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

BULLETIN 501 APRIL 6, 1942.

1. APPELLATE DECISIONS - BRINE v. NEWARK AND FRANKLIN STORES CO.

WILLIAM J. BRINE,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK and FRANKLIN STORES CO.,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Douglas R. Todd, Esq., Attorney for Appellant.
Charles S. Gansler, Esq., Attorney for Respondent Board.
Louis B. Englander, Esq., Attorney for Respondent-Licensee, Franklin Stores Co.

BY THE COMMISSIONER:

This is an appeal from the decision of the Newark Board of Alcoholic Beverage Control granting respondent's application for the transfer of a plenary retail distribution license of the Franklin Stores Co. from 852 Broad Street to 353 Park Avenue in Newark.

The appellant, one of the objectors before the respondent Board, is a resident of the City of Newark, living within 200 feet of the respondent-licensee's new location. Although the petition of appeal alleges various grounds for setting aside the transfer in question, those actually urged at the hearing may be summarized as follows: (1) that the locale in question is residential in character and, therefore, the location of a "package" store there is improper; (2) that there are, without this store, sufficient liquor places in the general vicinity to serve this particular neighborhood; and (3) that the licensee, in applying for the transfer, failed to give the notice required by an ordinance of the City of Newark.

As to (1) and (2): The general vicinity to which the licensee has been permitted, by the respondent, to transfer his "package" store appears, by and large, to be substantially residential in character. However, the particular block where licensee's store is presently located is entirely business or commercial in character. There are a series of mercantile places on the licensee's side of the street and a large factory building and railroad freight yard on the other side.

Although there are apparently no liquor licenses within a radius of at least two blocks from respondent-licensee's, the appellant insists there are many taverns and "package" stores to be found by taking in a large adjoining area "five blocks south and ten or eleven blocks west."

It is well settled that, where an applicant seeks to locate a retail liquor place in any particular vicinity, the question whether the character of that vicinity and already existing liquor

places should debar the application is committed, in the first instance, to the sound and bona fide discretion of the local issuing authority. See, for example, Neuschwender v. Fort Lee, Bulletin 475, Item 4; Siebel v. Randolph, Bulletin 477, Item 1; Golden Inn Bar Inc. v. Newark, Bulletin 481, Item 2; Service Liquors Inc. v. Hackensack, Bulletin 482, Item 3; Sun Valley Tavern v. Bogota, Bulletin 487, Item 2; Northend Tavern Inc. v. Northvale et al., Bulletin 493, Item 5.

Hence, on appeal in such cases, my function is not to substitute my opinion for the local issuing authority, but to determine whether theirs was necessarily unreasonable or in any wise an abuse of discretion. See Northend Tavern Inc. v. Northvale et al., supra.

Were the "package" store in question located in an area entirely residential in character (Parker v. Newark et al., Bulletin 425, Item 12) instead of being on a solid business or commercial block, or were there such a concentration of liquor places in the vicinity that the addition of this "package" store aggravated an already acute social problem (Arrington et al. v. Orange et al., Bulletin 240, Item 7), I might well reverse. However, no such facts appear in this case. On the contrary, all that appears is that reasonable men might differ as to whether a "package" store should be located in this vicinity.

Appellant's objection to the transfer appears to be based, in part, upon his fear that the "package" store in question may be the forerunner of a tavern.

With respect to this, it is to be noted that the establishment of a "package" store in no way prejudices the position of the appellant or of anyone else to hereafter object to the location of a tavern in the same neighborhood.

As to (3): The Alcoholic Beverage Law provides that, upon proper application and after newspaper publication in accordance with R. S. 33:1-25, a municipal issuing authority may grant an application for transfer from premises to premises. R. S. 33:1-26.

An ordinance of the City of Newark (No. 8811-F) provides that every applicant for transfer from premises to premises must, in addition to the newspaper advertising required by statute, (a) serve personal notice upon persons living within 200 feet of the premises to which a license is sought to be transferred, and (b) post an appropriate notice on or about these premises visible from the street, which is to remain posted for a period beginning five days before the second publication of the statutory notice and continuing until the application has been disposed of by the local Board.

In the present case the respondent-licensee appears to have complied in full with the statutory requirements.

With respect to the ordinance, the evidence discloses that the requisite notice was served on property owners and posted on the licensed premises. The posted notice appears to have been affixed to the inside of the window of the proposed licensed premises by stickers and, on one or more occasions, the top portion appears to have become unfastened so that it fell over and remained in an unreadable position until discovered by the caretaker, whereupon it was refastened. The latter states that she kept refastening the sign to the window on each occasion that she discovered it had fallen. There is nothing in the case to indicate that the posted sign was deliberately or intentionally permitted to fall or to remain in an unreadable condition.

Appellant contends that, since the sign was actually not readable from the street throughout the required period, there was a failure to comply with the ordinance and hence a fatal defect in the application for transfer. I cannot agree with this contention. Where an applicant for transfer fully complies with the statutory notice, fully satisfies the provisions in the ordinance for specific notice upon the property owners within 200 feet and, in apparent good faith, posts the requisite sign, there is a substantial compliance with the ordinance even though the posted notice may, on one or more occasions, have required the attention of the caretaker in pasting it back in position on the window. The courts of this country have, on numerous occasions, sustained postings upon a finding of "substantial compliance." It is not to be presumed that the framers of the ordinance contemplated a construction thereof which would result in the assumption by the applicant of responsibility for elements beyond his control and permit third parties to defeat the application by a deliberate removal of the notice or otherwise.

In view of the personal notice and in the absence of any showing of prejudice to the public or to the objector, the finding of the respondent Board should not be disturbed.

It is thus unnecessary to determine, in this case, whether the Newark ordinance is invalid in requiring notice additional to that provided in the statute. Although the ordinance was approved by the Department of Alcoholic Beverage Control on November 30, 1940, such approval was ex parte and subject to the express condition that the question of reasonableness or validity of the ordinance might be raised on appeal.

I note that, during the pendency of these proceedings, the license in question was transferred to Arrow Liquor Co. That transfer in no way affects the present decision.

Finding no reason for reversal, the action of the Newark Board in the present case is affirmed.

Accordingly, it is, on this 20th day of March, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

2. APPELLATE DECISIONS - COSTA v. VERONA.

NICHOLAS V. COSTA,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF VERONA,

Respondent.

CONCLUSIONS AND ORDER

Joseph Slifkin, Esq., Attorney for the Appellant.
William J. Camarata, Esq., Attorney for the Respondent.
Julius Y. Krill, Esq., Attorney for Objector.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to grant to appellant a person-to-person and place-to-place transfer of a plenary retail distribution license.

The Great Atlantic & Pacific Tea Co. held the license in question for premises 666 Bloomfield Avenue. Appellant now desires to locate a distance of 234 feet therefrom at 638 Bloomfield Avenue.

The testimony discloses that Bloomfield Avenue is the main business thoroughfare in the community and that both premises are located in the same general neighborhood.

It is apparent from an examination of the record that the major motivation for the denial is respondent's desire to reduce the number of licensed establishments now existing in the vicinity in question. This is a perfectly proper objective. I regard as wholly salutary a local policy to alleviate an area reasonably considered by the issuing authority to contain an overabundance of licensed places.

Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as is the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained. Cf. Van Schoick v. Howell, Bulletin 120, Item 6; Re Morten, Bulletin 126, Item 14; Kirschhoff v. Millville et al., Bulletin 254, Item 8; DiMattia v. Bellmawr, Bulletin 294, Item 4; Bartole v. Harrison, Bulletin 304, Item 2; Randall v. Camden et al., Bulletin 420, Item 7. The principle is fully considered in the opinion in Kirschhoff v. Millville et al., supra, where it was stated:

> "Indubitably, reduction of the number of licenses in a municipality, when too many are deemed to be outstanding therein, is a praiseworthy end. But this objective may not be achieved in complete disregard of individual interests. Conway v. Haddon, Bulletin 251,

Item 3. Licensees invest time, effort and money in their licensed businesses. The statute provides for a method whereby, through transfer of license within the sound discretion of the issuing authority, they may sell their businesses and may remove them to new sites. In fairness, they should not be denied this privilege and be forced to the alternative of remaining in their liquor business willy-nilly and at the same location or else surrendering their investment, merely because the municipal authorities erred in previously granting too many licenses and now wish to correct that mistake by destroying transferability.....

"Respondent Board asks the question: 'If existing licenses may be freely sold and transferred, how will the number ever be reduced?'

"Here is one answer which I have repeatedly urged upon municipalities, viz.: Reduction of outstanding licenses may be effected with fairness by eliminating, through revocation or through refusal to renew, those whose owners have misconducted themselves. Re Renton, Bulletin 115, Item 8; Re Juska, Bulletin 116, Item 7; Re Haney, Bulletin 119, Item 9; Re Hinchcliffe, Bulletin 171, Item 7; Re Bailey, Bulletin 172, Item 10. Case after case has been decided where renewals have been denied and upheld on appeal because of previous misconduct of the licensee. White v. Bordentown, Bulletin 130, Item 4; Wellens v. Passaic, Bulletin 134, Item 4; Schelf v. Weehawken, Bulletin 138, Item 10; Girard v. Trenton, Bulletin 140, Item 2; Greenberg v. Caldwell, Bulletin 141, Item 7; Brown v. Newark, Bulletin 146, Item 9; Hagenbucher v. Somers Point, Bulletin 192, Item 6; Repici v. Hamilton, Bulletin 201, Item 8; Hagerty v. Cranbury, Bulletin 202, Item 2; Klotz v. Trenton, Bulletin 202, Item 7; Callahan v. Keansburg, Bulletin 204, Item 6. Cf. Zicherman v. Newark, Bulletin 227, Item 7.

"Or, if public interest demands such drastic and difficult action, municipalities may adopt a numerical quota which will require, at renewal time, the selection of only the most desirable of renewal applicants. See Re Hinchcliffe, supra.

"These suggested methods reduce the quantity of licenses on a basis of quality. Reasonable and fair discrimination is substituted for the arbitrary and unfair method of denying all licensees, whether their conduct has been good or bad, the privilege to transfer their licenses and thus ultimately starve, exhaust or otherwise compel some of them to surrender or be unable to renew their licenses.

* * * * *

"The Board argues that the authority to grant a person-to-person transfer of an outstanding municipal license is a matter confided to the discretion of the issuing authority. It is. R. S. 33:1-26 (Control Act, Sec. 23). But it is also true that this discretion may not

be exercised arbitrarily. A transfer, whether from person to person or from place to place, may be denied if there are valid and reasonable grounds to justify such refusal. See Blumenthal v. Wall, Bulletin 169, Item 6; Parker v. Belleville, Bulletin 179, Item 13; also see Craig v. Orange, supra. No such ground here appears."

The premises from which the transfer is sought are located between Rockland Terrace and Grove Avenue. The proposed site is situated on the next block to the east, between Grove Avenue and Gould Street. On the latter block, there already exists the licensed distribution place of Barnett Freedman, which is 137 feet from the old premises and 97 feet from the proposed premises.

From these facts respondent argues that it was within its reasonable discretion to refuse appellant's application since, to grant it, would result in placing two distribution licenses on one block, whereas heretofore there was only one on each of two blocks, as well as also bringing them forty feet closer together. I am not impressed by this argument. The difference in proximity is so slight as to make it readily apparent that, standing alone, it would not be sufficient to sustain respondent's action.

Does the additional fact that two distribution licenses would be comprised within one block rather than on two adjoining blocks lend any greater weight to the reasonableness of respondent's position? I think not. I can see no magic in a geographical distribution of licenses based merely upon a dividing street line. If respondent's argument were carried to its logical conclusion, it would result in permitting two licenses to be located on opposite corners separated only by the width of a 50 foot highway and yet would prohibit two licenses on the same block although 300 or 400 feet apart.

Although not set forth in the answer to the petition of appeal, respondent's attorney stated that he was "advised" that another reason for the denial is that the former licensee conducted a super-market in conjunction with its license whereas the appellant intended to operate exclusively as a liquor store. The testimony, however, shows that this reason was neither discussed nor considered by respondent's members when voting on appellant's application. The nearest approach to any evidence on this issue was given by two Councilmen who testified that the A & P store closed at 6:00 P. M. on weekdays and all day on Sundays. While such earlier closing hours might well be beneficial to competitive licensees who stay open later and also sell on Sundays, it cannot be used as a test in determining whether to issue a particular license. A limitation of licenses is valid, if at all, because it promotes public welfare and not because it protects the private business of existing licensees. Licata v. Camden, Bulletin 342, Item 1; Bambo v. Belleville et al., Bulletin 353, Item 6; Delia v. New Providence et al., Bulletin 408, Item 3.

Under the circumstances, I am constrained to hold that respondent's refusal to grant appellant's application was unreasonable and that such action must, therefore, be reversed.

Accordingly, it is, on this 20th day of March, 1942,

ORDERED, that the action of respondent in refusing transfer of the plenary retail distribution license held by The Great Atlantic & Pacific Tea Co. for premises 666 Bloomfield Avenue to appellant for premises 638 Bloomfield Avenue, Verona, be and the same is hereby reversed, and respondent is directed to issue forthwith the transfer for which application was made by appellant.

ALFRED E. DRISCOLL,
Commissioner.

3. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - FIRST OFFENSE - LICENSEE PAID FINE OF $100.00 - LICENSED PREMISES CLOSED FOR 11 DAYS - PETITION TO LIFT GRANTED.

In the Matter of a Petition by)
SALVATORE DiBUONO,)
19-21-23 Lemon St.,)
Bridgeton, N. J.,) CONCLUSIONS AND ORDER
to Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-11 issued by the City)
Council of the City of Bridgeton.)

George H. Stanger, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On January 2, 1942 the licensee pleaded guilty to an indictment for selling alcoholic beverages to a minor, in violation of R. S. 33:1-77, and on January 16th he was sentenced to pay a fine of $100.00. On March 12, 1942 investigators of this Department visited the licensed premises and picked up the license which was suspended automatically by virtue of the provisions of R. S. 33:1-31.1.

Licensee, through his attorney, has filed a petition herein praying that the automatic suspension be lifted and the license restored.

The records of this Department disclose that the violation consisted in the sale of three glasses of beer to a seventeen year old colored boy who delivered them to three of his companions, two of whom were seventeen years of age and the third eighteen years of age. In disciplinary proceedings conducted by the Bridgeton City Council prior to the indictment, the licensee was found guilty and had his license suspended for three days with sentence suspended. At the time, Council President Howard S. Collett stated that the sentence was lenient because the Council had not had the opportunity to see the minors and thus determine whether the licensee had made a reasonable mistake; that this was the licensee's first offense of any kind; and that any future violation during the term of the present license would cause the suspended sentence to become effective and would probably result in failure to renew the license.

Department records indicate that this is, in fact, the licensee's first violation of record. The reports of our investigators do not indicate that the violation was in any way aggravated or that the minors involved were so youthful in appearance that they could not reasonably be mistaken for adults.

By virtue of the statutory automatic suspension, the license has already been suspended since March 12th — a period of eleven days. Under the circumstances, that suspension appears to be adequate punishment for the violation in view of the additional facts that the licensee has paid a fine of $100.00 and has been convicted in criminal court of a violation of the Alcoholic Beverage Law — a conviction which will make him ineligible for future license after the expiration of the current license. See P.L. 1941, c. 97, amending R. S. 33:1-25; and Re New Legislation, Bulletin 463, Item 10, construing that amendment.

Accordingly, it is, on this 23rd day of March, 1942,

ORDERED, that the statutory automatic suspension of the license be lifted effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

4. 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 because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 190.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1936 petitioner, when twenty-three years of age, was convicted in this State for larceny and receiving stolen goods (viz., a quantity of electric light bulbs) and was placed on probation for a period of three years.

In 1939 this Department, when the question came before it, ruled that petitioner's crime involved moral turpitude and that petitioner was therefore disqualified under the Alcoholic Beverage Law (R. S. 33:1-25, 26) from holding a liquor license or working for a liquor licensee in this State. Re Case No. 297, Bulletin 354, Item 7.

Five years having elapsed since the conviction, petitioner is now applying, under R. S. 33:1-31.2, for a removal of the disqualification.

Petitioner is now twenty-eight years of age and has had his home in Newark for the last twenty-five years. At the time of his arrest he was working for the "General Electric" unloading freight cars at their siding. While the criminal case was pending, he worked as a delivery man for a retail produce market. Shortly after being released on probation, he obtained a job as a bartender in the city. Thereafter, in 1939, when declared ineligible, he discontinued that work and obtained employment, first on a railroad construction job and later as delivery man for another vegetable market, until the summer of 1940. He then remarried (his first wife having died) and took up residence with his "in-laws" (the respective owners of the two taverns where he had worked as bartender). Since that marriage petitioner has apparently been dependent upon these "in-laws" for support, except for a few months in 1941 when he went to Massachusetts and helped out in his uncle's grocery store.

Petitioner swears that, until ruled ineligible, he had believed he was permitted to work as a bartender and had, in fact, consulted his probation officer before accepting that work. The Probation Department confirms that they were fully aware of this employment and states that, at the time, they too had believed petitioner to be eligible. In view of such facts, I am satisfied that petitioner, when working as bartender, did so in honest ignorance of his disqualification.

The Probation Department further advises that petitioner cooperated with the police in retrieving almost one-third of the property which he had stolen; that his record during the probationary period was good; and that he was discharged in 1939 with "improvement in conduct."

Five character witnesses, consisting of a member of the Bar of this State, an automobile salesman, a building contractor, a cabinet maker, and an acquaintance in the furniture business, who have known petitioner respectively for twenty years, six years, twenty-three years, nineteen years and ten years, all testify that petitioner has led an honest and law-abiding life since 1936.

The Newark Police Department states that, according to their records, the 1936 conviction is the only instance of petitioner's arrest. State and federal fingerprint returns show the same.

However, in 1939, petitioner, while still tending bar, became involved in a fight at the tavern. He claims that the fracas resulted when he tried to evict an undesirable patron. Investigation at the time by both the police and this Department apparently absolved him of any blame in the matter.

In the light of the foregoing evidence, petitioner has seemingly lived down the misstep which resulted in his conviction in 1936.

I conclude that he has been law-abiding since that time and that his association with the alcoholic beverage business will not be contrary to the public interest.

Accordingly, it is, on this 24th day of March, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against PATRICK DeSIMONE, T/a Jack's Bar & Grill, 365 Main Avenue, Wallington, N. J., Holder of Plenary Retail Consumption License C-38, issued by the Mayor and Council of the Borough of Wallington.	CONCLUSIONS AND ORDER

Anthony P. Bianco, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded non vult to charges alleging (1) that he violated R. S. 33:1-25 by falsely denying in his application for license for the current fiscal year that any other individual was

interested in the license applied for or the business to be conducted thereunder, and (2) that he violated R. S. 33:1-52 in that, from July 1, 1941 until November 3, 1941, he knowingly aided and abetted Jack Barcelone, a non-licensee, to exercise the rights and privileges of his license.

On January 24, 1941 the license for the premises in question was transferred from one Van Dine to the defendant herein. It is admitted that between January 24, 1941 and November 3, 1941 the licensed business was, in fact, owned by Jack Barcelone, who is a brother-in-law of defendant. At the hearing herein, defendant testified that the license was transferred to him instead of to his brother-in-law, because the latter's credit "wasn't any good." He further testified, under oath, that Barcelone has had no connection with the licensed business since November 3, 1941, at which time defendant took full control of the licensed business and assumed all its debts. It appears that since November 3, 1941, defendant has reduced the outstanding debts to the extent of about forty per cent. I conclude from the evidence that the unlawful situation has been corrected.

Under the circumstances, the license will be suspended for ten days. Re Pousenc, Bulletin 492, Item 3, and cases therein cited.

Accordingly, it is, on this 26th day of March, 1942,

ORDERED, that Plenary Retail Consumption License C-38, heretofore issued to Patrick DeSimone, t/a Jack's Bar and Grill, by the Mayor and Council of the Borough of Wallington, for premises 365 Main Avenue, Wallington, be and the same is hereby suspended for a period of ten (10) days, commencing March 31, 1942, at 3:00 A.M. and terminating April 10, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE BY A CLUB LICENSEE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - THIRD SIMILAR VIOLATION - SLOT MACHINES - SECOND SIMILAR VIOLATION - LICENSE REVOKED.

CLUB LICENSEES - HEREIN OF THE SERIOUSNESS OF SALES AFTER HOURS.

In the Matter of Disciplinary Proceedings against TENTH WARD ORGANIZATION REPUBLICAN CLUB, 623 Pearl Street, Camden, N. J., Holder of Club License CB-20, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

Charles E. Kulp, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to charges alleging that (1) on November 23, 1941 it permitted four slot machines on its licensed premises in violation of Rule 7 and Rule 8 of State Regulations

No. 20, and (2) on Sunday, November 23, 1941, at about 5:05 A. M., it sold alcoholic beverages on its licensed premises in violation of a local ordinance which prohibits the sale of alcoholic beverages between 2:00 A.M. on Sunday and 7:00 A.M. on the following day.

On Sunday, November 23, 1941, at about 5:05 A.M., police officers of the City of Camden entered defendant's premises and found twenty-four men and five women drinking alcoholic beverages; they also saw several men and women playing the slot machines.

The previous record of this licensee requires attention. It is most unsatisfactory.

In December of 1936, the police found slot machines on the licensed premises in violation of the regulations and thereafter, following a hearing, the license was suspended for a period of thirty days. Collateral to this case, the club manager was apparently arrested and after entering a guilty plea was fined $25.00. In March of 1938, defendant's license was suspended for the balance of the term for the sale of alcoholic beverages after the closing hour, in violation of the local ordinance. It is to be noted that the bartender in connection with this violation appeared in Police Court, pleaded guilty and was fined $100.00 under the local ordinance. In October of 1938, the licensee again disregarded the requirement of the ordinance with respect to the closing hour and the bartender was arrested for the sale of alcoholic beverages in violation of the local ordinance, and after pleading guilty was fined $25.00. If the information provided by the licensee in its application is correct, the latter two fines, although assessed against the bartender, were paid by the licensee. In October of 1939 the licensee was again in difficulty with the authorities, although no action appears to have been taken. In March of 1941 the licensee was charged with selling during prohibited hours on Sunday and a hearing was held before the local Excise Board on July 22, 1941. Although it would appear that there has been ample time for the local Board to render a decision, none has as yet been handed down.

It thus appears that at least three strikes have been registered against this licensee. The licensee is, therefore, clearly out, and its license will be revoked. In the face of the record made by it, I am left with no other alternative. Cf. Re Tarlow, Bulletin 375, Item 1.

In Re Democratic Club of the 11th Ward, Bulletin 495, Item 5, I pointed out that club licensees in the City of Camden pay $100.00 for their licenses, whereas consumption licensees in the same city are called upon to pay $500.00 for a license. Clubs which are either unable or unwilling to confine their activities to the limited privileges conferred upon them by their license, should not be permitted to continue in business and compete unfairly with legitimate licensees. Such unfair competition is in large measure the direct cause of many of the evils and problems with which the industry is today confronted. Likewise, a major portion of the criticism leveled against the industry and licensees generally arises as a result of this unfair competition.

So-called political clubs, ostensibly organized for the purpose of increasing interest in good government, reflect little credit on the political party whose name they adopt when they develop records of the type here exposed. Violations of the character herein recited by political clubs demand prompt and severe punishment. Neither the membership nor influential friends should be permitted to stand in the way of such punishment lest an already skeptical public become even

more cynical. Those who would influence the course of government should be the first to obey its rules. Unfortunately, this has not always been the case.

Accordingly, it is, on this 26th day of March, 1942,

ORDERED, that Club License CB-20, issued to Tenth Ward Organization Republican Club for premises 623 Pearl Street, Camden, by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - LICENSEE CHARGED WITH: FRONT, FALSE STATEMENTS IN LICENSE APPLICATIONS, AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LACK OF PROOF - PROCEEDINGS DISMISSED.

In the Matter of Disciplinary Proceedings against FRANK PIRRONE, JR. and FRANK I. PIRRONE, T/a F. Pirrone & Sons, 92-94 Monroe Street, Garfield, N. J., Holders of Plenary Winery License V-29, issued by the State Commissioner of Alcoholic Beverage Control, and transferred during the pendency of these proceedings to PIRRONE WINERIES, INC., a corporation, for the same premises.	CONCLUSIONS AND ORDER

Vanderwart & Scharnikow, Esqs., by William F. Scharnikow, Esq., Attorneys for Defendant-Licensees.
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensees pleaded not guilty to the following charges:

"1. In your applications for licenses dated March 16, 1937, June 3, 1937, June 3, 1938, June 7, 1939, June 3, 1940 and June 4, 1941, filed with the State Department of Alcoholic Beverage Control, upon which plenary winery licenses V-29 for the licensing years 1936-37 (May 1 to June 30, 1937), 1937-38, 1938-39, 1939-40, 1940-41 and 1941-42 were granted, you falsely stated 'No' in answer to Question 22 therein which asks, 'Has any individual....other than the applicant(s) 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 Joseph Pirrone and Rosalie Pirrone had such an interest; said false statements being in violation of R. S. 33:1-25.

"2. Since on or about May 1, 1937 and until the present time you knowingly aided and abetted Joseph Pirrone and Rosalie Pirrone, non-licensees, to exercise the rights and privileges of your licenses contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

The licensees, Frank Pirrone, Jr. and Frank I. Pirrone, are, respectively, father and son. The alleged undisclosed principals, Rosalie and Joseph Pirrone, are also children of Frank Pirrone, Jr.

The Department's proofs show that on May 15, 1941, while making a routine inspection of licensees' personnel, an investigator discovered that Rosalie Pirrone, employed at the licensed premises as a stenographer, was not listed in licensees' social security returns as an employee. Upon attempting to ascertain the reason therefor, the investigator was told by the bookkeeper that he had always been under the impression that Rosalie Pirrone and also her brother, Joseph Pirrone, were partners in the business since they were named as such in licensees' income tax returns. When the investigator asked Frank I. Pirrone whether Rosalie and Joseph Pirrone were partners, he replied in the affirmative, explaining that they were so described in the tax returns. Rosalie Pirrone also stated to the investigator on this occasion that she considered that she was a partner in the business.

At the hearing, however, both Frank I. Pirrone and Frank Pirrone, Jr. denied that Rosalie or Joseph Pirrone had any interest in the license or in the business conducted thereunder. The former testified that his father, Frank Pirrone, Jr. spent a great deal of time in California where he owned several vineyards; that, while his father was so occupied, he was in sole charge of the business in this State; that Rosalie Pirrone was but a mere employee and had never had any voice in the management of the business; that Joseph Pirrone had been employed at the licensed premises until the latter part of 1940, since which time he has been working at the California vineyards; that when it became necessary to file the first income tax return for the year 1937 he hired an accountant to prepare the return; that the accountant informed him that Rosalie and Joseph Pirrone should be listed therein as partners since "they were members of the family and they should go on as members of the partnership"; that, nevertheless, they were never in fact partners in the business and the only reason for so stating to the investigator was that they were listed as such in the tax returns.

Frank Pirrone, Jr. testified that he started the winery in this State because he wanted eventually to provide a source of income for all his sons; that when the license was originally issued in 1937, Frank I. Pirrone was the only son in whom he had confidence and was, therefore, the only one to receive a share of the business; that he had never given any interest in the business to his son Joseph; that he had never intended to, nor actually ever did, give any interest to Rosalie since he had made other financial provision for her as well as for her younger sister.

Licensees also produced documentary proof that their tax returns have been corrected to accord with the true situation. Amended income tax returns for all prior years, showing only Frank I. Pirrone and Frank Pirrone, Jr. as partners, have been filed with the Collector of Internal Revenue. A receipt from such Collector was also submitted in evidence certifying that social security taxes covering the employment of Rosalie and Joseph Pirrone for the respective periods of their employ at the licensed premises have been paid. As further evidence of their good faith, and indicative that they are sincerely desirous

of remedying the former slipshod method of conducting their business, they applied for and were granted a transfer of their license to Pirrone Wineries, Inc., a corporation, in which Frank Pirrone, Jr. and Frank I. Pirrone hold 92 per cent of the stock, the remainder being issued to Angelina Pirrone, the wife of Frank Pirrone, Jr.

It would be fruitless to detail the testimony any further. Suffice it to say that a careful examination and analysis of the entire record of the hearing has failed to convince me that the burden of proving the essential elements of the offense charged has been been sustained. Falsification of a license application by failing to disclose all persons interested in the license is a most serious charge. It involves the element of fraud and should, therefore, be proved by clear and convincing evidence. The evidence in support of the charges in this case is not of such character. True, the inclusion of Rosalie and Joseph Pirrone as partners in the income tax returns and their omission from the social security returns, if not otherwise reasonably explained, would be damaging admissions of the truth of the charges herein. However, in the light of licensees' story and the further fact that all other records and dealings of the partnership are consistent with licensees' contention that no persons other than Frank Pirrone, Jr. and Frank I. Pirrone were interested in the license and the business conducted thereunder, I cannot find that there was any intention to violate the Alcoholic Beverage Law or, indeed, that any violation of that law exists in this case. The fact that the licensees were badly advised by their accountant and, perhaps, committed a violation of the Federal tax laws, while not to be condoned, is not, under the circumstances appearing in the record of this case, a sufficient justification for me to find the licensee guilty of the charges herein brought against them.

The proceedings must, therefore, be dismissed.

Accordingly, it is, on this 26th day of March, 1942,

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

8. ELIGIBILITY - POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES - NO PROOF OF LARGE SCALE COMMERCIAL ACTIVITY - NOT MORAL TURPITUDE IN INSTANT CASE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

March 27, 1942

Re: Case No. 416

On November 17, 1936 applicant pleaded guilty to an indictment containing two counts, one for possession of illicit alcoholic beverages in violation of the Alcoholic Beverage Law (then known as the Control Act) and the other for possession of alcohol containing poisonous ingredients in violation of P.L. 1935, Chapter 138 (Supplement to Crimes Act). He was sentenced to a fine of $100.00 on each count to run concurrently.

Applicant's arrest arose out of the seizure of a partly full five gallon can and a full quart bottle of alcohol at premises in the rear of those where applicant then conducted a tavern. In a statement made at the time of the arrest applicant admitted having purchased the alcohol some time prior thereto.

Applicant was first charged only with unlawful possession in violation of the Control Act but when chemical analysis of the alcohol disclosed the presence of poisonous ingredients he was subsequently charged with the second offense. As a result his consumption license was revoked by the local authorities on March 17, 1936, thus rendering him ineligible for a liquor license for a period of two years therefrom. See R. S. 33:1-31.

There is no proof that any of the alcohol was sold by applicant or that he engaged in any unlawful activity on a large commercial scale. Under such circumstances, the mere possession of illicit alcoholic beverages, even since Repeal, does not involve moral turpitude. Cf. Re Case No. 188, Bulletin 212, Item 2; Re Case No. 371, Bulletin 453, Item 6.

The crime of possessing alcohol containing poisonous ingredients may or may not involve the element of moral turpitude, depending upon the facts of each case. The record herein is barren of any evidence indicating any knowledge on the part of applicant that the alcohol was adulterated. Nor may such knowledge be presumed from the conviction since it is not an essential element of the crime. Cf. State v. Solomon, 96 N. J. L. 124. Under the circumstances, and in view of the comparatively light sentence imposed by the court, I do not believe this conviction involves moral turpitude.

It is recommended that applicant be advised that the convictions referred to herein do not mandatorily disqualify him from holding a liquor license or being employed by a liquor licensee in this state. However, the question of whether applicant is a fit person to hold a liquor license should be carefully considered by the local issuing authority in the event applicant applies for a license. A copy of this ruling should, therefore, be forwarded to such issuing authority.

Samuel B. Helfand,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - MISLABELING OF BEER TAPS - FIRST CONVICTION - 3 DAYS' SUSPENSION, LESS 1 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

LOUIS SUDOL,
105 Midland Avenue,
Wallington, N. J.,

Holder of Plenary Retail Consumption License C-35, issued by the Borough Council of the Borough of Wallington.

CONCLUSIONS AND ORDER

Louis Sudol, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the charge that, on January 15, 1942, there were two mislabeled beer taps in his tavern, in violation of Rule 1 of State Regulations 22.

The facts are that investigators of this Department, on routine inspection of the defendant's tavern on the day in question, found that the tap marked "Vitabrew" was drawing beer from a "Schaefer's" barrel and that, conversely, the tap marked "Schaefer's" was drawing beer vrom a "Vitabrew" barrel.

It may well be that, as claimed by the defendant, he got the "wires crossed" inadvertently.

However, such inadvertence does not absolve the defendant of responsibility for the violation. The fact remains that the beer taps were actually mislabeled by him, and that customers asking for the one brew would, because of such mislabeling, be served the other. The public is, in fairness, entitled to get what it asks for, and not to take the risk of the defendant's negligence in hooking up his beer barrels.

Since this is defendant's first conviction, his license will, in line with past decisions in this type of case, be suspended for three days. Re Hi-Way Tavern Inc., Bulletin 272, Item 5; Re Ehrich & Dishowitz, Bulletin 272, Item 6. In accordance with the Department's present policy of remissions on guilty pleas, one day will be remitted for the defendant's plea, leaving a net of two days.

Accordingly, it is, on this 2nd day of April, 1942,

ORDERED, that Plenary Retail Consumption License C-35, heretofore issued to Louis Sudol by the Borough Council of the Borough of Wallington, for premises 105 Midland Avenue, Wallington, be and the same is hereby suspended for a period of two (2) days, commencing at 3:00 A. M. April 7, 1942 and concluding at 3:00 A.M. April 10, 1942.

Alfred E. Driscoll
Commissioner.