

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

BULLETIN 685

NOVEMBER 29, 1945

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DEPARTMENT OF HEALTH, EDUCATION AND WELFARE  
OFFICE OF THE ASSISTANT SECRETARY FOR PUBLIC HEALTH AND SAFETY

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, 2, N. J.

BULLETIN 685

NOVEMBER 29, 1945.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

GARDEN COCKTAIL LOUNGE & GRILLE, INC.  
204 Market Street  
Paterson 1, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-22, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

August C. Michaelis, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that it possessed one 4/5 quart bottle labeled "Four Roses A Blend of Straight Whiskies" and one 4/5 quart bottle labeled "Wilson 'That's All' Blended Whiskey", both of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On September 21, 1945, during the course of an inspection of defendant's liquor stock, an agent of the State Department of Alcoholic Beverage Control seized the above described bottles when his field test disclosed that the contents of the two bottles were not genuine as labeled. Subsequent analysis by the Department chemist revealed that the contents of the two bottles had been substantially diluted.

Defendant alleges that neither its officers nor managers had any knowledge of any tampering with its alcoholic beverage stock. It is well established, however, that a licensee is strictly responsible for any "illicit" liquor on its premises. Re Kurian, Bulletin 517, Item 2.

Defendant has no prior adjudicated record. I shall suspend the license for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 14th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-22, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Garden Cocktail Lounge & Grille, Inc., for premises 204 Market Street, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. November 21, 1945, and terminating at 3:00 a.m. December 6, 1945.

ALFRED E. DRISCOLL  
Commissioner.

2. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND JUKE BOX ORDERED FORFEITED.

In the Matter of the Seizure )  
on August 11, 1945, of a )  
quantity of alcoholic beverages )  
and a music machine on premises )  
located on Haines Neck Road, in )  
the Township of Mannington, )  
County of Salem and State of New )  
Jersey. )  
----- )

CASE No. 6876

ON HEARING  
CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., appearing for the Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 51 bottles of beer and a music machine seized from John Douglas on August 11, 1945 in Mannington Township, New Jersey constitute unlawful property and should be forfeited.

On August 10, 1945 two ABC agents, on an undercover investigation, visited John Douglas' dwelling located on Haines Neck Road in Mannington Township. When they entered they observed three men seated at a table in the kitchen drinking whiskey. The ABC agents thereupon gave Douglas an order for alcoholic beverages. The agents were served beer and whiskey by Douglas, who accepted payment for the drinks from one of the agents. Douglas did not hold any license authorizing him to sell or serve alcoholic beverages.

The ABC agents thereafter obtained a search warrant on the basis of their purchase of alcoholic beverages from Douglas and this warrant was executed in the early morning hours of August 11, 1945. The agents found and seized ten quart bottles and 41 - 12 ounce bottles of beer and a music machine in a room off the kitchen. John Douglas arrived at his dwelling while the agents were there and he was arrested on charge of selling alcoholic beverages without a license and unlawfully possessing alcoholic beverages with intent to sell the same.

This is not the first time Douglas has been in trouble with the law. On July 9, 1944 he was arrested at the above mentioned premises by ABC agents on charge of possessing illicit alcoholic beverages. On August 3, 1944 he entered a plea of guilty to this charge in the Special Sessions Court of Salem County. Although sentenced by the Judge of that Court to imprisonment for a period of from one to two years in State Prison, that sentence was suspended and instead he was placed on probation for two years, conditioned upon his payment of a fine of \$150.00. Douglas paid his fine but did not serve any time in jail. He probably was quite content to escape merely with a fine, especially since the amount of such fine was less than the minimum fee of \$200.00 fixed by law for a tavern license. Moreover, in a dry municipality such as Mannington Township, whatever fine Douglas paid for his illicit liquor activities there was a bargain.

Douglas apparently assumed that he was free to continue his sneakeasy activities with nothing more than a fine awaiting him if he was again caught. Perhaps the sentence of imprisonment for six months in the County Jail, as well as the fine of \$100.00 imposed on October 4, 1945 by the Judge of the Special Sessions Court upon Douglas' plea of guilty in the instant case, will teach him to steer clear of any bootlegging activities in the future.

The above recital of what occurred in Douglas' dwelling on August 10, 1945 warrants the inference that Douglas intended to sell the beer found in his home. Since he is not licensed to deal in alcoholic beverages, such beer is illicit and is, together with the music machine found therewith, subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, no one appeared to oppose forfeiture of the seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

ALFRED E. DRISCOLL  
Commissioner.

Dated: October 31, 1945.

SCHEDULE "A"

- 10 - 1 quart bottles of beer
- 41 - 12 ounce bottles of beer
- 1 - music machine

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

FRANK MORELLI  
T/a PRINCETON AVENUE INN  
945 Princeton Avenue  
Trenton 8, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-231, issued by the Board of Commissioners of the City of Trenton.

Frank Morelli, Defendant+licensee, Pro se.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on October 1, 1945, he possessed a 4/5 quart bottle of "Canadian Club Blended Canadian Whiskey", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

The license will be suspended for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 14th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-231, issued by the Board of Commissioners of the City of Trenton to Frank Morelli, t/a Princeton Avenue Inn, for premises 945 Princeton Avenue, Trenton, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. November 19, 1945, and terminating at 2:00 a.m. December 4, 1945.

ALFRED E. DRISCOLL  
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against HELEN DE BLANCO T/a D & G CAFE 15 West Main Street Bound Brook, N. J., Holder of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Bound Brook.

CONCLUSIONS AND ORDER

Milton A. Weiss, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that she sold, served and delivered alcoholic beverages to a minor, and permitted the minor to consume alcoholic beverages on her licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On July 19, 1945, at about 11:00 p.m., a young soldier, who was born on July 23, 1927, entered the licensed premises and joined a party of two girls and an adult soldier, all of whom were sitting at the bar. One of the girls ordered a glass of beer from the bartender, who made the service, and the girl handed the glass to the minor. After consuming the beer, the minor ordered from the bartender the same kind of a drink that the girls were imbibing, namely, a green Creme de Menthe. The bartender served the drink to the minor, who then consumed it.

The adult soldier corroborated the foregoing evidence of the minor by testifying that he observed the minor drink the glass of beer and that he heard the minor order a Creme de Menthe from the bartender.

Neither the bartender nor the licensee's husband recalled seeing the minor in the tavern on the occasion in question. The bartender stated that he had never served a Creme de Menthe to a male and, therefore, he denied having served that drink to the minor. He further testified that he would not have served any alcoholic beverages to the minor because he appeared "not more than his age, eighteen or nineteen."

After considering all of the evidence, I find that the minor, whose testimony was substantially corroborated by the adult soldier, told a truthful story, and I therefore find the defendant guilty as charged.

This is the first time that the defendant has been cited in disciplinary proceedings. Since the circumstances surrounding the violation do not appear to be aggravated, I shall suspend the license for the usual ten-day period.

Accordingly, it is, on this 14th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Bound Brook to Helen De Blanco, t/a D & G Cafe, for premises 15 West Main Street, Bound Brook, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. November 19, 1945, and terminating at 2:00 a.m. November 29, 1945.

ALFRED E. DRISCOLL  
Commissioner.

5. ADVERTISING - MISLEADING SIGNS STATING TAVERN "CLOSED FOR ALTERATION" WHEN IN FACT LICENSE HAS BEEN SUSPENDED, PROHIBITED BY RULE 27 OF STATE REGULATIONS NO. 20 - LICENSEES WHO DISREGARD THIS RULE WILL BE COMPELLED TO POST SIGN GIVING REAL REASON FOR PREMISES BEING CLOSED.

November 9, 1945

Mr. Paul Lanna  
Cape May, N. J.

Dear Sir:

It has been reported by investigators of this Department that on October 25, 1945 they observed a large sign in your tavern window reading:

"CLOSED FOR ALTERATION  
OPEN NOV. 7TH"

The plain fact of the matter was that you were really closed because this Department had suspended your liquor license from October 23, 1945 to November 7, 1945 for possessing illicit alcoholic beverages (refills). The posting of your aforesaid sign was a direct violation of Rule 27 of State Regulations No. 20, which provides:

"During the suspension of any license, the licensee shall not \*\*\* advertise that the licensed premises are closed or the licensed business stopped because of repairs or alterations or for any reason other than the suspension."

As has been the Department's uniform practice with licensees who post misleading signs of this kind, you were required to remove the sign in question and to post in place thereof, for the remainder of the period of suspension, a new sign of the same approximate size stating the real reason for the closing of your premises.

Please do not trifle with the liquor laws and regulations.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (GENERAL ELECTION DAY), IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

MICHAEL SZCZURKE )  
113 Mallory Avenue )  
Jersey City 4, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-42, issued by the Board of Commissioners of the City of Jersey City. )

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Michael Szczurke, Defendant-licensee, Pro se.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, who operates a combination grocery and liquor store, pleaded guilty with "no further comments" to a charge alleging that, on General Election Day, Tuesday, November 6, 1945, he sold a quart bottle of wine to an ABC agent, during the hours that the polls were open for voting, in violation of Rule 2 of State Regulations No. 20.

In the absence, as here, of any prior record, the license will be suspended for the usual fifteen-day period, with five days remitted for the plea, leaving a net penalty of ten days.

Accordingly, it is, on this 16th day of November, 1945,

ORDERED, that plenary Retail Distribution License D-42, issued by the Board of Commissioners of the City of Jersey City to Michael Szczurke, for premises 113 Mallory Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 9:00 a.m. November 21, 1945, and terminating at 9:00 a.m. December 1, 1945.

ALFRED E. DRISCOLL  
Commissioner

7. DISCIPLINARY PROCEEDINGS -- PERMITTING THE SALE OF LOTTERY TICKETS (NUMBERS GAME) ON LICENSED PREMISES, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 20 -- LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

VASIL KIMAK )  
 T/a KIMAK TAVERN )  
 88 Mercer Street )  
 Wallington, N. J., )

Holder of Plenary Retail Consumption License C-19, issued by the Borough Council of the Borough of Wallington. )

CONCLUSIONS AND ORDER

Vasil Kimak, Defendant-licensee, Pro se.  
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to a charge alleging that he allowed, permitted and suffered the sale of lottery tickets (commonly known as the "numbers game") on or about his licensed premises, in violation of Rule 6 of State Regulations No. 20.

The evidence before me is conclusive that on September 18th and 20th a "numbers writer" was operating in the licensed premises. There is also proof that this activity had been indulged in daily on the licensed premises for about a year prior to said dates.

On September 20th the licensee was in conversation with the "writer" and the "collector" when an A.B.C. investigator "placed a bet" with the two "numbers" men. Three "numbers" receipts were found in the possession of the licensee's daughter-in-law, who was acting as bartender, and the licensee admitted that he had placed bets that day. Some thirty-five betting slips and \$22.00 in cash "bets" were seized from the "operators."

I find the defendant guilty.

I shall suspend the license for twenty days and remit five days thereof by reason of the plea. Re Ferment, Bulletin 635, Item 5. The defendant's prior record, namely, a three-day suspension by the local issuing authority for a sale during prohibited hours, in violation of a local ordinance, in January 1939, is of such antiquity (more than five years having elapsed) as not to require an increase in the suspension imposed herein.

Accordingly, it is, on this 16th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-19, issued by the Borough Council of the Borough of Wallington to Vasil Kimak, t/a Kimak Tavern, for premises 88 Mercer Street, Wallington, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. November 26, 1945, and terminating at 3:00 a.m. December 11, 1945.

ALFRED E. DRISCOLL  
 Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (GENERAL ELECTION DAY), IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES IN OTHER THAN ORIGINAL CONTAINERS, IN VIOLATION OF R. S. 33:1-2 - HINDERING INVESTIGATION, IN VIOLATION OF R. S. 33:1-35 - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 VINCENT JASINSKI  
 T/a VINCENT'S TAVERN  
 74 Mallory Avenue  
 Jersey City 4, N. J.,  
 Holder of Plenary Retail Consumption License C-299, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

Vincent Jasinski, Defendant-licensee, Pro se.  
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that, on General Election Day, Tuesday, November 6, 1945, he (1) sold alcoholic beverages to consumers during voting hours, (2) sold alcoholic beverages for consumption off the licensed premises in other than original containers, and (3) hindered an investigation made by ABC agents.

After observing several people enter the rear door of the building housing the licensed premises, two ABC agents, on routine Election Day investigation, gained admittance, at about 6:30 p.m., to the kitchen in the rear of the defendant's tavern. The kitchen is not part of the licensed premises. When the agents inquired whether they could purchase a drink, one of three men seated at the kitchen table called the defendant's wife from the upstairs living quarters. She then sold the agents two drinks of whiskey, three glasses of beer and a bottle of beer, all of which she obtained from the tavern and served to the agents in the kitchen.

When the agents identified themselves to the defendant's wife, she summoned her husband, who had apparently been sleeping. In the meantime, one of the agents had poured his glass of beer into an empty bottle to be retained as evidence. When the defendant arrived in the kitchen, the agent asked him for a stopper for the bottle. Taking the bottle from the agent for that ostensible purpose, the defendant instead emptied its contents into a glass and handed it to one of the men seated at the table. Before the agents could prevent it, this man consumed the contents of the glass.

When, on the following day, the local authorities learned of the sales off the licensed premises, they arrested the defendant's wife, who is presently awaiting Grand Jury action.

The defendant has no previous record. Considering all of the attendant circumstances, I shall suspend the license for a period of thirty days. Five days will be remitted for the plea, leaving a net penalty of twenty-five days.

Accordingly, it is, on this 16th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-299, issued by the Board of Commissioners of the City of Jersey City to Vincent Jasinski, t/a Vincent's Tavern, for premises 74 Mallory Avenue, Jersey City, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. November 20, 1945, and terminating at 2:00 a.m. December 15, 1945.

ALFRED E. DRISCOLL  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - BOTTLING ALCOHOLIC BEVERAGES, IN VIOLATION OF R. S. 33:1-78 - SALE OF ALCOHOLIC BEVERAGES FOR CONSUMPTION OFF THE LICENSED PREMISES IN OTHER THAN ORIGINAL CONTAINERS, IN VIOLATION OF R. S. 33:1-2 - UNLABELED BEER TAP - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FANNIE NORTH  
216 Norfolk Street  
Newark, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-719 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Fannie North, Pro se.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded non vult to charges that:

"1. On October 11, 1945, at about noon, and on October 19, 1945, at about 9:55 a.m. and again at about 11:00 a.m., you, not being the holder of any license so to do, bottled alcoholic beverages for the purpose of sale in that you refilled bottles with whiskey for such purpose and actually sold the same; such bottling being in violation of R. S. 33:1-78.

"2. On all the occasions aforesaid, you sold alcoholic beverages not pursuant to and within the terms of your license as defined by R. S. 33:1-12(1) in that on all such occasions you sold whiskey for consumption off the licensed premises in other than the original containers, thereby violating R. S. 33:1-2.

"3. On October 19, 1945 you possessed on your licensed premises a barrel from which beer was being drawn through a spigot or other dispensing apparatus which did not contain the name or brand of the manufacturer of that beer but instead had no name or brand thereon, in violation of Rule 1 of State Regulations No. 22."

It appears from the investigation in the instant case that on two separate and distinct occasions, viz., October 11 and 19, 1945; respectively, the husband of the licensee refilled bottles with whiskey and sold them to an investigator of the Department of Alcoholic Beverage Control for off-premises consumption. On the first occasion the investigator did not identify himself. In addition, an inspection of the licensed premises disclosed a beer tap without a label indicating the name of the beer being drawn therefrom.

Defendant has no previous adjudicated record. Under the circumstances, I shall suspend defendant's license for a period of twenty days, less five days for the plea entered herein, or a net suspension of fifteen days.

Accordingly, it is, on this 16th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-719, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Fannie North, for premises 216 Norfolk Street, Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. November 26, 1945, and terminating at 2:00 a.m. December 11, 1945.

ALFRED E. DRISCOLL  
Commissioner.

10. APPELLATE DECISIONS - ADELPHI WITTE HOTEL CO. v. WILDWOOD.

ADELPHI WITTE HOTEL CO., )  
a corporation of New Jersey, )

Appellant, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF WILDWOOD, )

Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

Robert Bright, Esq., Attorney for Appellant.  
Irving Shenberg, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to grant a plenary retail consumption license to appellant for premises known as the Hotel Adelphi Witte, located at the southeast corner of Atlantic and Pine Avenues, Wildwood.

It appears that the license was denied by the respondent for the following reasons: (1) public convenience and necessity is at present being amply served by existing nearby licensees; (2) an additional licensed premise in the area would tend to increase the noise and confusion already complained of and thereby further jeopardize the business of nearby hotels, boarding houses and rooming houses; and (3) the issuance of an additional license would be contrary to the provisions of an ordinance duly adopted by the Board of Commissioners of the City of Wildwood and now in full force and effect limiting the number of plenary retail consumption licenses authorized in the City of Wildwood to thirty.

The denial of the license is attacked on the theory that the premises sought to be licensed are operated as a bona fide hotel and that a license is necessary for the proper operation of a hotel and as a convenience for the guests of the hotel and the public. The appellant further questions the validity of the ordinance in that the ordinance makes no provision for the granting of licenses to bona fide hotels and restaurants, thereby transcending the statutory law of the State of New Jersey upon which it is based.

The statute specifically provides that the municipalities of this State may limit the number of licenses to be issued in the municipality. There is no provision in the law requiring an exception as to hotels and restaurants or either of them. R.S. 33:1-40 provides in part as follows:

"The governing board or body of each municipality may as regards said municipality, by ordinance, limit the number of licenses to sell alcoholic beverages at retail \*\*\*\*. The aforesaid limitations of number of licenses \*\*\*\* shall be subject \*\*\*\* to appeal to the Commissioner (Commissioner of Alcoholic Beverage Control) as hereinafter provided."

The ordinance of the respondent limiting the number of licenses is a valid exercise of the powers granted to the municipality by the Legislature of the State. It is undisputed that the number of licenses now outstanding is in excess of the number authorized by the ordinance.\* An ordinance, until repealed or set aside, is binding upon the action of the governing body. So long as the limitation ordinance remained operative, the city had no jurisdiction to issue the license applied for. Re Suskowitz, Bulletin 534, Item 2 and cases cited; Cf. Bachan v. Phillipsburg, 68 N.J.L. 552.

While R. S. 33:1-41 provides that "any person" affected by the ordinance limiting "the number of licenses" may "appeal to the Commissioner in respect thereto", the Commissioner should not arbitrarily reverse the considered judgment of the body primarily authorized to issue retail licenses.

The question of whether on appeal a hotel may be distinguished from the ordinary applicant is discussed in the case of Current v. Fredon, Bulletin 184, Item 1, where Commissioner Burnett held:

"While hotels are distinguishable from ordinary drinking places and are not to be discriminated against in the issuance of licenses; see cases supra; also Retail Liquor Dealers Association v. Plainfield, Bulletin 70, Item 1 and Peck v. West Orange, Bulletin 147, Item 1; nevertheless it does not follow that a hotel is ipso facto entitled to a license just because it is a hotel. There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed."

\*The ordinance excepts renewals of licenses presently outstanding on the date of the adoption thereof even though in excess of the established quota.

See also Lincoln Avenue Corp. v. Wildwood, Bulletin 540, Item 2; Hotel Macon, Inc. v. Wildwood, Bulletin 573, Item 6; Berman v. Wildwood, Bulletin 642, Item 7.

Applying the test laid down in the Current case, supra, to the evidence presented in this appeal, the record shows that appellant operates a 60-bedroom summer hotel during the summer vacation season which contains a dining room open to the public. Said hotel has been operated since Repeal without a license excepting during the first year following Repeal, and the testimony indicates that the hotel is usually filled to capacity during the summer season.

The testimony adduced by the appellant on the question of public necessity and convenience is confined to that of the Secretary of the corporation and one other witness. The testimony of the Secretary of the appellant is to the effect that a large number of his guests desire the convenience of having alcoholic beverages with their meals; that the appellant intended to operate a cocktail lounge with a bar, and that the lounge and bar would be open to members of the general public. The testimony of the other witness is that:

"If I thought this license application here was just another taproom or saloon I would be just as strongly opposed to it as anyone in the courtroom. I am not quite sure, but I am under the impression that this is a place where a man could have a drink with his meals and if that is correct I am in favor of it for a very simple reason. We have plenty of places where people who have a thirst can get a drink, but there is a distinction, and so far as I can see, there isn't a single place where a man can get a meal, if he wants one, with a cocktail, so far as I know."

The testimony offered by appellant falls far short of meeting the test of the Current case, supra, and certainly does not convince me that public convenience and necessity require that the appellant be granted a consumption license despite the limitation imposed in the municipal ordinance. On the contrary, it would appear that the neighborhood in which appellant's premises are located is amply supplied with liquor establishments. Within two blocks of the hotel premises is Oak Avenue, on which there are presently located five plenary retail consumption licensees.

The burden of proving that public convenience and necessity require the granting of a license rests with the appellant. The convenience of a comparatively few guests of a family-type hotel in a summer resort must be weighed and considered in the light of the general public policy in the community. It appears that the City of Wildwood presently has ample facilities for the sale of alcoholic beverages. The ordinance adopted June 11, 1940, hereinbefore referred to, limiting the number of licenses to be issued in the City of Wildwood, appears to have been a reasonable exercise of the authority delegated to the municipality in R. S. 33:1-40.

The appellant has not shown that the numerical restriction contained in the local ordinance is unreasonable either generally or as applied to its individual case. Hence, the action of the respondent cannot be said to have been either arbitrary or capricious. Having reached this conclusion, it is unnecessary to consider any other reasons advanced either for or against the denial of the license. The action of the respondent is affirmed.

Accordingly, it is, on this 20th day of November, 1945,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

WILLIAM R. CZAPLICKI and )  
CHARLES MEYERS )  
T/a ZANZIBAR )  
136 Sumner Avenue )  
Seaside Heights, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Seaside Heights. )  
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Saul C. Schutzman, Esq., Attorney for Defendant-licensees.  
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant licensees plead non vult to charges alleging sale and service of alcoholic beverages on September 1, 1945, to Ronald ---- and William ----, both sixteen years of age, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file discloses that on the evening of September 1, 1945 two ABC agents observed an employee of the defendants serve two glasses of beer and one glass of whiskey apiece to the sixteen-year-old youths mentioned above.

Defendants have no previous adjudicated record. The age of the youngsters, however, requires a suspension of defendants' license for a period of twenty-five days, less five days for the plea entered herein, or a net suspension of twenty days.

The records of this Department indicate that defendants' premises are now closed and will in all probability remain closed until Spring. Thus no effective suspension can be imposed at the present time. The starting date of the suspension herein will be postponed until my further order, after the licensed premises shall have reopened for business in the Spring of 1946. Re Solomon, Bulletin 586, Item 2.

Accordingly, it is, on this 20th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Seaside Heights to William R. Czapliski and Charles Meyers, t/a Zanzibar, for premises 136 Sumner Avenue, Seaside Heights, be and the same is hereby suspended for twenty (20) days, the time to be fixed by subsequent order as aforesaid.

ALFRED E. DRISCOLL  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against )

POLISH HOME ASS'N, INC. )  
430-32-34 Hall Avenue )  
Perth Amboy, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-30, issued by the Board of Commissioners of the City of Perth Amboy. )  
----- )

Polish Home Ass'n, Inc., Defendant-licensee, Pro Se.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to a charge alleging that it possessed one 4/5 quart bottle labeled "Old Charter Kentucky Straight Bourbon Whiskey", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On October 23, 1945, during the course of an inspection of the defendant's open stock, an agent of the State Department of Alcoholic Beverage Control seized the above bottle when his preliminary tests disclosed a variation in proof and other discrepancies between the label and the contents of said bottle.

Chemical analysis by the Department chemist shows that the contents of the seized bottle did not compare at all with the whiskey described on the label. The proof was 3.4 short, the acids very low, and the solids relatively high. It also disclosed the presence of artificial coloring matter in a whiskey described on the label as "straight."

There can be no doubt that the contents of the seized bottle were not genuine as labeled, nor can the low acid and artificial color be explained in any way except that the bottle had been at least partly refilled with another whiskey.

As repeatedly pointed out, a patron is entitled to exactly what he orders. Retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1.

Defendant has no previously adjudicated record. I will suspend defendant's license for a period of fifteen days.

Accordingly, it is, on this 28th day of November, 1945,

ORDERED, that Plenary Retail Consumption License C-30, issued by the Board of Commissioners of the City of Perth Amboy to Polish Home Ass'n, Inc., for premises 430-32-34 Hall Avenue, Perth Amboy, N. J., and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. December 4, 1945, and terminating at 2:00 a.m. December 19, 1945.

ALFRED E. DRISCOLL  
Commissioner.

## 13. APPELLATE DECISIONS - LASCHITZKI v. FIELDSBORO.

PEARL LASCHITZKI, )

Appellant, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDERBOROUGH COUNCIL OF THE )  
BOROUGH OF FIELDSBORO, )

Respondent )

Thomas D. Begley, Esq., Attorney for Appellant.  
Alexander Denbo, Esq., Attorney for Respondent.

## BY THE COMMISSIONER:

This is an appeal from the denial, on September 10, 1945, of an application for a plenary retail consumption license by the Borough Council of the Borough of Fieldsboro for premises located on Front Street, Fieldsboro.

Appellant urges three grounds for her appeal, summarized as follows:

- (1) An ordinance of the Borough of Fieldsboro limits the number of plenary retail consumption licenses that may be issued and outstanding at the same time to three -- hence it was improper for the respondent to deny appellant's application since only two plenary retail consumption licenses were then outstanding;
- (2) There were no legal objections to the issuance of the license applied for;
- (3) The persons signing the petition presented to the respondent objecting to the granting of appellant's application did so for reasons other than those stated in the petition.

In its denial of the appellant's application, respondent adopted the following resolution, which appears in the official minutes of the Borough:

"Be it resolved that the application of Pearl Laschitzki for Plenary Retail Consumption License for Premises 32 Front Street, Fieldsboro, be denied for the reasons in the petition of residents presented to the Common Council."

The reasons stated in the petition (Exhibit A-1), incorporated by reference in the respondent resolution, are as follows:

"Whereas, there is now pending before your honorable body, an application for the issuance of a Plenary Retail Liquor License, and, whereas, it is the sincere opinion of the undersigned petitioners that the existing licensed places are sufficient to take care of the alcoholic beverage needs of our community, and whereas this position can be supported by the fact that a previously existing establishment of this kind ceased to operate, we, therefore, earnestly request your honorable body not to grant the license applied for, until a greater need for such a license becomes apparent in the future."

There is no merit to the first contention of appellant herein. In Bumball v. Burnett, 115 N. J. L. 254, the Court says:

"If the ordinance had fixed one hundred as a limit, still the Council, in its discretionary power to license or not to license, could stop short of that number at any point, or could license A and refuse B."

From 1934 to 1943 the premises for which the license is now sought were occupied by Emma W. Zabriskie, the holder of a plenary retail consumption license issued by the respondent. Charles Zabriskie, husband of Emma, apparently acted as manager for his wife's liquor business until 1943, when he was "forced" by the War Manpower Commission to resume his former employment as a freight conductor for a railroad. In response to a question as to whether or not the business flourished in 1943, Zabriskie stated: "Yes; we were doing all right." In 1945 the Zabriskies sold the property to appellant, who filed her application for a plenary retail consumption license on August 22, 1945.

The evidence in the present case is devoid of any testimony tending to indicate that there is a public need for the issuance of an additional license in the respondent municipality. According to the 1940 census, the population of the Borough of Fieldsboro was then 537. The mere statement by a manager of the tavern located in the premises for which a license is sought that two years previously thereto "we were doing all right", fails to prove a need for another liquor license. The burden rests on appellant satisfactorily to prove such need in a case of this character. Houtkin v. Lakewood, Bulletin 646, Item 1.

Appellant contends that an examination of the petition (Exhibit A-1) filed with the respondent raises reasonable doubt as to its validity and regularity. While no evidence has been presented to substantiate the claim of irregularity, suffice it to say that in the instant case I have completely disregarded the petition in reaching a decision.

Appellant having failed to sustain the burden of proof and no evidence having been presented that the action of the respondent denying the license was either arbitrary or unreasonable, the appeal must be dismissed.

Accordingly, it is, on this 28th day of November, 1945,

ORDERED, that the within appeal be and the same is hereby dismissed.

*Joseph E. Dunsell*  
Commissioner.