

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 841

APRIL 28, 1949.

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - GALSWORDY, INC. v. HOCK - DETERMINATION AND ACTION OF DIRECTOR AFFIRMED.
2. DISCIPLINARY PROCEEDINGS (Newark) - SUSPENSION REIMPOSED UPON AFFIRMANCE OF DIRECTOR'S DECISION BY APPELLATE DIVISION OF THE SUPERIOR COURT.
3. DISCIPLINARY PROCEEDINGS (Lyndhurst) - FAILURE TO KEEP PREMISES CLOSED DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - CHARGE OF HINDERING INVESTIGATION DISMISSED - LEAVE TO APPLY FOR LIFTING OF SUSPENSION PREVIOUSLY IMPOSED HEREBY ANNULLED AND SET ASIDE - LICENSE TO REMAIN SUSPENDED FOR BALANCE OF ITS TERM.
4. MORAL TURPITUDE - CRIME OF BURGLARY FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS NOT HAVING BEEN SHOWN, APPLICATION TO LIFT DENIED.
5. DISCIPLINARY PROCEEDINGS (Lodi) - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - HOSTESSES - INDECENT SONGS BY ENTERTAINER - CHARGE OF PERMITTING PREMISES TO BE CONDUCTED AS A NUISANCE DISMISSED - LICENSE SUSPENDED FOR 45 DAYS.
6. DISCIPLINARY PROCEEDINGS (Newark) - CHARGES OF PERMITTING AND SUFFERING LEWDNESS AND IMMORAL ACTIVITIES AND CONDUCTING BUSINESS IN SUCH MANNER AS TO BECOME A NUISANCE, DISMISSED.
7. DISCIPLINARY PROCEEDINGS (Glassboro) - PIN BALL MACHINE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
8. APPELLATE DECISIONS - TED'S BAR & GRILL, INC. v. NEWARK AND HOPKINS.
9. STATE LICENSES - NEW APPLICATIONS FILED.
10. DISCIPLINARY PROCEEDINGS (East Orange) - SOLICITOR'S PERMIT - SUSPENSION REIMPOSED UPON AFFIRMANCE OF DIRECTOR'S DECISION BY APPELLATE DIVISION OF THE SUPERIOR COURT.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 841

APRIL 28, 1949.

1. COURT DECISIONS - GALSWORTHY, INC. v. HOCK - DETERMINATION AND ACTION OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
No. A-79, September Term, 1948.

GALSWORTHY, INC.,)
Plaintiff-Appellant,)
-vs-)
ERWIN B. HOCK, State Commissioner)
of the Department of Alcoholic)
Beverage Control,)
Defendant-Respondent.)
-----)

Argued February 21, 1949. Decided Apr. 14, 1949.

Before McGeehan, Donges and Colie, JJ.

Mr. Edward R. McGlynn, argued the cause for Plaintiff-Appellant (McGlynn, Weintraub and Stein, Attorneys).

Mr. Samuel B. Helfand, argued the cause for Defendant-Respondent. (Mr. Walter D. Van Riper, Attorney-General, on the brief.)

The opinion of the Court was delivered by

DONGES, J.

Appeal is taken to set aside an order of suspension for 20 days of appellant's wholesale liquor license, on 8 charges involving violations of rules and regulations of the Department of Alcoholic Beverage Control. At the time fixed for hearing by the respondent, appellant withdrew its plea of not guilty and entered a plea of non vult to all the charges.

The only question for determination is as to whether the order of suspension is harsh, oppressive and unjust and should be set aside as an abuse of discretion of respondent.

Under date of August 16, 1948, appellant was charged with violations of various rules and regulations of the Department involved, which the Commissioner has summarized as follows:

1. That it delivered alcoholic beverages to a retailer without accompanying invoice of sale, in violation of Rule 6 of State Regulations No. 39.
2. That it transported alcoholic beverages in an automobile having no transportation insignia affixed thereto, in violation of Rule 2 of State Regulations No. 17.
3. That it failed to affix to the exterior of a vehicle the transportation insignia which had been issued therefor, in violation of Rule 11 of State Regulations No. 17.

- 4, 6, 7. That it delivered to several retailers alcoholic beverages without their itemization on orders signed by said retailers, in violation of Rule 4 of State Regulations No. 34.
5. That it delivered alcoholic beverages to a retailer then listed in default and accepted in payment therefor ordinary checks of third persons, in violation of Rule 4(a) of State Regulations No. 39.
8. That it failed to notify the State Commissioner of Alcoholic Beverage Control of a default by a retail licensee, in violation of Rule 5(b) of State Regulations No. 39."

As to the first three charges there is no denial that, on July 22, 1948, an automobile, which had been rented by appellant, was being used to transport two cases of whiskey for which there was no invoice to sustain the claim of the driver employee of appellant that it was to be delivered to a retail licensee, and that it had no transportation insignia, although one had been issued for the vehicle. All of which acts were in violation of the cited Rules of the Department.

As to charges 4, 6, and 7, it was not denied that various shipments of alcoholics were delivered to several retail licensees, without signed orders therefor, and without being ordered by telephone, in violation of the cited Rule of the Department.

Charge No. 5 had to do with the acceptance by appellant checks drawn by third parties in payment for deliveries to a retail licensee then listed on the Default List of the Department. The Commissioner was impelled, because of possible misinterpretation of the Rule involved, to dismiss this charge.

Charge No. 8 alleges that appellant failed to file required notice of default with the Commissioner within three days after a retail licensee became in default to appellant. It appears that the default arose by reason of appellant's failure to promptly deposit a check received by it from the retail licensee. But, its failure to give the notice required was in violation of the Rules.

The Commissioner, in his conclusions, said:

"The various matters involved in these charges, taken together, go to the very heart of liquor control. Violations of this character may well form the foundation of far more serious infractions of the law since violations such as these could conceivably be part of a scheme to offer and distribute 'free goods' to retailers in violation of State regulations. However, the instant case must be decided upon the charges preferred and admitted by defendant's plea."

He, thereupon, on November 19th, 1948, ordered that appellant's Plenary Wholesale License be suspended for a period of twenty days, commencing at 12:01 A.M. November 24, 1948, and terminating at 12:01 A.M. Tuesday, December 14, 1948.

Appeal was taken from this order. Upon application to this Court an order was granted for a stay of proceedings and to supplement the record by the taking of testimony and to submit other material facts. This has been submitted to this Court.

The record submitted supports the withdrawal of the plea of not guilty. As to the first three charges it is clear that an insignia

for the automobile in question was issued, but was never affixed. It was testified that the salesman in charge thereof "had the insignia in the glove compartment of his car and had not affixed it". As to the failure to have an invoice for the two cases of liquor in his car, it was said that the shipping clerk put the packages in his car and he, the salesman, drove away without picking up the invoice.

As to the three charges that orders for alcoholic beverages were not signed by the retail licensee or his agent, the proofs are clearly in support thereof. As to one instance, it was testified the salesman signed it on the authorization of the retailer. In another instance, the proof was that the salesman's wife signed the name of the retail purchaser to the order, after the salesman got home and "wrote this order up", because the retailer was very busy. The other charge was not satisfactorily explained as being a telephone order, in light of the plea entered thereto.

Charge 8 was not denied, and the only explanation was that appellant's Credit Manager was waiting for some instructions with respect thereto.

As stated, Charge No. 5 was dismissed by the Commissioner.

Admittedly, rules and regulations of the Department, which must have been known by appellant, were violated. Obviously, the appellant by the supplement to the record sought to establish that the violations were not of importance, but that, as stated in its brief, "its plea of non vult which was an admission that there had been at least a technical violation of the rules and regulations", did not warrant disciplinary action. Our courts have held that the duty to obey the law, and rules and regulations is imposed upon the licensee and may not be evaded by a claim that any such act was not known to the licensee or authority in charge. *Cedar Restaurant v. Hock*, 135 N. J. L. 157 (Sup. Ct. 1947). In *Kravis v. Hock*, 135 N. J. L. 253 (Sup. Ct. 1947), it was said "The whole machinery of the Alcoholic Beverage Control statute is designed to control and keep within limits a traffix which, unless tightly restrained, tends toward abuse and debasement."

R. S. 33:1-31 provides:

"Any license *** may be suspended or revoked by the commissioner *** for any of the following causes:

g. Any violation of rules and regulations."

We conclude from a careful consideration of the record, and the possible injury to the public by disregard of the rules and regulations designed to control licensees, that there was no abuse of discretion by the Commissioner in suspending appellant's license for twenty days. The charges covered more than one offense, over a period of more than thirty days, indicating either intentional violation of the requirements, or such disregard of the obligations imposed upon a licensee as to warrant suspension or revocation of its license in the judgment of the Commissioner.

The determination and action of the State Commissioner of the Department of Alcoholic Beverage Control is affirmed.

- - - - -

2. DISCIPLINARY PROCEEDINGS - SUSPENSION REIMPOSED UPON AFFIRMANCE OF DIRECTOR'S DECISION BY APPELLATE DIVISION OF THE SUPERIOR COURT.

In the Matter of Disciplinary Proceedings against
 GALSWORTHY, INC.
 414 Elizabeth Avenue
 Newark 8, N. J.,
 Holder of Plenary Wholesale License W-1, issued by the State Commissioner (now Director) of Alcoholic Beverage Control.

O R D E R

BY THE DIRECTOR:

By order dated November 19, 1948, the Plenary Wholesale License held by the defendant was suspended for a period of twenty days after it had pleaded non vult to eight charges involving violations of State Regulations Nos. 17, 34 and 39. See Bulletin 822, Item 4.

Upon the defendant's appeal to the Superior Court, Appellate Division, the court ordered the suspension held in abeyance pending the outcome of the appeal. By its recent decision, the court affirmed the order of suspension and dismissed the appeal.

The twenty-day suspension, therefore, will now be reimposed.

Accordingly, it is, on this 21st day of April, 1949,

ORDERED that Plenary Wholesale License W-1, issued by the State Commissioner (now Director) of Alcoholic Beverage Control to Galsworthy, Inc., 414 Elizabeth Avenue, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 A.M. Wednesday, April 27, 1949, and terminating at 12:01 A.M. Tuesday, May 17, 1949.

ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP PREMISES CLOSED DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - CHARGE OF HINDERING INVESTIGATION DISMISSED - LEAVE TO APPLY FOR LIFTING OF SUSPENSION PREVIOUSLY IMPOSED HEREBY ANNULLED AND SET ASIDE - LICENSE TO REMAIN SUSPENDED FOR BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against)

ARTHUR J. VALLERY)
T/a VALLERY TAVERN)
455 Valley Brook Avenue)
Lyndhurst, N. J.,)

CONCLUSIONS AND ORDERS

Holder of Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the Township of Lyndhurst.)
-----)

Arthur J. Vallery, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to charges which, as amended, allege that (1) on December 20, 1947, January 3, 1949, January 4, 1949, and January 13, 1949, he violated the local curfew ordinance, and (2) on the latter date he hindered and failed to facilitate an investigation by ABC agents at his licensed premises.

The local ordinance, adopted November 15, 1943, provides, so far as here pertinent, that no consumption licensee shall conduct his licensed business, or permit any person except himself and his actual employees upon the licensed premises, between the hours of 2 a.m. and 7 a.m.

A local police officer testified that on December 20, 1947 he observed five men drinking at defendant's bar about three-quarters of an hour past the closing hour. The defendant does not deny this incident. He explained, however, that he was subsequently called before the local Board and that this incident formed the basis of an informal censure proceeding, at which he was warned against a recurrence of a similar violation. As a result, he gained the impression that no further action would be taken against him because of this incident.

No legal defense is discernible in this explanation. Nevertheless, when reflected against the substantial lapse of time since the occurrence, considerations of fairness to the defendant dictate that I disregard this occasion when admeasuring the penalty to be imposed for the other violations as hereinafter stated.

Another local police officer testified that he observed three men, each with a partially consumed glass of beer in front of him, at the defendant's bar on January 3, 1949, at about 2:45 a.m. At the same hour the next morning, he saw the defendant serving alcoholic beverages to five patrons on the licensed premises. As to the last date mentioned in the charge, to wit, January 13, 1949, two ABC agents testified that, at about 2:15 a.m., they observed four male patrons, each of whom was consuming a glass of beer, at the defendant's bar. The only defense interposed by the defendant as to these three occasions is his categorical statement to the effect that all of these people observed by the enforcement officers were his employees. None

of these people were produced as witnesses by the defendant and, while there is some evidence that one or two of them may have been employed by him, I am satisfied that all of the others were ordinary patrons and not in his employ within the meaning and intent of the local ordinance.

I find the defendant guilty as to the three occasions in January 1949 as alleged in the first charge.

I have carefully considered all of the evidence relating to the second charge and, without needlessly detailing it here, am of the opinion that the burden of proving the defendant's guilt thereof has not been sustained. I shall, therefore, dismiss the second charge.

The defendant's license is presently under suspension for the balance of the current licensing year as a result of his concealment of the fact that he had been convicted of a disqualifying crime. See Bulletin 832, Item 5, decided February 4, 1949.

In proceedings decided simultaneously herewith, I have denied the defendant's petition for removal of the disqualification resulting from such conviction. See Re Case No. 724, Bulletin 841, Item 4. The defendant is, therefore, ineligible to hold a liquor license or be employed by a liquor licensee in this state. R. S. 33:1-25, 26.

The order in the prior disciplinary proceeding (Bulletin 832, Item 5) included a reservation permitting a qualified person to apply for a lifting of the suspension after May 11, 1949, or ninety days from the effective date of the suspension. Because of the violations herein, no such application will be entertained, with the result that the defendant's license will remain unqualifiedly suspended for the full balance of the current licensing year. The order in the prior case is thus modified as indicated herein.

As stated, the defendant must forego the privileges of his liquor license. If he is successful in finding a qualified purchaser, the latter may apply to the local issuing authority during the current term for a transfer of the license which the local issuing authority may grant before June 30, 1949 but which shall serve only to qualify the transferee as a renewal applicant for the ensuing licensing year. See R. S. 33:1-96. In no event may any further alcoholic beverage activity take place under the license for the present licensing year ending June 30, 1949 by any holder thereof, either at the present address or at any premises to which it may be transferred.

Accordingly, it is, on this 12th day of April, 1949,

ORDERED that the order heretofore made on February 4, 1949, suspending Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the Township of Lyndhurst to Arthur J. Vallery, t/a Vallery Tavern, for premises 455 Valley Brook Avenue, Lyndhurst, for the balance of the current licensing year, is hereby confirmed and continued in full force and effect; and it is

FURTHER ORDERED that the reservation therein permitting a properly qualified person to apply for a lifting of said suspension be and the same is hereby annulled and set aside.

ERWIN B. HOCK
Director.

4. MORAL TURPITUDE - CRIME OF BURGLARY FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS NOT HAVING BEEN SHOWN, APPLICATION TO LIFT DENIED.

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

CONCLUSIONS
AND ORDER

Case No. 724.
- - - - -)

BY THE DIRECTOR:

The petitioner's criminal record discloses, among other things, that in 1934 he was convicted of burglary, a crime which involves the element of moral turpitude, and the concealment of which resulted in the suspension on February 4, 1949 of his plenary retail consumption license for the balance of the current licensing term. See Bulletin 832, Item 5.

Petitioner's failure to reveal this conviction in his license application would be a sufficient warrant to deny the relief requested herein. Cf. Re Case No. 285, Bulletin 583, Item 9. In addition, however, he has recently been guilty of further infractions of the liquor laws. See Bulletin 841, Item 3, decided simultaneously herewith. It is manifest, therefore, that my discretion may not be favorably exercised in the petitioner's behalf in view of my inability to find compliance with the statutory requirement that "the applicant has been conducting himself in a law-abiding manner" for five years last past. See R. S. 33:1-31.2.

Accordingly, it is, on this 12th day of April, 1949,

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

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - HOSTESSES - INDECENT SONGS BY ENTERTAINER - CHARGE OF PERMITTING PREMISES TO BE CONDUCTED AS A NUISANCE - DISMISSED - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against)

VICTORIA BAR, INC.)
T/a VICTORIA BAR)
Route 6)
Lodi, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Lodi.)

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to Charge (3) alleging that it sold, served and delivered, and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages on its licensed premises and failed to keep said licensed premises closed between 4:00 a.m. and noon on Sunday, in violation of a local ordinance.

The testimony of two ABC agents discloses that they entered defendant's licensed premises at about 3:15 a.m. on Sunday, November 7, 1948 and that drinks were served to the patrons until 4:45 a.m., when the agents identified themselves. An ordinance of the Borough of Lodi prohibits the sale of alcoholic beverages on Sunday between the hours of 4:00 a.m. and noon, and requires that, during the said hours, the entire licensed premises shall also be closed.

Defendant has pleaded not guilty to the following charges:

- (1) That it permitted female employees to accept beverages at the expense of, and as a gift from, customers and patrons, in violation of Rule 22 of State Regulations No. 20;
- (2) That it permitted lewdness and immoral activities in and upon its licensed premises, in violation of Rule 5 of State Regulations No. 20;
- (4) That it permitted its licensed business to be conducted in such a manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20.

At the hearing held herein, the two ABC agents mentioned above testified that during their visit to defendant's premises on the early morning of Sunday, November 7, 1948, they observed, at various times, each of four female entertainers accept a drink served by a bartender at the expense of a male patron. There is little, if any, evidence in the case to offset this direct and positive testimony of two agents. It is true that one of the entertainers testified that she does not drink alcoholic beverages, but the regulation in question refers to "beverage, alcoholic or otherwise". None of the other entertainers was produced by the defendant at the hearing. The

defendant's manager and a bartender in its employ testified that the drinks were not paid for by the male patrons, but stated that it is a practice to charge such drinks to the entertainer on a "tab", which is given to the "boss" each night after closing. However, no so-called "tabs" were produced. I conclude that the patrons paid for the drinks, as the agents testified. The entertainers were hired by defendant from a New York agency and each was a "female employed" on the licensed premises within the meaning of the rule. Kravis v. Hock, 137 N.J.L. 252. I find the defendant guilty as to Charge (1).

As to Charge (2): The agents testified that, while they were on the licensed premises, two of the female entertainers sang songs which were lewd and indecent. There is no need to repeat the language which appears in the agents' testimony. The entertainer who testified on behalf of defendant denied that she sang one of these songs, but I do not believe her testimony. In any event, the other entertainer did not testify. So-called entertainment of this type should not be permitted on licensed premises. I find defendant guilty as to Charge (2).

As to Charge (4): In State v. Berman, 120 N.J.L. 381, it is said that:

"Any place or public resort is a public nuisance where illegal practices are habitually carried on, or when such place becomes the habitual resort of thieves, drunkards, prostitutes, etc., who gather there for an unlawful purpose or make it a rendezvous where plans may be concocted for depredations upon society and disturbing either its peace or its rights of property."

The proof herein shows that illegal activity was carried on during the morning in question, but there is nothing to show that such practices were habitually carried on or that any other element of the above definition was present in this case. Under the circumstances I shall dismiss Charge (4).

Defendant has no prior adjudicated record. I shall suspend its license for a period of fifteen days because of the violation set forth in Charge (3), Re Dabrowski, Bulletin 687, Item 8; for an additional period of twenty days because of the violation set forth in Charge (1), Re Garman, Bulletin 582, Item 8; and for an additional period of ten days because of the violation set forth in Charge (2), Re Arno, Bulletin 830, Item 1; making a total suspension of forty-five days. No remission will be made because of the entry of the plea as to Charge (3) because it was necessary to try the case fully upon the other pending charges.

Accordingly, it is, on this 12th day of April, 1949,

ORDERED that Plenary Retail Consumption License C-11, issued by the Mayor and Council of the Borough of Lodi to Victoria Bar, Inc., t/a Victoria Bar, Route 6, Lodi, be and the same is hereby suspended for forty-five days, commencing at 3:00 a.m. April 19, 1949, and terminating at 3:00 a.m. June 3, 1949.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - CHARGES OF PERMITTING AND SUFFERING LEWDNESS AND IMMORAL ACTIVITIES AND CONDUCTING BUSINESS IN SUCH MANNER AS TO BECOME A NUISANCE, DISMISSED.

In the Matter of Disciplinary Proceedings against

WASHINGTON CAFE (a corp.)
415 Washington Street
Newark 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-474, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to charges alleging it allowed, permitted and suffered its licensed premises to be used in furtherance and aid of, and in connection with, an illegal activity, i.e., (1) procuring for prostitution, and (2) solicitation for prostitution, both in violation of State Regulations No. 20, Rule 4; (3) it allowed, permitted and suffered lewdness and immoral activities, i.e., procuring and solicitation for prostitution upon its licensed premises, in violation of State Regulations No. 20, Rule 5; and (4) it allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance, in violation of State Regulations No. 20, Rule 5.

The charges grew out of activities observed on the licensed premises on July 16, 20 and 22, 1948.

In support of the charges, evidence was introduced by ABC agents at the hearing to the following effect: On July 16, 1948, two agents of the Department (now Division) went to the licensed premises and entered into a discussion on the subject of women with the defendant's bartender. One of the agents, who was seated close to a girl named "Elsie", heard a conversation between "Elsie" and her male companion, in which conversation the girl made a remark (with gesture) so indecent as to be here unrepeatable. The bartender at the time was behind the bar walking back and forth serving drinks. The bartender, when asked by one of the agents about a certain female patron then on the premises, suggested, instead, the desirability of one "Betty" who would be there that night. The agents did not return that night for the reason that the bartender was then off duty. When the agents returned on the 20th, the bartender said to one of them: "Where the hell was you.....? I had Betty lined up. Being you didn't show up I fixed her up with my buddy." There was talk of the prospects of a later meeting with "Betty" to be arranged by the bartender, but such meeting did not eventuate. On the 22nd one of the agents, together with another agent, entered the licensed premises. The first agent (who had spoken with the bartender on the previous occasions) asked the bartender where the girls were. The bartender pointed to two girls at the end of the bar but he then refused, when asked, to make

the introductions. The agent approached the women, bought them a drink, and was introduced to them by the bartender as Josephine and Madeline. Following a conversation in which the bartender, busy with his bartending duties, joined occasionally and briefly, the agent paid \$10.00 to Josephine, who thereupon left the premises with him for the purpose of prostitution. The agent testified that, as he and Josephine were leaving the premises, he stated to the bartender that Josephine was leaving with him for the indicated purpose; that he asked the bartender whether he had any contraceptives, and that the bartender replied: "You don't need any; she's clean." The bartender testified that he had not heard any such statement or question by the agent, and he denied that he had made any remark concerning contraceptives.

The bartender, testifying further, denied that he knew Josephine or Madeline or had introduced them to the agent; that he had heard heard the indecent language used by "Elsie"; or that he had ever in any wise been a party to any arrangement between any male patron in the premises and a female in furtherance of any illegal activity. With respect to "Betty", the bartender testified that "I gave them a snow job that there was a Betty. There was no Betty. I snowed them along so as not to discourage them. This way they get sick and tired of asking me about women and wouldn't bother me."

The testimony herein does not clearly establish that Josephine "solicited" or that she was "procured" as a prostitute upon the licensed premises on July 22, and the evidence indicates that she was in the defendant's establishment on but one occasion prior to that date. Furthermore, it is not shown that the bartender overheard "Elsie's" indecent remark or the essential tenor of Josephine's conversation with the agent. The bartender's tactics were patently unwise and unjustifiable. His conversations and conduct in the accompanying circumstances give rise to a reasonable, strong suspicion with respect to the commission of the charged violations. However, suspicion, no matter how reasonably inferable, is not a substitute for proof. Cf. Re Doyle, Bulletin 469, Item 2, citing Weiss v. Newark, Bulletin 164, Item 8, and Re Silidker, Bulletin 405, Item 5.

My careful examination and analysis of the record before me leads me to conclude that the evidence is insufficient to establish the licensee's guilt of the offenses charged. The charges will, therefore, be dismissed.

Accordingly, it is, on this 11th day of April, 1949,

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

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - PIN BALL MACHINE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SHAW-PAULIN POST #241
THE AMERICAN LEGION, INC.
East High Street
Glassboro, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-2, issued by the Borough Council of the Borough of Glassboro.

Shaw-Paulin Post #241, Defendant-licensee, by Raymond Atkinson,
Finance Officer.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it allowed, permitted and suffered a bagatelle or pin ball machine on its licensed premises, in violation of Rule 7 of State Regulations No. 20.

On March 28, 1949, in the course of a retail inspection of defendant's licensed premises, an investigator of the State Division of Alcoholic Beverage Control found a pin ball machine thereon.

Defendant has no prior adjudicated record. I shall suspend the license for ten days, the minimum period indicated for such violation. Re Carteret Club of Trenton, Bulletin 672, Item 12. Remitting five days thereof because of the plea will leave a net suspension of five days.

Accordingly, it is, on this 18th day of April, 1949,

ORDERED that Club License CB-2, issued by the Borough Council of the Borough of Glassboro to Shaw-Paulin Post #241, The American Legion, Inc., for premises East High Street, Glassboro, be and the same is hereby suspended for a period of five (5) days, commencing at 6:00 a.m. April 25, 1949, and terminating at 1:00 a.m. April 30, 1949.

ERWIN B. HOCK
Director.

8. APPELLATE DECISIONS - TED'S BAR & GRILL, INC. v. NEWARK AND HOPKINS

TED'S BAR & GRILL, INC.,)

Appellant,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF)

NEWARK, and JOHN J. HOPKINS,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Samuel R. Blaine, Esq., Attorney for Appellant.
Thomas L. Parsonnet, Esq., by George B. Astley, Esq., Attorney for
Respondent Municipal Board of Alcoholic Beverage Control.
Giuliano & Giuliano, Esqs., by Anthony Giuliano, Esq., Attorneys
for Respondent John J. Hopkins.

BY THE DIRECTOR:

This appeal is from respondent Board's granting of a transfer of respondent Hopkins' plenary retail consumption license from 113 Broadway to 597 Broadway.

Appellant contends, inter alia, that the transfer is prohibited by Section 4 of the city's ordinance, effective July 1, 1938, reading in pertinent part:

"No Plenary Retail Consumption license....shall be granted or transferred to another premises within a distance of seven hundred and fifty (750) feet from an existing licensed premises covered by a Plenary Retail Consumption License....."

The undisputed facts are these: The premises at 597 Broadway are on the northeasterly corner of Romaine Place and Broadway. Romaine Place is a thirty-foot wide street, open to vehicular traffic, which commences on the north side of Delavan Avenue, runs northeast approximately 250 feet and then northwest for approximately 225 feet until it opens upon Broadway at a right angle. Romaine Place has dwelling houses on both sides and, in addition to the thirty-foot wide street, has ten-foot sidewalks. Romaine Place is not continued across Broadway. Appellant's plenary retail consumption licensed premises are located at 618 Broadway, on the westerly side of Broadway. The distance from 597 Broadway to 618 Broadway, measured by crossing Broadway within an extension of the curb and property lines of Romaine Place and thence along the westerly sidewalk of Broadway, is approximately 400 feet. (Such measurement was taken by appellant's engineer.) The distance between the two premises, measured along the easterly sidewalk of Broadway to Elwood Avenue, thence crossing Broadway by a crosswalk, where there is a traffic policeman and where there are traffic signals, and thence along the westerly sidewalk of Broadway, is over 760 feet. (Such measurement was taken by the city's traffic engineer and followed by respondent Board.) There are no crosswalk lines on Broadway at Romaine Place. On the west side of Broadway, opposite 597, is a bus stop.

The question for determination is whether the distance between the premises is to be measured, under the hereinabove quoted provision of the city's distance-between-premises ordinance, from 597 Broadway, across Broadway at Romaine Place and thence to 618 Broadway or from 597 Broadway, along the easterly sidewalk to Elwood Avenue, thence crossing Broadway and proceeding on the westerly sidewalk to 618. If the former measurement method is proper, the

transfer here in question was granted in violation of the ordinance; and, conversely, if that measurement method is improper, the granting of the transfer did not contravene the ordinance.

The ordinance does not set forth a method of measurement. In the absence thereof, the method of measurement is that used in the Alcoholic Beverage Law's so-called "200-foot rule" with respect to distance between licensed premises and a church or school, i.e.: "...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." (Revised Statutes, 33:1-76.) Franklin Stores Co. v. Newark and Gruber, Bulletin 381, Item 7; Re Guenther, Bulletin 206, Item 15; Crowley v. Atlantic City and Foxwell, Bulletin 455, Item 11.

At the hearing on appeal the city's Traffic Engineer testified that on Broadway at Romaine Place there are no signs to indicate any restriction there against pedestrian crossing, but that in his opinion the intersection is not a legal crossing. He testified, further, as follows:

"Q Does the City of Newark have a traffic ordinance?

A Yes, sir.

Q And does that traffic ordinance define all streets where there are legal crossings for pedestrians?

A No, sir. It is defined under the State law."

Our State Motor Vehicles Law (in Revised Statutes, 39:1-1) contains the following definitions:

"'Crosswalk' means that portion of the roadway ordinarily included within the prolongation of curb and property lines at street intersections, or that portion of a roadway clearly indicated for pedestrian crossing by lines marked on the surface of the roadway."

"'Intersection' means the area embraced within the prolongation of the lateral curb lines or, if none, the lateral boundary lines of two or more highways which join one another at an angle, whether or not one such highway crosses another."

Respondents cite Revised Statutes, 39:4-33 which reads:

"At intersections where traffic is directed by a police officer or traffic signal, no pedestrian shall enter upon or cross the highway at a point other than a designated crosswalk."

Since traffic is not directed by a police officer or traffic signal at the intersection of Broadway and Romaine Place, the citation appears inappropriate. More pertinent is Revised Statutes, 39:4-34 which reads:

"At all intersections where traffic is not controlled and directed either by a police officer or a traffic signal, no pedestrian shall cross the highway other than at right angles to the curb, and when crossing at a point other than at a designated crosswalk shall yield the right of way to all vehicles on the highway...."

In the light of the cited provisions of Revised Statutes, 39:1-1 and 39:4-34, it would appear that the intersection of Broadway and

Romaine Place might well be deemed a legal crosswalk even for purposes broader than the scope of this appeal and beyond my jurisdiction. See Ferris v. McArdle, 92 N.J.L. 580, at pp. 582 and 583, E. & A. (1919); Clarkson v. Ley, 106 N.J.L. 380, at pp. 384 and 385, E. & A. (1930).

The "200-foot rule" (Revised Statutes, 33:1-76) is, in view of its obvious purpose, strictly construed in protection of churches and schools. See Re Two Hundred Feet Rule, Bulletin 127, Item 4; Goldberg v. Little Falls, Bulletin 177, Item 4; Aldarelli v. Asbury Park, Bulletin 186, Item 12; Rapetti v. Atlantic City, Bulletin 627, Item 7. Similarly, a strict construction is in order with respect to distance-between-premises ordinances which are held to be reasonable in purpose and valid as regulations designed to prevent, in the public interest and protection, the overcrowding of liquor licenses in any particular section of the municipality. Franklin Stores Co. v. Newark and Gruber, supra. I find that, within the purpose and meaning of Newark's distance-between-premises ordinance, following the crosswalk at Broadway and Romaine Place is the normal way that a pedestrian would properly walk in proceeding from the nearest entrance of 618 Broadway to the nearest entrance of 597 Broadway and, since the distance between the premises measured by such crosswalk route is approximately 400 feet, that the transfer here appealed from is in contravention of the ordinance. Hence, the action of respondent Board will be reversed. Cf. Franklin Stores Co. v. Newark and Gruber, supra; Crowley v. Atlantic City and Foxwell, supra.

Accordingly, it is, on this 18th day of April, 1949,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control granting the transfer, here appealed from, be and the same is hereby reversed; and it is further

ORDERED that said transfer be set aside and be and is hereby declared null and void, and that respondent John J. Hopkins forthwith cease all alcoholic beverage activity at 597 Broadway, without prejudice to the right of respondent John J. Hopkins to apply for further transfer of his current license.

ERWIN B. HOCK
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

New Jersey Apple Growers, Inc.
Cottrell's Road
Browntown, N. J.

Application for Limited Distillery License filed April 18, 1949.

Joseph, Alfred, George and Walter Nash and Charles Nash
T/a Chas. Nash & Sons (Limited Wholesale License WL-24)
64 Hutton St.
Jersey City, N. J.

Application for additional warehouse at 176 New York Ave.,
Jersey City, N. J., filed April 20, 1949.

Austin, Nichols & Co., Inc.
82 Poinier St.
Newark, N. J.

Application for additional warehouse at 64-70 Oakland St.,
Trenton, N. J., filed April 22, 1949.

ERWIN B. HOCK
Director.

10. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - SUSPENSION REIMPOSED UPON AFFIRMANCE OF DIRECTOR'S DECISION BY APPELLATE DIVISION OF THE SUPERIOR COURT.

In the Matter of Disciplinary Proceedings against)

DANIEL FLAX)
284 Prospect Street)
East Orange, N. J.,)

O R D E R

Holder of Solicitor's Permit)
No. 817, issued by the State Com-)
missioner (now Director) of)
Alcoholic Beverage Control.)

BY THE DIRECTOR:

By order dated November 19, 1948, the solicitor's permit of the defendant was suspended for a period of ten days after he had pleaded non vult to a charge alleging violation of R. S. 33:1-2. See Bulletin 822, Item 5.

These proceedings are related to those brought against the plenary wholesale license of Galsworthy, Inc., the defendant's employer. See Bulletin 822, Item 4. When the suspension of the latter's license, upon its appeal, was stayed by order of the Superior Court, Appellate Division, the suspension against this defendant was likewise held in abeyance.

The suspension against the wholesale license having been affirmed by the court, it was reimposed, by order being entered simultaneously herewith, to conclude on Tuesday, May 17, 1949, at 12:01 a.m. The suspension against the solicitor's permit herein, therefore, will also be now reimposed, to commence at that time.

Accordingly, it is, on this 21st day of April, 1949,

ORDERED that Solicitor's Permit No. 817, issued by the State Commissioner (now Director) of Alcoholic Beverage Control to Daniel Flax, 284 Prospect Street, East Orange, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. Tuesday, May 17, 1949, and terminating at 12:01 a.m. Friday, May 27, 1949.

Erwin B. Hoek
Director.