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

BULLETIN 481 OCTOBER 22, 1941.

1. MORAL TURPITUDE - EMBEZZLEMENT INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - ASSOCIATION WITH ALCOHOLIC BEVERAGE INDUSTRY CONTRARY TO PUBLIC INTEREST BECAUSE OF PAST RECORD - APPLICATION DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 164.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1922 petitioner was arrested for issuing worthless checks; in 1923 he was arrested for disorderly conduct; and later, in another case, held as a material witness. These charges were later dismissed. In 1926 he was convicted of assault and battery and placed on probation for six months; in 1927 he was charged with neglect by his wife, who later requested that the case be dismissed, in 1929 he was arrested for grand larceny, which charge was also dismissed; in 1930 he was convicted of embezzling over $800.00 collected by him as a constable, placed on probation and ordered to make restitution; in 1932 he was arrested for embezzlement, arising out of his previous activities as a constable, made restitution and the case was not moved; in 1933 he was arrested for conspiracy to violate the election laws, which charge was later nolle prossed; later in 1933 he was arrested, charged with assault and battery, and robbery, but he was released when no formal complaint was made; and in July 1936 he was convicted of disorderly conduct and sentence suspended. The probation office which had the petitioner under its supervision until September 1, 1937, reports that his record while on probation was unsatisfactory. When he was discharged, he was classified "without improvement."

Petitioner's conviction of embezzlement clearly involves moral turpitude; cf. Re Case No. 516, Bulletin 397, Item 6; Re Case No. 264, Bulletin 305, Item 14; and hence he is ineligible to be employed by a liquor licensee unless his disqualification is removed. He is not automatically entitled to relief merely because he has not been convicted of a crime within the past five years. Cf. Re Case No. 178, Bulletin 478, Item 12. Removal of his disqualification is discretionary and I will not exercise that discretion in petitioner's favor unless he establishes to my satisfaction that he now has a genuine regard for law and order and intends to conduct himself in such a manner that his association with the alcoholic beverage industry will not be contrary to public interest.

In view of petitioner's lengthy record, which is indicative of petitioner's criminal trend of mind, and his discharge from probation in 1937 "without improvement," I am unwilling at this time to permit the public interest to be jeopardized by removing his disqualification.

The petition is denied.

Dated: October 3, 1941.

ALFRED E. DRISCOLL,
Commissioner.

2. APPELLATE DECISIONS - GOLDEN INN BAR, INC. v. NEWARK.

SUFFICIENT LICENSES IN VICINITY - DENIAL OF TRANSFER AFFIRMED.

GOLDEN INN BAR, INC.,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Oliver Randolph, Esq., Attorney for Appellant.
Thomas F. Guthrie, Esq., Attorney for Respondent.
Samuel F. Shatz, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to transfer appellant's plenary retail consumption license from its present site at 150 Charlton Street to a proposed site, some two hundred feet away, at the corner of Spruce and Charlton Streets - viz., 194 Spruce Street, Newark.

Spruce Street (on which appellant seeks to locate) is the main business thoroughfare in the area in question, with Charlton (where appellant's tavern is now located) being apparently a residential side street.

Respondent contends, inter alia, that the transfer was properly denied because of the number of liquor places already located on Spruce Street near the proposed corner, there being four taverns and four package stores within a block to the east and two blocks to the west of that corner.

Like other general questions involving the issuance or transfer of licenses, determination of how many retail liquor places will be permitted in any given area is confided, in the first instance, to the sound and bona fide discretion of the issuing authority. See Baselici v. Asbury Park, Bulletin 382, Item 4 (and cases there cited); and also Siebel v. Randolph, Bulletin 477, Item 1 (and cases there cited).

In the present case I cannot say that respondent abused this discretion. In view of the four taverns (and various package stores) already on Spruce Street within such short compass, respondent was wholly reasonable in refusing to add a fifth tavern there. I am mindful that the proposed transfer covers a relatively short "hop" of some two hundred feet (or the equivalent of a usual city block) and may have the benefit of bringing the tavern up from the side street onto the business thoroughfare. However, these facts, while not without merit, do not furnish sufficient reason for compelling respondent to convert Spruce Street in this area into virtually a "liquor lane" or "rum row" by loading a fifth tavern there.

There is suggestion by appellant that respondent may be arbitrarily precluding it from locating on Spruce Street merely because it (appellant) is a corporation composed of colored folk. This

suggestion is based upon the fact that, although this is a colored neighborhood where the various liquor places cater to colored trade, all such places on Spruce Street are in the hands of white proprietors.

Now, this Department has consistently been alert to prevent local issuing authorities from discriminating against colored folk. See, for example, Sears Roebuck & Co. v. Absecon and Jones, Bulletin 185, Item 10; Jones v. Absecon, Bulletin 218, Item 1; Williams v. Hillsborough, Bulletin 268, Item 7.

However, I do not believe that any such discrimination occurred in this case. As for the fact that there are no colored licensees on Spruce Street, there is neither contention nor evidence that any colored applicant has ever before applied to be located there. As for the present application, it appears that respondent conducted a very full and fair hearing (at which both colored as well as white objectors appeared against appellant), and reached its decision four-square on the merits.

Indeed, the only evidence of unfair play in the case is actually directed against appellant. I thus note from a transcript of the proceedings below, submitted in evidence by stipulation of counsel, that respondent, after fully listening to all sides in the case, cleared the hearing room in order to deliberate and reach its decision; that, while it was thus deliberating, a man entered the room accompanied by appellant's President, claimed himself to be (mirabile dictu!) a "third ward political leader," and asked respondent to approve the application; that Commissioner Halpin showed this political leader "the door and asked him to get out as fast as he could."

There is no mistaking the meaning of this incursion by appellant's President and his "third ward political leader" friend as an attempt to exert "political influence" upon respondent. Such reprehensible conduct by appellant could, of itself, well have warranted outright refusal of appellant's application for the transfer. See Solomon v. Bloomfield, Bulletin 209, Item 4; Chmielinski v. Clifton, Bulletin 240, Item 5.

The denial of the transfer is affirmed.

Accordingly, it is, on this 7th day of October, 1941,

ORDERED, that this appeal be and it hereby is dismissed.

ALFRED E. DRISCOLL,
Commissioner.

3. MORAL TURPITUDE - VOTING ILLEGALLY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - EVASION AND SUPPRESSION OF MATERIAL FACTS AT HEARING - APPLICATION DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 166.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Petitioner, a waiter by trade, employed for the most part in New York City, took up his residence in this State in 1939. Because of his lack of five years' residence, he recently applied for an employment permit.

It developed that in 1934, petitioner was convicted in New York State of voting illegally and sentenced to serve six months in the County jail. His version of this affair is that the defeated candidate for Mayor claimed that many illegal votes had been cast; that an investigation followed and resulted, among other things, in petitioner's arrest and conviction. His fingerprint record is otherwise clear.

Voting illegally is a crime which involves moral turpitude. Cf. Re Case No. 79, Bulletin 399, Item 3. Petitioner now seeks in this proceeding and pursuant to R. S. 33:1-31.2, removal of the statutory disqualification resulting from his conviction.

It appears that petitioner, although disqualified, has been employed from time to time as an extra waiter at various liquor places in this State during the past seven or eight years. Instead of making a full and frank disclosure of this fact, petitioner at first testified that he had been employed in this State only for a short period after May 1, 1940. The full story was only revealed when two of his character witnesses testified concerning petitioner's employment in this State. One witness stated that he actually worked with petitioner in a number of these places. When the Hearer recalled petitioner to the stand and asked for his explanation, he seemingly groped for "a way out" and finally made the grandiloquent surmise that what was referred to was merely a single job he had in 1934 as an extra waiter at a liquor place in this State.

This lack of frankness comes with ill grace from a petitioner who seeks to move my discretion in his favor. He is not entitled to have his disqualification removed merely because he has not been convicted of a crime within the past five years (cf. Re Case No. 178, Bulletin 478, Item 12), but must prove to my satisfaction that his present standards of conduct are such that his association with the alcoholic beverage industry will not be contrary to the public interest.

His evasiveness and suppression of material facts in a proceeding of this nature is a sure road to dismissal of his petition. Petitioners who are not ready to give a full, frank and truthful story at the hearing will not get relief. Cf. Re Case No. 82, Bulletin 390, Item 11; Re Case No. 27, Bulletin 268, Item 5; Re Lynch, Bulletin 107, Item 1.

The petition is therefore denied.

Dated: October 7, 1941.

ALFRED E. DRISCOLL,
Commissioner.

4. ELIGIBILITY - BREAKING, ENTERING, LARCENY AND RECEIVING - MORAL TURPITUDE - APPLICANT INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY LIQUOR LICENSEE.

October 7, 1941

Re: Case No. 393

In January 1936 applicant was sentenced to eight months in a County penitentiary after having been found guilty of the crime of assault with intent to rob. In May 1937 he was sentenced to one year in the same penitentiary after having been found guilty of the crime of breaking, entering, larceny and receiving.

The first conviction probably involves moral turpitude despite the fact that applicant was discharged by order of the court after serving one week of his sentence but, in any event, it is unnecessary to determine that question since the second conviction clearly involves moral turpitude. Re Case No. 186, Bulletin 209, Item 6.

It is recommended that applicant be advised that he is disqualified from holding a liquor license or being employed by a liquor licensee in this State.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

5. APPELLATE DECISIONS - SKOCHOPIC v. NEWARK.

RENEWAL DENIED BECAUSE OF UNSATISFACTORY EXPLANATION OF POLICE RECORD - RECORD CLARIFIED - ISSUANCE RECOMMENDED BY LOCAL BOARD - DENIAL REVERSED.

CATHERINE SKOCHOPIC,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

David H. Yonneff, Esq., Attorney for the Appellant.
Charles S. Gansler, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to renew appellant's plenary retail consumption license for premises 199 Rose Street, Newark.

Upon reviewing her application for the present fiscal year, respondent noted that appellant admitted having a minor police record attained some years prior thereto when she was a resident of Carteret, N. J. Appellant was accordingly requested to appear before respondent

for the purpose of being cautioned against any further infractions of the law upon penalty of being refused any liquor licenses in the future.

When appellant appeared before respondent, she gave an unsatisfactory account concerning her record and respondent was led to the belief that she had wilfully misrepresented the facts and circumstances surrounding that record. Because of this belief, respondent refused to grant a renewal of her license.

Respondent is to be commended for its careful scrutiny of applications which come before it and its practice of requiring investigation by the Police where there is any doubt in the Board's mind as to the advisability of granting a renewal.

Upon the appeal coming on for hearing before me, appellant was questioned at length concerning her record. Testimony was also offered by Officers McCormack and Hull of the Newark Police as to their investigation of the record of appellant. Without detailing any of this testimony, suffice it to say that it was followed by the abandonment of respondent's position and the suggestion of respondent's counsel that the hearing be terminated. Thereafter the respondent Board adopted and submitted to me the following resolution:

> "It is unanimously agreed by the Municipal Board of Alcoholic Beverage Control of Newark, at their meeting on August 14, 1941, that the renewal application of Catherine Skochopic for the premises at 199 Rose Street, Newark, N. J., be recommended.
>
> "The Chairman of the Board, Mr. Daniel V. Crosta, who was present at the trial and who heard the testimony had explained the situation to the entire Board and the Board feels that this woman did not deliberately lie to the Board when she appeared at their previous hearing and that the police record of the Town of Carteret is not a true record. We are heartily in accord that her license be granted."

A careful reading of the entire case record, including the transcript of the hearing below, satisfies me that, while appellant's answers to respondent's questions were, perhaps, inartistically stated, they were not deliberately false. I am fortified in this conclusion by the testimony of the Carteret Chief of Police who substantiated appellant's testimony in all pertinent details. Moreover, an exhaustive investigation of appellant's criminal record was made by the Newark Police Department in June 1939 when appellant applied for her original license and such application was approved. It is apparent, therefore, that appellant had no reason for misrepresenting her record to respondent upon her present application.

No other impediment to the renewal of appellant's license appearing in the record, I am inclined to follow the recommendation of the respondent.

Under these circumstances, the decision of the respondent denying appellant's application will be reversed.

Accordingly, it is, on this 11th day of October, 1941,

ORDERED, that respondent's action in denying appellant's application for renewal of her plenary retail consumption license be and the same is hereby reversed, and respondent is directed to issue the license as applied for forthwith; and

It is further ORDERED, that the term of plenary retail consumption license C-392, held by appellant for the fiscal year 1940-41, heretofore extended during the pendency of these proceedings by order of this Department dated July 25, 1941, be and the same is hereby further extended until the issuance by respondent of appellant's renewal license.

ALFRED E. DRISCOLL,
Commissioner.

6. APPELLATE DECISIONS - CLIFF LODGE, INC. v. ENGLEWOOD CLIFFS.
SUFFICIENT LICENSES IN VICINITY - DENIAL AFFIRMED.

CLIFF LODGE, INC., a corporation of the State of New Jersey,

Appellant,

-vs-

MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF ENGLEWOOD CLIFFS,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Mackay and Freint, Esqs., Attorney for Appellant.
Thomas S. Clancy, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant applied to respondent for a plenary retail consumption license for premises on the west side of Sylvan Avenue (also known as State Highway 9-W) between Anne Court and Demarest Avenue. This appeal is from the denial of such application.

Appellant had previously held a consumption license for premises on the east side of Sylvan Avenue about a mile north of its proposed site. The vicinity surrounding its old location consists mainly of undeveloped land with only one home and one liquor license being located within a half mile thereof. On the other hand, the vicinity of the new location was stipulated at the appeal hearing to be residential in character with thirty homes and eight licensed establishments being located within a half mile thereof. Seven of these eight licensees are located on Sylvan Avenue, four on the west side and three on the east side.

Respondent based its refusal of appellant's application on the ground, among others, that the aforesaid eight consumption places are sufficient not only to service the needs of the residents in that area but also to adequately cater to the transient trade.

No citations are necessary to support the oft-repeated and well-settled doctrine that the determination of the number of liquor licenses to be issued in any particular area is a matter confided, in the first instance, to the sound discretion of the local issuing authority. In view of the character of the neighborhood and the concentration of licenses therein, it is manifest that respondent's refusal to permit the addition of a ninth consumption license in the vicinity in question cannot be considered arbitrary or in anywise an abuse of such discretion. As to the transient trade, although there

is some evidence that Sylvan Avenue is a well traveled road, the aforementioned seven places now situated on that highway provide more than an ample choice to travelers even on weekends when traffic is at its heaviest. Cf. Peroni, et al. v. Washington, Bulletin 458, Item 6, and cases therein cited.

Since the foregoing is dispositive of this appeal, it is unnecessary to pass upon the other reasons assigned by respondent in support of its denial of appellant's application.

The action of respondent is affirmed.

Accordingly, it is, on this 14th day of October, 1941,

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

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF AN ALCOHOLIC BEVERAGE TO A MINOR - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

AARON MESEROLL,
T/a MAPLE LODGE,
S/S Highway 28, between Lebanon and Whitehouse,
Clinton Township, P.O. Lebanon, N.J.,

Holder of Plenary Retail Consumption License No. C-4 issued by the Township Committee of the Township of Clinton.

CONCLUSIONS AND ORDER

Anthony M. Hauck, Jr., Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded guilty to the charge that he sold an alcoholic beverage to a minor on January 15, 1941, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The Department file discloses that, as the result of an automobile accident involving a vehicle driven by one Paul A_____, a minor just turned twenty years of age, it was found that this minor had purchased wine in three licensed premises in Hunterdon County, one of which was the tavern operated by the defendant-licensee.

A signed statement was secured from the licensee, admitting that on the date in question he sold the minor a quart bottle of wine. The licensee further admitted that this minor had been in his licensed premises "about a half dozen times," but that he thought the boy was over twenty-one.

In fairness to the licensee, it should be mentioned that the report of the investigators sets forth that the minor, who weighs about 165 pounds, is 5'10" tall, and at the time of the violation affected a moustache and rather long sideburns, might reasonably be

taken to be over twenty-one years of age.

As I said in Re Morey, Bulletin 479, Item 4:

"The minimum ten day penalty for the sale of alcoholic beverages to minors is to be imposed only in cases lacking aggravating circumstances. The fact that the minor appeared to be of age, and that the licensee bore a good reputation, were reasons why this licensee was entitled to the minimum penalty of ten days rather than a suspension of greater duration."

In the present case, the licensee has no previous record, and the minor appeared to be of age. I shall, therefore, suspend the license for the minimum period of ten days. In view of the guilty plea, five days of the penalty will be remitted. Re Morey, supra.

Accordingly, it is, on this 14th day of October, 1941,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued to Aaron Meseroll, T/a Maple Lodge, by the Township Committee of the Township of Clinton, be and the same is hereby suspended for a period of five (5) days, effective October 20, 1941, at 1:00 P. M.

ALFRED E. DRISCOLL,
Commissioner.

8. SEIZURES - UNLICENSED TRAILER TRUCK TRANSPORTING WINE IN INTERSTATE COMMERCE TEMPORARILY STOPPED IN NEW JERSEY FOR REPAIRS - VEHICLE AND WINE RETURNED TO CARRIER ON PAYMENT OF COSTS.

In the Matter of the Seizure of a tank truck containing 3150 gallons of wine, at the intersection of Route 25 and Beverly Road, in the City of Burlington, County of Burlington and State of New Jersey.	Case No. 6133 ON APPLICATION FOR RETURN OF SEIZED PROPERTY CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

A tank truck containing 3150 gallons of wine was seized on October 10, 1941 by investigators of this Department at the intersection of Route 25 and Beverly Road, in the City of Burlington. The seizure was justified because the investigators found the tank truck without any transportation insignia, parked in or near a gasoline filling station, and were unable to ascertain from anyone in the vicinity whether the wine was lawfully manufactured or was being transported lawfully.

At the hearing herein, on application for the immediate return of the tank and its contents, on claim that irreparable injury will result from awaiting formal hearing, Abraham W. Slapin, general manager of Metropolitan Grape Products Co., Inc., a New York licensee, introduced documentary evidence which satisfies me that the wine was being shipped in bond in the tank truck from licensee's bonded warehouse to the bonded warehouse of the Dixie Wine Corporation, 1600 Valley Road, Richmond, Virginia; that the shipment was being made through Frank S. Kigler, trading as Kigler Forwarding Co.

Frank S. Kigler testified that the seized tank truck was being transported through New Jersey, from New York to Virginia, attached to a power unit; that the power unit broke down on the highway in Burlington and was removed to Camden for repairs, after being detached from the tank truck, which was permitted to remain in Burlington.

If transportation had continued through the State to Richmond, Virginia, no violation would have occurred because Rule 2 of Regulations No. 17 provides:

> "Alcoholic beverages not intended for sale or use in New Jersey may be transported through this State in any vehicle, provided no delivery is made in New Jersey."

The documentary evidence satisfies me that the wine was not intended for sale or use in this State and there is no evidence that a delivery was made in New Jersey. The transportation through this State was interrupted through causes beyond the control of the carrier. Under these circumstances, I shall release the tank of wine so that the transportation through the State may be completed, but since the seizure of the tank truck was justified, I shall require the carrier to pay the actual costs incurred in connection with the seizure.

Accordingly, it is ORDERED that the tank truck and 3150 gallons of wine therein contained, seized herein, be returned to Frank S. Kigler, provided that on or before the 17th day of October 1941, Frank S. Kigler pays the actual costs incurred in the seizure and storage of such tank truck.

ALFRED E. DRISCOLL,
Commissioner.

Dated: October 15, 1941.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN PROOF, COLOR, ACID AND SOLID CONTENT - SEVEN WHISKEY REFILLS INDICATING CHEATING ON A LARGE SCALE - 30 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

TWELVE EAST PARK STREET TAVERN, INC.,
12 East Park Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-928 for the fiscal year expiring June 30, 1941, and now holder of Plenary Retail Consumption License No. C-954 for the current fiscal year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Abraham Merin, Esq., Attorney for State Department of Alcoholic Beverage Control.
Twelve East Park Street Tavern, Inc., by David Breit, President.

BY THE COMMISSIONER:

Defendant is charged with:

1. Possession of illicit liquor at its tavern on March 19, 1941, contrary to R. S. 33:1-50.

2. Rebottling of alcoholic beverages in violation of R. S. 33:1-78.

On March 19, 1941, an inspector of the Alcohol Tax Unit, Bureau of Internal Revenue, inspected the above licensed premises, and gauged and tested the open stock. The contents of seven bottles which were labeled respectively "Old Overholt Straight Rye Whiskey" (two one-quart bottles); "King's Ransom Blended Scotch Whisky"; "Four Star Paul Jones Rye" (two one-quart bottles); "Four Roses Rye"; and "Cutty Sark Blended Scots Whisky," gave indication of not being genuine as labeled and, as a result, the bottles were seized.

Subsequent analysis by the Federal chemist disclosed that the acid and solid content of the liquor contained in the Old Overholt, Four Star Paul Jones and Four Roses bottles varied, materially, from that of genuine samples, and that artificial coloring (not present in genuine samples) was found; that the contents of the Old Overholt bottles were, in addition, lower in proof than a genuine sample and as labeled; that the contents of the King's Ransom bottle, while similar in composition to a genuine sample, were lower in proof than a genuine sample and as labeled; that the solid content and color of the liquor in the Cutty Sark bottle varied, materially, from that of a genuine sample.

The defendant, though entering a formal plea of not guilty, admits having possessed these bottles of alcoholic beverages at its tavern. It further admits the accuracy of the chemist's analysis.

I am satisfied from my study of this analysis that the contents of these seven bottles were not genuine as labeled.

P.L. 1939, Chapter 177, provides that any alcoholic beverage in any bottle shall, in any proceeding under this chapter, be deemed prima facie an illicit beverage where the container bears a label which does not truly describe its contents. Mere possession of an illicit beverage constitutes a violation of R. S. 33:1-50. Re Haney, Bulletin 304, Item 13.

By way of defense and "explanation," the President of the defendant corporation testified, at the hearing, that investigation made by him following the seizure had led him to believe that one of the tavern employees - a porter and night watchman - had drunk out of four of the seized bottles and, in order to cover up his derelictions, had refilled these bottles from bottles of other tax paid alcoholic beverages standing nearby; that the suspected porter had been discharged; that, as to the other three bottles, he did not know how the contents had become tampered with; that he (the President) did not tamper with any of the bottles or change their contents. The porter, whose name the President did not know, was not produced at the hearing.

The fact that the refilling may have been the unauthorized act of an employee constitutes no defense. Re Reeves, Bulletin 461, Item 4; Re Heuring, Bulletin 445, Item 12. Licensees are strictly accountable for their liquor stock. Re DiGiacomo, Bulletin 461, Item 1; Re Perna, Bulletin 442, Item 6; Re Whoroski, Bulletin 454, Item 6; Re Birban, Bulletin 457, Item 10. Refilled liquor, moreover, constitutes an illicit beverage under the Alcoholic Beverage Law regardless of whether the substituted liquor is tax paid or bootleg. Re Haney, supra.

Giving the defendant the benefit of every doubt, it is apparent from the evidence in this case that the bottles in question

were refilled with alcoholic beverages other than that described by the label attached thereto. This took place on the licensed premises while the bottles were under the supervision and control of defendant and was done by an agent or employee of the same. The refilling of an alcoholic beverage from one container to another constitutes bottling within the meaning of R. S. 33:1-78. Re Gypsy Camp, Inc., Bulletin 454, Item 2.

In Re Haney, supra, it was held:

> "Where liquor has been rectified, blended or bottled by a retail licensee, it is illicit within the statutory definition contained in Section 1 of the Control Act, (now R. S. 33:1-1)."

I therefore find the defendant guilty on both charges.

The defendant has permitted on its premises a practice fraught with danger which, if permitted for any length of time, would eliminate every vestige of control over illicit and bootleg liquor. The practice must therefore be dealt with in no uncertain terms. Customers are entitled to receive the liquor which they order.

While in 1939 the defendant's license was suspended for ten days for permitting and failing to give notice of the transfer to an unqualified person of more than 10% of its stock, Re 12 East Park Street Tavern, Inc., Bulletin 343, Item 9, I will, nonetheless, in this case, because of the complete dissimilarity between the violations and the technical character of the former, confine the suspension to thirty (30) days.

This proceeding, although instituted during the licensing term expiring June 30, 1941, does not abate but remains effective against the defendant corporation's renewal license for the current term. State Regulations, No. 15.

Accordingly, it is, on this 15th day of October, 1941,

ORDERED, that Plenary Retail Consumption License C-934, heretofore issued to Twelve East Park Street Tavern, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of thirty (30) days, effective October 20, 1941, at 3:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

10. APPELLATE DECISIONS - PINTO v. RARITAN AND SABOL.
PINTO v. RARITAN AND ANCELLOTTI.

ISSUANCE OF PLENARY RETAIL DISTRIBUTION LICENSES APPEALED ALLEGING NO PUBLIC NECESSITY AND IMPROPER INTEREST AND PARTICIPATION OF MEMBERS OF THE LOCAL BOARD - NO ABUSE OF DISCRETION, OR IMPROPER INTEREST OR PARTICIPATION, SHOWN - ISSUANCE AFFIRMED.

JOSEPH A. PINTO,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE TOWN OF RARITAN, SOMERSET COUNTY, AND ANDREW SABOL, SR.,

Respondents.

-and-

JOSEPH A. PINTO,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE TOWN OF RARITAN, SOMERSET COUNTY, AND MARCELLA M. ANCELLOTTI,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Clarkson A. Cranmer, Esq. and Leo J. Berg, Esq., Attorneys for Appellant.
George W. Allgair, Esq., Attorney for Respondent Board of Commissioners.
James I. Bowers, Esq., Attorney for Respondent Licensees.

BY THE COMMISSIONER:

The above entitled cases come before me on the appeal of Joseph A. Pinto from the action of the Board of Commissioners of the Town of Raritan, Somerset County, as a result of which plenary retail distribution licenses were granted to Andrew Sabol, Sr. and Marcella M. Ancellotti. The issues being substantially the same in each case, the appeals were heard together.

On May 16, 1941 respondent Board of Commissioners granted retail distribution licenses for the fiscal year 1940-41 to Andrew Sabol, Sr. for premises at 32 Thompson Street and to Marcella M. Ancellotti for premises at 37 First Avenue, in the Town of Raritan, Somerset County. Appellant filed separate appeals from the action of the Board.

Appellant alleges in each case that public convenience and necessity do not demand the granting of the license and that the granting thereof was not in the public interest. In the first case appellant alleges also that the issuing authority had no power to issue a license to Andrew Sabol, Sr. because the person actually interested in said license is his son, Andrew Sabol, Jr., a member of

respondent Board. In the second case appellant alleges also that the issuing authority had no power to issue a license to Marcella M. Ancellotti because the person actually interested in said license is her husband, Joseph V. Ancellotti, a member of respondent Board. In each case, appellant alleges also that the ordinance, under which applications for these licenses were made, is invalid.

Andrew Sabol, Jr. and Joseph V. Ancellotti were, during the past fiscal year, members of respondent Board.

At a meeting of the Board on March 3, 1941, an ordinance to amend an existing ordinance of the Town of Raritan was introduced. Section 1 of the amending ordinance (so far as material to the issue herein) provided that Section 9 of the existing ordinance be amended to read as follows:

> "Section 9. (a). Not more than sixteen (16) plenary retail consumption licenses shall be issued and remain outstanding and in force in the Town of Raritan at any one time pursuant to the provisions of this ordinance.
>
> "(b). Not more than four (4) plenary retail distribution licenses shall be issued and remain outstanding and in force in the Town of Raritan at any one time pursuant to the provisions of this ordinance.****"

The proposed amendment increased the permissible number of consumption licenses from twelve to sixteen and the permissible number of distribution licenses from one to four. It appears from the minutes of said meeting that Commissioner Sabol then stated that his father was interested in obtaining a license and that Commissioner Ancellotti then stated that he was interested in obtaining a license. The proposed amendment was tabled for further consideration at the next meeting. On March 17, 1941 the amending ordinance, as proposed, was passed on first reading. On the roll call Commissioners Sabol and Ancellotti did not vote but the other four Commissioners then present voted "yes." On April 7, 1941 the amending ordinance was considered for final adoption. At this meeting Attorney Fasoli appeared on behalf of appellant herein and presented a petition opposing the adoption of the ordinance and argued that licenses should be reduced instead of increased. Another citizen objected to the adoption of the ordinance. A letter was also received, signed by the Secretary of the Raritan-Bridgewater Chamber of Commerce, advising the Board that the Chamber of Commerce had gone on record as opposing the increase of distribution licenses to four. The minutes of the meeting show that:

> "After considerable discussion on the above ordinance a motion was offered by Commissioner Mencaroni, seconded by Commissioner Maslar, that the ordinance be adopted. Upon the call of the roll, the vote was as follows:
>
> "Commissioner Peebles - Yes
> Commissioner Sabol - Not voting
> Commissioner Maslar - Yes
> Commissioner Ancellotti - Not voting
> Commissioner Mencaroni - Yes
> Commissioner Mezzanotte - Yes
> Commissioner Del Monte - Yes."

It thus appears that, on April 7, 1941, the amending ordinance was finally adopted.

Thereafter, applications for plenary retail distribution licenses were received from Andrew Sabol, Sr. and Marcella M. Ancellotti. Objections were filed by the appellant herein alleging that the persons actually interested in obtaining the licenses were two members of the Board of Commissioners, Andrew Sabol, Jr., son of one of the applicants, and Joseph V. Ancellotti, husband of the other applicant. The attorney for the Board thereupon advised the members that since there was no definite indication whether Andrew Sabol, Jr. and Joseph V. Ancellotti would be employed in the store, the Board of Commissioners should hold the matter and direct applicants to make applications to the State Commissioner of Alcoholic Beverage Control.

After applications had been filed with this Department, as suggested, the Acting Commissioner ruled:

"The question as to whether jurisdiction to issue these licenses rests in me or in the Board of Commissioners of the Town of Raritan depends upon the interpretation of R. S. 33:1-20. This section provides that no license shall be issued by any municipal license issuing authority to any member thereof, or to any corporation, organization or association in which any member thereof is interested directly or indirectly, but that in such case the application shall be made directly to the Commissioner. Neither of these applications is made by a member of the municipal license issuing authority, Marcella M. Ancellotti being the wife of Joseph V. Ancellotti, a member of the Board, and Andrew Sabol, Sr. being the father of Andrew Sabol, Jr., a member of the Board.

"As to Ancellotti: In Re Rosenberg, Bulletin 203, Item 5, the Commissioner said that applications by wives whose husbands hold public office should be scrutinized with the greatest care to the end that the true status of the parties be fully ascertained and, in effect, that if the husband is the real party in interest he should make the application in his own name directly to the State Commissioner. Assuming, however, that the husband has no interest in the license or in the business to be conducted thereunder except that he may in the future be employed on the licensed premises, neither the husband and wife relationship nor the mere employment would be sufficient to confer jurisdiction upon me to consider the application. The fact that James V. Ancellotti is the co-owner of the premises to be licensed would not confer jurisdiction upon me for the reasons set forth in Re Farias, Bulletin 426, Item 9.

"The same reasoning would apply to the Sabol application except that, in that case, it applies to a father and son relationship and that no question as to the ownership of the premises by a member of the Board seems to be involved.

"Under the circumstances, the applications should be considered in due course by the Board of Commissioners of the Town of Raritan, subject to appeal to me by any person aggrieved by said action. It is suggested that because of the relationship of the parties neither Joseph V. Ancellotti nor Andrew Sabol, Jr. should participate in any way in proceedings concerning the applications. If, hereafter, either of these individuals is

employed in the liquor business, he cannot, while so employed, participate in any manner whatsoever in the deliberations of the Board concerning any phase of alcoholic beverage control for the reasons set forth in Re Rosenberg, supra."

On May 9, 1941 respondent Board scheduled a hearing on the objections filed and on May 16, 1941, after a hearing at which the appellant herein appears to have been the only objector, the Board granted the licenses in question by a vote of five in favor of the granting thereof and none opposed. Commissioners Sabol and Ancellotti did not participate in these proceedings or vote upon the resolution.

The burden is upon appellant herein to show that the respondent Board abused its discretion or acted illegally. Respondent Board has the power, under R. S. 33:1-40, to limit by ordinance the number of retail licenses in the municipality. By virtue of the power given local municipalities by R. S. 33:1-40, a local governing body may, from time to time, by appropriate action, either increase or decrease the number of retail distribution licenses. By the same token, the local governing body, if it sees fit, may entirely eliminate this type of license. This is Home Rule.

The first question to be decided, therefore, is whether the Board abused its discretion and acted contrary to the public interest by granting the two additional distribution licenses.

It appears that in September 1936 the Board, then composed of other individuals, adopted an ordinance providing that not more than nineteen consumption licenses and one distribution license should be outstanding at any one time. In April 1938 the Board amended said ordinance to provide that not more than twelve consumption licenses and one distribution license should be outstanding at any one time and provided that said amendment should not prevent renewals of licenses to persons then holding licenses.

It further appears that, at present, there are in existence fifteen consumption licenses and three distribution licenses, including those issued to Sabol and Ancellotti. Thus, the total actual number of licenses of both types is now two less than the total permissible number of both types as fixed in the 1936 ordinance and the permissible number of licenses of both types now corresponds with the number fixed in said ordinance. President Del Monte of the Board of Commissioners testified that he voted to increase the number of distribution licenses from one to four and voted to grant the two additional distribution licenses because he was opposed to a monopoly by appellant, who then held the only distribution license in the town; because the town needed the added revenue and because, in his opinion, the town is big enough to have more package goods stores. Commissioner Mencaroni testified that he voted for the ordinance and the additional licenses to obtain additional revenue; because he was opposed to women visiting saloons, and because he thought that the town needed more liquor stores. There was also some testimony that Commissioner Mezzanotte stated that he was in favor of the ordinance and the additional licenses because the town needed more money.

I am not impressed with the suggestion that additional revenue is a sufficient reason for an increase in the number of licenses. The primary purpose of the alcoholic beverage law is control -- not revenue. This is a fact which the respondent should never lose sight of. From the record it appears that the population of the respondent Town of Raritan is approximately forty-seven hundred. Prior

to 1938 provision was made for twenty licenses -- nineteen consumption and one distribution. This was one license for every two hundred and thirty-five persons (men, women and children). In 1938 the number of licenses to be issued by respondent municipality was reduced to thirteen. The amending ordinance of 1941 again increases the number of licenses to twenty, although, as noted, the number of consumption licenses is three less today than it was in 1938. If this case were before me on appeal under Section 33:1-41 and in the absence of any additional evidence, I would be constrained to hold that the increase in the number of consumption licenses from twelve to sixteen was unwarranted in view of the size of respondent municipality. I will expect the respondent municipality to govern itself accordingly.

On the other hand, on the present state of the record, in view of the evidence given by the two Commissioners herein, the evidence that the new licensed premises are near stores which cater to some out-of-town trade, and the other evidence in the case, I am not in a position to say that respondent abused its discretion in granting the two additional distribution licenses.

In granting these licenses, respondent Board apparently reached the conclusion that neither Andrew Sabol, Jr. nor Joseph V. Ancellotti was interested in the respective licenses considered herein.

Andrew Sabol, Sr. has been engaged in the grocery business in the Town of Raritan for many years. His licensed premises are located a short distance from his grocery store. Both father and son have sworn under oath that the son has no interest in the father's liquor business, although it is admitted that for some years the son has been employed in the grocery store and, since the issuance of the license, has assisted his father in conducting the liquor store. No other evidence was offered to refute the testimony of the licensee and his son.

Marcella M. Ancellotti swears that her husband has no interest in her liquor business, but she admits that the licensed premises are owned by both of them and that, since the issuance of the license, she has employed her husband on the licensed premises. To substantiate her contention that the licensed business belongs to her, she testified that for fifteen years prior to 1939 she conducted a grocery store which she sold and that she has her own bank account. She further testified that she purchases all liquor with her own funds; that she actually conducts the licensed business and pays her husband a small salary. These cases involving family relationship between licensees and members of local issuing authorities arouse suspicion as to the real party in interest. However, after reviewing the testimony herein, I conclude that the evidence is not sufficient to warrant me in reversing the finding of respondent Board that Andrew Sabol, Sr. and Marcella M. Ancellotti are the real parties in interest.

The only ground alleged as to the invalidity of the ordinance itself is that the participation of Commissioners Sabol and Ancellotti in the adoption of the ordinance rendered it illegal. It is clear that a member of a governing body who is interested in the liquor business is absolutely disqualified from either voice or vote on any matter involving alcoholic beverage control. Gardner v. Sea Bright, Bulletin 171, Item 9; Petrusha v. Mine Hill, Bulletin 146, Item 8; Skeba v. Millstone, Bulletin 274, Item 1. In this case, however, it does not appear that either of these Commissioners voted or

participated in the proceedings on March 17, 1941, when the amending ordinance passed on first reading, or voted or participated in the proceedings on April 7, 1941, when the amending ordinance was finally adopted. The most that has been shown is that they participated in proceedings on March 3, 1941, at which time the matter was tabled for further consideration. I conclude that the ordinance under which the applications were made is valid.

Accordingly, it is, on this 16th day of October, 1941,

ORDERED, that the action of respondent Board in granting licenses to Andrew Sabol, Sr. and Marcella M. Ancellotti be and the same is hereby affirmed; and it is further

ORDERED, that the appeals herein be and the same are hereby dismissed.

Alfred E. Driscoll
Commissioner.