

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

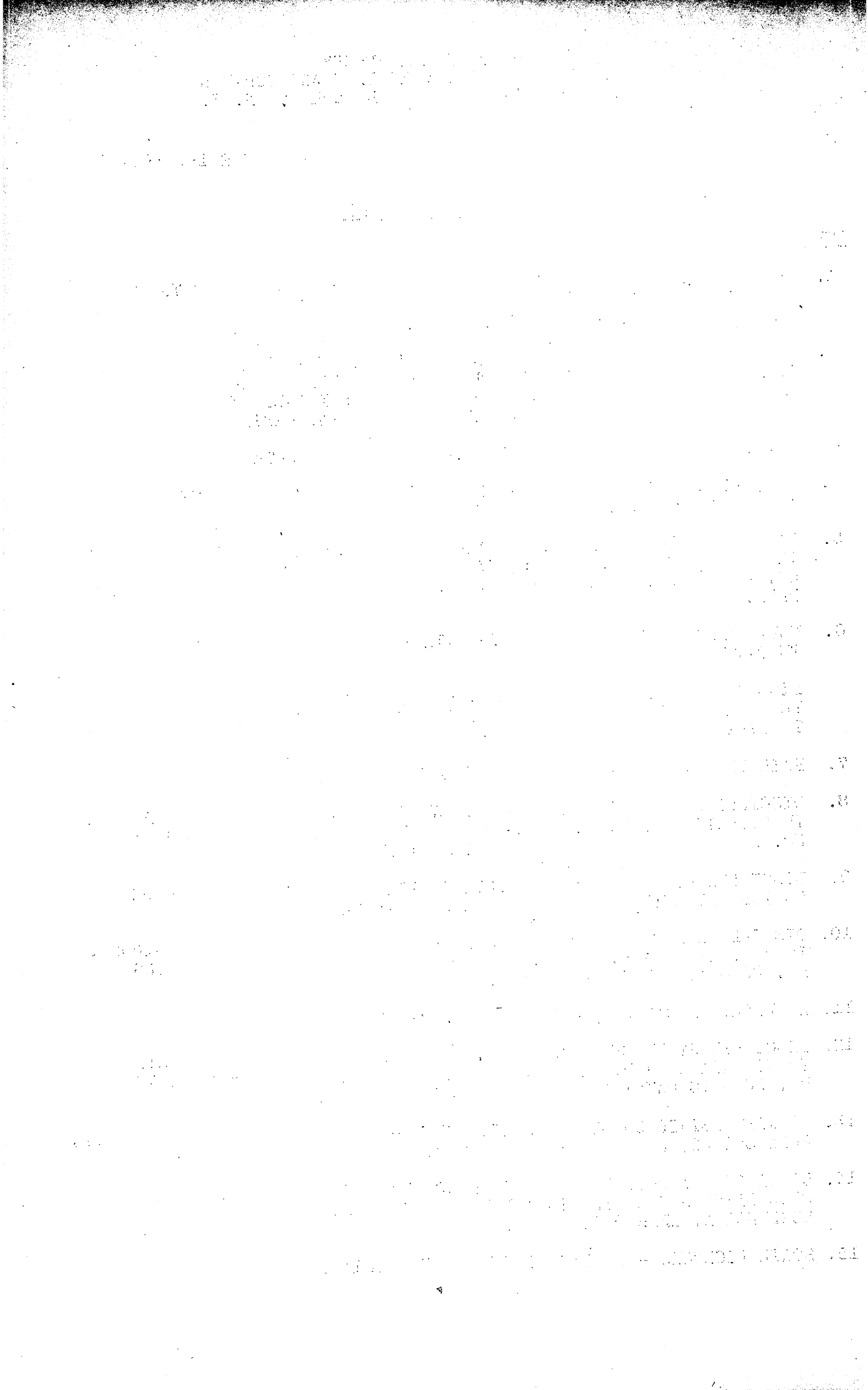
BULLETIN 623

JUNE 19, 1944

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

BULLETIN 623

JUNE 19, 1944

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO WOMEN
OVER THE BAR, IN VIOLATION OF LOCAL ORDINANCE - 5 DAYS' SUSPENSION,
LESS 2 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

STEELE INN, INC.)
t/a ROY STEELE'S TAVERN)
560 Carman Street)
Camden, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-19, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Camden.)

Steele Inn, Inc., by H. Roy Steele, Secretary.
Edward F. Hodges, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant corporation, through its secretary, has pleaded guilty to a charge alleging that, on March 17, 1944, it served alcoholic beverages to women directly over a bar on its licensed premises, in violation of local ordinance.

The service in question was observed by ABC agents in the rear cocktail lounge at a bar which is an extension of the main front bar and separated therefrom by a wooden partition. It does not appear that the violation was committed deliberately since the defendant was apparently under the honest but mistaken impression that only that portion of its bar located in the front room was limited to male patrons. The local ordinance, however, prohibits the service of beverages to women "over any bar", and a violation thereof does not depend upon the type of room in which the bar is located (cf. Re Hencinski, Bulletin 546, Item 3), nor upon the use to which it is put (cf. Re Lorusso, Bulletin 619, Item 11).

The defendant's otherwise clear record, good reputation, and the unaggravated circumstances of the instant offense merit, upon the defendant's guilty plea, a penalty of only three days. Cf. Re Lorusso, supra.

Accordingly, it is, on this 7th day of June, 1944,

ORDERED that Plenary Retail Consumption License C-19, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Steele Inn, Inc., t/a Roy Steele's Tavern, for premises 560 Carman Street, Camden, be and the same is hereby suspended for a period of three (3) days, commencing at 2:00 A. M. June 13, 1944 and terminating at 2:00 A. M. June 16, 1944.

ALFRED E. DRISCOLL
Commissioner.

2. LIMITATION OF NUMBER OF LICENSES - LIMITATION ORDINANCES ARE VALID AND DESIRABLE BECAUSE THEY PROMOTE THE PUBLIC WELFARE - AN INCREASE OF THE LIMITATION QUOTA IS UNJUSTIFIABLE IF ITS PRIMARY PURPOSE IS TO PROMOTE OR PROTECT PRIVATE INTERESTS.

Mr. G. A. Anderson,

June 6, 1944.

Re: Borough of Riverdale.

Dear Mr. Anderson:

I have your letter of May 31st, relating to your interest, as a Riverdale Councilman, in the Borough's numerical limitation ordinance and in the prospect of increasing the existing limitation quota from four to seven to permit issuance of a new license for premises in which the owner has a large investment and which, it is represented, cannot be operated profitably without an alcoholic beverage license.

You ask my advice as to whether Council can legally change the ordinance to allow for the issuance of the additional license; and whether, in my opinion, this would set a precedent justifying a future applicant's appeal to me from Council's refusal to increase the quota again and issue a new license for his formerly licensed premises which had been vacated by the licensed tenant.

The Borough Council has the power to limit the number of licenses or to raise or lower the quota. (R. S. 33:1-40.) That power is subject only to appeal to the State Commissioner pursuant to R. S. 33:1-40 and 33:1-41. The purpose of the statutory authorization is to enable municipalities to bring the issuance of licenses to a halt. Municipal limitation ordinances are valid and desirable because they promote the public welfare and not because they protect the private businesses of licensees or the interests of property owners. Thus, the single and controlling question to be considered by a municipal issuing authority, and decided by them in the first instance, is whether the number of licenses issued and the quota sought to be fixed is reasonable and proper in light of the population, characteristics, and circumstances of the municipality, and the public convenience and necessity. The State Commissioner has, on appeal, cancelled licenses issued pursuant to an increase in the limitation quota where the issuance did not appear to serve public convenience and necessity but only private individual interests. (See Franco v. Phillipsburg, Bulletin 392, Item 5.)

As pointed out in your letter, Section 6 of Riverdale's ordinance (adopted June 11, 1940) fixes the Borough's plenary retail consumption license quota at four (4), with a proviso that this shall not prevent transfers or renewals of licenses outstanding upon the adoption of the ordinance. With seven plenary retail consumption licenses then outstanding, the wholly commendable purpose of the ordinance was to reduce the number of such licenses to four, through license surrender, revocation or non-renewal.

Through one non-renewal last year, the number of plenary retail consumption licenses in the Borough has been reduced to six. Those six licenses represent (according to Riverdale's 1940 population) one to each 185 persons, which by any reasonable standard appears to be an all too generous number.

You understand, of course, that a new license cannot be issued under your existing ordinance. Without reference to the merits of the particular case to come shortly before the Council,

I wish to emphasize my general conviction that the financial interests of landlords do not constitute a proper basis for a municipal authority's increasing the limitation quota and issuing a new license.

Let me stress, also, the apparent fact that new licensees will have great difficulty indeed in securing any alcoholic beverage supplies at this time of shortage and under the informal rationing program now in effect.

I want to thank you cordially for your letter which demonstrates your sincere interest in a bona fide consistent limitation policy for the Borough.

Very truly yours,

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - HUNTER v. TEANECK AND HUNTER.

CHARLES HUNTER,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COUNCIL OF THE TOWNSHIP)
 OF TEANECK, and ANN A. HUNTER,)
)
 Respondents.)
)

ON APPEAL
ORDER OF DISCONTINUANCE

Hon. Leland F. Ferry, Attorney for Appellant.
Donald M. Waesche, Esq., Attorney for Respondent, Township Council
of the Township of Teaneck.
Tarrant & Tarrant, Esqs., Attorney for Respondent, Ann A. Hunter.

BY THE COMMISSIONER:

The appellant having requested that the within appeal be discontinued, and the attorneys for both respondents having signified that they have no objection thereto, and no reason appearing to the contrary,

It is, on this 7th day of June, 1944,

ORDERED that the within appeal be and the same is hereby discontinued.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SLOT MACHINE - PREVIOUS RECORD -
15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
)
 BURLINGTON LODGE #965,)
 LOYAL ORDER OF MOOSE,)
 S/E Cor. Wood & Broad Sts.,)
 Burlington City, N. J.,)
 Holder of Club License CB-39,)
 issued by the State Commissioner)
 of Alcoholic Beverage Control.)

CONCLUSIONS
AND ORDER

 Hon. Howard Eastwood, Attorney for Defendant-Licensee.
 Edward F. Hodges, Esq., appearing for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to a charge alleging that it possessed a slot machine on its licensed premises, in violation of Rule 8 of State Regulations No. 20.

On April 6, 1944, during the course of a routine investigation, an ABC agent discovered a pull-handle jackpot slot machine concealed in a steel cabinet in a service room located in the basement of the licensed premises. The explanation given by the defendant that the gambling device "had not been in use for a number of months and had been placed in a part of the building which is not generally used by members" presents no defense. The mere possession of such a device on licensed premises constitutes a violation. Re Fairview Post, etc., Bulletin 576, Item 6.

In February 1936 the licensee was warned about the possession of gambling devices after three slot machines, similar to that involved in the instant violation, were found upon its premises. In view that more than eight years have elapsed since the warning was given and that there is no evidence that the machine had actually been played at the club, I shall not consider the present offense aggravated thereby.

However, the defendant's license was suspended for three days in September 1939 for selling alcoholic beverages to non-members. See Bulletin 346, Item 3. Under all the circumstances, I shall suspend the license for a period of fifteen days, with remission of five days for the guilty plea, leaving a net penalty of ten days.

Accordingly, it is, on this 7th day of June, 1944,

ORDERED that Club License CB-39, heretofore issued by the State Commissioner of Alcoholic Beverage Control to Burlington Lodge #965, Loyal Order of Moose, for premises S/E Cor. Wood & Broad Sts., Burlington City, be and the same is hereby suspended for a period of ten days (10) days, commencing at 12:01 A. M. June 12, 1944 and terminating at 12:01 A. M. June 22, 1944.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - PREVIOUS WARNING - 12 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against HARRY M. LEVENSON, 214 So. Warren Street, Trenton 9, N. J. Holder of Plenary Retail Consumption License C-211 issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER.

Frank I. Casey, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that on February 2, 1944, he sold alcoholic beverages to, and permitted the consumption of alcoholic beverages on his licensed premises by, Ruth --- and Alice ---, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file herein discloses that on the evening of February 2, 1944, a party of five persons, including Ruth ---, age 20, and Alice ---, age 20, both married, entered defendant's premises. Statements obtained from the minors disclose that they remained on the licensed premises for a period of more than two hours, during which they were served and consumed several glasses of beer. In attempted mitigation defendant states that, at the time the service was made, Ruth --- verbally told him that she was 22 years of age, and Alice --- verbally told him that she was 23 years of age. The fact that defendant questioned the girls indicates that he was in doubt as to whether or not they were of full age but, despite his doubt, he failed to insist that they sign written statements that they were 21 years of age or over. A casual inquiry as to age by a licensee is not sufficient. To establish a defense to a charge of selling alcoholic beverages to minors, defendant must prove compliance with all the provisions of R. S. 33:1-77. Re Wooby, Bulletin 606, Item 6.

Defendant has no prior adjudicated record. However, on December 22, 1943, after the Department of Alcoholic Beverage Control had received information, but insufficient evidence to warrant disciplinary proceedings, concerning the sale of alcoholic beverages to another minor, I warned defendant, in writing, that he must be careful to avoid sales to minors. In my letter of warning I advised defendant that this warning might well be taken into account in determining the proper penalty if disciplinary proceedings were thereafter instituted against him for sales to minors. Under these circumstances, I shall suspend the license for a period of twelve days, instead of the minimum suspension of ten days, less five days for the guilty plea, making a net suspension of seven days.

Accordingly, it is, on this 8th day of June, 1944,

ORDERED that plenary retail consumption license C-211, issued by the Board of Commissioners of the City of Trenton to Harry M. Levenson, for premises 214 So. Warren Street, Trenton, be and the same is hereby suspended for seven (7) days, commencing at 2 A. M. June 15, 1944, and terminating at 2 A. M. June 22, 1944.

ALFRED E. DRISCOLL
Commissioner.

6. MORAL TURPITUDE - CRIME OF VOLUNTARY MANSLAUGHTER INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction Pursuant)
to R. S. 33:1-31.2,)
Case No. 345.)
-----)

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

Petitioner herein, pursuant to the provisions of R. S. 33:1-31.2, seeks to have any disqualification removed that may exist by reason of his having been convicted of a crime.

Petitioner testified that, in December 1936, during an altercation which followed a party held in a club in Philadelphia, a man was fatally stabbed. Petitioner was subsequently tried and convicted of the crime of voluntary manslaughter. On May 17, 1937, petitioner was sentenced by the Court to serve one to six years in a Pennsylvania penitentiary, which sentence was commuted to parole after his confinement in prison for approximately eleven months. A communication addressed to the petitioner from the Chairman of the Pennsylvania Board of Parole, dated August 4, 1943, informed petitioner that he had been finally discharged from parole, effective April 2, 1943.

Voluntary manslaughter is a crime involving moral turpitude.

The State and Federal records indicate that prior to, or since, 1937 petitioner has not been convicted of any other crime. The Federal Bureau of Investigation does, however, show a charge of assault and battery and robbery against petitioner on April 4, 1944, but discloses that the charges had been withdrawn. A letter, dated May 24, 1944, from the Police Recorder before whom the matter was brought, addressed to the Commissioner, corroborates the withdrawal of the complaint and further advises that the alleged assault had been committed by an unknown person.

Three character witnesses, including a State Parole Officer and a County Probation Officer who have known petitioner for six or more years, testified that petitioner bears a good reputation in the community in which he resides.

In view of the petitioner's law-abiding record, especially during the past five years, I am satisfied that he has made a conscientious attempt to rehabilitate himself, and conclude that his association with the alcoholic beverage industry will not be detrimental to the public interest. As a consequence thereof, I shall lift his disqualification which resulted by reason of his conviction of the crime of voluntary manslaughter.

Accordingly, it is, on this 7th day of June, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

7. FAIR TRADE - NOTICE OF SUPPLEMENTAL PUBLICATION.

June 8, 1944

In response to numerous requests by listers who wish to correct price listings affecting their items appearing in the April minimum resale price publication and in order to afford manufacturers and wholesalers an opportunity to list new items introduced since April 24, 1944, the effective date of the complete pamphlet, it is my decision that a supplemental publication of minimum resale prices pursuant to Fair Trade Rules, Regulations No. 30, shall become effective on or about Monday, July 3, 1944.

New items and changes in old items must be filed at the offices of this Department not later than Friday, June 16, 1944.

It is noted that in some few instances listers in the April publication failed to submit price listings of all of their items for publication, pursuant to my request of March 13, 1944. They are now cautioned that items previously omitted should be submitted for publication in the supplemental price pamphlet, effective July 3, 1944. Further, I wish it emphasized that withdrawals of any items now appearing in the complete minimum resale price pamphlet will not be countenanced unless listers desiring to make such withdrawals establish to my satisfaction that the items affected no longer remain in the inventory of any retailer and are not now available in New Jersey or likely to be available during the summer.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to all retail licensees.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

MARGARET G. BROWN)
T/a THE ANNEX GRILL)
134 Nassau Street)
Princeton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Princeton.)
-----)

Margaret G. Brown, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges alleging that, on April 20, 1944, she sold alcoholic beverages to, and permitted the consumption of alcoholic beverages on her licensed premises by, Ruth --- and Mary ---, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file herein discloses that on the evening of April 20, 1944, Mary ---, age eighteen, and her sister Ruth ---, age twenty, both married, entered defendant's premises accompanied by a soldier and a civilian, both apparently of full age. From statements obtained from both minors, it appears that they remained on the licensed premises about two hours, during which time they were served several drinks of alcoholic beverages by a waiter who did not question them as to their respective ages.

Defendant has no prior record. Since no aggravating circumstances appear in this case, I shall suspend the license for a period of ten days, less five for the guilty plea, making a net suspension of five days.

Accordingly, it is, on this 8th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Princeton to Margaret G. Brown, t/a The Annex Grill, for premises 134 Nassau Street, Princeton, be and the same is hereby suspended for five (5) days, commencing at 12:01 A. M. June 19, 1944 and terminating at 12:01 A. M. June 24, 1944.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, SOLIDS AND ACIDS - PREVIOUS RECORD - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
 FRANK PIETROWICZ
 479 Henderson Street
 Jersey City, N. J.,
 Holder of Plenary Retail Consumption License C-527, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

Matthew F. Czachorowski, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to a charge that, on May 2, 1944, he possessed one 4/5 quart bottle of "Wilson 'That's All' Blended Whiskey 86.8 Proof" and one 4/5 quart bottle of "Carstairs White Seal Blended Whiskey 86.8 Proof", both of which contained alcoholic beverages which were not genuine as labeled, in violation of R. S. 33:1-50(e).

On the date aforementioned, an inspector of the Department of Alcoholic Beverage Control, while in the course of a retail inspection, seized four bottles of liquor on the licensed premises. Analysis of the contents of the bottles disclosed that two of the four bottles varied in proof, solids and acids when compared with analysis of authentic samples of the alcoholic beverages in question.

The defendant was warned on two previous occasions for violations of a similar nature and on October 9, 1937 defendant's license was suspended by the municipal issuing authority for three days because of a prohibited hours violation.

Under all the circumstances, I shall suspend the license of the within defendant for fifteen days.

Accordingly, it is, on this 12th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-527, heretofore issued by the Board of Commissioners of the City of Jersey City to Frank Pietrowicz for premises 479 Henderson Street, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A. M. June 16, 1944, and terminating at midnight June 30, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FERDINAND R. SCHEUERMANN
Olden Ave. and Brookland Ave.
Ewing Township
P. O. Trenton, N. J.,

Holder of Plenary Retail Consumption License C-1 issued by the Township Committee of the Township of Ewing.

Ferdinand R. Scheuermann, Pro Se.

Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging that, on April 16, 1944, and on divers dates prior thereto, he sold alcoholic beverages to, and permitted the consumption of alcoholic beverages on his licensed premises by, Margaret --- and Mary ---, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file herein discloses that, on the evening of April 16, 1944, Margaret ---, age seventeen, was served "about eleven beers" in defendant's premises, and Mary ---, age eighteen, was served a "couple of shots of whiskey" and beer in defendant's premises. Both minors also alleged in statements given to ABC agents that they had been served with alcoholic beverages in defendant's premises on numerous occasions prior to April 16, 1944.

Defendant has no prior record. The fact that one of the minors was seventeen years old, and that both were served alcoholic beverages on numerous occasions, are aggravating circumstances in this case. I shall suspend the license for a period of fifteen days, less five for the guilty plea, making a net suspension of ten days.

Accordingly, it is, on this 8th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Ewing to Ferdinand R. Scheuermann, for premises at Olden Avenue and Brookland Avenue, Ewing Township, be and the same is hereby suspended for ten (10) days, commencing at 2:30 A. M. June 19, 1944, and terminating at 2:30 A. M. June 29, 1944.

ALFRED E. DRISCOLL
Commissioner

ALFRED E. DRISCOLL
Commissioner

11. APPELLATE DECISIONS - KUREMSKY v. TRENTON.

JOSEPH J. KUREMSKY,)
 Appellant,)
 -vs-) ON APPEAL
) CONCLUSIONS AND ORDER.
 BOARD OF COMMISSIONERS OF)
 THE CITY OF TRENTON,)
 Respondent.)
 -----)

William J. Connor, Esq., Attorney for Appellant.
 Frank I. Casey, Esq., Attorney for Michael J. Laffey.
 John J. Connell, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent denying transfer of a plenary retail consumption license from Michael J. Laffey to appellant for premises at 29 East Hanover Street, Trenton.

At a meeting held on April 20, 1944, a resolution granting the said transfer was lost by the following vote:

Ayes: Messrs. Duch and Waldron.
 Nays: Messrs. Geraghty, Page and Rieker.

The criminal record of appellant discloses that, on May 24, 1928, he was convicted on two counts for possession of liquor and sentenced to pay a fine of \$250.00 and placed on probation for a period of three years on each charge, and that on June 29, 1928 he was found guilty on two charges of unlawful sale and possession of liquor and sentenced to a term of three months in the Mercer County Jail on each charge, the sentences to run concurrently. Neither of these convictions involved moral turpitude although they might well be taken into consideration in determining the general fitness of the appellant to hold a liquor license. Despite this record, respondent, as then constituted, granted a plenary retail consumption license on March 7, 1942 to appellant for premises at 601 Second Street, and thereafter renewed said license from year to year for said premises.

During the present fiscal year, and while he was conducting business at 601 Second Street, appellant pleaded non vult in disciplinary proceedings instituted before me to a charge alleging that, on September 29, 1943, he possessed four bottles of alcoholic beverages which were not genuine as labeled, as a result of which I suspended his license for twenty days commencing at 2:00 A. M. January 12, 1944. Re Kuremsky, Bulletin 602, Item 2.

On March 13, 1944 appellant entered into a written agreement with Michael Laffey whereby the latter agreed to sell the licensed business conducted by him at 29 East Hanover Street. In said agreement it was provided that, in the event the Board of Commissioners of the City of Trenton should refuse to approve the transfer of the liquor license then held by Michael Laffey for said premises, the deposit was to be returned and the agreement to be considered null and void. On March 28, 1944 the application to transfer the liquor license from Michael J. Laffey to Joseph J. Kuremsky for premises at

29 East Hanover Street was filed. On April 10, 1944 an application to transfer the liquor license then held by Joseph J. Kuremsky to one John Chell for the premises at 601 Second Street was also filed. As indicated above, respondent refused to grant the transfer from Michael J. Laffey to Joseph J. Kuremsky, but did grant the transfer from Joseph J. Kuremsky to John Chell. It is noted that the local ABC investigators approved both transfers.

The minutes of the meeting of respondent held on April 20, 1944 show that Mayor Duch expressed an opinion that the Board could not legally justify the refusal of the transfer because the applicant already held a license for premises on Second Street and "We do not have two standards of morals -- one on Second Street and one on Hanover Street." Commissioner Waldron, after referring to the investigators' report of approval, said, "I see no social or business distinction between permitting this man to operate on Second Street and forbidding him on Hanover Street." Commissioner Geraghty, after referring to appellant's Prohibition violations as "somewhat ancient history", referred to the twenty-day suspension imposed in January 1944 and stated: "That is within three months of the application made for the transfer of this license, and I do not think that any man with a record like that has any kind of a right to ask this Board for the privilege of transferring a license to him." Commissioner Rieker stated that he voted "No" for the reason that "*** my interpretation of the report (of the local ABC investigators) is in the negative, especially the part referring to the January record. I am relying on that and the same reasons given by Commissioner Geraghty." Commissioner Page stated that he voted "No" for the same reason given by Commissioner Geraghty, but also stated, "I also feel this old gentleman has his life savings in the property, owns the property and I understand he was approached at a time when he was sick. He realizes now he made a mistake and wants to keep his property and his license."

A municipal issuing authority should require the same high standard of personal qualifications for all licensees irrespective of the section of the municipality in which the applicant may seek to locate. However, the mere fact that appellant obtained a renewal in July 1943 does not indicate that he is entitled to a renewal or transfer of another license to his name where it appears that he was subsequently found guilty of violating the provisions of the Alcoholic Beverage Law. That question should be decided in the sound discretion of the local issuing authority. I would be inclined to affirm the decision below if it appeared that the three members who voted in the negative did so solely for the reasons expressed by Commissioner Geraghty. However, I find nothing in the local ABC investigators' report approving the transfer which would support Commissioner Rieker's interpretation thereof, and I am in doubt as to Commissioner Page's reason for voting in the negative. Even if it appeared to members of the issuing authority that Mr. Laffey made a mistake, that would not be a proper matter to be considered by the Board of Commissioners. Apparently the sole issue in this case is whether or not appellant is a fit person to hold a license and, on the record presented, it does not appear that respondent has decided that issue. I shall remand the case for a prompt reconsideration upon the merits.

It might be well to point out that the instant case involves a different issue from that considered in the transfer of the license to John Chell. It is true that both Kuremsky and Chell have records of Prohibition violations but, in addition thereto, it appears from the record that Kuremsky possessed illicit alcoholic beverages during the current fiscal year.

Accordingly, it is, on this 13th day of June, 1944,

ORDERED, that the appeal herein be and the same is hereby remanded to respondent for reconsideration, in accordance with the views herein expressed.

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)
JOHN ZDANOWICZ)
650 No. Clinton Avenue)
Trenton, 9, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-123 issued by the)
Board of Commissioners of the)
City of Trenton.)

CONCLUSIONS
AND ORDER

Arthur A. Salvatore, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging, in substance, that on April 19, 1944, and on various prior dates thereto, he sold alcoholic beverages to, and permitted the consumption of alcoholic beverages on his licensed premises by, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The minors mentioned in said charges are Margaret ---, seventeen years old, Mary ---, eighteen years old, Alice ---, twenty years old, and Ruth ---, twenty years old.

The file herein discloses that on Sunday, April 2, 1944, Margaret, Mary and Alice visited defendant's premises. On this visit they met three civilians who purchased a number of glasses of beer for each of the girls. The file further discloses that Mary and Alice again visited defendant's premises on April 19, 1944. On this visit they were accompanied by the minor, Ruth, and each of these minors was served a glass of beer by defendant's wife. In statements given to ABC investigators, Margaret and Ruth said that they had previously been served alcoholic beverages in defendant's premises.

Defendant has no prior adjudicated record. In the absence of a prior record, the usual suspension for sale of alcoholic beverages to a minor, where there are no aggravating circumstances, is ten days. However, in this case, four minors were involved, one of whom was only seventeen years of age, and two of these minors, including the youngest girl, were served with alcoholic beverages on a date prior to April 2, 1944. Under the circumstances, the license will be suspended for a period of twenty days. Five days will be remitted because of the plea entered herein, making a net suspension of fifteen days.

Accordingly, it is, on this 12th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-123, issued by the Board of Commissioners of the City of Trenton to John Zdanowicz, for premises 650 No. Clinton Avenue, Trenton, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A. M. June 16, 1944 and terminating at midnight June 30, 1944.

ALFRED E. DRISCOLL
Commissioner.

13. PLENARY RETAIL CONSUMPTION LICENSEES - "RUSHING THE GROWLER"
STILL PERMISSIBLE, BUT RESTRICTED TO CONTAINERS OF OPEN TYPE.

June 12, 1944

Mr. Raymond Samalonis

Dear Mr. Samalonis:

I have reviewed a report that two agents, when visiting your tavern, observed you draw beer from your tap into a large glass jar, then fasten a screw cap on this jar and hand it to a patron to take out. In a signed statement to the agents, you claimed that you thought the Department had ruled this practice to be permissible.

What you probably had in mind is the Department's so-called "growler" ruling under which tavern keepers may draw beer from their taps into pails, pitchers or open containers to be taken out by the customer. This ruling was made in benign recognition of the time-honored custom of "rushing the growler." As the late Commissioner Burnett colorfully stated (Re Orłowski, Bulletin 339, Item 2):

"'Rushing the growler', while hardly a hall mark of society or a cotillion figure, nevertheless has countless devotees among our sturdy workers on the roads, in the mills and at the factories, especially at noon time lunch or at home to share with the good wife in the cool of the evening. To them it is a refreshing, economical and time-honored practice. So far as it serves such utilitarian ends I think it proper."

However, the ruling is strictly and properly limited to containers of open type. It in no way allows a tavern keeper to draw beer into any containers with screw cap or any similar device by which it may be virtually sealed. Having an ordinary lid on a pail of "suds" is one thing; but virtually sealing the container in any way is quite another! Such a capping goes beyond the limits of a "growler"; opens up too many possible circumventions of the law (e.g., State Regulations No. 38); and actually constitutes a "bottling" of the beer for sale -- something which no retail licensee has any authority to do (R. S. 33:1-78).

Since there may have perhaps been confusion among the tavern keepers as to the extent of the "growler" ruling, I am not taking any further steps against you in the present case other than to warn you to stay within the strict confines of that ruling as indicated above.

Hereafter, any licensee going beyond those confines may well face disciplinary proceedings.

Since the bumper season for "rushing the growler" is during the warm months now at hand, I am issuing this warning as a timely reminder to all licensees.

Please acknowledge this letter by return mail.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

14. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - 15 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
MADISON LODGE B.P.O. ELKS #1465
192 Main Street
Madison (Boro), N. J.,
Holder of Club License CB-3,
issued by the State Commissioner
of Alcoholic Beverage Control.

CONCLUSIONS
AND ORDER

Howard F. Barrett, Jr., Esq., Attorney for Defendant-Licensee.
Edward F. Hodges, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, through its attorney, offers a plea of non vult to the charge that it sold, served and delivered and suffered the sale, service or delivery and allowed the consumption of alcoholic beverages on Sunday, in violation of an ordinance adopted by the Borough Council of the Borough of Madison.

The file discloses that investigators of the Department of Alcoholic Beverage Control entered the licensed premises on Sunday, May 28, 1944, at 12:30 P. M. They observed several men drinking beer and other alcoholic beverages in the barroom. It was admitted by the bartender then in charge of the premises that he had served these persons with the alcoholic beverages they were then consuming.

An ordinance adopted by the Borough Council of the Borough of Madison prohibits the sale, service or consumption of alcoholic beverages by any licensee on Sundays. This is defendant's first conviction of a violation of the laws relating to alcoholic beverages. I shall suspend the license for fifteen days, with a remission of five days for the plea, or a net suspension of ten days. Re Germania Mannerchor, Bulletin 570, Item 11.

Accordingly, it is, on this 14th day of June, 1944,

ORDERED, that Club License CB-3, issued by the State Commissioner of Alcoholic Beverage Control to Madison Lodge B.P.O. Elks #1465, for premises 192 Main Street, Madison (Boro), be and the same is hereby suspended for ten (10) days, commencing at 1:00 A. M. June 16, 1944, and terminating at 1:00 A. M. June 26, 1944.

ALFRED E. DRISCOLL
Commissioner
By: Edward J. Dorton

15. STATE LICENSES - APPLICATION FOR WINE WHOLESALE LICENSE DENIED.

In the Matter of an Application)
by)

SALVATORE CARUSO)
T/a CARUSO WINE CO.)

CONCLUSIONS)
AND ORDER)

For a Wine Wholesale License for)
premises located at)

1301 Liberty Avenue)
Hillside, N. J.)

Anthony F. Minisi, Esq., Attorney for Applicant.

BY THE COMMISSIONER:

On May 11, 1944 the applicant herein filed with the State Commissioner of Alcoholic Beverage Control an application for a Wine Wholesale License for the premises above mentioned. Written objections to the issuance of the license were filed by Mr. Benjamin T. Summer and Rev. Roy B. Deer, Executive Secretary of the New Jersey Baptist Convention.

In accordance with Rule 11 of State Regulations No. 1, notification of a hearing to be held upon said objections was sent to the applicant and to the objectors.

At the hearing the only objector who appeared was Mr. Benjamin T. Summer, who stated that he was withdrawing his objection because he believed at the time his objection was filed that the applicant intended to conduct his premises for the sale of alcoholic beverages at retail.

Our investigation, however, discloses that the premises known as 1301 Liberty Avenue are almost directly opposite a Baptist Church located at the corner of Liberty and Harvard Avenues, Hillside. The distance between the nearest entrance of the premises sought to be licensed and the nearest entrance of said church, measured in the normal way that a pedestrian would properly walk, is 120 feet. Thus it appears that the issuance of the license would be directly contrary to the terms of R. S. 33:1-76 which, among other things, provides that no license shall be issued for the sale of alcoholic beverages within 200 feet of any church.

It appears also that the Township of Hillside has adopted a zoning ordinance. The premises known as 1301 Liberty Avenue are located in a business "A" district. The uses permitted in a business "A" district under the ordinance do not include the sale of goods at wholesale or the maintenance of wholesale salesrooms. Under the circumstances, the issuance of the license would also be contrary to the zoning ordinance of the Township of Hillside.

For the reasons aforesaid, I have reached the conclusion that the pending application should be denied.

Accordingly, it is, on this 15th day of June, 1944,

ORDERED, that the application of Salvatore Caruso, trading as Caruso Wine Co., for a Wine Wholesale License for premises located at 1301 Liberty Avenue, Hillside, be and the same is hereby denied.

Robert E. Griswold
Commissioner.