

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

BULLETIN 670

JUNE 8, 1945.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against

FRANK TRIVIGNO
301-03 Richmond Street
Plainfield, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Common Council of the City of Plainfield.

Edward J. Santoro, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging that he possessed one quart bottle labeled "Old Methusalem A Blend of Straight Whiskies" and one 4/5 quart bottle labeled "Old Overholt Straight Rye Whiskey", which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

During the course of an investigation on April 24, 1945, an inspector of the Department of Alcoholic Beverage Control observed a quart bottle of Old Methusalem A Blend of Straight Whiskies, which appeared to be off color. Later he found in the stock of the licensee a one-quart bottle of Old Overholt Straight Rye Whiskey which appeared to be a blend and was under proof. The chemical analysis disclosed that the contents of the seized bottles varied in proof, solids and acids from genuine samples of the same products.

Defendant states that the bottles must have been tampered with by the janitor. However, a licensee must be held strictly accountable for any "refills" found in his stock of liquor. Re Klimovich, Bulletin 667, Item 1. The licensee has no prior record and I shall, therefore, suspend his license for a period of ten days. Re Muller, Bulletin 662, Item 2.

Accordingly, it is, on this 29th day of May, 1945,

ORDERED, that Plenary Retail Consumption License C-7, issued by the Common Council of the City of Plainfield to Frank Trivigno, for premises 301-03 Richmond Street, Plainfield, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 a.m. June 5, 1945, and terminating at 1:00 a.m. June 15, 1945.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - APPLICATION FOR MODIFICATION OF SUSPENSION DENIED.

In the Matter of Disciplinary Proceedings against)

VITO LORUSSO)
T/a MESAGNE)
17 Salem Avenue)
Carteret, N. J.,)

ON PETITION
CONCLUSIONS

Holder of Plenary Retail Consump-)
tion License C-2 issued by the)
Borough Council of the Borough)
of Carteret.)
-----)

George H. Stanger, Esq. and Robert G. Howell, Esq.,
Attorneys for Defendant-Petitioner.

BY THE COMMISSIONER:

On August 9, 1944 I suspended defendant's license for the balance of its term, effective August 14, 1944, after he had pleaded guilty to a charge alleging that he had falsely denied in his applications for licenses that he had been convicted of a crime. Re Lorusso, Bulletin 631, Item 9.

The petition for relief herein recites that defendant has not consented to transfer his license to any other person because he desires, if possible, to turn the business over eventually to his son, who has been serving overseas with our armed forces for two years. The petition requests that the order heretofore entered herein be modified and that the suspension be lifted immediately if the Commissioner removes defendant's statutory disqualification from holding a license.

The violation committed by defendant is serious because it goes to the very root of proper control. Licensees must learn to answer all questions in applications frankly and fully so that issuing authorities may properly pass upon pending applications. The fact that a licensee permits other persons to fill in his application cannot be accepted as an excuse when a licensee swears that the facts therein are true. Because of the seriousness of the violation, I have decided to enter no further order herein. Defendant's present license will remain suspended for the balance of its term.

In proceedings decided herewith I have lifted defendant's statutory disqualification, effective June 30, 1945. This will remove defendant's statutory disqualification from holding a license for the coming fiscal year. The question as to whether such license should be issued must be decided in the sound discretion of the local issuing authority, if proper application for renewal of the license is filed at any time before July 30, 1945, with the local issuing authority.

ALFRED E. DRISCOLL
Commissioner.

Dated: May 28, 1945.

3. DISQUALIFICATION - APPLICATION TO LIFT - FACTS REEXAMINED - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

ON HEARING
CONCLUSIONS AND ORDER

Case No. 350.
-----)

George H. Stanger, Esq. and Robert G. Howell, Esq.,
Attorneys for Petitioner.

BY THE COMMISSIONER:

Petitioner herein was granted a re-hearing upon his petition to have his statutory disqualification removed in order that he might be eligible to be associated with the alcoholic beverage industry.

At the original hearing it appeared that in 1925 petitioner had been convicted of a crime involving moral turpitude, and that in 1928 and 1929 he had been convicted of other crimes. It further appeared that in every license application filed by him between 1934 and 1943 petitioner denied that he had been convicted of a crime. After that hearing, in the exercise of my discretion I entered an order denying relief. Re Case No. 350, Bulletin 631, Item 8.

At the re-hearing held herein it appeared that in 1925 petitioner was convicted only on the third count of an indictment, which count alleged that he possessed counterfeit money. However, even if he was not convicted on the additional counts for passing counterfeit money, I believe that the crime of which he was convicted, under the circumstances of the case, involved moral turpitude. At the re-hearing fourteen residents of Carteret, including the Chief of Police, two police officers, a former Mayor, two councilmen and other municipal officials testified that petitioner has an excellent reputation and that he conducted his licensed place of business in a proper manner during the ten-year period in which he held a license.

Petitioner, who was born in Italy, came to this country in 1913. He settled in Carteret and has since resided there continuously except for the period of time he served here and overseas in the U. S. Army during World War I, and except during a prior period of time when he made a trip to Italy, where he married the mother of his three children. He has one son serving in World War II.

At the re-hearing petitioner testified that in 1934 he was conducting business as a shoemaker when a liquor salesman induced him to apply for the transfer of a license held by an individual who desired to retire. He testified that at that time he could not read or write English and that the salesman filled out the original application which he signed. There is some evidence that the information set forth in subsequent applications was copied by other persons from the original application.

Petitioner has not been convicted of any crime within the past sixteen years and hence is eligible for relief. His original misstatement in his application was made more than ten years ago. His adjudicated record as a licensee is clear except that his license

was suspended for five days for possessing illicit liquor in 1935, which is also ten years ago. In proceedings decided herewith I have concluded not to lift the suspension of his license. However, under all the circumstances, I believe that he has been sufficiently punished and, in the exercise of my discretion, I have decided to lift his statutory disqualification, effective June 30, 1945, so that the local issuing authority may consider, on its merits, any application filed for the next fiscal year.

Accordingly, it is, on this 28th day of May, 1945,

ORDERED, that petitioner's statutory disqualification, resulting from the convictions described in this proceeding, be and the same is removed, effective June 30, 1945, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

- 4. SEIZURE - FORFEITURE PROCEEDINGS - SPECIAL PERMIT MUST BE OBTAINED PRIOR TO HOME MANUFACTURE OF WINE - WINE MANUFACTURED WITHOUT SPECIAL PERMIT AND PERSONAL PROPERTY ON PREMISES SUBJECT TO SEIZURE AND FORFEITURE - APPLICANT FOR RETURN OF SEIZED PROPERTY REQUIRED TO ESTABLISH GOOD FAITH AND THAT THE VIOLATION WAS UNWITTING - WINE AND PERSONAL PROPERTY DECLARED UNLAWFUL PROPERTY AND ORDERED FORFEITED.

In the Matter of the Seizure)
on February 28, 1945 of about)
1300 gallons of home made wine,)
a wine press, grape crusher,)
24 bottles of Vermouth and a)
number of empty jugs and other)
personal property at 223 Hunterdon)
Street, in the City of Newark,)
County of Essex and State of New)
Jersey.)

Case No. 6800

ON HEARING
CONCLUSIONS AND ORDER

Pearce R. Franklin, Esq., Attorney for Anthony Zecchitella,
Pompelio Russo, Jay Zecchitella and Philip Zecchitella.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of home made wine, a wine press, a grape crusher, a quantity of Vermouth, a number of empty jugs and bottles, and other personal property, itemized in a schedule hereinafter referred to, seized at 223 Hunterdon Street, Newark, N. J., constitute unlawful property and should be forfeited.

A complaint was received by the Department of Alcoholic Beverage Control that alcoholic beverages were being unlawfully sold at the above mentioned address. On February 28, 1945 ABC agents, accompanied by two Newark police officers, visited the premises, which consist of a three-family dwelling and a garage in the rear. Mrs. Zecchitella, wife of Anthony Zecchitella, the owner of the premises, informed them that her husband had some wine in the cellar. She also gave the agents a key to the garage.

The agents then went to the cellar and there observed wine in two bins. Mr. Zecchitella arrived soon thereafter and opened these bins. In one bin there were sixteen 50-gallon barrels of wine, five 5-gallon bottles of wine, one 5-gallon bottle half full of wine, six cartons each containing four 1-gallon jugs of wine, 24 - 4/5 quart bottles labeled Port or Muscatel Wine, containing home made Vermouth, and three empty barrels. In the other bin there were nine 50-gallon barrels of wine and one 5-gallon jug of wine. A quantity of corks, a measuring can, funnels, a large wine press and an electrically driven grape crusher were also in the cellar. Fifty-one cartons, each containing four empty one-gallon jugs, were in the garage.

Mr. Zecchitella told the agents that he had manufactured the wine during the months of October, November and December, 1944, without any permit from the Department of Alcoholic Beverage Control. He likewise told the agents that he had made the Vermouth.

Since the wine was not manufactured pursuant to a permit issued by this Department, as provided by R. S. 33:1-75, it is an illicit alcoholic beverage. The Vermouth is likewise illicit because Mr. Zecchitella was not licensed to manufacture alcoholic beverages. Such illicit wine and Vermouth, as well as the grape crusher, wine press and other articles appurtenant to the manufacture and distribution of such wine and all other property seized on the premises where the illicit wine was stored, is subject to seizure and forfeiture. R. S. 33:1-1(i); R. S. 33:1-2; R. S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Anthony Zecchitella, Pompelio Russo, Jay Zecchitella and Philip Zecchitella appeared and sought return of the seized property.

Under the provisions of R. S. 33:1-66(e) I am authorized to return property subject to seizure or forfeiture to a person who has acted in good faith and who has unknowingly violated the law.

In applying this provision to a request for the return of home made wine manufactured without a permit, due regard should be given to the legislative concept governing the manufacture of such wine. Apparently recognizing a well established custom of manufacturing wine for home use, a law was enacted (R. S. 33:1-75) which specifies that a person who obtains a special permit, at a nominal fee, from the Commissioner of Alcoholic Beverage Control, is thereby authorized to manufacture within his home, or premises used in connection therewith, not more than 200 gallons of wine for personal consumption only.

Plainly this provision was only intended to cover the manufacture of a limited quantity of wine in the home for general family use. It is strictly a personal privilege. It was not intended to authorize a person to manufacture wine on a wholesale scale for other persons, to be taken away and consumed by such persons at premises other than where manufactured. Indeed, even wine lawfully manufactured under a permit cannot be given to friends to take home with them. Re Reber, Bulletin 213, Item 1.

In a case where a reputable citizen, who is not involved in any bottlegging activities, manufactures home made wine in ignorance of the fact that he is required to first obtain a permit, the Commissioner of Alcoholic Beverage Control, in the exercise of his discretion, may accept an application for a permit retroactively validating such unlawful manufacture in lieu of forfeiting the wine.

However, this situation does not exist in the instant case.

Thirteen hundred gallons of wine in one man's home appears to be far and above the normal requirements of a family. Two hundred and four empty one-gallon jugs and 25 1-gallon jugs with wine tend to indicate a wholesale commercial distribution of the wine to outsiders. Moreover, it is Anthony Zecchitella's second offense of this nature. In 1935 agents of this Department found 35 barrels of home made wine in Zecchitella's possession. At that time the Department accepted Zecchitella's story that various individuals, including himself, were the owners of the wine and were ignorant of the law. These persons, including Anthony Zecchitella and his cousin, Pompelio Russo, were permitted to retain the wine upon obtaining validating permits from the Department of Alcoholic Beverage Control.

Apparently encouraged by the acceptance of this story in 1935, it is again presented.

This time the story is that five barrels of the wine were made for Pompelio Russo, and the other barrels of wine were made for Zecchitella and three of his sons. Russo and Zecchitella's sons do not reside at the premises where the wine was made. Zecchitella says that the empty jugs were given to him by a friendly tavern owner, and were used by his sons to take wine to their homes.

Russo seeks to bolster Zecchitella's story by claiming that five barrels of the wine belong to him. He, too, should be familiar with the law, because he was one of the persons who obtained a validating permit for wine found in Zecchitella's residence in 1935. Jay Zecchitella and Philip Zecchitella, two of Anthony Zecchitella's sons, testified that it was their understanding that their father made wine for them, although they are vague as to how many barrels each was to have and they do not claim any specific barrels of wine.

It is probable that in 1935, in the early days of repeal, when persons may have been unfamiliar with the law, the doubt was resolved in the favor of the claimants to the wine and their story accepted. It does not necessarily follow that the explanation offered in the instant case, cut from the same pattern, must be accepted.

Because of the 1935 incident, Russo and Anthony Zecchitella, and probably his sons, must have been fully aware that a permit must be obtained to manufacture home made wine. Indeed, more than eleven years after repeal, this law should be familiar to all persons. In addition, the logical use for the large number of empty gallon jugs was as containers for the sale of the wine.

In any event, in determining whether the seized property should be returned, it is not necessary to make an affirmative finding that all of the wine actually was owned by Zecchitella and that he intended to sell it. It is sufficient that, because of the background of the case, it has not been established to my satisfaction that the wine was manufactured in unknowing violation of the law and for the personal use of the individual claimants. Under such circumstances there is no basis upon which I can exercise my discretionary authority in favor of such claimants. The request of Anthony Zecchitella, Pompelio Russo, Jay Zecchitella and Philip Zecchitella for return of the seized property is therefore denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" annexed hereto, constitute unlawful property, and that the same be and hereby is forfeited in

accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

ALFRED E. DRISCOLL
Commissioner.

Dated: May 31, 1945.

SCHEDULE "A"

- 25 - 50 gallon barrels of wine
- 7 - 5 gallon jugs with wine
- 25 - 1 gallon jugs of wine
- 24 - 4/5 quart bottles Vermouth
- 204- empty 1 gallon jugs
- 4 - empty 1/2 gallon jugs
- 3 - empty 50 gallon barrels
- 5 - empty 5 gallon jugs
- 1 - wine press
- 1 - grape crusher
- miscellaneous corks, hose and other articles.

5. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
 ANTON VOGEL)
 4535 Bergenline Avenue)
 Union City, N. J.,)
 Holder of Plenary Retail Consump-)
 tion License C-19 issued by the)
 Board of Commissioners of the)
 City of Union City.)
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CONCLUSIONS
AND ORDER

John R. Kelly, Esq., Attorney for Defendant-licensee.
 Harry Castelbaum, Esq., appearing for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charges:

"1. In your application filed with the Union City Board of Commissioners, upon which you obtained your plenary retail consumption license, effective June 24, 1943, for premises 4535 Bergenline Avenue, Union City, N. J., and in your subsequent applications filed with said Board of Commissioners, upon which you obtained your successive plenary retail consumption licenses for the 1943-44, and the 1944-45 fiscal years, you falsely stated 'No' in answer to Question 31 which asks: 'Have you agreed to pay any employee, or other person, any percentage of the profits derived from the business to be conducted under the license applied for?', whereas in truth and fact at the time of the first mentioned application and continuously thereafter to date, you had an agreement with Karl Kaufman employed by you as manager, to pay him 25 per cent of the profits of the licensed business; such false statements being in violation of R. S. 33:1-25.

"2. On May 4, 1945 you possessed illicit alcoholic beverages at your licensed premises, viz., two 4/5 quart bottles labeled 'Black and White Blended Scotch Whiskey', a 4/5 quart bottle labeled 'Teacher's Highland Cream Blended Scotch Whiskey' and a 4/5 quart bottle labeled 'Imported Blended Harwood's Canadian Whisky', all of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

As to charge (1): Defendant owns, or is interested in, three retail licensed premises in the City of Union City. At his licensed premises located at 4535 Bergenline Avenue he employs as manager Karl Kaufman, a German national who is the holder of an employment permit issued by the Commissioner of Alcoholic Beverage Control. From July 1943 until after the investigation herein was completed, defendant employed Karl Kaufman under an arrangement whereby he paid him a salary and 25% of the net profits. The percentage was payable at the end of each six-month period. In answering Question 31 of the license application, defendant falsely denied that there was any percentage arrangement between him and his employee.

As to charge (2): On May 4, 1945 an ABC agent tested eighteen opened bottles on defendant's premises and seized the four bottles mentioned in charge (2). Subsequent analysis by the chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of each of these four bottles varied substantially in solids and acids from the contents of genuine samples. Defendant states that he never worked behind the bar of the premises in question and that each of his employees denied to him that he tampered with the contents of the seized bottles. Even if defendant is personally innocent, he must be held strictly accountable for any "refills" found in his stock of liquor. Re Klinovich, Bulletin 667, Item 1.

Defendant has no prior adjudicated record. He has advised me that the percentage arrangement between himself and Karl Kaufman has been terminated and that the latter is now employed as manager on a straight salary basis. This, of course, does not excuse the violation set forth in charge (1). Licensees must learn that all questions in license applications must be answered frankly and fully. The fact that defendant, because of his other interests, had little time to supervise operation of the premises in question does not mitigate the seriousness of the violation set forth in charge (2).

Under all the circumstances, I shall suspend defendant's license for the balance of its term, which will be equivalent to a suspension of twenty days.

Accordingly, it is, on this 1st day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-19, issued by the Board of Commissioners of the City of Union City to Anton Vogel, for premises 4535 Bergenline Avenue, Union City, be and the same is hereby suspended for the balance of its term, ending at midnight June 30, 1945, effective at 3:00 a.m. June 11, 1945.

ALFRED E. DRISCOLL
Commissioner.

6. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$250.00 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS IN DISCIPLINARY PROCEEDINGS - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)

LOUIS FILIPOW)
T/a LOUIS' BAR AND GRILL)
Route 6, Mountainview)
Wayne Township)
R.F.D. 1, Little Falls, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension of License C-36 issued by the Township Committee of Wayne Township.)
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Robert J. Rubacky, Esq., Attorney for Petitioner.

It appears from the petition filed herein that on April 17, 1945 the petitioner pleaded non vult in the Court of Quarter Sessions, Passaic County, to charges alleging that he had sold alcoholic beverages to minors, and that, as a result of said plea, petitioner, on June 1, 1945, was sentenced to pay a fine of \$250.00, which fine has been paid.

It further appears from the petition, and from the records of the Department of Alcoholic Beverage Control, that the Township Committee of the Township of Wayne, in disciplinary proceedings, had previously suspended petitioner's license for a period of twenty days, less five days for the plea, effective from March 23, 1945 to April 6, 1945, both inclusive, after the defendant, in said proceedings, had pleaded guilty to a charge of selling alcoholic beverages to minors.

The criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. Because of the criminal conviction, the license of the petitioner herein has been automatically suspended for the balance of its term. R. S. 33:1-31.1. The petitioner herein requests that the automatic suspension may be lifted.

The case involves the sale of alcoholic beverages to three boys, two of whom were seventeen years of age and one of whom was sixteen years of age.

It has been the policy of this Department to lift an automatic suspension when and only when a license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time.

Under all the circumstances, the penalty imposed by the Township Committee of Wayne Township appears to be adequate. Hence, the relief sought in the petition will be granted.

Accordingly, it is, on this 1st day of June, 1945,

ORDERED, that the automatic suspension of License C-36, held by Louis Filipow, t/a Louis' Bar and Grill, issued by the Township Committee of Wayne Township for premises on Route 6, Mountainview, Wayne Township, be lifted, and said license is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

By: Edward J. Dorton
Deputy Commissioner.

7. APPELLATE DECISIONS - WYSZYNSKI v. NEWARK - ORDER DISMISSING APPEAL.

ROMAN WYSZYNSKI and)
ANNA WYSZYNSKI,)

Appellants,)

-vs-

ON APPEAL
ORDER

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

Respondent)
-----)

Rospond & Rospond, Esqs., Attorneys for Appellants.
Thomas L. Parsonnet, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellants appealed from an eighteen-day suspension of License C-496 which was then held by them for premises 209 Ferry Street, Newark. The suspension, originally effective April 23, 1945, was imposed by respondent after appellants had been found guilty of sales of alcoholic beverages to minors.

A stay of said suspension was granted upon the filing of the appeal by order dated April 20, 1945.

On May 17, 1945 the license was transferred to John Fresolone and Gerard Cerqua by respondent, subject to the outcome of this appeal.

A stipulation of discontinuance of said appeal having been filed herein, duly consented to by the attorneys for the respective parties to this appeal, and no cause appearing to the contrary,

It is, on this 1st day of June, 1945,

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

ORDERED, that the eighteen-day suspension of License C-496, issued to appellants and transferred as aforesaid, be and the same is hereby reinstated, commencing at 2:00 a.m. June 11, 1945, and terminating at 2:00 a.m. June 29, 1945.

ALFRED E. DRISCOLL
Commissioner.

8. ACTIVITY REPORT FOR MAY, 1945

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	Licensees and employees - - - - -	1	Bootleggers - - - - -	16
	Total number of persons arrested - - - - -			17
<u>SEIZURES:</u>	Still - 1 to 50 gallons daily capacity - - - - -			1
	50 gallons and more daily capacity - - - - -			4
	Total number of stills seized - - - - -			5
	Mash - gallons - - - - -			37,815
	Motor vehicles - Trucks - - - - -			1
	Passenger cars - - - - -			1
	Total number of motor vehicles seized - - - - -			2
	Beverage alcohol - gallons - - - - -			294
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -			167
	Wine - gallons - - - - -			51-1/3
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -			2/3
<u>RETAIL LICENSEES:</u>	Total number of premises inspected - - - - -			1,193
	Total number of bottles gauged - - - - -			9,762
	Total number of premises where violations were found - - - - -			62
	Total number of violations found - - - - -			84
	Type of violations found:			
	Illicit (bootleg) liquor - - - - -	14	Improper beer tap markers - - - - -	1
	Gambling devices - - - - -	2	Stock disposal permits necessary - - - - -	14
	Prohibited signs - - - - -	1	No sign denoting legal sale hours - - - - -	
	Unqualified employees - - - - -	26	off-premises consumption - - - - -	9
	"Fronts" (concealed ownership) - - - - -	10	Other types of violations - - - - -	7
<u>CURFEW VIOLATIONS (REGULATIONS NO. 40):</u>				12
<u>MILITARY AREA PATROL INSPECTIONS:</u>				566
<u>STATE LICENSEES:</u>	Premises inspected - - - - -			41
	License applications investigated - - - - -			76
<u>COMPLAINTS:</u>	Investigated, reviewed and closed - - - - -			329
	Investigation assigned, not yet completed - - - - -			166
<u>LABORATORY:</u>	Analyses made - - - - -			185
	"Shake-up" cases (alcohol, water and artificial coloring) - - - - -			20
	Liquor found to be not genuine as labeled - - - - -			13
<u>IDENTIFICATION BUREAU:</u>	Criminal fingerprint identifications made - - - - -			16
	Persons fingerprinted for non-criminal purposes - - - - -			171
	Identification contacts with other enforcement agencies - - - - -			223
	Motor vehicle identifications via N. J. State Police Teletype - - - - -			16
<u>DISCIPLINARY PROCEEDINGS:</u>	Cases transmitted to municipalities - - - - -			15
	Cases instituted at Department - - - - -			25
<u>HEARINGS HELD AT DEPARTMENT:</u>	Total number of hearings held - - - - -			42
	Appeals - - - - -	6	Seizures - - - - -	3
	Disciplinary proceedings - - - - -	20	Applications for license - - - - -	5
	Eligibility - - - - -	8		
<u>PERMITS ISSUED:</u>	Total number of permits issued - - - - -			736
	Unqualified employees - - - - -			124
	Solicitors - - - - -			72
	Social affairs - - - - -			203
	Home manufacture of wine - - - - -			0
	Disposal of alcoholic beverages - - - - -			146
	Miscellaneous permits - - - - -			191

Respectfully submitted,
 Erwin B. Hock
 Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULES 1 AND 2 OF STATE REGULATIONS NO. 40 AND RULE 1 OF STATE REGULATIONS NO. 38 - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 40 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

HENRY STANCZAK
47 Washington Avenue
Paterson 3, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-364, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

Henry W. Warren, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to charges that he permitted the sale of alcoholic beverages on his licensed premises, permitted his premises to remain open between midnight, May 4, 1945, and 7:00 a.m. May 5, 1945, and permitted persons other than himself and his bona fide employees thereon, in violation of Rules 1 and 2 of State Regulations No. 40. The defendant-licensee likewise pleaded guilty to a charge that on May 4, 1945, after 10:00 p.m., he sold alcoholic beverages in original containers for consumption off his licensed premises, in violation of Rule 1 of State Regulations No. 38.

On Friday, May 4, 1945, at about 11:20 p.m., defendant's manager and bartender sold to an agent of the State Department of Alcoholic Beverage Control a bottle of wine and, shortly thereafter, sold to at least two other persons bottles of beer for off-premises consumption.

It further appears that the licensed premises were not closed at twelve o'clock midnight in accordance with the so-called curfew regulation then in full force, and that the operation of said premises continued with the service of alcoholic beverages to several of the patrons (of whom there were about twelve in the premises as late at 12:15 a.m.).

The abrogation of Regulations No. 40 on May 9, 1945 did not bar or abate disciplinary proceedings for a violation of its provisions at a time when it remained in force. Cf. United States v. Hark, 88 U.S. L ed. 222. See also Bulletin 667, Item 6.

The minimum penalty for each of the two violations set forth in the charges is fifteen days. Re Holloway, Bulletin 662, Item 10; Re Gattuso, Bulletin 587, Item 1. Defendant, however, has a prior adjudicated record. His license was suspended for twenty-five days in 1943 for permitting gambling on the licensed premises. In view of this record, I shall suspend the license for a period of forty days. Five days of said suspension will be remitted because of the plea, leaving a net suspension of thirty-five days.

Since the defendant's license for the current licensing period, expiring on June 30, 1945, will not remain in force sufficiently long to permit the service of the full suspension imposed herein, I shall suspend defendant's present license for the balance of its term, and shall order that any license issued to defendant (or to anyone else) for the premises in question for the 1945-46 licensing period, be and remain inoperative until the full period of the herein imposed suspension be served.

Accordingly, it is, on this 4th day of June, 1945,

ORDERED, that Plenary Retail Consumption License C-364, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Henry Stanczak, for premises 47 Washington Avenue, Paterson, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 12, 1945; and it is further

ORDERED, that if any license be issued to this licensee, or to any other person, for the premises in question, for the 1945-46 fiscal year, such license shall be inoperative until 3:00 a.m. July 17, 1945.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - BENNETT v. HILLSIDE.

EDGAR W. BENNETT, SR.,)
trading as ELMER'S TAVERN,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE TOWNSHIP)
OF HILLSIDE.)

Sidney Simandl, Esq., Attorney for Appellant.
Emil Herrigel, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a five-day suspension of Plenary Retail Consumption License C-19 held by appellant for premises at 476 Bloy Street, Hillside. Upon the filing of the appeal an order was entered on April 27, 1945 staying the suspension, in accordance with the provisions of R. S. 33:1-31.

The appeal has been submitted to the Commissioner upon an agreed statement of facts in accordance with Rule 8 of State Regulations No. 15.

From the agreed statement of facts it appears that on April 23, 1945 appellant appeared, without counsel, before respondent Board and pleaded guilty to a violation of Rule 2 of State Regulations No. 40 in that between 12 o'clock midnight Saturday, April 7, 1945 and 7:00 a.m. on April 8, 1945, namely, at 1:52 a.m. April 8, 1945, he failed to have his entire premises closed and permitted persons other than himself and his bona fide employees to be and remain on the licensed premises.

The petition of appeal alleges that the action of respondent Board was erroneous because:

- (a) Under all the circumstances, the penalty was excessive, unreasonable and not in accordance with the facts;
- (b) The alleged violation, if any, was purely technical, in that the persons who accompanied appellant to the licensed premises were not his employees;
- (c) Appellant states that Regulations 40, Rule 2, is unreasonable and unconstitutional and unlawful under the facts stated because it prohibits a licensee to enter his licensed premises in an emergency and for a lawful purpose.

The facts of the case are as follows: During the early morning of Sunday, April 8, 1945, one of appellant's bartenders, who was then at his home, telephoned to the Hillside Police Department and notified them that someone was in the licensed premises. At approximately 1:52 a.m. on the morning in question, a police officer arrived at the licensed premises and found therein appellant and his wife, Mr. and Mrs. Frank Haas and Louis Herman. There is no evidence that any alcoholic beverages were being served at that time. Appellant states that he had been to New York with his wife and his three friends mentioned above and had returned to Hillside early on the following morning. He parked his car nearby and entered the licensed premises for the purpose of obtaining receipts for the previous night's business. The other members of his party at first remained in appellant's automobile but later entered the licensed premises, where they were observed by the police officer.

In view of the plea of guilty entered at the hearing below, there is grave doubt as to whether appellant is entitled to contend herein that he is in fact not guilty. However, even upon the merits of the case it clearly appears that he was guilty as charged. Rule 2 of State Regulations No. 40, which was then in effect, provided that:

"During the hours that sales are hereinabove prohibited, the entire licensed premises shall be closed and no persons other than the licensee and bona fide employees of the licensee shall be permitted to be or remain thereon.***"

It is admitted that the other members of appellant's party who were observed on the premises were not bona fide employees of the appellant.

Under the circumstances, the suspension was reasonable. The violation, even if technical, warranted the suspension imposed. The question as to the constitutionality of the Rule is without merit. The Rule did not prevent the licensee from entering his premises in an emergency and for a lawful purpose. The violation arose from the fact that he permitted persons other than himself and his bona fide employees on the licensed premises during prohibited hours.

For the reasons aforesaid, I shall affirm the action of respondent.

Accordingly, it is, on this 5th day of June, 1945,

ORDERED, that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED, that the five-day suspension by respondent of appellant's Plenary Retail Consumption License C-19, for premises at 476 Bloy Street, Hillside, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, to commence at 3:00 a.m. June 11, 1945 and to terminate at 3:00 a.m. June 16, 1945.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS - PERMITTING SLOT MACHINES ON LICENSED PREMISES, IN VIOLATION OF RULE 8 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
PHIL SHERIDAN KNIGHTS OF COLUMBUS BLDG. ASSN
N/W Cor. Park St. & Bergen Ave.
Ridgefield Park, N. J.,
Holder of Club License CB-11,
issued by the State Commissioner
of Alcoholic Beverage Control.

CONCLUSIONS
AND ORDER

Nicholas A. Carella, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant club pleaded non vult to charges alleging that it (1) sold alcoholic beverages to non-members and (2) possessed slot machines on its licensed premises.

On Wednesday, March 21, 1945, two ABC agents, neither of whom was a member or guest of any member of the club, entered the defendant's premises and, without being questioned, were each served a glass of beer by the bartender. Two slot machines of the pull-handle type were situated at one end of the barroom and were played by the agents.

In the absence, as here, of any previous record, the usual penalties of fifteen days and ten days, respectively, on the first and second charges herein, will be imposed. Re Penns Grove Lodge, etc., Bulletin 615, Item 2. Five days will be remitted for the plea, leaving a net penalty of twenty days.

Accordingly, it is, on this 5th day of June, 1945,

ORDERED, that Club License CB-11, issued by the State Commissioner of Alcoholic Beverage Control to Phil Sheridan Knights of Columbus Bldg. Assn for premises on N/W Cor. Park Street & Bergen Avenue, Ridgefield Park, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. June 9, 1945, and terminating at 3:00 a.m. June 29, 1945.

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - APPLICATION TO TEMPORARILY LIFT
SUSPENSION GRANTED.

In the Matter of Disciplinary)	
Proceedings against)	
PHIL SHERIDAN KNIGHTS OF)	ON PETITION
COLUMBUS BLDG. ASSN)	ORDER
N/W Cor. Park St. & Bergen Ave.)	
Ridgefield Park, N. J.,)	
Holder of Club License CB-11,)	
issued by the State Commissioner)	
of Alcoholic Beverage Control.)	

Nicholas A. Carella, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

On June 5, 1945 Club License CB-11, issued by the State
Commissioner of Alcoholic Beverage Control to Phil Sheridan Knights
of Columbus Bldg. Assn, was suspended for a period of twenty days,
commencing Saturday, June 9, 1945.

The club has filed a verified petition requesting that the
effective date of the suspension be postponed.

The petition shows that, at least two months ago, arrangements
had been completed for holding the club's Annual Charity Ball on
Saturday, June 9, 1945. The petition further shows that such
affairs have been held each year for more than the last twenty years
and that approximately 150 tickets have already been sold for the
Ball to be held on Saturday, June 9, 1945. It is expected that at
least several hundred people will attend the affair. The proceeds
of the affair will be devoted solely to charitable purposes.

Since I see no reason for needlessly penalizing either the
innocent persons who will attend the affair or the recipients of the
proceeds of the affair, I shall, in fairness, postpone the effective
date of the suspension until Monday, June 11, 1945. Cf. Re Starn,
Bulletin 593, Item 11.

Accordingly, it is, on this 6th day of June, 1945,

ORDERED, that the twenty-day suspension of license heretofore
imposed in this case shall, in lieu of the period originally fixed,
commence at 12:01 a.m. Monday, June 11, 1945, and terminate at
12:01 a.m. July 1, 1945.

Alfred E. Griswold
Commissioner.