

BULLETIN 1093

JANUARY 11, 1956.

TABLE OF CONTENTS

ITEM

1. COURT DECISIONS - TOWNSHIP OF LAKEWOOD v. BRANDT AND
DIVISION OF ALCOHOLIC BEVERAGE CONTROL - ORDER OF DIRECTOR
AFFIRMED.
2. APPELLATE DECISIONS - ROYAL CASTLE, INC. v. NEWARK.
3. DISCIPLINARY PROCEEDINGS (Elizabeth) - SALE OF ALCOHOLIC
BEVERAGES AT PLACE OTHER THAN LICENSED PREMISES - SALE
DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE
REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR
35 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Clifton) - GAMBLING - LOTTERY -
CHARGE ALLEGING THAT LICENSEE PERMITTED AN OBSCENE FIGURINE
ON LICENSED PREMISES, DISMISSED - LICENSE SUSPENDED FOR 20
DAYS.
5. DISCIPLINARY PROCEEDINGS (Garfield) - AGGRAVATED SALES TO
MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Newark) - GAMBLING - LOTTERY -
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. ELIGIBILITY - COMMERCIALIZED GAMBLING - CRIME FOUND TO
INVOLVE MORAL TURPITUDE UNDER CIRCUMSTANCES OF CASE.
8. DISCIPLINARY PROCEEDINGS (Camden) - SALE DURING PROHIBITED
HOURS, IN VIOLATION OF LOCAL ORDINANCE - PRIOR RECORD -
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Penns Grove) - CHARGE ALLEGING
REFUSAL TO ALLOW POLICE OFFICER TO INSPECT LICENSED
PREMISES, IN VIOLATION OF LOCAL ORDINANCE, DISMISSED.
10. DISCIPLINARY PROCEEDINGS (Jackson Township) - SALE TO
MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF
TIME - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 1093

JANUARY 11, 1956.

1. COURT DECISIONS - TOWNSHIP OF LAKEWOOD v. BRANDT AND DIVISION
OF ALCOHOLIC BEVERAGE CONTROL - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-722-54

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LAKEWOOD,)
)
Appellant,)
)
-vs-)
)
JOSEPH BRANDT, MARJORIE BRANDT)
and DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL, DEPARTMENT OF LAW AND)
PUBLIC SAFETY, STATE OF NEW JERSEY,)
)
Respondents.)
-----)

Argued December 12, 1955. Decided December 27, 1955.

Before Judges Clapp, Jayne and Francis.

Mr. Julius Cohn argued the cause for Appellant,
Township Committee of the Township of Lakewood.

Mr. J. Elmer Matthews argued the cause for
Objectors-Appellants.

Mr. Samuel B. Helfand argued the cause for
Respondent, Division of Alcoholic Beverage
Control (Mr. Grover C. Richman, Jr.,
Attorney General).

Mr. Samuel Leventhal argued the cause for
Respondents, Joseph and Marjorie Brandt
(Mr. Mark Addison, Attorney. Messrs.
Stewart & Leventhal, of Counsel).

The opinion of the Court was delivered by

CLAPP, S.J.A.D.

Application was made to the Township Committee of the Township of Lakewood for a person-to-person and place-to-place transfer of a plenary retail liquor consumption license belonging to Wilson O. Bachman. The Committee denied the application, objecting, not to the proposed transferees, Joseph and Marjorie Brandt, but (so the Committee asserted) to the proposed site. On appeal to the Division of Alcoholic Beverage Control, the Township Committee was reversed. The Committee, and certain residents in Lakewood who also objected to the transfer, now appeal to us from the Division's order.

Appellants' principal contention is that "public necessity and convenience" does not require the transfer of the license to the proposed site. Our cases make some reference to this term in connection with the issuance of liquor licenses. Hudson Bergen, etc. Assn. v. Hoboken, 135 N.J.L. 502, 506 (E. & A. 1947); Phillipsburg v. Burnett, 125 N.J.L. 157, 161 (Sup. Ct. 1940); cf.

Brush v. Hock, 137 N.J.L. 257, 259 (Sup. Ct. 1948), speaking of "public need or necessity"; Mauriello v. Driscoll, 135 N.J.L. 220 (Sup. Ct. 1947), referring to "public need".

Of course the subject of intoxicating liquors stands apart from other subjects, and analogies from other quarters of the law do not always apply. Mazza v. Cavicchia, 15 N. J. 498, 505 (1954). Still it may be useful to take some note of the context in which the term, public necessity and convenience, is usually found. Perhaps originally it served as a criterion in determining whether or not there was justification for laying a new highway between certain termini, In re Shelton St. Ry., 69 Conn. 626, 38 Atl. 362 (1897); but today it is little used except in connection with public utilities. E.g. see Interstate Commerce Commission v. Parker, 326 U. S. 60, 65, 89 L. ed. 2051, 2058 (1945); In re New Jersey & New York R. Co., 12 N. J. 281, 286 (1953) and cases cited; 60 C. J. S. Motor Vehicles § 82-93. See the 1920 Transportation Act, 41 Stat. 477, 49 U.S.C.A. §1 (18), and a half dozen subsequent Federal statutes dealing with utilities.

Some question has been raised as to the significance of the term in connection with public utilities. Village of Bronxville v. Maltbie, 284 N. Y. 206, 30 N. E. 2d 475, 480 (1940); Mulcahy v. Public Service Commission, 101 Utah 245, 117 P. 2d 298, 300 (1941); Thomson v. Iowa State Commerce Commission, 235 Iowa 469, 15 N. W. 2d 603, 606 (1944). Cf. N.J.S.A. 48:2-14, providing for a determination by the Board of Public Utility Commissioners, depending on whether

"the privilege or franchise is necessary and proper for the public convenience and properly conserves the public interests."

An even more obvious question arises as to the significance of the term in connection with intoxicating liquors. Is there any public necessity for a tavern? To be sure, the authority issuing a liquor license must take into consideration more than the matter of public convenience. Cf. Wisconsin Telephone Co. v. Railroad Commission, 162 Wis. 383, 156 N. W. 614, 616 (1916); D. C. & U. Truck Lines, Inc. v. Public Utility Commission, 158 Ohio St. 564, 110 N. E. 2d 587, 592 (1953); but cf. Commonwealth v. Gilligan, 195 Pa. 504, 46 Atl. 124 (1900); 65 C. J. S. 272; Barry v. O'Connell, 303 N. Y. 46, 100 N. E. 127, 130 (1951); Lord v. Delaware Liquor Commission, 2 Terry 154, 17 A. 2d 230, 235 (Del. Gen'l. Sess. 1940); Wilmington Country Club v. Delaware Liquor Com'n., 8 Terry 352, 91 A. 2d 250, 256 (Del. Super. Ct. 1952). For one thing -- as may be said to be suggested by the concept of public necessity -- consideration should be given to the question whether there is any deficiency or lack in present facilities. Cf. In re Chatham, 5 N. J. Misc. 858, 860 (Cir. Ct. 1927). And of course the paramount consideration is the public interest. Cf. In re Greenville Bus Co., 17 N. J. 131, 143 (1954).

But we need not pursue the point because the Township Committee of Lakewood here was not really concerned with the question whether there was any public necessity for having a tavern at the proposed location. As the Director of the Division found, "the Township Committee was motivated primarily by a desire to have the license 'die'"; they felt there were too many taverns in Lakewood. Indeed in the Committee's official minutes it is stated that one of the Committeemen looked upon this as "a chance to eliminate a license". Another Committeeman, in effect, admitted this at the hearing before the Division. Moreover the testimony before the Director was sufficient to sustain a finding that their two colleagues went along with them.

The desire of these Committeemen to reduce the number of licenses, because too many were outstanding, is commendable. But this they should have attempted through some less arbitrary means than through destroying the transferability of outstanding licenses. For other methods of reducing licenses (on which we do not pass), see Kirschhoff v. Millville, Div. Alcoholic Bev. Control, Bulletin No. 254, Item 8, June 1938. An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection in connection with a transfer. As to the conditions under which a transfer may be made, see N.J.S.A. 33:1-26; cf. Zicherman v. Driscoll, 133 N. J. L. 586 (Sup. Ct. 1946).

It seems to have been suggested on the oral argument that perhaps there should be a tendency on our part to sustain the Director's orders setting aside local determinations where he seeks to eliminate abuses in liquor traffic or to elevate its standards; but that on the other hand, where there are no such considerations involved, there should be a tendency on our part to uphold local determinations as to local public conveniences and interests. Suffice it to say -- without attempting to approve such generalizations unqualifiedly -- that this is a case which was resolved by the municipality (as we have said), not on the basis of local conveniences and interests affected by the proposed site, but on a basis which should not have been controlling.

The question remains whether the Director's action in approving the site was proper. The proposed location is in an appropriate zone, the nearest church being 2 miles away and the nearest school 2.2 miles away. While there are hardly any close neighbors, still the area is changing rapidly, with one housing development in the planning stage less than a half mile off and three others wholly or partly under construction, 1.2 miles, 2 1/2 miles and less than 4 miles distant, respectively. Two of these developments are in Brick Township. Perhaps it is anticipated that patrons will to a large extent be made up of transients; for the proposed site is on a State Highway where, especially on weekends, the traffic is "heavy, very heavy". The nearest tavern in Brick Township is 1.2 miles away and the nearest one in Lakewood is 2 1/2 miles away. We see no basis for saying that the Director clearly erred in holding that public conveniences and interests warranted the transfer of the license to the site proposed.

The Township argues that the Director is limited to the evidence which had been adduced before it. But under the law the case is heard de novo by the Director, Cino v. Driscoll, 130 N. J. L. 535 (Sup. Ct. 1943); and he may properly rely on additional evidence brought out in the Division, Florence Methodist Church v. Florence, 38 N. J. Super. --- (App. Div. 1955).

We should not interfere with his determination where it could reasonably be said there was clearly unjustifiable action on the part of the local authorities, South Jersey Retail Liquor Dealers Ass'n. v. Burnett, 125 N. J. L. 105 (Sup. Ct. 1940), Wildwood v. Garrett, 126 N. J. L. 203 (Sup. Ct. 1941), Bivona v. Hock, 5 N. J. Super. 118 (App. Div. 1949) -- and where, in addition to that, the action taken by the Director appears to us not to be clearly erroneous. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N. J. Super. 598, 600 (App. Div. 1955).

Affirmed.

2. APPELLATE DECISIONS - ROYAL CASTLE, INC. v. NEWARK.

ROYAL CASTLE, INC.,)

Appellant,)

-vs-)

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

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER-----)
Jack L. Cohen, Esq., Attorney for Appellant.Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq.,
Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from a ten-day suspension of appellant's license C-755 issued for premises 35 River Street, Newark.

In disciplinary proceedings instituted by respondent against appellant-licensee, it was alleged, in substance, that on April 15, 1955, said licensee (1) sold alcoholic beverages to and permitted the consumption of alcoholic beverages on the licensed premises by James --- (19 years of age), in violation of Rule 1 of State Regulations No. 20, and (2) on the same day, allowed, permitted and suffered gambling, namely, flipping of coins for drinks, on the licensed premises, in violation of Rule 7 of State Regulations No. 20.

After lengthy hearings, one member of the Board abstained from voting because he had not heard all the testimony, and the other two members dismissed Charge 2 aforesaid but found the licensee guilty as to Charge 1 aforesaid and suspended its license for a period of ten days effective October 10, 1955.

Upon the filing of this appeal an order was entered by me staying respondent's order of suspension pending a further order herein. R. S. 33:1-31.

This case was presented upon the transcript of the proceedings before respondent and upon additional evidence presented at the hearing of the appeal. See Rule 8 of State Regulations No. 15.

On December 12, 1955, counsel for appellant and respondent orally argued the case before me.

The petition of appeal alleges, in substance, that the finding of guilt as to Charge 1 was against the weight of the evidence.

A review of the testimony taken before respondent Board discloses that the only witness who testified as to the alleged violations was James --- (19 years of age). He testified that he entered the licensed premises on April 15, 1955, at about 3:00 p.m., and started flipping coins for drinks with patrons whom he did not know; that Joseph Romano was tending bar at that time; that he continued to flip coins for three hours; that he remained in the licensed premises for eight or nine hours, during which time he was served about twenty "shots" of beer and cognac by either Joseph Romano or Frank Burns (president of appellant corporation); that about 11:00 p.m. he was chased from the premises because he was annoying patrons and had

threatened several persons with a knife and that he was subsequently arrested elsewhere by a member of the Newark Police Department on a charge of carrying a concealed weapon. At the time of said hearing James --- was confined to the Essex County Penitentiary.

At the hearing before respondent Board Thomas A. Keller testified that he was the day-bartender in the licensed premises on April 15, 1955, and was on duty from 9:00 a.m. to 8:00 p.m. He denied that James --- was in the licensed premises on that day at any time during the hours he was tending bar. Joseph Romano testified that he came to work at 9:00 p.m.; that he saw James --- in the premises about 10:45 p.m. and refused to serve him a drink. Frank Burns testified that he relieved Keller (the day-bartender); that James --- came in "around 11 o'clock" and left ten or fifteen minutes later, and that no one served any drinks to James ---. Thaddeus Pronell testified that he was a patron of the licensed premises; that he entered between 9:30 p.m. and 10:00 p.m.; that James entered after he did and left around 11:00 p.m., and that no one served any drinks to James.

At the hearing of the appeal herein John M. Padalino testified that he is employed as a musician on the premises; that James --- entered "between 10:30 and 11" and that no drinks were served to James. Ted DeSalvo, another patron, testified that he entered about 10:45 p.m., and that James --- entered later.

Not only is the testimony of the minor uncorroborated, but also it appears that, on the following morning, he testified under oath in the Police Court that he had not been served anything in appellant's premises. When the Judge asked why he had made a previous statement that he had been served, he answered that "he wanted to get this place into trouble." In addition, the minor has a prior criminal record and, in my opinion, his testimony is unworthy of belief. Numerous witnesses produced by appellant testified that the minor was not served with any drinks. I conclude, therefore, that the finding of guilt by respondent as to Charge 1 is not supported by a fair preponderance of the evidence and, hence, that its action in finding guilt as to said charge should be reversed. Cf. Kurschner v. Newark, Bulletin 1081, Item 3.

Accordingly, it is, on this 16th day of December, 1955,

ORDERED that the action of respondent, whereby it found appellant guilty of Charge 1 and suspended its license, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT PLACE OTHER THAN LICENSED PREMISES - SALE DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

ANNA RYAN)
 79 Magnolia Avenue)
 Elizabeth, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-5, issued by the)
 Municipal Board of Alcoholic)
 Beverage Control of the City of)
 Elizabeth.)
 -----)

Anna Ryan, Defendant-licensee, Pro se.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to charges alleging that:

"1. On Sunday, November 13, 1955, between 10:00 a.m. and 11:59 a.m., you sold alcoholic beverages not pursuant to and within the terms of your plenary retail consumption license as defined by R.S. 33:1-12(1), contrary to R.S. 33:1-26 and R.S. 33:1-1(w), in that you accepted orders for and sold numerous bottles of various kinds of alcoholic beverages at a place other than your licensed premises, viz., at an area in the rear of your licensed building commonly known as the 'back yard'; in violation of R. S. 33:1-2.

"2. On Sunday, November 13, 1955, between 10:00 a.m. and 12:05 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of numerous bottles of various kinds of alcoholic beverages at retail in their original containers for consumption off your licensed premises; in violation of Rule 1 of State Regulations No. 38."

The file herein discloses that shortly after 12:00 noon on Sunday, November 13, 1955, an ABC agent entered defendant's licensed premises, purchased drinks of alcoholic beverages for himself and another person, and then purchased a pint of Seagram's 7 Crown Whiskey from the licensee, who asked the agent, "You sure you're one of the workers down there?" The agent then left the tavern with the pint bottle of whiskey, joined another agent who was stationed outside the premises and both agents immediately entered the tavern and disclosed their identities to the defendant.

During the course of the ensuing conversation with the defendant-licensee, the agents called her attention to the fact that they had information that earlier that day she was selling wine and whiskey to persons she knew by handing such beverages over the fence in the back yard of her licensed premises and they had observed a portion of such activities. The defendant thereupon admitted that such was the fact in a signed sworn statement wherein it appears, among other things, that beginning about 10:00 a.m. on the day in question, she sold fifteen or twenty pints of wine and three or four pints of whiskey from her

back yard, which is not part of her licensed premises, to customers who came into an adjacent alley and told her what they wanted. From her statement, it further appears that she handed the alcoholic beverages requested over a wire fence and that she knew it was a violation to sell bottled goods for consumption off the licensed premises on Sundays, and to sell alcoholic beverages from the back yard.

The excuse which she offers is that she is a widow; closes her place of business early every night because business is very bad; and sells alcoholic beverages on Sunday mornings in the manner above outlined to help her "catch up a little financially".

Defendant has a prior adjudicated record. Effective April 6, 1950, her license was suspended by the local issuing authority for ten days for sale during prohibited hours. The practice of selling alcoholic beverages "over the fence" during prohibited hours is typical of an "old fashioned speakeasy", an aggravated form of selling during prohibited hours, for which the minimum suspension is thirty days. Re Julewicz, Bulletin 1034, Item 8. In view of the prior similar record occurring more than five but less than ten years ago, I shall suspend defendant's license for thirty-five days. Re Stein, Bulletin 1067, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 19th day of December, 1955,

ORDERED that Plenary Retail Consumption License C-5, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Anna Ryan, 79 Magnolia Avenue, Elizabeth, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. January 4, 1956, and terminating at 2:00 a.m. February 3, 1956.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - CHARGE
ALLEGING THAT LICENSEE PERMITTED AN OBSCENE FIGURINE ON
LICENSED PREMISES, DISMISSED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

JOHN W. GUSCIORA)
T/a GUS 'S TAVERN)
615 VanHouten Avenue)
Clifton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-))
tion License C-80, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Clifton.)
-----)

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

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charges:

"1. On June 25, 1955 and prior thereto, you engaged in and allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20.

"2. On the occasions aforesaid you allowed, permitted and suffered lotteries, commonly known as 'horse-race pools' and 'baseball pools' to be conducted in and upon your licensed premises and sold and offered for sale and possessed, had custody of and allowed, permitted and suffered tickets and participation rights in such aforementioned lotteries in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20.

"3. On June 25, 1955, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting printing, pictures and other representations; in violation of Rule 17 of State Regulations No. 20."

At the hearing herein an ABC agent testified, in substance, that he and another agent visited defendant's licensed premises on June 18 and 23, 1955, and observed therein the passing of paper slips and money to the licensee by patrons, others of whom purchased rights in what appeared to be a baseball pool and participated in the selection of beer coasters, the concealed side of each of which bore a writing inscribed by the licensee. He further testified that on the dates aforesaid he heard a patron say to the licensee's wife, who had accepted money, "Don't forget, Emma, that's a \$6.00 round house;" and that he saw the licensee hand some money and a paper slip to a patron who said, "If it's too late for the first race, put it all on the one in the second race." He further testified that he and the other agent entered the licensed premises on June 25, 1955, while a municipal and county detective participating in the investigation remained outside; that he observed activities similar to those engaged in during his previous visits; that he handed the licensee a horse-race bet slip and four one-dollar bills, the serial numbers of which had been noted by the detectives and were in their possession, and said, "I would like to get a \$4.00 bet on 'Avon Lady' in the 8th race at Aqueduct;" that the licensee said, "I don't usually take bets from strangers" and put the slip of paper in his pocket and walked to the rear of the premises; that he then identified himself to the licensee who threw the paper and the bills on the floor, remonstrating, "I never took anything from you. You can't prove anything;" that the detectives, who on signal had entered the premises, retrieved the bills, the serial numbers of which compared with those in their possession; that thereafter the premises were searched and a racing form and beer coasters and slips bearing the names of horses listed therein, metal tags imprinted with the names of National and American League baseball teams, and a sheet of paper listing the names of those participating in the pool, together with an alleged indecent figurine, were seized. These exhibits and other evidential material were submitted in evidence and it was stipulated that the other agent hereinabove referred to would, if called, testify similarly respecting the above facts.

Defendant, his wife and three patrons who were present in the licensed premises on the occasions herein charged, denied their participation in or knowledge of bookmaking on the licensed premises, but testified, in substance, that a baseball pool was conducted thereon for the benefit of the "Physically Handicapped League of Northern New Jersey;" and that, although the licensee at times collected money from the participants and kept records thereof, he received no profits or gains from the proceeds. The licensee denied having seen the alleged indecent figurine and, with respect to the bet slip and money handed to him by the agent, stated that he didn't know what the money was for and that "When I saw it was a horse bet, I said, 'I don't take horse race bets.' I threw it on the floor."

I have carefully considered the record herein, and I am satisfied that the testimony of the agents, coupled with the verifying exhibits submitted in evidence, clearly establish that a lottery and bookmaking were conducted on the licensed premises in violation of the Rules enumerated in Charges 1 and 2, on which charges I find the defendant guilty. However, the evidence tending to support Charge 3 is inadequate and, accordingly, that charge is dismissed. Cf. Re Fireside Tavern, Inc., Bulletin 991, Item 5. I shall suspend defendant's license for a period of twenty days (Re Conklin, Bulletin 1086, Item 4).

Accordingly, it is, on this 19th day of December, 1955,

ORDERED that Plenary Retail Consumption License C-80, issued by the Municipal Board of Alcoholic Beverage Control of the City of Clifton to John W. Gusciora, t/a Gus's Tavern, for premises 615 VanHouten Avenue, Clifton, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. January 4, 1956, and terminating at 3:00 a.m. January 24, 1956.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

ANNA KASICA
T/a RIVER DRIVE TAVERN
120 River Drive
Garfield, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-43, issued by the
Mayor and Council of the City of
Garfield.

Chandless, Weller & Kramer, Esqs., by Julius E. Kramer, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on Sunday night, October 16, 1955, she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon her licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that ABC agents, acting upon information transmitted to this Division by the Garfield Police Department, obtained a signed sworn statement from Susan ---, who stated she is sixteen years of age and that, on the date alleged in the charge herein, she entered defendant's licensed premises with two adults and that she consumed "three or four shots of whiskey and a couple of beers" which were served by a bartender who made no inquiry as to her age. On November 2, 1955, Susan --- directed one of the agents, a school nurse and a City detective to the licensed premises which she pointed out as the place wherein she had been served alcoholic beverages, and therein identified Stanley L. Kasica (son of the licensee herein) as the person who had served her.

In alleged mitigation defendant states that the bartender mistakenly assumed that the minor was of full age because she entered with two adults. The ABC agents report that Susan definitely looks like a minor.

Defendant has no prior adjudicated record. The minimum penalty for a violation of this kind, involving a minor as young as sixteen years of age, is a suspension of the license for twenty days, with a possible five days' remission for a plea. Re Lavitz, Bulletin 1068, Item 6. However, in view of the number and kind of drinks the minor consumed, I shall suspend defendant's license for twenty-five days. Cf. Re McCollum, Bulletin 1052, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 20th day of December, 1955,

ORDERED that Plenary Retail Consumption License C-43, issued by the Mayor and Council of the City of Garfield to Anna Kasica, t/a River Drive Tavern, for premises 120 River Drive, Garfield, be and the same is hereby suspended for twenty (20) days, commencing at 4:00 a.m. January 4, 1956, and terminating at 4:00 a.m. January 24, 1956.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE
SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

WILLIAM F. KOCH
T/a BILL'S TAVERN
797-799 Sanford Avenue
Newark 6, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-483, issued by the
Municipal Board of Alcoholic
Beverage Control of the City of
Newark.

Mayer and Mayer, Esqs., by Abraham I. Mayer, Esq., Attorneys
for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On August 26 and 31, 1955, and on divers other days, you engaged in and allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulations No. 20.

"2. On August 31, 1955 and on divers days prior thereto, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as Irish Hospitals' Sweepstake Tickets, to be sold

and offered for sale and possessed, had custody of, and allowed, permitted and suffered such tickets and participation rights in the aforementioned lottery, in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20."

The file herein, in brief, discloses that on August 13, 20 and 26, 1955, ABC agents visited defendant's licensed premises wherein they observed the licensee accept from patrons bets on baseball and horse racing and phone them to an undisclosed person. On August 26th, the licensee accepted from one of the agents a five dollar bet on a horse running at Atlantic City. On August 31st, the agents placed two horse bets with the licensee, handing him identifiable bet slips, together with marked money, which he placed in a cigar box on the back bar. Meanwhile, other ABC agents, stationed outside, contacted a local detective and together they entered the premises and made known their identities. The licensee attempted to destroy some papers and the bartender unsuspectingly palmed a bet slip to one of the two "betting" agents, both of whom then identified themselves. The agents seized the cigar box containing the bet slips and the marked money, together with another cigar box containing a sweepstake book of four unsold "Irish Sweepstake" tickets and \$21.00 in cash. Thereafter, they obtained signed sworn statements from the licensee and bartender admitting in detail their participation in the violations hereinabove charged.

Defendant has no prior adjudicated record. I shall suspend his license for the minimum period of twenty days. Re Conklin, Bulletin 1086, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 20th day of December, 1955,

ORDERED that Plenary Retail Consumption License C-483, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to William F. Koch, t/a Bill's Tavern, 797-799 Sanford Avenue, Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a. m. January 4, 1956, and terminating at 2:00 a.m. January 19, 1956.

WILLIAM HOWE DAVIS
Director.

7. ELIGIBILITY - COMMERCIALIZED GAMBLING - CRIME FOUND TO INVOLVE MORAL TURPITUDE UNDER CIRCUMSTANCES OF CASE.

December 13, 1955.

Re: Case No. 667

Applicant seeks a determination as to whether or not he is ineligible for employment by a liquor licensee in New Jersey by reason of his conviction of crime.

His fingerprint returns show that on September 25, 1955 he pleaded non vult to an indictment charging him with book-making, holding stakes on horse races, and possessing lottery papers, in violation of R. S. 2A:112-3 and R.S. 2A:112-7, and was fined \$1,000.00.

At the hearing held to elicit facts underlying the aforesaid conviction, applicant stated that he never accepted any

horse race bets but had allowed a bookmaker to use his home telephone for which privilege he received \$25.00 per week. These facts, standing alone, might justify a favorable determination herein. Re Case No. 1237, Bulletin 1078, Item 6. However, a report submitted by the arresting authority indicates that the police kept applicant's residence under surveillance for five or six days and, thereafter, possessing warrants, raided the premises wherein they located in a bedroom a telephone over which, during their stay, approximately eighteen persons called in horse race bets. A further search of the room disclosed a quantity of betting slips and scratch sheets under the bedding.

The crime of commercialized gambling may or may not involve the element of moral turpitude, depending upon the circumstances. Re Case No. 1018, Bulletin 956, Item 7. Where one is a principal or a "lieutenant" in commercialized gambling, particularly where the gambling is conducted on a large scale, it has been held that such gambling involves the element of moral turpitude. Re Case No. 635, Bulletin 946, Item 10; Re Case No. 641, Bulletin 963, Item 5.

Considering the facts in the instant case, it is my opinion that applicant was a "lieutenant", if not a principal, and that the crimes of which he was convicted in September 1955 involve the elements of moral turpitude. Re Cottman, Bulletin 987, Item 1 and cases cited therein.

Under the circumstances, I recommend that applicant be advised that in the opinion of the Director he is not presently eligible to hold a liquor license in this State or to be employed by or connected in any business capacity whatsoever with the holder of such a license, within the meaning of R. S. 33:1-25, 26.

APPROVED:
WILLIAM HOWE DAVIS
Director.

Joseph A. Burns
Attorney.

8. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceeding against

FIRST WARD ITALIAN DEMOCRATIC CLUB
414 N. Front Street
Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-16, issued
by the Municipal Board of Alcoholic
Beverage Control of the City of Camden.)

Malandra & Tomaselli, Esqs., by Joseph Tomaselli, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on Sunday, October 30, 1955, it sold, served and delivered alcoholic beverages upon its licensed premises, in violation of a local ordinance which prohibits such activity after 2:00 a.m. on Sunday.

The file herein discloses that at 12:15 p.m., Sunday, October 30, 1955, ABC agents were admitted to defendant's licensed premises wherein they observed six males consuming bottled beer. The agents identified themselves, seized the unfinished bottles of beer from the patrons, and obtained unsigned statements from the bartender and custodian who admitted the sale of beer in violation of the municipal ordinance which prohibits such sale on Sunday.

Defendant has a prior adjudicated record. When the licensee herein was located at 628 North Front Street, Camden, its license was suspended by this Division, as follows: ten days, effective August 8, 1944, for sale on Sunday, see Bulletin 630, Item 11; sixty days, effective October 29, 1945, for (a) sale on Sunday and (b) false statement (concealing prior suspension) in license application, see Bulletin 683, Item 1; thirty days, effective March 25, 1946, for a "front" violation, see Bulletin 703, Item 7. The minimum penalty imposed for a violation as set forth in the charge herein is fifteen days. Re Bicsak, Bulletin 1076, Item 7. Considering the numerous violations of this licensee since the inception of its license, I would be inclined to impose a severe penalty. However, I note that its record has been free of violations for nearly ten years, which is encouraging. Nevertheless, licensees must realize that a license is merely a privilege, Mazza v. Cavicchia, 15 N. J. 498 (1954), the loss of which is attributable to laxity of licensees, their agents and employees in failing to abide by the laws and rules and regulations governing the operation of licensed premises. I shall suspend defendant's license for twenty days and remit five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 20th day of December, 1955,

ORDERED that Club License CB-16, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to First Ward Italian Democratic Club, 414 N. Front Street, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. January 3, 1956, and terminating at 2:00 a.m. January 18, 1956.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING REFUSAL TO ALLOW POLICE OFFICER TO INSPECT LICENSED PREMISES, IN VIOLATION OF LOCAL ORDINANCE, DISMISSED.

In the Matter of Disciplinary
Proceedings against

PENNS GROVE LODGE #1358, B.P.O. ELKS
57-59 West Main Street, PO Box 526
Penns Grove, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-35, issued by
the Director of the Division of Alcoholic
Beverage Control.

-----)
Thomas L. Smith, Esq. and Louis F. DiNicola, Esq., Attorneys
for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to a charge alleging that on Sunday, August 7, 1955, it refused to allow a police officer to enter its licensed premises for the purpose of making an inspection thereof; in violation of a local ordinance, the pertinent section of which reads:

"Section 14. All licensed premises shall be subject to examination and inspection by the police and by other constituted authorities at any time."

The licensed premises herein consist of the basement floor, the first floor, the grill room, cocktail room and sun porch of defendant's building.

At the hearing Humbert J. DiTeodoro, a local police officer, testified, in substance, that on Sunday, August 7, 1955, acting upon a specific complaint transmitted to him by his superior, he visited defendant's licensed premises at about 9:45 p.m. and found the second floor, which was part of the licensed premises, in darkness; that he sought to gain admission thereto by pressing a buzzer and by knocking on the rear and front doors which were locked; that someone looked toward him through a "slightly" opened inner door some five yards from where he stood; that "I started pretending I was going down the steps and moved to the front window, which was open and had a screen. I threw my flashlight in. The beam hit a Mr. Morse Booth at the door;" that I told Booth, "I was the Police Department" and said, "Open the door;" that Booth "all of a sudden, shut the door;" that he (the officer) left the premises and returned to the police station about a half block away; and that at about 10:00 p.m., as he looked out the side door of the "fire hall", he saw ten or twelve men leave the club through the front door.

Mr. Booth testified that he and four other members of the defendant lodge, none of whom was an officer, director, trustee, agent or employee thereof, were holding a committee meeting of the Little League (baseball), sponsored to some extent by the lodge, in the secretary's office located on the third floor of defendant's club house; that he went to the men's room on the second floor and, emerging therefrom, heard a "racket on the door;" that he opened the inner door of the sun porch, peered through the cracks of the closed venetian blinds on the front door and "saw the outline of a figure, so I closed the door and went upstairs to the meeting;" that he could not identify the person seeking entrance, nor did he hear the person say who he

was or what he wanted. He further testified that a foyer separates the sun porch from a rear room in the building; that as you enter the foyer from the sun porch, the barroom is to the right; and that the barroom door was locked and the room was inaccessible to members. He also testified that after concluding the meeting, he and the other members of the committee left the premises through the rear door (not the front) to an area where their cars were parked.

The Exalted Ruler of defendant lodge testified that lodge officers only are authorized to answer the door and that the Chairman of the House Committee, who, on the day in question, was in Atlantic City, was the only person who had keys to the barroom. The Chairman of the House Committee corroborated the testimony of the previous witness and photographs showing pertinent features of the building were submitted in evidence.

Defendant maintains that because of its status as a licensed club, the violation herein charged comes within the provisions of R. S. 33:1-35 which enumerates specifically those upon whom demand is to be made for examination and inspection of licensed premises and it contends that the committee members who were in the club at the time alleged were not such specified persons.

Considering the facts adduced herein, it is unnecessary to determine whether or not the cited statute is applicable to the instant case. The licensee is fully responsible for the acts of its members to whom it gave "the means of access and authority to occupy the premises", see Greenbrier v. Hock, 14 N. J. Super. 39. The sole question to be determined is: Did a member of defendant lodge refuse to admit to the licensed premises a police officer, knowing him to be such?

Reviewing the testimony of the police officer in conjunction with the photographs showing the physical layout of the premises in question, it is doubtful if the officer, from where he stood, could have recognized Booth in the foyer by throwing a flashlight beam through the right front window of the building. It is quite possible that a person five yards away behind the locked front door may not have heard the officer identify himself and say "Open the door". The testimony of defendant's witness, Booth, satisfies me that his actions at the time and under the conditions prevailing were compatible with normal conduct and were in nowise intended as a purposeful flaunting of lawful authority.

Under all the circumstances, I conclude that the evidence adduced by the Division is not sufficient to establish the licensee's guilt as alleged and that the charge herein should be dismissed.

Accordingly, it is, on this 27th day of December, 1955,

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

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME -- LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

ROVA FARMS, INC.
T/a ROVA FARMS
Trenton Road
Jackson Township
PO Cassville, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-2, issued by the
Township Committee of Jackson
Township.

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

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to two minors and permitted the consumption thereof by said minors upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

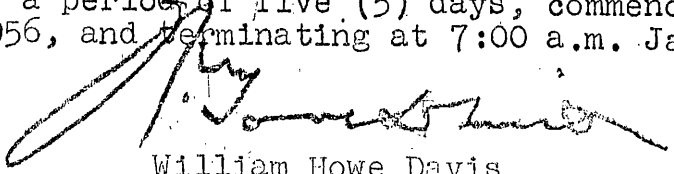
The file in the instant case discloses that at 10:00 p.m. on Saturday, October 29, 1955, two ABC agents visited defendant's licensed premises. Upon entering the premises the agents observed two young men drinking beer at the bar. These young men left the barroom for a time and, upon their return, were served a glass of beer apiece by the bartender. The agents then made known their identities to the bartender and to the two young men and ascertained that the latter were both twenty years of age.

Defendant has a prior adjudicated record. Its license was suspended for five days, effective October 4, 1943, by the local issuing authority for sale of alcoholic beverages to minors. Again, effective October 3, 1948, defendant's license was suspended for two days as a result of its plea of non vult on a charge of having mislabeled beer taps. Re Rova Farms, Inc., Bulletin 817, Item 16. Inasmuch as the similar previous violation referred to above occurred more than ten years ago and the dissimilar violation occurred more than five years ago, I shall not consider them in fixing the penalty for the present violation. In mitigation of the violation, the attorney for defendant sets forth in a letter that the premises were crowded; that the licensee employs a special officer to prevent sale to minors and that one of the minors had previously exhibited to the bartender a false identification card indicating that the holder was of full age. Under the circumstances, the violation appears to be unaggravated. I shall suspend defendant's license for the minimum penalty of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Cf. Re Soriero, Bulletin 1068, Item 11.

Accordingly, it is, on this 22nd day of December, 1955,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Jackson Township to Rova Farms, Inc., t/a Rova Farms, Trenton Road, Jackson Township, be and the same is hereby suspended for a period of five (5) days, commencing at 7:00 a.m. January 9, 1956, and terminating at 7:00 a.m. January 14, 1956.

New Jersey State Library


William Howe Davis
Director.