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

BULLETIN 399 MAY 3, 1940.

1. APPELLATE DECISIONS - HINDIN v. EGG HARBOR.

SAMUEL HINDIN,)

Appellant,)

-vs-) ON APPEAL CONCLUSIONS

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EGG HARBOR, STELLA REYNOLDS and LOUIS (or LEWIS) H. EBERLE,)

Respondents)

Benjamin M. Perlstein, Esq., Attorney for Appellant.
Clarence B. Dixon, Esq., Attorney for Respondent, Township Committee of the Township of Egg Harbor.
Frank S. Farley, Esq., Attorney for Respondent, Stella Reynolds (later withdrawing as such attorney).
Louis (or Lewis) H. Eberle, Pro Se.

This appeal is from the failure of Egg Harbor Township Committee to take final action on appellant's application for a plenary retail consumption license for the Turkey Ranch, Fire and Delilah Roads, Egg Harbor Township, and also from the Committee's renewal of the plenary retail consumption license of Mrs. Stella Reynolds and Louis (or Lewis) H. Eberle for the same premises.

During 1938-9 Mrs. Reynolds and Eberle, as partners, held a plenary retail consumption license for the Turkey Ranch, then owned by Mrs. Reynolds. On June 17, 1939 they executed a written instrument agreeing to sell the business to Samuel Hindin, and also stating that a five-year lease of the premises, as then furnished, with an option of purchase, would be given to appellant. On that same date appellant applied to the Egg Harbor Township Committee for a plenary retail consumption license for the premises for 1939-40.

However, dispute arising between the parties and the agreement never being effectuated, Mrs. Reynolds and Eberle themselves, at the end of June, applied for a renewal of their license for the premises. On June 30 the Egg Harbor Township Committee granted their application, but took no formal action on Hindin's. Hence this appeal.

As to Hindin's application: The parties have stipulated that the Committee be deemed to have formally denied such application on the ground, inter alia, that Hindin lacked requisite property interest in the premises and that his appeal be deemed as taken from such denial. The case will be treated on that stipulated basis.

As to Hindin's alleged lack of interest in the Turkey Ranch, it appears that his so-called agreement with Mrs. Reynolds and Eberle on June 17, 1939, while declaring that the premises would be leased to him, never, as regards such leasing, progressed beyond the stage of mere negotiation. No essential details, such as when the lease would begin, the amount of rent to be paid, or what obligations were to be assumed by landlord and tenant, were ever fixed upon. Hence, the written instrument of July 17 constituted neither lease nor contract. Charlton v. Columbia Real Est. Co., 64 N.J. Eq. 631 (Ch. 1903), rev. on other grds. 67 N.J. Eq. 629 (E. & A. 1905); 35 C. J. 1200, §517. Instead, the premises were, on or about June 26, 1939, leased by Mrs. Reynolds to one William Morley for a term of five years.

Hindin thus lacking legal or equitable possession or right to possession of the premises, no license therefor could have been granted to him. Procoli v. Trenton, Bulletin 28, Item 6; Kaplan v. Trenton, Bulletin 29, Item 11; Re Sakin, Bulletin 67, Item 13; White Castle Inc. v. Clifton and Weiss, Bulletin 97, Item 13; Re Fisher, Bulletin 107, Item 8; D'Annibale v. Fredon, Bulletin 139, Item 7; Eavenson et al. v. South Orange et al., Bulletin 283, Item 8; Vasapoli v. Plainfield et al., Bulletin 301, Item 7.

Hence, in so far as Hindin's application is concerned, the appeal, without need of inquiring into other issues, is dismissed.

As to the Reynolds-Eberle renewal license: In view of the said five-year lease of the Turkey Ranch to Morley, Mrs. Reynolds and Eberle were, on July 1, the date of commencement of the current fiscal year, apparently without any right to possession of the premises. Hence, as in the case of Hindin's application, they were not entitled to issuance of license (even though a renewal) for the current year.

Ordinarily, this defect as to right of possession might perhaps be viewed as corrected by the fact that Mrs. Reynolds sold the premises to Morley on August 2 and thereupon took back from him a purported lease on the premises, thus apparently revesting the Reynolds-Eberle partnership with right to possession.

However, the case further involves the serious question whether Mrs. Reynolds and Eberle, when obtaining their renewal license, were not merely "fronts" for Morley.

It thus appears that Morley, in June 1939, after the Hindin deal fell through, negotiated to buy the business; that, when the Reynolds-Eberle application for renewal of their license was filed, it was Morley's check that covered the requisite license fee; that when he, on or about June 26, obtained the five-year lease on the premises (apparently paying the first year's rental of $500.00 in advance), he at once began conduct of the tavern and continued such conduct after the Reynolds-Eberle renewal license was granted.

Morley, although seeking to claim that he was merely managing the tavern under a power of attorney from Mrs. Reynolds, nevertheless admitted, when examined by the Hearer, that he was actually conducting the tavern on his own behalf.

Mrs. Reynolds (alleged to be ill, an allegation denied by Eberle) was not present at any of the hearings on the appeal.

However, Eberle appeared, and testified that his understanding of the arrangement between himself, Mrs. Reynolds and Morley was that, should the renewal license be granted, there would be no operation under it but that such license would be surrendered when Morley applied for a license in his own name; that he was away during the early part of July - when the renewal license was issued - and first learned in the middle of that month that Morley was running the tavern under it; that he thereupon protested to Mrs. Reynolds and Morley, and asked the latter to obtain a license for himself; that Morley replied that he could not for reasons Eberle "would not understand."

Eberle's claim that, whatever may have been Mrs. Reynolds' plan, he actually intended the renewal license to be for his own and not Morley's benefit, is without much weight. What seems to have spurred him to prevent Morley from continuing to operate the tavern under the renewal license was, not because he had never intended that Morley operate the tavern under such license, but that, as he told Mrs. Reynolds when accosting her on July 17, "I found out about a little trouble Morley had at one time and, if anything like that occurs, we would be liable to get in trouble."

In view of all the evidence, I am satisfied that Mrs. Reynolds and Eberle obtained and held their renewal license as a cover for Morley.

Although Mrs. Reynolds is now apparently endeavoring to withdraw from the license, leaving it in Eberle's name alone, and Eberle is attempting to oust Morley from user of the license and to avail himself of it, such action may not be deemed as corrective. Neither Mrs. Reynolds nor Eberle, as partners or alone, may now seek, merely by ousting Morley, to enjoy the license as an after-fruit of their illegal scheme of having originally obtained it for Morley's use with themselves as a "front" for him.

Because of such "front", issuance of the license must be reversed. Plager v. Atlantic City and Friedman, Bulletin 80, Item 11; Hudson County Retail Liquor Stores Ass'n v. Terminal Wine and Liquors, Inc. and Jersey City, Bulletin 127, Item 1.

In view of this finding, it is unnecessary to inquire into other issues respecting the license.

The action of the Egg Harbor Township Committee in granting the Reynolds-Eberle renewal license is, therefore, reversed and the said license is hereby set aside and declared void.

E. W. GARRETT,
Acting Commissioner.

Dated: April 26, 1940.

2. SEIZURES - CONFISCATION PROCEEDINGS - AUTOMOBILE FORFEITED AS TO OWNERS BUT LIEN ALLOWED.

In the Matter of the Seizure on September 21, 1939, of a Studebaker Coach and fifty-nine 1-quart bottles of alcoholic beverages contained therein, at Grand and Henderson Streets, in the City of Jersey City, County of Hudson and State of New Jersey.	Case 5667 ON HEARING CONCLUSIONS AND ORDER

Murrel and Anna Johnson, Pro Se.
Braelow & Tepper, Esqs., by Benjamin D. Braelow, Esq., Attorneys for Madison Personal Loan, Inc.
Harry Castelbaum, Esq., Attorney for State Department of Alcoholic Beverage Control.

On September 21, 1939 Jersey City police seized an automobile belonging to Murrel and (his wife) Anna Johnson, and some 59 or 60 quarts of whiskey being transported therein. They arrested Murrel Johnson, who was driving the car, and William G. Washington, who was accompanying him.

In a signed statement Johnson admitted to the police that he had just purchased the whiskey at a licensed store in Jersey City and that his purpose was to bring it into New York City and there resell it (without benefit of any New York license) to various "friends."

Johnson now repudiates that signed statement, asserting that it was forced from him by the police. Both he and his wife claim that the 59 or 60 quarts of whiskey were really purchased by them and two others solely for personal consumption; that they (the Johnsons) were unaware that the transportation of the liquor in the car, even if intended for personal consumption, was, in view of the quantity being transported, illegal (see R. S. 33:1-2); and hence ask return of the car and liquor.

However, the Johnsons admit that they had been making case-lot purchases of liquor at the Jersey City store for several months.

Since their only visible source of income during that time and on the occasion in question was a small ice cream or luncheonette store in New York City, which they had purchased in March 1939 for $500.00 and later resold in January 1940 for $200.00, their story of making (and being able to afford) such large purchases of liquor merely for personal consumption is not sufficiently credible to supersede Johnson's statement to the police and establish, in lieu thereof, the present version of the facts as the correct one.

Hence it is concluded, in view of all the evidence, that the liquor on the occasion in question had been purchased at and was being transported from Jersey City for unlicensed resale in New York City. Leaving aside the question of validity of the purchase, the transportation itself was illegal since the automobile was not, as required by the Alcoholic Beverage Law, licensed for any business transport of liquor in New Jersey. R.S. 33:1-2.

Hence both the liquor and the automobile constitute unlawful property. R. S. 33:1-1 (i and y). In view of the plan of illegal resale of the liquor, albeit in New York City, and the Johnsons' attempt, in seeking to reclaim the liquor and car, to present a false story, no reason appears why, as against them, the property should not be forfeited.

However, the Madison Personal Loan Inc. seeks return of the car as an innocent and bona fide lien claimant. R.S.33:1-66.

The loan company produced documents showing that, on March 1, 1939, it granted a loan of $270.00 to Murrel and Anna Johnson, taking, as security, a chattel mortgage on their automobile, and that $192.65 remained unpaid on the mortgage at time of the seizure.

The company's employee in charge of "closing" loans testified that, before the company granted the Johnson loan, telephone check was made with a linen supply company where Johnson was then still working as a chauffeur and his record reported as "good"; that, on similar check with a bank where Johnson had previously obtained a loan for $600.00, and with a doctor and another person whom Johnson had given as references, Johnson was stated to be a reliable "risk."

In view of the foregoing, it satisfactorily appears that the Madison Personal Loan Inc. is an innocent and bona fide lienor of the car whose claim should be recognized.

The State Finance Commissioner advises that the car, as thus encumbered by the lien, is without value to the State. Hence the car will be returned to the loan company, on condition that it pay the costs of seizure and storage.

Accordingly, it is ORDERED that the automobile seized herein be returned to the Madison Personal Loan Inc., provided that on or before May 13, 1940 it pays the costs of seizure and storage; and it is further

ORDERED that the liquor be and the same is hereby forfeited and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

E. W. GARRETT,
Acting Commissioner.

Dated: April 29, 1940.

3. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

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

Case No. 79.

CONCLUSIONS. AND ORDER

In 1920 petitioner was convicted on a charge of assault and battery and fined $50.00; in 1921 he was found guilty of illegal transportation of liquor, fined $250.00, and sentenced to

sixty days in jail; in 1924 he was found guilty of illegal registration, fined $1,000.00, and received a suspended sentence. Since 1924 he has not been convicted of any crime.

Petitioner frankly admits that for several years prior to Repeal he "ran" beer between Detroit and various cities in Canada. The record shows that he was arrested in 1933 in Detroit on a charge of murder but that he was subsequently acquitted. After Repeal petitioner returned to New Jersey and has been employed in various licensed premises since that time. His right to be so employed was not questioned until recently, when investigators of this Department learned that he had a criminal record.

Petitioner contends that he is and has always been eligible for such employment because he has never been convicted of a crime involving moral turpitude. That is so with the possible exception of his conviction for illegal registration, which arose from the fact that at an election held more than fifteen years ago he registered in his own name from two separate addresses in the same city. I believe that the crime involved moral turpitude but I think he should be given the benefit of the doubt. It appears that he acted in good faith and actually believed that he was not disqualified from employment on licensed premises.

At the hearing six character witnesses testified that petitioner has conducted himself in a law-abiding manner for the past seven years and that the various premises in which he was employed have been properly conducted. The Chief of Police of the municipality in which he lives certifies that no investigations are pending against him and that "reports of neighbors indicate that he may be classed as a desirable citizen."

Despite his past record as a bootlegger, I am satisfied that petitioner has been law-abiding for the past seven years and that his continued connection with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 29th day of April, 1940,

ORDERED, that his statutory disqualification because of the convictions described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

4. APPELLATE DECISIONS - CASSULLO v. WHITE TOWNSHIP.

JOHN P. CASSULLO,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF WHITE TOWNSHIP,

Respondent

ON APPEAL
CONCLUSIONS

Nathan L. Jacobs, Esq. and Egbert Rosecrans, Esq., Attorneys for Appellant.
J. M. Roseberry & Son, Esqs., Attorneys for Respondent.

This appeal is from the denial of a plenary retail consumption license for appellant's hotel premises on Route 6 near Bridgeville, White Township.

The Township (population, some 1400; area, 28.2 square miles) presently contains eight plenary retail consumption places, all of which are located along or near Route 6, a very heavily traveled highway, the nearest being some 500 feet from appellant's proposed site.

On April 1, 1939 respondent adopted a resolution that:

> ".....due to the number of licensed places now on Route 6, no more new liquor licenses will be granted on Route 6 or in the township, unless located at least one mile and a half away from the nearest licensed place."

Respondent denied appellant's application on the basis of this resolution, stating:

> ".....we have no objection against the applicant, personally or his place and no objections were filed against the issuance of the license but by reason of the resolution of April 1st, 1939, passed before the hotel was built, we feel that the license could not be granted, because our hands are bound by this resolution."

The purpose of a municipal regulation specifying the minimum distance between liquor places is to provide a handy rule of thumb to keep vicinities from being over-crowded (or at least further crowded) with such places. Franklin Stores Co. et al. v. Newark et al., Bulletin 381, Item 7. In light of this purpose, it may well be that respondent's resolution of April 1, 1939 is not improper in setting as great a minimum distance as a mile and a half since the Township is a large and sparsely settled farming community.

However, the resolution, applying as it does to only the issuance of new and not also the transfer of licenses, is, because of such one-sided application, unreasonable on its face and hence invalid. For, in thus singling out only the issuance of new licenses, it fails to prohibit the proximity of liquor places that a minimum-distance regulation is designed to prevent. Licenses presently in existence may, in so far as the resolution is

concerned, be freely transferred to premises within the prohibited distance; and new licenses may be issued for premises beyond that distance and then transferred within it. No reason appears why such transfers should be permitted and the issuance of new licenses within the proscribed distance barred. As was said in Re Costello, Bulletin 308, Item 2, as to a similar type of regulation:

> "What is there that makes it bad for a new licensee to locate within 750 feet of another licensee, but acceptable for a person already holding a license to do so even though he moved across the city."

Also see Buechler v. Perth Amboy et al., Bulletin 339, Item 6. Cf. Re DuPree, Bulletin 348, Item 9; Re Lee, Bulletin 366, Item 4.

Although respondent may perhaps have intended its resolution of April 1,1939 to apply both to transfers of any license and to issuance of new ones, nevertheless, since the language used in the resolutiom is clear on its face in stating only that "No..... new liquor licenses will be granted" within the prohibited distance, the State Commissioner is not at liberty to seek any hidden intent by respondent to include transfers as well and hence to adopt a construction on the basis thereof. Re Guenther, Bulletin 206, Item 15; New Jersey Licensed Beverage Ass'n et al. v. Camden et al., Bulletin 215, Item 5; Easton v. Galloway et al., Bulletin 241, Item 9.

It thus appears that the only ground viewed by respondent as standing in bar of appellant's license is without merit.

However, despite the invalidity of this ground, the fact yet remains that the Township's eight consumption licenses are all on or near Route 6 apparently within a mile on either side of appellant's hotel. With such number of licenses within that compass, there should be substantial evidence of need for an additional license there before any such license be directed to issue.

Appellant's hotel is, so the evidence discloses, the only modern hotel anywhere in the vicinity short of Easton (14 miles away) and Stroudsburg (17 miles away) across the State line in Pennsylvania. The hotel services, in so far as the traveling public is concerned, not only the automobilists along Route 6, which is described as one of the most heavily traveled highways in the State, but also passengers alighting at a large nearby Greyhound bus terminal which connects with all points in the country and at which several other bus lines also stop. Guests at the hotel, so appellant testified, have, since the hotel's recent opening, been requesting the service of liquor there.

It further appears that the hotel has a large restaurant at which various civic and social organizations in the community and also the county wish to give functions.

The Mayor of the nearest center of population, the Borough of Belvidere, some two and a half miles away, and the State Senator for the county, who resides in that Borough, both testified that public necessity and convenience would be served by issuance of appellant's license.

Although a hotel is not ipso facto entitled to a liquor license (Current v. Fredon, Bulletin 184, Item 1), nevertheless, from the above facts it adequately appears that need exists for issuance of a consumption license for appellant's hotel.

The action of respondent is, therefore, reversed. Respondent is directed to issue a license to appellant as applied for.

E. W. GARRETT,
Acting Commissioner.

Dated: April 29, 1940.

5. DISCIPLINARY PROCEEDINGS - CHATTEL MORTGAGE GIVEN BY RETAILER TO SOLICITOR EMPLOYED BY WHOLESALER - RETAIL LICENSE SUSPENDED 2 DAYS - SOLICITOR'S PERMIT CANCELLED.

In the Matter of Disciplinary Proceedings against

ROBERT BRENNER,
110 Adams St.,
Hoboken, N. J.

Originally holder of Solicitor's Permit No. 2061, and subsequently holder of Solicitor's Permit No. 3274, issued by the State Commissioner of Alcoholic Beverage Control,

And

SALVATORE CAVELLO,
36 Colgate St.,
Jersey City, N. J.,

Holder of Plenary Retail Consumption License C-576, issued by the Board of Commissioners of the City of Jersey City.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Robert Brenner, Pro Se.
Salvatore Cavello, Pro Se.

Robert Brenner, a solicitor for a limited wholesale licensee, pleaded guilty to a charge of being interested in the retailing of alcoholic beverages at the licensed premises of Salvatore Cavello, a plenary retail consumption licensee, in that he held a chattel mortgage upon the goods and fixtures of those premises, in violation of R. S. 33:1-43. The licensee pleaded guilty to a charge of aiding and abetting the solicitor to have such an interest, contrary to R. S. 33:1-52.

From the evidence, it appears that Brenner loaned Cavello the sum of $800.00 on December 15, 1938. To secure that indebtedness Cavello, on April 10, 1939 gave Brenner the chattel mortgage, which was recorded the next day. The mortgage was cancelled of record on August 26, 1939.

It has heretofore been determined that a chattel mortgage constitutes a prohibited interest, within the meaning of

R.S. 33:1-43, which makes it unlawful for a wholesale licensee "to be directly or indirectly interested in the retailing of any alcoholic beverages." Re Bade, Bulletin 127, Item 6; Re Carabelli, Bulletin 174, Item 15. The prohibition applies as well to an employee of the wholesaler. Re Cohen & Abrahson, Bulletin 392, Item 13.

Cavello was also charged with having failed to disclose, in answer to Question 28 in his application for license for the year 1939-40, the existence of such mortgage. In view that Question 28 does not specifically require licensees to disclose this information, that charge will be dismissed. In accordance with an office memorandum written by the late Commissioner Burnett, under date of March 5, 1940, the ruling made in Re Rosenthal, Bulletin 210, Item 12, to the extent that it requires that the interest of a chattel mortgagee must be disclosed in answer to Question 28 (then Question 7), is overruled. Application forms for municipal retail licenses for the year 1940-41 have been amended by including therein Question 29, which reads:

> "Does any individual, partnership, corporation or association hold any chattel mortgage or conditional bill of sale on any furniture, fixtures, goods or equipment used or to be used in connection with the conduct of the alcoholic beverage business to be operated under the license herein applied for? ..... If so, state the name and address of the holder of such mortgage or bill of sale, giving full particulars in respect thereto." (See Bulletin 395, Item 2).

Commencing with the forthcoming fiscal year, therefore, such information must be disclosed in answer to this question.

There is nothing to show that Cavello intended to deliberately deceive the issuing authority. The chattel mortgage was immediately upon its execution placed on public record and both the licensee and the solicitor swore that they did not know that they were violating the law. As soon as they were informed by an investigator of this Department that the transaction was illegal, the chattel mortgage was cancelled of record.

In view of the guilty plea and the circumstances above disclosed, Cavello's license will be suspended for two days.

Brenner surrendered his solicitor's permit No. 2061 on February 6, 1940 and there was thereupon issued to him solicitor's permit No. 3274. Investigation discloses that he is no longer employed as a solicitor and that he has disappeared and his present whereabouts are unknown. The Department has, therefore, been unable to obtain a return of the permit. Under the circumstances, his permit No. 3274 will be cancelled.

Accordingly, it is on this 29th day of April, 1940,

ORDERED that plenary retail consumption license C-576, heretofore issued to Salvatore Cavello by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of two (2) days, effective May 2nd, 1940, at 2:00 a.m. (Daylight Saving Time); and

It is further ORDERED that solicitor's permit No. 3274, heretofore issued to Robert Brenner by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby cancelled, effective immediately.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALES BY CLUB TO NON-MEMBERS - FIVE DAYS SUSPENSION - "FRONT" CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against

FIFTEENTH WARD POLITICAL CLUB OF ESSEX COUNTY,
6 Newark Street,
Newark, N. J.

Holder of Club License CB-38, issued by Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Frank P. Marano, Esq., Attorney for Licensee.
Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee has pleaded guilty to Charge (1), alleging, in substance, that on August 11, 1939, it sold alcoholic beverages to investigators of this Department who were not bona fide members or bona fide guests of members of the club, in violation of Rule 5 of State Regulations No. 7.

Licensee has pleaded not guilty to Charge (2), alleging, in substance, that it has knowingly aided and abetted Arthur Guarino to exercise the rights and privileges of its club license, contrary to R.S. 33:1-26.

As to Charge (2): The evidence introduced by the Department consisted of a statement given by Arthur Guarino in which, among other things, he says:

> "I have been a member of the Board of Trustees ever since the club was incorporated. When the club applied for their license they requested me to take care of the liquor end of the business and do all of the buying. I agreed to be responsible for all of the liquor bills and for this I am receiving 70% of the receipts from which I pay the bartenders, who are members, and all liquor and bills which pertain to the operation of the bar. The club receives 30% of the bar receipts."

At the hearing herein, Arthur Guarino testified that he is not conducting the bar in the club for personal gain; that he is regularly employed as a marble polisher, working forty to fifty hours a week, and earning a substantial salary; that the verbal agreement provides that the club obtains 30% of the net profits and he obtains 70% of the net profits; that the agreement was entered into after he had loaned the club Nine Hundred Dollars ($900.00) when it obtained its license in July 1939; that the agreement is to continue only until he is fully repaid; that the

sum of One Hundred Dollars ($100.00) has been repaid to date; that the bartenders are selected by the three Trustees of the club; and that the bills for liquor are made out to the club, although he, Guarino, feels that he is personally responsible for said bills if they are not paid by the club.

His testimony is corroborated to some extent by the minutes of a meeting of the club held on July 10, 1939, which recites:

> "Mr. Guarino was given a vote of appreciation for his generosity to the club. His plan (Guarino's) that he pay all club expenses and turn back 30% of the profits to the club was accepted. At the end of the year the club is to have an accounting to see that Mr. Guarino is properly paid off for his loan. Mr. Guarino stated that he was not after profits; that he was interested primarily in the welfare of the club."

The method of operation is open to criticism. If it has not already done so, the club must arrange immediately to have the receipts turned over to its proper officers who should pay bills and who may reimburse Guarino until his loan is repaid. It does not appear from the evidence that the club license was farmed out to Guarino but, rather, that the arrangement was entered into in good faith as a means of repaying the money advanced by the individual to the club. The case is, therefore, distinguishable on its facts from Laurence Brook Country Club, Inc., Bulletin #335, Item #6, and Business Men's Associates, Inc., Bulletin #348, Item #6.

The second charge is dismissed.

The license will be suspended for five (5) days because of the violation set forth in Charge (1).

Accordingly, it is, on this 29th day of April, 1940,

ORDERED that Club License CB-38, heretofore issued to Fifteenth Ward Political Club of Essex County by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective May 3d, 1940, at 3:00 A.M. (D.S.T.).

E. W. GARRETT,
Acting Commissioner.

7. ENFORCEMENT DIVISION ACTIVITY REPORT FOR APRIL, 1940

To: E. W. Garrett, Acting Commissioner.

ARRESTS: Total number of persons - - - - - - - - - - - - - - - - 19
Licensees - 2 Non-licensees - 17

SEIZURES: Stills - total number seized- - - - - - - - - - - - - 7
Capacity 1 to 50 Gallons - - - - - - - 4
Capacity 50 Gallons and over - - - - - 3

Motor Vehicles - total number seized- - - - - - - - - 1
Trucks - 0 Passenger cars - 1

Alcohol
Beverage Alcohol - - - - - - - - - - - - 14 Gallons

Mash - total number of gallons- - - - - - - - 3400

Alcoholic Beverages
Beer, Ale, etc.- - - - - - - - - - - - - - 6 Gallons
Wine - - - - - - - - - - - - - - - - - - -142 "
Whiskies and other hard liquor - - - - 53 "

RETAIL INSPECTIONS:
Licensed premises inspected - - - - - - - - - 1452
Illicit (bootleg) liquor - - - - - 15
Gambling violations- - - - - - - 12
Sign violations- - - - - - - - - 32
Unqualified employees- - - - - - 83
Other mercantile business- - - - 14
Disposal permits necessary - - - 3
"Front" violations - - - - - - - 2
Improper beer markers- - - - - - 0
Other violations found - - - - - 9

Total violations found - - - - - - - - - 170
Total number of bottles gauged- - - - - - - -14626

STATE LICENSEES:
Plant Control Inspections Completed - - - - - 114
License applications investigated - - - - - 11

COMPLAINTS:
Investigated and closed - - - - - - - - - - - 377
Investigated, pending completion- - - - - - 452

LABORATORY:
Analyses made - - - - - - - - - - - - - - - - 156
Alcohol and water and artificial coloring cases- 20
Poison and denaturant cases - - - - - - - - 1

Respectfully submitted,

S. B. White,
Chief Inspector.

8. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to the provisions of R.S.33:1-31.2 (as amended by Chapter 350, P.L. 1938).	CONCLUSIONS AND ORDER
Case No. 90	

In 1928, petitioner pleaded guilty to a charge of assault with intent to rape and was sentenced to six months in the County jail; in 1931 he was convicted of larceny of an automobile and sentenced to imprisonment for one year. Since that time he has not been convicted of any crime.

On behalf of petitioner, three neighborhood business men who have known him for seventeen, seven and five years, respectively, testified that petitioner's reputation in the community was good. Petitioner also produced two other witnesses who spoke highly of him - one a neighbor and relative, the other a furniture dealer who has done business with petitioner for the past seven or eight years, but who, otherwise, was not conversant with petitioner's general reputation. Because of the interest of the one and the limited knowledge of the other, their testimony, while it has some bearing, does not have the weight of the other more competent character testimony. The Police Department in the municipality in which petitioner resides has certified that there are no pending complaints or convictions against him.

It is concluded that petitioner has led a law-abiding life for the last past eight years and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 2nd day of May, 1940,

ORDERED, that his statutory disqualification because of the convictions described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,
Acting Commissioner.

9. APPELLATE DECISIONS - ANDREWS v. SOUTH PLAINFIELD.

JOHN ANDREWS, trading as VILLAGE INN,
Appellant,
-vs-
THE MAYOR AND COUNCIL OF THE BOROUGH OF SOUTH PLAINFIELD,
Respondent

ON APPEAL
CONCLUSIONS

Philip A. Donnelly, Esq., Attorney for Appellant.
John J. Rafferty, Esq., by Philip Blacher, Esq., Attorney for Respondent.

This is an appeal from the revocation of appellant's plenary retail consumption license No. C-5 for premises located at 1907 Park Avenue, South Plainfield.

Appellant's license was revoked after he was found guilty of selling liquor and remaining open on a Sunday, in violation of an ordinance of the Borough of South Plainfield which provides, among other things, that no licensee shall permit the sale of alcoholic beverages nor shall any licensee open between the hours of 3:00 A.M. and 12:00 noon on Sundays.

The sole contention of appellant is that the penalty was unduly severe.

At the hearing herein appellant admitted that, when licenses were renewed on June 30, 1939, the Police Commissioner announced that, in view of the fact that the closing hour had been extended from 1:00 A.M. to 3:00 A.M., the Mayor and Council proposed to enforce strictly the 3:00 A.M. closing. He admits that four patrons were in his licensed premises at 3:20 A.M. on July 9, 1939. Chief of Police McCarthy testified that, on the morning in question, at 3:30 A.M., there were six in the barroom and that, at that time, he saw the wife of the licensee draw a drink and put it on the bar, and saw another man take a drink of whiskey.

At the hearing on appeal Chief of Police McCarthy also testified that, after the violation was discovered, appellant abused and assaulted him. Appellant has moved to strike out said testimony on the ground that the charges preferred related only to keeping open and selling alcoholic beverages after the closing hour of 3:00 A.M. It is true that the licensee was charged merely with keeping open and selling alcoholic beverages during prohibited hours, but testimony as to appellant's conduct within a short time after the violation seems to be material in determining the reasonableness of the penalty imposed. Actions which aggravate an offense may well warrant a more severe penalty. Motion to strike the testimony is, therefore, denied. Despite appellant's denial, I believe the testimony of the Chief.

It appears, however, that no charges were previously preferred against appellant. Under these circumstances, a revocation

of his license, which would prevent him from obtaining a license in any other municipality or being employed by any liquor licensee for a period of two years, appears to be unnecessarily severe. Moreover, on December 21, 1939, respondent adopted a resolution recommending to the Commissioner that the penalty be reduced to a suspension of the license for thirty days.

Accordingly, the action of respondent in finding the licensee guilty as charged is affirmed. The penalty is hereby modified by reducing said penalty from revocation of the license to suspension of said license for a term of thirty (30) days, effective May 6, 1940, at 3:00 A.M.(Daylight Saving Time).

E. W. Garrett

Acting Commissioner.

Dated: May 2, 1940.