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

BULLETIN 1022

JULY 1, 1954.

1. APPELLATE DECISIONS - SPARKS & EARL, INC. v. CLIFTON.

SPARKS & EARL, INC.,) t/a NEILLEY'S,) Appellant,) -vs-) MUNICIPAL BOARD OF ALCOHOLIC) BEVERAGE CONTROL OF THE CITY) OF CLIFTON,) Respondent.)	ON APPEAL CONCLUSIONS AND ORDER
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Friend & Friend, Esqs., by Israel Friend, Esq., Attorneys for
Appellant.

John G. Dluhy, Esq., by Mervyn R. Montgomery, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's order suspending for a net period of eighty-five days a plenary retail consumption license held by appellant for premises at 365 River Road, Clifton.

In the disciplinary proceedings before the respondent Board appellant pleaded guilty to a charge alleging that on March 5, 1954, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to ten minors named therein, and allowed, permitted and suffered the consumption of alcoholic beverages in and upon its licensed premises in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. As a result of appellant's plea, respondent suspended its license for ninety days, less five days for the plea, leaving a net suspension of eighty-five days.

On March 30, 1954 William Anastos, an officer and owner of more than ten per cent. of the stock of appellant corporation, was fined \$100.00 and costs in the Magistrate's Court as a result of his plea of non vult to a charge of selling alcoholic beverages to the afore-said minors in violation of R. S. 33:1-77. Pursuant to the provisions of R. S. 33:1-31.1 appellant's license was automatically suspended, effective March 30, 1954, for the balance of its term. To date no application has been made to me to lift the automatic suspension. Although respondent's order in the disciplinary proceedings was not entered until April 19, 1954, it provided, as was permissible under the circumstances, that the suspension would commence March 30, 1954 (the date of the automatic suspension of the license) and terminate at 3:00 a.m. June 23, 1954.

This appeal was filed on May 3, 1954, at which time an order denying a stay of respondent's order of suspension was entered and a hearing on the appeal was scheduled to be held on May 14, 1954 for the purpose of determining, among other things, whether the appeal should act as a stay of respondent's order of suspension pending determination of said appeal. R. S. 33:1-31.

Appellant alleges that the action of respondent was harsh, unreasonable and oppressive for substantially the following reasons:

(1) no similar penalty had been imposed by respondent for a first offense, and (2) respondent relied on hearsay facts and rumors in fixing the penalty.

As to (1): The Secretary of the Municipal Board, called as a witness at the within hearing, produced certified copies of minutes of said Board pertaining to divers disciplinary proceedings instituted against other licensees involving sales of alcoholic beverages to minors. I have examined these minutes, particularly those referring to Mack Wine & Liquor Co., Inc. (referred to in the testimony as the Ventura case). In said case it appears that the licensee pleaded guilty to sale of alcoholic beverages in original containers to minors on three separate occasions and as a result thereof the Board suspended its license for a period of forty-five days, less five days' remission for the plea, leaving a net suspension of forty days. However, in that case the charges pertaining to the sale of alcoholic beverages to the minors on the three dates in question were grouped together and it does not appear that there was a "locus poenitentiae" between the admitted violations. The instant case involves a sale of beer to ten minors (two of whom were 17 years of age, two of whom were 18 years of age, three of whom were 19 years of age and three of whom were 20 years of age). It further appears from the testimony of Benjamin Blackman, Chairman of respondent Board, called as a witness by the appellant, that the members of the Board observed nearly all the minors involved in this case. Mr. Blackman testified:

"The two seventeen could under no stretch of the imagination be considered anything other than seventeen year olds, definitely nowhere near twenty-one, and the same thing was involved with the other boys. In short, it was the flagrancy of the case on which we based our penalty."

In my opinion neither the facts in the Ventura case nor the facts in any other minor's case considered by the Board disclosed such a flagrant violation of the law as appears in the case herein considered. I find no merit in the first ground of appeal.

As to (2): Mr. Blackman also testified as follows:

"Q. Did you take into consideration any rumors or hearsay concerning other alleged violations by this licensee?"

"A. No, that had no bearing on our decision."

No other testimony was presented as to the second ground of appeal and, hence, I find that it has no merit.

The power of the Director to reduce a penalty on appeal should be exercised only in those cases where the penalty imposed is manifestly unreasonable and clearly excessive. The Ebony Corporation v. Trenton, Bulletin 958, Item 1. The evidence herein does not warrant the exercise of that power in this case. Grippio v. Hoboken, Bulletin 999, Item 2.

The application for a stay is denied, and respondent's action will be affirmed.

Accordingly, it is, on this 11th day of June, 1954,

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

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - MORRISSEY v. EGG HARBOR CITY.

DONALD T. MORRISSEY, t/a AMERICAN)
HOTEL,

Appellant,)

-vs-)

COMMON COUNCIL OF THE CITY)
OF EGG HARBOR CITY,

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Harry A. Walsh, Esq., by Frank Thompson, Esq., Attorney for Appellant.
Myrtle Frank, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it allegedly denied an application for a transfer of a plenary retail consumption license from Joseph R. Darwicki, t/a Hotel Club Ebony, to Donald T. Morrissey, t/a American Hotel. The premises in question are located at 57-59 Philadelphia Avenue, Egg Harbor City.

Appellant alleges that the action of respondent was arbitrary and capricious. Respondent denies said allegation and sets forth as a separate defense that the appeal was not taken within thirty days from the date upon which the application was denied. Rule 3 of State Regulations No. 15.

It appears that the application for transfer was filed with respondent on November 26, 1953. Respondent considered the application at a meeting held on January 14, 1954. The appeal herein was not filed until April 13, 1954. Thus, if respondent took formal action denying the application at its meeting held on January 14, it would follow that the appeal was not filed within time.

The minutes of respondent's meeting on January 14 disclose that the License Committee reported that "due to the fact that Joseph R. Darwicki is involved in charges made against a number of Councilmen in reference to the issuing of his license, which resulted in a law suit against them this Committee recommended that no transfer of this license be made until these charges were proven or disproven." Said minutes further disclose that Councilman Gehringer then made a motion that the report be accepted and transfer denied. A roll call was taken on acceptance of report and denial of transfer, with six votes in the affirmative and two votes in the negative. The evidence herein indicates that appellant is fully qualified to hold a license and that he has no connection with the pending lawsuit which involves alleged charges made in reference to the prior transfer of this license to Darwicki. Nevertheless, and irrespective of the question as to whether the application was denied for a valid reason, it does appear that the application was denied on January 14 and that the appeal herein was not filed within time.

Under the circumstances, this appeal must be dismissed. Cf. Segal v. Clifton et al., Bulletin 732, Item 5; Richardson v. Montgomery Township, Bulletin 898, Item 1.

Accordingly, it is, on this 15th day of June, 1954,

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

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - MONROE TAVERN, INC. v. ELIZABETH AND HIGGINS.

MONROE TAVERN, INC.,)

Appellant,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF ELIZABETH, and JAMES W.)
HIGGINS and BERNARD J. HIGGINS,)
t/a HIGGINS LIQUOR STORE,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER.-----
Saul C. Schutzman, Esq., Attorney for Appellant.

Louis P. Longobardi, Esq., Attorney for Respondent Municipal Board.

John T. Glennon, Esq., Attorney for Respondents James W. Higgins
and Bernard J. Higgins.

BY THE DIRECTOR:

This is an appeal from respondent Board's granting of transfer of respondents Higgins' plenary retail distribution license from premises at 1172 Spring Street to premises known as the rear of 625 Pennsylvania Avenue, Elizabeth.

The Petition of Appeal alleges, in part, that respondent Board's action was erroneous for the following reasons:

1. The premises at the rear of 625 Pennsylvania Avenue are within a radius of 1,500 feet of existing licensed premises and, therefore, in granting the transfer respondent Board "violated its own resolution", concerning distance between premises.
2. The premises at the rear of 625 Pennsylvania Avenue are not suitable for the conduct of the business for which this license was issued.

The Answers filed by respondent Board and respondents Higgins deny that the transfer was granted in violation of the distance-between-premises regulation and deny that the premises at 625 Pennsylvania Avenue are unsuitable.

The evidence herein establishes that the premises at the rear of 625 Pennsylvania Avenue are within 1,350 feet of premises at 562 North Broad Street. It further appears that for some seven years Elizabeth Bowl, Inc. held a plenary retail consumption license in connection with its operation of bowling alleys as tenant of the second floor of premises at 562 North Broad Street, and that respondent Board granted the corporation's application for 1953-1954 renewal for such premises. Elizabeth Bowl, Inc. is not operating under the license. The building at 562 North Broad Street was almost completely destroyed by fire in May of 1953, but no question regarding validity of the renewal, effective July 1, 1953, was raised on this appeal. The building has been rebuilt and (at the time of the Hearing) approximately eighty per cent of the second floor of the new building had been rented to other tenants. Rental discussions between an officer of Elizabeth Bowl, Inc. and the owner of the building have terminated.

In July or August of 1953 an officer of Elizabeth Bowl, Inc. visited the office of the Secretary of respondent Board and left the 1953-1954 license certificate with the Assistant Secretary, saying: "I think I'll leave it with you; then I will know where to find it."

Section 7 of Elizabeth's ordinance adopted March 5, 1952 reads:

"No licenses, excepting club licenses and excepting renewals and person to person transfers of other licenses now outstanding shall be granted for or transferred to premises within a radius of 1,500 feet of then existing licensed premises." (Underscoring added.)

A licensee's vacation or loss of premises during the license term does not invalidate the license, but there may be no operation under the license in the absence of reacquired legal possession and control or transfer to other approved premises prior to the end of the license year; and, furthermore, if a licensee loses legal possession and control of premises another license may be transferred to those premises provided the applicant has an enforceable right to possession thereof. (See Re Boettiger, Bulletin 98, Item 11; Re Becker, Bulletin 252, Item 11. See, also, Hindin v. Egg Harbor, Bulletin 399, Item 1.)

Elizabeth Bowl, Inc. had and has no interest or right to possession with respect to any portion of the rebuilt premises at 562 North Broad Street and it seems manifestly clear that there were no "existing licensed premises" there when respondent Board granted the transfer here appealed from. I find, therefore, that the transfer was not in violation of the City's ordinance.

The premises at the rear of 625 Pennsylvania Avenue are a garage and certainly are not elaborate, but it is proposed to install a telephone and to use those premises not as a package store but for taking orders for delivery. "The law does not prohibit conducting business in this manner under a plenary retail distribution license." (Union County Retail Liquor Stores Assn. v. Elizabeth and Pykish and Parker, Bulletin 810, Item 5, citing Craig v. Orange, Bulletin 251, Item 4.) The primary responsibility of determining whether premises are suitable for retail license rests with the local issuing authority. (R. S. 33:1-24.) Here respondent Board found the premises suitable and I cannot say, on the record before me, that its doing so was an abuse of discretion. (Cf. Union County Retail Liquor Stores Assn. v. Elizabeth and Pykish and Parker, supra.)

Appellant's efforts to show mala fides on the part of respondents Higgins with respect to the transfer sought and granted were without probative effect.

The burden of establishing that respondent Board's action was erroneous and should be reversed (Rule 6, State Regulations No. 15) has not been met. The action, therefore, will be sustained.

Accordingly, it is, on this 18th day of June, 1954,

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

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - PARENT TEACHERS ASSN. ET AL. v. PATERSON AND HUTCHINS.

PARENT TEACHERS ASSN. OF SCHOOL NO. 6, MAE SIROTA, ROBERT DOKES, MORRIS LUBLINER, CONGREGATION LENATH HAZEDIC and ANNA BERMAN,

Appellants,

-vs-

BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, and AUGUSTUS HUTCHINS,

Respondents.

ON APPEAL CONCLUSIONS AND ORDER

Schwartz & Schwartz, Esqs., by Louis Schwartz, Esq., Attorneys for Appellants.

James D. Ward, Esq., by George Dimond, Esq., Attorney for Respondent Board of Alcoholic Beverage Control.

Charles Turndorf, Esq., Attorney for Respondent Augustus Hutchins.

BY THE DIRECTOR:

This is an appeal from the action of the respondent Board whereby it approved by a two-to-one vote a transfer of a plenary retail consumption license held by respondent Augustus Hutchins from 34 Straight Street to 39-41 Carroll Street, Paterson.

Appellants contend that the action of the respondent Board was erroneous for the following reasons:

- "a. On the basis of the evidence presented, the application should not have been granted as a matter of law.
- "b. The application sought was not in the public interest.
- "c. The area in question is adequately serviced by liquor stores.
- "d. The establishment of a liquor outlet at the premises in question will create a traffic and parking hazard.
- "e. The applicant was denied similar applications on at least four previous occasions and there has been no change in the circumstances attendant upon these denials.
- "f. The granting of the proposed license was in violation of the Zoning Ordinance of the City of Paterson."

The respondent Board, in an answer filed herein, joined issue with the appellants on the various allegations made in the petition for reversal and alleged that its action was within its sound discretion.

The record herein discloses that on four prior occasions (in the years 1947, 1948, 1950 and 1951 respectively) applications were filed by respondent licensee for transfer of the license to the premises herein sought, and that on each occasion the application was denied by the local issuing authority.

On January 22, 1947, when the first application for a place-to-place transfer filed by the respondent licensee was denied by the local issuing authority, an appeal was taken from said action. After a hearing in the matter, the action of the issuing authority in denying the transfer was affirmed by the then Commissioner (now Director) and the petition of appeal was dismissed. Hutchins v. Paterson, Bulletin 764, Item 9.

At the instant hearing the attorneys for the respective parties agreed that the transcript of the testimony given before the respondent Board would be considered as part of the record in this appeal, together with such additional testimony presented by the parties thereto.

It appears from the evidence in this case that the proposed licensed premises are on the ground floor of a building located on the corner of Carroll and Harrison Streets; that the said four-story building which will contain the licensed premises is of brick construction and has a frontage of approximately twenty feet on Carroll Street, and a depth of approximately eighty-eight feet on Harrison Street; that the front section of the premises is to be the barroom and the rear section thereof, which is accessible from the barroom and also from Harrison Street, is to be used as a restaurant.

A number of residents voiced their objections before the respondent issuing authority to the transfer of the license to the proposed premises. These objections were based mainly on the fact that the neighborhood was congested and that, in their opinion, there was no need or necessity for a liquor license at the premises sought. Furthermore, there were various written objections, including one from the Principal and from the Parent Teachers Association of a nearby school. A petition containing names of persons objecting to the transfer in question and also a petition containing names of persons requesting that the transfer be allowed were presented and marked as exhibits in this case.

Proper liquor control dictates that, in considering successive applications, an issuing authority should not be permitted to "back and fill" without sound reason for its action. The above principle is subject to the general rule that no governing body may tie the hands of its successors in matters involving the exercise of discretion. North-end Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5.

I have carefully considered the evidence herein to ascertain the reasons alleged for reaching a different result in this case. I might point out that, when the four prior applications for a place-to-place transfer were denied, the two present members who voted in favor of the transfer were not members of the Board. The third member of the present Board was a member of the Board which heard the prior applications and he has consistently voted against the transfer. The two members who voted in favor of the transfer gave as their reasons that respondent licensee had a good record and that a liquor license to be used in conjunction with a restaurant would serve the convenience of people of the licensee's race at the proposed location.

It appears from the prior appeals that the section of the City in which 39-41 Carroll Street is located is already adequately supplied with licensed premises. The same factual situation exists at the present time. This is the fifth application made for the same transfer with no material change in the facts. The petition opposing the transfer was signed by four hundred people, and a number of people opposed the transfer at the hearing held below. The testimony at all prior hearings was made part of the record herein. No real public need for a license at the new premises has been established. Under all the circumstances, I conclude that respondent Board abused its discretion and acted in an unreasonable manner in granting this application for transfer. I shall reverse the action of respondent Board.

Accordingly, it is, on this 18th day of June, 1954,

ORDERED that the action of respondent Board of Alcoholic Beverage Control for the City of Paterson in granting a transfer of license held by respondent Augustus Hutchins from 34 Straight Street to 39-41 Carroll Street, Paterson, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

- 5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (PERMITTING MAKING ARRANGEMENTS ON LICENSED PREMISES FOR ILLICIT SEXUAL INTERCOURSE) - PERMITTING THE DISTRIBUTION OF PROPHYLACTIC DEVICES ON LICENSED PREMISES - SALE TO MINORS - BRAWL - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - UNDER CIRCUMSTANCES OF CASE LICENSE SUSPENDED FOR 225 DAYS.

In the Matter of Disciplinary Proceedings against)

ALFONSO BURCH)
 S/e Cor. West Jersey & Mulberry Aves.)
 Cardiff, Egg Harbor Township)
 P.O. Route #1, Box 233)
 Pleasantville, N. J.,)

CONCLUSIONS AND ORDER.

Holder of Plenary Retail Consumption License C-28, issued by the Township Committee of the Township of Egg Harbor.)

-----)
 Coulomb, McAllister & Hunter, Esqs., by William B. Hunter, Esq., Attorneys for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded not guilty to the following charges:

"1. On Saturday night, January 23 and early Sunday morning, January 24, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises viz., the making of arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"2. On Sunday, January 24, 1954, you allowed, permitted and suffered the distribution of a prophylactic against venereal disease and contraceptive device, in and upon your licensed premises; in violation of Rule 9 of State Regulations No. 20.

"3. On Saturday night, January 23 and early Sunday morning, January 24, 1954, and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to Ruth --- and Ada ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20.

"4. On Saturday night, January 23, 1954, you allowed, permitted and suffered a brawl, act of violence and disturbance in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.

"5. At various times on Saturday night, January 23, 1954, between 10:00 P.M. and 12:00 o'clock midnight, and on Sunday, January 24, 1954 between 12:01 A.M. and 5 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off the licensed premises; in violation of Rule 1 of State Regulations No. 38, which prohibits any such sale or delivery before 9:00 A.M. or after 10:00 P.M. on any weekday or at any time on Sunday."

An ABC agent testified that on January 23, 1954 at about 10:15 p.m. he and two other ABC agents visited defendant's licensed premises; that he inquired of defendant, who was tending bar, as to the whereabouts of the girls defendant had spoken to him about on a

prior visit; that defendant replied, "I am working for you * * * I will get you something good"; that he advised defendant that the girl must be clean, tender and young; that he reiterated this desire about five or six times during the evening to which the defendant would retort, "I am working for you"; that during the evening two females (Ruth --- and Ada ---) joined him and his fellow agents and he treated each of these females to a drink of alcoholic beverages; that he conversed with the females with reference to engaging in sexual intercourse and asked the defendant whether or not the two girls were the ones he had promised to get for the agents to which the defendant said, "I will get you something young and tender and clean"; that about twenty minutes thereafter Ruth --- and Ada --- left them; that he thereafter conversed with defendant concerning one Jonas Lewis and was told that the said Jonas Lewis was employed by the defendant as part time handy man; that at 3:30 a.m. two other girls joined the agents; that he questioned the defendant whether or not these were the girls he had intended getting for them and the defendant answered, "Yes"; that he and one of the other agents questioned their respective female companions relative to a financial arrangement for them to engage in sexual intercourse; that they agreed on a figure for the purpose aforementioned and prepared to leave defendant's premises at about 3:45 a.m.; that he himself actually left the premises but returned at about 4:50 a.m. at which time he joined his two fellow agents and the two females who had remained in the premises when he left; that he obtained a contraceptive from the defendant and also purchased two bottles of wine from the defendant shortly before 5:00 a.m., January 24, 1954; that one of his fellow agents who was leaving with the other female purchased two bottles of beer from the defendant who wrapped them in a newspaper and handed them to him; that he asked defendant whether or not he could use one of his cabins but the defendant stated, "No, I haven't got the key to that, and anyway they are cold, no heat in them"; that during the time he spent there on January 23 and 24, 1954 from 10:30 p.m. on until the time he left he observed six or eight men purchase alcoholic beverages in original containers for off-premises consumption; that at about 10:50 p.m. on the evening of January 23, he observed a brawl during which a man held a chair over another man's head and after some shuffling the next thing he saw was a man lying against the wall in a heap; that shortly thereafter the man on the floor was carried out of the premises by two others; that he did not see the defendant make any effort to stop the brawl.

It was stipulated by the attorneys for the parties hereto that if the second agent who was present were called as a witness his testimony would corroborate that of the first agent. The third agent testified in substantial corroboration of the testimony given by the first agent.

Ada ---, 19 years of age, was called as a witness by the Division. She testified that on the evening of January 23 she was with the agents and "had about a half glass of beer and a Seagram's gin and coke" which was served to her by defendant. Ruth ---, 20 years of age, who was also called as a witness by the Division, testified that on the evening in question one of the agents purchased a "coke" but that she drank no alcoholic beverages.

Defendant testified that he has held a liquor license since 1947. He admitted that the three ABC agents were on his licensed premises on the evening of January 23 and early morning of January 24, but claimed that he sold the bottles of wine and beer in original containers for off-premises consumption to them before 10:00 p.m. He said that he had previously obtained from Ada a written statement that she was over twenty-one years of age, but that he "couldn't find it." He denied any conversation with the agents concerning females except that he

admitted that he had told one agent "The only way to get girls is to go out and find them yourself." He denied that he knew the two girls who came in the premises later on the morning of January 24 were prostitutes, but admitted that one of the agents had told him that "This girl wants twenty dollars" and that the other girl had told him that an agent had given her ten dollars. He testified that he then told Jonas Lewis to get the money from the girls and to "get those girls out of here." He also testified that he called Jonas Lewis over and asked him to stop the disturbance described by the agent after he saw a man who he described as "sort of half shell-shocked" dance around with a chair. Jonas Lewis testified that defendant had spoken to him about getting the money from the girls and that he told defendant "I can't get the money. I can't jerk her out of the car. I let her go on."

After careful examination of the testimony I find defendant guilty of charges (1), (2) and (5) and guilty of that portion of charge (3) which refers to the service and consumption of alcoholic beverages to the minor Ada on defendant's licensed premises. As to charge (4), I am not fully satisfied that the defendant made no effort to stop the brawl or disturbance. I shall, therefore, dismiss said charge. Although there appears to be no evidence that the defendant actually procured the other females referred to in charge (1) to engage in illicit sexual intercourse with the agents, there is no doubt in my mind that he was aware of the fact that such immoral activities were contemplated. I am also mindful of the fact that defendant has no prior adjudicated record. Under the circumstances I shall suspend defendant's license for a period of two hundred twenty-five days. I might also add that if and when the defendant shall apply for renewal of his license, the license issuing authority should, in considering the application, carefully weigh the facts set forth herein in determining whether or not he is a fit person to hold a liquor license.

Accordingly, it is, on this 18th day of June, 1954,

ORDERED that Plenary Retail Consumption License C-28, issued by the Township Committee of the Township of Egg Harbor to Alfonso Burch, for premises at s/e Cor. West Jersey & Mulberry Avenues, Cardiff, Egg Harbor Township, be and the same is hereby suspended for the balance of its term, effective at 7:00 a.m. June 28, 1954; and it is further

ORDERED that if any license be granted to this licensee or to any other person for the premises in question for the 1954-55 licensing year, such license shall be under suspension until 7:00 a.m. February 8, 1955.

WILLIAM HOWE DAVIS
Director.

By: Edward J. Dorton
Deputy Director.

6.. DISQUALIFICATION - CONVICTION AS DISORDERLY PERSON AND CONVICTION FOR GAMING WITHIN PAST FIVE YEARS - APPLICATION TO LIFT DENIED.

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. 1153.
-----)

BY THE DIRECTOR:

On October 4, 1933, petitioner was convicted in a Criminal Court of another State of the crime of robbery and was sentenced to serve from five to eight years in a State Prison. He was released from prison on March 16, 1938. On August 2, 1939, he was convicted in a Criminal Court of another State on a charge of carrying concealed weapons and was sentenced to serve six months in a Penitentiary. He was released from the Penitentiary on November 20, 1939. Since robbery is a crime which necessarily involves moral turpitude, petitioner is ineligible because of his conviction in 1933 to hold a liquor license or to be employed by a liquor licensee in New Jersey. Hence it is unnecessary to decide if the crime of which he was convicted in 1939 also involved moral turpitude.

The statute under which relief may be afforded petitioner (R.S. 33:1-31.2) requires satisfactory proof, among other things, that petitioner has conducted himself in a law-abiding manner for at least five years last past. The record herein discloses that petitioner was arrested on November 19, 1950, on a charge of gaming and held to await the action of the Grand Jury. The record fails to show any further proceedings in that case. On July 13, 1952, he was adjudged to be a disorderly person and fined \$20.00. On July-21, 1953, he pleaded non vult in a County Court in this State to an indictment for gaming, in violation of R. S. 2A:112-1, and was sentenced to pay a fine of \$100.00 and placed on probation for one year. Irrespective of the question as to whether the crime of which he was convicted in July 1953 involved moral turpitude, it thus appears that he has been convicted of a crime within the past five years. Hence I cannot find that he has been law-abiding during that period. Re Case No. 801, Bulletin 874, Item 2. The petition must be dismissed.

Accordingly, it is, on this 28th day of May, 1954,

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

WILLIAM HOWE DAVIS
Director.

7. AUTOMATIC SUSPENSION - LICENSE SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

Case #97-

In the Matter of a Petition by)

MACK WINE & LIQUOR CO., INC.)
1057 Main Avenue)
Clifton, N. J.,)

ON PETITION
O R D E R

To Lift the Automatic Suspension of)
Plenary Retail Distribution License)
D-22, issued by the Municipal Board)
of Alcoholic Beverage Control of)
the City of Clifton.)

-----)
Maurice F. Karp, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a verified petition filed herein that on April 13, 1954, Anthony Ventura, President of Mack Wine & Liquor Co., Inc., was fined the sum of \$600.00 in the Clifton Municipal Court after he had pleaded non vult to three charges of selling alcoholic beverages to minors. On the same day petitioner's license was picked up by ABC agents because said conviction resulted in an automatic suspension of its license for the balance of its term. R. S. 33:1-31.1.

The petition further recites that on April 26, 1954, petitioner pleaded guilty in disciplinary proceedings instituted by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to charges of selling alcoholic beverages to the same minors, and that said Board then suspended its license for a net period of forty days, commencing at 9:00 a.m. April 13, 1954, and ending at 9:00 a.m. May 28, 1954.

The conviction in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. The case concerns the sale of alcoholic beverages to a minor on three separate occasions. Two of the minors were 18 years of age, and one of the minors was 20 years of age. The petition prays that the automatic suspension of the license may be lifted.

The suspension heretofore imposed appears to be adequate under the circumstances. It further appears that the forty-day suspension expired at 9:00 a.m. May 23, 1954, instead of 9:00 a.m. May 28, 1954. Hence the relief sought will be granted, effective immediately.

Accordingly, it is, on this 27th day of May, 1954,

ORDERED that the automatic suspension of License D-22, held by Mack Wine & Liquor Co., Inc., for premises 1057 Main Avenue, Clifton, be and the same is hereby lifted, and said license is hereby restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against PAULSBORO SPORTSMEN'S ASSOCIATION, INC. 32 Riverview Avenue Paulsboro, N. J.,

CONCLUSIONS AND ORDER

Holder of Club License CB-298, issued by the Director of the Division of Alcoholic Beverage Control.

Paulsboro Sportsmen's Association, Inc., by Samuel W. McCall, President.

David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Sunday, May 23, 1954, you sold alcoholic beverages for consumption on your licensed premises, contrary to referendum held in the Borough of Paulsboro on November 6, 1934; in violation of R. S. 33:1-47 and in violation of Section 3 of an ordinance adopted by the Mayor and Council of the Borough of Paulsboro on December 18, 1946."

The file herein discloses that on Sunday afternoon, May 23, 1954, ABC agents entered defendant's licensed premises and observed a number of men standing at the bar upon which were fourteen partially filled glasses of beer, whiskey glasses and two one-dollar bills. No bartender was observed in attendance. Identifying themselves, the agents seized two glasses of ice-cold beer and sought to interrogate the group, none of whom would volunteer a signed statement or claim as his the beverage and money on the bar. However, an officer of the club admitted to the agents that he and the others there present had participated in the self-service of alcoholic beverages that day and that each was in honor bound to pay for the drinks consumed.

Defendant has no previous adjudicated record. I shall suspend defendant's license for a period of fifteen days. Re Dell'Orto, Bulletin 1005, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 8th day of June, 1954,

ORDERED that Club License CB-298, issued by the Director of the Division of Alcoholic Beverage Control to Paulsboro Sportsmen's Association, Inc., for premises 32 Riverview Avenue, Paulsboro, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 15, 1954, and terminating at 2:00 a.m. June 25, 1954.

WILLIAM HOWE DAVIS Director.

9. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against EMIL KLUCKE T/a EMIL'S LOUNGE 111-113 Park Street Orange, N. J., Holder of Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.

CONCLUSIONS AND ORDER

James A. Palmieri, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On April 15, 1954, while an investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety was conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R. S. 33:1-35."

The file herein discloses that on April 15, 1954, an ABC agent, investigating defendant's licensed premises, observed therein a bowling-game machine and, behind the bar, a toy animal and numerous slips of paper. When questioned by the agents, the licensee denied any connection between the exhibited toy and the bowling game and he further refused to tender the slips. He did, eventually, give the agent five slips with persons' names thereon, which he presently retrieved and deposited with the other slips in the toilet of the men's room, remarking, "You can't prove anything on me as I did not give the prize yet.***"

Defendant has a prior adjudicated record. Effective June 27, 1938, his license was suspended for twenty-four days by the local issuing authority for permitting a brawl on the licensed premises, and effective October 10, 1943, his license was suspended for fifteen days by the same authority on gambling charges. Effective January 13, 1947, defendant's license was suspended for twenty-five days by the State Commissioner for (1) sale for off-premises consumption in other than original containers, (2) bottling for resale, and (3) falsifying application in failing to disclose 1943 suspension.

As the three prior offenses occurred more than five years ago and are dissimilar in character to the offense charged they will not be considered in fixing the penalty herein.

Under all the circumstances, including the plea entered herein, I shall suspend defendant's license for fifteen days. Re Menzel, Bulletin 948, Item 2; Re Jingoli, Bulletin 1000, Item 1.

Accordingly, it is, on this 4th day of June, 1954,

ORDERED, that Plenary Retail Consumption License C-25, issued by the Municipal Board of Alcoholic Beverage Control of the City of

Orange to Emil Klucke, t/a Emil's Lounge, for premises 111-113 Park Street, Orange, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. June 9, 1954, and terminating at 2:00 a.m. June 24, 1954.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - SUSPENSION REIMPOSED AFTER STAY DENIED BY APPELLATE DIVISION.

In the Matter of Disciplinary)
Proceedings against)
JAMES W. ESKRIDGE)
T/a JIMMY'S TAVERN)
2802 Buren Avenue)
Camden, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-26, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)
-----)

O R D E R

BY THE DIRECTOR:

On November 20, 1953, the license herein was suspended for 5 days. See Bulletin 994, Item 6. Pending the licensee's appeal to the Superior Court, Appellate Division, the suspension was stayed. On May 10, 1954, the court affirmed the suspension (see Bulletin 1016, Item 1) and it may, therefore, now be reimposed.

Accordingly, it is, on this 28th day of May, 1954,

ORDERED, that the suspension of 5 days heretofore entered against License C-26, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to James W. Eskridge, t/a Jimmy's Tavern, 2802 Buren Avenue, Camden, be and the same is hereby reimposed to commence at 2:00 a.m. June 7, 1954 and terminating at 2:00 a.m. June 12, 1954.

WILLIAM HOWE DAVIS
Director.

11. STATE LICENSES - NEW APPLICATIONS FILED.

Frank D. Cline
"Rambler", Belmar Marine Basin, Belmar, N. J.
Application filed June 28, 1954 for Plenary Retail Transit License.

Schuster's Express, Inc.
48 Norwich Avenue, Colchester, Conn.
Application filed June 28, 1954 for Transportation License.

John Kocsik
"Ranger", Rte. #35, Belmar Marine Basin, Belmar, N. J.
Application filed June 29, 1954 for Plenary Retail Transit License.

WILLIAM HOWE DAVIS
Director.

12. LICENSED PREMISES - ENTERTAINMENT - "PEEP HOLE" MACHINE AT TAVERN DISAPPROVED.

May 28, 1954

Gentlemen:

In your letter of May 24th you have enclosed a descriptive circular of a "3-D Stereo Picture Machine", and you ask whether such machine is permissible at taverns in New Jersey.

The machine, 21" high, is coin-operated, and is in the nature of a so-called "penny arcade" machine to be installed on a counter or table or bar. There are two eyeholes into which the patron peers on depositing his coin. Through these he views, inside the machine, a series of 20 pictures. From the circular, it is quite apparent that the prime subject of the pictures is to be "Artists' Models".

I am opposed to anything resembling a "peep show" device at taverns. Where a machine like the one in question involved moving pictures, it was ruled out as improper at taverns. See Bulletin 949, Item 6, copy enclosed. There is no greater reason why a "peep show" machine of such type should be permissible at taverns merely because the pictures, instead of being movies, are a series of stills.

Hence, the machine in question is herewith disapproved and should not be installed in or maintained at taverns in this state.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

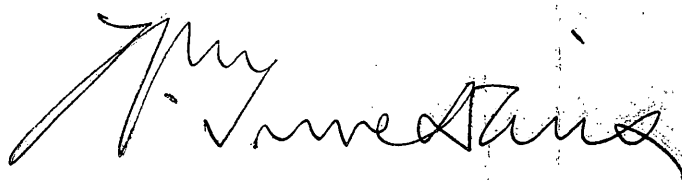
13. CORRECTION OF PRINTER'S ERROR IN LISTING OF "KENTUCKY TAVERN, STRAIGHT KENTUCKY BOURBON (BOTTLED IN BOND)" WHISKEY IN MINIMUM CONSUMER RESALE PRICE PAMPHLET OF JULY 1, 1954.

June 29, 1954

On May 19, 1954 a minimum consumer resale price listing for Kentucky Tavern, Straight Kentucky Bourbon (Bottled in Bond) was filed by the manufacturer with this Division to become effective on July 1, 1954 pursuant to the Rules of State Regulations No. 30. The listing as submitted carried an asterisk (*) indicating that a permissive discount of 5% on case lot purchases was applicable.

Due to a mechanical difficulty in the printing process the aforesaid asterisk alongside the listing of Kentucky Tavern, Straight Kentucky Bourbon (Bottled in Bond) is illegible and in some copies of the Minimum Consumer Resale Price Pamphlet of July 1st does not appear at all.

It shall be deemed that an asterisk appears alongside the listing of "Kentucky Tavern, Straight Kentucky Bourbon (Bottled in Bond)" on page 14 of the Minimum Consumer Resale Price Pamphlet effective July 1, 1954. Retail licensees should correct their copy of the pamphlet immediately.



William Howe Davis
Director.