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

BULLETIN 987 October 19, 1953

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

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MORAL TURPITUDE - COMMERCIALIZED GAMBLING HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

In the Matter of Disciplinary Proceedings against)

ISRAEL COTTMAN)
T/a HARLEM INN)
1117 Washington Avenue)
Douglas Park)
Egg Harbor Township)
PO Rte. 1, Pleasantville, N. J.) CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-18 for the license year 1952-53, issued by the Township Committee of the Township of Egg Harbor; and renewed for the 1953-54 licensing year in the name of)

ISRAEL COTTMAN,)

for the same premises.)

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Coulomb, McAllister & Hunter, Esqs., by William B. Hunter, Esq., Attorneys for Defendant-licensee.
Edward F. Amborse, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On April 6, 1952, you allowed, permitted and suffered your licensed premises and your licensed business to be used in furtherance and aid of and in connection with an illegal activity or enterprise resulting in a conviction in a criminal prosecution, in that you conducted a dice game in a building occupied and maintained by you immediately and directly accessible from your licensed premises and otherwise connected and operated in conjunction with your licensed business, by reason of which you were convicted on September 22, 1952 in the Atlantic County Criminal Court of the crimes of keeping and maintaining a disorderly house, contrary to N. J. S. 2A:85-1 and maintaining and keeping a gambling house contrary to N. J. S. 2A 112-3; in violation of Rule 4 of State Regulations No. 20.

"2. On September 22, 1952 you were convicted in the Atlantic County Criminal Court of the crimes of keeping and maintaining a disorderly house, contrary to N. J. S. 2A:85-1 and maintaining and keeping a gambling house contrary to N. J. S. 2A:112-3, crimes involving moral turpitude, such

convictions being acts or happenings occurring after the time of your making application for your current license which, if they had occurred before said time, would have prevented the issuance of your license since such issuance would have been contrary to R. S. 33:1-25."

At the hearing herein there was introduced in evidence, without objection, a certified copy of an indictment, together with the court minutes and sentence showing that, on September 22, 1952, defendant was convicted by a jury in the Superior Court of New Jersey, Atlantic County (Law Division - Criminal), on the following counts:

"The Grand Jurors of the State of New Jersey, for the County of Atlantic, upon their oath present that Israel Cottman and Harry Spencer, on the 6th day of April, 1952, and for a long period of time prior thereto at the Township of Egg Harbor, in the County of Atlantic aforesaid and within the jurisdiction of this Court, a certain common, ill-governed and disorderly house, unlawfully did keep and maintain; and, in the said house, for their own gain and lucre, certain evil-disposed persons, then and on the said other days and times, there unlawfully and willingly did cause and procure to frequent and come together, and the said persons, in the said house, at unlawful times, as well in the night as in the day, then and on the said other days and times, there to be and remain, gambling, playing for money and other valuable things at and with dice and other devices, and otherwise misbehaving themselves, unlawfully did permit and suffer, to the great damage and common nuisance of all the citizens of the State of New Jersey, there inhabiting, being, residing and passing, contrary to the provisions of N. J. S. 2A:85-1, against the peace of this State, the government and dignity of the same.

* * * * * *

THIRD COUNT.

"And the Grand Jurors aforesaid, upon their oath do further present that on the date, place and in the jurisdiction set forth in the first count herein, the said Israel Cottman and Harry Spencer wilfully, unlawfully, corruptly and habitually maintained and kept a place, to wit, the frame building situate at the rear of #1117 West Washington Avenue, in the Township of Egg Harbor, to which persons might and to which they intended they should and to which they did resort for engaging in the playing for money and other valuable things at and with dice and other devices, contrary to the provisions of N. J. S. 2A:112-3, and against the peace of this State, the government and dignity of the same."

Thus there is no question of defendant's conviction as alleged in the charges. The questions to be determined are (1): Did the licensee allow, permit or suffer the licensed premises or business to be used in furtherance or aid of, or in connection with, an illegal activity or enterprise resulting in conviction in a criminal prosecution as alleged in Charge 1 and (2) whether the crime of which defendant was convicted in September 1952 involves moral turpitude as alleged in Charge 2. The counts of the indictment upon which defendant was convicted charge, in effect, that he maintained for gain a disorderly house or place to which other persons could resort for the purpose of gambling. Briefly stated the charge alleges commercialized gambling. While commercialized gambling ordinarily involves moral turpitude (Bulletin 2, Item 8; Re Ulhich, Bulletin 70, Item 2; Re Case No. 239, Bulletin 305, Item 9), the decision in each case depends upon the facts. Re Case No. 220, Bulletin 263, Item 8; Re Case No. 378, Bulletin 460,

Item 1; Re Case No. 601, Bulletin 796, Item 12; Re Case No. 1018, Bulletin 956, Item 7.

At the hearing a detective of the New Jersey State Police testified as follows: At approximately 1:10 a.m., April 6, 1952, he and five other members of the State Police proceeded to a small frame building in the rear of 1115 Washington Avenue, Egg Harbor Township, with a search warrant to investigate gambling. The building in question is in the rear of premises next door to defendant's licensed premises (which is at 1117 Washington Avenue) and is separated from the rear of such licensed premises by fifty to seventy-five yards of unobstructed open ground and consists of a large room, a bathroom, a sun porch and another room or enclosed area which contained heavy tools (apparently used in digging wells). In the large room the officers found seven men (including one Harry Spencer indicted and convicted with defendant) shooting crap on a flat-top table approximately 4' x 6' which was covered by a cloth and had a railing around it approximately 4" high. On the table the officers found dice and approximately $9 in bills and $2.20 in change (some in front of the various players) and, in front of Spencer, they found a cigar box, with a hole in the top, which contained $2.56 and another pair of dice.

The detective forthwith interrogated Spencer and learned from him that he (Spencer) had installed a pump at 1115 Washington Avenue and had seen the table in the small building in the rear and had asked for and received defendant's permission to use the table to run crap games; that he was to "cut" the game for defendant; that the "percentage was 25% or five cents on the dollar was the cut from the game and he (Spencer) was to get 25¢ on each dollar that he cut," the balance to go to defendant; that the game had been in progress for an hour to an hour and a half before the officers arrived; that there had been six other similar games over a period of several months and that,on the previous night, he had taken the "cut box" to the licensed premises and given it to "Chester" (later identified as a man who cleans and does odd jobs at defendant's licensed premises). Defendant's attorney objected to the admission of this testimony on the ground that it was hearsay and not binding on defendant. The Hearer admitted the testimony with the understanding that it was subject to the Director's final ruling as to its admissibility and/or weight and sufficiency, indicating that much might depend upon the existence or lack of other evidence. Defendant's attorney expressed satisfaction with that ruling (which will be hereinafter discussed).

The detective further testified that he had a conversation with defendant in which defendant told him that he was renting the small building in the rear of 1115 Washington Avenue; that he was using it to store tools and pump equipment; that he was paying $18 a month rent for said building; that he paid the gas and electric bills and that he had had a carpenter build the table for him and that it was his intention to use the table for an organization known as the "Cardiff Gun Club." (However, there was no proof to substantiate the existence of such a club.)

On cross-examination the detective testified that he saw heavy tools (such as crowbars) in the small building and saw furniture piled up on the sun porch. He further testified that there were only one or two electric light bulbs in the room where the crap game was in progress; that it was not a "plush-gamed establishment" and that the total amount seized was $13.76.

It was stipulated that none of the other officers participated in the conversation between the detective and Spencer and that, with that exception, their testimony would be the same as that of the detective.

Spencer, called as a witness for the prosecution, testified that defendant had taught him the well-digging business

twenty-five years ago; that he had put in a pump in the building at the front of 1115 Washington Avenue; that he and defendant both kept tools in the small rear building, aforementioned, and that the licensee had given him a key to that building. He further testified that, on the night of his arrest, as aforesaid, he and several other men had been drinking in defendant's licensed premises and had gone from there to the small building, aforementioned, to play cards as they had done on a number of previous occasions. He admitted that they were "shooting crap" (gambling with dice) but denied that he was "cutting" the game or that he had any arrangement with defendant with respect to gambling. The prosecuting attorney then pleaded surprise, claiming that Spencer had made a written statement to the State Police wherein he had stated that he was running the game for defendant with whom he had made arrangements six weeks earlier and that he was taking a "cut" from the game pursuant to that arrangement. The prosecuting attorney then interrogated Spencer with respect to the discrepancies between his testimony and the statement. As the questions and answers were read Spencer claimed that he did not remember them but admitted that he had given a written signed statement to the State Police.

The licensee testified that he works at a nearby racetrack and, on occasion, digs wells; that he lives upstairs over the licensed premises; that, as is his custom, he went to bed early on the night in question; that he keeps tools in the small building in the rear of the property next door; that he permits Spencer to use his tools and to store his (Spencer's) tools there; that the property was formerly occupied by his wife's grandmother; that her furniture is still stored there and that his wife pays the owner $18 a month rent for the building. He further testified that only he and Spencer use the building, to which Spencer had the only key, and denied that he had any knowledge or connection with the gambling. He also denied that he ever discussed the table or a Gun Club with the officers and claimed that he did not know where the table came from.

Defendant's wife testified that her grandmother formerly owned the property next to the licensed premises but lost it; that she herself pays the rent of $18 a month to the new owner and is reimbursed therefor by her mother; that both her husband and Spencer use the shed and that the aforementioned "Chester" formerly slept there. She too disclaimed any knowledge of the gambling and corroborated her husband's testimony that he had gone to bed early.

Spencer's testimony must be viewed as having been neutralized and, for that reason, has been disregarded. The testimony of the detective in which he related his conversation with Spencer at the time of the latter's arrest, objected to by defendant's attorney, was properly admitted in evidence. Since the conversation took place during the apprehension of the dice players it may be viewed as part of the res gestae and is admissible as such. Even if this were not so, it is well settled that "administrative tribunals are not bound by the strict rules of evidence." Redbord, et al. v. Orange, Bulletin 704, Item 1. "Evidence which would not be competent in judicial proceedings may be received and considered by administrative agencies, but a decision may not be founded solely upon such evidence. The decision must be bottomed upon some competent legal evidence. Cf. Friese v. Nagle Packing Co., 110 N.J.L. 588." Redbord, et al. v. Orange, supra. This long standing and continuing doctrine has been reaffirmed in a number of recent decisions of our Courts. See Andricsak v. National Fireproofing Corp., 3 N.J. 466, 471 (1950); N. J. Bell Tel. Co. v. Communications Workers, etc., 5 N.J. 354, 378 (1950); Dutcher v. Department of Civil Service, 7 N.J. Super. 156, 163 (App. Div., 1950); Borgia v. Board of Review, 21 N.J. Super. 462, 466 (App. Div., 1952). See, also, Schwartz, The Model State Administrative Procedure Act-Analysis and Critique, 7 Rutgers L. Rev. 431, 499 (1953). In the instant case all of the evidence, including

defendant's conviction with Spencer, clearly pointed to defendant's complicity in the gambling conducted by Spencer.

However, despite the fact that I am convinced that an arrangement existed between Spencer and defendant with respect to the gambling activities which occurred in the small building in the rear of 1115 Washington Avenue (off the licensed premises) and that defendant participated in such activities, I cannot find from the preponderance of the evidence that the licensee allowed, permitted or suffered the licensed premises or business to be used in furtherance or aid of, or in connection with such activity, in violation of Rule 4 of State Regulations No. 20. Cf. Re The Sport Center, Bulletin 931, Item 7. Consequently, I find defendant not guilty as to Charge 1.

With respect to Charge 2, defendant contends that the gambling was of a minor and trivial nature and that the crime of which he was convicted does not involve moral turpitude. Reliance is placed upon the following language appearing in Re Case No. 601, Bulletin 796, Item 12:

> "Commercialized gambling may or may not involve moral turpitude. In Case No. 239, Bulletin 305, Item 9, it was held that the conviction of the head of a ring conducting gambling establishments, where the activities of the ring were attended by methods of violence, did involve moral turpitude. In Case No. 283, Bulletin 337, Item 14, the conviction of a 'lieutenant' of the real operator of a lottery conducted on a large scale, it was held, did involve moral turpitude. So also in a case wherein it was held multiple convictions showed a reckless disregard for law warranting the conclusion that the last offense involved moral turpitude. See Re Case No. 246, Bulletin 293, Item 10; Re Case No. 145, Bulletin 468, Item 2. In the instant matter none of the elements aforementioned is found.
>
> "I conclude that the single crime of which petitioner was convicted did not involve moral turpitude. Cf. Re Case No. 220, Bulletin 263, Item 8; Re Case No. 378, Bulletin 460, Item 1; Re Case No. 143, Bulletin 500, Item 6; Re Tumulty, Bulletin 558, Item 2."

In that case a restaurant proprietor had accepted small bets on horses as an employee of a bookmaker. It has long been held that mere employment in a gambling enterprise generally does not involve moral turpitude. Re Case No. 601, supra, and cases there cited. See also the more recent decision in Re Case No. 634, Bulletin 947, Item 8. In the instant case defendant was indicted and convicted as a principal for violation of N.J.S. 2A:85-1 and N.J.S. 2A112-3. Violation of either of these sections is a misdemeanor. I deem it significant that the penalty for violation of N.J.S. 2A:112-3 is not the usual penalty for a misdemeanor, i.e., a maximum term of imprisonment of three years, or a maximum fine of $1,000, or both (N.J.S. 2A:85-7), but a fine of not less than $1,000 nor more than $5,000, or imprisonment in the state prison for not less than one year nor more than five years, or both. Such a penalty clearly demonstrates that the Legislature considered the offense a serious one to be dealt with more severely than ordinary misdemeanors. Under the circumstances I cannot view defendant's offense as trivial. In a number of cases decided under R.S. 2:135-3 (which was the predecessor of N.J.S. 2A:112-3) it was held that the particular conviction constituted conviction of crime involving moral turpitude. See Re Case No. 618, Bulletin 878, Item 12; Re Case No. 629, Bulletin 918, Item 11; Re Case No. 635, Bulletin 946, Item 10.

Commercial gambling feeds upon the weakness of those who cannot resist the temptation to gamble, and the mere fact that a

relatively small amount of money was involved does not change the essential nature of the offense. Under all of the circumstances I find that defendant's aforementioned conviction was a conviction of crime involving moral turpitude. Consequently no license of any class may be issued to him (R.S. 33:1-25) and the conviction is an act or happening occurring after the time of making application for the license which, if it had occurred before said time, would have prevented issuance of the license and is ground for suspension or revocation of the license. R.S. 33:1-31.

I have considered carefully the question of the proper penalty to be imposed in this case. Defendant has a prior record. His license was suspended by the local issuing authority for twenty days, effective August 13, 1950, for sale of alcoholic beverages to a minor. As hereinabove indicated, the license may be suspended or revoked upon a finding of guilt as to Charge 2 in the instant case. However, revocation would inflict most severe punishment on this defendant unnecessary to the proper protection of the public interest which will be adequately protected if defendant, now ineligible to hold a license in this State, is removed from active participation in the alcoholic beverage business in New Jersey while such disqualification persists. This can be accomplished by suspension of his license for the balance of its term. Cf. Re Tulipano, Bulletin 980, Item 2.

Although this proceeding was instituted during the 1952-53 licensing period it does not abate but remains fully effective against the renewal license for the fiscal year 1953-54. State Regulations No. 16.

Accordingly, it is, on this 29th day of September 1953,

ORDERED that Plenary Retail Consumption License C-18, issued for the 1953-54 licensing year by the Township Committee of the Township of Egg Harbor to Israel Cottman, for premises 1117 Washington Avenue, Douglas Park, Egg Harbor Township, be and the same is hereby suspended for the balance of its term, effective immediately; and it is further

ORDERED that leave is hereby granted to make application, before June 30, 1954, for the lifting of such suspension upon the transfer of such license to a duly qualified person.

DOMINIC A. CAVICCHIA
Director

2. APPELLATE DECISIONS - FORNARO v. HANOVER

FELICE FORNARO,

Appellant,

v.

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HANOVER,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Orville V. Meslar, Esq., Attorney for Appellant.
David Young, 3rd, Esq., by Harry L. Sears, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's order of June 23, 1953, suspending appellant's plenary retail consumption license for premises located on the corner of Parsippany Road and Old Mt. Pleasant Avenue, Hanover Township, for ten days, commencing July 6, 1953

at 2 a.m. and ending July 16, 1953 at 2 a.m., after appellant was found guilty of selling alcoholic beverages to a minor.

After respondent's order of suspension was entered, respondent stayed the effect of such order because of alleged newly discovered evidence and appellant filed this appeal. When the appeal was filed, appellant applied for a stay of respondent's order of suspension and, pursuant thereto, on July 23, 1953, I entered an order granting such stay until further order.

The hearing on this appeal was de novo pursuant to Rule 6 of State Regulations No. 15. From the record on this appeal it appears that, as the result of an automobile accident William J. ---, 18 years of age, and Irene ---, 19 years of age, were interrogated on the early morning of March 14, 1953 by the police, who found seven cans of beer in and around the automobile. William claimed to have purchased a dozen cans of beer at appellant's licensed premises on the night of March 13, 1953. Based upon that information respondent conducted a disciplinary proceeding in which William and Irene both testified, under oath, that William had purchased a dozen cans of beer at appellant's licensed premises on the night in question and that Irene had remained in the automobile while William made the purchase. Respondent found appellant guilty of selling the beer to William and entered the order imposing the ten-day suspension.

Shortly after the order was entered, William told the Mayor of the Township of Hanover that he had not purchased the beer at appellant's licensed premises but had purchased it in Mount Freedom and gave a signed statement to that effect, in which he said "I thought it would go easier for both of us if I said I got it in my home town." However, at the hearing herein, William testified, again under oath, that the beer had been purchased at appellant's licensed premises but that it had been purchased by Irene on a "bet" and that he had remained in the car while Irene made the purchase. Irene testified to the same effect anf further testified that she had given false testimony at the hearing before respondent because William had requested her to do so. She identified John Fornaro, stepson of the licensee, as the person who sold her the beer. William admitted that he had testified falsely at the hearing before respondent and had requested Irene to do so because he had in his possession an altered draft card indicating that he was twenty-one or over, and stated that he believed that, if he had proof that he was twenty-one years of age, the blame would be on him and it would be easier for the licensee.

William and Irene were questioned by the Hearer with respect to their testimony at the hearing before respondent and their testimony on this appeal. Both stoutly maintained that their testimony on this appeal is the truth and that Irene, not William, purchased the beer.

John Fornaro admitted that he had been tending bar on the night in question but denied that he had sold beer to either William or Irene.

A witness called on behalf of appellant testified that on the night in question he had seen Irene sitting in a car which was parked outside appellant's licensed premises and that she had asked him if he had seen William. He further testified that he had looked in appellant's licensed premises to see whether or not William was there and that, failing to find William, he so advised Irene.

On the record before me I have no alternative but to reverse respondent's finding. There is no testimony in the record on this appeal to sustain a finding that anyone sold alcoholic beverages to William at appellant's licensed premises on the night in question. Such proof as there is tends to indicate that

alcoholic beverages may have been sold to Irene at defendant's licensed premises that night. However, it was stipulated (and it clearly appears) that respondent's order was based on a finding that alcoholic beverages had been sold to William. Since the finding was predicated upon what now appears to have been false testimony, it must be reversed.

Accordingly, it is, on this 30th day of September 1953,

ORDERED that the respondent's action in finding appellant guilty of the charge hereinbefore referred to and suspending his license for a period of ten days, which suspension was stayed during the pendency of these proceedings, be and the same is hereby reversed.

DOMINIC A. CAVICCHIA
Director

3. APPELLATE DECISIONS - MALINCONICA v. MATAWAN.

FLORENCE MALINCONICA
T/a FLO'S BAR & GRILL

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MATAWAN,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

John W. Applegate, Esq., Attorney for Appellant.
Karkus & Kantor, Esqs., by Ezra W. Karkus, Esq., Attorneys for Respondent.
Edward Farry, Jr., Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from denial of appellant's application for the transfer of her plenary retail consumption license from 93 Lower Main Street to 553 Line Road, Township of Matawan.

After written objections to the transfer had been filed, respondent Township Committee held a public hearing on August 5, 1953. At a subsequent meeting held on August 12, 1953, a resolution denying the application for transfer was adopted by unanimous vote of the Township Committee, for the following reason:

"Public convenience and necessity does not require the transfer of the said license to the said premises."

Paragraph 7 of the Petition of Appeal alleges that the action of respondent was erroneous for the following reasons:

(a) It was contrary to the weight of evidence, in that a public need and necessity does exist for the transfer of said license;

(b) It was an abuse of discretion in that its action was based on prejudice and not on fact;

(c) Its action is not valid in law but is arbitrary, capricious and an unlawful exercise of the power vested in it by the Legislature;

(d) Its action was against public policy.

The Answer filed herein denies Paragraph 7 of the Petition of Appeal.

The pleadings herein admit that "pursuant to the authority vested in the New Jersey Highway Authority, appellant is now under

an Order of the Superior Court of New Jersey, directing and enforcing her to surrender possession of said premises at 93 Lower Main Street, Matawan Township, to the Highway Authority on or before August 19, 1953."

At the Hearing herein appellant testified that she has operated the licensed business at 93 Lower Main Street for the past four and a half years; that she has caused the building formerly on said property to be removed to an empty lot and that, if the pending transfer is granted, she plans to have said building again moved a distance of about three-quarters of a mile and set on a new foundation to be erected at 553 Line Road. She testified also that she filed a prior application to transfer her license to another location and that respondent denied said application.

It clearly appears from the evidence that the section to which appellant now seeks to transfer her license is devoted principally to farming with scattered residences, none of which is in close proximity to the proposed licensed premises. Line Road is a township road, described by the Township Engineer as "a gravel road, country road." On Line Road there are two factories--one described as "Cochrane Chemical", about six hundred feet north of the proposed premises; and the other described as "Egan Aluminum", about three hundred feet south of the proposed premises. There is testimony that each of these factories employs not more than ten people and that there are no stores in this section of the Township.

At the Hearing herein appellant testified that in her opinion transfer to the new location would serve public convenience and necessity; and one person, resident nereby, testified that he had no objection to the granting of the transfer. However, ten persons who reside on Line Road or adjacent streets objected to the transfer of the license, nine of these objecting on the ground, among others, that in their opinions no public necessity and convenience would be served by the granting of the transfer sought. It further appears that, at the Hearing below, respondent considered a petition containing the names of one hundred and seven local residents who objected to the transfer and that about fifty objectors appeared at the Hearing below.

After reviewing all the evidence, I find it difficult to believe that public convenience or necessity would call for a transfer of the license to this rural section. There is no direct evidence that the transient trade requires the granting of the transfer and those who reside in built-up sections of the Township would have to travel at least three-quarters of a mile to reach the proposed premises.

There is no evidence that the action of the members of the Township Committee was based on prejudice, nor is there evidence showing that the action was against "public policy".

The transfer of a liquor license is not a right inherent in the license but is, rather, a privilege which the issuing authority may grant or deny in the exercise of a resonable discretion. When the transfer is denied on reasonable grounds, such action will be affirmed. Biscamp & Hess v. Teaneck, Bulletin 821, Item 8, affirmed in Biscamp v. Teaneck, 5 N.J. Super. 172 (Bulletin 856, Item 3).

The question whether a license should be transferred to a particular locality is a matter confided to the sound discretion of the issuing authority. The burden of establishing that the action of respondent was erroneous and should be reversed rests with appellant. Rule 6, State Regulations No. 15; and see Kemo v. Trenton, Bulletin 983, Item 2. Recognizing the unfortunate circumstances in which appellant finds herself, through no fault of her own, I am nevertheless constrained to find under the evidence

herein that she has failed to sustain that burden. See Masar v. Montville, Bulletin 252, Item 6; Cf. Dries v. Hainesport, Bulletin 191, Item 6 and cases cited therein.

The action of respondent in denying the application will, therefore, be affirmed.

Accordingly, it is, on this 1st day of October, 1953,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS

In the Matter of Disciplinary Proceedings against

FLORENCE HOLMES & ELWOOD HOLMES, T/a RIVERVIEW INN, N/W side of Moorestown-Centerton Road, Centerton, Mount Laurel Township, PO Masonville, N. J.,

Holders of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Mount Laurel.

CONCLUSIONS AND ORDER

James M. Davis, Jr., Esq., Attorney for Defendant-licensees.
David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendents pleaded not guilty to the following charge:

"On Friday night, June 5 and early Saturday morning, June 6, 1953 and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Donald ---, Ernest ---, Terrance ---, Richard ---, Richard M. --- and William ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

At the hearing herein Donald --- (18 years of age), Ernest --- (18 years of age) and Terrance --- (19 years of age) testified that they entered defendants' premises together on the evening of June 5, 1953, between 8:30 p.m. and 9 p.m.; that they went to the bar and that each was served a glass of beer by Elwood Holmes, one of defendant-licensees who was then acting as bartender. It further appears from the testimony of these witnesses that Donald and Ernest left defendants' premises shortly after 9 o'clock and went to Moorestown where they picked up Terrance's car and returned with it to defendants' premises; that Terrance left defendants' premises shortly thereafter but that the other two witnesses remained there until about midnight. Donald and Ernest further testified that thereafter they left defendants' premises with Howard Eckert and another man and that, after

visiting two licensed premises in Browns Mills, they returned to defendants' premises and remained there until approximately 2:30 a.m. on the morning of June 6, 1953. Donald testified that during the evening in question he consumed six to nine glasses of beer, all of which were served by Elwood Holmes, and that he had consumed beer in defendants' premises on previous occasions. Ernest testified that during the evening in question he consumed eleven to thirteen glasses of beer, all of which were served by Elwood Holmes, and Terrance testified that during the evening in question he consumed three or four glasses of beer, all of which were served by Elwood Holmes, and also that he had consumed beer in defendants' premises on previous occasions.

Richard --- (18 years of age) and Richard M. --- (20 years of age) testified that they entered defendants' premises together on the evening of June 5, 1953, at about 8 p.m. Richard --- testified that while he was on the licensed premises he consumed nine or ten glasses of beer which were served by Elwood Holmes, and that he had previously consumed beer in defendants' premises. Richard M. --- testified that while he was on the premises he consumed five or six glasses of beer, all of which were served by Elwood Holmes, and that he had previously consumed beer on defendants' premises.

William --- (18 years of age) testified that he entered defendants' premises alone on the evening of June 5, 1953, at about 8:30 p.m. and left about 10:30 p.m.; that while he was on the licensed premises he was served about ten glasses of beer by Elwood Holmes.

Howard Eckert, who was called as a witness by defendants, testified that he entered defendants' premises on the evening of June 5, 1953, at about 8:30 p.m. that he saw each of the aforesaid minors on the premises, but that he did not notice what they were drinking. He also testified that later in the evening he, Donald---, Ernest --- and another individual left defendants' premises, drove to two licensed premises in Browns Mills, and thereafter returned to defendants' premises. He stated that he did not know whether Donald or Ernest was served any beverages in defendants' premises after they returned from Browns Mills. Elwood Holmes testified that he was the sole bartender in defendants' premises on the night of June 5, 1953. He admitted that each of the six minors had been on the licensed premises during that evening, but testified that he sold only soda water and "7-Up" to these minors and that he did not sell any alcoholic beverages to any of these minors on that evening or on any previous occasion. He admitted that he had not questioned the minors as to their respective ages "because I thought they were under age so I didn't ask them."

After reviewing the testimony I conclude that the minors told the truth and, hence, I find defendants guilty as charged.

While the license for the premises in question was held in the name of Florence Holmes, the Director suspended her license for a period of ten days, effective August 8, 1949, after she had pleaded non vult to a charge alleging that she possessed illicit alcoholic beverages. Re Holmes, Bulletin 850, Item 9. This case involves the sale of alcoholic beverages to six minors, all of whom were at least eighteen years of age. Under the circumstances, including the prior dissimilar violation, I shall suspend defendants' license for a period of thirty days. Cf. Re Goltsch, Bulletin 959, Item 4.

Accordingly, it is, on this 25th day of September, 1953,

ORDERED that plenary retail consumption license C-6, issued by the Township Committee of the Township of Mount Laurel to Florence Holmes and Elwood Holmes, t/a Riverview Inn, for premises on N/W side of Moorestown-Centerton Road, Centerton, Mount Laurel Township, be and the same is hereby suspended for thirty (30) days, commencing at 3 a.m. October 5, 1953, and terminating at 3 a.m. November 4, 1953.

DOMINIC A. CAVICCHIA

5

ACTIVITY REPORT FOR SEPTEMBER, 1953

ARRESTS:
Total number of persons arrested - 17
Licensees and employees - - - - - - - - - - - - - - - - - 6
Bootleggers - 11

SEIZURES:
Motor vehicles - cars - 1
Stills - 50 gallons or under - 1
Mash - gallons - 100.00
Distilled alcoholic beverages - gallons - 17.37
Wine - gallons - 5.65
Brewed malt alcoholic beverages - gallons - 19.51

RETAIL LICENSEES:
Premises inspected - 1,114
Premises where alcoholic beverages were gauged - 645
Bottles gauged - 12,603
Premises where violations were found - 96
Violations found - 122
Type of violations found:
Unqualified employees - - - - - - - - - - - - - - - - 48
Other mercantile business - - - - - - - - - - - - - 10
Reg. #38 sign not posted - - - - - - - - - - - - - - 7
Disposal Permit necessary - - - - - - - - - - - - - 4
Prohibited signs - - - - - - - - - - - - - - - - - - 2
Improper beer taps - - - - - - - - - - - - - - - - - 1
Other violations - - - - - - - - - - - - - - - - - - 50

STATE LICENSEES:
Premises inspected - 13
License applications investigated - 23

COMPLAINTS:
Complaints assigned for investigation - 466
Investigations completed - 429
Investigations pending - 167

LABORATORY:
Analyses made - 125
Refills from licensed premises - bottles - 1
Bottles from unlicensed premises - 30

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made - 22
Persons fingerprinted for non-criminal purposes - 189
Identification contacts made with other enforcement agencies - 184
Motor vehicle identifications via N. J. State Police Teletype - 2

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities - 10
Violations involved:
Sale to minors - - - - - - - - - - - - - - - - - - - 4
Sale during prohibited hours - - - - - - - - - - - - 3
Sale to non-members by club - - - - - - - - - - - - 1
Permitting females at bar (local reg.) - - - - - - - 1
Permitting gambling (bookmaking) on prem. - - - - - 1
Cases instituted at Division - 17
Violations involved:
Sale to minors - - - - - - - - - - - - - - - - - - - 7
Permitting females at bar (local reg.) - - - - - - - 3
Permitting immoral activity on premises - - - - - - 2
Sale during prohibited hours - - - - - - - - - - - - 2
Unauthorized transportation - - - - - - - - - - - - 1
Sale outside scope of license - - - - - - - - - - - - 1
Permitting hostesses on premises - - - - - - - - - - 1
Permitting foul language on premises - - - - - - - - 1
Sale to intoxicated persons - - - - - - - - - - - - - 1
Mislabeled beer taps - - - - - - - - - - - - - - - - 1
Possessing illicit liquor - - - - - - - - - - - - - - 1
Permitting lottery (numbers) on prem. - - - - - - - - 1
Cases brought by municipalities on own initiative and reported to Division - - - - - - - - - - - - - - - - 8
Violations involved:
Sale to minors - - - - - - - - - - - - - - - - - - - 3
Sale during prohibited hours - - - - - - - - - - - - 3
Permitting lottery activity on premises - - - - - - - 1
Permitting bookmaking on premises - - - - - - - - - - 1

CANCELLATION PROCEEDINGS instituted at Division - 2
Violations involved:
Licensee non-resident - - - - - - - - - - - - - - - - 1
License issued in excess of DL limitation - - - - - - 1

HEARINGS HELD AT DIVISION:
Total number of hearings held - 30
Appeals - 6
Disciplinary proceedings - 14
Eligibility - 3
Seizures - 4
Tax revocation - 2
Applications for license - 1

PERMITS ISSUED:
Total number of permits issued - 1,109
Employment - 162
Solicitors' - 72
Disposal of alcoholic beverages - 156
Social affairs - 446
Special wine - 116
Miscellaneous - 157

Dated: October 1, 1953.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD OF PERSON "FRONTING" FOR DEFENDANT - LICENSE SUSPENDED FOR 15 DAYS LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FRANK ZIELONKA
t/a FRANK'S WINES & LIQUORS
103 Johnson Avenue
Wallington, N. J.,

Holder of Plenary Retail Distribution License D-2 issued for the 1952-53 licensing period by the Mayor and Council of the Borough of Wallington; and renewed for the 1953-54 licensing period in the name of

FRANK GREENE
t/a Frank's Wines & Liquors,

for the same premises.

CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - - - -

Frank Zielonka (Frank Greene, by change of name), Defendant-licensee, Pro Se.

David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non-vult to a charge alleging that he sold an alcoholic beverage at less than its price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that shortly after 1 p.m. on June 11, 1953, two ABC agents entered defendant's licensed premises where they purchased a dozen cans of beer from the clerk, later identified as the licensee. Thereafter they inquired of the licensee as to the price of a quart bottle of Four Roses Blended Whiskey. The licensee informed them that the price was $5.93, but that they could have it for $5.75. One of the agents agreed to buy it at that price, whereupon the licensee placed a quart bottle of that brand of whiskey in a paper bag and delivered it to the agent who paid $5.75 therefor. The licensee rang up the sale on the cash register and the agents left the premises but immediately returned and identified themselves to the licensee who readily admitted the sale but declined to give a written statement. He endeavored to excuse the sale below the minimum resale price by saying that other licensees nearby "are giving the stuff away, they're putting me out of business." Effective April 1, 1953, the minimum consumer resale price of the item in question was $5.93.

Defendant has no prior adjudicated record as a licensee. The usual minimum penalty for a first offense of this kind is a ten-day suspension of the license. Re Zotto, Bulletin 968, Item 9. However, when the license was held by George Scholtz, who is married to a sister of defendant's wife, such license was suspended for twenty days, effective November 28, 1949, because said Scholtz was "fronting" for defendant. Since defendant was thus a party to the offense and violated the Alcoholic Beverage Law in that he exercised the privileges of the license contrary to R. S. 33:1-26, I shall suspend the license for fifteen days. Cf. Re Morley, Bulletin 427, Item 3; Re Hahon, Bulletin 484, Item 6; Re Diodati, Bulletin 512, Item 4. Five days will be remitted for the plea

entered herein, leaving a net suspension of ten days.

On March 26, 1953 an order was entered in the Bergen County Court granting leave to said Frank Zielonka to assume the name of Frank Greene. Pursuant thereto the license for the 1953-54 licensing period was issued in the name of Frank Greene.

Although this proceeding was instituted during the 1952-53 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1953-54. State Regulations No. 16.

Accordingly, it is, on this 7th day of August 1953,

ORDERED that Plenary Retail Distribution License D-2, issued for the 1953-54 licensing year by the Mayor and Council of the Borough of Wallington to Frank Greene, t/a Frank's Wines & Liquors, 103 Johnson Avenue, Wallington, be and the same is hereby suspended for a period of ten (10) days, commencing at 9 a.m., August 17, 1953, and terminating at 9 a.m., August 27, 1953.

DOMINIC A. CAVICCHIA
Director

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - FALSE ANSWER TO QUESTION AND FAILURE TO ANSWER QUESTION IN APPLICATION - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PIKE INN (A CORP.)
T/a PIKE INN
228 Belleville Pike
Kearny, N. J.

Holder of Plenary Retail Consumption License C-29, issued by the Mayor & Council of the Town of Kearny.

CONCLUSIONS AND ORDER

Harold Heller, Esq., Attorney for defendant-licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that it (1) sold, served and delivered alcoholic beverages to minors on the licensed premises; in violation of Rule 1 of State Regulations No. 20; (2) falsely denied, in its current license application, that its license had been suspended, when in fact such license had been suspended by the Director for 15 days, effective September 8, 1952, for sale to minors; in violation of R. S. 33:1-25; and (3) failed to answer questions 21 and 22 in its current license application, thereby evading and suppressing material facts, i. e., the names and residences of all directors and all stockholders holding one or more per cent of its stock; in violation of R. S. 33:1-25.

As to charge (1), the file herein discloses that, at approximately 11:15 P.M., August 22, 1953, two ABC agents observed two females, whom they later learned to be 20 years of age, enter defendant's licensed premises where each was served a drink of Seagram's V.O. whisky and ginger ale by a male bartender. After the agents saw the girls sip their respective drinks they identified themselves as agents and, upon learning that the girls were 20 years of age, seized the drinks as evidence.

In a signed statement the bartender admitted serving the drinks, as aforesaid, and that he had not inquired of the minors as to their ages. The minors also gave statements to the same effect but refused to sign them. All three denied that any payment had been made for the drinks or that any part thereof had been consumed by either minor. I believe the statements of the agents that both minors partially consumed their drinks but, in any event, neither payment nor consumption is necessary. Delivery alone constitutes an offense under the regulation. See Re Casa Blanca Cocktail Bar, Inc., Bulletin 912, Item 3.

As to charges (2) and (3) inspection of the license application discloses that question No. 41 was incorrectly answered and that questions 21 and 22 were unanswered. All questions required to be answered by the statute or Rules and Regulations are material and either a false answer to, or a failure to answer, a question in the license application is a violation for which the license may be suspended or revoked. R. S. 33:1-25. It is neither a defense nor an excuse that the local issuing authority knew of the prior suspension or that the failure to supply the information concerning the officers and directors was not intended to mislead.

Defendant has a prior record. As indicated in charge (2), its license was suspended by the Director for fifteen (15) days, effective September 8, 1952, for sale to minors (Re Pike Inn, Bulletin 944, Item 6). The minimum penalty for sale to a minor 20 years of age is a ten-day suspension of the license. Re Brazinski, Bulletin 948, Item 7. Where, however, defendant has a prior record of a similar violation within five years, the penalty is doubled. Re Foster's Tavern, Inc., Bulletin 961, Item 8. Consequently I shall suspend defendant's license for twenty days on charge (1). Ten days will be added for the violations set forth in charges (2) and (3). Cf. Re Old Spot Clambroth Tavern, Inc., Bulletin 927, Item 3. This makes a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 29th day of September 1953,

ORDERED that Plenary Retail Consumption License C-29, issued by the Mayor & Council of the Town of Kearny to Pike Inn (A Corp.), t/a Pike Inn, 228 Belleville Pike, Kearny, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2 a.m., October 5, 1953 and terminating at 2 a.m., October 30, 1953.

DOMINIC A. CAVICCHIA
Director

8. MORAL TURPITUDE - COMMERCIALIZED GAMBLING HELD NOT TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

October 2, 1953

Re: Case No. 645

Applicant seeks a determination as to whether or not he is ineligible for employment by the holder of a liquor license in New Jersey by reason of his conviction of crime.

In September 1950, applicant pleaded non vult in a County Court to aiding and abetting another in bookmaking. He was sentenced to a term of one to two years in State Prison, where he remained for approximately nine months. He was placed on parole but released from said parole on April 24, 1952. From information obtained from applicant, the Orange Police Department and the Essex County Sheriff's Office, it appears that applicant, who was legitimately engaged in another business, rented premises in Orange for the purpose of taking orders for deliveries to his customers

in that area. Thereafter, a bookmaker approached applicant and offered to pay for the use of the store if applicant would permit him to use the premises for the taking of bets on horse races. When applicant agreed, the bookmaker installed telephone facilities and conducted a horse race betting establishment on the premises.

The crime of commercialized gambling may or may not involve moral turpitude, depending upon the circumstances. Re Case No. 1018, Bulletin 956, Item 7. Where one is a principal or a "lieutenant" in commercialized gambling, particularly where such gambling is conducted on a large scale, it has been held that convictions for commercialized gambling involve moral turpitude. Re Case No. 635, Bulletin 946, Item 10; Re Case No. 641, Bulletin 963, Item 5. However, in the instant case applicant was neither a principal nor a "lieutenant". On the contrary, he merely permitted premises leased by him to be used by another for bookmaking. Under the circumstances, I conclude that the crime of which applicant was convicted does not involve moral turpitude. Cf. Case No. 634, Bulletin 947, Item 8.

It is recommended that applicant be advised that, in the opinion of the Director, he is not disqualified by statute from being associated with the alcoholic beverage industry in this State.

Anthony Meyer, Jr.
Attorney

APPROVED:

DOMINIC A. CAVICCHIA
Director

9. STATE LICENSES - NEW APPLICATIONS FILED

S & S Beverage Co., Inc. (formerly Cape May County Beverage Company, Inc.)
3601-05 Park Blvd. & 275 West Lincoln Avenue
Wildwood, New Jersey
Application filed October 7, 1953 for additional warehouse at 321 North Rhode Island Avenue,
Atlantic City, New Jersey

F.O.B. Liquors
404 Broad Street
Bloomfield, N. J.
Application filed October 8, 1953 for Public Warehouse License.

American Airlines, Inc.
100 Park Avenue
New York 17, New York
Application filed October 9, 1953 for Plenary Retail Transit License.

Needes' Express, Inc.
21-02 Morlot Avenue
Fairlawn, New Jersey
Application filed October 9, 1953 for Transportation License.

Carmine F. Delisa and John Foord, t/a Delisa Wine Co.
222 Broome Street, Newark, New Jersey
Application filed October 16, 1953 for Plenary Winery License.

Philmore Liquor Sales, Inc.
561-563 East 32nd Street
Paterson, New Jersey
Application filed October 16, 1953 for Public Warehouse License.

Dominic A. Cavicchia
Director.