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

BULLETIN 272 OCTOBER 4, 1938

1. LICENSEES - JACKING UP PRICES AFTER A CERTAIN HOUR NOT BROUGHT TO THE ATTENTION OF THE CUSTOMER - WHILE THERE IS NO FORMAL RULE, THERE ARE REMEDIES TO EFFECT A CURE FOR THE UNFAIR PRACTICE.

Dear Sir:

Councilman Carpenter has asked me to write you in regards to one of our licensees.

A party called at this establishment, ordered several rounds of drinks according to the menu, and when they received the bill it was greatly in excess of what they anticipated.

They were told by the licensee that the prices advanced after 9 o'clock P.M. and that the bill was correct.

Councilman Carpenter desires to know if this is in order, whether or not we should do anything about it or if your department is interested in a case like this.

Yours truly,
Philip R. Shingler,
Borough Clerk.

September 26, 1938

Philip R. Shingler, Clerk,
Brielle, N. J.

Dear Mr. Shingler:

Jacking prices up after drinks have been ordered and without any notice to customers is obviously unfair. No rule has heretofore been made requiring licensees to sell at the prices shown on the menu. I don't think it necessary, for most licensees would condemn such an unethical practice.

Even in the absence of a formal regulation, there is much that can be done and which I wish your Mayor and Council would do, viz.: Serve notice at once upon the licensee that:

1. If prices are to be advanced at a given hour over those set forth in the menu, that fact must be brought to the actual attention of every customer who gives an order after the hour set.

2. Overcharging a customer is provocative of disturbance, if not brawls, and that the licensee will be held strictly responsible for anything that may occur as the result of the overcharge, or grow out of it;

3. A person who conducts business in this manner is not a desirable licensee and that, unless present practices are immediately discontinued, a license will be peremptorily refused at the next renewal time.

The same fairness that requires a licensee to advise his customers that the prices printed on his menu do not hold good after a certain hour, necessitates in turn that he be given fair warning

NOW of the impropriety of his practices and the results that will follow if not promptly discontinued.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. APPELLATE DECISIONS - GROSS v. NEW BRUNSWICK.

JOSEPH GROSS,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF NEW BRUNSWICK,
Respondent.

ON APPEAL
CONCLUSIONS

Jacob Ratner, Esq., Attorney for Appellant.
Paul W. Ewing, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail consumption license for premises located at 115 Albany Street, New Brunswick.

In its answer respondent alleges that an application filed by appellant for a plenary retail distribution license for the same premises was granted and consequently appellant's application for a plenary retail consumption license was denied on the ground that appellant could not hold two types of licenses for the same premises and also because there are sufficient holders of consumption licenses in the immediate vicinity of appellant's premises and, therefore, there is no necessity for the granting of appellant's application.

In November 1937 appellant obtained a plenary retail distribution license for 115 Albany Street, operated under said license until June 30, 1938 and is now operating under a renewal thereof. There is no testimony that appellant plans to change his premises from a package store to a saloon. In fact, appellant testified "I thought by paying a little more money that I can do a little more business." His belief seems to be based upon the fact that consumption licensees are permitted to remain open until 2:00 A.M. whereas distribution licensees are required to close on Saturday night at 11:00 P.M. and on other weekdays at 9:00 P.M. The difference in the fee for the two types of licenses is $100.00 per year.

On June 14, 1938 appellant filed two applications: One for a consumption, the other for a distribution license. He deposited a certified check for $500.00, it being understood that the $500.00 license fee would be applied to the consumption license if granted, and that $400.00 would be applied to the distribution license if granted, in which event the balance was to be returned to appellant.

This procedure was irregular because appellant should have deposited the sum of $900.00 to cover both applications. On June 28, 1938 respondent granted his application for a distribution license, and denied the consumption license. The sum of $100.00 was returned to appellant. The City should have deducted an investigation fee of $50.00 on denial of the consumption license. R. S. 33:1-25 (Control Act, Sec. 22). It should collect that fee forthwith.

There are presently outstanding consumption licenses for premises located at 7, 32, 69, 74, 96, 129 and 145 Albany Street, in addition to a consumption license hereinafter considered, issued for the present fiscal year to Albany Distributing Company (hereinafter called "Albany") for 128 Albany Street. That is plenty. Appellant has not shown any need for an additional consumption license in this section of the City.

Appellant bases his appeal upon alleged improper discrimination. He claims that "Albany", which for many years held a plenary retail distribution license at 128 Albany Street, followed the same procedure adopted by appellant, i.e., it applied for both a consumption and a distribution license for the present fiscal year; that on June 28, 1938, the "Albany" application for a consumption license was granted, and its application for a distribution license denied; that this action was unreasonably discriminatory because he had filed his applications approximately two weeks prior to the date upon which the "Albany" applications were filed.

Why the New Brunswick Commissioners should have allowed "Albany" to change its kind of license and denied the same privilege to the appellant does not appear in the record now presented for my decision. Whether or not such action constitutes an unfair discrimination, I cannot now determine for the simple but essential reason that "Albany" is not a party to this case and its rights cannot be affected by any proceeding in which it has no opportunity to defend itself. Steup v. Wyckoff, Bulletin 155, Item 12. Appellant took no appeal from the issuance of the license to "Albany." If he considered himself aggrieved by the issuance of that license on the same day that his own was denied, why did he not appeal therefrom? The mere fact that appellant's applications were filed first gives him no right to preferential treatment. Giberti v. Franklin, Bulletin 150, Item 3; Kristen v. Pequannock, Bulletin 169, Item 1. If it be assumed that a consumption license should not have been granted to "Albany", it does not follow that appellant is, therefore, entitled to have such a license. Two wrongs do not make a right.

For the reasons aforesaid, the only thing I am called upon to decide in this case is the right of appellant to have a consumption license at 115 Albany Street. Not only is that area already crowded with consumption licensees, but the only reason appellant desires a license of that kind is to keep open longer hours. A denial of such an application was eminently proper.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 27, 1938.

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

September 22, 1938

Re: Case 230

This is to determine the applicant's eligibility to obtain a solicitor's permit.

The law provides that no person convicted of a crime involving moral turpitude shall hold a liquor license or be employed by a liquor licensee in this State. R. S. 33:1-25, 26 (Control Act, Secs. 22, 23).

In April 1937, the applicant pleaded guilty to a charge of fraudulently issuing two worthless checks, one for $10.00 and the other for $35.00, and was sentenced to 60 days in the County Jail.

In May 1937, he pleaded guilty to a charge of fraudulently issuing a worthless check for $10.00, and was given a 30-day jail term, to run concurrently with the above sentence.

In June 1937, he was charged with fraudulently issuing three worthless checks, one for $7.06, another for $10.00, and the third for $15.00. However, restitution being made in these instances, the charges were withdrawn.

In November 1937, the applicant was arrested for fraudulently issuing a worthless check for $3.43. However, the charge was dismissed - after restitution made - on the finding that the applicant had negligently failed to designate that the check was being drawn on a special account.

In January 1938, the applicant pleaded guilty to a charge of fraudulently issuing a worthless check for $35.00, and was given a suspended jail sentence of 364 days.

In all these instances, the checks were given in return for merchandise or services.

The applicant claims that the checks (except the one involved in the November 1937 case) were drawn on the same account and issued during a period of 10 or 15 days; that before making these drafts upon that account he had deposited therein a check for approximately $180.00, which more than covered the total amount of the drafts; that unknown to him this $180.00 check had been protested and his account accordingly not credited therewith; that he first learned of this fact when arrested in April 1937; that his various pleas of guilty were made solely on advice of counsel.

However, the applicant was admittedly cognizant of all facts on each of the occasions when he pleaded guilty. Inquiry should not be made behind those confessive pleas in this collateral proceeding. Re Case 122, Bulletin 184, Item 4; Re Case 195, Bulletin 219, Item 2; United States v. Day, 16 F. (2d) 329 (D.N.Y.1936).

Fraudulently issuing a series of worthless checks indubitably involves moral turpitude. The crimes of which the applicant has been convicted, being based upon such a series, must therefore be taken as involving that element.

It is recommended that the applicant be declared ineligible for a solicitor's permit.

Nathan Davis,
Attorney.

Approved:
D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - MISLABELING OF DISPENSING APPARATUS - SUBSTITUTION OF BRANDS.

In the Matter of Disciplinary Proceedings against

FRED C. DENTON,
33 New Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-833, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Fred C. Denton, Pro Se.
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges served upon the licensee allege that, on August 2, 1938, he possessed on his licensed premises a container of Schultz beer, the dispensing apparatus of which bore the name "Hensler", in violation of Rule 1 of State Regulations No. 22.

The licensee pleaded guilty.

On August 2, 1938, at about 12:55 A.M., Investigators Flynn and Williams visited the licensed premises. They testified that, in the cellar, they found one barrel of Schultz beer on tap; that the spigot on the line to which this was tapped bore the name "Hensler."

Licensee testified that when he left the premises about 7:30 P.M. August 1st, the "Schultz" barrel was not on tap; that it must have been tapped thereafter by the porter; that at some time during the week preceding August 2nd a tap marked "Schultz" had broken off.

This, however, does not excuse the violation, nor is it a mitigating circumstance.

Licensee contends that the cost of the two brands is the same. I shall consider this in fixing punishment. Licensees profiting by the substitution of brands will receive severe penalties. Licensee's record is otherwise clear. Under the circumstances, I shall suspend the license for three (3) days.

Accordingly, it is on this 28th day of September, 1938,

ORDERED that Plenary Retail Consumption License No. C-833, heretofore issued to Fred C. Denton by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for three days, beginning October 3, 1938 at 7:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - MISLABELING OF DISPENSING APPARATUS - SUBSTITUTION OF BRANDS.

In the Matter of Disciplinary Proceedings against)
HI-WAY TAVERN, INC., 149 South Street, Newark, New Jersey,) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License No. C-484, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

A. Milton Jacobs, Esq., Attorney for Licensee.
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges served upon the licensee allege that, on August 2, 1938, it possessed on the licensed premises a barrel of Ebling's beer, the dispensing apparatus of which bore the name "Krueger", in violation of Rule 1 of State Regulations No. 22.

Licensee pleaded non vult, "with an explanation."

On August 2, 1938, at about 9:10 P.M., Investigators Flynn and Williams of this Department visited the licensed premises. In the cellar they found one barrel of Ebling's beer on tap. At that time the spigots behind the bar on the main floor bore the names of four other brands of beer, the spigot on the line to which "Ebling" was tapped bearing the name "Krueger." They instructed Nathan Peck, the bartender, to have the taps marked correctly and a device bearing the correct name was put on the tap by the bartender before the Investigators left the premises.

On behalf of the licensee, Nathan Peck testified that he relieved the other bartender, Jay Wolfe, at 9:00 P.M. on August 2nd; that, at his request, Wolfe then went to the cellar to tap Krueger's beer; that Wolfe called up that there wasn't any Krueger's, and Peck answered: "Tap Ebling." Peck admitted that he should have placed the Ebling marker on the spigot at once but says that he neglected to do so because he first waited on seven customers and, while he was doing so, the Investigators entered.

The explanation is not an excuse. The fact that the spigot was mislabeled for only ten minutes before the violation was discovered goes only to the length of the violation and not to the fact of its occurrence. It was the bartender's duty to first comply with the law even though the seven thirsty customers had to wait a brief minute.

As the record of the licensee is otherwise clear, the license will be suspended for three (3) days.

Accordingly, it is on this 28th day of September, 1938,

ORDERED that Plenary Retail Consumption License No. C-484, heretofore issued to Hi-Way Tavern, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for three days beginning October 3, 1938 at 7:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - MISLABELING OF DISPENSING APPARATUS - SUBSTITUTION OF BRANDS.

In the Matter of Disciplinary Proceedings against

JOSEPH EHRICH and PHILIP DISHOWITZ, 603 Central Avenue, Newark, New Jersey,

Holders of Plenary Retail Consumption License No. C-366, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for the Licensees.
Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges served on the licensees allege that on August 2, 1938 they possessed on the licensed premises a container of Krueger's beer, the dispensing apparatus of which bore the name "Schultz", in violation of Rule 1 of State Regulations No. 22.

Licensees plead non vult.

On August 2, 1938, at about 2:45 A.M., Investigators Flynn and Williams visited the licensed premises. In the cellar they found that a barrel of Krueger's beer was tapped to a line leading to a spigot marked "Schultz."

On behalf of the licensees, Mr. Ehrich testified that, about 7:00 P.M. on August 1st he instructed the porter to tap "No. 3 beer"; that the name on No. 3 tap was "Schultz." The porter testified: "I was asked to tap No. 3 and I went down to tap it and it said 'Schultz' tap. So I took the Krueger's and put it on and thought nothing of it."

I am disregarding testimony as to alleged mistake, due to poor lighting arrangements in the cellar. I believe that the porter connected up a barrel of Krueger's beer when he could find no Schultz beer. This conclusion is strengthened by the testimony of the investigators that there were no barrels of Schultz beer on the premises.

As the record of the licensees is otherwise clear, I shall suspend the license for three (3) days.

Accordingly, it is on this 28th day of September, 1938,

ORDERED that Plenary Retail Consumption License No. C-366, issued to Joseph Ehrich and Philip Dishowitz by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for three days, beginning October 3, 1938, at 7:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

7. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938)	CONCLUSIONS AND ORDER
Case No. 35	

Philip Blank, Esq., Attorney for the Petitioner.

BY THE COMMISSIONER:

On April 1, 1929 petitioner pleaded guilty to passing and possessing counterfeit Federal Reserve notes, and was sentenced to serve three months in a county jail. On June 28, 1929 he was discharged from the county jail, and since that time has not been convicted of any crime.

Since 1930 petitioner has resided in the municipality in New Jersey where he now lives. For about a year after his release from jail he was unemployed; from 1930 to 1933 he worked as a salesman; from 1933 to October 1937 he was employed during the summer as a bartender in various licensed places in said municipality, and during the winter visited Florida for business reasons. In October 1937 he obtained a solicitor's permit from this Department permitting him to be employed by a New Jersey wholesale licensee. In his application for said permit petitioner admitted that he had been convicted for "possession of counterfeit money." When subsequent investigation disclosed that in fact he had been convicted of passing and possessing counterfeit money, a hearing was held to determine whether said crime involved moral turpitude. While said proceedings were pending, petitioner voluntarily discontinued his employment with the wholesaler because he was unable to make a living. Subsequently he made two applications for a solicitor's permit to be employed by another wholesaler, and both applications were denied because, after a complete investigation, it was determined that the crime of which he had been convicted involved moral turpitude. Petitioner has been unemployed since February 1938, except that he has done odd jobs since that time. He admits that he tended bar at licensed premises during a recent week-end.

On behalf of petitioner, a Lieutenant of Police in the municipality where petitioner resides testified that he has known him seven or eight years and that he has never been arrested or convicted during that time. The Manager of an hotel who has known petitioner for two years, a businessman who has known him for three years, a liquor licensee who has known him three or four years and another liquor licensee who has known him about five years testified that his conduct has been good during the time they have known him. A collector for a brewery testified that he has known petitioner all his life, and that petitioner has never been in any trouble except in connection with the charge of passing and possessing counterfeit money. The evidence satisfies me that petitioner herein has conducted himself in a law abiding manner during the past five years and, under ordinary circumstances, I would lift the disqualification effective immediately. It appears, however, by his own admission, that petitioner tended bar over one week-end during the summer despite the fact that on June 29, 1938 he was advised that, until an order lifting his disqualification had been entered, he could not be employed by a New Jersey licensee in any capacity whatsoever. Because of this fact I shall not make the order lifting the disqualification effective until thirty (30) days from the date hereof.

It is, therefore, on this 28th day of September, 1938,

ORDERED, that petitioner's disqualification from obtaining or holding a license or permit, or being employed by a licensee because of the conviction of the crime of passing and possessing counterfeit Federal Reserve notes, be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2, as amended, but this order shall not be effective until October 28, 1938.

D. FREDERICK BURNETT,
Commissioner.

8. DISTRIBUTION LICENSEES - COOKING SCHOOL WITH COURSES IN THE ART OF MIXING COCKTAILS - DISAPPROVED.

September 23, 1938

Dear Sir:

Our store has been conducting a cooking school twice a week under the direction of Miss Helen G. Rees, who is nationally known in the field of Home Economics. This school is attended by eight hundred to one thousand women, and Miss Rees thought it would be a good idea to invite the men, as well as the women, next Wednesday evening, and teach them how to mix cocktails properly.

Is there any objection to this procedure?

Yours very truly,
HEARN DEPARTMENT STORES, INC.
A. Schindel, Manager.

September 27, 1938

Hearn Department Stores, Inc.,
Newark, N. J.

Gentlemen: Att: Abraham Schindel, Manager.

I have read with interest yours of the 23rd. It is a grand work you are doing with the cooking school and it is not a bad idea to make it co-ed.

Your plan, however, for OPEN HOUSE night won't do. The Rules provide that package goods stores shall not permit either consumption of alcoholic beverages or even the cork to be drawn on such licensed premises.

Unless, therefore, the lessons be confined to the book, it would be advisable to eliminate the course on cocktails and the higher athletics.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

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

September 29, 1938

Re: Case No. 232

In his questionnaire and application, applicant denied he had ever been convicted of a crime. His fingerprint records disclose that, in 1931, he was convicted of possessing and transporting liquor in violation of the Hobart Act and was fined $50.00.

At the hearing applicant admitted the conviction, testifying that at the time of his arrest he was transporting five gallons of "apple" to a banquet being held by an association of which he was a member; that he was not a bootlegger but was engaged in the building business at the time of his arrest; that he has never been convicted of any other crime. Under the circumstances, I believe that the crime of which he was convicted did not involve moral turpitude.

As to his false affidavit, applicant testified that in March 1934 he obtained a limited distillery license from this Department; that the application for said license failed to disclose said conviction because a distillery salesman, who made out the application, told the applicant that "that didn't make any difference; that is no crime." The applicant herein obtained renewals of his limited distillery license up to June 30, 1937 and failed to disclose his conviction in each of the applications for renewal of said license. Applicant testified that he had stated in his present application that he had never been convicted of a crime because "it had been done the same way before." Unquestionably, the applications filed with this Department contained false statements.

The present application for a solicitor's permit has been withheld since September 13th, 1938 because of the facts disclosed by the fingerprint returns. It is recommended that the issuance of the permit be withheld for an additional period of twenty (20) days because of the false affidavits.

Edward J. Dorton,
Attorney-in-Chief.

Approved:
D. FREDERICK BURNETT,
Commissioner.

10. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S.33:1-31.2 (as amended by Chapter 350, P.L. 1938)

Case No. 34

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In February 1930 petitioner pleaded guilty in a criminal court in the State of New York to the crime of grand larceny, second degree, as defined by the laws of that State, and was placed on probation for a period of two years. Immediately thereafter he returned to the New Jersey municipality where he was born, and has lived in that municipality since that time. From 1930 to 1933 he was

employed as a salesman; from 1933 to July 1935 he was employed in a retail liquor establishment which was owned and operated by his father until the time of his father's death, and thereafter owned and operated by his mother. In July 1935 petitioner herein obtained a plenary retail consumption license in his own name and, since that time, has conducted under said license, and renewals thereof, the business which was established by his father during his lifetime. At present petitioner is also the holder of another plenary retail consumption license for other premises in the same municipality. In applying for the licenses and renewals thereof, he disclosed the conviction referred to herein.

Since 1930 petitioner has never been convicted of any crime. In 1936 he was arrested on a charge of assault and battery as the result of a fist fight, but the grand jury returned "no bill."

At the hearing a superintendent of public works, a postmaster and a businessman testified that they have known petitioner for nine, twenty and five years respectively and that, aside from his conviction in 1930, his conduct has been good. A police inspector, who has known him since boyhood, testified that petitioner has never had any trouble with the local police; that he investigated the conviction referred to herein on behalf of the local issuing authorities, and that thereafter the local issuing authorities exercised their discretion in granting licenses to the petitioner. I assume that, as a result of said investigation, a conclusion must have been reached that the crime in question did not involve moral turpitude because, otherwise, the petitioner would have been ineligible to hold a license. That there may have been some basis for this conclusion appears from report received from the probation officer of the county in which the conviction took place. This report discloses that

> "Investigation made in connection with this case at the time of the indictment showed that ----- at no time actually appropriated the car with any particular intent to steal or to convert it to his own personal gain, it appearing rather that on a number of occasions he did remove the car from its storage place, the garage where ----- was employed, and took various friends of his for joy rides in and about the vicinity of Utica, each night returning the car to its place of storage without any particular harm, except the unauthorized use of the automobile and the consumption of gasoline."

It is unnecessary to determine in this proceeding the question as to whether or not the crime involved moral turpitude. Assuming that it did, I am satisfied from the evidence that petitioner has conducted himself in a law abiding manner for more than five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 30th day of September, 1938,

ORDERED that petitioner's disqualification from holding a license or being employed by a licensee, because of the conviction of the crime set forth above, be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938).

D. FREDERICK BURNETT,
Commissioner.

11. ENFORCEMENT DIVISION ACTIVITY REPORT FOR SEPTEMBER, 1938

TO: D. Frederick Burnett, Commissioner

ARRESTS:
Total number of persons - - - - - - - - - 67
Licensees - 3 Non-Licensees - 64

SEIZURES:
Stills - total number seized - - - - - 19
Capacity 1 to 50 gallons - 10
Capacity 50 gal. and over - 9

Motor Vehicles - total number seized - - 9
Trucks - 0 Passenger Cars - 9

Alcohol
Beverage alcohol - - - - - - - 219 Gallons

Mash - Total number of gallons- - 14,054

Alcoholic Beverages
Beer, Ale, etc. - - - - - - - - 28 Gallons
Wine - - - - - 151 "
Whiskeys and other hard liquor - 681 "

RETAIL INSPECTIONS:
Licensed premises inspected - - - - 1784
Illicit (bootleg) liquor - - - 3
Gambling violations - - - - - 38
Sign violations - - - - - - 84
Unqualified employees - - - -180
Other mercantile business - - - 98
Disposal permits necessary- - - 12
"Front" violations - - - - - - 2
Improper beer markers - - - - 8
Other violations found - - - - 24

Total violations found - - - 449

Total number of bottles gauged - - - 12,262

STATE LICENSEES:
Plant Control Inspections completed - 230
License applications investigated - - 21

COMPLAINTS:
Investigated and closed - - - - - - 394
Investigated, pending completion - - - 253

LABORATORY:
Analyses made - - - - - - - - - - - 190
Alcohol and water and artificial coloring cases - - - - - - - - - - - - - 42
Poison and denaturant cases - - - - - 0

Respectfully submitted,

E. W. Garrett,
Deputy Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - THE PENALTY TO BE INFLICTED WHEN LICENSEE LOSES POSSESSION OF PREMISES AFTER COMMISSION OF A VIOLATION.

In the Matter of Disciplinary Proceedings against TURF CLUB, INC., 4814 Hudson Boulevard, West New York, N. J., Holder of Plenary Retail Consumption License No. C-87, issued by the Board of Commissioners of the Town of West New York.	CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Samuel Schaunbaum, President of Turf Club, Inc., and William Moskowitz, General Manager of Turf Club, Inc., for the Licensee.

BY THE COMMISSIONER:

The defendant, a West New York licensee, is charged with operating its tavern, and permitting patrons therein, after 3 A.M. on Friday, August 12, 1938, in violation of a West New York resolution which prohibits a licensee from conducting his licensed premises between 3 A.M. and 7 A.M. on weekdays (and between 4 A.M. and 1 P.M. on Sundays), and which further forbids him to allow anyone other than himself or his employees and agents to be on his licensed premises during those hours. (Resolution of December 22, 1936).

The defendant pleads guilty. The facts are as follows:

On the Friday morning in question, Investigators King and Kane of this Department went to the defendant's tavern to investigate a complaint that the defendant was conducting its licensed business after the curfew hour. They entered the tavern prior to 3 A.M. and were permitted to remain well beyond that hour. At 3:05 A.M., the president of the licensee company extinguished the lights in the front show windows of the tavern but allowed the front door to remain open. At that time, 5 patrons (other than the investigators) were on the premises, but by 3:50 A.M. 15 additional patrons had gained entry through the front door. Drinks were readily sold and served to all these patrons. At 3:10, 3:30, and 3:50 A.M., the bartender sold and served a round of drinks to the investigators, consisting of a "gin rickey" and a "scotch and soda."

In explanation of this misconduct, the general manager testified that he permitted the tavern to be operated after 3 A.M. because he was confused by the local regulation concerning closing hours; that he thought the 4 A.M. closing hour, permissible on Sunday morning, was applicable to the entire week. Such an excuse deserves scant consideration. A liquor licensee who does not know the cardinal rules that regulate his business and who does not take the time and make the effort to ascertain them, can expect no leniency when he violates them.

This is the defendant's first conviction. Normally, its license would be suspended for five (5) days for conducting its licensed business after the curfew hour, and for an additional five (5) days for permitting persons other than its employees and agents upon its licensed premises after that hour.

However, it developed at the hearing on September 2nd that the defendant was then out of possession of the licensed premises or at least that it was in arrears for rent for which the landlord had distrained and that the keys were in the possession of the constable. Independent investigation by this Department reveals that it is still out of possession and is therefore not conducting any business. A suspension of its license for 10 days, while this situation exists, would be a mere gesture. Hence, to effect an actual penalty, the defendant's license will be suspended for the balance of its term, leave, however, being reserved to the licensee to apply for a modification of this order if the licensee hereafter shall come into possession of licensed premises and is otherwise in a position to resume operation of a licensed business.

Accordingly, it is on this 2nd day of October, 1938, ORDERED that plenary retail consumption license C-87, heretofore issued to Turf Club, Inc., by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for the balance of its term, effective immediately, with leave reserved to the holder of said license to apply for a modification of this order of suspension in accordance with the above conclusions.

D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - TEN DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

C. H. N. P. CORP.,
T/a Crescent Club,
483 Bergenline Ave.,
West New York, N. J.,

Holder of Plenary Retail Consumption License C-80, issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

The defendant, a West New York licensee, is charged with operating its tavern, and permitting patrons therein, after 3 A.M. on Friday, August 5, 1938, in violation of a West New York resolution which prohibits a licensee from conducting his licensed premises between 3 A.M. and 7 A.M. on weekdays, and which further forbids him to allow anyone but himself or his employees and agents to be on his licensed premises during those hours. (Resolution of December 22, 1936).

The defendant pleads guilty. The facts, briefly, are:

Investigators Thievon and King of this Department entered the defendant's tavern prior to 3 o'clock on the Friday morning in question. The tavern continued in operation after that hour. At 3:10 A.M., the defendant's bartender (who is also its president) served the investigators with a whiskey highball "on the house." At 3:20 A.M., and again at 3:40 A.M., he sold and served them a round of

the same drinks. Between 3 and 3:45 A.M., when the investigators identified themselves, liquor was also sold and served to 13 or 14 other patrons who were in the tavern during that time.

In explanation of this forbidden conduct, the bartender testified:

> "There were two weeks in a row that were so bad, that when on that particular night we had a little business, I figured it would take care of some of the expenses, and I stayed open a little later."

I doubt if it paid.

This is the defendant's first conviction. Its license will be suspended for five (5) days for conducting its tavern business after the local curfew hour, and for an additional five (5) days for permitting persons other than its employees and agents upon its licensed premises after that hour.

Accordingly, it is on this 2nd day of October, 1938, ORDERED that plenary retail consumption license C-80, heretofore issued to C. H. N. P. Corp., t/a Crescent Club, by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of ten (10) days commencing on October 7, 1938 at 3 A.M.

D. FREDERICK BURNETT,
Commissioner.

14. DISCIPLINARY PROCEEDINGS — SALES OUT OF HOURS — HEREIN OF A SHOPWORN ALIBI.

In the Matter of Disciplinary Proceedings against

BOULEVARD TAVERN, INC.,
1239 Boulevard East,
West New York, N. J.,

Holder of Plenary Retail Consumption License No. C-82, issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

The defendant, a West New York licensee, is charged with operating its tavern, and permitting patrons therein, before 1:00 P.M. on Sunday, May 15, 1938, in violation of a West New York resolution which prohibits a licensee from conducting his licensed premises between 4 A.M. and 1 P.M. on Sundays, and which further forbids him to allow anyone but himself or his employees and agents upon the licensed premises during those hours. (Resolution of December 22, 1936).

The defendant pleads guilty. The facts, briefly, are:

On the Sunday morning in question, Investigators Higginbotham and Robbins of this Department went to the defendant's tavern at the corner of Park Avenue and Boulevard East to investigate, inter alia, a complaint that the defendant was conducting its licensed business during forbidden hours.

They arrived at that corner at 10:45 A.M. and kept the tavern under surveillance until 12:05 P.M. During that time, they observed 3 persons freely enter the tavern through a side door. Investigator Higginbotham then gained similar entrance into the tavern. Inside, he discovered 5 patrons at the bar, 3 of whom were drinking. The bartender (the defendant's only representative on the premises) sold and served drinks to these patrons and to the investigator.

At 12:20 P.M., Investigator Robbins and a local police officer whom he had fetched, entered the tavern through the side door The investigators then identified themselves to the bartender, who readily admitted that the tavern had been open since 7:30 that morning.

The defendant's president now claims that the bartender had no authority to operate the tavern during the prohibited hours.

The alibi is quite shopworn. Licensees are directly answerable for the violations of their employees upon the licensed premises. Re Kneller, Bulletin 49, Item 4; Riewerts v. Englewood, Bulletin 60, Item 9; Re Pombo, Bulletin 238, Item 5; Re Neidenberg, Bulletin 271, Item 5.

This is the defendant's first conviction. Its license will be suspended for five (5) days for conducting its licensed business during prohibited hours, and for an additional five (5) days for permitting persons other than its employees and agents upon its licensed premises during those hours.

Accordingly, it is on this 2nd day of October, 1938, ORDERED that plenary retail consumption license C-82, heretofore issued to Boulevard Tavern, Inc., by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of ten (10) days, commencing on October 7, 1938, at 3 A.M.

Frederick Burnett

Commissioner.