

MR. ZEMEL

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N. J. 07102

BULLETIN 1596

January 12, 1965

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - SABLE v. GLEN GARDNER.
2. DISCIPLINARY PROCEEDINGS (Newark) - GAMBLING (HORSE RACE BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS.
3. DISCIPLINARY PROCEEDINGS (Somers Point) - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 60 DAYS.
4. DISCIPLINARY PROCEEDINGS (Egg Harbor Township) - SALE TO MINORS - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 80 DAYS.
5. STATUTORY AUTOMATIC SUSPENSION (Weehawken) - ORDER LIFTING SUSPENSION.
6. MORAL TURPITUDE - POSSESSION OF NARCOTICS - CONVICTION HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.
7. DISQUALIFICATION REMOVAL - IMPAIRING MORALS OF CHILDREN - ASSOCIATION WITH ALCOHOLIC BEVERAGE INDUSTRY DEEMED CONTRARY TO PUBLIC INTEREST - PETITION DENIED.
8. MORAL TURPITUDE - POSSESSION OF LOTTERY SLIPS - CONVICTION DEEMED TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.
9. ACTIVITY REPORT FOR NOVEMBER 1964.
10. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (NUMBERS BETS) - POSSESSION OF LOTTERY TICKETS - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

2. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against)
 Poodle Club, Inc.)
 24 William Street)
 Newark, New Jersey,)
 Holder of Plenary Retail Consumption License C-649, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
 -----)

CONCLUSIONS

AND

ORDER

Vincent P. Torppey, Esq., Attorney for Licensee
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On June 18, 23, July 7, 16 and 21, 1964, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

The Division's case was developed mainly through the testimony of ABC Agents G and M. Agent G testified substantially to the following effect: He was specifically assigned to investigate gambling, horse race bets, at the licensed premises. On June 18, 1964, at about 11:30 a.m., he visited the licensed premises with Agent M and went to the bar. Tending bar was Anthony Margotta, who admitted at the hearing that he was a 50% stockholder of the licensee corporation and the operator of the tavern. Agent G observed a male sitting in a booth hand a scratch sheet listing horse racing entries at various tracks and a slip of paper to Margotta. Shortly thereafter a second male came in, sat in the same booth and was observed reading the "Telegraph." He wrote on a piece of paper, gave the paper and some money to Margotta and departed. Margotta went to the telephone and appeared to be talking with someone. Neither male had anything to eat or drink, and remained in the tavern for a short period of time. Agent G said to Margotta at the bar, "If I could see the scratch sheet a fellow, a buddy of mine gave me a tip." Agent G asked for a paper and Margotta directed him to the "Telegraph" in the booth. After consulting the "Telegraph", Agent G returned to the bar and asked Margotta if he could play two horses. Margotta asked for the names of the horses and said he would call them in right then. After Margotta made a call, he said "The bet is in," whereupon the agent paid Margotta \$8. Margotta informed Agent G that, if the horse won, he could collect the money the following night.

On June 23, 1964, Agent G revisited the tavern with Agent M at noontime and was told by Margotta he had money coming to him. Margotta took \$5 out of the cash register and gave the money (which represented the winnings on the horse bet) to Agent G. A male who was seen on the previous visit came in, sat at the same booth, was observed consulting a scratch sheet and handing Margotta a slip of

paper which he wrote out. When Margotta came to the bar, Agent G said he had a couple of good ones he wanted to play and asked for the scratch sheet. Margotta brought him the scratch sheet and the "Telegraph." The agent wrote out certain horse bets totalling \$12 upon a slip of paper given to him by Margotta. Margotta took the slip of paper, went to the telephone after saying he would call in the bet, took out a match and burned the slip of paper after making the call, and received \$12 from the agent.

The testimony as to the visit of July 7, 1964, was substantially the same. The agent wrote out bets on horses costing \$12 and gave the slip of paper containing the bets and the money to Margotta.

On the visit of July 16, 1964, Margotta paid the agent \$90 which represented the winnings of the betting of July 7, 1964. Upon request of the agent for a scratch sheet, Margotta replied "I haven't got the scratch sheet, all I bought was the 'Telegraph.' There was a raid of five taverns yesterday and I have to be careful." Margotta furnished the agent with the "Telegraph," a piece of paper and pencil, and accepted \$10 to bet on several horse races.

On the occasion of the last visit on July 21, 1964, Agent G entered the licensed premises with Agent M while Agents G and D waited in the vicinity. Agent G again made several horse race bets on a piece of paper furnished by Margotta and handed to Margotta the piece of paper and \$12 (the serial numbers of which had been previously recorded) to cover the cost of the bets, following which Margotta said he would call the bets in right now. Margotta did go to the telephone and, as he returned behind the bar, Agent M, who had stepped out to signal the other agents, re-entered the premises with Agents G, D and three Newark detectives. As the officers came in, Margotta threw the slip of paper containing the bets on the bar.

Upon request of one of the detectives, Margotta emptied his pockets of the \$12 marked money.

On cross examination Agent G testified to substantially the same effect, adding that he was in the tavern on one occasion prior to June 18, 1964, more specifically, on June 11, 1964, dressed in work clothes, on the specific assignment of investigating horse race betting, and that no talk of betting occurred. He further testified that, on the visit of June 18, 1964, he asked Margotta if he could place a bet for him, and Margotta responded, "What's the name of the horse?" The agent denied that Margotta responded to the effect that it was a violation of ABC regulations and he was afraid to jeopardize his license.

It was stipulated that the testimony of Agent M would be corroborative of the testimony of Agent G, with right of cross examination reserved. A searching cross examination proved to be mainly corroborative of the testimony of Agent G.

In its defense, Margotta, testifying in behalf of the licensee, claimed that the males in the booth did not place bets with him; that one was an insurance salesman and the other was a beer salesman; that, aside of placing horse bets with the ABC agents, he never placed any bet for any patrons. Margotta also stated that he was a very frequent visitor at the track; that Agent G seemed to know more about horses than he did; that he was a horse player and not a bookmaker; that he pooled the bets with the agent; that he told Agent G he had to be very careful and that he didn't do it

as a business and that, as a friend, he would do it; that he was doing it as a favor, not as a gambling thing; that the agents visited the tavern several times before June 18, 1964, when he first accepted a bet; that they were talking about spraying paints and were very friendly with him. On cross examination Margotta admitted calling the bets in from the telephone on the licensed premises, and claimed that he was entrapped into doing it. The licensee produced no other evidence.

On rebuttal, Agent G denied being in the licensed premises more than once prior to June 18, 1964, and denied betting in partnership with Margotta.

In his brief, the licensee's attorney relied upon the defense of entrapment. As to this, a consideration of the evidence adduced herein clearly indicates that the licensee had a predisposition and actually engaged in, allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon the licensed premises, in violation of Rule 7 of State Regulation No. 20.

The solicitation by the representatives of the Division was readily accepted; their activity, although planned in advance, merely afforded the licensee the opportunity to perpetrate in specific instances what the evidence indicates it was prepared to do as a matter of routine practice. See State v. Rosenberg, 37 N.J. Super. 197 (App.Div. 1955), certif. denied 20 N.J. 303 (1956). See also, Re Highlander Hotel Corp., Bulletin 1475, Item 1, affirmed by the Superior Court, Appellate Division (1963), not officially reported, recorded in Bulletin 1533, Item 1.

I find no evidence from which it could be inferred that the agents implanted an unlawful design in his mind, or that they practiced any trickery, persuasion or fraud to induce licensee's officer and employee to commit a wrongful act. The agents did not envisage the offense, plan it, and activate its commission by one not theretofore intending its perpetration. He did not lure or entrap the employee into committing an offense which he otherwise would not have committed. Rather, the agents, acting in good faith and in the pursuit of their duties, merely furnished the opportunity for the commission of the offense. The mere solicitation to place bets on horse races was not in itself an entrapment. The rationale of Masciale v. United States, 356 U.S. 386, 78 C. Ct. 827 (1957), affirming 236 F. 2nd 601 (2 Cir. 1956), rehearing denied 357 U.S. 933, 78 S. Ct. 1367 (1958), is applicable. In that case a government informer, known to the defendant for four years, introduced him to a government agent who was posing as a big narcotics buyer. Defendant was arrested after he obtained drugs for the agent. The court held there was no entrapment. Hence, under principles of established law, as above indicated, there was no entrapment herein.

After reviewing the evidence and the memorandum submitted by the licensee's attorney, I conclude that the Division has established the truth of the charge herein by a fair preponderance of the evidence. I recommend that the licensee be found guilty of said charge.

The licensee has a previous record of suspension of license by the Director for twenty days, effective July 2, 1963, for sale to minors. Re Poodle Club, Inc., Bulletin 1525, Item 5. The prior record of dissimilar violation within the past five years considered, it is further recommended that the license be

suspended for sixty-five days. Re Mellolark, Inc., Bulletin 1573, Item 2.

Conclusions and Order

Written exceptions to the Hearer's Report and argument with reference thereto were filed by the attorney for the licensee within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of testimony, the Hearer's Report and the exceptions and argument filed with reference thereto, which exceptions and argument I find without merit, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Hence I find the licensee guilty as charged. I shall suspend the license for a period of sixty-five days.

Accordingly, it is, on this 10th day of November 1964,

ORDERED that Plenary Retail Consumption License C-649, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Poodle Club, Inc., for premises 24 William Street, Newark, be and the same is hereby suspended for sixty-five (65) days, commencing at *2 a.m. Tuesday, November 17, 1964, and terminating at 2 a.m. Thursday, January 21, 1965.

JOSEPH P. LORDI
DIRECTOR

*By order dated November 16, 1964, effective dates were amended to commence at 2 a.m. Tuesday, December 1, 1964 and to terminate at 2 a.m. Thursday, February 4, 1965.

3. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against

Richard K. McClain and Ruth M. McCann
t/a Bay Shores Cafe
998 Bay Avenue
Somers Point, New Jersey

)
)
) CONCLUSIONS

) AND

Holder of Plenary Retail Consumption License C-13, issued by the Common Council of the City of Somers Point

) ORDER
)

Frank J. Ferry, Esq., Attorney for Licensees
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that between July 26 and September 2, 1964, they hindered investigation, in violation of R.S. 33:1-35.

Reports of investigation disclose that John H. McCann and Jack Murray, co-managers of the licensed business, induced an essential minor witness in then pending disciplinary proceedings against the licensees to accept an expense-paid vacation to Hyannis, Mass.,

so that she would be out of the State of New Jersey on the date of scheduled hearing and thus not available to testify against the licensees. (Ultimately, the licensees pleaded non vult to the charge, obviating the need for any hearing, and were penalized by suspension of license for thirty days effective September 8, 1964. Re McClain and McCann, Bulletin 1582, Item 8.)

In addition, the reports disclose that during the conduct of investigation of the occurrence of the foregoing incident, John H. McCann refused to permit the agents to inspect his living quarters at and part of the licensed premises, notwithstanding the agents' request to make the inspection and their informing him that his refusal might be deemed hindering an investigation and cause for disciplinary action against the license. (Of course, copies of these reports have been forwarded to the Atlantic and Cape May County Prosecutors.)

Licensees have a record of previous suspension of license as follows:

- (1) License then held individually by Richard K. McClain
 - (a) by the municipal issuing authority for three days effective June 10, 1947, for mislabeled beer taps;
 - (b) by the municipal issuing authority for fifteen days effective June 14, 1949, for sale to minors; and
 - (c) by the Director for thirty-five days effective September 17, 1951, for sale to minors (Re McClain, Bulletin 916, Item 2);
- (2) License held by Richard K. McClain and Ruth M. McCann
 - (d) by the municipal issuing authority for five days, affirmed on appeal by the Director effective May 2, 1960, for sale to minors (Re McClain and McCann, Bulletin 1319, Item 5; Bulletin 1340, Item 4);
 - (e) by the Director for twenty-five days effective May 28, 1962, for sale to minors and sale of contraceptives (Re McClain and McCann, Bulletin 1427, Item 6; Bulletin 1460, Item 3); and
 - (f) by the Director for thirty days effective September 8, 1964, for sale to minors (Re McClain and McCann, Bulletin 1582, Item 8).

Considering the serious nature of the violation, involving as it does attempted subversion of justice by tampering with an essential witness, and thus striking at the very heart of control, a penalty of outright revocation of license might well be warranted. However, since this is a matter of first impression, and since Division records and reports of investigation show that the licensed business is not presently being conducted and customarily is conducted only during the summer season, it is my opinion that the licensees will be adequately and sufficiently penalized by a suspension of the license to be effective during the summer season after business is normally resumed.

All of the circumstances considered, the license will be suspended for sixty days, the suspension to commence after Memorial Day weekend when the licensed business is normally resumed.

Accordingly, it is, on this 18th day of November, 1964,

ORDERED that Plenary Retail Consumption License C-13, issued by the Common Council of the City of Somers Point to Richard K. McClain and Ruth M. McCann, t/a Bay Shores Cafe, for premises 998 Bay Avenue, Somers Point, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1965, commencing at 3:00 a.m. Monday, May 31, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Friday, July 30, 1965.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 80 DAYS.

In the Matter of Disciplinary Proceedings against
Dunes Club, Inc.
t/a The Dunes
Somers Point-Longport Boulevard
at Junction
Egg Harbor Township
PO Box 434, Longport, N. J.

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-29, issued by the Township Committee of the Township of Egg Harbor

Frank J. Ferry, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

After partial hearing, licensee pleaded non vult to a charge alleging that on August 13, 1964, it sold drinks of alcoholic beverages to three minors, two age 19 and one age 20, in violation of Rule 1 of State Regulation No. 20. In addition, the licensee pleads non vult to a supplemental charge alleging that between August 20 and 26, 1964, it hindered investigation, in violation of R.S. 33:1-35.

With respect to the hindering charge, reports of investigation disclose that John H. McCann, 30% stockholder and vice president and treasurer of the licensee corporation, paid one of the minors, then under Division subpoena, one hundred dollars to stay away from the scheduled hearing, and attempted to influence another of the minors, also under subpoena, likewise to stay away, thus seeking to abort the prosecution of the charge of sale to the minors. (Of course, copies of these reports have been forwarded to the Atlantic and Cape May County Prosecutors.)

Although the licensee has no previous record, the license held by Richard K. McClain (its president and 20% stockholder), t/a Bay Shores Cafe, 998 Bay Avenue, Somers Point, was suspended as follows:

- (1) License then held individually by Richard K. McClain
- (a) by the municipal issuing authority for three days effective June 10, 1947, for mislabeled beer taps;
 - (b) by the municipal issuing authority for fifteen days effective June 14, 1949, for sale to minors; and
 - (c) by the Director for thirty-five days effective September 17, 1951, for sale to minors (Re McClain, Bulletin 916, Item 2);
- (2) License held by Richard K. McClain and Ruth M. McCann
- (d) by the municipal issuing authority for five days, affirmed on appeal by the Director effective May 2, 1960, for sale to minors (Re McClain and McCann, Bulletin 1319, Item 5; Bulletin 1340, Item 4);
 - (e) by the Director for twenty-five days effective May 28, 1962, for sale to minors and sale of contraceptives (Re McClain and McCann, Bulletin 1427, Item 6; Bulletin 1460, Item 3); and
 - (f) by the Director for thirty days effective September 8, 1964, for sale to minors (Re McClain and McCann, Bulletin 1582, Item 8).

That the previous record of suspensions of license of McClain is chargeable to the licensee herein, see Re C.A.R. Corporation, Bulletin 1574, Item 8.

Considering the serious nature of the violation alleged in the supplemental charge, involving as it does attempted subversion of justice by tampering with essential witnesses, and thus striking at the very heart of control, a penalty of outright revocation of license might well be warranted. However, since this is a matter of first impression, and since Division records and reports of investigation show that the licensed business is not presently being conducted and customarily is conducted only during the summer season it is my opinion that the licensee will be adequately and sufficiently penalized by a suspension of the license to be effective during the summer season after business is normally resumed.

All of the circumstances considered, the license will be suspended on the first charge for twenty days (Re Jimmy's Bar & Grill, Inc., Bulletin 1526, Item 8) and on the second charge for sixty days (Re McClain and McCann, Bulletin 1596, Item 3) or a total of eighty days, the suspension to commence in mid-June, when the licensed business is normally resumed.

Accordingly, it is, on this 18th day of November, 1964,

ORDERED that Plenary Retail Consumption License C-29, issued by the Township Committee of the Township of Egg Harbor to Dunes Club, Inc., t/a The Dunes, for premises Somers Point-Longport Boulevard at Junction, Egg Harbor Township, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1965, commencing at 7:00 a.m. Monday, June 14, 1965; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 7:00 a.m. Thursday, September 2, 1965.

JOSEPH P. LORDI
DIRECTOR

three years in New Jersey State Prison (suspended) and placed on probation for five years.

At the hearing held herein, applicant (22 years old) testified that each week for a period of six months previous to his arrest on January 21, 1964, he had been injecting himself with four or five "shots" of heroin; that he had purchased the narcotics in New York for his personal use; that at the time of his arrest he had four glassine envelopes containing heroin and an ampule of desoxyn; that the last time he had taken a "shot" of heroin was on the day of his arrest, and that he neither sold nor gratuitously distributed any of the narcotics.

The crime of unlawful possession of narcotics may or may not involve moral turpitude. Where aggravating circumstances appear it has been held that such crime involves moral turpitude. Re Elig. No. 695, Bulletin 1391, Item 3.

A report received by this Division from the Essex County Probation office discloses that applicant was arrested in the company of a known narcotic user; that applicant mixed the desoxyn found in his possession with the heroin to "fortify it" and that applicant's probation officer has not seen any indication of continued use of heroin by the applicant.

Considering the background facts (as testified by the applicant), the quantity of heroin found in applicant's possession and the sentence of the court, it is my opinion that applicant's conviction on June 10, 1964 involves the element of moral turpitude.

Under the circumstances I recommend that applicant be advised that (1) in the opinion of the Director he has been convicted of a crime involving moral turpitude; (2) the alcoholic beverage law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him in any business capacity whatsoever a person so disqualified.

I. Edward Amada
Attorney

Dated: November 10, 1964

Approved:

JOSEPH P. LORDI
DIRECTOR

7. DISQUALIFICATION REMOVAL - IMPAIRING MORALS OF CHILDREN - ASSOCIATION WITH ALCOHOLIC BEVERAGE INDUSTRY DEEMED CONTRARY TO PUBLIC INTEREST - PETITION DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-32.2

CONCLUSIONS AND ORDER

Case No. 1858

BY THE DIRECTOR:

Petitioner's criminal record discloses that on September 11, 1959, she was convicted in the Bergen County Court of the crimes of impairing the morals of children under 16 years of age (inducing a girl under the age of 16 to disrobe and pose for a picture in the nude and exposing another girl under the age of 16 to view certain obscene and indecent motion pictures) and exhibiting obscene pictures to children under 18 (showing indecent and obscene pictures to six children under the age of 18), in violation of N.J.S. 2A:96-3 and 2A:115-3.2, respectively, as a result of which she received a suspended sentence of an indeterminate term at Clinton Reformatory and was placed on probation for three years. Since the crimes of which the petitioner was convicted involve the element of moral turpitude, she was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (33 years old) testified that she is married and living separate and apart from her husband; that she has three children who live with her and are supported by her husband; that for the past nine years she has resided at her present address; that she is a musician; that she had been a professional entertainer for seventeen years and that for the past ten years her principal source of income has been as an entertainer.

The Chief of Police of the municipality wherein the petitioner resides reports "We have recently received complaints that she (petitioner) is annoying one of the young ladies involved in her first episode. So much so that this girl has been committed to Bergen Pines for psychiatric treatment. We have asked her to come in to discuss this annoyance she is creating for the --- family, but she refuses to do so. I do not feel this request should be granted." This matter is denied by the petitioner.

Because of the seriousness of the offenses involved herein and the petitioner's denial of the report of the Chief of Police, I caused an independent investigation of the case to be made by an agent of this Division. On October 23, 1964, at the local police headquarters, the agent interviewed Mrs. --- in the presence of her daughter (the girl referred to in the report of the Chief of Police and one of the girls under 16 years of age mentioned in one of the indictments). Mrs. --- stated that during the past year, her daughter had received two or three annoying telephone calls from the petitioner; that her daughter had been receiving psychiatric treatments ever since her involvement with the petitioner in 1959 and had been confined to a hospital several times for such treatments; that during her last confinement (several weeks ago), her daughter had received an unsigned card reading "Best Wishes" and an anonymous gift of flowers; that the petitioner admitted to her that she had sent the card and flowers; that the petitioner had made several attempts to engage her daughter in conversation in the neighborhood and that she had repeatedly told petitioner to stay away from her daughter.

Petitioner further testified that she is asking for the removal of her disqualification to be free to be employed as an entertainer on licensed premises in this State and that, ever since her convictions on September 11, 1959, she has not been convicted of any crime or arrested.

Petitioner produced three character witnesses (a machine parts inspector, a high school music teacher and a wire solderer) who testified they have known the petitioner for over five years last past and that, in their opinion, she is now an honest, law-abiding person with a good reputation.

Although more than five years have elapsed since petitioner's last convictions of crime, I am not satisfied, after considering the nature of the offenses of which petitioner was convicted, that her association with the alcoholic beverage industry in this State would not be contrary to the public interest. I shall, therefore, in the exercise of my discretion, deny the petition for removal of her disqualification filed herein.

Accordingly, it is, on this 13th day of November, 1964,

ORDERED that the petition herein be and the same is hereby denied.

JOSEPH P. LORDI
DIRECTOR

8. MORAL TURPITUDE - POSSESSION OF LOTTERY SLIPS - CONVICTION
DEEMED TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

Re: Eligibility No. 735

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of a conviction of a crime.

Applicant's criminal record discloses that on July 16, 1964, following a plea of guilty in the Cumberland County Court to a charge of knowingly and unlawfully possessing lottery slips, in violation of N.J.S. 2A:121-3, he was fined \$100.

Division's Bulletin 1527, Item 4, discloses that applicant pleaded non vult to charges in disciplinary proceedings alleging that on March 28, 1962, he (1) possessed lottery tickets ("tip lottery") upon his licensed premises, in violation of Rule 6 of State Regulation No. 20, and (2) hindered an investigation, viz., attempted destruction of the lottery tickets, in violation of R.S. 33:1-35, and as a result thereof his license was suspended by order dated July 31, 1963. Aforesaid charges were based on the following facts: On March 28, 1962, two ABC agents, in the course of an investigation of applicant's licensed premises, found a white paper bag containing five printed "tip" lottery sheets in a closet adjoining its stockroom (the bag bore the name of a local merchant); that immediately after the agents had placed the bag and its contents on a table, the applicant seized the sheets, tore them in half and hid the bag in back of an air conditioning unit; thereafter the agents found a sixth printed sheet (bearing number 108) underneath the cash register behind the bar; this sheet bore a pencil notation ".50", under which appeared the name "Bourbon"; the applicant denied any knowledge of the sheets and denied that he had sold any of the slips. (Each sheet contains thirty printed lottery slips.)

On December 3, 1963, the applicant transferred his license to a corporation of which he was the president, director and thirty-nine percent stockholder. On August 22, 1964, the applicant resigned as president and director of the company and assigned his stock to another.

It further appears that applicant and another, as partners, were the holders of another plenary retail consumption license; that on September 3, 1964, the partnership was dissolved and that the licensed business was continued by applicant's partner.

At a hearing held herein, applicant testified that all of the lottery sheets were found in the ladies' rest room; that previous to their discovery by the agents, he had never seen them; that neither he nor his patrons had engaged in any gambling activities on the licensed premises; that the pencil notation ".50" "Bourbon" on lottery sheet No. 108 was not in his handwriting; that he tore the sheets because he was "shocked" to learn that they were in the premises; that he was innocent of the charge; that he pleaded guilty to the same because he was financially unable to defend the action and because he wished to avoid the notoriety of a trial. I am not impressed with the testimony of the applicant. Moreover, in view of his confessional plea in the criminal proceedings, the guilt or innocence of the applicant cannot be redetermined herein. Re Elig. No. 634, Bulletin 947, Item 8.

The attorney for the applicant argues that the aforesaid crime does not involve moral turpitude within the criteria set forth at pages 483 and 484 in State Board of Medical Examiners v. Weiner, 68 N.J. Super. 468 (App. Div. 1961), wherein the court states that moral turpitude has been defined as

"an 'act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men, to society in general, contrary to the accepted and customary rule of right and duty between man and man,' Black's Law Dictionary (4 ed. 1951); State v. McCarthy, 255 Wis. 234, 38 N.W. 2d 679, 687 (Sup. Ct. 1949), and as 'in its legal sense***everything done contrary to justice, honesty, modesty or good morals.' Huff v. Anderson, 212 Ga. 32, 90 S.E. 2d 329, 331, 52 A.L.R. 2d 1310 (Sup. Ct. 1955). The United States Supreme Court, in connection with alien deportation proceedings, has held that, in addition to 'crimes ***of the gravest character,' any crime in which fraud is an ingredient involves moral turpitude. Jordan v. DeGeorge, 341 U.S. 223, 227, 71 S.Ct. 703, 706, 95 L.Ed. 886 (1951). See Berardi v. Rutters, 42 N.J. Super. 39, 48 (App. Div. 1956), affirmed sub. nom. In re Berardi, 23 N.J. 485 (1957). But the attempt to apply these definitions to specific criminal acts, especially in the context of license revocation proceedings, has demonstrated only the elasticity of the phrase and its necessarily adaptive character, reflective at all times of the common moral sense prevailing throughout the community. See State ex rel. v. Mason, 29 Or. 18, 43 P. 651, 652 (Sup. Ct. 1896)."

Prior to March 25, 1964, the Division had held in numerous rulings that the crime of commercialized gambling may or may not involve moral turpitude, depending upon the facts in the case. See, for example, Re Case No. 1735, Bulletin 1506, Item 5. However, on such date Director Lordi found that the operation of a lottery as part of a commercialized gambling venture involves moral turpitude.

In arriving at such holding, he stated in Re Elig. No. 726, Bulletin 1558, Item 3:

"The type of gambling described herein by its very nature requires that kind of organization which breeds corruption and affects the moral fibre of the community. It is apparent that the applicant herein was an integral part of such group and that his services facilitated the operation of such a syndicate. The prime evil in question is not so much the gambling in and of itself but, rather, the syndicated structure which has as its underlying purpose the violation of our lottery statute."

See also State v. Ivan, 33 N.J. 197, 202 (1960), wherein the opinion by Chief Justice Weintraub stated:

"The gambling racket is an ancient foe of society. It bilks the weak. It wrecks homes and destroys men. It spawns embezzlement, larceny and crimes of violence. It corrupts officialdom. It is reputed to be allied with other illicit traffic. The 'easy' money it yields doubtless finds its way under cover into legitimate fields, there to continue its polluting course."

It is apparent that the applicant herein was an integral part of "the gambling racket" and that his services facilitated its operation.

Applicant's attorney further contends that the aforesaid crime, a misdemeanor, does not involve moral turpitude because it is not a serious offense. This argument is irrelevant and is not determinative of the question whether the crime is one involving moral turpitude. See Gonzales v. Barber, 207 Fed. 2d 398, 400.

The severity of punishment imposed is not controlling on the issue whether the offense involves moral turpitude for there are various shades and degrees of moral turpitude, varying from the vilest and basest acts of moral degeneracy to other acts which involve a very slight degree of moral turpitude on which society does not frown with such severity. Murder would come in the former category and perhaps a petit larceny could be used as an example of the latter. 58 C.J.S. 1204, 1205 (Note 31).

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director, he has been convicted of a crime involving moral turpitude; (2) the Alcoholic Beverage Law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him, in any business capacity whatsoever, a person so disqualified.

I. Edward Amada
Attorney

Approved:

JOSEPH P. LORDI
DIRECTOR

Dated: November 16, 1964.

9.

ACTIVITY REPORT FOR NOVEMBER 1964

ARRESTS:		
Total number of persons arrested - - - - -		18
Licensees and employees - - - - -	10	
Bootleggers - - - - -	8	
SEIZURES:		
Stills - 50 gallons or under - - - - -		1
Alcohol - gallons - - - - -		277.80
Mash - gallons - - - - -		420
Distilled alcoholic beverages - gallons - - - - -		6.83
Brewed malt alcoholic beverages - gallons - - - - -		3.19
RETAIL LICENSEES:		
Premises inspected - - - - -		483
Premises where alcoholic beverages were gauged - - - - -		424
Bottles gauged - - - - -		6,237
Premises where violations were found - - - - -		51
Violations found - - - - -		70
Unqualified employees - - - - -	31	Disposal permit necessary - - - - - 3
Reg. #38 sign not posted - - - - -	7	Prohibited signs - - - - - 2
Other mercantile business - - - - -	6	Other violations - - - - - 16
Application copy not available - - - - -	5	
STATE LICENSEES:		
Premises inspected - - - - -		7
License applications investigated - - - - -		12
COMPLAINTS:		
Complaints assigned for investigation - - - - -		343
Investigations completed - - - - -		358
Investigations pending - - - - -		171
LABORATORY:		
Analyses made - - - - -		104
Refills from licensed premises - bottles - - - - -		61
Bottles from unlicensed premises - - - - -		14
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -		1
Persons fingerprinted for non-criminal purposes - - - - -		228
Identification contacts made with other enforcement agencies - - - - -		162
Motor vehicle identifications via N.J. State Police teletype - - - - -		2
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities - - - - -		7
Violations involved - - - - -		7
Sale during prohibited hours - - - - -	4	
Sale to minors - - - - -	3	
Cases instituted at Division - - - - -		12
Violations involved - - - - -		21
Sale during prohibited hours - - - - -	4	Failure to keep true books of acct. - 1
Beverage Tax Law non-compliance - - - - -	3	Permitting bookmaking on premises - 1
Failure to close prem. during proh. hrs. - - - - -	2	Permitting lottery acty. on prem. - 1
Sale to minors - - - - -	2	Fraud in application - 1
Permitting gambling on premises - - - - -	2	Possessing liquor not truly labeled - 1
Fraud and front - - - - -	1	Hindering investigation - 1
Failure to afford view into prem. dur. prohibited hours - - - - -	1	
Cases brought by municipalities on own initiative and reported to Division - - - - -		17
Violations involved - - - - -		27
Sale to minors - - - - -	12	Hindering investigation - 1
Permitting lottery acty. on prem. - - - - -	3	Permitting immoral activity on prem. - 1
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -		30
Appeals - - - - -	3	Eligibility - 11
Disciplinary proceedings - - - - -	14	Tax revocations - 2
STATE LICENSES AND PERMITS ISSUED:		
Total number issued - - - - -		1,247
Licenses - - - - -	2	Social affair permits - 335
Solicitors' permits - - - - -	58	Miscellaneous permits - 149
Employment permits - - - - -	226	Transit insignia - 225
Disposal permits - - - - -	33	Transit certificates - 17
Wine permits - - - - -	202	
OFFICE OF AMUSEMENT GAMES CONTROL:		
Enforcement files established - - - - -	4	

JOSEPH P. LORDI
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

10. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - POSSESSION OF LOTTERY TICKETS - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Thomas Roche & Marilyn Roche
t/a Boyd Tavern
482 West Side Avenue
Jersey City, New Jersey

)
)
) CONCLUSIONS

) AND ORDER

Holder of Plenary Retail Consumption License C-113, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City

Michael G. Comunale, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges (1) and (2) alleging that on July 14, 15, 20, 22, 24 and 28 and August 10, and 13, 1964, they permitted the acceptance of numbers bets and on August 13, 1964, they permitted the acceptance of horse race bets and possessed tickets in a "Lucky Club" lottery on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Friendly Tavern, Inc., Bulletin 1581, Item 9.

Accordingly, it is, on this 10th day of November, 1964,

ORDERED that Plenary Retail Consumption License C-113, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Thomas Roche and Marilyn Roche, t/a Boyd Tavern, for premises 482 West Side Avenue, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, November 17, 1964, and terminating at 2:00 a.m. Monday, January 11, 1965.


Joseph P. Lordi
Director