

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

BULLETIN 446

FEBRUARY 25, 1941.

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

BULLETIN 446

FEBRUARY 25, 1941.

1. NATIONAL DEFENSE - THE DANGERS OF IMPROPERLY CONDUCTED LIQUOR PLACES IN THE VICINITY OF MILITARY BASES - HEREIN OF PRECAUTIONS AND PREVENTIONS AND THE PATRIOTIC COOPERATION OF PUBLIC-SPIRITED CIVIC ORGANIZATIONS.

February 17, 1941.

Mrs. William Grobler,
Chairman, Fort Dix Community Service,
Moorestown, N. J.

My dear Mrs. Grobler:

The control problem involving premises of liquor licensees in the neighborhood of Fort Dix is brought to my attention again in connection with a joint inspection of these places made by men of the Alcohol Tax Unit of the Federal Treasury Department with members of this Department's staff and now completed.

It is clear that the dangers concerning the use of their leisure time which lurk in the vanguard of the armed forces at Fort Dix reach out far beyond what may be regarded as the vicinity of the Fort. Fast, ample and low-cost transportation facilities carry these men on leave to the larger cities of this and other states. Our responsibility is broader then, and much more difficult of solution than it may have first appeared.

Fortunately, there are others who have seen the red light. In October of last year the Mayor of Trenton, Hon. Leo Rogers, and his Director of Public Safety, joined in warning the liquor licensees of their city of the need for great care in selling to members of the United States Army and other service men. This Department immediately backstopped these forward-looking public officials with the promulgation of a state-wide "hostess" regulation. Its aim is the suppression of the "girl racket" on liquor premises where women stimulate consumption and sometimes also offer themselves for immoral purposes in an off-premises contact.

With the effective cooperation of local police this Department has made gratifying headway in eliminating from the taverns the known prostitute of record. A considerable file of photographs of such persons has been assembled here and employed to advantage as an identification medium. Our larger difficulty, however, concerns the control of her amateur competitor, concerning whom there exists no police record. It is toward her activities that the hostess regulation is directed.

The President of the New Jersey Licensed Beverage Association has requested a "re-doubling" of our efforts and continued "vigilance" in our supervision of taverns in the immediate vicinity of army camps. This organization of retail licensees has been consistently helpful in informing its membership of the aims of this Department. It has suggested avenues of potential cooperation, as, for instance, our recently-completed arrangement with the State Department of Health for a mutual exchange of meaningful information concerning jurisdictional conditions affecting our respective responsibilities.

On January 24th, at Wrightstown, in a meeting presided over by that municipality's Mayor Everett Croshaw, I addressed the tavern keepers and officials of municipalities which lie around Fort Dix, cautioning them in detail concerning the need for special care by them in the exercise of their license privilege. Questions were encouraged and answered as long as they were forthcoming. There was every indication of a genuine desire on the part of the licensees and municipal officials to give their effective cooperation in maintaining satisfactory conditions.

In your letter of January 31st you state that you have no specific complaint to register with this Department. Our full resources are available to you and your organization in connection with any problems within our sphere of authority. Meanwhile our inspections of premises and program of watchfulness continue unabated.

Your effective cooperation is appreciated.

Sincerely yours,
E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - SECOND OFFENSE - MITIGATING CIRCUMSTANCES - 10 DAYS' SUSPENSION.

FAIR TRADE - A FAIR TRADE CONTRACT FILED BY ONE WHOLESALER OR IMPORTER APPLIES TO THE SAME PRODUCT PURCHASED THROUGH SOME OTHER WHOLESALER OR IMPORTER.

In the Matter of Disciplinary Proceedings against
LOUIS JACOB,
T/a PUBLIC WINE & LIQUOR DISTRIBUTORS,
87-1/2 French St.,
New Brunswick, N. J.,
Holder of Plenary Retail Distribution License No. D-8, issued by the Board of Commissioners of the City of New Brunswick.

CONCLUSIONS AND ORDER

Harry G. Cohen, Esq., Attorney for the Licensee.
Robert R. Hendricks, Esq., Attorney for State Department of Alcoholic Beverage Control.

Charge was served upon the licensee, alleging that on November 4, 1940 and November 16, 1940, without having first obtained a special permit so to do, he sold a four-fifth quart bottle of Duff Gordon Nina Sherry Wine below the minimum consumer price published in Bulletin 424, in violation of Rule 6 of State Regulations No. 30.

It has been stipulated that Munson G. Shaw Co., Inc., (formerly) holder of a wine wholesale license, placed Duff Gordon Nina Sherry Wine on Fair Trade by contract dated October 20, 1938 and that the minimum consumer price of Duff Gordon Nina Sherry, as listed by Munson G. Shaw Co., Inc. in Bulletin 424, was \$1.55 for a four-fifth quart bottle. It has been stipulated, also, that on

each of the dates mentioned in the charge an agent of defendant-licensee sold a four-fifth quart bottle of Duff Gordon Nina Sherry to Investigator Webster of this Department for \$1.40 and that the licensee then had in his possession a copy of Bulletin 424.

Defendant-licensee, however, contends that he is not guilty as charged because each of the bottles sold to the investigator has affixed thereto a small label with the following information:

"Imported in bulk and bottled by sole U.S. agent, Alex D. Shaw & Co. Inc., New York Shaw Import Division National Distillers ***, "

whereas the product now distributed by Munson G. Shaw Co., Inc. bears, instead, a small label containing the following information:

"Imported and bottled by Sole U. S. Agent Munson G. Shaw Co. Inc., New York ***, "

It should be noted, however, that paragraph 6 of the stipulation of facts recites "that the Duff Gordon Nina Sherry, shipped by Duff Gordon Co., Port St. Mary's, Spain, and imported and bottled by (a) Alex D. Shaw & Co., Inc., is the same product, bears an almost identical label (color, lettering, trade-mark) and is similar in appearance to (b) Duff Gordon Nina Sherry as imported and bottled by Munson G. Shaw Co., Inc. ***", except for the small labels described above.

In Re Berg, Bulletin 302, Item 8, the following inquiry was presented to the late Commissioner Burnett:

"My client is about to purchase a quantity of Vintner Private Cuvee Champagne from a wholesaler; this wholesaler originally purchased the above merchandise from Alex D. Shaw & Co., who were the original sole distributors of that brand and the name of Alex D. Shaw & Co. appears on the label of this merchandise. Some time subsequent to the aforesaid purchase the sole distributor of that champagne was transferred from Alex D. Shaw & Co. to Munson Shaw, who is now the distributor. Munson Shaw has listed that champagne under the fair trade law and has posted the prices with your office. My client is desirous of finding out whether or not the listing of the brand by Munson Shaw is binding on the merchandise carrying the same name but not purchased from the aforesaid Munson Shaw since the name of Alex D. Shaw & Co. appears on the label. Will you kindly advise me whether or not the price restriction applies on this champagne in view of the fact it was purchased by a wholesaler from a concern other than that which listed the price with your Department?",

and in response thereto the Commissioner replied:

"You ask whether a product purchased by a wholesaler from a distributor, other than the one which filed a Fair Trade contract covering that item, is subject to the price fixed in that contract.

"The answer is in the affirmative. The so-called Fair Trade Act (R. S. 56:4-3 et seq.) requires only that the product be in fair and open competition and that the commodity itself contain the brand name of the producer.

It is not requisite that the distributor-vendor itself establish the price, or that its name appear on the label. To adopt any other view would mean that only items sold by the particular vendor which has actually fixed the minimum price would be affected by the price so fixed. Such construction is neither authorized by the scope of the provisions of the statute, nor necessary to its operation. On the contrary, it would render nugatory the legislative intent and purpose.

"Indeed, our court of last resort has held that maintained prices may be enforced by one who is not a signatory to the price fixing contract. See Schenley Products Co. v. Franklin Stores Co., 124 N. J. Eq. 100."

In the present case it appears that the label on the bottles sold to the investigator bears the trade-mark, brand or name of the producer or owner of such commodity (namely, Duff Gordon Co., Port St. Mary's, Spain) within the meaning of those terms as set forth in R. S. 56:4-5. This being so, it is immaterial that the product is placed on Fair Trade by the wholesale distributor instead of by the producer. Schenley Products Co. v. Franklin Stores Co., *supra*. Cf. Re Solomon Taube, Inc., Bulletin 286, Item 12 (where a product of National Distillers Products Corporation was listed by McKesson Liquor Co., a wholesaler); Re New Yorker Liquor Stores, Inc., Bulletin 316, Item 6 (where a product imported by Cluff & Pickering, Ltd. was placed on Fair Trade by Gillhaus Beverage Co., Inc., wholesaler).

Defendant-licensee also contends that he is not guilty as charged because he possessed the two bottles prior to the execution of the Fair Trade contract, and, in support of his contention, he cites Lentheric v. Weissbard, 122 N. J. Eq. 573 (Ch. 1937). The uncontradicted evidence shows that defendant-licensee purchased these two bottles from J. & J. Distributing Co. on December 1, 1937, which, of course, was prior to the execution of the Fair Trade contract. As to products other than alcoholic beverages, it would seem that the Lentheric case is in point. However, Rule 6 of Regulations No. 30 provides:

"Whenever any such contract and price list or altered contract or price list is filed and published as aforesaid, no retail licensee shall sell or offer for sale any product referred to therein except (a) at the price stipulated therein by the manufacturer or wholesaler; or (b) pursuant to and within the terms, conditions and limitations of a special permit first obtained from the Department of Alcoholic Beverage Control."

It appearing herein that the contract and price list were duly filed and published, defendant-licensee could not thereafter sell the item except at the stipulated price or pursuant to a special permit. It is admitted that no special permit to permit such sale below the Fair Trade price was obtained from this Department.

I find, therefore, that the defendant was guilty of a violation of Rule 6 of State Regulations No. 30.

Our records show that licensee previously pleaded guilty to a violation of Rule 6 of State Regulations No. 30 and that, on September 29, 1939, his license was suspended for ten days, less five days for the guilty plea. Re Jacob, Bulletin 348, Item 15. Ordinarily, the usual ten-day suspension imposed for a first violation is

doubled for a second violation, and if this were the usual case I would impose a twenty-day suspension herein. However, in view that the evidence shows that the items in question were possessed prior to the execution of the Fair Trade contract and that the licensee could have obtained a special permit to sell below the minimum consumer price, I shall impose a penalty of ten days' suspension.

Accordingly, it is, on this 17th day of February, 1941,

ORDERED, that Plenary Retail Distribution License No. D-8, heretofore issued to Louis Jacob by the Board of Commissioners of the City of New Brunswick, be and the same is hereby suspended for a period of ten days, effective February 24, 1941, at 7:00 A.M.

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION FOR SOLICITOR'S PERMIT - PERMITTEE DISQUALIFIED BY HOLDING OFFICE AS JUSTICE OF THE PEACE - PERMIT SURRENDERED - FUTURE PERMIT TO BE WITHHELD FOR 10 DAYS.

In the Matter of Proceedings to)
Cancel or Revoke Solicitor's)
Permit issued to)

JOSEPH PAGANO,)
Mill Road, Bargaintown,)
Egg Harbor Township,)
R. D. 1, Pleasantville, N.J.)
-----)

CONCLUSIONS
AND ORDER

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

Solicitor was charged as follows:

"In your application for a solicitor's permit, dated June 17, 1940 and filed with the Department of Alcoholic Beverage Control of the State of New Jersey, upon which Solicitor's Permit No. 1607 was granted, you falsely stated 'No' in answer to Question 19 therein which asks, 'Are you entrusted with the enforcement of any laws concerning alcoholic beverages in any manner whatsoever?', whereas in truth and fact you were so entrusted in that you have, since May 1, 1938, held the office of Justice of the Peace in the Township of Egg Harbor; said false statement being in violation of R. S. 33:1-25."

A Justice of the Peace may not hold a liquor license. R. S. 2:9-10; see also Re Bruers, Bulletin 113, Item 9. He may not, therefore, be employed by a licensee in any capacity. R.S.33:1-26.

At the hearing, solicitor surrendered his permit for cancellation. Ordinarily, this would close the case. However, solicitor is contemplating resigning his judicial office, and the question of penalty becomes important, since, perchance, he may later, upon becoming eligible therefor, reapply for a permit.

Solicitor's explanation of his answer to Question 19 aforesaid was that he thought "enforcement" applied only to police officers, Departmental investigators and the like, and not to magistrates. His story is pretty thin. At best, the question may be said to be ambiguous to the lay mind, calling upon the applicant to make inquiry, if not of an attorney, at least of this Department as to what information the question was intended to elicit. Had he made such inquiry, he would have learned that the term "enforcement", in the manner used, covered his magisterial position. However, solicitor apparently chose to resolve in his favor any doubt that may have been in his mind at the time of filling out the application. Under the circumstances, the charge will not be dismissed but a penalty will be assessed.

Accordingly, it is, on this 17th day of February, 1941,

ORDERED, that if the said Joseph Pagano shall, upon becoming eligible therefor, apply to this Department for a solicitor's permit, issuance of such permit be withheld for a period of ten (10) days from the date it would otherwise be issued.

E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
 MEYER ALBERTS,
 T/a MEYER'S RESTAURANT AND TAVERN,
 1188 E. St. George Ave.,
 Linden, N. J.,
 Holder of Plenary Retail Consumption License C-1 issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden.

CONCLUSIONS
AND ORDER

Meyer Alberts, Pro Se.
 Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling alcoholic beverages at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that, on January 30 and on February 1, 1941, an investigator of this Department purchased from a clerk in the licensed premises a one-pint bottle of Three Feathers Blended Whiskey for \$1.10. The minimum consumer price at which pint bottles of this product could lawfully be sold at the time was in fact \$1.33. Bulletin 424. When the investigators identified themselves to the bartender and to the licensee, who was present, the licensee "explained" that the bartender was not familiar with prices on bottled goods. The licensee admitted having the Fair Trade lists. The failure of the employee to be familiar with these lists is no excuse. Re Hughes, Bulletin 438, Item 9.

The minimum penalty for sale below Fair Trade price is ten days. Since the instant offense is the licensee's first violation of record, the minimum penalty will be imposed.

By entering the guilty plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 19th day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-1, heretofore issued to Meyer Alberts, T/a Meyer's Restaurant and Tavern, by the Municipal Board of Alcoholic Beverage Control of the City of Linden, be and the same is hereby suspended for a period of five (5) days, effective February 24, 1941, at 2:00 A.M.

E. W. GARRETT,
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - LICENSED PREMISES ALLEGED TO BE WITHIN TWO HUNDRED FEET OF A CHURCH - ACTUAL DISTANCE, MEASURED IN ACCORDANCE WITH THE STATUTE, IN EXCESS OF TWO HUNDRED FEET - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against)

GEORGE LIZAK,)
T/a White Eagle Cafe,)
18 Scott Street,)
New Brunswick, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License No. C-61, issued by the Board of Commissioners of the City of New Brunswick.)
-----)

Daniel G. Kasen, Esq., Attorney for Defendant-Licensee.
Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.

It is charged (1) that the entrance to the defendant's tavern is within 200 feet of the entrance to the Magyar Baptist Church, contrary to R. S. 33:1-76, and (2) that the defendant falsely denied this fact in his application for his plenary retail consumption license for the tavern, contrary to R. S. 33:1-25.

Both the church and the tavern are in New Brunswick. The church is located at the corner of High and Somerset Streets, with its entrance being on High a short distance above (i.e., north of) Somerset Street. The tavern is located at the nearby corner of Scott and Somerset Streets, with its entrance being on Scott some thirty feet below (i.e., south of) Somerset Street.

The proper measurement between those respective entrances, to determine whether the tavern is within the forbidden distance of two hundred feet of the church, is along the route which a normal person would walk, deeming, among other things, that he would, in general, go to regular crosswalks or street corners to cross streets instead of jaywalking. R. S. 33:1-76; Kennan v. Hoboken, Bulletin 348, Item 3.

In measuring the distance along such a route, the measurement will start and stop at the nearest points on the respective entrances and will go, as was said by the late Commissioner in the leading case of Aldarelli v. Asbury Park, Bulletin 186, Item 12, "along the side of walls and street lines nearest to church (or school) and tavern", meaning, I deem, that, where building and sidewalk are flush with each other, measurement will go along the line where they meet, and that, where they are not flush, measurement will go along the nearest sidewalk line.

Accordingly, the proper route of measurement in the present case starts at the nearest point in the tavern entrance; then goes north up Scott Street along the line where the tavern building and sidewalk (which are flush with each other) meet; then, when reaching Somerset Street, goes west along a similar line down that street to its nearby juncture with High Street; then, going north again, crosses Somerset Street and continues down the nearest sidewalk line on High Street (where sidewalk and building line are not flush with each other) to the point where that public walk diverts eastward to the opening in the church fence; then goes directly along the nearest line of that eastward approach to such opening and there stops, since such opening, being the place where a person definitely enters the church's private way en route to its door, constitutes the church "entrance" (Re Grove Liquors, Inc., Bulletin 397, Item 3).

Such distance, so far as appears from a survey in evidence, drawn to scale, is actually several inches over two hundred feet. The instant charges are, therefore, not sustained.

However, I note that at one time the tavern had an actual entrance at the Scott-Somerset Street corner, which was well within two hundred feet of the church. The defendant claims that such entrance was discontinued in June 1940, a short time prior to his application for his present license. Independent check by this Department discloses that such entrance is actually locked and that a sign at the door there directs persons to the entrance on Scott Street. However, the defendant has not yet removed a large sign at the corner which points to the corner door as being the actual tavern entrance. Pursuant to my power under R. S. 33:1-59, I specially rule that such sign, since it is misleading, shall be removed forthwith, and further, that the corner door shall remain permanently locked and continue to bear a sign showing that the door on Scott Street is the actual entrance.

Accordingly, it is, on this 18th day of February, 1941,

ORDERED, that the charges in this case be and hereby are dismissed; and it is further

ORDERED, that the defendant shall immediately remove the said sign at the corner of Scott and Somerset Streets which points to the door there as being the actual entrance to the tavern, and shall keep such door permanently locked, and shall maintain a sign there directing persons to the Scott Street door.

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF PERSON CONVICTED OF CRIME INVOLVING MORAL TURPITUDE - ALLOWING A KNOWN CRIMINAL ON LICENSED PREMISES - KNOWLEDGE OF LICENSEE NOT SHOWN - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against SAMUEL WEINSTEIN, 215 Mulberry Street, Newark, N. J., Holder of Plenary Retail Consumption License No. C-414, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Fast & Fast, Esqs., by Louis A. Fast, Esq., Attorneys for Licensee. Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

Charges were served on licensee alleging that, since December 7, 1938, (1) he knowingly employed a person convicted of a crime involving moral turpitude in violation of R. S. 53:1-26, and (2) he allowed, permitted and suffered on his licensed premises a known criminal and person of ill repute in violation of Rule 4 of State Regulations No. 20.

A bartender, then employed by licensee, was arrested on August 5, 1938 and charged with the crime of open lewdness. Having been indicted, he pleaded non vult to said crime on December 7, 1938 and was placed on probation for three years. He continued to work for the licensee until October 1940, when he was discharged as soon as the Newark Police notified licensee that the bartender had a criminal record.

In a statement given to the Police in October 1940, licensee denied that he had any prior knowledge of the arrest or conviction of his bartender. At the hearing he testified, under oath, that he had no such knowledge prior to obtaining the information from the Chief of Police. At the hearing the bartender testified that he could not recall whether he had advised licensee of his arrest or conviction, although he stated to the Police that he thought he had.

The evidence is insufficient to show that licensee knowingly employed an unqualified person, and hence it is unnecessary to consider herein whether the crime involved moral turpitude. The bartender, whose record is otherwise clear, is not a known criminal or person of ill repute within the meaning of Rule 4 of State Regulations No. 20. Re Silver, Bulletin 441, Item 12.

The charges are, therefore, dismissed.

E. W. GARRETT, Acting Commissioner.

Dated: February 19, 1940.

7. DISCIPLINARY PROCEEDINGS - BRAWL ON LICENSED PREMISES - EVIDENCE THAT LICENSEE CAUSED OR PERMITTED THE BRAWL, OR WAS NEGLIGENT IN FAILING TO PREVENT ITS OCCURRENCE, INSUFFICIENT - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against)

THE PROMENADE, INC.,)
237 Park Ave.,)
Newark, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-518, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.
Nathaniel J. Klein, Esq., Attorney for Defendant-Licensee.
Irving Siegler, Esq., Attorney for H. Shubert, complaining witness.

Licensee was charged with permitting a brawl on its licensed premises in violation of Rule 5 of State Regulations No. 20.

On September 16, 1940 investigation was instituted by this Department of a brawl alleged to have occurred on the premises of this licensee some eight days before. At the conclusion of the investigation, a prima facie case appearing, these proceedings were instituted.

From the record, it appears that on September 8, 1940 one Shubert arrived at the licensed premises at approximately 1:45 A.M. after attempting to cure a cold by having six "double shots" of whiskey at a friend's home. Although not drunk, Shubert admitted being "not stone sober" when he arrived at the tavern. What happened thereafter is not clear - either to Shubert or to me. All he recalls is that shortly after 2:00 A.M. he was standing at the bar and for no reason at all, Schaible, the President of the corporate licensee, began beating him with his fists.

Schaible says that after Shubert had had several drinks, he left without paying his check. Schaible then sent a waiter after Shubert, who apparently became incensed thereat, and, returning to the tavern, seized Schaible by the lapels of his coat. Further unpleasantness was averted and Shubert paid his check and left for the second time. After the premises were closed at 3:00 A.M., Shubert gained entrance to the tavern through a side door and, without warning, rushed at Schaible and attacked him. In the ensuing scuffle, both men fell to the floor. Schaible says that the only blows struck by him were in self-defense and that Shubert received his injuries, not from such blows, but from falling against the metal stools lined in front of the bar. The entire altercation lasted less than a minute. They were separated by one of Schaible's associates and Shubert was escorted out of the premises for the third time.

The foregoing are the stories, in brief, told by the complainant on the one hand and by the licensee on the other. As to the complainant, he admittedly has only a hazy recollection of what actually occurred. He does explain that on the morning in question there was some good-natured bantering back and forth between him

and Schaible and that he called Schaible a "Nazi.-----" but that Schaible had not shown any more resentment at the profane names on this occasion than he had on any prior occasions.

There is no independent, impartial testimony in this case to aid me in reaching a determination. Shubert's version of the affair is quite likely colored by his natural animosity against Schaible, and the licensee's version, given by witnesses all of whom are associated in some capacity with it, by their self-interest. However, the burden of proof necessary to sustain the truth of the charge has not been met by the evidence of the complainant. It fails to satisfy me that Schaible was the aggressor in the brawl, that he used more force than was necessary under the circumstances, or that he or anyone else connected with the licensee was in anywise neglectful in failing to prevent its occurrence. In this posture of the case I cannot, in fairness, find the defendant-licensee guilty of "permitting" a brawl on its licensed premises within the meaning of the Regulations.

Accordingly, it is, on this 19th day of February, 1941,

ORDERED, that the charge be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEES - THE TRUE OWNERS DISQUALIFIED THROUGH LACK OF FIVE YEARS' NEW JERSEY RESIDENCE - FULL AND FRANK DISCLOSURE - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER TEN DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary)
Proceedings against)

PETER LESYCZNSKI,)
T/a Spruce Run Inn,)
State Highway 30, road from)
Clinton to Glen Gardner,)
Lebanon Township, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-8, issued by the)
Township Committee of Lebanon)
Township.)

Ryman Herr, Esq., Attorney for the Defendant-Licensee.
Charles Basile, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges (1) of making false statement in applications for license, in that he failed to disclose the interest of Anthony Bisztyga and John Lapiga, and (2) knowingly aiding and abetting the said Anthony Bisztyga and John Lapiga, non-licensees, to exercise the rights and privileges of his license contrary to R. S. 33:1-26 and R. S. 33:1-52.

It appears that Anthony Bisztyga and John Lapiga purchased the real estate which houses the licensed premises; that they are not qualified to hold a liquor license in New Jersey solely because they have not been residents of the State for the required statutory period

of five years; that they induced Peter Lesycznski, a friend, to apply for a license on July 25, 1939 and again on June 6, 1940, as a "front" for them.

The parties in interest maintain that they thought they had entered into a bona fide arrangement and had no intention of perpetrating a fraud or to evade the law.

The full and unequivocal cooperation and frank admissions given to investigators of this Department during the course of this investigation by the parties in interest lends color to their contention.

It appears further that Peter Lesycznski is also the holder of a retail license in Union Township, Hunterdon County, and by helping his friends has jeopardized that license to the extent that, because of the conviction in the instant case, he now has one strike against him, and if perchance he should again be convicted of another violation of the Alcoholic Beverage Law, he will be forever barred from holding a license in New Jersey.

Under all the facts and circumstances, the license will be suspended for the balance of the term, with leave to apply to lift the said suspension as hereinafter set forth.

Accordingly, it is, on this 19th day of February, 1941,

ORDERED, that Plenary Retail Consumption License C-8, heretofore issued to Peter Lesycznski by the Township Committee of Lebanon Township, be and the same is hereby suspended for the balance of its term, effective February 24, 1941, at 1:00 A.M.

It is further ORDERED, that if and when transfer of the license to a duly qualified purchaser is granted by the local issuing authority, application may be made to me to vacate said suspension, provided, however, that in no event will said suspension be vacated prior to the expiration of ten (10) days from the effective date hereof.

E. W. GARRETT,
Acting Commissioner.

9. CLUB LICENSEES - SIGNS VISIBLE FROM THE EXTERIOR ADVERTISING ALCOHOLIC BEVERAGES - CLUB LICENSEES MAY NOT SELL TO THE GENERAL PUBLIC AND THERE IS NO REASON FOR MAINTAINING SUCH SIGNS.

February 21, 1941

Fifteenth Ward Political Club of Essex County,
Newark, N. J.

Gentlemen:

It is brought to my attention that four beer advertising signs, including one neon sign, are displayed in various windows of your licensed premises facing Newark Street, in such manner as to be visible from the street.

The records of this Department disclose that you are the holder of Club License CB-49, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

The holders of club licenses may not sell alcoholic beverages to the general public. They are authorized to sell only to their own bona fide members and their guests. R. S. 53:1-12(5); State Regulations No. 17, Rule 5. There is no valid reason, therefore, why premises licensed under a club license should maintain exterior signs, or signs visible from the exterior, advertising to the general public that alcoholic beverages are for sale on the premises. You are directed, therefore, to remove said signs immediately.

Violation of this special ruling is cause for revocation or suspension of your license.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

- 10. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES TO MINORS - AGGRAVATED CIRCUMSTANCES AND PRIOR CONVICTIONS OF DISSIMILAR OFFENSES - 30 DAYS' SUSPENSION - KNOWINGLY EMPLOYING A DISQUALIFIED PERSON - 5 DAYS' SUSPENSION - EMPLOYING A FEMALE TO SELL ALCOHOLIC BEVERAGES CONTRARY TO LOCAL REGULATION - SECOND OFFENSE - 10 DAYS' SUSPENSION - TOTAL: 45 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
JOSEPH ZOKAS,
202 Jefferson Street,
Newark, N. J.,
Holder of Plenary Retail Consumption License C-558, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS
AND ORDER

Wallace Norton, Esq. }
Emanuel Metzger, Esq. } Attorneys for the defendant-licensee.

Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges of (1) selling alcoholic beverages to minors, in violation of R. S. 53:1-77 and State Regulations No. 20, Rule 1; (2) knowingly employing a person not qualified by reason of non-citizenship, in violation of State Regulations No. 11, Rule 1; and (3) employing his wife to sell and serve alcoholic beverages to patrons in his licensed premises after 6:00 P.M., in violation of Newark Resolution No. 4889, adopted by the Board of Commissioners of the City of Newark on May 24, 1939.

The Department file discloses that at about 11:30 P.M. on Saturday, August 10, 1940, Rosaly Zokas, a national of Lithuania and the wife of the defendant-licensee, sold and served two glasses of beer to each member of a party of young people seated in a booth in a rear room of the licensed premises. One of the group to whom the beer was sold was a fourteen year old school girl; two others were minor girls, aged sixteen and nineteen, respectively. Apparently no inquiry into the age of any one of them was made.

Although, in March 1940, the defendant-licensee had obtained an employment permit authorizing the employment of his alien wife as a charwoman on the licensed premises, such permit had expired on June 30, 1940 and no new permit had been applied for or granted up until the date of this violation. Even had such permit been obtained it would not have authorized its alien holder to sell or serve alcoholic beverages. Re Guarino, Bulletin 311, Item 12; Re Zusi, Bulletin 85, Item 6.

As to penalty: The instant violations are not the defendant's first offenses. In 1937, while he was in partnership with another licensee, the partners were convicted by the local issuing authority of selling on Election Day and were given a suspended sentence. In 1939 the defendant pleaded guilty, in a proceeding before this Department, to charges of being open during prohibited hours; failing to draw aside, during those hours, curtains and screens obscuring the view to the interior of the licensed premises; and employing a female to tend bar and sell and serve alcoholic beverages to patrons in his tavern; in violation of municipal regulations, and his license was suspended for eight days. Re Zokas, Bulletin 329, Item 10. That part of the instant violation (charge number three), involving the employment of a female to sell and serve alcoholic beverages in violation of municipal regulations, therefore, marks the second time that the defendant has been found guilty of this particular infraction.

Under all the circumstances, I shall suspend the license for thirty days on the first charge. The penalty is made severe because there can be no reasonable excuse for selling alcoholic beverages to girls who are but fourteen and sixteen years of age (Re Wood, Bulletin 302, Item 13; Re Ghetti, Bulletin 365, Item 5). I shall impose a further penalty of five days on the second charge (Re Cook, Bulletin 432, Item 9), and, on the third charge, a penalty of ten days, which is double the usual five-day penalty for offenses of this nature (Re Kijek, Bulletin 422, Item 6), because the licensee was previously found guilty of a similar violation (Cf. Re Weiner, Bulletin 441, Item 13). Five days will be remitted for the guilty plea, leaving a net penalty of suspension for forty days.

Accordingly, it is, on this 20th day of February, 1941,

ORDERED, that Plenary Retail Consumption License No.C-538, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph Zokas, be and the same is hereby suspended for a period of forty (40) days, commencing February 24, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

11. SEIZURES - CONFISCATION PROCEEDINGS - TRANSPORTATION BY WHOLE-SALER IN UNLICENSED VEHICLE - APPARENT NEGLIGENCE, RATHER THAN DELIBERATE INTENT TO VIOLATE THE LAW - VEHICLE RETURNED UPON EXECUTION OF BOND - RELEASE FROM LIABILITY UNDER THE BOND AND ALCOHOLIC BEVERAGES RETURNED UPON PAYMENT OF COSTS AND ISSUANCE OF VALIDATING PERMIT AT FEE OF \$25.00.

In the Matter of the Seizure of) Case 5189
a Pontiac Coach and 53 bottles of)
alcoholic beverages from National)
Wines & Liquors, Inc., in the) ON HEARING
vicinity of 135 Main Street, in) CONCLUSIONS AND ORDER
the City of Hackensack, County of)
Bergen and State of New Jersey.)

James L. McKenna & Jerome B. McKenna, Esqs., by Jerome B. McKenna, Esq., Attorneys for National Wines & Liquors, Inc.

On January 5, 1939 Hackensack Police officers seized a motor vehicle and fifty-three bottles of liquor which were being transported therein. The liquor was tax paid but the vehicle bore no transportation insignia. The seizure was adopted by this Department. Pending the present proceedings, National Wines & Liquors, Inc., the owner of said vehicle, obtained its return by posting a surety bond with this Department. R. S. 33:1-66.

At the hearing herein National Wines & Liquors, Inc., a New Jersey wholesale licensee, presented evidence that one of its salesmen had obtained the fifty-three bottles of liquor at its licensed premises; that some of said bottles were to be used as samples by said salesman and the balance were to be used by other salesmen, to whom the first salesman was to deliver them as a matter of convenience.

While National Wines & Liquors, Inc. had the right to transport, by salesmen or other employees, any quantity of alcoholic beverages in its own vehicle for use as samples, or otherwise, in the course of its licensed business, nevertheless R.S. 33:1-28, which grants it such privilege, requires that the vehicle thus used should bear a requisite transportation insignia.

My recent ruling (see Re Blank, Bulletin 445, Item 8) that a salesman may, within certain sharp restrictions, transport samples in a vehicle not bearing such a transportation insignia, has no application in the instant case since (1) that ruling was adopted after the seizure in question and (2) the samples here being transported exceeded the restrictions in that ruling.

However, I am satisfied that the licensee, although transporting without the requisite insignia, had no intent to violate the law. It is scarcely likely that it would, to avoid obtaining a transportation insignia (costing \$2.00), risk losing its license and also the truck and liquor being transported. Under the circumstances, no forfeiture will be declared at this time but I shall permit it to make application for a special permit (costing \$25.00) to validate the transportation. Cf. Seizure No. 5572, Bulletin 394, Item 16).

Accordingly, it is ORDERED that if, on or before the 3rd day of March, 1941, National Wines & Liquors, Inc. pays the costs of seizure and storage in this case and applies for and obtains a

validating permit for the unlicensed transportation, both National Wines & Liquors, Inc., as principal, and National Surety Corporation, as surety, will be released from liability to the State Commissioner of Alcoholic Beverage Control (except as to their indemnification of the Commissioner against suits or claims of third persons) on their joint bond herein of January 26, 1939. The liquor will be returned to the licensee if it obtains the permit. If said permit is not obtained on or before the 3rd day of March, 1941, the right is reserved to consider further the question as to whether the liquor should be forfeited and the bond enforced.

E. W. Garrett

Acting Commissioner.

Dated: February 20, 1941.