

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

BULLETIN 415

JULY 15, 1940.

1. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2 (as amended )  
by Chapter 350, P.L. 1938) )  
Case No. 102 )  
----- )

CONCLUSIONS  
AND ORDER

Petitioner, Pro Se.

In 1922 petitioner was convicted of aiding others in the theft of a truck and given a suspended sentence.

After such conviction petitioner continued to live, as theretofore, in Brooklyn until 1934. He then moved to Jamaica, New York, where he now resides.

Throughout this period petitioner has, almost continuously, engaged in the trucking business and has recently formed a corporation of which he is President and one-third stockholder to carry on the business.

At the present hearing he produced three character witnesses who testified favorably on his behalf, viz., a private investigator who has known him as a friend for thirty years and who lived in his neighborhood in Brooklyn; the traffic manager of a New York manila-rope company (which has used petitioner for its trucking) who has known petitioner for eight or nine years and lives in his neighborhood in Jamaica; and an insurance broker who has known him for the last ten years and has been handling all his insurance during that period.

These witnesses testified that petitioner's reputation is good. The one who has known him for thirty years testified that he has heard nothing against petitioner since his conviction in 1922, and that petitioner has, since such time, been leading an honest and law-abiding life. The other two witnesses testified to a like effect as regards the period during which they have known petitioner.

Petitioner's fingerprint returns likewise show a clear record since 1922. The New York Police Department advises that search of their records reveals only that petitioner was fined \$2.00 in January 1940 on a minor traffic violation, viz., for failing to keep to the right.

In view of the foregoing evidence, I am satisfied that petitioner has been leading an honest and law-abiding life since his conviction in 1922, warranting removal of his disqualification.

Accordingly, it is, on this 3rd day of July, 1940,

ORDERED, that petitioner's statutory disqualification because of the conviction 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).

New Jersey State Library

E. W. GARRETT,  
Acting Commissioner.

2. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application )	
to Remove Disqualification be- )	
cause of a Conviction, pursuant )	CONCLUSIONS
to R. S. 33:1-31.2 (as amended )	AND ORDER
by P.L. 1938, Chapter 350) )	
Case No. 101 )	
----- )	

In November 1929 petitioner was convicted of the crime of assault with intent to rape, and sentenced to a reformatory. Within the following month he was recalled and placed on probation for one year. He has never been arrested for or convicted of any other crime.

At the hearing herein a police officer and a furniture dealer, who have known petitioner during his entire lifetime, testified that he has conducted himself in a law-abiding manner during the past eleven years. The Chief of Police of the municipality in which petitioner has resided for the past seven years has certified that the files of his Department fail to disclose any data of arrest or conviction of petitioner herein.

In the ordinary case I would be inclined to grant immediate relief because I believe that the crime, which was committed when the individual was about twenty years of age, has been lived down by subsequent good conduct. However, petitioner held State Beverage Distributor's licenses from April 1934 until May 1940, when his license was transferred to another person. In the applications filed for those licenses and in the application filed herein, petitioner denied that he had ever been convicted of a crime. At the hearing he testified that he "thought a crime meant whether he would be implicated with the bootlegging business." The answers were false and because of these false answers I shall withhold any relief for a period of thirty days.

Accordingly, it is, on this 3rd day of July, 1940,

ORDERED, that petitioner's disqualification from obtaining or holding a license or permit or being employed by a licensee because of the conviction referred to herein be and the same hereby is removed in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938), but this order shall not be effective until August 3, 1940.

E. W. GARRETT,  
Acting Commissioner.

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

3. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1939  
TO JUNE 30TH, 1940 AS PER CERTIFICATIONS RECEIVED FROM THE ISSUING AUTHORITIES

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	475	176,865.43	62	21,267.81	14	1,075.00	1	28.96	5	668.48	9	548	199,905.68
Bergen	818	264,722.69	238	55,909.11	49	4,468.76	38	1,658.33	14	2,115.54	15	1,142	328,874.43
Burlington	184	59,354.41	15	3,500.00	30	3,575.00	1	25.00			3	227	66,454.41
Camden	454	189,032.61	49	18,275.00	60	7,293.13	1	50.00	6	1,614.25	6	564	216,264.99
Cape May	127	43,468.39	10	3,344.64	5	500.00					1	141	47,313.03
Cumberland	76	22,244.41	9	1,925.00	24	2,577.54						109	26,746.95
Essex	1,441	724,318.08	350	165,452.29	79	9,892.46	25	1,250.00	2	454.87	8	1,889	901,367.70
Gloucester	112	30,785.54	9	1,325.00	6	329.16					1	126	32,439.70
Hudson	1,643	670,921.01	232	111,747.20	55	6,567.91	58	2,306.64			4	2,034	791,542.76
Hunterdon	83	21,924.53	1	200.00	1	150.00			1	112.54	2	84	22,387.07
Mercer	443	185,744.58	43	11,100.00	35	4,433.42			1	99.80	3	519	201,377.80
Middlesex	616	237,688.31	42	11,167.98	33	2,755.27	1	25.00	5	1,076.27	12	685	252,712.83
Monmouth	532	206,651.18	81	23,348.18	27	2,969.06	10	400.00	47	13,669.57	35	662	247,037.99
Morris	346	96,400.70	72	17,448.35	29	2,322.20	2	50.00	23	3,368.07	24	448	119,589.32
Ocean	184	90,234.77	30	10,231.00	7	700.00					1	220	101,165.77
Passaic	905	343,708.84	124	35,197.68	33	3,974.14	19	815.61	8	1,302.77	12	1,077	384,999.04
Salem	50	15,750.00	4	550.00	8	650.00						62	16,950.00
Somerset	189	64,525.40	22	5,025.00	10	969.80			1	125.00	3	219	70,645.20
Sussex	167	34,907.54	10	1,690.00	5	265.00			6	900.00	7	181	37,762.54
Union	556	273,909.58	124	40,661.13	63	7,072.83	20	860.20	2	616.32	3	762	323,120.06
Warren	140	40,225.09	13	2,332.50	17	1,770.00	2	70.00	5	648.50	5	172	45,046.09
TOTALS	9,541	3,795,383.09	1,590	541,697.87	590	64,310.68	178	7,539.74	126	26,771.98	154	11,871	4,433,703.36

E. W. GARRETT, Acting Commissioner.

Respectfully submitted,

ERWIN B. HOCK,  
Deputy Commissioner.

Report for the fiscal year ending June 30th, 1940.

4. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application	)	
to Remove Disqualification be-	)	
cause of a Conviction, pursuant	)	CONCLUSIONS
to R. S. 33:1-31.2 (as amended by	)	AND ORDER
Chapter 350, P.L. 1938).	)	
Case No. 105	)	
-----	)	

In 1921 petitioner was convicted of being a proprietor of a gambling house, and sentenced to a fine of \$1,000.00 and imprisonment for five months. He now seeks to have the disqualification resulting from such conviction removed.

Because of certain information received by this Department tending to indicate that petitioner has not been an honest and law-abiding citizen for at least five years last past, an unusually exhaustive investigation was instituted for the purpose of ascertaining whether such information was correct.

The office of the Sheriff of the county in which petitioner resides was contacted and two detectives of that office appeared at the hearing. They testified that they knew of no reason why the petitioner should not be associated with the alcoholic beverage industry; nor were they able to furnish any evidence to substantiate the aforesaid information.

The Prosecutor's office of the county where the petitioner lives advises that its records disclose no arrest or complaints against petitioner for the last five years. The Chief of Police of the municipality in which petitioner resides reports that for the past six years he has not received any complaints or made any investigations concerning the petitioner. Fingerprint returns show that petitioner has not been convicted of any crimes since 1921. Independent investigation made by this Department failed to elicit anything in support of the information received.

Petitioner's father died about seven years ago, and left him a substantial amount of money. Prior to that time he had managed his father's business and real estate, and continued to do so for about a year after his father's death. He then met with a serious accident which left him inactive for a period of two and a half years. After that, he became interested in a sales promotion scheme which occupied most of his time until about a year ago. Since then he has been unable to find anything to do, and so he recently decided to purchase a tavern.

Petitioner produced four witnesses to testify as to his good character - a man who has been in the diamond and loan business for forty years and has known petitioner for thirty years; another who has been in the tailors' supplies business for thirty-five years and has known petitioner for thirty years; another who has been in the bakery business for forty-three years and has known petitioner for thirty-five years; and the last, a lawyer of nineteen years standing, who has known petitioner for ten years. All testified that petitioner's reputation as an honest and law-abiding citizen is good and that, in their opinion, petitioner's association with the alcoholic beverage industry would not be detrimental to the industry.

The record thus discloses that petitioner has been leading an honest and law-abiding life for at least five years last past.

It is, therefore, on this 10th day of July, 1940,

ORDERED, that petitioner's disqualification from holding a liquor license or being employed by a liquor licensee in this State because of the conviction referred to herein, be and the same is hereby removed in accordance with R. S. 33:1-31.2, as amended by Chapter 350, P.L. 1938.

E. W. GARRETT,  
Acting Commissioner.

5. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

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

CONCLUSIONS  
AND ORDER

Case No. 106 )  
----- )

This matter was heard contemporaneously with Case No. 105, Bulletin 415, Item 4, in view that both petitioners presented their petitions at the same time and that three of the character witnesses produced by them were the same.

In 1920 petitioner pleaded non vult to a charge of maintaining a gambling house, as a result of which he was fined \$500.00.

Petitioner is fifty-three years old and married. His trade for the past thirty years has been that of a wood pattern maker. He testified that he has pursued that trade for the past five or six years after having had to give it up for seven years prior thereto because the dust affected his throat. During those seven years he managed to eke out an existence by selling neckties. He now desires to operate a tavern and to apply for a liquor license if his disqualification is removed.

For the same reason appearing in Case No. 105, supra, the investigation made in this case was as completely exhaustive as possible. The two detectives from the Sheriff's office testified that they knew of no reason why this petitioner's association with the alcoholic beverage industry should be detrimental to the industry, and could offer no proof that in any wise indicated that petitioner had not conducted himself in an honest and law-abiding manner for the past five years.

Petitioner's fingerprint returns are clear of any convictions since 1920. Reports received from the Prosecutor's office of the county, and the Chief of Police of the municipality, in which petitioner resides, show no arrests or complaints against him for at least the last five years.

The three businessmen referred to in Case No. 105, supra, also testified on behalf of this petitioner. All have known him for at least fifteen years, and all stated that his reputation in the community for being honest and law-abiding is good and gave as their opinion that it would not be inimical to the alcoholic beverage industry if he were connected therewith. In addition, petitioner

produced a former Police Magistrate who has known him for ten years, and whose testimony was of similar import as that of the other three character witnesses.

It thus appears that petitioner has conducted himself in an honest and law-abiding manner for at least five years last past.

It is, therefore, on this 10th day of July, 1940,

ORDERED, that petitioner's disqualification from holding a liquor license or being employed by a liquor licensee in this State because of the conviction referred to herein, be and the same is hereby removed in accordance with R. S. 33:1-31.2, as amended by Chapter 350, P.L. 1938.

E. W. GARRETT,  
Acting Commissioner.

6. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

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

CONCLUSIONS  
AND ORDER

Case No. 107 )  
----- )

In Case No. 51, Bulletin 308, Item 4, petitioner's application for removal of disqualification was denied because petitioner, who has a long criminal record, had been convicted for violation of a municipal ordinance during the five year period immediately preceding his application. Leave to re-apply on April 1, 1940, five years after the date of petitioner's last conviction, was therein granted.

At the hearing, two business men who have known petitioner for twenty and five years, respectively, testified that his reputation is good and that he has been leading an honest and law-abiding life during the past five years.

Petitioner's fingerprint record shows that he has not been convicted of any crime in the last five years. Reports from the police departments of the two municipalities wherein petitioner has resided since 1935 show that there are no pending complaints or investigations against him.

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

Accordingly, it is, on this 9th day of July, 1940,

ORDERED, that his statutory disqualification because of convictions described in Case No. 51, supra, 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.

7. APPELLATE DECISIONS - PILLSBURY v. TRENTON.

MARTIN K. PILLSBURY,	)	
Appellant,	)	ON APPEAL
-vs-	)	CONCLUSIONS
BOARD OF COMMISSIONERS OF THE	)	
CITY OF TRENTON,	)	
Respondent	)	
-----	)	

Percy Haveson, Esq., Attorney for Appellant.  
 Joseph Felcone, Esq., of Counsel.  
 John Brieger, Esq., Attorney for Respondent.

Appellant appeals the denial of a person-to-person and place-to-place transfer of plenary retail consumption license C-234 for the fiscal year 1939-40 from Armida Nobili at premises 232 Hamilton Avenue, Trenton, to appellant for premises 35 West State Street, Trenton.

At the hearing respondent gave no reason for its denial but in its answer alleged that the application was denied because the vicinity was adequately supplied with licensed places.

At the premises sought to be licensed, appellant conducts a restaurant of a type substantially the same as the coffee shops of the hotels Stacy Trent and Hildebrecht which are both within 350 feet of appellant's restaurant. Both hotels hold plenary retail consumption licenses. Across the street at 18 West State Street a third plenary retail consumption license is in effect.

Appellant testified that he sought a license for his restaurant because since opening it for business in December 1939 a number of his customers have requested the service of alcoholic beverages with their meals and some of them have left upon learning that such beverages were not available; and that it will be impossible to operate the type of business he conducts without the service of alcoholic beverages with meals.

That the licensing of the premises would be advantageous to appellant is not, in and of itself, a sufficient reason why the premises should be licensed. The primary purpose of licensing is to serve the public convenience and necessity. Where, as here, similar licensed restaurant facilities are available to the public within a short distance, and the reason for the denial is that the vicinity is adequately supplied with licensed places, appellant is required to show that the existing licensed places are inadequate to satisfy the public demand. Cf. Landgraff v. North Plainfield, Bulletin 284, Item 9. As to the inadequacy of the existing similar facilities nearby there was no proof.

The action of the respondent is therefore affirmed.

E. W. GARRETT,  
 Acting Commissioner.

Dated: July 9, 1940.

8. REPORT ON APPEAL CASES FROM JULY 1, 1939 TO JUNE 30, 1940.

July 2, 1940

To: Acting Commissioner Garrett  
From: Edward J. Dorton

Cases undecided June 30, 1939 - - - - -	30
Cases filed for period July 1, 1939 to June 30, 1940 - - - - -	<u>137</u>
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DISPOSITION

Affirmances - - - - -	83
Affirmances on condition- - - - -	3
Affirmances (Penalty Modified)- - - - -	5
Condition imposed by issuing authority modified - - - - -	2
Dismissed - - - - -	4
Ordinance modified- - - - -	1
Ordinance Vacated - - - - -	2
Reversed- - - - -	29
Reversed on condition - - - - -	3
Withdrawals - - - - -	17
Not Decided - - - - -	<u>18</u>

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Edward J. Dorton,  
Deputy Commissioner  
and Counsel.

9. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES -  
5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary )  
 Proceedings against )  
 )  
 HANS LUHRS, )  
 135 New York Avenue (now )  
 known as 619 New York )  
 Avenue), )  
 Union City, New Jersey, )  
 )  
 Holder of Plenary Retail Consump- )  
 tion License C-239, issued by the )  
 Board of Commissioners of the City )  
 of Union City )  
 ----- )

CONCLUSIONS  
AND ORDER

Robert R. Hendricks, Esq., Attorney for the State Department  
of Alcoholic Beverage Control.  
Hans Luhrs, Pro. Se.

The licensee has pleaded guilty to a charge of selling  
liquor at less than the Fair Trade price at the licensed premises  
on June 1, 1940, in violation of Rule 6 of State Regulations No. 30

The usual penalty for this violation is ten days.

By entering this plea in ample time before the time fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days instead of ten (10) days.

Subsequent to the institution of these proceedings, the above mentioned license has expired and has been renewed by the issuance of Plenary Retail Consumption License C-234, for the present fiscal year.

Accordingly, it is, on this 9th day of July, 1940,

ORDERED, that Plenary Retail Consumption License C-234, heretofore issued to Hans Luhrs by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for a period of five (5) days, effective July 15, 1940, at 3:00 A.M. (Eastern Daylight Time).

E. W. GARRETT,  
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

LICHTMANN LIQUOR DISTRIBUTORS, INC.,  
94 French Street,  
New Brunswick, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-9 issued by the Board of Commissioners of the City of New Brunswick.

Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.  
Lichtmann Liquor Distributors, Inc., by Anti Lichtmann, President.

The licensee has pleaded guilty to a charge of selling alcoholic beverages below the Fair Trade minimum on June 14, 1940, in violation of Rule 6 of State Regulations 30.

The usual penalty for this violation is ten days. By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five days instead of ten days.

Subsequent to the institution of these proceedings, the above mentioned license expired and has been renewed by the issuance of Plenary Retail Distribution License D-9 for the present fiscal year.

Accordingly, it is, on this 10th day of July, 1940,

ORDERED, that Plenary Retail Distribution License D-9, heretofore issued to Lichtmann Liquor Distributors, Inc. by the Board of Commissioners of the City of New Brunswick, be and the same is hereby suspended for a period of five (5) days, effective July 15, 1940, at 7:00 A.M. (DST).

E. W. GARRETT,  
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - REVOCATION MITIGATED INTO A SUSPENSION FOR 40 DAYS AFTER CONSIDERING ADDITIONAL EVIDENCE.

In the Matter of Disciplinary Proceedings against )  
 )  
 MARGARET H. BURKE, )  
 4 Heckman Street, )  
 Phillipsburg, New Jersey, )  
 )  
 Holder of Plenary Retail Consumption License No. C-43, issued by )  
 the Board of Commissioners of the )  
 Town of Phillipsburg. )  
 ----- )

ON PETITION  
CONCLUSIONS AND ORDER

Francis L. Thompson, Esq., Attorney for the Petitioner.

On June 12, 1940 I revoked Margaret H. Burke's then existing plenary retail consumption license for 1939-40 for her tavern in Phillipsburg after finding that one Frieda Nixon, who is disqualified from holding any liquor license in New Jersey since not a five years' resident in the State, was a secret partner in the tavern. See Re Burke, Bulletin 409, Item 13.

Miss Burke has filed a petition for modification of that penalty, such petition stating that she has never been found guilty of any other offense in her life; that the revocation works serious hardship upon her because she is under lease until June 30, 1941 for her tavern premises, and because she has no other adequate source of income than the tavern; and that she has now bought out Frieda Nixon's interest in the tavern.

The petition is accompanied by copy of a resolution of the Phillipsburg Board of Commissioners, stating that they wish to go on record as verifying that petitioner is of "high moral character;" that her tavern was "exceedingly high in standard" and, in fact, "an asset and benefit to the Town of Phillipsburg;" and that, because of such facts, they are in favor of her being "reinstated."

The petition is also accompanied by an affidavit of the local Chief of Police, likewise verifying petitioner's good character and reputation, and stating that the type of liquor establishment which she conducted "can be considered as the best in this community."

The petition is further accompanied by an affidavit of the Monsignor of the Saint Philip's and Saint James' Catholic Church, the nearest church to the tavern, being some 2½ blocks away, stating that petitioner has always been of "good moral character and reputation" and that, though the Monsignor is not in favor of any liquor licenses, nevertheless, in his opinion, if such licenses are to be issued there could be "no better type of person" to have such license than petitioner.

As stated in the original Conclusions and Order revoking Miss Burke's license, such extreme, instead of a lesser, penalty was imposed because it appeared that Miss Burke, in addition to being guilty of having Miss Nixon as an undisclosed and disqualified partner, failed to reveal the true situation at the hearing as to Frieda Nixon's connection with the tavern.

In view of the fact that Miss Burke has now bought out Miss Nixon's interest in the tavern (thus "correcting" the situation as to proprietorship of the tavern), the unusual testimonials as to her character and reputation and the excellent type of establishment she was running, and the fact that the Phillipsburg Board of Commissioners deems that her tavern is the type of place they want for the town, I shall change the revocation heretofore imposed to a suspension.

However, although Miss Burke's suspension might originally have been for thirty days had she made full and frank disclosure at the hearing, I shall, on now modifying the revocation, prescribe a penalty equivalent to a forty-day suspension.

Accordingly, it is, on this 10th day of July, 1940,

ORDERED, that the aforesaid Order of June 12, 1940 be and hereby is modified from revocation of Margaret H. Burke's then existing plenary retail consumption license for 1939-40, for premises at 4 Heckman Street, Town of Phillipsburg, to suspension of such license from June 12 through June 30, 1940 (the balance of its term) and, further, that no license shall be issued to Miss Burke or for said premises for the 1940-41 licensing year before July 23, 1940, thus constituting, in total, the equivalent of a forty-day suspension.

E. W. GARRETT,  
Acting Commissioner.

12. DISCIPLINARY PROCEEDINGS - FRONT - REAL PARTY IN INTEREST THEN QUALIFIED EXCEPT FOR LOCAL REGULATION - LICENSE NOW IN NAME OF REAL OWNER - 10 DAYS' SUSPENSION ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

WALTER BENNETT MONROE, )  
T/a Queen Anne Beverage Co., )  
38 Queen Anne Road, )  
Bogota, N. J., )

CONCLUSIONS

Holder of Plenary Retail Distribution License D-5 issued by the Borough Council of the Borough of Bogota on July 1, 1939. )

AND ORDER

RUDOLPH J. LAUZON, )  
T/a Queen Anne Beverage Co., )

Holder of Plenary Retail Distribution License D-5 issued by the Borough Council of the Borough of Bogota on June 27, 1940 for the same premises. )  
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Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

Walter Bennett Monroe, Pro Se.

Rudolph J. Lauzon, Successor in Interest.

The defendant-licensee has pleaded guilty to charges of making a false statement in his license application in that he denied that any individual other than himself had any interest in

the business, and aiding and abetting a non-licensee to exercise the rights and privileges of the license.

It is admitted that the license was taken in Walter Bennett Monroe's name because the undisclosed person, who is fully qualified in all other respects, was ineligible as a licensee in the Borough of Bogota by reason of lack of the two years' residence required by local regulation.

It further appears that Monroe's license expired on June 30, 1940 and that he did not apply for renewal thereof.

It further appears that Rudolph J. Lauzon, the undisclosed person hereinbefore referred to (who is now eligible for license under local regulations), applied for a new license for the same premises in question, and on June 27, 1940 the Borough Council issued to him Plenary Retail Distribution License D-5 effective as of July 1, 1940, expressly conditioned, however, to any order subsequently made under the present proceedings then pending against Walter Bennett Monroe.

The present licensee, Rudolph J. Lauzon, in obtaining the license in his own name, has corrected the violation. However, since the license was issued to him conditionally, as hereinbefore stated, in accordance with Re King, Bulletin 404, Item 5, the license will be suspended for ten days.

Accordingly, it is, on this 11th day of July, 1940,

ORDERED, that Plenary Retail Distribution License D-5, heretofore issued to Rudolph J. Lauzon, T/a Queen Anne Beverage Co., by the Borough Council of the Borough of Bogota, be and the same is hereby suspended for a period of ten (10) days, effective July 15, 1940, at 2:00 A.M., Daylight Saving Time.

E. W. GARRETT,  
Acting Commissioner.

13. APPELLATE DECISIONS - THE CREST TAVERN, INC. v. WILDWOOD CREST.

THE CREST TAVERN, INC., )  
a corporation of New Jersey, )  
Appellant, )  
-vs- )  
BOARD OF COMMISSIONERS OF THE )  
BOROUGH OF WILDWOOD CREST, )  
Respondent )  
-----

ON APPEAL  
CONCLUSIONS

Harry Tenenbaum, Esq., Attorney for Appellant.  
W. Russell Epler, Esq., Objector, Pro Se.

Appellant appeals the denial of a plenary retail consumption license for the year 1939-40 for premises at the northeast corner of Wisteria Road and New Jersey Avenue in the Borough of Wildwood Crest.

Respondent gave no reason for its denial, but in its answer alleged that the application was denied because of the protests of "prominent residents"; objections by way of petition by "many remonstrants of importance"; the presence of a number of residents who testified before the Board of Commissioners that the municipality was adequately supplied with licensed places, for all of which reasons the Board of Commissioners concluded that there was "an overwhelming sentiment" against the granting of the license by "many important citizens" of the Borough, for which reason the application was denied - in a word, the license was denied because there were sufficient licensed places in the municipality. Neither respondent nor any of the objectors, save one, appeared at the hearing of the appeal.

There is presently issued and outstanding in the Borough of Wildwood Crest (estimated area one square mile, population according to the 1930 Federal census 738, average summer population approximately 3,000) but one plenary retail consumption license. Subsequent to the hearing, the Borough adopted an ordinance on May 27, 1940 which limits the number of plenary retail consumption licenses to be issued to two. Since only one license has been issued, there exists a vacancy under the quota. Had the application been denied for the stated reason at a time when the formal quota was in effect, and a vacancy existed therein, the denial would be deemed improper. DeLuca v. Fairview, Bulletin 279, Item 6. The reason for the rule is equally applicable where the quota is established after denial of the license but before decision on appeal.

By its own action in adopting the ordinance the respondent has indicated that it does not believe that the one existing plenary retail consumption license is sufficient to serve the needs of the community. The alleged reason that the license was denied because the municipality was adequately supplied must, therefore, be accorded no weight. Furthermore, eight nearby residents and property owners testified that in their opinion the granting of the license would serve the public convenience and necessity. Opposed to this were the general objections of but one witness.

Nor are the provisions of P.L. 1939, Chapter 61, limiting the number of licenses to be issued in municipalities in Sixth Class Counties, any bar to the granting of the instant license. That law provides:

Section 1. "No new plenary retail consumption license shall be issued within any municipality situate within a county of the sixth class unless and until the ratio of such licenses issued and outstanding to the population within a municipality shall be less than one such license to every five hundred persons resident within said municipality as determined by the last preceding Federal census."

Section 13. "The term 'last preceding Federal census' where used in this act shall be deemed to mean the Federal census which is taken immediately previous to the date on which an application for a license is filed."

The Borough of Wildwood Crest is situate within Cape May County, a county of the Sixth Class. The application for the instant license was filed on February 14, 1940. The Federal census last preceding the date of filing was that of 1930, according to

which the population of Wildwood Crest was 738. Only one plenary retail consumption license was in effect at the time application was made for the instant license, consequently the ratio of such licenses issued and outstanding to the population was less than one to every 500 persons.

The action of the respondent is therefore reversed.

Since the license for which application was made was for the year 1939-40, expiring June 30, 1940, respondent is directed to issue a license for the year 1940-41, provided appellant makes application therefor and fully complies with all statutory requirements, unless valid objections different in kind from those heretofore raised shall be presented.

E. W. GARRETT,  
Acting Commissioner.

Dated: July 11, 1940.

14. DISCIPLINARY PROCEEDINGS - FAIR TRADE CHARGE DISMISSED WHERE EVIDENCE DISCLOSED NO VIOLATION - CHARGES RE FAILURE TO POSSESS PROPER FEDERAL TAX STAMP DISMISSED WHERE STAMP SINCE OBTAINED.

In the Matter of Disciplinary Proceedings against  
  
PAUL AND LOUIS CARUSO,  
435 Jackson Avenue,  
Jersey City, New Jersey,  
  
Holders of Plenary Retail Distribution License D-123, issued by the Board of Commissioners of the City of Jersey City.  
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CONCLUSIONS  
AND ORDER

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.  
Nathan L. Jacobs, Esq., Attorney for the Defendant-Licensees.

The defendants are charged (1) with selling a case of twelve quart bottles of Park & Tilford Reserve Whiskey below the Fair Trade price in violation of State Regulations No. 30, Rule 6, and (2) and (3) with selling alcoholic beverages in a manner not within the scope of their license in that more than five gallons of distilled spirits were sold at one time to one individual without having first paid the \$100.00 Federal special tax imposed on wholesale liquor dealers, in violation of Federal law.

The record shows that on September 21, 1939 Nicholas Caruso, an employee of the defendant-licensees, sold a case of Park & Tilford Reserve Whiskey to Murrel Johnson, from whom he received \$20.40 in payment. The minimum consumer price at which this particular item could be sold at that time was \$27.00, less 10% for the case lot purchase. Bulletin 320.

At the hearing, Nicholas Caruso testified that he sold the case of Park & Tilford for \$27.00, less \$2.70, the regular 10% discount, less \$3.90, representing a credit owing to the Johnsons and evidenced by a credit slip for that amount. The

credit slip, which was introduced into evidence, consists of the licensees' business card inscribed as follows:

"Johnson Luncheonette, 206 7th Avenue  
I. O. U. \$3.90 L. Caruso  
University 4-9390 near 12th St."

Louis Caruso, one of the defendant-licensees, testified that he had given the credit slip to Mrs. Johnson a few days prior to September 21, and that it represented the 5% case lot discount on a case of White Horse Scotch and a case of Teachers Scotch purchased, on or about September 11, 1939, for Murrel Johnson by Mrs. Johnson and another person who accompanied her. He explained the case lot discount had not been given at the time of the purchase because the clerk who made the sale had been instructed not to issue discounts on cases of scotch unless specifically authorized by Louis Caruso, due to the fact that there had been several changes in Fair Trade case lot discounts shortly before that time. He further testified that, a few days later, Murrel Johnson had telephoned, asking why a discount had not been given on the purchase and that after he had explained as above, arrangements had been made to deliver the credit slip to Mrs. Johnson the next day.

Bulletin 340 of this Department shows that the Fair Trade prices of Teachers and White Horse, on or about September 11, 1939, were \$39.00 per case less a discount of 5% on case lot purchases. The total discount allowable on a sale of two cases at that time, therefore, was \$3.90.

The licensee's story is further corroborated by the fact that the same bulletin, issued August 4, 1939, and effective August 8, 1939, provides for several changes in the discounts allowable on case lot purchases of scotch whiskey.

It is common business practice for merchants to issue credit slips to customers as evidence of money or merchandise due and owing on adjusted, prior transactions. The application of such credit toward a new purchase is regarded as the equivalent of a cash payment. The honoring of credit slips, while undoubtedly a legitimate practice, lends itself, nevertheless, as an easy "cover-up" for deliberate selling under Fair Trade prices. In order, therefore, that the door may not be opened to wholesale evasion of the Fair Trade regulations, such defenses will be subjected to the most rigid scrutiny.

In the instant case, while the credit transaction was undoubtedly loose, I believe, after carefully reviewing the entire record, that it was bona fide.

The first charge is, therefore, dismissed.

As to (2) and (3): Nicholas Caruso testified that at the time of the sale to Murrel Johnson, four other persons who accompanied him each ordered a separate case of liquor, and that with the exception of Mrs. Johnson, each of the others gave their money to Murrel Johnson to make payment. Whether there were, as the defendants claim, five separate sales or only one sale, need not, for reasons hereafter appearing, be further determined in this proceeding.

The sale of distilled spirits in excess of five gallons to one person at one time without having first paid the \$100.00

special tax imposed on wholesale liquor dealers is, primarily, a violation of Federal law. Except for R. S. 33:1-31(e), which authorizes the suspension or revocation of a license for failure to have at all times such valid special tax stamps as are required by Federal law, there is nothing in the State Alcoholic Beverage Law or the State Rules and Regulations which limits the quantity of alcoholic beverages which the holder of a distribution license may sell at one time to one consumer.

The record shows that a \$100.00 special tax stamp, covering the entire licensing year 1939-40, was subsequently issued to the defendant-licensees by the Federal authorities. If there was a violation of Federal law, the Federal authorities appear to have been satisfied by this means of retroactive validation. Under these circumstances, there is no need for further punitive action by this Department.

Charges (2) and (3) are, therefore, dismissed.

*E. W. Jarrett*

Acting Commissioner.

Dated: July 11, 1940.