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

BULLETIN 938 JUNE 12, 1952.

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ITEM

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

BULLETIN 938 JUNE 12, 1952.

1. NEW LEGISLATION - ISSUANCE OF NEW LIMITED RETAIL DISTRIBUTION LICENSE PROHIBITED.

Assembly Bill No. 513 was approved by the Governor on May 23, 1952 and thereupon became Chapter 284 of the Laws of 1952. The Act, effective immediately, reads as follows:

"AN ACT concerning certain alcoholic beverages licenses, and supplementing chapter one of Title 33 of the Revised Statutes.

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

"1. For the purposes of this act any license for a new license term, which is issued to replace a license which expired on the last day of the license term which immediately preceded the commencement of said new license term or which is issued to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new license term, shall be deemed to be a renewal of the expired or expiring license; provided, that said license is of the same class and type as the expired or expiring license, covers the same licensed premises, is issued to the holder of the expired or expiring license and is issued pursuant to an application therefor which shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses.

"2. No new limited retail distribution license shall be issued in any municipality after this act becomes effective, except as provided in section four of this act.

"3. Nothing in this act shall prevent the renewal of limited retail distribution licenses existing on the effective date of this act, or the transfer of such licenses or the renewal of licenses so transferred.

"4. Nothing in this act shall be deemed to prevent the issuance of a new limited retail distribution license to a person who files application therefor within sixty days following the expiration of the license renewal period if the State director shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control.

"5. This act shall take effect immediately."

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EDWARD J. DORTON
Acting Director.

Dated: June 4, 1952.

2. COURT DECISIONS - STATE v. REID ET ALS. - CONVICTION UNDER ORDINANCE FOR SELLING WITHOUT LICENSE NO BAR TO SUBSEQUENT INDICTMENT UNDER ALCOHOLIC BEVERAGE LAW FOR SAME OFFENSE.

ESSEX COUNTY COURT
Law Division (Criminal)

STATE OF NEW JERSEY,
Plaintiff,
-vs-
WILLIAM REID, EMMA NEWBY, and VIOLET McGUIRE,
Defendants

On Motion to Dismiss Indictments

(19 N. J. Super. 32)

Naughright, J. C. C. William Reid, Emma Newby and Violet McGuire were separately indicted by the Essex County Grand Jury for selling "certain alcoholic beverages * * * without having first obtained a license for that purpose from the Municipal Board of Alcoholic Beverage Control of the City of Orange", contrary to R. S. 33:1-50.

Defendants' motions to dismiss these indictments present the question of the legal sufficiency of their pleas of double jeopardy. These pleas are the result of convictions of the three above named defendants in the Municipal Court of the City of Orange for selling alcoholic beverages without a license, in violation of section 16 of a city ordinance regulating the sale and distribution of such beverages.

It is the contention of defendants that by reason of their having been convicted of the offense for which they now stand indicted, in the municipal court on the self-same facts and circumstances, the present indictments place them in second jeopardy.

Their pleas of double jeopardy rest, of course, upon Art. I, par. 11 of the New Jersey Constitution (1947) and the somewhat broader common law doctrine that no one may be twice put in jeopardy for the same offense.

Reliance is placed by defendants, in support of their motions, upon the case of State v. Labato, 7 N. J. 137 (1951). In the Labato case defendant was convicted in the police court for a violation of the Disorderly Persons Act, R. S. 2:202-16, for possession of number slips pertaining to a lottery. Thereafter he was indicted under the Crimes Act, R. S. 2:147-3, for possession of these self-same number slips. The County Court held that defendant's prior conviction for violation of the Disorderly Persons Act upon complaint filed in the police court, based upon the identical facts, constituted prior jeopardy and dismissed the indictment. On appeal, the Supreme Court affirmed.

It should be observed that in the Labato case the same authority, namely, the State, sought to punish twice forthe same unlawful act of possession of number slips -- once through the Disorderly Persons Act and again through the Crimes Act. That the holding of the court was confined to the impropriety of such action is underscored by the following statement of the court, at page 145:

> "'The same act may not be twice punished by the same sovereignty, merely because it violates two laws.'***It is not necessarily a second jeopardy for the same act that brings the maxim into operation, but rather a second jeopardy for the same offense."

And again at page 150:

> "This statute and the Crimes Act deal merely with different degrees of the same offense. The unlawful possession cannot be split into two separate and distinct offenses, cumulatively punishable."

It is thus quite obvious that the court in the Labato case was not faced with (and consequently did not purport to pass upon) the situation, represented by the case sub judice, of a conviction in a municipal court for violation of a municipal ordinance which prohibits an act which is also an offense under the general criminal laws of the State.

The question in the case at hand is not whether, as in the Labato case, the same authority may subdivide an offense and subject the offender to dual punishment, but whether the same act may constitute two separate and distinct offenses -- one against the State and one against the municipal corporation -- so that both may punish without violating any constitutional principle.

In Howe v. Treasurer of Plainfield, 37 N.J.L. 145 (Sup. Ct. 1874) this question was passed upon by the court. There, defendant was convicted in the Magistrate's Court of the City of Plainfield for violation of an ordinance of the city declaring that no person shall in any manner sell or dispose of spiritous liquor within the city limits unless licensed to do so by the common council.

By the charter of Plainfield the common council was given the exclusive right to regulate or prohibit the sale of spiritous liquors within the city. It was further provided in the charter that no person shall in any manner sell, etc., spiritous liquors unless licensed to do so by the common council.

From his conviction for violation of said ordinance defendant appealed to the Supreme Court. One of the questions presented by the appeal, among others, was whether the municipality could lawfully punish as an offense against its laws, an act which was an indictable offense by state law. On this point, the Supreme Court made the following significant remarks:

> "Judge Cooley, in his Treatise on Constitutional Limitations, p. 199, advances the doctrine that the same act may constitute an offence, both against the state and the municipal corporation, and that both may punish without violation of any constitutional principle; and I think he is abundantly supported, in principle as well as authority.*** I do not think the test, as Judge Dillon, in his work on Municipal Corporations, 361, inclines to hold, is whether the act prohibited by ordinance is embraced in and made indictable by the criminal code of the state, but rather whether it may not be an act not only against the peace and dignity of the state, but also subversive of, or dangerous to the peace, good order, safety or health of the municipality. If the prohibited act may have this double aspect and prove injurious in its consequences to both jurisdictions, I do not see why it may not be prohibited and punished as well by municipal ordinance as by state law. The offence against the municipality is a different one from that against the state, though both offences proceed from the same act."

This principle of dual sovereignty, laid down in the Howe case, was followed in Hunter v. Teaneck Township, 128 N.J.L. 164 (Sup. Ct. 1942).

There the court said:

"Thus even if the same act (having and keeping a purposefully designed gambling device) may constitute an offense against the state, as claimed for prosecutors, and an offense against the township, we think that the act falls within that category which permits both the state and municipality to punish for the violation thereof without violation of any constitutional principle. Cf. Howe v. Treasurer of Plainfield, 37 N.J.L. 145."

Outside of New Jersey, the clear weight of authority is in line with our rule that where both an ordinance and a state statute prohibit certain acts, a conviction of an offense under either does not bar a prosecution under the other. The courts likewise proceed on the theory that while the same act may be a basis of each prosecution, yet the offenses are separate and distinct and committed against two different laws. See 15 Am. Jur., sec. 398; 22 C.J.S., sec. 296; 8 R.C.L. 150. See also Theisen v. McDavid, 34 Fla. 440, 16 So. 321 (Sup. Ct. 1894); Oats v. State, 2 So. 2d 801 (Sup. Ct. Miss. 1941); State v. Tucker, 137 Wash. 162, 242 P. 363 (Sup. Ct. 1926); on rehearing, affirmed, 246 P. 758 (1926); Town of VanBuren v. Wells, 53 Ark. 368, 14 S. W. 38 (Sup. Ct. 1890); State v. Cavett, 171 Minn. 505, 214 N. W. 479 (Sup. Ct. 1927); Ex parte Sloan, 47 Nev. 109, 217 P. 233 (Sup. Ct. 1923); Chicago v. Union Ice Cream Mfg. Co., 252 Ill. 311, 96 N.E. 872 (Sup. Ct. 1911); Claypool v. McCauley, 131 Or. 371, 283 P. 751 (Sup. Ct. 1929); McInerney v. City of Denver, 29 P. 516 (Sup. Ct. Colo. 1892).

In Ex parte Sloan, supra, the court said that an ordinance penalizing the sale, manufacture, etc., of intoxicating beverages, also prohibited by statute, was not within the constitutional inhibition against double jeopardy because conditions ordinarily prevailing in populous cities constitute it a distinct offense against the municipality. To substantially the same effect is Chicago v. Union Ice Cream Mfg. Co., supra.

This view gives recognition to the fact that matters such as gaming or selling of intoxicating beverages "may in its broad social aspects be of state concern but in its particular complications or other aspects, varying with locality, also of peculiar municipal concern." See McQuillin, Municipal Corporations, sec. 23.01.

While the wisdom of a rule that permits a state to punish once directly and once through an agency or political subdivision of the state may be open to question, it should be pointed out that the courts proceed upon the theory that "within the contemplation of the constitutional inhibition against dual jeopardy for the same offense, our municipal governments are regarded as separate and distinct bodies politic from the government of the state; so that the same act may be a violation of, and consequently a crime against, the laws of both governments." See Theisen v. McDavid, supra.

The authority of the City of Orange to pass ordinances regulating the sale and distribution of alcoholic beverages and prohibiting the sale thereof without a license, has been conferred by the Alcoholic Beverage Law, R. S. 33:1-1 et seq., and more particularly R. S. 33:1-19, R.S. 33:1-24, and R.S. 33:1-40. The fact that the State has made it a crime to sell alcoholic beverages without a license does not render the city ordinance void as repugnant or in conflict with the state law. The city has power to regulate the sale of alcoholic beverages notwithstanding. Orange v. Cercere, 132 N.J.L.238 (Sup. Ct. 1944).

It has been established that the Legislature may constitutionally delegate to municipalities authority to make police regulations on the liquor traffic. See case of Riley v. Trenton, 51 N.J.L. 498 (Sup. Ct. 1889).

The defendants have not been placed in double jeopardy by their convictions in the municipal court under the city ordinance.

One of the defendants, William Reid, also contends that the indictment fails to state sufficient facts to constitute a crime against the State of New Jersey. This is wholly without merit.

The motions to dismiss the indictments are accordingly denied.

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3. APPELLATE DECISIONS - HAEFLIGER v. ALLAMUCHY TOWNSHIP.

EDWARD HAEFLIGER, trading as VILLAGE INN,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ALLAMUCHY,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - -

Francis J. Schindelar, Esq., Attorney for Appellant.
Claude E. Cook, Esq., by Frederick G. Sundheim, Esq., Attorney for Respondent.
Robert B. Meyner, Esq., Attorney for Objectors.

This is an appeal from respondent's denial of appellant's application for transfer of his plenary retail consumption license from premises on Main Street to premises to be completed at a location on Warren County Highway, Township of Allamuchy.

The appellant has been conducting his licensed business since July 1944 at its present location in a section of the township known as the Village of Allamuchy. As was pointed out in a prior appeal (Haefliger v. Allamuchy, Bulletin 880, Item 2), this location, "together with a general store, post office and public garage, virtually comprises the 'business center' of this rural community". The premises in the course of construction on Warren County Highway are located in a sparsely settled section of the township and are 1.4 miles from the premises presently licensed.

The prior appeal was remanded to respondent (June 13, 1950), with direction that it be reconsidered and that "the issue of public necessity and convenience, as applied to the respective locations and facilities of the existing and proposed premises, be determined by each member of respondent Committee prior to voting upon such reconsideration". Haefliger v. Allamuchy, supra. In accordance with such direction, the Township Committee reconsidered the application and again denied the application. Appellant took no further appeal from that action. Thereafter appellant obtained renewals of his license for his present premises for the 1950-51 period and for the 1951-52 period. Late in June 1951 appellant started the erection of a building on Warren County Highway. After his license was renewed for the present premises for the 1951-52 period, appellant again applied to the Township Committee for a transfer of license from the present location to the proposed new

location on Warren County Highway. The members of the Township Committee inspected the building at the proposed new location in December 1951, and found that it had not yet been completed. Appellant then withdrew that application and substituted therefor an application for transfer of his license to the Warren County Highway location but indicated therein that the building was not yet completed. After a written objection to the transfer had been filed, a public hearing was held on the last mentioned application on January 10, 1952.

Substantially, appellant contends herein that (1) public necessity and convenience would better be served if the licensed business were located in the proposed new location on the Highway, and (2) the Committeemen who voted against the proposed transfer were improperly motivated.

At the hearing held on January 10, 1952, one person spoke in favor of the proposed transfer, and three people spoke in opposition. In addition, petitions containing approximately forty names were filed in opposition to the proposed transfer. At a meeting held January 19, 1952, the Township Committee, by a vote of two-to-one, denied the application for transfer. Committeeman Gibbs (Chairman) and Committeeman Johnson voted to deny the transfer, while Committeeman Olenick voted to grant it. At the hearing herein, Committeeman Olenick testified that he voted to grant solely because he had "....heard that the man has got to move and that's the only reason why I was in favor of it". He admitted that he thought that there was a necessity for a license "within the Village of Allamuchy" or, if not there, then in the area near the Village.

It may be noted in passing that Committeeman Olenick was one of the members who voted to deny the transfer in 1950 and was one of the two Committeemen who testified at the hearing of the former appeal (the other member having since died and having been replaced by Committeeman Johnson).

At the hearing herein Committeeman Gibbs and Committeeman Johnson testified in effect that, in arriving at their decision to vote in favor of denial, they had been guided by the objections raised by the petitions and views expressed at the January 10, 1952 public hearing and by their own personal knowledge, and both expressed the view that public necessity and convenience would best be served by keeping the license in the Village of Allamuchy. It was pointed out by both that the Village of Allamuchy is the center of population and activity in that part of the township, and that the other two licensed premises are in another part of the township "over the mountain" eleven miles away by road. They also testified that there were ample parking facilities at the present location. In addition, each testified that in his opinion no license was needed at the proposed new location because there are few houses near that location. Committeeman Johnson expressed the opinion that taverns in nearby Hackettstown could amply serve that area.

At the hearing herein appellant produced numerous witnesses, some from the Village of Allamuchy, some from the Township outside the Village, and some from other communities. Most of them testified that the building in which the licensed business is presently located is old and in need of repair and that, from what they could see of the unfinished building at the proposed new location, the accommodations and facilities to be there provided would be a distinct improvement over those at the present location. Appellant's witnesses also alleged that there was a lack of private parking facilities at the present location and an abundance of "available" private parking space at the proposed new location. Some of appellant's witnesses stated that the proposed new location was nearer and, thus, more convenient to their respective homes than the present location, while others stated that, since they would travel by automobile to either location, they really had no preference of location.

I have examined the voluminous testimony as to alleged improper motivation. There is a complete absence of any evidence that Committeeman Gibbs was improperly motivated in reaching his decision. While it is true that Committeeman Johnson is employed by Mr. Ryan (one of the objectors), he testified that his employer had never spoken to him about the case. There was no valid reason why Committeeman Johnson should have disqualified himself (in which event the application could not have been granted because of a tied vote), and there is no evidence that Committeeman Johnson was improperly motivated in reaching his decision. There is testimony in the case that Mr. Ryan attempted to buy the building being erected on Warren County Highway but that he and appellant were unable to agree upon a price. There is also evidence that appellant is being threatened by eviction from his present licensed premises. However, in my opinion, this evidence is immaterial because there is nothing to show that Mr. Ryan influenced the vote of Committeeman Johnson and appellant remains in possession of his old premises.

"The transfer of a liquor license is not a right inherent in the license but is, rather, a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. When the transfer is denied on reasonable grounds, such action will be affirmed. Drucker v. Trenton, Bulletin 474, Item 9." Minsky v. Woodbridge, Bulletin 897, Item 3.

The question as to whether or not a license should be transferred to a particular location is a matter within the sound discretion of the issuing authority. The burden of showing that the issuing authority abused its discretion rests with appellant. Minsky v. Woodbridge, supra; Segal et al. v. Clifton et al., Bulletin 732, Item 5.

On the record before me, the two members of the issuing authority who voted to deny the application for transfer appear to have based their decisions on their honest beliefs that public necessity and convenience would best be served by denying the application to transfer the license to the proposed new location, situated as it is, 1.4 miles outside the center of the Village of Allamuchy.

After considering all of the evidence, I cannot find that the action of the majority of the members of the respondent issuing authority in denying the application for transfer was arbitrary or unreasonable, or constituted an abuse of discretion warranting a reversal of their action.

The action of the respondent in denying the application will, therefore, be affirmed.

Accordingly, it is, on this 26th day of May, 1952,

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

EDWARD J. DORTON
Acting Director.

4. APPELLATE DECISIONS - UNION COUNTY RETAIL LIQUOR STORES ASSOCIATION v. ELIZABETH AND HIGGINS.

UNION COUNTY RETAIL LIQUOR STORES ASSOCIATION, Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ELIZABETH, and JAMES W. HIGGINS and BERNARD J. HIGGINS, t/a HIGGINS LIQUOR STORE, Respondents.	ON APPEAL CONCLUSIONS AND ORDER

Julius R. Pollatschek, Esq., Attorney for Appellant.
Louis P. Longobardi, Esq., Attorney for Respondent Municipal Board.
John L. McGuire, Esq., Attorney for Respondents Higgins.

This is an appeal from the action of respondent Municipal Board whereby it granted an application filed by respondents James W. Higgins and Bernard J. Higgins for a plenary retail distribution license for premises at 1172 Spring Street, Elizabeth.

Appellant alleges in substance that the action of respondent Board was erroneous because (1) an ordinance adopted by the City Council of Elizabeth prohibits the issuance of any additional plenary retail distribution license; (2) public convenience is presently adequately served by existing licenses in the vicinity; (3) the establishment of a liquor outlet at the premises will create a traffic hazard, and (4) the premises are unsuitable.

As to (1): No violation of the State Limitation Law (P.L. 1947, ch. 94) is involved because the number of plenary retail distribution licenses issued in Elizabeth is less than the number permitted by said law. Appellant argues, however, that the application should have been denied because of the provisions of Section 3 of an ordinance, adopted by the City Council on March 5, 1952, which reads as follows:

> "Section 3. The total number of all types of licenses issued and outstanding in the City of Elizabeth at the same time shall not exceed the number limited by the Laws of the State of New Jersey (with exceptions referring to renewals and transfer of existing licenses)."

As indicated above, the number of plenary retail distribution licenses issued in Elizabeth does not exceed the number of such licenses limited by the Laws of the State of New Jersey. I cannot agree with appellant's argument that the ordinance prohibits the issuance of any new license of any type so long as the total number of existing licenses of all types exceeds the total permissible number of licenses of all types. In the first place, the State Limitation Law contains no such provision but sets up separate standards for the permissible number of consumption and distribution licenses. Moreover, Commissioner Burnett has held that a local regulation attempting to limit the total number of licenses without regard to type or class is invalid. Re Somerville, Bulletin 110, Item 6; Brost v. East Amwell, Bulletin 304, Item 1. The use of the word "all" in Section 3 was, perhaps, unfortunate, but, as is said in Bouvier's Law Dictionary, the word "all" is frequently used in the sense of "each" or "every one" (citing cases). Such a construction of the word makes the ordinance valid and consonant with the provisions of the State Law. In my opinion, ground (1) is without merit.

As to (2): Appellant introduced evidence indicating that, in addition to the twenty-nine plenary retail distribution licenses in Elizabeth, there are twenty-seven plenary retail consumption licenses which have the "broad package privilege". However, it also appears that the nearest licensed premises having such a privilege are one and one-half miles from Higgins' premises and that there are no licensed premises of any type within fifteen hundred feet of said premises. Respondent James W. Higgins testified that three large housing developments have recently been erected near the licensed premises in question. At the hearing herein fifty persons indicated that they favored the issuance of the license in question, and only one person opposed the issuance thereof.

The question as to the need for additional licensed premises must be decided primarily in the sound discretion of the issuing authority. On appeal, the burden of proof rests with appellant to show that the action of the issuing authority constituted an abuse of discretion. Under the circumstances, appellant has failed to sustain the burden of proof necessary to establish an abuse of discretion.

As to (3): The proof shows that the Higgins' premises are not located directly upon State Highway No. 25, but upon the "service road" which is a marginal road on the south side of said Highway. There appears to be no reason why the existence of licensed premises on this marginal road should create a traffic hazard.

As to (4): The premises were in existence when the application for the license was filed. Hence, the case is not within Rule 1 of State Regulations No. 2 which sets forth the procedure for a building not yet constructed. Photographs introduced at the hearing below indicated that, at that time, the only enclosed portion of the building contained approximately four hundred square feet which, conceivably, might be deemed too small for the conduct of the licensed business and, hence, unsuitable. If this were all, I would be inclined to remand the case to respondent Board for an inspection of the premises in accordance with the provisions of R. S. 33:1-24. However, at the hearing herein it appeared that, since the hearing below, the front portion of the building has been fully enclosed and a new store-front installed. The entire building is substantially constructed, is neat in appearance, and is now at least forty feet in depth by twenty feet in width. Under the circumstances, it would be a meaningless gesture to remand the case. The evidence satisfies me that the premises are now suitable.

For the reasons aforesaid, the action of respondent Board will be affirmed.

Accordingly, it is, on this 2nd day of June, 1952,

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

EDWARD J. DORTON
Acting Director.

5.

ACTIVITY REPORT FOR MAY 1952

ARRESTS:

Total number of persons arrested - 29
- Licensees and employees - - - - - - - - - 6
- Bootleggers - - - - - - - - - - - - - - - - - - 23

SEIZURES:

- Motor vehicles - cars - 2
- - trucks - 2
- Stills - over 50 gallons - 2
- - 50 gallons or under - 1
- Alcohol - gallons - 160.00
- Mash - gallons - 28,198.23
- Distilled alcoholic beverages - gallons - 27.79
- Wine - gallons - 2.59
- Brewed malt alcoholic beverages - gallons - 29.07

RETAIL LICENSEES:

- Premises inspected - 975
- Premises where alcoholic beverages were gauged - 1,025
- Bottles gauged - 17,418
- Premises where violations were found - 169
- Violations found - 207
  - Type of violations found:
    - Unqualified employees - - - - - - - - - - 55
    - Disposal permit necessary - - - - - - - - 5
    - Prohibited signs - - - - - - - - - - - - 3
    - Reg. #38 sign not posted - - - - - - - - 2
    - Other violations - - - - - - - - - - - - 142

STATE LICENSEES:

- Premises inspected - 21
- License applications investigated - 14

COMPLAINTS:

- Complaints assigned for investigation - 330
- Investigations completed - 417
- Investigations pending - 86

LABORATORY:

- Analyses made - 110
- Refills (from licensed premises) - bottles - 6
- Bottles from unlicensed premises - 21

IDENTIFICATION BUREAU:

- Criminal fingerprint identifications made - 22
- Persons fingerprinted for non-criminal purposes - 242
- Identification contacts made with other enforcement agencies - - - - - - - - - - - - - - - - - - - 175
- Motor vehicle identifications via N. J. State Police Teletype - - - - - - - - - - - - - - - - - - - 4

DISCIPLINARY PROCEEDINGS:

- Cases transmitted to municipalities - 11
  - Violations involved:
    - Sale during prohibited hours - - - - - - - - 6
    - Sale to minors - - - - - - - - - - - - - - - 3
    - Permitting hostesses on premises - - - - - - 1
    - Sale on credit contrary to municipal regulation - - - - - - - - - - 1
- Cases instituted at Division - 7
  - Violations involved:
    - Possessing illicit liquor - - - - - - - - - 3
    - Sale to minors - - - - - - - - - - - - - - - 2
    - Failure to file change in license application - - - - - - 1
    - Fraud and front - - - - - - - - - - - - - - 1
    - Sale during prohibited hours - - - - - - - 1
- Cases brought by municipalities on own initiative and reported to Division - - - - - - - - - - - - 6
  - Violations involved:
    - Sale during prohibited hours - - - - - - - - 3
    - Sale to minors - - - - - - - - - - - - - - - 1
    - Employing minor bartender - - - - - - - - - 1
    - Permitting bookmaking on premises - - - - 1
    - Permitting brawl on premises - - - - - - 1

CANCELLATION PROCEEDINGS instituted at Division - 1
- Violation involved: Club licensee ceased to be bona fide club.

HEARINGS HELD AT DIVISION:

Total number of hearings held - 27
- Appeals - 2
- Disciplinary proceedings - - - - - - - - - - - 14
- Eligibility - - - - - - - - - - - - - - - - - - 11

PERMITS ISSUED:

Total number of permits issued - 900
- Employment - - - - - - - - - - - - - - - - - - 193
- Solicitors' - - - - - - - - - - - - - - - - - - 77
- Disposal of alcoholic beverages - - - - - - - 123
- Social affairs - - - - - - - - - - - - - - - 380
- Special wine - - - - - - - - - - - - - - - - 127

EDWARD J. DORTON
Acting Director.

Dated: June 2, 1952.

6. DISCIPLINARY PROCEEDINGS - FAILURE TO NOTIFY ISSUING AUTHORITY OF CHANGE OF FACTS IN APPLICATION - PERMITTING NON-LICENSEES TO EXERCISE PRIVILEGE OF LICENSE - UNLAWFUL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

GEORGE SIMON
T/a FARMER'S INN,
at Barbertown, Kingwood Township
PO Frenchtown, RD 1, New Jersey,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Kingwood.

George Simon, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded non vult to the following charges:

"1. You failed to file with the Kingwood Township Committee, within 10 days after the occurrence thereof, written notice of changes in facts set forth in answer to Questions 30 and 31 of your license application dated May 15, 1951, upon which you obtained your current plenary retail consumption license, such changes being that on or about October 8, 1951 you entered into an agreement with Steven Simon and Belva Simon whereby they acquired an interest in your licensed business as real and beneficial part owners thereof and were permitted to retain all the profits from the business after payment to you of a fixed weekly fee; your failure to file such notice being in violation of R. S. 33:1-34.

"2. From on or about October 8, 1951 to the present time, you knowingly aided and abetted Steven Simon and Belva Simon to exercise, contrary to R. S. 33:1-26, the rights and privileges of your plenary retail consumption license; thereby yourself violating R. S. 33:1-52."

The file discloses that in October 1951 the licensee made an arrangement with his said son whereby the son and the son's wife, Belva, were to operate the licensed business and retain all profits derived therefrom after paying the licensee $67.50 per week. An inventory of the stock of alcoholic beverages was taken and, according to the statements in the file, Steven paid to the licensee one-half of the value of said inventory, it being understood that, when the licensee so desired, the business would be returned to him and the money repaid.

At the hearing held for the purpose of ascertaining whether the unlawful situation had been corrected, the licensee and his wife, Angelina, testified that the facts as above related were true except that both denied that Steven paid any money to the licensee for the inventory or any portion thereof. Both contended that they had taken their son Steven and his wife (Belva) into the business because of Angelina's illness and because Steven and his wife and their children had no place to live and no means of support.

As to the present situation, both the licensee and his wife testified that Steven and Belva have turned the licensed business back to the licensee and are not now connected with the business in any capacity.

From the evidence produced at the hearing, I am satisfied that the unlawful situation has been corrected.

Defendant has no prior adjudicated record. Under the circumstances, I shall suspend the license for a period of twenty days. Re Calandriello, Bulletin 934, Item 9.

Accordingly, it is, on this 23rd day of May, 1952,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Kingwood to George Simon, t/a Farmer's Inn, for premises at Barbertown, Kingwood Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. June 3, 1952, and terminating at 2:00 a.m. June 23, 1952.

EDWARD J. DORTON
Acting Director.

7. DONATIONS - CONTRIBUTION BOXES IN LIQUOR ESTABLISHMENTS TO RAISE MONEY FOR IMPROVING FISHING IN COUNTY PARK - APPROVED.

June 3, 1952

The Sporting Goods Dealers' Association of New Jersey
c/o Edward Carson, Hudson County Trustee
Union City, N. J.

Gentlemen:

In your letter of May 31st you say that your association, through its 20 members in Hudson County, is initiating a campaign to help the county authorities improve fishing conditions in the county by raising a fund to clean out and improve the lake in Hudson County Park.

You ask whether, as part of these fund-raising activities, you may place, in local taverns and barrooms, a coin-container with an appeal for voluntary contributions attached thereto. I take it that such containers will be sealed.

I am glad herewith to give permission for installation of these containers at the liquor places in question, and I extend my heartiest wishes for a successful fund-raising campaign and for the establishment of a piscatorial paradise at the lake for Izaak Waltons of all ages.

Very truly yours,
EDWARD J. DORTON
Acting Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against HARRY SIRVENT T/a LA POLOMA Bloomfield Ave., Route 6 P.O. Box 367, Mountain Lakes, N.J., Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Mountain Lakes.	CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to a minor at his licensed premises, and permitted the consumption thereof by said minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on March 28, 1952, a bartender employed by defendant served two or three glasses of whiskey and ginger ale to Helen ---, nineteen years of age.

Defendant has a previous adjudicated record. Effective November 14, 1945, defendant's license was suspended for a period of ten days after entering a plea of non vult to a charge alleging sale and service of alcoholic beverages to minors. Re Sirvent, Bulletin 684, Item 9.

The confessive plea was not entered in these proceedings until the day of the hearing. Under these circumstances, the remission usually granted in cases where the confessive plea is received sufficiently in advance of the hearing is not allowed. Re Yoches, Bulletin 855, Item 3. In this case defendant withheld the entry of a confessive plea until after the trial of a companion case had been held. There will be no remission for the plea entered herein.

The previous violation hereinabove referred to was similar to the violation set forth in the present charge. Ordinarily this would warrant a minimum suspension of twenty days. However, I shall consider the fact that more than five years have elapsed between these similar violations. Cf. Re Smith, Bulletin 929, Item 2; Re DeVita, Bulletin 729, Item 7. I shall, therefore, suspend defendant's license for a period of fifteen days.

Accordingly, it is, on this 28th day of May, 1952,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Mountain Lakes to Harry Sirvent, t/a La Poloma, for premises on Bloomfield Avenue, Route #6, Mountain Lakes, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. June 9, 1952, and terminating at 3:00 a.m. June 24, 1952.

EDWARD J. DORTON
Acting Director.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
JOHN & ELIZABETH SHINKUNAS 223 White Horse Pike Barrington, N.J.,	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Barrington.	)

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John & Elizabeth Shinkunas, Defendant-licensees, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

Defendants pleaded guilty to a charge alleging that they possessed on their licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulations No. 20.

On April 24, 1952, an ABC agent, in the course of a routine inspection of defendants' licensed premises, seized two 4/5 quart bottles labeled "Imperial Hiram Walker's Blended Whiskey 86 Proof" when his field tests disclosed a variance between the labels thereon and the contents thereof. Subsequent analysis by the Division chemist disclosed that the contents of the seized bottles were not genuine as labeled. John Shinkunas denied any knowledge of the discrepancies and stated that his wife, Elizabeth, the other defendant seldom tended bar.

Defendants have no previous adjudicated record. Under the circumstances I shall suspend the license for fifteen days, less five days for the plea entered herein, leaving a net suspension of ten days. Re Rustic Cabin Inc., Bulletin 912, Item 13.

Accordingly, it is, on this 2nd day of June, 1952,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Barrington to John & Elizabeth Shinkunas, 223 White Horse Pike, Barrington, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 a.m. June 9, 1952, and terminating at 1:00 a.m. June 19, 1952.

EDWARD J. DORTON
Acting Director.

10. DISQUALIFICATION - APPLICATION TO LIFT - FACTS REEXAMINED - APPLICATION GRANTED.

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

ON HEARING CONCLUSIONS AND ORDER

Case No. 883.

Harry L. Towe, Esq., Attorney for Petitioner.

Petitioner herein was granted a rehearing upon the filing of a new petition to have his statutory disqualification removed in order that he might be eligible to be associated with the alcoholic beverage industry.

At the hearing held upon the first petition filed herein it appeared that in 1919 petitioner had been convicted in the criminal courts of another state of robbery (a crime involving moral turpitude) and, as a result thereof, was sentenced to prison and released from prison in April 1923. His prior petition was denied because he had falsely denied in an application dated May 27, 1950, that he had ever been convicted of any crime. Re Case No. 883, Bulletin 894, Item 6.

From the evidence given at the original hearing and at the rehearing herein, it appears that petitioner was born in Poland on September 15, 1899, and that he became a citizen of the United States in 1929. He testified that he attended school for a few years in the land of his birth, and that he also attended classes while confined in prison. From the evidence it appears that petitioner filed his first application for a retail liquor license in 1936, and he admits that in that application, and in every application filed by him thereafter, he denied that he had ever been convicted of a crime. His explanation for failing to disclose his conviction in his original application was that he had then been told by a Municipal Clerk that it was not necessary for him to reveal the conviction because he was a youth at the time he was convicted and because he had revealed his conviction in his naturalization proceedings. Petitioner also testified that the information set forth in subsequent applications was copied from his original application by his accountant who prepared the subsequent applications.

The record herein indicates that, after the license then held by petitioner was suspended for the balance of its term, effective January 3, 1951 (Bulletin 892, Item 4), petitioner closed his licensed premises and has kept them closed until the present time; that petitioner has not engaged in any business activity since January 3, 1951, and that since that time he has supported himself from the proceeds of the sale of another piece of property. Petitioner is a widower and resides with a married daughter. He owns the building in which the licensed premises are located, and testified that the liquor business is the only business he knows.

Petitioner has not been convicted of any crime since he was released from prison twenty-nine years ago. His original misstatement in his application for license was made nearly sixteen years ago. His adjudicated record as a licensee is otherwise clear except that in 1940 his license was suspended for five days for selling during prohibited hours, and in 1942 his license was suspended for fifteen days for a Fair Trade violation. Both of these violations occurred more than ten years ago. His witnesses testified that he bears a good reputation in the community wherein he resides.

Under all the circumstances of this case, I believe that petitioner has been sufficiently punished and, in the exercise of the discretion conferred upon the Director by the provisions of R. S. 33:1-31.2, I have decided to lift his statutory disqualification, effective immediately. Re Case No. 350, Bulletin 670, Item 3.

Accordingly, it is, on this 3rd day of June, 1952,

ORDERED that petitioner's statutory disqualification, resulting from the conviction described herein, be and the same is hereby removed in accordance with the provisions of R. S. 33:1-31.2, effective immediately.

EDWARD J. DORTON
Acting Director.

11. STATE LICENSES - NEW APPLICATION FILED.

Garo Transportation Co.
Springfield Road
Union, N. J.
Application filed June 3, 1952 for transfer of Transportation License from Louis Garodnick, t/a Garo Transportation Co.

Edward J. Dorton
Acting Director.