

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

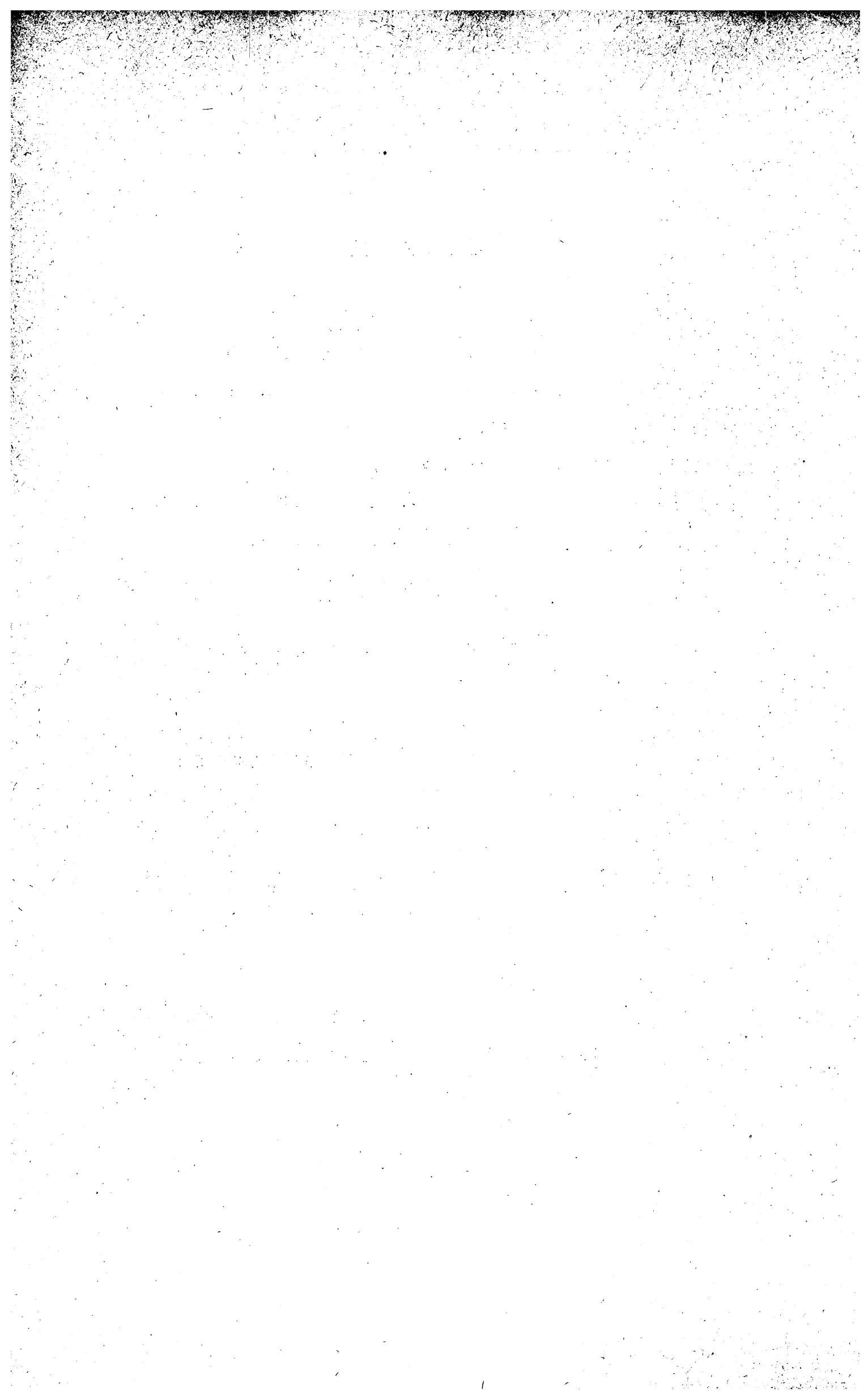
BULLETIN 815

SEPTEMBER 7, 1948.

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

BULLETIN 815

SEPTEMBER 7, 1948.

1. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

BYRON E. ENO)
T/a ENO'S HOTEL)
East End of Lacey Road)
Lacey Township)
P.O. Forked River, N. J.,)

Holder of Plenary Retail Consumption License C-103 for the 1947-48 fiscal year, issued by the Township Committee of the Township of Lacey, and transferred during the pendency of these proceedings to and renewed for the 1948-49 fiscal year by,)

ENO'S INC.,)

for the same premises.)
-----)

Robert A. Lederer, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging that (1) in his application dated June 3, 1947, he falsely concealed the fact that Eno's Inc. was the real owner of the licensed business, in violation of R. S. 33:1-25; and (2) from July 1, 1941 until June 27, 1946, he permitted Katherine Napier, Mamie J. Penn and Marcus A. Eno to exercise the privileges of his license, and from June 27, 1946 until the time charges were served he knowingly aided and abetted Eno's Inc. to exercise the privileges of his license, contrary to R. S. 33:1-26, thereby himself violating R. S. 33:1-52.

The file in the instant case discloses that defendant held a liquor license in his individual name for the premises in question from 1934 to February 6, 1948. From 1942 to 1946 defendant's mother, brother and aunt had an interest in the licensed business. In 1946 the business was incorporated as Eno's Inc. and all the assets of the business became the property of the corporation. The license, however, was retained in defendant's name until February 6, 1948 when the license was transferred to Eno's Inc., a corporation which obtained renewal of the license for the current licensing period. Apparently, none of the persons mentioned herein, including the stockholders of Eno's Inc., is disqualified by statute from being associated with the alcoholic beverage industry.

The illegal situation appears to have been corrected by the transfer of the license to Eno's Inc. Nevertheless, the nature of the violation heretofore committed warrants a suspension of the license.

The license will be suspended for a period of twenty days.
Cf. Re Russo, Bulletin 741, Item 4.

Accordingly, it is, on this 31st day of August, 1948,

ORDERED that Plenary Retail Consumption License C-103, issued by the Township Committee of the Township of Lacey to Eno's Inc. for premises East End of Lacey Road, Lacey Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. September 8, 1948, and terminating at 2:00 a.m. September 28, 1948.

2. APPELLATE DECISIONS - ALEXANDER AND MESTHOS v. BURLINGTON.

STEVEN ALEXANDER and GEORGE A.)
MESTHOS, trading as ALEXANDER'S)
INN,)

Appellants,)

-vs-

COMMON COUNCIL OF THE CITY OF)
BURLINGTON,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

George M. Hillman, Esq. and Robert W. Criscuolo, Esq., Attorneys for Appellants.

Alexander Denbo, Esq., Attorney for Respondent.
Sidney W. Bookbinder, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from the respondent's refusal to grant to the appellants the broad "package" privilege, as authorized in appropriate cases by State Regulations No. 32, in connection with its plenary retail consumption license for premises at 400 High Street, Burlington, N. J.

On May 28, 1948, the Governor approved P.L. 1948, c. 98, effective immediately. This Act provided, among other things, that the holder of a plenary retail consumption license may sell and display alcoholic beverages only in the public barroom unless, prior to its effective date, the licensee actually operated a separate "package" department in a portion of the licensed premises other than the public barroom. The Act was implemented by State Regulations No. 32 which, among other things, require the licensee to prove to the satisfaction of the local issuing authority that he came within the aforesaid proviso, in which event the authority was authorized to endorse the following notation on the license certificate:

"This license permits sale of alcoholic beverages in original containers for consumption off the licensed premises from portions of the licensed premises other than the public barroom, pursuant to P.L. 1948, ch. 98 and State Regulations No. 32."

The respondent refused to so endorse the appellants' license certificate because it was of the opinion that they had failed to prove a factual compliance with the proviso contained in the Act and also with the provisions of the regulations. The sole issue, therefore, is whether the appellants did operate a separate "package" department, within the meaning of the law and the regulation, in a portion of the licensed premises other than the public barroom, prior to May 28, 1948.

The appellants contend that, on or about May 21, 1948, they renovated a room adjoining the barroom which had theretofore been used only occasionally as a rehearsal room for an orchestra, and which had apparently contained only an old roll-top desk. They claim to have placed in this room three tables and a movable rack upon which they displayed bottled liquor; also a showcase containing cigars, and a cash register atop the showcase. In addition, they state that cartons of alcoholic beverages were stacked on the floor. They did not install any shelves or counters. They further allege that each evening they removed all of the liquor and the cash register and kept them in the barroom until the following morning, when they were returned to the adjoining room. They explain that this was done for reasons of security.

On behalf of the respondent, two members of the Council testified that they investigated the appellants' premises on June 24, 1948, between 8:00 and 9:00 p.m., and found no evidence of any liquor in the room. One of them remarked to the appellants' manager that, "I see there is no whiskey here", and the manager merely replied, "No", and offered no further explanation. One of the Councilmen further testified that several days later, on a weekday, at about 6:00 p.m., he again visited the licensed premises and noticed that the room adjoining the barroom was entirely empty of any liquor stock.

A consideration of the testimony offered by the appellants discloses that it is vague, indefinite and inconsistent in many particulars. The proofs fall far short of establishing that the appellants had maintained a separate "package" department on its licensed premises within the intent of the law and the regulation. On the other hand, the positive testimony given by the Councilmen satisfies me that the respondent's determination on the factual issue involved herein is the correct one and I shall, therefore, sustain its action in denying the appellants' application for the broad "package" privilege.

Accordingly, it is, on this 17th day of August, 1948,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

3. APPELLATE DECISIONS - COFFEE v. HIGHLANDS AND BRUSH.

J. HILLMAN COFFEE,)
Appellant,)
-vs-)
BOROUGH COUNCIL OF THE BOROUGH)
OF HIGHLANDS, and EDWARD R. BRUSH,)
Respondents)

ON APPEAL
O R D E R

Edward F. Juska, Esq., Attorney for Appellant.
Roberts, Pillsbury, Carton & Sorenson, Esqs., Attorneys for Respondent Borough of Highlands.
Parsons, Labrecque, Canzona & Combs, Esqs., Attorneys for Respondent Edward R. Brush.

BY THE COMMISSIONER:

This is an appeal from the action of the Mayor and Council of the Borough of Highlands in granting a transfer of a plenary retail consumption license from person-to-person and place-to-place.

At the time and place fixed for the hearing, the attorney for the appellant appeared and advised that the appellant, who was not present, did not desire to prosecute the appeal filed in this matter.

Pursuant to Rule 10 of State Regulations No. 15, the within appeal is dismissed for lack of prosecution.

Accordingly, it is, on this 17th day of August, 1948,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

4. APPELLATE DECISIONS - McCLAIN v. SOMERS POINT.

RICHARD K. McCLAIN, trading)
 as BAY SHORES CAFE,)
)
 Appellant,)
)
 -vs-)
)
 COMMON COUNCIL OF THE CITY OF)
 SOMERS POINT,)
)
 Respondent)

ON APPEAL
 CONCLUSIONS AND ORDER

Murray Fredericks, Esq., Attorney for Appellant.
 Enoch A. Higbee, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the imposition by the respondent of a ten-day suspension against the plenary retail consumption license held by the appellant for premises at 998 Bay Avenue, Somers Point.

The penalty was imposed to become effective on Friday, August 20, 1948. The only issue in this case is whether the suspension should commence on that date or be postponed to a later date.

The petition of appeal was filed on August 16, 1948 and, under the statute, automatically acts as a stay of the suspension unless the Commissioner otherwise orders. See R. S. 35:1-31. The parties hereto have stipulated that the determination of the issue of the stay shall be dispositive of the entire case.

It appears that on August 13, 1948, the date scheduled for the hearing of the charges before the respondent, the appellant appeared, with his attorney, prepared to enter a "not guilty" plea and to contest the case on the merits. Because of a misunderstanding the respondent did not have any of its necessary witnesses present. Prior to the entry of any plea, the respondent Council held a private caucus, at the conclusion of which advices were given to the appellant's attorney by at least one member of the governing body and its legal representative that, upon the entry of a confessional plea, the penalty would be scheduled to commence during the middle of September. The appellant thereupon pleaded non vult. Without needlessly detailing the balance of the proceedings, the final decision of the respondent, by a four-to-three vote, was to direct a ten-day suspension to commence August 20, 1948.

A careful consideration of all the attendant circumstances leads me to believe that the appellant did not receive a hearing "in accordance with the fundamental judicial requirements of 'fair play'". Cino v. Driscoll, 150 N.J.L. 585, and cases therein cited. While it does not appear that the respondent acted with malicious motives, the effect of its action, nevertheless, was to deprive the appellant of his full day in court. Under the circumstances, the matter must be remanded to the respondent in order that a new date be fixed for the hearing of the charges, and the appellant must be afforded an opportunity to plead to the charges as he may be advised. Such further proceedings should then be had by the respondent as will insure the appellant a "fair play" hearing.

Accordingly, it is, on this 19th day of August, 1948,

ORDERED that these proceedings be and the same are hereby remanded to the respondent for further action consistent with this opinion, and

IT IS FURTHER ORDERED that, in the meantime and until the further order of the Commissioner, the penalty heretofore imposed by the respondent, to wit, a ten-day suspension of appellant's plenary retail consumption license effective August 20, 1948, be and the same is hereby stayed.

ERWIN B. HOCK
Commissioner.

5. APPELLATE DECISIONS - GROSSMAN v. SOUTH RIVER and MINALGO.

NORMAN GROSSMAN,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH
OF SOUTH RIVER, and STANLEY
MINALGO,)

Respondents)

-----)
Benjamin Kleinberg, Esq., Attorney for Appellant.
John P. Kozak, Esq., Attorney for Respondent Borough Council.
Burton, Seidman & Pressler, Esqs., by Baruch S. Seidman, Esq.,
Attorneys for Respondent Stanley Minalgo.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Borough Council in granting a transfer of a plenary retail consumption license held by respondent Stanley Minalgo from premises known as 39 Ferry Street to premises known as 14 Washington Street, Borough of South River.

Appellant, who resides at 12 Washington Street, alleges that the members of respondent Borough Council abused their discretion in granting said transfer because there are too many liquor establishments in the vicinity of the premises to which the license was transferred.

The evidence herein establishes that respondent Minalgo conducted his licensed business at 39 Ferry Street for a period of thirteen years. After the owner of said premises served him with a written notice to vacate, Minalgo purchased the premises known as 14 Washington Street and duly applied to the Borough Council for a transfer of his license to said premises. The store at 14 Washington Street had previously been used as a cleaning, dyeing and tailoring establishment for twenty-five years. Appellant and other persons residing on Washington Street filed written objections with the Borough Clerk. A hearing upon said objections was held by the Borough Council, and thereafter the transfer of the license was granted. Hence this appeal.

Prior to the transfer of the Minalgo license there was a tavern at 8-10 Washington Street and another tavern at 18 Washington Street. However, the distance between 39 Ferry Street and 14 Washington Street is only 250 feet, and I am satisfied that both premises are within the same neighborhood. The entire section may be described as being of a mixed business and residential character. Business predominates on Ferry Street. Aside from the two other taverns previously mentioned, and the store to which the license was transferred, there are garages on Washington Street and stores on the corners of Washington and Ferry Streets. There are also liquor stores on the corners of Washington and Obert Streets, which is one block south of Ferry Street.

I realize that appellant believes that there were already sufficient licensed places in the vicinity of his home, but respondent

Borough Council, in the exercise of its discretion, after hearing all parties, granted the transfer. From the evidence presented I conclude that appellant has failed to sustain the burden of proof in establishing that Borough Council abused its discretion in transferring the license from one premises to another premises within the same neighborhood. Cooperate Service Co. v. Newark et al., Bulletin 813, Item 1, and cases therein cited. Hence I shall affirm the action of respondent Borough Council.

Accordingly, it is, on this 30th day of August, 1948,

ORDERED that the action of respondent Borough Council be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

6. APPELLATE DECISIONS - WEINBLATT v. ASBURY PARK.

LILLIAN WEINBLATT,)
Appellant,)
-vs-)
CITY COUNCIL OF THE CITY OF)
ASBURY PARK,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Haines, Chanalis, Lynch & Maloney, Esqs., by Michael N. Chanalis, Esq.,
Attorney for Appellant.
E. Alexander Edelstein, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of her application for a plenary retail consumption license for the fiscal year 1947-1948 for premises known as Metropolitan Hotel, 305 Asbury Avenue, Asbury Park.

The denial of the license is attacked on the theory that the premises sought to be licensed is operated as a bona fide hotel and that a license is necessary for the proper operation of a hotel and for the convenience of the guests of the hotel and the public.

In Current v. Fredon, Bulletin 184, Item 1, the Commissioner said:

"There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not."

The evidence herein discloses that appellant operated a 200-room summer hotel during the summer vacation season. Said hotel has been operated since Repeal without a license, excepting during the first year following Repeal. The testimony of the present appellant, who has leased the premises during the past three years, is that her operation of the hotel has been successful. Appellant further testified that the installation of a steam heating system makes it possible to operate the hotel all-year-round.

The testimony adduced by the appellant on the question of public necessity and convenience is confined solely to her testimony. She testified that a large number of her guests and organizations holding conventions desire the convenience of having alcoholic beverages with their meals and that she contemplated confining the operation of the bar to bona fide guests of the hotel.

The testimony offered by appellant does not convince me that public need and necessity require that appellant be granted a consumption license. On the contrary, it would appear from the testimony of respondent's witnesses that the neighborhood in which appellant's premises are located is amply supplied with liquor establishments. Within a few blocks of the hotel premises there are presently located at least five plenary retail consumption licensees.

The burden of proving that public convenience and necessity require the granting of a license rests with the appellant. The convenience of the guests of the hotel in question must be weighed and considered in the light of the general public policy in the community. It appears that there is an overabundance of liquor licenses within the area in question. Hence, I am satisfied that the action of the respondent cannot be said to have been either arbitrary or capricious. Lincoln Avenue Corp. v. Wildwood, Bulletin 540, Item 2; Hotel Macon, Inc. v. Wildwood, Bulletin 573, Item 6; Gallagher v. Spring Lake, Bulletin 750, Item 7. Having reached this conclusion, it is unnecessary to consider any other reasons advanced either for or against the license. The action of the respondent is hereby affirmed.

Accordingly, it is, on this 30th day of August, 1948,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SALES TO INTOXICATED PERSONS - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)
)
WILLIAM J. MEYER)
T/a BILL'S BAR & GRILL)
N/w cor. State Hwy Rte #35)
and Cliffwood Avenue)
Matawan Township)
P.O. Cliffwood, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-11 for the 1947-48 and 1948-49 fiscal years, both issued by the Township Committee of the Township of Matawan.)
)
)

William J. Meyer, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging (1) and (2) that he sold, served, delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to six minors who were permitted to consume the alcoholic beverages on his licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20; and (3) that he sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to the said six minors who were actually and apparently intoxicated, and permitted

the consumption thereof by said persons, in violation of Rule 1 of State Regulations No. 20.

On May 2, 1948, the six minors, aged 18 or 19 years, all of whom were soldiers stationed at Fort Monmouth, entered defendant's licensed premises at about 3:00 p.m. Previously, on their way to the tavern, they had consumed some beer from cans purchased on the Post. Apparently, they each were served and permitted to consume some fifteen glasses of beer and ten to twenty drinks of other alcoholic beverages, mostly whiskey, liqueurs and mixed drinks, on defendant's premises. As a result of this excessive drinking, and during its course, they all became intoxicated. Three or four of the boys left the premises for a short time, went to another tavern and returned. Some of them then assaulted a civilian patron on the licensed premises, with serious results. All left the premises about 6:00 p.m. and were subsequently arrested because of the alleged assault. Defendant's premises were in charge of a barmaid. She admits the sale, service and the consumption, and admits that she did not ask the boys their age or obtain any written statement as prescribed by R.S. 33:1-77.

While this is defendant's first conviction of a violation of the Alcoholic Beverage Law, the great number of minors involved, the length of time covered by the activity, the large number of drinks served and consumed, and the unfortunate assault lead me to conclude that a suspension of the license for the minimum of ten days for the minors charges (Re Bennett, Bulletin 720, Item 13), plus twenty days for the sale to intoxicated persons (Re Marinaccio, Bulletin 583, Item 5), is not sufficient. Considering all the aggravating circumstances involved in this case, and the plea entered herein, I shall suspend the license for sixty days.

Although this proceeding was instituted during the 1947-48 licensing period, it does not abate but remains fully effective against the renewal license for the licensing year 1948-49. State Regulations No. 16.

Accordingly, it is, on this 30th day of August, 1948,

ORDERED that Plenary Retail Consumption License C-11, issued for the 1948-49 licensing year by the Township Committee of the Township of Matawan to William J. Meyer, t/a Bill's Bar & Grill, for premises at n/w cor. State Hwy Rte #35 and Cliffwood Avenue, Matawan Township, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. September 7, 1948, and terminating at 2:00 a.m. November 6, 1948.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - SALES TO INTOXICATED PERSONS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RICHARD REGAN)
T/a REGAN'S TAVERN)
Cliffwood Avenue)
Matawan Township)
P.O. Cliffwood, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6 for the 1947-48 and 1948-49 licensing years; both issued by the Township Committee of the Township of Matawan, and extended to)

JOHN REGAN and THOMAS REGAN, Administrators of the Estate of Richard Regan.)

Herbert R. Rothenberg, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging (1) and (2) that he sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to two minors who were permitted to consume the alcoholic beverages on his licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20; and (3) that he sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to the said two minors who were actually and apparently intoxicated, and permitted the consumption thereof by said persons, in violation of Rule 1 of State Regulations No. 20.

This is a companion case to Re Meyer (decided concurrently herewith).

On May 2, 1948, at about 5:00 p.m., three or four of the minor soldiers involved in Re Meyer, supra, entered the licensed premises of defendant. They then were obviously intoxicated. Two of them were served alcoholic beverages -- one a mixed drink, the other a beer or two. Two played a game of darts, then all left the defendant's premises within about twenty minutes and returned to Meyer's.

Defendant claims he was not on the licensed premises and, due to illness, has not been at his tavern since about July 1, 1947. The premises were in charge of his brother, who does not deny the service to and consumption by at least one of the minors who, he says, showed no signs of intoxication. I believe both minors were served. The bartender in charge of the licensed premises made no effort to obtain a written statement as to the boys' ages as is required by R. S. 33:1-77. The defendant is fully responsible for the action of his employees. Re Grant Lunch Corp., Bulletin 517, Item 3; Re Quinn, Bulletin 537, Item 3.

Defendant has no previous adjudicated record. The minimum suspension for sales to minors in unaggravated cases, as here, is ten days (Re Bennett, Bulletin 720, Item 15); for serving intoxicated persons, such minimum is twenty days (Re Marinaccio, Bulletin 583, Item 5). Defendant has no previous adjudicated record. I shall suspend the license for thirty days. Remitting five days thereof because of the plea will leave a net suspension of twenty-five days.

Although this proceeding was instituted during the 1947-48 licensing period, it does not abate but remains fully effective against the renewal license, as extended, for the licensing year 1948-49. State Regulations No. 16.

Accordingly, it is, on this 30th day of August, 1948,

ORDERED that Plenary Retail Consumption License C-6, issued for the 1948-49 licensing year by the Township Committee of the Township of Matawan to Richard Regan, t/a Regan's Tavern, and thereafter extended to John Regan and Thomas Regan, Administrators of the Estate of Richard Regan, for premises on Cliffwood Avenue, Matawan Township, be and the same is hereby suspended for twenty-five days, commencing at 2:00 a.m. September 7, 1948, and terminating at 2:00 a.m. October 2, 1948.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - PERMITTING PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS - FALSE STATEMENT IN APPLICATION RE PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MATTIO MELE)
T/a MATTIO'S ALPINE INN)
35 John Street)
Haledon)
P.O. Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-13 issued by the Borough Council of the Borough of Haledon.)

-----)
Colombo Cammarano, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging (1) he permitted his licensed premises to be open during prohibited hours, contrary to provisions of a local ordinance, and (2) he falsified the application by virtue of which he received his current license by failing to disclose the suspension of a previous license.

On Sunday, July 11, 1948, at about 10:00 a.m., an investigator of the State Department of Alcoholic Beverage Control observed activity on the licensed premises. Entering the front door thereof he saw five men consuming alcoholic beverages at the bar. He ordered and was served a glass of beer. Shortly thereafter another investigator entered the premises. An ordinance of the Borough of Haledon provides that licensed premises must be closed on Sundays between the hours of 3:00 a.m. and 1:00 p.m. (with certain exceptions not material hereto).

In his application for renewal of his license for the current fiscal year defendant answered "No" to Question 41 which reads as follows: "Have you *** ever had any interest, directly or indirectly, in any alcoholic beverage license in New Jersey which was surrendered, suspended or revoked?" In fact, defendant previously held a license for premises in Hackensack and, on March 9, 1944, I suspended said license for a net period of ten days after defendant had pleaded non vult to selling alcoholic beverages to minors. Re Mele, Bulletin 609, Item 13. Defendant's explanation of his failure to disclose this prior suspension is that his application was prepared by another person. This is no excuse.

The minimum suspension because of the violation set forth in charge (1) is fifteen days. Re Calderone, Bulletin 789, Item 10. The minimum suspension because of the violation set forth in charge (2) is five days. Re Grimes, Bulletin 727, Item 4. Because of his prior record I shall suspend defendant's license on both charges herein for a period of twenty-five days, less five days for the plea, making a net suspension of twenty days.

Accordingly, it is, on this 30th day of August, 1948,

ORDERED that Plenary Retail Consumption License C-13, issued by the Borough Council of the Borough of Haledon to Mattio Mele, t/a Mattio's Alpine Inn, for premises 35 John Street, Haledon, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. September 8, 1948, and terminating at 3:00 a.m. September 28, 1948.

ERWIN B. HOCK
Commissioner.

10. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

THADDEUS MIELIWOCKI)
T/a STEVE'S BAR)
200 Madison Street)
Riverside, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-5 for the fiscal)
years 1947-48 and 1948-49, issued)
by the Township Committee of the)
Township of Riverside, and trans-)
ferred during the pendency of these)
proceedings to)

THADDEUS and STEVE MIELIWOCKI)
T/a STEVE'S BAR,)

for the same premises.)

CONCLUSIONS

AND ORDER

William T. Cahill, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging (1) that in his application dated June 4, 1947, he falsely concealed the interest of Steve Mieliwocki in the license and the business conducted thereunder, in violation of R. S. 33:1-25; and (2) from June 4, 1947, he knowingly aided and abetted the said Steve Mieliwocki to exercise the rights of his successive licenses, in violation of R. S. 33:1-52.

On June 4, 1947, the defendant secured the transfer of a license held by his father, Steve Mieliwocki, from 1934 to the date of transfer. This license was renewed by defendant Thaddeus Mieliwocki for the 1947-48 and 1948-49 licensing periods. In fact, Steve Mieliwocki has always been the real and beneficial owner of this license and the

business conducted by virtue of said license. The license was transferred to Thaddeus Mieliwocki because Steve was seriously ill. The transfer was not accompanied by any change in the operation of the business.

On August 13, 1948, the license was transferred by the local issuing authority to a partnership consisting of Thaddeus and Steve Mieliwocki, both of whom appear to be qualified to hold the same. On the evidence before me, this action will be accepted as a proper correction of the "front" heretofore existing.

The real owner of the license and the business conducted thereunder has the following previous adjudicated record: In 1939 his license was suspended for ten days by the local issuing authority for selling on special election day, and in 1941 his license was suspended for thirty days by the local issuing authority for sale on Sunday. In view of the length of time since the last of those prior suspensions, I shall not consider the present case aggravated thereby and shall suspend the license for a period of twenty days, the minimum suspension where, as here, all parties are apparently qualified. Re Bruno, Bulletin 786, Item 5.

Although this proceeding was instituted during the licensing year 1947-48; it does not abate but remains fully effective against the renewal license for the licensing year 1948-49. State Regulations No. 16.

Accordingly, it is, on this 30th day of August, 1948,

ORDERED that Plenary Retail Consumption License C-5, issued for the 1948-49 licensing year by the Township Committee of the Township of Riverside to Thaddeus Mieliwocki, t/a Steve's Bar, for premises 200 Madison Street, Riverside, and transferred during the pendency of these proceedings to Thaddeus and Steve Mieliwocki, t/a Steve's Bar, for the same premises, be and the same is hereby suspended for twenty (20) days, commencing at 1:00 a.m. September 8, 1948, and terminating at 1:00 a.m. September 28, 1948.

ERWIN B. HOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING EMPLOYMENT OF JUSTICE OF PEACE IN VIOLATION OF SPECIAL RULING, DISMISSED BECAUSE OF PROVISIONS OF R. S. 2:160-9.

In the Matter of Disciplinary Proceedings against)

MARY DIODATI)
T/a MARY'S TAVERN)
White Horse Pike)
Ancora, Winslow Township)
P.O. Hammonton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-20 for the 1947-48)
fiscal year, issued by the Township)
Committee of the Township of)
Winslow.)

-----)
Gene R. Mariano, Esq., Attorney for Defendant-licensee.)
William F. Wood, Esq., appearing for Department of Alcoholic)
Beverage Control.)

BY THE COMMISSIONER:

Defendant has pleaded not guilty to the following charge:

"On April 2, 7 and 9, 1948, you allowed, permitted and suffered David Finkenbinder, a Justice of the Peace, to be employed and to render services in your tavern business, in violation of special ruling made by the State Commissioner of Alcoholic Beverage Control in letter addressed to you dated September 11, 1945."

The special ruling mentioned in the charge reads as follows:

"I specifically rule and direct that, so long as David Finkenbinder remains a Justice of the Peace, you shall not allow, permit or suffer him to be employed or to render any services whatsoever in your tavern business. Failure to comply will be cause for suspension or outright revocation of your license."

The evidence herein discloses that on April 2, 1948 and April 7, 1948, ABC agents visited defendant's premises and purchased drinks of alcoholic beverages from David Finkenbinder who was then behind the bar. The fact that defendant was not present on her licensed premises would not be an excuse if in fact a violation occurred.

The attorney for defendant, however, contends that there was in fact no violation of the special ruling because David Finkenbinder was not a Justice of the Peace at any time in April 1948. It appears that David Finkenbinder received his commission as a Justice of the Peace on May 1, 1943, and that his commission was to expire on May 1, 1948. However, on December 1, 1947, he was found guilty in the Camden County Court of Special Sessions on a charge of atrocious assault and battery and received a suspended sentence conditioned upon the payment of costs. A conviction for atrocious assault and battery involves moral turpitude. It is contended that David Finkenbinder automatically lost and forfeited his office as Justice of the Peace upon his conviction on December 1, 1947. I am forced to agree with this contention because R. S. 2:160-9 provides as follows:

"Any person holding an office, elective or appointive, under this state, or any county or municipality thereof, who shall be convicted upon, or who shall plead guilty, non vult or nolo contendere to, an indictment or allegation charging him with the commission of a misdemeanor or high misdemeanor touching the administration of his office, or which involves moral turpitude, shall forfeit such office and cease to hold the same from the date of such conviction or entry of such plea as aforesaid."

As was said in Mulsoff v. Sloat, 8 N. J. Misc. 554:

"It would seem that, under the plain language of this statute, there can be no doubt but that respondent automatically, upon his conviction, *** lost and forfeited the office he was then occupying ***."

See also Walter v. Police and Fire Pension Commission, 120 N. J. L. 39.

Under the circumstances, I have no alternative except to dismiss the charge. It should be noted, however, that, since Finkenbinder appears to have been convicted of a crime involving moral turpitude, his employment hereafter on licensed premises may be cause for the revocation or suspension of a license held by his employer.

Accordingly, it is, on this 31st day of August, 1948,

ORDERED that the charge herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Frank and Jack Lozowick
T/a Academy Storage & Warehouse Co.
281-7 Miller St.
Newark, N. J.

Application for Transportation License filed August 20, 1948.

South Bergen Distributing Corporation
27 New Jersey Highway 17
East Rutherford, N. J.

Application filed August 20, 1948 for transfer of State Beverage Distributor's License SBD-218 from Surphene Matrise, t/a South Bergen Distributing Co.

William Boone
T/a United Motor Lines
36 Merriam Ave.
Newton, N. J.

Application filed August 25, 1948 for transfer of Transportation License T-15 from Chester M. Vreeland, t/a United Motor Lines.

Lebanon Valley Brewing Company
840 No. 7th St.
Lebanon, Pa.

Application for Limited Wholesale License filed August 24, 1948.

D. M. Silvers Co.
385 Rector St.
Perth Amboy, N. J.

Application for Warehouse Receipts License filed August 25, 1948.

ERWIN B. HOCK
Commissioner.

September 2, 1948

13.

ACTIVITY REPORT FOR AUGUST 1948

ARRESTS:		
Total number of persons arrested	-----	30
Licensees and employees	----- 2	
Bootleggers	----- 27	ABC agent impersonator ----- 1
SEIZURES:		
Motor vehicles - cars	-----	2
Alcohol - gallons	-----	1.16
Distilled alcoholic beverages - gallons	-----	26.75
Wine - gallons	-----	110.02
Brewed malt alcoholic beverages - gallons	-----	57.64
RETAIL LICENSEES:		
Premises inspected	-----	640
Premises where alcoholic beverages were gauged	-----	547
Bottles gauged	-----	9,107
Premises where violations were found	-----	35
Violations found	-----	39
Type of violations found:		
Unqualified employees	----- 8	Gambling devices ----- 2
Probable fronts	----- 4	Reg. #38 sign not posted ----- 1
Improper beer taps	----- 4	Other mercantile business ----- 1
Prohibited signs	----- 3	Other violations ----- 16
STATE LICENSEES:		
Premises inspected	-----	4
License applications investigated	-----	18
COMPLAINTS:		
Complaints assigned for investigation	-----	354
Investigations completed	-----	370
Investigations pending	-----	215
LABORATORY:		
Analyses made	-----	145
"Shake-up" cases (alcohol, water and artificial color) - bottles	-----	7
Liquor found to be not genuine as labeled - bottles	-----	20
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-----	32
Persons fingerprinted for non-criminal purposes	-----	195
Identification contacts made with other enforcement agencies	-----	170
Motor vehicle identifications via N. J. State Police Teletype	-----	10
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	19
Violations involved:		
Sale during prohibited hours	----- 7	Permitting brawls on premises ----- 2
Sale to minors	----- 5	Sale to intoxicated persons ----- 2
Mislabeling beer taps	----- 3	Permitting bookmaking on premises ----- 1
Cases instituted at Department	-----	19
Violations involved:		
Possessing illicit liquor	----- 4	Transportation in unlicensed vehicle ----- 4
Delivery by wholesaler not supported by order	----- 3	
Delivery by wholesaler without accompanying invoice	----- 3	
Sale during prohibited hours	----- 2	Fraud and front ----- 2
Sale under Fair Trade price	----- 2	
Solicitor giving inducement with sale to retailer	----- 2	
Sale by wholesaler under listed price	----- 1	
Wholesaler furnishing free goods to retailer	----- 1	
Wholesaler furnishing inducement with sale to retailer	----- 1	
Aiding and abetting unlicensed transportation	----- 1	
Failure to affix transportation insignia to vehicle	----- 1	
Delivery without bona fide order	----- 1	Failure to report retailer in default ----- 1
Permitting lottery activity on premises (wheel of chance)	----- 1	
Permitting gambling on premises	----- 1	Sale to minors ----- 1
Permitting brawls on premises	----- 1	Violation of special condition ----- 1
Cases brought by municipalities on own initiative and reported to Department	-----	3
Violations involved:		
Permitting brawls on premises	----- 2	
Sale during prohibited hours	----- 1	Violation of special condition ----- 1
HEARINGS HELD AT DEPARTMENT:		
Total number of hearings held	-----	60
Appeals	----- 34	
Disciplinary proceedings	----- 10	Seizures ----- 3
Eligibility	----- 9	Application for license ----- 4
PERMITS ISSUED:		
Total number of permits issued	-----	968
Employment	----- 198	Social affairs ----- 388
Solicitors	----- 97	Special wine ----- 31
Disposal of alcoholic beverages	----- 155	Miscellaneous ----- 99

Erwin B. Hock
Commissioner

14. DISCIPLINARY PROCEEDINGS - PERMITTING LICENSED PREMISES TO BE USED IN CONNECTION WITH ILLEGAL ACTIVITY (GAMBLING) IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

JOHN BUONOMO)
T/a MEADOW PARK CASINO)
Ft. of Farm Road)
Secaucus, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Town Council of the Town of Secaucus.)
-----)

John Buonomo, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to the following charge:

"On August 7, 1947 and on divers dates prior thereto, you allowed, permitted and suffered your licensed premises and licensed business to be used in furtherance and aid of and in connection with an illegal activity or enterprise, to wit, gambling conducted on a barge anchored in the Hackensack River, to which barge electric current was supplied from your licensed premises; in violation of Rule 4 of State Regulations No. 20."

On August 7, 1947, a barge anchored a short distance from the defendant's tavern was raided and about thirty persons, including the defendant, were arrested. The raid disclosed that the barge had been used for gambling on a highly commercialized plane and that electric current, used to furnish light and a warning buzzer signal, was supplied to the barge by a wire connection with the defendant's tavern.

Although the violation occurred about a year ago, the requisite evidence for the institution of these proceedings was not in the possession of the Department of Alcoholic Beverage Control until recently. The delay was occasioned by reason of the necessity of withholding the evidence until the final culmination of the criminal investigation.

Subsequent to the date of the raid, an investigation made by ABC agents uncovered an infraction of the local ordinance governing permissible hours of sale, as a result of which the defendant's license was suspended for ten days in December 1947. See Bulletin 783, Item 6.

The instant violation, involving, as it does, an aiding and abetting in an extensive gambling enterprise, merits a substantially weighty penalty. In the defendant's favor, however, it may be pointed out that it does not appear that the defendant was connected, other than as aforesaid, with the operation of the disorderly house, or that any gambling actually occurred on the defendant's licensed premises. A consideration of all the attendant circumstances, including the plea, satisfies me that a thirty-day penalty should be imposed.

Accordingly, it is, on this 31st day of August, 1948,

ORDERED that Plenary Retail Consumption License C-12, issued by the Town Council of the Town of Secaucus to John Buonomo, t/a Meadow Park Casino, for premises Ft. of Farm Road, Secaucus, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. September 8, 1948, and terminating at 2:00 a.m. October 8, 1948.

New Jersey State Library *Erwin B. Hoek*