

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

BULLETIN 490

JANUARY 21, 1942

1. NEW LEGISLATION - HOTELS AND RESTAURANTS - EMPLOYEES - HOTELS AND RESTAURANTS MAY EMPLOY, ON AND AFTER DECEMBER 27, 1941, PERSONS FAILING TO QUALIFY AS TO AGE OR RESIDENCE WITHOUT PERMIT, PROVIDED SUCH PERSONS DO NOT SERVE, SELL OR SOLICIT THE SALE, OR PARTICIPATE IN THE MIXING, PROCESSING OR PREPARATION OF ALCOHOLIC BEVERAGES.

Assembly Bill No. 594 was approved by Governor Edison on December 27, 1941, and thereupon became Chapter 405 of the Laws of 1941.

This Act makes Chapter 295, P. L. 1941, effective December 27, 1941 (date approved by the Governor) instead of on July 4, 1942.

In the interest of economy, we are not reprinting the new Act at this time, as no change is made in the language quoted in full in Bulletin 474, Item 4, except to add the following new matter:

"2. This act shall take effect immediately."

ALFRED E. DRISCOLL,
Commissioner.

Dated: January 7, 1942.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSEES MUST FOLLOW PRICES PUBLISHED IN OFFICIAL BULLETIN AND NOT RELY UPON INFORMATION RECEIVED FROM THIRD PARTIES - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

CITY WINE & LIQUOR STORES, INC.,)
4500 Bergenline Ave.,)
Union City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-244, issued by the)
Board of Commissioners of the)
City of Union City.)

City Wine & Liquor Stores, Inc., by Benjamin Lerner,
President and Treasurer.
Abraham Merin, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

It appears from the Department file that, on October 9, 1941, an A. B. C. investigator purchased a pint bottle of "Old Mr. Boston" Blackberry Nectar Liqueur for \$1.00 from Leo Lerner, the son of one of the officers of the corporation and an employee of the

licensee. Under the statute and pursuant to the rules of the Department, the minimum consumer price at which a pint bottle of this liqueur could be sold at the time was \$1.10. See Bulletin 416.

The defendant-licensee, while frankly admitting that the sale was made below the Fair Trade price, asks that clemency be shown in the imposition of the penalty on the ground that the violation was inadvertent. Benjamin Lerner, President of the licensee corporation, claims that it was his impression that this item, an 80 proof liqueur, was not on Fair Trade, its sale having been discontinued by the wholesalers for over two years, and that the Blackberry Nectar listed on Fair Trade referred only to a 70 proof liqueur and not the liqueur which was sold. He states that this belief was strengthened when a liquor salesman told him that the 80 proof liqueur was not protected under the Fair Trade listing.

Reference to the Fair Trade listing of "Old Mr. Boston" Blackberry Nectar Liqueur discloses the fact that no special proof is indicated. Hence it covers all Blackberry Nectar Liqueur irrespective of proof. The licensee should have followed the listings.

Licensees must learn to make their price changes in accordance with the prices published in the official bulletins regardless of information received from salesmen or other sources. Re The Tiger Food Co., Inc., Bulletin 377, Item 11.

I am satisfied, however, that there are no aggravating circumstances. Hence, since this is the licensee's first violation of record, it is entitled to the minimum penalty imposed in cases of this kind on entry of a guilty plea.

The license will be suspended for ten days. Further following precedent in this type of case, five days of said penalty will be remitted because of the guilty plea, making a net suspension of five days.

Accordingly, it is, on this 7th day of January, 1942,

ORDERED, that Plenary Retail Consumption License C-244, heretofore issued to City Wine & Liquor Stores, Inc. by the Board of Commissioners of the City of Union City, be and the same is hereby suspended for a period of five (5) days, commencing Monday, January 12, 1942, at 3:00 A.M., and concluding Saturday, January 17, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

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

In the Matter of Disciplinary
Proceedings against

SARAH CHERLIN,
T/a BENSON & CO.,
328 Morris Ave.,
Elizabeth, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-
bution License D-13, issued by
the Municipal Board of Alcoholic
Beverage Control of the City of
Elizabeth.

Connolly & Hueston, Esqs., Attorneys for Sarah Cherlin.
Abraham Merin, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of selling alcoholic beverages on May 20, 1941, at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30, adopted pursuant to P. L. 1938, c. 208 (R. S. Cum. Supp. *33:1-23.1).

Reports of Department agents, who took part in the investigation, show that in the afternoon of May 20, 1941 one of the agents entered the licensed premises and there purchased two quart bottles of Wilson "That's All" Whiskey for the sum of \$4.50. The minimum consumer price at which a quart bottle of this whiskey could be sold at this time was \$2.59. Bulletin 450.

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

By entering a guilty plea in ample time before the date set forth herein, the defendant-licensee has saved the Department the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Although the violation occurred during the last licensing period which expired June 30, 1941, the current license is subject to whatever penalty may be imposed. Regulation 15.

Accordingly, it is, on this 8th day of January, 1942,

ORDERED, that Plenary Retail Distribution License D-13, heretofore issued to Sarah Cherlin, T/a Benson & Co., by the Municipal Board of Alcoholic Beverage Control, be and the same is hereby suspended for a period of five (5) days, commencing January 12, 1942, at 2:00 A.M. and ending January 17, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - BEVERAGE, WHILE SUBSTANTIALLY THE SAME IN PROOF AS GENUINE SAMPLE, CONTAINED MORE THAN DOUBLE THE AMOUNT OF SOLIDS - LICENSEE ASSUMES THE RISK IF ILLICIT LIQUOR IS FOUND ON PREMISES - IN THE ABSENCE OF AGGRAVATING CIRCUMSTANCES, 10 DAYS' SUSPENSION FOR FIRST OFFENSE WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

A. J. MORITKO,)
718-720 State Street,)
Perth Amboy, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License No. C-100, issued by)
the Board of Commissioners of the)
City of Perth Amboy.)

A. J. Moritko, Defendant-Licensee, Pro Se.
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to the charge of possessing illicit liquor in violation of the Alcoholic Beverage Law. See R. S. 33:1-50.

On January 27, 1941, a federal agent, on testing some eight open bottles of liquor at the defendant's tavern, seized one such bottle labeled "Calvert's 'Special' Blended Whiskey." Subsequent analysis by the federal chemist disclosed the telling fact that the seized liquor, while substantially the same in proof as genuine samples of this brand, contained more than double the amount of solids. Such unusual and telltale amount of solids well warrants the chemist's conclusion that the bottle in question had apparently been refilled with other liquor.

For the illicit character of such "refills" and the fact that their mere possession by a licensee is a violation, see Re Haney, Bulletin 304, Item 13; Re Jacobs, Bulletin 315, Item 8; Re DiGiacomo, Bulletin 461, Item 1; Re Cutter, Bulletin 479, Item 12.

In mitigation, the defendant declares that he was wholly unaware that anything was actually wrong with this liquor until it was seized by the federal agent; that he himself never tampered with it; and that his only helpers at the tavern, his wife and a porter, have assured him they know nothing about it. He further states that the bottle was part of the open liquor stock which he took over when buying the tavern in July 1940 (some six months before the occasion in question) and hence suggests that the refilling was done during the days of his predecessor.

In the Cutter case, supra, I recently discussed the grave ramifications of the "refill" problem, and no useful purpose can be served in repeating such discussion here. Suffice it to say that "refills" constitute a serious menace to sound liquor control since they not only involve a fraud upon the consuming public but also open the door wide to the sinister practice of using bootleg liquor. For the late Commissioner's comprehensive review of the subject, see Re Jacobs, supra.

To insure the relentless wiping out of this "refill" evil, every licensee must be held strictly and sternly responsible for any "refills" found in his open liquor stock even though he may be personally innocent. As "master of his house," he is expected, at his peril, to take all possible steps to guarantee that none of his open liquor stock is tainted with any such illicit liquor.

Hence, in the present case, the defendant, having had the illicit liquor in question in his stock for at least six months, cannot avoid responsibility or penalty even if, as he suggests, the bottle was merely a "carry-over" from his predecessor. This Department has been willing, on request, to check a tavern's open liquor stock for any licensee who is buying such tavern. Where such a purchaser elects to take over the open stock and fails to use this or other adequate means to test and weed out any possible illicit liquor, he must be viewed as necessarily assuming the risk if illicit liquor is subsequently found on his premises.

Since this is the defendant's first conviction and there are no aggravating or other attendant circumstances warranting a more substantial penalty, his license will, in line with my past decisions in such cases, be suspended for ten days. See Re Cutter, supra; Re Hattie, Inc., Bulletin 482, Item 2; Re VanVooren, Bulletin 485, Item 7.

Accordingly, it is, on this 8th day of January, 1942,

ORDERED, that Plenary Retail Consumption License No. C-100, heretofore issued by the Board of Commissioners of the City of Perth Amboy to A. J. Moritko for 718-720 State Street, Perth Amboy, be and the same is hereby suspended for a period of ten (10) days, commencing January 13, 1942, at 2:00 A.M., and concluding at 2:00 A. M. January 23, 1942.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FRONT - STOCKHOLDER HOLDING STOCK AS FRONT FOR PERSON DISQUALIFIED BY REASON OF NON-RESIDENCE AND CRIMINAL RECORD - CORPORATE FICTION MAY NOT BE USED AS A MEANS OF ACCOMPLISHING THAT WHICH IS OTHERWISE UNLAWFUL - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

TWELVE EAST PARK STREET)

TAVERN, INC.,)

12 East Park St.,)

Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-934, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

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Martin Simon, Esq., Attorney for Defendant-Licensee.

Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded nolo contendere to the following charges:

"1. In your applications dated June 17, 1940 and June 16, 1941, filed with the Municipal Board of Alcoholic Beverage Control of the City of Newark, upon which Plenary Retail Consumption Licenses C-928 for the year 1940-41 and C-934 for the year 1941-42 were granted, you falsely stated 'No' in answer to Question 22 therein, which asks, 'Has any.....individual other than the stockholders hereinbefore set forth, any beneficial interest, directly or indirectly, in the stock held by said stockholder?', whereas in truth and fact Samuel Gietter had such an interest in the stock of Louis Gietter and Edna Gietter, listed as stockholders in Question 21 of said license applications; said false statements being in violation of R. S. 33:1-25.

"2. In your applications for licenses aforesaid, you falsely stated 'No' in answer to Question 27 therein, 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 Samuel Gietter had such an interest; said false statements being in violation of R. S. 33:1-25.

"3. Since on or about June 27, 1940 and until the present time, you knowingly aided and abetted Samuel Gietter, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

The facts disclose that since April 1939 Louis Gietter has held five of the twelve shares of the stock of this corporation as a "front" for Samuel Gietter. The reason therefor was not only that Samuel Gietter did not become a five-year resident of this State, as is required by R. S. 33:1-12.1, until November 1941, but also because of his criminal record which includes several arrests, a conviction in 1931 of the National Prohibition Act and an indictment in New York in connection with the notorious fur racket for conspiracy to commit grand larceny and bribery returned in March 1939 and to which he pleaded guilty in February 1941.

Previous to April 1939, and from October 1938, the same five shares of stock were held for Samuel Gietter by his wife Olga. When it was discovered that she did not have the necessary residence requirement, proceedings were instituted against the licensee as a result of which the stock then standing in the name of Olga Gietter was transferred to Louis Gietter. See Re 12 East Park Street Tavern, Inc., Bulletin 343, Item 9, decided August 15, 1939. Had it then appeared that the stock transfer to Louis Gietter was not bona fide but rather a further subterfuge to permit Samuel Gietter, an unqualified individual, to continue to maintain his interest in the liquor business operated by the corporate licensee, the license at that time might well have been revoked instead of merely being suspended for ten days.

In addition, the license of this corporation was again suspended for thirty days on a charge of possession of illicit alcoholic beverages. Re Twelve East Park Street Tavern, Inc., Bulletin 481, Item 9, decided October 15, 1941. It should be noted that even as late as these latter proceedings I viewed the prior violation as "technical" in character since the instant case, which clearly demonstrated the contrary, had not as yet been heard.

Licenses must learn that they cannot play fast and loose with this Department. Charges, as here, that a corporate device is being used as an artifice to permit individuals to accomplish that which they are disqualified from doing as individuals, are of the utmost seriousness, involving, as they do, gross fraud on the state, the issuing authority, as well as this Department. The corporation is a creature of the State. We cannot permit the corporate fiction to be used as a means of accomplishing that which is otherwise unlawful. Sound public policy, as well as the provisions of the Alcoholic Beverage Law and the rules of this Department, dictate otherwise. It is only in the exercise of a most lenient discretion that a licensee is permitted to effect a correction of such an unlawful situation and to escape with a suspension rather than a revocation. However, where the fraud is not corrected but further illegally perpetuated, as in this case, despite the dispensation previously allowed the licensee, the only penalty that is clearly indicated is a revocation of the license.

It is interesting to note that on the face of the record in this case the licensee has unconsciously admitted to yet another breach of the statute - namely, that of permitting Samuel Gietter, a disqualified person for the reasons stated, to be employed on the licensed premises as an occasional bartender.

Under the circumstances and in view of the previous record of this licensee as outlined above, I shall revoke the license.

The licensee has recently been adjudicated a bankrupt in Federal Bankruptcy Court and a receiver appointed for it. This does not in any wise bar or abate these proceedings, nor affect the penalty to be imposed. For the cogent and carefully considered reasons for this rule, see Re Agostino, Bulletin 382, Item 1.

Accordingly, it is, on this 9th day of January, 1942,

ORDERED, that Plenary Retail Consumption License C-934, heretofore issued to Twelve East Park Street Tavern, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - LICENSEE MAY NOT LIMIT OR RESTRICT THE MAXIMUM QUANTITY OF ALCOHOLIC BEVERAGES TO BE SOLD TO A CONSUMER IN ORIGINAL CONTAINERS FOR CONSUMPTION OFF THE LICENSED PREMISES - VIOLATION OF CHAPTER 171, P. L. 1939 (R. S. CUM. SUPP. *33:1-82) - 10 DAYS' SUSPENSION - PRICE WARS DISCUSSED - PREVIOUS RECORD IN THIS CASE WARRANTS 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary
Proceedings against

MUTUAL WINE STORES, INC.,
747 Bergen Avenue,
Jersey City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribu-
tion License D-130 for the year 1941-
42, issued by the Board of Commissioners
of the City of Jersey City.

David Berman, Esq., Attorney for Mutual Wine Stores, Inc.
Abraham Merin, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of limiting and restricting the maximum quantity of alcoholic beverages to be sold to a consumer, in violation of P. L. 1939, c. 171 (R. S. Cum. Supp. *33:1-82).

Chapter 171, P. L. 1939, provides as follows:

"1. No retail licensee shall hereafter limit or restrict the maximum quantity of alcoholic beverages which he shall sell to a consumer in original containers for consumption off the licensed premises; provided, however, nothing herein contained shall prevent a retail licensee from refusing to sell alcoholic beverages in a quantity which shall be in excess of the quantity permitted by the Federal Tax stamps held by him. (R. S. 33:1-82).

"2. Any retail licensee who shall advertise the sale of alcoholic beverages of any particular brand or manufacture, and who, subsequent to such advertising, shall dispose of his entire stock thereof shall, when said disposal occurs, forthwith make known such fact to consumers by placing written notices of said disposal upon the licensed premises. At least one of said notices shall be placed so that it may be viewed from the outside of the licensed premises." (R. S. 33:1-83).

This statute was published in full on July 13, 1939, in Bulletin 334, Item 9. At that time Commissioner Burnett, commenting on the statute, stated:

"The purpose of this Act is to prevent licensees from luring the public into their establishments by advertising a particular brand of alcoholic beverages at a bargain but upon entry into the licensed premises limiting the amount of the purchase to one bottle while, at the same time, endeavoring to sell them other alcoholic beverages by high pressure sales methods."

Departmental records disclose that on October 25, 1941 the defendant-licensee advertised Dewar's White Label Scotch Whisky at \$1.99 a 4/5 quart. On that day, an A. B. C. investigator entered the premises and sought to buy a case of Dewar's White Label Scotch Whisky as advertised. Defendant's salesman, subsequently identified as Joseph Golub, Manager of the store, in refusing to make the sale as requested, stated: "I only sell one bottle to a customer." This restriction on the maximum quantity to be sold by the licensee was followed by the disclosure by the A. B. C. investigator of his identity. An investigation of defendant's premises revealed that it had on hand at the time five full cases of Dewar's White Label Scotch Whisky in the rear stock room, ten bottles behind the counter and five bottles in the show window, more than sufficient to fill the order given by the investigator. Joseph Golub sought to excuse himself for refusing to sell the amount requested by stating that he was trying to make the whisky last as long as possible by giving only one bottle to a customer.

The defendant-licensee, while frankly admitting the violation, asks that clemency be shown in the imposition of a penalty on the ground that this is the first instance where charges have been preferred for violation of this law.

The Commissioner cannot refrain from noting the background against which this clear violation of the statute is projected. At the time the A. B. C. men entered the defendant-licensee's premises, the latter was an active participant in a predatory price war which had not only attracted considerable notoriety and unfavorable comment, but had resulted in the price of Scotch Whisky in some instances being reduced considerably below the wholesale price of the same whisky.

It has been the practice of a few licensees who are either unwilling or unable to recognize their responsibilities under the Alcoholic Beverage Control Law to sell alcoholic beverages not protected under the Fair Trade Law at ridiculously low or "cut" prices, solely for the purpose of luring customers into their places of business and then, in order to protect themselves from taking too great a loss, to either limit the quantity to be sold to one person or tell the customer that they are just out of the item. This is usually followed by an effort on the part of the salesman to pawn off some inferior article on which the house makes a handsome profit. This practice must be stopped.

In addition to being a practice replete with fraud on the public, it runs counter to the Department's opposition to the undue stimulation of the sale of alcoholic beverages. If a licensee wishes to engage in predatory price wars, where an item is not protected under the Fair Trade Law, he must accept the financial responsibility that accompanies his action. There is a difference between a legitimate price reduction, which will find support with the Department, and a predatory price war. Licensees will be encouraged by the Department, wherever possible, to pass on savings resulting from economic operation or foresight in purchase, or otherwise, to New Jersey customers. On the other hand, disastrous, predatory price wars, with their resultant unfair competition to legitimate merchandisers, will find only opposition from the Department.

Ordinarily, I would suspend the license for ten days. However, this is not the licensee's first offense. If experience does not indicate that this is a sufficient deterrent to future violations of the statute in question, this penalty will be increased.

In this case, however, in 1936 the defendant's license was suspended for two days for allowing prohibited signs in the store window in violation of Rules 2 and 3 of State Regulations No. 21. Apparently this violation, like the present, occurred during the period of a price war. In 1936 counsel for the licensee, seeking clemency for his client, said:

"We just state that this was during the period of the late price war. He (referring to licensee) did things that he should not have done, but he has been taught his lesson. He has been particularly worried about this violation, and he will not in the future do anything."

In passing it should be noted that vicious price wars breed violations, increasing not alone the problem of enforcement and the cost thereof, but are accompanied by a public reaction against the industry itself. While I am advised that different stockholders now control the licensee, nonetheless the corporation lives on, and those who purchase the corporate stock of a licensee assume the corporation's record for law observance or violation, as the case may be, as well as its assets.

Under all the circumstances, the license will be suspended for fifteen days.

By entering a plea of guilty, the licensee has saved the Department the time and expense of proving its case. Five days of the penalty will therefore be remitted.

Accordingly, it is, on this 9th day of January, 1942,

ORDERED, that Plenary Retail Distribution License D-130, heretofore issued to Mutual Wine Stores, Inc. by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing January 12, 1942, at 2:00 A.M., and ending January 22, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS BY HOLDER OF SOLICITOR'S PERMIT TO QUESTIONS 20 AND 22 IN 1940 APPLICATION IN VIOLATION OF R. S. 33:1-25 - CONVICTION FOR VIOLATION OF NEW JERSEY PROHIBITION ENFORCEMENT ACT REQUIRED AFFIRMATIVE ANSWER THERETO - PREVIOUS RECORD - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

ALBERT MELINI,)
171 South Myrtle Street,)
Vineland, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Solicitor's Permit)
No. 1377 issued by the State Com-)
missioner of Alcoholic Beverage)
Control for the 1940-41 period and)
Solicitor's Permit No. 2016 issued)
for the 1941-42 period by the Depart-)
ment of Alcoholic Beverage Control.)

Abraham Merin, Esq., Attorney for the State Department of
Alcoholic Beverage Control.
Frazer, Stoffer and Jacobs, Esqs., by Nathan L. Jacobs, Esq.,
Attorneys for Albert Melini.

BY THE COMMISSIONER:

The defendant-permittee has pleaded guilty to the following charges:

"1. In your application for solicitor's permit, dated June 12, 1940 and filed with the Department of Alcoholic Beverage Control of the State of New Jersey, upon which Solicitor's Permit No. 1377 was granted, you falsely stated 'No' in answer to Question 20 therein which asks, 'Have you ever been convicted of any crime?', whereas, in truth and fact, you were convicted on May 21, 1925 of illegal sale and possession of liquor in violation of the New Jersey Prohibition Enforcement Act; said false statement being in violation of R. S. 33:1-25.

"2. In the aforesaid application, you falsely stated 'No' in answer to Question 22 therein which asks, 'Have you ever been convicted of any violation of a Federal or State Law concerning the manufacture, sale, possession, distribution or transportation of alcoholic beverages?', whereas, in truth and fact, you were convicted of violating the New Jersey Prohibition Enforcement Act, as hereinabove set forth; said false statement being in violation of R. S. 33:1-25."

Since 1934, when the defendant-permittee first applied for his solicitor's permit, he has consistently answered in the negative similar questions in his permit applications.

Department records disclose that the defendant was arrested in 1925 for the violation of the Prohibition Enforcement Act and was sentenced to the Cumberland County Jail for six months.

Although Melini admits the present violation, he seeks to excuse himself stating that it was his understanding that a conviction for a Prohibition enforcement violation did not involve moral turpitude and, therefore, was not a conviction which he should disclose in his permit application.

It is possible that, believing that he was not actually convicted of a crime involving moral turpitude, Albert Melini honestly answered "No" to Question 20, which asks, "Have you ever been convicted of any crime?"

It is difficult for me to believe that anyone who has served a term in jail could honestly answer "No" to Question 22, which asks, "Have you ever been convicted of any violation of a Federal or State Law concerning the manufacture, sale, possession, distribution or transportation of alcoholic beverages?" The question is specific and direct and requires but one answer.

Examination of the indictment under which Melini was convicted discloses that he was charged with sale and possession of alcoholic beverages. Such convictions under the Prohibition Enforcement Act, in the absence of aggravating circumstances, may not involve moral turpitude. Hence, had Melini originally disclosed on his application that he had been so convicted, he probably would not have been disqualified from holding a solicitor's permit.

As to penalty: Since this conviction apparently is Melini's only one and in view of his good record and reputation which he has maintained since 1925, I shall suspend his permit for 15 days. By entry of the guilty plea, the Department has been saved the time and expense of proving its case. Five days of the penalty imposed will, therefore, be remitted.

Although this proceeding was instituted during the last licensing term, which expired June 30, 1941, it does not in anywise abate but remains fully effective against the defendant's permit for the current 1941-42 term.

Accordingly, it is, on this 12th day of January, 1942,

ORDERED, that Solicitor's Permit No. 2016, heretofore issued to Albert Melini by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of ten (10) days, commencing January 19, 1942, at 3:00 A.M., and ending January 29, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

8. ELIGIBILITY - CONVICTION OF POSSESSION OF MARIHUANA CIGARETTES (A NARCOTIC) INVOLVES MORAL TURPITUDE - APPLICANT DISQUALIFIED BY SUCH CONVICTION.

January 13, 1942

Re: Case No. 402

Applicant seeks a determination as to whether his conviction in 1941, in a Special Sessions Court of this State, of possessing marihuana cigarettes (a narcotic), for which he was given a suspended sentence of six months in jail and placed on probation for three years, involved the element of moral turpitude, and hence disqualifies him from working as a musician for a liquor licensee of this State.

What occurred, as developed by the testimony of the applicant and one of the police officers by whom he was arrested, was that police had searched the home of applicant's brother, on information that he was violating the law, and had found nothing; that later, the brother was brought to a hospital after a stabbing affray, and seven marihuana cigarettes were found on his person; that the officers continued their investigation in an endeavor to uncover commercialized sale of the cigarettes; that in the course of such investigation, about a month after the brother was admitted to the hospital, the officers picked up applicant at his place of employment and found two marihuana cigarettes upon his person.

Applicant swears that he had the cigarettes for his own use; that he has smoked such cigarettes, in all, between eight and twelve times extending over a period of a year; that he never had more than two in his possession and never sold any of such cigarettes.

His only other conviction is for creating a disturbance, for which he was fined in police court, and which is not a crime within the meaning of R. S. 33:1-25, 26.

The attorney for the municipality wherein applicant resides urged at the hearing that applicant should be ruled ineligible for employment by a liquor licensee because it is undesirable to have a drug addict employed on licensed premises. With this I agree. Drug addicts, whether convicted of violating the narcotic laws or not, should not be tolerated either as holders of a liquor license or employees of a liquor licensee.

Our previous rulings that conviction of unlawfully possessing drugs does not, per se, involve moral turpitude (see Re Case No. 77, Bulletin 387, Item 9; Re Case No. 301, Bulletin 358, Item 6; Re Case No. 7, Bulletin 224, Item 2) do not apply to this case because by none of such rulings was a drug addict permitted to become associated with the liquor industry. In Case No. 77, supra, applicant claimed

that he had never used narcotics and that he merely possessed them as security for a loan; in Case No. 301, supra, applicant's request for a solicitor's permit was denied because it did not appear conclusively that he had been entirely cured of the drug habit; and in Case No. 7, supra, applicant's crime was held to involve moral turpitude because he ran a "dope joint."

It is, therefore, recommended that applicant be advised that he is not eligible for employment by a liquor licensee in this State.

Harry Castelbaum,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - OVER PROOF - PREVIOUS RECORD - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

MARTINS, INC.,)
27 Church Street,)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-126, issued by the)
Board of Alcoholic Beverage Control)
of the City of Paterson.)

Richard E. Silberman, Esq., Attorney for Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that:

"1. On or about August 28, 1941 you possessed illicit alcoholic beverages in that two 4/5 quart bottles labeled 'Canadian Club Blended Canadian Whiskey' found in your licensed premises, contained alcoholic beverages which varied from a genuine sample used for comparative purposes in proof, and acid and solid content, in violation of R. S. 33:1-50.

"2. On or about the date aforesaid and prior thereto, you, not being the holder of a brewery, distillery, winery or rectifier's license, bottled an alcoholic beverage for sale and resale in that you refilled two 4/5 quart bottles labeled 'Canadian Club Blended Canadian Whiskey' with other whiskey, in violation of R. S. 33:1-78."

The evidence shows that, on August 28, 1941, Junior Inspectors Miller and Schrap of the Alcohol Tax Unit, Bureau of Internal Revenue, visited the licensed premises. They examined eighty opened bottles of liquor and seized from the back bar the two opened bottles mentioned in the charges when their tests showed that the contents of these bottles were over proof. Subsequent analysis by Chemist Blakeley, of the same unit, disclosed that the contents of the seized bottles tested as follows:

	<u>Proof</u>	<u>Acid Contents per 100 liters</u>	<u>Solid Contents per 100 liters</u>
Bottle (1)	100.4	48	122
Bottle (2)	100.7	48	121

The chemist further testified that a recent analysis of a genuine sample of this product disclosed a proof of 90.8, an acid content of 20.4 grams per 100 liters and a solid content of 103 grams per 100 liters. Referring to the seized bottles, the chemist testified that, in his opinion, "the contents of these two bottles are not Canadian Club Whiskey, but that the bottles have been refilled with some other brand of whiskey."

The Vice-President of licensee corporation testified that he employs four bartenders regularly and two additional bartenders on Saturday nights; that he never tampered with the contents of the seized bottles and that he has no knowledge that any of his bartenders tampered with the contents thereof.

It thus appears from the evidence that the contents of the seized bottles were about ten degrees higher in proof, and higher in acids and solids than the contents of a genuine sample. Licensee does not question this evidence, but, by its Vice-President, merely alleges that it has no knowledge as to the manner in which the violation occurred.

The many ramifications of the problem of "refills" and the necessity of imposing stern penalties for this type of violation despite the professed innocence of the licensee is discussed at length in Re Cutter, Bulletin 479, Item 12.

I find the licensee guilty as charged.

In similar cases where the licensee had no prior record and no aggravating circumstances appeared, I have suspended the license for ten days. Re Lachiewicz, Bulletin 488, Item 5. In this case, however, it appears that, in November 1941, the Board of Alcoholic Beverage Control of the City of Paterson suspended defendant's license for five days after finding defendant guilty on charges of being open and making sales during prohibited hours in March 1941. Because that violation occurred before the present violation, I shall consider it in fixing a penalty in this proceeding. While there appear to be no aggravating circumstances in the present case, the licensee has a prior record, and hence I shall suspend its license in this proceeding for fifteen days.

Accordingly, it is, on this 13th day of January, 1942,

ORDERED, that Plenary Retail Consumption License C-126, heretofore issued to Martins, Inc. for premises 27 Church Street, Paterson, by the Board of Alcoholic Beverage Control of the City of Paterson, be and the same is hereby suspended for fifteen (15) days, commencing January 19, 1942, at 3:00 A.M., and terminating February 3, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

10. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1941
TO DECEMBER 31ST, 1941 AS CERTIFIED BY ISSUING AUTHORITIES

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

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered	Number Licen- ses in Effect	Total Fees Paid
	No.	Fees	No.	Fees	No.	Fees	No.	Fees	No.	Fees	Revoked		
	Issued	Paid	Issued	Paid	Issued	Paid	Issued	Paid	Issued	Paid	Expired		
Atlantic	468	\$ 174,356.76	60	\$ 21,050.00	11	\$ 1,020.18			3	\$ 329.76	3	539	\$ 196,756.70
Bergen	819	270,098.05	241	57,478.66	47	4,439.18	34	\$1,528.97	5	962.04	10	1136	334,620.86
Burlington	194	62,379.86	17	4,050.00	30	3,610.62	1	25.00			1	241	70,065.48
Camden	445	189,542.19	53	19,192.26	60	5,540.82			1	164.19	3	556	214,439.46
Cape May	124	51,350.00	11	3,150.00	5	500.00						140	55,000.00
Cumberland	80	23,931.37	7	1,700.00	26	2,742.81						113	28,374.18
Essex	1402	703,205.91	353	167,058.00	85	11,051.24	20	999.18	1	235.71	1	1860	882,550.04
Gloucester	113	30,201.04	10	1,393.84	6	300.00						129	31,894.88
Hudson	1638	672,221.64	272	108,461.92	46	5,626.85	52	2,100.00			2	2006	788,410.39
Hunterdon	82	21,270.00	1	300.00	1	150.00			1	125.70	2	83	21,845.70
Mercer	437	183,911.21	44	11,200.00	35	4,350.48			1	101.06	2	515	199,562.75
Middlesex	611	235,996.66	45	11,990.10	33	2,708.69	1	25.00	3	488.94	4	689	251,209.39
Monmouth	506	204,264.02	73	20,628.00	24	2,518.59	6	225.00	27	8,401.99	27	609	236,037.60
Morris	338	97,493.51	71	17,850.00	28	2,350.00	1	25.00	15	2,134.68	16	437	119,853.19
Ocean	180	77,724.16	28	9,800.00	7	683.80					1	214	88,207.96
Passaic	899	345,689.83	124	35,315.40	26	3,073.89	15	655.74	2	326.97	4	1062	385,061.83
Salem	50	15,750.00	4	550.00	10	868.42						64	17,168.42
Somerset	189	65,009.21	24	5,575.00	9	875.00						222	71,459.21
Sussex	157	33,382.80	13	2,001.44	4	210.00			3	450.00	6	171	36,044.24
Union	557	273,696.59	127	42,342.47	57	6,687.18	18	804.17	1	375.00	3	757	323,905.41
Warren	136	37,542.32	13	2,307.50	18	1,853.84	1	35.00	5	685.65	5	168	42,424.31
TOTALS	9425	\$3,769,017.13	1591	\$543,508.55	568	\$61,161.57	149	\$6,423.06	68	\$14,781.69	90	11711	\$4,394,892.00

ALFRED E. DRISCOLL, Commissioner.

Respectfully submitted,
 Erwin B. Hock,
 Deputy Commissioner.

11. DISQUALIFICATION - APPLICATION TO LIFT - CRIME OF ROBBERY INVOLVES MORAL TURPITUDE - CONTINUED EMPLOYMENT IN OTHER THAN ALCOHOLIC BEVERAGE INDUSTRY LESS HAZARDOUS FOR PETITIONER - APPLICATION DENIED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 165

BY THE COMMISSIONER:

Petitioner, in this proceeding, requests that his disqualification resulting from convictions of various crimes be removed pursuant to R. S. 33:1-31.2.

The following is a resume of petitioner's convictions: In 1927, when eighteen years of age, breaking, entering and larceny, for which he was sentenced to ten days in jail; in 1927, stealing coal, thirty days in jail; in 1928, stealing coal, thirty days in jail; in 1928, disorderly conduct, sentence suspended; in 1930, theft of bathing suits, ten days in jail; in 1932, disorderly conduct, sentence suspended; in 1933, robbery, sentenced to the reformatory and released on parole in 1934; in 1937, fined for driving a motor vehicle without a license. In addition, in 1926, 1932 and 1938, he was held on suspicion, but no charges were preferred against him.

The crime of robbery clearly involves moral turpitude, and hence, applicant is ineligible to hold a license or to work for a licensee unless relief is afforded to him herein.

Although petitioner, during the five years last past, has not been convicted of a crime within the meaning of R. S. 33:1-25, 26, that fact, of itself, does not entitle petitioner to the relief sought. Re Case No. 155, Bulletin 486, Item 6. Under the statute, I must be satisfied that his association with the alcoholic beverage industry will not be contrary to the public interest.

In view of the petitioner's extensive and comparatively fresh record, I am not convinced that his association with the alcoholic beverage industry will not be contrary to the public interest.

The evidence shows that since petitioner's release from the reformatory he has been employed in various jobs, mainly as a helper in the furniture moving business, and has earned sufficient to support his family. His continued employment in lines other than the alcoholic beverage industry will be likely to be less hazardous for him because of his previous record.

The petition is therefore denied.

Alfred E. Driscoll
Commissioner.

Dated: January 14, 1942.