

BULLETIN 933

APRIL 28, 1952.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - MEVOLI ET AL. v. CAMDEN AND SHAPIRO.
2. DISCIPLINARY PROCEEDINGS (Long Branch) - PERMITTING OBSCENE LANGUAGE - PERMITTING FEMALE EMPLOYEE TO ACCEPT DRINKS AT EXPENSE OF PATRONS - SALE TO MINOR - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.
3. DISCIPLINARY PROCEEDINGS (Newark) - PERMITTING LICENSED PREMISES TO BE USED IN AID OF ILLEGAL ACTIVITY - PERMITTING GAMBLING ON LICENSED PREMISES - PREVIOUS RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Somerdale) - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT STORIES AND ACTIONS) - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Newark) - SALES TO MINORS - AGGRAVATED CIRCUMSTANCES - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. CANCELLATION PROCEEDINGS (North Bergen) - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163 SUSTAINED - LICENSE CANCELLED.
7. CANCELLATION PROCEEDINGS (North Bergen) - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163 SUSTAINED - LICENSE CANCELLED.
8. CANCELLATION PROCEEDINGS (Harrison) - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.
9. CANCELLATION PROCEEDINGS (Fanwood) - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P. L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.
10. CANCELLATION PROCEEDINGS (Englewood) - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.
11. CANCELLATION PROCEEDINGS (North Bergen) - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.
12. MORAL TURPITUDE - ASSAULT WITH INTENT TO RAPE AND BREAKING, ENTERING, LARCENY AND RECEIVING.

DISQUALIFICATION - APPLICATION TO LIFT - MISCONDUCT WITHIN PAST FIVE YEARS - APPLICATION DENIED.
13. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 933

APRIL 28, 1952.

1. APPELLATE DECISIONS - MEVOLI ET AL. v. CAMDEN AND SHAPIRO.

MARION R. MEVOLI, MARY WALLACE,)
REBECCA CRAWFORD,)
Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
CAMDEN, and GEORGE SHAPIRO,)
Respondents.)

-----)
William T. Cahill, Esq., Attorney for Appellants.
Louis L. Goldman, Esq., Attorney for Respondent Municipal Board of
Alcoholic Beverage Control.
Meyer L. Sakin, Esq., Attorney for Respondent George Shapiro.

This is an appeal from the action of respondent Municipal Board whereby it approved an application to transfer Plenary Retail Consumption License C-73 from Zenon Bubnoski to respondent George Shapiro, and from premises at 1425 Mt. Ephraim Avenue to premises 580 Chestnut Street, Camden.

The application for the transfer of the license in question was approved on January 8, 1952, by the two members of the respondent Board who were present at the meeting. The third member was absent from the meeting. The license was to be issued at a subsequent date by the Board after structural changes in the premises were completed in accordance with more detailed plans and specifications to be furnished to the Board by respondent licensee. The plans and specifications referred to were filed with the Board on or about January 23, 1952.

Appellants in their petition of appeal set forth eleven reasons why the action of the respondent Board was erroneous and should be reversed. These reasons may be summarized as follows: (a) that the notice of intention to apply for the person-to-person and place-to-place transfer of the license was defective, (b) that the medium used for advertising said notice of intention was a newspaper with limited circulation to another section of the municipality, (c) that the respondent Board did not consider whether a need existed and a convenience was to be served by the transfer of the license to the proposed location, (d) that the members of the respondent Board failed to determine the personal fitness of the respondent licensee, and (e) that there was no need or necessity for an additional outlet for dispensing alcoholic beverages in the neighborhood.

It appears that no objections were filed with the respondent Board prior to the hearing on January 8, 1952. At the hearing herein the objectors explained that they failed to object to the transfer in question because the paper in which the notice of intention was published is not circulated to any extent in the section of the municipality wherein they reside and where the proposed licensed premises are located. This latter fact was borne out by the testimony of the publisher of the newspaper during the hearing. The objectors testified that they had no knowledge of the application until January 15, 1952.

May A. Jones, a member of respondent Board who voted in favor of the transfer under consideration, testified that the question whether there is need for an additional licensed premises in the location to which the application for transfer was made was not

discussed or considered by the members of respondent Board. Apparently, the transfer was granted merely because the application appeared to be in proper form and no objectors appeared at the hearing below.

A decision of a local issuing authority totally disregarding the paramount issue of public necessity and convenience, such as is involved in connection with the discretionary function of transfer of a liquor license, cannot sustain the local action. Indeed, it is tantamount to a failure to discharge the responsibility which, under the provisions of the Alcoholic Beverage Law (R. S. 33:1-1 et seq.), is vested in each issuing authority in the first instance to determine within its sound discretion whether a license shall be issued or transferred. Passarella v. Board of Commissioners, 1 N.J. Super. 313 (App. Div. 1949); Haefliger v. Allamuchy, Bulletin 880, Item 2.

In the present posture of the record it is unnecessary to consider the other grounds raised by appellants in support of their appeal. The matter must be remanded to the respondent Board with direction that reconsideration be given to the application and that, consistent herewith, the issue of public necessity and convenience, as applied to the proposed location, be determined by each member of respondent Board prior to voting upon such reconsideration.

Accordingly, it is, on this 14th day of April, 1952,

ORDERED that the within application be and the same is hereby remanded to the respondent Municipal Board for its further action consistent with this opinion.

EDWARD J. DORTON
Acting Director.

2. DISCIPLINARY PROCEEDINGS - PERMITTING OBSCENE LANGUAGE - PERMITTING FEMALE EMPLOYEE TO ACCEPT DRINKS AT EXPENSE OF PATRONS - SALE TO MINORS - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

FLORENCE AGNELLINO

T/a AMBER ROOM

N/W Corner of Chelsea & Ocean Aves.
Long Branch, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-46, issued by the
Board of Commissioners of the City
of Long Branch.

Florence Agnellino, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

Defendant has pleaded non vult to charges alleging that (1) she allowed, permitted and suffered foul, filthy and obscene language in and upon her licensed premises, in violation of Rule 5 of State Regulations No. 20; (2) she allowed, permitted and suffered a female employee to accept beverages at the expense of or as a gift from customers, in violation of Rule 22 of State Regulations No. 20; and (3) she sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that in the early hours of March 19, 1952, two ABC agents heard a female employee and a female patron engage in loud and indecent conversation. To repeat this obscene and filthy language would serve no useful purpose. The bartender, although present, made no attempt whatsoever to restrain the women from the continuation of such improper conduct. On March 19, 20, 21 and 22, 1952, a female employee accepted drinks as a gift from both ABC agents and also accepted drinks at the expense of several male patrons. On March 22, 1952, the bartender was observed by the ABC agents serving a bottle of beer to a minor, 19 years of age.

Defendant has no previous adjudicated record. I shall, therefore, suspend her license on charge (1) for ten days (cf. Re Arno, Bulletin 830, Item 1); on charge (2) for twenty days (cf. Re Manno, Bulletin 921, Item 6); and on charge (3) for ten days (cf. Re Casamento, Bulletin 922, Item 12), making a total suspension of 40 days. Five days will be remitted for the plea entered herein, leaving a net suspension of 35 days.

Accordingly, it is, on this 17th day of April, 1952,

ORDERED that Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the City of Long Branch to Florence Agnellino, t/a Amber Room, N/W Corner of Chelsea & Ocean Aves., Long Branch, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 7:00 a.m. April 28, 1952, and terminating at 7:00 a.m. June 2, 1952.

EDWARD J. DORTON
Acting Director.

3. DISCIPLINARY PROCEEDINGS - PERMITTING LICENSED PREMISES TO BE USED IN AID OF ILLEGAL ACTIVITY - PERMITTING GAMBLING ON LICENSED PREMISES - PREVIOUS RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

ETHEL ENGLE
17 Centre Street
Newark 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-274, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Sidney Simandl, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges alleging that (1) on February 14 and 15, 1952, she allowed, permitted and suffered her licensed premises to be used in furtherance or aid of and in connection with an illegal activity resulting in a conviction in a criminal prosecution, in violation of Rule 4 of State Regulations No. 20; and (2) on February 9, 1952, she allowed, permitted and suffered gambling on her licensed premises, in violation of Rule 7 of State Regulations No. 20.

The file herein discloses that on February 14, 1952, an ABC agent, while in defendant's licensed premises, inquired of Steve Katsafouros, the bartender employed by defendant, where he could place bets on horses. The bartender told him to go to a confectionery store and tell Weber that "Steve, from Otto's, sent you." Pursuant to such direction the ABC agent did go to the confectionery store and placed a bet on a horse with one Jacob Weber. Thereafter the ABC agent returned to defendant's licensed premises and disclosed to the bartender that he had placed the bet.

On February 15, 1952, the ABC agent again visited defendant's licensed premises and Steve Katsafouros inquired as to "how he made out on his bet" and was informed by the ABC agent that he had won. The said Jacob Weber subsequently pleaded guilty to a complaint of making book on horse races, and Steve Katsafouros pleaded non vult to a complaint of aiding and abetting bookmaking, in violation of a city ordinance, and as a result thereof each was fined by a municipal magistrate.

Previously, on the evening of February 9, 1952, two ABC agents observed Otto Engle, husband of the defendant and manager of the licensed premises, engage in betting for money with various customers on fights that were being televised that evening.

Defendant has a previous adjudicated record. Effective February 24, 1949, defendant's license was suspended for fifteen days as a result of an "hours" violation. Bulletin 834, Item 9. As to the first charge herein, it is contended that neither the bookmaker nor the bartender has been convicted "in a criminal prosecution" because they have merely been convicted of violating a city ordinance. From a legal standpoint, this contention appears to be correct. See 10 "Words and Phrases, Permanent Edition" at page 541. In mitigation of the first charge it is argued that no betting occurred on defendant's premises. In mitigation of the second charge it is argued that there is no evidence that commercialized gambling was carried on in defendant's premises. Under all the circumstances, I shall suspend defendant's license for a period of twenty days, less five days' remission for the plea entered herein, or a net suspension of fifteen days.

Accordingly, it is, on this 9th day of April, 1952,

ORDERED that Plenary Retail Consumption License C-274, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ethel Engle, for premises 17 Centre Street, Newark, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. April 16, 1952, and terminating at 2:00 a.m. May 1, 1952.

EDWARD J. DORTON
Acting Director.

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(INDECENT STORIES AND ACTIONS) - AGGRAVATED CIRCUMSTANCES -
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

NICK'S MUSICAL BAR CORP.
344 White Horse Pike
Somerdale, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-5, issued by the
Mayor and Council of the Borough
of Somerdale.

-----)
George G. Tartar, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

Defendant pleaded non vult to a charge alleging that it allowed, permitted and suffered lewdness and immoral activity in and upon its licensed premises in that a male entertainer was permitted to recite stories, utter words and phrases and make gestures and movements having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning, in violation of Rule 5 of State Regulations No. 20.

The file discloses that ABC agents visited the licensed premises on the night of February 6 and early morning of February 7, 1952, at which time they observed a floor show consisting of a number of acts. One of the entertainers was a male (known by various names including Lennie Ross, Lenny Ross, Leonard Ross, Leonard Del Rossi and Leoni DiGiacimo) who resides in another state and whose employment permit to work in this state was revoked on November 1, 1949, because of his ineligibility arising out of his convictions in another state of crimes involving moral turpitude (indecent performance). Re DiGiacimo, Bulletin 859, Item 7.

On the night in question this male performed two separate acts at defendant's licensed premises, both of which were not merely suggestive or of questionable character but consisted of lewd, lascivious and filthy stories, words and actions of the most disgusting and revolting nature. It is significant that the President of the defendant corporation witnessed, without protest, his entire performance on the night in question.

As was said in Re DiAngelo, Bulletin 753, Item 4:

"Entertainment, if presented upon licensed premises, must be of such character as not to be inimical to the public welfare and morals or to the best interests of the industry."

Performances of the kind here in question cannot and will not be tolerated on licensed premises.

Defendant has no prior adjudicated record. While the minimum penalty in cases of a similar character has been fifteen days (Re S.E.W., Inc., Bulletin 891, Item 5), I shall, because of the aggravated nature of the performance in this case, impose a suspension of twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 10th day of April, 1952,

ORDERED that Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Somerdale to Nick's Musical Bar Corp., for premises 344 White Horse Pike, Somerdale, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. April 21, 1952, and terminating at 3:00 a.m. May 6, 1952.

EDWARD J. DORTON
Acting Director

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - AGGRAVATED CIRCUMSTANCES - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

FRANK JACEK
1103 Broad Street
Newark 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-49, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Newark.

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

Defendant has pleaded guilty to a charge alleging that he sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on March 26, 1952, between 11:15 and 11:30 p.m., an employee of defendant sold and served a glass of beer apiece to two members of the military forces, 17 and 18 years of age, respectively.

Defendant has a prior adjudicated record. Effective June 13, 1942, defendant's license was revoked by the local issuing authority for dissimilar violations. In view of the length of time that elapsed since the previous record, I shall not consider it in aggravation of the present charge. The minimum suspension for sales to minors is ten days. However, because of the fact that one of the minors was only seventeen years of age, I shall suspend defendant's license for a period of fifteen days (cf. Re Rosenthal & Celler, Bulletin 843, Item 4). Five days will be remitted for the plea entered herein, making a net suspension of ten days.

Accordingly, it is, on this 10th day of April, 1952,

ORDERED that Plenary Retail Consumption License C-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Frank Jacek, 1103 Broad Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. April 21, 1952, and terminating at 2:00 a.m. May 1, 1952.

EDWARD J. DORTON
Acting Director.

6. CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, c. 163 SUSTAINED - LICENSE CANCELLED.

In the Matter of Cancellation)
Proceedings against)

GEORGE McCOLLUM)
521 Grand Avenue)
North Bergen, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Limited Retail Distri-)
bution License DL-12, issued by)
the Municipal Board of Alcoholic)
Beverage Control of the Township)
of North Bergen.)

George McCollum, Licensee, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic
Beverage Control.

Licensee was ordered to show cause why his limited retail distribution license should not be suspended, revoked or cancelled and declared null and void for the reason that said license was improvidently issued, in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163).

The pertinent portion of P.L. 1951, ch. 163, which became effective on June 5, 1951, provides as follows:

"Limited retail distribution license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises; but only in original containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto.***"

At the hearing held herein an ABC agent testified that he visited the licensed premises on August 23, 1951, and made a sketch of the interior of the licensed premises. The licensee admits that the sketch which was introduced into evidence is correct, and that there have been no substantial changes on his premises since August 23, 1951. The sketch indicates that there is a soda fountain on the premises, stands displaying magazines, greeting cards, toys and newspapers, and shelves displaying stationery. The sketch also indicates that there is a candy case, a cigar case and a few shelves on which canned soups, tapioca and cleaning material are displayed.

The licensee testified that on June 27 or June 28, 1951, he purchased from a retailer about \$35.00 worth of canned soups, tapioca and cleaning material, and that from said time until the date of hearing he had sold about \$5.00 worth of these items.

It is clear from the evidence herein that, irrespective of the type of store conducted by the licensee, the sale of groceries or other foodstuffs is not now and never was the primary or principal business conducted therein and, hence, the license for the present licensing year was improvidently issued in violation of the provisions of the Alcoholic Beverage Law. R. S. 33:1-31(a).

Accordingly, it is, on this 9th day of April, 1952,

ORDERED that Limited Retail Distribution License DL-12, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen to George McCollum, for premises 521 Grand Avenue, North Bergen, be and the same is hereby cancelled and declared null and void, effective at 9:00 a.m. April 14, 1952.

EDWARD J. DORTON
Acting Director.

7. CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163 SUSTAINED - LICENSE CANCELLED.

In the Matter of Cancellation)
Proceedings against)

MIKE ZITO)

917 Tonnele Avenue)
North Bergen, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Limited Retail Distri-)
bution License DL-1, issued by)
the Municipal Board of Alcoholic)
Beverage Control of the Township)
of North Bergen.)

Mike Zito, Licensee, Pro Se.

Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic
Beverage Control.

Licensee was ordered to show cause why his limited retail distribution license for the current licensing year should not be suspended, revoked or cancelled and declared null and void for the reason that said license was improvidently issued, in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163).

The pertinent portion of P.L. 1951, ch. 163, which became effective on June 5, 1951, provides as follows:

"Limited retail distribution license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises; but only in original containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto.***"

At the hearing held herein an ABC agent testified that he visited the licensed premises on August 22, 1951, and made a sketch of the licensed premises. The sketch indicates that the property known as 917 Tonnele Avenue, North Bergen, has three buildings located thereon. One building is used for dwelling purposes by the licensee; another building is used in connection with his milk route, and the third building (formerly a garage) contains two series of shelves and a counter. At the time of the inspection a

quantity of canned goods and other items which may be designated as groceries were located on the shelves. According to the application for the license, the entire premises known as 917 Tonnele Avenue, North Bergen, constitutes the licensed premises.

At the hearing herein the licensee testified that he placed the shelves and the counter in the garage in April 1951, and started to sell groceries therein shortly thereafter. He testified that he has been engaged in the business of selling milk for thirty-five years. It is apparent from the statement given by him that he conducts a milk route and delivers milk by his trucks to the homes of consumers.

There is not much doubt that milk may be classified as food. However, in determining whether the licensee conducts a "bona fide food store" where "the sale of groceries or other foodstuffs is the primary and principal business", we must consider all the language of the sub-section in determining the intent of the Legislature. In my opinion, premises operated principally for the sale of milk may not be termed "other type of food store" in the same sense in which we would designate a grocery store, meat market, meat and grocery store or delicatessen as a food store. I find that the licensee does not conduct a "bona fide" food store within the meaning of the term as used by the Legislature. Moreover, it is plain that the primary and principal business is not "the sale of groceries or other foodstuffs", but is the sale and delivery of milk through a milk route.

From the evidence herein I conclude that the license for the present licensing year was improvidently issued in violation of the provisions of the Alcoholic Beverage Law as amended by P.L. 1951, ch. 163, which became effective June 5, 1951. I shall, therefore, cancel the license. R. S. 33:1-31(a).

Accordingly, it is, on this 9th day of April, 1952,

ORDERED that Limited Retail Distribution License DL-1, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen to Mike Zito, for premises 917 Tonnele Avenue, North Bergen, be and the same is hereby cancelled and declared null and void, effective at 9:00 a.m. April 14, 1952.

EDWARD J. DORTON
Acting Director.

8. CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P. L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.

In the Matter of Cancellation
Proceedings against

IRA M. ROSEN

530 Harrison Avenue
Harrison, N. J.,

CONCLUSIONS
AND ORDER

Holder of Limited Retail Distri-
bution License DL-3, issued by the
Town Council of the Town of
Harrison.

-----)
Jerome D. Schwitzer, Esq., Attorney for Licensee.
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic
Beverage Control.

Licensee was ordered to show cause why his limited retail distribution license for the current licensing year should not be suspended, revoked or cancelled and declared null and void for the reason that said license was improvidently issued, in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163).

The pertinent portion of P.L. 1951, ch. 163, which became effective on June 5, 1951, provides as follows:

"Limited retail distribution license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises; but only in original containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto.***"

At the hearing herein a sketch made by an ABC agent of the interior of the licensed premises as it appeared on July 23, 1951, was introduced into evidence by consent. The sketch indicates that a substantial amount of canned goods, bottled apple juice, sugar and coffee were displayed in the left front window, and that toys were displayed in the right front window of the premises. It also indicated that on the right side of the store, as one enters the premises, there were a cigar case, a soda fountain with five stools, a counter and a Pepsi-Cola cooler. On the left side of the store, as one enters the premises, there were shelves containing magazines and newspapers. There were also seven shelves on which were displayed canned goods, assorted crackers, candy and a few loaves of bread. It appears that each of these shelves is about twelve feet long, and that they extend from the floor almost to the ceiling. Toys and greeting cards were displayed on shelves in the rear of the premises.

The licensee testified that he has held a limited retail distribution license for the premises in question since 1946. He admits that prior to June 5, 1951 (the date upon which P.L. 1951, ch. 163, became effective), his principal business was "sale of beer, ice cream, tobacco and things that you find in a stationery store such as

newspapers and cards". He testified that, during the month of May 1951, he ordered a quantity of groceries which were delivered about June 22, 1951, and that he has been selling these items and other grocery items purchased since that time, so that the character of his business has changed. Between the date of the inspection and the date of the hearing there was no substantial change in the physical appearance of the store. The licensee testified that, at the time of the hearing, the sale of foodstuffs, including ice cream and candy, constituted approximately seventy per cent. of his business. The evidence indicates that the sale of beer amounts to approximately ten per cent. of his business.

It is impossible to determine the exact nature of the business as it was conducted on July 1, 1951, the date upon which the renewed license for the current licensing year became effective. However, upon the evidence presented, I conclude that the licensee now conducts a bona fide grocery store or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; that the sale of groceries or other foodstuffs is the primary and principal business, and that the sale of alcoholic beverages is merely incidental and subordinate thereto. Under the circumstances, the rule to show cause will be discharged.

Accordingly, it is, on this 7th day of April, 1952,

ORDERED that the rule to show cause be and the same is hereby discharged.

EDWARD J. DORTON
Acting Director.

9. CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.

In the Matter of Cancellation
Proceedings against

THE CORNER STORE (a corp.)
South and Martine Avenues
Fanwood, N. J.,

CONCLUSIONS
AND ORDER.

Holder of Limited Retail Distri-
bution License DL-2, issued by the
Borough Council of the Borough of
Fanwood.

Beard and McGall, Esqs., by William M. Beard, Esq., and William
Bruder, Esq., Attorneys for Licensee.
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic
Beverage Control.

Licensee was ordered to show cause why its limited retail distribution license for the current licensing year should not be suspended, revoked or cancelled and declared null and void for the reason that said license was improvidently issued, in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163).

The pertinent portion of P.L. 1951, ch. 163, which became effective on June 5, 1951, provides as follows:

"Limited retail distribution license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises; but only in original

containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto.***"

At the hearing herein an ABC agent testified that he visited the licensed premises on August 20, 1951, and made a sketch of the interior of the licensed premises. The sketch indicates that on the right side of the store, as one enters the premises, there were cases containing candy and cigars and a soda fountain with seven stools in front thereof. Towards the rear of the store were shelves containing toys and greeting cards. To the left, as one enters the premises, were a candy case, a case containing bread, cake and crackers and shelves containing magazines. The agent testified that he saw no canned goods on display.

On behalf of the licensee, Jack Pepper, President and Manager of the licensed corporation, testified that, after the agent visited the premises, six shelves, each approximately twelve feet long, were installed on the left side of the store. On these shelves are now displayed canned foods, vegetables, noodles, spaghetti and coffee. The witness also testified that bread, cakes, crackers, soda and bulk ice cream are sold on the premises. A sworn statement of this witness, setting forth items purchased for the months of October, November and December 1951, indicates that items such as those heretofore set forth in this paragraph, and which may be classified as foodstuffs, were purchased in substantial amounts during these months. The purchases of beer lead me to conclude that the sale of beer is merely incidental to the other business conducted on the premises. The sale of newspapers, magazines and stationery appears to constitute approximately twenty-five per cent. of the business but, after reviewing all the evidence, I am satisfied that the sale of groceries and other foodstuffs is now the primary and principal business.

It is impossible to determine the exact nature of the business as it was conducted on July 1, 1951, when the renewed license for the current licensing year became effective. However, upon the evidence presented I conclude that the licensee now conducts a bona fide grocery store or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; that the sale of groceries or other foodstuffs is the primary and principal business, and that the sale of alcoholic beverages is merely incidental and subordinate thereto. Under the circumstances, the rule to show cause will be discharged.

Accordingly, it is, on this 8th day of April, 1952,

ORDERED that the rule to show cause be and the same is hereby discharged.

EDWARD J. DORTON
Acting Director.

10. CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.

In the Matter of Cancellation
Proceedings against

MARY MALLEY
38 West Demarest Avenue
Englewood, N. J.,

CONCLUSIONS
AND ORDER

Holder of Limited Retail Distri-)
bution License DL-4, issued by)
the Common Council of the City)
of Englewood.)
- - - - -)

David A. Gelber, Esq., Attorney for Licensee.
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic
Beverage Control.

Licensee was ordered to show cause why her limited retail distribution license for the current licensing year should not be suspended, revoked or cancelled and declared null and void for the reason that said license was improvidently issued, in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163).

The pertinent portion of P.L. 1951, ch. 163, which became effective on June 5, 1951, provides as follows:

"Limited retail distribution license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises; but only in original containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto.***"

At the hearing herein an ABC agent testified that he visited the licensed premises on August 1, 1951, and made a sketch of the interior of the licensed premises. The sketch indicates that on the right side of the store, as one enters the premises, there were cases containing candy and cigarettes, and further to the rear of the store a soda fountain with five stools in front thereof. Behind these fixtures and along the right wall were shelves containing ink, pencils, toothpaste and toilet paper. To the left, as one enters the premises, was a low rack containing bread and, further to the rear, a stand containing newspapers and magazines. Along the rear wall of the premises, and extending for some distance along the right wall of the premises, were five shelves stocked with canned goods and various grocery items.

The licensee testified that she has conducted her store for more than forty years, and that she has held a limited retail distribution license since Repeal. Between the date of the inspection and the date of hearing there was no substantial change in the physical appearance of the store. Exhibits introduced into evidence, showing total purchases in the conduct of the business for the years 1949, 1950 and the first ten months of 1951, indicate that she has purchased substantial quantities of groceries during those periods. The

amount of dairy products, groceries, candy and soda purchased during the first ten months of 1951 amounted to approximately \$4500.00. Grocery items are not only substantial in amount, but varied in character. While it is true that the amount of groceries, including ice cream, candy and soda, apparently is somewhat less than fifty per cent. of her total purchases, nevertheless it is argued that the profits from the sale of these items account for more than half of her total profits. The evidence indicates that the sale of beer amounts to approximately sixteen per cent. of her business.

It is impossible to determine the exact nature of the business as it was conducted on July 1, 1951, when the renewed license for the current licensing year became effective. However, upon the evidence presented I conclude that the licensee now conducts a bona fide grocery store or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; that the sale of groceries or other foodstuffs is the primary and principal business, and that the sale of alcoholic beverages is merely incidental and subordinate thereto. Under the circumstances, the rule to show cause will be discharged.

Accordingly, it is, on this 8th day of April, 1952,

ORDERED that the rule to show cause be and the same is hereby discharged.

EDWARD J. DORTON
Acting Director.

11. CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P. L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.

In the Matter of Cancellation)
Proceedings against)

JACOB WARTH)
7124 Bergenline Avenue)
North Bergen, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Limited Retail Distri-)
bution License DL-18, issued by)
the Municipal Board of Alcoholic)
Beverage Control of the Township)
of North Bergen.)

Alfred E. Shultz, Esq., Attorney for Licensee.
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic
Beverage Control.

Licensee was ordered to show cause why his limited retail distribution license should not be suspended, revoked or cancelled and declared null and void for the reason that said license was improvidently issued, in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163).

The pertinent portion of P.L. 1951, ch. 163, which became effective on June 5, 1951, provides as follows:

"Limited retail distribution license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises; but only in original

containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto.***"

At the hearing herein an ABC agent testified that he visited the licensed premises on August 2, 1951, and made a sketch of the interior of the licensed premises. The sketch indicates that on the left side of the store, as one enters the premises, there was a soda fountain with five stools in front thereof. On the right side of the store, as one enters the premises, there was a cigar case and a candy case. On the right wall there were eight shelves, each of which is variously estimated to be from fourteen to eighteen feet long. These shelves contained a substantial amount of canned goods and items which may be classified as groceries, although cigars, cigarettes and razor blades were also displayed on these shelves near the front of the store. To the rear of the premises there were a book rack, a magazine rack, a greeting card rack and a display of stationery.

The records of the Division of Alcoholic Beverage Control indicate that, since December 1939, a limited retail distribution license has been issued for the business now conducted by the licensee, either to him or to some other person then conducting the business. The licensee testified that, after he applied for renewal of his license for the current licensing year, the local issuing authorities advised him that "You've got to have groceries in"; that, as a result, he placed nearly \$500.00 worth of groceries in his premises in the latter part of June 1951, and the evidence indicates that he has been purchasing groceries regularly since that time. He testified that "On groceries I am improving straight along." There was no substantial change in the physical appearance of the premises between the time of the inspection and the hearing, except that the licensee caused the word "Grocery" to be painted on the window of the premises. He testified that, at the time of hearing, the sale of groceries and foodstuffs, including ice cream and candy, constituted more than fifty per cent. of his business. The evidence indicates that the sale of beer amounts to less than ten per cent. of his business.

It is impossible to determine the exact nature of the business as it was conducted on July 1, 1951, the date upon which the renewed license for the current licensing year became effective. However, upon the evidence presented, I conclude that the licensee now conducts a bona fide grocery store or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; that the sale of groceries or other foodstuffs is the primary and principal business, and that the sale of alcoholic beverages is merely incidental and subordinate thereto. Under the circumstances, the rule to show cause will be discharged.

Accordingly, it is, on this 9th day of April, 1952,

ORDERED that the rule to show cause be and the same is hereby discharged.

EDWARD J. DORTON
Acting Director.

12. MORAL TURPITUDE - ASSAULT WITH INTENT TO RAPE AND BREAKING, ENTERING, LARCENY AND RECEIVING.

DISQUALIFICATION - APPLICATION TO LIFT - MISCONDUCT WITHIN PAST FIVE YEARS - APPLICATION DENIED.

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

Case No. 965.
- - - - -)

On February 5, 1946 petitioner was sentenced to an indeterminate term in a state reformatory as a result of being adjudged guilty of the crime of assault with intent to rape. Thereafter, on March 20, 1946, petitioner pleaded guilty to the crime of breaking, entering, larceny and receiving and was sentenced again to an indeterminate term in the same state reformatory, both terms to run concurrently. Petitioner was released from the penal institution on parole on March 18, 1947, the maximum of parole to expire on February 5, 1958.

The crime of assault with intent to rape and that of breaking, entering, larceny and receiving both involve per se the element of moral turpitude.

Although five years have elapsed since petitioner was released on March 18, 1947 from the state reformatory, it appears that he has been guilty of various offenses since his release. The record shows that on November 30, 1948 (adjudged disorderly person) he was fined \$7.00; on April 24, 1950 (adjudged disorderly person) he was fined \$5.00; on December 19, 1950 (adjudged disorderly person) he was fined \$10.00; on January 6, 1951 (adjudged disorderly person) he was sentenced to five days county jail; on October 23, 1951 (operating motor vehicle while under influence of intoxicating liquor in violation of R. S. 39:4-50) he was fined \$223.00 and his driver's license revoked for two years; on October 23, 1951 (operating motor vehicle in a careless manner) he received a suspended sentence.

Because of the record aforesaid, I am unable to conclude that petitioner has conducted himself in a law-abiding manner during the past five years. Hence, I must deny his application for relief under the provisions of R. S. 33:1-31.2.

Accordingly, it is, on this 17th day of April, 1952,

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

EDWARD J. DORTON
Acting Director.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Anthony Caruso, t/a Caruso Beverage Co.
442 No. 5th Street, Newark, N. J.

Application filed April 23, 1952 for transfer of SBD-100 from
Felix Gianantonio, 6913 Jackson St., Guttenberg, N. J.

Carmine Cocco and Annette B. Cocco, t/a The Millville Beverage Co.
Snyder Avenue, Landis Township, P.O. Millville, N. J.

Application filed for transfer of SBD license from Carmine
Cocco, April 23, 1952.

New Jersey State Library

Edward J. Dorton.
Acting Director.