

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

BULLETIN 952

JANUARY 12, 1953.

1. APPELLATE DECISIONS - BOCK TAVERN, INC. v. NEWARK.

BOCK TAVERN, INC.,)

Appellant,)

-vs-

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

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellant.

Charles Handler, Esq., by George B. Astley, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent on September 23, 1952, denying appellant's application for a place-to-place transfer of its plenary retail consumption license from 118 Belmont Avenue to 155 Belmont Avenue.

In its Conclusions and Order respondent recited that a formal hearing had been held at which all parties were afforded an opportunity to present evidence, and summarized the result of such hearing and its reasons for its action as follows:

"St. Stanislaus Church, located at 140-144 Belmont Avenue, Newark, N. J., presented a petition signed by many hundreds of its parishioners and the Priest, Reverend Father Kiczek gave sworn testimony before this Board in which he objected to the transfer. He alleged as his reasons:

1. That the tavern was moving to a location closer to the Church.
2. That he had heard many complaints of noise and objectional (sic) conduct on the part of the customers of the said licensee at this present location and that he had personally made complaints to the Police authorities, concerning such conduct.
3. That the Belmont Avenue entrance of the Church which would be approximately opposite to that of the proposed new location of the licensed premises, was used for the entrance for children attending Parochial School and would interfere with their progress to and from the School.
4. That there were many taverns within close proximity to the location proposed for the licensee and there were complaints which he knew of, with regard to the activities of these other taverns; and that placing the licensee within close proximity to these other licensees would create and increase the present hazardous and dangerous condition.

5. That the character of the neighborhood is such that it was dangerous for persons to walk without escort, after dark.

"Many other individual objectors, both members of the Church and neighborhood non-members living in the neighborhood, objected to the transfer of the license and testified that the licensee permitted unnecessary noise and permitted people to congregate on the sidewalk in front of its present location and to annoy women walking along the street. They also testified as to the number of taverns located within close proximity to the site to which this licensee desires to move.

"The licensee produced its officers and some people from the neighborhood who testified that the licensee did not conduct the tavern at this present location in any manner as alleged by the objectors; that there was no noise and that no people congregated in front of the premises or annoyed people passing by.

"The officers of the license (sic) testified that they intended to spend a great deal of money in the new location for the purpose of lessening the noise and making it a model tavern.

"Two witnesses testified from the licensee that they had done their utmost to find some other location in the vicinity where this licensee could move but that the address 155 Belmont Avenue was the only available site in the neighborhood.

"The attorney for the licensee filed a voluminous brief with this Board.

"After giving due consideration to the testimony offered and having read the briefs submitted by both the objectors and the licensee, this Board has come to the conclusion that it cannot grant the application for the following reasons:

1. Because of the character of the neighborhood, the transfer of this license to the premises sought, would not be conducive to the welfare of the neighborhood.
2. By reason of the character of the neighborhood, the relocation of the license would not be for the benefit and welfare of the neighborhood, nor in the opinion of this Board, would this re-arrangement of outlets be for the best interest of the community.
3. The proposed transfer would aggravate and congest the existing concentration of licenses in the area where the licensee seeks to operate."

Appellant contends that respondent's action was erroneous for various reasons which may be summarized as follows: (1) The evidence adduced before respondent preponderated in favor of appellant; (2) The denial of the application constitutes extreme hardship on appellant who is, in effect, put out of business and prevented from operating in a neighborhood in which it had built up good will during the past four years; (3) The denial of the application amounts to discrimination against appellant in view of respondent's action in March 1952 granting a place-to-place transfer to Boyd Casino, Inc. under similar circumstances, in the same neighborhood, particularly since both

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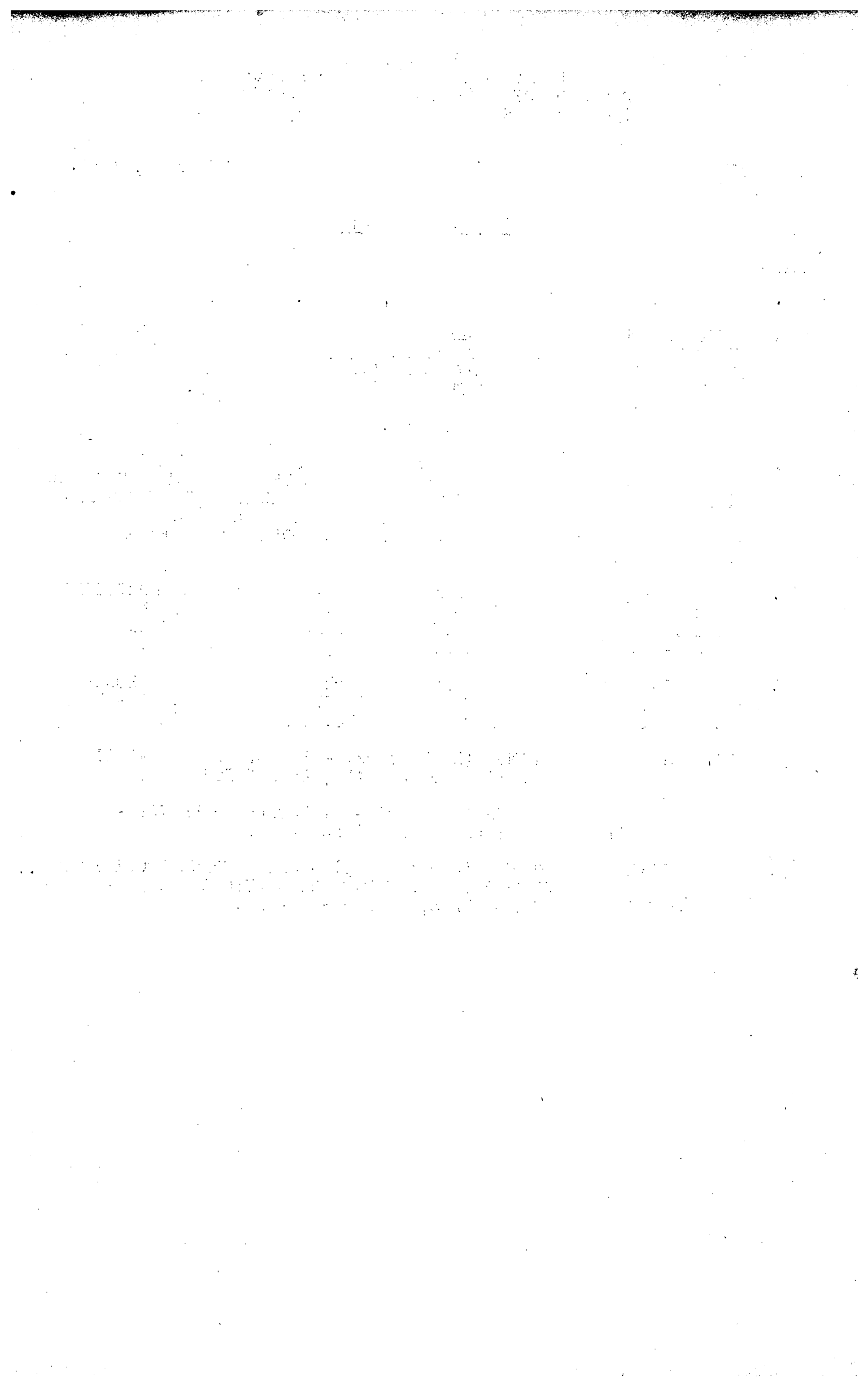
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appellant and Boyd Casino, Inc. were deprived of existing premises by condemnation proceedings on the same housing project; (4) By reason of the Boyd Casino, Inc. transfer, respondent is estopped from denying the transfer sought by appellant; (5) Respondent has never established a policy of denying a transfer to a location near a church (if outside the limits prescribed by statute) but, on the contrary, has issued many licenses for such locations; (6) The transfer sought by appellant would not aggravate or create undue concentration of plenary retail consumption licenses in the area because appellant's former premises are located in the same area.

The record below, including the testimony of the witnesses who appeared at the hearing before respondent, was stipulated as part of the record on this appeal, and other testimony and exhibits were introduced at the hearing on this appeal.

The record discloses that appellant's former premises at 118 Belmont Avenue (on the west side of Belmont Avenue 49.80 feet north of 17th Avenue) are part of a large area condemned for a public housing project known as the 14th Ward Project, in consequence of which appellant was forced to vacate those premises. The premises to which appellant seeks to transfer its license (155 Belmont Avenue) are on the east side of Belmont Avenue between Spruce Street (18th Avenue) and Montgomery Street, but near the northerly line of Spruce Street (18th Avenue). The proposed new premises are 500 feet from the former premises, in a direct line. In effect, the licensee seeks to move in a southerly direction from its former premises, a distance of 491 feet, and thence across the street. According to the uncontroverted written statement of the Secretary of the City Board of Adjustment admitted in evidence by stipulation, the area on the east side of Belmont Avenue between Montgomery Street and Spruce Street (18th Avenue) and the area on the west side of Belmont Avenue between 18th Avenue and 17th Avenue are both in what is known as a Second Business District where dwellings, offices and stores (but no industrial uses) are allowed.

Diagonally across the street from the proposed new premises is the entrance to St. Stanislaus Church and an entrance to the church's school which is located directly behind the church on Livingston Street. While the distance from the proposed entrance to the proposed new premises is slightly less than 200 feet, in a direct line, that distance is approximately 495 feet when measured as required by R. S. 33:1-76, i.e., "in the normal way that a pedestrian would properly walk from the nearest entrance from said church or school to the nearest entrance of the premises sought to be licensed."

At the hearing on this appeal various maps and other exhibits were introduced in evidence, and by stipulation a map was introduced showing the number of plenary retail consumption licenses on Belmont Avenue between a point slightly south of Spruce Street (18th Avenue) and a point slightly north of Montgomery Street, which includes the west side of Belmont Avenue to a point north of appellant's former premises at 118 Belmont Avenue. When appellant was located at 118 Belmont Avenue there were six such licensed premises -- three on the west side and three on the east side of Belmont Avenue. At the northerly end of the area covered by the aforementioned map were the appellant's premises on the west side, and two other licensed premises located side by side at 111 and 109 Belmont Avenue, respectively almost directly across the street from 118 Belmont Avenue. At the southern end of the area there were (and are) two such premises on the west side of the street, one on the northwest corner of 18th Avenue and Belmont Avenue, and one immediately adjacent to a store which is located on the southwest corner of that intersection, and one on the southeast corner thereof. As above indicated, appellant seeks to move across the street from, and approximately 491 feet south of, his former premises.

At the hearing on this appeal appellant produced numerous witnesses who testified that its former premises were conducted in an orderly manner, and also introduced the testimony of the hearing before respondent in the case involving Boyd Casino, Inc. hereinabove referred to. In addition, by stipulation, an affidavit was introduced in evidence listing numerous premises which had been licensed in Newark despite their proximity to churches and schools.

One of the members of respondent Board (Mr. Braff) testified for respondent and was examined at length with respect to the reasons for the Board's decision. He testified that the Board considered all of the evidence adduced at the hearing below before it arrived at its decision, and reiterated the Board's opinion that the proposed transfer would aggravate the congestion of plenary retail consumption licenses in the area, and that it was the unanimous opinion of the Board that the transfer would not be beneficial to the neighborhood.

Despite the ultimate result reached in these conclusions and order, as hereinafter set forth, I deem it appropriate to consider here all of the matters raised by this appeal. Respondent's refusal to grant the transfer because, as stated in reason 3, it "... would aggravate and congest the existing concentration of licenses in the area where the licensee seeks to operate" is based upon the premise that, in moving from 118 Belmont Avenue to 155 Belmont Avenue, appellant is moving to a different area. With this I cannot agree. Appellant merely wishes to move to other premises on the same street at a point approximately 500 feet away from its former premises, both of which are in the same general area, where ground floor occupancy is devoted almost entirely to stores of various types.

On the record in this case I conclude that the proposed transfer would not increase the number or concentration of plenary retail consumption licenses in this area (Kupay v. Passaic, Bulletin 803, Item 9; Conn v. Kearny, Bulletin 173, Item 1; Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1; Grower v. Hackensack, Bulletin 789, Item 1; Metropolitan Liquor Corp. v. Jersey City, Bulletin 645, Item 1; Costa v. Verona, Bulletin 501, Item 2) and it must be remembered that "a transfer may not be denied merely to decrease the number of licenses". Kupay v. Passaic, supra; Kirschhoff v. Millville, Bulletin 254, Item 8.

The other reasons (1 and 2) assigned by respondent for denying the transfer deal with the character of the neighborhood and express the opinion of the Board, which was unanimous, that such transfer would not be in the best interests of the neighborhood or the community. While the Board did not elaborate on these "reasons", it did summarize the objections (hereinabove set forth) voiced by the objectors at the hearing held before it. These objections relate generally to the conduct of the licensee's former premises at 118 Belmont Avenue, the conditions outside those premises and the proximity of the proposed new premises at 155 Belmont Avenue to the entrance of the St. Stanislaus Church and its school.

As to the alleged failure of appellant to properly conduct the licensed premises at 118 Belmont Avenue, the records of this Division fail to reveal any violations of the Alcoholic Beverage Law or State or local regulations on the part of appellant, and respondent claims no such violations. Since respondent has continued to renew appellant's license for the premises at 118 Belmont Avenue, it apparently did not consider the alleged conditions described by the objectors as sufficiently serious to require corrective action.

As to the alleged conditions in the neighborhood outside appellant's former premises, we said in Kupay v. Passaic, supra:

"If conditions are as bad as respondent's witnesses claim, it would seem apparent that there is need for a closer supervision by the local police in this section of the city. However, in the absence of convincing evidence that appellant is responsible for, or substantially contributed to, the unsatisfactory conditions, he should not be penalized."

After carefully reviewing the evidence I conclude that it is insufficient to support a finding of misconduct by appellant at its former premises warranting denial of the transfer of its license. Kupay v. Passaic, supra. See also Conn v. Kearny, supra; Hobbs v. Lower Penns Neck, Bulletin 405, Item 4; Dashefsky v. Orange et al., Bulletin 407, Item 9.

As to the proximity of the proposed new location to the entrance to the church and its school, it appears from the evidence that the distance as measured in the manner prescribed by the statute is more than 200 feet. In fact, it is approximately 495 feet. However, the proposed new premises are diagonally across the street from the entrance to the church and school, and the distance measured radially is a mere 192 feet. The distance between the church and school entrance and the entrance to appellant's former premises at 118 Belmont Avenue, both being on the west side of that street, was 316.80 feet. It has been uniformly held that proximity to churches or schools is a valid ground for denial of transfers even though not within the 200-foot prohibited distance. See Gianfortuno v. Bellmawr et al., Bulletin 900, Item 1, where the then Director said:

"Local desire to keep church vicinities free of liquor places is a civic sentiment which commands respect and should be left to the sound discretion of the local issuing authorities. In case after case, the refusal of a municipality to permit a liquor establishment near a church, even though, as here, beyond the statutory 200-foot distance, has been affirmed. As early as 1934, the late Commissioner Burnett said in Staciewicz v. Trenton, Bulletin 35, Item 10:

"Section 76 (now R. S. 33:1-76) expresses a legislative policy against licensing premises near churches and schools. The 200 feet provision was included in the statute as a workable minimum requirement. The Legislature did not contemplate depriving issuing authorities of the right to decline to issue licenses for premises reasonably considered by them as being too near churches or schools but, nevertheless, beyond 200 feet."

"This principle has been consistently followed ever since that time. The most recent application of the principle may be found in Moraitis v. Lower Penns Neck, Bulletin 839, Item 11, decided in April, 1949."

The evidence herein discloses that at the hearing held below, the Pastor of St. Stanislaus Church and many of his parishioners appeared and objected to the proposed transfer. Moreover, a petition, signed by 682 members of said church, objecting to the transfer was presented to the Municipal Board at said hearing.

Appellant introduced, by stipulation, an affidavit listing many other licensed premises in Newark in close proximity to churches and schools, and contends that respondent has not heretofore had a policy of denying transfers to premises near churches or schools.

Reference was made to the transfer of the license of Boyd Casino, Inc. from 70 Boyd Street to premises at 30 and near of 28 on 17th Avenue (nearer St. Stanislaus Church and school). Board member Braff, when questioned with respect to this transfer at the hearing on this appeal, testified that the Board considered that case and the locality there involved to be different from the instant case and the locality here involved. On the records in both cases I am inclined to agree with the Board. For one thing, the transfer in the Boyd Casino, Inc. case did not place the licensed premises almost directly across the street from a church or school. Another very pertinent difference is the change which has been made in the local ordinance with respect to restrictions on transfers. When the Boyd Casino, Inc. case was decided, the ordinance restricted place-to-place transfers to premises not more than 750 feet from the premises from which the license was sought to be transferred. Thus, Boyd Casino, Inc. was forced to find premises within the restricted distance (750 feet). However, it was stipulated at the hearing on this appeal that the ordinance has been changed so that it presently excepts from the 750-foot transfer restriction licenses whose premises have been taken for any municipal, county, state or federal project. While this exception was not in effect on September 23, 1952, when the action here appealed from was taken, and while appellant then was also forced to find premises within the restricted distance, the exception is now in effect and appellant may now seek a transfer to other premises beyond the previously restricted distance and the Board, in its discretion, may grant such transfer. In determining this appeal I must consider the ordinance and all other matters and situations as they now exist. Socony-Vacuum Oil Co. v. Mt. Holly, 135 N.J.L. 112 (Sup. Ct. 1947); Franklin Stores v. Elizabeth, Bulletin 61, Item 1; Kitchman v. Mount Laurel, Bulletin 752, Item 10; Price v. East Rutherford, Bulletin 754, Item 8.

Moreover, there has been no showing that the Board, as presently constituted, has approved transfers of licenses near a school or church. (Since the Boyd case was decided there has been a change in one of the members of the Board.) In any event, and particularly in the absence of any evidence or suggestion of improper motivation on the part of respondent Board, such Board is not bound to perpetuate or to further aggravate an existing condition merely because of previous similar action. Cf. Potts v. Board of Adjustment of Borough of Princeton, 133 N.J.L. 230 (Sup. Ct. 1945); Greenway Homes v. Borough of River Edge, 137 N.J.L. 453 (Sup. Ct. 1948). So long as good reason exists for its action, the Board may grant a transfer in one case and deny it in another. Biscamp v. Teaneck, 5 N.J. Super. 172 (1949).

On appeal from the action of a local issuing authority in cases of this kind I may not substitute my judgment for the judgment of the Board. The question of whether or not a place-to-place transfer is to be granted is within the sound discretion of the Board in the first instance, and, on appeal, the burden is on appellant to show that the Board abused its discretion. Rule 6, State Regulations No. 15; Haefliger v. Allamuchy, Bulletin 880, Item 2; Minsky v. Woodbridge, Bulletin 897, Item 3; Segal et al. v. Clifton et al., Bulletin 732, Item 5. In the instant case, after considering all of the evidence and in view of the numerous and vigorous objections to the proposed transfer, and especially those based upon the proximity of the proposed new premises to the church and school, I cannot find that the action of respondent in denying the application for transfer was arbitrary and unreasonable, constituting an abuse of discretion warranting a reversal of their action.

Accordingly, it is, on this 5th day of January, 1953,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

2. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1952 TO DECEMBER 31, 1952 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

C L A S S I F I C A T I O N O F L I C E N S E S

| County | Plenary Retail Consumption | | Plenary Retail Distribution | | Club | | Limited Retail Distribution | | Seasonal Retail Consumption | | Number Surren- dered Expired | Number Licen- ses 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 | 488 | \$ 208,030.05 | 71 | \$ 26,075.00 | 17 | \$ 1,600.00 | | | | | 1 | 575 | \$ 235,705.05 |
| Bergen | 815 | 299,367.18 | 299 | 83,712.00 | 82 | 7,749.19 | 57 | \$ 2,615.00 | 6 | \$ 1,597.00 | 6 | 1253 | 395,040.37 |
| Burlington | 186 | 72,525.00 | 31 | 8,550.00 | 36 | 5,150.00 | 1 | 25.00 | | | | 254 | 86,250.00 |
| Camden | 456 | 218,500.00 | 82 | 31,725.00 | 70 | 6,673.23 | | | 1 | 375.00 | 1 | 608 | 257,273.23 |
| Cape May | 133 | 64,650.00 | 11 | 3,550.00 | 17 | 1,800.00 | | | | | | 161 | 70,000.00 |
| Cumberland | 81 | 34,450.00 | 13 | 3,600.00 | 30 | 4,031.23 | | | | | | 124 | 42,081.23 |
| Essex | 1374 | 763,292.54 | 349 | 205,058.30 | 102 | 14,083.69 | 32 | 1,600.00 | 1 | 750.00 | 2 | 1856 | 984,784.53 |
| Gloucester | 107 | 33,600.00 | 13 | 2,750.00 | 15 | 1,442.05 | | | | | | 135 | 37,792.05 |
| Hudson | 1556 | 675,117.32 | 298 | 117,810.00 | 77 | 9,205.29 | 64 | 2,750.00 | | | 2 | 1993 | 804,882.61 |
| Hunterdon | 79 | 25,250.00 | 7 | 2,162.50 | 6 | 700.00 | | | | | | 92 | 28,112.50 |
| Mercer | 425 | 257,550.00 | 51 | 20,850.00 | 53 | 7,448.35 | | | 1 | 107.50 | 1 | 529 | 285,955.85 |
| Middlesex | 635 | 303,905.00 | 73 | 22,245.00 | 76 | 7,023.49 | 5 | 250.00 | | | | 789 | 333,423.49 |
| Monmouth | 549 | 277,445.00 | 116 | 39,525.00 | 32 | 3,840.55 | 11 | 460.00 | 28 | 11,626.51 | 29 | 707 | 332,897.06 |
| Morris | 353 | 122,307.60 | 97 | 29,800.00 | 46 | 4,435.89 | 22 | 1,100.00 | 6 | 1,443.80 | 8 | 516 | 159,087.29 |
| Ocean | 193 | 103,969.16 | 46 | 19,065.00 | 18 | 1,861.86 | | | | | | 257 | 124,896.02 |
| Passaic | 877 | 357,049.31 | 167 | 51,370.00 | 36 | 4,380.00 | 11 | 525.00 | | | | 1091 | 413,324.31 |
| Salem | 50 | 19,000.00 | 7 | 1,300.00 | 15 | 1,300.00 | | | 1 | 262.50 | 1 | 72 | 21,862.50 |
| Somerset | 185 | 76,068.99 | 38 | 10,345.00 | 22 | 2,400.00 | | | | | | 245 | 88,813.99 |
| Sussex | 170 | 45,155.00 | 19 | 3,555.00 | 9 | 535.00 | 1 | 50.00 | 1 | 225.00 | 1 | 199 | 49,520.00 |
| Union | 546 | 295,980.82 | 144 | 59,500.00 | 69 | 7,711.37 | 34 | 1,650.00 | | | | 793 | 364,842.19 |
| Warren | 143 | 42,555.00 | 17 | 4,157.50 | 32 | 3,165.00 | | | 2 | 292.48 | 2 | 197 | 50,169.98 |
| Totals | 9406 | \$4,295,767.97 | 1949 | \$746,705.30 | 860 | \$96,536.19 | 238 | \$11,025.00 | 47 | \$16,679.79 | 54 | 12446 | \$5,166,714.25 |

Dominic A. Cavicchia, Director

Respectfully submitted,
John H. Michelson
Deputy Director

January 2, 1953.

3.

ACTIVITY REPORT FOR DECEMBER 1952

| | | |
|--|-----|--|
| ARRESTS: | | |
| Total number of persons arrested - - - - - | | 9 |
| Licensees and employees - - - - - | 1 | |
| Bootleggers - - - - - | 8 | |
| SEIZURES: | | |
| Motor vehicles - cars - - - - - | | 3 |
| Stillis - 50 gallons or under - - - - - | | 3 |
| Mash - gallons - - - - - | | 500.00 |
| Distilled alcoholic beverages - gallons - - - - - | | 29.49 |
| Wine - gallons - - - - - | | .65 |
| Brewed malt alcoholic beverages - gallons - - - - - | | 3.28 |
| RETAIL LICENSEES: | | |
| Premises inspected - - - - - | | 985 |
| Premises where alcoholic beverages were gauged - - - - - | | 787 |
| Bottles gauged - - - - - | | 15,455 |
| Premises where violations were found - - - - - | | 75 |
| Violations found - - - - - | | 112 |
| Type of violations found: | | |
| Unqualified employees - - - - - | 53 | Disposal permit necessary - - - - - 3 |
| Reg. #38 sign not posted - - - - - | 9 | Improper beer taps - - - - - 2 |
| Gambling devices - - - - - | 4 | Other mercantile business - - - - - 2 |
| Prohibited signs - - - - - | 4 | Other violations - - - - - 35 |
| STATE LICENSEES: | | |
| Premises inspected - - - - - | | 16 |
| License applications investigated - - - - - | | 7 |
| COMPLAINTS: | | |
| Complaints assigned for investigation - - - - - | | 368 |
| Investigations completed - - - - - | | 369 |
| Investigations pending - - - - - | | 95 |
| LABORATORY: | | |
| Analyses made - - - - - | | 101 |
| Refills from licensed premises - bottles - - - - - | | 1 |
| Bottles from unlicensed premises - - - - - | | 18 |
| IDENTIFICATION BUREAU: | | |
| Criminal fingerprint identifications made - - - - - | | 12 |
| Persons fingerprinted for non-criminal purposes - - - - - | | 215 |
| Identification contacts made with other enforcement agencies - - - - - | | 184 |
| Motor vehicle identifications via N. J. State Police Teletype - - - - - | | 3 |
| DISCIPLINARY PROCEEDINGS: | | |
| Cases transmitted to municipalities - - - - - | | 7 |
| Violations involved: | | |
| Sale to minors - - - - - | 4 | |
| Sale during prohibited hours - - - - - | 2 | |
| Failure to afford view into premises during prohibited hours - - - - - | 1 | |
| Permitting brawl on premises - - - - - | 1 | |
| Permitting females at bar - - - - - | 1 | |
| Cases instituted at Division - - - - - | | 14 |
| Violations involved: | | |
| Sale during prohibited hours - - - - - | 6 | Permitting gambling (dice) on premises - - 1 |
| Mislabelled beer taps - - - - - | 2 | Permitting bookmaking on premises - - - 1 |
| Hindering investigation - - - - - | 1 | Sale outside scope of license - - - - - 1 |
| Sale to minors - - - - - | 1 | Possessing illicit liquor - - - - - 1 |
| Permitting immoral activity on premises - - - - - | 1 | Permitting immoral activity on premises - 1 |
| Cases brought by municipalities on own initiative and reported to Division - - - - - | | 19 |
| Violations involved: | | |
| Sale to minors - - - - - | 7 | Permitting gambling (cards) on premises - 1 |
| Permitting brawls on premises - - - - - | 5 | Permitting immoral activity on premises - 1 |
| Sale during prohibited hours - - - - - | 3 | Permitting lottery activity on premises - 1 |
| Permitting bookmaking on premises - - - - - | 2 | |
| HEARINGS HELD AT DIVISION: | | |
| Total number of hearings held - - - - - | | 29 |
| Appeals - - - - - | 3 | Seizures - - - - - 2 |
| Disciplinary proceedings - - - - - | 14 | Tax revocation - - - - - 1 |
| Eligibility - - - - - | 9 | |
| PERMITS ISSUED: | | |
| Total number of permits issued - - - - - | | 974 |
| Employment - - - - - | 146 | Social affairs - - - - - 234 |
| Solicitors - - - - - | 55 | Special wine - - - - - 176 |
| Disposal of alcoholic beverages - - - - - | 106 | Miscellaneous - - - - - 257 |

Dated: January 2, 1953.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION - FAILURE TO NOTIFY LOCAL ISSUING AUTHORITY OF CHANGE IN FACT SET FORTH IN APPLICATION - AIDING AND ABETTING UNQUALIFIED PERSONS (ALIENS) TO EXERCISE RIGHTS AND PRIVILEGES OF SUCCESSIVE LICENSES - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against)

MICHAEL KUCHAR)
80 Montgomery Street)
Paterson 1, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-264, issued by the Board of Alcoholic Beverage Control for the City of Paterson, and transferred during the pendency of these proceedings to)

MICHAEL KUCHAR and PETER KINEVICH,)
for the same premises.)

-----)
Sidney Simandl, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. In your application dated May 12, 1952, filed with the Board of Alcoholic Beverage Control for the City of Paterson, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact John and Nettie Kinevich had such an interest in that they were co-owners with you of the licensed business; said false statement being in violation of R. S. 33:1-25.

"2. You failed to file with the Board of Alcoholic Beverage Control for the City of Paterson, within 10 days after the occurrence thereof, written notice of change in fact set forth in answer to Question 30 of your aforesaid application, such change being that in or about August 1952 Peter Kinevich acquired an interest in your licensed business as co-owner thereof, succeeding John and Nettie Kinevich; your failure to file such notice being in violation of R. S. 33:1-34.

"3. From on or about February 8, 1950 until in or about August 1952, you knowingly aided and abetted John and Nettie Kinevich, and from in or about August 1952 until the present time you knowingly aided and abetted Peter Kinevich, to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R. S. 33:1-52.

"4. From on or about November 23, 1948 until on or about February 8, 1950, you exercised the rights and privileges of the successive plenary retail consumption licenses then held by Marian Jurewicz; thereby violating R. S. 33:1-26.

"5. From on or about November 23, 1948 until on or about February 8, 1950, your predecessor in interest, Marian Jurewicz, knowingly aided and abetted you and John and Nettie Kinevich to exercise, contrary to R. S. 33:1-26, the rights and privileges of her successive plenary retail consumption licenses; thereby herself violating R. S. 33:1-52."

The file herein discloses the following facts:

Michael Kuchar, who was born in Poland, came to the United States in 1914 and was naturalized as a citizen of the United States on December 3, 1942. Hence, so far as citizenship is concerned, he is, and at all times mentioned in the charges was, eligible to hold a retail liquor license in New Jersey.

John Kinevich and Nettie Kinevich were also born in Poland. Both of them came to this country more than forty years ago but neither of them ever became a citizen of the United States. Since neither of them resided in Poland in 1921, when the Republic of Poland was established, they were not protected by the terms of the reciprocal treaty which formerly existed between the United States and Poland (see Bulletin 130, Item 5) and which has been recently terminated (see Bulletin 948, Item 1). Hence they are not now and never were eligible to hold a retail liquor license in New Jersey.

Prior to 1948 the three persons mentioned above had been engaged in the retail liquor business in Webster, Massachusetts. In that year they sold that business and arranged to purchase the tavern then conducted at 80 Montgomery Street, Paterson, by one Gallo. Some time in the latter part of 1948 they moved to 80 Montgomery Street, Paterson, and have resided there since that time. However, either because they believed that they lacked the necessary residential requirements or because they realized that John and Nettie Kinevich were aliens, they arranged to have the license transferred by the local issuing authority from Gallo to Marian Jurewicz. From November 23, 1948 to February 8, 1950, the license was held in the name of Marian Jurewicz, but it is admitted that, in fact, the license was held by her as a "front" for Michael Kuchar, John Kinevich and Nettie Kinevich.

On February 8, 1950, the license was transferred by the local issuing authority from Marian Jurewicz to Michael Kuchar and was thereafter renewed annually in his name to and including the present licensing year. Admittedly, John Kinevich and Nettie Kinevich continued to hold an interest in the license and the business conducted thereunder until August 1952 when, they allege, they gave their interest to their son, Peter Kinevich, who is of full age and who, by birth, is a citizen of the United States.

After the institution of these proceedings, Michael Kuchar and Peter Kinevich applied to the local issuing authority for a transfer of the license from Michael Kuchar to Michael Kuchar and Peter Kinevich. On December 10, 1952, the local issuing authority granted said application subject to the outcome of these proceedings.

On the record presented it appears that the unlawful situation has been corrected. It is assumed that the local issuing authority found as a fact that no person other than the present holders of the license has any interest therein. If, in the future, it should be established that Peter Kinevich is merely a "front" for his disqualified parents, proceedings will be instituted to revoke or suspend the license. See Bulletin 948, Item 1.

Defendant has no prior record. Since two of the persons for whom the "fronts" were established were disqualified from holding a

license by reason of non-citizenship, the license will be suspended for a period of forty-five days. Re Mentine, Bulletin 774, Item 6; Re Prupis, Bulletin 794, Item 13; Re Cindrario, Bulletin 855, Item 9; Re Farmer's Bar & Grill, Bulletin 870, Item 5.

Accordingly, it is, on this 30th day of December, 1952,

ORDERED that Plenary Retail Consumption License C-264, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Michael Kuchar, for premises 80 Montgomery Street, Paterson, and transferred to Michael Kuchar and Peter Kinevich for the same premises, be and the same is hereby suspended for forty-five (45) days, commencing at 3:00 a.m. January 6, 1953, and terminating at 3:00 a.m. February 20, 1953.

DOMINIC A. CAVICCHIA
Director.

- 5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS AND FAILING TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ABRAHAM GOLDBERG)
T/a LGG CABIN TAVERN)
125-127 Jackson Ave.)
Jersey City 5, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-341, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Abraham Goldberg, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) he conducted his licensed business before 1:00 p.m. on Sunday and (2) suffered and permitted persons other than himself and his actual employees and agents in and upon his licensed premises during prohibited hours, both in violation of local regulations.

The file discloses that, at approximately 12:20 p.m. on Sunday, November 2, 1952, two ABC agents arrived in the vicinity of defendant's licensed premises and placed the premises under observation. At approximately 12:25 p.m., they saw two men emerge from the licensed premises. At approximately 12:30 p.m., the agents endeavored to enter the licensed premises by means of the front door but found it locked. However, through a window, they were able to see into the barroom where they observed five men at the bar. Each of these men had a drink in front of him on the bar, and there were also two bottles of whiskey on the bar. The agents knocked on the door and, after a lapse of time, the licensee came to the door and told them that the premises did not open until 1:00 p.m.

The agents called the local police and, at 1:00 p.m., they were all admitted to the licensed premises by the licensee who admitted

orally that five men had been on the licensed premises before 1:00 p.m., and had consumed drinks which had been served by him. The licensee declined to give a written statement but, in a letter accompanying his plea, admitted serving beer, claiming that the men were in the licensed premises for a committee meeting of a neighborhood group known as the "Log Cabin Social Club". He denied charging for the drinks.

However, even taking defendant's story as true, the service of alcoholic beverages to the five men and the presence of persons other than the licensee and his employees or agents on the licensed premises before 1:00 p.m. on Sunday constitute violations of the local regulations which prohibit such conduct between 2:00 a.m. and 1:00 p.m. on Sundays. It is immaterial that the licensee may not have charged them for the drinks which were served. Re Zenda, Bulletin 271, Item 5. See also R.S. 33:1-1(w) which provides, inter alia, that "the gratuitous delivery or gift of any alcoholic beverage by a licensee" constitutes a sale.

Defendant has a prior record. On two occasions his license has been suspended by the local issuing authority, i.e., for five days, effective April 11, 1949, for sale of alcoholic beverages to minors and for seven days, effective February 25, 1952, for the same offenses as are here charged and for failure to provide clear view of the interior of the licensed premises during hours when sales of alcoholic beverages are prohibited. Since this is defendant's second similar (hours) violation in less than five years, I shall suspend his license for thirty days on the charges herein, Re Behling, Bulletin 811, Item 3; Re Trenton Lodge #105, B. P. O. Elks, Bulletin 897, Item 7, and five days will be added to the suspension for the prior dissimilar (minors) violation also occurring within the five-year period. Re Dos Santos, Bulletin 928, Item 6. This makes a total suspension of thirty-five days. Five days will be remitted for the plea, leaving a net suspension of thirty days.

Accordingly, it is, on this 29th day of December, 1952,

ORDERED that Plenary Retail Consumption License C-341, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Abraham Goldberg, t/a Log Cabin Tavern, 125-127 Jackson Avenue, Jersey City, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. January 5, 1953, and terminating at 2:00 a.m. February 4, 1953.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

VERONICA MEKIS & THOMAS J. O'SHAUGHNESSY) T/a COLUMBIA CAFE) Grove & Col. Blvd.) National Park, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of National Park.

Leo J. Berg, Esq., Attorney for Defendant-licensees. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charge:

"On Sunday, October 26, 1952, between 1:30 P.M. and 2:00 P.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages at retail in their original containers for consumption off the licensed premises in violation of Rule 1 of State Regulations No. 38 which prohibits any such sale or delivery at any time on Sunday."

The file herein discloses that during a visit to defendants' licensed premises on Sunday, October 26, 1952, an ABC agent observed a man, subsequently identified as George Kirk, enter the barroom from a rear room on three different occasions. Each time he would obtain a bottle of whiskey, go into the rear room, and shortly thereafter return to the barroom with a sum of money which he handed to the bartender. The ABC agent left the barroom and proceeded through the rear room to a kitchen where he ordered a pint of whiskey from George Kirk. The latter went to the barroom, returned with a paper bag containing a bottle of whiskey, handed it to the ABC agent, and stated the price to be \$2.50. The agent then gave George Kirk a five dollar bill. George Kirk went to the barroom, and upon his return handed the agent \$2.50. The ABC agent left the premises and returned shortly thereafter with another ABC agent who had previously remained on the outside. They went into the kitchen and identified themselves to George Kirk. The latter called to Thomas J. O'Shaughnessy, one of the defendant-licensees, who was seated at a table in the adjoining room. When Thomas J. O'Shaughnessy joined them, he was told what had occurred, and in his presence George Kirk admitted that he sold a bottle of whiskey to one of the ABC agents. Thomas J. O'Shaughnessy informed the ABC agents that although George Kirk is not employed at the licensed premises he does help out occasionally without receiving compensation for his services. A licensee is responsible for the acts of one whose services he utilizes even though it appears that the person receives no compensation therefor. Re Haino, Bulletin 295, Item 7.

Defendants have a prior adjudicated record. Effective April 11, 1949, defendants' license was suspended for five days by the local issuing authority for sale of alcoholic beverages during prohibited hours in violation of a municipal ordinance. The usual penalty for an "hours" violation -- where no aggravating circumstances appear -- is a suspension of fifteen days. Where a second similar violation

occurs within five years the penalty is doubled. Although the offense here charged involves violation of a State regulation, and the offense of which defendants were convicted in 1949 involved a violation of a local regulation, both are nonetheless similar. Accordingly, I shall suspend the defendants' license for a period of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days. Re Behling, Bulletin 811, Item 3; Trenton Lodge #105, B.P.O. Elks, Bulletin 897, Item 7.

Accordingly, it is, on this 30th day of December, 1952,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of National Park to Veronica Mekis & Thomas J. O'Shaughnessy, t/a Columbia Cafe, Grove & Col. Blvd., National Park, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. January 6, 1953, and terminating at 2:00 a.m. January 31, 1953.

DOMINIC A. CAVICCHIA
Director.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN OSTROWSKI)
T/a OSTROWSKI'S CAFE)
419 Hudson Street)
Hackensack, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-39, issued by the City Council of the City of Hackensack.)

Alfred W. Kiefer, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

On September 18, 1952, an ABC agent examined 31 opened bottles of alcoholic beverages on defendant's premises and seized one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky 90.4 Proof" when his field test indicated a variance between the description on the labeled bottle and the contents thereof. Subsequent analysis by the Division's chemist resulted in a conclusion by the chemist that the seized bottle did not contain genuine Canadian Club Blended Canadian Whisky 90.4 Proof because "the solids are too high and the color is too dark".

At the time of the seizure by the ABC agent, the licensee denied that he had tampered with the contents of the seized bottle. Nevertheless, a licensee is responsible for any "refills" found in his stock of liquor. Re Bertola, Bulletin 921, Item 8.

Defendant has a prior adjudicated record. In 1934 he was fined \$150.00 in the Criminal Judicial District Court after he had been found guilty of possessing illicit alcoholic beverages. On August 14, 1946, his license was suspended by the then Commissioner for a period

of twenty days after he had pleaded non vult to charges alleging that on June 24, 1946 he possessed a bottle containing an alcoholic beverage not genuine as labeled and falsely denied in his application that he had ever been convicted of a crime whereas he had been so convicted as hereinabove set forth. Re Ostrowski, Bulletin 726, Item 5. However, because more than five years have elapsed, instead of doubling for a second similar violation the usual fifteen-day penalty for a first offense of this character, I shall suspend defendant's license for twenty days. Cf. Re Kneble, Bulletin 942, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 29th day of December, 1952,

ORDERED that Plenary Retail Consumption License C-39, issued by the City Council of the City of Hackensack to John Ostrowski, t/a Ostrowski's Cafe, for premises 419 Hudson Street, Hackensack, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. January 5, 1953, and terminating at 3:00 a.m. January 20, 1953.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
ANDREW H. CONTE)
T/a BUD CONTE'S CAFE)
652 East State Street)
Trenton, N. J.,)
Holder of Plenary Retail Consumption License C-70, issued by the Board of Commissioners of the City of Trenton.)

CONCLUSIONS
AND ORDER

Andrew H. Conte, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded guilty to a charge alleging that he allowed an unlabeled beer tap on his licensed premises, in violation of Rule 26 of State Regulations No. 20.

The file herein discloses that on November 24, 1952, during the course of a routine inspection of defendant's licensed premises, an ABC agent found a half-barrel of beer marked "Ballantine" connected to a tap which bore no name of the brand of beer to be dispensed therefrom.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of three days (the minimum suspension imposed for a violation of this character). One day will be remitted for the plea entered herein, leaving a net suspension of two days. Re Clark & O'Toole, Bulletin 894, Item 11.

Accordingly, it is, on this 29th day of December, 1952,

ORDERED that Plenary Retail Consumption License C-70, issued by the Board of Commissioners of the City of Trenton to Andrew H. Conte, t/a Bud Conte's Cafe, 652 East State Street, Trenton, be and the same is hereby suspended for a period of two (2) days, commencing at 2:00 a.m. January 5, 1953, and terminating at 2:00 a.m. January 7, 1953.

DOMINIC A. CAVICCHIA
Director

9. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

STEVENS TAVERN, INC.
T/a STEVENS TAVERN
71 Jackson Avenue
Jersey City 5, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-447, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Stevens Tavern, Inc., by Joseph E. Sesta, Secretary.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold, after 10:00 p.m. on a weekday, two 1-quart bottles of beer in their original containers for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38.

The file discloses that two ABC agents visited defendant's licensed premises at approximately 10:00 p.m., on Friday, November 21, 1952. Between 10:45 p.m. and 11:05 p.m., they observed the bartender make several sales of bottled beer for off-premises consumption. At approximately 11:10 p.m., one of the agents purchased two 1-quart bottles of Rheingold beer in original containers from the bartender, who put the bottles in a paper bag which he then placed on the bar and received payment therefor from the agent. The agent then announced that he was "... going home" and left the premises with the unopened bottles of beer in the paper bag but returned immediately, at which time both agents identified themselves to the bartender, who orally admitted the violation but declined to make a written statement.

Defendant has no prior adjudicated record. I shall impose the minimum penalty for violations of this type -- fifteen days. Re Cohen, Bulletin 945, Item 14. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 29th day of December, 1952,

ORDERED that Plenary Retail Consumption License C-447, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Stevens Tavern, Inc., t/a Stevens Tavern, 71 Jackson Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 5, 1953, and terminating at 2:00 a.m. January 15, 1953.

Dominic A. Cavicchia
Director.

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