

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

BULLETIN 468

JULY 10, 1941.

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

BULLETIN 468

JULY 10, 1941.

1. APPELLATE DECISIONS - TOWNSEND v. SHREWSBURY.

SUFFICIENT LICENSES IN MUNICIPALITY - DENIAL AFFIRMED.

| | | |
|---------------------------|------------|-----------------------|
| ALICE TOWNSEND, |) | |
| | Appellant, |) |
| -vs- |) | ON APPEAL |
| | | CONCLUSIONS AND ORDER |
| TOWNSHIP COMMITTEE OF THE |) | |
| TOWNSHIP OF SHREWSBURY, |) | |
| | Respondent | |
| - - - - - |) | |

J. Stanley Herbert, Esq., Attorney for the Appellant.
John S. Applegate, Esq., by H. Carl Kait, Esq., Attorney for
the Respondent.

This is an appeal from respondent's refusal to grant appellant's application for a plenary retail consumption license for premises at Asbury Avenue and Shafto Road, Reeveytown, Shrewsbury Township.

Respondent's reason for denial is that there already exist sufficient licenses in the municipality.

Appellant contends, however, that respondent has not uniformly applied any policy of limiting the number of consumption licenses in the Township and that, therefore, the denial of her application was purely arbitrary. The real stress of appellant's argument apparently is not the action taken by respondent with respect to her particular application, but rather what it has done in the past.

On April 10, 1937 respondent adopted a formal limitation of nine consumption licenses for the municipality. On December 10, 1938 this limitation was repealed and two further consumption licenses issued. One of these latter two licenses was issued because the applicant had gone to considerable expense in building his premises in anticipation of obtaining a license, and the other because the applicant was the owner of premises previously licensed to a tenant who had transferred to a different location.

That the additional two licenses were improvidently issued in view of respondent's feelings that the then number were sufficient, cannot be gainsaid. The reasons for their grant, while perhaps morally and equitably compelling, were not legally sufficient. The fact that a person has expended a large amount of money in building or renovating his premises confers no franchise for a license. Use of premises for the retail sale of liquor is subject to the wholesome power and public duty in the issuing authority to deny such license on the ground that, all circumstances weighed, sufficient liquor places exist in the municipality. Ninety-One Jefferson Street, Passaic, Inc. v. Passaic, Bulletin 255, Item 9. Again, an owner of premises gains no right to a liquor license for such premises merely because a previous tenant held a license there.

Although failure to issue a new license to the owner may result in individual hardship to him, nevertheless where, in the question of issuing liquor licenses, private and public interests conflict, the latter, at least in the absence of an unreasonable application of this principle by the issuing authority (see, for example, Pappalardo v. Newark, Bulletin 466, Item 2), must necessarily prevail. Roberts v. Delaware, Bulletin 447, Item 11.

However, since the granting of the said two licenses, no new licenses have been issued by respondent, although applications therefor have been made. Indeed, in September 1939, application for a consumption license for the very premises here involved was made by one Hall. This license was also denied by respondent on the ground of sufficiency. See Hall v. Shrewsbury Township, Bulletin 397, Item 8. As was there said:

"The given reason for repealing the original limitation and increasing the number of licenses from nine to eleven may, perhaps, be open to criticism. However, that is not the question in this case. There must be some stopping point in the issuance of licenses. Respondent's action should be sustained unless it clearly appears that there is need for an additional license. Eleven plenary retail consumption licenses exist in this municipality with a population of but 1052, thus being one consumption license for less than each one hundred of population. There is nothing to show that the liquor places already in existence are not ample to serve the needs of residents of the Township or appellant's vicinity or the needs of the traveling public. See Granda v. Rockaway, Bulletin 282, Item 7."

There are now outstanding ten consumption licenses, one such license having been surrendered in September 1940. The population of the Township as shown by the 1940 census is 1347. There has, however, been no appreciable increase in the population since the Hall decision, it appearing that the figure of 1052 there stated as the then population was based upon the 1930 census. One consumption license for every 134 residents would appear to be amply sufficient to supply the needs of the local inhabitants.

The evidence indicates that respondent is now definitely committed to the policy of issuing no further consumption licenses in its municipality. The following is an excerpt from the testimony of the Chairman of the Township Committee:

- "Q At the time when you had nine you said you felt you had enough and yet you issued two more because one was an owner and another had gone to a great deal of expense?
A Yes.
Q Today you say ten are enough? A Yes.
Q Would you issue an eleventh license to someone who happened to be the owner today? A No."

And further:

- "Q The policy of the township is they feel they ought to have ten and no more? A That is right.
Q And that under no circumstances would they issue an eleventh license? A No."

It is apparent that respondent, although itself allowing an unsatisfactory condition to arise by issuance of eleven consumption licenses, is now sincerely desirous of remedying such condition. Because it erred then is no reason why it should be compelled to perpetuate its error. An issuing authority does well to learn by experience and avoid past mistakes. I find here no smug or complacent attempt by respondent to invoke "lack of social desirability" or some such empty phrase as a means of effecting any discrimination against appellant, or as an "out" to cover any personal or political prejudice.

Under all the circumstances, I am satisfied that respondent's assertion that the saturation point for the issuance of consumption licenses in its municipality has been reached is bona fide and shall accept its declaration of such policy at face value.

Appellant's contention that, since there is no ordinance presently in effect placing a quota upon consumption licenses respondent must grant her application, is without merit. It is well settled that a local issuing authority may validly refuse to issue a liquor license if, at the time, sufficient liquor places are already outstanding in the municipality even though there is no formal regulation limiting the number of such licenses. Haycock v. Roxbury, Bulletin 101, Item 3; Dunster v. Bernards, Bulletin 121, Item 11; Widlansky v. Highland Park, Bulletin 209, Item 7; Goff v. Piscataway, Bulletin 234, Item 5; Watts v. Princeton, Bulletin 301, Item 2; Alpert v. Asbury Park, Bulletin 380, Item 2; Stewart v. Chatham, Bulletin 433, Item 9; Capitol Liquor Stores Co. v. Belleville, Bulletin 434, Item 5.

Nor is there any merit to appellant's claim that she was not given a hearing before respondent. A local issuing authority need not conduct any hearing when denying a license. Such hearing is necessary only to afford objectors an opportunity to be heard. See Rule 8 of State Regulations No. 2; Gomulka v. Linden, Bulletin 294, Item 8; Sidney's, Inc. et al. v. Newark, Bulletin 296, Item 10; Lipman v. Newark, Bulletin 356, Item 6; Peroni et al. v. Washington, Bulletin 458, Item 6.

The only affirmative evidence that public necessity and convenience require that appellant's premises be licensed is to the effect that the Asbury Avenue roadway has recently been improved and that a traffic circle has been erected in the vicinity, with consequent increase in the amount of traffic there. While the needs of transients may properly influence an issuing authority in its determination of whether a liquor license shall issue, compelling proof thereof must be presented in order to override a reasonably fixed quota. In a similar situation, in the case of Owen v. Medford, Bulletin 463, Item 8, it was held:

"It (transient trade) is but one pertinent factor to be considered by an issuing authority in reaching its decision. Standing alone, however, it is not sufficient to overcome the primary consideration to be determined by the issuing authority, namely, the needs of its own residents. Levitt v. Liberty, Bulletin 169, Item 4; Granda v. Rockaway, Bulletin 282, Item 7; Watts v. Princeton, Bulletin 301, Item 2. Liquor is not such a necessitous commodity that it must be made readily accessible to a person who, when leaving one licensed establishment, must drive his automobile twenty-nine miles farther before being able to obtain another drink."

Appellant's proof on this issue falls short of meeting her burden of showing that public necessity and convenience necessitate the issuance of a license for her premises despite the lack of any need therefor in the municipality as a whole.

The action of respondent is affirmed.

Accordingly, it is, on this 28th day of June, 1941,

ORDERED, that the petition of appeal be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

2. MORAL TURPITUDE - WRITING NUMBERS - FIVE CONVICTIONS - REPEATED OFFENSES SHOWING DISREGARD FOR LAW AND ORDER INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 145

- - - - -)

Petitioner, in the period between 1932 and 1935, was convicted in the Court of Special Sessions of the City of New York on five different "policy" charges. He was sentenced, in September 1932, to thirty days in the workhouse, which sentence was suspended; in February 1933, to pay a fine of \$50.00; in October 1933, to pay a fine of \$50.00; in February 1935, to ten days in the workhouse, and in June 1935, to twenty days in the workhouse.

Petitioner testified that in 1932 he commenced writing "numbers" because he lost his employment as a salesman for a stove repair company, which he had held for about eleven years; that he was unable readily to obtain other employment, hence took up this means of earning a livelihood for his family; that he was not one of the principals in the gambling enterprise, but only a minor employee earning an average of \$25.00 per week.

Even though petitioner was merely a collector, nevertheless his return to the same illegal employment after each arrest shows that he was lacking in any regard for law and order; that he refused to change his way of life despite his constant clashes with the law. This warrants the conclusion that at least his last conviction actually involved moral turpitude. Cf. Re Case No. 378, Bulletin 460, Item 1; Re Case No. 345, Bulletin 427, Item 4; and Re Case No. 314, Bulletin 393, Item 9.

After petitioner's conviction in 1935, he was unable to obtain steady work, and as a consequence, his wife obtained employment, and, in addition, her family contributed toward their support. In May 1937, a relative by marriage gave him employment as a salesman and he moved to this State. In September 1937, with the aid of the Unemployment Commission, he went to work as a salesman for a company in the stove business and held this position until November 1938, when he became ill and went to a hospital, from which he was finally discharged in December 1939.

In August 1939, his wife opened a licensed liquor store with the cooperation of her family and friends. Upon his discharge from the hospital, his continued ill health prevented him from returning to the stove company, hence the Unemployment Commission assisted him to find work as an outside salesman. He gave up this work in April 1940 because his earnings were meager. Since that time he has been out of work, although registered with the Unemployment Commission, and he now apparently seeks removal of his disqualification so that he will at least be able to help his wife in the liquor business.

Petitioner produced four character witnesses: An attorney of this State, a claim examiner of the New Jersey Unemployment Commission and a former fellow employee, all of whom have known him for about three and one-half years, and a social acquaintance, who has known him for about seven years. All testified that petitioner's reputation is good and that, in their opinion, it would not be harmful to the public interest to allow him to become engaged in the liquor industry.

The police departments of the municipalities wherein the petitioner has resided since his convictions, have certified that there are no complaints, reports or investigations presently pending against him.

From all the evidence, I conclude that petitioner has led an honest and law-abiding life for more than five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 1st day of July, 1941,

ORDERED, that petitioner's statutory disqualification because of any of the convictions described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

E. W. GARRETT,
Acting Commissioner.

3. ACTIVITY REPORT FOR JUNE, 1941

TO: E. W. Garrett
Acting Commissioner

ARRESTS: Total number of persons - - - - - 31
Licensees - - - - - 0 Non-licensees - - - - - 31

SEIZURES: Stills - total number seized - - - - - 4
Capacity 1 to 50 Gallons - - - - - 1
Capacity 50 Gallons & Over - - - - - 3
Motor Vehicles - total number seized - - - - - 4
Trucks - - - - - 1 Passenger cars - - - - - 3
Beverage Alcohol - - - - - 8 Gallons
Mash - total number of gallons - - - - - 21,125
Alcoholic Beverages
Beer, Ale, etc. - - - - - 12.34 Gallons
Wine - - - - - 190.32 "
Whiskies & other hard liquor - - - - - 80.24 "

RETAIL INSPECTIONS:
Licensed premises inspected - - - - - 2110
Violations disclosed:
Illicit (bootleg) liquor - - - - - 14
Gambling violations - - - - - 11
Sign violations - - - - - 12
Unqualified employees - - - - - 160
Other mercantile business - - - - - 1
Disposal permits necessary - - - - - 6
"Front" violations - - - - - 5
Improper beer markers - - - - - 1
Other violations found - - - - - 5
Total violations found - - - - - 215
Total number of bottles gauged - - - - - 19,039

STATE LICENSEES:
Plant Control Inspections Completed - - - - - 38
License Applications Investigated - - - - - 574

COMPLAINTS:
Investigated and closed - - - - - 482
Investigated, pending completion - - - - - 455

LABORATORY:
Analyses made - - - - - 134
Alcohol and water and artificial coloring cases - - - - - 16
Poison and denaturant cases - - - - - 0

HEARINGS HELD:
Appeals - - - - 10 Disciplinary proceedings - - - - 16
Seizures - - - - 6 Eligibility - - - - 9
Objections to issuance of license - - - - 5

PERMITS ISSUED:
Unqualified employees - - - - - 679
Solicitors - - - - - 37
Social Affairs - - - - - 341
Disposal of alcoholic beverages - - - - - 47
Miscellaneous permits - - - - - 87
1191

Respectfully submitted,

S. J. MacINTOSH,
Inspector

To: E. W. Garrett, Acting Commissioner
From: E. B. Hock, Deputy Commissioner

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
NEWARK, NEW JERSEY

4. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1940
TO JUNE 30TH, 1941 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

C L A S S I F I C A T I O N O F L I C E N S E S

| County | Plenary Retail Consumption | | Plenary Retail Distribution | | Club | | Limited Retail Distribution | | Seasonal Retail Consumption | | Number Surren- dered Revoked 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 | Fees Paid | | | |
| Atlantic | 475 | \$ 173,392.28 | 61 | \$ 21,069.18 | 14 | \$ 1,251.67 | | | 4 | \$ 539.79 | 7 | 547 | \$ 196,252.92 |
| Bergen | 820 | 269,672.20 | 239 | 58,033.41 | 50 | 4,625.62 | 35 | \$1,585.00 | 11 | 2,097.00 | 10 | 1145 | 336,013.23 |
| Burlington | 195 | 60,189.10 | 18 | 3,718.20 | 30 | 3,488.15 | 1 | 25.00 | | | 2 | 242 | 67,420.45 |
| Camden | 449 | 188,443.88 | 53 | 18,718.08 | 60 | 5,458.76 | | | 5 | 1,055.13 | 6 | 561 | 213,675.85 |
| Cape May | 128 | 44,040.60 | 13 | 3,083.43 | 6 | 516.66 | | | | | 3 | 144 | 47,640.69 |
| Cumberland | 77 | 22,443.15 | 10 | 1,891.37 | 26 | 2,739.03 | | | | | 1 | 112 | 27,073.55 |
| Essex | 1422 | 714,345.98 | 354 | 167,277.65 | 83 | 10,693.80 | 20 | 965.55 | 2 | 460.39 | 2 | 1879 | 893,743.37 |
| Gloucester | 112 | 30,974.67 | 9 | 1,237.63 | 7 | 430.69 | | | | | | 128 | 32,642.99 |
| Hudson | 1646 | 671,132.51 | 280 | 111,256.44 | 50 | 6,014.37 | 53 | 2,132.49 | | | 4 | 2025 | 790,535.81 |
| Hunterdon | 87 | 22,567.84 | 1 | 200.00 | 1 | 150.00 | | | | | 2 | 87 | 22,917.84 |
| Mercer | 441 | 184,846.60 | 44 | 11,124.98 | 35 | 4,440.00 | | | 1 | 97.20 | 2 | 519 | 200,508.78 |
| Middlesex | 618 | 239,487.10 | 42 | 11,628.41 | 34 | 2,660.90 | 1 | 25.00 | 3 | 491.52 | 7 | 691 | 254,292.93 |
| Monmouth | 529 | 209,150.87 | 73 | 20,461.63 | 23 | 2,502.18 | 9 | 317.71 | 51 | 14,699.99 | 43 | 642 | 247,132.38 |
| Morris | 348 | 101,285.39 | 72 | 17,818.22 | 30 | 2,314.66 | 1 | 25.00 | 25 | 3,757.38 | 17 | 459 | 125,200.65 |
| Ocean | 182 | 89,129.00 | 30 | 10,760.00 | 7 | 699.45 | | | | | | 219 | 100,588.45 |
| Passaic | 904 | 346,198.05 | 124 | 35,231.73 | 28 | 3,425.00 | 18 | 797.81 | 4 | 665.27 | 7 | 1071 | 386,317.86 |
| Salem | 50 | 15,750.00 | 4 | 550.00 | 9 | 725.00 | | | | | 1 | 62 | 17,025.00 |
| Somerset | 190 | 64,687.98 | 24 | 5,094.34 | 10 | 972.26 | | | | | 1 | 223 | 70,754.58 |
| Sussex | 160 | 33,756.79 | 13 | 1,901.46 | 4 | 210.00 | | | 7 | 998.92 | 7 | 177 | 36,867.17 |
| Union | 560 | 273,878.68 | 126 | 41,891.69 | 61 | 7,150.00 | 20 | 880.28 | 3 | 967.57 | 6 | 764 | 324,768.22 |
| Warren | 140 | 38,041.68 | 15 | 2,529.79 | 17 | 1,819.18 | 1 | 35.00 | 7 | 897.50 | 8 | 172 | 43,323.15 |
| TOTALS | 9533 | \$3,793,414.35 | 1605 | \$545,477.64 | 585 | \$62,287.38 | 159 | \$6,788.84 | 123 | \$26,727.66 | 136 | 11869 | \$4,434,695.87 |

5. ELIGIBILITY - USING THE MAILS TO DEFRAUD - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR BE EMPLOYED BY A LIQUOR LICENSEE.

July 1, 1941.

Re: Case No. 384

This is a proceeding to determine applicant's eligibility to hold an employment permit for a person disqualified by reason of non-residence.

On April 1, 1940 applicant pleaded guilty in Federal Court to charges of unlawfully using the mails in furtherance of a scheme to defraud and of conspiring so to do. After having served two months and eleven days of a four months' sentence, applicant was released and placed on probation for two years.

In response to an inquiry made by this Department, the United States Attorney of the district wherein applicant was convicted, reports that applicant and another person "opened a general merchandising business....on March 1, 1938 and closed August 10, 1938"; that "during those six months large purchases were made and false statements of their financial worth were sent to these creditors, inducing them to part with their merchandise, and that at the time of closing the defendants owed the sum of \$24,021.13."

At the hearing applicant testified that he had been a half partner in a retail merchandising venture; that he had taken no active part in the operation or conduct of the partnership business and that he had been unaware of the fact that his partner had ordered goods with intent to defraud their creditors.

Applicant cannot, in this proceeding, plead innocence and thus collaterally attack his conviction. Re Case No. 320, Bulletin 397, Item 7; Re Case No. 303, Bulletin 361, Item 6; Re Case No. 289, Bulletin 346, Item 11. The fact that he was convicted on his own plea of guilt is, moreover, almost conclusive evidence that his culpability was equally as great as that of his partner, who received a like sentence and was released at the same time.

Using the mails to defraud is a crime which, ordinarily, involves the element of moral turpitude. Re Case No. 320, supra; Re Case No. 196, Bulletin 219, Item 10. I find no mitigating circumstances which would tend to cleanse this particular crime of that element.

Accordingly, it is recommended that applicant be advised that he is ineligible, by reason of said conviction, to be employed by a liquor licensee in this State, and that his application for a non-resident's employment permit therefore be denied.

Robert R. Hendricks,
Attorney.

APPROVED:

E. W. GARRETT,
Acting Commissioner.

6. EDUCATIONAL CAMPAIGN

July 1, 1941

Addresses by members of the Department during the period April 1, 1941 to June 30, 1941, and the organizations before which appearances were made:

1941
April

| | | |
|----|--|---|
| 1 | Barrett Council #1273, Knights of Columbus, West New York | Edward F. Ambrose |
| 2 | Mercury Club of Passaic | Sydney B. White |
| 2 | Sussex County Peace Officers Association | Charles Basile and Charles M. Kenney |
| 2 | Secaucus Kiwanis Club | William S. Codd |
| 3 | Vineland Women's Democratic Civic Club | Frank M. Middleton |
| 5 | Police Judges and Recorders of New Jersey | Edward Lurie |
| 9 | N. J. Association of Township Committeemen | Earle W. Garrett |
| 9 | Hoboken Lions Club | Stanton J. MacIntosh |
| 9 | American Business Club of Newark | Charles Basile |
| 10 | The Young Republicans of Bloomfield, Inc. | Erwin B. Hock |
| 11 | Glassboro Lodge No. 85, F. & A. M. | Frank M. Middleton |
| 11 | Burlington County Municipal Association | David J. H. Murray |
| 14 | Rotary Club of Union City | Stanton J. MacIntosh |
| 14 | Blessed Sacrament Holy Name Society, Elizabeth | Charles Basile |
| 15 | Independent Tavern Owners Association, Div. #113, N.J.L.B.A., Newark | Earle W. Garrett |
| 16 | Monmouth County Div. #58, N.J.L.B.A. | Earle W. Garrett |
| 17 | Ridgewood Post #53, American Legion | Earle W. Garrett |
| 17 | Clifton Kiwanis Club | William S. Codd |
| 18 | Association of Exempt Firemen, West New York | William S. Codd |
| 21 | Quentin Roosevelt Post No. 8, American Legion, Clifton | Richard E. Silberman |
| 22 | Morris County Licensed Beverage Association, Inc., Div. #54, N.J.L.B.A. | Earle W. Garrett |
| 23 | Jersey City Retail Liquor Dealers Association | Earle W. Garrett |
| 28 | New Jersey Restaurant Association | Earle W. Garrett |

1941
April

| | | |
|----|---------------------------------|----------------------|
| 29 | Rotary Club of Ridgewood | Stanton J. MacIntosh |
| 29 | Asbury Park Lions Club | Emerson A. Tschupp |
| 29 | Newark Tavern Association, Inc. | Earle W. Garrett |
| 30 | Ridgewood Exchange Club | Erwin B. Hock |

May

| | | |
|----|--|----------------------|
| 2 | Wyckoff Republican League | Sydney B. White |
| 4 | Woman's Christian Temperance Union, Newark | Richard E. Silberman |
| 5 | The Better Business Men's Bureau of Union | Sydney B. White |
| 5 | Mid-Year Convention of New Jersey Licensed Beverage Association | Earle W. Garrett |
| 8 | Men's Club of the Congregational Church of Passaic | Stanton J. MacIntosh |
| 9 | Everyman's Club of St. Paul's Methodist Church, Bridgeport | Frank M. Middleton |
| 11 | Retail Liquor Distributors Association of Atlantic City | Earle W. Garrett |
| 14 | Seventh Annual Crime Conference, Cape May County | Earle W. Garrett |
| 15 | Rotary Club of Paterson | Richard E. Silberman |
| 15 | Craftsmen Club of Jersey City, Lodge No. 74, F. & A. M. | William S. Codd |
| 20 | Men's Service League of Christ Church, West Englewood | Stanton J. MacIntosh |
| 22 | Summit Association for Liquor Control | Earle W. Garrett |
| 26 | Salem County Association of Township Committeemen | Frank M. Middleton |
| 27 | National Retail Package Stores Association, Inc. | Earle W. Garrett |

June

| | | |
|----|--|----------------------|
| 10 | Rotary Club of Camden | Bayard M. Sullivan |
| 19 | North Jersey Manufacturers' Association, North Bergen | Stanton J. MacIntosh |
| 24 | New Jersey Retail Liquor Stores Association | Earle W. Garrett |

* * * * *

7. ADVERTISING - BEER ADS ON PAY ENVELOPES - DISAPPROVED.

July 2, 1941.

National Premium Pay Envelope Corporation,
New York, N. Y.

Gentlemen:

I have yours of June 25th regarding brewery advertisements on pay envelopes, and, frankly, do not care for the scheme.

There are many and growing demands these days on a worker's pay, and liquor or beer is certainly not one of the most vital of them. The proper place for worker's wages is at home, for the use of the family, where it belongs, and not in a tavern. It is time enough to buy beer when the family expenses have been met.

If necessary, I shall prohibit the advertisement as a practice designed unduly to increase the consumption of alcoholic beverages.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN APPLICATIONS FOR LICENSES CONCEALING PRIOR REVOCATION - FALSE STATEMENTS IN APPLICATIONS FOR LICENSES CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - PRIOR CONVICTION OF POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES - LICENSE TRANSFERRED AND SITUATION CORRECTED - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

ROSE YANDOLINO,)
2319 Bergenline Ave.,)
Union City, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-236 for the fiscal)
year 1940-41 and transferred during)
said year to)

CONCLUSIONS
AND ORDER

PHILIP YANDOLINO)
for the same premises,)

and renewed by the said Philip)
Yandolino, now holding Plenary)
Retail Consumption License C-236,)
issued by the Board of Commissioners)
of the City of Union City.)
- - - - -)

Richard E. Silberman, Esq., Attorney for the Department of)
Alcoholic Beverage Control.)
Mario M. Polcari, Esq., Attorney for Rose Yandolino and)
Philip Yandolino.)

Licensee pleaded guilty to charges that:

(1) She falsely stated in her license applications dated December 11, 1939 and June 3, 1940 that she had never had any interest in any application for an alcoholic beverage license in New Jersey which was revoked, whereas in truth and in fact she had been the

holder of Plenary Retail Consumption License C-171 for the period 1935-36 for premises 233 New York Avenue, Union City, which license had been revoked on January 15, 1936 by the Board of Commissioners of Union City, in violation of R. S. 33:1-25; and

(2) She falsely stated in said license applications that no individual other than herself had any interest in the license applied for or in the business to be conducted thereunder, whereas in truth and in fact Philip Yandolino had such an interest, in violation of R. S. 33:1-25; and

(3) She knowingly aided and abetted Philip Yandolino, a non-licensee, to exercise the rights and privileges of her license, contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

Philip Yandolino, husband of the licensee, held a liquor license from January 18, 1934 to June 30, 1934, when he went out of business, leaving unpaid creditors. On September 20, 1934 Rose Yandolino, then married to Philip Yandolino, applied for and received a liquor license in her maiden name, Rose Miceli, which was revoked on January 15, 1936 because illicit alcoholic beverages (under proof tax paid liquor) were found on the licensed premises. During the course of the Departmental investigation resulting in said revocation Philip Yandolino admitted that the license held in his wife's maiden name really belonged to him and that the license was in her name because he wanted to conceal his assets from his creditors. It was apparently because of this admitted ownership of the license that Philip Yandolino, and not his wife, was arrested and charged with possession of illicit alcoholic beverages, to which he pleaded non vult and was sentenced to a thirty day jail term.

On December 21, 1939, more than two years after the revocation of her prior license (see R. S. 33:1-31), Rose Yandolino was issued a liquor license which was renewed for the fiscal year 1940-41. This license also belonged to her husband. In a written statement given to investigators of this Department on January 29, 1941, he stated that his wife held the license because "I had an arrest against me and also being afraid of the liquor men's judgments that they hold against me."

Philip Yandolino's conviction referred to heretofore does not involve moral turpitude. It appears that four bottles of open stock at the licensed premises were gauged by investigators of this Department during a routine investigation and were discovered to contain watered liquor. Philip Yandolino testified that the bartender employed by him had tampered with the liquor in those bottles. Under such circumstances, such crime is not tainted with the element of moral turpitude and he is, hence, not mandatorily disqualified because of such conviction from holding a liquor license. Re Case No. 366, Bulletin 445, Item 10. His record is otherwise clear of any arrests or convictions.

Licensee explains the failure to disclose the revocation of her license as set forth in the first charge by stating that a liquor salesman advised her that because more than two years had elapsed since the prior license had been revoked, and she was therefore eligible to again become the holder of a liquor license, that it was not necessary to reveal it. The question in the application reading "Have you....ever had any interest, directly or indirectly, in any application for an alcoholic beverage license in New Jersey which was.....suspended or revoked?", is clear and unambiguous and not subject to the interpretation placed thereon by her adviser.

Since the question is so utterly lacking in obscurity, the only reasonable conclusion is that the misrepresentation was deliberate. Her alleged reliance upon the false information given to her by the liquor salesman furnishes, therefore, no excuse for the offense.

The circumstances here call for a substantial penalty. In view of the criminal record of the undisclosed real owner of the license, the previous revocation and its concealment, I shall impose a suspension of forty days.

The unlawful "front" situation has now been corrected. On April 3, 1941 the license was transferred to Philip Yandolino subject to any penalty to be imposed herein.

Although this proceeding was instituted during the last licensing term (which expired June 30, 1941), it does not in any wise abate but remains fully effective against the renewal license for the current (1941-42) term. State Regulations No. 15.

Accordingly, it is, on this 2nd day of July, 1941,

ORDERED, that Plenary Retail Consumption License C-236 for the current term (1941-42), heretofore issued by the Board of Commissioners of the City of Union City to Philip Yandolino for premises 2319 Bergenline Avenue, Union City, be and the same is hereby suspended for a period of forty (40) days, commencing July 7, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

9. APPEAL CASES - JULY 1, 1940 TO JUNE 30, 1941.

| | |
|--|------------|
| Cases undecided June 30, 1940 - - - - - | 18 |
| Cases filed for period July 1, 1940 to June 30, 1941- - - - - | <u>105</u> |

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DISPOSITION

| | |
|-----------------------------------|-----------|
| Affirmed- - - - - | 61 |
| Affirmed on condition - - - - - | 2 |
| Dismissed - - - - - | 1 |
| Ordinance - Approved- - - - - | 1 |
| Ordinance - Disapproved - - - - - | 1 |
| Resolution - Approved - - - - - | 1 |
| Reversed- - - - - | 24 |
| Reversed on condition - - - - - | 2 |
| Withdrawals - - - - - | 15 |
| Not decided - - - - - | <u>15</u> |

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Edward J. Dorton,
Deputy Commissioner
and Counsel.

10. ACTIVITY REPORT FOR PERIOD FROM JANUARY 1, 1941 TO JUNE 30, 1941, INCLUSIVE.

To: E. W. Garrett, Acting Commissioner

| ARRESTS: | JAN. | FEB. | MAR. | APR. | MAY | JUNE | TOTALS |
|---|-------|-------|-------|--------|--------|--------|---------|
| Licensees | 0 | 0 | 0 | 0 | 2 | 0 | 2 |
| Permittees | 0 | 0 | 7 | 0 | 0 | 0 | 7 |
| Persons not holders of licenses or permits | 19 | 26 | 18 | 19 | 23 | 31 | 136 |
| Total number | 19 | 26 | 25 | 19 | 25 | 31 | 145 |
| <u>SEIZURES</u> | | | | | | | |
| <u>Still</u> | | | | | | | |
| 1 to 50 gallon capacity | 2 | 3 | 4 | 3 | 3 | 1 | 16 |
| Over 50 gallon capacity | 3 | 7 | 5 | 2 | 0 | 3 | 20 |
| Total number | 5 | 10 | 9 | 5 | 3 | 4 | 36 |
| <u>Motor Vehicles</u> | | | | | | | |
| Trucks | 1 | 0 | 0 | 0 | 1 | 1 | 3 |
| Passenger Cars | 2 | 6 | 2 | 4 | 0 | 3 | 17 |
| Total number | 3 | 6 | 2 | 4 | 1 | 4 | 20 |
| <u>Alcohol</u> | | | | | | | |
| Beverage Alcohol (Gal.) | 1 | 211 | 69 | 8.60 | 0 | 8 | 297.60 |
| <u>Mash</u> | | | | | | | |
| Total number gallons | 4240 | 10715 | 5800 | 3140 | 0 | 21125 | 45020 |
| <u>Alcoholic Beverages</u> | | | | | | | |
| Beer, Ale, etc. (Gal.) | 21 | 10 | 4 | 5.15 | 8.66 | 12.34 | 61.15 |
| Wine (Gal.) | 4 | 78 | 808 | 808.36 | 274.24 | 190.32 | 2162.92 |
| Whiskies and other hard liquor (Gal.) | 8 | 20 | 105 | 26.75 | 211.56 | 80.24 | 451.55 |
| <u>RETAIL INSPECTIONS</u> | | | | | | | |
| Licensed premises inspected | 1813 | 1695 | 2255 | 1802 | 1763 | 2110 | 11438 |
| Illicit (bootleg) liquor | 12 | 32 | 12 | 4 | 19 | 14 | 93 |
| Gambling violations | 16 | 8 | 40 | 19 | 8 | 11 | 102 |
| Sign violations | 27 | 20 | 33 | 18 | 12 | 12 | 122 |
| Unqualified employees | 79 | 99 | 75 | 58 | 87 | 160 | 558 |
| Other mercantile business | 7 | 3 | 5 | 4 | 0 | 1 | 20 |
| Disposal permits necessary | 3 | 5 | 3 | 0 | 2 | 6 | 19 |
| "Front" violations | 4 | 9 | 5 | 0 | 2 | 5 | 25 |
| Improper beer markers | 10 | 1 | 1 | 2 | 0 | 1 | 15 |
| Other violations found | 27 | 16 | 19 | 11 | 2 | 5 | 80 |
| Total violations found | 185 | 193 | 193 | 116 | 132 | 215 | 1034 |
| Number of bottles gauged | 15253 | 16457 | 21475 | 15547 | 14388 | 19039 | 102159 |
| <u>STATE LICENSEES</u> | | | | | | | |
| Plant Control inspections completed | 30 | 13 | 41 | 115 | 128 | 38 | 365 |
| License applications investigated | 7 | 8 | 11 | 8 | 67 | 574 | 675 |
| <u>COMPLAINTS</u> | | | | | | | |
| Investigated and closed | 319 | 228 | 179 | 191 | 216 | 482 | 1615* |
| <u>LABORATORY</u> | | | | | | | |
| Analyses made | 107 | 117 | 122 | 120 | 164 | 134 | 764 |
| Alcohol and water and artificial coloring cases | 14 | 16 | 17 | 15 | 18 | 16 | 96 |
| Poison and denaturant cases | 2 | 2 | 1 | 0 | 0 | 0 | 5 |
| <u>HEARINGS HELD</u> | | | | | | | |
| Appeals | 6 | 9 | 8 | 12 | 9 | 10 | 54 |
| Disciplinary proceedings | 29 | 22 | 38 | 31 | 20 | 16 | 156 |
| Seizures | 9 | 7 | 8 | 17 | 9 | 6 | 56 |
| Eligibility | 6 | 11 | 12 | 10 | 12 | 9 | 60 |
| Application for special permit | 0 | 0 | 0 | 1 | 1 | 0 | 2 |
| Objections to issuance of license | 0 | 0 | 0 | 0 | 0 | 5 | 5 |
| <u>PERMITS ISSUED</u> | | | | | | | |
| Unqualified employees | 339 | 350 | 346 | 356 | 522 | 679 | 2592 |
| Home manufacture of wine | 239 | 15 | 5 | 6 | 1 | 0 | 266 |
| Solicitors | 93 | 77 | 99 | 117 | 107 | 37 | 530 |
| Social affairs | 203 | 277 | 131 | 299 | 321 | 341 | 1572 |
| Disposal of alcoholic beverages | 86 | 44 | 69 | 68 | 48 | 47 | 362 |
| Miscellaneous permits | 102 | 112 | 81 | 67 | 66 | 87 | 515 |
| Total | 1062 | 875 | 731 | 913 | 1065 | 1191 | 5837 |

Respectfully submitted,

S. J. MAC INTOSH,

Inspector.

* 455 complaint investigations pending at end of year

11. MORAL TURPITUDE - BURGLARY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION - APPLICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2.)
)
Case No. 150.)
- - - - -)

ON HEARING
CONCLUSIONS AND ORDER

Petitioner applied for an employment permit because he has not been a resident of this State for five years.

In 1921 petitioner was convicted of burglary and received a suspended sentence. The crime of burglary involves moral turpitude. In February 1925 he was fined \$50.00 for permitting gambling in his restaurant, in violation of a village ordinance. In March 1929 he was arrested for possessing and selling liquor, which charge petitioner states was dismissed, although the record does not show the final disposition. Later, in March 1929, he was convicted of third degree assault, involving his beating his wife with his fists, for which he was fined \$50.00, sentenced to ten days, and actually served two days in the County Penitentiary. In May 1934 he was convicted by a local Magistrate of possessing a slot machine and fined \$15.00.

Petitioner's explanation as to his past offenses, in general, is that he committed the burglary while still a young man; that the other offenses, in the main, were incidents connected with his restaurant and "speakeasy" business during prohibition, and that since his arrest in May 1934 he has led an exemplary life and conducted himself in a law-abiding and upright manner.

Petitioner testified that for about thirty years prior to May 1940, he resided in one community in New York State, which was the scene of his various arrests and where he had for many years, with various members of his family, conducted a restaurant which, after repeal, was licensed to sell liquor, the license having been issued in petitioner's name from 1937 to 1940; that he gave up this business in May 1940 and came to this State. Thereafter he worked as a bartender for a New Jersey licensee for a few weeks in the summer of 1940, and again from November 1940 until the early part of 1941, when investigators of this Department advised him that he was not qualified to hold such position. Petitioner claims that he was previously unaware that he was disqualified, and upon being so informed, immediately filed his application for an employment permit.

Petitioner produced as character witnesses two of his former neighbors in New York State, who have known him for upwards of twenty years and ten years respectively. They both testified that petitioner's reputation has always been good; and that since 1934 he has led an honest and law-abiding life.

The police department of the municipality in New York State, and that of the municipality in this State where he now resides, have certified that there are no complaints, reports or investigations presently pending against him.

Petitioner thus appears to have a clear record since 1934. As to petitioner's employment as a bartender while disqualified, I shall give him the benefit of the doubt and accept as true his testimony that he was unaware of his disqualification until advised by investigators.

From all the evidence, I conclude that the petitioner has led an honest and law-abiding life since 1934 and that his continued association with the alcoholic beverage industry, despite his past difficulties with the law, will not be contrary to public interest.

Accordingly, it is, on this 9th day of July, 1941,

ORDERED, that petitioner's statutory disqualification because of any of the convictions described herein, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

E. W. Barrett

Acting Commissioner.