

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

BULLETIN 659

MARCH 27, 1945.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40 - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

CORNELIUS (NEIL) WARD
181 Ellison Street
Paterson 1, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-210 issued by the
Board of Alcoholic Beverage
Control of the City of Paterson.

Cornelius Ward, Defendant-licensee, Pro se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges alleging that he sold alcoholic beverages and permitted his licensed premises to remain open between midnight and 7:00 a.m. on Sunday, March 4, 1945, in violation of Rules 1 and 2 of State Regulations No. 40.

On the morning in question, at about 12:45 a.m., two members of the Paterson Police Department entered a rear storeroom which was in semi-darkness and which was part of defendant's premises. They observed Dominick War and Peter Krause serving drinks of alcoholic beverages to nineteen patrons. In order to reach this storeroom it was necessary to go through a hallway and to pull back a fireproof door. This fact and the lateness of the hour at which the sales were made are aggravating circumstances.

Defendant has no prior record. However, because of the aggravating circumstances, I shall suspend his license for a period of twenty days, less five days for the plea, making a net suspension of fifteen days.

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

ORDERED, that Plenary Retail Consumption License C-210, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Cornelius (Neil) Ward, for premises 181 Ellison Street, Paterson, be and the same is hereby suspended for fifteen days, commencing at 12:01 a.m. March 26, 1945, and terminating at 12:01 a.m. April 10, 1945.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - CHARGES OF PERMITTING FEMALE EMPLOYEES TO ACCEPT ALCOHOLIC BEVERAGES AT THE EXPENSE OF PATRONS, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20; PERMITTING PREMISES TO BE CONDUCTED IN SUCH A MANNER AS TO BECOME A NUISANCE, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20, AND HINDERING INVESTIGATION, IN VIOLATION OF R. S. 33:1-35, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary
Proceedings against)

HERMAN WEINER)
44 Broadway)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-219 for the fiscal)
year 1943-44, and now holder of)
Plenary Retail Consumption License)
C-219 for the fiscal year 1944-45,)
both issued by the Board of Alco-)
holic Beverage Control of the City)
of Paterson.)
-----)

Herman H. Singer, Esq. and George S. Grabow, Esq.,
Attorneys for Defendant-licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to charges alleging that
(1) on divers dates during the months of July, August and September 1943, he allowed, permitted and suffered female employees on the licensed premises to accept beverages at the expense of and as a gift from patrons, in violation of Rule 22 of State Regulations No. 20; (2) he allowed, permitted and suffered his licensed place of business to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20; (3) he hindered and failed to facilitate the investigation of the aforesaid violations made by investigators of the State Department of Alcoholic Beverage Control, in violation of R. S. 33:1-35.

Defendant-licensee pleads guilty to an additional charge of having, on March 12, 1944, and divers days prior thereto, sold to and allowed, permitted and suffered the consumption of alcoholic beverages by three minors on his licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The charges to which defendant pleaded not guilty arose as the result of investigations conducted by ABC agents during a period of time extending from July 16, 1943 to September 18, 1943. The evidence herein shows that during the aforesaid period one or more agents visited defendant's premises seven times. Each time, Rita, wife of a soldier, was present. Each time numerous drinks of alcoholic beverages were purchased for Rita by the agents and by other male patrons. Rita, apparently, had a habit of rapping on the bar with her glass as soon as her drink was finished, so that her male companion of the moment was kept busy buying her drinks. On

August 25, 1943 another girl, identified as Carol, was present on the licensed premises. When an ABC agent entered, she was drinking with a male companion. Later she sat with the agent at the bar and consumed eleven drinks of Vermouth purchased for her by him. The licensee admits that Rita frequently entered his premises unescorted, and that Carol visited his premises four or five times. He denies that either was employed by him as a hostess or in any other capacity.

Rule 22 of State Regulations No. 20 provides:

"No plenary or seasonal retail consumption licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron."

No matter how reprehensible may be the practice of permitting unescorted females to mingle with strangers and obtain free drinks at their expense, it is apparent that the first charge has not been proven unless it has been established that either girl was "employed" on the licensed premises.

One ABC agent testified that, on July 16, 1943, Rita said she could not go out with him until after 3:00 a.m. "because she had to work." Another agent testified that he asked her if she worked there and that her answer was "No." At the hearing herein Rita testified that she was living with her stepsister in Paterson; that her husband was sending her money and that she visited defendant's premises "sometimes every night and sometimes two or three times a week." She said that she usually waited there until her stepsister came in after completing her work at midnight in a defense plant. She denied that she ever worked for defendant or received any money from him or that any count was kept of the number of drinks she consumed. The licensee corroborated her testimony.

Another ABC agent testified that, on the only occasion Carol was found in defendant's premises, she told him that she worked in a defense plant and that she also worked for defendant. He testified that she said: "Last week I worked five days, and made thirty dollars; work on percentage, get ten cents a drink." Unfortunately, Carol could not be found to testify at the hearing. Her conversation with the agent was not in the presence of the licensee. The bartender then on duty denies that he ever heard such a conversation. The licensee testified that he saw Carol in his premises only four or five times between July 16, 1943 and September 18, 1943. He denies that he ever employed her in any capacity or paid her any money or kept any account of the drinks she consumed. Since Carol did not testify at the hearing, I am unable to determine whether her statement to the agent was true. There is no record evidence to support her statement and defendant denies it is true.

While there are suspicious circumstances which lead me to suspect that both girls may have been acting as hostesses, I am forced to conclude on the evidence that the Department has not established that either was employed on the licensed premises and, hence, the first charge must be dismissed.

Charge (2) is based solely upon the activities of these alleged hostesses. No question of immoral conduct is involved. Since I have dismissed the first charge, it follows that the second charge must also be dismissed.

Charge (3) was based upon the allegation that the licensee attempted to induce Rita to state that she met the ABC agents outside of his premises on the evening of September 18, 1943, and that she entered with them. Defendant and Rita denied that any such attempt was made. Defendant apparently made no other attempt to hinder or delay the investigation. The evidence is not sufficient to sustain a finding of guilt and, hence, I shall dismiss charge (3).

Although the aforesaid charges have been dismissed for lack of sufficient proof, I do not condone the actions of defendant in permitting unescorted females to force the sale of drinks at the expense of male patrons. He was previously warned as to this practice and promised to correct the situation. Defendant was served herein with an order to show cause why a special ruling and order should not be entered by the State Commissioner of Alcoholic Beverage Control directing that he should not allow, permit or suffer any female to consume any beverages at his licensed premises. I think that such an order would be too drastic and shall dismiss the order to show cause with a final warning to defendant to correct all unsatisfactory conditions on his licensed premises.

As to penalty on the additional charge of selling to minors: The defendant was President of Broadway Lites, Inc. at the time a plea of guilty was entered to the charge that a "front" situation existed. Defendant was the holder of the majority of its corporate stock, which fact had not been disclosed on the application for the liquor license. Also, defendant made sale of alcoholic beverages during prohibited hours, for which the corporation was adjudged guilty by the local municipal issuing authority and this action was affirmed on appeal by the State Commissioner of Alcoholic Beverage Control. A suspension of the license for 55 days was imposed for the various violations. (See Re Broadway Lites, Inc., Bulletin 513, Item 3).

Under all the circumstances, and in view of the fact that three minors were involved, two of whom were eighteen years of age and the other nineteen years of age, I shall suspend the license for a period of twenty days, less five days for the plea, making a net suspension of fifteen days.

Accordingly, it is, on this 16th day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-219, issued by the Board of Alcoholic Beverage Control of the City of Paterson for the current fiscal year to Herman Weiner, for premises 44 Broadway, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 12:01 a.m. March 21, 1945, and terminating at 12:01 a.m. April 5, 1945.

ALFRED E. DRISCOLL
Commissioner.

3. ELIGIBILITY - FACTS EXAMINED - ILLEGAL POSSESSION OF GASOLINE
RATION COUPONS FOUND NOT TO INVOLVE MORAL TURPITUDE.

March 16, 1945.

Re: Eligibility No. 546

Hearing was held herein for the purpose of determining whether or not subject is eligible to be associated in any capacity with the alcoholic beverage industry.

Federal records disclose that, on August 17, 1944, subject pleaded guilty in a Federal District Court to an indictment charging him with "illegal possession of gasoline ration coupons", in violation of Ration Order 5-C made by the Office of Price Administration. As a result thereof, he was fined \$500.00, received a one-year suspended sentence, and was placed on probation for three years.

The facts upon which the conviction was predicated are that, on December 17, 1943, a Federal investigator found a bag containing 2662 "C-2" gasoline ration coupons in a cabinet in the rear part of subject's licensed premises. At the hearing herein subject testified that the bag containing the coupons had been left with him by a patron on December 16, 1943 with the understanding that the patron was to pick up the bag the following day. At the hearing herein subject denied that he had any knowledge that the coupons had been stolen.

In a proceeding of this character I may not redetermine the question as to whether a person was in fact guilty of the crime of which he stands convicted. I may, however, examine all the facts to determine whether the crime involves moral turpitude. On the record presented herein, it appears that subject has pleaded guilty to illegal possession of gasoline coupons, but that conviction of itself does not establish the fact that he had knowledge that the coupons were stolen.

The crime in question is a statutory crime and, in view of the subject's testimony in this proceeding, I conclude that the crime to which he pleaded guilty does not involve moral turpitude.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR THE BALANCE OF ITS TERM, WITH PERMISSION GRANTED TO PETITION TO LIFT UPON THE EXPIRATION OF 60 DAYS' SUSPENSION AND CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary
Proceedings against

JOHN MANFREDI
T/a TOPPERS CAFE
Cor. Chapel and Franklin Aves.
Delaware Township
P. O. Merchantville, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-3 issued by the
Township Committee of the Township
of Delaware.

Rocco Palese, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded non vult to charges (3) and (4) herein alleging, in substance, that in his application for his license he falsely denied that any other individual had any interest in the license applied for, such false statement being in violation of R. S. 33:1-25; and also that, from June 22, 1944 to date, he knowingly aided and abetted his brother, Frank Manfredi, to exercise, contrary to R. S. 33:1-26, the rights and privileges of his license, thereby violating R. S. 33:1-52.

Prior to June 22, 1944 the license for the premises in question was held by Frank Manfredi. The license was transferred to John Manfredi after Frank had been convicted of illegal possession of gasoline coupons, and application for the transfer was made because Frank believed that he might be ineligible to hold a liquor license because of his conviction.

Defendant-licensee has also pleaded non vult to charge (2) herein which alleges that on December 17, 1943 his predecessor in interest, Frank Manfredi, possessed six bottles of illicit alcoholic beverages, in violation of R. S. 33:1-50. After reviewing the evidence given at the hearing, I also find defendant guilty of charge (1) herein which alleges that, during December 1943, his predecessor in interest, Frank Manfredi, in violation of R. S. 33:1-2, sold alcoholic beverages to another retailer for the purpose of resale. The finding of guilt as to charge (1) is based upon the testimony given by Robert Keehfuss, who purchased the alcoholic beverages.

As to prior record: In June 1943 the local issuing authority suspended a license which was then held by Frank Manfredi and another of his brothers for a period of fifty-five days after the licensees had been convicted of various charges.

Under the circumstances, I shall suspend the defendant's license for the balance of its term. Cf. Re Scharnberg, Bulletin 540, Item 4. In the event that the business is hereafter sold and

the license duly transferred to a bona fide purchaser subject to this suspension, I shall entertain the purchaser's petition to lift the suspension. However, in no event will the order lifting the suspension become effective until at least sixty (60) days have elapsed from the effective date of the suspension herein imposed.

Accordingly, it is, on this 16th day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Delaware to John Manfredi, t/a Toppers Cafe, for premises at cor. Chapel and Franklin Avenues, Delaware Township, be and the same is hereby suspended for the balance of its term, effective at 12:01 a.m. March 21, 1945; and it is further

ORDERED that, in the event a correction of the "front" is effectuated, leave be given, as aforesaid, to make application to the Commissioner of Alcoholic Beverage Control to lift the suspension.

ALFRED E. DRISCOLL
Commissioner.

5. ELIGIBILITY - CRIME OF BREAKING AND ENTERING FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS DISQUALIFIED TO BE ASSOCIATED WITH THE ALCOHOLIC BEVERAGE INDUSTRY.

March 19, 1945

Re: Case No. 564

Applicant desires a ruling by the Commissioner of Alcoholic Beverage Control as to whether he is precluded from being associated with the alcoholic beverage industry because of his previous convictions of crime. R. S. 33:1-25, 26.

Applicant's record began in 1925, when he was seventeen years of age. He was committed to a parental home as a consequence of running away from home. After his release from the parental home, his record includes divers convictions over a period of fifteen years. On August 20, 1928 applicant was convicted of the crime of breaking and entering and was sentenced to an indeterminate term in a state reformatory, being released therefrom after serving a year and a day. His last conviction of petit larceny occurred on November 17, 1940, as a result of which he was sentenced, on February 5, 1941, by a police magistrate to a county prison for six months, remaining there for a period of sixty days.

The crime of breaking and entering is a crime involving moral turpitude.

It is, therefore, unnecessary at this time to determine whether the element of moral turpitude is present in the other crimes of which applicant has been convicted. Enumerating them would serve no useful purpose.

Accordingly, it is recommended that applicant be declared ineligible to be associated in any capacity whatsoever with the alcoholic beverage industry.

Clarence E. Kremer
Attorney.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

6. LICENSE FEES - PRORATION - HEREIN COMPUTATION OF PRORATED FEE
FOR PLENARY RETAIL CONSUMPTION LICENSE ISSUED DURING LICENSE YEAR.

March 19, 1945

E. H. Schaeffer, Borough Clerk
Teterboro, N. J.

Dear Mr. Schaeffer:

According to our records, Section 2 of the Teterboro ordinance, adopted June 20, 1944, fixes the seasonal retail consumption license fee at \$187.50. Since July 18, 1939 (when Chapter 234 of the Laws of 1939 became effective) municipalities have had authority to fix alcoholic beverage license fees only by ordinance -- a resolution will not suffice.

The seasonal fee fixed by the 1944 ordinance remains in effect unless and until changed by another ordinance.

You ask whether or not "the holder of a seasonal license from May to November could, at the expiration date, then take out a regular license from November to July."

Section 1 of the 1944 ordinance reads:

"Section 1. There shall be only one license issued and outstanding at any one time to sell alcoholic beverages at retail in the Borough of Teterboro.

"Said license shall be either a plenary retail consumption license or a seasonal retail consumption license, the latter to be effective from May 1st to November 1st inclusive; and the Council shall determine each year, by resolution which of said licenses shall be issued."

It seems clear that Section 1 permits only one license in the Borough -- a plenary retail consumption license or a summer seasonal retail consumption license --, and thus prohibits issuance of a winter seasonal retail consumption license (which license under Revised Statutes, 33:1-12(2) runs from November 15th until April 15th). I assume, therefore, that when you speak of a "regular license from November to July", you have in mind a plenary retail consumption license.

Under the Borough's ordinance there may not be a plenary and seasonal license issued and outstanding at the same time. But if a summer seasonal license is issued effective next May, then the holder of that license, expiring November 1st, could, upon proper application, be issued a plenary retail consumption license to be effective November 2, 1945 and to expire June 30, 1946. The fee for such plenary retail consumption license should be prorated according to its effective date and based on the annual fee therefor. (Revised Statutes, 33:1-26). Section 2 of the Borough's 1944 ordinance fixes the annual plenary retail consumption license fee at \$250.00. In Teterboro, therefore, the prorated fee for a plenary retail consumption license effective November 2nd would be \$165.07.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

WM. FREDERICK DEY
T/a FREDDIES MARLBORO TAVERN
W/S Freehold-Matawan Road
Marlboro, N. J.,

Holder of Plenary Retail Consump-
tion License C-5, issued by the
Township Committee of the Township
of Marlboro.
- - - - -
Harold McDermott, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

Defendant pleaded non vult to charges that he sold alcoholic beverages, and failed to close his licensed premises, between mid-night and 7:00 a.m. on March 4, 1945, in violation of Rules 1 and 2 of State Regulations No. 40.

About 12:40 a.m. on the morning in question, the defendant opened the door for two ABC agents, who observed five patrons in the barroom just finishing their drinks of alcoholic beverages. The room was dimly lighted.

The defendant explains that, although the drinks were served after midnight, no charge was made. This presents no defense. In addition to the fact that the gratuitous delivery of intoxicants by a licensee constitutes a sale within the meaning of the Alcoholic Beverage Law (see R. S. 33:1-1(w)), Rule 1 of State Regulations No. 40 prohibits all consumption of alcoholic beverages on licensed premises after midnight. Furthermore, the presence on licensed premises after midnight of any persons other than the licensee and his bona fide employees constitutes a violation of Rule 2 of the regulations.

The license will be suspended for the usual fifteen-day period. Five days will be remitted for the plea, leaving a net suspension of ten days.

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

ORDERED, that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Marlboro to Wm. Frederick Dey, t/a Freddie's Marlboro Tavern, for premises on W/S Freehold-Matawan Road, Marlboro, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. March 26, 1945, and terminating at 12:01 a.m. April 5, 1945.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40 - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

CHARLES MARANDINO
T/a CHERPIE'S TAVERN
N/S Wheat Road
Buena Vista Township
P.O. Vineland, RFD, (Atlantic Co.),
New Jersey,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-18, issued by the Township
Committee of the Township of Buena
Vista.

Charles Marandino, Defendant-licensee, Pro se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he sold alcoholic beverages, and failed to have his licensed premises closed, between midnight and 7:00 a.m. on March 5, 1945, in violation of Rules 1 and 2 of State Regulations No. 40.

Seven automobiles were parked outside of the premises after midnight on Monday, March 5, 1945. The barroom was in darkness, but a rear dining room and kitchen were well lighted, although the curtains in both of the latter rooms were drawn so that no observation could be made inside.

An ABC agent covered the front door while another agent and State trooper proceeded to the rear door. When the latter agent knocked on the rear door, the former observed someone enter the barroom from the dining room and place four bottles of beer on the floor alongside the wall.

When the door was opened, about 12:50 a.m., there were fifteen people in the dining room, two of whom were the defendant and his wife. Empty beer glasses were on the table. The four bottles of beer found on the barroom floor were chilled. One of these bottles was full while the others had been partially consumed.

The dining room, although part of the licensed premises, is not ordinarily used for the service of customers. It is the private dining room of the defendant, who resides on the premises. It is apparent that the defendant, after the curfew, attempted to continue his business by servicing his patrons in a room not normally used for such purpose. As in Re Ward, Bulletin 659, Item 1, this is an aggravating circumstance, warranting the imposition of a twenty-day penalty. With remission of five days for the plea, the license will be suspended for a net period of fifteen days.

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

ORDERED, that Plenary Retail Consumption License C-18, issued by the Township Committee of the Township of Buena Vista to Charles Marandino, t/a Cherpie's Tavern, for premises on N/S Wheat Road, Buena Vista, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 12:01 a.m. March 26, 1945, and terminating at 12:01 a.m. April 10, 1945.

ALFRED E. DRISCOLL
Commissioner.

9. APPELLATE DECISIONS - HOLLAND v. BRIDGETON AND FORMASANO.
HOLLAND v. BRIDGETON AND NEAGLEY.

DR. JAMES S. HOLLAND,)

Appellant,)

-vs-)

CITY COUNCIL OF THE CITY OF
BRIDGETON and JOSEPH FORMASANO,)

Respondents)

DR. JAMES S. HOLLAND,)

Appellant,)

-vs-)

CITY COUNCIL OF THE CITY OF
BRIDGETON and DAN C. NEAGLEY,)

Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

Dr. James S. Holland, Pro se.

Stanger & Howell, Esqs., by Robert G. Howell, Esq., Attorneys for
Respondent-licensees, Joseph Formasano and Dan C. Neagley.

John A. Casarow, Esq., Attorney for Respondent, City Council
of Bridgeton.

BY THE COMMISSIONER:

These cases come before me on the appeal of Dr. James S. Holland from the action of the City Council of the City of Bridgeton issuing plenary retail consumption licenses to Joseph Formasano and Dan C. Neagley. The issues being substantially the same in the two cases, the appeals were heard together.

The record shows that, pursuant to authorizing resolutions dated December 19, 1944, the respondent City Council issued plenary retail consumption licenses, effective January 1, 1945, to Joseph Formasano for premises at the southwest corner of Warren Street and South Pearl Street, Bridgeton, and to Dan C. Neagley for premises at the west side of North Pearl Street north of the Central Railroad Tunnel, Bridgeton.

The grounds of appeal advanced by the appellant's petition are, in substance: (a) That public convenience and necessity did not warrant the issuance of the licenses and that their issuance was contrary to the public policy of the municipality; (b) that the ordinance, adopted December 5, 1944, increasing the City's plenary retail consumption license quota from twelve (12) to fourteen (14)

was illegally drawn and passed; (c) that the ordinance was never approved by the State Commissioner of Alcoholic Beverage Control; (d) that at the public hearing on the ordinance persons appearing in objection and opposition were not given a fair, legal and just hearing; (e) that the Formasano premises constitute a fire and health hazard and thus are not suitable to be licensed, and that the Neagley premises, due to their remote location, would not have proper police supervision.

The appellant's testimony at the appeal hearing consisted, in essence, of a restatement and amplification of the various grounds enumerated in his petition of appeal.

Frederick L. Myers, Commissioner of Public Safety of Bridgeton, testified that after making a complete examination of the Formasano building, he concluded that the premises did not constitute a fire or health hazard; and stated that this conclusion was based upon the fact that the building was constructed of fireproof material and contained two fire towers and exits from each floor. Commissioner Myers testified that the Neagley building adequately met the necessary requirements for use as licensed premises. He testified, further, that Bridgeton's population has been increased to approximately 21,000, due to an influx of migrant workers; that residents of various "dry" municipalities bordering upon Bridgeton, with a combined population of some 11,000, are supplied to a large extent by Bridgeton licensees; and that licensed premises in Bridgeton are overcrowded with customers.

Bridgeton City Councilman A. Lewis Turner testified that in his opinion there was and is a definite need for the two additional liquor establishments. It was stipulated and agreed by the parties that the testimony of Council President Frank O'Neill and of Councilman Dr. Joseph M. Musiano and George Tullis would corroborate the testimony given by Councilman Turner.

There is no probatory evidence appearing in the record before me that the City's amendatory limitation ordinance was illegally drawn or passed. In so far as the record discloses the ordinance was adopted in keeping with all of the procedural requirements as to notice, hearing and publication set forth in Revised Statutes, 40:49-2.

In respect to the appellant's contention that the limitation ordinance was never approved by the State Commissioner, it is sufficient to point out that municipal ordinances limiting the number of retail licenses do not require the Commissioner's approval in order to be effective. The Alcoholic Beverage Law empowers the municipal governing bodies to enact such ordinances and provides for an appeal in respect thereto to the Commissioner. Revised Statutes, 33:1-40 and 33:1-41.

I stated, in Re Meisler v. Independence Township, Bulletin 520, Item 6, that although the Supreme Court has expressed some doubt that the Commissioner may repeal a municipal ordinance (Re Phillipsburg v. Burnett, 125 N.J.L. 157), I was nevertheless ready to take such a step in a proper case. In the instant case, however, the record does not justify such action. The ordinance appears on its face to be valid.

It has long been my personal conviction, amply borne out by experience, that we have generally far too many retail licensees in New Jersey. It is difficult for me to imagine a local situation in which one plenary retail consumption license to each one thousand of

In the light of the City Council's determination that an increase in the number of licenses was necessary, and in view of the testimony adduced to substantiate the Council's position in the matter, I am unable to conclude that there was any unreasonableness or abuse of discretion in the issuances appealed from in these proceedings.

ORDERED, that the action of the respondent City Council in issuing plenary retail consumption licenses to Joseph Formasano and Dan C. Neagley be and the same is hereby affirmed; and it is further

ALFRED E. DRISCOLL
Commissioner.

Respondent)

At the time the application was denied, no reasons for denial were stated by the members of the local issuing authority. I have repeatedly pointed out that, in fairness to applicants, the reasons should be stated at the time an application is denied.

In its answer, however, respondent sets forth that:

"There is no necessity for the issuance of a plenary retail distribution license in the Borough of Wallington."

At the hearing held herein it was stipulated that the ordinance of the Borough of Wallington limits the number of plenary retail consumption licenses (taverns) to forty-eight, and that forty-eight plenary retail consumption licenses have been issued and are now in effect. It was further stipulated that the ordinance limits the number of plenary retail distribution licenses (package stores) to two, and that no plenary retail distribution licenses are in effect in the Borough at the present time.

It cannot be disputed that the Borough of Wallington, with a population of about 10,000 people, is more than adequately supplied with taverns.

It should also be noted that a plenary retail consumption licensee enjoys all the privileges granted to a plenary retail distribution licensee, plus the additional privilege of selling alcoholic beverages for consumption on the licensed premises by the glass or other open receptacles.

In the instant case, however, appellant contends that despite the large number of taverns, there is a need for a plenary retail distribution license at his premises because many people do not desire to visit a tavern for the purpose of purchasing alcoholic beverages in original containers.

In support of this contention appellant has produced four people who reside in the vicinity and who testified they purchased their alcoholic beverages in package stores in the nearby community of Passaic because they do not desire to patronize any of the taverns in Wallington.

Appellant also presented a petition signed by one hundred and twenty residents of the Borough, requesting issuance of appellant's license because it is inconvenient and embarrassing to purchase package liquor from a saloon or tavern.

I have not had the benefit of any evidence on behalf of respondent. The latter apparently stands upon its contention that there is no need for a package store in the Borough.

"No one has a right to demand a license: license is a special privilege granted to the few, denied to the many."
Paul v. Gloucester, 50 N. J. L. 585, 596.

A municipal issuing authority "may in its discretionary power to license or not to license, stop short" of the number of licenses authorized in its ordinance. Bumball v. Burnett, 115 N. J. L. 254, 255.

The burden on appeal rests upon the appellant to show by clear and convincing evidence that respondent abused its discretionary power and that its action refusing to grant the license was clearly erroneous and, therefore, should be reversed. Rule 6, State Regulations No. 14. In other words, it is incumbent upon appellant herein to show a real and substantial need for an additional license.

It is difficult to define the weight of proof required to demonstrate that a community needs or will be more properly or conveniently serviced by a liquor store where there are outstanding in the community a substantial number of plenary retail consumption licenses. The mere fact that the nearest package store is in an adjoining community is not in itself decisive. Municipal boundary lines are unimportant. One community may be entirely residential and the neighboring community may provide the shopping center.

As Commissioner Burnett stated in Colonna v. Montclair, Bulletin 39, Item 8,

"***with telephone and transportation facilities, such a (liquor) store can serve a greater ambit than a consumption license. It is very largely a matter for the exercise of sound discretion by the governing body of the particular municipality."

The records show that plenary retail consumption licenses have been issued for premises at 12, 15, 57, 70, 116 and 139 Wallington Avenue, Wallington. Some years ago respondent issued one plenary retail distribution license, but that license has not been in existence for a period of more than a year and a half. I am not particularly impressed by the petition because so many people will sign any form of petition upon request. While it may be somewhat inconvenient for some residents of the Borough to purchase their package goods in Passaic, this evidence is insufficient to show that the general welfare of the community requires the issuance of the license to appellant. I conclude, after reviewing the evidence, that appellant has not sustained the burden of proof in establishing the need for a plenary retail distribution license at his premises in view of the large number of plenary retail consumption licenses already in existence and, hence, that he has not shown that respondent abused its discretion. I shall affirm the action of respondent and dismiss the appeal. Cf. Iacovone v. Gloucester, Bulletin 644, Item 4.

The Borough ordinance should be immediately amended to provide that no plenary retail distribution licenses shall be issued. In that way the sincerity of the position of respondent will be further demonstrated. To permit the ordinance to stand unamended invites further difficulties. Houtkin v. Lakewood, Bulletin 646, Item 1.

Accordingly, it is, on this 21st day of March, 1945,

ORDERED, that the action of respondent be and the same is hereby affirmed and that the petition of appeal be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

11. MIDNIGHT CURFEW - STATE REGULATIONS NO. 40 AMENDED TO CHANGE PERMITTED OPENING HOUR FROM 7:00 A.M. TO 6:00 A.M.

Rule 1 of State Regulations No. 40 is hereby amended, effective immediately, to read as follows:

"Rule 1. No plenary retail consumption, seasonal retail consumption or club licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage or permit the consumption of any alcoholic beverage upon licensed premises between the hours of 12:00 o'clock midnight and 6:00 a.m. of the following morning."

The amendment changes the permitted opening hour from 7:00 a.m. to 6:00 a.m. This action is taken solely because I do not wish to invade Home Rule any more than is necessary to insure that licensees comply with the Byrnes midnight curfew "request."

The prohibited hours -- 12:00 o'clock midnight to 6:00 a.m. of the following morning -- are State-wide in their application. If, however, a municipal regulation is more restrictive as to either the closing hour, the opening hour, or both, the municipal regulation shall prevail.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 26, 1945.

12. EGG NOG - SERVICE BY RETAIL CONSUMPTION LICENSEES PERMITTED MARCH 29, 1945-APRIL 2, 1945, INCLUSIVE.

Each year during the Easter season the Department has permitted consumption licensees to serve egg nog for a limited period of time.

This year the privilege will be permitted commencing Thursday, March 29th and ending Monday, April 2nd, at midnight.

The attention of all licensees is directed to the fact that over-indulgence in any form is not to be tolerated. Licensees shall be governed accordingly.

Alfred E. Driscoll
Commissioner.

Dated: March 26, 1945.