

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

BULLETIN 562

APRIL 19, 1943.

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DEPARTMENT OF AGRICULTURE  
WASHINGTON, D. C. 20250

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

BULLETIN 562

APRIL 19, 1943.

1. NEW LEGISLATION - DEPUTY COMMISSIONERS, ATTORNEYS AND LEGAL ASSISTANTS DESIGNATED BY COMMISSIONER MAY EXAMINE WITNESSES UNDER OATH - DEPUTY COMMISSIONERS, INSPECTORS AND INVESTIGATORS OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL AUTHORIZED TO TAKE ANY OATH OR AFFIRMATION OF ANY PERSON TO DEPOSITIONS, STATEMENTS, REPORTS OR APPLICATIONS REQUIRED IN THE ADMINISTRATION OF THE ALCOHOLIC BEVERAGE CONTROL LAW.

Assembly Bill No. 112 was approved by Governor Edison on March 27, 1943, and thereupon became Chapter 37 of the Laws of 1943.

It reads as follows (new matter is underlined):

"AN ACT concerning alcoholic beverages, and amending section 33:1-35 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-35 of the Revised Statutes is amended to read as follows:

"33:1-35. The commissioner and each other issuing authority may make, or cause to be made, such investigations as he or it shall deem proper in the administration of this chapter and of any and all other laws now or which may hereafter be in force and effect concerning alcoholic beverages, or the manufacture, distribution or sale thereof, or the collection of taxes thereon, including the inspection and search of premises for which the license is sought or has been issued, of any building containing the same, of licensed buildings, examination of the books, records, accounts, documents and papers of the licensees or on the licensed premises.

"Every applicant for a license, and every licensee, and every director, officer, agent and employee of every licensee, shall, on demand, exhibit to the commissioner or other issuing authority, as the case may be, or to his or its deputies or investigators, or inspectors or agents all of the matters and things which the commissioner or other issuing authority, as the case may be, is hereby authorized or empowered to investigate, inspect or examine, and to facilitate, as far as may be in their power so to do, in any such investigation, examination or inspection, and they shall not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever. Investigations, inspections and searches of licensed premises may be made without search warrant by the commissioner, his deputies, inspectors or investigators, by each other issuing authority and by any officer.

"For the purpose of any investigation, examination or inspection, revocation, rule to show cause and every other proceeding authorized under this chapter or appropriate for its enforcement, the commissioner, his deputy commissioners, attorneys and legal assistants designated to act on his behalf, and each other issuing authority may examine, under oath, any

and all persons whatsoever and compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers and documents of any person or persons and the commissioner, his deputy commissioners, inspectors and investigators and each other issuing authority may take any oath or affirmation of any person to any deposition, statement, report or application required in the administration of this chapter, or of any and all other laws now or which may hereafter be in force and effect concerning alcoholic beverages, or the manufacture, distribution and the sale thereof, or the collection of taxes thereon.

"The fees of witnesses required to attend before the commissioner or other issuing authority shall be the same as those allowed to witnesses in the Supreme Court.

"The above enumerations of purposes and powers shall not be construed as exclusive and shall not limit such power to investigate, examine and subpoena for any purpose consonant with the administration and enforcement of this chapter.

"If a person subpoenaed to attend any hearing refuses or fails to appear or to be examined, or to answer any question or to produce any books, records, accounts, papers and documents when ordered so to do by the commissioner, the commissioner or other issuing authority, as the case may be, may apply to the Supreme Court, or any justice thereof, who shall have the power of the court for that purpose, to make an order returnable in not less than two nor more than ten days, directing such person to show cause before the court or a justice thereof why he should not comply with the subpoena or direction or order of the commissioner or of the other issuing authority, as the case may be, and upon the return of such order the court or justice shall examine such person, under oath, and thereupon make such order as may be required, and any refusal or failure to obey such order of the court or such justice may be punished by said court or by said justice as a contempt of the Supreme Court.

"Each deputy commissioner shall have and exercise all the powers conferred by this chapter upon the commissioner to the extent that the same shall be delegated to him by the commissioner by rules and regulations.

"One of such deputy commissioners shall be designated by the commissioner with power to perform all of the duties of the commissioner in case of his absence or inability to act for any cause and who shall also have authority to so act in the event of the death of the commissioner until a successor has been appointed and qualified.

"2. This act shall take effect immediately."

2. NEW LEGISLATION - R. S. 33:1-25 AMENDED - FIVE YEAR RESIDENCE REQUIREMENT FOR RETAIL LICENSEES AND STOCKHOLDERS OF CORPORATE RETAIL LICENSEES NO LONGER REQUIRED - RETAIL LICENSEES AND PERSONS OWNING, DIRECTLY OR INDIRECTLY, MORE THAN TEN PER CENT (10%) OF THE STOCK IN CORPORATE RETAIL LICENSES (EXCEPT IN CERTAIN SPECIFIED CASES) REQUIRED TO BE CITIZENS OF THE UNITED STATES AND BONA FIDE RESIDENTS OF THE STATE OF NEW JERSEY AT THE TIME OF THE SUBMISSION OF THE APPLICATION - FORMER PROVISIONS OF R. S. 33:1-12.1 INTEGRATED AND INCORPORATED IN SUBSTANCE THEREIN.

Senate Bill No. 23 was approved by Governor Edison on March 27, 1943, and thereupon became Chapter 46 of the Laws of 1943.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-25 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-25 of the Revised Statutes is amended to read as follows:

"33:1-25. No retail license shall be issued to a natural person unless he is a citizen of the United States and a resident of the State of New Jersey at the time of the submission of the application. No license of any class shall be issued to any individual who is an alien; to any person under the age of twenty-one years; to any person who has been convicted of a crime involving moral turpitude; or to any person who has been twice convicted in a court of criminal jurisdiction of violation of this chapter. Cessation of United States citizenship or New Jersey residence shall be cause for the suspension or revocation of the license.

"No retail license shall be issued to any corporation, except for premises operated as a bona fide hotel, or for a business conducted or to be conducted by the corporation, as a tenant, at any airport owned or operated by the Federal, State, county or municipal government, unless each owner, directly or indirectly, of more than ten per centum (10%) of its stock qualifies in all respects as an individual applicant; provided, however, that retail licenses in effect on July fourth, one thousand nine hundred and thirty-five, and since renewed each year, issued to corporations comprising stockholders who would have failed to qualify as individual applicants, may be renewed as heretofore.

"In applications by corporations, except for club licenses, the names and addresses of, and the amount of stock held by, all stockholders holding one or more per cent (1%) of any of the stock thereof, and the names and addresses of all officers and of all members of the board of directors must be stated in the application, and if one or more of such officers or members of the board of directors would fail to qualify as an individual applicant in all respects, except as to citizenship, residence or age, no license of any class shall be granted.

"In applications for club licenses, the names and addresses of all officers, trustees, directors, or other governing officials, together with the names and addresses of all members of the corporation, association or organization must be stated in the application.

"In applications by partnerships, the applications shall contain the names and addresses of all of the partners. No license shall be issued unless all of the partners would qualify as individual applicants.

"A photostatic copy of all Federal permits necessary to the lawful conduct of the business for which a State license is sought and which relate to alcoholic beverages, or other evidence in lieu thereof satisfactory to the commissioner, must accompany the license application, together with a deposit of the full amount of the required license fee, which deposit to the extent of ninety per cent thereof shall be returned to the applicant by the commissioner or other issuing authority if the application is denied, and the remaining ten per cent shall constitute an investigation fee and be accounted for as other license fees.

"Every applicant for a license shall cause a notice of the making of such application to be published in a form prescribed by rules and regulations, once a week for two weeks successively in a newspaper, printed in the English language, published and circulated in the municipality in which the licensed premises are located; but if there shall be no such newspaper, then such notice shall be published in a newspaper, printed in the English language, published and circulated in the county in which the licensed premises are located. No publication shall be required with respect to applications for transportation or public warehouse licenses.

"Applicants for licenses shall answer such questions as may be asked and make such declarations as shall be required by the form of application for license as may be promulgated by the commissioner from time to time. All applications shall be duly sworn to by each of the applicants, except in the case of applicants in the military service of the United States whose applications may be signed in their behalf by an attorney-in-fact holding a power of attorney in form approved by the commissioner, and except in cases of applications by corporations which shall be duly sworn to by the president or vice-president. All statements in said applications required to be made by law or by rules and regulations shall be deemed material, and any person who shall knowingly misstate any material fact, under oath, in said application shall be guilty of a misdemeanor. Fraud, misrepresentation, false statements, misleading statements, evasions or suppression of material facts in the securing of a license are grounds for suspension or revocation of the license.

"2. This act shall take effect immediately."

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3. NEW LEGISLATION - R. S. 33:1-12.1 - CLASS C LICENSES - QUALIFICATIONS OF STOCK OWNERS - REPEALED.

Senate Bill No. 24 was approved by Governor Edison on March 27, 1943, and thereupon became Chapter 47 of the Laws of 1943.

It reads as follows:

"AN ACT concerning alcoholic beverages, and repealing section 33:1-12.1 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-12.1 of the Revised Statutes is repealed.

"2. This act shall take effect immediately."

4. NEW LEGISLATION - R. S. 33:1-39 AMENDED - COMMISSIONER AUTHORIZED TO PROMULGATE RULES AND REGULATIONS IN LIEU OF CHAPTER 171, P. L. 1939 REPEALED BY COMPANION LEGISLATION.

Assembly Bill No. 245 was approved by Governor Edison on April 8, 1943, and thereupon became Chapter 154 of the Laws of 1943.

It reads as follows (new matter is underlined):

"AN ACT concerning alcoholic beverages, and amending section 33:1-39 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-39 of the Revised Statutes is amended to read as follows:

"33:1-39. The commissioner may make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, in addition thereto, and not inconsistent therewith, and may alter, amend, repeal and publish the same from time to time.

"Such rules and regulations may cover the following subjects: Specification of duties of holders of any office, position or employment in the department of alcoholic beverage control; instructions for municipalities and municipal boards; all forms necessary or convenient in the administration of this chapter; tax paid, licensed vehicle and other insignia; inspections, investigations, searches, seizures, findings and such activities as may become necessary from time to time; hours of sale; sales on credit; sales to defectives and habitual drunkards; out-of-door sales; limitation of sales, limitation of the quantity to be sold to a consumer for off-premises consumption, unfair competition; racketeering; prostitution; solicitation; disorderly houses; criminals; disreputable characters; gambling, slot machines and gambling devices; control of signs and other

displays on licensed premises; use of screens; identification of licensees and their employees; employment of aliens, minors and females; storage; warehouses; transportation; health and sanitary requirements; standards of cleanliness, orderliness and decency; sampling and analysis of products; standards of purity and labeling; records to be kept by licensees and availability thereof; practices unduly designed to increase consumption of alcoholic beverages; gifts of equipment, products and things of value; and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this chapter.

"2. This act shall take effect immediately."

5. NEW LEGISLATION - P. L. 1939, CHAPTER 171 (R. S. 33:1-82 AND R. S. 33:1-83) REPEALED.

Assembly Bill No. 244 was approved by Governor Edison on April 8, 1943, and thereupon became Chapter 153 of the Laws of 1943.

It reads as follows:

"AN ACT to repeal 'An act concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes,' approved July eleventh, one thousand nine hundred and thirty-nine (P.L. 1939, c. 171).

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. 'An act concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes,' approved July eleventh, one thousand nine hundred and thirty-nine, is repealed.

"2. This act shall take effect immediately."

6. NEW LEGISLATION - R. S. 33:1-26 AMENDED - COMMISSIONER AUTHORIZED, IN HIS DISCRETION, TO ISSUE PERMITS TO NON-CITIZENS FOR UNLIMITED EMPLOYMENT BY LICENSEES.

Assembly Bill No. 245 was approved by Governor Edison on April 8, 1943, and thereupon became Chapter 152 of the Laws of 1943.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-26 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-26 of the Revised Statutes is amended to read as follows:

"33:1-26. All licenses shall be for a term of one year from the first day of July in each year. The respective fees for any such license shall be prorated according to the effective date of such license and based on the respective annual fee as in this chapter provided. Where the license fee deposited with the application exceeds such prorated fee, a refund of the excess shall be made to the licensee. Licenses are not transferable except as hereinafter provided. A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises. No retail license of any class shall be issued to any holder of manufacturer's or wholesaler's license, and no manufacturer's or wholesaler's license shall be issued to the holder of a retail license of any class. Any person who shall exercise or attempt to exercise, or hold himself out as authorized to exercise, the rights and privileges of a license except the licensee and then only with respect to the licensed premises, shall be guilty of a misdemeanor.

"In case of death, bankruptcy, receivership or incompetency of the licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the commissioner or other issuing authority may, in his or its discretion, extend said license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law as aforesaid. Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this chapter.

"On application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises, and after publication of notice of intention to apply for transfer, in the same manner as is required in case of an application for license as to said premises, the commissioner or other issuing authority may transfer, upon payment of a fee of five dollars (\$5.00), any license issued by him or it respectively to a different place of business than that specified therein, by indorsing permission upon such license.

"On application made therefor setting forth the same matters and things with reference to the person to whom a transfer of license is sought as are required to be set forth in connection with an original application for license, which application for transfer shall be signed and sworn to by the person to whom the transfer of license is sought and shall bear the consent in writing of the licensee to such transfer, and after publication of notice of intention by the person to whom the transfer of license is sought, to apply for transfer in the same manner as is required in the case of an original application for license, the commissioner or other issuing authority, as the case may be, may transfer any license issued by him or it respectively to such applicant for transfer by indorsing the license. Such application and the applicant

shall comply with all requirements of this chapter pertaining to an original application for license and shall be accompanied, in lieu of the license fee required on the original application, by a fee of ten per centum (10%) of the annual license fee for the license sought to be transferred, which ten per centum (10%) shall be retained by the commissioner or other issuing authority, as the case may be, whether the transfer be granted or not, and accounted for as other license fees.

"The action of the other issuing authority in granting or refusing to grant any application for a transfer of license to a different place of business or person shall be subject to appeal to the commissioner within thirty days from the date such action was taken.

"No person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee; but specialized technical workers, required in any business may, with the approval of the commissioner, and subject to rules and regulations, be employed although failing to qualify as to residence or citizenship. Persons failing to qualify as to age, residence or citizenship may, with the approval of the commissioner, and subject to rules and regulations, be employed by any licensee, but such employee, if disqualified by age, shall not, in any manner whatsoever serve, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage; and further provided, that no permit shall be necessary for the employment in a bona fide hotel or restaurant of any person failing to qualify as to age or residence so long as such person shall not in any manner whatsoever serve, sell or solicit the sale of any alcoholic beverage, or participate in the mixing, processing or preparation thereof.

"2. This act shall take effect immediately."

7. NEW LEGISLATION - AN EXPLANATORY STATEMENT - HEREIN OF THE COMMISSIONER'S REQUEST FOR CONSIDERATION OF THE LEGISLATION SET FORTH IN ITEMS 1 TO 6, INCLUSIVE, AND THE REASONS THEREFOR.

March 13, 1943

Hon. Vincent S. Haneman  
Chairman, Alcoholic Beverage Control Committee  
Trenton, N. J.

Dear Mr. Haneman:

The war is repeatedly confronting law enforcement agencies with new problems. This is particularly true within the field of alcoholic beverage control. These new problems have been many, varied, and frequently perplexing. We have literally been living on a week to week basis.

Within the past few days, two new problems have developed. The importance of these problems, in my opinion, warrants the consideration of the same by the Legislature of this State.

In 1939 the Legislature enacted Chapter 171, P. L. 1939, providing: "No retail licensee shall hereafter limit or restrict the maximum quantity of alcoholic beverages which he shall sell to a consumer in original containers for consumption off the licensed premises; \*\*\*." The only exception contained in the act was a provision that a retailer might refuse to sell beverages in a quantity in excess of that permitted by his Federal stamp.

In 1939 there was, if anything, an over-abundance of alcoholic beverages. Competition was unusually keen, and the legislation in question was properly passed to curtail certain abuses that had developed as a result of the use of "loss leaders" and the adoption of other unfortunate practices by retailers. The war brought an abrupt termination to the era of "too much."

Up until the past week, New Jersey has been able to maintain a rather orderly market notwithstanding the fact that available supplies have been materially reduced. This was in marked contrast to conditions prevailing in some of the other states, notably, for example, Pennsylvania. Within the past few days, however, there has been an increasing tendency on the part of residents of Pennsylvania, many of whom are reported to be tavern owners or interested therein, to come to New Jersey for the purpose of making substantial purchases from retailers in this State. It is rumored that stocks are depleted in Pennsylvania and that the tavern owners have sought to piece out their inventories by purchases in this State. These purchases may be made directly by the Pennsylvanians, or by a Jerseyman for the benefit of the former. With Chapter 171 on the books, this Department is almost powerless to protect the New Jersey retailer against a sudden depletion of his stock. We are likewise unable to protect the New Jersey consumer.

I am therefore requesting that the Legislature give immediate consideration to the repeal of Chapter 171. In making this recommendation, I am not unmindful of the fact that in the past this law has performed a meritorious service. During the brief period that I have been Commissioner, it has been one of my strongest weapons in our fight against destructive anti-social price wars. In view of this fact, and also because a few operators may seek to take advantage of its repeal by the adoption of unscrupulous practices, I am hereby requesting the Legislature to amend R. S. 33:1-39 to give the Commissioner the authority to control the subject by appropriate rules and regulations. It is truly important that the Commissioner have this authority.

I hesitate to make any public statement with respect to the general question of rationing within the field of alcoholic beverages, lest the public misunderstand the statement and assume that rationing is imminent and start stocking up. Ill-considered statements by Federal agencies on this subject have almost always been followed by an inordinate demand for the article, thereby making rationing necessary. I see no immediate reason why we should ration the sale of alcoholic beverages for off-premises consumption in this State. The fact does remain, however, that many states have been forced to adopt some rationing system for alcoholic beverages. Unless Chapter 171 is repealed and Section 33:1-39 amended, it is my present opinion that, irrespective of need, it would not be possible to adopt a rationing program in this State.

I am enclosing herewith, for the consideration of yourself and your associates on the Committee, and for the members of the Legislature generally, draft of repealer of P. L. 1939, Chapter 171, and

draft of amendment to Section 33:1-39 of the Revised Statutes.

The second of the two problems requiring immediate attention has developed as a result of the labor shortage.

The alcoholic beverage industry has, in my opinion very appropriately, been recently classified as a non-essential industry. It is entirely proper that able-bodied citizens who have heretofore been employed by licensees should seek employment wherever possible in war industries. On the other hand, this wholesome trend has confronted our licensees -- particularly the hotels -- with an acute personnel problem.

At the present time the law, R. S. 33:1-26 (except under certain circumstances hereinafter explained), prohibits licensees from employing non-residents and aliens. The law presently provides that "persons failing to qualify as to age, residence or citizenship may, with the approval of the Commissioner, and subject to rules and regulations, be employed by any licensee, but such employee, if disqualified by age or citizenship, shall not, in any manner whatsoever, sell or solicit the sale or participate in the manufacture, \*\*\* of any alcoholic beverages;\*\*\*."

In the past, the Federal Government has entered into certain so-called reciprocal trade treaties with a number of foreign governments. These so-called trade treaties have been construed to permit alien nationals of the countries involved to hold liquor licenses and to be employed by licensees notwithstanding the provisions of the Revised Statutes referred to above. Some of these trade treaties have been terminated. In any event, there is a great deal of confusion respecting the status of many aliens who are residents of New Jersey. The "accident of birth" has frequently resulted in unwarranted discrimination. For example, under the present law, a citizen of Canada, while he may be employed as a janitor by a licensee, may not be employed to sell, serve or manufacture alcoholic beverages. On the other hand, a national of Ethiopia may be employed in either capacity. The reason for this discrimination against our brothers to the North is because we have no trade treaty with Canada while, mirabile dictu, we do have one with Ethiopia! Likewise, a national of Spain, a "neutral" country, may presently be employed as a bartender, whereas a national of our friendly ally Australia may not be so employed.

Many of these non-citizens are presently not qualified by reason of their alienage for work in defense plants. They, therefore, constitute the labor market to which the hotels, restaurants, etc. must look to replace those lost to the production line.

Under the circumstances, I am recommending that the Legislature give immediate consideration to the amendment of R. S. 33:1-26 by the elimination of the words "or citizenship" in the portion of the section previously cited. For reasons of policy, which I would be perfectly willing to explain to the Committee or to the Legislature but which I do not feel warrant publication, I have retained the provisions requiring aliens to apply for a permit as heretofore. This will permit of a proper control. Incidentally, after the war, it will also afford our own citizens a degree of protection to which they are rightfully entitled.

Drafts of the proposed amendment to R. S. 33:1-26 are enclosed herewith.

I sincerely hope that you and your associates on the Committee will be as impressed as I am with the importance of the problems herein presented.

These bills are being submitted for consideration by the House of Assembly in the first instance, rather than by the Senate, because of my personal knowledge that the House, by reason of its larger membership, necessarily requires a longer period of time for the study of proposed legislation.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINOR IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

MORRIS L. ABRAMS  
322 Plainfield Avenue  
Plainfield, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-12, issued by the Common Council of the City of Plainfield.

Norman J. Abrams, Esq., Attorney for Defendant-Licensee.  
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded not guilty to the following charges:

"1. On or about December 19, 1942, and on or about December 22, 1942, you sold alcoholic beverages to Private Louis J....., a minor, in violation of R. S. 33:1-77.

"2. On or about the dates aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Private Louis J....., a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

On December 25, 1942 a brawl occurred on the premises of defendant-licensee. Upon investigation, however, it developed that the licensee was not to blame for this occurrence. One of the participants in the affray, a soldier who said he was nineteen years of age, admitted that beer had been served to him in the tavern on several previous occasions by an employee called "Steve."

At the hearing the alleged minor testified, rather reluctantly, that he had obtained beer upon the dates specified in the within charges. Corporal Robert P..... testified that he usually accompanied the alleged minor soldier to the licensee's premises. He

stated that on a few occasions beer had been served to both Private Louis J....., the alleged minor, and himself. The Corporal asserted that the dates specified in the charges were correct, but he stated he could not recollect the names of days of the week when the service had taken place.

On behalf of the defendant-licensee, the employce, Steve Waldron, whom Private Louis J..... and the Corporal accused of serving the alcoholic beverages, emphatically denied making a sale to the alleged minor. He recalled serving Corporal P.... a few times but stated he had never seen Private Louis J..... prior to Christmas Day. On that particular day, all witnesses were in agreement that no liquor had been served to Private Louis J..... The licensee acknowledged, however, that he served the alleged minor one time during December, 1942. He stated that the soldier informed him that he was twenty-seven years of age and he appeared to him to be that old. Officer Thomas Conshay of the Plainfield Police Department testified that when Private Louis J..... was arrested by him on Christmas Day he also told him that he was twenty-seven years of age.

The alleged minor denied that he was ever interrogated regarding his age. He testified that he was born in Baltimore, Maryland on May 30, 1923; his father's given name was Robert and the maiden name of his mother was Margaret Brown. A person is competent to testify to his own age, irrespective of the consideration that the fact of age is one of the essentials necessary to be established in order to constitute the crime charged. State v. Huggins, 83 L. 43; State v. Girone, 91 L. 498. Nevertheless, a certified copy of a birth certificate purporting to be a record of the birth of Private Louis J..... shows that a male child was born on May 30, 1923. The name of the father of this child corresponds with the name stated by Private Louis J.... There is a variance between the testimony of the alleged minor and the birth certificate relative to the maiden name of his mother. The testimony of the soldier shows that her maiden name was Margaret Brown, whereas the name of Margaret Robinson appears on the birth certificate. No given name of the child is shown on the birth record.

Despite the fact that the birth certificate is not complete in all details, there is no doubt that it is the birth record of Private Louis J..... The date of birth testified to by the soldier is in exact agreement with the date appearing on the certified copy of the birth record. Furthermore, the testimony and birth record agree as to the place of birth, the father's name and the mother's given name. Therefore, I conclude that Private Louis J..... was a minor of the age of nineteen years at the time alleged that alcoholic beverages were served to him by the defendant-licensee. Corporal P..... corroborated the testimony of Private Louis J.... that beer had been sold to him on divers occasions. Disregarding the probative value of all other testimony regarding the sale of beer to the minor, the Corporal's testimony is enough to convince me that Private Louis J....., the minor, had been served alcoholic beverages on several occasions. The licensee admitted serving the minor at one time during December 1942, the date of which he did not recall. Assuming, but not deciding, that the proof adduced at the hearing was not entirely clear as to the specific dates when service had been made, nonetheless, the time in the charges was purely formal and the defendant was in no wise prejudiced by the variation. State v. Lewandowski, 121 L. 612; also State v. Shapiro, 89 N. J. L. 322, wherein our Court of Errors and Appeals held that "where the date is not of the essence of the offense, it is not necessary to prove that it was committed on the date laid in the indictment." In addition thereto, the charges allege "on or about" certain dates. Where the

violation is alleged to have been committed on or about a certain date, proof of the commission of the violation on other days near the one stated is proper. Thompson v. United States, 285 Fed. 895.

Therefore, I find the defendant-licensee guilty as charged. In fixing the penalty, I shall take into consideration that no aggravating circumstances have attended this violation. I shall, therefore, impose the minimum of ten days for the sale to a minor. Re McGovern, Bulletin 559, Item 3.

Accordingly, it is, on this 12th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-12, heretofore issued by the Common Council of the City of Plainfield to Morris L. Abrams for premises 322 Plainfield Avenue, Plainfield, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A.M. April 14, 1943, and terminating at 2:00 A. M. April 24, 1943.

ALFRED E. DRISCOLL  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against  
MORRIS GOTTS  
T/a BLUE KITTEN CAFE  
1418 Baltic Avenue  
Atlantic City, N. J.,  
Holder of Plenary Retail Consumption License C-191, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS  
AND ORDER

Martin Bloom, Esq., Attorney for Defendant-Licensee.  
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleads non vult to charges alleging that on November 2, 1942 he possessed a quart bottle labeled "Clayton Distilled London Dry Gin", which contained alcoholic beverages which were not genuine as labeled; and that on February 8, 1943 he possessed six quart bottles and one 4/5 quart bottle, respectively, labeled "Park and Tilford Reserve Whiskey a Blend", "Three Feathers-The Aristocrat-Distilled London Dry Gin", "120 Bar Special Straight Rye Whiskey", "The Wilkin Family Blended Whiskey", "Hiram Walker's Straight Rye Whiskey", "Paul Jones XXXX Rye-a Blend of Straight Whiskies", and "Imperial Hiram Walker's Blended Whiskey", all of which bottles contained alcoholic beverages not genuine as labeled, such possession of the illicit liquor in both charges being in violation of R. S. 33:1-50.

It appears that on November 2, 1942 an investigator of the Department of Alcoholic Beverage Control, in the course of a routine inspection of the licensed premises, found a quart bottle of "Clayton Distilled London Dry Gin" which appeared to be low in proof. The bottle was seized, subsequently analyzed by the Department's chemist and found to be ten points under proof.

An Alcoholic Beverage Control investigator returned to the licensed premises on February 8, 1943. He again tested the contents of the open liquor bottles on the licensee's bar and found that the alcoholic beverages contained in six quart bottles and one 4/5 bottle were apparently under proof. A subsequent analysis by the Department's chemist disclosed that the seven bottles did not test the same as genuine liquor of the respective brands, indicating that the contents of such bottles were "refills."

The licensee contends that he has no knowledge of either of the alleged violations. He states that he is very seldom on the premises and entrusts the operation of the business to his two bartenders. Despite lack of personal participation in the violations, a licensee must be held to strict accountability for any "refills" found in his liquor stock. Re Kurian, Bulletin 517, Item 2.

In the instant case the number of bottles containing illicit liquor indicates either a complete lack of proper supervision or deliberate chiseling. I shall suspend his license for a period of twenty days.

Accordingly, it is, on this 12th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-191, heretofore issued by the Board of Commissioners of the City of Atlantic City to Morris Gotts, t/a Blue Kitten Cafe, for premises 1418 Baltic Avenue, Atlantic City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 A. M. April 16, 1943, and concluding at 12:01 A. M. May 6, 1943.

ALFRED E. DRISCOLL  
Commissioner.

10. APPELLATE DECISIONS - REID v. WALL TOWNSHIP.

HARRY J. REID, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF WALL, )  
Respondent )  
- - - - - )

ON APPEAL  
CONCLUSIONS AND ORDER

W. Durward McCloskey, Esq., Attorney for Appellant.  
Elvin R. Simmill, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located at 737 River Road Drive, in the Township of Wall.

Respondent asserts that the application was properly denied because the neighborhood in question is residential, a substantial number of the residents objected to the issuance of the license, and that existing licensed places within the Township adequately service the demands of the community.

Appellant has held consumption licenses issued by the appropriate authorities in Dunellen, Brielle and Lakewood. No question has been raised as to his personal qualifications to hold a license, or with respect to the manner in which he conducted his business under his prior licenses in the municipalities mentioned.

Respondent Township is an extensive rural community with a population, as disclosed by the 1940 census, of 4,383. As of July 1, 1942, eleven consumption licenses had been issued in the Township. The neighborhood in which appellant seeks to locate a consumption license is almost entirely residential in character. Apparently a substantial number of these dwellings are occupied as summer homes. The particular property leased by appellant, and for which he seeks a license, is a large private residence. Following the death of the previous owner, this property has been variously used, during the last two years, as a restaurant and rooming house. The issue on an appeal from the denial of an application for a consumption license is not to be confused with the issues raised on an appeal from a revocation of a license, or the refusal to grant a transfer, or the refusal to grant an application for the renewal of a license. The question to be decided on this appeal is whether the application was denied in the reasonable exercise of a proper discretion and in good faith. Within the State of New Jersey no one has a right to demand a license. A license to sell alcoholic beverages is a special privilege granted to the few and denied to the many. In Paul v. Gloucester County, 50 N. J. L. 585, 596, the Court of Errors and Appeals, in an opinion delivered by Mr. Justice VanSyckel, stated:

"We will probably, \*\*\* be led into error, if we reason upon this subject, as we may in respect to those pursuits which are open to all upon the mere payment of a license fee."

The observation of Mr. Justice VanSyckel made in 1888 in the Paul case, supra, applies with full force today.

When the appellant was asked for his opinion as to whether there was any necessity for the establishment of an additional place licensed to sell alcoholic beverages, he replied: "Yes, I think so; I am pretty sure." Appellant subsequently elaborated this statement by adding: "It (referring to the premises for which license is sought) is in a good location. I have lots of customers from Asbury and Belmar." It does appear from the testimony that the highway upon which the premises in question are located is a busy one and is used by a substantial proportion of those traveling between Camp Evans, Belmar, Asbury Park and Long Branch. This testimony, however, standing alone, and without more, does not warrant a reversal of the decision below.

In view of the character of the neighborhood, the objections of the residents therein as disclosed by the record on appeal, and the existence of a sufficient number of licensed premises to supply the demands of the community, it cannot be said that the denial of the appellant's application was unreasonable. Herrman v. Landis Township, Bulletin 88, Item 1; Welstead v. Borough of Matawan, Bulletin 133, Item 2.

The Alcoholic Beverage Law, except in certain cases not here important, vests in the governing board or body of each municipality the responsibility for administering the issuance of retail consumption licenses within their respective municipalities. R. S. 33:1-19. The Law provides further, R. S. 33:1-24, that the local municipality shall "enforce primarily the provisions of this chapter (Alcoholic Beverage Law) and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses; \*\*\*." The decision of a local issuing authority denying an application for a new license should not be reversed in the absence of clear and convincing proof that the decision below was arbitrary or unreasonable.

The appellant has not shown that the action of respondent was arbitrary and contrary to the best interests of the community at large, or motivated by anything but an honest and sound exercise of discretion.

Accordingly, it is, on this 12th day of April, 1943,

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

ALFRED E. DRISCOLL  
Commissioner.

11. COURT DECISIONS - NEW JERSEY SUPREME COURT - APPLICATION FOR A WRIT OF CERTIORARI TO REVIEW CONCLUSIONS AND ORDER HERETOFORE ENTERED (BULLETIN 562, ITEM 8) DENIED.

DISCIPLINARY PROCEEDINGS - PENALTY REINSTATED.

In the Matter of Disciplinary Proceedings against  
MORRIS L. ABRAMS  
322 Plainfield Avenue  
Plainfield, N. J.,  
Holder of Plenary Retail Consumption License C-12 issued by the Common Council of the City of Plainfield.

O R D E R

BY THE COMMISSIONER:

It appearing that, by an order entered herein on April 12, 1943, plenary retail consumption license C-12, issued to Morris L. Abrams, was suspended for ten days commencing at 1:00 A.M. April 14, 1943, and terminating at 2:00 A.M. April 24, 1943; and

It further appearing that, on April 13, 1943, the operation of said order was stayed to permit said Morris L. Abrams to apply for a writ of certiorari to review the legality of the Conclusions and Order heretofore entered herein; and

It further appearing that the application for the writ was made today to Justice Case of the New Jersey Supreme Court, and that the application for the writ was denied;

It is, on this 16th day of April, 1943,

ORDERED, that Plenary Retail Consumption License C-12, heretofore issued by the Common Council of the City of Plainfield to Morris L. Abrams for premises 322 Plainfield Avenue, Plainfield, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A.M. April 21, 1943, and terminating at 2:00 A.M. May 1, 1943.

*Alfred E. Driscoll*  
Commissioner. CHECKED BY NO. 5