

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

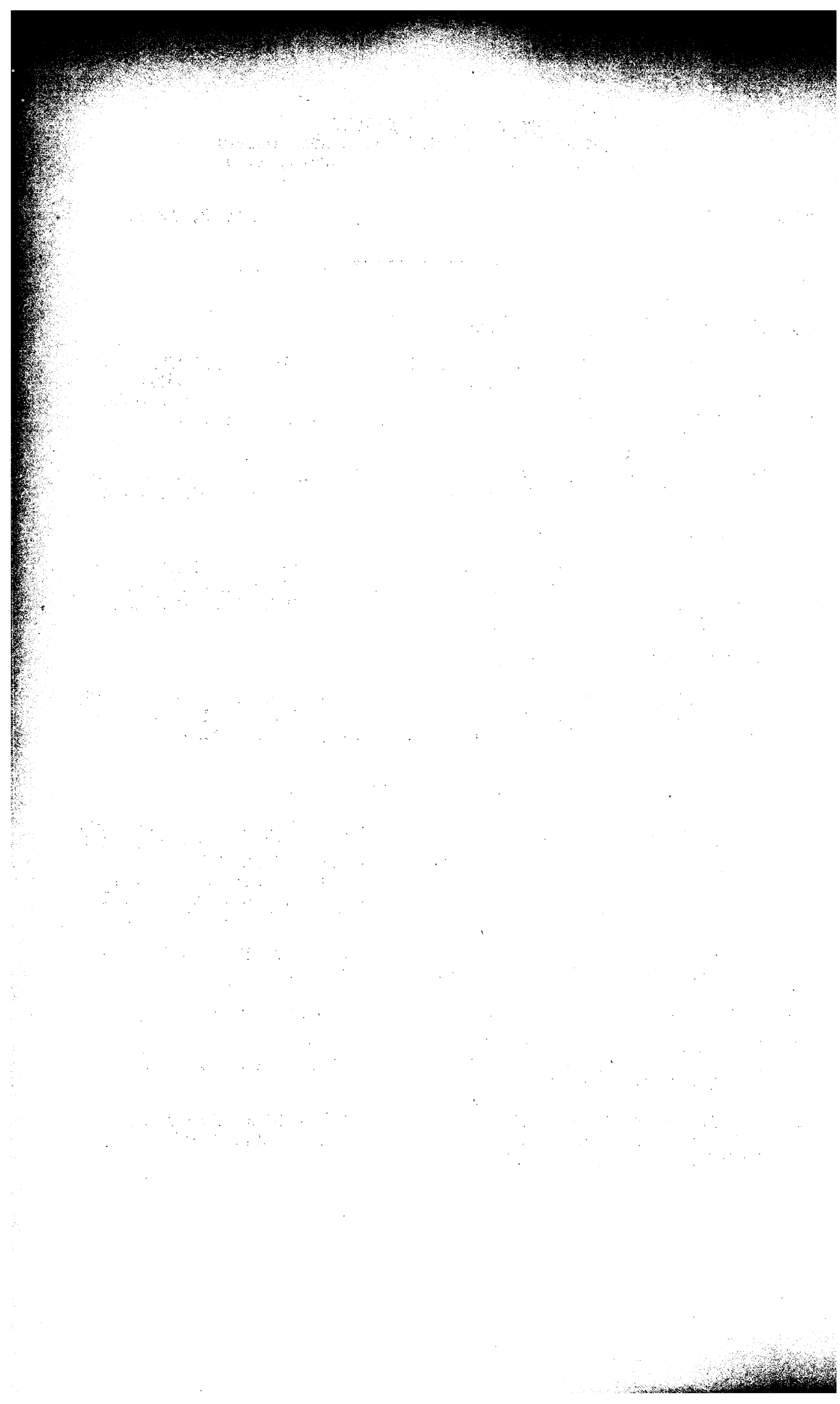
BULLETIN 457

MAY 8, 1941.

TABLE OF CONTENTS

ITEM

1. FAIR TRADE - NOTICE OF NEXT PUBLICATION.
2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN COLOR, ACID AND SOLID CONTENT - BLENDED WHISKEY IN A BOTTLE CALLING FOR STRAIGHT WHISKEY - APPARENT TAMPERING BY CUSTOMER WITHOUT LICENSEE'S KNOWLEDGE - LICENSEE FOUND GUILTY OF POSSESSION - NO SUSPENSION IMPOSED.
3. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.
4. APPELLATE DECISIONS - FEDERICI v. CLEMENTON.  
  
MUNICIPAL REGULATIONS - DISTANCE BETWEEN LICENSED PREMISES - A REGULATION PROHIBITING ONLY THE ISSUANCE OF NEW LICENSES FOR PREMISES WITHIN 500 FEET OF OTHER LICENSED PREMISES DOES NOT AFFECT TRANSFERS - DENIAL OF TRANSFER REVERSED.
5. ACTIVITY REPORT FOR APRIL, 1941.
6. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - BOTH PERSONS QUALIFIED - FULL AND FRANK DISCLOSURE - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER TEN DAYS IF SITUATION CORRECTED.
7. APPELLATE DECISIONS - SCHMIDT v. MORRISTOWN.  
  
SALES TO MINORS - PREMISES CONDUCTED AS A NUISANCE - SUSPENSION APPEALED ALLEGING INSUFFICIENT EVIDENCE, EXCESSIVE PENALTY, AND UNFAIRNESS AND POLITICS ON THE PART OF THE MUNICIPAL BOARD - ALLEGATIONS FOUND WITHOUT MERIT - SUSPENSION AFFIRMED - PETITION TO LIFT AUTOMATIC STATUTORY SUSPENSION RESULTING FROM A CRIMINAL CONVICTION, DENIED - PREMISES DISQUALIFIED FOR SIX MONTHS.
8. NEW LEGISLATION - QUALIFICATIONS OF APPLICANTS FOR LICENSES - AMENDMENT TO THE LAW RESPECTING CONVICTIONS.
9. APPELLATE DECISIONS - GORELICK AND ROSEMAN v. ROSELLE.  
  
DENIAL OF PLENARY RETAIL DISTRIBUTION LICENSE APPEALED ALLEGING ABUSE OF DISCRETION - PUBLIC CONVENIENCE AND NECESSITY NOT SHOWN - DENIAL AFFIRMED.
10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN ACID AND SOLID CONTENT - REFILLS - 10 DAYS' SUSPENSION, WITH NO REMISSION FOR GUILTY PLEA.



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

BULLETIN 457

MAY 8, 1941.

1. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

April 30, 1941

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will be made on or about Monday, May 19, 1941. New items and changes in old items must be filed at the offices of this Department not later than Tuesday, May 6, 1941.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to all retail licensees.

E. W. GARRETT,  
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN COLOR, ACID AND SOLID CONTENT - BLENDED WHISKEY IN A BOTTLE CALLING FOR STRAIGHT WHISKEY - APPARENT TAMPERING BY CUSTOMER WITHOUT LICENSEE'S KNOWLEDGE - LICENSEE FOUND GUILTY OF POSSESSION - NO SUSPENSION IMPOSED.

In the Matter of Disciplinary Proceedings against )

DOMINICK DiROCCO, )  
459 Valley Street, )  
Orange, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Orange. )  
- - - - - )

Samuel F. Penza, Esq., Attorney for Licensee.  
Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

Charge was served upon licensee, alleging that:

"On or about October 14, 1940 you possessed an illicit alcoholic beverage in that one bottle labeled 'Four Roses Rye A Blend of Straight Whiskies', found in your licensed premises, contained an alcoholic beverage which varied from genuine samples similarly labeled used for comparative purposes, in color, acid and solid content; in violation of R. S. 33:1-50."

Licensee pleaded not guilty.

On October 14, 1940 an inspector of the Alcohol Tax Unit, Bureau of Internal Revenue, seized upon the licensed premises an open

quart bottle, containing about eight ounces, labeled "Four Roses Rye A Blend of Straight Whiskies." During the course of his investigation the inspector examined 17 other open bottles, none of which were seized.

Chemical analysis of the contents of the seized bottle showed that the contents thereof had a proof of 88.8; that the solids were 248 grams in 100 liters; that the acids were 20.4 grams in 100 liters, and that most of the coloring was artificial. Chemical analyses, made by the chemist of this Department, disclose that genuine samples of Four Roses A Blend of Straight Whiskies vary in proof between 89.9 and 90 proof; that the solids vary from 160 to 198 grams in 100 liters; the acids vary from 60 to 65 grams in 100 liters, and the color is all natural color. A chemist employed by the Alcohol Tax Unit of the Bureau of Internal Revenue and the chemist employed by this Department testified that, in their opinion, the contents of the seized bottle were not genuine as labeled.

P.L. 1939, c. 177 provides, among other things, that any alcoholic beverage in any bottle shall be deemed prima facie an illicit beverage where the container bears a label which does not truly describe its contents. Hence, a prima facie case was established against the licensee.

Licensee testified that he and his son-in-law Michael Pepper are the only persons employed on the licensed premises. Both the licensee and his son-in-law denied, under oath, that they ever tampered with the contents of the seized bottle.

The licensee further testified that, on an afternoon shortly before the date of the seizure, two unknown couples entered his premises and sat at a table in the rear room; that at their request he brought a quart bottle of Green River Blended Whiskey, more than one-half full, and the seized bottle of Four Roses Whiskey, which was more than one-third full, to the table in the rear room and left the bottles, together with a bottle of ginger ale and glasses, on the table; that he then returned to the bar and was unable to see the table in the rear room; that about an hour later he was called to the rear room and, computing that fourteen drinks had been taken from the Green River bottle and two drinks from the Four Roses bottle, charged the party \$2.80 for the Green River drinks at the rate of 20¢ per drink, and 60¢ for the Four Roses drinks at the rate of 30¢ per drink.

From the testimony of the licensee, an inference may be drawn that the customers consumed the entire contents of the Four Roses bottle and then refilled said bottle from the contents of the Green River bottle, thereby making it appear that they had consumed the cheaper whiskey instead of the more expensive whiskey. In general, an attempted explanation of this kind carries little weight. An attempted explanation that a customer tampered with a bottle has, in many cases, been given no credence. However, there are certain facts herein which lead me to believe that the licensee and his son-in-law are telling the truth. Analysis of the contents of the seized bottle agrees in marked respects with analyses made by the chemist of this Department of genuine samples of Green River Blended Whiskey, as appears from the following comparison:

## SEIZED BOTTLE

Proof 88.8  
Solids (p.c.l.) 248 g.  
Acids (p.c.l.) 20.4 g.  
Coloring - artificial

## GREEN RIVER BLENDED WHISKEY

Proof 89.5  
Solids (p.c.l.) 235-275 g.  
Acids (p.c.l.) 18-21 g.  
Coloring - artificial

The only persons in charge of the licensed premises swear that they did not tamper with the contents of the seized bottle; both of them testified that in their section of the city Four Roses is a slow seller and the licensee testified: "I don't sell a bottle of Four Roses in three or five months." It appears also that the licensee has held a license since Repeal; that he has been in business at the same address since 1913; has never been previously accused of any violations of any kind. The Hearer reports that he is satisfied that both the licensee and his son-in-law are telling the truth.

Considering all the evidence, I conclude that the seized bottle was refilled by the unknown customers without the knowledge or consent of the licensee or his sole employee. This is not a case involving a refill by an employee, in which event licensee would be held fully responsible for the acts of his agent. I am bothered by the failure in this case to exercise more caution in supervising the access of strangers to liquor containers. In view of the licensee's previous clean record, however, I shall resolve the benefit of doubt in his favor.

Since mere possession of illicit alcoholic beverages constitutes a violation of R.S. 33:1-50, I find the licensee guilty as charged. Under the circumstances, no other penalty will be imposed.

E. W. GARRETT,  
Acting Commissioner.

Dated: April 30, 1941.

3. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )  
CARRIE NEIDENBERG, )  
266 Market St., )  
Newark, N. J., )  
Holder of Plenary Retail Consump- )  
tion License C-190, issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
----- )

CONCLUSIONS  
AND ORDER

Carrie Neidenberg, Pro Se.  
Abraham Merin, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.

The licensee has pleaded guilty to the charge that during prohibited hours on Thursday, March 27, 1941 and on Sunday, March 30, 1941, she sold alcoholic beverages in her licensed premises, in violation of Newark Ordinance No. 3930, adopted December 21, 1938.

The violation occurred as the result of the sale of three bottles of wine and several drinks of alcoholic beverages to an investigator of this Department by a bartender on the premises.

The licensee does not reside on the licensed premises and maintains that she knew nothing about the sale. The licensee is responsible for what goes on upon the licensed premises. The license

is hers. So is the business. She may not hide behind the cloak of her employees when apprehended for violation of the law. Re Kriger, Bulletin 436, Item 11.

The usual penalty for such violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case, for which two days will be remitted.

Accordingly, it is, on this 30th day of April, 1941,

ORDERED, that Plenary Retail Consumption License C-190, heretofore issued to Carrie Neidenberg by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is suspended for a period of three (3) days, effective May 5, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,  
Acting Commissioner.

4. APPELLATE DECISIONS - FEDERICI v. CLEMENTON.

MUNICIPAL REGULATIONS - DISTANCE BETWEEN LICENSED PREMISES - A REGULATION PROHIBITING ONLY THE ISSUANCE OF NEW LICENSES FOR PREMISES WITHIN 500 FEET OF OTHER LICENSED PREMISES DOES NOT AFFECT TRANSFERS - DENIAL OF TRANSFER REVERSED.

VINCENT FEDERICI,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
	)	
BOROUGH COUNCIL OF THE BOROUGH	)	
OF CLEMENTON,	)	
	)	
Respondent.	)	
-----	)	

Frank M. Lario, Esq., Attorney for Appellant.  
No appearance on behalf of Respondent.

Appellant appeals from denial of transfer of his plenary retail consumption license C-5 from 70-72 Berlin Road to adjoining premises located at the northwest corner of Berlin Road and Garfield Avenue, Clementon.

Answer filed herein alleges that the transfer was refused because of an ordinance "which contains a provision prohibiting the transfer of a license to a location within 500 feet of any existing retail consumption licensed premises."

Appellant does not dispute the fact that another plenary retail consumption licensed premises exists within 500 feet of his present location and the place to which he seeks to transfer his license. He has held a plenary retail consumption license for his present premises at 70-72 Berlin Road since November 10, 1937.

The sole question to be considered is the legal effect of Section 5 of an ordinance of the Borough of Clementon, dated July 12, 1938. Said section provides:

"No more than six Plenary Retail Consumption Licenses shall be in effect in this community at any time hereafter, and no such new license shall be issued for or transferred to any premises within 500 feet from any other Plenary Retail Consumption licensed premises, but nothing contained in this section shall apply to the issuance or renewal of licenses already issued or applications pending at the time of the passage of this ordinance nor to the renewal of licenses issued or transferred in accordance with this ordinance."

Section 5 of the ordinance is ambiguous. It provides that no such new license shall be issued for or transferred to any premises within 500 feet from any other plenary retail consumption licensed premises. The question to be decided is whether the language of the section prohibits the transfer of licenses in existence when the ordinance was adopted to other premises within the prohibited distance. A somewhat similar situation was discussed in New Jersey Licensed Beverage Association, Division No. 5 v. Camden, Bulletin 215, Item 5, wherein it was held that the section of an ordinance providing that no new licenses should be issued within 500 feet of other consumption licensed premises did not prevent the transfer of a license in existence when the ordinance was adopted to other premises within the prohibited distance. In the present case it may have been the intention of the Borough Council to prohibit the transfer of all consumption licenses to other premises within 500 feet of places holding a similar license, but the language used does not carry out such an intent if it did exist. It is not my function to rewrite the ordinance. I am required to construe the ordinance as written.

I conclude that Section 5 of said ordinance, as presently worded, does not prevent the transfer considered herein. Since no other reason for denial appears, I must reverse the action of respondent herein.

Accordingly, it is, on this 1st day of May, 1941,

ORDERED, that the action of respondent be and the same is hereby reversed and respondent is directed to grant the transfer of the license as requested.

E. W. GARRETT,  
Acting Commissioner.

5. ACTIVITY REPORT FOR APRIL, 1941

To: E. W. Garrett, Acting Commissioner

<u>ARRESTS:</u>	Total number of persons - - - - -	19
	Licensees - - 0 Non-licensees -	19
<u>SEIZURES:</u>	Stills - total number seized- - - - -	5
	Capacity 1 to 50 Gallons- - - - -	3
	Capacity 50 Gallons and over- - - - -	2
	Motor Vehicles - total number seized- - - - -	4
	Trucks - 0 Passenger cars -	4
	Beverage Alcohol- - - - -	8.60 Gallons
	Mash - total number of gallons- - - - -	3140
	Alcoholic Beverages	
	Beer, Ale, etc. - - - - -	5.15 Gallons
	Wine- - - - -	808.36 "
	Whiskies and other hard liquor- - - - -	26.75 "

RETAIL INSPECTIONS:

Licensed premises inspected - - - - -	1802
Violations disclosed:	
Illicit (bootleg) liquor- - - - -	4
Gambling violations - - - - -	19
Sign violations - - - - -	18
Unqualified employees - - - - -	58
Other mercantile business - - - - -	4
Disposal permits necessary- - - - -	0
"Front" violations- - - - -	0
Improper beer markers - - - - -	2
Other violations found- - - - -	11
Total violations found- - - - -	116
Total number of bottles gauged- - - - -	15547

STATE LICENSEES:

Plant Control inspections completed - - - - -	115
License applications investigated - - - - -	8

COMPLAINTS:

Investigated and closed - - - - -	191
Investigated, pending completion- - - - -	594

LABORATORY:

Analyses made - - - - -	120
Alcohol and water and artificial coloring cases -	15
Poison and denaturant cases - - - - -	0

HEARINGS HELD:

Appeals - - - 12	Disciplinary proceedings - - -	31
Seizures- - - 17	Eligibility- - - - -	10
	Application for special permit -	1

PERMITS ISSUED:

Unqualified employees - - - - -	356
Home manufacture of wine- - - - -	6
Solicitors- - - - -	117
Social Affairs- - - - -	299
Disposal of alcoholic beverages - - - - -	68
Miscellaneous permits - - - - -	67
Total- - - - -	913

Respectfully submitted,

S. B. White,  
Chief Inspector.

DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - BOTH PERSONS QUALIFIED - FULL AND FRANK DISCLOSURE - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER TEN DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against JOSEPH DRESSLER, 22 North 3rd Street, Hammonton, New Jersey, Holder of Plenary Retail Consumption License No. C-1, issued by the Mayor and Council of the Town of Hammonton.

CONCLUSIONS AND ORDER

Joseph Dressler, Pro Se. Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to the following charges:

"1. In your application for transfer of license, filed August 29, 1940 with the Mayor and Council of the Town of Hammonton, upon which Plenary Retail Consumption License C-1, theretofore issued to Anthony J. Macri was transferred to you, you falsely stated 'No' in answer to Question 28 therein which asks, 'Has any individual..... other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Emerson A. Burdick had such an interest; said false statement being in violation of R. S. 33:1-25.

"2. Since on or about September 10, 1940, and until the present time, you knowingly aided and abetted Emerson A. Burdick, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

The investigation file discloses that agents of this Department, while making a routine inspection of the above premises on February 18, 1941, found certain bills and bank statements which caused them to suspect that Emerson A. Burdick, the alleged manager of the premises, was the real person in interest.

Burdick and Dressler, upon being questioned, frankly admitted that the business belonged to Burdick and that Dressler was only the nominal licensee. In a signed statement which he gave to the investigators, Burdick stated that he had asked Dressler, his friend, to take the transfer of the license in his name because he (Burdick) "had intentions of running for....political office of the Town of Hammonton at some future date." Dressler's statement substantiates that of Burdick.

Burdick, up to the present time, has neither announced his candidacy nor has he been elected or appointed to any public office. He appears to be fully qualified.

Burdick maintains that the violation was unintentional and requests that leave be afforded to apply to the Mayor and Council for a transfer of the license from Dressler to himself. In view of all the circumstances, no reason appears why the request should not be granted. Continuance of the unlawful situation, pending the transfer, however, cannot be permitted.

Accordingly, it is, on this 2nd day of May, 1941,

ORDERED, that Plenary Retail Consumption License C-1, heretofore issued to Joseph Dressler by the Mayor and Council of the Town of Hammonton, be and the same is hereby suspended for the balance of its term, effective May 6, 1941, at 2:00 A.M. (Daylight Saving Time); and it is further

ORDERED, that if and when said license is transferred by the Mayor and Council, subject to the lifting of the suspension hereinabove imposed, to Emerson A. Burdick or any other duly qualified person, application may be made to me to lift said suspension, provided, however, that in no event will said suspension be lifted or vacated prior to the expiration of ten (10) days from the effective date thereof.

E. W. GARRETT,  
Acting Commissioner.

7. APPELLATE DECISIONS - SCHMIDT v. MORRISTOWN.

SALES TO MINORS - PREMISES CONDUCTED AS A NUISANCE - SUSPENSION APPEALED ALLEGING INSUFFICIENT EVIDENCE, EXCESSIVE PENALTY, AND UNFAIRNESS AND POLITICS ON THE PART OF THE MUNICIPAL BOARD - ALLEGATIONS FOUND WITHOUT MERIT - SUSPENSION AFFIRMED - PETITION TO LIFT AUTOMATIC STATUTORY SUSPENSION RESULTING FROM A CRIMINAL CONVICTION, DENIED - PREMISES DISQUALIFIED FOR SIX MONTHS.

FRANCIS SCHMIDT,	)	
	)	
Appellant,	)	
	)	ON APPEAL
-vs-	)	CONCLUSIONS AND ORDER
	)	
BOARD OF ALDERMEN OF THE TOWN	)	
OF MORRISTOWN,	)	
	)	
Respondent.	)	
-----	)	

Parnell & Krueger, Esqs., by William Krueger, Esq., Attorneys for Appellant.  
Nathaniel C. Toms, Esq., by Frank C. Scerbo, Esq., Attorney for Respondent.

On December 6, 1940 the Morristown Board of Aldermen preferred fifteen charges, covering a variety of alleged violations, against Francis Schmidt, the holder of a plenary retail consumption license for 42-44 Morris Street.

The Board, after hearings on these charges on December 17 and 20, 1940, apparently acquitted Schmidt of nine, which alleged sales to drunken persons, selling during prohibited hours, etc., and found him guilty of the remaining charges, which for convenience may be condensed into two categories and summarized briefly as follows -

selling and serving alcoholic beverages to Florence Bockoven and John Waka, both minors, contrary to local and State regulations and the Alcoholic Beverage Law; and also conducting the tavern in the manner of a nuisance, contrary to local and State regulations. Upon such finding of guilt, the Board, by vote of 7-2, suspended Schmidt's license for six months, effective December 28, 1940.

Schmidt thereupon took the present appeal from such suspension and urgently contends (1) that the Board's proceeding against him was merely politically inspired and that there is insufficient evidence to warrant the finding of guilt; (2) that the penalty, in any event, is excessive and is similarly a political maneuver; and (3) that the hearing before the Board of Aldermen was unfair.

As to (1): It is needless to detail the extensive evidence which was submitted on the appeal. From such evidence I am satisfied that, on the evening of November 1, 1940, Schmidt took orders from and sold and served three or four rounds of beer to John Waka, then nineteen and a half years old; that he also served Florence Bockoven, then twenty years three months of age, two or three rounds of beer (such service also constituting a "sale" under the Alcoholic Beverage Law at R. S. 33:1-1w); that previously, about August 1940, Florence's mother had specifically informed the licensee that Florence was a minor and that she was worried by Florence's going to any tavern and, among other things, specifically requested Schmidt not to serve her any drinks.

It is well to note that Schmidt has, since institution of this appeal, been found guilty in criminal court of violating the Alcoholic Beverage Law by serving (and hence, under that law, technically selling) beer to Florence on the occasion in question and that he has pleaded non vult in the same court to similar violation of selling to Waka.

As to the alleged nuisanceful misconduct of the tavern, I find from the evidence that much of the nuisance complained of resulted from acts of patrons and also an employee after leaving the tavern. It may well be questioned as to how far a licensee, in a disciplinary proceeding, which specifically purports to punish him for wrongdoing, is to be held accountable for acts of patrons or others off the licensed premises. However, even discounting such acts in the present case, it nevertheless appears from testimony of various neighbors near the tavern, and I so find, that there has been excessive music and noise (including vile language) at the tavern itself; that, although the major part of such misconduct occurred prior to the period of time (viz., September 29 to December 6, 1940) with which Schmidt has been specifically charged, it nevertheless persisted, although to a lesser degree, during that period also.

I thus find that the violations of which the Board found Schmidt guilty were actually committed by him. However, since the Board's finding of guilt was general in character, such finding is here narrowed to the facts found above.

While it may be, as strongly urged by Schmidt, that the Board or various of its members had a political motive in mind when instituting the disciplinary proceeding against him, nevertheless this in no way disturbs the fact, here found after full and fair hearing, that the violations of which the Board ruled Schmidt guilty actually did occur. In such case I should, indeed, burlesque the proceedings and would ignore the fundamental public interest in bringing liquor violators to justice were I to reverse the Board's

adjudication of guilt merely because that Board or various of its members may have taken some personal delight in the trial.

Schmidt further urges that violations have occurred in other taverns in the Town and that the Board took no action against them. Even assuming this to be true, the criticism is, properly, not against the Board's action in the present case, but toward its failure to initiate proceedings in the others.

As to (2): The penalty to be administered in a local disciplinary proceeding rests within the sound discretion of the municipality. Although this Department on appeal has jurisdiction to reduce such penalty, that power is properly to be exercised only when the penalty is clearly excessive. McCracken v. Caldwell, Bulletin 456, Item 3; Pawelek v. Sayreville, Bulletin 456, Item 10.

In the present case I cannot conclude that the penalty, although stern, is necessarily excessive. The fact that Schmidt sold to Florence Bockoven after specific notice from her mother that Florence was a minor and after the mother's anxious plea not to serve Florence, is, regardless of the balance of the case, itself sufficient to sustain the heavy-fisted six-month suspension.

As to (3): No evidence was produced on the appeal to show that the hearing before the Board was in any way actually unfair. In any event, Schmidt on the appeal was afforded full and fair hearing de novo. Cf. Marsteller v. Somers Point et al., Bulletin 244, Item 7.

In view of the foregoing, I see no reason for disturbing the Board's action in this case.

Pending disposition of this appeal, Schmidt obtained a stay of the six-month suspension. See R. S. 33:1-31. However, upon his conviction in criminal court for violating the Alcoholic Beverage Law by selling to the minors, his license has, since April 18, been automatically suspended for the current year. See R. S. 33:1-31.1. Schmidt has filed a petition to lift that suspension. Such petition must be denied in view of the Board's six-month suspension which must now be reimposed.

In reimposing that six-month suspension it will, in fairness, be deemed to begin from April 18, the day when the automatic suspension took effect. Since only approximately two and one-half months of the six-month period may be served during the current license year (which ends June 30, 1941), the balance will be effected by withholding issuance of further license to Schmidt, or to any transferee of his license, or for the premises in question, for the remainder of the suspension period.

Accordingly, it is, on this 2nd day of May, 1941,

ORDERED, that the present appeal be and hereby is dismissed; and that Francis Schmidt's application to lift the automatic suspension (in effect since April 18, 1941) of his plenary retail consumption license for 42-44 Morris Street, Morristown, be and hereby is denied; and that his license shall remain suspended for the balance of the term; and that no further alcoholic beverage license - renewal or otherwise - shall be issued to Schmidt, or to any transferee of his license, or for the premises in question until six months have elapsed from April 18, 1941 - i.e., until October 18, 1941.

Although there is question as to whether a recent law signed by the Governor on April 30, 1941 mandatorily disqualifies Schmidt from hereafter obtaining any further liquor license whatsoever in this State by reason of his aforesaid conviction in criminal court, I have not yet received any certified copy of that law. Hence, until receipt of such copy the above Order shall stand. Upon receipt, if Schmidt be mandatorily disqualified from future license by that law, an appropriate order will be entered herein modifying the above Order accordingly.

E. W. GARRETT,  
Acting Commissioner.

8. NEW LEGISLATION - QUALIFICATIONS OF APPLICANTS FOR LICENSES - AMENDMENT TO THE LAW RESPECTING CONVICTIONS.

Senate Bill No. 224 was approved by Governor Edison on April 30, 1941, and thereupon became Chapter 97 of the Laws of 1941.

It is effective immediately.

The new matter is underlined.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-25 of the Revised Statutes.

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

1. Section 33:1-25 of the Revised Statutes is amended to read as follows:

33:1-25. Applicants for licenses shall answer such questions and make such declarations as shall be prescribed by rules and regulations. No retail license shall be issued to a natural person unless he is a citizen of the United States and shall have been a resident of the State of New Jersey for at least five years continuously immediately prior to the submission of the application. No license of any class shall be issued to any individual who is an alien; to any person under legal age; or to any person who has been convicted of a crime involving moral turpitude or who has been convicted in a court of criminal jurisdiction of any violation of this chapter or has been convicted of three violations before any other authority pursuant to this chapter.

In case of applications by corporations, except applications for club licenses, the names and addresses of, and the amount of stock held by, all stockholders holding one or more per centum of any of the stock thereof, of all officers and of all members of the board of directors must be stated in the application, and if one or more of such officers or members of the board of directors or any holder

directly or indirectly, whether through an intermediary corporation or otherwise, of ten per centum (10%) or more in beneficial interest of the capital stock of the corporation would fail to qualify as an individual applicant in all respects, except as to citizenship, residence or age, no license of any class shall be granted.

In case of applications for club licenses, the names and addresses of all officers, trustees, directors, or other governing officials, together with the names and addresses of all members of the corporation, association, or organization must be stated in the application.

In the case of application by a partnership, the application shall contain the names and addresses of all of the partners. No license shall be issued unless all of the partners would qualify as individual applicants.

A photostatic copy of all federal licenses, permits and stamps necessary to the lawful conduct of the business for which a state license is sought and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the commissioner, must accompany the license application, together with a deposit of the full amount of the required license fee, which deposit to the extent of ninety per centum (90%) thereof shall be returned to the applicant by the commissioner or other issuing authority if the application is denied, and the remaining ten per centum (10%) shall constitute an investigation fee and be disposed of as hereinafter provided.

Every applicant for a license shall cause a notice of intention to make such application to be published in a form prescribed by rules and regulations, once a week for two weeks successively in a newspaper, printed in the English language, published and circulated in the municipality in which the licensed premises are located; but if there shall be no such newspaper, then such notice shall be published in a newspaper, printed in the English language, published and circulated in the county in which the licensed premises are located. No publication shall be required with respect to applications for transportation or public warehouse licenses.

All applications shall be duly sworn to by each of the applicants, except in cases of applications by corporations which shall be duly sworn to by the president or vice-president. All statements in said applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor. Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for revocation.

2. This act shall take effect immediately."

E. W. GARRETT,  
Acting Commissioner.

9. APPELLATE DECISIONS - GORELICK AND ROSEMAN v. ROSELLE.

DENIAL OF PLENARY RETAIL DISTRIBUTION LICENSE APPEALED ALLEGING ABUSE OF DISCRETION - PUBLIC CONVENIENCE AND NECESSITY NOT SHOWN - DENIAL AFFIRMED.

RAY L. GORELICK and )  
JACK ROSEMAN, )

Appellants, )

-vs- )

BOROUGH COUNCIL OF THE )  
BOROUGH OF ROSELLE, )

Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Nicholas A. Tomasulo, Esq., Attorney for Appellants.  
Harry Dvorken, Esq., Attorney for Objectors.  
No appearance on behalf of Respondent.

Appellants appeal from denial of a plenary retail distribution license for premises located at 308 Amsterdam Avenue, Roselle.

The premises in question are located in the westerly section of the borough, which is strictly residential in character except for a few small neighborhood stores located in the immediate vicinity of appellants' premises. The store which appellants have rented is located on the ground floor of a two-story building and the owner of the property resides with his family above the store. To the east is another two-story building containing a butcher and grocery store, with a family residing above. Farther east, on the same side of the street, is a one-story brick structure containing a grocery store, barber shop and an empty store. Across the street is a delicatessen.

The borough has no municipal regulation limiting the number of licenses, but has issued nine plenary retail consumption licenses, nine plenary retail distribution licenses, two limited distribution licenses, and one club license. It has never issued a license of any kind for premises located in the westerly section of the borough and, in fact, only a short time ago, denied a previous application made by another applicant for the premises being considered herein. Considering the fact that the population of the borough is about fourteen thousand, it would seem that the existing licensed premises should be sufficient to take care of the needs of the inhabitants of the borough.

Appellants contend, however, that since there is no limitation of the number of licenses and no license exists in the westerly section of the borough, respondent abused its discretion in denying the present application. The burden of proof as to the need of an additional license is upon appellants. Aside from their own testimony, they produced the owner of the building, his daughter and her mother-in-law and father-in-law, who testified that the store has been vacant for two years and that the owner is in danger of losing his property if he cannot rent it. They also produced a tenant who has resided next door for the past three months and a petition signed by eighty residents of the neighborhood, which requested that the license be granted for the benefit of the community.

On the other hand, respondent considered a petition signed by one hundred and twenty-six residents of the borough and six letters of protest. At the hearing herein eight residents of the borough testified as to the residential character of the section and expressed the opinion that there was no need for a license in the western section of the community.

In Ely v. Long Branch, Bulletin 99, Item 2, the Commissioner said:

"It does not follow that a license must issue merely because the premises are located on a street containing other stores. \*\*\* In the present case it appears that no licenses have been issued in the vicinity of the premises in question but the Mayor and a Commissioner, as well as many others, testified that the issuance of the license was socially undesirable; that the issuance of the license was opposed by a large majority of the residents of the neighborhood.\*\*\*\*"

The present case is similar in character to Norton v. Camden, Bulletin 97, Item 9, and Zuckerman v. Camden, Bulletin 413, Item 9, in each of which cases denial of a license in a residential section containing a few so-called neighborhood or community stores was upheld.

The most that has been shown in the present case is that there exists a difference of opinion as to whether any license should be issued in the westerly section of the borough. Appellants have not sustained the burden of proof in showing that the action of respondent was unreasonable. Hence the action of respondent is affirmed.

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

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

E. W. GARRETT,  
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN ACID AND SOLID CONTENT - REFILLS - 10 DAYS' SUSPENSION, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against JACOB BIRBAN, 410-410½ Reservoir Street, Trenton, N. J., Holder of Plenary Retail Consumption License No. C-145, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Jacob Birban, Pro Se.  
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges of possessing illicit alcoholic beverages, in violation of R.S.33:1-50, and rebottling alcoholic beverages, in violation of R. S. 33:1-78.

The investigation file discloses that, on December 12, 1940, investigators of this Department gauged and tested some twenty-eight open bottles of liquor in the defendant's licensed premises and, as a result of their tests, seized three bottles labeled Calvert Special Whiskey and one bottle labeled Wilson "That's All" Whiskey. Analysis by the Department chemist showed that the contents of the seized bottles varied in acid and solid content from genuine samples used for comparative purposes.

At the time of the seizure the defendant-licensee disclaimed any knowledge and was unable to give any explanation of how the contents of the seized bottles came to be altered or refilled. Subsequently, however, and before the institution of these proceedings, the defendant gave a statement to investigators of this Department wherein he stated that, on September 1 or 2, 1940, the cellar in which he kept his liquor stock had been flooded by a heavy rainfall; that, as a result of the flooding, the labels of several bottles, which had been stored in the cellar, soaked off and were separated from the bottles; that the Federal Government was notified and Federal agents instructed the defendant as regards the restoration of said damaged labels and stamps; that all of the damaged stock was restored or replaced except two 1/2-gallon bottles of Schenley's Red Label Blended Whiskey which were overlooked; that the licensee's wife, several days prior to the seizure, discovered these bottles while cleaning up the premises and becoming "excited when she found these two bottles of Schenley's Red Label Whiskey behind the bar, dirty and without stamps or labels.....(thinking) we would be fined if investigators came in and found them.....filled the empty bottles that were handy without thinking what she was doing"; and that his wife had not told him that she had poured the Schenley Whiskey into the Calvert and Wilson bottles until after he had informed her of the seizure.

Reports of the investigators who took the statement disclose that they inspected the cellar and found rust on the oil burner and other evidence that the cellar had been flooded with water. Other investigation reveals that there had been a heavy rainfall in the Trenton district on September 1, 1940 and that the Alcohol Tax Unit of the Internal Revenue Service of the United States Treasury Department had been notified on September 10, 1940 of the defendant's water-damaged liquor stock and had sent agents to inspect the same. Further corroboration of the defendant's story is evidenced by the chemist's analysis of the contents of the seized bottles. With but one minor variation, which may be explained by the fact that the bottle had not been entirely empty when refilled, all of the seized liquor compares closely with a genuine sample of Schenley's Red Label Blended Whiskey.

In view of the strong corroborative evidence, I shall give the defendant-licensee the benefit of any possible doubt and accept as true his explanation for the refills.

The fact remains, however, that the seized liquor, since it does not conform to label specifications, constitutes an illicit alcoholic beverage. Re Haney, Bulletin 304, Item 13. As such, its mere possession on licensed premises violates the Alcoholic Beverage Law. R. S. 33:1-50. The beverages, moreover, are a refill, and

refilling from one container to another constitutes bottling, within the meaning of R. S. 33:1-78, for which the licensee is strictly accountable regardless of personal innocence. Re Wnoroski, Bulletin 454, Item 6; Re Heuring, Bulletin 445, Item 12.

This is the defendant-licensee's first violation of record. In view of all the circumstances, his license will be suspended for ten days, the minimum period of suspension for this type of violation. See Re Wnoroski, supra.

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

ORDERED, that Plenary Retail Consumption License No. C-145, heretofore issued to Jacob Birban by the Board of Commissioners of the City of Trenton, be and the same is hereby suspended for ten (10) days, effective May 12, 1941, at 2:00 A.M. (Daylight Saving Time).

*E. W. Barrett*

Acting Commissioner.