

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

BULLETIN 535

NOVEMBER 5, 1942

1. REFERENDUM (R. S. 33:1-47.1) - SPECIFIED HOURS FOR SUNDAY SALES -
EFFECT OF AFFIRMATIVE OR NEGATIVE VOTE.

October 22, 1942

Barney Asarnow, Esq.,
Newark, N. J.

Dear Mr. Asarnow:

I have yours of October 10th concerning the contemplated referendum on hours of Sunday sale of alcoholic beverages in Warren Township. According to your letter, the question which will be submitted to the voters on November 3rd is as follows:

"Shall alcoholic beverages be sold on the Sabbath Day, commonly called Sunday, between the hours of 2 o'clock a.m. and 12 o'clock noon in this municipality?"

You state that the petition requesting the referendum was presented to the Township Committee on October 3rd, and that the Committee's resolution pursuant to the petition was not received by the County Clerk until Monday, October 5th, twenty-nine days before the general election date, whereas the statute requires that it be delivered not less than thirty days prior to the election. R. S. 33:1-47.1. Further, the County Clerk has determined to place the question on the ballot, considering that since the thirtieth day fell upon a Sunday, receipt by him on the following Monday was sufficient compliance.

I shall not presume to pass upon the legality of the resolution's certification. As you know, the decisions are far from agreement in this matter. I would refer you, however, to at least one New Jersey case, similar on its facts to the instant situation, wherein it was held that if the last day of the thirty prior to the election falls on Sunday, such a (nominating) petition may be filed on the next succeeding business day. In Re Manning, 35 N.J.L.J. 369.

It would likewise be improper for me to rule on the effect of applying R. S. 19:3-6 to the proposition proposed to be submitted in November. That section reads in part:

"Any public question voted upon at an election shall be presented in simple language that can be easily understood by the voter. The printed phrasing of said question on the ballots shall clearly set forth the true purpose of the matter being voted upon."

Quite another question is the effect of an affirmative or negative vote on the proposition to be submitted, assuming the legal sufficiency of the twenty-nine days and of the proposition's phrasing. To state my views in this regard will be entirely in order.

The statute (R. S. 33:1-47.1) under which this referendum is to be held sets forth the precise effect of an affirmative or negative vote. If the vote is affirmative "thereafter the retail sale of alcoholic beverages may be made only within the hours fixed by such referendum"; if negative, "thereafter the hours between the

sale of alcoholic beverages at retail may be made may be regulated as theretofore in such municipality."

It is clear, therefore, that while an affirmative vote would fix the only permissible hours of Sunday sales and that the present regulation permitting other hours would be automatically superseded; yet, a negative vote would have no effect whatsoever on the existing regulations which would continue in force until altered, amended or repealed by the Township Committee. (See Re Deighan, Bulletin 363, Item 8; and he Paullin, Bulletin 365, Item 16).

In light of the present regulations in Warren Township and the language of the question to be submitted, it seems likely that unless the voters are informed otherwise, many of those meaning to vote for the question will be voting against it, and vice versa.

If the statements and comment herein are not sufficiently clear, please call upon us further.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS RECORD - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

RAYMOND F. CAMPBELL,
T/a CAMPBELL'S TAPROOM,
9 South Third Street,
Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-195, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Camden.

Edward R. Deibert, Esq., Attorney for Defendant-Licensee:
Abraham Merin, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleads not guilty to the following charge:

"At or about 12:20 P.M. on Sunday, May 17, 1942, he sold alcoholic beverages upon his licensed premises in violation of Section 5 of Ordinance concerning alcoholic beverages adopted by the Board of Commissioners of the City of Camden on December 27, 1934, which prohibits the sale of alcoholic beverages after 2:00 A.M. on Sundays."

On Sunday, May 17, 1942, at about 12:20 P.M., investigators of the Department of Alcoholic Beverage Control observed a man enter the defendant's licensed premises empty-handed and thereafter leave the premises with a package under his arm. They stopped the man and found that he was carrying a bottle of Camden Pilsener Beer, wrapped

in a paper wrapper. A few minutes earlier they had stopped another man, who came from the licensed premises carrying a package, which, upon investigation, was found to contain two bottles of Ortlieb's Bock Beer. The wrappings of both packages were identical. In both cases the bottles of beer were ice cold. One of the investigators then went to the side door of the premises, pressed a buzzer and was admitted by the licensee. Shortly after his entrance, another man pressed the buzzer and, upon gaining admission, informed the investigator that he wished to purchase some wine.

Defendant contends that he never sold any beer on the date in question, but admits that he had the two brands of beer heretofore mentioned on ice in his licensed premises. He also contends that he was in the licensed premises only to wash beer glasses and generally clean up the place and that he had been so engaged from 10:30 that morning.

It is true that there is no direct evidence of sale. Nevertheless, all of the facts surrounding this case must be considered. The fact that the investigators found paper wrapping in the premises which corresponded exactly with the paper wrapped around the beer carried by the men they had stopped, plus the additional fact that the beer was ice cold, and the further fact that entrance was gained by others confidently seeking to purchase alcoholic beverages by pressing a buzzer, lead me to conclude that defendant sold alcoholic beverages during prohibited hours.

I therefore find defendant guilty as charged.

I note that defendant has a previous record. In 1939 his license was suspended by this Department for a period of five days for a fair trade violation. Re Campbell, Bulletin 303, Item 3. In March 1942 his license was suspended by the Local Board for a period of three days, after he had pleaded guilty to a charge of selling alcoholic beverages on Sunday. In reviewing the Fair Trade violation, to which defendant also pleaded guilty, I find that there were mitigating circumstances. In that case the Commissioner was satisfied that the sale, which was made at two cents less than the minimum consumer price, was the result of a mistake. The only other violation of which defendant has been found guilty is the Sunday sale for which his license was suspended for three days. Under these circumstances, I am hesitant to apply the "three strikes and out" rule in this case. While I am satisfied that this licensee must be made to realize that he cannot repeatedly violate the law, I shall, because of the mitigating circumstances in the Fair Trade violation, give him one more chance instead of revoking his license. I shall, therefore, suspend defendant's license because of the violation set forth herein for a period of thirty days.

Accordingly, it is, on this 22nd day of October, 1942,

ORDERED, that Plenary Retail Consumption License C-195, heretofore issued to Raymond F. Campbell, t/a Campbell's Tavern, for premises 9 South Third Street, Camden, by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of thirty (30) days, commencing October 26, 1942, at 2:00 A.M. and terminating November 25, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - FALSE ANSWERS IN LICENSE APPLICATION - SUPPRESSION OF MATERIAL FACTS - PREVIOUS RECORD - 35 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary
Proceedings against

CAMDEN COUNTY ITALIAN
DEMOCRATIC CLUB,
345 Spruce Street,
Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-14,
issued by the Municipal Board of
Alcoholic Beverage Control of the
City of Camden.

Frank M. Lario, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant, a club licensee, pleads non vult to the following charges:

1. It sold alcoholic beverages on Sunday, July 12, 1942, during prohibited hours, in violation of Section 5 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934.

2. It falsely answered Question No. 36 in its application by stating that the club never held a license which was suspended.

The departmental record discloses that on Sunday, July 12, 1942, investigators of this Department entered the premises of the licensee and ordered beer. The President of the club, who was behind the bar, refused to sell to them. The investigators observed fourteen men drinking beer and playing cards. When interrogated, the President of the club said he had not sold the beer but had given it away.

As to charge (1): Where, as here, alcoholic beverages are given away by a licensee, such action constitutes a sale. See R. S. 33:1-1(w), which defines a sale to include "a gratuitous delivery or gift of any alcoholic beverage by any licensee."

As to charge (2): It clearly appears that defendant is guilty of falsely answering Question 36 in its application. In mitigation defendant stated that the application was filled out by an employee of the City of Camden, a non-member of the club. This is no excuse since it appears that the proper officers of the club signed and swore to the application.

Licensees must answer questions correctly and must realize that they will be held to strict accountability for any false statement in an application.

As to penalty: Club licensees must be brought to the realization that they are not privileged to dispense alcoholic beverages with a half-hearted attitude toward regulation. On the contrary, they must diligently observe the Rules and Regulations. See Re Eighth

Ward Progressive Club, Bulletin 514, Item 4. The usual penalty for Sunday sales by a club licensee is fifteen days' suspension of the license where it is a first offense. The defendant has a previous record. Its license was suspended for five days on March 9, 1942 by the local issuing authority for the same offense. In view of the fact that the defendant is a second offender, I will double the penalty and suspend the license for a period of thirty days on the first charge and will further impose a penalty of five days' suspension of the license on the second charge, making a total of thirty-five days, with a remission of five days for the plea.

Accordingly, it is, on this 22nd day of October, 1942,

ORDERED, that Club License CB-14, heretofore issued to Camden County Italian Democratic Club by the Municipal Board of Alcoholic Beverage Control of the City of Camden for premises 345 Spruce St., Camden, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 A.M. October 26, 1942, and concluding at 2:00 A.M. November 25, 1942.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF,
ACID AND SOLID CONTENT - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

ARROW COMMERCIAL CORPORATION,
169 Clinton Avenue,
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-834, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Newark.

Roy W. Harrington, Manager, for the Licensee.
William F. Wood, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

There was served upon the licensee a charge alleging that:

"On or about May 27, 1942 you possessed illicit alcoholic beverages in that you possessed one quart bottle labeled 'Hildick Old Fashioned Applejack Brandy 86 Proof', one quart bottle labeled 'Calvert Special Blended Whiskey 86.8 Proof', one quart bottle labeled 'Old Mr. Boston Distilled Dry Gin 90 Proof', one 4/5th quart bottle labeled 'Johnnie Walker Black Label Old Blended Scotch Whisky 86.8 Proof', one 4/5th quart bottle labeled 'Carta Blanca Rum Carioca Puerta Rican Rum 86 Proof', one 4/5th quart bottle labeled 'Haig & Haig, The Finest Blended Scots Whisky 86.8 Proof', one 4/5th quart bottle labeled 'Vat #69 Liqueur Blended Scotch Whisky 86 Proof' and one 4/5th quart bottle labeled 'Carta Ambar Puerta Rican Rum Ron Superior 89 Proof', the labels of which did not truly describe the contents thereof with respect to proof, and the solid and acid contents of

the first seven of which varied from the solid and acid contents of genuine samples similarly labeled used for comparative purposes; said possession being in violation of R. S. 33:1-50."

At the hearing agents of the Federal Alcohol Tax Unit testified that, on May 27, 1942, they seized the eight open bottles mentioned in the charge when they found the contents low in proof. Analysis made by Chemist Blakeley of the Alcohol Tax Unit disclosed that the contents of each bottle were substantially lower in proof and the contents of seven of these were slightly lower in acids and solids than the contents of genuine samples.

Roy W. Harrington, present manager of the hotel operated by defendant, testified that he became manager on May 26, 1942; that he could offer no explanation except that a porter, whom he subsequently discharged for inefficiency and insubordination, might have tampered with the liquor prior to the date of its seizure. The former manager of the hotel is now in the Army and could not appear to testify at the hearing.

I find defendant guilty as charged.

As to penalty: This is the licensee's first conviction. It operates a large chain of hotels throughout the United States and the present manager of its hotel in Newark states that he has taken steps to prevent repetition of this violation. In his analysis, the chemist expressed the opinion that the contents of each bottle had been diluted and stated that he found no denaturants. There appear to be no aggravating circumstances and, in the absence thereof, I shall impose the usual minimum suspension of ten days.

Accordingly, it is, on this 23rd day of October, 1942,

ORDERED, that Plenary Retail Consumption License C-834, heretofore issued to Arrow Commercial Corporation for premises 169 Clinton Avenue, Newark, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing November 4, 1942, at 2:45 A.M., and terminating November 14, 1942, at 2:45 A. M.

ALFRED E. DRISCOLL,
Commissioner.

5. ELIGIBILITY - FACTS EXAMINED - COMMERCIALIZED GAMBLING MAY OR MAY NOT INVOLVE MORAL TURPITUDE - APPLICANT DECLARED ELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

October 23, 1942

Re: Case No. 466

Applicant was convicted in January 1932, in a Special Sessions court of this State, of the crime of gaming, and fined \$200.00. His fingerprint record does not disclose any other conviction of crime.

This proceeding is to determine whether such conviction involves the element of moral turpitude and hence disqualifies applicant from engaging, or working, in the liquor business in this State. R. S. 33:1-25, 26.

Applicant testified that he accepted a proposal made by an acquaintance that he take charge of a horse race betting establishment in a community in which applicant had a wide acquaintance. The place was raided, after it had been opened a few weeks, and applicant arrested. He stated the reason he went into the venture was because he had been unemployed for some time. Applicant testified that the money to run the enterprise was furnished by his acquaintance who promised that his earnings would be substantial, but that actually he did not receive any pay because the place was raided before it could really get started.

Applicant appears to have been a small-time lieutenant rather than the master mind of this commercial gambling establishment. Hence, the crime of which he was convicted does not involve moral turpitude. Re Case No. 143, Bulletin 500, Item 6.

It is therefore recommended that applicant be advised that his conviction of the crime in question does not automatically disqualify him from holding a liquor license or working for a liquor licensee in this State.

Harry Castelbaum,
Attorney.

APPROVED: ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLEGAL PURCHASE OF STOLEN ALCOHOLIC BEVERAGES BY RETAIL LICENSEE FROM NON-LICENSEES -- POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES (NOT TAX-PAID) -- STORAGE BY RETAIL LICENSEE OF ALCOHOLIC BEVERAGES OFF THE LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-2 - 60 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

CECIL MYLOR;
343-21st Avenue,
Paterson, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-258 for fiscal year
1941-42, issued by the Board of
Alcoholic Beverage Control of the
City of Paterson, which license was
renewed for the current fiscal year
1942-43.

James D. Ward, Esq., Attorney for the Defendant-Licensee.

Abraham Merin, Esq., Attorney for the Department of

Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded not guilty to the following
charges:

"1. On or about April 14, 1942 you purchased alco-
holic beverages from a person not the holder of a New Jersey
manufacturer's or wholesaler's license nor pursuant to special
permit, in that you purchased nine cases of assorted wines
from Samuel De Rosa, Romaine A. Panicci and Nicholas J.

Von Atzingen, non-licensees, which wine had been stolen on April 13, 1942 from Frank Di Giacomo & Co. in Paterson, New Jersey; said purchase being in violation of Rule 15 of State Regulations No. 20.

"2. You failed, in violation of R. S. 54:45-1, to file with the State Tax Commissioner, within time, a report disclosing truly the alcoholic beverages distributed, transported, imported, purchased and sold by you during the month of April, 1942, in that you failed to report the purchase of nine cases of still wine on or about April 14, 1942 from Samuel De Rosa, Romaine A. Panicci and Nicholas J. Von Atzingen.

"3. You failed, in violation of R. S. 54:44-1, to pay, within time, to the State Tax Commissioner the amount of taxes due by reason of your purchase of nine cases of assorted wines from Samuel De Rosa, Romaine A. Panicci and Nicholas J. Von Atzingen, on which wine no tax had been paid by said persons at the time of its sale to you.

"4. On or about April 14, 1942 and on divers days subsequent thereto, you possessed illicit alcoholic beverages in that you stored in the cellar of the building at 343 Twenty-first Avenue, Paterson, New Jersey, nine cases of assorted wines on which the tax imposed by the laws of the State of New Jersey had not been paid, in violation of R. S. 33:1-50.

"5. On or about May 18, 1942 and on divers days prior thereto, you possessed alcoholic beverages with intent to sell the same not pursuant to and within the scope of your plenary retail consumption license, in that you stored keg beer in the cellar of the building at 343 Twenty-first Avenue, Paterson, New Jersey, off your licensed premises; said possession being in violation of R. S. 33:1-2."

Charge (1) alleges, in substance, that defendant purchased nine cases of wine from persons who were not licensed to deal in alcoholic beverages.

At the hearing, a detective attached to the Paterson Police Department testified that he questioned a number of individuals who were alleged to have stolen wine from a licensed winery in this State, and as a result of information obtained from them, brought defendant to police headquarters. The detective further testified that, at police headquarters, defendant stated that he had purchased wine from two men and placed it in his cellar; that one of the men was his bartender's brother, while the other one was unknown to him; that the licensee was detained at headquarters while detectives went to the licensed premises, where the bartender took them to the cellar and unlocked a compartment with a key which he obtained from in back of the bar; that in this compartment were nine cases of wine, later identified as part of the wine stolen from the winery.

An investigator of the Department of Alcoholic Beverage Control, assigned to the case, testified that a few days later, while at the licensed premises, the licensee pointed out to him the stairway by which the wine was brought into the cellar.

The licensee flatly denies that he purchased the wine or made the statements attributed to him by the detective and the investigator. He admits that the compartment in the cellar in which the

wine was found is under his control. He claims that the wine was stored in the compartment without his knowledge or consent and that he has no idea how it came to be there.

I see no reason to doubt the sworn testimony of the police detective and investigator. They have no apparent cause unjustly to accuse the licensee of making the statements in question. The licensee, in repudiating his previous statements, is obviously making a brazen effort to conceal the truth. This is an aggravating factor in the case.

I find that the licensee actually purchased the wine from non-licensees. The purchase, by a person licensed to sell alcoholic beverages at retail, of nine cases of wine at one time, and storage thereof in the cellar underneath his tavern, is sufficient in itself to raise a strong inference that such wine was intended for use in connection with the purchaser's licensed business. Nothing is here presented to overcome that inference. I therefore find licensee guilty as to charge (1).

The evidence shows that defendant, as was quite natural under the circumstances, did not report his purchase of the wine to the State Tax Commissioner or pay the tax thereon. Since the state tax was not paid, the wine constitutes an illicit alcoholic beverage. R. S. 33:1-1(i).

Hence I find defendant guilty as to charges (2), (3) and (4).

Charge (5) involves the storage by licensee of keg beer in his icebox in another compartment in the cellar. The licensed premises, as defined in the application for license, does not include the cellar. The licensee claims that in his application he inadvertently failed to include the cellar compartment in question. Nevertheless, it is a violation for a licensee to warehouse or store his alcoholic beverages off the licensed premises.

I therefore find the licensee guilty of the fifth charge.

As to penalty: Charges (1) to (4) involve one transaction whereby the licensee purchased wine, on which the tax had not been paid, from a non-licensee, and apparently on the basis of "no questions asked" as to the origin of the wine. This is a threefold infraction of the law, each of which is serious in itself.

These violations go to the very root of control. It is obvious that a retail licensee's stock of liquor must be legitimate in origin and purchased from a licensed dealer. Rule 15 of State Regulations No. 20, which requires that a retailer must purchase his liquor from a New Jersey manufacturer or wholesaler, or pursuant to a special permit, furnishes an effective method of checking the liquor in licensed premises. The licensee is not permitted to purchase even tax-paid liquor from any other source. In the instant case, the licensee purchased the wine from an unlawful source, under circumstances which make it difficult for me to believe that he did not at least suspect, if not actually know, that the vendors had obtained such wine illegitimately.

A substantial penalty will serve notice on retail licensees that it is not profitable to buy liquor from racketeers or hijackers, or from any source other than a manufacturer or wholesaler.

I would therefore be inclined to revoke the license in the instant case, if it were not for the fact that the licensee apparently has not been previously arrested, and has held a liquor license for over three years without any previous complaint as to his conduct

of the licensed business. Under these circumstances, I am of the opinion that a suspension of the license for sixty days on all charges will teach the licensee to obey the law.

I note that the licensee's possession of the wine resulted in his arrest on charge of receiving stolen goods. These criminal proceedings are now pending. If the licensee is convicted it may well be, since the crime of receiving stolen goods ordinarily involves moral turpitude, that he will thereby become disqualified from obtaining any liquor license thereafter. See R. S. 33:1-25. However, this question must await the actual outcome of the criminal proceedings.

Although this proceeding was instituted during the last licensing year which expired June 30, 1942, it does not abate but remains fully effective against defendant's renewal license for the current (1942-43) year. State Regulations No. 15.

Accordingly, it is, on this 22nd day of October, 1942,

ORDERED, that Plenary Retail Consumption License C-258, heretofore issued to Cecil Mylor by the Board of Alcoholic Beverage Control of the City of Paterson for the current fiscal year, for premises 343 - 21st Avenue, Paterson, be and the same is hereby suspended for a period of sixty (60) days, effective 3:00 A.M. October 27, 1942 and terminating 3:00 A.M. December 26, 1942.

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PREVIOUS RECORD - 20 DAYS' SUSPENSION - PERMITTING NUMBERS TICKETS TO BE WRITTEN AND SOLD ON LICENSED PREMISES, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 20 - 5 DAYS' SUSPENSION - TOTAL: 25 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

LOUIS ZALESKI,
1122 Mt. Ephraim Avenue,
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-76, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

William T. Cahill, Esq., Attorney for Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges alleging that:

"1. On Sunday, July 5, 1942, at about 2:00 P.M., and on Sunday, July 12, 1942, at about 4:00 P.M., you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages upon your licensed premises, in violation of Section 5 of an

ordinance concerning alcoholic beverages adopted by the Board of Commissioners of the City of Camden on December 27, 1934, which ordinance prohibits sale of alcoholic beverages after 2:00 A.M. on Sundays.

"2. On July 14, 1942 you allowed, suffered and permitted a ticket or participation right in a lottery to be sold and offered for sale on and about your licensed premises, in violation of Rule 6 of State Regulations No. 20."

The investigation file discloses that on Sunday, July 5, 1942, at about 2:00 P.M., an investigator of the Department of Alcoholic Beverage Control entered the side door of the licensed premises and purchased three bottles of beer. On July 12, 1942, at about 4:00 P.M., the same investigator entered the licensed premises and purchased a pint bottle of whiskey and two bottles of beer. On July 14, 1942, two other investigators of this Department visited the premises and requested the licensee to notify them "when the number man came in." Later, when a colored man entered, he was identified as the number man by the licensee. Both of the investigators and a son of the licensee placed small bets on the numbers with the colored man and received receipts from him. The Camden police were thereupon notified and the colored man was placed under arrest.

As to penalty: Licensee has a prior record. In April 1937 the local issuing authorities placed him on probation after he had pleaded guilty to a charge of selling to minors. Ordinarily, I would suspend the license for ten days on the first charge, but because of the prior record this penalty will be increased to twenty days. I shall suspend the license for an additional period of five days on the second charge. Re Lawson, Bulletin 448, Item 9. Five days of the total penalty of twenty-five days will be remitted for the guilty plea, making a net suspension of twenty days.

Accordingly, it is, on this 23rd day of October, 1942,

ORDERED, that Plenary Retail Consumption License C-76, heretofore issued to Louis Zaleski for premises 1122 Mt. Ephraim Avenue, Camden, by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of twenty (20) days, commencing October 28, 1942, at 2:00 A.M., and terminating November 17, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

8. APPELLATE DECISIONS - MULLEN v. LUMBERTON TOWNSHIP.

MYRTLE BANKS MULLEN,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF LUMBERTON,

Respondent

ON APPEAL
CONCLUSIONS AND ORDERWorth and Worth, Esqs., by Herbert L. Worth, Esq., Attorneys for
Appellant.Powell & Parker, Esqs., by Robert W. Criscuolo, Esq., Attorneys
for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of renewal of a plenary retail consumption license for the current fiscal year.

The resolution denying renewal contains, in substance, the following reasons:

(1) That on June 10, 1942 Myrtle Banks Mullen pleaded guilty in disciplinary proceedings conducted by respondent to charges alleging that, on April 12, 1942, she sold alcoholic beverages and kept her licensed premises open during prohibited hours in violation of a local ordinance; and

(2) That "this Committee has satisfied itself by personal investigation that the patrons of said premises are allowed to engage in loud and boisterous language at late hours and have engaged in fights on the said premises and the expressed attitude of the said licensee towards observance of the regulations promulgated in the aforesaid Ordinance and those of the Alcoholic Beverage Department has not been cooperative, but has been defiant."

As to (2): At the hearing herein the Township Clerk and the three members of the Township Committee were the sole witnesses produced on behalf of respondent. It does not appear from their testimony that any of them visited the licensed premises during the preceding fiscal year. There is meager, if any, testimony that patrons were allowed to engage in loud and boisterous language or that patrons engaged in fights on the licensed premises. On the other hand, appellant produced seven witnesses, who reside either above the licensed premises or in homes which are closely adjacent thereto. Each of these witnesses testified that the licensed business had always been conducted in a proper manner and without any annoyance to them. As to the expressed attitude of the licensee: One of the Township Committeemen testified that, about three years ago, he had spoken to her about a verbal complaint that she was permitting unnecessary noise and loud music upon her licensed premises and that she then said she thought she was capable of running her business. Appellant testified that, at the time of this visit, the Committeeman merely requested her to discontinue the use of an orchestra on Sundays and that she promptly complied with his request. The evidence is clearly insufficient to sustain the second reason alleged by respondent.

The case, therefore, is narrowed to a consideration of the question as to whether the action of respondent should be affirmed solely because of the admitted violation which occurred on April 12, 1942.

It is fundamental that a licensee is not entitled to renewal as a matter of right. Re Marritz, Bulletin 61, Item 8. It is clear also that respondent's refusal to renew the license is not a "new or additional or cumulative punishment" but merely an exercise of discretion which may, in some cases, be based on the same facts for which licensee has already been punished. Kaplan v. Newark, Bulletin 269, Item 6. The question remains, however, as to whether, in exercising its discretion, respondent herein acted in a reasonable manner.

Where the evidence shows that a licensee has improperly conducted his place of business over a period of time, or that the licensed business has been conducted in such a manner as to warrant the conclusion that the licensee is not a fit person to be engaged in the industry, the action of the issuing authority in refusing to renew the license has been upheld. White v. Bordentown, Bulletin 130, Item 4; Wellens v. Passaic, Bulletin 134, Item 4; Schelf v. Weehawken, Bulletin 138, Item 10; Brown v. Newark, Bulletin 146, Item 9; Buczek v. Piscataway, Bulletin 529, Item 7; Heistein v. Randolph, Bulletin 531, Item 7.

The present case is distinguished from the foregoing cases because it does not involve a course of conduct but, rather, a single violation committed by the licensee. Where a single violation involves immoral conduct, or flagrant and repeated unlawful acts, or where the evidence discloses that the licensee is frequently drunk, the natural inference is that he is unfit to hold a license. Re Orsi, Bulletin 552, Item 2; Clinton Ave. Liquor & Delicatessen Store Inc. v. Newark, Bulletin 521, Item 5; White v. Bordentown, supra.

The present case, however, does not come within any of the rulings previously set forth. After appellant had pleaded guilty on June 10, 1942, her license was suspended for ten days, effective June 15, 1942, to June 25, 1942. It appears that this single offense has been sufficiently punished and that this violation, which is the only one of which she has been found guilty during the seven years she has been a licensee, was not a sufficient reason for denial. As was said in Re Scull, Bulletin 276, Item 14:

"It is wholly within the sound discretion of the members of the Council whether any particular license should be renewed. *** Such discretion is properly exercised, however, on the basis of the previous conduct of the licensee, on what he has done, rather than arbitrarily on the mere fact, without more, of his having suffered a suspension. It all depends on the facts. If denial is not warranted, the renewal should be granted. If the offense warrants denial, then, of course, the renewal should be denied."

It is perhaps significant that when the disciplinary proceedings were before the respondent, the latter, by its imposition of a limited suspension, indicated that a revocation was not warranted.

I conclude from the evidence herein that the single violation did not warrant denial of renewal and that respondent acted in an unreasonable manner. On the record presented, it is necessary to reverse the action of respondent.

Accordingly, it is, on this 23rd day of October, 1942,

ORDERED, that respondent's action in denying appellant's application for a renewal of her plenary retail consumption license be and the same is hereby reversed; and it is further

ORDERED, that respondent issue forthwith to appellant a plenary retail consumption license for premises located at 24 South Main Street, Lumberton, New Jersey.

ALFRED E. DRISCOLL,
Commissioner.

9. ALIENS - ITALIAN NATIONALS PROHIBITED FROM SERVING, SELLING OR SOLICITING THE SALE OF ALCOHOLIC BEVERAGES - ITALIAN NATIONALS NOT ELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE EXCEPT PURSUANT TO SPECIAL PERMIT - HEREIN OF RULING BY ATTORNEY GENERAL BIDDLE.

October 21, 1942

Department of Alcoholic Beverage Control,
Newark, N. J.

Gentlemen:

I would appreciate having a ruling from you as to whether or not an Italian who has made application for his citizenship papers may work as a dispenser of alcoholic beverages.

In view of the recent ruling of Attorney General Biddle, I felt that same would be applicable to your Department also.

Very truly yours,
Philip L. Lipman

October 24, 1942

Philip L. Lipman, Esq.,
Vineland, N. J.

Dear Sir:

As I understand the recent ruling of Attorney General Biddle, Italian nationals, under ordinary circumstances, are not to be considered as "enemy aliens." However, the qualification of an individual under the provisions of the Alcoholic Beverage Law does not turn on whether or not he is an enemy alien but whether he is in fact an alien.

R. S. 33:1-25 provides that no license of any class shall be issued to any individual who is an alien. In Re McGuigan, Bulletin 228, Item 2, the Commissioner ruled that treaties which existed between the United States and certain foreign nations superseded, to the extent that they were applicable, the provisions of the New Jersey State Law. At that time a treaty existed between the United States and Italy. In 1939 that treaty was terminated. Re Woertendyke, Bulletin 304, Item 8. It follows that since 1939 an Italian alien has not been eligible to hold a liquor license or to be employed by a liquor licensee except pursuant to a special permit, which contains a provision that he shall not, in any manner whatsoever, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing

or bottling of any alcoholic beverages. R. S. 33:1-26. You will note, therefore, that even if an Italian national obtains a permit from this Department, he cannot act as a bartender.

The ruling of Attorney General Biddle does not, of course, confer citizenship upon Italian nationals. A person who has made application for citizenship papers does not thereby become a citizen. I must, therefore, rule that the individual to whom you refer may not work as a dispenser of alcoholic beverages until he receives his final papers.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, ACID AND SOLID CONTENT - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

ITALIAN KITCHENS, INC.,
191 Market Street,
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-833, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Newark.

Jacob S. Glickenhau, Esq., Attorney for Licensee.
William F. Wood, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty, with an explanation, to a charge
alleging:

"On or about May 13, 1942, you possessed illicit
alcoholic beverages in that you possessed one 4/5th quart
bottle labeled 'Canadian Club Blended Canadian Whiskey 90.4
Proof', one 4/5th quart bottle labeled 'The Blended Scotch
Whisky of the White Horse Cellar 86.8 Proof' and one quart
bottle labeled 'Calvert Special Blended Whiskey 86.8 Proof',
the labels of which did not truly describe the contents
thereof with respect to proof, and the solid and acid contents
of which varied from the solid and acid contents of genuine
samples similarly labeled used for comparative purposes; said
possession being in violation of R. S. 33:1-50."

Our file shows that, on May 13, 1942, agents of the Federal Alcohol Tax Unit tested forty opened bottles at the licensed premises and seized the three mentioned in the charges when they found the contents low in proof. Analysis made by Chemist Blakeley of the Alcohol Tax Unit disclosed that the contents of each seized bottle were substantially lower in proof and slightly lower in acids and solids than the contents of genuine samples.

On behalf of defendant, the manager of the licensed premises testified that she could offer no explanation as to violation except

that a bartender or porter may have tampered with the liquor. It is also alleged as a mitigating circumstance that the present stockholders of defendant corporation acquired control in April 1942 and that they are personally innocent. However, as was said in Re Moritko, Bulletin 490, Item 4,

"defendant *** cannot avoid responsibility or penalty even if, as he suggests, the bottle was merely a 'carry over' from his predecessor. This Department has been willing, on request, to check a tavern's open liquor stock for any licensee who is buying such tavern. Where such a purchaser elects to take over the open stock and fails to use this or other adequate means to test and weed out any possible illicit liquor, he must be viewed as necessarily assuming the risk if illicit liquor is subsequently found on his premises."

As to penalty: Defendant's record is clear except that, on May 26, 1942, its license was suspended for ten days after it had pleaded guilty to charges alleging that, prior to April 1942, it had acted as a front for a person disqualified as to residence. Re Italian Kitchens, Inc., Bulletin 513, Item 4.

The present stockholders were not involved in the previous violation. In view of that fact and the further fact that the prior violation is of such a dissimilar character, I conclude that the penalty to be imposed herein should not be increased because of the prior record. In his analysis of the seized liquor, the chemist expressed the opinion that the contents of each bottle had been diluted and stated that he found no denaturants. There appear to be no aggravating circumstances and, in the absence thereof, I shall impose the usual minimum suspension of ten days.

Accordingly, it is, on this 26th day of October, 1942,

ORDERED, that Plenary Retail Consumption License C-833, heretofore issued to Italian Kitchens, Inc., for premises 191 Market Street, Newark, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing November 4, 1942, at 2:45 A.M., and terminating November 14, 1942, at 2:45 A. M.

(Sgd.) J. E. Duse
Commissioner.

CHECKED BY No. 2