

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1656

January 26, 1966

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1. NEW LEGISLATION - WHOLESALE LICENSES, IN ADDITION TO CLUB LICENSES, REQUIRE BUT ONE WAIVER UNDER R.S. 33:1-76.

On December 14, 1965 the Governor approved Senate, No. 324 which thereupon became Chapter 188 of the Laws of 1965. The act reads as follows (bracketed matter deleted - underscoring new):

"An Act to amend the title of 'An act concerning alcoholic beverage control, relating to the renewal of certain club licenses,' approved June 17, 1961 (P.L. 1961, c.83), so that the same shall read 'An act concerning alcoholic beverage control, relating to the renewal of certain club and wholesale licenses,' and to amend the body of said act.

Be it enacted by the Senate and General Assembly of the State of New Jersey:

1. The title of chapter 83 of the laws of 1961 is amended to read as follows: An act concerning alcoholic beverage control, relating to the renewal of certain club and wholesale licenses.

2. Section 1 of the act of which this act is amendatory is amended to read as follows:

1. Notwithstanding the provisions of section 33:1-76 of the Revised Statutes if a club or Class B (wholesale) license has been or shall be granted on a waiver of its protection granted on authority of a church or school, the holder of such license shall be entitled to apply for renewal thereof without further or renewed authority, or waiver, of the church or school; but the renewal or reissuance of [the club] such license after a revocation, or subsequent transfer of [the club] such license, shall not be permitted without a new waiver granted on authority of the church or school.

2. This act shall take effect immediately."

JOSEPH P. LORDI
DIRECTOR

Dated: January 26, 1966

2. NEW LEGISLATION - AMENDMENT OF R.S. 33:1-10 (CLASS A - MANUFACTURER'S LICENSE) - PLENARY WINERY LICENSE.

On December 23, 1965 the Governor approved Senate, No. 262 which thereupon became Chapter 208 of the Laws of 1965, effective immediately. The act amended Paragraph 2a of R.S. 33:1-10 to read as follows (bracketed matter deleted - underscoring new):

"Plenary winery license. 2a. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any fermented wines, and to blend, fortify and treat wines, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter and to churches for religious purposes, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be \$650.00. Upon payment of an additional fee of \$100.00 for each but not in excess of 2 premises, in addition to the licensed premises of the winery, the holder of this license shall have the right to sell such wine at retail [on the licensed premises] as is manufactured, blended, fortified or treated by the licensee in his licensed premises and sold as the licensee's products under the label or labels of the licensee or in lieu of such additional fee of \$100.00 but upon payment of an additional fee of \$500.00 the holder of this license shall have the right to sell wines and other alcoholic beverages at retail on the licensed premises; provided, however, that such sales shall be made only for consumption off the licensed premises; and provided further, that such wines and other alcoholic beverages shall be manufactured or blended, fortified, distilled or treated by the licensee in his licensed premises or [in a] by the licensee's subsidiary corporation [operated by the licensee] and sold only under the label or labels of the licensee. The combined total number of plenary winery licenses having retail privileges, shall not exceed [3] one per each million of population in the State as shown by the last preceding Federal census. In the granting of such plenary winery licenses, the Director of the Division of Alcoholic Beverage Control may, in the exercise of his discretion and pursuant to such rules and regulations as he may adopt, give prior consideration to applicants engaged in growing and cultivating grapes upon land owned by the applicant, having an area not less than 3 acres. The containers of all wine sold at retail by such licensee shall have attached thereto a label setting forth such information as shall be required by the rules and regulations of the director of alcoholic beverage control."

JOSEPH P. LORDI
DIRECTOR

Dated: January 26, 1966

3. NEW LEGISLATION - MODIFICATION OF THE 1962 "CHAIN STORE" ACT CONCERNING INTEREST IN MORE THAN TWO RETAIL LICENSES.

Senate Committee Substitute for Senate, No. 321 was approved by the Governor on December 17, 1965 and thereupon became Chapter 197 of the Laws of 1965, effective immediately. The act amended Section 6 (R.S. 33:1-12.36) of P.L. 1962, c.152 to read as follows (underscoring new):

"6. Nothing in this act shall affect (a) the right of any person having a beneficial interest in a retail license or licenses to hold or acquire an interest of not more than 10% of any corporation the shares of which are traded on a national securities exchange or regularly traded in an over-the-counter market by one or more members of a national or affiliated securities association or (b) the right of any person to hold or acquire an interest in a corporation from his parent or grandparent provided such child or grandchild does not have a beneficial interest in any retail license or licenses other than those held by the corporation."

JOSEPH P. LORDI
DIRECTOR

Dated: January 26, 1966

4. APPELLATE DECISIONS - PERTH AMBOY TAVERN OWNERS, INC. v. PERTH AMBOY and JOHN F. KENNEDY PUERTO RICAN DEMOCRATIC CLUB, INC.

Perth Amboy Tavern Owners, Inc.,)
)
 Appellant,)
 v.)
 Board of Commissioners of the)
 City of Perth Amboy, and John)
 F. Kennedy Puerto Rican Democratic)
 Club, Inc.,)
)
 Respondents.)

On Appeal

O R D E R

Robert W. Wolfe, Esq., Attorney for Appellant
 Francis M. Seaman, Esq., by Robert P. Levine, Esq., Attorney for
 Respondent Board of Commissioners
 Wilentz, Goldman & Spitzer, Esqs., by Warren W. Wilentz, Esq.,
 Attorneys for Respondent John F. Kennedy Puerto
 Rican Democratic Club, Inc.

BY THE DIRECTOR:

Appellant appeals from the action of respondent Board of Commissioners in granting, by resolution dated June 16, 1965, a club license to respondent John F. Kennedy Puerto Rican Democratic Club, Inc., for premises 289 McClellan Street, Perth Amboy.

Prior to the hearing respondent Board of Commissioners adopted a resolution dated December 15, 1965, rescinding its June 16th resolution granting the license, for the stated reason that respondent John F. Kennedy Puerto Rican Democratic Club, Inc. had withdrawn its application for license.

The appeal is therefore moot.

Accordingly, it is, on this 21st day of December 1965,

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

JOSEPH P. LORDI,
DIRECTOR

DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Prodeedings against)
)
 One Eleven Wines & Liquors, Inc.)
 111-113 Albany Street)
 New Brunswick, N.J.,)
)
 Holder of Plenary Retail Consumption License C-8, issued by the Board of Commissioners of the City of New Brunswick.)
)

CONCLUSIONS and ORDER

 Busch & Busch, Esqs., by Malcolm R. Busch, Esq., Attorneys for Licensee
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On Wednesday night April 28, early Saturday morning May 1, Thursday night May 6, and Friday night May 7 into early Saturday morning May 8, 1965, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g. males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

At the hearing held herein three ABC agents testified with respect to the said charge. The primary testimony was given by Agent S and his testimony was substantially corroborated, by stipulation, by two other agents.

The substance of the Division's testimony was as follows: Pursuant to specific assignment to investigate alleged homosexual activities at the licensee's premises, ABC agents made four visits to the said premises. On Wednesday, April 28, 1965, at about 8:45 p.m., the three agents entered the barroom and seated themselves at the bar. On this occasion, according to the testimony of Agent S, they noted that there were about nine males and no females present. At the height of the activity the patronage increased to about eleven, nine of whom appeared to be "very effeminate; from their mannerisms and their demeanor and their actions they appeared to be males impersonating females." They were kept under observation for about one and one-half hours. Their mannerisms were described as follows: They were conversing in a lisping tone of voice and used limp wrist movements to each other; one patron would stick his tongue out at another and they would laugh and giggle; they drank in a very dainty manner, took short sips from their straws; looked into each other's eyes as they conversed. When walking they swished and swayed.

The agents returned to the premises on Saturday, May 1, 1965, at about 12:01 a.m., at which time they noted that there were fifty male and two female patrons, all of whom, with the exception of one couple, appeared to be homosexuals. On this occasion the agents observed that many of them were wearing fluffy sweaters, tight chino pants, gaily printed sport shirts and turtle-neck sweaters. There was a very strong aroma of perfume which exuded from these individuals. The agents further observed that many of these patrons were holding hands with each other, rolling their eyes, fluttering their eyelashes and singing love songs to each other around a player piano. They also overheard two of these apparent homosexuals discussing another apparent homosexual and one said, "Oh, Rick and I are very close friends. We are not what you call intimate. We are like close sisters, friendly sisters." The agents also testified that some of the patrons had their arms around the waists of some other patrons and frequently "one would throw a kiss in gesture to another, such as putting his hand to his mouth and making a motion, a kissing sound, and throw it in the air and the other would catch it and pick it up and put it on his lips."

During this visit Mr. Mack (later identified as E. Manning Mack, the manager and principal officer of the corporate licensee) was walking around in close proximity to these individuals. He appeared to know many of them and they knew him by name. Some of them placed their arms around his back and his shoulders, and several of them purchased drinks for him.

The third visit was made on Thursday, May 6, 1965, at approximately 10:30 p.m. At this time the agents noted that there were fifteen male and two female patrons sitting at the bar. All of the male patrons appeared to be homosexuals bearing the characteristics as hereinabove described. One of the women appeared to be a lesbian and was sitting with another woman who apparently was a normal female. The apparent lesbian bought drinks for her companion and appeared to be very affectionate toward her.

About 11 p.m. two other apparent homosexuals entered the premises and immediately seated themselves at the bar. One of them kissed and embraced the other in the immediate presence of the bartender on duty and Mack. The agents also overheard a conversation wherein the apparent homosexual who was kissed was asked how he was "making out" and he replied, "If you can't fight them, lick them", accompanying this statement with a flutter of his eyelashes, rolling of his eyes, giggling and protruding his tongue in response to similar gestures by his companion.

The final visit was made on Friday, May 7, 1965, at 11:15 p.m. On this occasion there were twenty-five males and several females sitting at the bar. Mack and his wife were in the barroom and the dining-room area during the entire visit of the agents. The patronage increased to about thirty-five males and several couples in the rear dining-room, all of whom at the bar appeared to be apparent homosexuals. They were dressed in the same manner as described on previous visits. Some of them sat around the player piano singing a song entitled "Mister Wonderful", during which time they rolled their eyes at each other and had their arms around each other's neck. They would throw kisses at each other and giggled and laughed in an effeminate manner. They also swished and swayed when they walked, rolled their eyes and used endearing terms to each other. One of these apparent homosexuals referred to his companion as his girl friend; another one was called his lover.

The agent then engaged Mack in conversation, saying, "I see all the girls are here tonight as usual", indicating that he was referring to the male patrons. Mack replied, "Yes, they

are." The agent then said, "I never saw such a good-looking group as them, including the two lesbians", to which Mack replied, "Who are we to say what they are, what they do, or when they leave here, who is to care what they do when they leave here?" He added, "They are a well-behaved group and they are a good-spending group. I don't allow them to drag in here." Mack further explained that he caters to two separate types of patronage and, pointing to the persons sitting in the dining-room, said, "See those people in the back? Those are mostly straight people."

At this point the agents identified themselves, and they retired to an adjoining room. Mack then stated, "I know I am in trouble" and then went into a detailed defense of his position. He told the agents that he had suffered from a physical disability, had left his place of business for treatment. When he returned he found that there were some "queers" in his premises. He then instructed these "queers" that they were not to dress in female attire and that they were not to drag or to use any make-up. He also insisted that, if he actually saw any kissing among his patrons, he would have "thrown them out immediately. He does not permit them to drag in the premises." Finally he asked the agents whether they would advise him to "get rid of them right away." He also indicated that he did not intend to contest this charge.

Under searching cross examination Agent S defined the terms which he used in his direct examination and stated that, while some of the actions and mannerisms considered by themselves might not represent apparent homosexuality, the combination of these mannerisms and characteristics and behavior of these patrons represented to him the complex upon which he arrived at his opinion expressed in his direct testimony. He explained that the agents did not attempt to converse with these apparent homosexuals because they "ignored us completely. Didn't attempt a conversation."

E. Manning Mack (president of the corporate licensee) was the only witness for the defense, and his testimony represented a blanket denial of the charge. The substance of his testimony was that, while he was present on all of the occasions testified to by the agents, he noticed nothing unusual about the behavior, mannerisms or conduct of these individuals. He saw no patrons throwing kisses; he did not detect any strong odor of perfume emanating from the group of male patrons, and denied inviting any apparent homosexuals to attend the premises.

On cross examination he insisted that the conduct of all of the patrons at the bar was entirely normal, and he noticed nothing unusual about their mannerisms or behavior. He was asked whether he considered it unusual to have fifty male patrons at the bar and no females on Friday night and early Saturday morning, as testified to by the agents. His answer was, "Well, Friday nights and Saturday nights the students and people in general don't have to work for the weekends, so those are the nights that they go out. That's the reason." He admitted that on that night he kept his patrons under surveillance because he sought to avoid arguments or fights and wanted to make sure that there was not any over-consumption by his patrons. He also felt there was nothing unusual in having one patron buy a drink for another or toast another, but vigorously denied seeing any of these patrons throw kisses or make any other intimate gestures. He was then asked if throwing a kiss or catching a kiss would have any significance to him, "Wouldn't it indicate that they were queers", to which his answer was "No." He had no recollection of the specific question directed to him by the agents as testified to by them, except that he does remember discussing his physical disability which required that he absent

himself from the premises for a period of time. He further denied knowing what a homosexual is, and in fact first started to look into the nature of homosexuality after this offense. He states that he never knew the exact definition of a homosexual, and still does not know it until this day, although he has been in the tavern business for twenty-one years. In answer to a further question about the nature of his patronage, he stated, "Well, they told me that I had homosexuals and queers there and I said, 'To my observation they are not.' I said, 'Can you pinpoint them? Can you definitely say that they are?' They said, 'No, we can't. Not even a psychologist or a psychiatrist can verify that.' So I said, 'Neither can I.' And further: "'In your opinion,' and I said, 'If you have had more experience than me -- in my opinion I don't see anything wrong.' I said, 'In your opinion you tell me how can I get rid of them? How can I walk over to a person and say, 'If you are a homosexual, if you are, I don't want you in here'".

He added that it was his impression that it was his obligation to serve anyone who came into the premises, and that he had no right to refuse a person who came in because "you didn't like the way he looked." He was then asked by me the following:

"Q ... Assuming that you saw, if you saw what the agents described what they saw, would you consider them apparent homosexuals?

"A I wouldn't consider anybody an apparent homosexual, and I told them if the only thing is their behavior was obnoxious to other people or was obnoxious to me, I told them if I saw men kissing each other or hugging each other, I would throw them out bodily."

I then pursued the matter further and asked whether, if he saw what the agents testified to, would he have evicted them from his premises, and his answer was, "I don't think I would have the right to evict them. I would just tell them to behave themselves."

On rebuttal Agent S testified that at no time, in a conversation with Mack, did he ever assert that he would be subject to suit if he asked these apparent homosexuals to leave the premises.

I have detailed the testimony of the witnesses for both the Division and the licensee in order to obtain an objective prospective of the true situation that existed on the dates in question. My careful analysis and evaluation of this testimony, coupled with my observation of the witnesses as they testified, lead me to the conscientious conviction that the version as narrated by the agents is a credible, believable and factual version.

On the contrary, I was not impressed by the credibility or veracity of the corporate officer who testified on behalf of the licensee. I found that his testimony was evasive, uncertain and lacking in forthrightness. I am particularly unimpressed with his responsibilities and obligations, as an agent of the licensee, with apparent homosexuals. While denying vigorously that there were any apparent homosexuals on the licensee's premises, his testimony appeared to be rather contradictory on this point. For example, in his direct testimony, while denying the presence of homosexuals, he responded to the following question of his counsel:

"Q What did you say to the inspector?

"A The inspector said to me, 'These are homosexuals.' I said, 'Well, I wouldn't know.' And I said, 'If they are, as long as they behave themselves here,

and I don't know the difference, I don't know who is a homosexual because I don't know any homosexuals,' I said, 'If they do anything on the outside, that's none of my business. I can't control them there. Here, I don't know who is and who isn't and I don't see any, as far as I know, because I wouldn't know one.'

If the description of the manner, conduct and characteristics of these apparent homosexuals, as given by the agents, is to be believed, it should have been the duty and prime responsibility of the licensee and its agent to recognize that these persons, as charged herein, were apparent homosexuals. As the agents related their observation, the presence of fifty males in the circumstances described on one of the occasions should have made it crystal clear to the licensee that this, standing alone, was a suspicious circumstance.

The following other circumstances should have brought home to licensee's agent the true nature of these patrons, viz., the use of such endearing terms as "lover", "sweetheart" and "darling" by males addressed to other males; the throwing of kisses; the embracing of each other around the waist; their manner of walking by swishing and swaying; their kissing each other, and hugging each other, and other effeminate gestures and mannerisms and conduct, including the heavy use of perfume. All of these should have alerted licensee to the true nature of these patrons.

I am convinced that Mack actually knew what was going on. I am not at all persuaded by his testimony that he did not know the definitive nature of apparent homosexuals. Licensees may not avoid the responsibility for the conduct of the licensed premises merely by closing their eyes and ears. On the contrary, licensees must use their eyes and ears and use them effectively to prevent improper use of the premises. Re Ehrlich, Bulletin 1441, Item 5; Bilowith v. Passaic, Bulletin 527, Item 3. Moreover, a licensee is under a duty to exercise close supervision of his licensed premises, and violations occurring therein cannot be excused because he had no personal knowledge of them. Rule 33 of State Regulation No. 20; Stein v. Passaic, Bulletin 451, Item 5.

The licensee is under the impression, and this is stressed by its counsel in a memorandum submitted in summation, that, in the absence of an actual disturbance, this licensee or its agent would be prevented under R.S. 18:25-12(f) (the Civil Rights Act) from evicting such apparent homosexuals regardless of their numbers. He cites the above statute which makes it unlawful for an owner of a place of public accommodation to "refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges thereof" He argued that a tavern is a place of public accommodation; that the licensee comes within the definition of the statute and that ousting of such individuals would be violating the civil rights of those patrons, "particularly their right to congregate and assemble without interfering with the rights of any other person and without violating any law."

This specific argument was disposed of by then Commissioner Burnett in Re Plaza Hotel-O'Leary, Bulletin 188, Item 9. Commissioner Burnett ruled that this argument is groundless because it can only apply to an action under the Civil Rights Act where a person was refused liquor because of his race, creed or color, or previous condition of servitude, or for some cause of reason not "applicable alike to all citizens of every race, creed and color, and regardless of race, creed or color, or of previous condition of servitude", citing Shubert v. Nixon Amusement Co., 83

N.J.L. 101 (Sup.Ct. 1912). He concluded that a licensee has an absolute right to refuse to sell or serve liquor to anybody provided only that such refusal is not made on account of race, creed or color. He further cited his early decision in Re Dorflinger, Bulletin 136, Item 12, as follows:

"The reason for this is that tavern keepers, like all liquor licensees, have great responsibilities under the law"

and further cited Re Rollka, Bulletin 142, Item 4:

"The licensee is Master of his tavern. He who is responsible for the conduct of it has the right to decide for himself what behavior he shall permit."

In Re Dorsey, Bulletin 226, Item 11, it was held further that there was nothing in the alcoholic beverage law which defines licensed places as public places. Neither the term "tavern" nor "saloon" is used in the law (Re Phillips, Bulletin 200, Item 5), let alone a definition as to whether or not they are public places. The Commissioner cited in that case State v. Lynch, 23 N.J.L.J. 45, wherein Judge, afterwards Justice, Fort held that a saloon was not a public place within the meaning of that term in "An Act Concerning Disorderly Persons." He said:

"A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor."

His ruling was followed by Justice Parker in State v. Colgan (Sup.Ct. 1919), 92 N.J.L. 307. The Commissioner then stated that, so far as the alcoholic beverage law was concerned, he has consistently treated taverns as being "private places" and hence has held the proprietor responsible for whatever goes on therein and has sustained his power, commensurate with such responsibility, to maintain order and decency, citing Re Tait, Bulletin 188, Item 9; Re Craster, Bulletin 198, Item 6. See Re Minetti, Bulletin 264, Item 14. A similar contention that apparent homosexuals cannot be barred from licensed premises has most recently been rejected in Re Jo Stem Corp., Bulletin 1625, Item 2. To the same effect, see Re Kaczka & Trobiano, Bulletin 1063, Item 1; Re V.M. & S., Inc., Bulletin 1345, Item 6; Re Bader, Bulletin 1073, Item 4.

I therefore conclude that the contention that the licensee is estopped under the provisions of the Civil Rights Act from excluding this type of patronage and his further contention that such patrons cannot be ousted from a tavern because it is a public place are both without substantial merit and must be rejected.

The liquor business must be carefully supervised and tightly restrained in the public interest, in accordance with the manifest design of the alcoholic beverage law. Re Olympic, 49 N.J.S. 299, 307.

The court observed in In re Schneider, 12 N.J.S. 449, at p. 458:

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises."

The court further went on to state:

"'Immorality' is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are contra bonos mores, inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2nd ed.)."

One further point: Counsel presses the view that there was no proof that these persons were in fact homosexuals. However, the cases are legion in support of the principle that it is not necessary to prove that these persons were in fact homosexuals. It is sufficient to show that by their appearance, mannerisms, actions and behavior they are apparent homosexuals. See Padlock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405 (App.Div. 1957); Re Rutgers Cocktail Bar, Bulletin 1543, Item 3.

Finally, the attitude of our courts with reference thereto was well delineated in Murphy's Inc. v. Davis, 70 N.J. Super. 87:

"It should not be thought that the court is callous to the problem of the homosexual, medically or socially. The public interest in tight control over the liquor business, In re Olympic, Inc., 49 N.J. Super. 299, 306 (App.Div. 1958), certification denied 27 N.J. 279 (1958), involves, however, neither the curative approach of the physician nor the analytical view of the sociologist. The primary concern in this regard is maintenance of accepted standards of public decency and morality, and when these standards are, as here, impinged upon, proper sanctions are not only justified but are demanded."

I am persuaded by the clear and convincing proof in this case that the Division has established the charge; that the licensee and its agent knew or should have known of the presence and activities of these apparent homosexuals, and that it did in fact acquiesce in such assemblage, in violation of the intent and purpose of Rule 5 of State Regulation No. 20.

Absent prior record, I recommend that an order be entered suspending the license for a period of sixty days, the usual penalty imposed where the violation involves simple congregation of a relatively large percentage of apparent homosexuals. Re Charmac, Inc., Bulletin 1630, Item 2.

Conclusions and Order

Exceptions to the Hearer's report and argument with reference thereto were filed by the attorneys for the licensee pursuant to Rule 6 of State Regulation No. 16.

The Hearer's report amply answers the arguments advanced by the attorneys for the licensee in their memorandum and exceptions. However, I want to comment on the motion made by the attorneys for the licensee during the course of the hearing that the charge herein be dismissed on the ground that Rule 5 of State Regulation No. 20 fails to specifically define "nuisance" as set forth in said rule.

The short answer to this is that "nuisance" as contemplated in this rule, and specifically applied to the charge sub judice, has been extensively defined in many of our adjudicated cases.

It is well settled by the dictionary meaning. As defined in Webster's Third New International Dictionary, "nuisance" is:

"an offensive, annoying, unpleasant, or obnoxious thing or practice: a cause or source of annoyance that although often a single act is usual, a continuing or repeated invasion or disturbance of another's right."

See also Alpine Village Tavern, Inc. v. Newark, Bulletin 629, Item 3; Re Cosfair Corporation, Bulletin 875 Item 9; Re Arlington Inn, Bulletin 982, Item 1; Benedetti v. Trenton, Bulletin 1040, Item 1 (aff'd 35 N.J. Super. 30 (1955)); Re Marrone, Bulletin 1076, Item 4; Re White House Inn, Inc., Bulletin 1252, Item 2; Schwartz v. Paterson, Bulletin 1577, Item 2.

As the Hearer pointed out, there were, on the occasions complained of, congregations of a relatively large percentage of apparent homosexuals on the licensed premises. These patrons, by their acts, conduct and demeanor, satisfied the agents and the Hearer that they were indeed apparent homosexuals and their presence constituted a nuisance within the contemplation of this rule. The promulgation by the Division of Alcoholic Beverage Control of the rule providing that no licensee shall allow, permit or suffer in or upon its licensed premises any lewdness or immoral activity or conduct is within its orbit of authority. McFadden's Lounge v. Division of Alcoholic Beverage Control, 33 N.J. Super. 51; R.S. 33:1-39. And, as was pointed out in Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, 46 N.J. Super. 405:

"... the liquor business must in the interest of the public welfare be carefully supervised and tightly restrained, and to that end, the governmental power extensively to regulate licensees should be accorded broad judicial support."

See also Carelis v. Division of Alcoholic Beverage Control, (App. Div. 1961), not officially reported, reprinted in Bulletin 1430, Item 1.

In addition to the numerous cases which define "nuisance" as used in the applicable rule, common sense would dictate that the conduct and activity as described in the Hearer's report would be "inimical to the preservation of our social and moral welfare to permit public taverns to be converted into recreational fraternity houses for homosexuals or prostitutes. It is the policy and practice of the Division of Alcoholic Beverage Control to nip reasonably apprehended evils while they are in the bud." Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, *supra*. Patrons of liquor licensed premises should not be exposed to such activity.

The testimony of the agents that these apparent homosexuals were holding hands with each other, rolling their eyes, fluttering their eye lashes and singing love songs to each other around the player-piano, the embracing of male apparent homosexuals by other male apparent homosexuals and the throwing of kisses, the open kissing, the swishing and swaying when they walked, and the other mannerisms and conduct could not but have an unwholesome and adverse effect upon the other patrons in these licensed premises.

It is no answer for the licensee's agents to deny that these activities took place in their presence. I am persuaded, as was the Hearer, that the conduct and activities as testified to by the agents actually took place and were, or should have been,

observed by licensee's agents. Thus it became the duty of the licensee to take immediate action to prevent such prohibited conduct on its premises. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39; Paddock Bar, Inc. v. Division of Alcoholic Beverage Control, supra; see 48 C.J.S. Intoxicating Beverages, sec. 199, p. 330.

Counsel for the licensee raises the additional argument that the agents were not qualified to testify as to the apparent homosexuality of the patrons so described. Witnesses are not required to be psychiatrists or doctors in order to testify as to their observations of these apparent homosexuals. Agent S was closely cross-examined with respect to his experience with investigations relating to apparent homosexual activity. He stated that he has had considerable on-job training and, in fact, specialized in this type of investigation for this Division for a number of years. Just as an experienced investigator may be permitted to testify with respect to apparently intoxicated persons. (cf. Freud v. Davis, 64 N.J. Super. 242, 247), so too a witness with ordinary intelligence may, after proper observation, testify as to whether or not a person is an apparent homosexual. Cf. Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87.

I conclude, therefore, that, in the totality of the evidence presented herein, the Division has established its case by the overwhelming preponderance of the credible evidence.

Having carefully considered the entire record, including the transcript of the testimony, the memorandum submitted in summation by the attorneys for the licensee, the Hearer's report and the exceptions and arguments filed with reference thereto, I concur in the Hearer's findings and conclusion and adopt his recommendations. Hence I find the licensee guilty as charged, and shall suspend its license for a period of sixty days.

Accordingly, it is, on this 27th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-8, issued by the Board of Commissioners of the City of New Brunswick to One Eleven Wines & Liquors, Inc., for premises 111-113 Albany Street, New Brunswick, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, January 3, 1966, and terminating at 2 a.m. Friday, March 4, 1966.

JOSEPH P. LORDI,
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against John F. Giordano t/a Johnnie's Tavern 87 Water Street Morristown, N. J.

CONCLUSIONS and ORDER

Holder of Plenary Retail Consumption License C-19, issued by the Board of Aldermen of the Town of Morristown

Edward F. Broderick, Jr., Esq., Attorney for Licensee. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on November 9 and 12, 1965, he permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Blue Fountain, Inc., Bulletin 1647, Item 4.

Accordingly, it is, on this 28th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-19, issued by the Board of Aldermen of the Town of Morristown to John F. Giordano, t/a Johnnie's Tavern, for premises 87 Water Street, Morristown, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, January 4, 1966, and terminating at 2:00 a.m. Monday, February 28, 1966.

JOSEPH P. LORDI, DIRECTOR

DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Philip J. Pecoraro and Patrick R. Marchitto t/a Patty and Peck's Bar 281 Newark Avenue Jersey City, New Jersey)

CONCLUSIONS and ORDER

Holders of Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)

Licensees, by Philip Pecoraro, Pro se. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on October 3, 1965, they permitted patrons on the licensed premises during prohibited hours, viz., between 2:00 a.m. and 2:25 a.m., in violation of municipal ordinance.

Reports of investigation disclose that on the date alleged, Division agents found four patrons consuming alcoholic beverages after the local closing hour of 2:00 a.m.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Lauterio, Bulletin 1475, Item 8; Re Schmidt & Brophy, Bulletin 1577, Item 12.

Accordingly, it is, on this 28th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Philip J. Pecoraro and Patrick R. Marchitto, t/a Patty and Peck's Bar, for premises 281 Newark Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, January 4, 1966, and terminating at 2:00 a.m. Friday, January 14, 1966.

JOSEPH P. LORDI, DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Arthur C. Champion)
t/a "Point View Inn")
1854 Marlton Pike)
Cherry Hill, New Jersey)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consump-)
tion License C-11, issued by the)
Township Council of the Township)
of Cherry Hill)
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Cahill, Wilinski & Mohrfeld, Esqs., by Robert Wilinski, Esq.,
Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 10, 1965, he sold three 6-packs of beer to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re W & W, Inc., Bulletin 1639, Item 8.

Accordingly, it is, on this 28th day of December, 1965,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Council of the Township of Cherry Hill to Arthur C. Champion, t/a Point View Inn, for premises 1854 Marlton Pike, Cherry Hill, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. Tuesday, January 4, 1966, and terminating at 3:00 a.m. Friday, January 14, 1966.


Joseph P. Lordi
Director