

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

BULLETIN 793

FEBRUARY 16, 1948

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

BULLETIN 793

February 16, 1948

1. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE TO NON-MEMBERS -  
SALE TO WOMEN OVER BAR, IN VIOLATION OF LOCAL ORDINANCE -  
LICENSE SUSPENDED FOR 20 DAYS, LESS FIVE FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

11th WARD DEMOCRATIC ASSOCIATION, )  
1014 North 27th Street, )  
Camden, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-42, issued )  
by the Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Camden. )

-----  
Louis L. Goldman, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that, on  
December 21, 1947, it sold alcoholic beverages (1) to non-members,  
in violation of Rule 8 of State Regulations No. 7, and (2) to  
women directly over its bar, in violation of local ordinance.

The defendant has no prior record. The license will be  
suspended for fifteen days on the first charge (Re Club Lido,  
Bulletin 773, Item 2), and five days on the second charge (Re  
The Progressive Democratic Club, Bulletin 776, Item 7). Five  
days will be remitted for the plea, leaving a net suspension of  
fifteen days.

Accordingly, it is, on this 4th day of February, 1948,

ORDERED that Club License CB-42, issued by the Municipal  
Board of Alcoholic Beverage Control of the City of Camden to  
11th Ward Democratic Association, for premises 1014 North 27th  
Street, Camden, be and the same is hereby suspended for a period  
of fifteen (15) days, commencing at 2 A.M., February 9, 1948,  
and terminating at 2 A.M., February 24, 1948.

ERWIN B. HOCK  
Commissioner

2. ACTIVITY REPORT FOR JANUARY 1948.

ARRESTS:

Licenses and employees - - - - -	4
Bootleggers - - - - -	9
Total number of persons arrested- - - - -	13

SEIZURES:

Motor vehicles - cars - - - - -	1
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons	36.62
Distilled alcoholic beverages - gallons - - - - -	5.06
Alcohol - gallons - - - - -	607.50

RETAIL LICENSEES:

Total number of premises inspected- - - - -	887
Total number of premises where alcoholic beverages were gauged - - - - -	677
Total number of bottles gauged- - - - -	11,457
Total number of premises where violations were found- - - - -	42
Total number of violations found- - - - -	69

Type of violations found:

Gambling devices - - - - -	16	Reg. #38 sign not posted -	8
Prohibited signs - - - - -	1	Other mercantile business- -	2
Unqualified employees- - - - -	22	Disposal permit necessary- -	6
Probable fronts- - - - -	6	Other violations - - - - -	8

STATE LICENSEES:

Premises inspected - - - - -	21
License applications investigated- - - - -	13

COMPLAINTS:

Complaints assigned for investigation- - - - -	294
Investigations completed- - - - -	288
Investigations pending - - - - -	175

LABORATORY:

Analyses made - - - - -	110
"Shake-up" cases (alcohol, water and artificial color)-bottles-	3
Liquor found to be not genuine as labeled - bottles - - - - -	15

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -	13
Persons fingerprinted for non-criminal purposes - - - - -	172
Identification contacts made with other enforcement agencies-	174
Motor vehicle identifications via N. J. State Police Teletype	10

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -	9
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Violations involved:

Sale during prohibited hours - - - - -	3	Permitting lottery activity on premises (numbers)	-1
Sale to minors - - - - -	2	Possessing contraceptives on premises	-1
Mislabeled beer taps - - - - -	2		

Cases instituted at Department- - - - -	12
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Violations involved:

Possessing illicit liquor - - - - -	5	Hindering investigation	-1
Fraud and front - - - - -	2	Permitting pin ball machines on premises	-1
Purchase from improper source - - - - -	1	Sale to minors	-1
Sale under Fair Trade price - - - - -	1	Sale during prohibited hours	-1

Cases brought by municipalities on own initiative and reported to Dept. - - - - -	5
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Violations involved:

Sale to minors - - - - -	3
Sale during prohibited hours - - - - -	2



handed Rosko two five-dollar bills, with the request to "put it on Brooklyn," and that he also observed three or four other patrons talking to Rosko and handing him money. On the same afternoon two ABC agents were also present on defendant's premises. William Urbanski, a stockholder in defendant corporation, and Matthew Balint were then tending bar. One of the ABC agents testified that he asked Mr. Balint what were the odds on the game, and was told that the odds were 8-7 in favor of the Yankees. This agent testified that he asked Mr. Balint with whom he could place a bet and Mr. Balint, pointing to Rosko, said "Go and see that fellow sitting at the end of the bar." The agent then went to the end of the bar where Rosko was seated, and placed a \$5. bet on the Dodgers. The aforesaid testimony is corroborated by the other ABC agent who thereafter placed a bet on the Yankees with the same individual. The ABC agents further testified that they observed three other patrons hand money to Rosko. Apparently none of the bets was paid off on this date because the police entered before the game was over and arrested Rosko.

On behalf of the defendant, Thomas D. Cheret and William Urbanski deny that they had any knowledge that any bets were being placed upon the licensed premises. In fairness to these witnesses, I should state that there is no direct testimony that either of them had any personal knowledge that Rosko was accepting these bets, although Cheret admits that Rosko had been visiting the premises for at least two weeks. Matthew Balint admits that the ABC agent asked him what the odds were on the game. Balint admits also that he indicated to the agent that he should see John Rosko who had a newspaper spread out on the bar, but denies that he indicated that the agent could place a bet with Rosko. I believe that the agents told the truth.

The evidence herein refers not to an isolated transaction which might occur without the knowledge or consent of defendant's agents or employees. Instead, the evidence indicates a series of similar events occurring over a two-day period on defendant's premises, and I am satisfied that at least the employee, Mattie Balint, was actually aware that Rosko was accepting bets. This knowledge is imputable to the defendant.

Moreover, in Essex Holding Corp. v. Hock, 136 N.J.L. 28, the Court said:

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority."

Under the circumstances of this case, I find the defendant guilty of allowing, permitting and suffering bookmaking and gambling on and about its licensed premises, as charged.

Defendant has no prior record. Since no aggravating circumstances appear, I shall suspend its license for a period of ten days.

Accordingly, it is, on this 3rd day of February, 1948,

ORDERED that plenary retail consumption license C-18, issued by the Board of Commissioners of the City of Perth Amboy to Billy Urbanski, Inc., for premises 320 State Street, Perth Amboy, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. February 9, 1948, and terminating at 2 a.m. February 19, 1948.

ERWIN B. HOCK  
Commissioner

4. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - FRONT FOR INDIVIDUAL - CLUB NOT IN ACTIVE OPERATION FOR 3 YEARS - FAILURE TO HAVE EXCLUSIVE CONTINUOUS POSSESSION FOR 3 YEARS - FALSE ANSWERS IN LICENSE APPLICATION - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

LINWOOD LODGE GUN & ROD CLUB, Sadler Avenue, Lawnside, New Jersey, )

CONCLUSIONS AND ORDER

Holder of Club License CB-2, issued by the Borough Council of the Borough of Lawnside. )

Linwood Lodge Gun & Rod Club, by Percy W. Branch, President, Defendant-licensee, Pro Se. William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that, in its current license application, it:

- (1) failed to reveal that Percy Branch was the real and beneficial owner of the licensed business.
(2) failed to reveal that it had agreed to permit Percy Branch to retain all of the profits of the licensed business.
(4) falsely stated that it had been in active operation for three years immediately prior to submitting the application.
(5) falsely stated that it had been in exclusive continuous possession and use of club quarters for three years immediately prior to submitting the application.
(6) falsely stated that it owned the premises to be licensed.
(7) falsely stated that a list of all of the members was submitted with the application.

and also pleaded not guilty to charge (3) alleging that ever since July 1, 1946 it permitted Percy Branch to exercise the rights and privileges of its license.

The evidence indicates that no regular meetings of the club were held during the "war" years and that the first such meeting thereafter was held on February 12, 1946. At such meeting it was decided that the club should acquire permanent club quarters, and this was accomplished on April 2, 1946.

Throughout the year 1947 no dues were collected from members. The officers of the club are Percy Branch, president, his wife, secretary, and his father, treasurer. The licensed premises are located in the home of Percy Branch, and all of the proceeds of the liquor sales are used primarily for the expenses of maintaining his home which, nominally, is deeded to his wife. It further appears, from the testimony of the local clerk, that no membership list was submitted with its license application.

A consideration of the entire record can lead to no other conclusion than that the club is conducted for the private gain of Percy Branch, and that it lacked the requisites of three years' possession of club quarters and active operation prior to the submission of its application.

I find the defendant guilty as charged. The license will be revoked. See French-American Athletic Club, Bulletin 731, Item 2; Thirteenth Ward Italian Democratic Club, Bulletin 731, Item 3.

Accordingly, it is, on this 6th day of February, 1948,

ORDERED that Club License CB-2, issued by the Borough Council of the Borough of Lawnside to Linwood Lodge Gun & Rod Club, for premises on Sadler Avenue, Lawnside, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK  
Commissioner

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

DOMINICK GALENTO, )  
T/A Galento's Cocktail Lounge, )  
14-18 So. Day Street, )  
Orange, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-15 issued by the )  
Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Orange. )

----- )  
Colalillo & Goldner, Esqs., Attorneys for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that he possessed two bottles containing alcoholic beverages not genuine as labeled, in violation of R.S. 33:1-50.

On January 12, 1948, an ABC agent tested the contents of twenty-eight opened bottles of alcoholic beverages on defendant's premises. He seized two 4/5th quart bottles labeled "Canadian Club Blended Canadian Whisky," after his preliminary tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis disclosed that the contents of the seized bottles varied in substantial respects from genuine samples of the same product.

In alleged mitigation defendant states that, at the time the violation occurred, he was on a wrestling tour and knew nothing about the violation until he returned. He further states that he believes the bottles were refilled by a porter whom he has since discharged. In any event, defendant possessed illicit liquor in violation of R.S. 33:1-50. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156.

Defendant has a prior record. The local issuing authority suspended his license for a period of seven days, effective May 1,

1944, for selling alcoholic beverages to minors. Under the circumstances I shall suspend defendant's license for a period of twenty days (Bulletin 694, Item 3), less five days for the plea entered herein (Bulletin 741, Item 8), leaving a net suspension of fifteen days.

Accordingly, it is, on this 6th day of February, 1948,

ORDERED that plenary retail consumption license C-15, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Dominick Galento, t/a Galento's Cocktail Lounge, for premises 14-18 So. Day Street, Orange, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. February 16, 1948, and terminating at 2 a.m. March 2, 1948.

ERWIN B. HOCK  
Commissioner

6. APPELLATE DECISIONS - VASSOS AND MURPHY v. SPRINGFIELD.

WILLIAM VASSOS AND CHARLES MURPHY, )  
trading as GOLDEN MOON CAFE, )

Appellants, )

ON APPEAL

) CONCLUSIONS AND ORDER

v. )

TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF SPRINGFIELD (BURLINGTON COUNTY) )

Respondent. )

-----  
John S. Conroy, 3rd, Esq., Attorney for Appellants.  
Powell & Parker, Esqs., by Robert W. Criscuolo, Esq., Attorneys  
for Respondent.

BY THE COMMISSIONER:

Appellants appeal from the imposition of a ten-day suspension of their license by respondent Township Committee as a result of being adjudged guilty of the sale of alcoholic beverages during prohibited hours on Sunday, December 15, 1946.

Appellants contend that (1) the proceedings should have been dismissed because the matter had previously been disposed of, and (2) Wardell C. Gaskill, Chairman of respondent Township Committee, was prejudiced against appellants and, therefore, should have disqualified himself as a member of the respondent Township Committee for the purpose of the hearing in question.

The allegation that the matter had already been disposed of refers to correspondence had with the Department of Alcoholic Beverage Control. It appears that subsequent to December 15, 1946, when the violation in question was alleged to have taken place, advice was received in this Department which indicated that there was some confusion relative to the closing hours and that the local issuing authority had given permission to appellants to remain open until 1 a.m. on Sundays. Pursuant thereto, a warning letter was sent to appellant-licensees and a copy thereof was forwarded to the respondent Township Committee. Thereafter Wardell C. Gaskill, Chairman of the respondent Township Committee, notified the Department that no permission had ever been given to appellants to remain open during the hour in question. As a result of this information, the warning letter previously sent was superseded and institution of charges because of the alleged violation was recommended.

In 1938 the people of the Township of Springfield (Burlington County) approved a referendum to prohibit sale of alcoholic beverages in the Township on Sundays.

Appellants admit that the sale of alcoholic beverages was made to ABC agents between 12:00 and 1:00 a.m. on Sunday morning. Appellants contend, however, that they had been advised by members of the respondent Township Committee that it was permissible to remain open and make sales of alcoholic beverages until 1 a.m. on Sunday mornings. Two members of the Township Committee denied that they had ever given such permission to appellants. The member who was alleged to have been the spokesman for the Committee at the time the matter of hours was discussed did not appear at the instant hearing.

Wardell C. Gaskill, Chairman of the respondent Township Committee, testified that, since the appellants did not deny that they had made the sale of alcoholic beverages during prohibited hours, he had no alternative in the matter other than to find them guilty. This conclusion was correct because the Township Committee had no power to permit licensees to sell on Sundays in violation of the referendum. Committeeman Gaskill testified that, because of the elapsed time between the date of the violation and the hearing thereon, he and the other members of the respondent Committee imposed a minimum suspension of the license.

There is nothing before me relative to the instant case that indicates that the Chairman was prejudiced against appellants or that any member of the respondent Township was improperly motivated.

After a consideration of all the evidence, particularly the fact that the violation in question was admitted by appellants, I cannot hold that the action of the respondent Township Committee was either arbitrary, inspired by improper motives, or unreasonable.

The action of respondent Township Committee is affirmed.

The suspension imposed by respondent became effective at 2 a.m. on November 27, 1947. When the appeal was filed herein, I entered an order dated November 28, 1947, staying respondent's order of suspension until further order of the Commissioner. I shall now vacate my order dated November 28, 1947, and enter an order suspending the license which appellants hold for ten days, less the one day already served.

Accordingly, it is, on this 6th day of February, 1948,

ORDERED that the suspension be reduced to nine days because of the one day already served; and it is further

ORDERED that the order dated November 28, 1947, be vacated, effective at 2 a.m. February 13, 1948, and that the license held by appellants be and the same is hereby suspended for nine (9) days, commencing at 2 a.m. February 13, 1948, and terminating at 2 a.m. February 22, 1948.

ERWIN B. HOCK  
Commissioner

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against )

WILLIAM VASSOS & CHARLES MURPHY, T/A Golden Moon Cafe, Route 39, Chambers Corner, Springfield Township, P.O. Mt. Holly, RFD, New Jersey, )

CONCLUSIONS AND ORDER

-----  
Holders of Plenary Retail Consumption License C-2 issued by the Township Committee of the Township of Springfield. )

John S. Conroy, 3rd, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded not guilty to charges (1) and (2), which allege that they sold alcoholic beverages to minors and permitted minors to consume alcoholic beverages on their licensed premises, in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20. They have also pleaded not guilty to charge (3) which alleges that, in violation of Rule 1 of State Regulations No. 20, they sold alcoholic beverages to, and permitted the consumption of alcoholic beverages on their licensed premises by, persons who were actually or apparently intoxicated.

At the hearing herein, a soldier, who was seventeen years of age, and another soldier, nineteen years of age, testified that they visited the defendants' premises on the evening of November 14, 1947, and that they were each served two or three drinks of beer by a waitress or bartender. The testimony introduced by defendants does not consist of a denial that these drinks were served. Defendants allege, however, that both minors had previously exhibited to one or both of defendants cards which indicated that the minors were twenty-one years of age. It is immaterial, however, whether or not such cards were presented. Admittedly, neither of these minors falsely represented in writing that he was twenty-one years of age or over. Hence defendants have not established a defense under the provisions of R.S. 33:1-77. Roey v. Hock, Bulletin 758, Item 2.

The evidence also discloses that four other minors, who were respectively seventeen, eighteen, eighteen and twenty years of age, were also present on defendants' premises on the evening of November 14, 1947. Each of these minors testified that he consumed a few glasses of beer which had been served, directly or indirectly, by one of the licensees. The testimony given by these minors is not denied by the witnesses produced on behalf of defendants. However, defendants allege that they believed one of the minors to be of age because he was 6 ft. 3 in. tall and weighed 210 lbs., and that they believed two other minors to be of age because they were seeking employment as musicians on defendants' premises and represented that they had previously played as musicians on other licensed premises. Admittedly none of these minors falsely represented in writing that he was twenty-one years of age, and hence defendants have not established a

defense under the provisions of R.S. 33:1-77. I find defendants guilty as to charges (1) and (2).

The testimony presented by the Department as to charge (3) concerns two other soldiers, Edwin C. --- and Robert W. ---, who were apparently of full age. Two ABC agents testified that these soldiers staggered and swayed when walking to and from the men's room and that one of the two, at one time, sat in a slumped position, "resting his head on his arms on the table." The agents further testified that they observed drinks served to both soldiers while in this condition. A member of the State Police who was called to the premises, testified that one of the soldiers (Robert W. ---) "swayed", "staggered", and "did talk funny". Another State Trooper testified that this soldier "certainly wasn't sober"; that he staggered when he walked; and that his speech was "incoherent".

Robert W. --- who appeared on behalf of the defendant testified "Well, I had been drinking. I wouldn't say I was intoxicated, and I wouldn't say I was completely sober." When asked "Would you say you were high?", he replied, "I was feeling pretty good, yes." Other defense witnesses produced no evidence to refute the testimony of the ABC agents or State Police.

In view of the above I find the defendants guilty as to charge (3).

At the time these violations were committed, defendants had no prior adjudicated record. Their guilt upon another charge was established at a hearing held subsequent to the hearing held in this case. See Vassos and Murphy v. Springfield (decided herewith). Cf. Re Kasica, Bulletin 729, Item 11.

The violations herein are aggravated since six minors were involved in the first two charges. Under all the circumstances I shall suspend the license for sixty days to be effective at the expiration of the suspension imposed in the case decided herewith.

Accordingly, it is, on this 6th day of February, 1948,

ORDERED that plenary retail consumption license C-2, issued by the Township Committee of the Township of Springfield to William Vasso's & Charles Murphy, t/a Golden Moon Cafe, for premises on Route 39, Chambers Corner, Springfield Township, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m., February 22, 1948, and terminating at 2:00 a.m., April 22, 1948.

ERWIN B. HOCK  
Commissioner

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 VINCENT JAMES LARDINO & JOSEPH LARDINO,  
 T/A Burntwood Den,  
 Bloomfield Avenue,  
 Montville,  
 P.O. Pine Brook, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Montville.

-----  
 Vincent James Lardino & Joseph Lardino, Defendant-Licensees,  
 Pro Ses.  
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded non vult to a charge alleging that, on December 2, 1947, they possessed an illicit alcoholic beverage, to wit, a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", which was not genuine as labeled, in violation of R.S. 33:1-50.

Defendants have no previous adjudicated record. The minimum fifteen-day suspension will be imposed, less five days for the plea entered herein, or a net suspension of ten days. Cf. Re Dentz, Bulletin 780, Item 8.

Accordingly, it is, on this 6th day of February, 1948,

ORDERED that Plenary Retail Consumption License C-11, issued by the Township Committee of the Township of Montville to Vincent James Lardino and Joseph Lardino, t/a Burntwood Den, for premises on Bloomfield Avenue, Montville, be and the same is hereby suspended for a period of ten (10) days, commencing at 7 A.M., February 16, 1948, and terminating at 7 A.M., February 26, 1948.

ERWIN B. ROCK  
 Commissioner

9. DISCIPLINARY PROCEEDINGS - ORDER SUSPENDING LICENSE STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.

In the Matter of Disciplinary Proceedings against )  
 )  
 BILLY URBANSKI, INC., )  
 320 State Street, )  
 Perth Amboy, New Jersey, )  
 )  
 Holder of Plenary Retail Consumption License C-18 issued by )  
 the Board of Commissioners of )  
 the City of Perth Amboy. )  
 ----- )

ORDER

BY THE COMMISSIONER:

It appearing that by Conclusions and Order herein, dated February 3, 1948, plenary retail consumption license C-18, for premises 320 State Street, Perth Amboy, was suspended for a period of ten days, commencing at 2 a.m. February 9, 1948, and terminating at 2 a.m. February 19, 1948, and

It further appearing that said licensee has declared its intention to apply to a Justice of the Supreme Court for a writ of certiorari to review the said Conclusions and Order, and to prosecute the writ, if granted, with due diligence, and

It further appearing that said licensee would suffer irreparable injury if a stay is not granted pending application to a Justice of the Supreme Court for said writ;

It is, on this 6th day of February, 1948,

ORDERED that the effect of the order dated February 3, 1948, be and the same is hereby stayed until a further order is entered herein; on condition, however, that application for a writ of certiorari shall be made to a Justice of the Supreme Court on or before March 8, 1948, and thereafter prosecuted with diligence.

ERWIN B. HOCK  
Commissioner

10. RULES AND REGULATIONS - FILING WITH SECRETARY OF STATE REQUIRED BY NEW CONSTITUTION - FILING OF SPECIAL RULINGS NOT REQUIRED - OPINION OF ATTORNEY GENERAL.

December 4, 1947

Hon. Walter D. Van Riper, Attorney-General  
Trenton 7, N. J.

My dear Mr. Van Riper:

Governor Driscoll's letter to me, dated November 24th, reads:

"In order to carry out the requirements of Paragraph 6 of Section IV of Article V of the new State Constitution please file with the Secretary of State, State House, Trenton, prior to January 1, 1948, all existing rules and regulations made by you or your department, or any officer, agency or authority therein, except such as relate to the organization or internal management thereof.

"All amendments and supplements to or repealers of any such rules and regulations made after January 1, 1948 should be filed with the Secretary of State until otherwise provided by law."

As you know Article V, Section IV, Paragraph 6 of the new State Constitution reads:

"6. No rule or regulation made by any department, officer, agency or authority of this State, except such as relates to the organization or internal management of the State government or a part thereof, shall take effect until it is filed either with the Secretary of State or in such other manner as may be provided by law. The Legislature shall provide for the prompt publication of such rules and regulations."

Being forwarded to you under separate cover is a Pamphlet Copy, with up-to-date inserts, of the formally promulgated general rules and regulations of the State Commissioner. I shall, of course, file an identical Pamphlet Copy with the Secretary of State prior to January 1, 1948. Further I shall, of course, file with the Secretary of State all amendments and supplements to or repealers of any such general rules and regulations made by me after January 1, 1948.

The State Commissioner's authority to make general "rules and regulations" is granted by R.S.33:1-39. That section also grants authority to make "special rulings". Since the time this Department began operations hundreds upon hundreds of special rulings have been made. Many of these special rulings have been included in the Department's regular bulletins which are published on an average of one each week. See, for example, the special ruling in the enclosed copy of Re Kreuger Brewing Company, Bulletin 783, Item 10. You will note that this ruling, though addressed to a particular licensee, is of general import but disciplinary proceedings against a different licensee (looking toward suspension of license) could not be supported unless that licensee had knowledge of the special ruling.

I point out, for your information, that copies of the Department's bulletins are mailed, on their publication date, to all New Jersey municipal Clerks and ABC Boards, newspapers, members of the legislature, state police, sheriffs, prosecuting attorneys, and paid subscribers. The bulletins are mailed also to a miscel-

laneous list including libraries, etc. The Secretary of State is not on our bulletin mailing list.

For your further information I point out that the weekly bulletins average 16 pages and our latest bulletin, published December 2d, is Bulletin No. 785. Thus a complete set of the bulletins would cover (as of today) something close to 12,500 legal size pages. We have Indexes for the bulletins but no "special rulings" index item and it would be a staggering job to attempt to pull out all the special rulings appearing, since 1934, in all the bulletins.

There are thousands of special rulings which do not appear in the Department's bulletins. These are contained in letters addressed to a particular person. They, unlike the special rulings appearing in bulletin, are not of general import but, instead, are of application peculiar to the addressee. It would be an impossible job to seek out all of these special rulings in our files.

It is my considered thought that the words "rule or regulation" used in the new Constitution contemplate only general rules and regulations such as those being forwarded to you under separate cover. I shall greatly appreciate your ruling in the matter so that I may proceed accordingly under the indicated "filing" provision of the new Constitution.

Sincerely yours,

ERWIN B. HOCK,  
Commissioner

February 4, 1948

Honorable Erwin B. Hock, Commissioner  
Department of Alcoholic Beverage Control  
Newark 2, New Jersey

Dear Commissioner:

You recently requested my opinion as to the necessity for filing with the Secretary of State special rulings made by you as Commissioner of Alcoholic Beverages.

It is to be noted that R.S.33:1-39 authorizes the Commissioner to make "such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, in addition thereto, and not inconsistent therewith . . . ." Said section then enumerates the subjects which the rules and regulations may cover. In this statutory treatment, the distinction between general rules and regulations, on the one hand, and special rulings, on the other hand, becomes apparent.

The general rules and regulations made by the Commissioner are of general import and those to whom they may apply must take notice thereof.

The authority to make special rulings, however, presupposes a particular situation which brings to the attention of the commissioner certain facts and circumstances upon which he must rule; in other words, upon which he must make a finding of fact and then apply the law as represented by statute or by rules and regulations consistent therewith. In this sense, the special ruling does not apply generally except as it may serve as precedent. And the mere publication of such ruling does not clothe it with the force and effect of a general rule, even though such publication may be otherwise helpful to the public.

It is my opinion that any special ruling made by you as commissioner is not within the meaning of Article V, Section IV, paragraph 6 of the new Constitution, and that, therefore, the same need not be filed with the Secretary of State along with your general rules and regulations.

Very truly yours,

WALTER D. VAN RIPER  
Attorney General

11. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION -  
- AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against )

DOROTHY ANTINOFF & PAUL ANTINOFF, )  
T/A Grob's Cafe, )  
2101 Pacific Avenue, )  
Atlantic City, New Jersey, )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-87, issued by the Board of Commissioners of the City of Atlantic City, and transferred during the pendency of these proceedings to )

SAMUEL ANTINOFF & PAUL ANTINOFF, )  
T/A Grob's Cafe, )

for the same premises. )

Leon Leonard, Esq., Attorney for Defendant-licensees.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded non vult to charges as follows:

"1. In your application dated May 20, 1947, filed with the Board of Commissioners of Atlantic City, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual ---, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Samuel Antinoff, or Antinoffsky (a person who prior to August 27, 1947 was disqualified by reason of non-citizenship and who on or about February 15, 1935 had been convicted of the crime of using the mails to defraud) had such an interest in that he was co-owner with you of said business; said false statement being in violation of R.S. 33:1-25.

"2. From May 16, 1946 until December 30, 1946 you, Dorothy Antinoff, and Herman Goldberg, and from December 30, 1946 until the present time both of you, knowingly aided and abetted Samuel Antinoff, or Antinoffsky, to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R.S. 33:1-52."

Samuel and Dorothy are husband and wife. Paul is their son. The business, at least since December 30, 1946, has been owned and operated by the aforesaid family. Prior thereto, and for about seven months, Herman Goldberg was a partner in the licensed business. Paul purchased Herman Goldberg's interest.

When the "front" was created, Samuel Antinoff was ineligible to hold a license because he was not a citizen of the United States but a national of Russia. It appears also that he had been convicted in 1935 of the crime of using the mails to defraud, a crime which ordinarily, but not per se, involves moral turpitude. Re Case No. 384, Bulletin 468, Item 5.

Prior to the investigation in this case, Samuel Antinoff became a United States citizen on August 27, 1947. During the pendency of these proceedings the license was transferred from Dorothy Antinoff and Paul Antinoff to Samuel Antinoff and Paul Antinoff. In the application for transfer, Samuel Antinoff's conviction of crime was disclosed and the surrounding circumstances set forth for consideration by the issuing authority. Under the circumstances it may be presumed that the issuing authority found that mitigating circumstances existed and that the conviction did not involve moral turpitude. I shall accept the determination of the local issuing authority. Re Elia, Bulletin 780, Item 6.

The minimum suspension for a "front" motivated by reason of citizenship of a foreign country not subject to reciprocal trade treaty is forty-five days. Re The Panda, Bulletin 774, Item 1. Under the circumstances I shall suspend the license for forty-five days.

Accordingly, it is, on this 9th day of February, 1948,

ORDERED that plenary retail consumption license C-87, issued by the Board of Commissioners of the City of Atlantic City to Dorothy Antinoff and Paul Antinoff, t/a Grob's Cafe, for premises 2101 Pacific Avenue, Atlantic City, and transferred during the pendency of these proceedings to Samuel Antinoff and Paul Antinoff, t/a Grob's Cafe, for premises 2101 Pacific Avenue, Atlantic City, be and the same is hereby suspended for forty-five (45) days, commencing at 7 a.m. February 16, 1948, and terminating at 7 a.m. April 1, 1948.

ERWIN B. HOCK  
Commissioner

12. STATE LICENSES - NEW APPLICATIONS FILED.

T. Porto & Sons, Inc.  
512 West 29th Street, New York, N. Y.  
Application for Transportation License filed February 5, 1948.

Matthew F. Mauriello, T/A Matson Beverages  
202-208 Shepard Avenue, East Orange, N. J.  
Application for State Beverage Distributor's License filed  
February 11, 1948.

*Erwin B. Hock*  
Commissioner.