

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

BULLETIN 682

OCTOBER 25, 1945.

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

BULLETIN 682 OCTOBER 25, 1945.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)

JOSEPH J. COYLE, SR.)
T/a SHEER'S RESTAURANT)
S/W Cor. New Jersey & Spruce Aves.)
North Wildwood)
P.O. Wildwood, New Jersey,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-16 issued by the Mayor and Common Council of the City of North Wildwood.)

Joseph J. Coyle, Sr., Defendant-licensee, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging that he possessed on his licensed premises two bottles of alcoholic beverages, the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On August 23, 1945 an ABC agent seized at the defendant's licensed premises a bottle of "Galvert Reserve Blended Whiskey 86.8 Proof" and a bottle of "Imported Harwood's Blended Canadian Whiskey 90.4 Proof" when preliminary tests indicated that the contents of the bottles were not genuine as labeled. Chemical analyses of the contents of the bottles disclosed that both bottles had been definitely refilled with a different brand of whiskey.

The licensee disclaimed any knowledge of the violation. Nevertheless, a licensee must be held strictly accountable for any "refills" found in his stock of liquor. Re Klimovich, Bulletin 667, Item 1. In the absence of a prior record, I shall suspend his license for a period of fifteen days.

The records of this Department indicate that defendant's premises are now closed and will remain closed until some time in the Spring. Thus, no effective suspension can be imposed at the present time. The starting date of the suspension herein will be postponed until my further order, after the licensed premises shall have reopened for business in the Spring of 1946. Re Solomon, Bulletin 586, Item 2.

Accordingly, it is, on this 16th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-16, issued by the Mayor and Common Council of the City of North Wildwood to Joseph J. Coyle, Sr., t/a Sheer's Restaurant, S/W cor. New Jersey & Spruce Avenues, North Wildwood, be and the same is hereby suspended for fifteen (15) days, the time to be fixed by subsequent order, as aforesaid.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)

FRANCIS H. MCKENNA)
T/a MCKENNA'S BAR)
176 S. Maryland Avenue)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-151, issued by the Board of Commissioners of the City of Atlantic City.)
-----)

Robert N. McAllister, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge that he possessed a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whiskey", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

On August 21, 1945, an ABC agent, after preliminary tests of defendant's open stock of liquor, seized the bottle in question when tests thereof disclosed that the contents of the bottle were not genuine as labeled. Subsequent analysis by the Department chemist revealed that the bottle had been definitely refilled.

Defendant claims that he was ill at the time and if the bottle was refilled it was done by one of his employees. However, a licensee is strictly accountable for the alcoholic beverages found on his licensed premises. Cf. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. In accordance with cases decided herewith, I shall, in the instant case, suspend defendant's license for a period of fifteen days.

Accordingly, it is, on this 16th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-151, issued by the Board of Commissioners of the City of Atlantic City to Francis H. McKenna, t/a McKenna's Bar, for premises 176 S. Maryland Avenue, Atlantic City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 12:01 a.m. October 23, 1945, and terminating at 12:01 a.m. November 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

3. DISCIPLINARY PROCEEDINGS -- ILLICIT LIQUOR -- LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)
 RUTHERFORD R. BAKER)
 T/a LINCOLN BAR)
 308 E. Lincoln Avenue)
 Wildwood, N. J.,)
 Holder of Plenary Retail Consumption License C-18, issued by the Board of Commissioners of the City of Wildwood.)

CONCLUSIONS AND ORDER

 Harry Tenenbaum, Esq., Attorney for Defendant-licensee.
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads non vult to a charge that he possessed two 4/5 quart bottles labeled "Canadian Club Blended Canadian Whiskey 90.4 Proof", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On August 23, 1945, an investigator of the State Department of Alcoholic Beverage Control seized the above described two bottles of whiskey when preliminary tests thereof indicated that the contents of said bottles had different characteristics than the whiskey named on the labels. Subsequent analysis of the said whiskey by the Department chemist disclosed that the said whiskey was not genuine as labeled.

Defendant denies any knowledge whatsoever of the violation. Nevertheless, a licensee is held strictly accountable for the alcoholic beverages found on his licensed premises. Cf. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. I shall in the instant case suspend defendant's license for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

The records of this Department indicate that defendant's premises are now closed and will remain closed until some time in the Spring. Thus, no effective suspension can be imposed at the present time. The starting date of the suspension herein will be postponed until my further order, after the licensed premises shall have reopened for business in the Spring of 1946. Re Solomon, Bulletin 586, Item 2.

Accordingly, it is, on this 16th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-18, issued by the Board of Commissioners of the City of Wildwood to Rutherford R. Baker, t/a Lincoln Bar, for premises 308 E. Lincoln Avenue, Wildwood, be and the same is hereby suspended for fifteen (15) days, the time to be fixed by subsequent order as aforesaid.

ALFRED E. DRISCOLL
 Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)
 IRVIN ARONOFF)
 T/a GOLDEN GATE CAFE)
 29 S. Missouri Ave.)
 Atlantic City, N. J.,)
 Holder of Plenary Retail Consumption License C-175, issued by the Board of Commissioners of the City of Atlantic City.)

CONCLUSIONS AND ORDER

 Irvin Aronoff, Defendant-licensee, Pro Se.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads non vult to a charge that he possessed on his licensed premises two 4/5 quart bottles labeled "Old Taylor Kentucky Straight Bourbon Whiskey" and one 4/5 quart bottle labeled "Old Grand Dad Kentucky Straight Bourbon Whiskey", all of which bottles contained alcoholic beverages not genuine as labeled, such possession thereof being in violation of R. S. 33:1-50.

On August 16, 1945 an ABC investigator's preliminary tests indicated that the contents of the above described bottles of whiskey were not genuine as labeled. Analysis by the chemist of the State Department of Alcoholic Beverage Control confirmed the fact that the said whiskey was not genuine as labeled.

Defendant denies any knowledge whatsoever of the violation. Nevertheless, the licensee is held strictly accountable for the alcoholic beverages found on his licensed premises. Cf. Re Kurian, Bulletin 517, Item 2.

Defendant has no prior adjudicated record. I shall, in the instant case, suspend the defendant's license for a period of twenty days. Cf. Re Rudolph, Bulletin 680, Item 1 (one bottle) and Re Zeidner & Cohen, Bulletin 680, Item 2 (three bottles).

Accordingly, it is, on this 16th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-175, issued by the Board of Commissioners of the City of Atlantic City to Irvin Aronoff, t/a Golden Gate Cafe, for premises 29 South Missouri Avenue, Atlantic City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 a.m. October 23, 1945, and terminating at 12:01 a.m. November 12, 1945.

ALFRED E. DRISCOLL
 Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against
 J. WARREN ARNOLD
 Jackson & Beach Avenues
 Cape May, N. J.,
 Holder of Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Cape May.

CONCLUSIONS AND ORDER

J. Warren Arnold, Defendant-licensee, Pro Se.
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge that on August 24, 1945 he possessed illicit alcoholic beverages in violation of R.S.33:1-50, in that three bottles labeled "Canadian Club Blended Canadian Whiskey 90.4 Proof" found on his premises were not genuine as labeled.

On August 24, 1945 an investigator of the Department of Alcoholic Beverage Control seized three bottles of "Canadian Club Blended Canadian Whiskey" after a preliminary test indicated that the contents thereof were not genuine as labeled. Subsequent analyses by the Department chemist disclosed that the three bottles in question had been refilled.

Defendant admitted that he had refilled the three bottles with another brand of Canadian whiskey. Defendant has no prior adjudicated record. Under the circumstances, I shall suspend defendant's license, because of the within violation, for a period of twenty days. Cf. Re Zeidner & Cohen, Bulletin 680, Item 2.

Accordingly, it is, on this 16th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Cape May to J. Warren Arnold, for premises on Jackson and Beach Avenues, Cape May, be and the same is hereby suspended for a period of twenty (20) days, commencing at 1:00 a.m. October 23, 1945, and terminating at 1:00 a.m. November 12, 1945.

ALFRED E. DRISCOLL
 Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

FORT PITT, INC.
T/a FORT PITT
168-170 South New York Ave.
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-219 issued by the Board of Commissioners of the City of Atlantic City.

Clarence Blitz, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee, through its attorney, has pleaded non vult to a charge alleging that, on August 16, 1945, it possessed one 4/5 quart bottle labeled "Old Crow Brand Kentucky Straight Bourbon Whiskey" and one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whiskey" which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On the date in question an investigator of the Department of Alcoholic Beverage Control tested a number of bottles at the premises of the licensee and found two of them unsatisfactory. He seized the bottles. Subsequent analysis by the Department chemist showed that the contents of these bottles differed substantially from authentic samples.

The licensee's employees denied any tampering with the bottles in question. Assuming this to be true, a licensee is none the less absolutely responsible for the alcoholic beverages found on his licensed premises. Cf. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record although on May 29, 1937 the Department warned the licensee that an alleged "refill" had been found on its premises by agents of the Alcohol Tax Unit. I shall suspend the defendant's license for a period of fifteen days.

Accordingly, it is, on this 16th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-219, issued by the Board of Commissioners of the City of Atlantic City to Fort Pitt, Inc., t/a Fort Pitt, for premises 168-170 South New York Avenue, Atlantic City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 12:01 a.m. October 23, 1945, and terminating at 12:01 a.m. November 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against)

JAMES CARR JR. & VAUGHN COMFORT)
T/a COMFORT CAFE)
1008 Shore Road)
Somers Point, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5 issued by the Common Council of the City of Somers Point.)
-----)

James Carr, Jr. and Vaughn Comfort, Defendant-licensees, by James Carr, Jr., a partner.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded guilty to a charge alleging that they possessed one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On August 22, 1945 an investigator of the Department of Alcoholic Beverage Control seized the bottle mentioned in the charge when preliminary tests indicated that the contents were "off" in color. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottle varied substantially in acids from the contents of a genuine bottle of the same product.

At the time of the seizure, James Carr, Jr., one of the defendants, verbally admitted to the agent that the seized bottle had been refilled with Harwood whiskey. In a written statement given to the agent he said:

"We have had trouble in getting Canadian Club whiskey and could get Harwood Canadian Whiskey, so we substituted Harwood by pouring it in Canadian Club labeled bottles."

As repeatedly pointed out, a patron is entitled to receive exactly what he orders. Retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1.

Defendants have no previous adjudicated record. I shall suspend defendants' license for a period of fifteen days.

Accordingly, it is, on this 16th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Common Council of the City of Somers Point to James Carr, Jr. and Vaughn Comfort, t/a Comfort Cafe, for premises 1008 Shore Road, Somers Point, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. October 23, 1945, and terminating at 3:00 a.m. November 7, 1945.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

AQUILINA RIGGIO)
T/a VALLEY HOUSE)
High Street)
Pohatcong Township)
P.O. Alpha, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-1 issued by the Township Committee of the Township of Pohatcong, and transferred during the pendency of these proceedings to)

JOSEPH CSERNAK, JR. and)
JULIA CSERNAK)

for the same premises.)

Andrew Varga, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded non vult to the following charge:

"From December 26, 1933 and until the present time you knowingly aided and abetted Fred Riggio, Wally Stanchuck, Charles Ricketts and Joseph Csernak, Jr. to exercise, contrary to P. L. 1933, c. 436, sec. 23 and R. S. 33:1-26, the rights and privileges of your successive retail alcoholic beverage licenses for premises at High Street, Pohatcong Township, N. J., thereby yourself violating P. L. 1933, c. 436, sec. 50 and R. S. 33:1-52."

The investigation and the statements given by all the parties involved warrant the conclusion that Aquilina Riggio, the former licensee, is guilty as charged.

The violation developed as a scheme of Fred Riggio, who is the husband of Aquilina Riggio, and who was disqualified to hold a license in 1933 by reason of his position as a Justice of the Peace. This scheme of obtaining successive licenses in his wife's name permitted Fred Riggio to secure, at first, the benefits of a license although disqualified, and, later, to control the license, operated by persons other than his wife, as a valuable adjunct to the property which he owned. See Re DiPaolo, Bulletin 568, Item 5.

Subsequent to the inception of the investigation, and prior to its completion, Csernak and his wife purchased the premises from Riggio and obtained from the local issuing authorities a transfer of the license from Mrs. Riggio. Csernak and his wife seem to be fully qualified to hold the license. The Riggios seem to have no further interest in the license or in the business conducted thereunder. On the evidence presented I conclude that the unlawful situation has been corrected.

I am deeply concerned that, under the law, I cannot penalize the Riggios. The only penalty that I can impose is against the license.

I cannot, however, consider Mr. and Mrs. Csernak as parties to the illegal situation which existed for many years before November 1944, when Mr. Csernak began to operate the business, and shall, therefore, only consider the part played by them in my determination of a proper suspension. Under all the circumstances I shall suspend the license for twenty days. See Re DiPaolo, supra.

Accordingly, it is, on this 16th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Pohatcong to Aquilina Riggio, t/a Valley House, for premises on High Street, Pohatcong Township, and transferred during the pendency of these proceedings to Joseph Csernak, Jr. and Julia Csernak, for the same premises, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. October 24, 1945, and terminating at 2:00 a.m. November 13, 1945.

ALFRED E. DRISCOLL
Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR THE BALANCE OF ITS TERM, WITH PERMISSION TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF 60 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

GIOVANNI SCIALES & VIRGINIA SCIALES, t/a BLACK CAT INN N/W Cor. Delaware St. & Crown Point Road West Deptford Township P.O. Thorofare, RFD, N. J.,

CONCLUSIONS AND ORDERS

Holders of Plenary Retail Consumption License C-8, issued by the Township Committee of West Deptford Township.

Benjamin F. Friedman, Esq. and Frank Sahl, Esq., Attorneys for Defendant-licensees.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded non vult to the following charges:

"1. In your application filed with the Township Committee of the Township of West Deptford, N. J., and upon which you obtained your current plenary retail consumption license for premises at Delaware Street and Crown Point Road, West Deptford Township, you answered 'No' to Question No. 30 which asks: 'Has any individual....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 one Salvatore Sciales was and is a partner in the said business; such false statement being in violation of R. S. 33:1-25.

"2. From about September 13, 1944 and until the present time, you knowingly aided and abetted the said Salvatore Sciales to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses for the aforesaid premises, thereby yourselves violating R. S. 33:1-52."

The record of the investigation discloses that some time in September, 1944, the defendant, Giovanni Sciales, and his brother, Salvatore Sciales, formed a partnership to purchase the licensed premises and business thereon, each contributing an equal sum for this purpose. The license was duly transferred to Giovanni Sciales and Virginia Sciales. Virginia is the wife of Salvatore and the license was taken in her name and that of the other partner because Salvatore is an Italian alien and, as such, not qualified to hold a liquor license in this state. Re Ferrucci, Bulletin 677, Item 5. This illegal arrangement was continued when the 1945-46 license was issued. The false statement made in the application for the current license, to wit, that no person other than the applicants had an interest in the business, is the basis for charge one.

Salvatore still retains his alien status and the unlawful situation cannot be corrected until he actually and absolutely withdraws from any interest in the business. To date no attempt has been made to have Salvatore so withdraw from the business and the illegal situation still exists. Hence, I must suspend the license for the balance of its term.

It is alleged that negotiations are presently pending for the sale of the interest of both the Sciales brothers, and if this sale is consummated they both intend to withdraw entirely from the business. If such a sale is made, or if the illegal situation is otherwise corrected, I will entertain a petition to lift the suspension and restore the license to full force and effect, provided that the said restoration shall not in any event become effective until at least sixty (60) days after the effective date of the suspension herein imposed.

Accordingly, it is, on this 16th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Township Committee of West Deptford Township to Giovanni Sciales and Virginia Sciales, t/a Black Cat Inn, for premises on N/W Corner Delaware Street and Crown Point Road, West Deptford Township, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. October 23, 1945; and it is further

ORDERED that, in the event the unlawful situation is properly corrected, an application by petition may be made to the Commissioner of Alcoholic Beverage Control for the lifting of said suspension, in accordance with the terms aforesaid.

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

DIAMOND SOCIAL CLUB)
524 1/2 Landis Avenue)
Vineland, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-5, issued by the Board of Commissioners of the Borough of Vineland.)

Philip L. Lipman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on July 29, 1945, it possessed a 4/5 quart bottle of "Gallagher & Burton's Black Label Blended Whiskey", a 4/5 quart bottle of "Fleischmann's Prepared Blended Whiskey", a 4/5 quart bottle of "Imperial Hiram Walker's Blended Whiskey" and a 4/5 quart bottle of "Three Feathers Blended Whiskey Reserve", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

A second charge of possessing slot machines is dismissed because subsequent investigation has determined that the room where the devices were kept did not constitute any part of the defendant's licensed premises.

In view that this is the first time that the defendant has been cited in disciplinary proceedings, a penalty of twenty days will be imposed on the first charge. Cf. Re Zeidner & Cohen, Bulletin 680, Item 2.

Accordingly, it is, on this 18th day of October, 1945,

ORDERED, that Club License CB-5, issued by the Board of Commissioners of the Borough of Vineland to Diamond Social Club, for premises 524 1/2 Landis Avenue, Vineland, be and the same is hereby suspended for a period of twenty (20) days, commencing at 1:00 a.m. October 24, 1945, and terminating at 1:00 a.m. November 13, 1945.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS -- ILLICIT LIQUOR -- LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 AUDITORIUM CAFE, INC.)
 T/a AUDITORIUM CAFE AND BAR)
 141 So. Mississippi Avenue)
 Atlantic City, N. J.,)
 Holder of Plenary Retail Consumption License C-211, issued by the Board of Commissioners of the City of Atlantic City.)
 -----)

CONCLUSIONS AND ORDER

Ernest M. Curtis, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on August 22, 1945, it possessed two 4/5 quart bottles of "The Blended Scotch Whisky of the White Horse Cellar 86 Proof", two 4/5 quart bottles of "King William IV V.O.P. Blended Scotch Whisky 86.8 Proof", and a 4/5 quart bottle of "Highland Queen Grand Liqueur Blended Scotch Whisky 86.8 Proof", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

Since this is the defendant's first offense, the license will be suspended for a period of twenty days. Cf. Re Zeidner & Cohen, Bulletin 680, Item 2.

Accordingly, it is, on this 18th day of October, 1945,

ORDERED, that Plenary Retail Consumption License C-211, issued by the Board of Commissioners of the City of Atlantic City to Auditorium Cafe, Inc., t/a Auditorium Cafe and Bar, for premises 141 So. Mississippi Avenue, Atlantic City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 a.m. October 24, 1945, and terminating at 12:01 a.m. November 13, 1945.

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - APPLICATION TO RECONSIDER SUSPENSION - PREVIOUS SUSPENSION ORDERED REINSTATED.

In the Matter of Disciplinary Proceedings against)

JOSEPH J. FERRUCCI)
T/a CIRCLE MARKET)
Route 6)
Netcong, N. J.,)

O R D E R

Holder of Plenary Retail Distribution License D-4 for the present fiscal year, issued by the Common Council of the Borough of Netcong, and transferred to)

ALBERT FERRUCCI and)
JOSEPH FERRUCCI,)

for the same premises.)

BY THE COMMISSIONER:

Albert Ferrucci, a non-citizen, created a "front" by concealing his interest in the license held on his behalf by his son Joseph. As a result, the license was suspended, in effect, for a period of sixty days. See Bulletin 677, Item 5.

Albert Ferrucci having become a citizen of this country, the license was then transferred to a partnership consisting of himself and his son, thus correcting the prior unlawful situation. Application was then made for a reduction of penalty and a subsequent order was entered on August 28, 1945 by which the suspension was temporarily held in abeyance after sixteen days of the suspension had been served. See Bulletin 678, Item 5.

I have given careful consideration to the penalty imposed in "front" cases motivated by reason of non-citizenship and have reached the conclusion that the nature of the violation fully warrants the penalty normally imposed, to wit, a suspension for a period of sixty days.

The order heretofore entered (Bulletin 677, Item 5) will be reinstated and the penalty reimposed. Since sixteen days of the suspension have already been served, the order herein will provide for a suspension for a net period of forty-four days.

Accordingly, it is, on this 23rd day of October, 1945,

ORDERED, that the order heretofore entered (Bulletin 677, Item 5) be reinstated and that Plenary Retail Distribution License D-4, transferred during the pendency of these proceedings by the Common Council of the Borough of Netcong to Albert Ferrucci and Joseph Ferrucci, for premises on Route 6, Netcong, be and the same is hereby suspended for a net period of forty-four (44) days, commencing at 2:00 a.m. October 29, 1945, and terminating at 2:00 a.m. December 12, 1945.

ALFRED E. DRISCOLL
Commissioner.

13. RETAIL LICENSES - TRANSFER - NO "RIGHT" TO A TRANSFER - MUNICIPAL ISSUING AUTHORITY MAY DENY TRANSFER APPLICATION IN EXERCISE OF SOUND DISCRETION.

RESIDENCE - HEREIN DISCUSSION OF MUNICIPAL ORDINANCE, OR BONA FIDE POLICY WITHOUT ORDINANCE, REQUIRING MUNICIPAL RESIDENCE AS QUALIFICATION FOR LICENSE OR LICENSE TRANSFER.

October 18, 1945

Chester B. Campbell, Chief of Police
Tenafly, New Jersey.

Dear Chief Campbell:

The Commissioner has requested my replying to your straightforward and obviously sincere letter of October 8th, pointing out that difficulties have arisen in respect to the granting of license transfers to "out of town" persons and asking "whether the Mayor and Council has to transfer a tavern license to anyone who should purchase such tavern or has the Mayor and Council the right to say who they shall issue or transfer such license to."

First, it is clear, of course, that a license may not be issued or transferred to a person disqualified from holding a license under our Alcoholic Beverage Law -- Revised Statutes 33:1-25.

No one has a "right" to a license or a license transfer. A retail license is, at most, a privilege, authorized by the State to be conferred, but which the municipal issuing authority may deny in the exercise of sound discretion. (See Meehan v. Jersey City, 73 N.J.L. 382). It follows that it is not mandatory for a municipal issuing authority to issue a license or grant a transfer to an applicant simply because he is not disqualified under the law -- Revised Statutes 33:1-25. To this effect, see Iamello v. Rumson, Bulletin 77, Item 9, in which the late Commissioner Burnett held reasonable a Rumson ordinance providing that:

"no retail license shall be issued to a natural person unless he shall have been a resident.....of the Borough of Rumson for at least one year continuously, immediately prior to the submission of the application for any such license."

We suggest that you read carefully the whole of the Conclusions in the Rumson case.

See also Tuccillo v. Princeton, Bulletin 97, Item 11. There the Mayor and Council of the Borough of Princeton had denied an application partly on the ground that the applicant was a non-resident of the Borough; and the late Commissioner Burnett stated:

"Furthermore, respondent has adopted a policy not to issue licenses except to bona fide residents of Princeton. Such a policy is reasonable.....even in the absence of formal enactment."

It would seem, however, that if a municipality is to establish a municipal residence requirement it would be preferable to do so by formal ordinance enactment which would tend to avoid a possible charge that the informal policy was not bona fide or not uniformly applied. Alcoholic beverage ordinances requiring municipal residence are not among those requiring the State Commissioner's approval pursuant to Revised Statutes 33:1-40, but if such an ordinance is

prepared for consideration by Tenafly's Mayor and Council we suggest that a copy be sent to us before its introduction so that the Commissioner's comments or suggestions, if necessary and in order, may be made in timely fashion.

You and the Mayor and Council will perhaps be aware of the fact that the statutory five-year State residence requirement (Revised Statutes 33:1-25) was changed by Chapter 46 of the Laws of 1943 so as to require that a retail license applicant must be "a resident of the State of New Jersey at the time of the submission of the application" and "Cessation of.....New Jersey residence shall be cause for suspension or revocation of the license." Several "municipal residence" ordinances, in addition to that in the enclosed Rumson bulletin item, have been before the State Commissioner on appeals from a municipal issuing authority's action upon a license application. Those appeals were decided while the five-year State residence requirement was in effect. There has, however, been no court adjudication or appeal to the State Commissioner involving the question whether or not a particular municipal residence requirement is reasonable and valid in the face of the present statute.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

By: Harold J. Saum
Assistant Deputy Commissioner.

- 14. DISCIPLINARY PROCEEDINGS - HINDERING AND FAILING TO FACILITATE INSPECTION BY ABC AGENTS, IN VIOLATION OF R. S. 33:1-35 - PERMITTING MINORS TO BE EMPLOYED ON LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-26 AND RULES 3 AND 6 OF STATE REGULATIONS NO. 13 - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 RALPH BERGER)
 T/a BERGER'S DELICATESSEN)
 5206 Ventnor Avenue)
 Ventnor City, N. J.,)
 Holder of Plenary Retail Distribution License D-4, issued by the)
 Common Council of the City of)
 Ventnor City.)
 -----)

CONCLUSIONS
AND ORDER

Frank S. Farley, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to charges alleging that (1) on August 16, 1945 he hindered and failed to facilitate an inspection, in violation of R. S. 33:1-35; and (2) and (3) he permitted minors to work on his licensed premises, such employment being in violation of R. S. 33:1-26 and Rules 3 and 6 of State Regulations No. 13.

An examination of the facts in the present case disclosed that an investigator of the Department of Alcoholic Beverage Control visited defendant's licensed premises on August 16, 1945. Observing several minors apparently employed on the premises, the investigator identified himself. The licensee thereupon directed one of the minors to leave the premises and refused the request of the ABC agent to recall this youth. The two remaining minors employed by the defendant were, respectively, fourteen and nineteen years of age. The fourteen-year-old boy, the defendant states, is his nephew and the nineteen-year-old boy was found to be his son. These boys apparently waited on customers in the defendant's premises and did other odd jobs. No employment permit had been obtained by the defendant to cover the employment of his son on the premises and no employment permit could have been obtained for the fourteen-year-old boy -- nor had defendant sought to obtain one. Cf. Re Cowan, Bulletin 338, Item 5.

The defendant's employment of minors in violation of the law, while serious, is overshadowed by his failure to facilitate an inspection by ABC agents. The defendant apparently forgot that he was in a privileged business. His failure to cooperate with the ABC agent presented an intolerable situation.

Defendant's license was suspended for five days, effective November 20, 1939, by the State Commissioner for a Fair Trade violation. Again, effective September 14, 1942, defendant's license was suspended for five days by the State Commissioner for employing a minor without necessary employment permit.

Under all the circumstances, I shall suspend defendant's license for a period of thirty-five days, less five days for the plea entered herein, or a net suspension of thirty days.

Accordingly, it is, on this 23rd day of October, 1945,

ORDERED, that Plenary Retail Distribution License D-4, issued by the Common Council of the City of Ventnor City to Ralph Berger, t/a Berger's Delicatessen, for premises 5206 Ventnor Avenue, Ventnor City, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. October 29, 1945, and terminating at 2:00 a.m. November 28, 1945.

Alfred E. Driscoll

Commissioner.