

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

December 2, 1948

BULLETIN 824

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 824

December 2, 1948

1. NEW LEGISLATION - CHAPTER 439 OF THE LAWS OF 1948 - EFFECTIVE JANUARY 1, 1949, DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL TRANSFERRED TO AND CONSTITUTED THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL IN THE DEPARTMENT OF LAW AND PUBLIC SAFETY.

Committee Substitute for Senate Bill No. 27 was approved by the Governor on October 15, 1948, and thereupon became Chapter 439 of the Laws of 1948. This new act, effective January 1, 1949, is one of the State Administrative Reorganization measures. It continues the Department of Alcoholic Beverage Control, together with all of its functions, powers and duties, but provides that this Department shall be transferred to and be constituted the Division of Alcoholic Beverage Control in the new Department of Law and Public Safety. It continues the functions, powers and duties of the State Commissioner of Alcoholic Beverage Control but provides that such functions, powers and duties shall be transferred to and vested in the Director of the Division of Alcoholic Beverage Control and shall be exercised and performed by him through such Division.

Chapter 439 provides for the transfer, to the new Department of Law and Public Safety, of other State agencies, including the Department of Motor Vehicles and the Department of State Police.

The pertinent portions of Chapter 439 read as follows (omission of provisions not bearing upon the Department of Alcoholic Beverage Control being denoted by asterisks):

"AN ACT relating to the reorganization of the executive and administrative offices, departments, and instrumentalities of the State Government; and establishing and concerning a Department of Law and Public Safety as a principal department in the executive branch of the State Government.

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

"1. There is hereby established in the executive branch of the State Government a principal department which shall be known as the Department of Law and Public Safety.

"As used in this act, unless the context clearly indicates otherwise, the words 'the department' mean the Department of Law and Public Safety herein established.

"2. The head of the Department of Law and Public Safety shall be the Attorney General who shall be appointed by the Governor, with the advice and consent of the Senate, and who shall serve during the term of office of the Governor. He shall receive such salary as shall be provided by law. Any vacancy occurring in the office of Attorney General shall be filled in the same manner as the original appointment, but for the unexpired term only.

"The person in office as Attorney-General on the thirty-first day of December, one thousand nine hundred and forty-eight, shall hold the office of Attorney General in the Department of Law and Public Safety established hereunder for the unexpired period of the term for which he was appointed, and until his successor is appointed and qualifies.

"3. There is hereby established in the Department of Law and Public Safety a Division of Law, a Division of State Police, a Division of Alcoholic Beverage Control, a Division of Motor Vehicles, a Division of Weights and Measures and a Division of Professional Boards.

"The Attorney General shall have the authority to organize and maintain in his offices an Administrative Division and to assign to employment therein such secretarial, clerical and other assistants in the department as his office and the internal operations of the department shall require.

"4. The Attorney General, in addition to the functions, powers and duties specifically conferred and imposed upon him, shall:

"a. Maintain suitable headquarters for the department and such other quarters within the State as he may deem necessary to the department's proper functioning;

"b. Have general responsibility for the department's operations under this act;

"c. Supervise the organization of the department and changes in the organization thereof, except that the divisions, bureaus, boards and offices herein specifically provided shall be maintained;

"d. Formulate and adopt rules and regulations for the efficient conduct of the work and general administration of the department, its officers and employees;

"e. Adopt uniform procedures for all secretarial, recording and clerical duties of each of the divisions, bureaus and other agencies within the department;

"f. Perform such other functions and duties as the Governor may prescribe;

"g. Be the request officer of the department within the meaning of such term as defined in chapter one hundred twelve of the laws of one thousand nine hundred and forty-four; and

"h. Make an annual report to the Governor and to the Legislature of the department's operations, and render such other reports as the Governor or the Legislature shall from time to time request."

* * * *

"15. The Department of Alcoholic Beverage Control, together with all of its functions, powers and duties, is continued, but such department is hereby transferred to and constituted the Division of Alcoholic Beverage Control in the Department of Law and Public Safety established hereunder.

"16. The Division of Alcoholic Beverage Control shall be headed by a director, who shall be a person qualified by training and experience to direct the work of such division. The director of such division shall be appointed by the Governor, with the advice and consent of the Senate, and shall serve during the term of office of the Governor appointing him and until the director's successor is appointed and has qualified; provided, however, that the person in office as State Commissioner of

Alcoholic Beverage Control on the thirty-first day of December, one thousand nine hundred and forty-eight, shall hold the office of director of the Division of Alcoholic Beverage Control established hereunder for the unexpired period of the term for which he was appointed as State Commissioner of Alcoholic Beverage Control, and until his successor is appointed and qualifies. The director of the Division of Alcoholic Beverage Control shall receive such salary as shall be provided by law and shall devote his entire time and attention to the duties of his office. He may be removed from office by the Governor, for cause, upon notice and opportunity to be heard.

"17. The functions, powers and duties of the State Commissioner of Alcoholic Beverage Control, are continued, but such functions, powers and duties are hereby transferred to and vested in the director of the Division of Alcoholic Beverage Control established hereunder, and shall be exercised and performed by him through such division.

"18. Except as otherwise provided herein or as may be changed pursuant to authorization contained herein or in any other law, the organization of the existing Department of Alcoholic Beverage Control is continued as the organization of the Division of Alcoholic Beverage Control established hereunder; provided, however, that divisions in the Department of Alcoholic Beverage Control shall hereafter be constituted bureaus in the Division of Alcoholic Beverage Control established hereunder, and any person in charge of any such bureau shall hereafter be known and designated as deputy director in the Division of Alcoholic Beverage Control established hereunder."

* * * *

"27. The Attorney General shall, after consultation with the heads of the several divisions in the department, develop, and from time to time revise, a program designed to accomplish the greatest possible efficiency of departmental operations. He shall, subject to the approval of the Governor:

"a. Co-ordinate the inspectional and law enforcement activities of the department, and the several divisions and other agencies therein, in a manner designed to eliminate overlapping and duplicating functions; and

"b. Integrate within the department, so far as practicable, all staff services of the department and of the several divisions and other agencies therein.

"28. Any power, except (1) that of adjudication after a hearing required by statute, (2) that of granting or denying any application for a license, permit, transportation insignia, or removal of a disqualification, and (3) that of extending, transferring, suspending, revoking or reinstating any license or permit, which may be vested in the head of the Division of State Police, the head of the Division of Alcoholic Beverage Control, the head of the Division of Motor Vehicles, or the head of the Division of Weights and Measures, may, subject to the approval of the Governor, be exercised by the Attorney General, and to the extent that such power is exercised by the Attorney General the power of the head of the division shall be superseded."

* * * *

"44. All files, books, papers, records, equipment and other property of any department, officer or agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Law and Public Safety or to any officer or

agency designated, continued or constituted hereunder, shall upon the effective date of this act be transferred to the officer or agency to which such assignment or transfer has been made hereunder.

"45. This act shall not effect the orders, rules and regulations heretofore made or promulgated by any department, officer or agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Law and Public Safety or to any officer or agency designated, continued or constituted hereunder; but such orders, rules and regulations shall continue with full force and effect until amended or repealed pursuant to law.

"46. This act shall not affect actions or proceedings, civil or criminal, brought by or against any department, officer or agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Law and Public Safety or to any officer or agency designated, continued or constituted hereunder, and pending on the effective date of this act, but such actions or proceedings may be prosecuted or defended in the same manner and to the same effect by the department, officer or agency to which such assignment or transfer has been made hereunder, as if the foregoing provisions had not taken effect; nor shall any of the foregoing provisions affect any order or recommendation made by, or other matters or proceedings before, any department, officer or agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Law and Public Safety or to any officer or agency designated, continued or constituted hereunder, and all such matters or proceedings pending before such department, officer or agency on the effective date of this act shall be continued by the department, officer or agency to which such assignment or transfer has been made hereunder, as if the foregoing provisions had not taken effect.

"47. Except as provided in section thirty-eight hereof, all appropriations available and to become available to any department, commission, board, office or other agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Law and Public Safety or to any office or agency designated, continued or constituted therein, are hereby transferred to the Department of Law and Public Safety established hereunder, and shall be available for the objects and purposes for which appropriated." (Section 38 refers to appropriations to various professional boards: public accountants, architects, etc.)

"48. Any vacancy occurring in the office of Superintendent of State Police, director of the Division of Alcoholic Beverage Control, director of the Division of Motor Vehicles or Superintendent of the Division of Weights and Measures shall be filled in the same manner as the original appointment.

"49. Such employees of any department, office or other agency, the functions, powers and duties of which have been herein assigned or transferred to the Department of Law and Public Safety or to any office or agency designated, continued or constituted therein, as the head of the department, office or agency to which such functions, powers and duties have been

herein assigned or transferred, may determine are needed for the proper performance of the functions and duties imposed upon such department, office or agency, are hereby transferred to the department, office or agency to which such functions, powers and duties have been herein assigned or transferred.

"50. Nothing in this act shall be construed to deprive any person of any tenure rights or of any right or protection provided him by Title 11 of the Revised Statutes, Civil Service, or under any pension law or retirement system.

"51. * * * Whenever the term 'Department of Alcoholic Beverage Control' occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Division of Alcoholic Beverage Control established hereunder.

"Whenever the term 'State Commissioner of Alcoholic Beverage Control' occurs or any reference is made thereto in any law, contract or document, the same shall be deemed to mean or refer to the Director of the Division of Alcoholic Beverage Control established hereunder.

* * * *

"52. All acts and parts of acts inconsistent with any of the provisions of this act are, to the extent of such inconsistency, hereby repealed.

"53. This act shall be known as, and may be cited as, the 'Department of Law and Public Safety Act of 1948.'

"54. This act shall take effect on the first day of January, one thousand nine hundred and forty-nine, except that any appointment, and any confirmation or approval of any appointment permitted by this act may be made prior to such date."

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CONCEALING PERCENTAGE ARRANGEMENT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

SPRING LAKE REAL ESTATE COMPANY)
Warren Avenue)
Spring Lake Heights, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Spring Lake Heights.)

Edward J. Ascher, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charges:

"1. In your application dated May 11, 1948, filed with the Borough Council of Spring Lake Heights, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 31, which asks: 'Have you agreed to pay any employee, or other person, any percentage of the profits derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to pay George Sutor, your manager, 50% of the profits derived from the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. From or about December 29, 1947 until the present time, you knowingly aided and abetted George Sutor to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R. S. 33:1-52."

Defendant, who owns and operates a golf course, on December 3, 1947 entered into an agreement for a period of one year with one George Sutor wherein and whereby the said George Sutor agreed to manage the "food and beverage service" at the said Golf Club and receive for such services 50% of the net profit therefrom. The defendant's application as above denied any such agreement existed.

After charges were served, George Sutor executed and delivered to said defendant a general release, effectively severing all his connections with the business. Apparently all parties herein are and have been duly qualified to hold a license in New Jersey. I shall accept the said action as a correction of the illegal situation. Defendant has no prior adjudicated record. I shall suspend the license for the minimum period as in front cases, twenty days. Re Russo, Bulletin 741, Item 4.

Accordingly, it is, on this 22nd day of November, 1948,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Spring Lake Heights to Spring Lake Real Estate Company, Warren Avenue, Spring Lake Heights, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. November 29, 1948, and terminating at 2:00 a.m. December 19, 1948.

ERWIN B. HOCK
Commissioner.

3. LICENSEES - ADVERTISING - SPONSORSHIP OF BOWLING OR SIMILAR TEAMS AND FURNISHING UNIFORMS PERMISSIBLE WITHIN LIMITS INDICATED HEREIN.

November 19, 1948.

Dear Sir:

You hold a plenary wholesale license issued by this Department.

In your letter of November 5th you ask whether it is permissible for you to sponsor a bowling team and to enter same in the American Bowling Congress Tournament to be held in Atlantic City next February. This sponsorship includes, I take it, the furnishing of uniforms with your name appearing thereon.

Originally, this Department disapproved of any such sponsorship of a bowling or other athletic team by a liquor licensee (the only exception being a team consisting of the licensee's bona fide employees). For example, see Bulletin 207, Item 9.

However, this position has been modified during the last several years. To crystallize present policy, I shall, so far as this Department is concerned, consider it permissible for a liquor licensee to sponsor a bowling or similar athletic team and furnish uniforms, provided that no participant on the team is a minor. I do not believe that youngsters should be used in this type of advertisement by liquor licensees.

It is expected, of course, that licensees will use good sense and judgment in these matters. Should there be any abuse of the above privilege, or should the sponsorship of these teams create any substantial problem in sound liquor control, the privilege will be promptly cancelled.

Subject to the foregoing, it is therefore permissible for you to sponsor and enter your team in the above mentioned bowling tournament.

Very truly yours,
ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - CONCEALING INTEREST OF NON-LICENSEE - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

JOHN ALBACH)
326 River Street)
Hoboken, N. J.,)

Holder of Plenary Retail Consumption License C-214, issued by the Board of Commissioners of the City of Hoboken, and transferred during the pendency of these proceedings to)

CONCLUSIONS AND ORDER

JOHN ALBACH & GERHARD H. C. KORTELING)
T/a NEW AMSTERDAM BAR & GRILL,)

for the same premises.)

-----)
Joseph P. Hanrahan, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that (1) in his current license application he concealed the interest of Gerhard Korteling in the license and the business conducted thereunder, and (2) since December 1946, he permitted the said Gerhard Korteling to exercise the privileges of his successive licenses.

When the license was originally placed in the name of John Albach in December 1946, the partnership interest of Gerhard Korteling was concealed because the latter was not a resident of Hoboken and they had been advised that the local issuing authority was averse to granting licenses to non-residents of the municipality. There was, in fact, no such prohibitory local regulation and both individuals appear to have been under no statutory disability.

On November 3, 1948, the local issuing authority granted a transfer of the license to both parties, thereby correcting the prior unlawful situation.

The license will be suspended for a period of twenty days. Cf. Re R.J.S. Inc., Bulletin 776, Item 10.

Accordingly, it is, on this 22nd day of November, 1948,

ORDERED that Plenary Retail Consumption License C-214, issued by the Board of Commissioners of the City of Hoboken to John Albach and transferred to John Albach & Gerhard H. C. Korteling, t/a New Amsterdam Bar & Grill, for premises 326 River Street, Hoboken, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. November 30, 1948, and terminating at 2:00 a.m. December 20, 1948.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP PREMISES CLOSED AND OBSTRUCTING PUBLIC VIEW DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MARY TAMBOER)
124 - 16th Avenue)
Paterson 1, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-133, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
-----)

Mary Tamboer, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging that she (1) failed to keep her entire licensed premises closed between 3:00 a.m. and 1:00 p.m. on Sunday, and (2) failed to keep her licensed premises open to public view during said hours, in violation of municipal regulations.

On Sunday, September 26, 1948, at 3:40 a.m., agents of the State Department of Alcoholic Beverage Control, together with law-enforcement officers of the City of Paterson, found the licensed premises open with members of the public therein, and found the curtain and blind at the door and window of said premises so arranged that no view of the interior could be had from the outside thereof.

An ordinance of the Board of Alcoholic Beverage Control, passed May 27, 1948, provides, inter alia, that no sales shall be made on licensed premises on Sunday between the hours of 3:00 a.m. and 1:00 p.m., and that during said hours the entire licensed premises shall be closed, with exceptions not germane to the issue herein.

A resolution of the municipal governing body, passed June 21, 1934 (prior to the appointment of an excise board), provides, inter alia, "During the hours within which alcoholic beverages are not permitted to be sold *** the entire interior of the licensed premises shall be kept open to public view from the outside thereof ***." This resolution has not been amended or repealed by the excise board.

It seems obvious that all violators involving the disobedience of "hours" regulations are equally reprehensible. I see no reason why there should be any difference in the minimum penalty in unaggravated cases. This principle was well stated in Re Morgan, Bulletin 542, Item 10. Defendant has no prior adjudicated record, and no aggravating circumstances appearing herein, I shall suspend the license for fifteen days on charge (1), and add five days for charge (2). The remission of five days for the plea will leave a net suspension of fifteen days.

Accordingly, it is, on this 22nd day of November, 1948,

ORDERED that Plenary Retail Consumption License C-133, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Mary Tamboer, for premises 124 - 16th Avenue, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. November 29, 1948, and terminating at 3:00 a.m. December 14, 1948.

ERWIN B. HOCK
Commissioner.

6. DISQUALIFICATION - CRIME OF LARCENY HEREIN INVOLVES MORAL TURPITUDE - PETITION TO LIFT GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 682.
-----)

BY THE COMMISSIONER:

On May 23, 1931 petitioner was placed on probation as a result of a conviction in a Police Court of larceny of a steam boiler. On February 26, 1932, petitioner was sentenced to fifteen days in a County prison by a Federal Judge after being convicted of violation of the National Prohibition Act. Both the aforesaid convictions arose out of one unlawful action.

Again, on February 8, 1936, petitioner was fined \$100.00 in a Police Court as a result of a conviction of possession of illegal liquor.

Inasmuch as the crime of larceny involves the element of moral turpitude, it is unnecessary to determine whether the other crimes of which petitioner was convicted involved moral turpitude.

Petitioner failed to disclose in his petition filed herein and also failed to mention at the hearing on June 4, 1948 that he was convicted in 1932 of violation of the National Prohibition Act, and that in 1936 he was convicted of the charge of having illegal liquor in his possession. Under further examination on June 10, 1948 relative to petitioner's criminal record, petitioner, in explanation of his failure to disclose the conviction in 1936, stated that he "didn't realize it was a conviction because I was fined". As to the conviction in 1932 of violation of the National Prohibition Act, petitioner stated that this arose in connection with the larceny of the steam boiler which he had disclosed. I am satisfied from the record that petitioner's failure to disclose the 1936 conviction was unintentional on his part.

Petitioner testified that during the past seven years he was employed as a stationary engineer.

Petitioner produced three witnesses who testified that they have known petitioner seven or more years and they were of the opinion that petitioner bears a good reputation for being a law-abiding citizen in the community in which he resides.

The Police Department of the municipality in which petitioner resides has certified to this Department that there are no pending complaints against petitioner or pending investigations concerning his conduct.

I conclude, after consideration of all the evidence, that petitioner has been law-abiding, especially during the past five years, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 23rd day of November, 1948,

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

ERWIN B. HOCK
Commissioner.

7. CANCELLATION PROCEEDINGS - LICENSE ISSUED IN EXCESS OF STATUTORY QUOTA - EXCEPTION AS TO HOTELS OF 50 SLEEPING ROOMS RUNS ONLY IN FAVOR OF HOTEL OPERATOR - LICENSE HEREIN CANCELLED NOTWITHSTANDING EXPIRATION OF TERM.

In the Matter of Cancellation)
Proceedings against)

ATLANTIC BAR, INC.)
240-250 Ocean Avenue)
Ocean & Pavilion Aves.)
Long Branch, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Seasonal Consumption)
License CS-3, issued by the)
Board of Commissioners of the)
City of Long Branch.)

-----)
No appearance on behalf of Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant was served with notice to show cause why its license should not be cancelled and declared null and void on the ground that it was issued in violation of P.L. 1947, c. 94 (R. S. 33:1-12.13, et seq.).

On May 26, 1948, the local governing body issued a summer seasonal consumption license to the defendant for a portion of the premises known as the Atlantic Hotel, located at 240-250 Ocean Avenue, Long Branch. The defendant had leased from the operator of the hotel the "dining room, kitchen and bar facilities" for "the dispensing of food and liquors therein". The licensed premises consisted of the "ground floor cocktail lounge and dining room during meals".

The cited statute prohibited the issuance of any new license in the municipality because there were already outstanding there more than one consumption license for each 1,000 of its population. See R. S. 33:1-12.14. Although the license was issued to hotel premises, which contained at least fifty sleeping rooms, the defendant was not "a person who operates a hotel", but merely a lessee of a portion of said premises and, therefore, not within the pertinent exception of the statute. See R. S. 33:1-12.20.

While the term of the license has already expired, an order for cancellation will be entered to obviate any possibility of a future application by the defendant for the premises in question being considered as an application for renewal, as distinguished from an application for a new license. See R. S. 33:1-12.13.

Accordingly, it is, on this 23rd day of November, 1948,

ORDERED that Seasonal Consumption License CS-3, which expired on November 1, 1948, and which was issued to Atlantic Bar, Inc. by the Board of Commissioners of the City of Long Branch, for premises 240-250 Ocean Avenue, Long Branch, be and the same is hereby cancelled and declared null and void.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FRANK JACKSON)
T/a JACKSON'S TAVERN)
109 Fulton Avenue)
Lakewood, N. J.,)

CONCLUSIONS AND ORDER.

Holder of Plenary Retail Consumption License C-22, issued by the Township Committee of the Township of Lakewood.)
-----)

Frank Jackson, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to two charges alleging that he sold, served and delivered alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On October 18, 1948, the defendant's waitress served beer to two minors, one 17, and the other 19, years of age.

The defendant has no previous record. Since one of the minors was but 17 years of age, I shall suspend the license for a period of fifteen days, less five days for the plea, leaving a net suspension of ten days. Cf. Re Drucker, Bulletin 801, Item 5.

Accordingly, it is, on this 25rd day of November, 1948,

ORDERED that Plenary Retail Consumption License C-22, issued by the Township Committee of the Township of Lakewood to Frank Jackson, t/a Jackson's Tavern, 109 Fulton Avenue, Lakewood, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. November 29, 1948, and terminating at 2:00 a.m. December 9, 1948.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - UNLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JAY R. FACKENTHAL)
T/a JAY'S LITTLE OAK)
400 - 57th Street)
West New York, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-56, issued by the Board of Commissioners of the Town of West New York.)
-----)

Carmen LaCarrubba, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge as follows:

"On October 28, 1948, you possessed on your licensed premises, two barrels or other containers from each of which a brewed malt alcoholic beverage was drawn, to the dispensing apparatus of which the name or brand of the manufacturer of that product was not attached, in that Ballantine beer was drawn through a tap bearing no label; in violation of Rule 1 of State Regulations No. 22."

Defendant's plea states that he "was not aware at the time of committing any infraction" of the regulations. Licensees are expected to know the law and the regulations. Ignorance of the law or regulations presents no defense.

In the absence of any prior adjudicated violation against the defendant's record, I shall suspend the license for the minimum in cases of this kind, a period of three days, less one day because of the plea, leaving a net suspension of two days. Cf. Re Sudol, Bulletin 501, Item 9.

Accordingly, it is, on this 29th day of November, 1948,

ORDERED that Plenary Retail Consumption License C-56, issued by the Board of Commissioners of the Town of West New York to Jay R. Fackenthal, t/a Jay's Little Oak, for premises 400 - 57th Street, West New York, be and the same is hereby suspended for a period of two (2) days, commencing at 3:00 a.m. December 6, 1948, and terminating at 3:00 a.m. December 8, 1948.

ERWIN B. ROCK
Commissioner.

10. REFERENDUM (R. S. 33:1-47.1) - SPECIFIED HOURS FOR WEEKDAY AND SUNDAY SALES - EFFECT OF NEGATIVE VOTE.

REFERENDUM BALLOTS - UNDER R. S. 33:1-47.1 AS AMENDED BY CHAPTER 259 OF THE LAWS OF 1945, COUNTY CLERK REQUIRED TO HAVE PRESCRIBED "EXPLANATORY STATEMENT" PRINTED ON BALLOTS.

December 1, 1948

U. G. Pursell, Town Clerk
Belvidere, N. J.

Dear Mr. Pursell:

I have your letter of November 30th (responsive to ours of November 29th) with a copy of the petition calling for a referendum in the town at the general election on November 2, 1948, on the following Public Question:

"Shall the sale of alcoholic beverages at retail be made in the Town of Belvidere on week days between 7:00 A.M. and 2:00 A.M. of the following day; on Sundays, between 12:00 midnight and 2:00 A.M. Sunday; on New Year's day when it is a week day from 12:00 midnight of New Year's day to 5:00 A.M. and from 7:00 A.M. to 2:00 A.M. of the following day; on New Year's day when it is a Sunday from 12:00 midnight to 5:00 a.m.?"

Enclosed, also, with your letter is a portion of the Sample Ballot (of the ballots used at the indicated election) setting forth the "Public Question" and setting forth your notation of the total votes on such Question as follows: "Yes" - 364; "No" - 591. (You also give the "Yes" and "No" votes for the First Election District - 180 and 411, respectively, and the "Yes" and "No" votes for the Second Election District - 184 and 180, respectively.)

The referendum was held pursuant to Revised Statutes, 33:1-47.1. That statutory section provides, in part, as follows:

"If a majority of the legal voters shall vote affirmatively on the question of whether the hours of sale shall be fixed in the manner set forth in such question or questions, the clerk of the governing board or body of such municipality shall forthwith in writing notify the commissioner and municipal board, if any, of the action taken by the legal voters of such municipality and thereafter the retail sale of alcoholic beverages may be made only within the hours fixed by such referendum. Such sale at any other time within such municipality shall be unlawful and constitute a violation of this chapter.

"If a majority of legal voters voting upon such question or questions shall vote in the negative on the question of whether the hours of sale shall be fixed in the manner set forth in such question or questions, the clerk of the governing board or body of such municipality shall forthwith in writing notify the commissioner and municipal board, if any, of the action taken by the legal voters of such municipality and thereafter the hours between which the sale of alcoholic beverages at retail may be made may be regulated as theretofore in such municipality."

It follows, therefore, that an affirmative majority vote at a referendum held under Revised Statutes, 33:1-47.1 would fix the only permissible hours of sale in the municipality and that the prior

hours regulations of the municipality would be automatically superseded. It follows, on the other hand, that a ~~majority~~ negative majority vote at a referendum held under Revised Statutes, 33:1-47.1 has no effect whatsoever on the then existing hours regulations of the municipality, which regulations continue in force until amended or repealed by ordinance or superseded by a subsequent referendum. (See Re Asarnow, Bulletin 535, Item 1 and bulletin items cited therein.)

Thus, pursuant to the majority of negative votes on the Public Question submitted to the town's voters at the last general election, the referendum made absolutely no change in the town's hours regulations. Those regulations remain in full force and effect.

According to our records Belvidere's hours regulations, set forth in Section 4 of the town's alcoholic beverage ordinance adopted February 28, 1944, are as follows:

"4. No licensee shall sell, serve, deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or allow the consumption of any alcoholic beverage on licensed premises: on New Year's Day when it is a weekday, between the hours of 5:00 a.m. and 7:00 a.m.; on New Year's Day when it is a Sunday, between the hours of 5:00 a.m. and 7:00 a.m. of the following Monday; on other weekdays, between the hours of 1:00 a.m. and 7:00 a.m.; on other Sundays, between the hours of midnight Saturday and 7:00 a.m. of the following Monday."

I must point out (without making a determination in the matter) the further important fact that the referendum may be invalid. Revised Statutes, 33:1-47.1, as amended by P.L. 1945, c. 259, provides that the County Clerk shall cause the Public Question or Public Questions to be printed in an appropriate place on the ballot, and shall cause to be printed on the ballot immediately below the printed question or questions the following: 'EXPLANATORY STATEMENT--A "Yes" vote is a vote to permit sales only within the hours set forth in the question or questions printed above. A "No" vote is a vote against changing the hours during which sales of alcoholic beverages are now permitted in this municipality.'

On December 17, 1947 (after the Clerk of one county had failed to cause the "Explanatory Statement" to be printed on the ballots at a referendum held in one of the county's municipalities under Revised Statutes, 33:1-47.1) I wrote to all of the County Clerk's offices in New Jersey the following letter:

"An important matter may have escaped the attention of some County Clerks. Please see the EXPLANATORY STATEMENT which the County Clerk is directed to have printed on the ballot at an election held under Revised Statutes, 33:1-47.1, as amended by Chapter 259 of the Laws of 1945."

The EXPLANATORY STATEMENT does not appear on the Sample Ballot enclosed with your letter of November 30th, and I take it that the prescribed EXPLANATORY STATEMENT was not printed on the ballots actually used.

Please bring this letter to the prompt attention of the Mayor and Common Council, and please notify each of the town's three consumption licensees that the recent referendum effected no change in Belvidere's hours regulations which continue in force and effect in Section 4 of the town's ordinance adopted February 28, 1944. Since the club license in Belvidere was issued by me (under Revised Statutes, 33:1-20) I am today notifying the club licensee (American Legion Memorial Park Association, Inc.) to the above effect.

Very truly yours,
ERWIN B. HOCK
Commissioner.

11. STATE LICENSES - NEW APPLICATIONS FILED.

Towers Transportation, Inc.
Warehouse #3, Port Street
Port Newark, N. J.

Application for Transportation License filed November 24, 1948.

Italian-American Winery Co., Inc.
88-90 Clinton Street
Hoboken, N. J.

Application filed November 26, 1948 for transfer of Plenary Winery License V-39 (with retail privileges) from Carmelo Cannizzaro, 33 Aspen St., Passaic, N. J.

Erwin B. Hock
Commissioner.