

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

BULLETIN 321.

JUNE 8, 1959.

1. RULES CONCERNING SIZE OF CONTAINERS - CHAMPAGNE AND SPARKLING WINES - AMENDED TO PERMIT MARKETING OF THESE BEVERAGES IN FOUR OUNCE BOTTLES - HEREIN OF INTERNATIONAL FLAVOR.

Dear Commissioner:

We fully appreciate and can readily understand the motive which prompted the limiting of the size of packages on Wines but we feel that Champagne and Sparkling Wines do come under a different classification than Still Wines (both sweet and dry), and, therefore, deserve special consideration.

In our efforts to market Champagne, we find that the greatest handicap is that when a bottle is opened it must all be used at once as even if part of a bottle is kept for only an hour or two it does not have the same life and effervescence that a freshly opened bottle does. Therefore, the majority of places will not serve an individual glass of Champagne or an individual Champagne cocktail. We do market an 8-ounce bottle of Champagne. This, however, makes two drinks, either as straight Champagne or two Champagne cocktails and, as stated above, even with this small bottle the average licensee hesitates to open it for one individual drink.

The reasons for limiting the size of a package of Still Wines, in our opinion, would not hold good in the case of Champagne. Champagne is not a product which anyone would go into a package store and buy in a small container, go out on the street, open the bottle and drink it for the purpose of feeling good. It would have to be taken home and chilled before it could be used. The price itself puts it into a class beyond the reach of people who would buy a small bottle of Sherry, Port, etc. for the purpose of having a good time.

Under the present reciprocity treaty with France, which permits the importation of French Wines and Champagne at only 50% of the duty which was formerly imposed on these Wines, unknown and unheard-of brands of Champagne are today stealing the market from Domestic Champagne. These French Champagnes are selling for from slightly below, to slightly above the prices of Domestic Champagnes and this competition is now reaching such a stage that it is necessary to use new methods to preserve our business.

RENAULT Champagne and Sparkling Burgundy are produced from approximately 75% of New Jersey grapes. We are, therefore supporting New Jersey agriculture and giving employment to New Jersey labor. We feel that if we are permitted to market the individual 4-ounce bottle of Champagne it will at least give us some means to combat the competition of the Imported Wines, which we assure you is very serious at this time.

We would, therefore, appreciate it if you will kindly give this your most serious consideration and permit the sale, not only to us, of Champagne in smaller than 6-ounce bottles.

Yours very truly,
L. N. RENAULT & SONS, INC.,
John D'Agostino, President.

June 4, 1939

L. N. Renault & Sons, Inc.,
Egg Harbor City, N. J.

Gentlemen: Att: John D'Agostino, Pres.

Your argument for the marketing of champagne and sparkling wines in four ounce containers is quite persuasive.

Champagne seems to be taking on an international flavor. I note with interest your trade rivalry with France. Perhaps your competition will eventually be with Russia now that it has decided that champagne is a "cultural" drink. Or do you think the Soviet will be a good outlet for New Jersey grapes?

The present minimum standard of fill for such beverages is a half pint or eight fluid ounces, whereas the average champagne glass has a capacity of but four ounces whence it is impractical to open the bottle unless the entire contents are used in a comparatively short time. The effervescence and bouquet cannot be recaptured once the cork is popped.

The fact that these beverages require chilling to about 40 Fahrenheit in order to be palatable, coupled with the price at which they are sold, take them out of the reasons why nips were abolished.

Permission is therefore granted, effective immediately, to market champagne and sparkling wines in four ounce containers.

The rules concerning size of containers are hereby amended accordingly.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - HEREIN OF IMMUNITY OF LICENSEES TO THE LAW.

June 5, 1939

Phillip Blacher, Esq.,
New Brunswick, N. J.

My dear Mr. Blacher:

I have before me staff report and your letter of May 29th re disciplinary proceedings conducted by the South Plainfield Mayor and Council against Herman J. Frowery, 1517 Park Avenue, charged with sale of alcoholic beverages during prohibited hours, and note that his license was suspended for one day, but even that picayune sentence was itself suspended.

According to the staff report, the licensee was running wide open and doing a substantial business as late as 3:15 A.M., two and a quarter hours beyond the 1:00 A.M. closing which was then in force. True, before the hearing, the closing hour was extended to 3:00 A.M. Even so, the licensee would have been guilty of violation of the later closing hour.

Doesn't anybody care whether the law in South Plainfield is flouted or not?

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - HEREIN THAT LICENSEES ON THE PIKE ARE NOT IMMUNE TO THE LAW.

June 5, 1939

W. Richard Seely,
Town Clerk,
Hammononton, N. J.

My dear Mr. Seely:

I have before me staff report and your letter of May 27th re disciplinary proceedings conducted by the Town Council against Dominic T. Camorato, 682 White Horse Pike, charged with sale of alcoholic beverages during prohibited hours, and note that his license was suspended for eleven days.

Please express to the members of the Council my appreciation for their conduct of these proceedings and the penalty imposed.

According to the staff report, before my investigators identified themselves to the licensee he admitted that he knew that the closing hour was 2:00 A.M., but claimed that "We are not bothered out here on the Pike."

Being out on the Pike doesn't make it No Man's Land. The suspension imposed is a clear indication that the Council means business wherever the taverns are. That is as it should be!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - POSSESSION OF ILLICIT LIQUOR - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

MILITARY PARK CAFE, INC.,)
54 Park Place,)
Newark, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-783, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

George R. Sommer, Esq., Attorney for the Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty, with an explanation, to a charge alleging that on February 4, 1939 it possessed illicit alcoholic beverages, contrary to R. S. 33:1-50.

On February 4, 1939 Investigators Wierenga and Lippitt, of this Department, tested the open bottles on the back bar of the licensed premises and seized six bottles of the forty-seven which they examined because their preliminary tests showed that the contents of the six bottles did not conform with the labels. Subsequent analysis made by Chemist Battista shows that four of the bottles contained no artificial coloring, and that the other two contained only slight traces of artificial coloring although the labels on said bottles call for blended whiskey, the genuine samples of which did contain artificial coloring; that all of the seized bottles were below proof to an extent varying from 2.9 degrees to 4 degrees.

The explanation of the licensee is that, shortly before the investigators arrived, the seized bottles had been filled with a straight liquor by one Oscar Glickman, who was then employed as a bartender in the licensed premises. Glickman testified that, on the morning of February 4, 1939, he had dropped a case containing twelve bottles of Hiram Walker Ninety-Three, as a result of which three or four of the bottles were cracked; that, in order to save the liquor, he strained it into water pitchers and poured it from the pitchers into open bottles which were located on the back bar; that he told no one of the accident which had occurred until about ten days before the hearing because he feared that he would lose his job.

I have grave doubts as to the truth of Glickman's testimony because, if straight liquor is poured into bottles containing even a small amount of blended whiskey, a trace of artificial coloring will be found, whereas in the present case four of the seized bottles show no trace at all of artificial coloring. In any event, the licensee is responsible for the wrongdoing of his servant, and where liquor has been bottled by a retail licensee or his servant, it is illicit within the statutory definition contained in Section 1 of the Control Act (now R. S. 33:1-1), and the licensee's mere possession of such illicit beverage subjects his license to disciplinary proceedings. (See Section 28, now R. S. 33:1-31); Re Haney, Bulletin 304, Item 13.

The evidence that the business is conducted in a very orderly manner, and that the officers of the corporation had nothing to do with refilling the bottles, is immaterial in the present case for the reasons set forth in Re Jacobs, Bulletin 315, Item 8 and Re Tumen, Bulletin 316, Item 8, in which I determined that a minimum penalty of thirty days would be imposed where licensees possessed illicit alcoholic beverages. No reasons appear why the same penalty should not be imposed herein. Since, however, the current licensing period will expire prior to the expiration of thirty days, the present license will be suspended for the balance of its term, and the Municipal Board of Alcoholic Beverage Control of the City of Newark will be directed not to issue any renewal of said license prior to the expiration of thirty days from the effective date of the suspension ordered herein.

Accordingly, it is on this 4th day of June, 1939,

ORDERED that Plenary Retail Consumption License No. C-783, heretofore issued to Military Park Cafe, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended until the end of its term, effective June 8, 1939 at midnight (Daylight Saving Time); and it is

FURTHER ORDERED that no further license be issued to it for said premises prior to July 9, 1939.

D. FREDERICK BURNETT,
Commissioner.

5. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

June 2, 1939

Re: Case No. 275

In his application and questionnaire applicant denied that he had ever been convicted of a crime. Fingerprint records disclosed that, in 1926, he had been found guilty on a charge of maintaining a gambling house.

At the hearing applicant testified that, at the time of his arrest, he conducted a confectionery store, in the rear of which several men were found playing cards; that applicant and the other men were fined \$100.00 each, but that the fine was remitted. Investigation corroborates the applicant's story. There is no question of moral turpitude involved.

Applicant testified that he believed he had never been convicted of a crime because of the remission of the fine. I think applicant's explanation should be accepted with a warning to disclose the conviction in future applications.

It is recommended that the permit be issued.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - GAMBLING COUPLED WITH THE EMPLOYMENT OF FEMALES - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

BRONISLAW GRAZUL,)
75 Magazine Street,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-919, issued by the)
Municipal Board of Alcoholic Beverage Control of the City of)
Newark.)
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E. H. Failor, Esq., Attorney for the State Department of Alcoholic Beverage Control.

Bronislaw Grazul, Pro Se.

BY THE COMMISSIONER:

The defendant is charged with -

(1) permitting gambling at his tavern, contrary to Rule 7 of State Regulations No. 20; and

(2) employing three females to tend bar and sell and serve liquor at his tavern, contrary to Section (a) of Resolution of August 29, 1934 of the Newark Board of Alcoholic Beverage Control (adopted by that Board at a time when it, instead of the municipal governing body as now, had power to regulate the conduct of retail liquor places in the municipality).

As to (1): Investigators Di Pietro and Kane of this Department testified, in substance, that at 10:30 P.M. on Saturday, March 25, 1939, they visited the defendant's tavern to investigate a complaint; that, stationing themselves at the bar, they observed the defendant's wife play two games of shuffleboard with three men in the tavern, the losing team standing a round of drinks for the players; that, at her suggestion, the investigators then played three games with two of the men, drinks for the group being bet on the outcome; that the defendant's wife then challenged Di Pietro to a game with her for drinks for the "house"; that this game was played and won by Di Pietro, and drinks served accordingly; that the defendant (who entered the tavern ten or fifteen minutes before these drinks were served) "stood at the bar watching the game" between his wife and Di Pietro; that the investigators left the tavern at 12:45 A.M., soon after the drinks were served.

Although the defendant and his wife categorically deny everything, nevertheless I see no reason for disbelieving the story of the investigators which is both consistent and convincing in all details. They have no axe to grind with this licensee, nor any reason to draw their story from the blue sky.

I find the defendant guilty on charge (1).

As to (2): The investigators testified that a woman called "Rose" served drinks over the bar at the tavern "mostly all night", and that the defendant's wife and another woman called "Bertha" also served drinks there.

The defendant and his wife, while admitting that she has tended bar and sold and served liquor at the tavern, deny that "Rose" or "Bertha" have ever done so. The defendant's wife identified "Bertha" as her sister who, some time ago, worked in the tavern cleaning up and "Rose" as a "lady (who) comes in with her husband".

Here, too, I believe the testimony of the investigators.

On May 24, 1939 (two months after the investigators visited the defendant's tavern), the Newark Board of Commissioners adopted a resolution permitting a licensee's wife to tend bar and sell and serve drinks in his tavern between certain daytime hours. See Re Reichenstein, Bulletin 319, Item 10.

This new resolution, however, has no effect in the present case. It cannot wipe out any prior violations. Re Fabiano, Bulletin 313, Item 12. Furthermore, it does not purport to legalize the kind of female employment here involved (viz., a licensee's wife

tending bar or selling or serving drinks in his tavern at night, or other females acting in a like capacity at any time) but expressly forbids such.

I find the defendant guilty on charge (2).

His license will be suspended for five days for permitting gambling for drinks at shuffleboard in his tavern (contrary to State rule), and for an additional ten days for employing the three females to tend bar and sell and serve liquor (contrary to municipal regulation); or a total suspension of fifteen days.

Accordingly, it is, on this 4th day of June, 1939, ORDERED that Plenary Retail Consumption License C-919, heretofore issued to Bronislaw Grazul by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing June 8, 1939, at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES OUT OF HOURS.

In the Matter of Disciplinary Proceedings against)

MARTIN WIERNIK and BENJAMIN SCHUMAN,)
401 Central Avenue,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License No. C-354, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
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Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensees plead guilty to charges alleging that on Sunday, May 7, 1939, at 11:00 A.M., they sold alcoholic beverages and at the same time kept their licensed premises open, in violation of an ordinance of the City of Newark. Said ordinance prohibits sale or service of alcoholic beverages between 7:00 A.M. and noon on Sundays, and forbids licensed premises to be open during said hours.

This is defendants' first offense of record. Their license will be suspended for five days for selling during prohibited hours, and five additional days for keeping open during prohibited hours, less five days for telling the truth and making no alibis.

Accordingly, it is on this 4th day of June, 1939,

ORDERED that Plenary Retail Consumption License No. C-354, heretofore issued to Martin Wiernik and Benjamin Schuman by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, commencing June 8, 1939 at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - STATE BEVERAGE DISTRIBUTOR - PURCHASE OF BEER FROM UNLICENSED SOLICITOR.

In the Matter of Disciplinary Proceedings against	:	
	:	
FRANK H. BOHLEN,	:	CONCLUSIONS
t/a HOLLY BEVERAGES,	:	AND
11 South Avenue,	:	ORDER
Mount Holly, New Jersey,	:	

Holder of State Beverage Distributor's License No. SBD-83, issued by the State Commissioner of Alcoholic Beverage Control.	:
	:

Frank H. Bohlen, Pro se.
 Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges served upon the licensee allege that (1) on June 7, 1938 he transported alcoholic beverages within this State in a vehicle not bearing proper transit insignia, contrary to R.S. 33:1-2, as amended and supplemented, and R.S. 33:1-28, and (2) on July 11, 1938, and on divers days prior thereto, he placed orders and allowed, permitted and suffered the placing of orders within this State for the purchase of alcoholic beverages with C. T. Robinson, who solicited said orders without permit so to do, contrary to Rule 7 of State Regulations No. 12.

Licensee pleads guilty as to the first charge and not guilty as to the second charge.

The evidence on the first charge consists of a written admission made by the licensee during the course of an investigation. Licensee therein admits that, on June 7, 1938, he transported in his wife's car (which was not licensed for transportation) ten cases of Drewrys' beer from a distributor's place of business in Camden to defendant's licensed premises in Mount Holly. Licensee's explanation is that he did not know that he was violating the law.

As to the second charge: It appears that C.T. Robinson is, and was in June 1938 and July 1938, Eastern Manager of Drewrys Limited U.S.A. Incorporated; that said corporation was not licensed in New Jersey in June 1938 or July 1938, although it had subsequently obtained a license in this State; that C.T. Robinson did not obtain a solicitor's permit from this Department until December 9, 1938.

The evidence shows that, on June 10, 1938, C.T. Robinson called at the licensed premises of Frank H. Bohlen, in Mount Holly. On the following day Robinson sent a letter from his New York office to Mr. and Mrs. Bohlen, reading in part as follows:

"Thanking you for the courtesy extended me and anticipating a long and friendly relationship, I am confirming herewith the various points as understood. ***

"We have shipped you, per pooled car to Camden
1200 half cases Beer (cans)
50 half cases Ale (cans) ***"

A shipment of Drewrys' beer was received by Frank H. Bohlen on or before June 20, 1938. C. T. Robinson denies that, on June 10, 1938, he discussed prices or solicited, obtained or took an order for alcoholic beverages. However, the evidence is sufficient to show that Frank H. Bohlen placed the order for the beer with an unlicensed solicitor on June 10, 1938.

The evidence further shows that C. T. Robinson again visited the licensed premises on July 10, 1938, and that Bohlen shortly thereafter received another large shipment of beer, but there is no further evidence that the latter order was placed in the State of New Jersey with the unlicensed solicitor. The licensee, however, is guilty of the second charge in so far as it refers to the order placed with the unlicensed solicitor on June 10, 1938.

I shall impose a penalty of five days' suspension on the first charge, less two for frankly admitting it, and a further penalty of five days on the second charge, making a total suspension of eight days.

Accordingly, it is on this 4th day of June, 1939

ORDERED that State Beverage Distributor's License No.SBD-83, heretofore issued to Frank H. Bohlen, t/a Holly Beverages, by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of eight (8) days, effective June 15, 1939.

D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - POSSESSION OF ILLICIT LIQUOR - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

MICHAEL D. DONOVAN,)
33 West 8th St.,)
Bayonne, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-153, issued by the Board of Commissioners of the City of Bayonne.)
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Stanton J. MacIntosh, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Michael V. Donovan, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged with possessing illicit liquor, in violation of R. S. 33:1-50.

On November 2, 1938, Inspectors of the Alcohol Tax Unit, U. S. Department of Internal Revenue, seized at the defendant's licensed premises five quart bottles of liquor, all open and partly full, two being labeled Wilson "That's All" Blended Whiskey and the others being labeled, respectively, Calvert's Reserve Blended Whiskey, Calvert's Special Blended Whiskey, and Harmony Blended Whiskey.

Federal Chemist Blakeley, on analyzing samples from these bottles, found that all tested substantially alike in proof, acid, solid content, and coloring matter; further, that there was, among other things, a substantial variation in solid content and a very marked variation in coloring matter between each sample and genuine liquor of that brand, the proportion of coloring matter in each sample being 90% natural and 10% artificial as against proportions of 90% artificial and 10% natural in three of the genuine liquors, 80% artificial and 20% natural in a fourth of the genuine liquors, and 65% artificial and 35% natural in the fifth.

In the chemist's opinion, the liquor found in all five bottles was the same.

The defendant testified that he is unable to "account for anything being wrong" with these bottles (seized on November 2, 1938); that from the middle of October until about the middle of December 1938, he was recuperating from an operation on a cyst and went to his tavern only "once in a while"; that during that time, he had a bartender and a porter in his employ and also a friend who helped take care of the place; that he has confidence in all three of these persons; that he had no liquor with which he was overstocked or which he was trying to get rid of at the time; that the Wilson "That's All" and the Calvert's Special are "pretty fast" sellers but the Calvert's Reserve is "very slow" and the Harmony "not popular".

I find that the five bottles were refills, constituting the contents as illicit liquor. The singular circumstance of the same liquor in all five of these bottles is more than convincing. The defendant's possession of such illicit liquor was a violation of the Alcoholic Beverage Control law (R. S. 33:1-50) irrespective of whether he is personally innocent of the refilling. See Re Jacobs, Bulletin 315, Item 8 and Re Tumen, Bulletin 316, Item 8, where I carefully discussed how the problem of refills strikes at the root of liquor control.

I find the defendant guilty as charged.

His license, in accordance with the principles set forth in the Jacobs case, will be suspended for the minimum period of thirty days.

Accordingly, it is, on this 4th day of June, 1939,

ORDERED that Plenary Retail Consumption License C-153, heretofore issued to Michael D. Donovan by the Board of Commissioners of the City of Bayonne, be and the same is hereby suspended until the end of its term, effective June 8, 1939 at midnight (Daylight Saving Time); and it is

FURTHER ORDERED that no further license be issued to him or for said premises prior to July 9, 1939.

D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - GAMBLING - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

OTTO PALMER and)
CLIFFORD E. PETERSON,)
43-A Branford Place,)
Newark, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-573, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

Stanton J. MacIntosh, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

Morris Feinberg, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendants plead guilty to the charge of engaging in and permitting gambling at their tavern, in violation of Rule 7 of State Regulations No. 20.

On the afternoon of February 6, 1939, Sergeant Volz and Officer Hull of the Newark Police Department visited the defendants' tavern. When they arrived, Palmer, one of the defendants, was in the tavern's telephone booth with a racing-form sheet and various blank pieces of paper; a small notebook (in his shirt pocket) containing, under date of February 4, a number of entries in figures and initials; and \$117.00 in cash (in his trouser pocket). He admitted to the sergeant that he was telephoning New York City to place bets on horses but claimed they were his own. However, Volz, on examining the premises, found, on the back bar, a cigar box containing a large number of slips registering bets in various names or initials on horses. These slips were, for the most part, collected in groups under various dates, each group totaling several hundred dollars.

Palmer claimed that his partner, Peterson, "had nothing to do with the betting."

There is no doubt that Palmer was making book at the tavern on a substantial scale.

Horses and all other forms of gambling, and of making book, must be driven out of licensed places.

The fact that Peterson may have been innocent of Palmer's illegal activity is immaterial. Partners holding a license are strictly accountable for the violations of each other.

Their license will be suspended for ten days.

Accordingly, it is, on this 4th day of June, 1939, ORDERED that Plenary Retail Consumption License C-573, heretofore issued to Otto Palmer and Clifford E. Peterson, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing June 8, 1939, at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - POSSESSION OF ILLICIT LIQUOR - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
 SPIRROS PAPANOU,
 147 Ellison St.,
 Paterson, N. J.,
 Holder of Plenary Retail Consumption License C-348, issued by the Board of Aldermen of the City of Paterson.

CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
 Spirros Papanou, Pro Se.

BY THE COMMISSIONER:

The defendant is charged with possessing illicit liquor, contrary to R. S. 33:1-50.

His licensed premises are deep and narrow, a lunch counter being located in the front and a bar in the rear. The establishment connects with a hallway that leads to premises where the defendant operates bowling alleys and pool tables.

On October 27, 1938, Inspectors Corse and Bacher of the Alcohol Tax Unit, U. S. Department of Internal Revenue, applied the Williams test (pouring a chemical re-agent into an equal amount of liquor in a glass tube) to samples taken from twenty-four bottles of liquor at the defendant's place. They seized, as being off proof, six bottles of liquor, all partly filled, from the back bar, labeled, respectively, Calvert's Reserve Blended Whiskey, 90 Proof; Seagram's 5 Crown Blended Whiskey, 90 Proof; Wilson "That's All" Blended Whiskey, 90 Proof; Seagram's Crown Special Blended Whiskey, 90 Proof; Gibson's Club Blended Whiskey, 90 Proof; and Old San Lino Brand Cuban Rum, 86 Proof.

Federal Chemist Blakeley, on analysis of a sample of liquor from each bottle, found that they fell below the labeled proof as follows - Calvert's Reserve, by 7.2 points; Seagram's 5 Crown, 15.1; Wilson "That's All", 7.2; Seagram's Crown Special, 8.7; Gibson's Club, 7.2; and Old San Lino, 8.1. He further found that the sample from the Seagram's 5 Crown bottle varied substantially in acid, solids, and coloring from genuine liquor of that brand.

On the basis of his analysis, the chemist concluded that the liquor in the Seagram's 5 Crown bottle was not genuine as labeled but that the contents in the other bottles may have been genuine liquor of those respective brands diluted with water.

The defendant settled his case with the Federal authorities in this matter by payment of a compromise of \$25.00 for all six bottles.

He stated that he was unable to account for the fact that the liquor in these bottles was not as labeled; that they may have been tampered with by persons when he left his premises temporarily for change or when he, on one occasion, carelessly left his back door open for two nights; but that "it is hard to blame on somebody

something when you don't see them do it".

The possibility of a thief or intruder stealing into the premises by day or night merely to tamper with the bottles is negligible.

I find as fact that the five bottles were refills (either by addition of water to the original contents, or of other liquor), constituting the contents of those bottles as illicit beverage. The defendant's mere possession of such illicit liquor was a violation of the Alcoholic Beverage Control Law (R. S. 33:1-50) irrespective of whether he is personally innocent of the refilling. See Re Jacobs, Bulletin 315, Item 8, and Re Tumen, Bulletin 316, Item 8, where I carefully reviewed how the problem of refills strikes at the root of liquor control.

I find the defendant guilty as charged.

His license, in accordance with the principles set forth in the Jacobs case, will be suspended for the minimum period of thirty days.

Accordingly, it is, on this 5th day of June, 1939,

ORDERED that Plenary Retail Consumption License C-548, heretofore issued to Spirros Papanou by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended until the end of its term, effective June 9, 1939 at midnight (Daylight Saving Time); and it is further

ORDERED that no further license be issued to him or for said premises prior to July 10, 1939.

D. FREDERICK BURNETT,
Commissioner.

12. APPELLATE DECISIONS - SACHS v. TRENTON ET AL.

JOSEPH SACHS,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS

CITY COUNCIL OF THE CITY OF)
TRENTON and MICHAEL J. BUDDY,)
INC.,)

Respondents)
- - - - -)

Irving H. Lewis, Esq., Attorney for Appellant.
Sidney Goldman, Esq., Attorney for Respondent City Council.
Leo J. Rogers, Esq., Attorney for Respondent Michael J. Buddy, Inc.

BY THE COMMISSIONER:

Appellant, a taxpayer of the City and the holder of a consumption license at 332 East State Street, appeals from the action of the City Council in granting the transfer of a plenary retail consumption license from another person and place to Michael J. Buddy, Inc. for premises known as 326 East State Street, Trenton.

The petition of appeal alleges that (1) said transfer was obtained by subterfuge, and (2) the application should have been denied because the neighborhood is adequately supplied with licensed premises.

As to (1): Michael J. Buddy has held a consumption license in Hamilton Township since Repeal, and resided in Hamilton Township until October 12, 1938, at which time he became a resident of the City of Trenton. On October 25, 1938, respondent Michael J. Buddy, Inc. was duly incorporated and, three days later, filed its application for the transfer considered herein. The authorized capital stock of the corporation consists of one hundred shares; nine of which are held by Michael J. Buddy and the balance of which are held by eleven other shareholders, the majority of whom are relatives of Michael J. Buddy. There is no evidence that any stockholder is disqualified by Statute from holding an individual license.

The alleged subterfuge appears to be based upon the contention that the corporation was organized solely to permit Michael J. Buddy to hold a license which he could not hold as an individual because of the provisions of an ordinance of the City of Trenton. Said ordinance provides:

"No license shall be issued to any natural person unless he shall have been a resident of the City of Trenton for at least three years continuously immediately preceding his application for such a license."

Unquestionably, the transfer could not have been granted to Michael J. Buddy as an individual because of the terms of said ordinance.

The certificate of incorporation and the minute book of Michael J. Buddy, Inc. have been introduced into evidence, and the corporation appears to have been duly organized. The uncontradicted evidence shows that each of the incorporators contributed to the sum of One Thousand Dollars with which the corporation started business. I have no doubt, however, that Michael J. Buddy, President, manager and bartender, is the controlling factor in the corporation. If he or the other stockholders were disqualified by Statute from holding a license and were merely using the corporation as a cloak, the transfer would be set aside. William Tell Hotel Corporation v. Ridgewood, Bulletin 65, Item 3; Hudson County Retail Liquor Stores v. Terminal and Jersey City, Bulletin 127, Item 1.

The same strict rules need not be applied, however, where the issue concerns local residential requirements. Such requirements are not specifically set forth in the Statute. They may be superimposed, if reasonable in the period of residence required, to permit the issuing authority to judge the applicant's character. Iamello v. Rumson, Bulletin 77, Item 9; McHugh v. West Deptford, Bulletin 106, Item 1. Aside from affording an opportunity to judge an applicant's character, no reason exists for such additional requirements. Michael J. Buddy is a fit person to hold a license.

Moreover, by its terms the ordinance applies only to natural persons. The City Council might have applied the residential requirement to stockholders of corporations (Re Flagg, Bulletin 185, Item 11) but it did not see fit to do so. Under the circumstances, it does not appear that the transfer was obtained by subterfuge. All the facts of the case were apparently made known to the City Council.

At the hearing appellant attempted to show that fraud was practiced on the City Council because respondent corporation represented that it intended to conduct a businessmen's restaurant, whereas it in fact intends to conduct an ordinary saloon. The President of the corporation testified, at the hearing, that the premises are fitted up with twelve booths, seating forty people, and that there is a kitchen fully equipped; that the corporation has engaged a chef and intends to serve lobsters, sea food, steaks, and other delicacies, the mere mention of which may whet the chops but doesn't convert a grill into a wet goods emporium.

As to (2): It is admitted that 326 East State Street is located in a business section on the main thoroughfare of the City, which is traversed by many people traveling from the railroad station to the public buildings. Aside from Sachs' place of business there is no other licensed place located on East State Street in close proximity to 326 East State Street. Under these circumstances, the question as to need for an additional license is peculiarly within the discretion of the issuing authority. Sobocienski v. Newark, Bulletin 239, Item 8; Hudson v. Gold's and Union City, Bulletin 253, Item 3; Finfer v. Morristown, Bulletin 267, Item 8; Fanel v. Newark and Richman, Bulletin 284, Item 10. I do not find that respondent City Council abused its discretion in granting another consumption license in this busy section.

The action of respondent City Council in granting the transfer referred to herein is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 5, 1939.

13. LICENSES - APPLICATIONS - HOW TO ANSWER AS TO VIOLATION OF REGULATION AS DISTINGUISHED FROM VIOLATION OF THE CONTROL ACT.

Dear Sir:

I represent a State Beverage Distributor who received a suspension of his license by your department because of an infraction of one of your rules and regulations.

I am about to prepare my client's application for a new license and in answering question No. 24 of the application, I am wondering whether or not it is necessary to mention the above penalty. As you will note, the question pertains to a violation of "an act concerning alcoholic beverages." Therefore, please advise me whether or not the rules and regulations are part of the act.

Very truly yours,
Moe A. Joseph

June 5, 1939

Moe A. Joseph, Esq.,
Vineland, N. J.

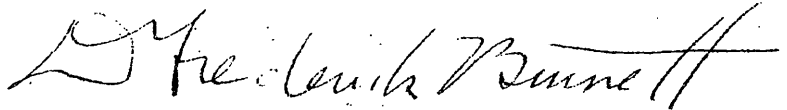
My dear Mr. Joseph:

I take it that you are referring to the application for State license, individual or partnership form.

Your client should answer Question No. 24 "yes" or "no", depending on whether or not he has ever been convicted of or has committed any violation of the Act. The question does not contemplate violations of the regulations unless such violation is at the same time a violation of the Act. All violations of regulations are not necessarily violations of the Act. It all depends on the violation.

Whatever the violation, as there has been a suspension of the license, it will be covered by Question No. 29, which asks if the applicant has ever had any interest in any application for a license which was denied or which, if granted, was surrendered, suspended or revoked. You will give full details of the suspension, whether for a violation of the Act or for a violation of the Regulations, in the answer to Question No. 29.

Very truly yours,



Commissioner.

R