

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

BULLETIN 574

JUNE 25, 1943.

TABLE OF CONTENTS

ITEM

1. CANCELLATION PROCEEDINGS - LICENSE ISSUED CONTRARY TO EXPRESS PROVISIONS OF MUNICIPAL ORDINANCE - LICENSE ORDERED CANCELLED.
DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER, IN VIOLATION OF R.S. 33:1-26 - 45 DAYS' DISQUALIFICATION.
2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES ON ELECTION DAY, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS FOR OFF-PREMISES CONSUMPTION, IN VIOLATION OF R. S. 33:1-2 - 50 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.
3. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 10 DAYS AND BONA FIDE TRANSFER OF THE LICENSE - 10 DAYS HAVING EXPIRED AND TRANSFER APPROVED BY MUNICIPAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.
4. LICENSEES - WHERE FACTS WARRANT, LICENSEES SHOULD NOT HESITATE TO CALL UPON THE POLICE FOR ASSISTANCE - LICENSEES SHOULD NOT BE PLACED IN JEOPARDY SOLELY BECAUSE THEY HAVE CALLED UPON THE POLICE FOR ASSISTANCE.
5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77, RULE 1 OF STATE REGULATIONS NO. 20 AND LOCAL ORDINANCE - 10 DAYS' SUSPENSION.
6. ELIGIBILITY - OPERATION OF ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.
7. MUNICIPAL REGULATIONS - CLOSING HOUR - REGULATION REQUIRING PREMISES TO BE CLOSED DURING HOURS SALES ARE PROHIBITED MEANS THAT PREMISES MUST BE ACTUALLY CLOSED AND THAT ALL PATRONS MUST BE OFF THE PREMISES BY THE DESIGNATED HOUR - LICENSEES CANNOT PERMIT CUSTOMERS TO REMAIN ON PREMISES AFTER THAT HOUR TO "FINISH UP" THEIR DRINKS.
8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, COLOR, ACIDS AND SOLIDS - 10 DAYS' SUSPENSION.
9. APPELLATE DECISIONS - BACKOFEN v. UNION CITY.
10. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 60 DAYS AND CORRECTION OF ILLEGAL SITUATION - ILLEGAL SITUATION CORRECTED - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF 60 DAYS.
11. APPELLATE DECISIONS - MARINELLO v. NEWARK.
12. MORAL TURPITUDE - CRIME OF PROSTITUTION INVOLVES MORAL TURPITUDE. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION TO LIFT DENIED.

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

BULLETIN 574

JUNE 25, 1943.

1. CANCELLATION PROCEEDINGS - LICENSE ISSUED CONTRARY TO EXPRESS PROVISIONS OF MUNICIPAL ORDINANCE - LICENSE ORDERED CANCELLED.

DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER, IN VIOLATION OF R. S. 33:1-26 - 45 DAYS' DISQUALIFICATION.

In the Matter of Disciplinary)
Proceedings against)

MARGARET BURKE)
596½ Grove Street)
Jersey City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-565, issued by the)
Board of Commissioners of the)
City of Jersey City.)
-----)

Michael Breitkopf, Esq., Attorney for Defendant-Licensee.
Samuel Pesin, Esq., Jersey City Law Department, appearing for
the City Clerk of the City of Jersey City.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to a charge alleging that, between January 5, 1943 and March 1, 1943, she exercised the rights and privileges of a plenary retail consumption license then held by William Callaghan for premises 596½ Grove Street, Jersey City, in violation of R. S. 33:1-26.

Defendant has also appeared in opposition to an order to show cause why the aforesaid license, which was issued to William Callaghan and transferred to her, should not be cancelled and declared void because the license was issued in violation of the terms of a Jersey City ordinance limiting the number of plenary retail consumption licenses.

For the fiscal year 1941-42 William Callaghan held a plenary retail consumption license for premises located at 261 Erie Street, Jersey City. In May 1942 he was compelled to vacate these premises because they had been taken over by the Federal Housing Authority. At that time he consulted Lieutenant Carey, who was then in charge of the Jersey City Liquor Bureau, and was advised that, if he found a place suitable to him and to the City of Jersey City, an application for renewal or transfer of the license would be entertained. He made no application to transfer the license prior to June 30, 1942, when it expired by its terms. He made no application to renew the license for the fiscal year 1942-43 prior to July 30, 1942. In fact, he took no action, at least so far as the city was concerned, until October 22, 1942, when he wrote to the Liquor Bureau with reference to the transfer of his license to 596½ Grove Street, Jersey City. The matter was referred to a member of the Law Department of the City of Jersey City and, after a favorable opinion was obtained, William Callaghan, on November 27, 1942, duly filed an application for a

plenary retail consumption license for premises 596½ Grove Street. The license was issued to him on January 5, 1943. After application duly made, this license was transferred to defendant herein on March 1, 1943. By the plea to the charge, it is admitted that Margaret Burke actually owned and operated the business between the date upon which it was issued to William Callaghan and the date upon which it was transferred to her name.

Section 1(a) of an ordinance to limit the number of plenary retail consumption licenses and plenary retail distribution licenses to sell alcoholic beverages at retail in the City of Jersey City, which was adopted on October 5, 1937, provides:

"No Plenary Retail Consumption License shall be granted hereafter unless and until the number of such licenses issued and outstanding shall be less than five hundred (500), except as hereinafter set forth."

Section 3 of said ordinance provides:

"The provisions of Section 1 shall not apply to the renewal of licenses which are issued and outstanding on the passage of this ordinance, nor shall said provisions apply to the transfer of such licenses from person to person, nor to the renewal of licenses so transferred, provided, further, however, that the Board of Commissioners of the City of Jersey City do reserve to themselves the right of issuing Plenary Retail Consumption Licenses to any banquet hall with adequate kitchen facilities or new and bona fide restaurants or hotel premises, as defined by the laws of the State of New Jersey governing alcoholic beverages, notwithstanding any limitation in this ordinance."

The number of licenses existing in the City of Jersey City is far in excess of five hundred. Despite the opinion rendered by the member of the Law Department, I believe that the license issued to William Callaghan cannot be considered a renewal of the license which he previously held for 261 Erie Street. The opinion rendered is based upon a decision dated December 26, 1935 by Commissioner Burnett in Sciarotta v. Trenton, Bulletin 102, Item 1. At that time the Legislature had not defined a renewal. The question as to whether an application was an application for renewal depended at that time to a great extent upon the intent of the licensee. Cf. Re Perry, Bulletin 199, Item 1. However, in order to eliminate many difficult problems concerning renewals, the Legislature thereafter defined a renewal license. P. L. 1939, c. 281. Therein it was provided that, in order to be considered a renewal, the license (1) must replace a license that would expire on the last day of the license term which immediately precedes the commencement of the new term; (2) be for the same class and type as the expired or expiring license; (3) cover the same licensed premises; (4) be issued to the holder of the expired or expiring license and (5) application therefor must be filed with the proper issuing authority prior to the commencement of the new term or not later than 30 days after commencement of the new term. In this case it is clear that the application for 596½ Grove Street could not be considered as an application to renew a license previously held for premises at 261 Erie Street, nor was it filed within the time provided by the statute. I must conclude that the license was issued in violation of the terms of the local ordinance, and hence I must cancel the same. The Board of Commissioners had no right to issue the license contrary to the express provisions of the ordinance. Bachman v. Phillipsburg, 68 N. J. L. 552.

In order that defendant may be punished for the violation to which she has pleaded guilty, I shall cancel the license forthwith and direct that in no event may a license be issued or transferred to her prior to August 1, 1943.

Accordingly, it is, on this 15th day of June, 1943,

ORDERED, that Plenary Retail Consumption License C-565, issued by the Board of Commissioners of the City of Jersey City to William Callaghan and thereafter transferred to Margaret Burke, for premises 596 1/2 Grove Street, Jersey City, be and the same is hereby cancelled, effective immediately; and it is further

ORDERED, that in no event shall a license be issued or transferred to Margaret Burke or to any other applicant for the said premises prior to August 1, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES ON ELECTION DAY, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES IN OPEN CONTAINERS FOR OFF-PREMISES CONSUMPTION, IN VIOLATION OF R. S. 33:1-2 - 50 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
 JULIUS BEESE
 T/a JULES GRILLE
 1201 Broadway
 Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-131 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Julius Beese, Defendant-Licensee, Pro Se.
 Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleads nolo contendere to the following charges:

"1. On Tuesday, May 11, 1943, an election day in the City of Camden, N. J., you sold at retail and delivered alcoholic beverages to consumers while the polls were open for voting, in violation of Rule 2 of State Regulations No. 20.

"2. On the date aforesaid, you sold alcoholic beverages to Thelma -----, a minor, in violation of R. S. 33:1-77.

"3. On the date aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages at your licensed premises to Thelma -----, a person under the age of twenty-one (21) years, in violation of Rule 1 of State Regulations No. 20.

"4. On the date aforesaid, you sold alcoholic beverages not pursuant to and within the terms of your plenary retail consumption license in that you sold such beverages in other than the original containers to Ernest ---- for consumption off the licensed premises, such sales being in violation of R. S. 33:1-2."

On the morning of May 11, 1943, while the polls were open in the City of Camden, Ernest ---- purchased two glasses of alcoholic beverages in defendant's premises. He was permitted to take the drinks in the open receptacles to his room on the second floor, which is not a part of defendant's premises. Later, Ernest ---- and Thelma -----, who had been in his room, entered the licensed premises and each of them was served with a glass of beer. Thelma, who had run away from her home, was then fifteen years and eight months of age.

The licensee places the entire blame on the bartender and says that he had instructed the bartender not to sell any drinks on Election Day while the polls were open. The licensee must none the less be held to strict accountability for the acts of his agent and employee.

As to penalty: Aside from the other violations herein mentioned, the sale of liquor to this young girl merits a substantial penalty. Licensee has no previous adjudicated record and apparently did not participate personally in the violations. Without attempting to fix a separate penalty for each violation, I shall suspend the license for fifty days, with a remission of five days for the plea, making a net suspension of forty-five days.

Accordingly, it is, on this 15th day of June, 1943,

ORDERED, that Plenary Retail Consumption License C-131, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Julius Beese, t/a Jules Grille, for premises 1201 Broadway, Camden, be and the same is hereby suspended for the balance of its term, effective at 2:00 A.M. June 18, 1943; and it is further

ORDERED, that if any license be issued to this licensee or any other person for the premises in question for the 1943-44 fiscal year, such license shall be under suspension until 2:00 A.M. August 2, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 10 DAYS AND BONA FIDE TRANSFER OF THE LICENSE - 10 DAYS HAVING EXPIRED AND TRANSFER APPROVED BY MUNICIPAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against)

THOMAS CULHANE)
591 Anderson Avenue)
Cliffside Park, N. J.,)

ON PETITION ORDER

Holder of Plenary Retail Consumption License C-27 issued by the Mayor and Council of the Borough of Cliffside Park.)
-----)

James P. McCabe, Petitioner, Pro Se.

BY THE COMMISSIONER:

On May 13, 1943, I suspended the license considered herein for the balance of its term, effective May 17, 1943, after defendant had pleaded guilty to charges alleging, in substance, that he was a "front" for James P. McCabe.

In said order it was provided that leave would be given to a bona fide transferee of the license to make application to lift said suspension provided that at least ten days of said suspension were served. Re Culhane, Bulletin 568, Item 11.

Pursuant to leave, James P. McCabe has filed a verified petition wherein it is set forth that, on June 14, 1943, the Mayor and Council of the Borough of Cliffside Park granted a transfer of License C-27, subject to the suspension heretofore imposed, from Thomas Culhane to James P. McCabe. A letter has been received from the Borough Clerk advising that the transfer was granted.

It appearing that the unlawful situation has been corrected and that more than ten days of the suspension have expired,

It is, on this 15th day of June, 1943,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-27, issued by the Mayor and Council of the Borough of Cliffside Park, be and the same is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

4. LICENSEES - WHERE FACTS WARRANT, LICENSEES SHOULD NOT HESITATE TO CALL UPON THE POLICE FOR ASSISTANCE - LICENSEES SHOULD NOT BE PLACED IN JEOPARDY SOLELY BECAUSE THEY HAVE CALLED UPON THE POLICE FOR ASSISTANCE.

June 16, 1943.

Dear Mr. _____:

You may rest assured that I have been sincerely trying to regulate the liquor industry in this State fairly as well as firmly. I have at all times realized that, as Commissioner, I have a duty, not only of protecting the interests of the public, but also the interests of all law-abiding liquor licensees in New Jersey.

As such guardian, I have tried to be equitable and fair with all licensees. Hence, when confronted by dubious matters, I have, just as in your case, given the licensee the benefit of every reasonable doubt. On the other hand, I have not hesitated to impose stern penalties in cases of proven violations where such a penalty was called for. Likewise, I have not hesitated to impose on the industry regulations which I believed were for the good of the public, and, by the same token, for the ultimate preservation of the industry. While various of these measures may appear to be strict, I am sure you will agree that, especially in these war days, the industry should cause as little friction as possible to every-day life. Only in this way may we have any guarantee against the possible return of Prohibition.

In your letter you indicate that licensees may be fearful to call the police to quell disturbances at their licensed premises lest such call be construed as creating a bad record against the licensees. This is all wrong. Let me reassure you that, where the licensee has been conducting his business properly and is not accountable for the disturbance, I have respected his sense of responsibility in immediately calling the police. Indeed, in various cases where a disturbance has occurred at licensed premises, I have given the licensee the benefit of the doubt and have brought no charges against him because, among other things, he promptly summoned the police.

In the same vein, I may point out that in Fisch v. Hillsborough, Bulletin 467, Item 8 (copy enclosed), where a local issuing authority took certain action because State Troopers had several times been called to licensed premises, this Department reversed that action since believing that the management was not responsible for the incidents in question and had acted quickly and properly in calling the troopers.

Hence, my candid advice to you and to all licensees is that, where any situation even threatens to get out of hand, you promptly call the police. Such caution is praiseworthy and can scarcely harm the licensee. Of course, if a series of disturbances occurs in licensed premises, that is a horse of quite a different color. In such a case, whether the licensee calls the police or not, there may be good warrant for taking action against the licensee. After all, repetition of undesirable incidents at licensed premises creates the inevitable inference that the licensee is unfit to conduct the business or that the business is a peril to the public good.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77, RULE 1 OF STATE REGULATIONS NO. 20 AND LOCAL ORDINANCE - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

MICHAEL KEELEY)
T/a CLIQUOT CLUB CAFE)
15 North Illinois Avenue)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-219, issued by the Board of Commissioners of the City of Atlantic City.)
-----)

Emerson S. Richards, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee retracts his former plea of not guilty and pleads non vult to the following charges:

"1. On Saturday night, March 20, 1943, and on divers days prior thereto, you sold alcoholic beverages to Privates James ---, Thomas --- and William ---, minors, in violation of R. S. 33:1-77.

"2. On Saturday night, March 20, 1943, and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Privates James ----, Thomas ---- and William ----, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20; and also in violation of an ordinance adopted by the Board of Commissioners of Atlantic City on July 16, 1936, as amended by Section 3 of an ordinance adopted by said Board on August 11, 1938."

The testimony of the three members of the armed forces involved in this case is in agreement that three glasses of beer were sold to Private Thomas ----, a minor, on March 20, 1943. The soldier who was just passed twenty years of age at the time distributed one glass of beer apiece to his two soldier companions. One of these soldiers was approximately nineteen years and six months of age, whereas the other was approximately nineteen years of age.

Licensee has no previous adjudicated record. Inasmuch as no aggravating circumstances are present, the usual minimum penalty of ten days will be imposed for this violation. (See Re Abrams, Bulletin 562, Item 8).

Accordingly, it is, on this 18th day of June, 1943,

ORDERED, that Plenary Retail Consumption License C-219, heretofore issued by the Board of Commissioners of the City of Atlantic City to Michael Keeley, trading as Cliquot Club Cafe, for premises 15 North Illinois Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 12:01 A.M. June 20, 1943, and terminating at 12:01 A.M. June 30, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. ELIGIBILITY - OPERATION OF ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

June 18, 1943

Re: Case No. 496

This is a proceeding to determine subject's eligibility for employment by a liquor licensee in this state.

Subject's fingerprint returns disclose that, in March 1937, he pleaded guilty to an indictment charging him with the crime of operating an illicit still and was sentenced to serve one year and one day. He was released in January 1938. At the hearing subject confirmed this record.

It was ruled in Re Case No. 437, Bulletin 517, Item 10, that activities in illicit liquor since Repeal constitute moral turpitude within the meaning of the Alcoholic Beverage Law, and hence it appears subject has been convicted of a crime involving moral turpitude.

Subject's criminal record also discloses that he was arrested in June 1938 for robbery and thereafter indicted, and that the matter is still pending.

It is recommended that subject be advised that he is not eligible for employment by a liquor licensee in this state. It is also recommended that he be advised that the pending indictment for robbery must be disposed of before any petition will be entertained to remove his statutory disqualification. See Re Case 32, Bulletin 269, Item 7.

Gaylord R. Hawkins,
Attorney.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

7. MUNICIPAL REGULATIONS - CLOSING HOUR - REGULATION REQUIRING PREMISES TO BE CLOSED DURING HOURS SALES ARE PROHIBITED MEANS THAT PREMISES MUST BE ACTUALLY CLOSED AND THAT ALL PATRONS MUST BE OFF THE PREMISES BY THE DESIGNATED HOUR - LICENSEES CANNOT PERMIT CUSTOMERS TO REMAIN ON PREMISES AFTER THAT HOUR TO "FINISH UP" THEIR DRINKS.

June 18, 1943

Dear _____:

I have your letter of June 14th, stating that you close your tavern at two o'clock, at which hour you have everyone out, but that some tavern owners apparently feel that, while they may not serve any alcoholic beverages after two o'clock, it is permissible to allow customers to remain on the premises to finish their drinks. You indicate that the "finishing up" process makes it at least two-thirty before the customers leave the premises. Under these circumstances, you ask whether your understanding or that of the other tavern owners is correct.

Section 5 of the ordinance adopted October 27, 1942 reads:

"5. The hours between which sale of alcoholic beverages at retail may be made pursuant to the Act mentioned in Section 1 of this ordinance are as follows:

"On week days between the hours of seven (7) a.m. and two (2) a.m. of the day following; provided, however, that on the last day of the calendar year the hours shall be between seven (7) a.m. and five (5) a.m. of the day following.

"On Sundays between the hours of one (1) p.m. and two (2) a.m. of the day following, provided, however, that on the last day of the calendar year when it is a Sunday the hours shall be between one (1) p.m. and five (5) a.m. of the day following.

"Alcoholic Beverages as defined in said Act shall not be sold at any other time at retail in the City of _____.

"Nothing herein contained, however, shall be construed to permit the sale of alcoholic beverages on any day when otherwise prohibited by law.

"During the hours sales are prohibited, the entire licensed premises shall be closed, provided, however, that this provision shall not apply to bona fide restaurants, as defined in the Revised Statutes of New Jersey 33:1-1(t), and bona fide hotels." (Underscoring ours).

The underscored provision makes it clear that all licensed premises in _____, except bona fide restaurants and hotels, must be closed at the regular weekday and Sunday closing hour of 2:00 a.m.

As used in the ordinance, "closed" means that all members of the public must be excluded (see Re Heisel, Bulletin 318, Item 12). Furthermore, for excluding members of the public, closing or locking the doors is not enough - patrons must be off the premises. (See Re Casarico, Bulletin 268, Item 1.) In Re Zenda, Bulletin 271, Item 5, the Commissioner ruled that proof of the charge of "keeping

open" (which is the same as "not being closed") requires only proof that the licensee continues to entertain the public.

The quoted ordinance provision and cited rulings show that you are absolutely right in closing your tavern at 2:00 a.m. and having everyone out by that hour. If the tavern owners you have in mind operate taverns as distinguished from bona fide hotels or restaurants, and fail to close at 2:00 a.m. or permit customers to remain on the premises after 2:00 a.m., they are violating the ordinance and are thereby subjecting their licenses to suspension or revocation. (R. S. 33:1-31, paragraph h.)

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, COLOR, ACIDS AND SOLIDS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
RALPH P. FUCCILE and
HAROLD J. FUCCILE
S/S Route 40, State Highway
Lakehurst, N. J.,
Holder of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Lakehurst.

CONCLUSIONS
AND ORDER

Ralph P. Fuccile and Harold J. Fuccile, Pro Se.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-partnership, by Harold J. Fuccile partner, entered a plea of non vult on charges that they possessed illicit alcoholic beverages in violation of R. S. 33:1-50.

This illicit beverage was discovered on the licensed premises and consisted of a natural colored straight whiskey of 80.20 proof in a quart bottle labeled "Schenley Blended Whiskey Reserve Quality 86 Proof." A comparison of the illicit liquor with a full bottle of genuine Schenley Blended Whiskey Reserve Quality 86 Proof, submitted by the licensee, shows the following:

| | <u>Proof</u> | <u>Color</u> | <u>Acids</u> | <u>Solids</u> |
|------------------|--------------|------------------|--------------|---------------|
| Illicit beverage | 80.20 | Natural | 28.8 | 142.2 |
| Genuine beverage | 86. | Added artificial | 28. | 130. |

I am forced to conclude that no part of the original contents of the bottle seized remained in the bottle at the time of its seizure. This is not a case of dilution but of real substitution. The seized bottle contained a naturally colored straight whiskey; the genuine, an artificially colored blend.

The defendant, Harold J. Fuccile, while entering the plea after an exhaustive and unsuccessful investigation, pleads that he, personally, is in no way guilty of the substitution. I believe that he did not personally tamper with the contents of the seized bottle and that he was not aware of the refilling. However, under the circumstances, and in view of my many rulings that the licensee must assume full responsibility for the bona fides of the liquor found on his licensed premises and be held strictly accountable therefor, Re Kurian, Bulletin 517, Item 2, I must provide for a suitable penalty. There being no prior record, I shall suspend the license for ten days. Re Agostini, Bulletin 506, Item 8, and cases cited.

Accordingly, it is, on this 21st day of June, 1943,

ORDERED, that Plenary Retail Consumption License C-3, heretofore issued by the Borough Council of the Borough of Lakehurst to Ralph P. Fuccile and Harold J. Fuccile, for premises S/S Route 40, State Highway, be and the same is hereby suspended for the balance of the term, effective 2:00 A.M. June 23, 1943; and it is further

ORDERED, that if any license be issued to this licensee or any other person for the premises in question for the 1943-44 fiscal year, such license shall be under suspension until 2:00 A.M. July 3, 1943.

ALFRED E. DRISCOLL
Commissioner.

9. APPELLATE DECISIONS - BACKOFEN v. UNION CITY.

#952
WILLY GEORGE BACKOFEN,)
Appellant,)
-vs-)
BOARD OF COMMISSIONERS OF THE)
CITY OF UNION CITY,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

#1259
WILLY GEORGE BACKOFEN,)
T/a THE CITY HALL TAVERN,)
Appellant,)
-vs-)
BOARD OF COMMISSIONERS OF THE)
CITY OF UNION CITY,)
Respondent.)

Wilbur V. Keegan, Esq., Attorney for Appellant in Case #952.
Anthony J. Armore, Esq., Attorney for Appellant in Case #1259.
James C. Agnew, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

These cases were heard, considered, but not decided by my predecessor. The background against which were projected the rather narrow issues raised by the successive appeals, the temper of the times, as well as the depth of the feeling in opposition to some of the characters involved, made a dispassionate consideration of the merits of the legal issues difficult.

The appellant having failed to apply for a renewal of his license for the present fiscal year, all of these legal questions may now be regarded as moot, with the exception of the issue raised by the appeal in Case #952.

In the last mentioned appeal, the record discloses that the respondent suspended the license which appellant then held for a period of ten days after it had found him guilty on a charge of violating a local ordinance which provided, in part, as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbance, brawl, or unnecessary noise, nor allow, permit or suffer the licensed place of business to be conducted in such a manner as to become a nuisance."

A stay of the suspension was granted by the then Commissioner pending determination of the appeal.

The charge of violating the ordinance and the subsequent disciplinary proceedings followed a public demonstration against a meeting by members of the German-American Bund on October 2, 1938, in a hall located in the rear of the appellant's licensed building.

It is quite clear that on the evening in question there was a disturbance and that this disturbance, which began on the public thoroughfare - inspired and inflamed by the presence of Fritz Kuhn in the meeting hall - ultimately engulfed the licensee's building. The local police, having received prior notice of the meeting, were present in force and performed valiant service when the disturbance threatened to get out of hand. The hall had been sublet to the Bund by the licensee. The holding of the meeting, though ill-advised and calculated to infuriate large numbers of patriotic, American citizens, was not at that time, in itself, illegal. These facts and, in particular, the presence of the police, tend to negative the charge that the licensee allowed, permitted or suffered a disturbance or brawl "in or upon the licensed premises."

Without questioning the patriotic intent of the respondent nor condoning the presence of members of the now thoroughly discredited Bund in the hall adjacent to appellant's barroom, I am nonetheless compelled to find that the facts in the case do not support the finding of guilt on the charge in question. Hence, I shall reverse the action of respondent in Case #952.

Case #1259 is an appeal from the denial of appellant's application for a renewal of his license for the 1941-42 period. Upon the filing of the appeal, an extension of the license previously held by appellant was granted and appellant operated thereunder until June 30, 1942. Appellant failed to file an application for renewal for the present fiscal year. Accordingly, the question presented by this appeal is now moot and the case will be dismissed upon that ground.

Many of the more important issues which were inexorably involved in this case but which were not properly before either the respondent or the Commissioner have now been tried before and decided by appropriate forums.

Accordingly, it is, on this 21st day of June, 1943,

ORDERED, that the action of respondent in Case #952 be and the same is hereby reversed; and it is further

ORDERED, that the appeal in Case #1259 be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 60 DAYS AND CORRECTION OF ILLEGAL SITUATION - ILLEGAL SITUATION CORRECTED - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF 60 DAYS.

| | | |
|--|---|-------------|
| In the Matter of Disciplinary Proceedings against |) | |
| |) | |
| VINCENZA D'ANNA |) | ON PETITION |
| 809 - 7th Street |) | ORDER |
| Union City, N. J., |) | |
| |) | |
| Holder of Plenary Retail Consumption License C-132 issued by the Board of Commissioners of the City of Union City. |) | |
| ----- |) | |

Frank J. Guarini, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On April 28, 1943 I suspended the license of Vincenza D'Anna for the balance of its term, effective at 3:00 A.M. May 1, 1943, after she had pleaded guilty to charges alleging that she was a "front" for Gaetano DeMartino. Re D'Anna, Bulletin 565, Item 12.

In said order it was provided that leave would be given to petition to lift said suspension, after sixty days thereof had been served, upon correction of the illegal situation. Pursuant to said leave, Keyhole Pizzeria, a corporation of the State of New Jersey, has filed a petition wherein it is set forth that, on June 17, 1943, the Board of Commissioners of the City of Union City duly transferred the license, subject to the suspension heretofore imposed, from Vincenza D'Anna to said Keyhole Pizzeria, a corporation of the State of New Jersey, and that neither Vincenza D'Anna nor Gaetano DeMartino has any interest in said business. A certified copy of the resolution transferring the license was presented with the petition.

It appearing that the unlawful situation has been corrected, and it further appearing that the sixty-day minimum suspension will expire on June 30, 1943, at 3:00 A.M., the suspension will be lifted effective at that time.

Accordingly, it is, on this 22nd day of June, 1943,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-132, issued by the Board of Commissioners of the City of Union City, be and the same is hereby restored to full force and operation, effective June 30, 1943, at 3:00 A. M.

ALFRED E. DRISCOLL
Commissioner.

11. APPELLATE DECISIONS - MARINELLO v. NEWARK.

JAMES MARINELLO, JR. and)
 JOSEPH MARINELLO,)
)
 Appellants,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF NEWARK,)
)
 Respondent)
)
 - - - - -)

ON APPEAL
CONCLUSIONS AND ORDER

George R. Sommer, Esq., Attorney for Appellants.
Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellants appeal from the action of the respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark, suspending their plenary retail consumption license C-542 for a period of fifteen days. The licensed premises are located at 173 Sussex Avenue, Newark.

The respondent's action followed its decision that the appellants were guilty as charged of selling alcoholic beverages to a minor in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The appeal was taken pursuant to the provisions of R.S.33:1-31, providing that a "licensee may, within thirty days after date of service or of mailing of said notice of suspension or of revocation, appeal to the commissioner from the action of the (municipal) issuing authority in suspending or revoking such license, which appeal shall act as a stay of such suspension or revocation pending the determination thereof unless the commissioner shall otherwise order." The appeal in this case was permitted to stay the suspension.

From the testimony offered on the appeal, it is apparent that there is no dispute with respect to the following facts: On January 4, 1943, at about 12:00 midnight, Ruby _____, a minor of fourteen years of age, entered the appellants' tavern in the company of Isabel _____, a woman of about thirty years of age, and remained on the premises until about 3:00 A. M. There is no question that the minor was served beverages on four or five occasions during the evening by James Marinello, Jr., one of the appellants. All of the appellants' witnesses were on the licensed premises during the evening in question.

The one vital fact concerning which there is substantial conflict in the testimony is whether any of these beverages served to the minor were alcoholic in character. No portion of the beverages alleged to have been served to the minor was available for analysis. In the absence of any physical evidence, my decision must necessarily turn upon the credence which I give to the testimony of the various witnesses.

The testimony of Ruby, respondent's only witness, was uncorroborated, contradictory and, in a number of respects, apparently in conflict with the testimony given by her before the Municipal Board. In her testimony she emphatically states that she warned James Marinello, Jr. that she was a minor. Following their entry into the

tavern, Isabel was served a highball. It was following this service that Ruby testified that she voluntarily advised the bartender, "I saw your minor sign and cannot have anything to drink." In a subsequent conversation with a patron (one of appellants' witnesses), she stated that the bartender would not sell her an intoxicating drink because she was under age. Notwithstanding the foregoing, this witness insists that during the course of the evening she was, in fact, served alcoholic beverages and permitted to consume the same on the licensed premises.

On behalf of the appellants, James Marinello, Jr., the bartender, stated that he had served Ruby several sodas but no alcoholic beverages. A patron, Dominick _____, testified that the minor had approached him shortly after entering the tavern and struck up a conversation on the pretext that she thought she knew him. He said that he bought the minor several drinks of soda and a sausage sandwich. He advised her to go home and offered her a dollar for fare. Later he drove the girl to her home. The minor substantiated Dominick's testimony and said that "Dom had been a perfect gentleman." The appellant, Joseph Marinello, and Fannie Curatolo, his sister, who were present most of the time that the minor was in the tavern, testified that Ruby had not been served anything other than soda. A health officer of the City of Newark was in the licensed premises at the time the minor and her companion entered. He testified that he remained in the premises from about 12:00 o'clock until some time after 1:00 A.M.; that he had heard the bartender say that the girl could not be served liquor because she was a minor, and that while he was present the girl drank soda. He further stated that he purposely "hung around" to see if the bartender would serve the minor liquor, and, had this been done, it was his intention to report the violation.

The testimony of one witness, if believed, is sufficient to establish guilt. However, during the hearing, many variances appeared in the testimony given by respondent's sole witness as to what took place. This witness contradicted herself on many occasions and, further, her testimony varied from that given by her before the Newark Board. It is difficult for me to believe that the bartender, after being warned by the minor concerning the minor sign, would deliberately violate the law. Further, I cannot disregard the testimony of Dominick, which was corroborated by Ruby in all respects except as to the service of the alcoholic beverages. The testimony of the health officer is likewise entitled to serious consideration. Because of the foregoing, I conclude that the greater weight of the evidence supports the appellants' version of the incident. Because of this, I must reverse the action of the respondent.

The licensees are now on notice. If they are well advised, they will not permit minors, particularly young girls, to remain on the licensed premises.

Accordingly, it is, on this 23rd day of June, 1943,

ORDERED, that the order of respondent dated February 9, 1943, suspending appellants' plenary retail consumption license for a period of fifteen days, be and the same is hereby reversed.

ALFRED E. DRISCOLL
Commissioner.

12. MORAL TURPITUDE - CRIME OF PROSTITUTION INVOLVES MORAL TURPITUDE.

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

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

CONCLUSIONS
AND ORDER

Case No. 278.)
-----)

BY THE COMMISSIONER:

In January 1931 petitioner was convicted of prostitution, a crime which involves moral turpitude. She was paroled after serving eighteen months of a three-year jail term and finally discharged from parole in January 1934.

Certain facts came to the attention of this Department which raised the suspicion that petitioner, if declared eligible to hold a liquor license, intended to act as a "front" for another person heretofore ruled disqualified by me. See Case No. 153, Bulletin 513, Item 1. When questioned whether the latter person had accompanied her to this office on the day of the hearing, petitioner answered with a vehement denial. When leaving the office at the conclusion of the hearing, however, she was observed entering an automobile which was being driven by the aforesaid disqualified person. Such a deliberate falsification is a sufficient basis for refusing the relief requested. Cf. Re Case No. 188, Bulletin 491, Item 9; Re Case No. 180, Bulletin 504, Item 5.

Moreover, the testimony of all three character witnesses produced by petitioner is particularly unimpressive and falls far short of that necessary to establish to my satisfaction that the petitioner has conducted herself in a law-abiding manner for the past five years and that her association with the alcoholic beverage industry will not be contrary to public interest. See R. S. 33:1-31.2.

The petition is denied.

Dated: June 22, 1943.

Alfred E. Driscoll
Commissioner.