

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1295

September 1, 1959

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BULLETIN 1295

September 1, 1959

1. APPELLATE DECISIONS - LYKOSH v. PERTH AMBOY AND KRECZ.

JOSEPH LYKOSH,)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS
)	AND ORDER
BOARD OF COMMISSIONERS OF THE)	
CITY OF PERTH AMBOY, AND CHARLES)	
& MICHAEL KRECZ, T/A VALLEY INN)	
& LIQUOR STORE,)	
Respondents.)	

Melko, Goldsmith & Pollack, Esqs., by David Goldsmith, Esqs.,
Attorneys for Appellant.
Francis M. Seaman, Esq., Attorney for Respondent Board of
Commissioners of the City of Perth Amboy.
David I. Stepacoff, Esq., and Martin S. Koch, Esq., Attorneys
for Respondents Charles & Michael Krecz.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent Board, whereby on March 18, 1959 it approved an application for a place-to-place transfer of a plenary retail consumption license from premises 683 State Street to premises 1132-1140 Convery Boulevard, Perth Amboy.

"Appellant's petition of appeal sets forth, in substance, the following grounds for reversal of the action of respondent Board of Commissioners:

1. In view of the fact that Oliver R. Kovacs was not a member of respondent Board on February 18, 1959 when the matter in question was heard, his vote on March 18, 1959 in favor of the transfer was a nullity; thus the required number of votes to permit approval of the application for transfer was lacking.
2. The respondent licensee failed to file plans and specifications with the application and to insert the requisite newspaper advertisement that said plans and specifications might be examined in the office of the city clerk.
3. The proposed licensed premises is in too close proximity to a school.
4. The transfer to the proposed site would be detrimental to the municipality as undesirable elements would inevitably be attracted to that location.

5. There is no need for nor public convenience to be served by the transfer of the license.
6. The action of the respondent Board was contrary to the evidence presented and constituted an abuse of discretion.

"The hearing in the instant matter was held on February 18, 1959 before the respondent Board, but the case was continued until March 18, 1959 in order to permit the respondent licensee to file plans of contemplated alterations to the existing building and to permit the appellant to file maps and surveys.

"It appears from the undisputed facts in this case that at a meeting on February 18, 1959, one of the members of the respondent Board submitted his resignation to become effective March 2, 1959, and at the same meeting Oliver R. Kovacs was elected to fill the vacancy for the unexpired term, also effective as of March 2, 1959. Oliver R. Kovacs was present at the meeting of February 18, 1959 when the matter now under consideration was heard. Thereafter, at a meeting on March 18, 1959 (when the application for the place-to-place transfer came before the respondent Board) two members declined to vote and the remaining three members (one of whom was Oliver R. Kovacs) voted to approve the application for transfer.

"There is no question that there was a quorum present and that a majority thereof might determine whether or not a place-to-place transfer should be granted. Manno v. Clifton, 14 N.J. Super. 100.

"Appellant challenges Commissioner Kovacs' vote on the ground that on February 18th, when the matter of transfer was heard, he (Kovacs) was not a member of the respondent Board. On March 18, 1959, when he voted to approve the application for transfer, he was a member of the respondent Board. Whether or not the respondent Board erred in permitting Commissioner Kovacs to vote on the question of transfer need not be determined in the present appeal. Disregarding Commissioner Kovacs' vote, there still were sufficient votes favoring the application for transfer. Two members of the respondent Board voted to approve the transfer and two refrained from voting. There is no evidence that at the official meeting when the matter of transfer was considered, either of the Commissioners who had abstained from voting expressed objection to the transfer.

"Justice Parker, speaking for the Supreme Court in the matter of Kozusko v. Garretson, 102 N.J.L. 508, stated that:

'It may well be conceded that when in a parliamentary body a majority vote suffices for effective enactment, and some vote aye and the others remain silent, they are taken as voting in the affirmative. Such we understand to be the law. In line with this is the principle that where a quorum is present, a proposition is carried by a majority of all the votes cast, though some of the members present refused to vote. 29 Cyc. 1690. This is, or was the congressional rule. U.S. v. Ballin, 144 U.S. 1. In this state it has been held that the vote of a member present who declined to vote at all should be counted in the affirmative. Mount v. Parker, 32 N.J.L. 341.'

"In Kozusko v. Garretson, *supra*, Justice Parker further stated that where a person did not vote and had expressed opposition

to the motion, his vote could not be counted in favor of the resolution. He quotes Chancellor Zabriskie in Abels v. McKeen, 18 N.J. Eq. 462, who said, 'At such a meeting, if a vote is taken, and no one dissents, all who do not vote are considered as voting with the majority for the motion. And a vote of three ayes at a meeting of twenty, where no one dissents, is considered as the affirmative vote of all present.'

"Commissioner Ernest M. Muska, who declined to vote on the transfer in question, testified that although before the formal meeting he may have expressed himself as opposed to the transfer, he made no comment at the public meeting before or after the vote was taken. He stated that he had not made up his mind on the question because of various circumstances involved. Commissioner Richard M. Budnicki (the other member of the respondent Board who declined to vote) was not called upon to testify at the hearing herein. There is nothing to indicate from the record herein that he stated at the meeting of March 18th that he opposed the transfer.

"In line with the decision aforementioned, I am satisfied that although Commissioners Budnicki and Muska declined to vote on the application in question, their votes must be counted in the affirmative. Thus, with the four members present who were qualified to vote, the resolution to transfer the license was approved by a vote of four in favor and none opposed.

"Appellant contends that the respondent licensees neglected to file plans and specifications with the respondent Board at the time the application for transfer was made. The premises to which a transfer was sought were already in being and, therefore, there was no necessity to file plans and specifications in this case. The rules and regulations of the Division of Alcoholic Beverage Control specifically provide that the filing of plans and specifications with the application is required when the building to be used as a licensed premises is to be constructed. See Rule 1 of State Regulation No. 2.

"Appellant contends that the proposed location is located too close to a county vocational school. The record discloses that there is such a school on the other side of Convery Boulevard from the proposed site. The school building is erected some distance from the boulevard and there is a metal fence erected along Convery Boulevard and Florida Grove Road. The distance in a straight line from the nearest section of the fence to the proposed site is approximately 142 feet. However, as a person would ordinarily walk, the entrance to the vocational school on Convery Boulevard and the entrance to the proposed premises is approximately 400 feet. Thus, the statute prohibiting the issuance of a liquor license to premises within 200 feet of a school has no application herein. See R.S. 33:1-76.

"Appellant produced a number of witnesses who testified in opposition to the transfer. Burr Coe, Director of the Middlesex County Vocational School on Convery Boulevard, testified that he was opposed to the proposed location of the licensed premises because he believed it is contrary to the best interest of the school. Furthermore, the large majority of the students in the evening classes are girls and women and, inasmuch as the section is isolated, he felt that it was his responsibility to do everything possible to provide the maximum security to the students attending the school.

"Janet Lund, Principal of the vocational school, testified that she felt the proposed establishment was too close to the

school because students who travel by bus must use the bus stop at the corner of the school property diagonally across from the proposed premises.

"Louis Migliorini, President of the Middlesex County Schools System, testified that he objects to licensed premises being conducted at the proposed location because the school in question is primarily a girls' school and, because of the isolated section, the girl students would be subjected to hazards that might occur because of the bar across the street.

"Karl E. Metzger, Director of the Middlesex County Board of Freeholders, testified that it is his opinion a tavern is undesirable in close proximity to a school building in that it has a psychological effect upon the students attending the school and would affect the school program.

"George Otlowski, a member of the Board of Chosen Freeholders of Middlesex County, testified that in his opinion, a tavern operating at the proposed site would create all kinds of problems for the girl students attending the school.

"Appellant testified that he resides about a half mile from the proposed premises and, in his opinion, a tavern should not be permitted at the proposed location. On cross-examination by the attorney for the respondent Board, appellant admitted that his brother-in-law is Charles J. Gergasko, the proprietor of a restaurant located a short distance away, but stated he was not aware that there is presently on file with the local issuing authority an application requesting transfer of a liquor license to his brother-in-law aforementioned.

"Commissioner Donald F. Olsen testified that he voted in favor of the transfer in question because he was of the opinion that the operation of a liquor establishment at the proposed site would have no adverse effect upon the school. Moreover, he testified that he felt that it would be helpful to the area rather than detrimental. Commissioner Olsen further testified that he is of the opinion that there is a public need for such an establishment because there are no other licensed premises within a considerable distance. He further stated that when voting in favor of the transfer, he took into consideration the reputation of the respondent licensees based upon information received from the police department and from people in the neighborhood of their present premises.

"Commissioner Kovacs testified that an inspection of the area to which the license was sought to be transferred disclosed some deterioration over the years, and that a licensed premises at the proposed location would be an advantage to the municipality.

"Mayor Flynn testified that he voted in favor of the transfer because he was of the opinion that a licensed premises at the proposed site would not in any way whatsoever interfere with a vocational school and that premises such as the respondent licensee propose to provide would be in the best interests of the community. He also took into consideration that the respondent licensees operated a decent establishment at their present premises and that the objections to the transfer were motivated by a desire of someone else to acquire a license in the immediate area. Furthermore, the Mayor testified that in his opinion, there was a public need for a tavern in that area.

"Charles Krecz, one of the respondent licensees, testified that the applicants plan to improve the building and beautify the adjoining land, and later on to enclose the parking area.

"It appears that the objectors are apprehensive that the proposed licensed premises will create a moral hazard for the students who attend the county vocational school. It is readily understandable that such concern exists, especially in the part of those persons connected with the school system and the members of the county government who testified at the within hearing. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), the students or other persons have nothing to fear. If, perchance, the licensed premises are permitted to be operated in violation of the Alcoholic Beverage Law, the respondent licensees will subject their license to either suspension or revocation. The testimony herein seems to indicate that many of the students attending the vocational school arrive there and leave by special buses.

"The question whether or not there is a need or necessity for a liquor outlet at a particular location is within the sound discretion of the issuing authority. In cases of the kind now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. Curry v. Margate City, Bulletin 460, Item 9; Mulcahy et als. v. Maplewood et al., Bulletin 658, Item 4; Krough's Restaurant, Inc. et als. v. Sparta et al., Bulletin 1258, Item 1.

"I am satisfied that in all respects proper consideration was given by the members of the respondent Board before action was taken on the application for transfer. Furthermore, there has been no evidence presented herein to indicate that there was an abuse of discretion on the part of the members of the respondent Board.

"After careful examination of the evidence and also of the memoranda filed by the attorneys for the respective parties, I recommend that the action of the respondent Board, in approving the application for transfer of the license in question to the proposed site, be affirmed and that the appeal herein be dismissed. However, I further recommend that the license be withheld by the respondent Board until such time as alterations are made to the proposed premises in accordance with the plans and specifications submitted to the respondent Board."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation. I shall enter an order affirming respondent Board's action.

Accordingly, it is, on this 28th day of July 1959,

ORDERED that the action of respondent Board of Commissioners of the City of Perth Amboy be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

2. APPELLATE DECISIONS - BROTHERS FISHING LODGE v. LOWER.

BROTHERS FISHING LODGE,)	
	Appellant,)
	v.)
TOWNSHIP COMMITTEE OF THE)	ON APPEAL
TOWNSHIP OF LOWER,)	CONCLUSIONS
)	AND ORDER
	Respondent.	

 Perskie & Perskie, Esqs., by Marvin D. Perskie, Esq., Attorneys
 for Appellant.
 William J. Peters, Esq., Attorney for Respondent.
 Edward A. Costigan, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the denial of appellant's application for a club license for premises located on Delaware Bay approximately 2000 feet south of Wildwood Avenue, Highland Beach, Township of Lower.

"The answer filed herein alleges that the application was denied, among other things, because the respondent Township Committee adopted a policy to restrict the number of liquor licenses in the municipality and, furthermore, the issuance of the said license would not serve the best interests of the Township.

"At the hearing herein, respondent moved to dismiss the appeal because the issuance of the said club license would violate the provisions of a local ordinance limiting the number of club licenses to be issued in the municipality.

"The ordinance in question was adopted by the Township Committee on January 10, 1945 and the pertinent section thereof reads as follows:

'Section 1. The number of Liquor Licenses (excepting Hotel Licenses) issued and outstanding in the Township of Lower, County of Cape May shall not exceed Fourteen (14) Retail Consumption Licenses, Two (2) Retail Distribution Licenses, One (1) Club License.'

"A municipality may, by ordinance, prohibit issuance of club licenses (R.S. 33:1-12(5)). It may also, by ordinance, limit the number of licenses to sell at retail, including club licenses, and may amend or repeal such ordinances. R.S. 33:1-40. An operative numerical limitation ordinance is binding upon the issuing authority. Trenton United Licensed Beverage Association et al. v. Trenton et al., Bulletin 899, Item 2; Local #2111, United Steelworkers of America, C.I.O. v. Trenton, Bulletin 899, Item 3. It is no longer deemed necessary for the municipality to establish the reasonableness of the ordinance. Trenton United Licensed Beverage Association et al. v. Trenton et al., supra.

"Respondent has, by ordinance, authorized the issuance of but one club license. It appears that the quota of club licenses has been filled. Thus, the respondent Township Committee had no

jurisdiction to grant the application for the club license in question because such action on its part would be in contravention of an operative numerical limitation ordinance. Local #2111, United Steelworkers of America, C.I.O. v. Trenton, supra; Camden Leather Workers Union Local 206 v. Camden, Bulletin 973, Item 1.

"In view of the fact that I have no alternative other than to recommend dismissal on legal grounds, it will be unnecessary to discuss the merits of the case now under consideration. Under the circumstances, I recommend that the action of the respondent be affirmed and that the appeal herein be dismissed."

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations. I shall enter an order affirming respondent Township Committee's action.

Accordingly, it is, on this 29th day of July 1959,

ORDERED that the action of respondent Township Committee of the Township of Lower be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - CLUB SAL, INC. v. WEST NEW YORK.

CLUB SAL, INC., t/a HAFTIE'S)
COCKTAIL LOUNGE,)
Appellant,)
v.)
BOARD OF COMMISSIONERS OF THE)
TOWN OF WEST NEW YORK,)
Respondent.)

ON APPEAL
CONCLUSIONS
AND ORDER

James F. McGovern, Jr., Esq., Attorney for Appellant.
Samuel L. Hirschberg, Esq., by John R. Armore, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of the respondent whereby it suspended appellant's license for a period of five days effective April 13, 1959, after finding the appellant guilty of permitting unauthorized persons on the licensed premises during prohibited hours, in violation of a local ordinance.

"Upon the filing of the appeal an order was entered on April 9, 1959, staying respondent's order of suspension until further order of the Director. R.S. 33:1-31.

"Appellant, in its petition of appeal, alleges that

respondent's action was erroneous because its decision was contrary to the law. No answer was filed on behalf of respondent.

"The respective parties to this appeal stipulated that the determination in this matter be made from the transcript of the record taken before respondent.

"The only matter to be decided herein is whether the respondent erred in finding appellant guilty of violation of a local 'hours' ordinance. The pertinent part of the amended ordinance in question adopted by respondent on January 12, 1943, provides as follows:

- '1. SECTION 6 of a resolution of which this ordinance is amendatory is hereby amended to read as follows:

"Section 6" No Plenary Retail Consumption Licensee or Club Licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or allow the consumption of any alcoholic beverage on licensed premises on New Year's Day when it is a weekday between the hours of 5:00 A.M. and 7:00 A.M.; on New Year's Day when it is a Sunday between the hours of 5:00 A.M. and Noon; on Lincoln's Birthday, Washington's Birthday, Decoration Day, Independence Day, Labor Day, Columbus Day, Election Day, Armistice Day, Thanksgiving Day, and Christmas Day, between the hours of 4:00 A.M. and 7:00 A.M.; on other weekdays between the hours of 3:00 A.M. and 7:00 A.M.; on Sundays except where the same shall be New Year's Day between the hours of 4:00 A.M. and Noon.

During the hours that sales of alcoholic beverages are prohibited, all premises licensed under a Plenary Retail Consumption License shall also be closed and no persons shall be allowed thereon except the licensee and bona fide employees of the licensee; provided, however, that this closing provision shall not apply to bona fide restaurants.***'

"During the hearing below the attorney speaking on behalf of the respondent conceded that the appellant's business met the requirements of a bona fide restaurant.

"Inasmuch as the closing hours set forth in the ordinance do not apply to a bona fide restaurant, the finding of guilt by respondent of the charge preferred herein was improper. Under the circumstances, I recommend that the action of respondent be reversed, and that the charge preferred against appellant be dismissed."

No exceptions to the Hearer's Report were taken within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered the facts and circumstances herein, I concur in the Hearer's finding and conclusion and adopt his recommendation.

Accordingly, it is, on this 30th day of July 1959,

ORDERED that the action of the respondent be and the same is here reversed.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WALTER SHERRY)
344 Bergen Blvd.)
Fairview, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-21 (for the 1958-59 and 1959-60 licensing years), issued by the Mayor and Council of the Borough of Fairview.)

Schraier and Palmisano, Esqs., by Cosmo D. Palmisano, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On April 29, 1959, an ABC agent tested the licensee's open bottles of alcoholic beverages (49 bottles) and seized four bottles because they appeared to be off in color. Subsequent analysis by the Division's chemist disclosed that the contents of two of said bottles, when compared with the samples of the genuine product of the labeled brands, varied substantially in acids, solids and color.

Defendant has a prior adjudicated record. Effective June 23, 1958, defendant's license was suspended by this Division for sixty days for (1) immoral activity and nuisance, (2) hostess activity, and (3) an "hours" violation. Re Sherry, Bulletin 1236, Item 3. I shall suspend defendant's license for fifteen days, the minimum period where two bottles are involved (Re Gavlak, Bulletin 1245, Item 6), to which will be added five days because of the dissimilar violation which occurred within the past five years (Re Forster, Bulletin 1269, Item 9), making a total suspension of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 22nd day of July, 1959,

ORDERED that Plenary Retail Consumption License C-21 (for the 1959-60 licensing year), issued by the Mayor and Council of the Borough of Fairview to Walter Sherry, t/a The Tender Trap, for premises 344 Bergen Blvd., Fairview, be and the same is hereby suspended for fifteen (15) days, commencing at 3 a.m. Monday, August 3, 1959, and terminating at 3 a.m. Tuesday, August 18, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JULIA CICHOWSKI
t/a EDDIE'S LONG BAR
107 Hawkins Street
Newark 5, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-557 (for the 1958-59 and 1959-60 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Julia Cichowski, Defendant-licensee, Pro se.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that she possessed on her licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On May 12, 1959 an ABC agent tested the licensee's open bottles of alcoholic beverages (32 bottles) and seized three of such bottles because they appeared to be off in proof. Subsequent analysis by the Division's chemist disclosed that the contents of two of said bottles, when compared with the samples of the genuine product of the labeled brands, varied substantially in acids and solids.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days, the minimum period where two bottles are involved (Re Gavlak, Bulletin 1245, Item 6). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 20th day of July 1959,

ORDERED that Plenary Retail Consumption License C-557 for the 1959-60 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Julia Cichowski, t/a Eddie's Long Bar, for premises 107 Hawkins Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Monday, July 27, 1959 and terminating at 2:00 a.m., Thursday, August 6, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - PURCHASE BY RETAILER FROM OTHER THAN MANUFACTURER OR WHOLESALER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 PHILIP PASSNER
 t/a 5 Corners Bar & Grill
 470 Central Avenue
 Newark 7, N. J.

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License C-791 (for the 1958-59 and 1959-60 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

 Robert W. Wolfe, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of non vult to the following charge:

"In or about December 1958 you, a New Jersey retail licensee, without authority of special permit, purchased or obtained an alcoholic beverage from a person who was not the holder of any New Jersey manufacturer's or wholesaler's license, in that you purchased or obtained a 4/5 quart bottle of Schenley Reserve Blended Whiskey from a person called 'Jackie Lambert', who did not hold either of the above types of licenses; your obtaining an alcoholic beverage from such person being in violation of Rule 15 of State Regulation No. 20."

On Tuesday, January 27, 1959, an ABC agent gauged the open stock of assorted brands of liquor in defendant's licensed premises and found a partially filled 4/5 quart bottle of Schenley whiskey which appeared to be off in color and had the seal of another state attached to the bottle's neck. The agent seized the bottle of illicit liquor and was informed by the licensee that he had accepted it from a customer in exchange for a 4/5 quart bottle of Seagram's Seven Crown. The explanation given does not, in any way, affect defendant's liability. However, since the violation charged is defendant's first adjudicated offense involving a single bottle of illicit liquor, I shall suspend his license for a period of fifteen days. Re Lappin, Bulletin 728, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 21st day of July, 1959,

ORDERED that Plenary Retail Consumption License C-791 for the 1959-60 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Philip Passner, t/a 5 Corners Bar & Grill, for premises 470 Central Avenue, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Tuesday, July 28, 1959, and terminating at 2:00 a.m., Friday, August 7, 1959.

WILLIAM HOWE DAVIS
 DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against)

GRACE MACRIE PITALE AND MARY)
JOAN PITALE)
t/a BELL LIQUOR STORE)
N/E corner 12th Street & Black)
Horse Pike)
Folsom, PO RD 3, Hammonton, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Distribution License D-1, (for the 1958-59 and 1959-60 licensing years) issued by the Mayor and Council of the Borough of Folsom.)

Defendant-licensees, by Grace Macrie Pitale, a Partner.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants have pleaded not guilty to a charge alleging that on April 11, 1959 they sold, served and delivered alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

"The substance of the evidence presented by three minors who testified on behalf of the Division is that on April 11, 1959 Richard ---, age 20, accompanied by two minor companions, arrived at defendant's licensed premises in a motor vehicle; that Richard alone entered the premises, purchasing therein a case of 24 cans of beer from a male bartender whom he cannot identify and who did not ask Richard his age or require him to sign any written representation thereof; that Richard emerged with the beer which he placed in the car; and that the two minors observed Richard enter the licensed premises emptyhanded and leave the premises with the beer and bring it to the car.

"It appears that police officers apprehended the three minors for a traffic violation, then questioned them as to the source of the beer which they found in the car and brought the matter to the attention of ABC agents. Thereafter, on April 16th, an ABC agent was directed to defendants' licensed premises by Richard and one of the minors, both of whom identified the place as the establishment which Richard entered on April 11th; that Richard and the agent entered the premises; that Joseph Pitale, husband of Grace Pitale, was in charge thereof, but Richard was unable to identify him as the bartender who sold him the beer. On the following day, the third minor directed the ABC agent to the premises and similarly identified the exterior thereof as the place where he had observed Richard emerge with the case of beer.

"The licensees' defense in the main rests upon the statement by Richard allegedly made to the police officers when apprehended that some other person at some other place purchased the beer, buttressed by Joseph Pitale's claim that he was the only male bartender employed at the premises and his denial that he sold the

beer to Richard or had ever seen him before he came there with the ABC agent.

"Joseph Pitale testified that after he was confronted with Richard he talked with one of the police officers who had participated in the case who told him that Richard first said that some other person had purchased the beer for him at some other place. He then contacted Richard and one of the other minors who told him that they did not know him and it is Pitale's opinion that Richard should have known him if he sold him the beer. Further, that Richard told him that, after he persisted in his first account of where the beer was purchased, the officer made a deal with him that he would not 'take the license away for speeding', presumably if he changed his story.

"Specifically questioned concerning what he told the police officer, Richard stated that he at first told him that some other person had purchased the beer for him in Lawnside, about twenty miles from the scene, but that he did not mention any particular establishment by name; that when the officer replied that he did not believe him because the beer was too cold, he finally decided to tell the truth and identified defendants' premises as the store 'past the bridge on the left hand side going down the pike'; that the officer did not threaten him or persuade him to change his story, but that he merely decided to tell the truth and was not told that he would be arrested or charged with any offense or that it would go easy with him; that his reason for not revealing at first that defendants' premises was the actual place where he purchased the beer was because he did not want to get anyone in trouble. Richard further testified that his two companions did not make any statement to the police as to where Richard purchased the beer.

"The evidence presented by Richard and his two companions establishes definitely and clearly that Richard purchased the case of beer at defendants' licensed premises under the observation of his two companions. There is no claim that the minors have any motive to accuse the licensees unjustly. Under the circumstances, Richard's attempt to conceal at first the identity of the place where he had purchased the beer for the reason he gives is, in my opinion, not of sufficient importance to impeach his later identification of the defendants' premises, especially in view of the testimony of his two companions, who have not made any contrary statements. Richard's failure to identify the particular employee making the sale or service of alcoholic beverages to him is not fatal in disciplinary proceedings provided it be established that he purchased the beer in the licensed premises. Re Chizun, Bulletin 1274, Item 7. Such purchase has been established by his testimony and that of his two companions.

"I therefore recommend that defendant licensees be found guilty as charged. Defendants have no prior adjudicated record. I further recommend suspension of defendants' license for a period of ten days, the minimum suspension for sale to a 20-year-old minor. Re Messeka, Bulletin 1277, Item 11."

Exceptions to the Hearer's Report, in the form of a letter from one of the licensees, were filed with me pursuant to Rule 6 of State Regulation No. 16. The gist of such letter is that, in all the years the licensees have been in business, they have

been operating 100 per cent within the law and they protest that they are innocent in this instance.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's Report and the matter set forth in the letter, I accept the Hearer's conclusion that the defendants are guilty of the charge and I so find.

However, in considering penalty, it appears that the licensees have an unblemished record for the past eleven years, that the minor was within a few months of being 21 years of age, and was in the premises for only a short period of time. Under all of the circumstances, I shall suspend defendants' license for five days.

Accordingly, it is, on this 16th day of July 1959,

ORDERED that Plenary Retail Distribution License D-1 for the 1959-60 licensing year, issued by the Mayor and Council of the Borough of Folsom to Grace Macrie Pitale and Mary Joan Pitale, t/a Bell Liquor Store, for premises N/E corner 12th Street & Black Horse Pike, Folsom, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m., Monday, July 27, 1959 and terminating at 9:00 a.m., Saturday, August 1, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

8. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against
THOMAS H. IACOZZI
t/a BUDDY'S TAVERN
437 Palisade Avenue
Jersey City 7, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-308 (for the 1958-59 and 1959-60 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Thomas H. Iacouzzi, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant entered a plea of not guilty to the following charge:

"On Sunday, May 31, 1959, between 12:15 p.m. and 12:55 p.m. while Inspectors of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety of the State of New Jersey were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35."

When the matter came on for hearing, defendant, appearing pro se, retracted the aforesaid plea and entered a plea of guilty.

It appears from the reports herein that at 11:25 a.m., Sunday, May 31, 1959, ABC Agents M and G arrived in the vicinity of defendant's licensed premises and from a vantage point, observed a male enter the hallway adjacent to the tavern. Shortly thereafter, Agent M proceeded into the hallway to a rear door leading to the licensed premises and, hearing voices inside, rang the buzzer. A male inquired, "Who is it?" and Agent M replied that a fellow in the gas station directed him there and that he wanted to get a drink. Receiving no response, Agent M rejoined Agent G in front of the tavern where, at 12:15 p.m., they confronted Thomas Iacouzzi, the licensee, who had emerged through the front door which he locked. The agents identified themselves and asked Iacouzzi to open the door, Iacouzzi refused, yelling very loudly, "You can't go into my place -- you need a warrant -- there is no one in there." Agent G informed Iacouzzi that he was hindering their investigation and that he would be charged with "hindering" but Iacouzzi still refused saying, "I don't care who you are, you aren't getting in." Agent G then entered the hallway and observed two males at the rear door who were attempting to gain entrance. At 12:20 p.m., Iacouzzi opened the door and the agents entered. No one was present in the tavern but the agents seized two partially filled bottles of ice-cold beer which were in the kitchen sink and on the shelf they found a cigar box containing cash. Agent G then went into the enclosed back yard of the premises and discovered two men, one of whom had been seen entering the hallway earlier, hiding behind a shack.

Defendant has no prior adjudicated record. I shall suspend his license for a period of fifteen days. Re Paul's Tavern, Inc., Bulletin 1277, Item 12. No remission of the penalty will be granted since the confessional plea was entered on the date scheduled for the hearing on the charge.

Accordingly, it is, on this 28th day of July, 1959,

ORDERED that Plenary Retail Consumption License C-308 for the 1959-60 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Thomas H. Iacouzzi, t/a Buddy's Tavern, for premises 437 Palisade Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Tuesday, August 4, 1959, and terminating at 2:00 a.m., Wednesday, August 19, 1959.

WILLIAM HOWE DAVIS
DIRECTOR

9. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1958 through JUNE 30, 1959

	1st Quarter			2d Quarter			3d Quarter			4th Quarter			Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	
ARRESTS:													
Total number of persons arrested	76			64			79			104			323
Licenses and employes	29			31			40			50			150
Bootleggers	47			33			39			52			171
ABC agent impersonator	-			-			-			2			2
SEIZURES:													
Motor vehicles - cars	5			7			12			11			35
- trucks	-			1			1			1			3
- trailers	-			-			2			2			4
Stills - over 50 gallons	4			7			1			3			15
- 50 gallons or under	2			1			2			7			12
Alcohol - gallons	-			-		1,950.00	-			160.00			2,110.00
Mash - gallons	2,025.00			1,150.00			550.00			2,488.75			6,213.75
Distilled alcoholic beverages - gallons	124.55			267.25			1,292.00			734.55			1,418.35
Wine - gallons	35.99			14.99			225.67			69.43			346.08
Brewed malt alcoholic beverages - gallons	72.11			53.20			19.71			2,391.99			2,537.01
RETAIL LICENSEES:													
Premises inspected	1,953			2,121			1,731			1,841			7,646
Premises where alcoholic beverages gauged	1,111			1,714			2,780			2,222			7,827
Bottles gauged	18,624			28,870			49,666			42,531			139,691
Premises where violations were found	225			218			141			151			735
Type of violations found	339			313			189			212			1,053
Unqualified employes	142			111			61			97			411
Application copy not available	61			46			35			45			187
Reg. #38 sign not posted	40			57			16			27			140
Prohibited signs	32			23			7			4			66
Other mercantile business	22			12			15			4			53
Disposal permit necessary	11			4			5			3			23
Improper beer taps	2			5			-			-			7
Other violations	29			55			50			32			166
STATE LICENSEES:													
Premises inspected	65			78			67			68			278
License applications investigated	27			15			25			57			124
COMPLAINTS:													
Complaints assigned for investigation	1,375			1,103			1,477			1,392			5,347
Investigations completed	1,292			1,092			1,389			1,382			5,155
Investigations pending	(170)			(131)			(192)			161			161
LABORATORY:													
Analyses made	504			351			745			1,101			2,701
Refills from licensed premises - bottles	5			14			112			214			345
Bottles from unlicensed premises	122			114			123			112			471
IDENTIFICATION:													
Criminal fingerprint identifications made	51			32			46			54			183
Persons fingerprinted for non-criminal purposes	53			465			534			941			2,693
ID contacts made, w/other enforcement agencies	576			321			383			713			1,993
My Identifications via N.J. State Police	5			9			10			25			49
DISCIPLINARY PROCEEDINGS:													
Cases transmitted to municipalities	40			56			47			39			182
Violations involved	42			74			53			44			213
Sale during prohibited hours	29			37			35			19			120
Sale to minors	5			13			11			13			42
Sale to non-members by club-licensee	4			4			2			4			14
Failure to close premises during prohibited hours	-			5			4			3			12
Employee w/o ID card (local reg.)	1			2			-			1			4
Sale to intoxicated persons	1			2			-			-			3
Sale to women at a bar (local reg.)	1			1			-			1			3
Permitting brawl on premises	1			1			-			1			3
Permitting hostesses on premises	-			2			-			-			2
Sale outside scope of license	-			1			-			1			2
Sale of drinks on credit (local reg.)	-			-			1			1			2
Possessing chilled beer (DL licensees)	-			1			-			-			1
Failure to have copy of license application on premises	-			1			-			-			1
Employing unqualified persons	-			1			-			-			1
Employing female bartender (local reg.)	-			1			-			-			1
Permitting foul language on premises	-			1			-			-			1
Permitting lottery activity on premises	-			1			-			-			1
Cases Instituted at Division	69			70*			102**			108			349
Violations involved	105			119			149			150			523
Sale to minors	26			14			30			30			100
Sale during prohibited hours	15			18			17			21			71
Possessing liquor not truly labeled	4			5			16			24			49
Sale below minimum resale price	6			4			10			5			25
Permitting immoral activity on premises	8			6			3			4			21
Hindering investigation	3			4			3			9			19
Fraud and front	2			3			7			6			18
Conducting business as a nuisance	6			4			4			2			16
Permitting lottery activity on premises	3			5			6			2			16

*Includes one cancellation proceeding against blanket employment permit--females who acted as hostesses.
 **Includes two cancellation proceedings--License improvidently issued in violation of State Limitation Law.
 License improvidently issued to club lacking requisite possession of quarters.

1st Quarter 2d Quarter 3d Quarter 4th Quarter
 July Aug. Sept. Oct. Nov. Dec. Jan. Feb. Mar. Apr. May June

DISCIPLINARY PROCEEDINGS (Continued)

	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	Total
Cases instituted at Division (Continued)													
Violations involved:													
Permitting bookmaking on premises	3			4			4			4			15
Permitting foul language on premises	4			4			4			2			14
Sale to intoxicated persons	4			4			4			2			14
Possessing indecent matter	3			1			6			2			12
Sale outside scope of license	3			3			3			3			12
Solr-permittee engaging in conduct prohibited to employer	-			6			2			3			11
Permitting gambling on premises	-			1			4			4			9
Failure to have copy of license application on premises	2			3			2			1			8
Failure to close premises during prohibited hours	1			5			-			1			7
Delivery without bona fide invoice	2			1			3			1			7
Furnishing unlawful inducements to retailer	-			5			-			1			7
Permitting hostesses on premises	2			2			1			2			6
Employing unqualified persons	1			2			1			2			6
Employee w/o ID card (local reg.)	-			2			2			1			5
Possessing contraceptives on premises	1			-			3			1			5
Unauthorized transportation	1			-			1			3			5
Failure to file notice of change in application	-			1			2			1			4
Solicitor violating terms of permit	-			-			2			2			4
Aiding and abetting unauthorized sale	-			1			1			1			3
Permitting brawl on premises	-			1			1			1			3
Service to women at a bar (local reg.)	1			1			1			-			3
Failure to file notice of default	-			2			-			-			2
Sale on credit to retailer in default	-			2			-			-			2
Unlicensed sale by solicitor	-			-			2			-			2
Single instance of other violations	4			5			4			9			22
Cases brought by municipalities on own initiative and reported to Division	48			51			59			57			215
Violations involved:	59			59			67			70			263
Sale to minors	25			25			36			33			119
Permitting brawl on premises	12			14			8			9			43
Sale during prohibited hours	7			7			15			9			38
Conducting business as a nuisance	5			2			-			5			12
Hindering investigation	-			2			1			3			6
Permitting gambling on premises	-			2			-			4			6
Failure to close prem. during prohibited hours	-			1			2			2			5
Permitting bookmaking on premises	1			-			1			2			4
Employee working while intoxicated	-			1			-			3			4
Permitting immoral activity on premises	2			-			1			1			4
Sale to intoxicated persons	1			-			-			1			3
Permitting persons of ill repute on premises	-			-			-			3			3
Purchase from improper source	2			-			-			-			2
Failure to afford view into premises during prohibited hours	-			1			-			1			2
Employing unqualified persons	-			-			1			1			2
Permitting lottery activity on premises	-			-			-			1			1
Single instance of other violations	4			3			2			+			9
HEARINGS HELD AT DIVISION:													
Total number of hearings held	114			131			149			178			572
Appeals	16			16			14			25			71
Disciplinary proceedings	68			79			92			109			348
Eligibility	14			20			22			19			75
Seizures	6			10			8			20			44
Tax revocations	7			3			11			4			25
Applications for license	3			3			2			1			9
STATE LICENSES AND PERMITS ISSUED:													
Total number issued	4,468			4,287			2,857			22,216			33,828
Licenses	599			10			5			12			626
Employment permits	770			398			354			2,611			4,133
Solicitors' "	162			111			210			2,816			3,299
Disposal "	277			211			198			311			997
Social affair "	1,236			1,111			952			1,456			4,755
Wine "	-			1,020			9			-			1,029
Miscellaneous "	617			503			331			720			2,171
Transit insignia	726			859			750			12,773			15,088
Transit certificates	81			84			48			1,517			1,750

Dated: July 15, 1959

WILLIAM HOWE DAVIS
 DIRECTOR

10. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FREDERICK WOLF, INC., 7000 Jackson Street Guttenberg, N. J.

Holder of Plenary Retail Consumption License C-2 (for the 1958-59 and 1959-60 licensing years), issued by the Board of Council of the Town of Guttenberg.

DECISIONS AND ORDER

Defendant-licensee, by Frederick Wolf, President. William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On May 27, 1959, an ABC agent tested the defendant's open bottles of alcoholic beverages (40 bottles) and seized a quart bottle of "Four Roses Blended Whiskey 86 Proof", the contents of which appeared to be off in proof and color. Subsequent analysis by the Division chemist disclosed that when compared with an analysis of the genuine product, the contents of said bottle varied in proof, solids and acids.

Defendant has no prior adjudicated record. I shall suspend defendant's license for ten days. Re Meola, Bulletin 1285, Item 12. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 27th day of July, 1959,

ORDERED that Plenary Retail Consumption License C-2 for the 1959-60 licensing year, issued by the Board of Council of the Town of Guttenberg to Frederick Wolf, Inc., for premises 7000 Jackson Street, Guttenberg, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m., Monday, August 3, 1959, and terminating at 3:00 a.m., Saturday, August 8, 1959.

WILLIAM HOWE DAVIS DIRECTOR

11. STATE LICENSES - NEW APPLICATION FILED.

Park Beverages, A Corporation t/a Park Beverages 15-17 Hackensack Avenue Ridgefield Park, N. J.

Application filed August 27, 1959 for place-to-place transfer of State Beverage Distributor's license SBD-173 to include additional space.

[Handwritten signature]

William Howe Davis Director