

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

BULLETIN 971

JUNE 2, 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.

BULLETIN 971

JUNE 2, 1953.

1. APPELLATE DECISIONS - BRAMBERGER v. CLIFTON.

JOHN BRAMBERGER trading as)
MARWOOD LOUNGE,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF CLIFTON,)

Respondent.)

Edward Feld, Esq., Attorney for Appellant.

John G. Dluhy, Esq. and Mervyn R. Montgomery, Esq., Attorneys
for Respondent.

Sidney Simandl, Esq., Attorney for Retail Liquor Dealers'
Association of Clifton, N. J.

Levy & Levy, Esqs., by Edward A. Levy, Esq., Attorneys for Allwood
Confectionery & Liquor, Inc., an Objector.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board on March 23, 1953, denying appellant's application for a transfer of License C-118 from Donmor Inn, Inc., to appellant, and from premises at 1663 Main Avenue to premises at 114 Market Street. In his Petition of Appeal, appellant contends that the action of respondent was erroneous in that:

- (a) The evidence shown and available indicated that there was a need and convenience for granting said license;
- (b) Respondent's action was an abuse of discretion;
- (c) No legal evidence was presented upon which the denial of the application was predicated;
- (d) Respondent failed to consider the paramount issue of public necessity and convenience to be served in this section of the City of Clifton;
- (e) The action of Respondent in denying said transfer was in violation of the rules of the issuing authority, the rules of the Director of Alcoholic Beverage Control of the State of New Jersey, and the Statute of the State of New Jersey applicable thereto;
- (f) The decision of the Respondent on the facts presented should have been in favor of the applicant and against the objectors;
- (g) The action of the Respondent was arbitrary, unreasonable and capricious;
- (h) Appellant was not in fact accorded a legal hearing within the provisions of the Statute of the State of New Jersey and the rules and regulation of the Director of Alcoholic Beverage Control.

Respondent, in its answer, asserts that its action in denying appellant's application was proper because:

- (1) The public interests and welfare of the community will not be served by such transfer.
- (2) There are sufficient retail plenary distribution and other licenses in the vicinity in the proposed location to serve the needs of the community.
- (3) The neighborhood surrounding the proposed location is such that the proposed establishment is not desirable or conducive to the health or welfare of the community.

The hearing on this appeal was de novo, pursuant to Rule 6 of State Regulations No. 15.

There is no substantial dispute as to the facts. From the evidence adduced at the hearing herein it appears that the present location of the licensed premises at 1663 Main Avenue is in the northwestern portion of the city near the boundary line of the City of Paterson, and that the proposed new location at 114 Market Street is in the "Allwood section", which is in the southern portion of the city not far from the Essex County boundary line. The two locations are in different sections of the city and are at least three miles apart. The present location is in an old mixed business and residence area, while the proposed new location is in an area which is admittedly predominantly residential in character. The "Allwood section" was practically undeveloped until some time in the late 1920's or early 1930's, at which time a large number of one-family houses were constructed in that area. Since that time, and principally within the last five to ten years, many more dwellings have been constructed in the "Allwood section". For example, in the last four years more than 1600 dwelling units have been erected in that area, mostly in the form of multiple dwelling units. There have, however, also been erected during that same period approximately 168 single family units. In addition, numerous stores and other mercantile establishments have been erected in the area, which now also includes two banks, a theatre, and a Post Office. These stores and other mercantile establishments are, for the most part, limited to small "business zones" within the area and may generally be characterized as "neighborhood" stores.

It was agreed that to the east of the area where the aforementioned dwellings and stores have been erected, a considerable number of industrial plants have been located. Some of these have been in existence for a number of years, while many others have been erected within recent years. It was also agreed that, for the most part, these industrial establishments are east of the branch of the Erie Railroad and that the only crossing of that branch railroad at grade, for a distance of one mile, is the crossing at Bloomfield Avenue where it is joined by Market Street (the other end of Market Street from the proposed new location).

The evidence also discloses that since approximately 1934, plenary retail consumption licenses have existed at 550 Allwood Road (approximately 1400 feet from the proposed new location) and at 777 Bloomfield Avenue (approximately .6 miles from the proposed new location). Three plenary retail distribution licenses have been issued for premises in the same general area at the following locations: 120 Market Street, 14 Market Street, and 1362 Clifton Avenue; the first two being in the immediate area of the proposed new location, the other being in the shopping center of the "Richfield Village Center", some distance northerly from the proposed new location.

On behalf of appellant it was testified that the present licensee is being forced to vacate the present licensed premises at 1663 Main Avenue and has not been able to locate other premises. Appellant testified that while the "Allwood section" was primarily residential and consisted mostly of one-family houses, the enormous increase in population has created a public need for a plenary retail consumption license in the area of the proposed new location. Five other persons who reside in that general area testified to the same effect. Some of these witnesses further testified that the licensed premises at 550 Allwood Road was more of a "supper club" as distinguished from a "workingman's tavern", and that the licensed premises at 777 Bloomfield Avenue was too far away. It was admitted that the building at the proposed new location has been vacant for approximately two years. In this connection it appears that appellant has an option to lease the proposed new location until May 21, 1953, and that his agreement with the present licensee is contingent upon the approval of the transfer of the present license to the proposed new location.

The evidence discloses that, while the 200-foot rule (R. S. 33:1-76) is not involved, there is a church approximately 700 feet and a school approximately 1100 feet from the proposed new location.

Further on behalf of appellant, four members of the Retail Liquor Dealers' Association of Clifton, N. J., testified the present licensed premises at 1663 Main Avenue was in a "congested" area where there was an unnecessary concentration of plenary retail consumption licenses; that there were more such licenses in that area than were necessary to properly serve public necessity and convenience, and they expressed the opinion that such licenses should be distributed throughout the city. One of these witnesses testified that, in his opinion, the concentration of such licenses caused "disturbances". Another of these witnesses testified that the Association had tried to persuade the local authorities to permit licensees to move where there is more room.

On behalf of respondent, Philip Rubin, one of the members of respondent Board, testified that he and the other members of the Board were present at the hearing below, at which evidence was received from and opinions expressed by a number of citizens and representatives of local organizations. From the report of the hearing, it appears that written objections were received from a church, the Parent-Teachers' Association of a nearby school, two local civic organizations, and the objector on this appeal, Allwood Confectionery & Liquor Inc., and verbal objections were made by a number of other persons. There was introduced at the hearing below a petition signed by 180 objectors. The objections, generally, were based on the following considerations:

- (1) Proximity to Public School #9;
- (2) Proximity to Allwood Community Church;
- (3) Adequacy of existing licensed premises;
- (4) Increase in congestion at the intersection near the proposed new location would be hazardous, and
- (5) The transfer would increase noise and commotion in the neighborhood.

Mr. Rubin testified that the Board took into consideration the fact that the neighborhood was predominantly residential; the objections filed by the objectors who desired to maintain the residential

character of the community; and the existence of the two plenary retail consumption licenses in that area. He expressed it as his opinion that there was no need for an additional license in that area. He further testified that he believed the situation to be similar to one in another nearby municipality where an application to transfer a license from the center of the town to a residential section of the community was denied. He admitted that several plenary retail distribution licenses had been located in the "Allwood section" but expressed the belief that such licenses were needed. He further testified that the Board considered the over-all situation, including the traffic conditions and the schools, and that, after deliberating for approximately a half-hour, the Board unanimously denied the transfer.

Other witnesses testified that the proposed new location is situated at a busy street intersection; that there is a considerable traffic problem at that point; that traffic lights are in the process of being installed, and that a considerable number of school children board and leave school buses at that corner.

The minister of the nearby Allwood Community Church testified that the church objected to the proposed transfer because of its proximity to the church. This objection was based principally on the belief that the moral tone of the community would be lowered if the transfer were granted and that certain undesirable conditions might be created thereby.

Three other witnesses also voiced their objections -- principally on the proximity of the proposed new location to the aforementioned church and school.

It was stipulated that the present location at 1663 Main Avenue and the proposed new location at 114 Market Street are not in the same area of the city.

"A transfer of a liquor license to another person or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2; Masarik et al. v. Milltown, Bulletin 283, Item 10." Biscamp & Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp v. Teaneck, 5 N. J. Super. 172 (App. Div. 1949).

The question of whether or not a place-to-place transfer is to be granted is within the sound discretion of the Board in the first instance and, on appeal, the burden is on appellant to show that the Board abused its discretion. Rule 6 of State Regulations No. 15; Bock Tavern Inc. v. Newark, Bulletin 952, Item 1; Segal et al. v. Clifton et al., Bulletin 732, Item 5; Christian v. Passaic, Bulletin 928, Item 2.

In the instant case, after carefully considering all of the evidence, including the objections to the proposed transfer, the proximity of the proposed new premises to the church and school and to the other plenary retail consumption licenses, and considering also the fact that the effect of the transfer would be to move the license a considerable distance from a mixed business and residential area to an entirely different section of the city predominantly residential in character, I cannot find that the action of respondent in

denying the application for transfer was arbitrary and unreasonable, constituting an abuse of discretion warranting a reversal of its action.

Accordingly, it is, on this 19th day of May, 1953,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

2. HOURS OF CLOSING - ELECTION DAY - RULE 2 OF STATE REGULATIONS NO. 20 CONSTRUED AS TO "RUN-OFF" ELECTION IN SECOND WARD, HOBOKEN.

May 27, 1953.

Arthur C. Malone, City Clerk
Hoboken, N. J.

Dear Mr. Malone:

In your letter dated May 22 you ask whether all licensed premises in the City of Hoboken or only those licensed premises in the Second Ward of the City are subject to the provisions of Rule 2 of State Regulations No. 20 on Tuesday, June 16, 1953, when a "run-off" election for Councilman for the Second Ward is being held.

Rule 2 of State Regulations No. 20 provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer any alcoholic beverage, or allow, permit or suffer the consumption of any alcoholic beverage in or upon the licensed premises, in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

The problem presented in your letter has not previously arisen and was probably not contemplated when Rule 2 of State Regulations No. 20 was promulgated.

The "run-off" election is being held pursuant to the provisions of R. S. 40:69A-161. R. S. 40:69A-151 provides that the election shall be "conducted in the same manner, so far as possible, as the general election"; the "run-off" election is, therefore, a special election within the purview of Rule 2 of State Regulations No. 20. See Bulletin 384, Item 1.

Accordingly, since the "run-off" election being held in Hoboken on June 16, 1953 is limited to the Second Ward, I construe said Rule 2 to apply, on that day, only to those licensed premises located in the Second Ward of the City of Hoboken and not to every licensee in the City.

Very truly yours,

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION - FAILURE TO FILE NOTICE REQUIRED BY R. S. 33:1-34 - AIDING AND ABETTING NON-LICENSEE (CRIMINAL) TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - FAILURE TO DISCLOSE CHATTEL MORTGAGE - LICENSE SUSPENDED FOR 95 DAYS.

In the Matter of Disciplinary Proceedings against

JOSEPH P. VITALE
97 Prospect Street
Paterson 1, N. J.,

CONCLUSIONS

Holder of Plenary Retail Consumption License C-185, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

Ervan F. Kushner, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:
Defendant has pleaded non vult to the following charges:

"1. In your application dated June 2, 1952, filed with the Board of Alcoholic Beverage Control for the City of Paterson, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?' whereas in truth and fact John Luciano had such an interest in that he was permitted to retain all of the profits from the licensed business after payment of fixed monthly installments on an outstanding obligation incurred by you in the purchase of the business; said false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application, you falsely stated 'No' in answer to Question 31, which asks: 'Have you agreed to pay any employee, or other person, any portion or percentage of the profits or income (by way of rent, salary or otherwise) derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit John Luciano to retain all the profits from the licensed business after payment of fixed monthly installments on an outstanding obligation incurred by you in the purchase of the business; said false statement being in violation of R. S. 33:1-25.

"3. You failed to file with the Board of Alcoholic Beverage Control for the City of Paterson, within ten days after the occurrence thereof, written notice of changes in facts set forth in answer to Questions 30 and 31 of your aforesaid application, such changes being that on or about March 5, 1953 you entered into an arrangement with Mike Singer by which he acquired an interest in your licensed business and by which you agreed to permit him, instead of John Luciano, to retain the profits from the business; your failure to file such notice being in violation of R. S. 33:1-34.

"4. From on or about February 13, 1952, until on or about January 27, 1953 you knowingly aided and abetted John Luciano, and from on or about March 5, 1953 until the present time you knowingly aided and abetted Mike Singer, to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R. S. 33:1-52.

"5. In your aforesaid application, you falsely stated 'No' in answer to Question 32, which asks: 'Does any individual..... hold any chattel mortgage.....on any furniture, fixtures, goods or equipment used or to be used in connection with the conduct of the alcoholic beverage business to be operated under the license herein applied for?', whereas in truth and fact Clara Kernan held such a mortgage dated February 14, 1952 in the original amount of \$5500.00; said false statement being in violation of R. S. 33:1-25."

The file in the instant case discloses that on or about February 13, 1952, defendant, who had no previous experience in the liquor business obtained a transfer to him of the license in question. A chattel mortgage, representing part of the purchase price, was given by him on the fixtures, etc. at the time the sale was consummated. Defendant employed one John Luciano to act as manager of the licensed premises and agreed that, after payment of the fixed monthly installments on outstanding obligations incurred by him when the business was purchased and other necessary expenses for the operation of the business, Luciano was to retain all the profits that were realized from the business. This method of operation of defendant's business continued until January 27, 1953. Thereafter, a person employed as bartender operated the business until March 5, 1953, when one Mike Singer took over the management thereof. At that time defendant agreed with Mike Singer that the latter could retain any profit realized from the business. The facts herein indicate that the license in defendant's name had been "farmed out" to the said John Luciano and Mike Singer.

The criminal records of John Luciano received at this Division disclose that he has a criminal record and, specifically, that he pleaded guilty on October 17, 1940 to the crime of conspiracy to violate the Internal Revenue Laws in connection with the possession of an unregistered still. As a result of said plea, he was sentenced to 180 days in a federal penal institution, the operation of the sentence was suspended, however, and said John Luciano was placed on probation for 360 days, in addition to the imposition of a fine. The crime of conspiracy to violate the Internal Revenue Laws involves moral turpitude. During the course of the investigation in this case, defendant admitted to an ABC agent that he thought Luciano had some kind of a record which would prevent him from tending bar and, therefore, he designated him as manager. A person convicted of a crime involving moral turpitude may not be connected in any business capacity whatsoever with a licensee. Defendant failed to divulge truthful information in the application upon which he obtained his current plenary retail consumption license. Said falsification resulted in the institution of the aforementioned charges. Defendant has notified this Division that the licensed premises have been voluntarily closed by him since March 31, 1953. It would appear, therefore, that the unlawful condition has ceased to exist.

Defendant has no prior adjudicated record. Although the illegal situation has apparently been corrected, defendant's license is subject to suspension. The nature of the violations charged herein calls for a substantial suspension of the license. As to charges (1) to (4), inclusive, I shall suspend defendant's license for a period of ninety days. Cf. Re Holiday Inn Inc., Bulletin 944, Item 1. I

shall suspend his license for an additional period of five days on charge (5) (Re Cervino, Bulletin 494, Item 1), making a total suspension of ninety-five days. No remission will be granted for the plea entered as to charge (5).

Accordingly, it is, on this 18th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-185, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Joseph P. Vitale, 97 Prospect Street, Paterson, be and the same is hereby suspended for the balance of its term, effective 3:00 a.m. May 21, 1953; and it is further

ORDERED that if any license be issued to this licensee or to any other person for the premises in question for the 1953-54 licensing year, such license shall be under suspension until 3:00 a.m. August 24, 1953.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PETER SCHEIB
T/a SCHEIB'S INN
126 Jackson Avenue
Jersey City 5, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-157, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Peter Scheib, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that he sold and delivered and permitted the sale and delivery of alcoholic beverages at retail in their original containers for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that, at approximately 10:00 p.m., Saturday, April 25, 1953, two ABC agents entered the barroom of defendant's licensed premises. At approximately 10:30 p.m. a man entered and asked the bartender for two quarts of beer to take out. The bartender walked to the rear of the barroom and asked the licensee whether it was all right to make the sale. The licensee looked at the prospective customer and told the bartender that it was all right to make the sale. The bartender took two quarts of beer from the cooler behind the bar, placed them in a paper bag and handed them to the customer who, in turn, paid the bartender, who rang up 90¢ on the cash register. At approximately 10:50 p.m. the customer took the paper bag and walked out of the licensed premises. One of the agents followed the customer and brought him back to the licensed premises, where both agents identified themselves to the bartender and the licensee.

Defendant has no prior adjudicated record. I shall impose the fifteen-day minimum penalty for a first violation of this kind.

Re Kaiser, Bulletin 954; Item 7. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 18th day of May, 1953

ORDERED that Plenary Retail Consumption License C-157, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Peter Scheib, t/a Scheib's Inn, 126 Jackson Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 25, 1953, and terminating at 2:00 a.m. June 4, 1953.

DOMINIC A. CAVICCHIA
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MALACHY J. HEALEY
T/a HEALEY'S TAVERN
187-189 Main Street
Orange, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-60, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange.

Giuliano & Giuliano, Esqs., by James R. Giuliano, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold, served and delivered alcoholic beverages to a minor at his licensed premises and permitted the consumption of such beverages by said minor upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that two ABC agents visited defendant's licensed premises on the night of April 11, 1953 to investigate a specific complaint that defendant was selling alcoholic beverages to minors. At approximately 10:30 p.m. the agents saw four young men, including a youth who appeared to be a minor, enter the licensed premises where they went to the bar. The agents then saw the bartender serve four glasses of draft beer to the four, including the apparent minor. After the latter had consumed a portion of his drink the agents identified themselves and ascertained that the youth in question was in fact 18 years of age.

Statements were obtained from the minor and from the bartender. The minor admitted that he had been served and had consumed beer; that he had been served by the bartender; and that he had not been questioned as to his age.

The bartender, while admitting that the minor had been seated at the bar while he (the bartender) was on duty, denied that he had served the minor any alcoholic beverages. He sought to explain that one of the minor's companions, who is a steady customer, asked for an order of four beers and that he (the bartender) served four glasses of beer to said customer without knowing who was going to consume them. He denied that he saw the minor either receive or consume any beer and admitted that the minor had not been required to show proof of age.

Although the licensee was personally present no statement was taken from him because he is apparently very hard of hearing.

From the foregoing it is obvious that the minor consumed alcoholic beverages on the licensed premises on the night in question. Even if the bartender's claim were accepted as true, the consumption of alcoholic beverages by the minor under the circumstances described constitutes a violation of the Regulation. Re Morganstern and Oliner, Bulletin 292, Item 9; Re Liss, Bulletin 941, Item 7; Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

Defendant has no prior adjudicated record. Under the circumstances I shall suspend the license for ten days. Re Watters, Bulletin 954, Item 9. Five days will be remitted for the plea entered herein leaving a net suspension of five days.

Accordingly, it is, on this 11th day of May, 1953,

ORDERED that Plenary Retail Consumption License C-60, issued by the Municipal Board of Alcoholic Beverage Control of the City of Orange to Malachy J. Healey, t/a Healey's Tavern, 187-189 Main Street, Orange, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. May 18, 1953, and terminating at 2:00 a.m. May 23, 1953.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT BONA FIDE INVOICE OR MANIFEST COVERING SHIPMENT - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JULES ROSENBERG)
T/a J'S DELICATESSEN)
618 West Maple Avenue)
Merchantville, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Merchantville.)

Leo Berg, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On December 17, 1952, you transported alcoholic beverages from Camden, New Jersey into the State of Pennsylvania in a vehicle without the driver thereof having in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill or similar document stating the bona fide name and address of the purchaser or consignee, and the brand name or size of the container and quantity of each item of alcoholic beverages being delivered and transported, in violation of Rule 3 of State Regulations No. 17."

The file discloses that, on December 17, 1952, agents of the Pennsylvania Liquor Control Board observed an automobile, owned and operated by defendant, being driven along a street in Philadelphia, Pa. When the agents searched this car they found ten cases of whiskey. None of the bottles bore Pennsylvania tax stamps. Defendant admitted that he did not have any sales slips (invoices) for the alcoholic beverages as required by Rule 3 of State Regulations No. 17. In a signed statement he claimed that he had come to Philadelphia "to pick up some cabinet knobs"; that he had bought some of the whiskey from a wholesaler and that he was going back to his licensed premises to make up the balance of the order. However, he did not have any invoice or other evidence of the alleged transaction with the wholesaler and he failed to identify his alleged retail customer or to disclose the alleged customer's address. He denied that he had ever transported alcoholic beverages in Pennsylvania on any other occasion.

I believe that defendant was, in fact, attempting to sell and deliver a considerable quantity of alcoholic beverages in a neighboring state, apparently in violation of the laws of that state.

Defendant has no prior adjudicated record. Under the circumstances, I shall suspend his license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Cf. Re Meisler, Bulletin 835, Item 7.

Accordingly, it is, on this 12th day of May, 1953,

ORDERED that Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Merchantville to Jules Rosenberg, t/a J's Delicatessen, for premises 618 West Maple Avenue, Merchantville, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. May 18, 1953, and terminating at 9:00 a.m. May 28, 1953.

DOMINIC A. CAVICCHIA
Director.

7. DISQUALIFICATION - APPLICATION DENIED BECAUSE OF LENGTH AND NATURE OF PETITIONER'S CRIMINAL RECORD DESPITE FACT THAT HE HAD NOT BEEN CONVICTED OF CRIME WITHIN PAST FIVE YEARS.

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

CONCLUSIONS
AND ORDER

Case No. 1040.)
- - - - -)

BY THE DIRECTOR:

On March 30, 1924, petitioner was convicted in a criminal court in another state of felonious wounding, as a result of which he was sentenced to a county prison for a period of three to six years and fined \$100.00. Petitioner was released on parole from the penal institution on June 15, 1925. Thereafter, petitioner was apprehended by police authorities on divers occasions for various reasons, including suspicion of murder, maintaining a bawdy house, conspiracy in counterfeiting money, assault and robbery and maintaining and operating a disorderly (bawdy) house. He was also

convicted of the following charges: April 17, 1933, of being a frequenter of a disorderly house and fined \$5.00; May 30, 1938, of being an inmate of a bawdy house and fined \$10.00; September 22, 1943, of keeping a bawdy house, as a result of which he received a suspended sentence to permit his induction in the military forces, and on December 11, 1951, fined \$100.00 and costs for a violation of the automobile laws.

The crime of felonious wounding of which petitioner was convicted in 1924 is a crime involving the element of moral turpitude. It is therefore unnecessary to determine if the other offenses committed by petitioner are crimes which may involve that element.

Petitioner produced three witnesses (an unemployed miner, a presently employed miner, and a State employee) who testified they have known him seven or more years and that in the community wherein he formerly resided, he bears the reputation of being a law-abiding person. At the time of the within hearing, petitioner testified that he has been living in this state only for a period of two weeks. The police department of the municipality wherein petitioner now resides has informed this Division that no complaint or investigation involving petitioner is presently pending. Petitioner also testified that, after his discharge from the Army, he conducted a vending machine business for a number of years but that he was unemployed for nearly two years before he moved to New Jersey.

Although more than five years have elapsed since his last conviction of a crime, I am not satisfied, after considering the nature of the various convictions, that his association with the alcoholic beverage industry will not be contrary to the public interest. The mere fact that petitioner has not been convicted of a crime within the past five years does not automatically entitle him to relief. In the exercise of my discretion, I shall therefore deny the petition for removal of his disqualification filed herein.

Accordingly, it is, on this 13th day of May, 1953,

ORDERED that the petition herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - TRANSPORTATION IN VEHICLE HAVING NO TRANSPORTATION INSIGNIA ATTACHED - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ISADORE MAZIE)
T/a MAZIE'S MARKET)
N/W side of Westfield Avenue)
between West River Drive and)
48th Street)
Pennsauken Township)
P.O. Merchantville, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-4, issued by the Township Committee of the Township of Pennsauken.)

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Isadore Mazie, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On December 6, 1952, you transported alcoholic beverages from your licensed premises into the State of Pennsylvania in a vehicle having no transportation insignia affixed thereto; in violation of Rule 2 of State Regulations No. 17."

The file discloses that, on December 6, 1952, agents of the Pennsylvania Liquor Control Board observed an automobile, owned by defendant and driven by defendant's son, being loaded with alcoholic beverages at defendant's licensed premises and followed it across the Delaware River Bridge into Philadelphia, Pa. When the agents stopped this automobile in Philadelphia, they found five cases of whiskey in it. None of the bottles bore Pennsylvania tax stamps. The driver produced an invoice for these alcoholic beverages and admitted to the agents that defendant had instructed him to deliver it to a purchaser in Pennsylvania. The records of this Division disclose that no transportation insignia had been issued for this vehicle.

Defendant has no prior adjudicated record. However, since he was attempting to sell and deliver a considerable quantity of alcoholic beverages in a neighboring state, apparently in violation of the laws of that state, I shall suspend the license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Cf. Re Meisler, Bulletin 835, Item 7.

Accordingly, it is, on this 12th day of May, 1953,

ORDERED that Plenary Retail Distribution License D-4, issued by the Township Committee of the Township of Pennsauken to Isadore Mazie, t/a Mazie's Market, n/w side of Westfield Avenue between West River Drive and 48th Street, Pennsauken Township, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. May 18, 1953, and terminating at 9:00 a.m. May 28, 1953.

DOMINIC A. CAVICCHIA
Director.

9. STATE LICENSES - TRANSFER (PLACE TO PLACE) OF STATE BEVERAGE DISTRIBUTOR'S LICENSE GRANTED.

In the Matter of Objections to an Application for Transfer from State Highway #36, Raritan Township, to 24 Port Monmouth Road, Keansburg, of State Beverage Distributor's License SBD-18, issued to

CONCLUSIONS

BEE-LINE BEVERAGE SERVICE.

Leo J. Berg, Esq., Attorney for Applicant.

BY THE DIRECTOR:

Objections to the application for transfer having been filed, a hearing thereon was held at this Division. At said hearing four objectors who reside on Port Monmouth Road, Keansburg, in the immediate vicinity of the premises to which the license is sought to be transferred, appeared and three of these objectors testified. On behalf of the applicant, Mark C. Bendon, President of the applicant corporation, appeared and testified.

In substance, the objectors allege that the transfer of the license will greatly depreciate the property value of adjoining residences; that the present licensed premises have not been conducted in a proper manner, and that transfer of the license would create a traffic hazard.

From the evidence it appears that the objectors who appeared at the hearing reside on one side of Port Monmouth Road, which is zoned for residential purposes. The premises known as 24 Port Monmouth Road are located on the opposite side of the road, in a section which is zoned for business purposes. This business zone extends for a distance of approximately 300 feet along Port Monmouth Road and, in addition to the premises to which the license is sought to be transferred, contains a building operated as a delicatessen and another building operated as a dancing school. Property known as 24 Port Monmouth Road is approximately 100 feet in width by 100 feet in depth and contains a building approximately 24 feet in width and 40 feet in depth. For the past two months the applicant herein has been using this property for the storage and distribution of carbonated beverages, and seeks the transfer of its license so that its entire business may be conducted at one place of business. During the past four years the land and building at 24 Port Monmouth Road has been used for business purposes -- namely, as a "welding place" for a period of time, and thereafter as a garage.

The President of applicant corporation admits that at its present place of business some boxes have been stored outside of the building. However, he testified that this building is only 20 feet wide by 20 feet deep and that it is too small to permit the business to be conducted inside the building. As to the alleged traffic hazard, the President testified that applicant owns two trucks, and that the plot of ground to which the transfer is sought is more than sufficient to permit the storing of the trucks thereon without parking vehicles on Port Monmouth Road. He further testified that the trucks will leave the licensed premises between 8:00 a.m. and 9:00 a.m. and return thereto between 5:00 p.m. and 6:00 p.m.

Considering the fact that the premises to which the license is sought to be transferred are zoned for business and have been used for that purpose for at least four years, there appears to be no

reason why the transfer of the license would depreciate the property value of adjoining residences. The evidence further fails to establish that there is any reason why the larger premises to which the transfer is sought should not be properly conducted or that the transfer would create a traffic hazard. I conclude that the aforesaid objections are without merit.

It appears from the file herein that the Mayor and Council of the Borough of Keansburg, on April 21, 1953, adopted a resolution reciting that "they go on record as objecting to the aforesaid application for transfer." Although the Borough Clerk had previously been notified of the date of hearing, no representative of the Mayor and Council appeared at the hearing held herein. The resolution recites no reason for the objection of the Mayor and Council except that it does set forth that objections to said transfer have been filed with the Division of Alcoholic Beverage Control by some fifteen citizens of the Borough of Keansburg who reside in the neighborhood of 24 Port Monmouth Road. The "objection" of the Mayor and Council appears to be based solely upon the objections of the residents, which objections have been considered above. In any event, municipal consent is not a statutory prerequisite to the issuance of a State license. After carefully considering all the evidence herein, I conclude that the objections are without merit.

Accordingly, the transfer applied for will be granted if and when the application is in proper form.

DOMINIC A. CAVICCHIA
Director.

Dated: May 14, 1953.

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

In the Matter of Disciplinary Proceedings against)
JOSEPH RISDEN)
T/a RISDEN'S BAR & GRILL)
906 Ocean Ave, between Atlantic)
& New Jersey Aves.)
Point Pleasant Beach)
P.O. Point Pleasant, N. J.,)
Holder of Plenary Retail Consumption License C-13, issued by the)
Point Pleasant Beach Mayor and)
Borough Council.)

O R D E R

BY THE DIRECTOR:

It appearing that by Order dated November 5, 1952, the license held by the above named defendant was suspended for twenty-five days, and that the effective dates of said suspension were to be fixed by subsequent order (Re Risdén, Bulletin 948, Item 4); and

It further appearing that defendant's premises have now been reopened for business;

It is, on this 19th day of May, 1953,

ORDERED that the twenty-five day suspension heretofore imposed shall commence at 2:00 a.m. May 25, 1953, and terminate at 2:00 a.m. June 19, 1953.

DOMINIC A. CAVICCHIA
Director.

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

In the Matter of Disciplinary Proceedings against)

HARRY W. ROESCH)
T/a THE BEACHCOMBER)
218 East Schellenger Avenue)
Wildwood, N. J.,)

O R D E R

Holder of Plenary Retail Consump-)
tion License C-34, issued by the)
Board of Commissioners of the)
City of Wildwood.)
-----)

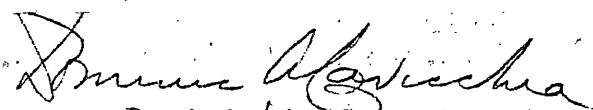
BY THE DIRECTOR:

It appearing that by Order dated April 15, 1953, the license held by the above named defendant was suspended for a period of fifteen days, and that the effective dates of said suspension were to be fixed by subsequent order (Re Roesch, Bulletin 966, Item 4); and

It further appearing that defendant's premises have now been reopened for business;

It is, on this 19th day of May, 1953,

ORDERED that the fifteen-day suspension heretofore imposed shall commence at 2:00 a.m. May 25, 1953, and terminate at 2:00 a.m. June 9, 1953.


Dominic A. Cavicchia
Director.