

26 Rose Avenue,
Madison,
Morris County, New Jersey.

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

BULLETIN 1021

JUNE 28, 1954.

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New Jersey State Library

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JUNE 28, 1954.

1. APPELLATE DECISIONS - PASSAIC COUNTY RETAIL LIQUOR DEALERS' ASSO-
 CIATION v. PATERSON AND BERTELLI'S LIQUOR STORE, INC.

PHILMORE LIQUOR SALES, INC. v. PATERSON AND BERTELLI'S LIQUOR
 STORE, INC.

PASSAIC COUNTY RETAIL LIQUOR DEALERS')
 ASSOCIATION,)

Appellant,)

-vs-)

BOARD OF ALCOHOLIC BEVERAGE CONTROL)
 FOR THE CITY OF PATERSON, and)
 BERTELLI'S LIQUOR STORE, INC.,)

Respondents.)

ON APPEAL

 PHILMORE LIQUOR SALES, INC.,)

Appellant,)

CONCLUSIONS AND ORDER

-vs-)

BOARD OF ALCOHOLIC BEVERAGE CONTROL)
 FOR THE CITY OF PATERSON, and)
 BERTELLI'S LIQUOR STORE, INC.,)

Respondents.)

Theodore D. Rosenberg, Esq., Attorney for Appellant Passaic County
 Retail Liquor Dealers' Association.
 Arnold M. Smith, Esq., Attorney for Appellant Philmore Liquor Sales, Inc
 Louis Nussman, Esq., Attorney for Respondent Board of Alcoholic
 Beverage Control for the City of Paterson.
 Harry Smith, Esq., Attorney for Respondent Bertelli's Liquor Store, Inc.
 Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor Stores
 Association, Objector.

BY THE DIRECTOR:

These appeals, consolidated for hearing and determination, were
 taken from the action of respondent Board in approving an application
 for transfer of a plenary retail consumption license from Edward A.
 Levy, Receiver in Bankruptcy for the 230 Market Street Corporation, to
 respondent Bertelli's Liquor Store, Inc., and from premises 230 Market
 Street to 218-230 Redwood Avenue, Paterson.

In the grounds for reversal appellants urge that the action of the
 respondent Board was erroneous in that it was contrary to R. S.
 33:1-12.23 (P. L. 1948) Chapter 98, and State Regulations No. 32.

On May 28, 1948, Chapter 98, Laws of 1948, now R. S. 33:1-12.23,
 became effective, reading as follows:

"The holder of a plenary retail consumption license or a sea-
 sonal retail consumption license, after the effective date of
 this act, may sell and display for sale alcoholic beverages in
 original containers for consumption off the licensed premises
 only in the public barroom of the licensed premises, such bar-
 room being a room containing a public bar, counter or similar
 piece of equipment designed for and used to facilitate the sale

and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises; provided, however, that where, prior to the effective date of this act, alcoholic beverages in original containers for off-premises consumption were sold and displayed for sale by the holder of such license, either to the exclusion of sale for consumption on the licensed premises or upon a portion of the licensed premises other than the public bar-room, such sale and display shall be permitted as heretofore and notwithstanding renewal or transfer of the license either from person to person or place to place, subject to rules and regulations to be promulgated by the commissioner."

The license in question did not come within the proviso set forth in said section and does not contain "the broad package privilege" notation set forth in Rule 4, State Regulations No. 32.

At the time respondent-licensee made application for the transfer in question the plans filed with the respondent-issuing authority showed the building proposed to be licensed as having a frontage of fourteen feet six inches and a length of sixty-five feet; that approximately four feet from the front entrance and adjacent to each wall divers shelves were to be erected; that the shelves to the left were to be twenty-four feet in length and the shelves to the right twenty-one feet in length; that at the end of the right shelving and at right angles thereto a counter about eight feet long and two feet wide was proposed to be erected; that approximately four feet behind this counter toward the rear of the premises a refrigerator eight feet by eight feet was to be installed; that to the left of the refrigerator and beyond the shelving attached to the left wall a small table, approximately two and one-half feet by two feet, was to be placed; that about four feet beyond this table there was to be erected a ten-foot curved bar, the short curved end thereof attached to the left wall, which bar would be approximately eight and one-half feet from the rear of the building. Also, some distance beyond the refrigerator toward the end of the building another table was to be placed. Henry DeVries, President of respondent-licensee, testified that the counter in front of the refrigerator was to be used solely for wrapping package goods for off-premises consumption; that he did not know whether or not any plumbing was to be installed in connection therewith; that it was the intention of the respondent-licensee to dispense liquor over the bar situated in the rear of the premises but, if a patron happened to be in the front of the store and desired a drink of alcoholic beverages for immediate consumption, it would be served to him; that the name "Bertelli's Liquor Store, Inc." was to be placed on the front window of the premises.

It will be necessary, in order to decide the matter properly, to determine the intent of the Legislature in limiting the sale of alcoholic beverages in original containers for off-premises consumption of certain holders of plenary retail consumption licenses without the "broad package privilege."

The purpose of the Alcoholic Beverage Law (R. S. 33:1-73) is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed.

"A 'liberal construction' of a statute is that construction by which the letter of the statute is enlarged or restrained to accomplish its intended purpose, and permits a statute to be extended to include cases clearly within the mischief intended to be remedied, unless such construction does violence to the language used ***."

82 C.J.S. 530.

Justice Wachenfeld, speaking for the Supreme Court in Flackman v. Iles, et als., 4 N. J. 82, in the same vein, said:

"It is a recognized rule of statutory construction that the intention of the Legislature is to be derived from the entire document. The meaning of the general words will be restricted whenever this is necessary to carry out the legislative intention and the reason and spirit of the statute will control in its interpretation. Lynch v. City of Long Branch, 111 N.J.L. 148 (Sup. Ct. 1933); May v. Board of Com'rs. of Town of Nutley, 111 N. J. L. 166 (Sup. Ct. 1933).

"The inquiry in construing statutes is to determine the purpose and intent of the Legislature. If the statute alters or amends the previous law or creates or abolishes types of actions, it is important, in discovering the intention of the Legislature, to ascertain the old law, the mischief and the proposed remedy. Holt v. Akarman, 84 N.J.L. 371 (E. & A. 1913); Pine v. Okzewski, 112 N.J.L. 429 (E. & A. 1934)."

The pertinent part of the first section of the statute with reference to plenary retail consumption licenses (R.S. 33:1-12), before the supplement now under consideration was enacted, provides as follows:

"The holder of this license shall be entitled, subject to rules and regulations, to sell for consumption on the licensed premises any alcoholic beverages by the glass or other open receptacle, and also to sell all alcoholic beverages in original containers for consumption off the licensed premises ***."

Query: What did the Legislature intend to accomplish by the enactment of the supplement in question with reference to the privileges granted to one holding a plenary retail consumption license?

It is obvious, upon reading the supplement with reference to plenary retail consumption licenses (R.S. 33:1-12.23), that the Legislature intended where there was no "broad package privilege" to confine the sale of alcoholic beverages in original containers to a bona fide barroom which has been defined therein as "a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises." The supplement was designed to prevent emergence of "package stores" at plenary retail consumption licensed premises without the "broad package privilege." The arrangement set forth in the plans filed by the respondent-licensee clearly indicates an attempt to circumvent the supplement to the statute in question. In effect, the counter and refrigerator in the proposed locations partition the front from the rear of the licensed premises. Access may be had from the front of the premises to the rear thereof through a passageway between the counter and the shelving to be erected adjacent to the left wall. If such circumvention were permitted, the statute itself would be useless and of no avail. It is not to be assumed that the Legislature intended an absurdity, or that absurd consequences shall flow from its enactments. Oates v. First National Bank, 100 U. S. 239; State v. Clark, 29 N.J.L. 96; Walker v. Freeholders of Essex, 82 N.J.L. 348; Gordon v. State Board of Education, 132 N.J.L. 356 (E. & A. 1945). The entire proposal for the erection of a small bar in the rear of the premises and a large "package goods department" in the front part thereof is obviously for the purpose of evading the spirit and intention of the present law in obtaining a privilege to which it is not legally entitled.

Although Judge Colie, in Coral Lounge and Cocktail Bar, Inc. v. Hock et al., 5 N. J. Super. 163, stated that it appeared clear to the Court that a barroom means "that portion included within the four walls of the room in which the bar is located", I am of the opinion that he

was referring to a bona fide barroom where the bar was used to facilitate the sale and dispensing of alcoholic beverages for consumption on the licensed premises and not such a barroom as that proposed by the respondent-licensee.

It is also to be noted that respondent-licensee's corporate name is "Bertelli's Liquor Store, Inc." Rule 2 of State Regulations No. 26 provides:

"No licensee of any class shall use any corporate name, trade name, or other name, sign or symbol, which is calculated to or may mislead the general public to believe the licensee is conducting any operations or business pertaining to alcoholic beverages other than the operations or business actually being conducted by the licensee."

I am of the opinion that respondent-licensee's name refers to a "package goods store" rather than to a "tavern" and thus may mislead the general public.

For the reasons above mentioned, the matter will be remanded to the respondent Board for further consideration, in accordance with the opinion expressed herein.

Accordingly, it is, on this 21st day of May, 1954,

ORDERED that these cases be and the same are hereby remanded to the respondent Board of Alcoholic Beverage Control for the City of Paterson for further action in accordance with the foregoing conclusions.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALE BEYOND TERMS OF LICENSE BY LICENSEE NOT HAVING BROAD PACKAGE PRIVILEGE - FALSE ANSWER IN APPLICATION FOR LICENSE CONCEALING MATERIAL FACT - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO FILE APPLICATION TO LIFT IF ILLEGAL SITUATION IS CORRECTED.

In the Matter of Disciplinary Proceedings against)

ADAM KRYSZYNIAK)
166 Maple Avenue)
Wallington, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-41, issued by the Mayor and Borough Council of the Borough of Wallington.)
-----)

Feder and Rinzler, Esqs., by Joseph A. Feder, Esq., Attorneys for Defendant-licensee.

William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On January 6, 1954, and prior thereto, you sold alcoholic beverages in original containers for off-premises consumption not from a public barroom of your licensed premises without having notation (the so-called 'broad package privilege') on your then current license certificate and statement in the application for your then current license as respectively set forth in Rules 4 and 2 of State Regulations No. 32; in violation of Rule 6 of State Regulations No. 32.

"2. On January 6, 1954, and prior thereto, you sold and displayed for sale alcoholic beverages in original containers for consumption off the licensed premises not in a public barroom of your licensed premises; in violation of P.L. 1948, ch. 98 (R.S. 33:1-12.23).

"3. In your application dated August 3, 1953, filed with the Mayor and Borough Council of the Borough of Wallington, upon which you obtained your current plenary retail consumption license, in answer to Question 6(b), which asked the purpose for which the licensed building would be used, you falsely stated 'tavern', whereas in truth and fact the building was to be used for a liquor store; said false statement being in violation of R. S. 33:1-25."

At the hearing herein three ABC agents testified in support of the charges. From their testimony and the exhibits the following appears:

On May 18, 1953, defendant filed with the local issuing authority an application for transfer of a plenary retail consumption license from one Rigano to defendant and from premises known as 189 Main Avenue to premises described as 168 Maple Avenue. In that application the purpose for which the building was to be used was described as "Package Liquors." Such application was granted June 6, 1953, but that action was rescinded June 22, 1953. On August 3, 1953, defendant completed a new application for transfer of the Rigano license to defendant for premises described as 166 Maple Avenue, in which the purpose for which the building was to be used was described as "tavern." This application was filed with the local issuing authority August 5, 1953, and was granted August 24, 1953.

The licensed premises consists of the entire building at 166 Maple Avenue, which is a new cinder block structure attached to an older building at 168 Maple Avenue where defendant has conducted a grocery store and butcher shop. Access between the two premises is gained by means of a passageway between the two premises in the rear. Entry to the licensed premises from the street is gained through a glass door in the front of the building at sidewalk level.

The following is a description of what the agents found at the licensed premises on their visits on December 28 and 29, 1953, and January 6, 1954: Clear view of the interior from the sidewalk through the glass door and large show window containing package liquor display and neon sign "Krueger on ice"; large overhead advertising sign extending out from building over sidewalk reading "Adam's Liquors"; side walls lined with shelves, at least six tiers high, displaying bottled liquor and price tags; large three-panel refrigerator, with upper and lower doors in each panel, across rear of room for approximately half its width; bottled and canned beer (and other beverages) clearly visible through refrigerator doors; sign over refrigerator advertising Ice Cold Beverages and Ballantine Beer and Ale; several feet in front of refrigerator a show-case counter approximately 30 inches high; bottled liquor displayed at each end on top of counter and in show-case under counter; center of counter clear; in front of room, immediately behind display window, stacks of cases of beer and bottles of soft drinks; cases of beer stacked elsewhere around room; on the right, as one enters, and approximately eight or nine feet from the front display window, defendant's only cash register resting on third shelf of a section of shelves; directly above it two shelves containing displays of bottled liquor, with price tags; seven bottles of whiskey on the shelf immediately below the cash register, five opened and the other two sealed; immediately in front of the cash register a counter, approximately four feet high, three feet wide and six feet long, closed in front and on both sides but open in the rear (toward the cash register) with a low rail bordering the front and sides of the top (approximately six feet by three feet); on said top a beer comb, a tray and a "March of Dimes" collection receptacle; under the bar or counter a sink with hot and cold running water and a drainboard with glasses; no beer taps; no draught beer is

10 vis
10 vis

sold; no implements, equipment or facilities for making cocktails or other mixed drinks; no ice cubes; no signs or other matter, either inside or outside, relating to sales by the drink or the prices thereof.

The opened bottles on the shelf under the cash register behind the bar or counter were not conspicuously displayed, being considerably below eye-level, and were not equipped with pourers. They had their original corks or tops, and the agent who visited the premises on December 28 and 29, 1953, testified that they were approximately seven-eighths full and he believed that the same bottles were there on both days. On December 28, 1953, this same agent found on the drainboard only five four-ounce glasses, thirteen three-quarter-ounce shot glasses and one six-ounce jelly glass. Neither agent observed any sales by the drink on any of the three visits. They did not observe any bar-rail or stools or chairs upon the licensed premises on any of these visits, although defendant produced a photograph showing three cushioned bar-stools in front of the bar or counter. There is a toilet in the rear of the building.

On January 6, 1954, one of the agents purchased two sealed bottles of whiskey from defendant, who gave a signed sworn statement admitting that he had made such sale; that it was made at the counter in front of the refrigerator and that the license certificate did not contain the endorsement of the "broad package privilege." Such statement was introduced in evidence. Several similar sales to other patrons had been witnessed by the other agent on December 28 and 29, 1953.

The records of this Division reveal that defendant's license is not one of those which carries the "broad package privilege" as provided by P.L. 1948, c. 98, and State Regulations No. 32.

Defendant testified that his building is new; that he commenced business under his license the week following Thanksgiving in 1953; that he is conducting a tavern and liquor store; that he has a "counter" on the right as one enters which he uses "for mixed drinks"; that he sells drinks every day and that he built this kind of a "counter" or "bar" so that "nice people would come in, have a drink and go home, not to hang around the place." He further testified that he has hot and cold water under the bar and glasses and that, when he needs liquor, he opens a bottle. He admitted that he had no stools or chairs on December 28 or 29, 1953, but produced evidence that he purchased six slightly used bar-stools and seven dozen glasses on December 30, 1953, but explained that he may not have placed the stools at the bar until after January 6, 1954. He further testified that he opens at 8:00 or 9:00 a.m. and closes at 10:00 or 11:00 p.m., depending on whether there are any customers; that he hires a bartender (referred to in his statement as a "clerk working in the liquor store") who works from 10:00 a.m. until 10:00 p.m., and that he personally conducts the business at other times and when his employee is otherwise occupied. He also testified that he has had from seven to ten customers per day for on-premises drinking, mostly after 5:00 p.m.; that no one has yet asked for mixed drinks; that he has bottles of ready-mixed cocktails, and that he does not open for business on Sunday. He estimated his sales of drinks as 15% to 20% of his gross receipts, the balance being for sale of package goods, and admitted that the only portion of his licensed premises devoted to on-premises drinking is the portion at the "bar" or "counter", aforementioned, the remainder of the premises being devoted to sale and display of bottled goods, including soft drinks.

He further testified that he had telephoned to this Division for information concerning the privileges conferred by his license, but admitted that he had never submitted for approval either the present layout or any plans whatsoever.

P. L. 1948, c. 98, §1 provides, in pertinent part, as follows:

"[33:1-12.23.] Sale and display for off-premises consumption. The holder of a plenary retail consumption license or a seasonal retail consumption license, after the effective date of this act, may sell and display for sale alcoholic beverages in original containers for consumption off the licensed premises only in the public barroom of the licensed premises, such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises ***"

and contains an exception (grandfather clause) in favor of licensees who had previously made such sales from a portion of the premises other than the public barroom.

In his Memorandum counsel for defendant contends that, since the statute sets forth no yardstick for size or details of construction of a "bar", it leaves it to the licensee's discretion as to how he sets it up. He further contends that, consequently, the evidence discloses no violation by defendant, citing in support principally cases dismissing criminal indictments.

For some purposes the structure in front of the cash register, here in above referred to as a "bar" or "counter", may be deemed to be a "bar" cf. Eskridge v. Division of Alcoholic Beverage Control (App. Div. A-126-53), decided May 10, 1954, but not yet officially reported. However, in deciding this case it is necessary to determine whether the sales were made in a "public barroom" containing "a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises" within the meaning of P.L. 1948, c. 98, §1. In order to determine that question it is necessary to ascertain the intent of the Legislature when it enacted that legislation which limits the privileges of retail consumption licensees (not having the "broad package privilege") to sell alcoholic beverages in original containers for off-premises consumption. The statute must be read as a whole and must be construed with relation to the other statutory provisions affecting the privileges of retail consumption licensees.

R. S. 33:1-73 provides as follows:

"This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

"A 'liberal construction' of a statute is that construction by which the letter of the statute is enlarged or restrained to accomplish its intended purpose, and permits a statute to be extended to include cases clearly within the mischief intended to be remedied, unless such construction does violence to the language used ***."

82 C.J.S. 530.

Justice Wachenfeld, speaking for the Supreme Court in Blackman v. Iles, et als., 4 N.J. 82, in the same vein, said:

"The inquiry in construing statutes is to determine the purpose and intent of the Legislature. If the statute alters or amends the previous law or creates or abolishes types of actions, it is important, in discovering the intention of the Legislature, to ascertain the old law, the mischief and the proposed remedy. Holt v. Akarman, 84 N.J.L. 371 (E. & A. 1913); Pine v. Okzewski, 112 N.J.L. 429 (E. & A. 1934)."

R. S. 33:1-12(1), as it existed when P.L. 1948, c. 98 (a supplement) was enacted, reads as follows:

"Plenary retail consumption license. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacles, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises ***."

Thus, prior to the enactment of P.L. 1948, c. 98, a plenary retail consumption licensee had not only the privilege of selling by the drink for on-premises consumption, but also the unlimited privilege of selling by the bottle for off-premises consumption. When all of these factors are taken into account, it becomes obvious that, by P.L. 1948, c. 98, the Legislature intended to restrict sales of alcoholic beverages in original containers for off-premises consumption by a consumption licensee, not protected by the "grandfather clause", to the public barroom of his licensed premises. As used in that statute, the term "public barroom" means a bona fide public barroom, not a room, however public and containing whatever equipment, which is not in fact a public barroom. The evidence in this case clearly discloses that defendant, on the dates in question, was not conducting a barroom but that he was, in truth and in fact, conducting a package liquor store in which he had placed a piece of equipment designed to circumvent the stricture of the statute. This "token" bar did not convert his store into a barroom. As Justice Wachenfeld said in Blackman v. Iles, et als., supra, p. 88:

"It is a recognized rule of statutory construction that the intention of the Legislature is to be derived from the entire document. The meaning of the general words will be restricted whenever this is necessary to carry out the legislative intention and the reason and spirit of the statute will control its interpretation. Lynch v. City of Long Branch, 111 N.J.L. 148 (Sup. Ct. 1933); May v. Board of Com'rs. of Town of Nutley, 111 N.J.L. 166 (Sup. Ct., 1933)."

It seems obvious that defendant's whole purpose from the very beginning was to carry on a package store operation under the license. If such attempted circumvention were deemed compliance, this remedial statute would be rendered nugatory. It is not to be assumed that the Legislature intended an absurdity or that it intended to do a useless thing. Gordon v. State Board of Education, 132 N.J.L. 356 (E. & A. 1945); Walker v. Freeholders of Essex, 82 N.J.L. 348 (Sup. Ct. 1912).

I find defendant guilty on all charges.

Since defendant has continued to conduct his licensed business in violation of the statute, I have no alternative but to suspend the license for the balance of its term. In the event that the illegal situation is corrected, application may be made to me for the lifting of such suspension, but in no event will an order lifting the suspension be entered prior to the expiration of ten days from the effective date thereof. Cf. Re Faller Bowl O'Drome, Inc., Bulletin 959, Item 8; Re Grande and Schipani, Bulletin 994, Item 5.

Although this proceeding was instituted during the 1953-54 licensing period, it does not abate but remains fully effective against any renewal license in the event a satisfactory correction has not been effected during the current licensing period. State Regulations No. 16.

Accordingly, it is, on this 21st day of May, 1954,

ORDERED that Plenary Retail Consumption License C-41, issued for the 1953-54 licensing period by the Mayor and Borough Council of the Borough of Wallington to Adam Krystyniak, 166 Maple Avenue, Wallington,

be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 1, 1954; and it is further

ORDERED that, in the event a correction of the illegal situation is effected, leave will be given to make application to me for the lifting of the suspension, as aforesaid.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against)

THE ALOHA, INC.)
T/a THE ALOHA)
15th Avenue and Ocean Avenue)
Belmar, N. J.,)

O R D E R

Holder of Seasonal Retail Consumption License CS-6, issued by the Board of Commissioners of the Borough of Belmar.)
-----)

BY THE DIRECTOR:

It appearing that by Order dated December 31, 1953, the license then held by the above named defendant was suspended for a period of twenty-five days, and that a further order was to be entered herein fixing the effective dates for said suspension (Re The Aloha, Inc., Bulletin 998, Item 4); and it appearing that the Board of Commissioners of the Borough of Belmar has issued to defendant Seasonal Retail Consumption License CS-6 for the summer season from May 1, 1954, until November 1, 1954; and it further appearing that defendant's licensed premises have now been reopened for business;

It is, on this 27th day of May, 1954,

ORDERED that Seasonal Retail Consumption License CS-6, for the summer season from May 1, 1954, until November 1, 1954, issued by the Board of Commissioners of the Borough of Belmar to The Aloha, Inc., t/a The Aloha, for premises at 15th Avenue and Ocean Avenue, Belmar, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. June 3, 1954, and terminating at 2:00 a.m. June 28, 1954.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 HERMAN WEINER
 44 Broadway
 Paterson 1, N. J.,
 Holder of Plenary Retail Consumption License C-219, issued by the Board of Alcoholic Beverage Control for the City of Paterson..
 -----)

CONCLUSIONS AND ORDER

George S. Grabow, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On April 9, 1954, and on divers days prior thereto, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20."

The file herein discloses that, pursuant to a search warrant, members of the New Jersey State Police entered defendant's licensed premises on April 9, 1954, and searched the premises. They found a number of horse race betting slips, hastily thrown on the floor by a patron known as the "Senator" who also had on his person \$269.41 and numerous betting slips listing horses running that day at various tracks. They found similar slips in the possession of another patron and the bartender, Elmer Burrows. They also found numerous similar slips in a waste can under the bar. Burrows later revealed that the "Senator" had been in daily attendance on the licensed premises since January 1954, and had regularly received bets placed by him and others frequenting the establishment.

Defendant has a previous adjudicated record. Effective March 21, 1945, his license was suspended for fifteen days by the State Commissioner for various dissimilar violations (see Bulletin 659, Item 2) and again, effective June 8, 1950, his license was in like manner suspended for twenty days for Sunday "hours" and "screen" violations (see Bulletin 879, Item 8). The first of these violations I shall disregard as having occurred more than five years ago. Re Burday & Budowsky, Bulletin 970, Item 10. However, the second violation, having occurred within a five-year period, will be considered in fixing the penalty herein. The minimum suspension is twenty days where the licensee or his agent participated in the violation. Re Ferment, Bulletin 635, Item 5. Under the circumstances of this case I shall suspend defendant's license for twenty-five days and remit five days for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 21st day of May, 1954,

ORDERED that Plenary Retail Consumption License C-219, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Herman Weiner, for premises 44 Broadway, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. June 1, 1954, and terminating at 3:00 a.m. June 21, 1954.

WILLIAM HOWE DAVIS
 Director.

5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against THE LOPE INN, A CORP. 44 Temple Street Paterson 2, N. J., Holder of Plenary Retail Consumption License C-51, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS AND ORDER

Melvin N. Fine, Esq., Attorney for Defendant-licensee. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that it (1) allowed alcoholic beverages to be consumed on its licensed premises on Saturday, April 10, 1954, between 3:00 a.m. and 3:25 a.m., and (2) failed to have its licensed premises closed during said prohibited hours, both in violation of a local ordinance.

An ordinance of the City of Paterson prohibits the consumption of alcoholic beverages on weekdays between 3:00 a.m. and 7:00 a.m., and requires that licensed premises (with exceptions not here material) shall be closed between said hours.

The file herein discloses that at 3:15 a.m. on April 10, 1954, two ABC agents looked through a window of defendant's licensed premises and observed a number of male patrons at the bar drinking alcoholic beverages. There also were two couples seated at a table and a male member of the group was drinking beer. The agents knocked on the door and found it to be locked. Within a short period of time a man, subsequently identified as Benjamin Berman, President and Treasurer of the defendant corporation, opened the door and permitted them to enter. He refused to make a written statement but verbally admitted the violation. He contended, however, that he was not aware that the premises must be closed at 3:00 a.m. Ignorance of the law is no excuse. Re Broodwinner, Bulletin 477, Item 3.

Defendant has no prior adjudicated record. I shall suspend its license for the minimum period of fifteen days (Re Vecchione, Bulletin 967, Item 7). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 20th day of May, 1954,

ORDERED that Plenary Retail Consumption License C-51, issued by the Board of Alcoholic Beverage Control for the City of Paterson to The Lope Inn, A Corp., for premises 44 Temple Street, Paterson, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. June 1, 1954, and terminating at 3:00 a.m. June 11, 1954.

WILLIAM HOWE DAVIS Director.

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF TAX PAID ALCOHOLIC BEVERAGES IN EXCESS OF LIMITED QUANTITY PERMITTED TO BE TRANSPORTED IN UNLICENSED VEHICLE - TRANSPORTER ESTABLISHED THAT ALCOHOLIC BEVERAGES WERE TRANSPORTED IN GOOD FAITH FOR PERSONAL CONSUMPTION - PERMIT VALIDATING UNLAWFUL TRANSPORTATION ISSUED AND MOTOR VEHICLE AND ALCOHOLIC BEVERAGES RETURNED.

In the Matter of the Seizure on) Case No. 8484
 December 18, 1953, of thirteen)
 bottles of whiskey and an)
 Oldsmobile sedan, on River Road)
 in the City of Clifton, County of) ON HEARING
 Passaic and State of New Jersey.) CONCLUSIONS AND ORDER

-----)
 Charles A. Stanziale, Esq., Attorney for Michael Caperino.
 Harry Castelbaum, Esq., appearing for the Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and further pursuant to a stipulation dated December 31, 1953 signed by Michael Caperino, to determine whether 13 bottles of taxpaid whiskey and an Oldsmobile sedan, described in a schedule attached hereto, seized on December 18, 1953 on River Road, Clifton, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by local police officers while investigating suspected bookmaking activities of Michael Caperino. The whiskey and motor vehicle were turned over to the Division of Alcoholic Beverage Control.

Pending seizure hearing in the case Michael Caperino deposited \$495.00, under protest, pursuant to R. S. 33:1-66 with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the Oldsmobile sedan, and thereupon obtained return of such motor vehicle. He has stipulated that such Director should determine, in these present proceedings, whether such sum should be forfeited or returned to him.

At the seizure hearing held pursuant to R. S. 33:1-66 and such stipulation, Michael Caperino appeared and sought return of the aforesaid deposit of \$495.00 and the whiskey.

It is admitted that Michael Caperino transported the above whiskey in the Oldsmobile sedan, which is not licensed for the transportation of alcoholic beverages. A person is permitted to transport not more than twelve quarts of whiskey for personal consumption without such license. Caperino transported one-fifth of a quart over that amount. Hence, it is a violation of the Alcoholic Beverage Law for which the whiskey and motor vehicle may be forfeited. R. S. 33:1-1(i) and (y), R.S. 33:1-2, R.S. 33:1-66.

However, if the whiskey is legitimate in origin and intended for personal use, in other words, if it is a legitimate transaction, with the owner unaware of the provisions of the Alcoholic Beverage Law governing transportation of alcoholic beverages, he would normally be relieved of forfeiture, pursuant to R.S. 33:1-66(e) and instead, would be permitted to obtain an appropriate permit validating the transportation.

Michael Caperino was employed by an industrial concern as a pipe fitter for nearly eleven years. He has been accused of engaging in bookmaking among his fellow workers. The gist of his account of his purchase of the whiskey is that during a rest period at the plant on December 17th, a discussion arose concerning the purchase of liquor for the Christmas holidays, and Caperino volunteered to

make such purchase for himself and three of his fellow workers, who named the brand and the amount they wished to purchase, and advanced part of the purchase price; that he drove to a liquor store and purchased the whiskey in question, part of which was to be delivered to his fellow workers, and part was for his own use.

Two fellow employees testified on Caperino's behalf to the effect that each of them gave Caperino money with which to purchase Four Roses Whiskey, three bottles for each man; and that the arrangement was made under the circumstances described by Caperino.

Caperino and his witnesses were required to detail at length their account of what transpired in seeking to ascertain whether the actual fact was that Caperino was selling alcoholic beverages without a license, or was distributing such liquor to cultivate good will of the persons who allegedly placed bets with him.

Some discrepancies in Caperino's testimony were developed, such as his failure at first to disclose the name of his fellow employee who recommended the dealer where Caperino purchased the alcoholic beverages; his failure at first to fully disclose the details of the arrangements whereby he purchased the alcoholic beverages; and his failure to explain why he tore up the invoices for the liquor given to him by the dealer. A possible explanation for the latter item may be that he paid less than the "Fair Trade" price of the whiskey. However, these and other discrepancies which appear are to be expected when a person is questioned repeatedly, and those that appear here are not of such serious nature as to overcome the fair import of the other evidence presented that the purchase of the whiskey was a single isolated incident arising out of a suggestion among fellow workers that one of the group be delegated to purchase alcoholic beverages on their behalf for the Christmas holidays.

I therefore will give Caperino the benefit of the doubt, and accept his explanation of the source and destination of the seized whiskey. Hence, I find that he acted in good faith and unknowingly violated the Alcoholic Beverage Law.

Accordingly, it is DETERMINED and ORDERED that Michael Caperino apply for an appropriate permit validating the transportation of the seized alcoholic beverages, at a fee of \$5.00, which is to be deducted from the \$495.00 deposited under protest; and it is further

DETERMINED and ORDERED that Michael Caperino pay the costs of the seizure and storage of the whiskey and motor vehicle, which costs are likewise to be deducted from the aforementioned sum of \$495.00; and it is further

DETERMINED and ORDERED that the 13 bottles of whiskey, and the balance of the \$495.00 deposited, be returned to Michael Caperino.

WILLIAM HOWE DAVIS
Director.

Dated: June 15, 1954.

SCHEDULE "A"

- 13 - bottles of whiskey
- 1 - Oldsmobile sedan, Serial No. 66W3048,
1953 N. J. Registration EG2726

7. DISCIPLINARY PROCEEDINGS - SUSPENSION LIFTED UPON CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against)

ADAM KRISTYNIAK)
166 Maple Avenue)
Wallington, N.J.,)

Holder of Plenary Retail Consumption License C-41, issued by the Mayor and Borough Council of the Borough of Wallington.)

-----)
Feder and Rinzler, Esqs., Attorneys for Petitioner.

ON PETITION
O R D E R

BY THE DIRECTOR:

On May 21, 1954, I suspended defendant's license for the balance of its term because the manner in which he was then conducting his business constituted a violation of P. L. 1948, Ch. 98 (R. S. 33:1-12.23). In said order it was provided that, in the event the illegal situation was corrected, application might be made to me for the lifting of said suspension but that in no event would an order lifting said suspension be entered prior to the expiration of ten days from the effective date thereof, namely, 3:00 a.m. June 1, 1954.

By letter dated June 7, 1954, the attorneys for petitioner advised me that defendant had complied with suggested changes and that the premises now resembles a public bar. On the following day ABC agents inspected defendant's premises and ascertained that a new bar more than fourteen feet long, adjoining the "counter" referred to in the Conclusions and Order entered herein, has been constructed along the right side of the premises; that a back bar approximately five feet in length has been constructed in back of said bar; that there were six stools at the bar, and that the outside sign had been changed to read "Adam's Bar and Liquors." The agents further report that at the present time the only way that a person from the outside can see the liquor display on the shelves on the interior is through the solid glass door.

It sufficiently appearing that the room in which defendant intends to sell and display alcoholic beverages is a "public bar-room" within the meaning of the term as used in the statute, and it further appearing that ten days have expired from the effective date of the order heretofore entered herein, I shall lift the suspension immediately.

Accordingly, it is, on this 11th day of June, 1954,

ORDERED that Plenary Retail Consumption License C-41, issued by the Mayor and Borough Council of the Borough of Wallington to Adam Krystyniak, for premises 166 Maple Avenue, Wallington, be restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

8. DISQUALIFICATION - PRIOR APPLICATION DENIED - FIVE YEARS' GOOD CONDUCT - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to R. S.)
33:1-31.2.)
Case No. 1145.)
-----)

CONCLUSIONS
AND ORDER

BY THE DIRECTOR:

On February 13, 1942, petitioner pleaded non vult in a Court of Common Pleas to the crime of aiding, abetting and managing a lottery and was sentenced to pay a fine of \$1,000.00. Since the crime of which he was convicted involves moral turpitude, petitioner became ineligible to engage in the alcoholic beverage industry in this State. Re Case No. 283, Bulletin 337, Item 14.

An earlier petition to remove petitioner's disqualification was denied on June 4, 1947, because of a pending indictment in the United States District Court for the Eastern District of Michigan. Re Case No. 604, Bulletin 767, Item 13. This indictment was nolle prossed on June 17, 1947.

At the hearing on the instant application petitioner testified that since 1942 he has not been convicted of any crime nor had any difficulty with the law, and the Police Department of the community wherein he resides reports no complaints nor investigations presently pending against him. Petitioner further testified that he has been employed as a checker for the past two and one-half years, and that prior thereto he was in business for himself; that he held a liquor license from 1933 to 1938 but has not since been connected with the alcoholic beverage industry. He stated that, if given the opportunity, he would resume his association therewith.

Three witnesses (a wholesale merchant, a businessman and a book-keeper) appeared in petitioner's behalf and testified as to their acquaintance and contacts with him over a period of fifteen to thirty years and respecting his good reputation as a law-abiding citizen in his community for more than five years last past.

Under the circumstances, I find that petitioner has been law-abiding for more than five years last past, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 20th day of May, 1954,

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

WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Peter Saro

"Spray II"

Belmar Marine Basin

Belmar, N. J.

Application filed June 23, 1954 for Plenary Retail Transit License.

Lester J. Genung

"Ermimie"

Ken's Landing

Point Pleasant Beach Borough, N. J.

Application filed June 23, 1954 for Plenary Retail Transit License.

John H. Ziegler

"Skipper"

Belmar Marine Basin

Belmar, N. J.

Application filed June 23, 1954 for Plenary Retail Transit License.

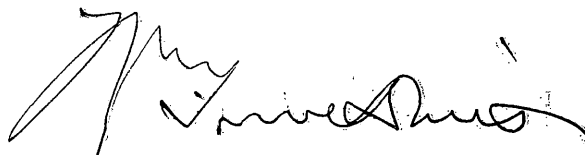
Henry L. Leonard

"Lenny"

Route #35, Belmar Marine Basin

Belmar, N. J.

Application filed June 24, 1954 for Plenary Retail Transit License.



William Howe Davis
Director.