

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 965

APRIL 20, 1953.

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I. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1952 TO MARCH 31, 1953

	1st Quarter			2d Quarter		3d Quarter			Total
	July,	Aug.,	Sept.	Oct.,	Nov.,	Dec.	Jan.,	Feb.,	
ARRESTS:									
Total number of persons arrested	77			55			62		194
Licensees and employees	30			23			37		90
Bootleggers	45			32			25		102
ABC agent impersonators	2			0			0		2
SEIZURES:									
Motor vehicles - cars	8			5			2		15
- trucks	2			1			1		4
Still - over 50 gallons	4			2			0		6
- 50 gallons or under	16			10			8		34
Alcohol - gallons	0			485.00			0		485.00
Mash - gallons	37,528.10			47,343.00			865.00		85,736.10
Distilled alcoholic beverages - gallons	137.23			89.69			19.03		245.95
Wine - gallons	27.53			207.57			249.59		484.69
Brewed malt alcoholic beverages - gallons	89.61			50.65			58.51		198.77
RETAIL LICENSEES:									
Premises inspected	2,597			2,896			2,720		8,213
Premises where alcoholic beverages were gauged	2,248			2,662			2,629		7,539
Bottles gauged	39,753			47,158			46,764		133,675
Premises where violations were found	280			271			309		860
Violations found	377			363			350		1,090
Type of violations found:									
Unqualified employees	164			131			89		384
Disposal permit necessary	28			24			23		75
Regs. #33 sign not posted	6			26			22		54
Other mercantile business	17			3			6		26
Prohibited signs	3			16			3		22
Gambling devices	1			5			8		14
Probable fronts	3			6			1		10
Improper beer taps	0			4			2		6
Other violations	155			148			196		499
STATE LICENSEES:									
Premises inspected	46			69			62		177
License applications investigated	31			22			27		80
COMPLAINTS:									
Complaints assigned for investigation	1,349			1,156			1,415		3,920
Investigations completed	1,231			1,163			1,241		3,635
Investigations pending	(164)			(93)			146		146
LABORATORY:									
Analyses made	364			271			325		960
Refills (from licensed premises) - bottles	9			2			5		16
Bottles from unlicensed premises	69			54			55		178
IDENTIFICATION BUREAU:									
Criminal fingerprint identifications made	84			59			57		200
Persons fingerprinted for non-criminal purposes	918			604			581		2,103
Ident. contacts w/other enforcement agencies	760			510			553		1,823
MW ident. via N.J. State Police Teletype	23			9			31		63
DISCIPLINARY PROCEEDINGS:									
Cases transmitted to municipalities	52			35			26		113
Violations involved:									
Sale to minors	20			17			8		45
Sale during prohibited hours	19			10			15		44
Permitting females at the bar	6			1			0		7
Permitting lottery activity on premises	2			2			2		6
Permitting brawls on premises	0			2			4		6
Permitting females to tend bar	1			1			3		5
Sale to non-members by clubs	3			1			0		4
Permitting bookmaking on premises	0			1			3		4
Failure to afford view into premises									
during prohibited hours	1			1			1		3
Permitting immoral activity on premises	2			0			0		2
Permitting gambling on premises	1			1			0		2
Sale to intoxicated persons	0			1			1		2
Sale on credit by retail licensee	1			0			0		1
Possessing chilled beer (DL licensee)	0			1			0		1
Sale of less than 72 fluid oz. of beer (DL licensee)	0			1			0		1
Permitting hostesses on premises	0			1			0		1
Permitting minor to tend bar	0			1			0		1
Bartender working while drunk	0			1			0		1
Possessing contraceptives on premises	0			0			1		1
Permitting slot machines on premises	0			0			1		1

DISCIPLINARY PROCEEDINGS (Cont'd):	1st Quarter			2d Quarter		3d Quarter		Total
	July,	Aug.,	Sept.	Oct.,	Nov., Dec.	Jan.,	Feb., Mar.	
Cases instituted at Division	46*			44		60**		150
Violations involved:								
Sale to minors	20			10		17		47
Sale during prohibited hours	7			8		15		30
Permitting immoral activity on premises	6			7		7		20
Fraud and front	2			5		9		16
Hindering investigation	4			2		5		11
Possessing illicit liquor	4			2		4		10
Mislabeled beer taps	0			4		3		7
Permitting foul language on premises	0			3		3		6
Sale beyond scope of license	2			2		1		5
Sale below minimum resale price	2			0		3		5
Sale to intoxicated persons	1			3		1		5
Permitting hostesses on premises	2			1		1		4
Unauthorized transportation	2			1		0		3
Failure to afford view into premises during prohibited hours						1		3
Employing unqualified persons	1			1		1		3
Possessing contraceptives on premises	1			1		1		3
Permitting lottery activity on premises	1			1		1		3
Permitting prostitutes on premises	0			3		0		3
Purchase from improper source	0			2		1		3
Permitting gambling on premises	0			1		2		3
Conducting business as a nuisance	1			0		1		2
Permitting slot machines on premises	0			2		0		2
Permitting bookmaking on premises	0			2		0		2
Sale on election day	0			2		0		2
Licensee working while drunk	1			0		0		1
Aiding & abetting sale during prohibited hrs.	1			0		0		1
Delivery without bona fide invoice	1			0		0		1
Retailer soliciting house-to-house	1			0		0		1
Permitting pinball machines on premises	1			0		0		1
Permitting females at bar	1			0		0		1
Wholesaler accepting ordinary checks from retailer in default	1			0		0		1
Act or happening	0			0		3		3
Failure to report retailer in default	0			0		1		1
Delivery to retailer on Default List	0			0		1		1
Failure to have copy of license application on premises	0			0		1		1
*Includes one cancellation proceeding for conduct of other mercantile business on consumption licensed premises								
**Includes one cancellation proceeding--license improvidently issued to club not bona fide								
Cases brought by municipalities on own initiative and reported to Division	14			47		37		98
Violations involved:								
Sale to minors	6			23		20		49
Sale during prohibited hours	6			6		6		18
Permitting brawls on premises	0			11		7		18
Permitting bookmaking on premises	2			4		0		6
Permitting gambling on premises	0			1		3		4
Sale to intoxicated persons	2			0		0		2
Permitting lottery activity on premises	0			2		0		2
Conducting business as a nuisance	0			1		1		2
Permitting immoral activity on premises	0			1		1		2
Permitting minors on licensed premises	0			0		2		2
Fraud and front	0			1		0		1
Employing unqualified persons	0			1		0		1
Permitting persons of ill repute on premises	0			1		0		1
Possessing slot machines on premises	0			0		1		1
HEARINGS HELD AT DIVISION:								
Total number of hearings held	38			101		101		290
Appeals	9			9		13		31
Disciplinary proceedings	46			41		57		144
Eligibility	22			25		19		66
Seizures	6			20		7		33
Tax revocation	0			6		3		9
Applications for license	5			0		2		7
PERMITS ISSUED:								
Total number of permits issued	7,439			3,827		2,111		13,377
Employment	2,378			484		412		3,274
Solicitors'	2,980			178		217		3,375
Disposal of alcoholic beverages	225			346		292		863
Social affairs	1,102			1,029		750		2,881
Special wine	175			1,275		12		1,462
Miscellaneous	579			515		428		1,522

Dated: April 8, 1953.

DOMINIC A. CAVICCHIA
Director.

2. STATE REGULATIONS NO. 34, RULE 8, AND STATE REGULATIONS NO. 35,
RULE 3 - INTERPRETATION.

TO ALL MANUFACTURERS AND WHOLESALERS OF ALCOHOLIC BEVERAGES OTHER
THAN MALT ALCOHOLIC BEVERAGES AND THEIR SOLICITORS:

There appears to exist some confusion or misunderstanding with respect to the scope of the prohibitions of Rule 8 of State Regulations No. 34 and Rule 3 of State Regulations No. 35, both of which prohibit generally the furnishing of any gift, rebate or allowance of money or any thing of value or other discount or inducement to retailers, the former rule being directed to manufacturers and wholesalers of alcoholic beverages other than malt alcoholic beverages and the latter rule being directed to their solicitors.

To clarify any misunderstanding or confusion that may exist, it is announced for the information of all concerned that the cited rules do prohibit (among other things) the following:

1. The purchase of any drinks for patrons on the licensed premises, i.e., the practice commonly known as buying drinks "for the house".
2. The furnishing of gifts of any nature at any time, directly or indirectly, to licensees and their employees except as herein-after specified.

The cited rules were not intended to prohibit and, unless experience demonstrates the necessity for more restrictive regulation in the future, will not be interpreted to prohibit the following:

1. The purchase of drinks and other merchandise (such as cigars, meals, etc.) on retail licensed premises by manufacturers, wholesalers and their solicitors for themselves and their bona fide guests in normal and usual course and in reasonable degree.
2. The purchase of drinks and cigars on retail licensed premises for retail licensees, their managers and bartenders, in normal and usual course and in reasonable degree.

It is emphasized that the exceptions hereinabove indicated have been and are being permitted by reason of the fact that such practices have not heretofore created any problem complicating the enforcement of State Regulations Nos. 34 and 35 but that, should there be any future abuse of such privileges, the regulations will be promptly and appropriately amended.

DOMINIC A. CAVICCHIA
Director.

Dated: April 14, 1953.

3. APPELLATE DECISIONS - DORIO v. EAST AMWELL TOWNSHIP AND COLLIGAN.

MICHAEL DORIO,)
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF EAST AMWELL, and WILLIAM P.)
COLLIGAN, JOHN P. COLLIGAN, LEONARD)
COLLIGAN and CHARLES COLLIGAN,)
t/a RINGOES TAVERN,)
Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Emmett D. Topkins, Esq., Attorney for Appellant.
Nicholas F. Gallicchio, Esq., Attorney for Respondent Township
Committee.
Herr & Fisher, Esqs., by Lloyd Fisher, Esq., Attorneys for
Respondents William P. Colligan, John P. Colligan, Leonard
Colligan and Charles Colligan, t/a Ringoes Tavern.

BY THE DIRECTOR:

This is an appeal from respondent Committee's granting of the plenary retail distribution license application of respondent Colligans, t/a Ringoes Hotel, for premises on Routes 30 and 29, Township of East Amwell, and from respondent Committee's denial of the plenary retail distribution license application of appellant for premises on Route 30 in said township.

The Petition of Appeal alleges, inter alia, that (1) the grant of the plenary retail distribution license to the Colligans and the denial of such a license to appellant "was based on bias and prejudice in that it was admitted by the Chairman of the Township Committee that the ordinance setting up the said plenary retail distribution license was passed for the benefit of Ringoes Tavern, without regard to suitability, monopoly or evidence adduced at the time the applications were heard"; and (2) respondent Committee was without legal authority to grant said license to the Colligans because (a) the application therefor was filed subsequent to the first insertion of the Notice of Application "which is contrary to the rules and regulations of the Department", and (b) the township's ordinance authorizing and permitting issuance of a plenary retail distribution license was not adopted until after the filing of the Colligans' application "and, therefore, no consideration should have been given to the application of the Ringoes Tavern."

An ordinance adopted January 22, 1938 provided that not more than one license to sell alcoholic beverages at retail shall be issued in the Township of East Amwell. The one license issued was a plenary retail consumption license held by John P. Colligan for the premises on Routes 30 and 29, which license was transferred, on February 1, 1952, to John P., William P., Leonard and Charles Colligan. East Amwell's 1950 Federal census population is 1,525 and therefore (with one plenary retail consumption license outstanding) the State Limitation Law (P. L. 1947, c. 94 -- R.S. 33:1-12.13 et seq.) permitted issuance of one additional license in that Township -- one plenary retail distribution license. But, of course, issuance of such additional license was prohibited by the 1938 ordinance and by the absence of an ordinance fixing the annual fee for such license.

The Colligans' plenary retail consumption license carries the "Broad Package Privilege" under P.L. 1948, c. 98 (R.S. 33:1-12.23 et seq.) -- the privilege of selling and displaying alcoholic beverages

in original containers for off-premises consumption upon a portion of the licensed premises other than the public barroom. In exercise of this "Broad Package Privilege" the Colligans operated, upon their retail consumption licensed premises, a package store in a room apart from the public barroom. On April 4, 1952, in the course of a routine inspection of these licensed premises, the Division's agents found that the package store room was in process of being remodelled by installation therein of equipment for refrigeration of various kinds of cheese to be sold for off-premises consumption. One of the inspecting agents then advised John P. Colligan that such other mercantile business upon plenary retail consumption licensed premises is prohibited by law. The applicable statutory provision (in R. S. 33:1-12(1)) is that a plenary retail consumption license "shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on."

The statute does not prohibit other mercantile business upon plenary retail distribution licensed premises but empowers the governing bodies of the various municipalities to effect such a prohibition by ordinance. (R. S. 33:1-12(3a).) No such ordinance has been adopted in the Township of East Amwell. It would appear that the Colligans, in making preparation for the sale of cheese in the package store room of their plenary retail consumption licensed premises, were under the impression that the Alcoholic Beverage Law permits other mercantile business upon the package store premises of a retail consumption license which carries the "Broad Package Privilege" pursuant to P. L. 1948, c. 98. Such an impression is, of course, erroneous. As the Division's agent pointed out to John P. Colligan on April 4, 1952, the prohibition in R. S. 33:1-12(1) concerning other mercantile business applies, without exception, to all plenary retail consumption licenses -- irrespective of whether they do or do not carry the "Broad Package Privilege" under P. L. 1948, c. 98.

At a meeting of the East Amwell Township Committee held on May 2, 1952, John P. Colligan appeared and stated that he wished to sell imported and domestic cheeses in the package store room of the Ringoes Tavern but that the law prohibited such sales under the plenary retail consumption license. He presented a draft of an ordinance to amend the existing ordinance so as to permit issuance of a plenary retail distribution license, and he requested the Committee to move to adoption of such amendatory measure so that a plenary retail distribution license might be issued to permit sales of cheese in the indicated package store room. A motion to lay the matter over for further consideration was unanimously adopted.

At the Township Committee's meeting of May 16, 1952 John P. Colligan and William P. Colligan appeared, with their attorney, and pressed their request for the ordinance amendment. The matter "was laid on the table."

An extract from the minutes of the Township Committee's meeting of May 30, 1952 sets forth: "The Clerk reported that Michael Dorio had requested that the Committee amend the Liquor Ordinance, to allow for a package store. Dorio had stated that he would like to apply for a package store license for his property."

An extract from the minutes of the Township Committee's meeting of June 6, 1952 reads:

"Jack Colligan and his attorney Lloyd Fisher were again present to insist that our present Liquor Ordinance be amended to allow for two licenses. Mr. Fisher presented an Ordinance and talked at some length urging the passage of his ordinance on first reading. A motion by Frizzell, seconded by Voorhees, was made to pass on the following ordinance as presented by Fisher:

"AN ORDINANCE TO AMEND AN ORDINANCE ENTITLED, 'AN ORDINANCE TO LIMIT THE NUMBER OF LICENSES TO SELL ALCOHOLIC BEVERAGES AT RETAIL WITHIN THE TOWNSHIP OF EAST AMWELL, COUNTY OF HUNTERDON AND STATE OF NEW JERSEY', which said ordinance was adopted January 22, 1938.

"BE IT ORDAINED by the Township Committee of the Township of East Amwell, in the County of Hunterdon and State of New Jersey:

"1. Section 1 of the above entitled Ordinance is amended to read as follows:

"Section 1. Not more than one (1) plenary retail consumption license shall be issued and outstanding in the Township of East Amwell.

"Not more than one (1) plenary retail distribution license shall be issued and outstanding in the Township of East Amwell.

"The annual fee for a plenary retail consumption license shall be \$300.00. The annual fee for a plenary retail distribution license shall be \$300.00.

"2. This Ordinance shall take effect immediately upon final adoption and publication according to law."

At the Committee's June 6th meeting the proposed ordinance was passed on first reading and ordered advertised for Hearing on July 2, 1952. Committeeman Frizzell and Mayor Voorhees voted for such passage and Committeeman Allen voted against.

At a meeting held June 20, 1952, the Township Committee granted 1952-1953 renewal (effective July 1, 1952) of the Colligans' plenary retail consumption license for the Ringoes Tavern premises.

On July 2, 1952, after the Hearing on the proposed amendatory ordinance, the Township Committee held a special meeting to consider passage of said ordinance on final reading. An excerpt from the minutes of that meeting sets forth: "... After the reading of the ordinance a motion was made by Frizzell to adopt the ordinance as read, on final reading. The motion was seconded by Voorhees. A call for votes showed Frizzell and Voorhees voting yes and Allen voting opposed. Lloyd Fisher then informed the Committee that the Colligans had filed an application with the Clerk and urged its immediate approval. The Clerk stated that he had also received an application for a Plenary Retail Distribution License from Michael Dorio and that he had received a written objection against granting a second license to the Colligans, from Michael Dorio. It was decided to hear the objection and to consider the application on the regular meeting of July 4th, 1952. No one appeared to protest the ordinance."

An excerpt from the minutes of the Committee's meeting of July 4, 1952 sets forth: "The application for a Plenary Retail Distribution License from the Colligans and also from Michael Dorio was presented. A letter was also presented from Dorio protesting the

issuance of a second license to the Colligans. Lloyd Fisher spoke for the Colligans and stated that this second license would enable them to sell fancy groceries such as cheese, etc., which they could not do under the present set up ... Dorio was ... represented by Emmett Topkins who supported the protest against the license on the grounds that under the terms of the ordinance recently passed the Township would be issuing all the licenses that the State Law would allow, and approval of the Colligan application would grant the Colligans a monopoly on the liquor business in the Township. After all parties interested had an opportunity to speak they were dismissed by the Chairman. A resolution was presented by Frizzell and seconded by Voorhees to the effect that the application of the Colligans, trading as Ringoes Tavern, for a Plenary Retail Distribution License, be granted ... Roll call of votes showed Frizzell and Voorhees voting favorable and Allen voting opposed."

There is no probative evidence that respondent Committee's action was fraudulent, collusive or corrupt. The testimony shows bias (on the part of two members of the Committee) in favor of the Colligan application, and the reason for said bias together with the resultant granting of said application will hereinafter be considered fully. It would appear, however, there existed no prejudice against appellant -- that even in the absence of the aforementioned bias, or in the absence of the Colligan application for a second license, appellant's application would not have been granted.

There is no merit in appellant's contention concerning final adoption of the amendatory ordinance after the Colligans' application was filed. When the plenary retail distribution license was actually granted the ordinance was in full force and effect and, therefore, respondent Committee did not lack jurisdiction in the matter. (Cf. Goldberg and Taylor v. Lincoln Park, Bulletin 733, Item 1.)

It is true that the Colligans' publication of their first Notice of Application for a plenary retail distribution license before their application for such license was filed was not in compliance with Rule 1 of State Regulations No. 2, and denial of an application for such noncompliance has been sustained on appeal. (Brost v. East Amwell, Bulletin 304, Item 1.) On the other hand the granting of an application after objectors have been heard is indicative of substantial satisfaction of the purposes of the Rule, as set forth in Re Dunphey, Bulletin 184, Item 6, and has impelled waiver of the Rule to avoid sacrificing substance to form. (Staiker et als. v. Roxbury et als., Bulletin 804, Item 3.) It would appear that the indicated defect might properly be deemed non-fatal under the circumstances in the instant case but in view of my determination of the appeal (hereinafter set forth) it is unnecessary to pass, herein, upon the specific procedural question.

With respect to appellant's contention concerning monopoly it is to be pointed out that a municipal issuing authority's granting of two licenses to the same person is not prohibited by law. Our Alcoholic Beverage Law provides (in R. S. 33:1-40) that "The governing ... body of each municipality may, by ordinance, enact that no more than one retail license shall be granted to any person in said municipality", but no such ordinance has been adopted in the Township of East Amwell.

Testimony adduced at the Division hearing shows convincingly that the one area of relatively large and concentrated population and of the preponderantly heavy flow of vehicular traffic is in the neighborhood of the Ringoes Tavern. Such testimony would be of considerable weight in demonstration of a public need for an alcoholic beverage license in that neighborhood. It is clear, however,

that as justification of the plenary retail distribution license issuance appealed from said testimony is far wide of the mark for it has no bearing upon the basic facts and merits of the case. Directly in point are the following allegations made on behalf of appellant at the Hearing before the Division: The Colligans' only reason for seeking to obtain the plenary retail distribution license was "because if they attempted to sell groceries and cheese they would have to close off the part (of the plenary retail consumption licensed premises) used of that type of store and set up a separate entrance and put an extra man on duty. It is the contention of the appellant that this does not satisfy public convenience and necessity; that Ringoes Tavern had a plenary retail consumption license; that the granting of a retail distribution license gave them no greater right to sell package goods for off-premises consumption; and, therefore, the public gained nothing by way of added convenience or necessity." It "is clear that the granting of a license based on economic necessity whether it would be better for applicant's business has nothing to do with the granting of the license."

As hereinabove stated the hearing on the objection to issuance of a plenary distribution license to the Colligans was held on July 4, 1952. At the Hearing before the Division the Township Clerk was asked, on direct examination, whether he remembered Mayor Voorhees' making the following statement at the local hearing on July 4th: "... the understanding was that the ordinance was to be passed for the purpose of giving Ringoes Tavern this license and if there was any other reason for it I wouldn't have voted for it." The Clerk answered: "He said something like that. I can't repeat it word for word." Then, Question: "That's the purport of what he said?", and the Answer: "Something along that line." On cross-examination Mayor Voorhees was asked whether he said in open meeting on July 4th that the only reason the ordinance was passed was to give a plenary retail distribution license to the Colligans. The Mayor replied: "I don't recall that statement." Then when asked: "Could you have said it and not recall it?", he replied: "I could have." On further cross-examination Mayor Voorhees was asked: "... you feel that Colligan is the only tavern or only place in the Township to have this type of license, isn't that true?" The Mayor answered: "Back years before I was a committeeman we had trouble with liquor in East Amwell Township, and the public forced this ordinance through to have only one liquor license. Mr. Colligan held the one liquor license, which included the package store privilege. He already had this privilege. All we wanted was a broader privilege -- which would issue no more liquor in the Township, or no more liquor privileges, so it complied with the people's request we thought to issue that license." Later came the Question: "You felt by giving the license to Colligan, Mr. Voorhees, you were not increasing the number of licensed places in the Township, is that right?"; and the Answer: "That is my opinion." Then, the further Question: "The only reason you gave the license to Mr. Colligan was because he could carry out the grocery business in no other place in the package business, is that right?" The Mayor replied: "That is the principle of it." Then the following questions and answers: Question: "It was not your opinion that the public convenience and necessity would be helped in any way by giving Colligan the license, is that right?" Answer: "It was considered that would suit the public better than the other location." Question: "In what way?" Answer: "It is more centrally located." Question: "But he already had that right didn't he, Mr. Voorhees?" Answer: "That is right." Question: "So it didn't increase the public's right in any way, did it?" Answer: "The public, I explained to you a few minutes ago -- we were under the impression it didn't want another liquor licensed premises ... The public only wanted one license."

On cross-examination Township Committeeman Frizzell (who, as already noted, voted with the Mayor for the amendatory ordinance and for issuance of the plenary retail distribution license to the Colligans) was asked: "... when this ordinance was passed it was to give Mr. Colligan the right to get this license in order for him to sell his groceries, wasn't it?" The Committeeman answered: "That is right." When asked, later: "Would you have voted to change this (the ordinance) to give the license to anybody else except Colligan", Committeeman Frizzell replied: "No." This Committeeman was then asked: "Was it your opinion that there was need and necessity for a distribution license at that particular spot?" He answered: "I think so." However, when asked: "There was no need for it if they could already do it; the only need was for the purpose of selling groceries; isn't that true?", Committeeman Frizzell replied: "Only they didn't have to build a new entrance and a new room to their building."

Committeeman Allen (who voted "No" on the amendatory ordinance and on the plenary retail distribution license applications of appellant and of the Colligans) testified: "Only one license in the Township -- that was my only reason going against Mr. Dorio or the Colligans... I felt because the people of East Amwell -- realized they wanted it that way."

It is well established that liquor licenses should be granted only when warranted by public convenience and necessity. (See Colonna v. Montclair, Bulletin 39, Item 8; Arlington Liquor Store v. Plainfield, Bulletin 283, Item 1; Gorcica v. Wallington, Bulletin 659, Item 10.) In any sound, fair and acceptable administration of the issuance of alcoholic beverage licenses public need is the hub of the wheel. If license issuances in the absence of public need were to be deemed affirmable on appeal the result would be the damaging and weakening and eventual collapse of our whole licensing structure. Obviously public convenience and necessity did not warrant issuance of the plenary retail distribution license herein appealed from. Obviously the license was granted, in the absence of any public need therefor, as an accommodation to the Colligans and to serve their private economic interest. The record shows very clearly that the Township Committee's actions, with respect to the ordinance and the applications, were tantamount to a determination that there was no public need for a plenary retail distribution license, as such, in the Township of East Amwell. The package store was operated pursuant to the "Broad Package Privilege" carried by the Colligans' plenary retail consumption license; indeed, that privilege carried by the consumption license permitted and permits operation of the entire consumption-licensed premises as an extensive package store. The only practical change in operation effected by issuance of the plenary retail distribution license was the addition of a cheese department in the package store. In effect, the license (within the sworn to purpose of its issuance and altogether unrelated to the licensing purposes of our Alcoholic Beverage Law) is a license to sell cheese in that room. The inescapable conclusion is that the license was improvidently and erroneously issued in abuse of the Township Committee's discretionary authority. (Cf. Murphy v. Washington Township and O'Neill, Bulletin 820, Item 12.) It will, therefore, be cancelled.

The appellant had not caused to be published the Notices of Application required by R. S. 33:1-25. Thus, the Township Committee could not lawfully have granted the license to appellant. (Cf. Rosania v. Readington, Bulletin 37, Item 3; Trotto v. Trenton, Bulletin 46, Item 11.) Furthermore, while witnesses for appellant testified that a plenary retail distribution license at his premises would be a convenience the testimony falls far short of demonstrating

any clear public need for a license there. (See Gorcica v. Wallington, supra.) The appellant has not sustained the burden of proof (Rule 6, State Regulations No. 15) and respondent Committee's denial of his application will be affirmed.

Accordingly, it is, on this 30th day of March, 1953,

ORDERED that the action of respondent Township Committee in issuing a plenary retail distribution license to William P. Colligan, John P. Colligan, Leonard Colligan and Charles Colligan for premises at the Ringoes Tavern, be and the same is hereby reversed and said license is hereby cancelled, effective immediately, and it is further

ORDERED that respondent Township Committee's action in denying the plenary retail distribution license application of appellant Michael Dorio be and the same is hereby affirmed, and that the appeal herein from said denial be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

4. APPELLATE DECISIONS - CAINE v. TRENTON.

PHILIP J. CAINE, trading as)
MIDDLE BAR & LIQUOR STORE,)
Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE)
CITY OF TRENTON,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Felcone & Felcone, Esqs., by Joseph J. Felcone, Esq., Attorneys)
for Appellant.)
Louis Josephson, Esq., by John A. Brieger, Esq., Attorney for)
Respondent.)

BY THE DIRECTOR:

This is an appeal from an order entered by respondent on February 2, 1953, whereby it suspended appellant's plenary retail consumption license for twenty days, effective February 9, 1953, at 2:00 a.m., after finding appellant guilty of (1) sale, service and delivery of an alcoholic beverage to a minor and permitting the consumption of such beverage by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20; and (2) allowing a person between the age of sixteen (16) to twenty-one (21) to frequent, loiter or remain in a room or rooms used or devoted to the sale, service or consumption of alcoholic beverages upon a licensed premises, in violation of Section 23 of Ordinance #41 of the City of Trenton, as amended and supplemented.

Upon the filing of this appeal an order was entered by me on February 4, 1953, whereby respondent's order of suspension was stayed until the entry of a further order herein.

Appellant contends that the action of respondent was erroneous in that:

"(a) The respondent failed to maintain the burden of proof.

"(b) The finding was contrary to the evidence.

"(c) The finding was arbitrary.

"(d) The finding was capricious."

Respondent, in its answer, denied the aforementioned allegations and alleged that its finding of guilt was supported by the evidence adduced at the trial.

On this appeal the matter was heard de novo under Rule 6 of State Regulations No. 15 solely upon evidence adduced herein.

It was stipulated that one of the five members of respondent Board of Commissioners had voted "not guilty" as to charge (1) but had concurred in the penalty imposed. It was also stipulated that a police car arrived at appellant's licensed premises at 4:02 p.m., December 27, 1952.

Wilmer ---, 19 years of age, and his adult sister testified on behalf of respondent. Wilmer testified that, some time after 2:00 p.m., on Saturday, December 27, 1952, he, his sister, and Willie Jones, a male companion (who is now in the armed forces) entered appellant's barroom where he (the minor) went to the bar and consumed a glass of beer which had been served to him by Dory Wright, one of appellant's bartenders; that, after consuming that glass of beer, he and "Willie" went to another tavern nearby but, shortly thereafter, returned to appellant's barroom where he (the minor) consumed another glass of beer which had been served to him by Wright. He further testified that he remained on appellant's licensed premises until after 4:00 p.m., at which time he was hit on the head by Jerry Fabiano, appellant's manager-bartender, during the course of an altercation and that, during that (second) visit to appellant's premises, he consumed whiskey, in the men's toilet, from a bottle supplied by "Willie."

The minor's adult sister also testified that, some time after 2:00 p.m., on the day in question, she and her brother had entered appellant's licensed premises with "Willie" and that, on that occasion, she had seen Wright serve her brother a glass of beer. She further testified that she went to the other licensed premises mentioned by her brother before he did and returned to appellant's premises after he had returned there and that, upon re-entering appellant's barroom, she saw her brother at the bar drinking a glass of beer. She also testified, on cross-examination, that she thought "it must have been around three o'clock" when she entered appellant's barroom for the second time that day, and that Jerry Fabiano was behind the bar when she saw her brother drinking a glass of beer on that occasion.

Dory Wright testified that, as is his usual custom, he tended bar at appellant's licensed premises from 7:00 a.m., until 3:30 p.m., on December 27, 1952, at which time (or possibly five minutes earlier) he was relieved by Fabiano and then left the premises. He denied seeing the minor or serving him any alcoholic beverage on that day.

Jerry Fabiano testified that he is appellant's manager-bartender; that, as such, he relieved Wright at approximately 3:30 p.m., on December 27, 1952; that he did not see the minor enter appellant's premises on that day; that he did not serve said minor any alcoholic

beverages; that, about ten or fifteen minutes after he went on duty, his attention was attracted by a commotion near the juke box; that there was an altercation between the minor and "Willie" which he (Fabiano) personally interrupted but that, when it flared up again, he told another employee to call the police, after which the minor lunged at him with a knife and he struck the minor on the head with a club.

A man who said that he entered appellant's barroom some time after 2:00 p.m., on the day in question, testified that he saw the minor enter said barroom with his sister and male companion approximately fifteen minutes after Fabiano went on duty; that the minor did not stop at the bar but proceeded to the juke box where he and his male companion became involved in a fight during which the minor brandished a knife and was struck by Fabiano. He admitted that he had not testified at the hearing below but testified that he had testified in the municipal court hearing following the minor's arrest.

It is clear that the minor was actually in appellant's barroom at some time before 4:00 p.m. on the day in question. The dispute is as to whether he was "allowed to frequent, loiter or remain" there and whether any alcoholic beverages were sold, served or delivered to him or he was allowed to consume the same upon the licensed premises. In this latter connection I shall disregard the testimony with respect to the minor's alleged consumption of whiskey in the men's toilet since there is evidence that it was done in a surreptitious manner and there is no evidence that anyone connected with appellant's licensed business had any knowledge thereof or reason to believe that it occurred. No reason appears why Wilmer and his sister should have given false testimony in this case. I believe their testimony.

Appeals to the Director from action of the local issuing authority are heard de novo and the burden of establishing that the action of such issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15; Santore v. West New York, Bulletin 958, Item 2; Laurence Harbor Amusement Corporation v. Madison, Bulletin 955, Item 1; Neu v. Irvington, Bulletin 923, Item 3. After carefully considering all of the evidence in this case I find that appellant has failed to carry that burden and that therefore the action of respondent should be affirmed.

Accordingly, it is, on this 31st day of March 1953,

ORDERED that the action of respondent be affirmed; that the order heretofore entered by me on February 4, 1953 be vacated at 2:00 a.m. April 8, 1953; and that the twenty-day suspension imposed by respondent, as aforesaid, be restored and reimposed against License C-8 issued to appellant for premises at 611-613 South Warren Street, Trenton, to commence at 2:00 a.m. April 8, 1953, and to terminate at 2:00 a.m. April 28, 1953.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION - AIDING AND ABETTING NON-LICENSEE (AN ALIEN) TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - ILLEGAL SITUATION NOT CORRECTED - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY TO LIFT SUSPENSION AFTER 45 DAYS, IF SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against)

LOTTIE STANISLAWSKI)
89-91 Elizabeth Avenue)
Elizabeth 1, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-221, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.)

Benny A. Dudek, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charges:

"1. In your application dated May 24, 1952, filed with the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual, partnership, corporation or association other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Bronislaw Stanislawski had such an interest in that he was co-owner with you of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From on or about March 10, 1934 until the present time, you knowingly aided and abetted Bronislaw Stanislawski to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R. S. 33:1-52."

Bronislaw Stanislawski, a Polish national, husband of defendant, filed an application for an employment permit to be employed on defendant's licensed premises. In the said application Bronislaw Stanislawski stated that he was a part owner of the licensed business operated in the name of defendant. During the course of an investigation to determine the true ownership of the liquor license and the business conducted thereunder, an ABC agent obtained representations which were reduced to writing and signed by the respective defendant and her husband. These statements were marked as exhibits in evidence in the instant case. In the statements given and signed by defendant (dated December 29, 1952 and January 23, 1953) she admitted that the license was originally purchased from funds earned by her husband as she had no money of her own; that the license was not in the name of both defendant and her husband because defendant understood that he could not qualify as a partner because of not being a citizen of the United States of America; that since 1933 he has worked on the licensed premises; that the profits realized from the business were used for the maintenance of the home and family; and that the business checking account is in

the joint names of defendant and her husband. The statements given and signed by defendant's husband (dated December 29, 1952 and January 23, 1953) corroborate in substance the statements made by defendant.

At the hearing, the defendant repudiated her prior statements and claimed that the licensed business was purchased with her personal funds; that her husband had no sense of responsibility; that she operated the tavern and that he merely helped her in the business without receiving compensation; that when she made the untrue statements to the ABC agents she did so because she was ashamed and did not want anyone to know he was unreliable.

Bronislaw Stanislawski, husband of defendant, contradicted his prior written statements and denied having any interest whatsoever in the defendant's license. He further testified that he was born in Poland and came to this country in 1914 but never became a citizen of the United States. Since he did not reside in Poland in 1921, when the Republic of Poland was established, he was not protected by the terms of the reciprocal treaty which formerly existed between the United States and Poland (see Bulletin 130, Item 5) and which has been recently terminated (see Bulletin 948, Item 1). Hence, he is not now and never was eligible to hold a retail liquor license in New Jersey. Re Kuchar, Bulletin 952, Item 4.

The testimony given by defendant and her husband at the within hearing in attempted repudiation of their prior statements falls far short of overcoming the probative force of the admissions made by the defendant and her husband at that time. I, therefore, find defendant guilty as charged.

In the absence of any proof to the contrary, it is assumed that the illegal situation which resulted in the institution of the charges herein continues to exist. Under the circumstances, the license will be suspended for the balance of the current licensing term. Leave is reserved to the defendant, or other proper person, to petition to have the suspension lifted upon proof of true ownership and operation of the license and business conducted thereunder. Since, however, the defendant merits a penalty of forty-five days for the violations of which she was found guilty, the suspension will not be lifted until a full forty-five days have elapsed from the effective date of the order herein. Re Mentine, Bulletin 774, Item 6; Re Prupis, Bulletin 794, Item 13; Re Cindrario, Bulletin 855, Item 9; Re Farmer's Bar & Grill, Bulletin 870, Item 5; Re Kuchar, supra.

Accordingly, it is, on this 31st day of March, 1953,

ORDERED that Plenary Retail Consumption License C-221, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Lottie Stanislawski for premises 89-91 Elizabeth Avenue, Elizabeth, be and the same is hereby suspended for the balance of the current licensing term, effective at 2:00 a.m. April 6, 1953; and it is further

ORDERED that, in the event a correction is effected, leave be given, as aforesaid, to make application to the State Director of the Division of Alcoholic Beverage Control to lift the suspension after a period of forty-five days have elapsed from the effective date of the suspension imposed herein.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL SUPPA)
175 Eighth Avenue)
Newark 4, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-883, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Agresti & Grasso, Esqs., by Vincent J. Agresti, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to charges alleging that (1) he sold, served and delivered alcoholic beverages to a minor and allowed, permitted and suffered the consumption of such alcoholic beverages by such minor upon his licensed premises, in violation of State Regulations No. 20; and (2) he sold alcoholic beverages at retail in their original containers for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that, at approximately 9:00 p.m., on Wednesday, March 4, 1953, three ABC agents entered defendant's licensed premises and took places at the bar where the defendant was acting as bartender. At approximately 10:45 a youth entered the premises in company with two adults, all of whom proceeded to the bar. When one of the older men asked the youth what he wished to drink the latter replied "beer," whereupon a round of drinks consisting of three glasses of beer was ordered and filled by defendant who placed one glass in front of each of the three male patrons. Each of the three male patrons consumed the drink which had been served to him, and the agents observed that several similar rounds of drinks were served and consumed.

Meanwhile the agents had noticed the defendant make several sales of alcoholic beverages in original containers for off-premises consumption after 10:00 p. m. At approximately 11:00 p.m. one of the agents asked the defendant for four cans of beer to take home. Pursuant to this order defendant obtained a paper bag from the end of the bar which he filled with four cans of Ballantine beer which he obtained from a cooler. He then handed the bag to the agent and charged him 75¢ for the beer. The agent immediately left the premises and met one of the other agents, who had left some time earlier, and both agents re-entered the licensed premises. The third agent, who had remained in the barroom, observed an unidentified male patron order four glasses of beer from defendant, pursuant to which order defendant placed one glass of beer in front of said unidentified male and one glass of beer in front of each of the three aforementioned male patrons, including the youth. After the other two ABC agents returned to the barroom, all three agents identified themselves to the licensee and to the patrons. Upon interrogating the youth they learned that he was 17 years of age and that his companions were his father and his uncle, respectively. The agents also seized the minor's partly consumed glass of beer.

State Regulations No. 38 prohibits the sale of alcoholic beverages in original containers for off-premises consumption after 10:00 p.m. on weekdays.

Defendant has a prior adjudicated record. His license was suspended by the local issuing authority for five days, effective June 7, 1948 for permitting a brawl upon his licensed premises. The minimum penalty for sale of alcoholic beverage to a 17-year-old minor is a fifteen-day suspension of the license. Re Cedar Bar of Bergen County Inc., Bulletin 942, Item 5. The minimum period of suspension for the "hours" violation (Charge 2) is also a fifteen-day suspension of the license. Re Kaiser, Bulletin 954, Item 7. However, in view of defendant's record of prior dissimilar violation occurring within five years I shall suspend his license for a total period of thirty-five days. Cf. Re DosSantos, Bulletin 928, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 6th day of April, 1953,

ORDERED that Plenary Retail Consumption License C-883, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Michael Suppa, 175 Eighth Avenue, Newark, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. April 13, 1953, and terminating at 2:00 a.m. May 13, 1953.

DOMINIC A. CAVICCHIA
Director.

7. STATE LICENSES - NEW APPLICATIONS FILED.

Cumberland Beverage Co.

E/S S. Delsea Drive, 350 feet S. of Elmer Road
Vineland, N. J.

Application filed April 13, 1953 for transfer of State Beverage Distributor's License SBD-57 from Maurice G. Warren, t/a Cumberland Beverage Co., 70 W. Landis Ave., Vineland, N. J.

Lee I. Gann and William S. Konecky

T/a International Brands
Rooms 515-516-517, 60 Park Place
Newark, N. J.

Application filed April 16, 1953 for transfer of Plenary Wholesale License from International Brands, Inc.

James Vetri

T/a James Vetri, Truckman
260 - 39th Street
Brooklyn, N. Y.

Application filed April 16, 1953 for Transportation License.

DOMINIC A. CAVICCHIA
Director.

8. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1952 to MARCH 31, 1953 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club Issued	Club Fees Paid	Limited Retail Distribution		Seasonal Retail Consumption		Number Suren-dered Expired	Number Licen-ses in Effect	Total Fees Paid	
	No. Issued	Fees Paid	No. Issued	Fees Paid			No. Issued	Fees Paid	No. Issued	Fees Paid				No. Issued
Atlantic	490	\$ 208,442.37	71	\$ 26,075.00	17	\$ 1,600.00					1	577	\$ 236,117.37	
Bergen	815	299,367.18	299	83,712.00	84	7,815.36	57	\$ 2,615.00	6	\$ 1,597.00	6	1255	395,106.54	
Burlington	186	72,525.00	33	8,687.00	36	5,150.00	1	25.00				256	86,387.00	
Camden	456	218,500.00	82	31,725.00	70	6,673.23			1	375.00	1	608	257,273.23	
Cape May	133	64,650.00	11	3,550.00	17	1,800.00						161	70,000.00	
Cumberland	81	34,450.00	13	3,600.00	30	4,031.23						124	42,081.23	
Essex	1374	763,292.54	349	205,058.30	104	14,297.39	32	1,600.00	1	750.00	2	1858	984,998.23	
Gloucester	197	33,600.00	13	2,750.00	15	1,442.05						135	37,792.05	
Hudson	1556	675,117.32	298	117,810.00	78	9,265.44	64	2,750.00			4	1992	804,942.76	
Hunterdon	79	25,250.00	7	2,162.50	6	700.00						92	28,112.50	
Mercer	425	257,550.00	51	20,850.00	53	7,448.35			1	107.50	1	529	285,955.85	
Middlesex	635	303,905.00	74	22,449.12	76	7,023.49	5	250.00				790	333,627.61	
Monmouth	549	277,445.00	118	39,894.65	32	3,840.55	11	460.00	28	11,626.51	31	707	333,266.71	
Morris	353	122,307.60	98	29,891.67	47	4,464.24	22	1,100.00	6	1,443.80	8	518	159,207.31	
Ocean	193	103,969.16	46	19,065.00	18	1,861.36						257	124,896.02	
Passaic	877	357,049.31	167	51,370.00	36	4,380.00	11	525.00				1091	413,324.31	
Salem	50	19,000.00	7	1,300.00	16	1,350.00			1	262.50	1	73	21,912.50	
Somerset	186	76,468.99	38	10,345.00	22	2,400.00						246	89,213.99	
Sussex	170	45,155.00	19	3,555.00	9	535.00	1	50.00	1	225.00	1	199	49,520.00	
Union	546	295,980.82	144	59,500.00	69	7,711.37	34	1,650.00				1	792	364,842.19
Warren	148	42,555.00	17	4,157.50	32	3,165.00			2	292.48	2	197	50,169.98	
Totals	9409	\$4,296,580.29	1955	\$747,507.74	867	\$96,954.56	238	\$11,025.00	47	\$16,679.79	59	12457	\$5,168,747.39	

DOMINIC A. CAVICCHIA
Director.

April 6, 1953.

9. DAYLIGHT SAVING TIME EFFECTIVE THROUGHOUT THE STATE FROM LAST SUNDAY IN APRIL UNTIL LAST SUNDAY IN SEPTEMBER.

April 20, 1953.

Under New Jersey Law (Revised Statutes, 1:1-2.3) the standard of time in the State is Eastern Standard Time except from the last Sunday in April until the last Sunday in September, in each year, when the standard of time is Eastern Daylight Saving Time which is one hour in advance of Eastern Standard Time.

The Law is State-wide in its application and is binding on all municipalities.

This year's Eastern Standard Time period is almost over. From midnight Saturday, April 25th, and throughout the five-month Daylight Saving period, the time will be one hour in advance of the present Eastern Standard Time. To illustrate: As of midnight Saturday, April 25th, clocks are to be turned ahead one hour. If the regulations of "Municipality X" require closing between the hours of 2:00 a.m. and 7:00 a.m., that municipality's licensed premises must be closed when the changed clock time reaches 2:00 a.m. and remain closed until the changed clock time reaches 7:00 a.m.

In some other States the change to Daylight Saving Time will take place at 2:00 a.m. on the morning of Sunday, April 26th. Similarly, in some New Jersey municipalities, there are ordinances or resolutions or executive proclamations which indicate that the change to Daylight Saving Time is to take place, in the particular municipality, at 2:00 a.m. on the morning of Sunday, April 26th. But regardless of such ordinances, resolutions or proclamations, the change to Daylight Saving Time will be legally effective in all New Jersey municipalities not at 2:00 a.m. on the morning of Sunday, April 26th, but at midnight Saturday, April 25th.

Dominic A. Cavicchia
Dominic A. Cavicchia
Director.