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

BULLETIN 308 APRIL 5, 1939.

1. DISCIPLINARY PROCEEDINGS - CONSISTENTLY INADEQUATE PENALTIES - CONDUCT OF ALL DISCIPLINARY PROCEEDINGS IN BOROUGH OF WALLINGTON TAKEN OVER BY STATE COMMISSIONER.

DISCIPLINARY PROCEEDINGS - EVIDENCE - STATEMENTS BY LICENSEES - NO REQUIREMENT THAT LICENSEE BE WARNED THAT HIS STATEMENT MAY BE USED AGAINST HIM.

LICENSED BUILDINGS - NOT ONLY LICENSED PREMISES BUT ALL PORTIONS OF THE BUILDING HOUSING SAME ARE SUBJECT TO INSPECTION.

March 28, 1939

Louis A. Schiffman, Esq.,
Attorney, Wallington Borough,
Carlstadt, N. J.

Dear Mr. Schiffman:

I have before me staff report and your letter of March 14th re disciplinary proceedings conducted by the Mayor and Council of the Borough of Wallington against Victoria Grosiak, 115 Main Avenue, charged with sale of alcoholic beverages on Sunday mornings, and note that her license was suspended for three days.

I have heretofore had occasion to comment on the handling of disciplinary proceedings in Wallington, viz.:

1. October 15th: Penalty of but two days against John Skawienski for permitting obscene and licentious moving pictures.

2. November 14th: Dismissal of charges against Anna Kielb for violation of the Election Day Rule on the untenable ground that the beer was served, while the polls were open, to relatives, or in the kitchen, or in a spirit of friendly welcome.

3. January 16th: An inadequate three day suspension - Monday, Tuesday, and Wednesday at that - against Vasil Kimak, charged with sale of alcoholic beverages and permitting his licensed premises to be open on Sunday morning in violation of your own ordinance.

In the instant case, Victoria Grosiak apparently thought that she could beat the rule against Sunday morning sales by having her customers come upstairs to her kitchen, which was not part of the licensed premises. Everything would have been fine except for the fact that by making sales off her licensed premises the sales were not covered by the license, and consequently she was, in effect, running a speak on Sunday morning. In spite of her flagrant violation the Council imposed a suspension of only three days, and once again, for a Monday, Tuesday, and Wednesday, the days in the week that hurt the least.

It was with considerable surprise that I learned from the staff report that you refused to offer in evidence the licensee's signed statement in which she admitted the violation for the reason that it did not contain the phrase "I make this statement of my own

free will, knowing that any part of it may be used against me", or words to that effect. I know of no rule of the law that requires written admissions against interest to be coupled with such a statement. Disciplinary proceedings before the issuing authority, although penal, are civil and not criminal. Hence, there is no requirement in disciplinary proceedings that a licensee be warned that his statement may be used against him. The admission was certainly evidential and I see no reason for leaning backward in favor of those who, by their tactics, bring odium upon honest licensees.

The staff report further discloses that Councilman Hartman inquired by what right the investigators justified their entrance into the private apartment of the licensee above the licensed premises. For his information, I suggest that you call to his attention the provisions of R. S. 33:1-35 (Control Act, Section 32), which provides:

> "The Commissioner and each other issuing authority is hereby authorized and empowered to make, or cause to be made, such investigations as he or it shall deem proper in the administration of this Act.....including the inspection and search.....of licensed buildings .....and every licensee.....shall, on demand, exhibit to the Commissioner or other issuing authority, as the case may be, or to his or its deputies or investigators, or inspectors or agents, all of the matters and things which the Commissioner or other issuing authority as the case may be, is hereby authorized or empowered to investigate....."

R. S. 33:1-1 (Control Act, Section 1(j)) defines "Licensed building" as any building containing licensed premises. Furthermore, the official form of application for all municipal retail licenses except club licenses (Bulletin 237, Item 2) by paragraph 44 provides that the applicant for license consents that the <u>licensed premises and all portions of the building containing the same</u> in the applicant's possession or under his control, may be inspected and searched without warrant by duly authorized inspectors, investigators, and agents of the State Commissioner of Alcoholic Beverage Control. The meager three day suspension in the instant case, in effect, condones a sneaky attempt by a licensee to circumvent the very law which gave her a license.

I get the distinct impression that the Mayor and Council have no real desire to enforce the liquor law and their own regulations governing hours of sale. Consequently, from now on and until such desire is made apparent, I shall handle all disciplinary proceedings in Wallington myself.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. MUNICIPAL REGULATIONS - MINIMUM DISTANCE BETWEEN LICENSED PREMISES - EXEMPTIONS FOR EXISTING LICENSES AND EXISTING LICENSED PREMISES DISAPPROVED.

March 29, 1939

Philip P. Costello,
City Clerk,
Perth Amboy, N. J.

My dear Mr. Costello:

I have before me yours of March 25th and proposed ordinance to amend Section 2 of ordinance of November 18, 1936.

Section 2 of the ordinance of November 18, 1936 provides:

> "No plenary retail consumption license or plenary retail distribution license shall be hereafter issued or transferred from place to place for the sale of alcoholic beverages within seven hundred and fifty feet of any premises licensed for the sale of alcoholic beverages by any licensee holding a plenary retail consumption license or a plenary retail distribution license. The said distance shall be measured from the nearest entrance of the nearest licensed premises to the nearest entrance of the premises sought to be licensed, to be measured in the normal way that a pedestrian would properly walk. This provision shall not be construed to affect existing licensed premises or the renewal of licenses on existing licensed premises."

The effect of the amendment is to strike out the concluding sentence of Section 2, as it now stands, and insert in place thereof:

> ".....This provision shall not be construed to affect existing licenses or the renewal thereof."

I take it that what the Board is working toward, in Section 2, is the separation of all premises for which plenary retail consumption or distribution licenses are issued, by a minimum distance of 750 feet.

I sense no objection, in principle, to that. Avoiding the close congestion of liquor places may well serve a public purpose. Nor do I raise any question now to the provision in the original Section 2 that it shall not affect existing licensed premises. I doubt its propriety, but shall discuss that later. I am satisfied that an exception allowing renewals for the same premises of licenses within 750 feet of each other at the time the regulation was adopted, as in the original Section 2, is sound. These people have made commitments, built up their businesses, and otherwise changed their positions in reliance on the licenses that were issued to them and the anticipation that barring misconduct or violation of the law, they would be allowed to renew. The exception for renewals is but fair.

But to exempt existing licenses, as in the proposed amendment, is quite another matter. This, mind you, goes far beyond merely exempting presently licensed premises or renewals for the same premises. It has the effect of taking all present licenses wholly out of the scope of the principal regulation, so that it does not apply to them at all. The result is that for all practical

purposes, there will be no regulation. You have 115 plenary retail consumption and one plenary retail distribution license, or a total of 116, in the City at the present time. The numerical limitation in Section 1 of the November 18, 1936 ordinance, although erroneous in imposing a limitation in the aggregate for the reasons in my letter of February 10, 1937 to Mr. Medinets, who was then City Attorney, contemplates that no new licenses will be issued until the quota is reduced to 87. It will be a long time before you get down to that number. In the meantime, if the amendment goes through, present licensees will be able to transfer about the City without restriction. The 750-foot minimum distance will be a mere gesture. The exemption will effectively nullify the principal regulation and set it at naught.

If the Board of Commissioners wishes to wipe out the regulation, it has the power to do so. But the way to do it is by the repeal of Section 2, and not by the adoption of an emasculating amendment. I see no point to retaining an empty and meaningless regulation, the only effect and apparent purpose of which is to mislead and create a mistaken impression of municipal policy.

Sooner or later, new licenses will be issued. Yet they will be subject to the 750-foot restriction, although the licenses in existence upon the adoption of the regulation will not. I see no reasonable basis for that. What is there that makes it bad for a new licensee to locate within 750 feet of another licensee, but acceptable for a person already holding a license to do so even though he moves across the City. Regulations must apply fairly to all. Exceptions, to be valid, must be based on reasonable distinctions, appropriately necessary in the light of the particular facts. As the proposed amendment is now drawn, applied to new licenses it is arbitrary and discriminatory, and consequently is disapproved.

I referred earlier in this letter to the exception in the regulation as passed November 18, 1936, exempting existing licensed premises. I have heretofore ruled that it is no reason for issuing an additional license contrary to a numerical limitation, that a premises theretofore covered by a license is now without one. Puri v. Warren, Bulletin 266, Item 2. Where social considerations justify a municipal policy, such as the reduction of the number of licenses outstanding, private interests of landlords or property owners must give way. Atlantic City Licensed Beverage Association v. Atlantic City and Adelman and Campbell et al. v. Atlantic City and Adelman, Bulletin 296, Item 6. In the absence of justification under the law, that is to say, that one premises was qualified for a license and the other not, I have grave doubts that a premises previously licensed would be entitled to the new license any more than a wholly new premises. See also Re Rothermel, Bulletin 293, Item 4. There is a vast difference between exempting persons and exempting premises. See Re Meyerson, Bulletin 200, Item 2. I think that the same applies, in principle, to the situation contemplated in your Section 2. It seems to me that the essential purpose of the exception is served by the provision for renewals. I suggest that at earliest convenience the Board amend Section 2 to strike out, last sentence, "existing licensed premises or.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF MINOR AS BARTENDER - 7 DAYS' SUSPENSION.

March 30, 1939

Walter W. Marrs,
City Clerk,
Burlington, N. J.

My dear Mr. Marrs:

I have before me staff report and your letter of March 24th re disciplinary proceedings conducted by the Common Council against Antonio Rando, 530 Linden Avenue and Green Street, charged with employing his minor son as a bartender, and note that his license was suspended for seven days.

Please express to the Common Council my appreciation for their conduct of these proceedings and the penalty imposed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of R.S.33:1-31.2, as amended by Chapter 350, P.L. 1938; 1938 C.S.R.S. 33:1-31.2

Case No. 51

CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In February 1920, petitioner was, pursuant to his plea of non vult, convicted of assault and battery upon two girls. He was sentenced to imprisonment for a term of from four to six years, but was paroled in July 1921 after serving seventeen months of that term

In explanation of the offense, petitioner testified that "two young fellows" whom he knew proposed that they all "go out with a couple of girls" who were waiting for them; that, accordingly, they went in the petitioner's automobile and picked up the two girls, who were prostitutes; that, while driving about, the two girls proved to be recalcitrant to their advances and became abusive; that petitioner thereupon directed that they get out of the automobile. The petitioner further testified that he was under the influence of liquor on that occasion.

However, report from the County Probation Department states that the two girls, one being fifteen years of age, were forced into the car, and that the petitioner, with violence, tried to compel one of them to have intercourse with him.

While assault and battery is not, per se, a crime involving moral turpitude within the meaning of R. S. 33:1-25, 26, where, as

here, it occurs in a forcible attempt to subject a young girl to intercourse, that element unquestionably is present, no less than in the case of actual rape. Cf. Re Case No. 190, Bulletin 222, Item 15

Petitioner was convicted on three occasions in connection with his operation of a "speakeasy" during the Prohibition days. In 1923, he was convicted of receiving stolen goods (three barrels of wine and one barrel of whiskey, which, so he claims, he bought for use at his "speakeasy" without knowledge of their being stolen), and was sentenced to imprisonment for fifteen months. In 1925, he was convicted of being the proprietor of a disorderly house (i.e., a place where liquor was being sold), and sentenced to four months' imprisonment. At about the same time, he was convicted of possessing and selling liquor, and likewise sentenced to four months' imprisonment.

In February 1934, petitioner was convicted of assault and battery and fined $100.00 as the result of attempting to strike his wife with a chair.

On April 1, 1935, he was convicted of opening a tavern, where he was manager, before noon on Sunday, March 31, 1935, in violation of the Newark ordinance, and was fined $25.00.

In order to lift petitioner's disqualification, it must appear that he has conducted himself in a law-abiding manner for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest.

In cases such as this, where the applicant has a long criminal record, testimony as to his conduct during the five years immediately preceding his application should be scrutinized with exceeding care to make sure that he really has turned over a new leaf - that his "repentance" is affirmatively genuine and not a mere lucky streak of freedom from getting caught. The evidence in such cases will, therefore, be construed strictly and not at all liberally.

While petitioner's violation of the Newark ordinance is not a "crime" within the meaning of R. S. 33:1-25, 26 (Re Case No. 249, Bulletin 305, Item 8), nevertheless it is unlawful conduct and can find little, if any, excuse. As I said with respect to such a violation in Re Application to Remove Disqualification, Case No. 43, Bulletin 300, Item 3:

> "There is no excuse for this. There is, admittedly, great difficulty in determining the age of a minor and an honest mistake might well be made. But there is no reason why those in the liquor trade should not gratefully and scrupulously obey the hours fixed during which their special privileges may be enjoyed. Anyone can tell what the time is."

I cannot, therefore, find that petitioner has been a law-abiding citizen, except from the date of his last conviction on April 1, 1935. It is from that date that the five years of good behavior will have to run.

Accordingly, the petition is dismissed, with leave to re-apply on April 1, 1940.

D. FREDERICK BURNETT,
Commissioner.

March 31, 1939.

5. ENFORCEMENT DIVISION ACTIVITY REPORT FOR MARCH, 1939

To: D. Frederick Burnett, Commissioner

ARRESTS: Total number of persons - - - - - - - - - - - - - - - 52
Licensees - 0 Non-licensees - 52

SEIZURES: Stills - total number seized - - - - - - - - - - - - 17
Capacity 1 to 50 Gallons - - - - - 9
Capacity 50 Gallons and over- - - - 8

Motor Vehicles - total number seized- - - - - - - - 11
Trucks - 3 Passenger Cars - - 8

Alcohol
Beverage Alcohol - - - - - - - - - - - - - - 414 Gallons

Mash - Total number of gallons - - - - - - 58,211

Alcoholic Beverages
Beer, Ale, etc. - - - - - - - - - - - - - - 11 Gallons
Wine - 781 "
Whiskies and other hard liquor - - - - - - 75 "

RETAIL INSPECTIONS:
Licensed premises inspected- - - - - - - - -1851
Illicit (bootleg) liquor - - - - - - - 15
Gambling violations- - - - - - - - - - 31
Sign violations- - - - - - - - - - - - 40
Unqualified employees- - - - - - - - - 74
Other mercantile business- - - - - - - 87
Disposal permits necessary - - - - - - 1
"Front" violations - - - - - - - - - - 1
Improper beer markers- - - - - - - - - 1
Other violations found - - - - - - - - 14

Total violations found - - - - - - - -264
Total number of bottles gauged - - - - - - - - 13,356

STATE LICENSEES:
Plant Control inspections completed- - - - - 212
License applications investigated- - - - - - 13

COMPLAINTS:
Investigated and closed - - - - - - - - - - - 423
Investigated, pending completion - - - - - - 154

LABORATORY:
Analyses made- - - - - - - - - - - - - - - - - - 152
Alcohol and water and artificial coloring cases - 21
Poison and denaturant cases- - - - - - - - - 1

Respectfully submitted,

E. W. Garrett,
Deputy Commissioner.

6. MUNICIPAL REGULATIONS - HOURS OF SALE - GRATIFYING REVERSAL OF MUNICIPAL POLICY THERETOFORE ALLOWING SALES TWENTY-FOUR HOURS A DAY - SALES BEFORE NOON ON SUNDAY DISCOURAGED.

March 31, 1939

Mr. John Dobnack,
Clerk of Weymouth Township,
Dorothy, N. J.

My dear Mr. Dobnack:

I have before me resolution adopted by the Township Committee on November 28, 1938, providing:

> "BE IT RESOLVED by the Township Committee of Weymouth Township, in Atlantic County, New Jersey, that all licensed premises holding a plenary retail consumption license in Weymouth Township, close for business and remove all customers therefrom between the hours of Two o'clock A.M. and Seven o'clock A.M. on week days, and on Sundays from Two o'clock A.M. to One o'clock P.M., Standard Time or Daylight Saving Time, whichever is in effect in said Township."

and further resolution adopted February 8, 1939, reading:

> "BE IT RESOLVED by the Township Committee of Weymouth Township, in Atlantic County, New Jersey, that all licensed premises holding a plenary retail consumption license in Weymouth Township, extinguish outside lights at 2 A.M., and close for business, removing all customers therefrom between the hours of 3 o'clock A.M. and 6 o'clock A.M., each and every day, Standard Time or Daylight Saving Time, whichever is in effect in said Township."

I am gratified that the Township Committee has seen fit to discard its previous regulation (Bulletin 280, Item 10) authorizing sales twenty-four hours a day without restriction. You have taken a forward and far-sighted step and one that is wholly in the public interest. Please express to the members of the Township Committee my sincere appreciation.

Both resolutions appear to be adequate as to form. The adoption of Daylight Saving Time as the official time for the Township, by resolution or ordinance of the Township Committee, will suffice to change the hours from Eastern Standard to Daylight Saving Time, during the period the latter is in use. See Re Wieser, Bulletin 287, Item 17; Re Tanier, Bulletin 261, Item 1.

I have no objection to extending the hours until 3:00 A.M. every night in the week if that is what the Township wants. See Notice to Municipalities, Bulletin 286, Item 1; Re Madden, Bulletin 268, Item 9; Re Lane, Bulletin 261, Item 8; Re MacDonald, Bulletin 244, Item 3; Pearce v. West Orange, Bulletin 220, Item 10. But it does not seem to me to be good policy to allow sales on Sundays during church hours. See Re Tanier, Bulletin 298, Item 3. I therefore cordially suggest that the Township Committee set back the Sunday morning opening hour to noon. Your resolution of November 28, 1938 provided for Sunday opening at 1:00 P.M. I think that noon on Sunday is very liberal.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

7. TEA - FOR CONSUMPTION BY THE HOME TEAM - NOT PERMISSIBLE AT BARS EVEN UPON DOCTOR'S ORDERS.

Dear Sir:

Will you please advise whether it is permissible for an owner of a tavern who, under doctor's orders must refrain from consuming alcoholic liquors, to fill an empty liquor bottle with tea and consume that when requested by a customer to drink with him although said customer knows not what the owner drinks?

April 1, 1939

My dear Mr. _____

Tea in liquor bottles won't go, doctor's orders or no. Customers are not to be charged the liquor rate for treating the proprietor to bewitched water.

Liquor bottles must be labeled and the contents must be strictly as represented. The law cannot be enforced in any other way. If your client can possess such a bottle to fool customers, so can the hostesses who make it a practice.

For your client, in his delicate condition, I suggest soda pop or else refrain until he recovers. I am sure his importunate friends will understand if he pleads "doctor's orders."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938)	CONCLUSIONS AND ORDER
Case No. 49 Lordi	

James P. Lordi, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In 1923, when petitioner was nineteen years of age, he was convicted on a charge of larceny of an automobile and served six months in a penitentiary; two years later he was convicted on a similar charge and served eight months in a penitentiary; in January 1927 he was convicted on a third charge of larceny of an automobile and was sentenced to State's Prison for a period of seven years but was paroled in June 1929. Since that time he has served no time in jail.

His record shows that, in 1932, he was fined $100.00 after having been convicted of transporting and possessing alcoholic beverages in violation of the Prohibition Law and, on June 13, 1935, in a criminal court, he was fined $10.00 for violating a city ordinance by serving alcoholic beverages during prohibited hours.

At the hearing petitioner testified that, on June 13, 1935, at about 2:15 A.M., police officers entered a saloon owned by petitioner's wife and arrested a bartender for selling alcoholic beverages after 2:00 A.M. (the closing hour fixed by a local ordinance); that petitioner did not make the actual sale but was placed under arrest when he entered the licensed premises shortly after the police had arrived; that both petitioner and bartender had been fined $10.00 for violating a city ordinance after they had signed statements for the police.

As pointed out in Case No. 51, Bulletin 308, Item 4, where applicant has a long criminal record, testimony as to his conduct during the five years immediately preceding his application should be scrutinized with exceeding care to make sure that he really has turned over a new leaf - that his "repentance" is affirmatively genuine and not a mere lucky streak of freedom from getting caught. The evidence in such cases is, therefore, to be construed strictly.

It is unnecessary to consider the evidence given by character witnesses for petitioner because I conclude that his conviction in 1935, for violation of the closing hour regulations, shows that he has not been a law-abiding citizen for at least five years. Case No. 48, Bulletin 300, Item 3. Moreover, petitioner admits that, a few years ago, the local police questioned his right to work in his wife's place of business because of his criminal record; that, at that time, petitioner promised the police that he was not going to work there and that, in fact, he did not work there for approximately a year thereafter. Despite this promise, petitioner admits that, during the past year, he has worked about ten months in his wife's saloon.

I cannot, therefore, find that petitioner has been a law-abiding citizen except from the date of his last conviction, on June 13, 1935. It is from that date that the five years of good behavior will have to run.

Accordingly, the petition is dismissed with leave to re-apply on or after June 13, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 1, 1939.

9. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against)
)
FRIEDA POLONSJY and LIPMAN KIEWE, t/a State's Ave. Liquor Store, 809 Pacific Ave., Atlantic City, N. J.,) CONCLUSIONS AND ORDER
)
Holder of Plenary Retail Distribution License D-6, issued by the Board of Commissioners of the City of Atlantic City.)

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.
Vincent S. Haneman, Esq., Attorney for Licensee.

BY THE COMMISSIONER:

These licensees have pleaded guilty to the charges of selling liquor at their licensed premises on February 18, 1939, in violation of Rule 6 of State Regulations No. 30.

By entering this plea in ample time before the day fixed for the hearing, the Department has been saved the time and expense of proving its case. This practice will apply to all future cases and also retroactively as far as possible.

Accordingly, instead of the usual ten days' suspension, it is, on this 2nd day of April, 1939,

ORDERED, that Plenary Retail Distribution License D-6, heretofore issued to Frieda Polonsjy and Lipman Kiewe, t/a State's Ave. Liquor Store, by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended for a period of five days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against

ANTONINA TARASKIEWICZ,
1199 Thurman Street,
Camden, New Jersey,

Holder of Plenary Retail Consumption License No. C-109, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Antonina Taraskiewicz, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to a charge alleging that, on January 13, 1939, she sold one pint bottle of Wilson "That's All" Whiskey below the minimum retail price, in violation of State Regulations No. 30.

On January 13, 1939, Investigator Brooks, of this Department, purchased the item in question at $1.15 from the licensee at the licensed premises. The Fair Trade price of said item is $1.16. The licensee admitted to the investigator that she knew the regular price was $1.16 and said that she "didn't want to bother with the pennies." Penny "chiseling" is no different in principle from cheating in dimes or dollars. Re Revallo, Bulletin 303, Item 2. If this were a defense, or a matter of mitigation, the regulations which the licensees themselves asked for would be rendered inert. Re Kraus, Bulletin 286, Item 10.

I shall suspend the license for ten days.

Accordingly, it is on this 3rd day of April, 1939, ORDERED that Plenary Retail Consumption License No. C-109, heretofore issued to Antonina Taraskiewicz by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and same is hereby suspended for a period of ten (10) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against

JOSEPH WARDACH,
1448 Rose Street,
Camden, New Jersey,

Holder of Plenary Retail Consumption License No. C-83, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Joseph Wardach, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to a charge alleging that, on January 13, 1939, he sold a pint bottle of Calvert's "Special" Blended Whiskey below the minimum retail price, in violation of State Regulations No. 30.

On January 13, 1939, Investigator Brooks, of this Department, purchased the item in question for $1.15 from the licensee at the licensed premises. The Fair Trade price of said item is $1.16. The licensee admitted to the investigator that he knew that the regular price of the item was $1.16.

Licensee's only explanation is that "sometimes I got no pennies to give change." Penny "chiseling" is no different in principle from cheating in dimes or dollars. Re Revallo, Bulletin 303, Item 2. If this were a defense or a matter of mitigation, the regulations which the licensees themselves asked for would be rendered inert. Re Kraus, Bulletin 286, Item 10.

I shall suspend the license for ten days.

Accordingly, it is, on this 3rd day of April, 1939, ORDERED, that Plenary Retail Consumption License No. C-83, heretofore issued to Joseph Wardach by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and same is hereby suspended for a period of ten (10) days.

Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against CHARLES I. TARLOW, 23 S. Union Avenue, Cranford, New Jersey, Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Cranford.	CONCLUSIONS AND ORDER

Samuel B. Helfand, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Henry S. Waldman, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged with selling, on November 23, 1938, a fifth bottle of Martin's V.V.O. (Scotch) below the Fair Trade price, contrary to Rule 6 of State Regulations No. 30.

The defendant conducts a large store at his licensed premises with a liquor department on one side and a food department on the other. On Wednesday, November 23, 1938, at about 12:30 P.M., Investigators Arts and Thievon of this Department visited the store to investigate a complaint that Martin's V.V.O. (Scotch) was there being sold at $2.59 a fifth despite the Fair Trade price of $3.25. They went to the liquor counter - where Max Tarlow, the defendant's son, was in charge - to make a buy, and found several customers at that counter. Investigator Arts testified that when his turn was reached he asked for a fifth of Martin's V.V.O. (Scotch) and, when Max produced it, asked its price; that Max replied, "$2.59"; that Arts then handed him two $1.00 bills folded around a fifty cent piece, a nickel, and four pennies (money which he had been holding in his hand since entering the store); that Max said, "That's right", and put the money in the cash register; that the investigators then moved away from the liquor counter to the front of the store; that Thievon went outside to their automobile to get his brief case containing various papers for the taking of statements, etc.; that Arts, who remained in the store, took the bottle of Martin's V.V.O. from its bag and was looking at the label when Max came over to him and, just as Thievon reentered, stated, "You got me, boys, I was terribly busy, and made a mistake on the price." Investigator Thievon corroborated Arts' testimony.

The defense, while admitting the sale to Arts, asserts that Max believed that the folded up money which was given to him contained the correct Fair Trade amount.

Max testified that Arts, after asking for and getting the bottle of Martin's V.V.O., put his money, folded up, on the counter; that he (Max) quoted no price but assumed that the Fair Trade price of $3.25 was being paid and remarked, "Right", as a substitute for "Thank you"; that, as he set about to wait on the next customer, he handed Arts' money, still folded up, to his sister, who, though working in the grocery department, happened to be at the cash register at the liquor counter at that moment, and told her to take out $3.25; that, after counting the money, she informed him that the money was short; that, upon learning this fact, he immediately left

his customers at the liquor counter and hurried to Arts, who was still in the store, and told him that there was some mistake; that, as he was talking to Arts, Thievon reentered the store. He further testified that he did not know either of the investigators at the time.

His sister, Betty, testified that she was working in the grocery department at the time; that she interrupted waiting upon a woman customer to sell a package of cigarettes to a man who gave her fifteen cents and was entitled to some pennies in change, that the man told her to forget the change; that, however, having no pennies at the cash register in the grocery department, she went over to the register at the liquor counter to get some change for subsequent sales; that when she reached there, Max gave her some money and said, "Here, ring up $3.25"; that she counted the money and discovered only $2.59; that when she told this to Max, he stated, "There must be some mistake", and ran after the investigators; that, however, she did not hear the conversation between him and the investigators.

The defendant produced a man and a woman who stated that they were the persons upon whom Betty had waited, and also another man who stated that he was in the store at the time. The two men testified that they were out of town customers who had entered the store to buy some liquor and witnessed the sale to Arts. The woman testified that she was shopping in the grocery department at the time. These three witnesses sought to corroborate the story of the defense.

Frankly, I am not at all impressed with the part of the story which portrays Max as selling Martin's V.V.O. to strangers without stating its price and accepting, diffidently and without question, whatever it was that they gave him. I am satisfied that the testimony of Investigators Arts and Thievon that Max, when selling the liquor, quoted its price as $2.59 and later admitted, "You got me, boys", depicts the truth.

The defendant's contention that State Regulations No. 30 are unconstitutional has already been adversely decided by the State Commissioner and, on appeal from his decision, by the New Jersey Supreme Court. Re Gaine, Bulletin 288, Item 9; Gaine v. Burnett, 122 N.J.L. 39 (Sup. Ct. 1939), Bulletin 299, Item 2.

I find the defendant guilty as charged.

His license will be suspended for ten (10) days.

Accordingly, it is, on this 2nd day of April, 1939, ORDERED, that Plenary Retail Distribution License D-1, heretofore issued to Charles I. Tarlow by the Township Committee of the Township of Cranford, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

13. APPELLATE DECISIONS - WITHERSPOON SOCIAL CLUB v. LAWRENCE TOWNSHIP.

WITHERSPOON SOCIAL CLUB,)

Appellant,) ON APPEAL
CONCLUSIONS

-vs-)

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAWRENCE,)

Respondent)

Robert Queen, Esq. and Frank H. Wimberley, Esq., Attorneys for Appellant.
Harvey Satterthwaite, Esq., Attorney for Respondent.
William C. Vandewater, Esq. and Morgan R. Seiffert, Esq., Attorneys for Gladys Ziegler, an Objector.
J. A. Homan, Esq., Attorney for other Objectors.

BY THE COMMISSIONER:

This appeal is from the denial of a club license to appellant, a colored organization, for its present club quarters at premises variously known as "The Old Princessville Inn", the "Susan D. Pierson Farm", and the "Old Halfway House", located in a rural and residential section of Lawrence Township.

Rule 2 of State Regulations No. 7 provides (with certain exceptions here not material):

> "No license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously, immediately prior to the submission of said application, and shall have been in exclusive, continuous possession and use of a clubhouse or club quarters for the same period of time."

Appellant was incorporated as an association for non-pecuniary profit on May 14, 1934. However, it appears, from the testimony of the Secretary (who has been a member of the club since its inception), that the club became inactive some two years ago and was thereafter revived. It further appears, from his testimony, that originally the club quarters were at 146 Witherspoon Street, Princeton, in the rear of a barber shop, for "a couple of months"; that thereafter, and until the spring or early summer of 1937, their quarters were at the colored Elks' home, where they met at the indulgence of the Elks, in whatever room was free at the time, paying only for the light; that they then met for about a month at the Charcoal Club across the street in whatever room was there available at the time, at the indulgence of that club; that they then met for about a month at the Elks' new home under the original arrangement; that thereafter they met for two or more months at an office maintained at the Secretary's home; that they then (somewhat over a year ago) leased the first floor of "The Old Princessville Inn", for which they seek their present license.

From this testimony, it is clear that the club lacks continuous, active operation and exclusive, continuous possession and use of club quarters for three years immediately prior to its present application for club license. Hence, it was not qualified, under the State Rule, to obtain such a license. Its application was therefore correctly denied.

The action of respondent is affirmed.

Frederick Burnett

Commissioner.

Dated: April 3, 1939.