

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

BULLETIN 812

AUGUST 4, 1948

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

BULLETIN 812

AUGUST 4, 1948.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -
LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

BELL CLUB CORPORATION)
1200 Palisade Avenue)
Fort Lee, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-10 for the 1947-48)
and 1948-49 licensing years, issued)
by the Mayor and Council of the)
Borough of Fort Lee.)

Bell Club Corporation, by Michael Bufis, President.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that it pos-
sessed illicit alcoholic beverages at its licensed premises, in
violation of R. S. 33:1-50.

On May 14, 1948, an inspector of the State Department of Alco-
holic Beverage Control seized one 4/5 quart bottle labeled "Canadian
Club Blended Canadian Whisky" when his field tests indicated that the
contents of said bottle were not genuine as labeled. Subsequent
analysis by the Department chemist established that said bottle bore
a label which did not truly describe its contents.

The minimum suspension for one-bottle refill cases, in accordance
with the policy laid down in Re Rudolph, Bulletin 680, Item 1, is
fifteen days. Defendant, however, has a prior record. In 1946 its
license was suspended by the local issuing authority for ten days
upon a plea of non vult to charges alleging "hostesses" and the
employment of non-residents without permits. Moreover, Michael Bufis,
President, and a very substantial stockholder in the corporation-
defendant, at one time held a license in his individual name in Lodi.
His license was suspended by the State Commissioner for twenty days
in 1945 on a charge of possession of illicit liquor. In 1942 he suf-
fered a suspension of four days imposed by the local issuing authority,
after conviction on charges alleging "hostess activities", "immoral
activities", and selling after hours. Under all the circumstances I
shall suspend the license for forty-five days. Cf. Kravis v. Hock,
Bulletin 808, Item 6; Re Kravis, Bulletin 801, Item 2. Remitting
five days thereof because of the plea will leave a net suspension of
forty days.

Although this proceeding was instituted during the 1947-48 licens-
ing year, it does not abate but remains fully effective against the
renewal license for the licensing year 1948-49. State Regulations No.
16.

Accordingly, it is, on this 14th day of July, 1948,

ORDERED that Plenary Retail Consumption License C-10, issued for
the 1948-49 licensing year by the Mayor and Council of the Borough of
Fort Lee to Bell Club Corporation, for premises 1200 Palisade Avenue,
Fort Lee, be and the same is hereby suspended for a period of forty
(40) days, commencing at 3:00 a.m. July 21, 1948, and terminating at
3:00 a.m. August 30, 1948.

ERWIN B. HOCK
Commissioner.

2. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN CONFECTIONERY STORE - ALCOHOLIC BEVERAGES, STOCK OF MERCHANDISE, FIXTURES AND FURNISHINGS ORDERED FORFEITED - NONE OF THE PERSONAL PROPERTY EXEMPT FROM FORFEITURE.

In the Matter of the Seizure)
on May 14, 1948, of a quantity)
of beer, and stock of merchandise,)
fixtures and equipment at 621 -)
61st Street, in the Town of West)
New York, County of Hudson and)
State of New Jersey.)

Case No. 7263

ON HEARING
CONCLUSIONS AND ORDER

Morris F. Pearlman, Esq., Attorney for Frank Bailyn.
Harry Castelbaum, Esq., appearing for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of beer, and stock of merchandise, fixtures and equipment, itemized in a schedule attached hereto, seized on May 14, 1948 at Frank Bailyn's confectionery store located at 621 - 61st Street, West New York, New Jersey, constitute unlawful property and should be forfeited.

Bailyn apparently made a practice of selling beer in his establishment. He sold beer on various dates in May 1948 to an ABC agent who was there investigating his activities. Bailyn did not hold any license authorizing him to sell or serve alcoholic beverages, and the premises were not licensed for the sale of alcoholic beverages.

On May 14, 1948, after the agent purchased beer, such agent, as well as other ABC agents who joined him, disclosed their identity to Bailyn, seized the stock of beer in the place, as well as all of the merchandise and fixtures, and arrested Bailyn on charge of violating the Alcoholic Beverage Law. Bailyn gave the agents a signed statement admitting the sales of beer to the ABC agent, and stated, "I've been selling for a couple of months, but I only sell to friends -- they used to go across the street to the grocery store and buy the beer there -- so I decided to give them the beer instead."

It is clear that the seized beer was intended for sale in violation of the Alcoholic Beverage Law. Such beer is therefore an illicit alcoholic beverage. R.S. 33:1-1(i). Illicit alcoholic beverages and all other personal property seized therewith in the premises constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Pending the seizure hearing in the case, all of the seized property excepting the beer was returned to Frank Bailyn upon payment of the sum of \$1,000.00, the appraised retail value thereof, to the State Commissioner of Alcoholic Beverage Control, under protest, pursuant to R.S. 33:1-66. Bailyn has stipulated that such Commissioner shall determine in this proceeding whether that money shall be returned to him.

When the matter came on for hearing pursuant to R.S. 33:1-66, and such stipulation, Bailyn appeared with counsel and sought return of the aforesaid sum of \$1,000.00.

Request for return of the money is bottomed upon the contention that such property as was not used in the actual sale of the beer cannot and should not be forfeited and, in any event, that Bailyn could show extenuating circumstances.

It appears that the beer sold to the ABC agent, chilled in a refrigerator in the kitchen, was served and consumed at the soda fountain or counter. Bailyn's stock of beer was stored in his stock room, with other reserve stock of merchandise.

According to Bailyn, he never stocked more than two or three cases of beer, and sold it as an accommodation to his customers, does a relatively small gross business, has never been arrested or convicted of any crime, and earns but a meagre living.

His background, the motives which prompted him to violate the law and the effect of forfeiture upon his finances are immaterial and do not warrant relief from forfeiture of his property. See Seizure Case No. 7041, Bulletin 745, Item 1, Seizure Case No. 7002, Bulletin 731, Item 2, Seizure Case No. 7003, Bulletin 731, Item 3.

My authority to return property subject to forfeiture is limited to those cases where it has been established to my satisfaction that the owner has acted in good faith and has unknowingly violated the law. R.S. 33:1-66(e). The evidence establishes that Bailyn was fully aware that he was violating the law.

The contention that only property actually used or intended for use in the unlawful sale of alcoholic beverages can be forfeited has been frequently presented and uniformly rejected.

R.S. 33:1-1(y) defines unlawful property as illicit alcoholic beverages and all "fixtures and personal property located in or upon any premises, building, yard or enclosure connected with a building, in which an illicit beverage is found, possessed, stored or kept". Unlawful property is subject to forfeiture. R.S. 33:1-66.

This clear statutory language has from the very outset of the State Department of Alcoholic Beverage Control been construed to mean just what it says. Under its provisions Commissioner Burnett ordered forfeited the entire equipment of a restaurant speakeasy. Seizure Case No. 4919, Bulletin 363, Item 2. Thereafter forfeiture has followed as of course in each of many cases involving seizure of furniture, fixtures and equipment and stock of merchandise in commercial establishments where speakeasy activities were carried on. For a recent case see Seizure Case No. 7066, Bulletin 757, Item 8.

Hence, for the reasons above expressed, Frank Bailyn's request for return of the money which he deposited with me is denied.

Accordingly, it is DETERMINED and ORDERED that the beer and empty beer bottles, itemized in Schedule "A" attached hereto, constitutes unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the stock of candy store merchandise and fixtures and equipment seized at the premises, as itemized in an inventory made thereof, which inventory is referred to as if incorporated herein at length, constitute unlawful property, and the sum of \$1,000.00 representing the retail value thereof, paid under protest to the State Commissioner of Alcoholic Beverage Control by Frank Bailyn,

be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law.

ERWIN B. HOCK
Commissioner.

Dated: July 15, 1948.

SCHEDULE "A"

- 6 - cases of 12 - 32 oz. bottles of beer
- 2 - cases of 24 - 12 oz. bottles of beer
- 1 - case of 24 - 12 oz. cans of beer
- 6 - 12 oz. bottles of beer
- 19 - 32 oz. empty beer bottles
- 4 - 12 oz. empty beer bottles
- stock of candy store merchandise and fixtures and equipment at premises as itemized in an inventory made thereof in the case and which is referred to as if incorporated herein at length.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FROM MOTOR VEHICLE ON PUBLIC HIGHWAY IN VIOLATION OF R.S. 33:1-2 AND STATE REGULATIONS NO. 17 - CHARGES REGARDING TECHNICAL VIOLATIONS OF STATE REGULATIONS NO. 39 DISMISSED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GEORGE J. CARUCCI)
Pavilion Ave. & Polk Street)
Riverside, N. J.,)

CONCLUSIONS
AND ORDER

Holder of State Beverage Distributor's License SBD-18, issued by the State Commissioner of Alcoholic Beverage Control.)

-----)
Mitchell H. Cohen, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to charges (1) sale of alcoholic beverages off his licensed premises, on a public highway, contrary to R.S. 33:1-26, in violation of R.S. 33:1-2; (2) sale of alcoholic beverages from a vehicle, in violation of Rule 3 of State Regulations No. 17; and (3) using his licensed vehicle bearing transportation insignia to deliver alcoholic beverages without having in his possession bona fide invoices or manifests stating the names of the purchaser of each item of alcoholic beverages and the kind and quantity of the alcoholic beverages being delivered in said vehicle to each of said purchasers, in violation of Rule 3 of State Regulations No. 17.

The departmental file in the instant case discloses that on August 30, 1947, an employee of defendant-licensee sold a case of beer to an ABC agent. The sale in question took place from defendant's motor vehicle parked on a public highway.

It appears from the investigation in the instant matter that the employee who sold the case of beer to the ABC agent had been employed by the defendant the day prior thereto and was not familiar with the liquor law. Nevertheless, licensees are directly answerable for a violation of the Alcoholic Beverage Law and State Regulations by their employees. Cf. Re Pinto, Bulletin 639, Item 4.

Defendant also pleaded guilty to technical violations of State Regulations No. 39, pertaining to extension of credit. In view of the nature of the charges and since State Regulations No. 39 have been completely amended and revised, I shall dismiss said charges.

In view of the fact that defendant has no previous adjudicated record, I shall suspend his license for a period of ten days. Five days will be remitted for the plea, leaving a net suspension of five days. Re Pinto, supra.

Although this proceeding was instituted during the 1947-48 licensing period, it does not abate but remains fully effective against the renewal license for the 1948-49 licensing year. State Regulations No. 16.

Accordingly, it is, on this 19th day of July, 1948,

ORDERED that State Beverage Distributor's License SBD-18, issued for the 1948-49 licensing year by the State Commissioner of Alcoholic Beverage Control to George J. Carucci, for premises Pavilion Avenue and Polk Street, Riverside, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. July 26, 1948, and terminating at 9:00 a.m. July 31, 1948.

ERWIN B. HOCK
Commissioner.

4. RETAIL LICENSEES - PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION-
"PERCENTAGE CLUBS" AT TAVERNS DISAPPROVED.

July 22, 1948

Paul W. Ewing, Esq.
City Attorney
New Brunswick, N. J.

My dear Mr. Ewing:

In your letter of July 8th you ask whether it is permissible for a tavernkeeper to run a "percentage club -- that is, -- keeping a list of money spent by a customer at the bar during a year, and at the end of the year repaying him two per cent of the amount spent over the bar."

Such plan is disapproved. In the first place, it may well incite to quarrels between patron and tavernkeeper as to how much the patron is actually entitled to as his "dividend". Who is to keep track of the exact spendings of each patron, and to be in charge of the records and vouch for their accuracy? What is to happen if the proprietor sells out?

While the foregoing illustrates that the above practice is undesirable at taverns because of threat of arguments, my more fundamental objection is that the plan is merely a lure for patrons to "tank up" at the tavern in the comforting thought that 2% of everything they drink allegedly will come back into their pockets. In this light, it clearly constitutes a scheme "unduly designed to increase consumption of alcoholic beverages" (R.S. 35:1-39).

In view of the foregoing, I specifically disapprove of the scheme in question.

Very truly yours,
ERWIN B. HOCK
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

LOUIS FRIEDBERG)
927-29 Boardwalk)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-156 for the 1947-48 licensing year, and Plenary Retail Consumption License C-216 for the 1948-49 licensing year, issued by the Board of Commissioners of the City of Atlantic City.)

Samuel Backer, 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 charges alleging that (1) in his license application filed for the 1947-48 licensing year, he failed to reveal that Joseph Hyman, Isadore Sacks and Harry Neff were the real and beneficial owners of the license and business conducted thereunder, and (2) since May 15, 1944 he permitted the said individuals to exercise the rights and privileges of his successive licenses.

It appears that the license for the premises in question had been operated during the past three summer seasons under an arrangement whereby the defendant leased the license and the business conducted thereunder to Joseph Hyman and Isadore Sacks for 10% of the profits, with the lessees retaining the balance of the profits for themselves. During the 1947-48 licensing year, the lessees hired Harry Neff and paid him a percentage of the profits. In effect, the transaction resulted in the defendant "farming out" his license. Cf. Maione, Bulletin 806, Item 1.

The defendant has recently commenced business at his licensed premises for the current summer season and, so far as appears, the prior unlawful arrangement no longer exists and the defendant is presently conducting the license and business thereunder solely on his own behalf.

The license will be suspended for a period of twenty days. Cf. Maione, supra.

Accordingly, it is, on this 21st day of July, 1948,

ORDERED that Plenary Retail Consumption License C-216, issued for the current licensing year by the Board of Commissioners of the City of Atlantic City to Louis Friedberg, 927-29 Boardwalk, Atlantic City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 9:00 a.m. July 27, 1948, and terminating at 9:00 a.m. August 16, 1948.

ERWIN B. HOCK
Commissioner.

6. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

July 22, 1948

The next official publication of minimum resale prices pursuant to Fair Trade rules (Regulations No. 30) will become effective on September 1, 1948. Price listings must be filed with the offices of this Department not later than Monday, August 2, 1948.

It is my decision that the publication be a complete pamphlet superseding the June 1948 complete publication.

In submitting price lists to the Department for this complete publication, it is important to note the following:

- (1) A complete schedule of all items offered for sale by manufacturers and wholesalers in this State may be submitted. Pursuant to a Department ruling, brands of alcoholic beverages (including malt beverages) **not** listed in Fair Trade publications may not be price-advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in New Jersey.
- (2) Traditional markups of 33 1/3% on spirits, 45% on cordials and liqueurs and 50% on wines should be maintained.
- (3) It is earnestly suggested that when reductions in minimum resale prices are effected, at the same time a comparable reduction **should** be made in the wholesale prices to be listed in the official monthly wholesale price pamphlet.
- (4) Only manufacturers and wholesalers owning brands, or wholesalers having specific written authorization from the owners of brands, may file price listings for publication in minimum resale price pamphlets.
- (5) The Department will continue to accept price filings which set forth a permissive discount for case lot purchases of listed brands. Where listers of brands choose to publish a permissive case lot discount, the phrase "Discount of _____% permitted on case lot purchases" should be used.
- (6) Not later than August 12, 1948, manufacturers and wholesalers of alcoholic beverages (except malt beverages) shall submit new Fair Trade contracts containing an explicit statement of the prices stipulated in the listing filed on or before August 2nd, and an adequate description of the articles to which they refer. The new contract will supersede any contract now on file and must be entered into with any licensed New Jersey retailer. Any standard form of Fair Trade contract will be acceptable.

Notification of the proportionate share of aggregate expenses involved in the publication of the complete pamphlet will be made to participating companies as soon as the pamphlet is mailed to all retail licensees.

ERWIN B. HOCK
Commissioner.

7. APPELLATE DECISIONS - BORDEN AND POINT PLEASANT PROPERTIES, INC. v. POINT PLEASANT BEACH AND KULLER

Cases No. 1 and No. 2)
 William R. Borden and Point Pleasant)
 Properties, Inc.,)
 Appellants,) ON APPEAL
 v.)
 Mayor and Borough Council of the Borough) ORDER OF DISCONTINUANCE
 of Point Pleasant Beach, and Minnie)
 Kuller, t/a Hotel Arnold,)
 Respondents.)
 -----)
 Harold Feinberg, Esq., Attorney for Appellants.
 W. Douglas Blair, Esq., Attorney for Respondent, Mayor and Borough
 Council.
 William J. Blair, Esq., Attorney for Respondent, Minnie Kuller.

BY THE COMMISSIONER:

These appeals are from the granting of a place-to-place transfer to include an addition to premises at 419 Richmond Avenue, Point Pleasant Beach, for which the respondent Minnie Kuller holds a plenary retail consumption license, and also from the renewal thereof for the current licensing year.

All of the interested parties hereto have stipulated that the appeals may be withdrawn. Since no reason appears to the contrary,

It is, on this 23rd day of July, 1948,

ORDERED that the within appeals be and the same are hereby discontinued.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)
 UNION GRILL, INC. (A Corp.),)
 T/A Union Grill,)
 173 French Street,) CONCLUSIONS
 New Brunswick, N. J.,) AND ORDER

Holder of Plenary Retail Consump-)
tion License C-75, issued by the)
Board of Commissioners of the)
City of New Brunswick.)

-----)
Union Grill, Inc., by Vera Selinger, Secretary & Treasurer,
William F. Wood, Esq., Appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that on June 28, 1948, it possessed an illicit alcoholic beverage at its licensed premises, to wit, a 4/5 quart bottle of "Teacher's Highland Cream Perfection of Blended Scotch Whisky", which was not genuine as labeled, in violation of R.S. 33:1-50.

alcoholic beverages for and on behalf of said Great Notch Winery, Inc., in your automobile not bearing a transportation insignia issued by the State Commissioner of Alcoholic Beverage Control; in violation of R.S. 33:1-52.

"2. On or about March 25, 1948 you, as holder of a solicitor's permit authorizing your employment by Great Notch Winery, Inc., holder of a New Jersey Wine wholesale license, offered for sale and solicited an order for the purchase of alcoholic beverages otherwise than to the extent duly allowed and permitted by law and by the license of said Great Notch Winery, Inc., viz., an order for 5 cases (12 gallons) of Kosher Concord Grape Wine from Yankel's Hotel, Brighton and Pacific Avenues, Atlantic City, N. J., not the holder of any New Jersey retail or wholesale alcoholic beverage license; in violation of Rule 5 of State Regulations No. 14.

"3. On divers occasions between February 12, 1948 and April 9, 1948, you, without being the holder of any license so to do, sold alcoholic beverages at Emerald Hotel, 116 South Missouri Avenue, Atlantic City, N. J., to Thomas F. Beck and Doris Beck, consumers, contrary to R.S. 33:1-2; in violation of R.S. 33:1-50."

Defendant pleaded non vult as to charges (1) and (2), and as a result of defendant's failure to appear at the date set for the hearing a plea of not guilty as to charge (3) was entered by the Hearer.

The facts constituting the basis for the charges filed herein are sufficiently set forth in the charges to obviate the necessity of repetition.

Defendant, in a written memorandum, denies that he sold the wine to Thomas F. Beck and Doris Beck, as alleged in charge (3). Defendant claims that the wine was given gratis to these people. Even if this be so, the gifts were made by defendant who then held a solicitor's permit. Under the Alcoholic Beverage Control Law, the gratuitous delivery or gift of any alcoholic beverage by any licensee is defined as a "sale". See R.S. 33:1-1(w). I find defendant guilty of charge (3).

Defendant's solicitor's permit will be revoked notwithstanding the fact that the permit has expired and no renewal thereof has been obtained. State Regulations No. 16, Rules 1 and 2.

Accordingly, it is, on this 29th day of July, 1948,

ORDERED that Solicitor's Permit No. 2855, heretofore issued to Isador Fishman for the licensing year 1947-48, be and the same is hereby revoked, effective immediately.

ERWIN B. FOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING AND GAMBLING ON LICENSED PREMISES - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

FRANK A. MEYER,)
416 Broad Avenue,)
Palisades Park, N. J.,)

Holder of Plenary Retail Con-)
sumption License C-10, for the)
1947-48 and 1948-49 licensing)
periods, issued by the Borough)
Council of the Borough of)
Palisades Park.)

CONCLUSIONS
AND ORDER

Joseph W. Marini, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging that:

1. On March 23rd and 24th, 1948, you allowed, permitted and suffered bookmaking and gambling on and about your licensed premises; in violation of Rule 7 of State Regulations No. 20.
2. On March 24, 1948, while investigators of the State Department of Alcoholic Beverage Control were investigating the above alleged bookmaking occurring on that date, your employee, Michael F. Casey, hindered and failed to facilitate such investigation; in violation of R.S.33:1-35.

On March 23 and 24, 1948, two agents of the State Department of Alcoholic Beverage Control placed bets on horse races, with a "bookmaker" at the defendant's licensed premises. On the latter date, other agents and the local police "raided" the premises and found the evidence of the illegal activity. During the course of the "raid", defendant's bartender who was then in charge of the licensed premises attempted to hide or destroy some of the seized evidence and was quite uncooperative in other ways.

Apparently, the licensee was not present at any time during the course of the investigation. However, it is apparent that his bartender knew of the illegal activity and, in fact, cooperated with the bookmaker in the conduct of such activity. The knowledge of the bartender is imputable to the defendant.

This is the first time defendant has been found guilty of a violation of the law. I shall suspend his license for twenty days on the first charge, with an additional fifteen days for the second charge. Cf. Kobylarz, Bulletin 688, Item 6. Under the circumstances, five days will be remitted because of the plea, leaving a net suspension of thirty days.

Although this proceedings was instituted during the 1947-48 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1948-49. State Regulations No. 16.

Accordingly, it is, on this 29th day of July, 1948,

ORDERED that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Palisades Park to Frank A. Meyer, 416 Broad Avenue, Palisades Park, be and the same is hereby suspended for a period of thirty (30) days, commencing at 3:00 a.m., August 4, 1948, and terminating at 3:00 a.m., September 3, 1948.

ERWIN B. HOCK
Commissioner.

12. APPELLATE DECISIONS - OCEAN DRIVE OPERATING COMPANY, INC. v. SEA BRIGHT

Cases No. 1 and No. 2)

Ocean Drive Operating Company, Inc.,)

Appellant,)

ON APPEAL

v.)

CONCLUSIONS AND ORDER

Mayor and Council of the Borough of)
Sea Bright,)

Respondent.)

-----)
Parsons, Labrecque, Canzona & Combs, by Robert H. Maida, Esq.,
Attorneys for Appellant.
A. Henry Giordano, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant applied for a transfer of its plenary retail consumption license, which it held for the last licensing year at premises 958 Ocean Avenue, Borough of Sea Bright, to premises at 1145 Ocean Avenue. When this was denied, the appellant then unsuccessfully applied for a transfer and renewal of said license to premises at 1138 Ocean Avenue. Hence, these appeals.

Since a common issue pervades both cases, they will be disposed of together herein.

The denial of the first application was voted by the respondent at its meeting of June 8, 1948. Among other reasons, its action was predicated upon the existence of a sufficient number of licensed establishments in the vicinity of the proposed site. These premises at 1145 Ocean Avenue are situated about 200 feet south of another tavern located in the same block. About 500 feet to the north, on the same side, there is another tavern.

Across the street, where the second proposed premises are located at 1138 Ocean Avenue, there is another tavern in the same block, separated therefrom by only 25 feet in a southerly direction. Less than 500 feet away to the north, there are three consumption and two distribution establishments. The transfer and renewal to these premises was denied on June 28, 1948, also because of the adequate number of licensed places located in that area.

It is apparent that, with six consumption and two "package" licenses already located within a radius of less than 1000 feet of both of the proposed premises, the neighborhood is already well supplied with liquor outlets and respondent's refusal to place an

additional liquor license there was based upon a sound exercise of the discretion vested in it, in the first instance, to determine the number of licenses which may exist in any particular area of its municipality.

I have examined the only other issue raised by the appellant, to wit, that the denials were the result of bias and prejudice, and find that it has failed to sustain the burden of proof on this issue.

The action of the respondent in both cases is affirmed.

Accordingly, it is, on this 29th day of July, 1948,

ORDERED that the petitions of appeal in both cases be and the same are hereby dismissed.

ERWIN B. HOCK
Commissioner.

13. APPELLATE DECISIONS - ALTON v. ATLANTIC CITY.

Elizabeth B. Alton, Joseph M.)
Barstow and Charles O. Barstow,)
Executors of the Estate of Harry)
M. M. Barstow, Sr.,)

Appellants,)

v.)

Board of Commissioners of the)
City of Atlantic City,)

Respondent.)

ON APPEAL

CONCLUSIONS AND ORDER

Moore, Butler & McGee, Esqs., by Charles S. Moore, Esq., Attorneys
for Appellants.

Daniel J. Dowling, Esq., Attorney for Respondent.

Emerson Richards, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This matter comes before me as an appeal from respondent Board of Commissioners' action in denying an application for permission to make certain changes in the interior arrangement of the appellants' licensed premises.

On April 15, 1948, appellants filed an application under the provisions of Section 3(c) of an Ordinance of the City of Atlantic City, adopted July 16, 1936, as amended August 10, 1939. Said Section provides as follows:

"The interior plan, the nature of the business, and the place of display of alcoholic beverages to be consumed off the premises shall not be changed by the holder of a plenary retail consumption license without first applying for or receiving the permission of the Board of Commissioners. Such application for permission shall include the diagram, explanation and information provided for by paragraphs 3(a) and 3(b) hereof, and shall be in the same form and advertised in the same manner as application for licenses.

Objections to the granting of such permission may be filed with the Clerk of the municipality and in such event, the same practice and procedure shall apply as in cases of objections filed to the granting of a license."

The application was denied on May 8, 1948, after a hearing pursuant to the terms of said ordinance.

On May 18, 1948, notice of, and petition of, appeal were served by appellants, and on May 20, 1948, the said notice of appeal and petition were filed with the State Commissioner of Alcoholic Beverage Control pursuant to State Regulations No. 15. Hearing on the appeal was fixed for Friday, June 4, 1948.

On May 28, 1948, after the filing of the appeal but prior to the hearing thereon, the Governor signed Chapter 98, P.L. 1948, which, by its terms, became effective immediately.

This statute, entitled "AN ACT concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes," generally limits future sales for off-premises consumption by holders of plenary retail consumption licenses to the public barroom, "provided, however, that where, prior to the effective date of this act, alcoholic beverages in original containers for off-premises consumption were sold and displayed for sale by the holder of such license, either to the exclusion of sale for consumption on the licensed premises or upon a portion of the licensed premises other than the public barroom, such sale and display shall be permitted as heretofore and notwithstanding renewal or transfer of the license either from person to person or place to place, subject to rules and regulations to be promulgated by the Commissioner." Bulletin 806, Item 10.

The appellants are not within any of the excepted clauses set forth in Chapter 98, P.L. 1948.

It is well settled that the law to be applied in deciding a case on appeal is the law in effect at the time of the appellate decision, and a change in the law between the time of the action appealed from and the appellate decision requires the Court to apply the changed law. It is the status of the law prevailing at the time of the decision by the appellate tribunal that is controlling. Socony-Vacuum Oil Co., Inc. v. Mt. Holly Twp., 155 N.J.L. 112.

This is also the rule in these quasi-judicial proceedings before the Commissioner of Alcoholic Beverage Control. DePadova v. Little Falls, Bulletin 770, Item 9.

On June 3, 1948, the State Commissioner of Alcoholic Beverage Control promulgated State Regulations No. 32, pursuant to the provisions of the said statute. Bulletin 806, Item 11. There has, however, been no compliance with the provisions of this regulation.

The further argument made by the appellants regarding the constitutionality of the statute may not be considered herein. Such issue rests with the courts and an administrative agency must accept a legislative act as constitutional until a contrary declaration is made by a qualified judicial body. Schwartz v. Essex Co. Bd. of Taxation, 129 N.J.L. 129. DePadova v. Little Falls, supra.

Accordingly, it is, on this 29th day of July, 1948,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

14. STATE LICENSES - NEW APPLICATIONS FILED.

American Express Field Warehousing Corporation
1473-1499 South 8th St., Camden, N. J.

Application for Public Warehouse License filed July 22, 1948.

Spector Motor Service, Inc.
156 Rome St., Newark, N. J.

Application for Transportation License and Additional Warehouse
at 1535 Paterson Plank Road, Secaucus, New Jersey, filed
July 26, 1948.

Erwin B. Hock
Commissioner.