

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 610

MARCH 21, 1944.

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UNITED STATES GOVERNMENT

OFFICE OF THE SECRETARY

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 610

MARCH 21, 1944.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO.
20 - AGGRAVATING CIRCUMSTANCES - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

AL STRICKLAND)
T/a STRICKLAND'S TAVERN)
108 Easton Avenue)
New Brunswick, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-57, issued by the)
Board of Commissioners of the)
City of New Brunswick.)
- - - - -)

Morris Spritzer, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that he sold, served and delivered alcoholic beverages to two minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On February 1, 1944, at approximately 7:45 P. M., two soldiers accompanied a female to the defendant's tavern, where they were served five rounds of whiskey by a waitress. The female was but fourteen years of age, while one of the soldiers was twenty years old.

The defense was limited to a statement by the defendant that he had no specific recollection of the evening of February 1, 1944 and did not recall serving any of the three persons on any occasion. Testimony to the same effect was given by the waitress.

The testimony of the two minors, which was corroborated fully by the adult soldier, was clear and concise. No reason is suggested why they should fabricate a story out of thin air. Under the circumstances, I find the defendant guilty as charged.

The violation herein is seriously aggravated by the extreme immaturity of the minor female who, while appearing somewhat older than her actual age, could not reasonably be taken for more than sixteen years old. I shall suspend the license for a period of thirty days. Cf. Re Di Orio, Bulletin 509, Item 8.

Accordingly, it is, on this 9th day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-57, heretofore issued by the Board of Commissioners of the City of New Brunswick to Al Strickland, t/a Strickland's Tavern, for premises 108 Easton Avenue, New Brunswick, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 A. M. March 14, 1944 and terminating at 2:00 A. M. April 13, 1944.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - AGGRAVATING CIRCUMSTANCES - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

JAMES KANE
T/a WASHINGTON HOUSE
246 Neilson Street
New Brunswick, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-32, issued by the Board of Commissioners of the City of New Brunswick.

George R. Morrison, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to charges alleging that he sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On Monday, January 17, 1944, and again two weeks later on January 31, 1944, the minor was served several glasses of beer by the defendant's bartender. The minor, who is fourteen years old, is the same female as was involved in Re Strickland, Bulletin 610, Item 1. As in that case, I shall, in view of the youthfulness of the minor, suspend the license for a period of thirty days. Five days will be remitted for the guilty plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 9th day of March, 1944,

ORDERED that Plenary Retail Consumption License C-32, heretofore issued by the Board of Commissioners of the City of New Brunswick to James Kane, t/a Washington House, for premises 246 Neilson Street, New Brunswick, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 A. M. March 14, 1944 and terminating at 2:00 A. M. April 8, 1944.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - AGGRAVATING CIRCUMSTANCES - 60 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

JOSEPH PAUL FOZMAN)
T/a FOZMAN'S GRILL)
32-34 French Street)
New Brunswick, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-79, issued by the Board of Commissioners of the City of New Brunswick.)
-----)

Edmund A. Hayes, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that, on September 13, 1943, and prior thereto, he sold, served and delivered alcoholic beverages to two minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On the night of September 13, 1943, the two minors in question, both aged nineteen years, were each served two glasses of beer by Robert Arundel, the defendant's waiter. They testified that they had visited the defendant's tavern on four or five prior occasions and each time were served with beer.

On October 7, 1943, the minors were accompanied to the tavern by several ABC agents. Mr. Arundel was not present at the time. After the minors gave a description of the waiter who had served them on September 13, 1943, the defendant remarked, "It must be Bob Arundel, my waiter, who was working on that particular night of September 13th."

Arrangements were subsequently made for Mr. Arundel, who had then left the defendant's employ, to visit the premises on November 5, 1943, for the purpose of having him identified by the minors. The latter entered the premises and, in the presence of two ABC agents, readily pointed out Mr. Arundel, who was sitting in a booth with other patrons.

At the hearing herein, the only defense interposed by the defendant was that Robert Arundel was not on duty on the evening of September 13, 1943. No documentary evidence in substantiation of this testimony was produced, although the defendant stated that he kept books at his tavern which would indicate the days upon which the waiter had actually worked there.

I find, after a careful review of the entire record, that the minors were served alcoholic beverages at the defendant's tavern on September 13, 1943 and also on several prior occasions. It is immaterial whether the service on September 13, 1943 was made by Mr. Arundel or by another employee of the defendant. In either event, the licensee, who is fully responsible for the acts of his employees, is guilty as charged.

While the aforesaid proceedings were pending, the defendant was again served with charges alleging that, on February 1, 1944, he sold, served and delivered alcoholic beverages to two minors. To this charge, the defendant pleaded guilty. The minors who were served on this occasion are the same fourteen-year old female and twenty-year old soldier involved in Re Strickland, Bulletin 610, Item 1, in which case I fixed the penalty at thirty days because of the extreme immaturity of the minor female.

In evaluating the proper penalty for the several violations herein involved, I am constrained to consider, as an aggravating circumstance, not only the youthfulness of the fourteen-year old female, but as well, the obvious fact that this defendant, after being served with the original charges herein, apparently failed to adopt any precautionary safeguards against the recurrence of a similar violation. Such negligent conduct raises a serious question as to the defendant's fitness to enjoy the privilege of dispensing alcoholic beverages. It may be, however, that a sixty-day penalty will bring him to a full realization of the responsibilities attached to his license. Another violation of the laws pertaining to sales to minors may well demonstrate that he is not worthy of continuing as a licensee, in which event, the license will be revoked outright.

Accordingly, it is, on this 9th day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-79, heretofore issued by the Board of Commissioners of the City of New Brunswick to Joseph Paul Fozman, t/a Fozman's Grill, for premises 32-34 French Street, New Brunswick, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 A. M. March 14, 1944 and terminating at 2:00 A. M. May 13, 1944.

ALFRED E. DRISCOLL
Commissioner

4. MORAL TURPITUDE - CRIME OF MANUFACTURING AND POSSESSING ILLICIT LIQUOR (OPERATING UNREGISTERED STILL) FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - 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.)

CONCLUSIONS
AND ORDER

Case No. 317.)
- - - - -)

BY THE COMMISSIONER:

Petitioner, in this proceeding, prays that his disqualification resulting from conviction of crimes be lifted pursuant to R. S. 33:1-31.2.

Petitioner's criminal record discloses a conviction, on October 10, 1931, for the manufacture and possession of illicit

liquor, as a result of which he was fined \$50.00 by a Judge of a County Court of Special Sessions. On April 14, 1937 petitioner, after being convicted for possession of illicit liquor, was sentenced to a term of four months in a County Penitentiary by a Judge of a County Court of Quarter Sessions.

On March 7, 1938 petitioner was apprehended by agents of the Federal Alcohol Tax Unit for operating an unlicensed still in the City of New York and, upon pleading guilty to the charge, petitioner was sentenced by a Federal Judge to a term of 180 days in prison. The prison sentence was subsequently suspended and petitioner was placed on probation for one year instead. As a result of this offense, petitioner was charged with "unlawfully selling an alcoholic beverage without a license" and, upon his plea of guilty, he was sentenced in the Court of Special Sessions, Manhattan, to a term of 30 days in the workhouse at Riker's Island, New York.

Operation of an unregistered still, especially since repeal of the National Prohibition Act, has been ruled to be a crime involving moral turpitude. See Re Case No. 267, Bulletin 313, Item 1.

Petitioner stated that his wife operates a duly licensed tavern and because of his desire to assist her in the business due to economic conditions, he has filed the within petition.

The last offense occurred more than five years ago. Since that time petitioner has apparently lived a good life. This fact is substantiated by the testimony of three character witnesses, among whom are a publisher of a newspaper, a proprietor of a cleaning and dyeing establishment and funeral director. These men stated that they have known petitioner ten years or more and that he enjoys a good reputation in the community wherein he resides. They were in agreement that for more than five years last past petitioner has conscientiously rehabilitated himself and has been a law-abiding citizen. The violations which petitioner has committed are very serious for one who desires to be associated with the alcoholic beverage industry. After careful consideration in this matter, however, I am disposed to give petitioner a chance to redeem himself as I am convinced that he has seen the error of his ways. I conclude, therefore, that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 9th day of March, 1944,

ORDERED, that any statutory disqualification that may exist because of the convictions described herein be and the same is hereby lifted, in accordance with and pursuant to R. S. 33:1-31.2.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

S. S. H., INC.)
237 Main Street)
Fort Lee, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-5, issued by the Mayor and Council of the Borough of Fort Lee, and transferred during the pendency of these proceedings to:)

LOUIS SNOW)
for the same premises.)

Vincent J. Aikens, Esq., Attorney for Defendant-Licensee.
Gaylord R. Hawkins, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to the following charges:

"1. In your application, filed with the Mayor and Council of the Borough of Fort Lee and upon which you obtained your current plenary retail distribution license, you, in answer to Question 22 which asks: 'Names.....of all stockholders holding one (1) or more per cent of the issued and outstanding stock of the applicant corporation.', falsely stated Ida Snow 1 share, Louis Snow 1 share and Alfred Hewitt 25 shares, whereas in truth and in fact the said Alfred Hewitt is the holder of only 5 shares; such false statement being in violation of R. S. 33:1-25.

"2. In your aforesaid application, you, after listing the following as the stockholders in your corporation - Ida Snow 1 share, Louis Snow 1 share and Alfred Hewitt 25 shares, falsely stated 'No' in answer to Question 24 which asks: 'Has any stockholder of the applicant corporation any beneficial interest, directly or indirectly, in the stock of any other stockholder of the applicant corporation?', whereas in truth and in fact the said Louis Snow was the real and beneficial owner of all the shares assigned to the aforesaid Alfred Hewitt; such false statement being in violation of R.S. 33:1-25."

In September 1940 Louis Snow desired to acquire the business of Harry and Ida Liberman, who previously conducted the licensed premises. Louis Snow was not then eligible to hold a liquor license because he had not been a bona fide resident of this State for a period of five years nor was a corporation in which he held directly or indirectly ten per cent or more of the corporate stock then eligible to hold a license. Nevertheless a New Jersey corporation was formed, and in its application for a license Alfred Hewitt was falsely listed as being the holder of twenty-five shares of stock in the corporation whereas, as a matter of fact, Hewitt was the owner of record of but five shares. The application listed Ida Snow and

Louis Snow as holding one share each. On the basis of the false information set forth in the application, Louis Snow appeared to hold less than ten per cent of the corporate stock, but on the basis of the corporate record at that time Louis Snow held one-seventh of the stock and hence the corporation was not then qualified to hold a liquor license in this State. Actually it now appears that Louis Snow was the beneficial owner of all of the corporate stock.

The license has now been transferred to Louis Snow, who has been individually qualified to hold a license since March 27, 1943, when R. S. 33:1-25 was amended. See P. L. 1943, c. 46.

Since there is no previous record and the "front" situation has now been corrected, I shall suspend the license for a period of ten days. Re Starr, Bulletin 590, Item 2. The punishment shall be fully effective against the transferee. State Regulations No. 15, Rule 3.

Accordingly, it is, on this 13th day of March, 1944,

ORDERED, that Plenary Retail Distribution License D-5, issued by the Mayor and Council of the Borough of Fort Lee to S. S. H., Inc. for premises 237 Main Street, Fort Lee, and transferred during the pendency of these proceedings to Louis Snow for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 A.M. March 20, 1944 and terminating at 12:01 A. M. March 30, 1944.

ALFRED E. DRISCOLL
Commissioner.

6. APPELLATE DECISIONS - JAMISON v. LIBERTY TOWNSHIP.

WILLIE JAMISON,)

Appellant,)

-vs-

ON APPEAL

ORDER OF DISCONTINUANCE

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LIBERTY,)

Respondent.)

Saul N. Schechter, Esq., Attorney for Appellant.

Clark C. Bowers, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises located on State Highway Route #6, Liberty Township.

At the hearing scheduled to be held herein, the attorney for appellant requested leave to withdraw the appeal. The attorney for the respondent has duly consented to the withdrawal of the appeal and no reason appears why the request should not be granted.

Accordingly, it is, on this 10th day of March, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - HINDERING INVESTIGATION - PREVIOUS RECORD - 25 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

ROBERT W. KLEIN
219 Ellison Street
Paterson, 1, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-290, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

Robert W. Klein, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to the following charges:

"1. On January 25, 1944 you possessed illicit alcoholic beverages at your licensed premises, viz., two 4/5th quart bottles labeled, 'Carstairs White Seal Blended Whiskey, 86.8 Proof', which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50.

"2. On the date aforesaid, while investigators of the Department of Alcoholic Beverage Control were making a routine inspection at your licensed premises, you hindered and failed to facilitate such inspection, in violation of R. S. 33:1-35."

On the date in question two agents of the Department of Alcoholic Beverage Control, upon entering the defendant's premises, observed the licensee take a bottle from the bar bearing the label of a popular brand of whiskey and start to pour the contents down the drain. The agents seized the bottle and discovered that the contents remaining therein was clearly not what it should have been.

An inspection of the remaining bottles on the premises disclosed one other bottle bearing the same label containing about one ounce of liquor of the same color and type as that contained in the bottle first seized.

In this day and age of war-time liquor scarcity, licensees do not ordinarily pour alcoholic beverages down the drain unless they have something to hide.

The unfortunate consumer in the defendant's premises, but for the timely appearance of the ABC agents, might have received, instead of the whiskey ordered, a "touch" of rum on rye or vice versa. The licensee admitted to the agents that he had put rum in the two bottles for the reason that he was out of the brand and did not want to lose "his customers." His conduct is hardly flattering to the good taste of his paying guests. Whether by his unscrupulous behavior he succeeded in keeping his customers is problematical. There is nothing problematical, however, about the suspension that he will receive for the violations committed.

In January 1941 defendant's license was suspended for five days for possession of slot machines on the licensed premises. Re Klein, Bulletin 446, Item 6.

In view of the previous record, I shall suspend the defendant's license on the first charge for a period of fifteen days and for the second charge an additional ten days' suspension will be imposed. During this period it is to be hoped that the licensee will have time to learn that rum in a rye bottle is a very bad combination. The guilty plea was not entered until the date of hearing, after the Department had been put to the expense and trouble of subpoenaing its witnesses. Under the circumstances, there will be no remission because of the entry of the plea. Re Free Bridge Tavern Inc., Bulletin 591, Item 12.

Accordingly, it is, on this 10th day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-290, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Robert W. Klein, for premises 219 Ellison Street, Paterson, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 A.M. March 14, 1944 and terminating at 3:00 A. M. April 8, 1944.

ALFRED E. DRISCOLL
Commissioner.

8. APPELLATE DECISIONS - BOOTH AND SEDDON v. UNION TOWNSHIP (UNION COUNTY).

MARY BOOTH and CHARLES SEDDON,)
t/a YE OLD BARN,)
Appellants,)

-vs-

TOWNSHIP COMMITTEE OF UNION)
(UNION COUNTY),)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Harold Simandl, Esq., Attorney for Appellants.
Charles Wagner, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellants appeal from a ten-day suspension of their Plenary Retail Consumption License No. C-4, for premises on Galloping Hill Road, Union Township, by the Township Committee of the Township of Union. In disciplinary proceedings the latter found the appellants guilty of selling alcoholic beverages to minors, in violation of Rule 7, Regulations No. 20 - R. S. 33:1-77.

Various grounds for reversal are alleged by the appellants, one being that there was no written finding of guilt or order of suspension. This ground was abandoned at the hearing because the records of the Township affirmatively show such a finding and such an order. All the other reasons for reversal, except the one that the finding was against "the weight of credible evidence and that there was no credible evidence to warrant said finding", were likewise abandoned.

At the trial de novo on the appeal, the case for the respondent depended upon the evidence of the two minors who allegedly had been sold alcoholic beverages, and their one minor companion. The same minors had testified below. The appellant depended upon the testimony of two patrons of the licensed premises and the testimony of Charles Seddon, one of the licensees.

The story as told by the boys, although strongly attacked by counsel for the appellant, is credible. The slight inconsistencies are explainable as normal variations due to different individual reactions to the same incidents and a difference in the wording and understanding of the questions used in eliciting the story. I am particularly impressed with the testimony offered by James _____, the companion of the two minors who were served alcoholic beverages. James _____ did not enter the tavern, yet he observed the other two boys at the bar with glasses containing some liquid before them. The other boys testified that they were there at the bar and were served beer. One of the boys, Francis _____, describes the inside of the place in a way that would lead me to believe that he must have been there at some time. It is admitted that he never was in the premises before. I cannot believe, as appellants seem to contend, that the oldest boy, Norman _____, coerced his companions into committing perjury at both hearings.

The two witnesses produced by the appellant, neither of whom had testified below, alleged that they were playing shuffleboard during all this time and, while they insist that they did not see any boys enter the tavern, there is really no reason to suppose that they made a mental note of all who entered and were served. It is well to note that three other patrons of the tavern who testified for the appellants below were not called on appeal at the trial de novo. Mr. Seddon, of course, testified that he did not see the boys that evening, although their testimony is to the effect that he served them. From the testimony here, I believe that the boys were served as testified to by them.

It is a well established and recognized rule that questions of fact as determined by the trial tribunal will not be disturbed on appeal where there is sufficient testimony to warrant such finding, unless the findings of fact are palpably erroneous. Campbell v. Emslie, 72 N.J.L. 37.

I must find, from the evidence adduced at the trial de novo, that there is sufficient credible evidence to warrant a finding of guilt.

The rules of the Department governing the instant appeal especially provide that the burden of establishing that the finding below is erroneous and should be reversed shall rest with the appellant. Regulations No. 14, Rule 6. This rule has been applied and cited many times. See E & W Corporation v. Long Branch, Bulletin 495, Item 7; Northend Tavern Inc. v. Northvale et al., Bulletin 493, Item 5; Curry v. Margate City, Bulletin 460, Item 9. I find that appellant has not sustained the burden of proof.

With respect to the penalty: I find that the penalty is strictly in line with the penalty imposed here and recommended by me for first offenses of sales to minors. Cf. Re Martins, Inc., Bulletin 576, Item 9. It is to be noted that, had the original trial been here and had it resulted in a finding of guilt, the penalty would have been substantially increased because of the aggravating circumstances due to the age of the minors. Re Martins, Inc., supra. The action of the respondent is hereby affirmed.

Accordingly, it is, on this 14th day of March, 1944,

ORDERED, that the ten day suspension imposed by respondent on appellant's Plenary Retail Consumption License C-4, which suspension was held in abeyance pending disposition of the instant appeal, is hereby restored, effective at 3:00 A.M. March 20, 1944 and terminating at 3:00 A.M. March 30, 1944.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - AGGRAVATING CIRCUMSTANCES - 60 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
WILLIAM B. WOERNER
T/a GUN CLUB TAVERN
Intersection Route 4-9 & 40
Lakewood-Toms River Highway
Dover Township
P.O. Toms River, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of Dover Township.

William B. Woerner, Pro Se.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads guilty to charges that on divers occasions he sold and served to and permitted the consumption of alcoholic beverages by minors on the licensed premises in violation of R. S. 33:1-77 and of Rule 1 of State Regulations No. 20.

The file discloses that over a period of many months, beginning on June 1, 1943, until October 1943, defendant sold and served alcoholic beverages on various occasions to groups of minors. Two of the minors were fifteen years of age, five sixteen years of age, three seventeen years old, three eighteen years of age and the remaining two were twenty years of age. Beer was sold and served to the minors on numerous occasions. In addition, the investigation made by an agent of the Department of Alcoholic Beverage Control reveals that whiskey and gin had also been served to some of these minors at various times.

No reasonable or justifiable excuse may be offered for the sale and service of alcoholic beverages to fifteen and sixteen year old girls or boys.

Under all of the circumstances in the instant case, I shall suspend the defendant's license for a period of sixty days, with five days remission because of the plea of guilty entered herein, making a net suspension of fifty-five days.

Accordingly, it is, on this 14th day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Township Committee of Dover Township to William B. Woerner, t/a Gun Club Tavern, for premises Intersection Route 4-9 & 40,

Lakewood-Toms River Highway, Dover Township, be and the same is hereby suspended for a period of fifty-five (55) days, commencing at 2:00 A.M. March 21, 1944 and terminating at 2:00 A.M. May 15, 1944.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, ACIDS AND SOLIDS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)
)
 ANTHONY NOBILE)
 833 Willow Avenue)
 Hoboken, N. J.,)
 Holder of Plenary Retail Consumption License C-32 issued by the Board of Commissioners of the City of Hoboken.)
 -----)

CONCLUSIONS
AND ORDER

Cyril J. McCauley, Esq., Attorney for Defendant-Licensee.
Edward F. Hodges, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has entered a plea of guilty to the following charge:

"On or about February 4, 1944, you possessed an illicit alcoholic beverage at your licensed premises, viz., one 4/5 quart bottle labeled 'Calvert's Reserve Blended Whiskey 86.8 Proof', which bottle contained an alcoholic beverage not genuine as labeled, such possession being in violation of R. S. 33:1-50."

On February 4, 1944 an agent of the Federal Alcohol Tax Unit seized a 4/5th bottle, three-quarters full, labeled "Calvert's Reserve Blended Whiskey 86.8 Proof", together with a genuine sealed bottle for comparison. Analysis showed that the questioned bottle was short in proof, high in acid content and deficient in solids when compared with a genuine specimen. It was evident that the bottle was refilled with a straight whiskey.

Licensee, while admitting responsibility for the conduct of his licensed premises, states that evidently one of his bartenders must have tampered with the bottle. However, the licensee cannot hide behind the cloak of his employees (Re Oprandy, Bulletin 600, Item 5) and is strictly responsible for any "refills" found upon the licensed premises (Re Baratta, Bulletin 596, Item 11).

The defendant's record is otherwise clear and, in the absence of aggravating circumstances, I shall suspend his license for a minimum period of ten days.

Accordingly, it is, on this 16th day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-32, issued by the Board of Commissioners of the City of Hoboken to Anthony Nobile, for premises 833 Willow Avenue, Hoboken, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. March 21, 1944 and terminating at 2:00 A.M. March 31, 1944.

ALFRED E. DRISCOLL

Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

STANLEY MINALGO
T/a STANLEY'S TAVERN
39 Ferry Street
South River, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Borough Council of the Borough of South River.

Stanley S. Dickerson, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that he sold, served and delivered alcoholic beverages to three intoxicated persons, two of whom are soldiers, in violation of Rule 1 of State Regulations No. 20.

On the evening of January 8, 1944, a soldier and a civilian, after having each consumed about fifteen drinks of liquor elsewhere, entered the defendant's tavern at approximately 10:30 P. M. Between 11:15 P.M. and 12:40 A. M. of the next morning, two ABC agents and a corporal assigned to assist them in this investigation observed the licensee serve four drinks of whiskey with beer chasers to the soldier. They testified that the soldier was intoxicated when served his first drink since he exhibited all the outward manifestations of a drunken person. His speech was incoherent, his hair disheveled, his tie askew, and he was unable to maintain his balance without supporting himself on the bar. The civilian finally fell asleep with his head resting on a table and was in such an extreme state of intoxication that the agents had the utmost difficulty in arousing him from his drunken stupor. In addition, another soldier who was visibly and apparently intoxicated, was served at least one glass of beer by the licensee's wife.

The defendant categorically denied that the soldier to whom he had served the four whiskeys and beer chasers was intoxicated. As to the civilian, defendant testified that he refused to serve him because he was drunk, although "not perfectly drunk."

Several witnesses were produced by the defendant. One witness testified that, in his opinion, the soldier whom the defendant had

personally served was not drunk because he had not been "rowdy." When asked whether he would consider a person intoxicated if he were "visibly under the influence of intoxicating liquor", his answer was in the negative. Another witness was not particularly helpful since he admittedly had left the tavern at least forty minutes before the last service of alcoholic beverages was made to the soldier by the defendant. In any event, none of these witnesses were in a position to deny the service of the beer by the licensee's wife to the other of the two soldiers in question.

A careful review of the entire record leaves me no alternative other than to find the defendant guilty as charged. I am satisfied that a fair preponderance of the evidence amply supports the allegation made against the defendant.

The license will be suspended for forty days. It is unnecessary for me to repeat herein my views concerning the reprehensible conduct of licensees in permitting members of our armed forces to over indulge in intoxicants, since I have had occasion to do so many times heretofore. See, e.g., Re Sacco, Bulletin 589, Item 4.

Accordingly, it is, on this 17th day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-14, heretofore issued by the Borough Council of the Borough of South River to Stanley Minalgo, t/a Stanley's Tavern, for premises 39 Ferry Street, South River, be and the same is hereby suspended for a period of forty (40) days, commencing at 2:00 A.M. March 22, 1944 and terminating at 2:00 A.M. May 1, 1944.

ALFRED E. DRISCOLL
Commissioner.

12. APPELLATE DECISIONS - GARBUTT v. GALLOWAY TOWNSHIP, ENDERLIN AND FLENTZ.

ETHEL GARBUTT,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE)

TOWNSHIP OF GALLOWAY, and)

KARL ENDERLIN and LEWIS FLENTZ,)

Respondents)

Glenn & Glenn, Esqs., by Alfred T. Glenn, Esq., Attorneys for Appellant.

Enoch A. Higbee, Esq., Attorney for Respondent Township Committee.

No appearance on behalf of Respondents Enderlin and Flentz.

BY THE COMMISSIONER:

This is an appeal from the issuance of Plenary Retail Consumption License C-20 by respondent Township Committee to respondents Karl Enderlin and Lewis Flentz for premises at 2598 White Horse Pike (also known as Cologne Avenue and White Horse Pike, Cologne), Galloway Township.

The premises in question, which are locally known as the "Bob White Inn", were licensed for the sale of alcoholic beverages

continuously, except during the period of Prohibition, from some time in the year 1903 until June 30, 1943. From July 1, 1935 until June 30, 1943, a plenary retail consumption license for said premises was held by one Lester Sheer. He failed to renew his license for the current fiscal year and apparently lost his right of possession in said premises at or shortly after June 30, 1943. On August 20, 1943 Karl Enderlin and Lewis Flentz, as partners, filed an application for a plenary retail consumption license for said premises with the Township Committee of the Township of Galloway. The license was granted on August 30, 1943. Thereafter Ethel Garbutt, who for many years has held a plenary retail consumption license for premises located 444 feet from the "Bob White Inn", filed this appeal.

The petition of appeal alleges that (1) the premises in question are within 500 feet of appellant's existing licensed premises, and (2) the issuance of the license was otherwise contrary to the provisions of ordinances and resolutions of Galloway Township and of the New Jersey Alcoholic Beverage Law. The answer, in effect, admits the first contention, but denies the second contention set forth in the petition of appeal.

The ordinance in question, which was adopted by the Township Committee of the Township of Galloway on June 19, 1937 and is still in effect, provides as follows:

"AN ORDINANCE TO REGULATE THE NUMBER OF BEVERAGE LICENSES TO BE ISSUED IN GALLOWAY TWP., ATLANTIC COUNTY, NEW JERSEY.

"BE IT ORDAINED by the Township Committee of Galloway Township, Atlantic County, that:

"1. No more than 27 plenary retail consumption licenses, nor more than 1 club license, shall be issued during any licensing year in Galloway Township, Atlantic County, New Jersey.

"2. Provided, however, that present licenses may be transferred, or new licenses issued for present licensed premises within the total limit of 27.

"BE IT FURTHER RESOLVED that no new licenses shall be granted to any premises not now licensed within 500 ft. of an existing licensed premises."

It has been stipulated that, during the present fiscal year, twenty plenary retail consumption licenses, including the license in question, have been issued in Galloway Township. Hence, there is nothing in Section 1 of the ordinance which would in any way affect the validity of the license issued to Enderlin and Flentz.

It will be necessary, however, to consider more carefully the provisions of the two paragraphs of Section 2 of said ordinance. It is clear that the license in question was not issued to the holder of the expired or expiring license and cannot, therefore, be considered a license renewal; accordingly, the license in question must be considered a new license. P.L. 1939, c. 281. Appellant apparently contends that, since the premises are located within 500 feet of her existing licensed premises, the issuance of the Enderlin-Flentz license is barred by the provisions of Section 2 of the ordinance, or by some unidentified provision of the Alcoholic Beverage Law.

It may be well to state at this point that, if the issuance of the license is not barred by the ordinance, it is not barred by

any provisions of the Alcoholic Beverage Law. The Alcoholic Beverage Law contains no provision requiring a minimum distance between licensed premises. It has been determined, however, that where a governing board or body of a municipality has adopted a valid and enforceable ordinance requiring a minimum distance between licensed premises, such ordinance is binding and no license can be issued in violation of its terms. Atlantic City Licensed Beverage Association v. Atlantic City and Adelman, Bulletin 296, Item 6; Elizabeth Beverage Dealers Assn v. Elizabeth and Fenik, Bulletin 514, Item 3. Hence appellant's contention, so far as it concerns the local ordinance, would, if the ordinance is valid, bar the issuance of the license considered herein.

It is my duty, on appeal, to construe an ordinance as written and not to rewrite the ordinance.

The second paragraph of Section 2 of the ordinance does not prohibit the issuance of any new license within 500 feet of an existing licensed premises. If it did, the issuance of a license to Enderlin and Flentz would be set aside on this appeal. The second paragraph of Section 2 does provide that no new license shall be granted to any premises not now licensed within 500 feet of an existing licensed premises. If we assume the validity of this paragraph, the issuance of the license in question was not improper because the premises were licensed at the time the ordinance was adopted. On the other hand, if we assume the invalidity of this paragraph, it must be disregarded, in which event there is nothing in the ordinance to prevent the issuance of the license in question. Hence Section 2 of the ordinance, whether valid or invalid, does not bar the issuance of the license.

For the reasons aforesaid, I deem it unnecessary in this case to pass upon the validity of Section 2 of the aforesaid ordinance. If required to do so, I would probably have to hold that it was improperly discriminatory and unreasonable as creating an undue preference in favor of certain premises. Re Konesky, Bulletin 217, Item 7; Buechler v. Perth Amboy, Bulletin 339, Item 6; Evans-Belmar Hotel Co. v. Belmar, Bulletin 545, Item 2. Licenses are granted to persons and not to premises. If respondent Township Committee desires to prohibit new licensed premises within 500 feet of existing licensed premises and to exempt the renewal of licenses then outstanding, it should amend this ordinance as the late Commissioner Burnett, on September 28, 1937, suggested that it should be amended. Re Guenther, Bulletin 206, Item 15.

On the record presented, there appears to be nothing in the Alcoholic Beverage Law or the ordinance of the Township of Galloway which would prevent the issuance of the license to respondents Enderlin and Flentz. Hence, the action of respondent Township Committee in issuing said license is affirmed.

Accordingly, it is, on this 17th day of March, 1944;

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

Alfred E. Griswold
Commissioner.