

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

BULLETIN 559

MARCH 30, 1943.

1. NOTICE OF INTENTION - ADVERTISING NOTICE OF APPLICATION FOR
STATE LICENSE - REGULATIONS NO. 1 AMENDED.

Regulations No. 1 are hereby amended, effective immediately, to read as follows:

REGULATIONS NO. 1

ADVERTISING NOTICE OF APPLICATION FOR STATE LICENSE.

1. Application for license must be filed with the Commissioner at or before the first insertion of advertisement.

2. If an applicant for a Class A or Class B license is a corporation, insert at the asterisk (*), in the following forms, the names and residences of all officers and all directors who have no other named office, and the names and residences of all stockholders holding ten (10) or more per centum of any of the stock of said corporation. If the applicant is a partnership, insert at the asterisk (*), in the following forms, the names and residences of all partners.

3. If the application is for a building not yet constructed, also insert at the asterisk (*) "Plans and specifications of building to be constructed may be examined at the office of the Department of Alcoholic Beverage Control, 1060 Broad Street, Newark, New Jersey."

4. Applicants for Class A (manufacturer's) license shall publish notice of application in the following form:

Manufacturer's Form.

Take notice that _____, trading as
(Name of Applicant)

_____, has applied to the State Commissioner of Alcoholic Beverage Control for a _____
(Trade name, if any) (Type of License)

license for the premises situated at _____
(No.) (Street) (City)

and to maintain a warehouse at _____
(No.) (Street) (City)

*

Objections, if any, should be made immediately in writing to the State Commissioner of Alcoholic Beverage Control, 1060 Broad Street, Newark, N. J.,

(Name of Applicant)

(Address of Applicant)

New Jersey State Library

5. Applicants for Class B (wholesaler's) license shall publish notice of application in the following form:

Wholesaler's Form

Take notice that _____, trading as
(Name of Applicant)

_____, has applied to the State
(Trade name, if any)

Commissioner of Alcoholic Beverage Control for _____
(Type of License)

license for the premises situated at _____,
(No.) (Street) (City)

and to maintain a warehouse at _____,
(No.) (Street) (City)

and to maintain a salesroom at _____.
(No.) (Street) (City)

*

Objections, if any, should be made immediately in writing to the State Commissioner of Alcoholic Beverage Control, 1060 Broad Street, Newark, N. J.

(Name of Applicant)

(Address of Applicant)

6. Applicants for Class C - Plenary Retail Transit - license for railroad dining and club cars shall publish notice of application in the following form:

Railroad Form

Take notice that _____ has applied
(Name of Applicant)

to the State Commissioner of Alcoholic Beverage Control for a Plenary Retail Transit license to sell alcoholic beverages for consumption only in dining and club cars while in transit and operated within the State of New Jersey.

*

Objections, if any, should be made immediately in writing to the State Commissioner of Alcoholic Beverage Control, 1060 Broad Street, Newark, N. J.

(Name of Applicant)

(Address of Applicant)

7. Applicants for Class C - Plenary Retail Transit - license for all airplanes shall publish notice of application in the following form:

Airplane Form

Take notice that _____ has applied to
(Name of Applicant)

the State Commissioner of Alcoholic Beverage Control for a Plenary Retail Transit license to sell alcoholic beverages for consumption only on airplanes while in transit within the State of New Jersey.

*

Objections, if any, should be made immediately in writing to the State Commissioner of Alcoholic Beverage Control, 1060 Broad Street, Newark, N.J.

(Name of Applicant)

(Address of Applicant)

8. Applicants for Class C - Plenary Retail Transit - license for a boat shall publish notice of application in the following form:

Boat Form

Take notice that _____ has applied to
(Name of Applicant)

the State Commissioner of Alcoholic Beverage Control for a Plenary Retail Transit license to sell alcoholic beverages for consumption only on the boat named _____ while in
(Name of Boat)

transit within the State of New Jersey.

*

Objections, if any, should be made immediately in writing to the State Commissioner of Alcoholic Beverage Control, 1060 Broad Street, Newark, N. J.

(Name of Applicant)

(Address of Applicant)

9. Where the licensed premises are located in the State of New Jersey, the notice of application shall be published once a week for two weeks successively in a newspaper printed in the English language, published and circulated in each municipality in which said premises or any portion thereof, e. g., office, warehouse, salesroom, is located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county or counties in which the licensed premises or any portion thereof are located.

10. Where applicant does not maintain any licensed premises in the State of New Jersey, notice of application shall be published in the manner above described in the municipality wherein the duly authorized agent within the State upon whom service of process may be made, is located. If applicant is a corporation authorized to do business in New Jersey, said agent may be the registered agent.

11. The Commissioner, immediately upon receipt of a written objection duly signed by a bona fide objector, will afford a hearing to all parties and forthwith notify the applicant and the objector of the date, hour and place thereof.

12. The date fixed for such hearing will be not less than two (2) days after the second insertion shall have been published, nor more than seven (7) days. For good cause, however, the Commissioner, in the exercise of sound and fair discretion, may fix a date for hearing later than said seven (7) days or may adjourn the hearing.

13. No hearing ^{shall} will be held if no objection shall be lodged, or if the Commissioner, after the requisite statutory investigation, shall have determined not to issue a license to such applicant.

14. Proof of publication of notice of application for a license shall be furnished forthwith upon second publication thereof, and shall be substantially in the following form:

STATE OF NEW JERSEY }
COUNTY OF } SS.

_____, of full age, being duly sworn according to law, on his oath says:

That he is a _____, employed by _____
(Name of _____
_____, which is a newspaper printed in the English
newspaper)
language, published and circulated in _____;
(Name of municipality or county)

that a notice of application, of which the annexed notice is a true copy, was published once a week for two (2) weeks successively in the said _____; and that the first insertion was
(Name of newspaper)

on the _____ day of _____, 19____, and that the second insertion was on the _____ day of _____, 19____, making two (2) insertions in all.

Sworn to and subscribed

before me this _____

day of _____, 19____.

(Signature of affiant)

(Signature of officer administering oath)

(Title of such officer)

15. Applicants for transportation, public warehouse or warehouse receipts licenses are not required to advertise notice of application.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 19, 1943.

NOTE:

The above amendment of Regulations No. 1 does not affect the present requirement that all applicants for State licenses (except applicants for transportation, public warehouse or warehouse receipts licenses) must cause a notice of intention to be published in accordance with the provisions of R.S.33: 1-25 after application for the license is filed with this Department.

The effect of the amendment is to eliminate the former requirement that corporations applying for plenary retail transit licenses must insert in their notice of intention published in the newspaper the names and residences of officers, directors and stockholders holding one (1) or more per centum of any stock of said corporation. As heretofore required, a partnership applying for a plenary retail transit license must insert in the published notice of intention the names and residences of all partners. As heretofore required, the application filed with this Department by a corporation applying for a plenary retail transit license must set forth the names and residences of, and the amount of stock held by, all stockholders holding one (1) or more per centum of any of the stock thereof, and the names and residences of all officers and all members of the board of directors.

Hereafter, corporations applying for a Class A (manufacturer's) or Class B (wholesaler's) license must set forth in the published notice of intention, as heretofore required, the names and residences of all officers and all directors who have no other named office. They must also set forth in the published notice of intention the names and residences of all stockholders holding ten (10) or more per centum of any of the stock of said corporation instead of the names and residences of all stockholders holding one (1) or more per centum of said stock as heretofore required. A partnership applying for a Class A or Class B license must insert in the published notice of intention the names and residences of all partners. As heretofore, the application filed with this Department by a corporation applying for a Class A or Class B license must set forth the names and residences of, and the amount of stock held by, all stockholders holding one (1) or more per centum of any of the stock thereof, and the names and residences of all officers and of all members of the board of directors.

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2. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - CHARGES DISMISSED.

DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING MATERIAL FACTS - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against)

PAUL KUSH)
891 E. State Street)
Trenton, N. J.,)

Holder of Plenary Retail Consumption License C-57 issued by the Board of Commissioners of the City of Trenton.)
-----)

In the Matter of Disciplinary Proceedings against)

JOHN KUSH)
891 E. State Street)
Trenton, N. J.,)

Holder of Employment Permit No. 780 issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

In the Matter of Disciplinary Proceedings against)

MARY KUSH)
891 E. State Street)
Trenton, N. J.,)

Holder of Employment Permits Nos. 789 and 5088 issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

Crawford Jamieson, Esq., Attorney for Defendant-Licensee and Defendant-Permittees.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded not guilty to charges alleging, in substance, that in his application dated June 8, 1942 he falsely concealed the fact that John Kush and Mary Kush were the real and beneficial owners of the licensed business and that, since September 5, 1940, he knowingly aided and abetted John Kush and Mary Kush to exercise the rights and privileges of his license in violation of R. S. 33:1-25 and R. S. 33:1-52.

Defendant-permittees each pleaded not guilty to charges alleging that they had falsely concealed in their permit applications that each had an interest in the plenary retail consumption license issued to Paul Kush and also that they exercised the rights and privileges of the license issued to Paul Kush in violation of R.S.33:1-25 and R. S. 33:1-26.

Prior to September 1940 John Kush and Mary Kush, his wife, resided in the State of New York. Paul Kush, who is a brother of John Kush, had resided for more than five years prior to September 1940 in the City of Trenton, N. J.

In September 1940 Nathan B. Litt was the owner of premises known as 891 E. State Street, Trenton, and at that time held a plenary retail consumption license for said premises. The evidence shows that, in September 1940, John Kush purchased from Nathan B. Litt the building heretofore described, and that John Kush and Mary Kush, his wife, moved to an apartment in said building and have resided there since that time. In September 1940 the plenary retail consumption license for said premises was transferred from Nathan B. Litt to Paul Kush and has been thereafter renewed from year to year in the name of Paul Kush. Shortly after Paul Kush obtained his first license, John Kush and Mary Kush obtained employment permits from this Department which they have renewed from year to year.

The Department contends that the licensed business in fact belongs to John Kush and Mary Kush, who are not qualified to hold a retail license because they have not resided in New Jersey for a period of five years. The fact that the building is owned by John Kush is, of course, a suspicious circumstance. The question in this proceeding, however, does not concern the title to the real estate, but rather the ownership of the license and the business conducted thereunder. Re Rubin, Bulletin 458, Item 8.

In statements given to our investigators in December 1941, Paul Kush alleged that in September 1940 he had purchased the licensed business from Litt for the sum of \$1500.00 and that, since that time, he has employed his brother as manager at a weekly salary. John Kush likewise states that he was employed as manager by the licensee at a weekly salary. There is strong evidence to support the statement of Paul Kush that, in September 1940, he purchased the licensed business for the sum of \$1500.00. His bank book, which was produced at the hearing herein, shows the withdrawal of \$1500.00 on September 6, 1940. The records of the licensed business from March 16, 1941 to October 1942 were also produced at the hearing. They show weekly payments of wages to Mary Kush and John Kush, and also payments of a monthly rental of \$30.00 for the use of the licensed premises. There was also produced at the hearing the income tax return filed by Paul Kush for the year 1941, which sets forth therein the profits he received during that year from the licensed business. It is apparent that some salesmen for wholesalers discussed the question of purchases with John Kush, but that is not inconsistent with his position as manager for his brother. Like all "front" cases involving persons who are closely related, this case has presented great difficulty to me. However, the burden of establishing guilt is upon the Department. After reviewing all the evidence, I conclude that the Department has not sustained the burden of proof in these proceedings as to either defendant-licensee or defendant-permittees.

Accordingly, the charges herein are dismissed.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 17, 1943.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

FRANK MCGOVERN)
58-60 New Street)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-453, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

Joseph J. Tully, Esq., Attorney for the Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to the following charges:

"1. On Tuesday night, March 2, 1943, you sold alco-
holic beverages to Private William _____, a minor, in
violation of R. S. 33:1-77.

"2. On the date aforesaid, you sold, served and
delivered and allowed, permitted and suffered the service
and delivery of alcoholic beverages to Private William
_____, a person under the age of twenty-one (21) years,
and allowed, permitted and suffered the consumption of al-
coholic beverages by such person upon your licensed premises,
in violation of Rule 1 of State Regulations No. 20."

The records disclose that investigators of the Department of
Alcoholic Beverage Control, while visiting the licensed premises on
March 2, 1943, observed a soldier, who appeared to be a minor, drinking
beer at a table. It was then about 11:10 P. M. When questioned, the
soldier told the investigators he was Private William _____. He
signed a statement in which he says that, following his arrival at the
tavern, accompanied by another soldier, the bartender came to their
table, took their order for beer and served them without inquiring
as to his age. Private William _____ is nineteen. The bartender,
in a signed statement, admits these facts, except he claims to have
asked Private William _____ his age and was told by the Private that
he was twenty-one years old. This, however, is not a valid defense.
In Re Morgenroth, Bulletin 557, Item 12, the following statement was
made:

"The only safe rule for licensees to follow is: 'When in
doubt, do not serve.' Licensees should follow the pro-
cedure outlined in R. S. 33:1-77. In every instance they
should request prospective patrons who appear to have
reached that stage in life where there may be some reason-
able question as to whether they are under or over twenty-
one years of age, to either submit proof positive of their
age or to represent in writing, over their respective sig-
natures, that they are in fact twenty-one or over. In
addition, it is to be noted that those seeking to establish
a valid defense to a charge involving the sale of liquor to

a minor must prove: (a) that the minor falsely represented in writing that he or she was twenty-one years of age or over; (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one years of age or over; and (c) that the sale was made in good faith, relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. R. S. 33:1-77, as amended P.L. 1939, c. 228."

See also Re Kelly, Bulletin 540, Item 5 and Re Murphy, Bulletin 540, Item 7.

As to penalty: There is no record of any former conviction. The minimum penalty for sales to minors is ten days but, in view of the guilty plea, five days will be remitted. Re Rasimowicz, Bulletin 540, Item 8.

Accordingly, it is, on this 22nd day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-453, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Frank McGovern, for premises 58-60 New Street, Newark, be and the same is hereby suspended for five (5) days, commencing at 2:00 A.M. March 28, 1943, and terminating at 2:00 A.M. April 2, 1943.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION FOR CLUB LICENSE CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary)
Proceedings against)

NEMDEROLOC SOCIAL CLUB)
184 John Street)
Princeton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-1,)
issued by the Mayor and Council)
of the Borough of Princeton.)
-----)

Charles R. Sperling, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to charges alleging that (1) it falsified its present license application by stating that no other person had any interest in its license and business whereas Willie Green did have such an interest, and (2) it permitted the said Willie Green to exercise the rights and privileges of its license.

This licensee was previously cited to appear before this Department in disciplinary proceedings to answer a charge, among others that it had not been in active operation for three years prior to filing its 1941-42 application (see State Regulations No. 7).

In dismissing this charge, I then stated (Re Nemderoloc Social Club, Bulletin 521, Item 4):

"As to the first charge, the theory of the Department's case is that the club had no real existence as such, since it was conducted merely for the private benefit and gain of one Willie Green. The proof, however, does not sustain this contention.

"The club was incorporated in 1922 and has operated at its present quarters for many years. In 1938 the club ran into financial difficulties, with the result that proceedings were instituted to foreclose the mortgage on its property. Willie Green was then induced to purchase the property, and ever since then has loaned the club moneys to the extent of about \$4,000.00. In order to protect his investment in the property and to have some control over the club's finances as well as to insure a return of the moneys loaned by him to the club, Willie Green was elected President of the club and apparently became its guiding spirit. No financial transactions of any kind took place without his approval. There is nothing in the evidence, however, to show that Willie Green personally derived any private profit from the operation of the club. The most that can be said, after a careful perusal of the entire record, is that the club's affairs were conducted in a very slipshod manner. This is a situation which, of course, must be corrected. A partial correction was presented at the hearing, and further investigation will be made to insure that future operation of the club is in accordance with the law."

It is now admitted, however, that despite the warning given to this licensee to correct its financial affairs so as to accord with the law, and the admonition that this Department would investigate further to ascertain whether such correction was made, Willie Green has, at least since July 1942, been the real and beneficial owner of the license nominally issued to the club.

At the previous hearing, this licensee pleaded guilty to (1) selling alcoholic beverages during prohibited hours on Sunday, (2) selling to non-members, and (3) possessing a gambling device (dice table). As a result, its license was suspended for thirty days, with five days remitted for the guilty plea.

This previous record, and the gravity of the instant violation as evidenced by the deliberate and open defiance of the law notwithstanding my cautionary advices to put its house in order, indicate that the only commensurate penalty is a revocation of the license.

Accordingly, it is, on this 25th day of March, 1943,

ORDERED, that Club License CB-1, heretofore issued to Nemderoloc Social Club by the Mayor and Council of the Borough of Princeton for premises 134 John Street, Princeton, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - REFILLING BOTTLE WITH WINE FOR OFF-PREMISES CONSUMPTION, IN VIOLATION OF R. S. 33:1-78 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

PERRY RICE)
T/a PERRY'S WAYSIDE INN)
1222 and 1228 Arctic Avenue)
Atlantic City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-45, issued by the)
Board of Commissioners of the)
City of Atlantic City.)
-----)

Bertram M. Saxe, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to the following charge:

"On the night of February 13, 1943, you, not being the holder of any license so to do, bottled an alcoholic beverage for sale, in that you refilled a pint bottle with wine and sold said bottle of wine; such bottling being in violation of R. S. 33:1-78."

The records disclose that investigators of the Department of Alcoholic Beverage Control visited the licensed premises on February 13, 1943 and observed a customer who was seated in front of the bar drinking beer, place an empty pint whiskey bottle on the bar which the bartender proceeded to fill from a gallon jug of Galsdale Wine under the bar. The bartender returned the filled bottle and was paid thirty (30) cents by the customer. The customer signed a statement in which he says he asked the bartender to fill the bottle with wine. The bartender signed a statement in which he admits the transaction, his excuse being that he believed he was permitted to refill a bottle with wine and sell it although he knew he could not refill a bottle with whiskey. A retail licensee may not refill bottles with wine for off-premises consumption. Re New Jersey Retail Liquor Package Stores Association, Bulletin 539, Item 16.

The defendant-licensee was not on the premises at the time of the violation, and in a signed statement says he had no knowledge of the incident and that it was not his practice to refill bottles with wine. This statement, however, does not set forth a valid defense. In Re Gallagher, Bulletin 558, Item 5, the following statement was made:

"Despite personal innocence, the licensee, as 'master of his house,' must be held strictly responsible for any 'refills' found in his stock of liquor. Re Agostini, Bulletin 506, Item 8; Re Solow, Bulletin 556, Item 3."

As to penalty: There is no record of any former conviction. Since the circumstances surrounding the violation do not appear to be aggravated, I shall suspend the license for a period of ten days, less five for the plea, or a net suspension of five days. The refilling of bottles or other containers with wine by consumption

licensees for off-premises consumption constitutes a misdemeanor. See R. S. 33:1-78. Licensees are hereby warned that in future similar disciplinary proceedings the penalty may be substantially increased.

Accordingly, it is, on this 25th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-45, heretofore issued by the Board of Commissioners of the City of Atlantic City to Perry Rice, trading as Perry's Wayside Inn, for premises 1222 and 1228 Arctic Avenue, Atlantic City, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 A. M. March 29, 1943, and terminating at 12:01 A. M. April 3, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - HINDERING INVESTIGATION, IN VIOLATION OF R. S. 33:1-35 - PREVIOUS RECORD - 25 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

FRANK D'AMBROSIO)
T/a CHITCH'S GRILL)
14 Columbus Place)
Bound Brook, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-))
tion License C-7 issued by the)
Borough Council of the Borough)
of Bound Brook.)
- - - - -)

Samuel Chiaravalli, Esq., Attorney for Defendant-Licensee.
Aghram Merin, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to charges alleging that:

"1. At or about 11:40 P.M. on August 22, 1942, you sold alcoholic beverages to Louis --- and Ralph ---, minors, in violation of R. S. 33:1-77.

"2. At or about the time aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Louis --- and Ralph ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. At or about the time aforesaid, you hindered and delayed and caused the hindrance and delay and failed to facilitate an investigation of your licensed premises, in violation of R. S. 33:1-35."

As to charges (1) and (2): On the evening of August 22, 1942, two investigators and an inspector employed by the Department of Alcoholic Beverage Control were present in defendant's premises. They observed five young men enter the dining room in the rear of the licensed premises. A waitress, Mary DeGhetto, took an order from the young men, went to the bar which was located in another room, and returned to the dining room with a tray containing two glasses of beer and three glasses of soda. The waitress proceeded to the table in the dining room where the young men were seated, placed a glass of beer in front of Louis ---, a glass of beer in front of Ralph ---, and a glass of soda in front of each of the other three young men. While Louis and Ralph were drinking the beer, one of the investigators went to the table, seized the glasses of beer and questioned Louis and Ralph. The waitress at this time apparently attempted to interfere with the investigators, but the evidence shows that she desisted in her attempts as soon as the investigators identified themselves to her.

Louis --- was eighteen years and nine months of age, and Ralph --- was seventeen years of age at the time the alleged violation occurred.

After the investigators had seized the two glasses, our inspector went to the barroom and requested the licensee, who had been tending bar, to come with him to the dining room. The inspector testified herein that the licensee, after entering the dining room, started to shout at the minors, and that thereafter several people in the premises arose and said, "Let's throw them out." The inspector also testified that the licensee then shouted, "You ABC ----- cannot come in my place and create a disturbance", and summoned the local police. It is apparent from the testimony that the licensee refused to permit the investigators to use two empty bottles to take samples of the seized alcoholic beverages, but there is a doubt in my mind as to whether he attempted to destroy this evidence. In any event, the samples were available for use at the hearing. Later in the evening the licensee arrogantly insisted that the inspector be examined by a doctor as to his sobriety. If this demand was made in the hope of intimidating the inspector, it failed of its purpose. After examination, the doctor stated that the inspector was sober.

On behalf of the licensee, the waitress, Mary DeGhetto, testified that at first she refused to serve beer to any of the young men because they were not old enough. She says, however, that Louis --- produced a draft card; that Ralph stated to her that he was over twenty-one; and that both young men appeared to her to be more than twenty-one years of age. She admits that she thereafter served the two glasses of beer at the table. The licensee, who was then tending bar in the other room, had no personal knowledge of the service to or consumption of the alcoholic beverages by the two young men. Despite his personal innocence, the licensee is responsible for the acts of his employees. Re Jacobs, Bulletin 316, Item 8; Re Almac, Bulletin 554, Item 10; Re Suppa, Bulletin 557, Item 7. Even if these young men appeared to the waitress to be over the age of twenty-one, that in itself was not a sufficient excuse. Licensees and their employees must learn not to trust their judgment as to ages. When in doubt they should follow the procedure outlined in R. S. 33:1-77. In every instance they should request prospective patrons who appear to have reached that stage of life where there may be some reasonable question as to whether they are under or over twenty-one years of age, to either submit proof positive of their age or to represent in writing, over their respective signatures, that they are in fact twenty-one or over. In addition, it is to be noted that those seeking to establish a valid defense to a charge involving the sale of

liquor to a minor must prove (a) that the minor falsely represented in writing that he or she was twenty-one years of age or over; (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one years of age or over; and (c) that the sale was made in good faith, relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. Re Morgen-roth, Bulletin 557, Item 12.

The licensee further contends that the drinks had not been paid for at the time they were seized by the investigators, but that is immaterial since the gratuitous delivery or gift of any alcoholic beverage by any licensee constitutes a sale. R. S. 33:1-lw.

On the evidence presented, I find the licensee guilty as to charges (1) and (2).

As to charge (3): The evidence shows that, after the agents of this Department had identified themselves to the licensee, he, instead of cooperating with them, hindered and delayed their investigation. R. S. 33:1-35 provides that a licensee shall not in any way hinder or delay or cause the hindrance or delay of an investigation in any manner whatsoever. I find the licensee guilty as to charge (3). Licensees will not be permitted to make statements reflecting doubt upon the parentage of ABC investigators with impunity. Citizens engaged in a privileged business must learn to obey the law and to cooperate cheerfully with the men of this Department whose duty it is to ascertain whether the law is in fact being obeyed. The licensee's stupid conduct and his inability to control his tongue have merely added to his grief.

As to penalty: Since no aggravating circumstances appear, I shall impose the usual penalty of ten days for the violations set forth in charges (1) and (2). I shall impose an additional penalty of ten days for the violation set forth in charge (3). Defendant has a prior record. In June 1939 his license was suspended by the local issuing authority for a period of three days after he had pleaded guilty to a charge of selling alcoholic beverages during prohibited hours. Because of his prior record, the penalty herein will be increased from twenty to twenty-five days.

Accordingly, it is, on this 25th day of March, 1943,

ORDERED, that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Bound Brook to Frank D'Ambrosio, t/a Chitch's Grill, for premises 14 Columbus Place, Bound Brook, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 A. M. March 30, 1943, and terminating at 2:00 A.M. April 24, 1943.

ALFRED E. DRISCOLL
Commissioner.

7. MORAL TURPITUDE - FACTS EXAMINED - CRIME OF BURGLARY FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED -
APPLICANT FAILED TO PROVE GOOD CONDUCT FOR FIVE YEARS LAST PAST -
APPLICATION DENIED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of Convictions, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 257.
- - - - -)

BY THE COMMISSIONER:

Petitioner has on divers occasions been convicted of crimes committed intermittently over a period of approximately fifteen years. The last serious offense occurred in October 1933. In 1919, when petitioner was about nineteen years of age, he was convicted of grand larceny because he drove an automobile without the consent of the owner. An indeterminate sentence to a reformatory was imposed upon petitioner for this offense and he was discharged therefrom after serving approximately one year.

In 1928 petitioner was convicted of a burglary charge and was sentenced to four months in a county prison. In October 1933 petitioner pleaded guilty to another burglary charge. He states that he pleaded guilty because he was informed that no prison term was to be imposed. Subsequently, on February 9, 1934, he received a suspended sentence of two to three years to the State Prison and was placed on probation. Three months thereafter petitioner was indicted for possession of burglary tools. His trial before a jury on this latter charge resulted in an acquittal. Notwithstanding this acquittal, the suspended sentence of from two to three years previously imposed was revived and petitioner commenced a term in the State Prison. After serving eight months in prison, petitioner states that he was released by the Board of Pardons.

In addition to the aforementioned conviction for crimes, at least two of which involve moral turpitude, several minor motor vehicle infractions that happened many years ago were admitted by petitioner. The petitioner subsequently forfeited his license to drive an automobile by reason of being convicted of operating a motor vehicle at an unlawful rate of speed on two separate occasions during the year 1942. On October 19, 1942 petitioner was convicted of driving a car after his license had been revoked and was fined \$100.00.

It is not my policy to prevent a person from engaging in the alcoholic beverage industry because he may have wandered from the righteous path on one or more occasions many years ago. If he has proven to me that he has mended his way and has lived a good life for at least five years last past, I have in a number of cases used the discretion vested in me to remove any disqualification that may exist. I was prompted at first blush to do this in the instant case, as the crimes that assuredly involved moral turpitude were committed over five years previous to the filing of the petition herein.

The three character witnesses, who appeared to be very substantial persons, were unanimous in their opinions that the petitioner has made rapid strides in the right direction. However, I cannot overlook the violation of driving an automobile after petitioner's license had been revoked. This is patent evidence that he has an utter disregard for law even at this late date. Considering petitioner's rather lengthy criminal record, together with the fact that he has failed to show that he has been completely law-abiding during the past five years, I shall not exercise my discretionary power at this time to lift his disqualification.

The petition is, therefore, denied.

Dated: March 26, 1943.

Alfred E. Griswold
Commissioner.

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