

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

BULLETIN 542

DECEMBER 16, 1942.

1. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - FAILURE TO DISCLOSE MATERIAL FACTS - 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

BECKER AND SCHULTZE CO.,
802 Main Street and
Rear of 804 Main Street
Asbury Park, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-53, issued by the City Council of the City of Asbury Park.

Haydn Proctor, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, holder of a plenary retail consumption license, has entered a plea of guilty to charges alleging:

(1) In its application for license dated June 10, 1941, filed with the City Council of the City of Asbury Park, it falsely stated that no one other than itself had any interest, directly or indirectly, in the license applied for or in the business to be conducted under the license, and that no one other than the stockholders set forth in the application had any interest in the corporation's stock, in violation of R. S. 33:1-25.

(2) From July 1, 1936 to February 9, 1942 it knowingly aided and abetted Sanford C. Flint, a non-licensee, to exercise the rights and privileges of its licenses, in violation of R.S.33:1-52.

Until sometime in 1935 the business was owned by two partners, Becker and Schultz, who operated under a corporation known as Becker & Schultz, Inc. In March of that year the stock and fixtures were sold at a sheriff's sale pursuant to proceedings instituted by the landlord for back rent. Sanford C. Flint and John P. Tilton, to whom the corporation was indebted in considerable amounts, purchased the stock and fixtures at the sale in order to protect their claims. About two months later Tilton transferred his interest to Flint and the latter formed a new corporation known as Becker & Schultz Co., the present licensee, with William Deeves, Rachel Feinberg and Nina C. Herbert as dummy stockholders. The stock remained in their names on the corporation's books until the time of the Department's investigation. In the 1936-37 license application, the first to be filed on behalf of the new corporation, the above mentioned persons were listed as stockholders. In subsequent applications various other persons, including Becker, were designated as stockholders. All persons so designated admittedly had no interest in the licensed business.

Becker and Schultze apparently were allowed to continue operating the business as "managers", with the understanding that they might repurchase it whenever they could obtain the necessary funds. The business was never repurchased. Schultze discontinued his employment after about two years and Becker in July 1941.

On or about February 9, 1942, during the course of the Department's investigation, Tilton purchased the entire interest in the licensed business from Flint and had the stock transferred on the corporate books to himself and his nominees.

The facts are not disputed. It is clear that the application dated June 10, 1941 contained false statements concealing the interest of Sanford C. Flint and that, in fact, the corporation was a "front" for Flint during a period of more than five years.

It is strongly urged that no penalty should be imposed because the present owners of the stock were not connected with the corporation when the violations occurred. However, a corporation is a legal entity separate and distinct from its members or officers. Re Roberts, Bulletin 366, Item 2. The present proceedings have been instituted against the license held by the corporation and the corporation has pleaded guilty to the charges. Hence a penalty must be imposed upon the license held by the corporation. At most, the innocence of the present stockholders is a matter to be considered as a mitigating circumstance in fixing the penalty.

As to penalty: Defendant has pleaded guilty. All of the interested parties appear to have been fully qualified at all times. The unlawful situation was corrected on February 9, 1942, and hence the case does not come within my statement of policy as to increased penalties to be imposed for all fronts continued or created after July 1, 1942. See Bulletin 512, Item 9. Under all the circumstances I shall impose the minimum penalty of ten days.

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

ORDERED, that Plenary Retail Consumption License C-53, heretofore issued to Becker & Schultze Co. by the City Council of the City of Asbury Park for the current fiscal year for premises at 802 Main Street and rear of 804 Main Street, Asbury Park, New Jersey, be and the same is hereby suspended for a period of ten (10) days, commencing December 7, 1942 at 2:00 A.M., and concluding December 17, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

2. APPELLATE DECISIONS - HENDERSON v. GLOUCESTER TOWNSHIP.

ROY HENDERSON,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF GLOUCESTER,)
)
 Respondent)
 - - - - -)

ON APPEAL
CONCLUSIONS AND ORDER

George A. Streitz, Esq., Attorney for Appellant.
George D. Rothermel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the refusal to transfer his plenary retail consumption license from premises at Black Horse Pike and Church Street to premises No. 10, west side of Black Horse Pike, both in Blackwood, Gloucester Township.

The section of Gloucester Township known as Blackwood is generally residential in character. However, Blackwood does contain a small business section located on Black Horse Pike and running approximately one block north and two blocks south of its intersection with Church Street.

On the northwest corner of the Pike and Church Street, in this small business district, there is a row of ten attached two-story brick buildings with living quarters on the second floor and stores on the ground floor of each building. For present purposes these buildings will be considered respectively as Premises No. 1 to Premises No. 10, west side of Black Horse Pike. Premises No. 1 is on the northwest corner of the Pike and Church Street. The store on the street level in Premises No. 1 is occupied as a cigar shop. The premises for which appellant now holds a license are located in the basement of Premises No. 1 and the only public entrance thereto is a stairway leading down from the street level of Church Street. This entrance appears to be inconspicuous and is some distance west of the Pike. These premises have been licensed for a number of years, the license therefor having been transferred to appellant in February 1942 and renewed for the present fiscal year. Appellant now seeks to transfer his license to a store located on the ground floor of Premises No. 10 in this row of buildings. When his application for said transfer was filed with the respondent a petition containing the names of 120 residents of Blackwood objecting to said transfer was filed with and considered by respondent. The store to which appellant seeks to transfer has an entrance on the street level of Black Horse Pike. This store is located about 217 feet from Premises No. 1 and is much nearer to a residential section of Blackwood. It appears also that another licensee has been operating for some time under a plenary retail consumption license issued for the store on the ground floor of Premises No. 4, which is approximately the same distance from Premises No. 1 and Premises No. 10.

The transfer to other premises is a privilege not inherent in appellant's license. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable grounds such action will be affirmed. Van Schoick v. Howell, Bulletin 120, Item 6. The burden of proof is upon appellant to show that the action of respondent in denying the transfer was arbitrary or unreasonable.

In Craig v. Orange, Bulletin 251, Item 4, a somewhat similar situation was considered. In that case appellant sought to transfer its license from the rear of the fourth floor of a bank building to a store located on the ground floor of a building in a business district. The refusal to transfer the license was sustained upon appeal. In the present case, the premises for which appellant holds his license are located in the basement of a building with no public entrance thereto from the Blackwood Pike. The transfer of the license would result in the establishment of two places licensed for the consumption of alcoholic beverages, both of which would be located on the Pike within close proximity to each other and would also result in the establishment of a licensed place much nearer to a residential section of Blackwood. Despite the fact that respondent has for years licensed premises located in the basement of Premises No. 1, it does not follow that respondent must, therefore, of necessity, transfer this license to the ground floor of Premises No. 10 contrary to the expressed wishes of numerous persons residing in the neighborhood. On the evidence submitted I must find that appellant has not sustained the burden of proof. The action of respondent in denying the transfer has not been proved to be arbitrary or unreasonable.

The case is distinguished from Costa v. Verona, Bulletin 501, Item 2, because the latter case involved merely the transfer from one store to another, both of which were located on the ground floor of the respective premises in the same business district.

For the reasons aforesaid, the action of respondent is affirmed.

Accordingly, it is, on this 4th day of December, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN HOLDER OF EMPLOYMENT PERMIT TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF STATE REGULATIONS NO. 11, RULE 3 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

SUSIE JOHNSON)
T/a SILVER MOON GRILL)
E/S Lakehurst Road)
Pemberton Township)
P. O. Browns Mills, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Pemberton.)
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Joseph J. Felcone, Esq., Attorney for the Defendant-Licensee.
William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to a charge of permitting her employee, Rose Kessler, holder of a non-citizenship employment permit, to sell alcoholic beverages, in violation of Rule 3 of State Regulations No. 11.

For the accompanying decision relating to the permittee see Re Kessler, Bulletin 542, Item 4.

Pending the determination of the aforesaid proceedings, the licensee was served with additional charges alleging that, on or about October 7, 1942, she sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and also Rule 1 of State Regulations No. 20. To these charges the licensee pleaded not guilty.

In the initial proceedings it appears that, on May 14, 1942, agents of this Department observed the disqualified permittee, Rose Kessler, serve beer to three persons seated at a table in the licensed premises. One of the agents also ordered a glass of beer from Rose Kessler, which she served to him. The licensee admits her knowledge of the permittee's ineligibility to "serve, sell or solicit the sale...of any alcoholic beverages", as specifically provided in the permit.

In the subsequent proceedings, the Department's case rests upon the testimony of an eighteen year old minor and three of his friends. On the night of October 7, 1942, at about 8:30 P.M., the car in which they were riding was stopped in front of the defendant's premises. While the others remained in the car, the minor entered the tavern and there purchased a pint bottle of Kessler's Private Blend Whiskey. The minor, although not positive in his identification, stated that the licensee "looked like" the person who had sold him the bottle of liquor.

Although the defendant denies the sale, I do not find her testimony worthy of belief. On October 10, 1942, three days after the occurrence, defendant stated to an agent of this Department that the minor had entered her premises accompanied by an old man and that the latter had purchased a pint bottle of Kessler's Whiskey. She further stated that she had arrived at the premises about 8:00 P.M. on October 7, 1942. When, during the course of the conversation, it developed that the sale had been made about 8:30 P.M., she said that she did not get to the premises until 9:00 P.M. At the hearing, she omitted any reference to the minor's presence at her tavern on the night in question and said that she had sold a quart bottle of Calvert's whiskey to the "old man."

I see no reason for believing that the minor and his three companions were lying at the hearing. Nor is any reason suggested why they should do so. The violation came to light because the minor, having been arrested on a statutory charge, gave a written statement to the police in which he detailed his activities on that night. Moreover, despite the minor's inability to identify beyond question the licensee as the person making the sale, there is no doubt that his testimony and that of his three friends adequately established that the liquor was actually purchased by him at the defendant's premises.

The defendant is guilty as charged.

The previous record of this licensee is, to say the least, impressive. On September 9, 1937, after off-proof liquor was found on her premises, she was officially warned by this Department against a recurrence of this offense. On November 22, 1937 her license was suspended by the local issuing authority for twenty days for sales during prohibited hours. On November 28, 1938 she suffered a suspension of eighteen days on charges of permitting a brawl on her premises and also selling alcoholic beverages to minors and intoxicated persons.

On August 28, 1940 she was found guilty of permitting bookmaking and numbers writing on her licensed premises, for which she received a penalty of twenty-six days.

In commenting on the last mentioned proceeding, this Department wrote the Pemberton Township Committee:

"I further note that in announcing the penalty Chairman Lemmon warned the licensee that if there were any further trouble at the licensed premises the license would be revoked outright. I hope that this time the Committee means it, since a similar and subsequently unfulfilled threat was made in November 1937 on the occasion of the licensee's first infraction of the hours of sale regulations (Rev. 1102). According to our records, the licensee has in the interim been found guilty of permitting a brawl on the licensed premises and selling alcoholic beverages to minors and to intoxicated persons, for which the license was, not revoked, but merely suspended for eighteen days (Rev. 1386). I think the Township Committee will agree that the licensee seems to have an inherent inability to abide by the law."

Revocation of the defendant's license is indicated.

Accordingly, it is, on this 7th day of December, 1942,

ORDERED, that Plenary Retail Consumption License C-15, heretofore issued to Susie Johnson, t/a Silver Moon Grill, for the fiscal year 1942-43, for premises at e/s Lakehurst Road, Pemberton Township, P. O. Browns Mills, New Jersey, by the Township Committee of the Township of Pemberton, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE AND SERVICE OF ALCOHOLIC BEVERAGES BY ALIEN PERMITTEE CONTRARY TO CONDITION OF EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-26 - PERMIT SUSPENDED FOR 30 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
ROSE RUTH KESSLER,
Rifle Range Road,
Browns Mills, N. J.,
Holder of Employment Permit No. 2379 for the fiscal year 1942-43, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS
AND ORDER

Joseph J. Felcone, Esq., Attorney for Defendant-Permittee.
William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a non-citizenship employment permit, pleaded guilty to a charge alleging that she sold alcoholic beverages contrary to the condition upon which such permit was issued and in violation of R. S. 33:1-26.

See Re Johnson, Bulletin 542, Item 3 for the proceedings against her employer.

The defendant's permit is expressly conditioned that she "shall not in any manner whatsoever serve, sell or solicit the sale....of any alcoholic beverages." Despite such disqualification she served, on May 14, 1942, a round of beer to a party of three persons on the licensed premises and also a glass of beer to an agent of this Department. The only reason given by her for making such service is that "she could not get the bartender to do it."

I shall suspend the permit for thirty days, less five days for the guilty plea. Cf. Re Shapiro, Bulletin 534, Item 1.

Accordingly, it is, on this 7th day of December, 1942,

ORDERED, that Employment Permit No. 2379, for the fiscal year 1942-43, issued to Rose Ruth Kessler by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, commencing December 14, 1942, at 7:00 A.M., and concluding January 8, 1943, at 7:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - INCREASED PENALTIES RECOMMENDED WHERE LICENSEES ADOPT "SPEAKEASY" TACTICS.

December 7, 1942

George Surosky, Esq.,
City Attorney,
Paterson, N. J.

My dear Mr. Surosky:

I have before me your letter of October 30th re disciplinary proceedings by the Board of Alcoholic Beverage Control against A. J. S. Corporation, 156 Broadway, charged with selling and failing to afford view of the interior during prohibited hours. It is noted that the license was suspended for five days.

Please express to the members of the Board my sincere appreciation for their institution and conduct of these proceedings on the Department's recommendation.

I understand that our agents were served drinks at the tavern as late as 3:45 A.M. and that business continued after curfew under dimmed lights and behind closed blinds, approximately fifteen customers being admitted by Sam Eilen, the bartender, upon their knocking at a locked door. In other words, the licensee was operating a "speakeasy." Further, it was the same Sam Eilen who was present on the licensed premises in June of 1941 when the former licensee corporation operating at these premises was charged with (1) employing hostesses, (2) selling after hours and (3) obstructing the view of the interior of the premises, all in violation of local regulation. At the hearing on the last cited charges, your Board very properly suspended the then license for a period of sixty days.

New Jersey has been plagued by the persistent refusal of a small group of notorious licensees to obey closing hour regulations.

There is no excuse for this type of violation. All licensees can presumably tell time. After having carefully studied the whole problem, I have reached the conclusion that the penalties heretofore given have not been sufficiently harsh. I have therefore recommended that in every case wherein a retail consumption licensee is found guilty of selling during prohibited hours or remaining open after the closing hour, the license be suspended for at least fifteen days. Where the licensee has a previous record or there are aggravating circumstances, the penalty should be correspondingly increased.

In the instant case there was, in my opinion, ample evidence of aggravating circumstances warranting the imposition of a much more severe penalty than that imposed. The presence of fifteen customers on the licensed premises forty-five minutes after the closing hour, the "speakeasy" tactics adopted by the licensee, as well as the presence of Sam Eilen, all constitute aggravating circumstances.

These comments are not to be considered as criticism of the Board, but rather as a guide for its future conduct.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

6. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIFTEEN YEARS LAST PAST 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. 249.

CONCLUSIONS
AND ORDER.

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualification resulting from convictions of crime be lifted pursuant to R. S. 33:1-31.2.

Petitioner admits that, from 1921 to 1927, he conducted a "speakeasy." In 1923 he pleaded guilty in a Court of Quarter Sessions to the crime of violating the Prohibition Enforcement Act and was fined \$50.00. In 1925 he pleaded guilty in the same Court to the same crime and was fined \$250.00. On June 9, 1926 he pleaded guilty in the same Court to an indictment for conducting a disorderly house and to three indictments for violating the Prohibition Act. He was fined \$1250.00 and was sentenced to States Prison for two years, but this sentence was immediately suspended. Petitioner has not been arrested or convicted of any crime since 1926. Shortly after his last conviction petitioner opened a grocery store and meat market in the same municipality and has conducted that business continuously since that time.

At the hearing a wholesale grocer, a baker and a wholesale produce merchant, each of whom has dealt with petitioner almost daily for more than eight years, testified that he has been honest and law-abiding during that time and that his reputation in the community is very good. I am satisfied that petitioner has been law-abiding for more than fifteen years last past. Because of his record during

Prohibition I have had some doubt as to whether his association with the industry would not be contrary to public interest. However, petitioner is married, has a family and has testified under oath that the disorderly house charge involved only the sale of liquor. Because of his good record during the past fifteen years, I shall give him the benefit of the doubt and shall lift his disqualification.

Accordingly, it is, on this 8th day of December, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

7. MORAL TURPITUDE - CRIME OF POSSESSION AND SALE OF NARCOTICS INVOLVES MORAL TURPITUDE.

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

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

CONCLUSIONS
AND ORDER

Case No. 248)
-----)

BY THE COMMISSIONER:

In 1928 petitioner pleaded guilty, in a Federal Court in New York, of unlawfully dealing in and possessing narcotics. This involved the alleged payment of money to petitioner by a drug addict for a package of narcotics which he took from a clothes locker on premises where petitioner was employed. Petitioner claims that although he was wholly innocent in the matter, he pleaded guilty upon the advice of his counsel and upon the assumption that sentence would be suspended; that when he was sentenced to serve a year and a day in prison he brought the matter to the attention of the judge of the court and convinced him of his innocence and that thereupon the judge suspended sentence.

However, the fact remains that the court records show that petitioner pleaded guilty and was convicted of the crime in question. Petitioner may not here collaterally attack his own confessional plea, or the merits of his conviction in the criminal court. Re Case No. 421, Bulletin 505, Item 5.

Selling and possessing narcotics is a crime involving moral turpitude. Re Case No. 445, Bulletin 521, Item 7. Petitioner is therefore disqualified from holding a liquor license or working for a liquor licensee in this State. R. S. 33:1-25, 26.

Petitioner seeks removal of his disqualification, pursuant to R. S. 33:1-31.2, on claim that he has been law-abiding not only for the past five years, but has always been an honest and upright person.

Petitioner testified that he is forty-two years of age and has until recently resided with his mother and other members of his family; that for the past twenty-five years he has been employed in the circulation division of the newspaper industry.

The Rabbi of the congregation of which the petitioner is a member appeared as a character witness and testified that he has been the petitioner's spiritual adviser and good friend for about six years, and that petitioner takes an active interest in the welfare of the community, and is there regarded as a reputable and law-abiding person.

The City Circulation Manager of a large metropolitan daily newspaper testified that he has known petitioner for about twenty-five years both as a fellow employee and as a friend; that petitioner has always had a good reputation in the newspaper business and is considered to be honest and law-abiding. The Secretary-Treasurer of the labor union, of which petitioner is a member, who has known petitioner about twenty years, testified to like effect.

The General Manager, who is also Director and part owner of a newspaper distributing company for whom petitioner worked at the time of his arrest, testified that he has known petitioner since boyhood; that he regarded petitioner to be of good character and reputation; that he made a thorough investigation after petitioner's arrest and satisfied himself that petitioner was in fact innocent of the charge; that he has kept in contact with him since that time, during which period the petitioner has steadily maintained his good reputation.

The police records of the municipality in this State where the petitioner has resided for the past five years disclose no complaints or criminal investigations pending against him.

I therefore conclude that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 8th day of December, 1942,

ORDERED, that 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.

8. ACTIVITY REPORT FOR NOVEMBER, 1942

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees - - - - -	2	Bootleggers - - - - -	2
	Total number of persons arrested - - - - -			4
<u>SEIZURES:</u>	Still - 1 to 50 gallons daily capacity - - - - -			0
	50 gallons and more daily capacity - - - - -			0
	Total number of stills seized - - - - -			0
	Mash - gallons - - - - -			0
	Motor vehicles - Trucks - - - - -			0
	Passenger cars - - - - -			0
	Total number of motor vehicles seized - - - - -			0
	Beverage alcohol - gallons - - - - -			0
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -			0
	Wine - gallons - - - - -			25.20
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -			1,255.69

RETAIL LICENSEES:

Number of premises in which were found	
Illicit (bootleg) liquor - 3 "Fronts" (concealed ownership) -	1
Gambling devices - - - - -	0
Improper beer tap markers - - - - -	0
Prohibited signs - - - - -	0
Stock disposal permits necessary -	6
Unqualified employees - - - - -	77
Other types of violations - - - - -	7
Total number of premises where violations were found - - - - -	90
Total number of premises inspected - - - - -	1,503
Total number of unqualified employees found - - - - -	100
Total number of bottles gauged - - - - -	10,416

MILITARY AREA PATROL INSPECTIONS: - - - - - 172

STATE LICENSEES:

Premises inspected - - - - -	44
License applications investigated - - - - -	7

COMPLAINTS:

Investigated, reviewed and closed - - - - -	273
Investigation assigned, not yet completed - - - - -	599

LABORATORY:

Analyses made - - - - -	132
"Shake-up" cases (alcohol, water and artificial coloring) - - - - -	14
Liquor found to be not genuine as labeled - - - - -	31

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -	5
Persons fingerprinted for non-criminal purposes - - - - -	92
Identification contacts with other enforcement agencies - - - - -	84
Motor vehicle identifications via N.J. State Police Teletype - - - - -	1

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -	22
Cases instituted at Department - - - - -	37

HEARINGS HELD AT DEPARTMENT:

Appeals - - - - -	4	Tax revocations - - - - -	1
Disciplinary proceedings - - - - -	28	Seizures - - - - -	1
Eligibility - - - - -	7		
Total number of hearings held - - - - -			41

PERMITS ISSUED:

Unqualified employees - - - - -	385
Solicitors - - - - -	47
Social affairs - - - - -	187
Home manufacture of wine - - - - -	1,366
Disposal of alcoholic beverages - - - - -	68
Miscellaneous permits - - - - -	129
Total number of permits issued - - - - -	-2,182

Respectfully submitted,
 Sydney B. White,
 Chief Inspector.

9. DISCIPLINARY PROCEEDINGS - LICENSEE CHARGED WITH POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES AND REFILLING ONE BOTTLE THEREOF - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against

LEO V. SALAMANDRA,
900-2 Chestnut Avenue,
Trenton, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-89, issued by the Board of Commissioners of the City of Trenton.

Joseph J. Felcone, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that (1) on February 10, 1942 he possessed illicit alcoholic beverages in that one quart bottle labeled "Schenley Red Label Blended Whiskey, 86 Proof", found on his licensed premises, contained alcoholic beverages which varied from a genuine sample in proof, in violation of R. S. 33:1-50, and (2) without holding a proper license therefor, he refilled the aforesaid bottle, in violation of R. S. 33:1-78.

On February 10, 1942 investigators of this Department tested twenty-one opened bottles on defendant's premises and seized the bottle mentioned in the charges when their test disclosed that it was more than three degrees over proof. They also seized an unopened bottle of the same item for comparative purposes.

Licensee pleaded not guilty. He does not dispute the fact that the seized bottle was found upon his premises and does not dispute the facts set forth in an analysis made by the chemist of this Department.

The chemist's analysis shows that the proof of the contents of the seized bottle was 87.4 degrees and that the proof of the contents of the bottle taken for comparative purposes was 86 degrees. The contents of both bottles contained added artificial color and substantially agreed as to solid contents and acid contents.

At the time of the seizure the manager of the licensed premises told the investigator that he could not explain the fact that the seized bottle varied in proof from a genuine sample. At the hearing herein the licensee testified that he could not offer any explanation for the variation in proof except perhaps that it might have occurred at the distillery because Schenley had recently changed the proof of this type of whiskey from 90 degrees to 86 degrees. At the time the seized beverage was bottled, Schenley manufactured a product labeled "Red Label Blended Whiskey" of 90° proof, 86.8° and 86°. The licensee and the manager testified that neither of them had in any way tampered with the opened bottle.

It is well established that a licensee must be held strictly responsible for any "refills" found in his stock of liquor. Re Agostino, Bulletin 506, Item 8, and cases therein cited. However,

in reviewing previous decisions I find that in all cases involving a single bottle the contents varied substantially in proof, acid contents, solid contents or color from the contents of genuine samples of the same item. See, for example, Re Cutter, Bulletin 479, Item 12; Re Hattie's, Inc., Bulletin 482, Item 2; Re Gustavsen, Bulletin 509, Item 4. In this case, while the preliminary field test indicated that the contents were more than three degrees over proof, the chemical analysis showed that, in fact, the contents were merely 1.4 degrees over proof and that there were no other discrepancies which might lead to the conclusion that the contents of the seized bottle were not genuine as labeled. The Department chemist has advised me that the contents of the seized bottle was definitely a Schenley product, perhaps of the 86.8° variety. In this case there is no evidence that licensee or his agents actually refilled the bottles. The strip stamp appeared to be genuine and of appropriate age. It is a serious matter to convict a licensee of possessing illicit liquor. The burden of proof is upon the Department. Because of the fact that the manufacturer was changing proofs at the time of the bottling of the seized item, and because the variation between the description on the label and the chemical analysis was confined to the slight variation in proof, I shall give the licensee, who has a clear record, the benefit of the doubt and dismiss the charges herein.

Accordingly, it is, on this 8th day of December, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - VIOLATION OCCURRED AND HEARING HELD PRIOR TO ANNOUNCED INCREASE IN PENALTIES - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
WILLIAM E. MORGAN, WILLIAM K.)
WHALAND, Attorney-in-Fact,)
T/a MORGAN'S CAFE,)
900 North Second Street,)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-99, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

William E. Morgan, by William K. Whaland, Attorney-in-Fact, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge that on Sunday, October 11, 1942, he sold, served and delivered alcoholic beverages during prohibited hours, in violation of the local ordinance of the City of Camden.

The usual penalty for sales during prohibited hours has heretofore been five days. The same penalty has been imposed for remaining open after permissible hours. Where both violations, arising from the same circumstances, were involved in one case, a five-day penalty has been given on each charge, or a total of ten days.

In Re Disbrow, Bulletin 540, Item 3, dated November 27, 1942, a new policy was announced. It was therein stated that the continued and persistent violation of local ordinances establishing closing hours by irresponsible licensees warranted an increase in the penalties imposed in this type of case. In the cited bulletin I recommended that in all future cases where a licensee sells during prohibited hours or is open during such hours for the evident purpose of "chiseling", the minimum penalty should be at least a fifteen-day suspension of the license (with no more than five remitted for the entry of a guilty plea in advance of the hearing). Where the licensee has a past record, or aggravating circumstances appear in the case, I stated the penalty should be increased commensurately.

This increased penalty, however, will apply to all hours cases, whether they include both charges of selling and remaining open during prohibited hours, or only one or the other. Thus, there will be no doubling of the penalty merely because the local regulation provides that licensees shall close their premises during certain hours as well as refrain from selling during those hours.

In view of the fact that the violation in this case occurred before my announcement in Re Disbrow, supra, I will not, in fairness to the licensee, impose such increased penalty in this case. Under all the circumstances, the license will be suspended for ten days, less five for the guilty plea.

Licensees are, however, now on notice that in all future cases involving closing hours or sales during prohibited hours, the penalty will be materially increased in accordance with my previous recommendation. There is no reason why the law enforcement machinery of this State, already heavily overburdened, should be called upon to keep licensees under constant surveillance for the purpose of insuring their closing on time. The answer to this problem would appear to be to eliminate those licensees who cannot be trusted to refrain from selling and to remain closed (whenever required) during hours when the sale of alcoholic beverages is prohibited.

Accordingly, it is, on this 11th day of December, 1942,

ORDERED, that Plenary Retail Consumption License C-99, heretofore issued to William E. Morgan, William K. Whaland, Attorney-in-fact, trading as Morgan's Cafe, by the Municipal Board of Alcoholic Beverage Control of the City of Camden, for premises 900 North Second Street, Camden, be and the same is hereby suspended for a period of five (5) days, commencing December 14, 1942, at 2:00 A.M., and concluding December 19, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

11. ELIGIBILITY - FACTS EXAMINED - CRIME OF POSSESSING LOTTERY SLIPS HELD NOT TO INVOLVE MORAL TURPITUDE.

December 11, 1942

Re: Case No. 473

Applicant seeks determination of whether the crime of possession of lottery slips involves moral turpitude, thus disqualifying him from holding a liquor license or being employed by a liquor licensee in this State. See R. S. 33:1-25, 26.

At the hearing applicant testified that, in August 1935, he was convicted in a Court of Quarter Sessions of possession of lottery slips and sentenced to forty-five days in a County Jail.

It was ruled in Re Case No. 344, Bulletin 425, Item 8, that possession of lottery tickets does not constitute moral turpitude within the meaning of the Alcoholic Beverage Law.

In 1920 he was convicted in a Police Court of loitering under the influence of liquor and received a suspended sentence. In 1936 he was convicted in a Recorder's Court of being drunk and disorderly and spent fourteen days in County Jail on default of his fine and costs. These convictions do not involve moral turpitude.

It is recommended that the applicant be advised that he is not ineligible to hold a liquor license or to be employed by any New Jersey liquor licensee because of the aforesaid convictions.

Herbert F. Myers, Jr.,
Legal Assistant.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

12. HOURS OF SALE - NEW YEAR'S EVE AND THE WAR EFFORT.

December 14, 1942

Hon. William H. Williams,
Mayor,
Belleville, N. J.

My dear Mayor Williams:

Please accept my personal appreciation for your letter of December 9th, which I have read with interest.

The action taken by the Board of Commissioners of the Town of Belleville in requesting licensees to close their premises on January 1st (New Year's Eve) at 3:00 A.M., rather than 5:00 A.M. as presently permitted by your ordinance, merits my wholehearted approval. It is to be hoped that other communities will follow your example and materially restrict their peace-time year-end closing hours.

The present critical period in the history of our country calls for sobriety rather than undue hilarity. It is important that we face the new year with sober heads and steady hands to the end that throughout 1943 we may be prepared to out-think, out-work and out-fight our enemies. Whether the citizens of the United States

have a Happy New Year is almost entirely dependent upon their collective accomplishments during the early days of 1943.

I am calling upon all licensees to make a contribution to the war effort by seeing to it that those who visit their premises during the holiday season leave at a reasonable hour and, as required by the regulations of this Department, in condition to effectively carry on the duties assigned to them at the appropriate time. There must be no loss of work hours as the result of over-indulgence. A million fighting men overseas can hardly be expected to look with favor on "life as usual" over here.

I can imagine no better contribution to the cause than for all of us to curtail our celebrations and accelerate our work. There will be time enough for celebration after we have won the Victory.

Congratulations to Belleville!

Very truly yours,

Alfred E. Biscoe
Commissioner.



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