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

BULLETIN 477 SEPTEMBER 17, 1941.

1. APPELLATE DECISIONS - SIEBEL v. RANDOLPH.

SUFFICIENT LICENSES IN VICINITY - DENIAL AFFIRMED.

PHILIP SIEBEL,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF RANDOLPH,)
Respondent)

John D. Collins, Esq., Attorney for the Appellant.
Morris H. Saltz, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of appellant's application for a plenary retail consumption license for premises located on the Mt. Freedom-Dover Road in Randolph Township.

The only issue necessary for decision is whether respondent's determination that sufficient licenses already exist in the vicinity of the proposed premises is reasonable.

The municipality is essentially agricultural. Houses are scattered, some being close together, while others are comparatively far apart. There is no real business section in the Township, although a small cluster of the usual type of neighborhood stores for the purchase of necessities may be found in various sections of the municipality.

The premises in question are situated in a division of the Township known as Mt. Freedom, which has a permanent population of 300 and a summer influx of about 2200. In this division there are now outstanding seven consumption establishments, all of which are within one mile of appellant's premises and three of which are within one-third of a mile thereof. This would appear to be a great sufficiency.

Like other general questions relating to the issuance of licenses, the determination of how many liquor licenses shall be granted in any given locality is entrusted, in the first instance, to the sound discretion of the local issuing authority. This doctrine is well settled. See Santoriello v. Howell, Bulletin 252, Item 8; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11; Raynor v. West Deptford, Bulletin 462, Item 5. Whether such discretion has been properly exercised may, of course, be tested on appeal to the Commissioner. The burden of proving an abuse of such discretion, however, rests with the appellant. In

this case the evidence presented falls short of that necessary to sustain such burden. In view of the character of the neighborhood and the proximity of the presently existent consumption licenses, it cannot be said that respondent's refusal to place an eighth license in that vicinity is unreasonable or in anywise an abuse of its discretion.

The foregoing renders it unnecessary to determine whether appellant's premises are located in an area zoned for business, since respondent's decision was properly made irrespective of the provisions of the local zoning ordinance. Cf. Vannozzi v. Trenton, Bulletin 35, Item 7; Mills v. East Brunswick, Bulletin 141, Item 1; O'Rourke v. Fort Lee, Bulletin 189, Item 14; Corradi v. Closter, Bulletin 219, Item 3; Parker v. Newark et als., Bulletin 425, Item 12.

Appellant contends that public necessity and convenience require that his premises be licensed since he intends to remain open and serve draught beer throughout the winter months, whereas most of the other licensees either close during such season or do not dispense draught beer during this period. It appears, however, that at least two of the licensed premises in Mt. Freedom sell draught beer all year round. Those places, since but 300 persons reside there during the winter season, are amply sufficient to cater to the needs of those residents.

The action of respondent is affirmed.

Accordingly, it is, on this 8th day of September, 1941,

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

ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - MILLS "JACKPOT" - 10 DAYS' SUSPENSION - SALES ON ELECTION DAY - 10 DAYS' SUSPENSION - TOTAL: 20 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against HARRY DILL, Central Avenue and Raritan Road, Clark Township, P.O. R.F.D. 2, Rahway, N. J., Holder of Plenary Retail Consumption License C-1 issued by the Township Committee of the Township of Clark.	CONCLUSIONS AND ORDER

Connolly & Hueston, Esqs., by John R. Connolly, Esq., Attorneys for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to charges that on April 19, 1941 he possessed two Mills Jackpot slot machines, devices and

apparatus designed for the purpose of gambling, in violation of Rules 7 and 8 of State Regulations No. 20, and that on Special Election Day, Tuesday, May 20, 1941, he sold and delivered alcoholic beverages to consumers while the polls were open for voting, in violation of Rule 2 of State Regulations No. 20.

The Department file discloses that, during the course of a routine inspection of the licensed premises on April 19, 1941, investigators found two Mills Jackpot pull handle slot machines, both in working order, on a table in the kitchen of the licensed premises. Examination of the license application disclosed that the kitchen was part of the licensed premises. A signed acknowledgment of the violation was secured from the bartender in charge at the time.

The Department file further discloses that on Special Election Day, Tuesday, May 20, 1941, two investigators visited the licensed premises at approximately 5:15 P.M. They found the front and side doors locked and a sign on each door reading "Special Election. Closed until 9:00 P.M." The investigators then went to the rear door, which was unlocked, entered through this door, which led into a small hall, and then into the barroom. They found three men and the licensee in front of the bar, and a bartender apparently tending bar. The three men had glasses of beer before them which the investigators immediately seized for evidential purposes.

The investigators identified themselves to the bartender and to the licensee. A voluntary signed statement was secured from the licensee setting forth that his bartender, at his request, had served three glasses of beer to the men present without charge; that the three men had just purchased the licensee's old bar and had given him a check for $500.00 in payment; and that the licensee had then given them the beers in "celebration of the sale of the bar."

In connection with his guilty plea, the licensee, through his attorney, contends that no penalty should be imposed for possession of the slot machines since "they were inaccessible to customers while in the kitchen, and their being so located is very strong evidence of the fact that they were not there for the purpose of being played." The mere statement of this argument is sufficient to refute it. Obviously, licensees do not put slot machines in the center of the bar where investigators of this Department, local police officers and other law enforcement agents may spot them immediately upon entering the premises. If the slot machines were not in the premises for the purpose of being used by customers, then could they have been there just for the licensee himself, so that he could gamble away his daily receipts in an effort, not to double his money, but merely to win back a part?

Mere possession of slot machines on licensed premises, without more, is a violation of the State Regulations. Re Ukrainian National Home, Bulletin 433, Item 10, and the items therein cited.

In connection with the Election Day sale, the licensee, through his attorney, states that "in the course of making the sale of the bar, and as proof of its efficient operation, three glasses of beer were drawn and placed on the bar." This explanation is contrary to that given by the licensee in his signed statement to the effect, not that the beers were drawn for testing purposes, but that they were given in celebration of the sale. Obviously, if either story is the true one, it is that made at the time the violation was discovered and without opportunity for reflection. The State Regulations prohibit not only the sale of alcoholic beverages on Election

Day, but their delivery as well. It makes no difference that the licensee gratuitously furnished alcoholic beverages or that the consumers were his relatives or friends. See Re Turner, Bulletin 277, Item 4; Re Seaman, Bulletin 292, Item 15.

The usual penalty for possession of slot machines is ten days, and for sales on Election Day the penalty is likewise ten days (Re Ukrainian National Home, supra).

By entering a guilty plea in ample time before the date set for hearing, the licensee has saved the Department the time and expense of proving its case, for which five days of the total penalty will be remitted.

Accordingly, it is, on this 10th day of September, 1941,

ORDERED, that Plenary Retail Consumption License C-1, heretofore issued to Harry Dill by the Township Committee of the Township of Clark, be and the same is hereby suspended for a period of fifteen (15) days, effective September 15, 1941, at 3:00 A.M. (Daylight Saving Time).

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PERMITTING AN ALIEN EMPLOYEE TO SELL ALCOHOLIC BEVERAGES - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN EMPLOYEE HOLDING AN EMPLOYMENT PERMIT - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

TIEMAN BROODWINNER,
T/a HOLLAND HOUSE,
41 Third St.,
Hoboken, N. J.,

Holder of Plenary Retail Consumption License C-30, issued by the Board of Commissioners of the City of Hoboken,

-and-

JACOB VAN der HOEK,
41 Third St.,
Hoboken, N. J.,

Holder of Employment Permit No. 500, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

John J. Meehan, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee was charged with permitting Jacob Van der Hoek, an alien employee, who is the holder of an employment

permit for a person disqualified by reason of non-citizenship, to sell alcoholic beverages, in violation of Rule 3 of State Regulations No. 11. The defendant-permittee was charged with selling and serving alcoholic beverages contrary to the condition upon which his employment permit was issued. Guilty pleas have been entered by both the defendant-licensee and the defendant-permittee. Since both proceedings have arisen out of the same occurrence, both matters will be treated and disposed of herein.

The Department file discloses that two investigators entered the licensed premises on July 21, 1941 for the purpose of making a routine inspection. They found Jacob Van der Hoek in charge of the premises and tending bar. The licensee was not present at the time. The investigators identified themselves to Van der Hoek and asked for the licensee, who appeared soon thereafter. Voluntary signed statements were secured from both the licensee and the permittee disclosing, in substance, that Van der Hoek, knowing that his employment permit was issued upon the specific condition that if its holder "does not qualify as to.....citizenship....., such permittee shall not in any manner whatsoever serve, sell or solicit the sale.....of any alcoholic beverage," nevertheless had, for the past six months, in the morning before the licensee's arrival, tended bar and served alcoholic beverages at the licensee's request. In his statement the licensee, while admitting all of these facts, stated that he did not know it was contrary to the terms of the employment permit or contrary to the State Regulations to allow Van der Hoek to tend bar occasionally.

Ignorance of the law or regulations affords no excuse. Licensees and their employees must know the rules and scrupulously adhere to them. Re Rausse and Cresco, Bulletin 452, Item 6; Re Ryan and Nunnink, Bulletin 323, Item 4; Re Bolton, Bulletin 316, Item 1.

The instant offenses appear to be the licensee's and the permittee's first violations of record. The usual minimum penalties will, therefore, be imposed. So far as the defendant-licensee is concerned, the minimum penalty for this violation is five days. So far as the defendant-permittee is concerned, the penalty is thirty days. Re Stein and Stoler, Bulletin 458, Item 3, and the items therein cited. Cf. Re Katz, Bulletin 404, Item 7.

By entering the guilty pleas, the licensee and the permittee have saved the Department the time and expense of proving its cases. Two days of the penalty imposed on the licensee and five days of the penalty imposed on the permittee will, therefore, be remitted.

Accordingly, it is, on this 10th day of September, 1941,

ORDERED, that Plenary Retail Consumption License C-30, heretofore issued to Tieman Broodwinner by the Board of Commissioners of the City of Hoboken, be and the same is hereby suspended for a period of three (3) days, effective September 17, 1941, at 2:00 A.M. (D.S.T.); and it is further

ORDERED, that Employment Permit No. 500, heretofore issued to Jacob Van der Hoek by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, effective September 17, 1941, at 2:00 A.M. (D.S.T.).

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATIONS CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FULL DISCLOSURE - SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against JACOB BYER, 1512 Calhoun Street, Trenton, N. J., Holder of Plenary Retail Consumption License C-12 for the fiscal year 1940-41 (during which the present proceedings were brought), and thereafter holder of Plenary Retail Consumption License C-12 for the current (1941-42) fiscal year, issued by the Board of Commissioners of the City of Trenton, and which current license has been transferred by said Board to MILTON BYER, for the same premises; - and also - In the Matter of Proceedings for two-year Disqualification of the said premises.	CONCLUSIONS AND ORDER

Perlman & Lerner, Esqs., by Sol Phillips Perlman, Esq., Attorneys for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, Jacob Byer, holder of a plenary retail consumption license for a tavern in Trenton, pleads nolo contendere to charges that he violated the Alcoholic Beverage Law by:

(1) Falsely denying in his application for license (and for place to place transfer of such license) that Milton Byer (his brother) had any interest in the tavern. See R. S. 33:1-25.

(2) Permitting Milton to exercise the rights and privileges of the license. See R. S. 33:1-26, 52.

It appears that toward the end of 1937 the defendant's brother, Milton Byer, planned to operate a tavern in Trenton; that, however, not having been a resident in the city for the required three years, he was disqualified under a local ordinance from obtaining any retail liquor license; that accordingly the defendant, a qualified resident, took the license (and subsequent renewals) in his name as a "front" for Milton.

Following institution of the present proceedings, this "front" was corrected by transfer of the current license to Milton, who now (and apparently since 1940) qualifies as a three years' resident of the City.

As to penalty: Where, as here, there has been a "front" to evade the State or a municipal residence requirement and such "front" is not disputed and is actually corrected, proper penalty ordinarily is full ten days' suspension of the license. Re Whitman, Bulletin 410, Item 4; Re Silver Palm Corp., Bulletin 422, Item 8.

The fact that, in the present case, the parties to such "front" may be close kin in no way alters this penalty. For, although close kinship may perhaps be pertinent as a mitigating circumstance in determining penalty in cases where the "front" was arranged merely as a matter of convenience between the kin and without any fraudulent purpose (Re DiGiovanni, Bulletin 401, Item 6; Re Waldman, Bulletin 404, Item 11; Re Mascolo, Bulletin 427, Item 7; Re Sowa, Bulletin 437, Item 9; Re Schauchulis, Bulletin 443, Item 7), it clearly has no such bearing where, as here, the "front" stems from a fraudulent plan to evade a residence or similar requirement. Re McGrath, Bulletin 431, Item 7. Cf. Re Boreth, Bulletin 442, Item 7. See Re Alter and Weissman, Bulletin 412, Item 2. Also see Re Russo, Bulletin 455, Item 9; Re Lipitz, Bulletin 460, Item 8.

Hence the penalty in the present case will, in the absence of either aggravating or mitigating circumstances, be a ten-day suspension of the license.

Such penalty, though being imposed in a proceeding which was instituted during the last licensing year, is nevertheless fully effective against the current license under State Regulations No. 15. Similarly, such penalty remains effective against the transferee, Milton Byer, both by virtue of the same Regulations and also by virtue of an express condition which was imposed on the transfer.

Accordingly, it is, on this 10th day of September, 1941,

ORDERED, that Plenary Retail Consumption License C-12, heretofore issued by the Board of Commissioners of the City of Trenton for the current fiscal year to Jacob Byer for 1512 Calhoun Street, Trenton, and later transferred by said Board to Milton Byer, be and the same is hereby suspended for a period of ten (10) days, commencing September 15, 1941 at 2:00 A.M. (Daylight Saving Time).

Notice was also served upon the defendant (Jacob Byer), as owner of the premises where the tavern is located, to show cause why, if the license be revoked, the premises should not be disqualified (under R. S. 33:1-31) for a period of two years from becoming the subject of any further liquor license.

Since the license in question is being suspended for ten days (and not revoked), the proceeding as to the disqualification of the premises automatically falls.

Accordingly, it is, on this same day, further

ORDERED, that the said proceeding as to disqualification of the premises be and hereby is dismissed.

ALFRED E. DRISCOLL,
Commissioner.

5. ELIGIBILITY - EMBEZZLEMENT - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

September 10, 1941.

Re: Case No. 390.

Applicant requests a determination as to whether he has been convicted of a crime involving moral turpitude and hence is disqualified, under R. S. 33:1-25, 26, from holding a liquor license or working for a liquor licensee in New Jersey.

In 1937, applicant, pursuant to his plea of non vult, was convicted in this State for embezzling over $10,000.00 of funds which he had collected in the course of his duties as a municipal licensing official. Sentenced to serve from four to six years in State Prison, he was released on parole in December 1939. Applicant now claims that he actually embezzled only $500.00 to $700.00; that the rest was taken by other persons who had access to the licensing fees; that he assumed sole responsibility for the entire sum because he was custodian of the funds and believed that he had no defense. His claim that he actually took only $500.00 to $700.00 of the funds, even if accepted, in no way minimizes the fact that he committed a high misdemeanor under the laws of our State. The applicant was clearly guilty of a crime involving moral turpitude. Re Case No. 40, Bulletin 151, Item 2.

It is, therefore, recommended that applicant be advised that he is disqualified under the Alcoholic Beverage Law from holding a liquor license or being employed by a liquor licensee in this State.

Harry Castelbaum,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

6. MORAL TURPITUDE - PARTICIPATION IN EXTENSIVE BOOTLEGGING ENTERPRISE INVOLVING ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FIVE YEARS NOT ELAPSED SINCE DATE OF CONVICTION - 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. 162

CONCLUSIONS

BY THE COMMISSIONER:

Petitioner, in 1934, was arrested in connection with the seizure, in this State, of a large bootleg "cracking" still. He was subsequently indicted by a Federal Grand Jury on several counts charging him with defrauding the United States of taxes and possessing an unregistered still, mash and untax-paid alcohol. On January 21, 1938, petitioner pleaded guilty to all charges and was sentenced

to a prison term of one year and a day. This sentence was suspended and petitioner was placed on probation for one year.

At the hearing herein, petitioner claimed that he had not been involved in the actual operation of the illicit still and that his only part in the unlawful enterprise had been to transport, in his car and for hire, two of the still operators back and forth daily between the municipality where the still plant was located and the municipality wherein, apparently, the operators lived. He admitted, however, that he had been fully aware of the fact that his employers "were interested in a still"; that the men whom he had been employed to carry back and forth were operating a still; that while he "did not know exactly where it (the still) was" he "had an idea."

Petitioner cannot, in this proceeding, collaterally contradict or limit the effect of his own confessive plea of guilty to the matters charged in the criminal indictment. See Re Case No. 307, Bulletin 373, Item 10; Re Case No. 291, Bulletin 346, Item 16; Re Case No. 280, Bulletin 326, Item 8; Re Case No. 267, Bulletin 313, Item 1; Re Case No. 247, Bulletin 294, Item 12. Moreover, even assuming that petitioner, as he testified, did nothing more than to knowingly transport the still operators, it is clear that he was, none the less, consciously engaged in, and a part of, an extensive bootlegging enterprise. Such activity in illicit liquor since Repeal constitutes moral turpitude within the meaning of the Alcoholic Beverage Law. Re Case No. 267, supra; Re Case No. 291, supra; Re Case No. 307, supra; Re Case No. 326, Bulletin 409, Item 3; Re Case No. 329, Bulletin 412, Item 9; Re Case No. 360, Bulletin 441, Item 7.

Petitioner now seeks, in this proceeding and pursuant to R. S. 33:1-31.2, to remove the statutory disqualification resulting from the aforesaid conviction. While petitioner's crime was committed in December 1934, he was not convicted until January 21, 1938. Under the terms of the statute (R. S. 33:1-31.2), the disqualification resulting from conviction of a crime involving moral turpitude may not be removed until "at least five years have elapsed from the date of conviction." Since, to date, less than four years have elapsed from the date of petitioner's conviction in 1938, the instant application for removal of disqualification is premature.

The petition, therefore, is denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: September 11, 1941.

7. TRANSFERS - REGULATIONS NO. 3 - APPLICATIONS FOR TRANSFERS MUST BE ACCOMPANIED BY CERTIFICATE FROM STATE TAX COMMISSIONER THAT TAXES ARE PAID AND REPORTS ARE IN - NOTICE TO MUNICIPAL LICENSE ISSUING AUTHORITY.

September 11, 1941

To: All Municipal Clerks
Clerks of Municipal Boards of Alcoholic Beverage Control.

This Department has been advised by the State Tax Department, Beverage Tax Division, that, in several instances, municipal issuing authorities have granted transfers of alcoholic beverage licenses from person to person without first obtaining a certificate from the State Tax Commissioner certifying that the transferring licensee is not delinquent in the payment of any tax or in the filing of any report required by provisions of the Alcoholic Beverage Tax Act.

Provision for the submission of the above mentioned certificate is set forth in Rule 3, State Regulations No. 3, Pamphlet Rules and Regulations, issued September 1939. Failure of a transferee to comply with this requirement is cause for revocation or suspension of license. See Re deValliere, Bulletin 282, Item 2.

I therefore urge that your municipal issuing authority does not grant any further transfers of licenses from person to person unless a certificate from the State Tax Commissioner is submitted in accordance with the aforesaid rule. Failure to obtain such certificate may result in the setting aside of a transfer of license and cause needless embarrassment.

Will you kindly bring this notice to the attention of your issuing authority? Your fullest cooperation will be appreciated.

ALFRED E. DRISCOLL,
Commissioner.

8. MORAL TURPITUDE - ROBBERY, ENTERING AND CARRYING CONCEALED WEAPONS INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.	CONCLUSIONS AND ORDER
Case No. 167.	

BY THE COMMISSIONER:

In September 1929, when petitioner was twenty-two years of age, he pleaded guilty in a criminal court of the State of Pennsylvania to charges of robbery and entering to commit a felony and carrying concealed weapons (crimes involving moral turpitude). He was sentenced to serve from three to six years in the penitentiary and was released on parole in September 1932. He has never been convicted of any other crime.

Shortly after his release from the penitentiary, he moved to a municipality in the State of New Jersey where he has lived continuously since that time. After he came to New Jersey he worked for about a year for an Express Company, and then obtained a position in a bakery where, since that time, he has been and is now employed. He married in 1935 and lives with his wife and daughter.

On behalf of petitioner, a contractor who has known him for twenty-five years, an agent for the Express Company by which he was formerly employed, and a businessman in the municipality where he lives testified that he has been leading an honest and law-abiding life since he came to this State. The Commissioner of Public Safety in his municipality has advised that there are no complaints, reports or investigations pending against petitioner, and that his reputation is very good.

I am satisfied from the evidence that petitioner has learned his lesson, is determined to go straight, and has led an honest and

law-abiding life for more than five years last past. I conclude also that, despite the seriousness of the crimes which resulted in a single conviction twelve years ago, his subsequent good conduct demonstrates that his association with the alcoholic beverage industry will not be contrary to the public interest.

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

ORDERED, that petitioner's application to lift his statutory disqualification because of the conviction referred to herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - MUNICIPAL POLICY OF GREATER PENALTIES RECOGNIZED AND EFFECTUATED - SALES BY CLUB LICENSEE TO PERSONS NOT MEMBERS OR GUESTS - 15 DAYS' SUSPENSION - SALES DURING PROHIBITED HOURS - 3 DAYS' SUSPENSION - TOTAL: 18 DAYS, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

RIVERSIDE FIRE CO. #1, INC.,
14 W. Scott Street,
Riverside, N. J.,

Holder of Club License CB-63 for the fiscal year expiring June 30, 1941 and now holder of Club License CB-63 for the current (1941-42) fiscal year, both licenses having been issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Christopher N. Peditto, Esq., Attorney for the Defendant Club Licensee.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant club licensee has pleaded guilty to charges that (1) it sold alcoholic beverages to non-members, in violation of Rule 5 of State Regulations No. 7, and (2) that it sold and allowed the consumption of alcoholic beverages on its licensed premises on a weekday between the hours of 1:00 A.M. and 1:00 P.M., in violation of Section 3 of an ordinance regulating the sale and distribution of alcoholic beverages within the Township of Riverside, adopted by the Township Committee on December 30, 1940. The defendant's club license having been issued by the State Commissioner of Alcoholic Beverage Control, pursuant to R. S. 33:1-20, the instant disciplinary proceeding has been instituted by this Department.

The Department file on this matter discloses that on Memorial Day, May 30, 1941, at about 11:00 A.M., two Department investigators, who were neither members nor guests of members of the defendant fire company, walked into the fire house, proceeded to the

bar, which is in the basement, and ordered, paid for and were served two beers by the bartender in charge. No inquiry as to whether they were members or guests of members of the fire company was made.

The instant offenses appear to be the defendant fire company's first violations of record. Under these circumstances, the penalty which this Department would ordinarily impose for violations of this character would be suspension of license for five days on each charge, less a remission of five days for the guilty plea. See William A. Rucki Ass'n, Bulletin 472, Item 10 (sale to non-members); Re Ferrari, Bulletin 470, Item 5 (sale during prohibited hours in violation of local regulation).

Departmental records, however, disclose that the Township Committee of the Township of Riverside, in disciplinary matters which have come before it, very commendably, has uniformly imposed, without remission for guilty plea, a penalty of fifteen days for sale during prohibited hours and a similar penalty for sale, by club licensees, to non-members. Although the Township Committee has not had occasion, as yet, to pass upon any disciplinary matter wherein one of its licensees has been charged and found guilty, in one proceeding, of having committed, as part of the same transaction, both of these violations, the Committee has advised this Department that, if the case were to be heard by it, "they would suspend the.... License.....(of) the Riverside Fire Co. #1 for 15 days for the first violation, and for three days on the second violation, making a total of 18 days, as the two violations arose out of the same act."

I shall treat the Committee's opinion regarding the penalty it would impose in this matter as an expression of its avowed policy.

This Department stands ready at all times to cooperate with those municipalities that have seen fit to establish a uniform policy with regard to the imposition of penalties in disciplinary matters. As long as the municipal standard is uniformly applied and does not fall below the minimum established by the State, penalties imposed by this Department upon licensees within such municipalities will be fixed, in so far as possible, in accordance with and following the expressed municipal policy. The license of the fire company, therefore, will be suspended for eighteen days.

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

Accordingly, it is, on this 12th day of September, 1941,

ORDERED, that Club License CB-63, heretofore issued to the Riverside Fire Co. #1, Inc. by the State Commissioner of Alcoholic Beverage Control for the current fiscal year, be and the same is hereby suspended for a period of eighteen (18) days, effective September 17, 1941, at 1:00 A.M. (Daylight Saving Time).

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - MUNICIPAL POLICY OF GREATER PENALTIES RECOGNIZED AND EFFECTUATED - SALES DURING PROHIBITED HOURS - 15 DAYS' SUSPENSION, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against RIVERSIDE LODGE #279, LOYAL ORDER OF MOOSE, 26 W. Scott St., Riverside, N. J., Holder of Club License CB-54 for the fiscal year expiring June 30, 1941 and now holder of Club License CB-54 for the current (1941-42) fiscal year, both licenses having been issued by the State Commissioner of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

Riverside Lodge #279, Loyal Order of Moose, by Carl Cowan, Governor.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant club licensee has pleaded guilty to a charge that it sold and allowed the consumption of alcoholic beverages on its licensed premises on a weekday between the hours of 1:00 A.M. and 1:00 P.M., in violation of Section 3 of an ordinance regulating the sale and distribution of alcoholic beverages within the Township of Riverside, adopted by the Township Committee on December 30, 1940. The defendant's club license having been issued by the State Commissioner of Alcoholic Beverage Control, pursuant to R. S. 33:1-20, the instant disciplinary proceeding has been instituted by this Department.

The Department file on this matter discloses that on Memorial Day, May 30, 1941, at about 10:55 A.M., two Department investigators, after observing a number of people enter the licensed premises, walked in and found some fifteen people drinking at the bar. The bartender, who was filling a glass with whiskey at the time the investigators entered, admitted to them that he had been selling and serving alcoholic beverages during prohibited hours.

Departmental records disclose that the Township Committee of the Township of Riverside, in disciplinary matters which have come before it, has uniformly imposed, without remission for guilty plea, a penalty of fifteen days for this violation. The Township Committee has advised the Department that it would, were the instant case to come before it, suspend the Lodge's license for fifteen days. The Township Committee is to be commended for its action in first establishing and then adhering to a uniform policy in the imposition of penalties. This action on its part merits my support.

I shall, therefore, for the reasons stated in Re Riverside Fire Co. #1, Inc., Bulletin 477, Item 9, recognize the policy established by the Township Committee as regards the penalty to be imposed for a violation of this character and suspend the license for fifteen days.

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

Accordingly, it is, on this 12th day of September, 1941,

ORDERED, that Club License CB-54, heretofore issued to the Riverside Lodge #279, Loyal Order of Moose, by the State Commissioner of Alcoholic Beverage Control for the current fiscal year, be and the same is hereby suspended for a period of fifteen (15) days, effective September 17, 1941, at 1:00 A.M. (Daylight Saving Time).

ALFRED E. DRISCOLL,
Commissioner.

11. MORAL TURPITUDE - EMBEZZLEMENT INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION - APPLICATION GRANTED.

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

Case No. 161.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

On July 29, 1931 petitioner, who had then been employed as a letter carrier for seventeen years, was arrested and charged with embezzling mail, in violation of the United States Postal Laws. It appears that he had stolen money from registered letters. As a result, he was found guilty after jury trial and sentenced to serve six months in the County jail and pay a fine of $250.00. He was committed to jail on October 20, 1932 and released on April 20, 1933.

The rifling of the mails by postal employees is a crime which involves moral turpitude. Re Case No. 224, Bulletin 248, Item 6.

After his release from prison, petitioner was unable to find steady employment. He worked as a laborer on odd jobs until 1936, when he was employed by a municipality in maintenance work in its public parks. In 1938 he was hired as a porter by a retail liquor licensee and has been employed there ever since.

Three character witnesses, a plumbing and heating contractor, an owner of a gasoline station and garage, and a salesman of package goods in the liquor store where petitioner is employed, who have known petitioner for five, ten and five years, respectively, testified that his reputation in the community is good and that in the past five years he has not been in any difficulties with any law enforcement agencies.

Petitioner's fingerprint returns disclose no arrests or convictions since 1933. The Chief of Police of the municipality where

petitioner has resided for the past twenty years advises that "we have searched our files....and we find no record against the said _____(petitioner) in the past five years."

Petitioner testified that he was unaware that he was ineligible to be employed by a liquor licensee. He stated that, immediately upon being informed of such disqualification by investigators of this Department, he filed the instant petition. The records of this Department substantiate such statement. I am satisfied that he is telling the truth and shall accept at face value his assertion that he did not know that he could not be employed at licensed premises.

I conclude, therefore, from all of the evidence, that petitioner has conducted himself in a law-abiding manner for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 12th day of September, 1941,

ORDERED, that petitioner's statutory disqualification because of his aforesaid conviction be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - OPEN DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - FAILURE TO REMOVE SCREENS DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 15 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against PATSY CUSANO, 329 Ferry Street, Newark, N. J., Holder of Plenary Retail Consumption License C-264, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Patsy Cusano, Pro Se.
Robert K. Hendricks, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to charges that, during prohibited hours on Sunday, July 13, 1941, he (1) sold and served alcoholic beverages, (2) permitted his licensed premises, where the principal business is the sale of alcoholic beverages, to be open, and (3) failed to draw aside curtains and screens obscuring the view from the street to the interior of his licensed premises; in violation of Section 1 of Ordinance No. 3930 adopted by the Board of Commissioners of the City of Newark on December 21, 1938.

The Department file on this matter discloses that at approximately 11:00 A.M. (one hour before the authorized Sunday noon opening hour) on the date in question, officers of this Department and the Newark Police Department, after having detected the sound of voices and radio music coming from the interior of the locked and curtained premises of the defendant-licensee, made their way, through a kitchen door, into the premises where they found several patrons sitting at a table in the rear of the barroom drinking beer.

In a statement given to the officers the defendant-licensee, while admitting the opening hour and screen violations, stated that he had not sold the beer but had "given" it to the persons who were found drinking on the premises. By virtue of the guilty plea, defendant must be assumed to have abandoned the last mentioned contention. Even if this were not the case, the contention would have afforded defendant no defense because (1) under the Newark ordinance the mere service of alcoholic beverages, whether a charge be imposed or not, is prohibited during certain hours and (2) under R.S.33:1-1(w) even the gratuitous delivery or gift of an alcoholic beverage by a licensee is deemed to be a sale. See Re Grande, Bulletin 442, Item 4.

The minimum penalty for selling and serving alcoholic beverages and permitting licensed premises to be open during prohibited hours is five days on each charge (Re William Street Bar & Grill, Inc., Bulletin 466, Item 8); for failure to comply with municipal screen regulations, another five days (Re Tedesco, Bulletin 434, Item 12) -- making a total of fifteen days. Since the instant offenses are the defendant-licensee's first violations of record, the minimum penalty of fifteen days will be imposed. In view of the guilty plea which saved the Department's time in the preparation of its case, five days of the total penalty will be remitted -- leaving a net penalty of ten days.

Accordingly, it is, on this 12th day of September, 1941,

ORDERED, that Plenary Retail Consumption License C-264, heretofore issued to Patsy Cusano by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, effective September 17, 1941, at 3:00 A.M. (Daylight Saving Time).

Alfred E. Driscoll
Commissioner.