

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

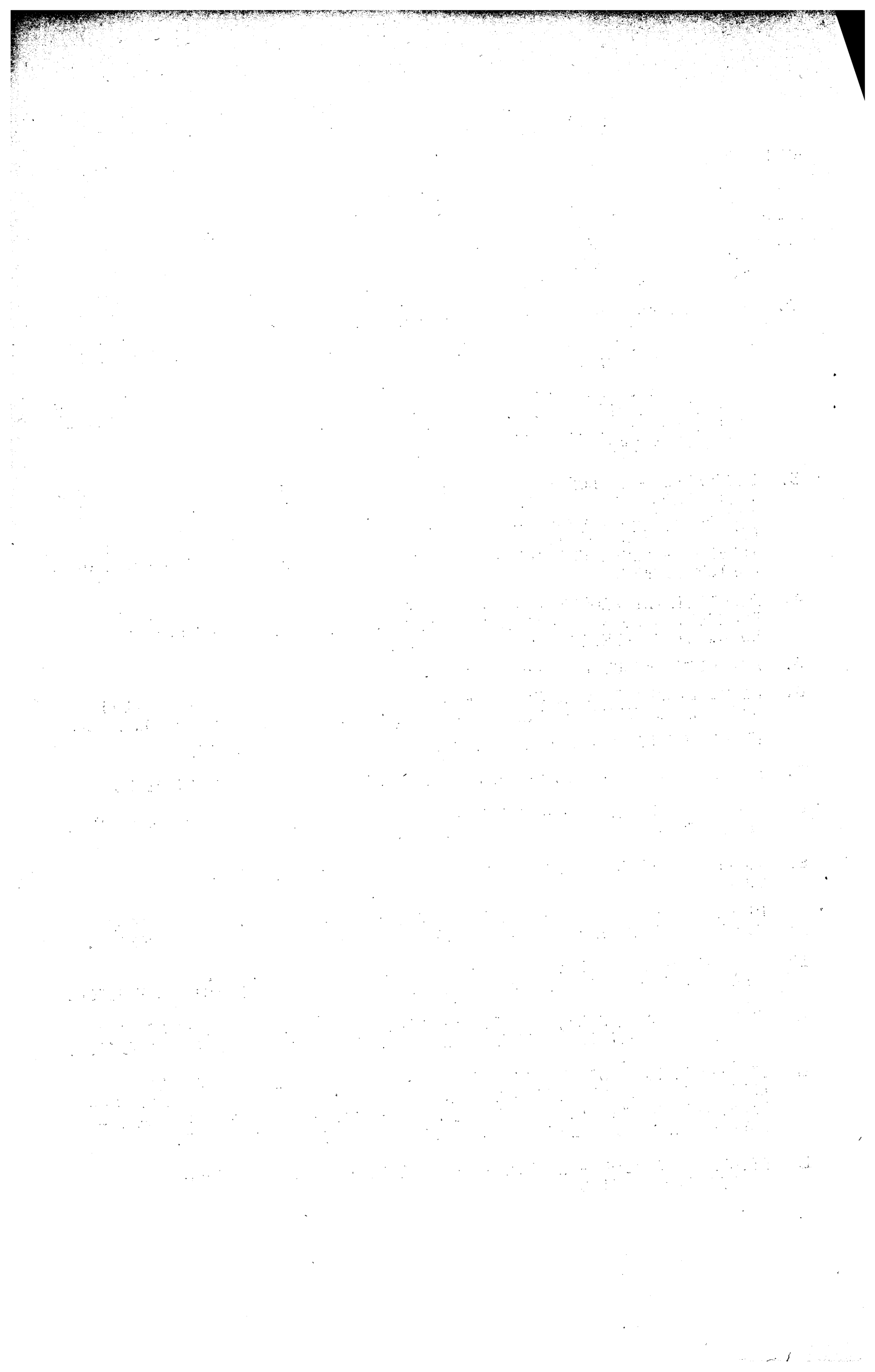
BULLETIN 566

MAY 11, 1943.

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

BULLETIN 566

MAY 11, 1943.

1. DISCIPLINARY PROCEEDINGS - PERMITTING SLOT MACHINES ON LICENSED PREMISES, IN VIOLATION OF RULE 8 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

CAMDEN POST 980 INC., V.F.W.)
308 Broadway)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-20,)
issued by the Municipal Board)
of Alcoholic Beverage Control)
of the City of Camden.)

Camden Post 980 Inc., V.F.W., by Leo G. Stephan, Commander.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleads guilty to the following charge:

"On March 8, 1943, you possessed, allowed, permitted and suffered on and about your licensed premises one ten-cent, two five-cent and a one-cent jack-pot slot machine which might be used for the purpose of playing for money or other valuable thing, in violation of Rule 8 of State Regulations No. 20."

The charge followed a visit of an investigator of the Department of Alcoholic Beverage Control to the licensed premises on March 8, 1943, when he observed four slot machines in the barroom.

The Commander of the Post, in a letter to this Department admitting defendant's guilt, attributes the presence of the gambling devices to the zealously of the members to do their part in making financial contributions to War Relief and related enterprises. He says the machines have been removed and promises they will not be permitted on the licensed premises in the future. I would be on dangerous ground if I were to "excuse" a violation of the law because of an alleged patriotic motive. It is doubly important that our laws be observed during the war period.

As to penalty: In October 1937 investigators of the Department of Alcoholic Beverage Control observed a slot machine on the licensed premises and served a warning on the licensee. On February 26, 1940 the license was suspended for seven days by the local Board on charges of (1) permitting gambling on the licensed premises in violation of State Regulations No. 20, Rule 7, (2) permitting a gambling device on the licensed premises in violation of State Regulations No. 20, Rule 7, and (3) possession of slot machines in violation of State Regulations No. 20, Rule 8. In view of this record, I must suspend the license for a period of twenty days, less five for the guilty plea.

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

ORDERED, that Club License CB-20, heretofore issued to Camden Post 980 Inc., V.F.W. by the Municipal Board of Alcoholic Beverage Control of the City of Camden for premises 308 Broadway, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A.M. May 5, 1943, and terminating at 2:00 A. M. May 20, 1943.

ALFRED E. DRISCOLL
Commissioner.

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

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE OF ALCOHOLIC BEVERAGES BY ALIEN PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-26 - PERMIT PRIVILEGE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against)

JERRYS NEW NAPLES REST. INC.
187 Union Street
Lodi, New Jersey,)

Holder of Plenary Retail Consumption License C-5 issued by the Borough Council of the Borough of Lodi)

CONCLUSIONS AND ORDER

In the Matter of Disciplinary Proceedings against)

GIUSEPPE VITELLO
187 Union Street
Lodi, New Jersey,)

Holder of Employment Permit No. 3397 issued by the State Commissioner of Alcoholic Beverage Control.)

James H. White, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.

Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

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

Both proceedings will be disposed of herein since they arose out of the same transaction.

On March 3, 1943 investigators of this Department were served alcoholic beverages by defendant-permittee on the premises of defendant-licensee. In mitigation, it is stated that the permittee is employed by licensee as a pie baker and that permittee believed that his employment permit authorized him to sell alcoholic beverages. At the time of the violation, an alien who held an employment permit could not handle, sell or serve alcoholic beverages, and the permit so stated.

Since no previous record appears against the licensee, the license will be suspended for a period of five days. Two days of the licensee's suspension will be remitted because of the plea. The permit will be suspended for the balance of the term.

Accordingly, it is, on this 3rd day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Lodi to Jerrys New Naples Rest. Inc. for premises 187 Union Street, Lodi, be and the same is hereby suspended for three days; commencing at 4:00 A.M. May 5, 1943, and terminating at 4:00 A.M. May 8, 1943; and it is further

ORDERED, that Employment Permit No. 3397, issued by the State Commissioner of Alcoholic Beverage Control to Giuseppe Vitello, be and the same is hereby suspended for the balance of its term, commencing at 4:00 A.M. May 5, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. LICENSEES - EMPLOYEES - CIVILIAN DEFENSE PROGRAM - LICENSEES AND THEIR EMPLOYEES MAY SERVE AS MEMBERS OF AUXILIARY POLICE RESERVE AND AS AIR RAID WARDENS PROVIDED THAT THERE IS NO CONFLICT BETWEEN THEIR DUTIES AS SUCH AND AS LICENSEES OR THE EMPLOYEES THEREOF - LICENSEES AND THEIR EMPLOYEES MAY NOT EXERCISE GENERAL POLICE POWERS.

May 4, 1943

Clarence Reardon, Secretary,
Bloomingdale Defense Council
Bloomingdale, N. J.

Dear Mr. Reardon:

You ask whether licensees and their employees, including bartenders, may serve as air raid wardens and as members of the Auxiliary Police Reserve.

While generally officers entrusted with the enforcement of the law may not hold liquor licenses or be employed by licensees, we have heretofore permitted licensees and their employees to serve as auxiliary police officers, on special occasions and under special circumstances, where there could be no possible conflict between their duties as members of an auxiliary police force and their duties as licensees or the employees thereof. Sound public policy demands that those persons whose duty it is to compel observance of the liquor laws shall have no personal or financial interest in the liquor trade. Where there is a potential conflict between private interest and public policy, the latter must, of course, prevail.

The inauguration of the Civilian Defense Program has presented an entirely different problem easily distinguishable from those considered by the Commissioner in his rulings prior to the declaration of war.

It is my understanding that the members of the Auxiliary Police Reserve, air raid wardens, and others participating in the Civilian Defense Program, are permitted to exercise police powers only during the period of an emergency and then only for the purpose of the emergency. I am advised that under no circumstances would the Auxiliary Police exercise general police powers over licensed premises or have authority to enforce the liquor laws of this State.

Under the circumstances, there appears to be no reason why the local Defense Council may not enlist licensees and their employees in the Civilian Defense Program.

If experience discloses a conflict between the duties of Auxiliary Police or air raid wardens and their duties as licensees, it will be necessary for me to rescind or modify this ruling.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - PREVIOUS RECORD - AGGRAVATING CIRCUMSTANCES - 40 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
EDWARD KAMMAUF
T/a EDDIE'S GRILLE
709 Water Street
Gloucester City, N. J.,
Holder of Plenary Retail Consumption License C-4, issued by the Common Council of the City of Gloucester City.

CONCLUSIONS
AND ORDER

Joseph P. Wilson, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charge:

"On Sunday, March 7, 1943, between the hours of 2:00 A.M. and 5:00 P.M., you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages upon your licensed premises, in violation of Section 3 of an Ordinance adopted by the Mayor and Common Council of Gloucester City on February 3, 1938, which Section prohibits any of the aforesaid activity between the aforesaid hours on Sunday."

The Departmental file discloses that on Sunday, March 7, 1943, at about 7:05 A.M., investigators of the Department of Alcoholic Beverage Control observed several men enter the licensed premises. A

short time thereafter one of the investigators entered the premises and proceeded to the bar. He was served a glass of whiskey by the bartender and ordered a pint bottle of whiskey. The bartender stated that the "boss" had instructed him not to sell any bottles since "visitors" (ABC agents?) were expected. At this time the other investigator entered the tavern and was served a drink of whiskey by the bartender. He too asked for a pint of whiskey and the bartender replied, "No bottles to go out" and repeated the story of the expected "visitors." However, after a short time the bartender asked one of the investigators if he was going to work and the investigator stated "No" and advised the bartender that he intended to take the whiskey "home." The bartender then sold the investigator a pint bottle of Wilson "That's All" Whiskey and sold a similar bottle to the other investigator.

At about 7:30 A.M. the licensee entered the premises and himself served a drink of whiskey to one of the investigators. The licensee also sold a pint bottle of "London Gin" to a patron and delivered a fifth bottle of "Three Feathers" to another patron. All of these sales occurred during prohibited hours and in violation of the local ordinance.

As to penalty: There is no doubt in my mind that the sale of alcoholic beverages upon the licensed premises during prohibited hours was a common occurrence. The instant case is to be distinguished from those cases where a licensee remains open a few minutes after the closing hour. The defendant in this case, operating in a defense area, opened his bar and deliberately disregarded the law by selling alcoholic beverages on Sunday during prohibited hours. Despite the licensee's premonition that "visitors" were expected, he apparently gambled on his ability to detect "the law" before being caught in a violation.

The defendant pleaded guilty to a similar violation in 1937. The licensee's open contempt for the law as expressed by his illicit activities warrants the imposition of a stern penalty in this case. Because of the licensee's previous record, and after having carefully considered the record in the instant case, his license will be suspended for a period of forty days. Five days will be remitted for the guilty plea, making a total suspension of thirty-five days.

In the event the defendant applies for a license for the 1943-44 license period, the municipal issuing authority should seriously consider the licensee's record and determine whether, in the face of that record, it is warranted in permitting him to continue in a privileged business. I admonish the licensee that, if there is a recurrence of the violation of sale of alcoholic beverages during prohibited hours, I shall revoke the license.

Accordingly, it is, on this 4th day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued by the Common Council of the City of Gloucester City to Edward Kammauf, t/a Eddie's Grille, for premises 709 Water Street, Gloucester City, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 2:00 A.M. May 10, 1943, and concluding at 2:00 A.M. June 14, 1943.

ALFRED E. DRISCOLL
Commissioner.

5. ACTIVITY REPORT FOR APRIL, 1943

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u> Licensees and employees - - - - -	12	Bootleggers - - - - -	6	
Total number of persons arrested - - - - -				18
<u>SEIZURES:</u> Stills - 1 to 50 gallons daily capacity - - - - -				0
50 gallons and more daily capacity - - - - -				0
Total number of stills seized - - - - -				0
Mash - gallons - - - - -				0
Motor vehicles - Trucks - - - - -				0
Passenger cars - - - - -				0
Total number of motor vehicles seized - - - - -				0
Beverage alcohol - gallons - - - - -				2.00
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -				27.85
Wine - gallons - - - - -				438.00
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -				33.30

<u>RETAIL LICENSEES:</u>				
Number of premises inspected - - - - -				1,550
Total number of bottles gauged - - - - -				13,009
Total number of premises where violations were found - - - - -				41
Number and type of violations found:				
Illicit (bootleg) liquor - 3 "Fronts" (concealed ownership) - - - - -				5
Gambling devices - - - - -	0	Improper beer tap markers - - - - -		0
Prohibited signs - - - - -	1	Stock disposal permits necessary - - - - -		5
Unqualified employees - - - - -	33	Other types of violations - - - - -		6

MILITARY AREA PATROL INSPECTIONS: - - - - - 792

<u>STATE LICENSEES:</u>				
Premises inspected - - - - -				120
License applications investigated - - - - -				6

<u>COMPLAINTS:</u>				
Investigated, reviewed and closed - - - - -				383
Investigation assigned, not yet completed - - - - -				304

<u>LABORATORY:</u>				
Analyses made - - - - -				125
"Shake-up" cases (alcohol, water and artificial coloring) - - - - -				10
Liquor found to be not genuine as labeled - - - - -				6

<u>IDENTIFICATION BUREAU:</u>				
Criminal fingerprint identifications made - - - - -				13
Persons fingerprinted for non-criminal purposes - - - - -				97
Identification contacts with other enforcement agencies - - - - -				137
Motor vehicle identifications via N. J. State Police Teletype - - - - -				4

<u>DISCIPLINARY PROCEEDINGS:</u>				
Cases transmitted to municipalities - - - - -				36
Cases instituted at Department - - - - -				36
Cancellation proceedings - - - - -				2

<u>HEARINGS HELD AT DEPARTMENT:</u>				
Number of hearings held - - - - -				61
Appeals - - - - -	2	Eligibility - - - - -		9
Disciplinary proceedings - - - - -	43	Seizure - - - - -		7

<u>PERMITS ISSUED:</u>				
Total number of permits issued - - - - -				595
Unqualified employees - - - - -				249
Solicitors - - - - -				33
Social affairs - - - - -				103
Home manufacture of wine - - - - -				2
Disposal of alcoholic beverages - - - - -				60
Miscellaneous permits - - - - -				148

Respectfully submitted,
Sydney B. White
Chief Inspector.

6. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - 10 DAYS' SUSPENSION, LESS 5 FOR PLEA.

HEREIN OF LICENSED PREMISES WITHIN 200 FEET OF CHURCH.

In the Matter of Disciplinary Proceedings against)

MARTIN STASNY)
Franklin Turnpike)
Waldwick, N. J.,)

CONCLUSIONS AND ORDER

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

Charles F. Black, Esq., Attorney for Defendant-Licensee.
Richard C. Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded non vult to the following charges:

"1. In your application, filed with the Borough Council of the Borough of Waldwick and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 10, which asks whether the premises to be licensed are within 200 feet of any church, whereas in truth and fact said premises were and still are within 200 feet of the Waldwick Methodist Church; such false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid license application, you falsely stated 'No' in answer to Question 33, which asks: 'Have you...ever been convicted of any crime?', whereas in truth and fact you were convicted on October 28, 1930 for violation of the Hobart Act and fined \$50.00; such false statement likewise being in violation of R.S. 33:1-25."

As to (1): The licensed building is described in Stasny's application as a one-story frame and stucco structure. The adjacent grounds to be included as part of the licensed premises are described as "House cellar in rear o place, picnic grounds at side and rear." (sic)

The licensed premises are located on Franklin Turnpike, in Waldwick. The Waldwick Methodist Church is located on the same turnpike, with its entrance at the intersection of a cinder walk on Franklin Turnpike and a stone walk leading to the entrance door of the church. The distance between said entrance to the church and the entrance doorway of the building in which the tavern is located is well over 200 feet. However, there is only a distance of 117 feet between said entrance to the church and the beginning of the picnic ground alongside the licensee's tavern. The licensee permitted his patrons to drive upon the picnic ground at any point of its frontage on the turnpike. Some of these patrons then entered the tavern and were there served alcoholic beverages; other patrons bought alcoholic

beverages at the tavern and brought them out to their cars; and still other patrons were served with alcoholic beverages on the picnic ground. The entrance to the licensed premises, within the meaning of the Alcoholic Beverage Law, was therefore the beginning point of the picnic ground nearest the church and not the doorway to the tavern proper.

The licensee, while frankly admitting that these are the facts, nevertheless asserts that he has at all times acted in good faith and that he did not intentionally make such false answer in his application concerning the distance between the licensed premises and the church; that, actually, he assumed that the doorway of his tavern was the entrance of the licensed premises from which the distance to the church entrance was to be measured, and that the local issuing authority committed the same oversight. Stasny seeks an opportunity to correct the situation by diminishing the licensed premises or by otherwise altering the entrance thereto so that such entrance will be more than 200 feet from the church entrance.

The licensee and John J. Reilly, Mayor of the municipality and a member of the local issuing authority since 1934, when this license was first granted, testified to the following effect: Up to July 1, 1941 the licensed premises were described as the building in which the tavern is located and the cellar of the licensee's dwelling, where he stored his stock of liquors; that an engineer, employed by the municipality, measured the distance from the church to the nearest doorway of the tavern, before the license was granted in 1934, and ascertained that the distance was more than 200 feet.

The licensee further testified that the picnic ground, although always used as an adjunct of the licensed premises, was included for the first time in his license application for the fiscal year 1941-42. This was done at the suggestion of his son, who was apprehensive that the licensee was committing a violation by permitting the sale and service of alcoholic beverages on the side picnic ground since it was not included as part of the licensed premises. Stasny says that he did not consider this enlargement of his licensed premises as of great significance and it did not awaken him to the fact that his side picnic ground was an entrance to his licensed premises within 200 feet of the church entrance. Mayor Reilly testified that the issuing authority likewise gave no thought to this fact.

I am therefore satisfied from the evidence that Stasny, in answering the question referred to, made an inadvertent misstatement rather than an intentional false statement.

Affiliate proceedings were brought in the case to cancel the license on the charge that the licensed premises were within 200 feet of the church. If there had been no change made in the licensed premises, they would be subject to the statutory bar of R. S. 33:1-76 by reason of being less than 200 feet from the church, and hence would be mandatorily disqualified from serving as licensed premises unless the church had waived the restriction. See Re McCauley, Bulletin 295, Item 10.

However, since the hearing in the case, the licensee has advised that he intends to diminish the licensed premises by excluding therefrom the side picnic ground, and that he has erected a picket fence a little over four feet high, extending along the turnpike a distance of 88 feet from the beginning of such picnic ground. This

fence now effectually prevents any person from entering the licensed premises at a point nearer than 205 feet from the church entrance. Hence, since the licensed premises now comply with the statutory provision concerning the permissible distance from a church, there no longer exists any basis for cancellation of the license. The cancellation proceeding is therefore dismissed.

The licensee has further declared his intention to reduce his licensed premises by eliminating therefrom the picnic ground in question. He made this proposal apparently in order that no part of his licensed premises should be within 200 feet of the church. This is cogent evidence of his good faith and I shall hold him to his offer. Therefore, I shall expect the licensee to proceed immediately to diminish the licensed premises in the manner outlined and in accordance with the procedure set forth in Re Daly, Bulletin 171, Item 3.

As to (2): Mr. Stasny was convicted in 1930 of violating the "Hobart" Act (involving the possession and sale of a quantity of home brew) and paid a fine of \$50.00. He says that in his various applications for license he answered "No" to the question, "Have you ever been convicted of a crime?", because he "Just forgot about that altogether because I don't think so it was come up against me."

Although this run-of-the-mill violation of the liquor laws of Prohibition days is not a crime involving the element of moral turpitude, and hence does not peremptorily disqualify Stasny from holding a liquor license (cf. Re Di Orio, Bulletin 509, Item 8), nevertheless the explanation he offers cannot serve as an excuse for his failure to reveal this conviction in his various applications. The question in the application is a simple one and should have been answered truthfully.

Since the licensee appears to have an otherwise clear record, his license will be suspended on this charge for ten days, less five days for the non vult plea. Re Tumulty, Bulletin 558, Item 2.

Accordingly, it is, on this 4th day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-2, issued to Martin Stasny by the Borough Council of the Borough of Waldwick for premises Franklin Turnpike, Waldwick, be and the same is hereby suspended for five (5) days, commencing at 2:00 A.M. May 10, 1943, and terminating at 2:00 A.M. May 15, 1943.

ALFRED E. DRISCOLL
Commissioner.

7. ELIGIBILITY - BREAKING, ENTERING AND LARCENY - MORAL TURPITUDE.

May 4, 1943.

Re: Case No. 489

In April 1937 applicant was sentenced to serve from three to five years in New Jersey State Prison after he had been found guilty of the crime of breaking, entry and larceny. He was later transferred to a reformatory and released on parole on October 18, 1940. The crime clearly involved moral turpitude, and hence it is unnecessary to consider his lengthy criminal record prior to 1937.

It is recommended that applicant be advised that he is not eligible to be employed by or connected in any business capacity with a liquor licensee in this State.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

Edward J. Dorton
Deputy Commissioner
and Counsel.

8. APPELLATE DECISIONS - ROCHE v. PAULSBORO - DISMISSED FOR LACK OF PROSECUTION.

GLADYS ROCHE, Executrix of the)
Estate of Richard H. Bradford,)
deceased,)

Appellant,)

-vs-

MAYOR AND COUNCIL OF THE)
BOROUGH OF PAULSBORO,)

Respondent)

ON APPEAL
ORDER

Fred A. Gravino, Esq., Attorney for Appellant.
Charles Camp Cotton, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to extend the plenary retail consumption license of Richard H. Bradford, deceased, to the executrix of his estate.

Hearing in this appeal was originally scheduled for January 14, 1943 and adjourned from time to time thereafter. It was ultimately set down for May 5, 1943 and the appellant advised that if she did not proceed at that time, her appeal would be dismissed for lack of prosecution. A communication from her attorney indicated that appellant would abandon the appeal. The appellant did not appear on May 5, 1943 and the appeal will, therefore, be dismissed.

It further appears that I have no jurisdiction to entertain this appeal. R. S. 33:1-26 provides that:

"In case of death....of the licensee....the commissioner or other issuing authority may, in his or its discretion, extend said license for a limited time, not exceeding its term, to the executor...."

Although the section cited makes provision for an appeal from the refusal to grant a transfer to a different place or person, and R. S. 33:1-22 provides for an appeal from the denial of the license, there is no provision whatever for an appeal from the refusal to extend a license to the representative of a deceased licensee. Cf. Kasen v. Orange, Bulletin 338, Item 4, where, in construing the section under consideration, the late Commissioner Burnett held:

"I conclude, therefore, that, however desirable on general principles, that there should be some right of review via appeal, I have no jurisdiction to entertain such an appeal. The appeal of the Trustee must, therefore, be dismissed."

Accordingly, it is, on this 6th day of May, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

9. MORAL TURPITUDE - CRIME OF RAPE NECESSARILY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST NOT FOUND - APPLICATION DENIED.

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

CONCLUSIONS
AND ORDER

Case No. 259.
-----)

BY THE COMMISSIONER:

Petitioner was convicted, on June 16, 1919, of the crime of forcible rape and sentenced to confinement at Rahway Reformatory for a period of fifteen months. On August 28, 1924 he pleaded guilty to the crime of assault and battery upon his wife. Sentence was suspended and petitioner ordered to contribute \$10.00 weekly to the support of his wife.

The crime of rape, of which petitioner was convicted, necessarily involves moral turpitude, thus rendering him ineligible to hold a liquor license or to be employed by a liquor licensee in this state. R. S. 33:1-25, 26; Re Case No. 190, Bulletin 222, Item 15; Re Case No. 139, Bulletin 455, Item 1.

Despite such disqualification, petitioner has held a consumption license in this state ever since August 1936. In each of the seven applications filed by petitioner with the local issuing authority, he falsely denied that he had ever been convicted of any crime.

Petitioner's explanation for withholding the fact of his two convictions is, to say the least, far from convincing. When questioned by his attorney he first stated that, because he was only nineteen years old when first convicted and remanded to a reformatory he was under the impression that such conviction did not constitute a

crime. He then stated that he "was not sure" that it was a crime. Upon interrogation by the Hearer, however, he admitted that he knew, when executing his first license application, that he had been convicted of a crime and that the answers in the various applications were "wrong."

As to his conviction for assault and battery, he explained that the fact that he received a suspended sentence led him to believe that this did not result in his conviction of a crime.

Upon a careful perusal of the entire record, I have no alternative other than to find that petitioner deliberately falsified all of his license applications and, in so doing, has perpetrated a fraud on the local authority ever since he first obtained a liquor license in August 1936.

In order that I may exercise my discretion favorably to petitioner, I am required, under the Alcoholic Beverage Law, to find that petitioner has conducted himself in a law-abiding manner for the past five years and that his association with the alcoholic beverage industry will not be contrary to the public interest. R. S. 33:1-31.2. In view of the foregoing, no such findings may here be made. Cf. Re Case No. 30, Bulletin 269, Item 5; Re Case No. 155, Bulletin 486, Item 6; Re Case No. 153, Bulletin 513, Item 1; Re Case No. 231, Bulletin 526, Item 3.

Accordingly, the petition is denied.

The disciplinary proceedings instituted against petitioner have been decided simultaneously herewith. See Bulletin 566, Item 10.

ALFRED E. DRISCOLL
Commissioner.

Dated: May 7, 1943.

10. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION
CONCEALING MATERIAL FACTS (CRIMINAL RECORD) - 90 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)
BENJAMIN BOTTA)
337 Harrison Avenue)
Garfield, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-40, issued by the)
City Council of the City of)
Garfield.)
-----)

CONCLUSIONS
AND ORDER

Feder & Rinzler, Esqs., by Jack Rinzler, Esq., Attorneys for
Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to a charge alleging that, in his application for license, he falsely denied that he had ever been convicted of any crime, whereas in truth he had been convicted of a crime on two separate occasions.

One of the two crimes of which defendant has been convicted involves moral turpitude. See Bulletin 566, Item 9, decided simultaneously herewith, in which I denied defendant's application to lift the mandatory statutory disqualification resulting from such conviction.

In view of the fact, as found in the latter proceeding, that defendant deliberately concealed his two convictions in all of his applications for license ever since August 1936, the license might well be revoked. However, I shall take into account the fact that defendant was not quite twenty years of age when convicted of the disqualifying crime, the fact that such conviction occurred some twenty-four years ago and that defendant has never heretofore been cited in disciplinary proceedings.

I shall, therefore, suspend the license for a period of ninety days. Cf. Clinton Cut Rate Drugs, Inc., Bulletin 538, Item 3. This will enable the defendant to sell the license and business conducted thereunder and thus salvage something of his investment. The sale and transfer of the license, however, must be effected prior to June 30, 1943, the date upon which the present license expires, since defendant may not receive a renewal thereof. Furthermore, the renewal license to the transferee must remain subject to the suspension until the full penalty of ninety days has been served.

In view of the foregoing disposition, the cancellation charge brought against this defendant on the theory that the license was improvidently issued because of his conviction of a crime involving moral turpitude is dismissed.

Accordingly, it is, on this 7th day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-40, heretofore issued by the City Council of the City of Garfield to Benjamin Botta, for premises 337 Harrison Avenue, Garfield, be and the same is hereby suspended for the balance of its term, effective at 4:00 A. M. on May 11, 1943; and it is further

ORDERED, that no new license (as distinguished from a renewal) be issued to any person for the same premises prior to August 9, 1943; and it is further

ORDERED, that if a bona fide transfer of the license is effected to a duly qualified purchaser prior to June 30, 1943, such transferee may apply for a renewal thereof, which, however, shall not become effective until August 9, 1943.

ALFRED E. DRISCOLL
Commissioner.

11. ELECTION DAY - SALE, SERVICE OR DELIVERY OF ALCOHOLIC BEVERAGES
AT RETAIL PROHIBITED DURING THE HOURS POLLS ARE OPEN FOR VOTING.

NOTICE TO CERTAIN CHIEFS OF POLICE CONCERNING RETAIL
LIQUOR LICENSEES AND ELECTION DAY, TUESDAY, MAY 11, 1943

Election will be held on Tuesday, May 11, 1943, between the hours
of 7:00 A.M. and 8:00 P.M. (Eastern War Time) in the municipalities listed
below:

<u>COUNTY</u>	<u>MUNICIPALITY</u>
Atlantic	Brigantine Margate
Bergen	Ridgewood
Camden	Camden Mt. Ephraim
Cape May	Avalon Ocean City (No licensees)
Essex	Cedar Grove
Hudson	Bayonne Hoboken North Bergen West New York
Mercer	Trenton
Middlesex	New Brunswick Raritan Township Spotswood
Monmouth	Avon Belmar Bradley Beach
Ocean	Beachwood Harvey Cedars Island Beach (No licensees) Long Beach Township
Passaic	Passaic Hawthorne

Rule 2 of Regulations No. 20 provides:

"No licensee shall sell or offer for sale at retail,
or deliver to any consumer, any alcoholic beverages in any
municipality in which a general, municipal, primary or
special election is being held, while the polls are open for
voting at such election."

Sales, service or delivery by retail licensees come within the rule. It
is your duty to enforce the foregoing rule. Honest licensees will lend assistance
not only by closing their places of business, but also by reporting cheating
competitors.

Do NOT arrest. Order licensee to stop selling immediately. Report him
to me for revocation proceedings, giving name, address, license number, time,
nature and detail of violation. This office will be open during polling hours
to advise and cooperate with you.

ALFRED E. DRISCOLL
Commissioner.

Dated: May 5, 1943.

12. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

JOHN GLADE
1 Main Street
Paterson, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-150, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

No appearance on behalf of Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant was served with charges alleging that he (1) falsely concealed in his license application that Benjamin Vilinofsky is the real and beneficial owner of the license and business conducted thereunder; (2) permitted the said Benjamin Vilinofsky to exercise the rights and privileges of his license; and (3) and (4) sold and served alcoholic beverages to minors.

Although the defendant entered no appearance at the hearing, Benjamin Vilinofsky did appear and admitted that he was the undisclosed owner of the license nominally issued to John Glade. A written statement obtained from the latter is to the same effect. In addition, the proofs clearly indicate that two female minors, one aged seventeen and the other eighteen, were served alcoholic beverages at the defendant's tavern on several occasions.

Benjamin Vilinofsky is disqualified from holding a license in this state because of a conviction of a crime involving moral turpitude. His application to lift such disqualification was denied on May 27, 1942. Re Case No. 153, Bulletin 513, Item 1.

This is Benjamin Vilinofsky's third illegal attempt to get into the liquor business. In each instance the medium used has been an unlawful "front" created for his benefit. In November 1939 his interest in licensed premises at 337 Straight Street, Paterson, was held for him by his sister. Re Vilinofsky, Bulletin 513, Item 2. In October 1940 he became the undisclosed owner of a half interest in licensed premises at 44 Broadway, Paterson. Re Broadway Lites, Inc., Bulletin 513, Item 3.

Vilinofsky's persistence is worthy of a better cause. His stubborn refusal to learn that the law must be obeyed, as evidenced by his continued conspiracy to defeat the Alcoholic Beverage Statute, warrants my referring his case to the Prosecutor of the Pleas for appropriate action.

The license will be revoked.

Accordingly, it is, on this 6th day of May, 1943,

ORDERED, that Plenary Retail Consumption License C-150, heretofore issued to John Glade by the Board of Alcoholic Beverage Control of the City of Paterson for premises 1 Main Street, Paterson, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

13. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION DENIED.

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

CONCLUSIONS
AND ORDER

Case No. 266
-----)

BY THE COMMISSIONER:

In 1920 petitioner was tried by an Army General Courts-Martial and was found guilty of larceny and attempting to desert the services of the Army of the United States, for which he was sentenced to be dishonorably discharged and to be confined for a period of five years in a Federal penitentiary. Of this sentence he served a few months over two years.

In 1924 petitioner pleaded guilty to carnal abuse and was sentenced to nine months in the Essex County Penitentiary. In 1926 he was convicted of obtaining money under false pretenses and was sentenced to from two to three years in State's Prison at Trenton. Of this sentence he served sixteen months. In 1927 he was convicted of larceny and received a suspended sentence. In 1937 he pleaded guilty to a charge of lewdness and was sentenced to eighteen months in the Essex County Penitentiary, of which sentence he served twenty-eight days and was released.

The mere fact that petitioner has not been convicted of a crime within the past five years does not automatically entitle him to relief. Removal of a disqualification is discretionary. Re Case 178, Bulletin 478, Item 12.

Petitioner's past record leads me to the conclusion that I am not warranted in affirmatively exercising my authority in his behalf.

The petition is denied.

Dated: May 7, 1943.

Alfred E. Driscoll
Commissioner.