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

BULLETIN 498 MARCH 12, 1942.

1. GAMBLING DEVICES - BAGATELLE AND PIN BALL MACHINES PROHIBITED ON LICENSED PREMISES - STATE REGULATIONS NO. 20, RULE 7 AMENDED.

TO ALL NEW JERSEY RETAIL LICENSEES:

The New Jersey Supreme Court, in an opinion written by Mr. Justice Porter in the case of Joseph Stafford, Prosecutor, v. E. W. Garrett, Acting Commissioner of Alcoholic Beverage Control of the State of New Jersey, Respondent, has sustained the legality of an order of this Department holding a licensee guilty of violating Rules 7 and 8 of State Regulations No. 20, in that he possessed and permitted on his licensed premises a "Mills 1-2-3" machine, found by the Department to be a device in the nature of a slot machine designed for the purpose of gambling. Of the machine in question the Supreme Court said:

> "The prosecutor (the licensee) had in his tavern a machine known as 'The Mills 1-2-3.' It is similar to a BAGATELLE OR PIN BALL GAME and is electrically controlled. A nickel is placed in a slot and a ball is made available for play, it is propelled up an incline and registers a score in the course of its travel. After the ball is put in motion it is beyond the control of the player. If a certain score is made the privilege of playing free games is awarded. The machine contains no cup into which money, tokens or anything of value is ejected. (Caps ours).
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> "The prosecutor argues that the proofs did not establish that the machine was either a device in the nature of a slot machine possessed in violation of Rule 8 or a device designed for gambling purposes permitted on the licensed premises in violation of Rule 7. We think that the proofs do establish a violation of the said regulations. The slot machine in question comes clearly within our holding in Hunter v. Teaneck, which opinion was filed February 24th, 1942."

This opinion of the Supreme Court, upholding the position heretofore taken by the Department, follows close on the heels of the Supreme Court's opinion in the case of Hunter v. Teaneck, wherein it considered and sustained the validity of an ordinance of the Township of Teaneck prohibiting the "keeping" of any "game of chance" or "gambling device", including, it is to be noted, "bagatelle" and "pin ball" machines. In the latter opinion written by Mr. Justice Perskie, the Supreme Court states:

> ".....we have no hesitancy in factually and legally stamping the pin ball game as a game of chance. The pin ball machines involved are nothing but ingeniously designed and purposefully constructed mechanical gaming devices to appeal to, induce, lure and encourage, the gaming instinct in the public generally....."

The Court further held that pin ball machines are gambling devices and that they are the "indispensable, specifically designed devices" for the playing of games of chance.

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The State Alcoholic Beverage Regulations have, since 1934, prohibited the possession of all gambling devices on licensed premises. Rules 7 and 8 of State Regulations No. 20 provide:

> "7. No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, on or about the licensed premises.
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> "8. No licensee shall possess, allow, permit or suffer on or about the licensed premises any slot machine or device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing."

In the past, while most thoughtful-minded enforcement authorities have regarded pin ball machines and the like as attractive nuisances, they have not always agreed as to whether they were or were not gambling machines or devices in the nature thereof. As a result, there was little uniformity and less continuity in the action taken by enforcement officers with respect thereto.

Now that the Supreme Court, by its declaration that these machines are gambling devices, has removed any doubt with respect to their classification, they must be treated as such by all enforcement agencies.

In our opinion, the existing language of Rules 7 and 8 of State Regulations No. 20 is adequate to prohibit the possession of pin ball and bagatelle machines on licensed premises. However, to obviate any possible doubt or future question, Rule 7 will be amended, effective immediately, to read as follows:

> "7. No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, or any machine or device commonly known as a bagatelle or pin ball machine, on or about the licensed premises."

Therefore, any licensee who has any bagatelle, pin ball or machine in the nature thereof on his licensed premises must remove the same at once. The mere possession of these machines is a violation of State Regulations. If in the future any bagatelle or pin ball machine is found on licensed premises, it will be cause for the institution of disciplinary proceedings directed to the suspension or revocation of the license. The law must be enforced and those who violate the same may expect prompt punishment.

The passing of the pin ball machine with its bells, whistles and lights, marks the close of an era in the life of New Jersey. Gone at least from the public scene is the encircling crowd who, with articulate torsos and audible groans and encouraging chuckles, watched the little ball make its way among the barriers to the tune of the business-like clicking of the scoring device. Many a "last nickel" changed hands on the outcome. It is just as well that the era is ended. There is work to be done! In the long run licensees will be better off without these attractive nuisances, which all too frequently lured minors into places where they did not belong.

ALFRED E. DRISCOLL,
Commissioner.

Dated: March 9, 1942.

2. COURT DECISIONS - NEW JERSEY SUPREME COURT - STAFFORD v. GARRETT - MILLS "1-2-3" MACHINE DECLARED GAMBLING DEVICE - RE STAFFORD (BULLETIN 461, ITEM 3) - ABC DEPARTMENT SUSTAINED.

JOSEPH STAFFORD,)
Prosecutor,)
-vs-)
E. W. GARRETT, Acting Commissioner of Alcoholic Beverage Control of the State of New Jersey,)
Respondent.)

NEW JERSEY SUPREME COURT
No. 224, January Term, 1942.

Submitted January Term, 1942: Decided , 1942.

On certiorari.

Before Justices Bodine, Perskie and Porter.

For the prosecutor, Clifford A. Baldwin.
For the respondent, Emerson A. Tschupp.

The opinion of the Court was delivered by

PORTER, J.

The prosecutor's tavern license was suspended by an order of the Acting Commissioner of Alcoholic Beverage Control after he was found guilty of possessing and permitting in his licensed tavern a machine in violation of regulations of the said Bureau. The legality of that order is the question for our determination.

The regulations in question are as follows:

"7. No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, on or about the licensed premises.

"8. No licensee shall possess, allow, permit or suffer on or about the licensed premises any slot machine or device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing."

The prosecutor had in his tavern a machine known as "The Mills 1-2-3." It is similar to a bagatelle or pin ball game and is electrically controlled. A nickel is placed in a slot and a ball is made available for play, it is propelled up an incline and registers a score in the course of its travel. After the ball is put in motion it is beyond the control of the player. If a certain score is made the privilege of playing free games is awarded. The machine contains no cup into which money, tokens or anything of value is ejected.

The prosecutor argues that the proofs did not establish that the machine was either a device in the nature of a slot machine possessed in violation of Rule 8 or a device designed for gambling purposes permitted on the licensed premises in violation of Rule 7.

We think that the proofs do establish a violation of the said regulations. The slot machine in question comes clearly within our holding in Hunter v. Teaneck which opinion was filed February 24th, 1942.

The writ will be dismissed with costs.

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3. COURT DECISIONS - NEW JERSEY SUPREME COURT - HUNTER AND MALATESTA v. TEANECK AND HARTE - BAGATELLE AND PIN BALL MACHINES DECLARED GAMBLING DEVICES.

NEW JERSEY SUPREME COURT
No. 203 October Term 1941.

Charles A. Hunter and Henrietta Malatesta,
Prosecutors,
v.
Mayor and Council of the Township of Teaneck, and Cornelius J. Harte, Chief of Police of the Township of Teaneck,
Respondents.

Argued October 8, 1941; decided

On certiorari.

Before Justices Bodine, Perskie and Porter.

For prosecutors; Abram A. Lebson: Seymour A. Smith, of counsel

For respondents; Donald M. Waesche.

Amicus curiae, Louis A. Fast.

The opinion of the court was delivered by

PERSKIE, J. The primary question requiring decision in this cause is whether the ordinance prohibiting the keeping of pin ball machines in any place of business in the Township of Teaneck, is ultra vires.

On March 18, 1941 respondent, Township of Teaneck, passed an ordinance (No. 781) prohibiting the "keeping" of any "game of chance" or "gambling device" in any place of "business" within the municipality. N.J.S.A. 40:48-1 (par. 6); 40:48-2.

Section 1 of the ordinance provides that any "game, machine, apparatus or device such as is commonly called bagatelle, PIN BALL, or roulette, and any game, machine * ** of like nature by whatever name known should be deemed and regarded as a game of chance or gambling device."

Section 2 provides that "no person shall have, or keep, in any store, shop, tavern, restaurant or other place of business within the Township of Teaneck * ** any game, machine, apparatus or device such as * ** PIN BALL * * * ."

Section 3 provides that the police of the township "are authorized to seize and hold for such further disposition as is authorized by law any game * ** pin ball found in any store *** restaurant * ** or other place of business in the township * ***."

Section 4 provides that any person convicted for violating the provisions of the ordinance shall be subject "to a fine of not more than two hundred dollars, or imprisonment in the county jail not exceeding ninety days." N. J. S. A. 40:49-5.

The police of the township seized some of the banned pin ball machines. Whereupon prosecutor Saunders (substituted for Hunter) who owns pin ball machines and leases them to merchants in the Township of Teaneck and prosecutrix Malatesta, who had and kept a pin ball machine in her restaurant in the township (both hereafter referred to as prosecutors) made application for and were allowed a writ of certiorari by our Supreme Court, at the May Term 1941, to review the legality of the stated ordinance.

While prosecutors argue, among other things, that the question as to whether the ordinance is ultra vires the township is primarily one of law, while they "strenuously deny" that "pin ball machines per se" may properly be "deemed and regarded as a game of chance or as a gambling device", and while they challenge the materiality of the "voluminous testimony" for the township to the contrary, nevertheles, they substantially urge, at the outset, that "pin ball machines" are not gambling devices but devices used as "innocent games of amusement" depending upon the skill with which the machines are operated.

We think that the proofs are relevant. They afford the only proper and legal basis upon which we can reach the truth and take hold of the substance of the real issue. For, "no dressing, however adroit, can make legal that which is illegal." Cf. State v. Berger, 126 N.J.L. 39, 43; 17 A. 2d. 167.

Thus save as to its complicated mechanical features, a most general description of the construction and operation of the pin ball machines involved, some of which were exhibited to the court at the oral argument, is advisable.

The proofs disclose that the pin ball machines consist of two cabinets; one is horizontal and contains the playing board; the other upright and the front part thereof is the score board. Although the set-up of each playing board varies with each named machine, each in principle, is alike. The playing board is studded with obstructions and set up at an incline. A metal ball is propelled to the top of the playing board after it is struck by a plunger operated by the player. The ball then rolls down the playing board passing through certain spaces thereon or striking certain obstructions thereon, some of which have marked scoring value, some free game value and some no value. As the ball rolls down the playing board it is accompanied by a succession of lights flashing on, or going out, bells or buzzers ringing and buzzing and numbers changing on the score board; and unless the ball on its downward course is lodged at some planned scoring point it finally reaches the trough at the end of the board provided for its reception.

The game is begun by the player (adult and minor) depositing a nickel in the slide of the machine. The slide is then pushed into the machine with the result that five metal balls are released. The playing of five balls constitutes a game. The player then pushes a lever which operates a rocker arm that lifts the balls, one at a

time, into a narrow run-way at the right edge of the playing board and against the front end of the plunger. The player then draws back the plunger which compresses a spring so that when the plunger is released it forces or drives the metal ball up the run-way to the top of the playing board whence it takes the course first stated. Free games are awarded. Their number on some machines are as high as 60 to 94 games.

Each machine is designed and constructed so that there are two distinctly different methods of registering, on the award or free game meter attached to each machine, the number of pay offs of free games won. One is called the "Regular" and the other "Free Play." On the back of the score board there is an electric plug to be inserted into either side of a double socket regulating which method of play is to be employed.

When the game is set for "Regular" play free games cannot be played off. When the game is so set, every game requires the insertion of a nickel into the machine. All free games showing on the score board together with the total score are all removed with the beginning of every new game, and it is necessary for the lessee of the machine to pay the player the number of coins indicated by the free plays, if the player is to receive any award for a winning score or if he is to be permitted to play off the free games.

When the machine is set for "Free Play", free games may be played off without the insertion of an additional coin. If the lessee of the machine, however, pays off free games when won, when the machine is set for "Free Play", all the free games and total score may be removed from the score board by pressing a button, underneath the playing cabinet, provided for that purpose.

The machines contain no meter to register the number of coins put into it, nor to register the number of games played. The reason is obvious. The owner is not concerned with the number of games played; for he alone has access to the coin box. But he is concerned with the number of free games played. For a sum equal to that number (based on the price of play of each game) is repaid to the lessee and the balance of the coins in the box is divided, on an agreed basis, between the owner and the lessee.

Thus it becomes abundantly clear that the meter attached to each machine registers only games PAID OFF and not games PLAYED OFF. When set for "Free Play" the award meter does not register the free games as they are won because they may be played off. When so set, the award meter registers only those free games removed from the score board by pressing the button underneath the cabinet, because they are the only free games paid off. In other words, when set for "Free Play", it registers only the free games won and not played off.

The proofs further show that a sheet of instructions in one of the machines stated that each number recorded on the free play meter showed that five cents had been awarded therefor. Other record cards taken from one of the coin boxes of a machine actually showed a credit given to the lessee for the free games paid off.

1. In light of the stated proofs, is the pin ball game a game of chance and are pin ball machines gaming devices? Various factors have been held to be determinative as to what constitutes a game of chance. There is a line of cases, of which People v. Lavin (1904) 179 N. Y. 164, 71 N. E. 753, 66 L. R. A. 601 and Commonwealth

v. Plisner (1936) 295 Mass. 457, 4 N. E. (2nd) 241, are typical, holding that the test of the character of the game is not whether it contains the element of chance or the element of skill, but which is the dominant element that determines the result of the game. There is another line of cases, of which State, ex rel. Dussault v. Kilburn (1941) 111 Mont. 400, 109 P. (2d) 1113, 135 A. L. R. 99, is typical, holding that if the game is designed to and does appeal to, and induces, lures, and encourages, the gambling instinct, it constitutes a game of chance. And there is a further line of cases, of which Alexander v. Martin (1939) 192 S. C. 176, 6 S. E. (2d) 20, and Alexander v. Hunnicutt (1941) 196 S. C. 364, 13 S. E. (2d) 630, are typical, holding that since amusement has value, and added amusement has additional value, and since that additional amusement is obtained by chance without the payment of additional compensation therefor, there is involved in the game the three necessary elements of gambling, viz., chance, price and prize.

The proofs in the case at bar are plenary in support of any one or all of the aforesaid determinative factors. Here the predominant element of the game is chance. Here the game is designed to and does appeal to, and induces, lures, and encourages, the gambling instinct of winning free games which may either be converted into cash or used for additional amusement without additional compensation therefor. See Annotation (Games of chance or skill), 135 A. L. R. p. 105, 149.

The facts that the pin ball machines were licensed by the township under its ordinance (No. 683) for five years prior to the passage of the ordinance under review, and that the Federal government, under the Federal Revenue Act of 1941, sec. 555, (Part IX, Coin operated amusement and gaming devices) sec. 3267, imposed a tax on pin ball machines, are altogether beside the point. These are revenue measures. The imposition of a tax for revenue by a municipality is not necessarily any more determinative of the legality of the thing licensed than the imposition of a tax on income by the Federal Government is necessarily determinative of the legality of the source of the income. And the fact that police officials, educators and others of the 25,000 inhabitants of the township failed to see any illegal use made of the machines is only material, if true, (there is proof to the contrary) as to the extent to which their gambling instinct blinded them to the obvious.

Notwithstanding our decisions in State v. Hall, 32 N. J. L. 158, and Breninger v. Belvidere, 44 Id. 350, both of which are clearly distinguishable on their facts, we have no hesitancy in factually and legally stamping the pin ball game as a game of chance. The pin ball machines involved are nothing but ingeniously designed and purposefully constructed mechanical gaming devices to appeal to, induce, lure and encourage, the gaming instinct in the public generally and children particularly.

2. Prosecutors further argue that even if pin ball games and pin ball machines may properly and legally be deemed and regarded to be games of chance and gambling devices respectively, the ordinance is, nevertheless, ultra vires the township.

That argument is rested upon the premise that the penalty provision of the ordinance (sec. 4) diminishes the punishment provided for "games of chance" or "gambling", at the time of the amendment of Art. IV, sec. 7, par. 2, of our State Constitution (July 11, 1939). Prosecutors construct that premise by placing the provisions of the challenged ordinance within N. J. S. A. 2:135-2, which

provides that "Any person who shall have or keep in his place of business, or other premises, any slot machine or device in the nature of a slot machine, which may be used for the playing of money or other valuable thing, shall be guilty of a misdemeanor." Having thus denominated the subject-matter of the ordinance a misdemeanor, prosecutors place the punishment therefor within N. J. S. A. 2:103-6 which provides for a fine not exceeding $1000.00 or imprisonment for a term of three years, or both.

For the township it is argued that the ordinance does not infringe upon the provisions of the Gaming Act, N. J. S. A. 2:135-2; that the latter relates to those who may "have or keep", in the places therein stated, a "slot machine" (definition of which was unknown to the common law or statutory law) which "may be used" for the playing of money or other valuable thing (Cf. State v. Brandt, 122 N. J. L. 488, 6 A. 2d. 203); whereas the ordinance under review relates to those who may "have or keep" in the places therein stated, gambling devices (pin ball machines) without provision as to their use as such devices.

Be that as it may, we choose to decide the question first posed as requiring decision in this case on the premise that a pin ball game is a "game of chance"; that pin ball machines are gambling devices; that possession of pin ball machines here involved, unlike the possession of lottery slips in State v. Murzda, 116 N. J. L. 226, 183 A. 305, constitutes not only an "ingredient" (Id. p. 226) of the "game of chance" prohibited by the stated constitutional amendment but the machines themselves are the indispensable, specifically designed devices for the playing of such games.

On the stated premise, the ordinance is not ultra vires the township. The object of the ordinance is "to strike at the evil in its inception by a measure that is primarily preventive in character." State v. Murzda, supra, p. 226. That object is clearly within the police powers which have been delegated to municipalities in very broad, general and comprehensive terms by N. J. S. A. 40:48-1 and 40:48-2. These terms have for their source the provisions of our Home Rule Act, P.L. 1917, c. 152, art. XIV, sections 1 and 2, respectively. And by the provisions of section 26 of the same act (N. J. S. A. 40:42-4) the legislature charged "all courts" with the duty of construing the act "most favorably to municipalities", it being the intention of the legislature to give to all municipalities, to which the act applies, "the fullest and most complete powers possible over the internal affairs of such municipalities for local self government."

Thus even if the same act (having and keeping a purposefully designed gambling device) may constitute an offense against the state, as claimed for prosecutors, and an offense against the township, we think that the act falls within that category which permits both the state and municipality to punish for the violation thereof without violation of any constitutional principle. Cf. Howe v. Treasurer of Plainfield, 37 N. J. L. 145.

3. While it would have been better craftsmanship to have followed the wording of N. J. S. A. 40:49-5, and thus to have added the words "or both" to the penalty provisions of the ordinance (sec. 4), we do not regard that omission fatal. N. J. S. A. 40:49-5 "confers upon magistrates, in their discretion, the power to commit as an aid in the collection of the fines imposed." Thorne v. Kearny, 100 N. J. L. 228, 126 A. 613, aff. sub nomine, Thorne v. Casale, 101 N. J. L. 418, 128 A. 174. Nor does the penalty provision deprive the magistrate of his discretion to impose a lesser penalty than the prescribed maximum. Cf. Pfister Chemical Co. v. Romano, 15 N. J. Mis. R. 71, 188 A. 727.

4. Being a valid exercise of the police powers, the ordinance does not violate any of prosecutors' Federal or state constitutional rights.

We have carefully considered all other points argued and find them to be without merit.

Accordingly, the writ is dismissed with costs.

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4. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE EMPLOYEES TO ACCEPT DRINKS IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

FRONT - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION IN PART CORRECTED - FRANK DISCLOSURE - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER 25 DAYS.

In the Matter of Disciplinary Proceedings against LOUIS KOVACS, 67 Center St., Clifton, N. J., Holder of Plenary Retail Consumption License C-89, issued by the Municipal Council of the City of Clifton.	CONCLUSIONS AND ORDER

Louis P. Bertoni, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee is charged with:

(1) Falsely stating in his license applications that no other person had any interest in his license or business, whereas Jack Kovacs, Al Pyret and Jack Conway had such interest, in violation of R. S. 33:1-25;

(2) Permitting said non-licensees to exercise the privileges of his license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52;

(3) Permitting female employees to accept drinks at the expense of patrons, in violation of Rule 22 of State Regulations No. 20.

Licensee pleaded guilty to all charges, except that he denied that Jack Kovacs had any interest in his license or business.

As to (1) and (2): Licensee frankly admitted that Al Pyret has been his partner ever since the license was issued to him. Pyret has apparently always been fully qualified to hold a liquor license. The only reason given for failing to disclose Pyret's interest was that the latter was employed at the time the original

application was filed and "did not want to take the time off to go to the Clerk's office to make the necessary arrangements for putting the license in his name."

Jack Conway's undisclosed interest arose from a written agreement which he entered into with the licensee, under which, in consideration of his supplying the entertainers at the licensed premises, he received a percentage of the gross profits of the business and was also obligated to share in the expense of the waiters' salaries and advertising costs. This is an interest which should have been disclosed. It also appears that this agreement was cancelled and Conway's interest terminated on November 1, 1941, prior to the preparation of the instant charges. Pyret, however, still remains an undisclosed principal and an admitted partner of the licensee, Louis Kovacs.

As to Jack Kovacs, I am satisfied from the evidence that he never had any interest in the license or the business conducted thereunder.

I shall suspend the license for ten days for this violation. Cf. Re Pousenc, Bulletin 492, Item 3.

As to (3): On two occasions during July 1941, agents of this Department were solicited by female entertainers employed at the licensed premises to purchase drinks for them. No immoral activities of any kind appear to have accompanied such solicitation. Under the circumstances, a twenty-day penalty will be meted out on this charge, with a remission of five days because of the guilty plea. Cf. Re Bud Holding Company, Bulletin 469, Item 8.

Under normal circumstances, I would, therefore, suspend the license for twenty-five days. Since, however, the present method of operation of the business is improper, the license must be suspended for the balance of its term. Leave is hereby given to vacate said suspension upon compliance with the conditions hereinafter set forth. Cf. Re Cliffside Park Town Tavern, Inc., Bulletin 492, Item 4.

Accordingly, it is, on this 3rd day of March, 1942,

ORDERED, that Plenary Retail Consumption License C-89, heretofore issued to Louis Kovacs by the Municipal Council of the City of Clifton, for premises 67 Center St., Clifton, be and the same is hereby suspended for the balance of its term, effective March 9, 1942, at 3:00 A.M.; and it is further

ORDERED, that when a bona fide transfer of the license is granted by the local issuing authority, or the unlawful situation is corrected by a complete severance from the partnership by Al Pyret, application may be made to me to vacate said suspension, provided, however, that in no event will said suspension be vacated prior to the expiration of twenty-five days from the effective date of the suspension imposed herein.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - COMBINATION SALE - OFFERING AND FURNISHING A GIFT, PREMIUM OR INDUCEMENT IN CONNECTION WITH SALE OF ALCOHOLIC BEVERAGES - 10 DAYS' SUSPENSION - EMPLOYMENT OF MINOR IN THE SALE OF ALCOHOLIC BEVERAGES - 5 DAYS' SUSPENSION - TOTAL: 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the matter of Disciplinary Proceedings against SARAH FELDMAN, 2600 Palisade Ave., Weehawken, N. J., Holder of Plenary Retail Distribution License D-15 issued by the Township Committee of the Township of Weehawken.	CONCLUSIONS AND ORDER

Sarah Feldman, Pro Se.
Abraham Merin, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded guilty to the following charges:

"1. On or about July 1, 1941, without having first obtained a special permit so to do, you sold a pint bottle of Fleischmann's Distilled Dry Gin below the minimum consumer price published in Bulletin 416 of this Department, in violation of Rule 6 of State Regulations No. 30.

"2. On or about the date aforesaid you sold a bottle of alcoholic beverage for consumption off the licensed premises not at the specified price thereof, in that you sold a pint bottle of gin in combination with two pounds of sugar at a single aggregate price, in violation of Rule 19 of State Regulations No. 20.

"3. On or about the date aforesaid you offered and furnished a gift, premium and similar inducement with the sale of an alcoholic beverage for consumption off the licensed premises, in that you gave two pounds of sugar to a customer purchasing a pint bottle of gin, in violation of Rule 20 of State Regulations No. 20.

"4. On or about the date aforesaid, you knowingly employed and had connected with you in a business capacity Fred Feldman, age 20, a person who would fail to qualify as a licensee by reason of age, in that you permitted said Fred Feldman to sell and solicit the sale of alcoholic beverages on your licensed premises, in violation of Rule 1 of State Regulations No. 11."

It appears that the licensee had advertised the grand opening of her business on July 1, 1941, and offered a two pound package of sugar free with every purchase of one dollar of merchandise. The investigators' reports disclose that they went to the licensed premises on that day and there purchased from the licensee's son, Fred Feldman, age 20, a pint bottle of Fleischmann's Gin for $1.05 (the Fair Trade price at that time) and received the gift of sugar as advertised. Their identity was then disclosed to the licensee.

The first three charges arise out of this single transaction. In essence, the gist of the violation is the gift of the package of sugar with the purchase of an alcoholic beverage. This a licensee may not do since it constitutes an undue inducement for the sale of alcoholic beverages contrary to the Regulations cited in the charges. For this I will suspend the license for ten days on these charges.

With respect to the fourth charge to which the licensee has pleaded guilty, namely, the employment of her minor son to sell alcoholic beverages, I will suspend the license for an additional five-day period.

Since the institution of these proceedings, the licensee has been adjudicated a bankrupt in the Federal Bankruptcy Court and a receiver appointed for her. This does not in any wise bar or abate these proceedings, nor affect the penalty to be imposed. See Re Agostino, Bulletin 382, Item 1.

By entering a plea of guilty, the licensee has saved the Department the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 5th day of March, 1942,

ORDERED, that Plenary Retail Distribution License D-15, heretofore issued to Sarah Feldman by the Township Committee of the Township of Weehawken, be and the same is hereby suspended for a period of ten (10) days, commencing March 9, 1942, at 2:00 A.M., and ending March 19, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

6. ELIGIBILITY - ATTEMPTED ASSAULT UPON A POLICE OFFICER WHILE IN THE PERFORMANCE OF HIS DUTY INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

March 3, 1942

Case No. 413

On January 9, 1939 applicant was arrested as a disorderly person for creating a disturbance in a public dining place. After being arraigned before the Police Judge, applicant was being escorted to the elevator in the City Hall by the arresting police officer when applicant attempted to strike the officer with a hammer. The assault was prevented only because a woman, standing nearby, saw applicant raise the hammer and uttered a warning scream. He was thereupon charged with attempted assault and battery, to which he pleaded guilty, and on June 7, 1939 he was placed on probation for three years. On October 29, 1941 he was sentenced to jail for three months for violation of probation.

The crime of assault upon a police officer while in performance of his duty is one which involves moral turpitude. Re Case No. 178, Bulletin 478, Item 12. The mere fact that consummation of the assault is frustrated by the fortuitous circumstance of a warning scream does not, in my opinion, relieve the offense of that element.

It is recommended that applicant be advised that he is ineligible to hold a liquor license or be employed by a liquor licensee in this State.

Samuel B. Helfand,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

7. MORAL TURPITUDE - CRIME OF ROBBERY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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

Case No. 183

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1919 petitioner, then about ten or eleven years of age, was committed to and remained for about two years in a parental home because he was a truant from public school. In 1921 he was again sent to a parental home on a charge of loitering. In 1927 he was convicted of grand larceny, arising out of the theft of a truck loaded with tobacco, sentenced to a reformatory and later re-sentenced to one year's probation. Later in the same year, while still on probation, he served one month in a Massachusetts jail for having a stolen fur coat in his possession. In 1928, when he was about nineteen years of age, he was convicted in Pennsylvania of robbery and sentenced to serve from twelve to twenty-four years in prison. This robbery was committed by petitioner and a companion in a restaurant, at the point of a gun. Petitioner's companion was shot and killed by a police officer in the ensuing pursuit. Petitioner was in prison for seven years and eight and one-half months, being released on parole in December 1935, when he immediately returned to this State. In 1939 he was held as a material witness in a case involving the alleged loan of money at illegal rates of interest. This case was closed by the police and prosecutor's office without any criminal charges being made against petitioner. In 1941 he was picked up on some old 1928 complaints, relics of his earlier trouble in this State, but these were nolle prossed a few days later.

The crime of robbery, per se, involves moral turpitude. Hence petitioner is disqualified from working for a liquor licensee in this State or from holding a liquor license. R. S. 33:1-25, 26.

Petitioner, in this proceeding and pursuant to R.S.33:1-31.2, seeks removal of such disqualification. His record clearly indicates that as a boy he was wayward and had marked criminal tendencies. Unless I am satisfied, by convincing evidence, that he has rehabilitated himself and has completely changed for the better, I will not lift his disqualification. Otherwise, his association with the alcoholic beverage industry would be contrary to public interest. The mere fact that petitioner has not been convicted of crime within the five years last past does not, of itself, entitle him to such relief. Re Case No. 175, Bulletin 492, Item 7.

However, in fairness, it is to be noted that petitioner (who is now in his middle thirties) reached maturity while in prison; that when committed, he had criminal tendencies, but he was not an adult, hardened criminal. In 1935, when he was released from the penitentiary, he came back to his mother, who resided in this State. His brother, a boxing promoter, gave him employment in his gymnasium for about six months. Subsequently, he obtained employment on W.P.A. projects; first as a laborer and later as a foreman, until January 1938, when he was discharged because he could not pass the necessary qualifying examinations. He then took over his brother's gymnasium,

and managed and trained boxers until recently, when the lease of the gymnasium expired. At the time of the hearing, he was helping his brother in another gymnasium and was also managing boxers. He says that if his disqualification is lifted, he intends to open a tavern as a supplement to his activities in the boxing field.

Petitioner's present outlook on life, in his own words, is: "I see an opportunity to rise and I cannot take it because of my parole and my past, and I feel that life would seem much brighter to me if I was given the same opportunity that any other man gets that behaves himself....What I have done is in the past. Since then, I have met up with a lot of good people.....I have been the only black sheep in the family. I was -- now I am a lamb."

The parole officer who has supervised petitioner's activities since 1937 testified that petitioner has rehabilitated himself and no longer associates with evil companions. He regards this as a worthwhile accomplishment, particularly because petitioner's activities as a boxing manager bring him in frequent contact with a rough and ready element.

Petitioner's pastor testified that he aided in obtaining petitioner's release from the penitentiary and promised that he would look after him; that since his release petitioner has led a clean life, attended church regularly and that he has really changed into a good boy.

A prominent figure in the sports promotion field testified that he has known petitioner for the past five years and found him to be honorable in his dealings. The chief of police of the municipality wherein petitioner has resided during that period reports there are no complaints pending against him.

The evidence of petitioner's character witnesses is most impressive, and petitioner's conduct since he reached manhood is that of an industrious individual seeking advancement in legitimate fields. Apparently, when he arrived at the age of reason, he saw the error of his ways. I am therefore going to accept the recommendation of the parole officer and petitioner's pastor, and give petitioner the chance which he asks. It is to be hoped that he will prove worthy of their confidence and mine.

I therefore conclude that petitioner's association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 5th day of March, 1942,

ORDERED, that the petitioner's statutory disqualification because of the convictions described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BECAUSE OF RESIDENCE) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION CORRECTED - 10 DAYS' SUSPENSION - EMPLOYMENT OF DISQUALIFIED PERSONS (NON-RESIDENCE) - SITUATION CORRECTED BY OBTAINING EMPLOYMENT PERMITS - 3 DAYS' SUSPENSION - TOTAL: 13 DAYS, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

RAYMOND NELSON,
122 South Broadway,
South Amboy, N. J.,

Holder of Plenary Retail Consumption License C-12, issued by the Common Council of the City of South Amboy, and transferred during pendency of these proceedings to

NELSONS TAVERN, INCORPORATED

for the same premises.

CONCLUSIONS AND ORDER

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Raymond Nelson, Defendant-Licensee, Pro Se.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, Raymond Nelson, has pleaded guilty to charges alleging (1) that he falsely denied, in his application for the present fiscal year, that any person other than himself was interested in the license applied for and the business to be conducted thereunder; (2) that he knowingly aided and abetted Justus Nelson, a non-licensee, to exercise the rights and privileges of his license; and (3) that he knowingly employed Justus Nelson and Mary Nelson, persons who would fail to qualify as licensees by reason of lack of five years' residence in New Jersey.

Justus Nelson and Mary Nelson, his wife, were formerly residents of the State of New York. In June 1941 they moved to South Amboy, New Jersey. At about the same time, Justus Nelson and his cousin, defendant Raymond Nelson, entered into a partnership and arranged to purchase the licensed business at 122 South Broadway, South Amboy. On June 18, 1941, application for a license for the present fiscal year was filed by Raymond Nelson but he did not disclose the fact that his cousin Justus Nelson was a partner in the business. Between July 1, 1941 and January 27, 1942, while the license was in the name of Raymond Nelson, the business was operated by the partners and Mary Nelson was employed on the licensed premises. On January 27, 1942 the license was transferred to Nelsons Tavern, Incorporated.

Since the institution of these proceedings, Raymond Nelson has purchased from Justus Nelson all of the latter's interest except a small interest which the latter has retained. In view of the testimony given under oath at the hearing, I am satisfied that this transaction was bona fide. The stock of Nelsons Tavern, Incorporated, which was incorporated on January 3, 1942, is now reported to be held by the following parties:

Raymond Nelson,	90 shares
Justus Nelson,	5 shares
Willard Goodman,	5 shares

Since Justus Nelson is now the bona fide holder of less than 10% of the stock of the corporate licensee, it appears that the unlawful situation has been corrected.

It further appears that, on October 27, 1941, after our investigation had begun but before charges herein were served, both Justus Nelson and Mary Nelson obtained employment permits from this Department. This, in itself, is not a defense to the present charges. It will, however, be considered in mitigation of penalty. The fact remains that the licensee did swear falsely in his application for a license and did improperly employ disqualified persons as charged.

As to penalty: Since guilt has been admitted and the situation corrected, I shall impose a ten-day suspension on charges (1) and (2). Re Casagrande, Bulletin 396, Item 11; Re Ceravolo, Bulletin 420, Item 6. Cf. Re Silver Palm Corporation, Bulletin 417, Item 8, and Bulletin 422, Item 8. I shall impose a three-day suspension on charge (3), making a total suspension of thirteen (13) days.

Accordingly, it is, on this 6th day of March, 1942,

ORDERED, that Plenary Retail Consumption License C-12, heretofore issued to Raymond Nelson for premises at 122 South Broadway, South Amboy, and transferred during the pendency of these proceedings to Nelsons Tavern, Incorporated, be and the same is hereby suspended for a period of thirteen (13) days, commencing March 11, 1942, at 3:00 A. M. and terminating March 24, 1942, at 3:00 A. M.

Alfred E. Driscoll
Commissioner.

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