

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

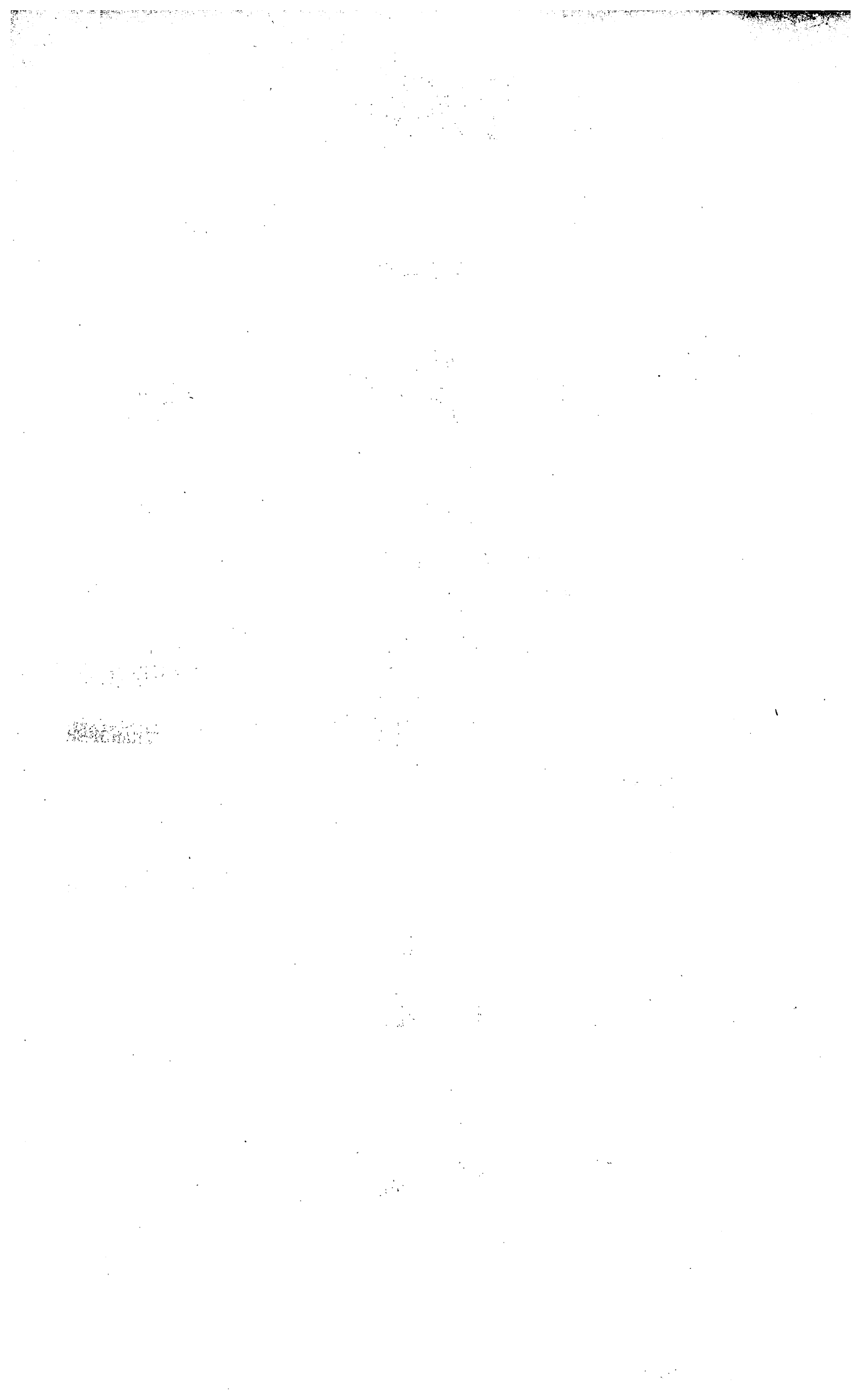
BULLETIN 1237

August 13, 1958

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

ULLETIN 1237

August 13, 1958

- . DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(SOLICITATION FOR PROSTITUTION) - PRIOR RECORD - PREMISES CLOSED -
LICENSE SUSPENDED FOR 65 DAYS, EFFECTIVE DATES TO BE FIXED BY
SUBSEQUENT ORDER WHEN PREMISES REOPEN.

In the Matter of Disciplinary)
Proceedings against)

T-BAR & GRILL, INC.)
t/a T-BAR)
257 Market Street)
Newark, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-328, issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Newark.)

Herman Blank, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On Wednesday night, September 18, 1957, you
allowed, permitted and suffered lewdness and
immoral activity in and upon your licensed premises,
viz., solicitation for prostitution and the making
of arrangements for illicit sexual intercourse; in
violation of Rule 5 of State Regulation No. 20.'

"ABC Agent M testified that he entered defendant's licensed
premises at 9:05 p.m. on Wednesday, September 18, 1957 and took a seat
at the bar; that approximately ten minutes later Agent Mc entered
defendant's premises and sat at the bar two stools from where Agent M
was sitting; that at about 9:45 p.m. a female (later identified as
Antoinette T---) came into the premises and 'walked about the bar
approaching several males seated at the bar, and she didn't stop to
drink with them, she just talked with them and walked on'; that she
spoke to 'approximately seven' men but that he (Agent M) did not
hear any of the conversations; that she then approached him (Agent M)
and said, 'Hello! How are you doing?'; that he answered, 'I don't
know yet. What business are you in?'; that Antoinette said, 'I am
hustling'; that he asked what her price was and she answered, '\$10.00
and \$2.00, the latter charge for the room'; that he asked her if she
cared to have a drink but she said, 'No. I am in a hurry. If you
want to do business let's get going. I have another appointment at
eleven o'clock'; that she walked toward the door at which time he
walked to the men's room followed by Agent Mc; that when he and
Agent Mc returned to the bar he called to the bartender and ordered
a drink for himself; that when the drink was being served to him
Antoinette came over and said, 'Hurry up. Let's get going'; that
as she walked away he pointed to Antoinette and said to the bartender,
'How is that girl? I want to get laid. She wants ten and two'; that

the bartender answered, 'She is all right. Just watch you don't get knifed'; that Antoinette then came to him again and said, 'Let's get going', at which time the bartender smiled; that thereafter he left the premises with Antoinette and as they reached the sidewalk he gave her twelve dollars (the serial numbers of which had been previously recorded) and by a pre-arranged plan he and the female were stopped by members of the local police department.

"Agent Mc's testimony corroborated in substance that given by Agent M.

"Nicholas Myz testified that he served both agents on the evening in question and that Agent M asked him to serve a drink to a lady but that he refused 'because the owner said it to me unless come in together don't serve them'; that he never heard Agent M speak about engaging in sexual intercourse with the woman; that when the agents returned to defendant's licensed premises and questioned him about Antoinette, he told them he knew nothing about a woman being in the premises who solicited men; that he has been in this country for five and one-half years and that he has difficulty in speaking and understanding the English language; that he did not know what the expressions 'getting laid' or 'knifed' meant.

"Ben Mak testified that he is president of defendant corporate-licensee and that he was on duty on the night in question; that he did not observe any woman soliciting men; that after 12 o'clock he remembered Agents M and Mc speaking to the bartender and then when he went over to them they made known their identifies as ABC agents and advised him that a woman prostitute had been taken from the defendant's licensed premises.

"The testimony of the agents is uncontradicted that Antoinette walked around the bar and spoke to seven men patrons before she approached Agent M. Ben Mak testified that he did not see Antoinette on the premises during the time she was there nor did he have knowledge of her activities until he was advised by the agents upon their return to the licensed premises.

"However, even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of incidents, such as are hereinabove related, on his licensed premises. He cannot hide behind his employees. Not only is it no defense that the violations may have been committed in his absence or by his agent, servant or employee, or that he did not participate in the violations, or that they were committed contrary to his instructions (Rule 33 of State Regulation No. 20; Stein v. Passaic, Bulletin 451, Item 5) but, in addition, 'licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises.' Bilowith v. Passaic, Bulletin 527, Item 3. See also Re One-thirty-five Mulberry St. Corp., Bulletin 892, Item 2. Most certainly, this licensee 'suffered' these lewd and immoral acts to take place in and upon the licensed premises. As the Supreme Court said in Essex Holding Corp. v. Hock, 136 N.J.L. 28, at p. 31, 'Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his knowledge. Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. Rep. (2d) 140.'

"I am satisfied from the evidence presented herein that the bartender made the remarks attributed to him when Agent M revealed his plans to engage in sexual intercourse with Antoinette. Although the contention of the bartender that his familiarity with the English language is limited may have some substance, there is no doubt in my mind that he understood and acquiesced in what Agent M said concerning

his contemplated immoral activities with Antoinette. I recommend that defendant be found guilty as charged.

"It seems to me that this case does not fall in the category of those in which penalties of 180 days heretofore were imposed on licensees for permitting and suffering solicitation for prostitution. Here, the female came into the premises, made no purchases of alcoholic beverages and did not accept the offer of a treat made by the agent. Everything concerning the events that occurred on the evening in question after the female entered were hurried to such an extent there appeared to be no collusion between the bartender and the girl to have her prey on the male patrons in the defendant's establishment. I am, therefore, of the opinion that there were sufficient mitigating circumstances present to recommend a lesser penalty for the instant violation. Cf. Re Wieliczka and Hanchar, Bulletin 1194, Item 2.

"Defendant has a prior adjudicated record. Effective March 11, 1957 its license was suspended for ten days for sale of alcoholic beverages in violation of the minimum consumer resale price and employing an unqualified person. Re T-Bar & Grill, Inc., Bulletin 1163, Item 6. Under the circumstances appearing in the case and taking into consideration the previous dissimilar record occurring within the past five years, I recommend that defendant's license be suspended for sixty-five days."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

After carefully considering the facts and circumstances herein, I concur in the Hearer's findings and conclusions and adopt his recommendation.

The file discloses that the defendant's business is not being conducted at present. Thus, no effective penalty can be imposed at this time. The effective time and date of the suspension, therefore, will be fixed by further order which will be entered by me after the licensed premises shall have reopened for business.

Accordingly, it is, on this 17th day of June 1958,

ORDERED that Plenary Retail Consumption License C-328, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to T-Bar & Grill, Inc., t/a T-Bar, for premises 257 Market Street, Newark, be and the same is hereby suspended for sixty-five (65) days, the effective time and date to be fixed by subsequent order as aforesaid.

WILLIAM HOWE DAVIS
Director

2. DISCIPLINARY PROCEEDINGS -- GAMBLING - SALE TO INTOXICATED PERSONS - LICENSE SUSPENDED FOR 35 DAYS.

In the Matter of Disciplinary Proceedings against

JULIUS AMSTER, ARTHUR AMSTER & BLANCHE A. ROBINS t/a AMSTER'S TAVERN 437 West Market Street Newark 7, New Jersey

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-607, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Robert W. Wolfe, Esq., Attorney for the Defendant-licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"The following charges were preferred against defendants:

'1. On February 5, 1958, you allowed, permitted and suffered gambling, viz., the playing of a pool game for stakes of money and the making and accepting of bets of money in a lottery, commonly known as a "fight pool", in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20.

'2. On February 5, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of such beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"Defendants have pleaded non vult to Charge 1 and not guilty to Charge 2.

"As to Charge 1: The file herein discloses that at about 9:00 p.m. on February 5, 1958 two ABC agents (hereinafter referred to as Agents M and Mc) entered defendants' licensed premises and took seats at the bar. A man (subsequently identified as John ---) and another patron played pool for money. At 9:30 p.m. the bartender (subsequently identified as Julius Amster, one of the defendant-licensees and hereinafter referred to as Amster) was observed accepting bets from patrons on the outcome of a prize fight scheduled to be televised later in the evening. Agent M participated therein and paid the bartender one dollar for his chance.

"As to Charge 2: Agent M testified that he observed John playing pool with another patron and that John appeared to be intoxicated, i.e., 'he walked unsteadily and staggered' when walking from the bar to the pool table and back again; that 'he would slump over the table, he made several miscues, and used the table once or twice for support walking around the table and positioning himself for another shot, he would use the table for support'; that 'at one

time he used the shuffleboard--leaned against the shuffleboard to steady himself'; that 'he would walk back to the bar, take a sip of beer at the bar'; that 'after the playing of a game he would go back to the bar and have a glass of beer which was served to him by Julius Amster'; that 'he was loud and used boisterous language' and his speech was 'very thick'; that Amster stated with reference to John 'that fellow has been in here all day drinking and now he is drunk' and added 'he lost an eye in an automobile accident about two years ago and just settled his claim'; that after the conversation with Amster he (Agent M) observed Amster again serve beer to John. Agent M further testified that about 9:50 p.m., in the presence of Agent Mc and two local police officers, he identified himself to John and Amster; that when he attempted to learn the identity of John the latter directed filthy epithets (the repetition of which will serve no useful purpose) toward him; that he also threatened that he was going to get in touch with a congressman whom he referred to by name; that, thereafter, he (Agent M) questioned Amster with reference to John's sobriety but Amster merely shrugged his shoulders and made no comment.

"Agent Mc's testimony corroborated in substance that given by Agent M. Although both agents were subjected to lengthy cross-examination, their testimony on the whole remained unshaken with reference to the actions and remarks allegedly made by John and Amster.

"Amster, one of the defendants herein, testified that about 9:50 p.m. on the evening in question, as two local police officers entered the premises, Agent M identified himself; that he heard conversation between John and Agent M and 'they were both loud'; that after Agent M called the police officers to the barroom he observed John hand his wallet to one of the officers; that during the evening John had engaged in games of pool with Robert Foley and that John was neither intoxicated nor apparently intoxicated; that during the evening he served John four or five six-ounce glasses of beer; that after the agents identified themselves he did not hear John direct any filthy language toward either of them; that he remembered telling the agents about John's accident and might have mentioned that he had gotten a settlement 'some months back'; that he did not tell the agents that John had been in the tavern all day as he (Amster) had been on duty since 5:00 p.m.

"John testified that he came into defendants' establishment at about 8:30 p.m. and, during the evening, had four glasses of beer; that he played pool with one 'Bob Foley' and, although he is always loud and noisy, he was not intoxicated nor did he stagger while walking; that he sometimes walks fast and other times slow, but ordinarily is a lazy person; that he had worked as a bartender on occasion for the defendants, the last time being two to three weeks before the incident in question and that about nine months previous to the night in question he received an award for the loss of his eye.

"Robert J. Foley testified that on the evening of February 5, 1958 he played pool with John who, in his opinion, was not actually or apparently intoxicated. He further testified that John is always 'a little loud' and was attempting to make him (Foley) nervous and confused whenever he endeavored to make a shot during the games.

"Leo J. Sweet testified that during the evening under consideration he visited the defendants' licensed premises but had left at about 9:45 p.m. He further testified that he saw John playing pool with Foley and, in his opinion, John was not intoxicated or was he apparently intoxicated.

"The evidence adduced by the parties herein appears to be

quite contradictory. On the one hand there is the testimony of the agents which is set forth in detail regarding the occurrences which took place at the time in question. With few exceptions, the agents were in agreement as to the appearance of John and also with reference to his sobriety. Despite the denials of both John and the other witnesses produced by the defendants, I am satisfied from the evidence presented that John was apparently intoxicated and, while in that condition, was served beer by Amster. I recommend that the defendants be adjudged guilty of Charge 2 preferred herein.

"Defendants have no prior adjudicated record. As a result of their plea of non vult to Charge 1, I recommend that their license be suspended for twenty days (Re Blome, Bulletin 1169, Item 3). In addition thereto, I recommend that their license be suspended for fifteen days on Charge 2 (Re Madeira, Bulletin 1199, Item 2). I recommend that the defendants' license be suspended herein for a total of thirty-five days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney for the defendants, pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's Report and the exceptions and argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 16th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-607, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Julius Amster, Arthur Amster & Blanche A. Robins, t/a Amster's Tavern, for premises 437 West Market Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m., June 23, 1958; and it is further

ORDERED that any renewal or transfer of such license shall be and remain under suspension until 2:00 a.m., July 28, 1958.

WILLIAM HOWE DAVIS
Director

DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE
SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)
CIRCLE BAR & GRILL, INC.)
t/a CIRCLE BAR & GRILL)
Rte. #23 & Black Oak Ridge Rd.)
Wayne Township)
PO RFD Paterson, N. J.)
Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of Wayne Township.)

CONCLUSIONS
AND ORDER

Donato & Donato, Esqs., by Mitchel F. Donato, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On Saturday, October 19, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., George ---, age 17; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein, George --- testified that on the date of the alleged violation he was 17 years of age and a member of the armed forces; that between 10:00 and 10:30 p.m. he arrived at the parking lot adjacent to defendant's licensed premises; that he went into the premises while his four companions (Jack ---, now in the armed services, Joseph ---, Everett --- and Lester ---) remained in the car; that he purchased two quart containers of beer from a waitress (subsequently identified as Myrtle Matich) who made no inquiry concerning his age before making service of the beer to him; that although he did not remember whether he told any member of the Lincoln Park Police Department that he obtained beer on October 19, 1957 at defendant's establishment, he remembered telling his father about the incident.

"Joseph ---, Everett --- and Lester --- testified that on October 19, 1957 they were passengers in a car which was driven by George ---; that Jack --- was also in the car at the time in question; that the car was parked in a parking lot of defendant's premises near the exit thereof; that George left the car, went to defendant's licensed premises and shortly thereafter returned with a bag in which there were two containers of beer; that upon reaching the car, George removed the containers from the wet bag and threw the bag away; that thereafter they went back to the dance at a school where they had previously been that evening.

"Two ABC agents testified that on October 23, 1957 they met George and his father at their home and drove them to the defendant's licensed premises; that George directed them how to get there; that on arriving at the premises they went inside and George pointed to Myrtle Matich as the person who sold the beer to him on the night in

question; that they identified themselves to Myrtle Matich and she, when questioned about the incident on the night of October 19, 1957, stated that she did not know whether or not the boys were there but she recalled several boys attempting to purchase beer but she refused to serve them.

"Myrtle Matich, called as a witness by the defendant, testified that she saw George on Friday, October 18, 1957, but neither he nor the other boys were in defendant's establishment on October 19th; that she and Catherine Petruzzi were working on Friday night, October 18th at the time when George came into the premises and asked for beer; that she inquired about his age and he displayed a card on the reverse side of which the age had been erased; that she took the card to the boss (Robert Chirichella) and he said, 'Don't serve them'; that when she refused to serve George he directed an indecent remark at her and thereafter would mock her each time she called out orders for other patrons; that Robert Chirichella came over and ordered George and his companions to finish their pizza pies and then leave the premises; that when George visited defendant's establishment with his father and the two ABC agents, she recognized George as the person who had been in defendant's premises on October 18th.

"Catherine Petruzzi testified that she is employed by defendant and remembered the boys who testified at the instant hearing being in defendant's premises on October 18, 1957; that they were giving Myrtle Matich 'a hard time'; and that no alcoholic beverages were sold to any of them.

"Robert Chirichella testified that he is the president of defendant-corporation; that on the evening of October 18, 1957, Myrtle Matich showed him a card which she had obtained from a youth; and after observing that the age had been erased, he ordered his waitress not to serve him; that a short time thereafter he was summoned by his waitress at which time he told George and the other boys who were eating pizza pie at the counter that after they finished the pie they should get out; that at no time on October 19, 1957 did he see George in the licensed premises.

"Officer Michael Nowacki, a member of the Lincoln Park Police, testified that he investigated an automobile accident which occurred on October 20, 1957 in which George was involved; that when George was being treated at the hospital the doctor told him (Officer Nowacki) the boy had been drinking; that the boy never mentioned that he had obtained alcoholic beverages at defendant's licensed premises. During cross-examination Officer Nowacki was asked whether or not he knew anything about George having been served beer in defendant's tavern on October 19th and he (Officer Nowacki) replied that he was not concerned with the 19th.

"On rebuttal, the attorney representing the Division recalled George, Joseph, Everett and Lester, and all denied that they were in defendant's licensed premises at any time on Friday night, October 18, 1957. Furthermore, George denied that he had ever used any profanity toward Myrtle Matich. The ABC agent who had questioned Myrtle Matich was also recalled in rebuttal as a witness and he testified that Myrtle Matich made no mention to him about the boys being in defendant's licensed premises on the Friday night.

"At a supplemental hearing which was held pursuant to the request of the attorney for defendant who claimed to have discovered new evidence which was not available at the time of the original hearing in the matter, one Thomas J. Scott was called as a witness on defendant's behalf. Scott testified that at six o'clock on the evening of the Monday following the date in question, he met Joseph, Lester and George on the corner where they used to meet and that the

boys stated that George had obtained the beer in question at some establishment other than defendant's licensed premises. It was agreed by the attorneys herein that if one William Ryder, who is in the armed services, were produced as a witness, his testimony would corroborate, in substance, that given by Thomas Scott.

"I have considered very carefully the testimony of the various witnesses in the instant case. I am satisfied that the testimony given by the four boys produced by the Division is substantially what occurred on the date in question. Although subjected to extensive cross-examination of the attorney for the defendant, George's testimony as to what occurred was very consistent. He stated that he went into the premises and that service of the containers of beer was made to him by Myrtle Matich, whom he immediately identified when he entered the defendant's premises on October 23rd with the ABC agents assigned to investigate the matter. The other three boys testified they remained in the car when George went into defendant's licensed premises; that he returned a short time thereafter with containers of beer and then returned to the dance. Furthermore, they testified how the bag in which the containers were placed was disposed of by George after he found it very wet. On the other hand, Myrtle Matich, the waitress designated as the one who made the sale and service of the beer to George, testified that the boys were present on the night of Friday, October 18th, when they allegedly annoyed her while in the premises. This testimony is corroborated substantially by the president of defendant corporate-licensee and also another employee. I have no doubt that there was a group of boys present on the evening of Friday, October 18th, but I am satisfied the boys in question were not there. The boys denied being in defendant's licensed premises on the night of October 18th. The police officer who testified on behalf of defendant-licensee, stated that he was not concerned with what happened on October 19th, but rather with what happened on October 20th because he was investigating an accident which happened on the latter date wherein George was involved. The testimony presented at the supplemental hearing carries little, if any, weight whatsoever.

"Under the circumstances appearing in this case, I recommend that the defendant be found guilty of the charge preferred herein.

"Defendant has a prior adjudicated record. Effective October 23, 1955, its license was suspended by the local issuing authority for a period of four days for sale of alcoholic beverages in original containers for off-premises consumption during prohibited hours. Inasmuch as the dissimilar past record occurred during the past five years, it will be taken into consideration with reference to the fixing of the penalty herein. I recommend that for the sale of alcoholic beverages to a 17-year-old minor, defendant's license be suspended for a period of twenty days (Re Decker, Bulletin 1222, Item 10), plus an additional five days because of the dissimilar record occurring within the past five years, making a total suspension of twenty-five days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the defendant's attorney, pursuant to Rule 6 of State Regulation No. 16.

Defendant's attorney laid considerable stress on the testimony given at the supplemental hearing by Thomas Scott, 16 years of age. Scott, who was not with George and his companions on the evening in question, attributed certain statements to George and some of his companions made some time thereafter, to the effect that they told the police that the purchase of the beer was actually made at some other than defendant's liquor establishment but in order to protect the other place, they accused the defendant. Officer Nowacki who investigated the matter denied that George had ever told him he had

obtained beer on either October 19th or 20th at defendant's licensed premises. I am not impressed with Scott's testimony and give little credence to the alleged statements attributed by him to George and the other youths.

After careful consideration of the entire record, including the transcripts of the testimony, the brief filed by defendant's attorney, the Hearer's Report, the exceptions and argument filed therewith, I concur in the Hearer's findings and conclusions and adopt his recommendation.

Accordingly, it is, on this 17th day of June 1958,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of Wayne Township to Circle Bar & Grill, Inc., t/a Circle Bar & Grill, for premises Rte. #23 & Black Oak Ridge Rd., Wayne Township, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m., June 23, 1958, and it is further

ORDERED that any renewal for the 1958-59 licensing year or transfer of said license shall be and remain under suspension until 3:00 a.m., July 18, 1958.

WILLIAM HOWE DAVIS
Director

NOTE: By order dated June 19, 1958, the Director amended the aforesaid orders to provide that the suspension should become effective at 3:00 a.m. June 30, 1958 and that any renewal of the license should remain under suspension until 3:00 a.m. July 25, 1958.

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
32 CLUB, INC.
t/a LATIN QUARTER
132 Orchard Street
Newark 5, N. J.
Holder of Plenary Retail Consumption License C-947, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

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) CONCLUSIONS
) AND ORDER
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Joseph A. D'Alessio, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On April 17, 19 and 22, 1958, you allowed, permitted and suffered gambling in and upon your licensed premises viz., the making and accepting of horse race bets on April 19 and 22, 1958 and the making and accepting of bets in a lottery, commonly known as the 'numbers game', on April 17, 19 and 22, 1958; in violation of Rule 7 of State Regulation No. 20.

"2. On April 17, 19 and 22, 1958, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20.

"3. On April 22, 1958, you possessed, had custody of and allowed, permitted and suffered tickets and participation rights in a lottery, known and designated as The Big Jack Pot, in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

The file herein discloses that, while two ABC agents were in defendant's licensed premises on the afternoon of April 17, 1958, they observed Joseph Carmazino, who was then tending bar, accept number bets amounting to \$5 from an unidentified patron. The same agents returned to the licensed premises on the afternoon of April 19, 1958, at which time Arthur Ackerman was tending bar. In the presence of the bartender one agent placed with a patron, Ernest LePree, a \$5 bet on a horse running at Gulfstream Park and the other agent placed with the same patron a \$4 bet on a horse running at Jamaica. The same agents returned to the licensed premises shortly after 11 a.m. on April 22, 1958. Arthur Ackerman was tending bar when they entered the premises and Ernest LePree (the patron mentioned above) was seated at the bar. At about 11:45 a.m. one agent placed with LePree a \$2 "daily double" bet on horses running at Laurel Park, and about twenty minutes later the other agent placed with LePree a \$4 bet on a horse running at Gulfstream Park. Both agents used marked money in making these bets. Each agent also placed a \$1 number bet with LePree. Other ABC agents and Newark police officers then entered the premises and found in LePree's possession the six \$1 marked bills, an additional sum of money, and a pad bearing number bets. Shortly before these agents and police officers had entered the premises Joseph Carmazino started to tend bar and in his possession there were found four Irish sweepstake tickets and a sheet of paper containing twenty-five number plays. Carmazino stated that the sweepstake tickets had expired and that the sheet of paper referred to number plays which he had taken outside of the premises. Upon searching the premises the agents found beneath the bar a raffle book (on a raffle known as The Big Jack Pot) containing twenty-five unpurchased chances at \$1 per chance.

Defendant has no prior adjudicated record. I shall suspend its license for twenty-five days on Charges 1 and 2 (Re Sparvitt, Inc., Bulletin 1206, Item 4). Under the circumstances of this case, I shall suspend defendant's license for five days on Charge 3, making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 17th day of June, 1958,

ORDERED that plenary retail consumption license C-947, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 32 Club, Inc., t/a Latin Quarter, for premises 132 Orchard Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2 a.m. June 23, 1958; and it is further

ORDERED that any renewal for the 1958-59 licensing year or transfer of said license shall be and remain under suspension until 2 a.m. July 18, 1958.

WILLIAM HOWE DAVIS
Director

ACTIVITY REPORT FOR JULY 1958

ARRESTS:		
Total number of persons arrested	-----	19
Licenses and employees	----- 6	
Bootleggers	----- 13	
SEIZURES:		
Still - over 50 gallons	-----	1
Mash - gallons	-----	1,250.00
Distilled alcoholic beverages - gallons	-----	6.66
Wine - gallons	-----	15.32
Brewed malt alcoholic beverages - gallons	-----	31.62
RETAIL LICENSEES:		
Premises inspected	-----	700
Premises where alcoholic beverages were gauged	-----	379
Bottles gauged	-----	6,159
Premises where violations were found	-----	79
Violations found	-----	142
Type of violations found:		
Unqualified employees	----- 78	Other mercantile business
Application copy not available	----- 23	Disposal permit necessary
Prohibited signs	----- 13	Probable fronts
Reg. #38 sign not posted	----- 7	Improper beer taps
		Other violations
		----- 8
STATE LICENSEES:		
Premises inspected	-----	11
License applications investigated	-----	5
COMPLAINTS:		
Complaints assigned for investigation	-----	525
Investigations completed	-----	413
Investigations pending	-----	210
LABORATORY:		
Analyses made	-----	145
Refills from licensed premises - bottles	-----	1
Bottles from unlicensed premises	-----	25
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-----	17
Persons fingerprinted for non-criminal purposes	-----	300
Identification contacts made with other enforcement agencies	-----	263
Motor vehicle identifications via N. J. State Police teletype	-----	2
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	14
Violations involved	-----	15
Sale during prohibited hours	----- 10	
Sale to minors	----- 3	
Sale to non-members by club	----- 1	
Employee without identification card (local reg.)	----- 1	
Cases instituted at Division	-----	20
Violations involved	-----	28
Sale to minors	----- 10	Conducting business as a nuisance
Sale during prohibited hours	----- 3	Unauthorized transportation
Possessing illicit liquor	----- 2	Delivery without bona fide invoice
Permitting immoral activity on premises	----- 2	Permitting foul language on premises
Sale below minimum resale price	----- 2	Permitting hostesses on premises
Permitting bookmaking on premises	----- 1	Service to women at a bar (local reg.)
Possessing indecent matter	----- 1	Hindering investigation
Cases brought by municipalities on own initiative and reported to Division	-----	----- 1
Violations involved	-----	11
Sale to minors	----- 5	
Sale during prohibited hours	----- 3	
Conducting business as a nuisance	----- 3	
Permitting brawl on premises	----- 2	
Permitting immoral activity on prem.	----- 1	
Permitting prostitutes on premises	----- 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	39
Appeals	----- 5	
Disciplinary proceedings	----- 26	
Eligibility	----- 4	
Seizures	----- 3	
Applications for license	----- 1	
STATE LICENSES AND PERMITS ISSUED:		
Total number issued	-----	2,004
Licenses	----- 589	Social affair permits
Employment permits	----- 332	Miscellaneous "
Solicitors "	----- 55	Transit insignia
Disposal "	----- 94	Transit certificates
		----- 384
		----- 269
		----- 259
		----- 22

WILLIAM HOWE DAVIS
DIRECTOR

Dated: August 5, 1958

DISCIPLINARY PROCEEDINGS - SALE TO MINORS - FAILURE TO HAVE TRUE COPY OF LICENSE APPLICATION ON PREMISES - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HENRY J. LAFFMAN)
t/a LAFFMAN'S JEWEL TAVERN)
5000-5002 Bergenline Avenue)
and 442-444-50th Street)
West New York, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-77, issued by the Board of Commissioners of the Town of West New York.)

Cohen and Turtz, Esqs., by Theodore Cohen, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) he sold, served and delivered alcoholic beverages to three minors and permitted the consumption of such beverages by said minors in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20, and (2) he conducted his licensed business without having on his licensed premises a true or photostatic copy of his current license application, in violation of Rule 16(b) of State Regulation No. 20.

The file herein discloses that at 9:55 p.m., Saturday, May 24, 1958, ABC agents who were in defendant's licensed premises observed two apparent minors take seats at the bar at which each was served a glass of beer by John Laffman, the licensee's son, who required no written proof of their ages. At 10:00 p.m. another apparent minor entered the premises and seated himself at the bar next to the other youths and, without being questioned as to his age, was served a glass of beer by Henry Laffman, the licensee. After the three young men had consumed some of the beverages, the agents identified themselves and, ascertaining that the youths were George ---, age 15, John ---, age 17 and Victor ---, age 19, seized the remaining portion of their drinks for evidential purposes. The agents then obtained signed, sworn statements from the three minors and from the aforesaid John Laffman. George in his statement states that on May 16, 1958 he presented a draft card to John Laffman and signed a "document" representing himself to be over 21 years of age. John in his statement states that he is a member of the United States Armed Forces and that, on a previous occasion, he presented to John Laffman his I.D. card on which his true age appeared. Victor in his statement states that Henry Laffman served him a glass of beer without requiring any proof of his age. John Laffman in his statement admits serving George and John and states that he didn't question George as to his age because he had previously signed a paper representing himself to be over 21 years of age. Henry Laffman refused to give a signed statement.

When the agents asked to see a copy of the current license application, Henry Laffman, the licensee, informed them that it was in the office of his accountant who was preparing the renewal application.

Defendant, by his attorney, contends in mitigation of the penalty to be imposed herein that the 17 and 19 year old minors appeared to be over 21 years of age and that the 15 year old minor had executed an affidavit representing himself to be over 21 years of age. The agents, however, report that the minors appeared to them to be their true ages. Defendant also contends that he was unaware of the requirements of the regulations. Ignorance of the statute and rules and regulations governing the conduct of a licensed business affords no excuse. Re Ceasar, Bulletin 1211, Item 4. A true or photostatic copy of the current license application must at all times be available on licensed premises for agents' inspection. The only defense provided by the Alcoholic Beverage Law in the case of sale or service of an alcoholic beverage to a minor or consumption of an alcoholic beverage by a minor on licensed premises is that wherein all the following facts affirmatively appear: (a) that the minor falsely represented himself in writing to be of age, (b) that the minor's appearance was such that an ordinarily prudent person would believe him to be of age and (c) that the sale was made in reliance upon such written representation and appearance and in the reasonable belief that the minor was of age. See R.S. 33:1-77; Re Butera, Bulletin 606, Item 4; Roey v. Hock, Bulletin 758, Item 2.

Defendant has no prior adjudicated record. Considering the number of minors involved and the tender ages of two of them, I shall, under all the circumstances, suspend defendant's license for a period of thirty days on Charge 1, Cf. Re Backiel, Bulletin 1166, Item 4. Accepting as true the licensee's statement that the accountant had his application for the purpose of preparing renewal application, I shall suspend the license for an additional five days instead of the usual ten days on Charge 2, making a total suspension of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this ¹⁸28th day of June, 1958,

ORDERED that Plenary Retail Consumption License C-77, issued by the Board of Commissioners of the Town of West New York to Henry J. Laffman, t/a Laffman's Jewel Tavern, for premises 5000--5002 Bergenline Avenue and 442-444 - 50th Street, West New York, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m., June 25, 1958; and it is further

ORDERED that any renewal for the 1958-1959 licensing year or transfer of said license shall be and remain under suspension until 3:00 a.m., July 25, 1958.

WILLIAM HOWE DAVIS
Director

STATE BEVERAGE DISTRIBUTOR - OBJECTIONS TO TRANSFER OF LICENSE HELD TO BE MERITORIOUS.

In the Matter of Objections to the Transfer of State Beverage Distributor's License SBD-111 from

SAXON DISTRIBUTING CO. 608 Adams Street Hoboken, N. J.

CONCLUSIONS

to

PETER, JOSEPH, AUGUST AND JULIAN MUSTARDO t/a LYNDALE BEVERAGE CO. 650 Valley Brook Avenue Lyndhurst, N. J.

Frank Piscatella, Esq., Attorney for Applicants. Otto J. Stellato, Esq., Attorney for Board of Commissioners of the Township of Lyndhurst, an Objector. Samuel Moskowitz, Esq., Attorney for Hudson-Bergen County Retail Liquor Stores Association, an Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Written objections to the transfer having been filed by various objectors, a hearing was duly held thereon.

"On behalf of the objector, Board of Commissioners, there was introduced into evidence a certified copy of a portion of the minutes of a meeting held by said Board on April 21, 1958. It appears therefrom that a motion was then unanimously carried directing the Clerk to write to the Division opposing the transfer for the following reasons:

- 1. The proposed use of the property is in violation of the Zoning Ordinance in that it is located in a 'B' residence zone.
2. That the Board, as a general policy, is opposed to any increase in the number of licenses issued.
3. That it is the opinion of the Board that the public already is adequately served, based upon the number of licenses.

"The objections filed by other objectors allege, in substance, that there is no need or necessity for an additional SBD license in the area wherein the applicants intend to operate.

"On behalf of applicants, Peter Mustardo testified that he and his three brothers, as partners, have been engaged in the business of manufacturing and distributing soft drinks at 650 Valley Brook Avenue, and that the business was established by their father about twenty-five years ago. He testified that there are a number of coal-yard, trucking terminals and factories within a radius of three blocks from their place of business. He also testified that they have lost about ninety customers during the past year because they do not sell unchilled beer, and that they desire the license to permit them to sell beer to their customers, particularly in Bergen County.

"The Zoning Ordinance of the Township of Lyndhurst, adopted April 13, 1938, was introduced into evidence. It has been represented that the other business places in that section of the Township are located in light industrial zones. However, applicants' premises are located in a 'B' residential zone, in which, according to said ordinance, 'no dwelling shall be erected, altered or used except as a one-family detached or semi-detached dwelling, or as a two-family detached dwelling.' It seems to be clear that the use of applicants' building for the manufacturing and distributing of soft drinks is permissible under the ordinance as a 'non-conforming' use. However, the sale of liquor at said premises would constitute a new use in the zoned area and would not be permissible under the non-conforming use which existed when the zoning ordinance was adopted. Talbot v. Mendham and Keppler, Bulletin 117, Item 1; New Brunswick Boat Club, Inc. Highland Park, Bulletin 1229, Item 2. The application should be denied because the granting thereof would result in a violation of the Zoning Ordinance.

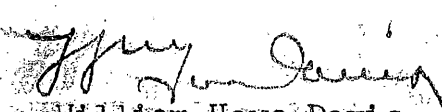
"As to need and necessity: Three licensee who hold plenary retail distribution licenses for premises in Lyndhurst testified that there is no need for an additional license in the Township. In Re Honchar, Bulletin 1215, Item 10, it was stated that such objections carry little weight because the SBD type of operation offers little competition to retail consumption and retail distribution licensees. However, in the present case Saxon Distributing Co. has not operated under its license since March 1, 1958, and it has not transferred its customers to the applicants. Thus, in effect, applicants are seeking to establish a new business for the sale of unchilled beer in Bergen County, which now has nineteen State Beverage Distributor licensees. Under these circumstances it does not appear that there is need or necessity for an additional SBD license in the area where the applicants intend to operate.

"For the reasons aforesaid, it is recommended that the application be denied."

No written exceptions to the Hearer's Report were filed on behalf of applicants.

After carefully considering the entire record, including the transcript of testimony and the Hearer's Report, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein and, hence, I deny the application for the transfer in question.

Dated: June 30, 1958


William Howe Davis
Director

New Jersey State Library