition, on the property of the Curtiss-Wright Corporation, there has recently been constructed a number of buildings used as barracks for the housing of more than 225 Army Air Corps technicians in training.

Within a radius of one-half mile of the premises to which appellant desires a transfer, there are at least six other establishments having consumption licenses. Respondent declares that this congestion of taverns in the vicinity of the emergent war activities is dangerous to the success of those activities and inimical to the war effort. It contends that conditions have changed so radically since December 1941 and more particularly since November 1942, as to warrant its refusal of appellant's application for a transfer of her license.

No citations are necessary to support the well-settled doctrine that the privilege of transfer is not inherent in a liquor license. Although this privilege may not be denied arbitrarily, nevertheless, where a refusal to transfer is based upon reasonable grounds, it will be sustained on appeal. It is also settled that, in reaching a determination of such issues in these appeal cases, it is not my function to substitute my opinion for that of the local issuing authority, but rather to decide whether the decision below is necessarily unreasonable or in anywise an abuse of discretion. Cf. Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5.

Thus, it has been held unreasonable for a local issuing authority to deny a person-to-person transfer merely as a means of effecting its general desire to reduce the number of taverns which it has permitted in the entire municipality or in a particular neighborhood. Kirschhoff v. Millville, Bulletin 254, Item 8; DiMattia v. Bellmawr, Bulletin 294, Item 4; Pappalardo v. Newark, Bulletin 466, Item 2. The same result has been reached where the refusal of a place-to-place transfer in the same general vicinity was motivated by a uniform policy of reducing the number of licensed establishments in that vicinity. Costa v. Verona, Bulletin 501, Item 2.

In the leading case on this subject, namely, Kirschhoff v. Millville, supra, it was there pointedly stated:

"Indubitably, reduction of the number of licenses in a municipality, when too many are deemed to be outstanding therein, is a praiseworthy end. But this objective may not be achieved in complete disregard of individual interests. Conway v. Haddon, Bulletin 251, Item 3. Licensees invest time, effort and money in their licensed businesses. The statute provides for a method whereby, through transfer of license within the sound discretion of the issuing authority, they may sell their businesses and may remove them to new sites. In fairness, they should not be denied this privilege and be forced to the alternative of remaining in their liquor business willy-nilly and at the same location or else surrendering their investment, merely because the municipal authorities erred in previously granting too many licenses and now wish to correct that mistake by destroying transferability.....

"Respondent Board asks the question: 'If existing licenses may be freely sold and transferred, how will the number ever be reduced?'

"Here is one answer which I have repeatedly urged upon municipalities, viz.: Reduction of outstanding licenses may be effected with fairness by eliminating, through revocation or through refusal to renew, those whose owners have misconducted themselves. Re Renton, Bulletin 115, Item 8; Re Juska, Bulletin 116, Item 7; Re Haney, Bulletin 119, Item 9; Re Hinchcliffe, Bulletin 171, Item 7; Re Bailey, Bulletin 172, Item 10. Case after case has been decided where renewals have been denied and upheld on appeal because of previous misconduct of the licensee. White v. Bordentown, Bulletin 130, Item 4; Wellens v. Passaic, Bulletin 134, Item 4; Schelf v. Weehawken, Bulletin 138, Item 10; Girard v. Trenton, Bulletin 140, Item 2; Greenberg v. Caldwell, Bulletin 141, Item 7; Brown v. Newark, Bulletin 146, Item 9; Hagenbucher v. Somers Point, Bulletin 192, Item 6; Repici v. Hamilton, Bulletin 201, Item 8; Hagerty v. Cranbury, Bulletin 202, Item 2; Klotz v. Trenton, Bulletin 202, Item 7; Callahan v. Keansburg, Bulletin 204, Item 6. Cf. Zicherman v. Newark, Bulletin 227, Item 7.

"Or, if public interest demands such drastic and difficult action, municipalities may adopt a numerical quota which will require, at renewal time, the selection of only the most desirable of renewal applicants. See Re Hinchcliffe, supra.

"These suggested methods reduce the quantity of licenses on a basis of quality. Reasonable and fair discrimination is substituted for the arbitrary and unfair method of denying all licensees, whether their conduct has been good or bad, the privilege to transfer their licenses and thus ultimately starve, exhaust or otherwise compel some of them to surrender or be unable to renew their licenses.

* * * * *

"The Board argues that the authority to grant a person-to-person transfer of an outstanding municipal license is a matter confided to the discretion of the issuing authority. It is. R. S. 33:1-26 (Control Act, Sec. 23). But it is also true that this discretion may not be exercised arbitrarily. A transfer, whether from person to person or from place to place, may be denied if there are valid and

reasonable grounds to justify such refusal. See Blumenthal v. Wall, Bulletin 169, Item 6; Parker v. Belleville, Bulletin 179, Item 13; also see Craig v. Orange, *supra*. No such ground here appears."

The principle of the foregoing cases, however, must be distinguished from those cases where the board below has been sustained in refusing a transfer from person to person, or place to place in the same general vicinity, when based upon good independent cause. For example, it has been deemed reasonable to deny a transfer because of a bona fide belief that the transfer would aggravate the situation as to the number of liquor places in the vicinity (cf. Craig v. Orange, Bulletin 251, Item 4); or that the proposed transferee is personally unfit (Chmielinski v. Clifton, Bulletin 240, Item 5); or that the licensee misconducted the tavern (Novitt v. Spotswood, Bulletin 188, Item 7); or that the physical conditions have so changed as to warrant a reduction of the number of licenses outstanding in a particular locality (Lingelbach v. North Caldwell, Bulletin 180, Item 8).

The last cited case is somewhat analogous to the one here under consideration. In that case, the Borough of North Caldwell had issued three licenses in close-proximity to an amusement park. When the park ceased operations, one of the three licensees sought to transfer his license to another person. The refusal to transfer the license was upheld on appeal to the late Commissioner Burnett. He there held that the changed conditions resulting from the closing of the amusement park justified the Borough's contention that there was no longer any need for three taverns in that vicinity.

By the same token, it is my belief that the changed conditions resulting from the present war emergency, affecting so substantially the entire area surrounding the Curtiss-Wright defense factory and the new manufacturing building and barracks, constitute such good independent cause and are ample authority for the respondent's policy (at least so long as the present emergent situation obtains) to cut down the congestion of taverns in that area. This ruling is in line with those cases where I have sustained municipalities in their refusal to issue new licenses, as distinguished from transfers, based merely upon the proximity of the proposed locations to military forts and posts. Cf. DiGirolamo v. North Hanover, Bulletin 543, Item 6.

In her brief submitted in this cause, appellant argues that the present emergent conditions are primarily the concern of the Federal government and if there is any necessity for reducing the congestion of liquor places because of such conditions, "the United States Government should first recognize it and first initiate the proceedings taken thereunder." This argument is wholly devoid of merit. In the first place, the issuance of retail liquor licenses is vested, in the first instance, in the local issuing authorities of this state. It is their duty to determine whether any valid reason exists for withholding approval of an application for liquor license. In the second place, an agency of the government, whether local or state, is not required to sit supinely by and feel itself impotent to interfere in a situation merely because it primarily affects the national welfare, so long as that situation is one falling within its jurisdiction and one which it has the authority to control. Especially is this so where, as here, the action of the local government does not affect adversely the national welfare but, on the contrary, is in aid of such welfare.

This is indeed a hard case for appellant to lose. I am sympathetic with the plight in which she finds herself through no fault of her own but, rather, through an act of God. However, as

I indicated in her former appeal case, supra, her private interest must necessarily be subordinate to the broad public interest. Moreover, she may still rebuild at her former site, or seek a more suitable location in the municipality than that covered by her present application.

I find that the action of respondent in denying appellant's present application for transfer is neither unreasonable nor arbitrary and, therefore, affirm such action.

Accordingly, it is, on this 30th day of March, 1943,

ORDERED that the petition of appeal be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - PERMITTING LEWD AND IMMORAL ACTIVITIES UPON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - PERMITTING PROSTITUTES AND PERSONS OF ILL REPUTE UPON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

THOMAS & PHILIP O'CONNOR, Executors)
Estate of Vincent O'Connor,)
t/a Grand View Hotel,)
382 Fairview Avenue,)
Fairview, N. J.)

-and-

JAMES O'CONNOR & OLGA COSTA,)
t/a Grand View Hotel,)
382 Fairview Avenue,)
Fairview, N. J.,)

CONCLUSIONS
AND
ORDER

Holders of Plenary Retail Consumption License C-16, issued by the Mayor and Council of the Borough of Fairview.)

James A. Major, Esq., Attorney for Defendant-Licensees.
Charles W. Kappes, Esq., Attorney for the William Peter Realty Corporation.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants were served with charges alleging that (1) they permitted lewdness and immoral activities upon their licensed premises, in violation of Rule 5 of State Regulations No. 20, and (2) they permitted prostitutes and persons of ill repute upon their licensed premises, in violation of Rule 4 of State Regulations No. 20.

The evidence produced by the state in support of these charges is so obscene that it would be distasteful to detail any of it here. Suffice it to say that I am satisfied from an examination of the record that the charges have been fully sustained by the testimony, and that the license must be revoked. In short, it may be said that prostitutes were permitted to ply their trade at the

tavern, and many immoral acts and disgusting scenes and conversations took place there. The last visit made by the ABC agents to these premises occurred on June 26, 1942 when, in cooperation with the local police, they arrested several of the prostitutes and the bartender and manager of the tavern. At that time, the premises were closed and have ever since remained closed.

The license for these premises was originally issued to one Vincent O'Connor. Upon his death, the license was, on September 9, 1941, extended to his executors, Thomas and Philip O'Connor. On June 23, 1942, the local issuing authority granted a simultaneous renewal and transfer of the license from the executors to James O'Connor and Olga Costa for the license year 1942-43, commencing July 1, 1942.

When the issuing authority learned of the indecent activities that had taken place at these premises, resulting in the arrests on June 26, 1942, it adopted a resolution on June 30, 1942, purporting to rescind its previous action approving the application. It would appear that this attempted rescission was nugatory since an issuing authority, after having granted or denied an application for a license, has no jurisdiction to reconsider its action at a subsequent meeting. See White v. Atlantic City, 62 N.J.L. 644; Paterson Grill Owners Association, et al v. Paterson, et als, Bulletin 545, Item 1, and cases therein cited.

However, it is unnecessary for me to pass upon that question in these proceedings since, in any event, I find that James O'Connor and Olga Costa never actually attained the status of licensees for these premises. All of the unlawful conduct resulting in the bringing of the instant charges occurred on or before June 26, 1942, during all of which time the license remained in the names of the executors of the estate of Vincent O'Connor. No further license for these premises was issued by the local issuing authority. The license originally approved upon the application of James O'Connor and Olga Costa was never delivered to them and, indeed, on July 2, 1942, the fee deposited with the application was returned to them and the refund accepted by them. Under these circumstances, James O'Connor and Olga Costa may not be held as licensees for the violations herein and, therefore, I have no alternative other than to dismiss the instant charges as to both James O'Connor and Olga Costa.

The owner of the premises was also called upon to show cause why the premises should not be disqualified from serving as a site for future licenses for a period of two years. See R. S. 33:1-31. It does not appear, however, that the owner was in anywise implicated in any of the unlawful conduct occurring at the tavern and, therefore, no order for disqualification of the premises will be entered.

Although this proceeding was instituted against a license which expired on June 30, 1942, it does not thereby abate nor bar a revocation of such license. State Regulations No. 15.

Accordingly, it is on this 30th day of March, 1943,

ORDERED that plenary retail consumption license C-16, issued to Vincent O'Connor for the fiscal year 1941-42 and extended on September 9, 1941 to Thomas & Philip O'Connor, Executors of the Estate of Vincent O'Connor, t/a Grand View Hotel, by the Mayor and Council of the Borough of Fairview, for premises 382 Fairview Avenue Fairview, be and the same is hereby revoked.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

JOSEPH KOMINIAK,)
T/A JOE KOMINIAK'S TAVERN,)
498 Hazel Street,)
Clifton, New Jersey,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-63, issued by the Municipal Council of the City of Clifton.)
-----)

Joseph Kominiak, Pro se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER.

The defendant pleaded guilty to the following charges:

"1. On Friday night, March 12, 1943, you sold alcoholic beverages to William Nash, a minor, in violation of R.S. 33:1-77.

"2. On the night aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to William Nash, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The Departmental file discloses that, on the night of March 12, 1943, investigators of the Department of Alcoholic Beverage Control observed the licensee sell a glass of beer to a young man who appeared to them to be a minor. The investigators thereupon identified themselves to the licensee, and it was learned that the boy who was served was nineteen years of age. The licensee admitted that he had served this boy three or four beers on the night in question, and that he had served the boy in the tavern on various previous occasions. He claimed, however, that he had asked the boy his age when he first visited the premises, and that the boy told him he was twenty-two and showed him a paper to the effect that he was in the U. S. Naval Reserve. The licensee, however, admits that this paper did not state the boy's age or date of birth. The minor admits that, on his first visit to the premises, the licensee asked him how old he was and he replied that he was twenty-one years of age. This does not, however, in any way constitute a defense. See Re Hoffacker, Bulletin 550, Item 4; Re Morgenroth, Bulletin 557, Item 12.

I shall, therefore, suspend the license for a period of ten days, less five for the guilty plea, leaving a net suspension of five days.

Accordingly, it is, on this 30th day of March, 1943,

ORDERED that plenary retail consumption License C-63, issued to Joseph Kominiak, t/a Joe Kominiak's Tavern, by the Municipal Council of the City of Clifton, for premises 498 Hazel Street, Clifton, New Jersey, be and the same is hereby suspended for a period of five (5) days commencing at 3 A.M. April 5, 1943, and terminating at 3 A. M. April 10, 1943.

ALFRED E. DRISCOLL
Commissioner

10. ACTIVITY REPORT FOR MARCH, 1943

TO: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u> Licensees and employees - - - -	12	Bootleggers - - - - -	8	
Total number of persons arrested- - - - -				20
<u>SEIZURES:</u> Stills - 1 to 50 gallons daily capacity - - - - -			0	
50 gallons and more daily capacity - - - - -			1	
Total number of stills seized - - - - -				1
Mash - gallons- - - - -				1,300
Motor vehicles - Trucks - - - - -			1	
Passenger cars - - - - -			1	
Total number of motor vehicles seized - - - - -				2
Beverage alcohol - gallons- - - - -				55.00
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - -				65.77
Wine - gallons- - - - -				1,169.30
Distilled alcoholic beverages (whiskey, brandy, etc.) gallons - - -				165.40

RETAIL LICENSEES:

Number of premises inspected- - - - -				2,124
Total number of bottles gauged- - - - -				15,750
Total number of premises where violations were found- - - - -				130
Number and type of violations found:				
Illicit (bootleg) liquor - 3 "Fronts" (concealed ownership)	22			
Gambling devices - - - - -	12	Improper beer tap markers - -	2	
Prohibited signs - - - - -	6	Stock disposal permits- - - -	2	
Unqualified employees- - - - -	71	necessary		
		Other types of violations - -	15	

MILITARY AREA PATROL INSPECTIONS - - - - - 542

STATE LICENSEES:

Premises inspected- - - - -				129
License applications investigated - - - - -				15

COMPLAINTS:

Investigated, reviewed and closed - - - - -				502
Investigation assigned, not yet completed - - - - -				221

LABORATORY:

Analyses made - - - - -				170
"Shake-up" cases (alcohol, water and artificial coloring) - - - -				12
Liquor found to be not genuine as labeled - - - - -				12

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -				22
Persons fingerprinted for non-criminal purposes - - - - -				103
Identification contacts with other enforcement agencies - - - - -				137
Motor vehicle identifications via N. J. State Police Teletype - - -				4

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -				21
Cases instituted at Department- - - - -				31
Cancellation proceedings- - - - -				2

HEARINGS HELD AT DEPARTMENT:

Number of hearings held - - - - -				42
Appeals - - - - -	5	Eligibility - - - - -	12	
Disciplinary proceedings- - - - -	24	Seizure - - - - -	1	

PERMITS ISSUED:

Total number of permits issued- - - - -				711
Unqualified employees - - - - -			343	
Solicitors- - - - -			50	
Social affairs- - - - -			79	
Home manufacture of wine- - - - -			9	
Disposal of alcoholic beverages - - - - -			69	
Miscellaneous permits - - - - -			161	

Respectfully submitted,

SYDNEY B. WHITE, CHIEF INSPECTOR

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO MEMBERS OF THE ARMED FORCES OF THE UNITED STATES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - 45 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

BRUCE ROWLEY, t/a ROWLEY'S BAR, 2035-2037 Atlantic Avenue, Atlantic City, New Jersey,)

Holder of Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the City of Atlantic City.)

- - - - -)

CONCLUSIONS AND ORDER

Leon Leonard, Esq., Attorney for Defendant-Licensee. Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charges:

"1. Between 8:00 P.M., on December 24th, 1942 and 1:15 A.M., December 25th, 1942, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Private Thomas G---, who was actually or apparently intoxicated, in violation of Rule 1 of State Regulations No. 20.

"2. After 11:30 P.M., Thursday, December 24th, 1942, and before 9:00 A.M., Friday, December 25th, 1942, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to persons wearing the uniform of one of the armed forces of the United States of America, viz., the United States Army, in violation of an ordinance adopted by the Board of Commissioners of the City of Atlantic City, on August 11, 1938, as amended by Section 1 of an Ordinance adopted by the said Board on September 10th, 1942."

As to charge (1): The departmental file discloses that statements were obtained from Private Thomas G--- and the bartender who was in charge of the licensed premises. In his statement Private Thomas G--- says that he entered defendant's premises at about 8 P.M. on December 24, 1942, and remained there until approximately 1 A.M. on December 25, 1942; that during that period he purchased and consumed about twenty drinks of whiskey; that he was intoxicated when he left the premises and does not remember what happened until he awoke in his barracks on the following morning. In his statement the bartender admits that during that period he served sixteen or eighteen drinks of whiskey to the soldier but further states that, in his opinion, the soldier was sober when he left the premises. The soldier says that, shortly before he left the premises, the bartender refused to serve him any more drinks "as he thought I had had enough." In any event, I am convinced that the soldier was permitted by the bartender to become very intoxicated. There is nothing in the record to support defendant's contention that the soldier's condition on the following morning was due in part to the fact that he had purchased a pint of liquor at another place after he left defendant's premises.

It appears that on the evening in question the licensee was engaged in repairing or building a bar in another part of the licensed premises and that he personally did not participate in the sales to the soldier.

I have repeatedly stated that the sale of liquor to men in uniform when they are actually or apparently intoxicated is not only a serious violation but an unpatriotic act. The absence of the licensee does not relieve him of his personal responsibility for the conduct of the licensed premises and the observance of the law by his agents and servants. However, in imposing penalty I shall take into consideration the fact that the licensee did not personally participate in the violation. The licensee is a veteran of World War No. 1, has been in business since Repeal and has no previous record. Considering all the facts of this case, I shall suspend defendant's license for a period of forty days because of the violation set forth in charge (1).

As to charge (2): The military authorities in Atlantic City have publicly stated their position with respect to the hours within which alcoholic beverages may be sold to men in the service. The ordinance mentioned in this charge was amended in September 1942 by the Board of Commissioners of the City of Atlantic City, with the approval of the Commanding Officer of the post, for the express purpose of lending civilian support to the policy of the Army in Atlantic City. It appears, however, that some confusion arose as to the permissible hours of sale to members of the armed forces on last Christmas Eve. Our investigation shows that, effective on Christmas Eve only, the Commanding Officer had extended "bed check" from midnight to 2 A.M. to permit his men to attend religious ceremonies. Defendant-licensee and his bartender allege that, early on the evening of December 24, two members of the military police entered the premises and advised them that the hours for sales to members of the armed forces had been extended for that evening only from 11:30 P.M. until 1:30 A.M. I am inclined to believe the licensee and his bartender, because subsequent investigation shows that at least five other licensees in the City of Atlantic City allege that they received similar information from members of the military police. If such information was given, it was not authorized by the Commanding Officer or the local civilian authorities. Such unauthorized information given by members of the military police does not excuse the violation, but I believe it should be taken into consideration in fixing a penalty. Because of the circumstances set forth above, this case is distinguished from Re Keeley, Bulletin 553, Item 5, where a twenty-day penalty was imposed for a similar violation. I shall suspend the license for an additional five days because of the violation set forth in charge (2).

Accordingly, the license will be suspended for forty-five days, with a remission of five days for the guilty plea, making a total suspension of forty days.

Accordingly, it is, on this 2nd day of April, 1943,

ORDERED that plenary retail consumption license C-46, issued by the Board of Commissioners of the City of Atlantic City to Bruce Rowley, t/a Rowley's Bar, for premises 2035-2037 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for forty (40) days, commencing at 12:01 A.M. April 7, 1943, and concluding at 12:01 A.M. May 17, 1943.

ALFRED E. DRISCOLL
Commissioner.

12. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST - APPLICATION GRANTED.

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

CONCLUSIONS
AND
ORDER

Case No. 260
-----)

BY THE COMMISSIONER:

On March 13, 1940, petitioner was declared ineligible to be employed by a liquor licensee in this State by reason of his conviction of robbery on November 5, 1937. Case 313, Bulletin 393, Item 8. After said conviction, he was placed on probation for three years and ordered to pay the costs and make restitution. It also appears that, in November 1930, while a member of the United States Navy and while the subject was about twenty-four years old, he served a sentence of fifteen days for petty larceny in the State of Washington.

Since his release on probation, petitioner seems to have led an exemplary life. He is now married and lives with his family. His mother is a saloon keeper. Our records disclose that subject has not worked for his mother since he was advised of his disability. It might be well to note that when he did work for her, before being advised of his disability, the probation officer advised this office that he had no objection to subject working in his mother's saloon.

Petitioner finally completed making restitution on the instalment basis, was discharged by the probation officer and there appears to be nothing further against his record since his conviction in November 1937.

The witnesses produced by petitioner at the hearing all testified they have known petitioner for many years and that they consider him a law-abiding citizen and that he bears such a reputation in his neighborhood and among his associates.

I find that the applicant has conducted himself in a law-abiding manner during the five years immediately past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 31st day of March, 1943,

ORDERED that applicant's disqualification because of the previous finding of moral turpitude be removed and he is hereby declared eligible for employment by a liquor licensee.

C. E. Russell
Commissioner.

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