

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

BULLETIN 417

JULY 24, 1940.

1. NEW LEGISLATION - AMENDMENT TO R.S. 33:1-10 - PLENARY WINERY LICENSEES MAY SELL AT RETAIL FOR ADDITIONAL ANNUAL \$100.00 FEE - NEW PROVISION FOR LIMITED WINERY LICENSES.

Assembly Bill No. 74 was approved by Governor Moore on June 10, 1940, and thereupon became Chapter 83, P.L. 1940.

It is effective immediately.

This Act amends Section 33:1-10 of Revised Statutes by supplementing paragraph (2) a. to permit Plenary Winery Licensees to sell wine at retail on the licensed premises upon the payment of an additional fee of \$100.00, and by adding a paragraph designated as (2) b. providing for the issuance of Limited Winery Licenses.

Paragraph (2) a., as amended, reads:

"(2)a. Plenary winery license. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any fermented wines, and to blend, fortify and treat wines, and to distribute and sell his products to wholesalers, retailers and to churches for religious purposes respectively licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be five hundred dollars. Upon the payment of an additional annual fee of one hundred dollars (\$100.00) the holder of this license shall have the right to sell on the licensed premise, wine at retail. All wines sold at retail by such licensee shall have attached thereto a label setting forth such information as shall be required by the rules and regulations of the Commissioner of Alcoholic Beverage Control."

Paragraph (2) b., as amended, reads:

"(2) b. Limited winery license. The holder of this license shall be entitled, subject to rules and regulations, to manufacture for sale any naturally fermented wines and fruit juices in a quantity dependent upon the following fees and not in excess of five thousand gallons per year and to be expressed in said license and to distribute and sell his products to wholesalers and retailers respectively licensed in accordance with this chapter and to consumers; provided, however, that such sale to consumers shall be made only for consumption off of the licensed premises and then only when the winery at which such naturally fermented wines and fruit juices are manufactured is located and constructed upon a tract of land owned exclusively by the holder of such limited winery license, which said tract of land shall have an area of not less than three acres and have growing and under cultivation upon said land at least twelve hundred grape vines; and provided, further, that such naturally fermented wines and fruit juices shall be manufactured only from fresh grapes or fruit grown in this State, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall

and
be graduated as follows: To so manufacture between twenty-five hundred and five thousand gallons per annum, two hundred dollars; to so manufacture between one thousand and twenty-five hundred gallons per annum, one hundred dollars; to so manufacture less than one thousand gallons per annum, fifty dollars."

It should be noted that the retailing privileges under the Limited Winery License may be granted only to an applicant who owns a tract of land comprising not less than three acres and having growing and under cultivation thereon at least 1200 grape vines and that the naturally fermented wines and fruit juices to be manufactured must be manufactured from fresh grapes or fruit grown in New Jersey.

E. W. GARRETT,
Acting Commissioner.

2. REGULATIONS NO. 32 - PLENARY WINERY LICENSES - ENDORSEMENT ON LICENSE CERTIFICATE OF RIGHT TO SELL WINE AT RETAIL - CONSUMPTION OF WINE ON LICENSED PREMISES PROHIBITED - COMBINATION SALES AND DISCOUNTS IN ALL FORMS ON RETAIL SALES FORBIDDEN (WHERE LICENSEE HAS RIGHT TO SELL WINE AT RETAIL) - LABEL REQUIREMENTS FOR RETAIL SALES.

REGULATIONS NO. 32

PLENARY WINERY LICENSES

(1) Whenever the holder of a plenary winery license qualifies for the right to sell wine at retail on the licensed premises, the license certificate shall thereupon be endorsed:

"This license permits the sale of wine, manufactured pursuant thereto, at retail on the licensed premises for off-premises consumption only, subject, however, to all the terms and conditions of said license."

(2) No plenary winery licensee whose certificate does not bear the endorsement referred to in Rule 1 hereof shall sell or allow, permit or suffer the sale of wine at retail upon the licensed premises.

(3) No plenary winery licensee shall allow, permit or suffer the consumption of wine on the licensed premises.

(4) No plenary winery licensee who has the right to sell wine at retail shall, directly or indirectly, sell or offer for sale any wine at retail for consumption off the licensed premises except at a specified price per container or specified price per case thereof, or both; "combination sales" of any kind, consisting of more than one article, whether it be an alcoholic beverage or something else, at a single aggregate price are prohibited.

(5) No plenary winery licensee who has the right to sell wine at retail shall, directly or indirectly, offer or furnish any gifts, prizes, coupons, premiums, rebates, discounts or similar inducements with the retail sale of wine to consumers for consumption off the licensed premises; provided, however, that nothing herein contained shall prohibit said licensee from furnishing advertising novelties of nominal value.

(6) Unless the container in which the wine is sold shall bear a label approved pursuant to the provisions of the Federal Alcohol Administration Act, each licensee holding a plenary winery license permitting sales at retail shall attach a label to each container in which wine is sold at retail, which label shall bear the brand name, type and alcoholic content of the wine stated in per centum of alcohol by volume within an accuracy of one per cent, net contents of the container, and name and address of the licensee.

(7) Violation of any of the foregoing rules shall constitute grounds for suspension or revocation of the license.

The foregoing rules are hereby promulgated, effective immediately.

E. W. GARRETT,
Acting Commissioner.

Dated: July 17, 1940.

3. REGULATIONS NO. 33 - LIMITED WINERY LICENSES - ENDORSEMENT ON LICENSE CERTIFICATE OF RIGHT TO SELL WINE TO CONSUMER - CONSUMPTION OF WINE ON LICENSED PREMISES PROHIBITED - COMBINATION SALES AND DISCOUNTS IN ALL FORMS ON RETAIL SALES FORBIDDEN (WHERE LICENSEE HAS RIGHT TO SELL WINE AT RETAIL) - LABEL REQUIREMENTS FOR RETAIL SALES.

REGULATIONS NO. 33

LIMITED WINERY LICENSES

(1) Whenever the holder of a limited winery license qualifies for the right to sell wine to consumers off the licensed premises, the license certificate shall thereupon be endorsed:

"This license permits sale of naturally fermented wines and fruit juices manufactured only from fresh grapes or fruit grown in New Jersey, to consumers for off-premises consumption, subject, however, to all the terms and conditions of said license."

(2) No limited winery licensee whose certificate does not bear the endorsement referred to in Rule 1 hereof shall sell or allow, permit or suffer the sale of wine upon his licensed premises to consumers for off-premises consumption.

(3) No limited winery licensee shall allow, permit or suffer the consumption of wine on the licensed premises.

(4) No limited winery licensee who has the right to sell wine to consumers shall, directly or indirectly, sell or offer for sale any wine to consumers for consumption off the licensed premises except at a specified price per container or specified price per case thereof, or both; "combination sales" of any kind, consisting of more than one article, whether it be an alcoholic beverage or something else, at a single aggregate price are prohibited.

(5) No limited winery licensee who has the right to sell wine to consumers shall, directly or indirectly, offer or furnish any gifts, prizes, coupons, premiums, rebates, discounts or similar inducements with the retail sale of wine to consumers for consumption off the licensed premises; provided, however, that nothing

herein contained shall prohibit said licensee from furnishing advertising novelties of nominal value.

(6) Unless the container in which the wine is sold shall bear a label approved pursuant to the provisions of the Federal Alcohol Administration Act, each licensee holding a limited winery license permitting sales to consumers for off-premises consumption shall attach a label to each container in which wine is sold to consumers for off-premises consumption, which label shall bear the brand name, type and alcoholic content of the wine stated in per centum of alcohol by volume within an accuracy of one per cent, net contents of the container, and name and address of the licensee.

(7) Violation of any of the foregoing rules shall constitute grounds for suspension or revocation of the license.

The foregoing rules are hereby promulgated, effective immediately.

E. W. GARRETT,
Acting Commissioner.

Dated: July 17, 1940.

4. SIGNS - RETAIL LICENSEE HOLDER OF FEDERAL WHOLESALE LIQUOR DEALER SPECIAL TAX STAMP MAY NOT DESIGNATE SELF AS WHOLESALER UNDER STATE LAW.

July 15, 1940

Carlo Wine & Liquor Co.,
Union City, N. J.

Gentlemen:

My attention is directed to a sign, approximately 12' in length and 3' in height, above the show window on the exterior of your premises, reading:

"Carlo Wine & Liquor Co.

Wholesale - Retail

Delivery Service Un 7-7077."

and to another sign on your show window adjacent to the entrance of your store in letters approximately 3" in height reading:

"Wholesale
Liquor
Dealer."

I understand that you are the holder of plenary retail distribution license No. 14 and of a Federal Wholesale Liquor Dealer Special Tax Stamp.

Federal law provides that

".....every wholesale liquor dealer, shall place and keep conspicuously on the outside of the place of such business a sign, exhibiting in plain and legible letters, not less than three inches in length, painted in

oil-colors or gilded, and of a proper and proportionate width, the name or firm of the.....wholesale dealer, with the words:.....'wholesale liquor dealer'Every person who violates the foregoing provision by negligence or refusal, or otherwise, shall pay a penalty of \$500."

While this section was apparently repealed by implication with the adoption on October 28, 1919 of the National Prohibition Act (Bender v. U.S., 93 F. (2nd) 814), it was reenacted by Title IV, Sec. 413 of the Liquor Tax Administration Act (26 USCA Sec. 2831), adopted June 26, 1936.

A wholesaler, under Federal law, is one who sells in quantities of five gallons or more to the same person at the same time. A retailer, under Federal law, is one who sells in quantities of less than five gallons to the same person at the same time. See Re Federal Wine & Liquor Co., Bulletin 198, Item 7. But you are not a wholesaler under State law notwithstanding that you hold a Federal Wholesale Liquor Dealer Special Tax Stamp. Under State law, a wholesaler is one who sells for purposes of resale and a retailer is one who sells to consumers. Under State law you are a retailer and, consequently, any unauthorized designation of yourself as a wholesaler is not permissible.

In order to comply with the Federal law, New Jersey retailers who also possess Federal Wholesale Liquor Dealer Special Tax Stamps may post on the exterior of the premises one sign "wholesale liquor dealer" in letters not greater than 3" in height and of proper and proportionate width.

No other reference to, or use of the terms "wholesale" or "wholesaler" is permissible, either on the exterior of the premises, or on the interior if visible from the street. It is an indirect advertisement of price leading the public to believe that merchandise is being offered at "wholesale" prices or at price reductions, and in violation of Rule 3 of Regulations No. 21 (Pamphlet Rules, page 67). See Re Sitkoff, Bulletin 390, Item 9; Re Frankfort, Bulletin 379, Item 11; Re Mutual, Bulletin 363, Item 6; Re Sawczuk, Bulletin 317, Item 9; Re Silverstein, Bulletin 293, Item 3; Re Schenley, Bulletin 264, Item 1; Re Giant Tiger, Bulletin 143, Item 12. It is, moreover, prohibited by Regulations No. 26 (Pamphlet Rules, page 70) that licensees shall use any name, sign or symbol which is calculated to, or may mislead the general public to believe the licensee is conducting any operations or business pertaining to alcoholic beverages other than the operations or business actually being conducted, at any time. See Re Felko, Bulletin 162, Item 3.

You are directed to remove the word "wholesale" from the exterior sign above your show window forthwith.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

5. APPELLATE DECISIONS - VARGA v. FRANKLIN TOWNSHIP.

ERNEST L. VARGA,)	
	Appellant,)
-vs-)	ON APPEAL
		CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF FRANKLIN (SOMERSET)	
COUNTY),)	
	Respondent)

John B. Molineux, Esq., Attorney for Appellant.
 Clarkson A. Cranmer, Esq., Attorney for Respondent.

Appellant appeals the denial of a seasonal retail consumption license for premises known as Varga's Picnic Grove on Clyde Lane, one-half mile south of Amwell Road.

Appellant's premises consist of a twelve acre tract, in part wooded and in part cleared. There is built thereon a one-story wooden frame building, forty by fifty feet, containing one room. The license is sought in order to cater to picnic groups, most of whom are expected to come from places outside the Township.

The Chairman of the Township Committee testified that the reason for denying the license was because neighboring residents objected. At the hearing before the Township Committee eighteen or twenty of these residents, who live within three-quarters of a mile of the premises, appeared and objected because the licensing of the premises would result in undue noise and disturbance. Some of these objectors testified at said hearing that the premises had been improperly conducted by another licensee under a seasonal retail consumption license issued for the summer of 1939. The Chairman of the Township Committee testified, at the hearing herein, that he had received many complaints of undue noise on Sunday nights. Mrs. Sunnit, whose land adjoins the grove, testified at the hearing herein, that during the summer of 1939 noise and singing at the grove often continued until midnight and that she had seen a number of intoxicated people at the grove, some of whom trespassed on her property. There is also some evidence that two other residents had altercations with patrons who were leaving the grove.

Moreover, fifteen plenary retail consumption licenses have been issued in the Township, which had a population of 5,675 according to the 1930 Federal census. These licenses seem to be sufficient to supply the needs of the residents of the Township. While the evidence as to misconduct under the prior license is not very strong, I find that it is sufficient to sustain the action of respondent, particularly in this case where appellant has not shown that public convenience and necessity require the issuance of an additional license.

The action of respondent is, therefore, affirmed.

E. W. GARRETT,
 Acting Commissioner.

Dated: July 11, 1940.

6. LICENSE APPLICATION HEARING - AREA ESSENTIALLY RESIDENTIAL - SUFFICIENT LICENSES IN VICINITY - LICENSE DENIED.

In the Matter of the Application)
of)
NELSON J. VAN DEUSEN,) CONCLUSIONS
for plenary retail distribution)
license for premises on the west)
side of Green Village Road, Green)
Village, Chatham Township, New)
Jersey.)
-----)

Frank J. Valgenti, Jr., Attorney for Applicant.

This application for a plenary retail distribution li-
cense has been filed with the Acting Commissioner because appli-
cant is a member of the Township Committee of the Township of
Chatham.

Written objections were filed to the issuance of the
license by two residents of the Township, who presented a peti-
tion containing twenty-five names. The petition recites that the
undersigned residents, voters and taxpayers of Chatham Township
object to the granting of the license "due to the fact that liquor
is sold in the general store nearby and one such store is suffi-
cient. Ours is also a moral objection."

Rule 3 of State Regulations No. 5 provides, in addition
to other requirements, that there shall be submitted a certified
copy of resolution adopted by the issuing authority of the muni-
cipality wherein the licensed premises are to be situated, setting
forth that said issuing authority has no objection to the issu-
ance of the license applied for and consents thereto and, fur-
thermore, is not aware of any circumstances or provisions of law
or ordinance which would prohibit the issuance of the license.
At a special meeting of the Township Committee of the Township of
Chatham held on June 27, 1940, it was moved and seconded that the
required resolution be adopted. Adoption of the resolution
failed because two Committeemen voted in favor and two against
its adoption.

Failure to present a copy of a favorable resolution
would be sufficient cause for denying the license if the refusal
of the local authority to approve the granting of the license was
based on reasonable grounds. Re Woodstown Lodge #932, Loyal Order
of Moose, Bulletin 107, Item 4; Cranford Veterans Holding Company,
Inc., Bulletin 126, Item 11.

Hearing was held herein in order to determine whether
the action of the Township Committee in refusing to pass a favor-
able resolution was reasonable. At said hearing, Committeeman
Churchill testified that he voted against the resolution because
of the location of the premises in question. He further testified
that, in his opinion, the premises are located in the midst of a
predominantly residential section; that, as a result of a personal
canvass, which he and Committeeman Bahooshian made of twenty-three
householders along Green Village Road, he found that the sentiment
was against the granting of the license; that there was no need
for an additional license at the premises in question because the

plenary retail distribution license in existence has been issued to one Botti, whose premises are approximately two hundred and fifty yards distant from Van Deusen's premises.

Committeeman Fountain, who also voted against the adoption of the resolution, has advised me that he so voted because, among other reasons, the premises are located in a residential area and because "in the more or less immediate vicinity of the location in question there is already an individual operating by virtue of having been granted a license in the same classification***."

Committeeman Bahooshian testified that the personal canvass which he made with Mr. Churchill disclosed that fifteen residents of the vicinity opposed and eight residents favored the granting of the license; that subsequently he learned that nine other persons who resided nearby had no objection, whereupon he voted in favor of the resolution.

Committeeman Brown testified that he voted in favor of the resolution because "the people around there seemed to feel there was no objection to it."

It does not appear that there is any provision of law or local ordinance which would prohibit the issuance of this license. There are two vacancies in the municipal regulation limiting the number of plenary retail distribution licenses which may be issued. Nevertheless, the character of the neighborhood and the location of the other licensed premises should be considered in determining whether this license should be issued. The evidence is sufficient to show that the neighborhood is essentially residential, although there are a few small business places located on Green Village Road. Considering the character of the neighborhood, the testimony of three objectors who appeared at the hearing, and the existence of the other licensed premises a short distance away, the action of the Township Committee in refusing to adopt a favorable resolution appears to be reasonable.

The application is, therefore, denied.

Dated: July 11, 1940.

E. W. GARRETT,
Acting Commissioner.

7. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application)	
to Remove Disqualification because)	
of a Conviction, Pursuant to)	CONCLUSIONS
R. S. 33:1-31.2 (as amended by)	AND ORDER
Chapter 350, P.L. 1938))	

Case No. 99.

Petitioner was convicted in February 1916 of assault with intent to kill, but was granted a full pardon later during that same year. In October 1923 he was convicted of disorderly conduct and fined \$25.00. In February 1935 he was convicted of operating a tavern as a disorderly house (viz., for purposes of prostitution) and fined \$250.00.

Without regard to the 1916 and 1923 convictions, petitioner's conviction in 1935 is for a crime which, as he himself admits, involves moral turpitude and hence disqualifies him, under R. S. 33:1-25 and 26, from holding a liquor license or working for a liquor licensee in this State. Re Case No. 289, Bulletin 346, Item 11.

Petitioner now applies, under R. S. 33:1-31.2 (as amended by L. 1938, c. 350), for removal of such disqualification on claim that he has been leading an honest and law-abiding life for at least the last five years.

Since his conviction in 1935 petitioner has, for the major part of the time, been working at various taverns in the State.

He testified it was only some two or three months ago that he first learned that he was disqualified from such work, the local Chief of Police then so advising him; that he thereupon ceased his employment at the tavern at which he was then working and consulted an attorney for the purpose of filing the present petition. When specifically asked whether he was in fact working at the tavern at the present time, he insisted that he had not worked there for six weeks prior to June 24, 1940, the date of hearing.

However, an investigator of this Department, sent out after the hearing to check on petitioner's story, found him actually tending bar at the tavern. When petitioner discovered the investigator's presence in the barroom, he immediately took to cover. The licensee of the tavern admitted to the investigator that petitioner had been working at the tavern continuously since the Chief of Police advised him that he was ineligible.

In view of petitioner's deliberate lying at the hearing, his petition must be, and is hereby, denied outright.

E. W. GARRETT,
Acting Commissioner.

Dated: July 12, 1940.

8. DISCIPLINARY PROCEEDINGS - FRONT - INDIVIDUAL HOLDING 50% OF STOCK IN CORPORATION DISQUALIFIED FOR LACK OF REQUIRED RESIDENCE - INDIVIDUAL NOW HOLDS LESS THAN 10% OF STOCK - LICENSE SUSPENDED 30 DAYS.

In the Matter of Disciplinary)
Proceedings against)

SILVER PALM CORPORATION,)
T/a "Silver Palm",)
1201-5 Kingsley Street,)
Asbury Park, N. J.,)

Holder of Plenary Retail Consump-)
tion License No. C-50 for the)
licensing year expiring June 30,)
1940, and now holder of Plenary)
Retail Consumption License)
No. C-50 for the current (1940-41))
licensing year, issued by the)
Board of Commissioners of the)
City of Asbury Park.)

CONCLUSIONS
AND ORDER

Durand, Ivins & Carton, Esqs., by Robert V. Carton, Esq.,
Attorneys for Defendant-Licensee.
Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic
Beverage Control.

The defendant, a corporation, pleads non vult to the charge of falsely stating in its application for its 1939-40 plenary retail consumption license that Miss Ervel Powers, then almost a 50% stockholder, was a 5-years' resident of New Jersey.

The purpose for such false statement in the application is evident. The Alcoholic Beverage Law provides (with certain exceptions here immaterial) that no corporation may obtain a retail liquor license unless all holders of more than 10% of its shares of stock are individually qualified under the statute to hold such a license. Since Miss Powers held more than 10% of the defendant's stock, its president, in executing its application for its 1939-40 license, apparently concealed the fact that she lacked the qualification of 5-years' residence in this State (R. S. 33:1-25) in order that the defendant might appear to be properly qualified for the license.

However, the defendant now shows that Miss Powers, after institution of this proceeding, actually sold and conveyed away all but 8-1/3% of her stock and that hence the defendant's disqualification to have a retail liquor license is thus corrected and removed. Such conveyance has been carefully scrutinized and, from the evidence, I am satisfied that it is actual and bona fide.

In view of the defendant's frank and full admission of guilt and the correction as to its disqualification, I shall, therefore, not revoke its license outright. Nevertheless, since the defendant apparently (and successfully) engineered a deliberate scheme to procure its 1939-40 license when actually disqualified, a substantial penalty is clearly indicated. Hence, its license will be suspended for thirty days.

Although this proceeding was instituted during the last licensing term (which expired June 30, 1940), it does not in anywise abate but remains fully effective against the defendant's renewal license for the current (1940-41 term. State Regulations No. 15; Re M.F. Tavern, Inc., Bulletin 407, Item 1.

Accordingly, it is, on this 12th day of July, 1940,

ORDERED that Plenary Retail Consumption License No. C-50 for the current (1940-41) licensing year, heretofore issued by the Board of Commissioners of the City of Asbury Park to Silver Palm Corporation, t/a "Silver Palm", for 1201-5 Kingsley Street, Asbury Park, be and the same is hereby suspended for a period of thirty (30) days, commencing at 5:00 A.M. (Daylight Saving Time) Monday, July 15th, 1940.

E. W. GARRETT
Acting Commissioner

9. COURT DECISIONS - NEW JERSEY SUPREME COURT - SOUTH JERSEY
RETAIL LIQUOR DEALERS ASSOCIATION et als v. D. FREDERICK BURNETT,
COMMISSIONER, et als.

NEW JERSEY SUPREME COURT

South Jersey Retail Liquor Dealers)
Association, Charles Brodsky, trad-)
ing as Central Liquor Company, and)
Michael Kouvata,)
Prosecutors-Appellants)
v.)
D. Frederick Burnett, Commissioner)
of Department of Alcoholic Beverage)
Control of the State of New Jersey,)
Victor H. Potamkin and Municipal)
Excise Board of the City of Camden.)
Respondents-Appellees.)
.....)

Submitted May 1940; decided July 15, 1940.
On rule to show cause why certiorari should not issue.
Before Brogan, Chief Justice, and Justices Parker and Perskie.
For the rule: Meyer L. Sakin.
Contra: E. J. Dorton, for the State Commissioner;
Carl Kisselman, for the Camden Board.

The opinion of the court was delivered by
PERSKIE, J. This matter is before us on the return of
an order to show cause why a writ of certiorari should not issue

to review a decision of the late Commissioner of the Department of Alcohol Beverage Control reversing the judgment of the municipal excise board of the City of Camden which body had refused to transfer the plenary retail consumption license to respondent Victor H. Potamkin.

In order clearly to understand the circumstances giving rise to the instant litigation it is necessary at the outset briefly to summarize certain provisions of the alcoholic beverage laws of this State. R. S. 33:1-1, et seq. This legislation divides liquor licenses into five separate classifications (R.S. 33:1-9) one of which is known as "Class C--Retailers' License". "Class C" is itself subdivided also into five separate classifications. One of these subdivisions is known as a "Plenary retail consumption license", (R. S. 33:1-12.1) and another is known as a "Plenary retail distribution license" (R. S. 33:1-12.3 (a)). The "plenary retail consumption license" entitles the licensee, inter alia, "to sell for consumption on the licensed premises any alcoholic beverages by the glass or other open receptacle, and also to sell alcoholic beverages in original containers for consumption off the licensed premises * * *." The "plenary retail distribution license", on the other hand, merely entitles the licensee, inter alia, "to sell any alcoholic beverages for consumption off the licensed premises, but only in original containers * * *." With this distinction between these two types of licenses in mind we turn to the facts of the instant case.

Respondent Potamkin filed an application with the municipal excise board of the City of Camden for a transfer to himself of plenary retail consumption license No. C-71, for premises 710 Broadway, Camden, N. J. The license had previously been issued to one William W. Ewing for premises 1251 Mechanic Street, Camden, N. J. Prosecutors protested the granting of the transfer and a hearing was held during which testimony was taken. It developed at this hearing that although respondent's application was for a plenary retail consumption license, he did not intend to sell any liquor for consumption on the premises as he would have been entitled to under his license. As a matter of fact, at the time of the hearing before the board in Camden, respondent's lease prevented his selling liquor to be consumed on the premises. Testimony was also adduced at this hearing concerning, among other things, the number of stores in the vicinity of respondent's property. The board denied the transfer, not because of an over-abundance of stores in the vicinity, but rather because respondent was not going to sell liquor to be consumed on the premises. In short, the board's theory was that respondent intended to operate under a plenary retail distribution license although he applied for a transfer of a plenary retail consumption license.

An appeal was taken from the ruling of the board to the Commissioner of Alcoholic Beverage Control. R. S. 33:1-22. Prosecutors here attempted to support the ruling of the board upon the grounds (1) that respondent here was attempting to circumvent an ordinance of the City of Camden limiting the number of plenary retail distribution licenses; and (2) that there were sufficient plenary retail consumption licenses in the section of the city to which the transfer was sought. The Commissioner ruled against the present prosecutors upon both grounds and directed that the transfer be granted as requested.

The present prosecutors then applied for and obtained a rule to show cause why a writ of certiorari should not issue. The rule contained a provision granting leave to the parties to take depositions. Pursuant to this provision, depositions were

taken, disclosing that respondent had obtained leave from his landlord to sell liquor for consumption on the premises, and that he intended to do so. The admissibility of this evidence is questioned by prosecutors, but our view of the cause renders unnecessary any decision on this phase of the matter.

We agree entirely with the view taken by the learned deceased Commissioner. The holder of a plenary retail consumption license may sell liquor in its original package, and he may also sell for consumption on the premises. He may choose to do one, or the other, or both. The municipal board was not justified in refusing the transfer merely because respondent admitted he did not intend to avail himself of all the privileges conferred by the license he held.

Nor do we think, after a careful consideration of the evidence that the transfer should have been denied because of the existence of too many liquor stores in the vicinity of prosecutor's premises. The municipal board itself, whose judgment in such matters is entitled to great weight, observed that there was not much congestion in the neighborhood of respondent's store. We concur in that finding.

We are, moreover, entirely satisfied that the action of the Commissioner in directing the issuance of the transfer was entirely proper. The power so to do is expressly conferred by statute. R.S. 33:1-38.

We have examined all other points argued and perceive no fairly debatable question.

Accordingly, the rule to show cause is discharged, with costs.

10. DISCIPLINARY PROCEEDINGS - PENALTIES - POSTPONEMENT - CONSIDERATIONS APPLICABLE.

In the Matter of Disciplinary Proceedings against

SILVER PALM CORPORATION,
t/a "Silver Palm",
1201-5 Kingsley Street,
Asbury Park, New Jersey,

Holder of Plenary Retail Consumption License No. C-50 for the licensing year expiring June 30, 1940 and now holder of Plenary Retail Consumption License No. C-50 for the current (1940-41) licensing year, issued by the Board of Commissioners of the City of Asbury Park.

ON PETITION FOR CLEMENCY

CONCLUSIONS.

Petitioner, Pro se.

On July 12, 1940 I suspended the defendant's license for its restaurant-and-tavern in Asbury Park for thirty days commencing 5:00 A.M. Monday, July 15, 1940, after finding that the defendant falsely stated in its application for its 1939-40 license that one of the then holders of more than 10% of its stock was a five-years resident in New Jersey when in fact that holder was not.

Such heavy penalty was imposed because the defendant was, by reason of the fact that such stockholder was not a five-years resident of the State, actually disqualified from obtaining its 1939-40 license and because the defendant had, therefore, deliberately misrepresented that the stockholder was a five years resident of the State in order to make the defendant appear qualified. The defendant escaped revocation of its license only because it frankly admitted its guilt and because the situation as to the defendant's disqualification was actually corrected. See Re Silver Palm Corp., Bulletin 417, Item 8.

The defendant has now filed a petition for postponement of at least the last twenty-five days of the suspension until October or later, claiming that inclement weather has spoiled most of the summer season thus far in Asbury Park; that the defendant, if compelled to serve the full suspension in the remainder of the season, will lose so much of the season that its business will become bankrupt.

As was said in Re Jay's, Bulletin 318, Item 10 (also involving an Asbury Park licensee):

"Suspensions are imposed not to destroy a licensee but to teach him that the law is made to be obeyed and to deter others from violations. The period of suspension is not to be chosen by the licensee any more than its length. It is not to be imposed on any principle that the timing should be when the punishment would hurt him the least. That would be but an idle gesture. It is only when the shoe pinches that the homework becomes effective. No lesson is learned unless it impresses. Therefore; on general principles, the fact that the suspension happens to bear onerously is a mere rub of the green which licensees, penalized for violations, will have to take in stride.

"There is, however, this to be said for the petitioner: The season at Asbury Park is but fourteen weeks. . . ."

In that case it was ruled, among other things, that the last five days of a forty-day suspension be postponed from June 20 until after Labor Day because serving such five days during the summer would be unduly harsh upon the licensee.

So too in the instant case, taking cognizance of the fact that the warm months constitute the major season in Asbury Park and that such season has heretofore been burdened with much bad weather, I shall, in fairness to the defendant, grant its petition and postpone the last twenty-five days of its suspension. However, I shall not, as the defendant desires, postpone these twenty-five days until October or later. Just as a suspension in the midst of the warm months would here be unduly harsh upon the defendant, so, by complement, a suspension during the cool months would, in large measure, be nugatory. Hence I shall postpone the said twenty-five days until the Monday after Labor Day, when, presumably, the defendant's business will be neither at its seasonal high nor at its lowest ebb.

Accordingly, it is, on this 19th day of July, 1940,

ORDERED that the thirty-day suspension heretofore imposed in this case and already in effect since 5:00 A.M. (Daylight Saving Time) July 15, 1940, shall continue to run until five days of such suspension have been served, and that the remaining twenty-five days be hereby postponed until 5:00 A.M. (Daylight Saving Time) Monday, September 9, 1940.

E. W. GARRETT
Acting Commissioner

11. DISCIPLINARY PROCEEDINGS - BRAWL - CHARGE DISMISSED.

In the Matter of Disciplinary)
Proceedings against)

THE HI-SPOT CORP.,)
173 West Kinney Street)
Newark, New Jersey)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Con-)
sumption License C-230, issued)
by the Municipal Board of)
Alcoholic Beverage Control of)
the City of Newark.)

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Charles Basile, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

William C. Egan, Esq., and
Samuel H. Lohman, Esq., Attorneys for the Licensee.

The following charge was brought against this licensee:

"On or about May 30, 1940, you allowed,
permitted and suffered a brawl and
disturbance in and upon your licensed
premises in violation of Rule 5 of
State Regulations No. 20."

The testimony of the complaining witness showed that on the day in question, she was sitting at a table in the rear room of the tavern with one "Buster". A quarrel ensued between them which was quelled by the bartender, who evicted "Buster" from the premises. She then proceeded to the bar, remained there about half an hour, and then left. She returned to the tavern later and took a seat at the bar. With respect to the brawl, she testified, on her direct examination:

"I was sitting at the bar and while sitting there talking, Buster walked behind me and hit me, and the next thing I was standing outside on the opposite corner talking to the radio cops."

And on cross-examination:

"Q You were not given any warning before you were hit at all?

A No.

Q He just came up and hit you?

A That is right.

Q You didn't even see him before he struck you?

A No. I didn't even know he was in the place."

The only other witness for the Department, who apparently arrived at the tavern immediately after the altercation, testified:

"Well, when I came in there was a big crowd at the end of the bar and quite a disturbance going on; so I went to see what it was, and Miss ----- was on the floor and looked like she was unconscious; she had her eyes closed. I said to Pop, 'Why don't you do something about it?' He was trying to get through the crowd. He said, 'I am trying to stop the disturbance.' I got excited and said, 'I will call the cops' and ran to the telephone booth and called the cops. I left after I called up the cops."

Such testimony falls short of that necessary to prove that the licensee "allowed, permitted and suffered" the brawl on the licensed premises. There is nothing to show that the bartender tolerated the brawl or was in any wise neglectful in failing to prevent its occurrence. In this status of the record, it is evident that the Department has failed to carry the burden of proving the charge preferred against the licensee.

Accordingly, the proceedings are dismissed.

E. W. Garrett

Dated: July 24, 1940.

Acting Commissioner