

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

BULLETIN 324.

JUNE 20, 1939.

1. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - HOSTESSES (SECOND OFFENSE), EMPLOYMENT OF FEMALE TO TEND BAR, AND PERMITTING SALE OF LOTTERY TICKET - 75 DAYS' SUSPENSION.

In the Matter of Disciplinary  
Proceedings against

LOUIS LIPMAN,  
443 Washington St.,  
Newark, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-914, 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.  
James L. McKenna, Esq. and Jerome B. McKenna, Esq., Attorneys  
for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged with -

(1) employing Bessie ----, Pearl ----, and Dorothy ---- as hostesses at his tavern on October 30 and November 4, 17 and 18, 1938, in violation of Section (c) of resolution of August 29, 1934 of the Newark Board of Alcoholic Beverage Control;

(2) employing a female, "Ma" Lipman (the defendant's wife), to tend bar and sell or serve liquor at his tavern on October 30, November 18 and December 1, 1938, in violation of Section (a) of the same resolution of the Board;

(3) permitting lewdness at his tavern on November 17 and 18, 1938, in violation of State Regulations No. 20, Rule 5;

(4) permitting lottery tickets to be sold at his tavern on November 18, 1938, in violation of State Regulations No. 20, Rule 6; and

(5) knowingly employing a non-resident at his tavern on November 17, 18 and 29 and December 1, 1938, in violation of R. S. 33:1-26.

As to (1): On October 30, 1938, just after midnight, Investigators Thievon and Kingsley visited the tavern pursuant to complaint that violations were occurring there. As they entered, they were met by Bessie, who took Thievon's coat and put it on a rack. He, recognizing her from a description given to him by his superior at the Department, called her by name and introduced her to Kingsley.

Bessie called Dorothy over as a companion for Kingsley and the four seated themselves at the bar. There they remained for "a considerable time", during which the girls asked "for drinks continuously". During the evening, Bessie introduced the investigators to the defendant's wife (known as "Ma"), who

thereupon treated the party to a round of drinks and who was then, at Bessie's suggestion, treated by the investigators "several times" in return. Bessie later told Thievon, on his request, as to how he "could get in touch with her", that "You can call up here", and had "Ma" give him one of the tavern's cards. The investigators left at 2:10 A.M.

Thievon returned to the tavern on the afternoon of November 4, 1938. After ordering a highball, he asked the defendant where Bessie was and received the reply that "it was a little bit early" for Bessie to be there. The defendant suggested, however, that he could get Bessie's "girl friend" who was then "in a restaurant across the way". Although Thievon replied, "No, I want Bessie", the defendant left the tavern and Dorothy entered soon thereafter. She joined Thievon at the bar and asked him for a drink. After remaining for some two hours, the investigator left at about 4:10 P.M.

Thievon and Kingsley returned to the tavern shortly after 10:00 P.M. on November 17, 1938. Bessie greeted Thievon warmly, throwing her arms about him and exclaiming, "God! Look who is here". She brought over Pearl, and the four sat at a booth all evening and consumed a number of drinks (the girls drinking, and ordering faster than the men) for which the investigators paid. At 2:00 A.M. the investigators left.

Thievon returned to the tavern again at 10:00 P.M., November 18. Dorothy and another girl approached and asked him for a drink, which he bought for them after some hesitancy. Pearl then came over, grabbed his arm, and led him to the "south bar", where at her request he bought her a drink. The investigator left at 10:45 P.M.

Thievon testified that on all these occasions the girls were "well behaved" except that they "drank fast" and kept soliciting for drinks.

The defendant testified that Pearl and Dorothy were employed by him as singers but that Bessie (who, because of conviction of a crime involving moral turpitude, was, in Re Case No. 249, Bulletin 303, Item 8, declared disqualified by the State Commissioner from employment by a liquor licensee) was not employed by him at all.

Irrespective of Bessie, it is clear that the defendant's admitted employees, Pearl and Dorothy, were more than merely singers or entertainers but were hostesses engaged to solicit drinks from men. As for Bessie, the evidence is sufficient to convince me that she, too, was permitted to act as such a hostess in the tavern.

I find the defendant guilty on charge (1). For this: Thirty days. But in view that this is defendant's second conviction, as hereinafter mentioned, for the same offense, the penalty will be doubled and is therefore fixed at sixty days.

As to (2): There is no dispute that "Ma", the defendant's wife, tended bar and sold and served liquor at the tavern on October 30, November 18 and December 1, 1938.

It is settled that the Newark regulation, then in force, in prohibiting females from tending bar or selling or serving liquor at taverns, includes the wife of a licensee within its ban, even though she be merely assisting her husband without pay. Re Haino, Bulletin 295, Item 7; Re Geller, Bulletin 312, Item 1; Re Fabiano, Bulletin 313, Item 12.

In defense, however, the defendant relies upon testimony that an attorney, several years ago, advised him and his wife that it was permissible for her to tend bar in her husband's tavern, and that a patron at the tavern one day telephoned into this Department and verified that information.

"Advice of counsel" is no excuse for violating the liquor regulations. Licensees who rely upon such advice take the risk of its being inaccurate. The regulations are designed to eliminate undesired conditions at which they are aimed. From the viewpoint of the public interest, it matters little whether a licensee, in violating one of those regulations, acted upon the advice of his attorney.

As for the alleged telephone conversation with an unidentified person at this Department, it is, if true, of no moment. Perhaps it was the janitor or the window cleaner! The alibi is not even novel. As far back as Re Smith, Bulletin 52, Item 7, I said:

"Whoever told you that I had approved the machine and that I had ruled that it was not a gambling device per se did not tell you the truth. All my rulings are put down in black and white. A mere say-so does not go. Otherwise there would be no end of false hearsay."

Later, in Re Greenspan Bros., Bulletin 162, Item 5, I stated:

"....rulings are not given over the phone. They are, invariably, made in writing and signed by me or by someone thereunto duly authorized. I do not recognize nor will I be bound by any conversations you may have with persons not authorized to speak for me."

I find the defendant guilty on charge (2). For this: Five days.

As to (3): When Thievon, Kingsley, Bessie and Pearl were drinking in a booth at the tavern on the night of November 17, the defendant brought them cottage cheese and made a vulgar remark, apparently in jocular vein, to the effect that such cheese supplied sexual virility. Later during that same evening, Pearl sang and the defendant, during her singing, made another indecent jest supposedly humorous, comparing Pearl's singing to her ability at sexual intercourse. Thievon later asked the defendant whether "the girls" were all right for intercourse, and the defendant replied that he didn't "know nothing from nothing about it".

Despite the indecency of the defendant's language, I find no evidence of lewdness. Occasional filthy remarks of so-called barroom variety, are, while reprehensible, nevertheless insufficient to constitute lewdness.

Charge (3) is therefore dismissed.

As to (4): While Thievon, Kingsley, Bessie and Pearl were drinking in the booth at about 1:20 A.M. on November 18, a man entered the tavern and went from patron to patron along the bar. He then went to the booth where the investigators were seated and sold three "numbers" slips to Bessie, one to Thievon and one to Kingsley. The defendant was in front of the bar as this man approached the various patrons there, and was but ten feet from the investigators' party when he sold the slips to them.

Thievon testified that, when in the tavern on the evening of November 18, he asked the defendant what "this ticket represented that I had bought in this place"; that the defendant explained its nature and stated that the winning number was determined by the results of the first, third and fifth races at Pimlico Park.

The defendant testified that he did not know any "numbers" slips were sold at his tavern, and that he could not recall any conversation with Thievon about them.

Seeing no reason for believing that the investigator invented that conversation out of thin air, I find as fact that the defendant knew of and permitted the sale of "numbers" slips at his tavern.

The defendant contends, however, that he is charged with permitting the sale of tickets to a lottery; that, under the strict construction required in penal proceedings, the slips in the present case were not lottery tickets, since the winners were determined by the results of horse races at Pimlico.

This contention, apparently based upon the theory that a lottery requires a drawing, is without merit. Any scheme of selling chances, the "lucky" ones to win a prize, is a lottery irrespective of the method of chance by which the winners are determined. Drawing the winners from a hat or from anything else is not necessary. In State v. Lovell, 39 N. J. L. 458 (Sup. Ct. 1877), a lottery was found, under the Crimes Act, where the determination of winners depended upon the results of a horse race. In State v. Shorts, 32 N. J. L. 398 (Sup. Ct. 1868), a lottery was found, under that same Act, where the determination of winners depended upon chance numbers called out by members of an audience.

I find the defendant guilty on charge (4). For this: Ten days.

As to (5): R. S. 33:1-26 provides, among other things, that no licensee shall knowingly employ a non-resident of the State except pursuant to special permit obtained from the State Commissioner.

The defendant admits that Pearl, a non-resident of the State (living in New York), worked in the tavern from November 10 until December 8 without the requisite permit. He further admits that he knew non-residents had to have such permit in order to be employed.

In explanation for employing Pearl between the above dates without permit, he testified that he had engaged her services through a New York agent; that he had believed that the agent, if furnishing a non-resident, would furnish one who had the requisite permit; that he first discovered his mistake when, on December 7, the agent, on coming around for his commission, informed the defendant's wife that it was the defendant's lookout to get a permit for Pearl; that such permit was thereupon obtained the next day.

While the explanation scarcely rings true and it was the defendant's responsibility, knowing that Pearl was a non-resident and required a special permit, not to allow her to work in the tavern until he had checked on whether she had that permit, an adjudication of guilt on this charge, being a statutory offense, would, in view of his previous record, render him ineligible for all time to hold any liquor license whatsoever. R. S. 33:1-25. I shall therefore give him the benefit of the doubt and hence find him not guilty on charge (5).

The defendant has a record. In 1936, he was found guilty in a disciplinary proceeding by the Newark Board of Alcoholic Beverage Control of employing a minor, sales of liquor after hours, employing hostesses, sales of liquor to minors, and serving liquor to persons apparently drunk. For all these offenses combined he received but a five day suspension. No wonder it taught him nothing.

In the instant case, the suspensions hereinbefore ad-measured total seventy-five days. Since, however, the current licensing period will expire before this suspension can run its course, 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 seventy-five days from the effective date of the suspension ordered herein.

Accordingly, it is, on this 15th day of June, 1939,

ORDERED that Plenary Retail Consumption License C-914, heretofore issued to Louis Lipman 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 18, 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 September 2, 1939.

D. FREDERICK BURNETT,  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - EMPLOYMENT OF FEMALE TO TEND BAR.

In the Matter of Disciplinary )  
Proceedings against )

NICHOLAS MATLAGA, )  
146 Elizabeth Avenue, )  
Newark, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License No. C-316, issued by )  
the Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
- - - - - )

Reginald Parnell, Esq., Attorney for the Licensee.  
Charles Basile, Esq., Attorney for the Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on April 29, 1939, he employed his wife to tend bar, in violation of a resolution adopted by the Municipal Board of Alcoholic Beverage Control of the City of Newark on August 29, 1934.

At the hearing the following facts were stipulated: That on April 29, 1939 Police Officers Madden and Silverman, of the Newark Police Department, entered the licensed premises at about 11:10 A.M. and each purchased two glasses of beer from licensee's wife who was behind the bar and served the beer from the tap.

Licensee contends that said service was made by his wife at a time when the licensee had left the barroom for the purpose of tapping beer in the cellar. That, of course, is no excuse since the ordinance prohibited the wife from tending bar. Licensee contends, however, that he did not "employ" his wife because he paid her no salary. It has already been settled that the resolution, in prohibiting females from tending bar, is an outright prohibition without exception and, hence, includes the wife of the tavern keeper, even though she is assisting her husband without pay. Re Haino, Bulletin 295, Item 7; Re Geller, Bulletin 312, Item 1; Re Fabiano, Bulletin 313, Item 12. Licensee is guilty as charged.

Accordingly, it is, on this 15th day of June, 1939,

ORDERED that Plenary Retail Consumption License C-316, heretofore issued to Nicholas Matlaga 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, effective June 18, 1939 at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - EMPLOYMENT OF FEMALE TO TEND BAR.

In the Matter of Disciplinary )  
Proceedings against )

NICHOLAS MARAD, )  
T/a RAINBOW TAVERN, )  
53 Rankin Street, )  
Newark, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License No. C-94, issued by )  
the Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )  
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Rose F. Albert, Attorney for Licensee.  
Charles Basile, Esq., Attorney for the Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to a charge alleging that, on April 28th and 29th, and May 6th, 7th and 13th, 1939, he employed his wife to tend bar and sell and serve alcoholic beverages in his licensed premises, contrary to a resolution adopted by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

The defendant has a past record. On May 6, 1938 his license was suspended for ten days for selling to a minor.

If this were a first offense I would suspend the license for five days but, as it is the second adjudicated offense, the penalty will be twice that or a suspension of ten days, less two days for pleading guilty, making a total suspension of eight days in all.

Accordingly, it is, on this 15th day of June, 1939,

ORDERED, that Plenary Retail Consumption License C-94, heretofore issued to Nicholas Marad, t/a Rainbow Tavern, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of eight (8) days, effective June 18, 1939 at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - FALSE STATEMENT AS TO COUNCILMAN NOT BEING A MEMBER OF THE CLUB - ALSO POSSESSION OF SLOT MACHINE.

In the Matter of Disciplinary Proceedings against	)	
	)	
FIRST SLOVAK CITIZENS CLUB,	)	CONCLUSIONS
665 Roosevelt Avenue,	)	AND ORDER
Carteret, New Jersey,	)	
	)	
Holder of Club License No. CB-1,	)	
issued by the Borough Council of	)	
the Borough of Carteret.	)	
-----	)	

Ambrose J. Mudrak, Esq., Attorney for Licensee.  
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This licensee has pleaded guilty to two charges, namely:

- 1. That false statements were made in the application filed with the issuing authority for the current licensing period, in violation of R. S. 33:1-25;
- 2. That a slot machine or device in the nature of a slot machine was permitted on the licensed premises on or about October 5, 1938, in violation of Rule 8 of State Regulations No. 20.

Our investigation discloses that the application made to the Borough Council for the current licensing period denied that any member of the governing board or body of the municipality was a member of the club or interested in the premises, whereas in fact Councilman Galvanek then was and now is a member of said club and owner of the licensed premises.

The club license was improperly issued by the Borough Council because of the provisions of R. S. 33:1-20. Apparently recognizing that this is so, the club has advised me that it voluntarily suspended operation of its license on May 8, 1939. It has also filed an application with me for a club license for the balance of the fiscal year, as it should have done in the first place.

I am satisfied that there was no intentional concealment. The club obtained its first license in 1934, at which time Councilman Galvanek did not hold public office. He was subsequently elected to office and by mistake and oversight this change was not reflected in the succeeding applications for a license.

In view of the self-inflicted suspension of its license and the good faith shown thereby, no further penalty will be imposed.

Accordingly, it is, on this 15th day of June, 1939,

ORDERED, that First Slovak Citizens Club surrender its club license No. CB-1 immediately to the Borough Council of the Borough of Carteret. It is

FURTHER ORDERED that the issuance of a club license, for which application has been made directly to me, be withheld until the Borough Clerk certifies to me the surrender of the club license presently outstanding.

D. FREDERICK BURNETT,  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - REFILLING LIQUOR BOTTLES - 10 DAYS' SUSPENSION INADEQUATE - HEREIN OF THE ULTIMATE DELUGE OF BOOTLEG IF SUBSTITUTIONS ARE NOT STAMPED OUT WITH A VIGOROUS HAND.

June 15, 1939

Joseph R. Malone,  
City Clerk,  
Bordentown, N. J.

My dear Mr. Malone:

I have before me staff report and your letter of June 9th re disciplinary proceedings conducted by the City Commissioners against Louis Kaplan, 222 Farnsworth Avenue, charged with refilling liquor bottles, and note that his license was suspended for ten days.

Please express to the Commissioners my appreciation for their conduct of these proceedings. The penalty imposed, however, is utterly inadequate. In transmitting the case to the Commissioners, there was enclosed a copy of recent rulings in Re Jacobs, Bulletin 315, Item 8, and Re Tumen, Bulletin 316, Item 8, both of which set forth the reasons why the refilling of liquor bottles demands a minimum of thirty days' suspension. Weren't those rulings brought to the Commissioners' attention?

According to the staff report, Kaplan admitted that he had refilled Calvert and Wilson bottles with Schenley's Red Label Whiskey because he had been told that the substitution could not be detected, and by so doing, he saved three dollars on a case. If licensees get only ten days when they admit refilling with legitimate liquor, it won't be long before they will be refilling with bootleg, because there is no way that one can tell bootleg from tax paid liquor by chemical analysis.

If Bordentown is deluged with bootlegging, the Commissioners will have only themselves to blame.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.



6. TRANSPORTATION - WINE WHOLESALE LICENSES - PERMISSIBLE TO DELIVER ALCOHOLIC BEVERAGES IN CONNECTION WITH THE LICENSEE'S BUSINESS WITHOUT A TRANSPORTATION LICENSE, PROVIDED TRANSIT INSIGNIA IS OBTAINED FOR THE VEHICLE.

June 13, 1939

Liquor Distributors of America,  
Newark, N. J.

Gentlemen:

The holder of a wine wholesale license may deliver alcoholic beverages in his own vehicle solely, however, for his own respective business in connection with and as defined in his license, without possessing a transportation license; provided, however, that the vehicle, while so used, shall bear a decalcomania which may be obtained from this Department, upon compliance with the rules governing transit insignia.

Within the limits above defined, the holder of such a permit may, so far as the laws of New Jersey are concerned, transport wines within the State or out of the State.

No opinion is expressed as to your right to transport wines in any other state except New Jersey.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - EMPLOYMENT OF FEMALE TO TEND BAR.

In the Matter of Disciplinary Proceedings against )

ANTON SLAMAR & TESSIE SLAMAR,  
618 South Orange Avenue,  
Newark, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-971, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
- - - - - )

Klein & Klein, Esqs., by Nathaniel J. Klein, Attorney for the Defendant-Licensees.  
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensees have pleaded guilty to charge of employing a female to tend bar and sell and serve alcoholic beverages to patrons on their licensed premises, contrary to municipal resolution.

The usual penalty for this violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three days, instead of five days.

Accordingly, it is, on this 12th day of June, 1939,

ORDERED that plenary retail consumption license C-971, heretofore issued to Anton Slamar and Tessie Slamar by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, commencing June 17, 1939, at 3:00 A.M. (Day-light Saving Time).

D. FREDERICK BURNETT,  
Commissioner.

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

June 14, 1939

Re: Case No. 277

In his application, applicant denied that he had ever been convicted of a crime. Fingerprint records disclosed that, in 1935, he had been convicted in a Court of Quarter Sessions of assault and battery.

At a hearing, applicant testified that said conviction followed a fist fight in which he engaged with another man; that he spent no time in jail as a result of his conviction, but was placed on probation to pay a fine of \$150.00. Investigation corroborates applicant's testimony. There appears to be no question of moral turpitude involved.

The affidavit, however, was false. Applicant testified that he didn't know assault and battery was a crime. It is recommended that solicitor's permit be withheld for a further period of ten days because of the false affidavit.

Edward J. Dorton,  
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILLS.

In the Matter of Disciplinary )  
Proceedings against )

ANTHONY HAREVICH, )  
143 Howard Street, )  
Newark, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-394, issued by )  
the Municipal Board of Alcoholic )  
Beverage Control of the City of )  
Newark. )

Richard E. Silberman, Esq., Attorney for the State Department  
of Alcoholic Beverage Control.

A. Milton Jacobs, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

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

At 11:15 o'clock in the morning, on May 4, 1939, Investigators Quinn and Williams of this Department gauged twelve open liquor bottles at the defendant's tavern in the course of routine inspection. They seized an almost full quart bottle labeled "Wilson 'That's All' Blended Whiskey" as being under proof. When the tests were being made, the bartender was in the tavern, and the defendant himself entered before the investigators left.

Department Chemist Battista, on analysis of the liquor in the Wilson's bottle, found that it varied substantially in proof and in solid content from genuine liquor of that brand. He testified that in his opinion, based upon this variation, the liquor in the bottle was not genuine as labeled.

The defendant virtually admits that the liquor in the bottle was a "refill". He testified that, on the night before the investigators came, he noticed that the Wilson's bottle contained only about an inch of liquor; that he first discovered that it was almost full again when he entered the tavern on May 4 and found the investigators there; that he accused the bartender of "refilling" the bottle and discharged him; that he himself in no wise tampered with the bottle.

I find as fact that the liquor in the Wilson's bottle was a "refill", constituting it 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 very 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 16th day of June, 1939, ORDERED, that Plenary Retail Consumption License C-394, heretofore issued to Anthony Harevich 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 19, 1939 at midnight (Daylight Saving Time); and it is

Further ORDERED, that no further license be issued to him on for said premises prior to July 20, 1939.

D. FREDERICK BURNETT,  
Commissioner.

10. GAMES - MONTE CARLO NIGHT WITH IMITATION MONEY - NOT PERMISSIBLE EXCEPT BY SPECIAL PERMIT SUBJECT TO STRICT CONDITIONS.

DOLLAR NIGHTS - STRICTLY PROHIBITED - HEREIN OF THE DISTINCTION BETWEEN A BOOZE PARTY AND A BONA FIDE MEAL WHERE BEER OR WINE IS INCLUDED AS A MERE INCIDENT.

CLUB LICENSES - NOT PERMISSIBLE TO SERVE BEER OR WINE AS PART OF A REGULAR MEAL TO THE GENERAL PUBLIC - HEREIN THAT THE TERM "BONA FIDE GUEST" IS TO BE STRICTLY CONSTRUED.

LICENSES - EFFECT OF BANKRUPTCY - RIGHTS OF TRUSTEE AFTER EXTENSION OBTAINED.

June 17, 1939

J. Elmer Hausmann, Esq.,  
Newark, N. J.

Dear Mr. Hausmann:

In order to run a "Monte Carlo" night where imitation money is used, the winners to obtain prizes consisting of groceries and foodstuffs, the club must obtain a special permit from this Department conditioned that the entire proceeds of the affair are devoted to a recognized charity, that the imitation money is distributed among the players at the beginning of the evening in a specified and equal amount, that no player may purchase any more such money either from the club or from another player, and that a player on losing his original allotment is out of the play for the rest of the evening. See Re Osborne, Bulletin 296, Item 5. Nor will the permit be issued if the "Monte Carlo" is really a subterfuge for a commercial proposition of gambling. See Re Hollander, Bulletin 271, Item 1.

If a permit is issued, the club may award a prize to the person having the most imitation money at the end of the evening, or sell or auction prizes to be paid for in such money. Re Osborne, supra.

You ask if Dollar Nights have been definitely prohibited. They have. That means, for illustration, a booze party where the offer is that one may have all the beer he can drink for a dollar. It has no application to a bona fide meal where, for instance, a beer or a glass of wine happens to be included as a mere incident to a regular dinner.

But even though such alcoholic beverages be but a mere part of a regular meal, yet if the Club furnishes it to other than its actual members, beware that every outsider is a bona fide guest of one of the individual members, for clubs may not sell or serve any alcoholic beverage under any circumstances, directly or indirectly, by itself or as part of a meal, to anyone except actual members and their bona fide guests. And the term "guest" is not to be stretched. It does not mean one who is paying his own way. In a broad loose sense, anybody stopping at a hotel for a few days is said to be a guest of the house. But that is not the sense in which the term is used in the Statute. For, if that were so, anybody who happened to be in the clubhouse would, as distinguished from the members, be a guest. That would make the term meaningless from a law enforcement angle. That is why the Legislature took the pains to use the term "bona fide" guest. Therefore, the term is to be strictly construed. Non-members in attendance at a club function

who are charged for their dinner or for their admission are not bona fide guests. Re Perth Amboy Calabrese Social Club, Bulletin 213, Item 4.

If the club wants to invite the general public to come and pay their own way for a special dinner or any affair at which alcoholic beverages are dispensed, it will first have to obtain from me a special permit (fee \$10.00) for the affair.

Violation of club privileges is cause for revocation of the club license.

You also inquire as to the effect of a tavernkeeper's petition in bankruptcy on his license.

A liquor license remains in existence despite the filing of a petition or adjudication in bankruptcy. However, it does not automatically pass to the trustee but remains the bankrupt's until and unless the trustee obtains an extension of it in his name as trustee under R. S. 33:1-26. See Re Dallavalle, Bulletin 312, Item 7 and Re Ewing, Bulletin 312, Item 13. Once the trustee obtains such extension, he may, if authorized by the bankruptcy court, seek to transfer it to anyone else by way of an ordinary application to the license issuing authority for a person to person transfer.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

11. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED -  
CONCLUSIONS.

June 17, 1939

Re: Case No. 279

On March 6, 1933 applicant, who was then seventeen years and seven months of age, was arrested on charges of burglary and larceny. He was subsequently convicted of breaking, entry, larceny and receiving, sentenced to from eight to twelve years in prison and remained in a reformatory until paroled in December 1938.

At the hearing applicant testified that, in 1933, he and three other young men had been convicted for stealing automobiles and entering various homes.

Fingerprint records disclose that applicant was a juvenile delinquent, as evidenced by four proceedings in a juvenile court, at various times between his tenth and sixteenth birthdays. The law provides that no adjudication against a child under sixteen years, in a juvenile court, shall be denominated a conviction.

A parole officer connected with the Department of Institutions and Agencies, State of New Jersey, testified that twelve or fifteen years ago applicant's father deserted the family, leaving five boys and one girl under the immediate dependency of the mother. Juvenile delinquency may have been due, at least in part, to unsatisfactory home conditions which resulted from said desertion. The parole officer further testified that, since December 1938, applicant herein has made an excellent parole adjustment, is making an earnest effort to rehabilitate himself and is, in the

officer's opinion, a very worthwhile type of young man. The applicant herein seeks a ruling as to his eligibility to be employed as a waiter in a licensed hotel.

The crimes committed in 1933 were of a serious character but, considering applicant's handicap during his early years, the fact that he was under eighteen when the crimes were committed and his present attitude, I believe that it should be decided that the crimes did not involve moral turpitude. Re Case No. 36, Bulletin 149, Item 1.

It is recommended that applicant be advised that he is eligible to be employed by a liquor licensee in the State of New Jersey.

Edward J. Dorton,  
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO MINORS  
AND EMPLOYMENT OF FEMALE WAITRESS.

In the Matter of Disciplinary  
Proceedings against

ROYAL BAR & GRILL, INC.,  
60 Frelinghuysen Avenue,  
Newark, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-693, issued by the  
Municipal Board of Alcoholic Bever-  
age Control of the City of Newark.

Louis A. Fast, Esq., Attorney for the Defendant-Licensee.  
Samuel B. Helfand, Esq., Attorney for the State Department  
of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges of serving alcoholic beverages to minors, contrary to R. S. 33:1-77, and employing a female waitress to sell and serve alcoholic beverages at its licensed premises, contrary to municipal resolution.

The usual penalty for the first violation is ten days and for the second, five days, making a total of fifteen days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for ten days, instead of fifteen days.

Accordingly, it is, on this 17th day of June 1939,

ORDERED that plenary retail consumption license C-693, heretofore issued to Royal Bar & Grill, Inc. 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 20, 1939, at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,  
Commissioner.

13. NEW LEGISLATION -- SUPPLEMENT -- DISCRIMINATORY PRICES AND DISCOUNTS.

Assembly Bill No. 216 was approved by Governor Moore on June 12, 1939 and thereupon became Chapter 87, P.L. 1939.

The supplement became effective immediately. It reads:

"AN ACT concerning alcoholic beverages, and supplementing chapter one of

"Title 33 of the Revised Statutes.

"WHEREAS, Many alcoholic beverage manufacturers and wholesalers have been granting discounts, rebates, allowances, free goods and other inducements to selected retailers; these practices have contributed largely to destructive price wars which have unduly increased the consumption of alcoholic beverages; they are deemed detrimental to the proper operation of the liquor industry and contrary to the interests of temperance; the sale of alcoholic beverages is unusually susceptible to abuse with resulting danger to the general public and should be strictly supervised and regulated to prevent undue stimulation of public demand for alcoholic beverages; therefore,

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

"1. It shall be unlawful for any manufacturer, wholesaler, or other person privileged to sell to retailers to discriminate in price, directly or indirectly, between different retailers purchasing alcoholic beverages other than malt beverages bearing the same brand or trade name and of like age and quality.

"2. It shall be unlawful for any manufacturer, wholesaler, or other person privileged to sell to retailers to grant, directly or indirectly, to any retailer purchasing alcoholic beverages other than malt beverages, any discount, rebate, free goods, allowance or other inducement over and above any discount, rebate, free goods, allowance or other inducement available to any other retailer purchasing from him alcoholic beverages bearing the same brand or trade name and of like age, quality and quantity.

"3. It shall be unlawful for any manufacturer, wholesaler, retailer and for any of their stockholders, officers, directors and employees, to participate, directly or indirectly, in any transactions which are declared unlawful by the preceding paragraphs of this act.

"4. Violation of this act shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment of not more than thirty (30) days or by both such fine and imprisonment in the discretion of the court.

"5. The State Commissioner of Alcoholic Beverage Control is hereby vested with power to promulgate such rules and regulations on the following subjects as will assist in properly supervising the liquor industry and promoting temperance: (a) maximum discounts, rebates, free goods, allowances and other inducements to retailers by manufacturers, wholesalers and other persons privileged

to sell to retailers; (b) gifts and deliveries of money, products and other things of value by manufacturers, wholesalers, other persons privileged to sell to retailers, their stockholders, officers, directors and employees, to retailers, their stockholders, directors, officers and employees; (c) maintenance and publication of invoice prices, discounts, rebates, free goods, allowances and other inducements; and (d) such other matters as may be necessary to fulfill the restrictions embodied in this act.

"6. This act shall take effect immediately."

D. FREDERICK BURNETT,  
Commissioner.

Dated: June 17, 1939.

14. DISCRIMINATORY PRICES AND DISCOUNTS - THE NEW LAW - HEREIN OF THE PROVISIONS WHICH ARE EFFECTIVE IMMEDIATELY INDEPENDENT OF RULES AND REGULATIONS SUBSEQUENTLY TO BE PROMULGATED - THE RULE MAKING PROCEDURE INDICATED.

June 14, 1939

Gentlemen:

It has just come to our attention that there has been a bill passed known as "Bill 216" relative to the granting of discounts on sales to New Jersey licensees. We have not had any word from your office on this matter and would appreciate being advised relative thereto.

We would also appreciate your comments on our present method of operation, that is, wherein we have a certain price on one to five case shipments and a slightly lower price on shipments over five cases to pass on the benefit of the saving of freight to our customers and naturally to stimulate our volume of sales.

An expression from you regarding the above will be very much appreciated.

Very truly yours,  
Gallagher & Burton, Inc.

June 17, 1939

Gallagher & Burton, Inc.,  
Philadelphia, Pa.

Gentlemen:

I have your inquiry of the 14th.

Bill 216 has become Chapter 87, P.L. 1939, effective June 12th. Enclosed is a copy.

You will note that the first four sections are now in force and state in plain but stringent language just what is unlawful. Every violation of the Act is an indictable misdemeanor punishable as set forth in Section 4.

The law will be strictly enforced.



The fifth section empowers the State Commissioner to make rules and regulations. None have yet been promulgated but that fact in nowise affects the immediate operation of the first four sections. With those sections you must comply immediately. But as regards the rules and regulations, they, of course, will not be retroactive for it would be unthinkable to hold anyone responsible for something yet unpublished.

Pursuant to my regular practice, a tentative set of rules and regulations will be formulated, submitted to the industry for criticism and comment, and a public hearing called, open to everybody interested, following which I shall promulgate in final form such rules and regulations as may seem to be necessary, expedient and fair. Of this, you will have due notice. In the meantime, I will be glad to have your constructive suggestions.

No comment is made on your present method of operation. What is essential is that the law be obeyed as it is written. Its spirit is that all retailers be treated alike.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

15. DISCIPLINARY PROCEEDINGS - FORTIFICATION AND TREATMENT OF NATURALLY FERMENTED WINES BY LIMITED WINERY LICENSEE - REVOCATION INDICATED AND EFFECTED.

In the Matter of Disciplinary )  
Proceedings against )

MARIO CIASULLI, )  
228 Broome Street, )  
Newark, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Limited Winery Licenses )  
No. VL-75 and VL-21, issued by the )  
State Commissioner of Alcoholic )  
Beverage Control. )

----- )  
Mario V. Farco, Esq., Attorney for the Licensee,  
Richard E. Silberman, Esq., Attorney for the Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Notice containing four charges was served upon the licensee, but it will be necessary to consider only Charges 1 and 3, which allege that:

"1. On or about January 28, 1939, and on divers days prior thereto, you rectified, blended, treated and processed alcoholic beverages in this State beyond the terms of your limited winery licenses, in that you added an excessive quantity of sugar to wine which had undergone acetic fermentation, in violation of R.S.33:1-2;  
\*\*\*\*

"3. On or about January 28, 1939, you transported alcoholic beverages in a vehicle not bearing proper transit insignia, in violation of R. S. 33:1-2 and R. S. 33:1-28."

The holder of a limited winery license may manufacture only naturally fermented wines and fruit juices. He may not blend, fortify or treat wines.

The evidence taken at a seizure hearing held before this Department, and by stipulation made part of the record herein,

shows that on January 28, 1939 licensee transported in an unlicensed vehicle two five-gallon jugs of wine; that on said date he was arrested for such unlawful transportation by the Newark police, who seized the wine and the vehicle; that chemical analysis disclosed that the seized wine contained sugar in excess of twenty per cent by weight, and that wine taken from a fifty-gallon barrel on the licensed premises was undergoing acetic fermentation, i.e., turning sour.

Licensee contends that he did not put any sugar in the seized wine. However, his father, Louis Ciasulli, who testified that he works over the week-ends at the licensed premises as a book-keeper, admitted that, on January 28, 1939, he put twenty-five pounds of sugar and ten gallons of wine in a pot on the licensed premises and boiled it to make a sweet drink to be used at a christening on the following day. The licensee's story is that the father of the candidate to be christened rejected the sweetened concoction and that the licensee was returning to the licensed premises with the rejected product when he was placed under arrest.

The rejection of boiled wine a la saccharine is the only plausible part of the yarn. It takes a courageous vintner to offer such a questionable delicacy for a christening.

The testimony of Louis Ciasulli shows that he fortified and treated the wine on the licensed premises. The evidence that sugar was added to the seized wine confirms the violation of the terms of the license. The licensee is responsible for the acts of his employee, Louis Ciasulli.

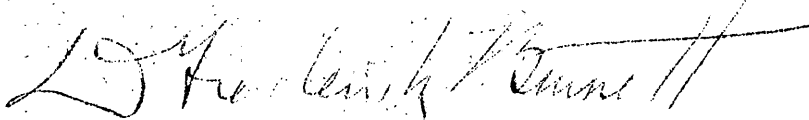
The evidence also shows that licensee transported alcoholic beverages in violation of the provisions of R. S. 33:1-2 and R. S. 33:1-28.

I find the licensee guilty as to Charges 1 and 3.

It is unnecessary to consider the alleged violation of labeling regulations in failing to show that other wine sold was "sub-standard", for the abuse of the licensed privilege, as to which guilt is clear, satisfies me that the licensee is an unfit person to hold a license. Therefore, the only proper remedy is revocation of the licenses which he now holds.

Accordingly, it is on this 19th day of June, 1939,

ORDERED, that Limited Winery Licenses No. VL-75 and VL-21, heretofore issued to Mario Ciasulli by the State Commissioner of Alcoholic Beverage Control, be and the same are hereby revoked, effective immediately.



Commissioner.

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