

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

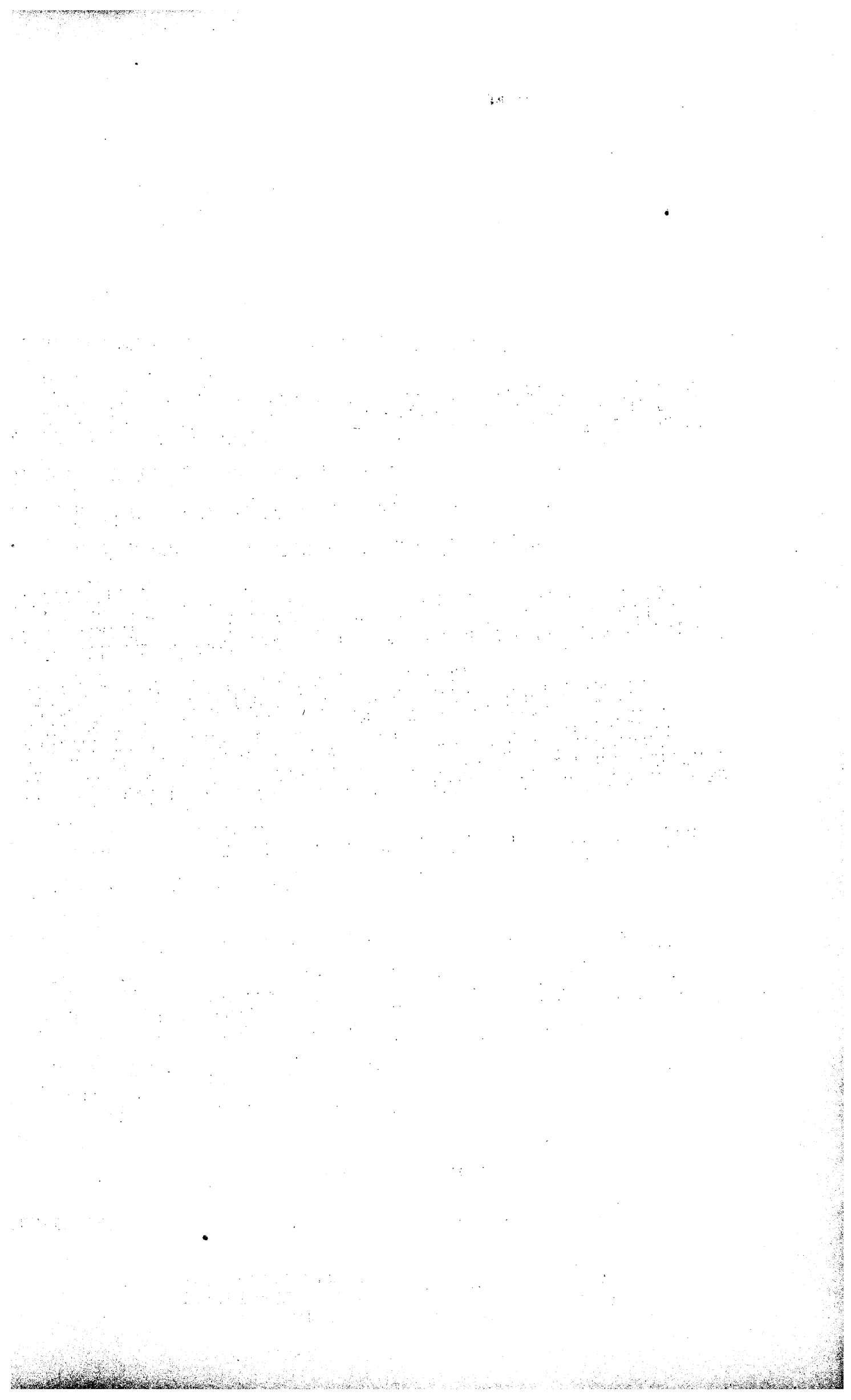
ULLETIN 641

DECEMBER 8, 1944

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

BULLETIN 641

DECEMBER 8, 1944

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY RETAILER FOR RESALE IN VIOLATION OF R. S. 33:1-2 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLES RAPPAPORT)
T/a BUDD LAKE STORE)
State Highway #6, Morgan Point)
Mount Olive Township)
P. O. Budd Lake, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Mount Olive.)
-----)

Charles Rappaport, Defendant-Licensee, Pro Se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads non vult to the following charge:

"On an occasion during May, 1944, and on two occasions during August, 1944, you sold alcoholic beverages contrary to the privileges of your license as defined by R.S. 33:1-12(1) in that you sold alcoholic beverages to another retailer, Frederick P. Bollinger, t/a Seven Gables, Route #6, Mount Olive Township, Budd Lake, New Jersey, for resale in that retailer's business; such sale by you being in violation of R. S. 33:1-2."

An investigator of the Department of Alcoholic Beverage Control, while making a routine inspection of another licensed premises (see Re Bollinger, decided herewith) discovered a bottle of Haig & Haig for which the licensee could not produce an invoice.

The defendant-licensee admits making the sales to the retail licensee, Frederick P. Bollinger, but does not recall the specific dates or the specific items he sold to him. However, he admits knowing that Bollinger was a licensee and that he was purchasing the whiskey for sale in his own tavern.

The violation appears to have resulted from the desire of one licensee to favor another so that the latter might accommodate his trade. However, if this practice were permitted to continue, proper control of the industry would be seriously impaired.

The licensee has no prior record. I will, therefore, suspend the license for fifteen days. Five days will be remitted for the plea, making a net suspension of ten days.

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

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

ORDERED, that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Mount Olive to Frederick P. Bollinger, t/a Seven Gables, for premises on State Highway #6, Mount Olive Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. November 27, 1944 and terminating at 2:00 A. M. December 7, 1944.

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - KOODRAY v. PATERSON - ORDER DISCONTINUING APPEAL.

ALICE KOODRAY,)

Appellant,)

-vs-

BOARD OF ALCOHOLIC BEVERAGE
CONTROL OF THE CITY OF PATERSON,)

Respondent)

ON APPEAL
O R D E R

Theodore D. Rosenberg, Esq., Attorney for Appellant.
George Surosky, Esq., Attorney for Respondent.
Paul Rittenberg, Esq., Attorney for the Objectors.

BY THE COMMISSIONER:

This appeal is from the denial of a person-to-person and place-to-place transfer of a plenary retail consumption license to appellant for premises at 259 Park Avenue, Paterson.

At the hearing, the attorney for appellant requested leave to discontinue the appeal. The attorneys for respondent and the objectors signified that they had no objection thereto. Since no reason appears to the contrary, the request will be granted.

Accordingly, it is, on this 27th day of November, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

4. 11:00 P. M. WAR BOND CALL

November 28, 1944

TO ALL NEW JERSEY RETAIL CONSUMPTION LICENSEES:

In a letter to all retail consumption licensees last week, I requested their active participation in the Sixth War Loan Campaign and urged them to purchase war bonds unstintingly. In particular, I have stressed the importance of retail licensees undertaking the sale of bonds to their patrons at all appropriate times.

Today I am calling upon them to take one further step:

For the balance of the Sixth War Loan Campaign ending December 16, 1944, every evening at 11:00 P.M., each New Jersey consumption licensee is requested to stop his normal business for a period of five minutes and devote that period to the solicitation of the purchase of war bonds by his or her patrons on the premises. In those establishments where music and entertainment are in progress, such music and entertainment should cease and the designated five-minute period should be devoted to taking subscriptions for war bonds. For this purpose, use your masters of ceremonies, waiters and bartenders during the 11:00 P.M. War Bond Call.

I am not unmindful of the inconvenience entailed in stopping normal business for even so brief a period of five minutes. However, this inconvenience must be recognized as nothing compared to the sacrifices our fighting men will be making at that very hour. Remember this and you will put your heart into the job of selling bonds during the five-minute period.

It is anticipated that every licensee in New Jersey will patriotically comply with my request herein and join in the observance of the 11:00 P.M. War Bond Call from now until December 16, 1944. It is your duty to devote the time between 11:00 P.M. and 11:05 P.M. from now until December 16th to the sale of war bonds. During this five-minute period, you will refrain from selling or serving alcoholic beverages.

Please refer to my letter of November 22nd, wherein I listed the name and address of the County Chairman in your county representing the Alcoholic Beverage Division in the Sixth War Loan Campaign. Contact your Chairman at once and obtain a supply of bond application blanks to be used in the solicitation of the sale of war bonds to your patrons. Ask him for full information as to the method to be followed.

ALFRED E. DRISCOLL
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

JULIA ABOFF)
377 Hawthorne Ave.)
Newark, 8, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-389, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Glickenhau & Glickenhau, Esqs., by Jacob S. Glickenhau, Esq., Attorneys for Defendant-Licensee. 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 four bottles of alcoholic beverages, the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

The bottles in question were seized at the licensed premises by an ABC agent on September 9, 1944, during the course of a routine inspection. Chemical analysis of each bottle indicated various discrepancies in acid and solid content from genuine samples of the same products.

The defendant denies that she, or anyone else to her knowledge, tampered with any of the bottles. She contends that, when the license was transferred to her in June 1944, she then purchased the liquor stock of the former owner, and that the bottles in question were part of that stock. She concludes, therefore, although admitting it is mere conjecture, that the variances occurred during the tenure of her predecessor in interest.

This explanation is subject to doubt since three of the four seized bottles were practically full when tested by the agent more than three months after the alleged purchase. In any event, it constitutes no defense to this action. The mere possession of the illicit beverages on licensed premises is sufficient to sustain the charge. Re Paula, Bulletin 618, Item 3. Moreover, where a licensee fails to adopt adequate means for ascertaining the genuineness of the open stock of liquor purchased from a prior owner, she must be viewed as necessarily assuming the risk if it subsequently develops that such liquor has been "refilled." Re Moritko, Bulletin 490, Item 4; Re Italian Kitchens, Inc., Bulletin 535, Item 10; Re Manziano and O'Brien, Bulletin 549, Item 8.

The license will be suspended for a period of ten days. Cf. Re Furnari, Bulletin 632, Item 9.

Accordingly, it is, on this 29th day of November, 1944,

ORDERED, that Plenary Retail Consumption License C-389, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Julia Aboff for premises 377 Hawthorne Ave., Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. December 4, 1944 and terminating at 2:00 A.M. December 14, 1944.

ALFRED E. DRISCOLL
Commissioner.

6. ALCOHOL ADDICTION - A DISEASE - THE APPROPRIATION OF FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS TO BE DEVOTED TO THE REHABILITATION OF THE ALCOHOLIC, THE DEVELOPMENT OF ADEQUATE INSTITUTIONAL FACILITIES FOR MEDICAL CARE AND THE PROMOTION OF TEMPERANCE EDUCATION, RECOMMENDED. (AN EXTRACT FROM THE COMMISSIONER'S STATEMENT ACCOMPANYING THE PROPOSED 1945-46 BUDGET FOR THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL)

From December 6, 1933 to November 1, 1944, the State of New Jersey and its various municipalities have collected One hundred forty-nine million, four hundred forty-three thousand, ninety-three dollars and fifty cents (\$149,443,093.50) in alcoholic beverage taxes and State and municipal license fees.*

During this same period, the Federal government, as a result of the manufacture, sale and distribution of alcoholic beverages in this State, has collected taxes in the amount of Three hundred forty-four million, nine hundred seventy-five thousand, six hundred fifty-nine dollars and eighteen cents (\$344,975,659.18).

Neither the State of New Jersey nor the Federal government has, at any time, assumed the full measure of responsibility for the care of the alcoholic, who, if not reclaimed by society and rehabilitated, will continue to be a constant threat to our hoped for standard of living. This was true prior to and during Prohibition. It is equally true today. The primary purpose of the license system, incidental fee and tax is to insure adequate control, promote temperance, and eliminate the bootlegger and racketeer. Revenue must remain a secondary consideration to the public welfare.

Alcohol addiction is "a disease worthy of study and intensive care".**

Accordingly, I earnestly recommend that the State begin at once to assume a greater portion of its obligation to society and that there be appropriated the sum of Five hundred thousand (\$500,000.00) Dollars to be devoted to the rehabilitation of the alcoholic, the development of adequate institutional facilities for the medical care of the alcoholic, and the promotion of temperance education. This is but a modest start on a task of tremendous importance and State-wide significance. Today citizens suffering from alcohol addiction are, in too many cases, consigned to the police, thrown into jail for a sobering-up period, and then left to their own devices without constructive aid from the medical profession, hospitals or society. Some unfortunate inebriates are permitted to serve repeated sentences, punctuated by brief periods of freedom, with no medical treatment of any kind provided. While

*Municipal license fees

December 6, 1933 to November 1, 1944 - - - - -	\$47,798,529.28
State alcoholic beverage taxes	
December 6, 1933 to November 1, 1944 - - - - -	95,287,829.81
State Department of Alcoholic Beverage Control	
license fees, etc., Dec. 6, 1933 to Nov. 1, 1944	6,356,734.41
	<u>\$149,443,093.50</u>

**E. M. Bluestone, M. D., Director Montefiore Hospital,
New York.

there is a growing public awareness that the alcoholic is a sick person, "he is more often than not treated as a voluntary subject of vice".*

During the First World War, we endeavored to solve the alcohol problem by law - namely, Prohibition. This did not cure the alcoholic and, indeed, the failure of society to accept the "experiment" produced many additional evils from which the country has not yet recovered.

Private and public institutions are presently overcrowded, and, because of the magnitude of the problem are loath to assume new responsibilities. Further, it is generally recognized that alcohol addiction is more than a medical problem and requires a special type of care and treatment. At the present time the Keswick Colony carries the burden in New Jersey for institutional treatment. Mention should also be made of the splendid work of Alcoholics Anonymous.

In a number of foreign countries and in a few American cities the problem of alcohol addiction has received considerable attention. In Sweden, for example, in every community there is a local official temperance board which possesses broad powers, including authority to send chronic alcoholics, picked up by the police, to public institutions for treatment. In Switzerland alcoholics are cared for by subsidized dispensaries as well as by approximately forty hospitals. The dispensaries are centers not only for treatment but also for information and social work guidance. In Russia it is reported that alcoholics are placed under the medical care of "specialists in narcology". Chronic alcoholics are committed to psychiatric hospitals. It is claimed that under this system 43% of the patients are completely cured and that an additional 30% are abstainers for a long period of time.

Enlightened and progressive members of the alcoholic beverage industry have long favored the promotion of temperance education. Unfortunately, prejudices on the subject of liquor have been so intense that a studied approach to the problem has never been made.

The appropriation in question should be administered jointly by the Department of Institutions and Agencies, Department of Health, Department of Education, and Department of Alcoholic Beverage Control.

Dated: November 21, 1944.

ALFRED E. DRISCOLL,
Commissioner.

*E. H. L. Corwin, Ph. D., Elizabeth V. Cunningham, Institutional Facilities for Treatment of Alcoholism, Quarterly Journal of Study on Alcohol, June, 1944.

7. 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 PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)
WILLOW INN, INC.)
239-241 N. Willow Street)
Trenton, 8, N. J.,)
Holder of Plenary Retail Consumption License C-119, issued by the Board of Commissioners of the City of Trenton.)
-----)

CONCLUSIONS AND ORDER

Willow Inn, Inc., by Morris Kalb, President.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that it sold, served and delivered alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Two girls, one eighteen and the other nineteen years of age, were each served several rounds of alcoholic beverages at the licensed premises on October 28 and October 31, 1944.

The charges also included a third minor, a twenty year old soldier, who accompanied the two girls to the tavern on October 28, 1944. Since he had been transferred to an unknown destination prior to the date scheduled for hearing, the charges, so far as they relate to this minor, are dismissed.

In view of the fact that the defendant, a licensee for almost ten years, has no previous record, and in the absence of aggravating circumstances, I shall impose the usual ten-day penalty, with five days remitted for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 29th day of November, 1944,

ORDERED, that Plenary Retail Consumption License C-119, issued by the Board of Commissioners of the City of Trenton to Willow Inn, Inc. for premises 239-241 N. Willow Street, Trenton, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A. M. December 4, 1944, and terminating at 2:00 A. M. December 9, 1944.

ALFRED E. DRISCOLL
Commissioner.

8. LICENSE APPLICATION HEARING - LICENSE GRANTED.

In the Matter of an)
 Application by)
 ROBERT BRETT,)
 T/a BRETT'S CONFECTIONERY,)
 for a plenary retail distribution)
 license for premises located at)
 251 Elm Street)
 East Paterson, N. J.)
 -----)

CONCLUSIONS

R. Sery Nicosia, Esq., Attorney for Applicant.
Wendel Joseph Staub, an Objector, Pro Se.

BY THE COMMISSIONER:

On September 28, 1944 Robert Brett, t/a Brett's Confectionery, filed with the State Commissioner of Alcoholic Beverage Control an application for a plenary retail distribution license for premises located at 251 Elm Street, Borough of East Paterson. The application was filed with the Commissioner because Robert Brett is a member of the Borough Council and therefore a member of the issuing authority in the Borough of East Paterson. In such cases, R. S. 33:1-20 provides, in effect, that no license shall be issued by any issuing authority to any member thereof but that application for such license may be made by such member directly to the Commissioner, who is authorized to issue such license, subject to rules and regulations, upon the same terms and conditions and for the same fee as other licenses of the same class are issued by said governing board or body.

The license application was accompanied by a true copy of a resolution adopted by the Mayor and Council of the Borough of East Paterson at a meeting held on September 20, 1944, wherein it is provided that:

"Whereas the Mayor and Council of the Borough of East Paterson, the license issuing authority of the Borough of East Paterson, have no objections to the issuance of the license applied for and consent thereto, and, furthermore, is not aware of any circumstances of provisions of law or local ordinance which would prohibit the issuance of said license.

"Now, therefore, be it resolved by the Mayor and Council of the Borough of East Paterson that we recommend the issuance of plenary retail distribution license to Robert Brett for premises located at 251 Elm Street, East Paterson, New Jersey."

An investigator of the Department of Alcoholic Beverage Control who was assigned to investigate the applicant and the premises sought to be licensed has reported to me that the applicant appears to be fully qualified; that the premises consist of a store which is owned by the applicant; that the premises are not within 200 feet of a church or school and that there are no zoning regulations which would prevent the issuance of the license. Notice of application for this municipal license appears to have been published on September 29, 1944 and October 6, 1944. The Chief of the municipal Fire Department has certified that the premises comply with the rules and regulations of that Department and the Secretary of the municipal Department of Health has certified that the premises conform to the regulations of the sanitary code concerning public establishments.

On October 6, 1944 written objections to the issuance of this license were filed with me by Wendel Joseph Staub and, in accordance with the provisions of Rule 5 of State Regulations No. 5 and Rule 6 of State Regulations No. 2, a hearing upon said objections was held at the offices of this Department at which the applicant and the objector were heard.

Since December 1941 the objector has held a plenary retail distribution license for premises located at 1 Summit Avenue, East Paterson. The basis for his objection appears to be that there are too many licensed premises in that section of the borough wherein the objector's premises and the applicant's premises are located. It appears that in December 1941, when Mr. Staub obtained his license, an application by another individual for premises at 14 Summit Avenue was also pending and that after some hesitation the local issuing authority decided to grant both of the pending applications. Both of these have been renewed to date. It is admitted that there is no municipal regulation limiting the number of plenary retail distribution licenses and the sole objection appears to be that there is a sufficient number of licenses in the vicinity.

The evidence of Mr. Brett discloses that he has been conducting a luncheonette, newspaper and confectionery store without a liquor license at his premises for many years. Although his premises are only 500 or 600 feet from the other licensed premises mentioned herein, they are located on another street in a small business neighborhood. The number of licenses that should be permitted in any given section of a municipality is ordinarily a question to be decided in the first instance by the local issuing authority, and hence, since the application is made to me, I must be guided to a great extent by the apparent current policy of the issuing authority. It appears also that the local issuing authority has recently increased the number of plenary retail distribution licenses in the borough from four to six and it would further appear that the only reason why the seventh plenary retail distribution license was not issued to Mr. Brett was because he was a member of the Borough Council.

The evidence herein shows that the borough is growing in population and by their recent actions the Mayor and Council of the Borough of East Paterson have indicated that in their opinions three additional plenary retail distribution licenses are required to take care of the needs of the residents of the borough and that one of these licenses may properly be located at Mr. Brett's premises.

Thus, despite the fact that in my opinion East Paterson, with seventeen plenary retail consumption licenses (all potential package stores under our present law), six plenary retail distribution licenses (package stores) and one club license, has an overabundance of places licensed for the sale of alcoholic beverages, I am unwilling, in the instant proceedings, to override the expressed policy of the municipality by denying the present application. To do so would apparently serve no useful purpose. The only result would be to discriminate against the applicant, who appears to be fully qualified, because he happens to be a member of the municipal council. A denial of the present application would leave the door open for the municipal issuing authority to grant a plenary retail distribution license to some other applicant not required to apply to the Commissioner in the first instance. Had the objector or any interested citizen taken an appeal from the action of the municipal issuing authority granting the two distribution licenses recently issued, the problem of the proper number of licenses to be issued in East Paterson would have been presented squarely for determination unencumbered by the question of discrimination involved herein.

In my judgment, it is imperative that the Mayor and Council of East Paterson take immediate steps by appropriate action to further limit the number of licenses that may be issued. The action to be taken, while affording reasonable protection to present licensees with good records, should contemplate an ultimate reduction in the number of licenses.

The license applied for will be granted if and when the application for license is completed.

ALFRED E. DRISCOLL
Commissioner.

9. FAIR TRADE - NOTICE - COMPLETE PUBLICATION.

December 1, 1944

The next official publication of Minimum Resale Prices pursuant to Fair Trade rules (Regulations No. 30) will become effective on January 1, 1945. Price listings must be filed at the offices of this Department not later than Friday, December 8, 1944.

It is my decision that the publication shall combine all of the prices into one complete pamphlet superseding the April 1944 publication and the two separate succeeding supplements of July and September 1944 now in force.

In submitting price lists to the Department for this complete publication, it is further my decision that:

(1) A complete schedule of all items offered for sale by manufacturers and wholesalers in this state shall be submitted, excepting those items withdrawn in the September 1944 supplement, which items will be permitted to remain unlisted for a further period. All items currently price listed in the April 1944 publication and supplements thereto, as well as new items and changes in old items, must be submitted unless good cause be shown the Commissioner on or before Friday, December 8, 1944.

(2) Items which for any reason are not listed in the forthcoming complete publication effective January 1, 1945 may not be price-advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece, in this state, unless the prices to be advertised by the retailers are the OPA ceiling prices.

(3) Listers are placed on notice that I desire the maintenance of the schedule of OPA markups for all items listed in the forthcoming publication.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the price list is mailed to all retail licensees.

ALFRED E. DRISCOLL
Commissioner.

10. ACTIVITY REPORT FOR NOVEMBER, 1944

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - - 2 Bootleggers - - - - - 10
 Total number of persons arrested - - - - - 12

SEIZURES: Stills - 1 to 50 gallons daily capacity - - - - - 4
 50 gallons and more daily capacity - - - - - 0
 Total number of stills seized - - - - - 4
 Mash - gallons - - - - - 60
 Motor vehicles - Trucks - - - - - 0
 Passenger cars - - - - - 1
 Total number of motor vehicles seized - - - - - 1
 Beverage alcohol - gallons - - - - - $\frac{1}{2}$
 Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - - 23
 Wine - gallons - - - - - 4
 Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - - 5

RETAIL LICENSEES:

Total number of premises inspected - - - - - 1,134
 Total number of bottles gauged - - - - - 8,792
 Total number of premises where violations were found - - - - - 38
 Total number of violations found - - - - - 46
 Type of violations found:
 Illicit (bootleg) liquor - - - - - 0 Improper beer tap markers - - - - - -3
 Gambling devices - - - - - 0 Stock disposal permits necessary - - - - - -8
 Prohibited signs - - - - - 1 No sign denoting legal sale hours - - - - - -
 Unqualified employees - - - - - -12 off-premises consumption - - - - - -21
 "Fronts" (concealed ownership) - 0 Other types of violations - - - - - -1

MILITARY AREA PATROL INSPECTIONS: - - - - - 465

STATE LICENSEES:

Premises inspected - - - - - 22
 License applications investigated - - - - - 8

COMPLAINTS:

Investigated, reviewed and closed - - - - - 313
 Investigation assigned, not yet completed - - - - - 289

LABORATORY:

Analyses made - - - - - 112
 "Shake-up" cases (alcohol, water and artificial coloring) - - - - - 9
 Liquor found to be not genuine as labeled - - - - - 7

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - - 10
 Persons fingerprinted for non-criminal purposes - - - - - 136
 Identification contacts with other enforcement agencies - - - - - 200
 Motor vehicle identifications via N. J. State Police Teletype - - - - - 22

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - - 13
 Cases instituted at Department - - - - - 15
 Supplemental charges in cases already instituted at Department - - - - - 2
 Cancellation proceedings - - - - - 1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - - 40
 Appeals - - - - - 7 Seizures - - - - - -3
 Disciplinary proceedings - - - - - 13 Application for license - - - - - -1
 Eligibility - - - - - 10 Lifting of automatic suspension - - - - - -1

PERMITS ISSUED:

Total number of permits issued - - - - - 1,271
 Unqualified employees - - - - - 126
 Solicitors - - - - - 56
 Social affairs - - - - - 210
 Home manufacture of wine - - - - - 575
 Disposal of alcoholic beverages - - - - - 182
 Miscellaneous permits - - - - - 122

Respectfully submitted,
 Erwin B. Hock
 Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS -- CHARGE OF SELLING ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED -- DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against

WILLIAM WEST
136 Mercer Street
Hightstown, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3 issued by the Common Council of the Borough of Hightstown.

Albert C. Barclay, Esq., Attorney for Defendant-licensee.
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to charges alleging that on September 2, 1944, and on divers dates theretofore, he sold alcoholic beverages to Bertha ---, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On the evening of September 2, 1944, two agents of the Department of Alcoholic Beverage Control visited defendant's premises. At the hearing they testified that they seized a bottle of beer which was standing on the bar in front of the alleged minor and her husband, both of whom are colored. The husband is twenty-seven years of age. The alleged minor testified that she had entered the premises with her husband on the evening in question and that her husband purchased from the bartender two bottles of beer which he and she consumed. She testified also that she had visited defendant's premises on previous occasions and had been served beer by the same bartender.

The principal question in this case is whether or not the evidence is sufficient to establish that Bertha --- was a minor on September 2, 1944. She testified that she was born in Summerton, South Carolina, on September 7, 1924. There is no other testimony as to her age. Defendant contends, as a matter of law, that this evidence is not sufficient to establish the fact that Bertha was a minor. I believe that defendant's contention is without merit. A minor is a qualified witness to testify as to his or her own age. See Wigmore on Evidence, Sec. 667. State v. Girone, 91 N.J.L. 498; State v. Calabrese, 99 N.J.L. 312, aff'd 100 N.J.L. 412; State v. Andoloro, 108 N.J.L. 47. However, as the Court said in State v. Girone, supra:

"Whether or not the prosecutrix testified truthfully as to her age was a fact for the jury to decide."

In this case, therefore, I am called upon to decide, as a question of fact, whether I should accept as true the uncorroborated testimony of the witness that she is a minor.

After the hearing herein, a representative of the Department of Alcoholic Beverage Control communicated with the State Board of Health of South Carolina and requested an exemplified copy of the birth record of Bertha, giving her maiden name. In reply, the Director of the Bureau of Vital Statistics of South Carolina advised me that some colored children of that name were registered in 1924 but that none of

them was from Summerton. He requested the names of the father and mother of the child. After this information had been furnished to him, he advised me that he could find no record in his Department of the birth of this child.

Bertha testified at the hearing that she obtained the information as to the date of her birth from her father. When first questioned by the ABC investigators, she told them that she was twenty years of age. Although recently married, she testified incorrectly at the hearing as to the date of her marriage. The Hearer advises me that, judging from her appearance, she may be over the age of twenty-one years. Under all the circumstances, I conclude that the Department has not sustained the burden of proof in establishing that Bertha was a minor when the alleged violation occurred. Hence I shall dismiss the charges.

Accordingly, it is, on this 30th day of November, 1944,

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

12. APPELLATE DECISIONS - OHME v. SEA BRIGHT.

DAVID OHME,)
)
 Appellant,)
)
 -vs-)
)
 BOROUGH COUNCIL OF THE BOROUGH)
 OF SEA BRIGHT,)
)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Frederic C. Ritger, Esq., Attorney for Appellant.
Leon Reussille, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license to appellant for premises located at 1088 Ocean Avenue, Sea Bright, N. J.

The only issue raised by the pleadings is whether the premises sought to be licensed come within the provisions of R. S. 33:1-76 providing, inter alia, that "no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church.***."

An examination of the evidence discloses the following: The First Methodist Church of Sea Bright is located on the northwesterly corner of Ocean Avenue and Church Street, in the Borough of Sea Bright. Two buildings with a common partition wall between them apparently occupy the church property. The building fronting exclusively on Ocean Avenue and occupying the northerly portion of the church property is occupied by the Pastor of the church as his home. The adjoining building on the corner of Ocean Avenue and Church Street houses the church and Sunday school. On the main floor there is one large room divided in two by a movable partition consisting of a series of folding doors which may be rolled or folded up against the ceiling. The Ocean Avenue side of this large room appears to be regularly used for church services. In it are located the pulpit, the organ and formal church pews. The entrance to this room when the movable partitions are in place is located at the

southeast corner of the building. It is conceded that this is the main entrance to the church and that the distance from it to the nearest entrance to the proposed licensed premises is slightly more than 200 feet.

The other side or northerly portion of the church building when the movable partitions are in place is apparently used for a Sunday school, choir practice and other church meetings. The entrance to this portion of the church building is a doorway located on Ocean Avenue. This entrance is conceded to be less than 200 feet, namely, 162 feet from the nearest entrance of the proposed licensed premises.

The testimony indicates that during the summer months the partitions between the two rooms are rolled up against the ceiling and that the main floor of the church building thereupon becomes one open room and the entire premises are thereupon used for church services. When this takes place, those attending the church services may use either the main entrance on the corner or the one on Ocean Avenue. It thus appears that during the summer months one of the entrances used to gain access to formal church services is clearly within 200 feet of the nearest entrance of the proposed licensed premises.

Appellant, however, contends that this particular entrance is the entrance to the Sunday school and is not the entrance to the church and such being the case, under a proper interpretation of the statute and decisions cited by counsel for the appellant, the action of the municipal issuing authority was erroneous and should be reversed.

With this contention I do not agree. R. S. 33:1-76 specifically states that the 200 foot restriction is "for the benefit not of property but of persons attendant therein***." It is significant that the Legislature, in prescribing the method of measurement, states: "Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed." (Emphasis ours). It is clear that the Legislature did not intend that the measurement should be from the main entrance of the church to the nearest entrance of the proposed licensed premises. On the contrary, it is perfectly apparent that the Legislature had in mind any entrance to the church building used by churchgoers.

R. S. 33:1-76 clearly expresses a legislative intention to establish a minimum distance of 200 feet between the nearest doorways of tabernacle and tavern in the absence of a waiver by "the duly authorized governing body on authority" of the church. With respect to this waiver, it is to be noted that even when given, it is only "effective until the date of the next renewal of the license." In other words, the church may or may not give the waiver and, in the absence of such waiver, neither the local issuing authority nor the Commissioner has any authority to issue a license. Irrespective of whether or not the church may have issued a waiver in the past in favor of an applicant for the proposed premises, the fact is that no such waiver was granted in the instant case.

Counsel for the appellant has cited a number of decisions and opinions in support of his position that the entrance on Ocean Avenue is not an entrance to the church within the meaning of the statute. While it is true that, in a primary sense, the word "church" has upon occasion been held not to include a separate parish house used for a Sunday school and in which prayers were read, hymns sung and scriptures read on Sunday and on other days devoted to choir practices, church meetings and socials (14 C. J., Sec.; p. 1116), and that this interpretation was followed in Newark Athletic Club v. Board of Adjustment of Newark, 7 N. J. Misc. 55, nevertheless the term "church" has been

defined as an edifice or place of assemblage for worship to the honor of God and religion or a place where persons regularly assemble for worship. (14 C.J., Sec.; p. 1116). In the Newark Athletic case, supra, the parish house was located about a block and one-half from the church, and hence this case is to be distinguished from the instant one.

In my opinion, the doorway of the church building on Ocean Avenue used in the summer time by those attending church services and apparently throughout the year by those attending Sunday school is an entrance to the church within the intent of the statute and this irrespective of whether it leads to a room devoted to a religious service designated as "Sunday School" or to the main church auditorium. It is not within the province of the Commissioner to subdivide a church building, all of which is customarily used for religious purposes, and to attempt to distinguish between the different religious uses to which various parts of the building may be devoted. Even if the entrance on Ocean Avenue were used only during the summer months, this would not alter its character. As the statute so plainly states, the restriction is for the "benefit ** of persons attendant therein", and if, during these summer months, both entrances were used by those attending church services, it follows that the measure must be from the entrance nearest the licensed premises, in this case less than 200 feet away. Such being the case, the action of the Borough Council must be upheld and the appeal dismissed.

It may also be noted that merely because the nearest entrance to the church is more than 200 feet from the nearest entrance of the proposed licensed premises, the municipal issuing authority, in the absence of other grounds for refusing to grant the license, is not thereby required to issue a license. It may, in the exercise of its discretion, decide as a matter of public policy that a greater distance between entrances is desirable, and where the public policy has been expressed and followed, it will be supported on appeal.

Accordingly, it is, on this 1st day of December, 1944,

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

Alfred E. Driscoll
Commissioner.