

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

BULLETIN 688

JANUARY 7, 1946.

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1000 BLOOMINGDALE ST. N.W. WASHINGTON, D.C. 20004
DEPARTMENT OF ECONOMIC DEVELOPMENT CONTROL
DIVISION OF NEW ENERGY

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

BULLETIN 688

JANUARY 7, 1946

1. MUNICIPAL REGULATIONS - EXTENDED HOURS OF SALE FOR NEW YEAR'S DAY - A RESOLUTION PURPORTING TO PERMIT ADDITIONAL HOURS OF SALE HAS NO LEGAL EFFECT - ANY CHANGE IN MUNICIPAL HOURS REGULATIONS MUST BE BY ORDINANCE. (P. L. 1939, c. 234).

December 17, 1945

Hon. Edward W. Currie, Mayor
Borough of Matawan
Matawan, N. J.

Dear Mayor Currie:

I have your letter of December 4th reading, in part:

"For many years the Boro Council has extended the closing hours on New Year's Eve by appropriate resolution; but as I remember last year you informed all municipalities that such would not be permitted, that an amendment must be made to the ordinance for this purpose.

"As I am writing to find out what the procedure will be for this year, I do hope that you will permit us to extend the hours by resolution. This is a more flexible arrangement which can be changed each year and, of course, less expensive as there is no ordinance to be drawn and advertised."

The procedure will be the same for this year. The only way a municipality may extend the hours of sale on New Year's Day is by ordinance -- a mere resolution will not suffice. (See, to the same effect, the enclosed copies of Re Mills, Bulletin 364, Item 16; and Re Bersch, Bulletin 370, Item 4.) Regardless of the fact that a resolution each year might be more flexible and less expensive, the law (P. L. 1939, chapter 234) provides that a municipality has power to change its alcoholic beverage regulations only by ordinance.

A number of New Jersey municipalities have included in their ordinances a provision permitting additional hours of sale on New Year's Day. I am not recommending such an extension but merely stressing the fact that if a municipality wishes to permit sales on New Year's Day beyond the hours permitted in its operative regulations, it may legally do so only by an ordinance which is adopted and in full force and effect before January 1st.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - MITIGATING
CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary
Proceedings against)

MARY ELIZABETH MITCHELL)
T/a YE OLDE CEDAR INN)
Riverside Drive)
Dover Township)
P.O. Toms River, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-19, issued by the)
Township Committee of the Township)
of Dover.)
- - - - -)

Mary Elizabeth Mitchell, Pro Se.

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

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging that she possessed a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On August 27, 1945, during the course of an inspection of the defendant's open stock, an agent of the State Department of Alcoholic Beverage Control seized the above bottle after his preliminary tests disclosed a variation between the contents of the bottle and the whisky described on the label.

Chemical analysis by the Chemist for the Department of Alcoholic Beverage Control shows that the contents of the seized bottle was different from the whisky described on the label. In fact, the analysis warrants the conclusion that the bottle had been refilled with "Harwood" whisky.

Persons buying alcoholic beverages are entitled to get exactly what they order. Retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1.

The conclusion that the questioned bottle had been refilled with a different whisky brings this case within the rule in reference to "one bottle cases." Cf. Re Rudolph, Bulletin 680, Item 1.

Defendant disclaims any personal responsibility for the alleged refill. Departmental investigation supports this claim. Nonetheless, licensee, as "master of her house", must be held strictly responsible for any "refills" found in her stock of liquor. Re Agostini, Bulletin 506, Item 8.

One other circumstance must be considered. In connection with a collateral investigation, defendant and her employees were extremely cooperative, thereby considerably assisting the State Department of Alcoholic Beverage Control.

In view of all the circumstances herein, and the fact that defendant has no previous adjudicated record, I shall suspend defendant's license for a period of ten days.

Accordingly, it is, on this 18th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-19, issued by the Township Committee of the Township of Dover to Mary Elizabeth Mitchell, t/a Ye Olde Cedar Inn, for premises Riverside Drive, Dover Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 7:00 a.m. January 2, 1946, and terminating at 7:00 a.m. January 12, 1946.

ALFRED E. DRISCOLL
Commissioner.

3. ELIGIBILITY - FACTS EXAMINED - CRIME OF LEWDNESS FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

December 20, 1945

Re: Case No. 583

Applicant herein seeks to have the State Commissioner of Alcoholic Beverage Control determine whether he is eligible to be associated with the alcoholic beverage industry.

The testimony of applicant discloses that, on April 13, 1944, he was convicted of the crime of lewdness, as a result of which he received a six months' suspended sentence by a Magistrate in a municipal family court. The testimony of applicant was corroborated by the criminal records received at this Department.

The crime of lewdness ordinarily involves the element of moral turpitude. Re Case No. 528, Bulletin 616, Item 7. Applicant has presented no evidence which would lead to a different conclusion in this case.

It is, therefore, recommended that applicant be advised that he is neither eligible to hold a liquor license nor to be employed by an alcoholic beverage licensee in this state.

Clarence E. Kremer
Attorney.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

MICHAEL M. ZUBKO
53 Johnston Avenue
Kearny, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Town Council of the Town of Kearny.

Gerald A. Caruso, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charge:

"On June 28, 1945 you possessed illicit alcoholic beverages at your licensed premises, viz., a 4/5 quart bottle labeled 'Calvert Reserve Blended Whiskey 86.8 Proof' and a 4/5 quart bottle labeled 'Imperial Hiram Walker's Blended Whiskey 86.0 Proof', both of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On June 28, 1945 an inspector employed by the Federal Alcohol Tax Unit tested seventeen bottles of the open stock of liquor on defendant's licensed premises and seized the two bottles mentioned in the charge because they appeared to be at variance with label requirements. Subsequent analysis by the Federal chemist disclosed that the contents of the seized bottle of "Imperial" were substantially lower in solids and acids than the contents of a genuine sample, and also that the contents of the bottle of "Calvert" were substantially higher in solids than the contents of a genuine sample.

Defendant disclaims any knowledge of tampering with the bottles in question. Despite the lack of any personal participation, the defendant must be held to strict accountability for any refills found in his stock of liquor. Cf. Re Kurian, Bulletin 517, Item 2.

Since the defendant's record is otherwise clear of any prior disciplinary proceedings, and since no aggravating circumstances appear to have attended the instant violation, the usual suspension of fifteen days will be imposed. Re Hartfield, Bulletin 683, Item 10.

Accordingly, it is, on this 20th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-15, issued by the Town Council of the Town of Kearny to Michael M. Zubko, for premises 53 Johnston Avenue, Kearny, be and the sale is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. January 2, 1946, and terminating at 2:00 a.m. January 17, 1946.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary
Proceedings against

BILLIE'S BLUE ROOM, INC.
39 Garden Street
Passaic, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-130 issued by the
Board of Commissioners of the
City of Passaic.

Peter P. Zangara, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On October 1, 1945 you possessed illicit alcoholic beverages at your licensed premises, viz., two 4/5 quart bottles labeled 'Canadian Club Blended Canadian Whiskey', three 4/5 quart bottles labeled 'Old Blended Scotch Whiskey Johnnie Walker Black Label', and one 4/5 quart bottle labeled 'Four Roses A Blend of Straight Whiskies', all of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On October 1, 1945 an investigator of the Department of Alcoholic Beverage Control tested thirty-two opened bottles of alcoholic beverages at defendant's premises and seized the six bottles mentioned in the charge when his preliminary tests indicated that the contents thereof were not genuine as labeled.

In attempted mitigation defendant alleges that there is a serious question as to whether or not the two seized bottles of "Canadian Club Blended Canadian Whiskey" contained illicit alcoholic beverages. Analysis of the contents of these two bottles discloses that the proof and acids vary only slightly from the proof and acids found by analysis of the contents of a genuine bottle of the same product. The solids in each of the seized bottles are slightly higher and the color is somewhat darker than that found by analysis of the contents of a genuine sample. There is some doubt in my mind as to whether the evidence is sufficient to establish that the contents of these two bottles are not genuine as labeled.

It is contended by defendant that there is also a question as to whether or not the three bottles of "Old Blended Scotch Whiskey Johnnie Walker Black Label" contained illicit alcoholic beverages. Analysis of the contents of the three seized bottles of this product shows that the proof thereof is, respectively, 5.8, 4.2 and 5.8 above that found by analysis of the contents of a genuine sample, and that there is also a variation in solids and acids from that found in a genuine sample. I conclude that these three bottles contained illicit alcoholic beverages.

It is admitted by defendant that the seized bottle of "Four Roses A Blend of Straight Whiskies" contains an illicit alcoholic beverage.

The officers of defendant corporation allege that they have no knowledge as to the manner in which the violation occurred. However, despite personal innocence, a licensee is responsible for any "refills" found upon his premises.

Defendant has no prior adjudicated record. In determining a period of suspension I shall consider this as a "four bottle" case and shall suspend defendant's license for a period of twenty days. Re Johnson, Bulletin 680, Item 10.

Accordingly, it is, on this 19th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-130, issued by the Board of Commissioners of the City of Passaic to Billie's Blue Room, Inc., for premises 39 Garden Street, Passaic, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. January 2, 1946, and terminating at 3:00 a.m. January 22, 1946.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - PERMITTING GAMBLING ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - HINDERING AND FAILING TO FACILITATE AN INVESTIGATION BY ABC AGENTS, IN VIOLATION OF R. S. 33:1-35 - EMPLOYING DISQUALIFIED PERSON ON LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-26 - FALSE ANSWER IN APPLICATION FOR LICENSE, IN VIOLATION OF R. S. 33:1-25 - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS, LESS 5 FOR PLEAS.

In the Matter of Disciplinary
Proceedings against)

JOHN KOBYLARZ and MARTIN KOBYLARZ)
T/a KING'S TAVERN)
42 Wall Street)
Passaic, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption
License C-48, issued by the Board of
Commissioners of the City of Passaic
and transferred during the pendency
of these proceedings to)

STANLEY and WALTER WOJCIK)
for the same premises.)

Greenburg, Wilensky & Feinberg, Esqs., by Oscar R. Wilensky, Esq.,
Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The following charges were served on the licensees:

"1. On October 30, 1945, you allowed, permitted and suffered book-making on and about your licensed premises, in violation of Rule 7 of State Regulations No. 20.

"2. On October 30, 1945, while investigators of the State Department of Alcoholic Beverage Control were investigating the above alleged book-making occurring on that date, you hindered and failed to facilitate such investigation, in violation of R. S. 33:1-35.

"3. On October 30, 1945, and on divers occasions theretofore, you knowingly employed at your licensed premises Frank Kobylarz, who was disqualified under R. S. 33:1-25, 26 from such employment in that he had been convicted on October 14, 1936, of a crime involving moral turpitude; your said employment of him being in violation of R. S. 33:1-26.

"4. In your application filed with the Board of Commissioners of the City of Passaic and upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 41 which asks: 'Have you or has any person mentioned in this application ever had any interest, directly or indirectly, in any alcoholic beverage license in New Jersey which was surrendered, suspended or revoked?', whereas in truth and fact the alcoholic beverage license held by Martin Kobylarz for the 1937-38 period for premises at 42 Wall St., Passaic, N. J. had been suspended for three days, effective November 9, 1937; such false statement being in violation of R. S. 33:1-25."

Licensees plead guilty to charges (1) and (3) and plead non vult to charges (2) and (4).

The Departmental file discloses that on October 30, 1945, an ABC agent placed several bets on horses with Frank Kobylarz, alias "Kingie", an employee and brother of the licensees. Kingie handed the slips of paper to his brother, Martin Kobylarz, one of the licensees. By prearrangement, another ABC agent, in the company of two municipal detectives, entered the defendants' tavern and the agents then made known their identity to the defendant, Martin Kobylarz. Kingie threw a slip of paper, on which the name of a horse had been written, on the floor when he learned of the identity of the investigators. One of the investigators retrieved this piece of paper, but Kingie immediately snatched part of it from the investigator's hand. Martin Kobylarz tore up a betting slip which he had in his possession and tossed it into the refuse can. Both defendant Martin Kobylarz and Kingie were abusive and used vile and indecent language.

It further appears that Kingie was convicted, on October 14, 1936, for conspiracy to obstruct justice in a criminal case involving a person indicted for statutory rape. This crime clearly involved moral turpitude, and hence Kingie was disqualified from being associated with the alcoholic beverage industry. R. S. 33:1-25, 26. Regardless of this disqualification, Kingie was permitted by the licensees to work on the licensed premises, in violation of R. S. 33:1-26. The fact of Kingie's disqualification was brought specifically to the attention of the licensees some time previous to the date set forth in the charges.

The licensees have a previous adjudicated record. Effective November 9, 1937, defendants' license was suspended by the local issuing authority for three days because of an "hours" violation. Since this violation occurred eight years ago, it will not be considered in determining the suspension herein. I shall suspend

defendants' license on charge (1) for a period of twenty days (Cf. Re Ferment, Bulletin 635, Item 5); on charge (2), fifteen days (Re Niewinski, Bulletin 549, Item 9); on charge (3), twenty days (Re Gulka, Bulletin 263, Item 9); and on charge (4), for a period of five days (Re Gulka, supra), making a total in all of sixty days. Five days' remission will be allowed for the pleas entered herein, with the net suspension of the license being for a period of fifty-five days.

Although the defendants' license was transferred to Stanley and Walter Wojcik during pendency of these proceedings, the present penalty is effective against the transferees by virtue of State Regulations No. 16. Moreover, the local issuing authority apparently granted the transfer of the license on the express condition that it be subject to the outcome of these proceedings.

Accordingly, it is, on this 27th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-48, issued by the Board of Commissioners of the City of Passaic to John Kobylarz and Martin Kobylarz, t/a King's Tavern, for premises 42 Wall Street, Passaic, and later transferred by said Board to Stanley and Walter Wojcik, be and the same is hereby suspended for a period of fifty-five (55) days, commencing at 3:00 a.m. January 2, 1946, and terminating at 3:00 a.m. February 26, 1946.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -
LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS.

In the Matter of Disciplinary
Proceedings against

FRANK VITRONE
11 Park Avenue
Paterson 1, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-25, issued by the
Board of Alcoholic Beverage Control
of the City of Paterson.

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

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on September 21, 1945, he possessed two 4/5 quart bottles of "Ancient Age Straight Bourbon Whiskey" and two 4/5 quart bottles of "James E. Pepper Kentucky Straight Bourbon Whiskey", all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

In a letter dated subsequent to the entry of the plea, the defendant denies that he personally tampered with the contents of the bottles and adds, "I honestly can't understand what has happened." This affords no excuse for the violation.

This is the defendant's second similar offense. In April 1945 his license was suspended for a period of twenty-five days upon three charges, one of which alleged possession of illicit alcoholic beverages. See Bulletin 661, Item 5.

The license will be suspended for a period of forty days.

Accordingly, it is, on this 27th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-25, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Frank Vitrone, for premises 11 Park Avenue, Paterson, be and the same is hereby suspended for a period of forty (40) days, commencing at 3:00 a.m. January 3, 1946, and terminating at 3:00 a.m. February 12, 1946.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS.

In the Matter of Disciplinary
Proceedings against

SAMUEL HASSAN
T/a RADIO CAFE
231 S. Tennessee Avenue
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-20, issued by the
Board of Commissioners of the
City of Atlantic City.

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

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on October 15, 1945, he possessed three 4/5 quart bottles of "Canadian Club Blended Canadian Whiskey", one 4/5 quart bottle of "Four Roses Fine American Whiskey A Blend of Straight Whiskies" and four 4/5 quart bottles of "Seagram's 7 Crown Blended Whiskey", all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The eight bottles in question were seized by a Federal ATU agent after he had tested fifty open bottles at the defendant's tavern. Subsequent analysis by the Federal Chemist disclosed the variance of the contents of each of the eight bottles with genuine samples of the same products.

The defendant's previous record consists of a warning administered to him by the Department of Alcoholic Beverage Control in February 1944, after questionable liquor was found on his licensed premises. In view of this warning, and the large number of bottles involved in the instant charge, I shall impose a penalty herein of forty days.

Accordingly, it is, on this 27th day of December, 1945,

ORDERED, that Plenary Retail Consumption License C-20, issued by the Board of Commissioners of the City of Atlantic City to Samuel Hassan, t/a Radio Cafe, for premises at 231 S. Tennessee Avenue, Atlantic City, be and the same is hereby suspended for a period of forty (40) days, commencing at 12:01 a.m. January 3, 1946, and terminating at 12:01 a.m. February 12, 1946.

ALFRED E. DRISCOLL
Commissioner.

9.

ACTIVITY REPORT FOR DECEMBER, 1945

To: Alfred E. Driscoll, Commissioner

| | | | |
|--|----|----------------------------------|-------|
| ARRESTS: | | | |
| Licensees and employees | 2 | Bootleggers | 10 |
| Personating an ABC officer | 1 | | |
| Total number of persons arrested | | | 13 |
| SEIZURES: | | | |
| Total number of stills seized | | | 2 |
| Alcohol - gallons | | | 2.50 |
| Brewed malt alcoholic beverages (beer, ale, etc.) - gallons | | | 23 |
| Wine - gallons | | | 1 |
| Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons | | | 4 |
| RETAIL LICENSEES: | | | |
| Total number of premises inspected | | | 1,015 |
| Total number of premises where alcoholic beverages were gauged | | | 575 |
| Total number of bottles gauged | | | 7,840 |
| Total number of premises where violations were found | | | 45 |
| Total number of violations found | | | 72 |
| Type of violations found: | | | |
| Illicit liquor | 18 | No sign denoting legal sale | |
| Unqualified employees | 27 | hours - off-premises consumption | 5 |
| "Fronts" (concealed ownership) | 4 | Stock disposal permits necessary | 8 |
| Prohibited signs | 2 | Other types of violations | 8 |
| STATE LICENSEES: | | | |
| Premises inspected | | | 7 |
| License applications investigated | | | 15 |
| COMPLAINTS: | | | |
| Investigated, reviewed and closed | | | 229 |
| Investigation assigned, not yet completed | | | 246 |
| LABORATORY: | | | |
| Analyses made | | | 120 |
| "Shake-up" cases (alcohol, water and artificial coloring) | | | 12 |
| Liquor found to be not genuine as labeled | | | 26 |
| IDENTIFICATION BUREAU: | | | |
| Criminal fingerprint identifications made | | | 20 |
| Persons fingerprinted for non-criminal purposes | | | 146 |
| Identification contacts with other enforcement agencies | | | 143 |
| Motor vehicle identification via N. J. State Police Teletype | | | 13 |
| DISCIPLINARY PROCEEDINGS INSTITUTED: | | | |
| Cases transmitted to municipalities | | | 10 |
| Violations involved: | | | |
| Sale during prohibited hours | 7 | Inadequate view into premises | |
| Sale to minors | 3 | during closing hours | 1 |
| Sale to intoxicated persons | 1 | | |
| Cases instituted by Department | | | 23 |
| Violations involved: | | | |
| Illicit liquor | 7 | Hostesses | 1 |
| Sale under Fair Trade | 5 | Improper advertising | 1 |
| Sale to minors | 4 | Inadequate view into premises | |
| Fraud and front | 3 | during closing hours | 1 |
| Sale during prohibited hours | 2 | Improper bottling by retailer | 1 |
| Business conducted as a nuisance | 1 | Lewdness | 1 |
| | | Offering discount | 1 |
| Cases brought by municipalities on own initiative and reported to Department | | | 4 |
| Violations involved: | | | |
| Act occurring after issuance of license which, if occurring before, would have prevented such issuance | 1 | Known criminal on premises | 1 |
| Brawls | 1 | Prostitutes | 1 |
| Gambling | 1 | Sale during prohibited hours | 1 |
| Inadequate view into premises during closing hours | 1 | Sale to intoxicated persons | 1 |
| | | Sale to minors | 1 |
| | | Unqualified employee | 1 |
| HEARINGS HELD AT DEPARTMENT: | | | |
| Appeals | 12 | Seizures | 6 |
| Disciplinary proceedings | 22 | Applications for license | 3 |
| Eligibility | 11 | | |
| Total number of hearings held | | | 54 |
| PERMITS ISSUED: | | | |
| Unqualified employees | | | 110 |
| Solicitors | | | 87 |
| Social affairs | | | 151 |
| Home manufacture of wine | | | 308 |
| Disposal of alcoholic beverages | | | 154 |
| Miscellaneous permits | | | 52 |
| Total number of permits issued | | | 862 |

Respectfully submitted,
ERWIN B. HOCK
Deputy Commissioner

10. APPELLATE DECISIONS - MAIN CENTRAL HOTEL & CAFETERIA, INC. v. ASBURY PARK.

MAIN CENTRAL HOTEL & CAFETERIA,)
INC., t/a ZULU BAR,)

Appellant,)

-vs-)

CITY COUNCIL OF THE CITY
OF ASBURY PARK,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDERS

J. Stanley Herbert, Esq., Attorney for Appellant.
Charles Frankel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a two-day suspension of the plenary retail consumption license held by the appellant for premises at 111-113 Second Avenue, Asbury Park, after it had pleaded guilty to a charge of having two unlabeled beer taps on its licensed premises, in violation of Rule 1 of State Regulations No. 22. Upon the filing of the appeal, the suspension was stayed pending the outcome of the appeal.

Appellant's sole ground of appeal is that the two-day penalty was imposed to take effect on a week-end and that "when they (respondent) inflicted a penalty..... of a two-day suspension on a Saturday and Sunday" the respondent thereby was guilty of an abuse of discretion.

Appellant's position, wholly unsupported by any factual proof, is devoid of merit. No claim of discrimination may be made since the respondent had never theretofore had occasion to impose a suspension of only two days against any of its licensees.

The respondent's evidence indicates that during the month of October, when the penalty was to take effect, there is little business activity in the municipality, which is primarily a seashore resort. Realizing that the appellant would suffer little, if any, inconvenience from a suspension of operations during two week-days, the respondent determined that a forceful penalty could be inflicted only on a week-end. I fully agree with this determination. The purpose of a penalty is to serve as a deterrent against future recurrences. This purpose would be rendered wholly nugatory by a deprivation of license privileges during a period when it would have only an inconsequential effect upon the operation of the licensed business.

Respondent's action, being neither arbitrary nor unreasonable, will be affirmed and the suspension reimposed on a week-end.

Accordingly, it is, on this 2nd day of January, 1946,

ORDERED, that the petition of appeal be and the same is hereby dismissed; and it is

FURTHER ORDERED, that the stay heretofore granted by Order dated October 25, 1945 be and the same is hereby vacated, effective at 2:00 a.m. January 12, 1946, and that Plenary Retail Consumption License C-11, issued by the respondent to the appellant for premises 111-113 Second Avenue, Asbury Park, be and the same is hereby suspended for a period of two (2) days, commencing at 2:00 a.m. January 12, 1946, and terminating at 2:00 a.m. January 14, 1946.

ALFRED E. DRISCOLL
Commissioner.

11. MORAL TURPITUDE - CRIME OF BREAKING, ENTERING AND LARCENY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST NOT SHOWN - APPLICATION TO LIFT DENIED.

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. 478
-----)

BY THE COMMISSIONER:

Petitioner herein, pursuant to the provisions of R.S.33:1-31.2, seeks removal of the statutory disqualification resulting from his conviction of crime involving moral turpitude, which prevents him from holding a liquor license in this state and from being employed by or connected in any business capacity whatsoever with the holder of such a license.

In 1933, when petitioner was about 16½ years of age, he was convicted of breaking, entering and larceny, and sentenced to five years' probation. Within eight months he was again arrested for violating the terms of his parole in failing to report to the probation officer. The next year, while still on probation and when he was about 17½ years old, he was convicted of grand larceny and again paroled.

The crimes of breaking, entering and larceny ordinarily involve the element of moral turpitude (Re Case No. 312, Bulletin 603, Item 6).

Between 1934 and 1945 petitioner apparently was not convicted of any crime. However, in August, 1945, he was convicted in a Police Court on a charge of driving an auto without owner's consent, a violation of the Motor Vehicle Act. This conviction, while possibly not a conviction of a crime, shows a disregard for law which is sufficient to nullify the evidence of law-abidingness.

This conviction in 1945 makes it impossible for me to find that petitioner "has conducted himself in a law-abiding manner during that period" (the last five years).

I have carefully considered all the evidence and note that petitioner's crimes, at least the two that usually involve moral turpitude, were committed between his 16-18 birthday. This permits the application of the humanitarian interpretation of the Alcoholic Beverage Law so fully explained by the late Commissioner Burnett (Re Case No. 36, Bulletin 149, Item 1).

The rule laid down in Case No. 36, supra, permits, if the surrounding facts warrant, a conclusion that crimes ordinarily involving moral turpitude do not, when committed by one under the age of eighteen, involve that element.

In the instant case, after a consideration of the evidence, I find that the repeated crimes were more indicative of a disregard for the orderly process of the law than mere youthful indiscretions. Case No. 192, Bulletin 215, Item 3.

Because of such finding, I cannot rule that such crimes did not involve moral turpitude, and the recent conviction in 1945 prohibits a finding that petitioner has, in fact, been law-abiding for the last five years.

The relief sought by the petitioner will be denied, with permission for petitioner to seek the relief he desires after August 14, 1950.

Accordingly, it is, on this 2nd day of January, 1946,

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

ALFRED E. DRISCOLL
Commissioner.

12. MORAL TURPITUDE - CRIME OF INCEST INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED -
PETITIONER PARDONED AND RESTORED TO CITIZENSHIP BY NEW JERSEY
COURT OF PARDONS - 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 be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 481.
-----)

BY THE COMMISSIONER:

Petitioner herein, pursuant to the provisions of R.S.33:1-31.2, seeks the removal of the statutory disqualification resulting from his conviction of a crime involving moral turpitude which prevents him from holding a liquor license in this State and from being employed by or connected in any business capacity whatsoever with the holder of such a license.

In 1925, petitioner was found guilty of the crime of incest and sentenced to State Prison for a term of seven to twelve years. In 1930 he was paroled and subsequently, in 1932, was granted full restoration of citizenship by the New Jersey Court of Pardons.

There can be no doubt that the crime of incest involves moral turpitude.

In 1933 petitioner was convicted in a Federal District Court of a violation of the National Prohibition Act and sentenced to serve fifteen days in a County Jail and to pay a fine of \$150.00.

Since 1933 petitioner has had no further trouble with the police and seems to be completely rehabilitated.

He produced three witnesses; one, the Chief of Police of petitioner's home municipality, has known him about thirty-five years. Another, also an official of the municipality, has known him for ten years; and the third, who is in the insurance business, has known him for twenty-three years. All testify that, with the exception of the above crimes, petitioner has always been honest and law-abiding.

The police department of his home municipality have no complaints, charges or investigations now pending involving the petitioner.

I find that petitioner has conducted himself in a law-abiding manner during the five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 2nd day of January, 1946,

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

ALFRED E. DRISCOLL
Commissioner.

13. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)

SAM DiFRANK and MARY DiFRANK)
T/a GARTON HOTEL)
East Side Garton Road, South)
of Landis Avenue)
Deerfield Township, N. J.,)

to Lift the Automatic Suspension)
of License C-10 issued by the)
Township Committee of Deerfield)
Township.)
- - - - -)

On Petition
CONCLUSIONS AND ORDER

William Gallner, Esq., Attorney for Petitioners.

BY THE COMMISSIONER:

It appears from the petition filed herein that on December 14, 1945, Sam DiFrank, one of the petitioners, pleaded guilty in the Court of Special Sessions, Cumberland County, to charges alleging that he had sold alcoholic beverages to minors and that, as a result of said plea, he was sentenced to pay a fine of \$100.00, which fine has been paid.

It further appears from the petition and from the records of the Department of Alcoholic Beverage Control that the Township Committee of Deerfield Township, in disciplinary proceedings, had previously suspended petitioners' license for a period of thirty days, effective from October 22, 1945 to November 21, 1945, after

the defendants in said proceedings had been found guilty of charges alleging sale of alcoholic beverages to minors and sale of alcoholic beverages to a person apparently intoxicated.

The criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts so far as the sale of alcoholic beverages to minors is concerned. Because of the criminal conviction the license of the petitioners herein has been automatically suspended for the balance of its term. R.S.33:1-31.1. The license certificate was picked up by investigators of the Department of Alcoholic Beverage Control on January 2, 1946. The petition requests that the automatic suspension may be lifted.

The case involves the sale of alcoholic beverages to three boys -- two of whom were seventeen years of age and one of whom was nineteen years of age -- and also to a girl nineteen years of age. It further appears that one of the seventeen-year-old boys was apparently intoxicated when served.

It has been the policy of this Department to lift an automatic suspension when and only when a license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. The suspension imposed in the disciplinary proceedings might well have been greater, but the members of the Township Committee heard all of the testimony and apparently concluded that a suspension for a period of thirty days would be adequate. I shall accept the judgment of the members of the Township Committee and, hence, conclude that the suspension imposed in the disciplinary proceedings was adequate under all the circumstances of the case. I shall, therefore, grant the relief sought in the petition.

Accordingly, it is, on this 2nd day of January, 1946,

ORDERED, that the automatic suspension of License C-10, held by Sam DiFrank and Mary DiFrank, t/a Garton Hotel, issued by the Township Committee of Deerfield Township for premises on the east side of Garton Road, south of Landis Avenue, Deerfield Township, be lifted, and said license is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

14. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

RALPH ZIMMERMAN & ISAK KAWUT
T/a QUALITY WINE & LIQUOR CO.
140 East Broad Street
Westfield, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distri-
bution License P-3, issued by the
Town Council of the Town of
Westfield.

Ralph Zimmerman & Isak Kawut, Defendant-licensees, Pro Se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Licensees plead non vult to a charge alleging that, on December 4, 1945, they sold a 4/5 quart bottle of Guild Select Reserve Muscatel Wine below the minimum retail price, in violation of Rule 6 of State Regulations No. 30.

On December 4, 1945 an investigator of the Department of Alcoholic Beverage Control purchased a 4/5 quart bottle of Guild Select Reserve Muscatel Wine for 89¢. The Fair Trade price of this item was 99¢ a 4/5 quart. (Bulletin 675)

Licensees allege that they changed the selling price of the article in question upon receipt of a written communication from the manufacturer of the wine setting forth that the price had been reduced. This, however, does not constitute a defense. Licensees are under a duty to fix their retail prices in accordance with the prices published in the official bulletins regardless of information received from other sources. Cf. Re Tiger Food Company, Inc. Bulletin 377, Item 11.

Inasmuch as defendants have no previous adjudicated record, I shall impose the minimum suspension of ten days, less five days for the plea entered herein, or a net suspension of five days.
Re United Italian Cooperatives, Inc., Bulletin 676, Item 2.

Accordingly, it is, on this 4th day of January, 1946,

ORDERED, that Plenary Retail Distribution License D-3, issued by the Town Council of the Town of Westfield to Ralph Zimmerman & Isak Kawut, t/a Quality Wine & Liquor Co., for premises 140 East Broad Street, Westfield, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. January 14, 1946, and terminating at 9:00 a.m. January 19, 1946.

Alfred E. Buswell
Commissioner.