

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

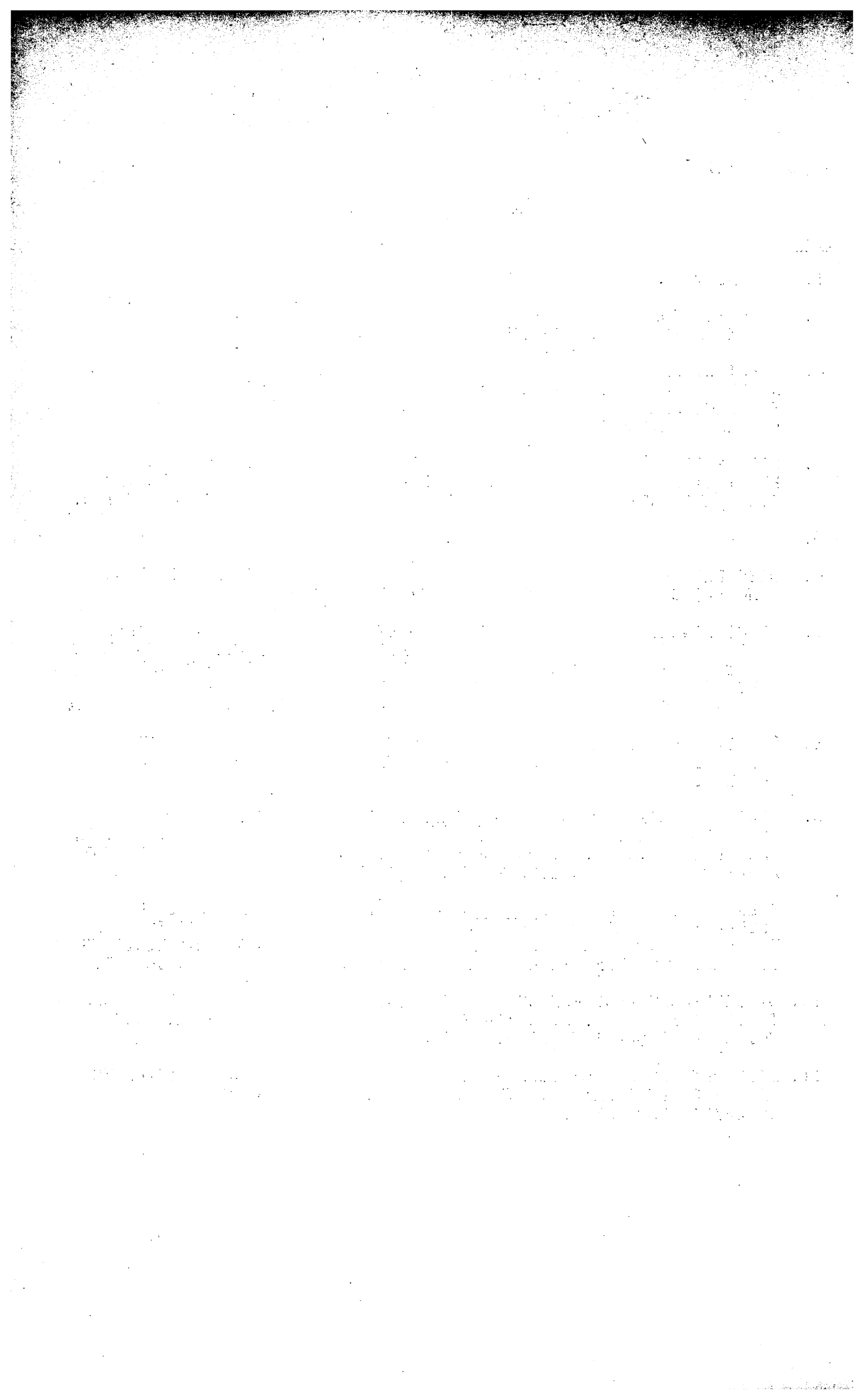
BULLETIN 611

APRIL 4, 1944.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - WYSZYNSKI v. NEWARK.
2. CONTRIBUTION BOXES IN LICENSED PREMISES TO RAISE MONEY FOR AMERICAN RED CROSS WAR FUND - APPROVED.
3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.
4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE AND RULE 1 OF STATE REGULATIONS NO. 38 - PREVIOUS RECORD - 60 DAYS' SUSPENSION.
5. APPELLATE DECISIONS - MULLEN v. PEMBERTON.
6. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - 5 DAYS' SUSPENSION.
7. DISCIPLINARY PROCEEDINGS - FRONT - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 60 DAYS AND TRANSFER OF LICENSE TO REAL PARTY IN INTEREST - LICENSE HAVING BEEN SUSPENDED FOR 60 DAYS AND TRANSFER HAVING BEEN APPROVED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.
8. SPECIAL PERMIT - LICENSED PREMISES MADE UNTENANTABLE BY FIRE - APPLICATION FOR TEMPORARY SPECIAL PERMIT FOR OTHER PREMISES GRANTED.
9. STATE REGULATIONS NO. 38 - RETAIL SALE AND DELIVERY BY STATE BEVERAGE DISTRIBUTORS PROHIBITED ON SUNDAYS AND BEFORE 9:00 A. M. AND AFTER 10:00 P. M. ON WEEKDAYS - THE STATE REGULATIONS DO NOT APPLY TO SALE AND DELIVERY AT WHOLESALE.  
  
SALE AND DELIVERY AT WHOLESALE ON SUNDAYS - WHERE MUNICIPAL REGULATION PROHIBITS SUNDAY SALE AT RETAIL, STATE LICENSEES ARE URGED TO CONFORM WITH SPIRIT OF MUNICIPAL REGULATION BY LIMITING TO EVERY POSSIBLE EXTENT SUNDAY SALE AND DELIVERY AT WHOLESALE.
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 - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.
11. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER - SITUATION CORRECTED - 10 DAYS' SUSPENSION.



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

BULLETIN 611

APRIL 4, 1944.

1. APPELLATE DECISIONS - WYSZYNSKI v. NEWARK.

ROMAN WYSZYNSKI and ANNA  
WYSZYNSKI,

Appellants,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF THE CITY  
OF NEWARK,

Respondent.

ON APPEAL  
CONCLUSIONS AND ORDER

Rospond & Rospond, Esqs., by J. Thaddeus Rospond, Esq.,  
Attorneys for Appellants.  
George B. Astley, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellants herein appeal from a five-day suspension of License C-496 issued for premises at 209 Ferry Street, Newark. The suspension was imposed after appellants had been found guilty on the following charges (as amended at the hearing below):

"3. On or about July 18th, 1943, you allowed, permitted and suffered in and upon the licensed premises a disturbance, brawl and unnecessary noises and allowed, permitted and suffered the licensed place of business to become a nuisance, in violation of Rule 5 of State Regulations #20.

"4. And that you also did, between the dates of January 24th, 1943, and September 4, 1943, inclusive, operate your place of business as a public nuisance, in violation of Rule 5 of State Regulations Number 20."

Appellants allege that the action of respondent was erroneous in that (a) the charges of respondent were not substantiated by the witnesses produced at the hearing in the disciplinary proceedings against appellants; and (b) the decision of the Board in finding the appellants guilty of the charges aforesaid and the suspension of said license are contrary to the weight of evidence adduced at the hearing.

Ten police officers of the City of Newark testified on behalf of respondent. Roman Wyszynski, one of the licensees, testified on behalf of appellants.

The testimony of the police officers as to events which occurred in or near the licensed premises may be summarized, in chronological order, as follows:

As to January 24, 1943: Officer O'Connor testified that he received a call in Radio Car #31 about 9:30 P. M. to proceed to appellants' premises. When the officers arrived they were informed by proprietor that he did have trouble with three young men because he refused to serve them. The young men had gone when the police arrived.

As to June 13, 1943: Officer Donaleski testified that he received a call in his Radio Car concerning noise. He went to appellants' dance hall and told a special officer employed there to "cut out" the loud music. This witness says that he went there at least six times as a result of complaints concerning loud music.

As to June 21, 1943: Officer Granbor testified that his Radio Car responded to a complaint of loud music and noise about midnight. When he arrived the owner said "Yes, yes, we are quieting it down" and closed doors and windows.

As to July 18, 1943: Sergeant DeMarco testified that he was detailed to vicinity of licensed premises. He saw a fight in front of place but couldn't testify as to whether participants were patrons of the place. He heard noises in the licensed premises.

As to August 14, 1943: Officer Blake testified that about midnight he heard a "juke-box" playing. He advised the special officer to shut down the music.

As to August 23, 1943: Officer O'Connor testified that his Radio Car responded to a noise complaint about 12:05 A.M. There was a dance and selections were being played on a clarinet. The proprietor closed the windows and stopped the playing.

As to September 4, 1943: Officer Heary testified that his Radio Car responded to a disturbance complaint. On arrival, Officer Bukowski notified him that three drunken sailors had been put out of dance hall.

In addition to the above testimony, Sergeant Carr testified that, between June 22, 1943 and June 29, 1943, a very boisterous and unruly crowd congregated outside the tavern and Officer McCormack testified that in June 1943 there was a scuffle in the place and eight or nine arrests were made in the dance hall.

Nearly all of these complaints were received on Saturday nights, when large crowds attend dances in the dance hall which is part of appellants' premises. It is admitted that conditions in and around the licensed premises have been satisfactory since September 4, 1943. The charges, however, were preferred because of the manner in which the licensed premises had been conducted over a long period of time.

Roman Wyszynski testified that "I tried the best I can." He admitted, however, that, prior to September 5, 1943, there was some unnecessary noise. He admitted also that from January 1943 to August 1943 "it was rather bad."

The evidence is meager as to the alleged violation set forth in Charge 3. However, the evidence is sufficient to show that between January 1943 and September 1943 appellants allowed, permitted and suffered disturbances and unnecessary noises in and upon their licensed premises. Appellants argue that the evidence is not sufficient to show that they did operate their place of business as a "public nuisance." I think that it is. Blue Bell v. West New York, Bulletin 515, Item 8. In any event, the evidence is sufficient to show a violation of Rule 5 of State Regulations No. 20, which provides:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls, or unnecessary noises, or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

It does not appear that appellants were misled by respondent's failure, in drafting Charge 4 herein, to set forth in full the language contained in Rule 5 of State Regulations No. 20.

The action of respondent is affirmed.

Accordingly, it is, on this 20th day of March, 1944,

ORDERED, that the present appeal be and is hereby dismissed; and it is further

ORDERED, that the five-day suspension imposed by the respondent on appellants' plenary retail consumption license in this case, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to take effect at 2:00 A.M. March 27, 1944 and to terminate at 2:00 A.M. April 1, 1944.

ALFRED E. DRISCOLL  
Commissioner.

2. CONTRIBUTION BOXES IN LICENSED PREMISES TO RAISE MONEY FOR  
AMERICAN RED CROSS WAR FUND - APPROVED.

March 22, 1944

A. D. Schultz, Chairman, Business District Committee  
American Red Cross, Monmouth County Chapter  
Keyport, N. J.

Dear Mr. Schultz:

This is the first opportunity I have had to acknowledge your letter requesting permission to place a container with a slot in the top of it on the bar of each tavern and on the counter of each package liquor store throughout Monmouth County for the purpose of collecting funds for the Red Cross War Fund Campaign.

The work of the American Red Cross merits the support of every patriotic American. Accordingly, permission is granted to licensees to place American Red Cross containers in a conspicuous spot on their premises to be used in the collection of contributions for the period of the campaign.

It is to be hoped that the response to this appeal will exceed your most optimistic expectations.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

ROCCO C. VESPER, 106 E. Main St. Chester Township  
P. O. Maple Shade, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-20, issued by the Township Committee of Chester Township.

-----

Rocco C. Vesper, Pro Se.  
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that (1) he falsified his license application by concealing the fact that Nick Boccaccio and Al Kunitis were the real and beneficial owners of the licensed business, and (2) ever since September 15, 1943 he permitted the said Nick Boccaccio and Al Kunitis to exercise the rights and privileges of the license.

After the institution of these proceedings, the defendant surrendered his license to the local issuing authority on February 28, 1944, ever since which time the premises have been closed. The surrender of the license, however, does not bar the instant proceedings. R. S. 33:1-31. Despite such surrender, the license will be revoked. This penalty will disqualify the licensee from holding or receiving any liquor license in this state for a period of two years from the date hereof. Idem. Cf. Re Young Men's Republican Club, Bulletin 515, Item 6.

Accordingly, it is, on this 21st day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-20, heretofore issued by the Township Committee of Chester Township to Rocco C. Vesper, for premises 106 E. Main Street, Chester Township, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL

Commissioner.

Attest:  
J. J. J. J. J.  
J. J. J. J. J.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE AND RULE 1 OF STATE REGULATIONS NO. 38 - PREVIOUS RECORD - 60 DAYS' SUSPENSION.

In the Matter of Disciplinary  
Proceedings against

WLADYSLAWA WOZNIAK  
1195 Chestnut Street  
Camden, N. J.,

Holder of Plenary Retail Consump-  
tion License C-125, issued by the  
Municipal Board of Alcoholic  
Beverage Control of the City of  
Camden.

CONCLUSIONS  
AND ORDER

Bruce A. Wallace, Esq., Attorney for Defendant-Licensee.  
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to charges alleging that she sold and delivered alcoholic beverages during prohibited hours on a Sunday, in violation of local ordinance and Rule 1 of State Regulations No. 38.

By local ordinance, sale and delivery of alcoholic beverages are prohibited in the City of Camden after 2:00 A. M. on Sunday. The state regulation prohibits the sale and delivery of alcoholic beverages in original containers for consumption off the licensed premises at any time on Sunday.

Both regulatory inhibitions were violated by this defendant on Sunday, January 23, 1944, when two ABC agents observed a man, carrying a large package, leave the licensed premises shortly before 1:00 P. M. Upon identifying themselves to this man, the agents discovered that the package contained four quart bottles of beer.

By way of mitigation, the defendant alleges that the actual sale of the beer was consummated the day before, to wit, Saturday, January 22, 1944, at which time she received payment and set the bottles aside at the request of the purchaser, who arranged to call for them on the following day. This is confirmed by the purchaser. In fairness to the defendant, I point out that the reports of the agents contain nothing inconsistent with this explanation. The fact remains, nevertheless, that the mere delivery, as differentiated from sale, is interdicted by both regulations in question. Moreover, even were this not so, the Alcoholic Beverage Law defines "sale" as including "delivery." R. S. 33:1-1(w).

The determination of the proper penalty in this case has given me deep concern. The defendant, who is a widow of seventy years of age, apparently derives her sole support from this business. However, she has heretofore been thrice convicted by the local issuing authority of selling alcoholic beverages during prohibited hours, on Sunday contrary to local ordinance. In July 1939, and again in September 1940, her license was suspended for three days. On the third occasion, in February 1941, the local Board imposed a penalty of fifteen days. Typifying the utter inadequacy of such extremely lenient penalties is the fact that this licensee was thereby not deterred from committing a fourth similar violation. I am certain that if the local authority had executed its full duty and responsibility when meting out penalties for the previous infractions, the instant violation would not have occurred.

Ordinarily, there would be no question that the license should now be revoked outright, if indeed that should not have been done by the Municipal Board on the occasion of the third violation in February 1941. There is, however, some semblance of merit in the defendant's argument that the instant violation is, in a sense, a "technical" one. It is true, as the defendant contends, that there is no evidence to indicate that she was actually open and transacting any ordinary business on the Sunday in question. The only citation against her appearing in the reports of the agents is the delivery of the four bottles of beer as heretofore explained.

A careful consideration of all the attendant circumstances leads me to the conclusion that a complete deprivation of the defendant's license privileges would, on the facts here presented, be undeservedly severe. No less a stern penalty, however, than a suspension for a period of sixty days is warranted. I trust that it is not necessary for me to add that another similar recurrence, even though "technical", will result, upon a finding of guilt, in a revocation of the license.

Accordingly, it is, on this 21st day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-125, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Wladyslawa Wozniak, for premises 1195 Chestnut Street, Camden, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 A.M. March 27, 1944 and terminating at 2:00 A.M. May 26, 1944.

ALFRED E. DRISCOLL  
Commissioner.



5. APPELLATE DECISIONS - MULLEN v. PEMBERTON.

MYRTLE B. MULLEN, )  
Appellant, )  
-vs- )  
BOROUGH COUNCIL OF THE )  
BOROUGH OF PEMBERTON, )  
Respondent )  
----- )

ON APPEAL  
CONCLUSIONS AND ORDER

Herbert L. Worth, Esq., Attorney for Appellant.  
Robert W. Criscuolo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of her application for a plenary retail consumption license for premises at 27 Hampton Street, Borough of Pemberton. The members of the Borough Council unanimously voted to deny her application.

In its answer respondent contends that the application was properly denied for the reason that there is no need for any licensed premises in the Borough because there are a sufficient number of licensed premises in the surrounding municipality known as the Township of Pemberton.

In the case of Korte v. Pemberton, Bulletin 581, Item 5, appellant therein sought a plenary retail consumption license for the same premises considered in the present appeal. His application was denied and the denial was sustained upon appeal. In the Korte case I said:

"The Borough of Pemberton, located in Burlington County, in the neighborhood of Fort Dix, is a smallish community, as evidenced by its population of 906 persons. It is about one-half mile in diameter and is entirely surrounded by the Township of Pemberton. At one time, a number of years past, two plenary retail consumption licenses were issued in the Borough. When one of these licensees ceased business, no new license was issued. Catherine Laughlin, however, was granted a renewal of her license each year. In 1942, when she had passed her eightieth birthday, her license was renewed by the favorable vote of a bare majority of the members of the Borough Council. One of these members, who subsequently voted against appellant's application, testified that he had voted in favor of the renewal of the Laughlin license because she 'would only need the license a short while.' This witness and two other members of the Council who testified stated that they opposed the appellant's application for a license on the ground that it was not needed in the community. One of these Councilmen testified that he voted against the issuance of a license to the appellant for the reason that 'so many licenses were close to the tavern it was not necessary to have any more in the town.'"

In the Korte case no testimony was offered by appellant to show a need for licensed premises within the Borough. Appellant herein has produced testimony which she contends establishes such a need.

The testimony shows that the business center of the Borough is located one-half mile away from the proposed premises but that there are several small business establishments in the vicinity of the building for which the present appellant seeks a liquor license. Among these are a garage, a restaurant and a hardware store. The testimony of witnesses varies as to the number of dwelling houses in the locality. Some of the witnesses state that there are approximately fifty-five houses while others estimate that there are ninety or one hundred dwellings.

The appellant produced eighteen witnesses, nearly all of whom reside in the vicinity of the premises for which the license is sought. These witnesses allege that the issuance of a retail license to the appellant would be a convenience to the inhabitants of the Borough because the nearest licensed place in the Township of Pemberton is located about three-quarters of a mile from appellant's premises. The evidence establishes that one tavern known as "The Country House", located in the Township of Pemberton, is about three-quarters of a mile west of appellant's premises, and that another tavern known as "Sweet's Bar", also located in the Township of Pemberton, is about one mile east of appellant's premises. These witnesses allege that it is difficult to reach either of the licensed places in the Township of Pemberton because of the present restrictions on the use of automobiles and because of the dangers which confront those attempting to walk, especially at night, on the highways leading to these licensed premises.

The evidence introduced on behalf of respondent establishes that the five members of the Council and Mayor Hamilton are of the opinion that a tavern is neither necessary nor desirable within the confines of the Borough because the population of the Borough is less than 1,000 and because so many licensed establishments exist in the Township of Pemberton.

After examining all the facts presented herein, the case resolves itself into a mere difference of opinion concerning the public need for a tavern in this particular locality. Conceding that the issuance of the license would be more convenient for the limited number of persons living in the immediate vicinity, this in itself would not be dispositive of the issues involved. Other factors must of necessity be taken into consideration. It clearly appears that there are a large number of licensed premises in the Township of Pemberton, which entirely surrounds the Borough of Pemberton.

The members of the Borough Council appear to be sincere in their judgment that the best interest of the majority of the citizens of the municipality would be served by denying the present application. There is no evidence to indicate that they were inspired by improper motives in denying appellant's request. They have consistently refused to issue new licenses in the Borough for more than four years last past. Cf. Spitz v. Pemberton, Bulletin 379, Item 8; Harvey v. Pemberton, Bulletin 538, Item 1; Korte v. Pemberton, *supra*.

The burden is upon the appellant to show that the action of respondent in denying the license was improper. Under all the circumstances, I conclude that the appellant has not established that the members of the Borough Council acted in an arbitrary or unreasonable manner in denying her application for license. Hence I shall affirm the action of respondent.

Accordingly, it is, on this 22nd day of March, 1944,

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

ALFRED E. DRISCOLL  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION  
CONCEALING MATERIAL FACT - 5 DAYS' SUSPENSION.

In the Matter of Disciplinary  
Proceedings against

FAIR WINE & LIQUOR STORES, INC.  
1128 Washington Street  
Hoboken, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribu-  
tion License D-7, issued by the  
Board of Commissioners of the  
City of Hoboken.

Philip Blank, Esq., Attorney for Defendant-Licensee.  
Milton H. Cooper, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to the following charge:

"In your application filed with the Board of Commissioners of the City of Hoboken, upon which you obtained your current plenary retail distribution license, you, after listing the following as stockholders in your corporation -- Morris Kanengiser 18.90 shares, Rose Reingold 1.05 shares and Nathan Rosenberg 1.05 shares, falsely stated 'No' in answer to Question 24, which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and fact, Rose Reingold and Nathan Rosenberg had such an interest in the stock listed in Morris Kanengiser's name; such false statement being in violation of R. S. 33:1-25."

In November 1942 Nathan Rosenberg purchased the licensed corporate business, in which 21 shares of stock were outstanding. In order to secure the payment of the balance of the purchase price, the vendor, Morris Kanengiser, retained 18.90 shares in his name. Nathan Rosenberg received 1.05 shares, and the balance of 1.05 shares was issued to Rose Reingold as her proportionate share of the amount invested by her in the business.

The only violation committed by the defendant is its failure to reveal in its license application the fact that Nathan Rosenberg possessed the beneficial interest in the stock held as collateral security by Morris Kanengiser. Had this fact been revealed, there would have been no violation of the Alcoholic Beverage Law, since all of the parties appear duly qualified to own the shares of stock in which they hold either the legal or beneficial interest, or both.

No deliberate intent to violate the Alcoholic Beverage Law is discernible. When this investigation was instituted, a full and frank disclosure of the entire arrangement was made to the ABC agents. Pending these proceedings, the defendant has caused a proper amendment to be made of its license application, which now indicates the true interest held by all persons in the corporate stock issued by the defendant.

In view of all the attendant circumstances, I shall suspend the license for a period of five days. Cf. Re Bayou Holding Co., Inc., Bulletin 563, Item 5.

Accordingly, it is, on this 22nd day of March, 1944,

ORDERED, that Plenary Retail Distribution License D-7, heretofore issued by the Board of Commissioners of the City of Hoboken to Fair Wine & Liquor Stores, Inc., for premises 1128 Washington Street, Hoboken, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A.M. March 27, 1944 and terminating at 2:00 A. M. April 1, 1944.

ALFRED E. DRISCOLL  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 60 DAYS AND TRANSFER OF LICENSE TO REAL PARTY IN INTEREST - LICENSE HAVING BEEN SUSPENDED FOR 60 DAYS AND TRANSFER HAVING BEEN APPROVED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary )  
Proceedings against )

MURIEL DOREMUS )  
4201 - 4203 Park Avenue )  
Union City, N. J., )

ON PETITION

ORDER

Holder of Plenary Retail Consump- )  
tion License C-48 issued by the )  
Board of Commissioners of the )  
City of Union City. )  
----- )

Carmen LaCarrubba, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On January 31, 1944 I suspended the license of Muriel Doremus for the balance of its term, effective at 3:00 A.M. February 4, 1944, after she had pleaded non vult to charges alleging that she was a "front" for her brother, Joseph W. Coupland. Re Doremus, Bulletin 605, Item 6.

In said order it was provided that, if Coupland obtained a transfer of the license to himself, he might make application to me to have the suspension lifted after the expiration of sixty days from the effective date thereof. Pursuant to said leave, Joseph W. Coupland has filed a verified petition wherein it is set forth that, on February 17, 1944, the Board of Commissioners of the City of Union City granted a transfer of the license, subject to the suspension heretofore imposed, from Muriel Doremus to Joseph W. Coupland. A certified copy of the resolution granting the transfer of the license was presented with the petition.

It appearing that the unlawful situation has been corrected, and it further appearing that the sixty-day minimum suspension will expire at 3:00 A.M. on April 4, 1944, the suspension will be lifted effective at that time.

Accordingly, it is, on this 23rd day of March, 1944,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-48, issued by the Board of Commissioners of the City of Union City, be restored to full force and operation, effective at 3:00 A. M. on April 4, 1944.

ALFRED E. DRISCOLL  
Commissioner.

8. SPECIAL PERMIT - LICENSED PREMISES MADE UNTENANTABLE BY FIRE - APPLICATION FOR TEMPORARY SPECIAL PERMIT FOR OTHER PREMISES GRANTED.

In the Matter of an Application )  
for Special Permit by )

FRED OLIVER, INC.  
1523 Pacific Avenue  
Atlantic City, N. J., )

ON PETITION  
CONCLUSIONS )

Holder of Plenary Retail Distribution License D-19 issued by the )  
Board of Commissioners of the City )  
of Atlantic City. )  
- - - - - )

Leon Leonard, Esq., Attorney for Petitioner.  
Charles M. Deull, Esq., Attorney for Leo Burg and Retail Liquor  
Distributors Association of Atlantic City, Objectors.

BY THE COMMISSIONER:

This is an application for a special permit to permit temporary operation by Fred Oliver, Inc. under License D-19 at premises known as 1530 Pacific Avenue, Atlantic City. After the application for the special permit was filed, written objections were received by the Commissioner from Leo Burg and Retail Liquor Distributors Association of Atlantic City. A hearing upon said objections was held, at which all parties were given an opportunity to be heard.

Plenary Retail Distribution License D-19 for the present fiscal year was issued by the Board of Commissioners of Atlantic City to Fred Oliver, Inc. for premises located at 1523 Pacific Avenue, Atlantic City. The licensed premises consist of a store located on the ground floor of a seven story apartment building, known as the Kenapac Apartments, on the northeast corner of Pacific and Kentucky Avenues. On February 27, 1944 a fire occurred in the Kenapac Apartments which destroyed the entire roof and the seventh floor of the building. In addition, the lower floors of the building, including petitioner's premises, suffered severe water damage. It was admitted at the hearing that, while the building has not been demolished, petitioner's store is now untenable. The sidewalk in front of the building has been roped off.

Petitioner has applied for a temporary permit to permit operation under its present license in a store at 1530 Pacific Avenue, located at the southeast corner of Pacific and Kentucky Avenues, which is located approximately 130 feet from the premises for which its license was issued. If the temporary permit is granted, it will continue in effect only until the licensed premises are repaired. In the absence of any objection from the local issuing authority, it has been the policy of the Commissioner, when licensed premises have been destroyed by fire, to issue a temporary permit under the provisions of R. S. 33:1-74 so that a licensee may operate temporarily at other premises until the licensed premises are repaired.

The premises for which petitioner seeks a temporary permit are located within two hundred feet of a store located at 1512 Pacific Avenue, in which the objector, Leo Burg, operates a business under Plenary Retail Distribution License D-4. The objectors urge that the temporary permit sought by petitioner should be denied because the issuance thereof would violate the provisions of Section 7 of Ordinance No. 12, which was adopted on August 27, 1942 by the Board of Commissioners of the City of Atlantic City. Section 7 of Ordinance No. 12 provides:

"Section 7. No plenary retail consumption or plenary retail distribution license, except renewals of licenses presently outstanding, shall be issued for, or transferred to any premises within three hundred feet of premises for which a license of either type is outstanding, provided, however, that in case the building covered by any such license, is completely demolished, a transfer may be granted as above provided, or a transfer may be granted to other premises within three hundred feet of said demolished premises, even though the said other premises be within three hundred feet of premises for which a license of either type is outstanding; and provided further, that in case the building covered by any such license is taken over and used or occupied by the armed forces of the United States of America, a transfer may be granted as above provided, or a transfer may be granted to the same licensee to other premises even though the said other premises be within three hundred feet of premises for which a license of either type is outstanding, and after such transfer be granted, the licensee shall thereafter be bound by the aforesaid three hundred feet restriction."

It should be pointed out that the present application concerns neither the issuance nor the transfer of a license and hence does not come within the terms of the ordinance in question. Under the provisions of R. S. 33:1-74, the issuance of the temporary permit is confided to the sound discretion of the Commissioner. The Board of Commissioners of the City of Atlantic City has not objected to the issuance of the temporary permit. While this question is not in issue, I also desire to point out that, if the Kenapac Apartments had been completely demolished, the petitioner herein would probably have been entitled to a transfer of his license to the premises for which he seeks a temporary permit.

Considering all the circumstances, it does not appear to me that the issuance of the temporary special permit would be contrary to the word or even the spirit of the ordinance in question. Hence I shall issue a temporary special permit to petitioner to permit operation under Plenary Retail Distribution License D-19 at 1530 Pacific Avenue, Atlantic City, for the balance of the term of the license, namely, until midnight June 30, 1944.

The evidence indicates that, due to war priorities, repairs to the store at 1523 Pacific Avenue may not be completed prior to the expiration of six months from the date of the hearing. If the repairs are not completed before June 30, leave is hereby given to petitioner to apply for another temporary special permit to take effect July 1, 1944. Application for such permit may be made during the month of June 1944, provided that, prior to the issuance of said permit, the Board of Commissioners of Atlantic City shall have duly renewed, for the fiscal year 1944-45, the plenary retail distribution license of Fred Oliver, Inc. for premises at 1523 Pacific Avenue, Atlantic City, subject to the completion of repairs to said premises.

Dated: March 28, 1944.

ALFRED E. DRISCOLL  
Commissioner.

9. STATE REGULATIONS NO. 38 - RETAIL SALE AND DELIVERY BY STATE BEVERAGE DISTRIBUTORS PROHIBITED ON SUNDAYS AND BEFORE 9:00 A. M. AND AFTER 10:00 P. M. ON WEEKDAYS - THE STATE REGULATIONS DO NOT APPLY TO SALE AND DELIVERY AT WHOLESALE.

SALE AND DELIVERY AT WHOLESALE ON SUNDAYS - WHERE MUNICIPAL REGULATION PROHIBITS SUNDAY SALE AT RETAIL, STATE LICENSEES ARE URGED TO CONFORM WITH SPIRIT OF MUNICIPAL REGULATION BY LIMITING TO EVERY POSSIBLE EXTENT SUNDAY SALE AND DELIVERY AT WHOLESALE.

March 28, 1944

Riverside Distributors  
Cambridge, P.O. Riverside, N. J.

Gentlemen:

I have your letter of March 23rd asking:

"Does the present law which prohibits the sale of case goods on Sunday and designated hours also apply to beverages in quarter or half barrels? Or are we permitted to make delivery of beer in barrels on Sunday?"

Rule 1 of State Regulations No. 38 reads:

"1. No licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in original containers for consumption off the licensed premises, on Sunday, or before 9:00 A. M. or after 10:00 P. M. on any other day of the week."

The rule applies to the sale and delivery of alcoholic beverages at retail. Thus, the retail privileges afforded by your state beverage distributor's license are definitely limited by, and subject to, State Regulations No. 38. In other words, you may not sell or deliver at retail on Sunday or during the weekday hours when such sale and delivery are prohibited by the quoted rule.

The rule does not apply to the sale and delivery of alcoholic beverages at wholesale; and, therefore, your privilege of selling and delivering beer at wholesale is not affected by the regulations.

Riverside Township's alcoholic beverage ordinance, adopted December 30, 1940, prohibits Sunday sales by plenary retail consumption and plenary retail distribution licensees. The municipal regulation does not, of course, apply to your wholesale privileges,

but I strongly recommend that you observe the spirit of the ordinance by limiting your Sunday wholesale deliveries to every possible extent.

Very truly yours,  
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 - 20 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

ANTHONY MUCCIO )  
T/a GOLDEN BUFFET )  
568 McBride Avenue )  
West Paterson )  
P.O. Paterson, R.D., N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-7 issued by the )  
Council Board of the Borough of )  
West Paterson. )  
----- )

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

BY THE COMMISSIONER:

The licensee has entered a plea of nolo contendere to charges  
filed against him alleging as follows:

"1. On Saturday night, January 15, 1944, and later during  
the early hours of Sunday morning, January 16, 1944, you sold  
alcoholic beverages at your licensed premises to Lawrence ----,  
Joseph ---- and Thomas ----, minors, in violation of R. S.  
33:1-77.

"2. On the aforesaid occasions, you sold, served and  
delivered, and allowed, permitted and suffered the service and  
delivery of alcoholic beverages at your licensed premises to  
Lawrence ---, Joseph --- and Thomas ---, persons under the  
age of twenty-one (21) years, and allowed, permitted and  
suffered the consumption of alcoholic beverages by such  
persons upon the licensed premises, in violation of Rule 1  
of State Regulations No. 20."

On the evening in question, about 8:45 P. M., the three minors,  
Lawrence ---, Joseph --- and Thomas ---, aged seventeen, fifteen and  
eighteen years respectively, came to the licensed premises and pur-  
chased four rounds of beer. They returned about 11:00 P.M. the same  
evening and made further purchases of beer, both times from the  
licensee.

The licensee states that on the occasion of the first visit he  
inquired as to their ages and that one of his customers stated he  
knew one of the boys and that in his opinion they should be served.  
The licensee states that, as a result of this and a further short  
conversation between them, he served all three of the minors. It is



further stated that the manner of dress, general appearance and demeanor of the boys led him to believe they were of age.

The licensee, who was apparently in doubt, was satisfied to accept the verbal assurance of his customer that the young men should be served, and depended upon this verbal assurance and the appearance of the young men in reaching the erroneous conclusion that they were of full age. The defendant, however, cannot successfully defend himself against the charge of sale to minors unless he can show compliance with all the provisions of R. S. 33:1-77, namely, (a) that the minor falsely represented in writing that he was twenty-one years of age or over, (b) that the appearance of the minor was such that an ordinary prudent person would believe him to be twenty-one years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. (Underlining ours.) Re Lombardi, Bulletin 588, Item 8; Re Wooby, Bulletin 606, Item 6.

As to penalty: The three minors involved appeared before a Hearer in another proceeding and I am advised that, while they appeared to be older than their actual ages, nevertheless none of them appeared to be twenty-one. One of the minors was in fact fifteen, and at the most appeared to be seventeen or eighteen. In view of this situation, a greater penalty than usual must be imposed.

The licensee has no previous record. A penalty of twenty days' suspension, less five days for the plea, will be imposed, making a net suspension of fifteen days.

Accordingly, it is, on this 28th day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-7, issued by the Council Board of the Borough of West Paterson to Anthony Muccio, t/a Golden Buffet, for premises 568 McBride Avenue, West Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 A.M. April 3, 1944 and terminating at 3:00 A. M. April 18, 1944.

ALFRED E. DRISCOLL  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF THE LICENSE PRIOR TO TRANSFER - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary  
Proceedings against

JOSEPH CRISCENZO  
522 West Broadway  
Haledon, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-19, issued by the  
Borough Council of the Borough of  
Haledon.  
-----

Joseph Criscenzo, Pro Se.

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

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, between September 1, 1941 and February 25, 1944, he exercised the privileges of the successive consumption licenses issued to Haledon Fire Co. No. 2 for premises 522 West Broadway, Haledon, in violation of R. S. 33:1-26.

The Haledon Fire Co. No. 2 is an incorporated volunteer fire company. It was issued its first liquor license in March 1934 and has never been cited in disciplinary proceedings. In August 1941, after becoming involved in financial difficulties, it entered into an agreement with Joseph Criscenzo, a member of its organization, by which it purported to appoint the latter as manager of its licensed premises. Actually, however, the license virtually changed hands since, under the agreement, Joseph Criscenzo guaranteed the fire company a stipulated monthly amount, the balance being retained by himself. In effect, therefore, the fire company "farmed out" its license to Joseph Criscenzo.

Where this type of violation originated by reason of the deliberate desire of the nominal licensee to retain effective control over the liquor license, the penalty usually imposed, in the absence of any other statutory disqualification, has been a suspension for a period of twenty days. Cf. Re Stetz, Bulletin 512, Item 3; Re DiPaolo, Bulletin 568, Item 5; Re Beringer, Bulletin 571, Item 10. In this case, however, no such motivation is apparent. The agreement between the parties was prepared by an attorney, upon whose advice they relied. As soon as the illegality of the situation was called to their attention, the license was promptly transferred into the name of Joseph Criscenzo.

Giving due consideration to all the attendant circumstances, I shall suspend the license for a period of ten days.

Accordingly, it is, on this 28th day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-19, heretofore issued by the Borough Council of the Borough of Haledon to Joseph Criscenzo, for premises 522 West Broadway, Haledon, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A.M. April 3, 1944 and terminating at 3:00 A.M. April 13, 1944.