

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

BULLETIN 662

APRIL 12, 1945.

1. SOCIAL PROTECTION - HEREIN OF THE PLACE OF POLICE, HEALTH DEPARTMENTS, COURTS AND PENAL INSTITUTIONS IN A SOCIAL PROTECTION PROGRAM.

The State Commissioner of Alcoholic Beverage Control has, for the past three years, served as a member of the State Social Protection Committee of the Civilian Defense Council.

The Department, recognizing the vital importance of social protection during these war years, has given generously of the time of its personnel in the common fight for the preservation of the health and general welfare of our citizens, including those in civilian life as well as those in the armed forces. During this period, New Jersey, in addition to being one of the important arsenals of the Republic, has been literally an armed camp serving as a training center and assembly point for millions of our men and women in the services.

The following statement: "Social Services in a Social Protection Program" represents the cooperative thinking of the members of the Social Case Work Council of National Agencies and the staff of the Social Protection Division of the Federal Security Agency. It is offered by these agencies at the present time in a serious effort to clarify the place of related services in a social protection program, and in the hope that it will serve as a useful guide to municipal officials and others concerned with the problem of social protection.

ALFRED E. DRISCOLL  
Commissioner.

Dated: April 2, 1945.

"SOCIAL SERVICES IN A SOCIAL PROTECTION PROGRAM

The goal of social services and protective forces in a social protection program is to insure community conditions which prevent practices that spread venereal infection, and to establish individualized social services of such merit that persons given to promiscuous sex practices are removed from the treadmill of infection, re-infection, incarceration and re-incarceration, and are helped to a more constructive life.

Generally speaking, a community recognizes the necessity of protective forces such as police, public health departments, courts, correctional and penal institutions. Acceptance of a protective and preventive service by voluntary agencies beyond that provided by law has been slow, but more and more both law enforcement and social agencies agree that the voluntary groups have a service to offer that does not interfere with nor assume the police functions. It is rather an additional aid in helping people to a better way of life. In order to clarify the voluntary case work agencies' part in a community's social protection program, this statement has been prepared cooperatively by members of the Social Case Work Council, and the staff of the Social Protection Division of the Federal Security Agency.

The function of law is the protection of the common good and the impartial administration of justice, which may include penalty. A clear recognition of this is essential to the protection of all of

our basic human rights. Social case work's function is the helping of the individual to utilize his potentialities for handling his difficulties within his individual situation. Case work by its very nature implies the confidential relationship between client and worker. Social workers have developed skills for establishing this relationship which enables people to discuss their difficulties freely and purposefully. The case work relationship should not be exploited to extract information to be used in determining guilt or innocence. Nothing is gained by confusing the function of law and social case work. In fact, such confusion lowers their effectiveness and the respect of the client and the community for both.

Prostitutes and extensively promiscuous women and girls, particularly those who have former court and police records, are the responsibility of the police, the court, the health department, the probation department and the correctional institution. In general, the services of the voluntary case work agency are not expected to deal with this type of offender, but the private welfare agency may well be encouraged to experiment in this area on a demonstration basis.

Welfare agencies, public and private, have a valuable service to perform in the field of protective case work for young people of both sexes. This service will often require cooperative action with police and health departments. It will require, furthermore, a willingness to attempt an aggressive program for protective purposes through case work. The emotional problems which many of these young people present means that the client is not likely to show initiative in the case work relationship, a factor which needs to be faced and dealt with by both the agency and the case worker. An aggressive program for protective purposes through case work requires that the worker initiate and assume responsibility for contacts to an extent not ordinarily required in a case work relationship. The worker will need to be fully aware of the importance of his supportive role in such a relationship. In such a setting the young person will be dealt with as an individual client.

#### SOCIAL SERVICES AND THE POLICE DEPARTMENT

1. The determination of who shall be arrested and who shall be tried in court is a function of the police and prosecutor, not of the social case worker.

2. The case work services of public and voluntary agencies can be of valuable assistance to the police in dealing with young people against whom there is no charge, and who have not been arrested. This is a group in need of case work for protection.

3. Because these young people are discovered to be engaged in conduct either questionable or harmful to themselves and to society, and come to the attention of the police for that reason, the police department is usually the agency from which referrals will be made.

4. Public and private welfare agencies should make available to the police department trained workers for the purpose of interviewing persons taken into protective custody (not arrested) and in need of referral for case work service. This is necessary in those instances where the police department is not equipped by knowledge or personnel to make suitable referrals. Such services should be available especially at hours when the social agency ordinarily is closed. This interviewing should not be done in a jail or precinct office if other

quarters can be secured. Persons interviewed by case workers at night should be referred to the appropriate social agency in the morning. The agency should exercise initiative and flexibility in its approach to the client and in the service it makes available.

5. At the same time as such services are made available to the police on a demonstration basis, community efforts should be directed towards the establishment of the services as a public responsibility. A determining factor in the establishment of a demonstration project should be the expressed willingness of the public officials to consider the eventual adoption and financing of such a project.

#### SOCIAL SERVICES IN THE HEALTH DEPARTMENT

1. Many patients coming to a venereal disease clinic can profit from case work treatment as well as medical care. Experience has shown that this service is most effectively carried out in a venereal disease clinic through medical social services provided by the agency operating the venereal disease clinic.

2. When the venereal disease clinic does not supply medical social services the efforts of the community should be directed towards the establishment of such services by the operating agency.

3. If the personnel of a venereal disease clinic is not able to make referrals, there are two ways in which this need can be met:

a. Local public and private agencies could provide consultation services to the clinic personnel with a view to helping the clinic personnel to make effective referrals. If a medical social worker is available to the community, she might well be the one asked to give such consultation services.

b. A qualified case worker could be provided for a limited time by public and private agencies to render the referral service within the clinic.

4. Such assistance should be given on an emergency or demonstration basis, and not with the idea that these agencies take over a function which properly belongs to the health department. Upon the initiation of a demonstration project, efforts should be directed towards assisting proper governmental officials eventually to take over the services as a public responsibility.

5. Hospitals for the rapid treatment of venereal diseases have been established in many communities. Case work services for social diagnosis and referral should be provided by the rapid treatment centers. In addition, the services of public and private agencies should be available in the community to those patients who want help with their problems upon discharge from the centers.

6. In those instances where the indicated services are not available in the rapid treatment center, a project demonstrating their usefulness might be set up. At the same time as such services are made available to the rapid treatment center on a demonstration basis, community efforts should be directed towards the establishment of the services as a public responsibility.

## "SOCIAL SERVICES IN THE COURTS, CORRECTIONAL AND PENAL INSTITUTIONS

1. The court determines the innocence or guilt of the defendant on the basis of legal evidence presented. Hearsay, social history, personality evaluation and medical findings are not legal evidence, and should not be introduced in the court trial before the decision. Social studies, psychiatric and psychometric studies and the medical findings, however, are valuable to the court in determining the sentence which will best meet the needs of the individual offender.

2. Courts should have probation departments which are responsible for making pre-sentence studies and for rehabilitation. However, in the absence of a probation staff the court may request the services of voluntary agencies in making social psychiatric and psychometric studies of the offender after determination of guilt and prior to sentence.

3. Where there is a probation department it should also be responsible for offering case work services to those offenders placed on probation by the court. A probation staff adequate in number and properly trained is essential if the case work treatment of these offenders is to be effective.

4. Where there is no probation department the court may request the voluntary agency to accept the offender on probation. Such an arrangement may be successful in carefully selected cases. A clear understanding, however, between the court and the voluntary agency is essential in order to protect the rights of the client and to properly distinguish the respective functions of the court and of the voluntary agency. Confidential material developed in the course of such supervision cannot be given to the court except with the permission of the client.

5. Social case work services should be available within correctional institutions as integral parts of the rehabilitation program.

6. Official case work services should be available in parole departments to provide supervision for persons discharged from penal or reformatory institutions. Such a parole supervision demands a staff adequate in numbers, and well trained.

## ORGANIZATION OF SERVICES

In some communities the services referred to have been developed, either through the initiative of the public or private welfare agencies or upon the request of the police department, the courts, the health department and the rapid treatment center. In those communities where the services are not in operation the welfare agencies carry a major responsibility for the initial approach and for developing the necessary arrangements. The situation in each community will affect the approach and the plan. In some communities the private agency will initiate, in others the public agency will; in still others the council of social agencies or the social planning council will lead. The processes of community organization should be applied to the needs and problems in the area of social protection. The objective of all the welfare agencies should be to get the services into operation as soon as possible and to insure their maximum usefulness to the persons in need of them."

- - - - -

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

In the Matter of Disciplinary Proceedings against )

MARGARET MULLER )  
294-296 Twenty-first Ave. )  
Paterson 3, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-325, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )  
----- )

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

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that she possessed two 4/5 quart bottles of "Canadian Club Blended Canadian Whiskey 90.4 Proof", both of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On February 7, 1945, an agent of the Federal Alcohol Tax Unit, while testing the contents of defendant's open stock of fifteen bottles, seized the two bottles in question. Chemical analysis by the Federal chemist indicates substantial variances in solids, acids and color between the contents of the two bottles and that of a genuine sample of the same product. As a result of such analysis, the chemist has certified that both bottles "have been refilled."

Since the defendant has no previous record, I shall impose the usual ten-day penalty for the instant violation. Re Colucci, Bulletin 655, Item 9.

Accordingly, it is, on this 3rd day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-325, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Margaret Muller, for premises 294-296 Twenty-first Avenue, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. April 9, 1945, and terminating at 12:01 a.m. April 19, 1945.

ALFRED E. DRISCOLL  
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE AND SERVICE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF MUNICIPAL ORDINANCE - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

MARSILIO DAZIANI  
T/a MONTE CARLO CAFE  
1016 South 4th Street  
Camden, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-73, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

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

BY THE COMMISSIONER:

Defendant pleaded guilty to a charge that he sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages on his licensed premises on Sunday, March 4, 1945, contrary to the provisions of an ordinance of the City of Camden.

It appears that on Sunday, March 4, 1945, defendant's licensed premises were open for business and sales of alcoholic beverages were made despite the prohibition in the local ordinance. The defendant's cafe was "raided" by Camden police officers at about 7:30 p.m., when twenty-five or more patrons and customers were found consuming alcoholic beverages.

As a result of the raid and on defendant's plea of guilt before the Judge of the Camden City Police Court, defendant was fined for violation of the ordinance. However, such fine does not clear the defendant of his liability under the provisions of R. S. 33:1-31, providing for a suspension or revocation of the license for a violation, among other things, "of any ordinance, resolution or regulation of any other issuing or governing board or body." Cf. Re Messina, Bulletin 392, Item 12.

Defendant has no prior record. I shall, therefore, suspend his license for the minimum period for sales "after hours" - fifteen days (Re Carney, Bulletin 640, Item 3), but will remit five days of said penalty for the plea.

Accordingly, it is, on this 3rd day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-73, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Marsilio Daziani, t/a Monte Carlo Cafe, for premises 1016 South 4th Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. April 9, 1945 and terminating at 12:01 a.m. April 19, 1945.

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF 30 DAYS' SUSPENSION - ILLEGAL SITUATION CORRECTED AND SUSPENSION PERIOD HAVING EXPIRED - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against

ELLEN DOYLE  
137 Hobart Avenue  
Bayonne, N. J.,

Holder of Plenary Retail Consumption License C-25, issued by the Board of Commissioners of the City of Bayonne.

O R D E R

Hyman Tulbowitz, Esq., Attorney for Defendant-licensees.

On February 19, 1945 an order was entered suspending the license held by Ellen Doyle for premises 137 Hobart Avenue, Bayonne, for the balance of its term, upon her non vult plea to charges alleging that she had permitted other persons to exercise the privileges of her license. See Re Doyle, Bulletin 654, Item 8. At the same time, leave was reserved to apply to lift such suspension upon a correction of the unlawful situation, after the expiration of thirty days from February 23, 1945, the effective date of said order.

Pursuant to such reservation, a hearing was scheduled at which proof was submitted concerning the formation of a bona fide partnership between Ellen Doyle and one Richard Hanken. A transfer of the license to the partnership has been effectuated today.

Since it appears that the prior unlawful situation has been corrected, and that the thirty-day period aforesaid expired on March 23, 1945, the suspension heretofore entered will be lifted.

Accordingly, it is, on this 3rd day of April, 1945,

ORDERED, that the suspension heretofore imposed be lifted and that Plenary Retail Consumption License C-25, heretofore issued by the Board of Commissioners of the City of Bayonne to Ellen Doyle, for premises 137 Hobart Avenue, Bayonne, and transferred during the pendency of these proceedings to Ellen Doyle and Richard Hanken for the same premises, be and the same is hereby restored to full force and operation, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

By: Edward J. Dorton  
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE EMPLOYEES TO ACCEPT ALCOHOLIC BEVERAGES AT THE EXPENSE OF PATRONS, IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

DISCIPLINARY PROCEEDINGS - CHARGES OF PERMITTING KNOWN PROSTITUTES ON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20; SALE OF ALCOHOLIC BEVERAGES TO A PERSON ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20, AND PERMITTING LEWDNESS AND IMMORAL ACTIVITIES ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against CHARLES YORKUS T/a WINDMILL Int. Routes 33 and 34, at Collingswood Howell Township, N. J., Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Howell.

CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to charges that (1) he allowed, permitted and suffered known prostitutes and persons of ill repute in and upon the licensed premises, in violation of Rule 4 of State Regulations No. 20; (2), (3) and (4) that he allowed, permitted and suffered female employees to accept beverages at the expense of or as a gift from customers or patrons in his licensed premises, in violation of Rule 22 of State Regulations No. 20; (5) that he sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon the licensed premises, in violation of Rule 1 of State Regulations No. 20; and (6) that he allowed, permitted and suffered (a) lewdness and immoral activities in and upon the licensed premises, (b) said licensed premises to be conducted in such manner as to become a nuisance, (c) said licensed premises to be used as a place of assignation, (d) allowed, permitted and suffered women to solicit men for immoral purposes, and (e) conducted said licensed business in a manner offensive to common decency and public morals, all in violation of Rule 5 of State Regulations No. 20.

Four members of the armed services who had visited the defendant's licensed premises on one or more occasions between August 15, 1944 and November 15, 1944 testified that during their visits they

had never seen any immoral activities taking place on the licensed premises. One of these witnesses picked up a girl named Ray ---- at defendant's premises and took her to a cabin located some distance from defendant's premises.

Several of the marines were in agreement that not only had they observed two female employees accept drinks at the expense of patrons but they themselves had actually treated the girls at different times.

Ann Milinski, one of the girl employees, testified that she had accepted drinks from customers and had seen another female employee do likewise on a few occasions.

As to the evidence presented on the other charges preferred against the licensee, even though there is a strong suspicion that prostitutes visited defendant's premises, the proofs presented are inadequate to warrant a finding of guilt. The Department was unable to locate the alleged prostitutes to testify at the hearing. It is probable that a few of these girls visited the defendant's premises for improper purposes. I am of the opinion, however, that the evidence presented is not sufficient to show that the proprietor was aware of their nefarious activities. Detailing the testimony adduced in the instant case would serve no useful purpose.

I find the defendant guilty of charges (2) and (4), and find him not guilty of charges (1), (3), (5) and (6). The latter four charges are hereby dismissed.

The licensee has no previous adjudicated record. I shall, therefore, suspend defendant's license for a period of twenty days. If the defendant values his license he will redouble his efforts to keep improper persons away from his premises.

Accordingly, it is, on this 3rd day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Howell to Charles Yorkus, t/a Windmill, for premises at Int. Routes 33 and 34 at Collingswood, Howell Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 a.m. April 10, 1945 and terminating at 12:01 a.m. April 30, 1945.

ALFRED E. DRISCOLL  
Commissioner.

6. ADVERTISING - SIGN "BUY A DRINK FOR THE BOYS IN SERVICE"  
DISAPPROVED AS DESIGNED TO UNDULY PROMOTE THE CONSUMPTION OF  
ALCOHOLIC BEVERAGES.

March 29, 1945

Mr. Michael O'Donnell  
Elizabeth, 1, N. J.

Dear Sir:

An agent of this Department has reported that, when inspecting your tavern premises at the end of February last, he found a card-board sign, about 28 inches by 24 inches, tacked to the wall in your barroom reading: "Buy a Drink for the Boys in Service." It appears that the sign has since been removed.

While you may have intended no harm by this sign, it was nevertheless objectionable and improper.

There is no reason why any liquor licensee must advertise or incite friends or strangers to "buy a drink for the boys." If you want to urge your patrons to do a good turn for the men and women in uniform, urge them to contribute to the Red Cross or to other similar organizations which have so grim and earnest a need for the greatest funds possible for those who are in service.

Under the Department's power to control undesirable types of advertisement and to curb practices unduly designed to increase the consumption of alcoholic beverages (R. S. 33:1-39), the aforementioned or any similar type of sign or advertisement is disapproved.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

By: Erwin B. Hock  
Deputy Commissioner.

Comment by the Commissioner:

There are two kinds of generosity -- good and bad. The effort of the licensee to promote, by advertisement, a generous impulse for his own pecuniary benefit, was certainly in poor taste. The Department, military authorities and G. I. Joes generally have frowned upon the practice of some misguided civilians who insist upon buying drinks for strangers in the service. The G. I.'s have resented the intrusion of their privacy. The authorities have opposed the practice on the ground that the misplaced generosity on the part of the civilian frequently resulted in headaches for the authorities and military personnel, both literally and figuratively.

ALFRED E. DRISCOLL  
Commissioner.

Dated: April 4, 1945.

- 7. DISCIPLINARY PROCEEDINGS - SALE AND SERVICE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF MUNICIPAL ORDINANCE - POSSESSION OF OBSCENE BUSINESS CARDS, IN VIOLATION OF RULE 17 OF STATE REGULATIONS NO. 20 - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 35 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
 Proceedings against )

JOSEPH FIMIANI )  
 T/a WASHINGTON CAFE )  
 422 South 3rd Street )  
 Camden, N. J., )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consump- )  
 tion License C-138, issued by the )  
 Municipal Board of Alcoholic )  
 Beverage Control of the City of )  
 Camden. )

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

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to charges that (1) he sold, served and delivered alcoholic beverages on his licensed premises during prohibited hours on Sunday, March 11, 1945, in violation of a municipal ordinance and (2) he allowed, possessed and distributed on or about the licensed premises, advertising matter containing obscene, filthy, lewd, lascivious and disgusting printing thereon, in violation of Rule 17 of State Regulations No. 20.

The departmental file discloses that on Sunday, March 11, 1945, at 10:30 a.m., three investigators of the Department of Alcoholic Beverage Control entered defendant's licensed premises and were served with alcoholic beverages by the licensee. A patron, who had come into the licensed premises a short time after the investigators entered, was served with a glass of beer by the defendant. The investigators thereupon made known their identity to the licensee, who readily admitted the sales and service of the alcoholic beverages.

During the course of the investigation, a number of cards advertising the defendant's business were seized when the investigators observed a writing in the nature of a riddle on the reverse side of the cards, the connotation of which appeared to be suggestive.

Defendant has a previous adjudicated record. His license was suspended by the local issuing authority for three days beginning February 26, 1940 and again by the local issuing authority for three days beginning April 20, 1942. The first suspension was imposed as a result of being found guilty of selling alcoholic beverages during prohibited hours and for keeping curtains drawn, and the other suspension resulted from a finding of guilt of sales of alcoholic beverages during prohibited hours and because of fraudulent information being given in his 1941-42 license application.

Under all of the circumstances, I shall suspend the license for a period of thirty-five days, less five days' remission for the plea of guilty entered herein, or a net suspension of thirty days.

Accordingly, it is, on this 9th day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-138, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Joseph Fimiani, t/a Washington Cafe, for premises 422 South 2nd Street, Camden, be and the same is hereby suspended for a period of thirty (30) days, commencing at 12:01 a.m. April 16, 1945 and terminating at 12:01 a.m. May 16, 1945.

ALFRED E. DRISCOLL  
Commissioner.

8. COURT DECISIONS - NEW JERSEY SUPREME COURT - MORRISSEY v. ALFRED E. DRISCOLL, COMMISSONER - RULE DISMISSING APPLICATION FOR WRIT OF CERTIORARI WITH COSTS - COMMISSIONER SUSTAINED.

NEW JERSEY SUPREME COURT

THE STATE OF NEW JERSEY )  
PATRICK MORRISSEY, )

Prosecutor, )

-vs- )

ALFRED E. DRISCOLL, State )  
Commissioner of Alcoholic )  
Beverage Control of the State )  
of New Jersey, )

Defendant )

ON CERTIORARI  
RULE DISMISSING  
APPLICATION FOR WRIT

This matter being opened to the Court by S. Melville Hussey, Esq., attorney for the prosecutor, in the presence of Samuel B. Helfand, Esq., appearing for Walter D. Van Riper, Attorney General, attorney for the defendant, and the Court having considered the affidavits submitted and having heard the arguments of counsel for the respective parties, and being of the opinion that the application should be denied;

It is, on this 7th day of April, 1945,

ORDERED, that the application for a writ of certiorari herein be and the same is hereby denied, with costs.

Let this rule be entered in the minutes.

Thomas J. Brogan  
Chief Justice.

On motion of  
Samuel B. Helfand,  
Of Counsel with Walter D.  
Van Riper, Attorney General,  
attorney for the defendant.

9. DISCIPLINARY PROCEEDINGS - PERMITTING THE CONSUMPTION 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

JOHN RIVELLO  
T/a JOHNNIE'S TAVERN  
State Highway 4-9  
Madison Township  
(Middlesex County), N.J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-28 issued by the Township Committee of the Township of Madison.

John Rivello, Defendant-licensee, Pro Se.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to charges that (1) he permitted the consumption of alcoholic beverages on his licensed premises during prohibited hours, in violation of Rule 1 of State Regulations No. 40; and (2) he failed to have his premises closed between 12 o'clock midnight, March 17, 1945 and 7:00 a.m. March 18, 1945, and permitted persons other than himself and bona fide employees to be and remain on the licensed premises, in violation of Rule 2 of State Regulations No. 40.

The departmental file discloses that, at 12:30 a.m. on March 18, 1945, two investigators of the Department of Alcoholic Beverage Control, upon observing four persons standing at the bar, entered defendant's licensed premises. As they entered, the patrons hurriedly consumed their drinks. The bartender, upon being questioned by the ABC agents, readily admitted the violations. Although the licensee was not present at the time, he is nevertheless fully accountable for violations committed on the licensed premises by his employees. Re Kneller, Bulletin 49, Item 4.

Defendant has no previous adjudicated record. I shall, therefore, suspend his license for a period of fifteen days, with a remission of five days for the plea, or a net suspension of ten days.

Accordingly, it is, on this 9th day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-28, issued by the Township Committee of the Township of Madison to John Rivello, t/a Johnnie's Tavern, for premises on State Highway 4-9, Madison Township (Middlesex County), be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. April 16, 1945 and terminating at 12:01 a.m. April 26, 1945.

ALFRED E. DRISCOLL  
Commissioner.

10. 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 )

JAMES H. HOLLOWAY )  
T/a HOLLOWAY'S )  
State Highway, Route 4 )  
Union Township, Ocean County )  
P. O. Box 5, Barnegat, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Union. )  
----- )

James H. Holloway, Defendant-licensee, Pro Se.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to charges that he sold alcoholic beverages, and failed to close his licensed premises, between midnight and 7:00 a.m. on March 18, 1945, in violation of Rules 1 and 2 of State Regulations No. 40.

In a written statement obtained by ABC agents from the defendant at the time of the violation, he admitted that, at 12:30 a.m. of the morning in question, there were six patrons at his bar, three of whom were still consuming alcoholic beverages.

Since the defendant has no previous record, and no aggravating circumstances appear to have attended the violation, I shall impose the usual fifteen-day penalty, with remission of five days for the plea, leaving a net suspension of ten days. Re Dey, Bulletin 659, Item 7.

Accordingly, it is, on this 11th day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Union to James H. Holloway, t/a Holloway's, for premises on State Highway, Route 4, Union Township (Ocean County), be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. April 17, 1945 and terminating at 12:01 a.m. April 27, 1945.

ALFRED E. DRISCOLL  
Commissioner.

By: Edward J. Dorton  
Deputy Commissioner.

11. MINORS - MUNICIPAL ALCOHOLIC BEVERAGE ORDINANCES DIRECTED AGAINST MINORS - HEREIN THE SUGGESTED TEXT OF A "MINORS" ORDINANCE FOR CONSIDERATION BY MUNICIPALITIES.

TO THE GOVERNING BODIES OF ALL NEW JERSEY MUNICIPALITIES:

The problem of sale and service of alcoholic beverages to minors is a serious one calling for a heavy responsibility upon licensees. Heretofore, that responsibility was truly stringent for the State Alcoholic Beverage Law originally provided that:

"Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor."  
(P.L. 1933, c. 436, sec. 77.)

Thus, regardless of a licensee's utmost good faith in trying to avoid sales to minors, such a sale violated the law and there could be no excuse.

In 1939, the legislature amended the above-quoted provision to read:

"Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) 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 (21) years of age or over." (P.L. 1939, c. 228; R.S. 33:1-77.)

Thus, the harsh consequences of a sale to a minor may be avoided, provided that the licensee complies strictly and fully with the amendment's three defense-requirements.

In its objective of preventing consumption of alcoholic beverages by minors, our law imposes penalties not upon the licensee alone but also upon the purchaser. Chapter 135 of the Laws of 1937 provides that:

"Any person who shall misrepresent or misstate his or her age or the age of any other person for the purpose of inducing any licensee or any employee of any licensee to sell, serve or deliver any alcoholic beverage to a person under the age of twenty-one years shall be deemed and adjudged to be a disorderly person and upon conviction thereof shall be punished by fine not exceeding two hundred dollars.

"All proceedings under this section shall conform to the procedure and practice set forth in subtitle 15 of the title Administration of Civil and Criminal Justice (§2:201-1 et seq.)." (R.S.33:1-81.)

Recently, several New Jersey municipalities, having determined that further safeguards are required, have adopted ordinances the object of which is to permit the punishment of minors who consume alcoholic beverages on licensed premises or who visit licensed premises for that purpose. Other municipalities have written to this Department requesting information as to the appropriate language and form of a "minors" ordinance.

There is no recommended model form of such ordinance designed as applicable in all of our varied municipalities where retail licenses are issued. It would appear appropriate, however, to offer certain suggestions to the extent that they may be helpful as the basis of deliberative discussion. I express no opinion at this time as to the merits and general advisability of adopting such an ordinance, but for careful consideration by the governing bodies of municipalities wherein a "minors" ordinance may be deemed desirable, the following is presented:

"1. It shall be unlawful for a minor to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing, or having served or delivered to him or her, any alcoholic beverage.

"2. It shall be unlawful for a minor to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages, or to purchase, attempt to purchase or have another purchase for him or her any alcoholic beverage.

"3. It shall be unlawful for a person to misrepresent or misstate his or her age or the age of any other person for the purpose of inducing any retail licensee, or an employee of a retail licensee, to sell, serve or deliver any alcoholic beverage to a minor.

"4. A violation of this ordinance shall, upon conviction thereof, be punishable by a fine of not more than one hundred dollars, or by imprisonment for not more than thirty days, or both such fine and imprisonment in the discretion of the court.

"5. This ordinance shall take effect upon final adoption and publication according to law."

*Alfred E. Driscoll*  
Commissioner.

Dated: April 10, 1945.

New Jersey State Library