

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

BULLETIN 636

OCTOBER 9, 1944.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 30 DAYS.

AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID \$150.00 FINE - LICENSE ORDERED SUSPENDED FOR 30 DAYS - APPLICATION TO LIFT GRANTED UPON TERMINATION OF SUSPENSION.
2. COURT DECISIONS - NEW JERSEY SUPREME COURT - ABAD v. ALFRED E. DRISCOLL, COMMISSIONER, AND MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK - ORDER DISMISSING APPLICATION FOR WRIT OF CERTIORARI - COMMISSIONER SUSTAINED.
3. ELIGIBILITY - FACTS EXAMINED - COMMERCIALIZED GAMBLING FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT INELIGIBLE TO HOLD LIQUOR LICENSE OR TO WORK FOR LICENSEE IN NEW JERSEY.
4. DISCIPLINARY PROCEEDINGS - ON PETITION TO RECONSIDER PENALTY - ORDER MODIFYING PENALTY.
5. APPELLATE DECISIONS - RETAIL LIQUOR DEALERS ASSOCIATION OF RED BANK, INC. v. BOROUGH OF RED BANK AND WEINSTEIN - ORDER OF DISCONTINUANCE.
6. 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 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR GUILTY PLEA.
7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - CHARGE DISMISSED.
8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINOR IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.
9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS.
10. ACTIVITY REPORT FOR SEPTEMBER, 1944.
11. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS DISMISSED - HEREIN OF THE EFFECT OF THE REPEAL OF AN ORDINANCE ON PENDING DISCIPLINARY PROCEEDINGS WHEREIN A VIOLATION OF THE ORDINANCE IS ALLEGED.
12. RETAIL LICENSES - ISSUED BY LOCAL MUNICIPAL AUTHORITIES.

New Jersey State Library

REPORT OF THE
COMMISSIONER OF THE
BUREAU OF LAND MANAGEMENT
ON THE
LANDS OF THE STATE OF CALIFORNIA

1911

LANDS OF THE STATE OF CALIFORNIA

1911

The following is a list of the lands of the State of California, as reported by the Commissioner of the Bureau of Land Management, for the year 1911.

The lands are classified as follows:

1. Lands owned by the State of California.

2. Lands owned by the United States Government.

3. Lands owned by private individuals.

4. Lands owned by corporations.

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

BULLETIN 636

OCTOBER 9, 1944.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - LICENSE SUSPENDED FOR PERIOD OF 30 DAYS.

AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC
BEVERAGES TO MINORS - LICENSEE PAID \$150.00 FINE - LICENSE ORDERED
SUSPENDED FOR 30 DAYS - APPLICATION TO LIFT GRANTED UPON TERMINA-
TION OF SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

JESSE MASON, JR.)
54 Franklin Street)
Lambertville, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-10, issued by the)
Board of Commissioners of the City)
of Lambertville.)

CONCLUSIONS
AND ORDER

-----)
In the Matter of Petition by)

JESSE MASON, JR.)

To lift the Automatic Suspension of)
Plenary Retail Consumption License)
C-10 issued by the Board of)
Commissioners of the City of)
Lambertville.)
-----)

Lloyd Fisher, Esq., Attorney for Defendant-licensee and Petitioner.
Nathan Davis, Esq., appearing for Department of Alcoholic Beverage
Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that on August 15, 1944, and on other dates prior thereto, he served alcoholic beverages to Marie ---- and Jean ----, both minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

It further appears that on August 22, 1944 the licensee and his bartender, Samuel Daugherty, Jr., pleaded guilty in the Special Sessions Court of Hunterdon County to an allegation charging sale of alcoholic beverages to minors, in violation of R. S. 33:1-77, for which offense each defendant was fined \$150.00, which fines have been paid. Because of such conviction the license was automatically suspended (R. S. 33:1-31.1) for the balance of its term and was picked up by an investigator of the State Department of Alcoholic Beverage Control on August 29, 1944.

The licensee has filed a petition with this Department asking that the automatic suspension of his license be lifted by the Commissioner.

The criminal proceedings and the charges in this disciplinary proceeding are based on the same facts. They involve sales to two minors, both fifteen years of age. In mitigation, the licensee, who served the minors in question, states that he inquired from both girls as to their ages and was informed that they were both over

twenty-one years of age, but did not ask them to sign anything for the reason that they appeared to him to be over twenty-one years of age. Pictures obtained of the two minors in question indicate that they appeared to be under twenty-one years of age. As previously pointed out, the mere inquiry as to age is not sufficient to constitute a defense. Admittedly, the licensee did not comply with the provisions of R. S. 33:1-77.

While the license has been automatically suspended for the balance of its term, nevertheless it has been the policy of this Department to lift an automatic suspension when the licensee has been fully penalized for the offense committed. See Kerensky, Bulletin 589, Item 2. The extreme youth of the minors involved makes the offense an aggravated one. The licensee, however, has no prior record. Under all the circumstances, I shall, in the pending disciplinary proceedings, suspend the license for thirty days and shall grant the petition to lift the suspension on September 28th next, at which time the suspension of thirty days from the date upon which the license was picked up will have been served.

Accordingly, it is, on this 20th day of September, 1944,

ORDERED, that the automatic suspension of License C-10, held by Jesse Mason, Jr. for premises 54 Franklin Street, Lambertville, be lifted at 2:00 A. M. on September 28, 1944. The license may be returned to the licensee at that time.

ALFRED E. DRISCOLL
Commissioner.

2. COURT DECISIONS - NEW JERSEY SUPREME COURT - ABAD v. ALFRED E. DRISCOLL, COMMISSIONER, AND MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK - ORDER DISMISSING APPLICATION FOR WRIT OF CERTIORARI - COMMISSIONER SUSTAINED.

NEW JERSEY SUPREME COURT

ADELINO VASQUEZ ABAD,)
Prosecutor,)

-vs-

ALFRED E. DRISCOLL, COMMISSIONER OF)
THE STATE DEPARTMENT OF ALCOHOLIC)
BEVERAGE CONTROL OF THE STATE OF NEW)
JERSEY, AND MUNICIPAL BOARD OF ALCO-)
HOLIC BEVERAGE CONTROL OF THE CITY)
OF NEWARK, NEW JERSEY,)

Respondent

ON CERTIORARI
ORDER DISMISSING APPLICATION
FOR WRIT OF CERTIORARI

This matter having come on for hearing before the Court at the Court House at Newark, on the 27th day of May, 1944, in the presence of Feld and Breitner, Attorneys for the Prosecutor; George B. Astley, Attorney for the Municipal Board of Alcoholic Beverage Control of the City of Newark, and Thomas L. Hanson, representing the Attorney General of the State of New Jersey, appearing for Alfred E. Driscoll, Commissioner of the State Department of Alcoholic Beverage Control of the State of New Jersey, and the respective counsel having been heard and the arguments presented having been considered by the Court, and the Court having determined the same;

It is ORDERED that the aforesaid application for a writ of certiorari be denied.

Order entered September 9, 1944.

On motion of
Thomas L. Hanson, Attorney,
appearing for Walter D. Van Riper,
Attorney General.

Charles W. ^{Parker} Porter
Supreme Court Justice.

3. ELIGIBILITY - FACTS EXAMINED - COMMERCIALIZED GAMBLING FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT INELIGIBLE TO HOLD LIQUOR LICENSE OR TO WORK FOR LICENSEE IN NEW JERSEY.

September 21, 1944

Re: Case No. 539

Applicant seeks a ruling as to his eligibility to hold a liquor license or to be employed by or connected in a business capacity with the holder of such a license.

In January 1941 applicant was indicted, charged with keeping a "gambling resort." He was subsequently tried on said indictment, found guilty, and sentenced to from one to three years in State Prison and to pay a \$1500.00 fine. He appealed the conviction to the Supreme Court and then to the Court of Errors and Appeals, where it was upheld. Applicant started serving his term in October 1942. He was released from State Prison on July 20, 1943 at the expiration of his minimum term, less time off for good behavior, and placed on parole for the balance of his term. The fine was remitted.

Commercialized gambling may or may not involve moral turpitude, depending upon the facts. See Re Case No. 417, Bulletin 532, Item 2.

Applicant's story as to the facts and incidents leading to his conviction is that for about seven or nine years applicant had been the operator of a poolroom. About seven years or so before his conviction he tried to sell the business because he was not making as much as he thought he should but was unable to sell, and then took in another man who operated a dice "crap" game in the back room. This other man paid applicant a percentage of the profits. Applicant cleared from between sixty and one hundred dollars a week for his interest in the game.

The record of the conviction, however, as reviewed by the Supreme Court, shows that applicant was really a partner in the game; that the poolroom was run as a front for the more lucrative but illicit "business"; that he worked in the operation of the game, which ran five nights a week, and catered to a fair-sized "clientele."

Applicant's principal concern seems to be with the fact that he was caught rather than that he was engaged in an illegal enterprise. When asked at the hearing held at the Department, "Didn't you know it was against the law to be interested in a gambling resort?", applicant answered, "Yes. I never dreamed there was such a heavy penalty for it. I never heard of it. Had I known that there was such a penalty I would have had nothing to do with it."

It is obvious that applicant was operating a gambling resort with the full knowledge that such operation was forbidden by law and in total disregard of the laws of the state. I feel that, under the circumstances and facts as developed in the instant case, the crime of which applicant was convicted involves the element of moral turpitude.

It is recommended that applicant be advised that he is ineligible to hold a liquor license or work for a liquor licensee in this State.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

Edward F. Hodges,
Attorney.

4. DISCIPLINARY PROCEEDINGS - ON PETITION TO RECONSIDER PENALTY - ORDER MODIFYING PENALTY.

In the Matter of Disciplinary Proceedings against)

CIRIACO D'ALOIA and)
ELSIE TRAVISANO)
446 No. 5th Street)
Newark, 7, N. J.,)

ON PETITION
ORDER

Holder of Plenary Retail Consump-)
tion License C-959 issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

Anthony M. Zoppi, Esq., Attorney for Petitioner, Louis Perrelli.

BY THE COMMISSIONER:

On August 29, 1944 I suspended the license of Ciriaco D'Aloia and Elsie Travisano for the balance of its term, effective at 2:00 A. M. August 31, 1944, after they had pleaded guilty to a charge alleging that they had aided and abetted Frank Potter to exercise the rights and privileges of their license. In said order it was provided that leave would be given to a bona fide purchaser of the business to file a petition for an order lifting the suspension after at least forty days of the suspension had been served.

Elsie Travisano, one of the defendants herein, has filed a petition with me requesting that relief be afforded to Louis Perrelli, the purchaser of the business, prior to the expiration of forty days from the effective date of the suspension imposed in the disciplinary proceedings. The attorney for the petitioner herein has appeared before me and has joined in said request for relief.

It appears that no business has been transacted under the license since January 15, 1944, when the violation was discovered by agents of the Department of Alcoholic Beverage Control.

It further appears that the arrangements to purchase the business were entered into between the defendants herein and Louis Perrelli in June 1944, and that the lengthy suspension imposed in the disciplinary proceedings is preventing Perrelli from obtaining a transfer of the business in accordance with said agreement. I believe that the purchaser is entitled to relief. It has been further represented to me that on September 14, 1944 the Municipal Board of Alcoholic Beverage Control of the City of Newark duly transferred the license, subject to the suspension heretofore imposed, from Ciriaco D'Aloia and Elsie Travisano to Louis Perrelli.

It thus appearing that the unlawful situation has been corrected, I have decided to grant relief to the bona fide purchaser of the business after twenty-five (25) days of the suspension have been served instead of forty days as fixed in the original order.

Accordingly, it is, on this 25th day of September, 1944,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-959, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - RETAIL LIQUOR DEALERS ASSOCIATION OF RED BANK, INC. v. BOROUGH OF RED BANK AND WEINSTEIN - ORDER OF DISCONTINUANCE.

THE RETAIL LIQUOR DEALERS
ASSOCIATION OF RED BANK, INC.,

Appellant,

-vs-

MAYOR AND COUNCIL OF THE BOROUGH
OF RED BANK AND SAMUEL WEINSTEIN,

Respondents.

ON APPEAL
ORDER

Edward W. Wise, Esq., Attorney for Appellant.
Applegate, Stevens, Foster & Reussille, Esqs., Attorneys for Respondent, Mayor and Council of the Borough of Red Bank.
Klatsky & Klatsky, Esqs., Attorneys for Respondent, Samuel Weinstein.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail distribution license to the respondent, Samuel Weinstein, for premises at 7 Broad Street, Red Bank, N. J. After the filing of the petition of appeal, the license in question was surrendered to the respondent Borough and all of the parties have agreed that the appeal may, therefore, be discontinued. Since no reason appears to the contrary,

It is, on this 22nd day of September, 1944,

ORDERED, that the within appeal be and the same is hereby discontinued.

ALFRED E. DRISCOLL
Commissioner.

6. 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 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

NATALIS CHIAPPA)
T/a DOC'S RUSTIC TAVERN)
Bloomfield Ave., Route 6)
Mountain Lakes, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 issued by the Borough Council of the Borough of Mountain Lakes.)
-----)

Joseph J. Maraziti, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging that during the early hours of Saturday, July 22, 1944, he sold alcoholic beverages to Robert ----, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file in this case discloses that early on the evening of Friday, July 21, 1944, Robert, who was accompanied by a young man over the age of twenty-one years, and two young ladies who were minors, had driven his automobile to a carnival which was being conducted in Rockaway, N. J. It appears that, prior to reaching the carnival, and after leaving the carnival, both young men consumed a large quantity of bottled beer which had been purchased in other licensed premises by the youth who was of full age. After the party left the carnival, Robert drove to two other licensed premises and finally reached defendant's premises shortly after midnight. At each of these three licensed premises, including defendant's, both young men entered the licensed premises, but the girls remained in the car. The file shows that at defendant's premises two glasses of beer were served to each of the young men by Helen Rak, who was then tending bar.

Defendant did not personally participate in the violation and, during the course of the subsequent investigation, Miss Rak stated that it was very likely she did serve Robert because his appearance was such as to raise no suspicion that he was under the age of twenty-one years. The fact is that Robert was born on August 12, 1926, and hence was a few weeks under the age of eighteen years at the time the violation occurred. Robert, who has since joined the Navy, has testified in disciplinary proceedings instituted against the two other licensees whose premises were visited by him on the evening in question. I am informed by the Hearer in those cases that Robert is 6 feet 1 1/2 inches tall, heavily built, and appears to be older than his actual age. Robert also had a mustache at the time the violation occurred. Defendant has no previous adjudicated record and admits that he has no defense to this disciplinary proceeding because no written statement was obtained from the minor as required by R. S. 33:1-77.

After considering all the circumstances of this case, I have decided to impose the minimum suspension of ten days, less five days for the plea, making a net suspension of five days.

Accordingly, it is, on this 28th day of September, 1944,

ORDERED, that Plenary Retail Consumption License C-2, issued by the Borough Council of the Borough of Mountain Lakes to Natalis Chiappa, t/a Doc's Rustic Tavern, for premises Bloomfield Ave., Route 6, Mountain Lakes, be and the same is hereby suspended for five (5) days, commencing at 3:00 A.M. October 9, 1944, and terminating at 3:00 A. M. October 14, 1944.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - CHARGE DISMISSED.

In the Matter of Disciplinary)
Proceedings against)

NELLIE & BARTOLO FAILLA)
T/a DIAMOND MIRROR)
52-54 Garden Street)
Passaic, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-94, issued by the)
Board of Commissioners of the)
City of Passaic.)
- - - - -)

Oscar R. Wilensky, Esq., Attorney for Defendant-Licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensees plead not guilty to charge alleging that on June 15, 1943, in violation of N. S. 33:1-50, they possessed at their licensed premises eight bottles of illicit alcoholic beverages, the contents thereof being not genuine as labeled.

The testimony discloses that, on June 15, 1943, an agent of the Federal Alcohol Tax Unit tested 85 open bottles of liquor in the defendant's licensed premises. The agent testified that six one-quart bottles labeled "Calvert Reserve Blended Whiskey 86.8 Proof" and two four-fifth quart bottles labeled "Carstairs White Seal Blended Whiskey 86.8 Proof" were seized by him after preliminary tests disclosed that the contents of these bottles appeared to be substantially darker than normal for whiskeys of the brands in question.

A Federal chemist testified that after an analysis of the contents of the seized bottles, he reached the conclusion that the eight bottles had been refilled. He based his conclusion upon his finding that the acids and coloring matter in the seized beverages were substantially lower than that ordinarily found in genuine 86.8 Proof Calvert Reserve (six years old minimum) and 86.8 Proof Carstairs (five years old minimum). However, a chemist produced by the defendants testified that he analyzed the contents of the seized bottles and, as a result, reached the conclusion that the alcoholic beverages in question were genuine as labeled. He testified that the variations that appeared in the analysis of the contents of the seized bottles when compared with the contents of genuine bottles were within permissible limits.

The chemist for the Department of Alcoholic Beverage Control, testifying as an expert, and basing his opinion upon the testimony of the Federal chemist, stated, in effect, that there was substantial doubt in his mind as to whether or not the contents of seven of the seized bottles had been refilled either in whole or in part. He characterized the analyses of the contents of these bottles as "too close for comfort." With respect to the eighth bottle, where there was a marked discrepancy between the testimony of the Federal chemist and the chemist produced by the defendants, an independent analysis by Mr. Battista tends to confirm the testimony of the chemist for the defendants.

In view of the discrepancies in the testimony of these experts, all men of ability and standing in their profession, I am inclined to rely upon the testimony of Mr. Battista.

After having carefully studied the entire record, I have reached the conclusion that the Department has not sustained the burden of proof and the charge should be dismissed. In reaching this conclusion I have not been unmindful of the fact that defendants have no prior record and are accordingly entitled to the benefit of the doubt that exists in my mind because of the conflict in testimony of the chemists.

Accordingly, it is, on this 22nd day of September, 1944,

ORDERED, that the charge herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

JOHN ROLLINS)
T/a TALLY HO TAVERN)
194 Belmont Avenue)
Long Branch, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-42, issued by the Board of Commissioners of the City of Long Branch.)
-----)

A. Henry Giordano and Haydn Proctor, Esqs., Attorneys for the Defendant-Licensee.

Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he sold alcoholic beverages to, and permitted their consumption on his licensed premises by, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On August 23, 1944 three sailors entered the defendant's tavern and, because the bar was quite crowded, only one was able to obtain a stool at the bar. This sailor ordered three bottles of beer and delivered a bottle to each of the other two sailors, who were standing behind him. One of these two sailors, a tall lad who appeared older than his age, actually was not quite nineteen years old.

The defendant, who has held a liquor license for more than a decade, has heretofore suffered only one suspension of his license. In May 1939 he received a five-day suspension for possession of "refilled" liquor. Because more than five years have elapsed since then, and because of the extenuating circumstances attending the instant violation, I shall impose the minimum penalty of ten days, with remission of five days because of the plea, leaving a net penalty of five days.

Accordingly, it is, on this 29th day of September, 1944,

ORDERED, that Plenary retail Consumption License C-42, heretofore issued by the Board of Commissioners of the City of Long Branch to John Rollins, t/a Tally Ho Tavern, for premises 194 Belmont Avenue, Long Branch, be and the same is hereby suspended for five (5) days, commencing at 2:00 A. M. October 2, 1944 and terminating at 2:00 A.M. October 7, 1944.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)

EMILIO LORETI)
T/a LORETI'S TAVERN)
167 West Main Street)
Somerville, N. J.,)

Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Somerville, and transferred during the pendency of these proceedings to)

EMILIO LORETI and VIRGILIO COPPO)
T/a LORETI'S TAVERN,)

for the same premises.)

CONCLUSIONS AND ORDER

George W. Allgair, Esq., Attorney for Defendant-Licensee.
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to charges alleging that (1) he falsified his application for a plenary retail consumption license for the present fiscal year by concealing the fact that Virgilio Coppo was an equal partner in said licensed business, such false statement being in violation of R. S. 33:1-25; and (2) since October 1, 1943 he knowingly aided and abetted Virgilio Coppo to exercise the rights and privileges of his license, in violation of R. S. 33:1-52.

Investigation by an agent of the Alcoholic Beverage Control Department revealed that on October 1, 1943 defendant, Emilio Loreti, sold a half-interest in his licensed business to Virgilio Coppo, his brother-in-law, and that since October 1, 1943 these two individuals have operated the licensed business as equal partners. It is admitted that, in his application for a license for the current fiscal year, Emilio Loreti did not disclose the interest of his brother-in-law.

It appears from a statement given by defendant, Emilio Loreti, that he did not disclose the interest of his partner because he believed that local regulations required all licensees to be residents of the municipality for a period of at least one year before

filing application and because he believed that, at the time the partnership was formed, Virgilio Coppo could not meet this supposed local requirement. So far as appears, there is no regulation of the Borough of Somerville requiring applicants for licenses to be residents of the Borough for one year before filing application.

The local issuing authority has notified the Department that on September 20, 1944, the license herein was transferred to defendant and Virgilio Coppo as partners. The proper correction appears to have been made but a suspension must be imposed for the admitted violation of the law.

Defendant has no prior adjudicated record. In cases of this kind, where it appears that both partners are fully qualified and no motive appears for the violation, the minimum suspension has been ten days. In this case, however, the violation seems to have been deliberate and to have been intended to avoid the effect of a local regulation which defendant erroneously believed existed and which would bar his brother-in-law from becoming a licensee in the Borough of Somerville. Under the circumstances of this case, I shall suspend the license for a period of fifteen days.

Accordingly, it is, on this 29th day of September, 1944,

ORDERED, that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Somerville to Emilio Loreti, t/a Loreti's Tavern, for premises 167 West Main Street, Somerville, and transferred during the pendency of these proceedings to Emilio Loreti and Virgilio Coppo, t/a Loreti's Tavern, for the same premises, be and the same is hereby suspended for fifteen (15) days, commencing at 1:00 A. M. October 13, 1944 and terminating at 1:00 A. M. October 28, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. ACTIVITY REPORT FOR SEPTEMBER, 1944

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees - - - - -	8	Bootleggers - - - - -	16
	Total number of persons arrested- - - - -			24
<u>SEIZURES:</u>	Still - 1 to 50 gallons daily capacity- - - - -			1
	50 gallons and more daily capacity - - - - -			1
	Total number of stills seized - - - - -			2
	Mash - gallons - - - - -			50
	Motor vehicles - Trucks- - - - -			0
	Passenger cars- - - - -			1
	Total number of motor vehicles seized - - - - -			1
	Beverage alcohol - gallons - - - - -			131
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons- - - - -			25.25
	Wine - gallons - - - - -			39.25
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons- - - - -			4.50

RETAIL LICENSEES:

Total number of premises inspected - - - - -	1,074
Total number of bottles gauged - - - - -	7,500
Total number of premises where violations were found - - - - -	31
Total number of violations found - - - - -	47
Type of violations found:	
Illicit (bootleg) liquor - - - - -	14
Improper beer tap markers- - - - -	0
Gambling devices - - - - -	7
Stock disposal permits necessary- - - - -	3
Prohibited signs - - - - -	2
No sign denoting legal sale hours - - - - -	
Unqualified employees- - - - -	11
off-premises consumption- - - - -	3
"Fronts" (concealed ownership) - - - - -	3
Other types of violations - - - - -	4

MILITARY AREA PATROL INSPECTIONS:

	406
<u>STATE LICENSEES:</u>	
Premises inspected - - - - -	29
License applications investigated- - - - -	9

COMPLAINTS:

Investigated, reviewed and closed- - - - -	232
Investigation assigned, not yet completed- - - - -	297

LABORATORY:

Analyses made- - - - -	120
"Shake-up" cases (alcohol, water and artificial coloring)- - - - -	12
Liquor found to be not genuine as labeled- - - - -	14

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made- - - - -	25
Persons fingerprinted for non-criminal purposes- - - - -	172
Identification contacts with other enforcement agencies- - - - -	245
Motor vehicle identifications via N. J. State Police Teletype- - - - -	6

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities- - - - -	25
Cases instituted at Department - - - - -	20
Cancellation proceedings at Department - - - - -	1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held- - - - -	42
Appeals - - - - -	5
Seizures- - - - -	5
Disciplinary proceedings- - - - -	14
Application for special permit - - - - -	1
Eligibility - - - - -	17

PERMITS ISSUED:

Total number of permits issued - - - - -	796
Unqualified employees- - - - -	162
Solicitors - - - - -	59
Social affairs - - - - -	161
Home manufacture of wine - - - - -	147
Disposal of alcoholic beverages- - - - -	130
Miscellaneous permits- - - - -	137

Respectfully submitted,
 Sydney B. White
 Chief Inspector.

11. DISCIPLINARY PROCEEDINGS -- CHARGE OF SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS DISMISSED - HEREIN OF THE EFFECT OF THE REPEAL OF AN ORDINANCE ON PENDING DISCIPLINARY PROCEEDINGS WHEREIN A VIOLATION OF THE ORDINANCE IS ALLEGED.

In the Matter of Disciplinary Proceedings against

CHARLES J. DI SANTI T/a 500 CAFE 6 S. Missouri Avenue Atlantic City, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-126 for the fiscal year 1943-44, and now holder of Plenary Retail Consumption License C-68 for the current (1944-45) year, both issued by the Board of Commissioners of the City of Atlantic City.

Emerson L. Richards, Esq., Attorney for Defendant-Licensee. Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded not guilty to the charge of selling alcoholic beverages to members of the armed forces of the United States after 11:30 P.M. on Friday, January 21, 1944, and before 9:00 A. M. on Saturday, January 22, 1944, in violation of an ordinance adopted by the Board of Commissioners of the City of Atlantic City.

Two investigators of the Department of Alcoholic Beverage Control testified that they observed two members of the United States Army being served a bottle of beer apiece by the defendant's bartender at 12:50 A. M. January 22, 1944. This was categorically denied by both the bartender and the manager of the defendant's establishment.

The defendant contended at the outset of the hearing that the State Commissioner of Alcoholic Beverage Control is deprived of jurisdiction to entertain further proceedings under the section of the ordinance alleged to have been violated because that section was repealed on February 10, 1944 and therefore no longer has any force or effect.

Ordinance No. 15 of the City of Atlantic City, adopted September 10, 1942, provided:

"Section 1. That section 2 of the ordinance to which this ordinance is amendatory and referred to in the title of this ordinance, be and the same is hereby amended by adding a section to be known as Section 2(a) to follow immediately after Section 2, as follows:

"(a) No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverages to any person wearing the uniform of any of the Armed Forces of the United States of America between the hours of 11:30 P. M. and 9:00 A.M. of any day of the week.***!"

Ordinance No. 18 of the City of Atlantic City, adopted December 30, 1943, and which was in effect when the alleged violation occurred, provided:

"Section 1. That Section 2 of the ordinance to which this ordinance is amendatory and referred to in the title of this ordinance, be and the same is hereby amended by adding a section to be known as Section 2(a) to follow immediately after Section 2, as follows:

"(a) No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverages to any person wearing the uniform of any of the Armed Forces of the United States of America between the hours of 11:30 P.M. and 9:00 A. M. of any day of the week, excepting, however, that in addition to the hours of sale, service and delivery not prohibited by this section, alcoholic beverages may be sold, served and delivered to such persons between the hours of 11:30 P. M. on Saturday, and on December 31st, and up to and including 1 A.M. the following morning."

"Section 2. All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed to the extent of such inconsistencies,***."

On February 10, 1944 the Board of Commissioners of Atlantic City adopted an amendatory ordinance providing:

"Section 1. That Section 2 of the ordinance to which this section is amendatory and referred to in the title of this ordinance, be and the same is hereby amended by adding a section to be known as Section 2(a) to follow immediately after Section 2, as follows:

"(a) No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverages to any person wearing the uniform of any of the Armed Forces of the United States of America between the hours of 1 A. M. and 9 A.M. of any week day, and 2 A. M. and 9 A.M. on Sunday."

"Section 2. All ordinances or parts of ordinances inconsistent herewith be and the same are hereby repealed to the extent of such inconsistencies, and Ordinance No. 15, approved September 10, 1942, and Ordinance No. 18, approved December 30, 1943, be and the same are hereby specifically repealed."

"Section 3. This ordinance shall take effect immediately after its final passage and publication."

The ordinance, dated February 10, 1944, was adopted after the alleged violation occurred and after the instant charge was preferred but before hearing was held thereon. Furthermore, as noted, that ordinance expressly repealed the ordinance section under which the charge was brought. Thus, there is raised the question of the repealer's effect, if any, upon the present proceedings.

It is a general rule, established by a long line of authorities both in England and in this country, that the repeal of a penal statute applied to acts committed before the repeal, so that although the act might have been an offense at the time it was committed, it cannot be punished after the repeal, and any proceedings pending at the time of the repeal with respect to such act are immediately abated. (See R.C.L. 941; Sutherland, Stat. Constr. 2d ed. Sec. 286; Wharton, Crim. Law, 11th ed. Sec. 413; Brill, Cyc. Crim. Law, Sec. 80).

While it is unquestionably the rule that the repeal of a penal statute (not present in this case) prevents any further proceedings thereunder, it is equally well established that where there is a saving clause reserving the right to punish offenses committed before the repeal, the general rule does not apply, and offenses committed before the repeal remain punishable. The saving clause may be contained in the repealing statute, but more often it is a general statutory provision which attaches by implication to other penal statutes. In either case, it has the effect of continuing the repealed statute in force for the purpose of punishing for offenses committed before the repeal. (See R. C. L. 931, 944; Sutherland, Stat. Constr. 2d ed. Sec. 287; Brill, Cyc. Crim. Law, Sec. 80. See also annotation in 6 Ann. Cas. 891).

"Where an ordinance is repealed, prosecutions pending under it are ipso facto terminated unless the repealing statute or ordinance, as it may do, provides otherwise." 43 Corpus Juris 567, Sec. 896(2).

Generally, therefore, where proceedings are founded on an ordinance, and, before they have been concluded, the ordinance is repealed by an ordinance which does not contain a clause saving proceedings under the repealed ordinance, the proceedings stop where the repeal finds them. (See 43 Corpus Juris 568, Sec. 897(3); Peisner v. Chicago, 318 Ill. 131, 149 N. E. 18; Riley v. Bell, 184 Ind. 110, 109 N. E. 843; Troy v. St. Paul, 155 Minn. 391, 193 N. W. 726. See also Moore v. Ashton, 36 Ida. 485, 32 A. L. R. 1512; Whichita v. Murphy, 78 Kan. 859, 99 Pac. 272, 23 L. R. A. (N.S.) 243, 16 Ann. Cas. 468. Cf. United States v. Chambers et al., 291 U. S. 217, 54 S. Ct. 434, 89 A. L. R. 1510; Yeaton v. United States, 5 Cranch 281, 3 L. ed. 101).

The Atlantic City repealing ordinance adopted February 10, 1944 contains no saving clause. There is in New Jersey, however, a general statutory saving provision -- R. S. 1:1-15. The latter relates by its terms to "any act or part of an act." In the absence of judicial interpretation of this language, it is my thought that the section applies to acts of the legislature only and not to municipal ordinances.

But even assuming the inapplicability to ordinances of the statutory saving provision (R. S. 1:1-15), and the effectiveness of a repealing ordinance to terminate pending municipal criminal or disciplinary proceedings, it does not necessarily follow that an ordinance repealer effects the termination of pending disciplinary proceedings instituted by the State Commissioner pursuant to his authority under R. S. 33:1-31(h). In consideration, nevertheless, of the subject of the repealed Atlantic City ordinance, and in keeping with the principles cited herein which appear to be uniformly enunciated in reported cases both State and Federal, I have reached the conclusion that the instant proceedings should be dismissed.

Accordingly, it is, on this 4th day of October, 1944,

ORDERED, that the charge herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

12. RETAIL LICENSES - ISSUED BY LOCAL MUNICIPAL AUTHORITIES.

October 5, 1944

Mr. Adam Puceka
Berlin, N. J.

Dear Mr. Puceka:

I have your letter of September 27th, relating to your desire to secure a plenary retail consumption license in Berlin Township. Stating that the Township Clerk told you that only five such licenses are allowed in the Township, you express your wish to obtain a license through me.

Retail alcoholic beverage licenses (except plenary retail transit licenses, which are for railroad trains, airplanes and boats) are not issued by the State Commissioner but by the issuing authorities of the various municipalities.

If a municipal issuing authority denies a license application, the applicant may appeal from that action to the State Commissioner within thirty days after the date the applicant is notified of the local issuing authority's refusal to grant the license. Similarly, if a municipal issuing authority grants a license, "any taxpayer or other aggrieved person" may appeal to the Commissioner. (Revised Statutes, 33:1-22).

According to my records, Section 7 of an ordinance adopted by the Berlin Township Committee on August 6, 1940 reads, in part:

"Section 7. No more than six plenary retail consumption licenses shall be in effect in this municipality at any one time hereafter."

If the quota of six has been changed, we have not been so notified. Under the quoted ordinance provision, the Township Committee has no authority to issue a plenary retail consumption license unless and until the number of such licenses outstanding in the Township is fewer than six. My records show that four plenary retail consumption licenses are now outstanding in Berlin Township.

If there are further questions, please call upon me.

Very truly yours,

Alfred E. Driscoll
Alfred E. Driscoll
Commissioner.