

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

BULLETIN 737

NOVEMBER 13, 1946.

TABLE OF CONTENTS

ITEM

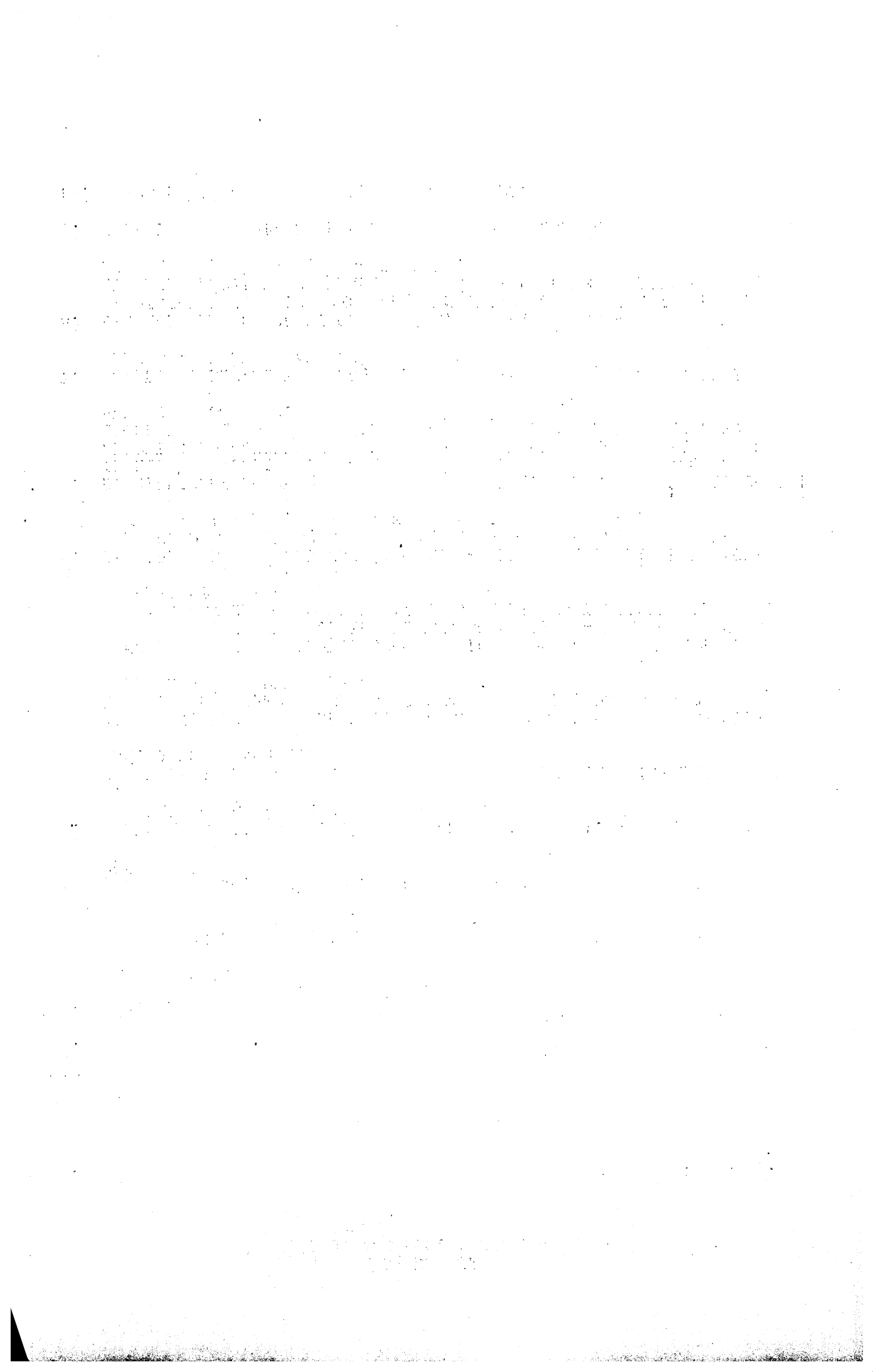
1. APPELLATE DECISIONS - MEADOWBROOK SOCIAL CLUB v. TRENTON.
2. DISCIPLINARY PROCEEDINGS (Wanaque) - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

RULE TO SHOW CAUSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED AS ABOVE - RULE DISMISSED.
3. APPELLATE DECISIONS - CALDWELL WINE & LIQUOR CO., INC. v. CALDWELL.
4. STATE REGULATIONS NO. 39 - CREDIT - RULES 2(a), 4(a) AND 4(b) AMENDED, EFFECTIVE NOVEMBER 20, 1946.

DEFAULTING RETAILER TO REMAIN IN DEFAULT FOR TEN (10) DAYS AFTER MAKING FULL PAYMENT.

MANUFACTURERS AND WHOLESALERS TO GIVE RETAILERS WARNING NOTICE TEN (10) DAYS BEFORE END OF THIRTY-DAY CREDIT PERIOD - FORM OF WARNING NOTICE PRESCRIBED.

MANUFACTURERS AND WHOLESALERS TO FILE COPY OF WARNING NOTICE WITH COMMISSIONER ONLY IF RETAILER DEFAULTS -- THEN COPY OF WARNING NOTICE TO BE FILED WITH COMMISSIONER TOGETHER WITH COPY OF DEFAULT NOTICE.
5. DISCIPLINARY PROCEEDINGS (Camden) - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.
6. DISCIPLINARY PROCEEDINGS (Hillsborough Township) - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.
7. APPELLATE DECISIONS - SUBURBAN COCKTAIL LOUNGE, INC. v. EAST ORANGE - ORDER REMANDING.
8. DISCIPLINARY PROCEEDINGS (Rumson) - SALE OF ALCOHOLIC BEVERAGES BY DISTRIBUTION LICENSEE AND PERMITTING CONSUMPTION THEREOF ON LICENSED PREMISES CONTRARY TO TERMS OF LICENSE - LICENSE SUSPENDED FOR A PERIOD OF 90 DAYS.
9. FAIR TRADE - NOTICE OF SUPPLEMENTAL PUBLICATION.
10. STATE LICENSES - NEW APPLICATIONS FILED.



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

BULLETIN 737

NOVEMBER 13, 1946.

1. APPELLATE DECISIONS - MEADOWBROOK SOCIAL CLUB v. TRENTON.

MEADOWBROOK SOCIAL CLUB,)
Appellant,)
-vs-) ON APPEAL
BOARD OF COMMISSIONERS OF THE) CONCLUSIONS AND ORDER
CITY OF TRENTON,)
Respondent)

Frank S. Katzenbach, III, Esq. and Emanuel Kaplan, Esq.,
Attorneys for Appellant.
John A. Brieger, Esq., Attorney for Respondent.

This is an appeal from the action of the respondent municipality in denying renewal of appellant's club license for the year 1946-47, for premises located at 725 North Clinton Avenue, Trenton.

Appellant asserts that it is a bona fide social club; that its application for renewal was, in all respects, proper, and that its application was denied without hearing and without just cause and also without giving the appellant an opportunity to appear and answer any charges "which might have been the reason and basis for respondent's action".

Respondent contends that the appellant is not a bona fide club; that in its applications filed for the years 1944-45, 1945-46 and 1946-47, it made false and fraudulent statements; and, generally, that the refusal to grant the license was based upon information secured after a proper statutory investigation had been made. Respondent's further contention that no hearing was necessary is supported by Rule 8 of State Regulations No. 2, which provides:

"No hearing need be held if no such objections shall be lodged (but this in nowise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant."

A study of the testimony and exhibits makes unavoidable the conclusion that the principal activities of the club center around its bar. Some evidence was offered by the club officers as to the civic activities of the club, such as making contributions for various charitable purposes, keeping in touch with those who were in service during the war, and sponsoring a soft ball team in a local league, but the specific instances cited are few and far between.

The club offered in evidence its roster of members, its minute book for the year 1946, and apparently the book kept by its treasurer or financial secretary showing its disbursements for the years 1945 and 1946. A study of those shows that, while its membership roster listed a substantial number of members, the books indicated that comparatively few of its members paid any dues whatsoever. Its record of disbursements showed some payments by check and a substantial number of cash payments for items which were used in connection with the operation of the bar. Its minute book for 1946, which was the only one produced, showed regular meetings only in January and February and one special meeting, presumably, on February 14, 1946.

The minutes indicated that the January meeting and the February 14th meeting were called to order by Edward Crush, president of the club. However, he testified he was not president at that time. A photostatic copy of a page from its check book showed one check signed in blank by Charles Soriero, who was listed as treasurer of the club. Significantly, the minutes do not show that the renewal of the license and payment of the fee therefor were ever authorized.

Mrs. Moore, an Alcoholic Beverage Inspector of Trenton, testified that she made an investigation after the filing of the application for renewal. She testified that she endeavored to interview the listed officers of the club and tried to locate various members who were listed on the roster of membership filed with the application, without success; and that, as a result of certain information obtained in her interview with one of the former officers, she checked the applications for 1944, 1945 and 1946 and ascertained that, while the applications were apparently signed by Edward Crush as president, Mr. Crush was not, in fact, the president and actually did not sign the applications. The Inspector testified that she had thereupon recommended to the respondent that the license be denied, basing her recommendation on the fact that in previous applications fraud had been practiced on the municipality by the manner in which the applications were filed; that a drinking orgy had been in progress during restricted hours shortly prior to a stabbing affray at the rear door of the club on May 7, 1946; that a long series of acts of the appellant in previous years involved failure of the officers to cooperate with the authorities; and that questionable conduct occurred on the licensed premises which indicated, in her opinion, illegal activities — principally, sales during prohibited hours.

In addition to the foregoing, the club was pointedly and specifically warned about its lax operation in January 1943, when its license was suspended for a period of ten days for selling alcoholic beverages to non-members, in violation of Rule 5 of State Regulations No. 7 and R. S. 33:1-2. See Re Meadowbrook Social Club, Bulletin 549, Item 4. At that time, with reference to collateral charges alleging that the club was a front for Soriero, its alleged treasurer, this Department stated:

"The method of operation by the club is open to criticism. It is evident that the minutes and records have been kept in a very lax fashion. If the club has not already made arrangements to do so, it must arrange at once to turn over the money received from the sale of alcoholic beverages to its proper officers, who should pay all bills, salaries and other expenses and keep proper records. The minute book and list of members must be brought up to date immediately."

It is evident from the record in this case that the quoted warning fell on deaf ears. I find no evidence whatsoever of any attempt made by this club to comply with any of the recommendations made in 1943. The club evidently chose to continue operating in the same lax manner, which definitely raises the question whether or not the club was bona fide or whether it was being operated for the benefit of a few individual members. It certainly warrants the conclusion that its operations mainly centered around the bar, to the exclusion of any bona fide social activity.

The action of the club in filing its applications for renewal for 1944-45 and 1945-46 without its president's own signature (if, indeed, there were a president in existence at that time) constitutes at least an imposition on the municipality, if not a fraud. While the 1946-47 application appears to be in proper form so far as the execution thereof is concerned, nevertheless, the respondent was justified in considering the entire picture, including the previous conduct of the appellant, in deciding whether or not to renew its license.

Under the circumstances, the action of respondent was proper. It will, therefore, be affirmed and the appeal dismissed. Zicherman v. Driscoll, 133 N. J. L. 586.

Accordingly, it is, on this 7th day of November, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

2. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

RULE TO SHOW CAUSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED AS ABOVE - RULE DISMISSED.

In the Matter of Disciplinary Proceedings against
JOSEPH MARESCA
T/a MEADOWBROOK INN
Meadowbrook Avenue
Wanaque, N. J.,

Holder of Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Wanaque, and transferred during the pendency of these proceedings to
ANGELO SCRIVANI
T/a MEADOWBROOK INN,

for the same premises.

CONCLUSIONS AND ORDERS

Joseph Maresca, Defendant-licensee, Pro se.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensee pleads guilty to the charge that he listed Wanaque, New Jersey as his residence in both the application for transfer of a plenary retail consumption license and in the application for renewal of said license, whereas in fact and truth he resided at 101 Park Place, Brooklyn, New York; such false statement being in violation of R. S. 33:1-25.

The departmental file discloses that, in March, 1946, defendant leased certain premises, consisting of a tavern, picnic grounds and bungalows, from one Angelo Scrivani. In the application for transfer, as well as in the application for renewal of the liquor license for the 1946-47 licensing year, defendant listed his residence as being in Wanaque, New Jersey. In response to another question, defendant answered in the affirmative that he was an actual and bona fide resident of New Jersey. During an investigation of the matter, however, defendant admitted that he resided with his family in Brooklyn, New York, and was a voter and taxpayer in that city.

Since these proceedings were commenced, the license has been transferred to Angelo Scrivani, the former licensee, subject to the outcome of these proceedings and any suspension which may be imposed herein. State Regulations No. 16. Under all the circumstances, I

shall dismiss the rule to show cause, and shall suspend the license now held by Angelo Scrivani for a period of ten days. Re Meyers and Phelan, Bulletin 635, Item 4; Re Heesch, Bulletin 635, Item 9.

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 1947. Re Solomon, Bulletin 586, Item 2.

Accordingly, it is, on this 7th day of November, 1946,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Wanaque to Joseph Maresca, t/a Meadowbrook Inn, for premises on Meadowbrook Avenue, Wanaque, and transferred during the pendency of these proceedings to Angelo Scrivani, t/a Meadowbrook Inn, for the same premises, be and the same is hereby suspended for a period of ten (10) days, the time to be fixed by subsequent order as aforesaid; and it is further

ORDERED, that the rule to show cause why said license should not be cancelled be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

3. APPELLATE DECISIONS - CALDWELL WINE & LIQUOR CO., INC. v. CALDWELL.

CALDWELL WINE & LIQUOR CO., INC.,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE BOROUGH)	
OF CALDWELL,)	
Respondent)	

George R. Sommer, Esq., Attorney for Appellant.
Julius Y. Krill, Esq., Attorney for Respondent.

This is an appeal from respondent's refusal to renew, for the fiscal year 1946-47, appellant's plenary retail distribution license for premises at 470 Bloomfield Avenue, Caldwell.

Dolores Bader is the beneficial owner of all of the stock of appellant corporation. Renewal was denied solely because respondent was of opinion that Dolores Bader is not a fit person to be connected with the alcoholic beverage industry.

Testimony was produced by respondent herein that Dolores Bader admitted to a Federal narcotic agent that she smoked a certain opium pipe found in her home on November 30, 1944, on which date several containers of solution of opium and a can of opium were also found in her home. The Federal agents also testified that on the same date Dolores Bader was found to be in actual possession of a bottle of Yen Shi Suey, a solution of opium, which was discovered in the purse which she was carrying when apprehended. In addition, the Federal agents said that they found, in a bedroom wastebasket, the torn scraps of a letter addressed to "Henry V. Meyers, 470 Bloomfield Avenue, Caldwell, N. J., c/o Caldwell Wine and Liquor." The context

of this letter, although it referred merely to dealings in "lots", might under the circumstances be interpreted as referring to traffic in narcotics.

The foregoing information, although known to the Federal agents since November 1944, was first made available to respondent on June 24, 1946. Acting in reliance thereon, respondent denied renewal of the license of appellant. Although the denial occurred without giving the licensee an opportunity to be heard, no hearing is necessary in cases where the issuing authority has determined not to issue a license. Rule 8, State Regulations No. 2. In any event, hearing de novo was afforded on appeal pursuant to Rule 6 of State Regulations No. 15, at which hearing the testimony set forth above was adduced by respondent.

Except for the Municipal Clerk, the only witness called by appellant was Dolores Bader, who chose not to answer any questions with reference to the events of November 30, 1944 on the ground of personal privilege against self-crimination. The burden of establishing that the action of a respondent issuing authority was erroneous and requires reversal rests with the appellant. Rule 6, State Regulations No. 15. Obviously under these circumstances the appellant has failed to sustain its burden since I have before me only the uncontroverted testimony offered by the respondent.

An issuing authority indubitably has the right to deny a license or renewal thereof where it appears that the applicant is an unfit person. Hodanish v. Trenton, Bulletin 121, Item 6; Adler v. Camp, Bulletin 256, Item 5. Significantly, the Hodanish case involved an applicant who was arrested and charged with possession of illicit alcoholic beverages, together with her mother with whom she was living. The mother pleaded non vult, but the case against the applicant was nolle prossed. In affirming denial of license, the late Commissioner Burnett said:

"At the hearing appellant testified that she has never been engaged in bootlegging activities. It appears that one of the principal reasons why the issuing authority refused to transfer the license to her was because they believed that she has been engaged in such activities. It is true that there is no direct evidence upon which to base such a supposition, but it cannot be said that their suspicions are entirely unfounded in view of the fact that she is living with her mother who admittedly violated the provisions of the Control Act, and also because appellant, in the latter part of 1934, purchased an automobile (which she now owns) for the sum of \$1150.00, despite her scant earnings and a long period of unemployment. It was also testified by an Investigator for the City of Trenton that appellant's reputation was 'not so good'.

"There is no conviction against appellant, let alone conviction for a crime involving moral turpitude. Nevertheless, it is competent for municipal issuing authorities to confine their selection of licensees to those who are clearly worthy. Speranzo v. Millburn, Bulletin 57, Item 8. Appellant is not disqualified by statute from receiving a license, but respondent has the power and is under the duty to examine into the character and fitness of all applicants, and to deny the application of those who they determine are unfit to receive a license. A determination by municipal issuing authority that just cause exists for the denial of

an application should, on appeal, be given considerable weight. Moss v. Trenton, Bulletin 37, Item 13; Orofino v. Millburn, Bulletin 45, Item 15; cf. Sylvester v. South Belmar, Bulletin 38, Item 15.

"As was said in the case of Iamello v. Rumson, Bulletin 77, Item 9:

"The dispensation of alcoholic beverages from time immemorial has been recognized as impregnated with public interest. The character of the persons to whom the privilege of making such sales is entrusted is of utmost importance -- perhaps in the long run the most effective safeguard against abuses."

"There is sufficient in the record to show that respondent's adverse determination to appellant was not unreasonable."

Nor is the rule any different because this is an application for renewal rather than a new license. Like a preceding new license, a renewal thereof is still a special privilege which in New Jersey no one has a right to demand. Zicherman v. Driscoll, 133 N. J. L. 586, wherein the Court observed:

"The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses." (Underscoring ours.)

There appeared to be ample evidence before the local issuing authority to support its action and, likewise, at the hearing on appeal, to warrant affirmance of its action. Ex parte ruling in Re Bowen, Bulletin 189, Item 9, is not contrary since there it appeared that denial was contemplated solely because the applicant had been indicted. Obviously, the mere fact of indictment of an applicant is insufficient to deny an application, whereas the facts giving rise to the indictment, if reasonably determined by the issuing authority to exist, may be. It was competent for the issuing authority to consider the fitness of Dolores Bader in passing on the application of appellant notwithstanding that she had been merely indicted for (even though not yet convicted of) the crime of illegal possession of opium. Its determination is entitled to and will receive great weight on this appeal.

In view of the foregoing, I cannot find that the action of respondent was erroneous. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 8th day of November, 1946,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the extension of appellant's 1945-46 license, granted by order dated June 27, 1946, to permit appellant to operate its business pending disposition of this appeal, be and the same is hereby terminated and that appellant cease any alcoholic beverage activity thereunder forthwith.

ERWIN B. HOCK
Deputy Commissioner.

4. STATE REGULATIONS NO. 39 - CREDIT - RULES 2(a), 4(a) AND 4(b)
AMENDED, EFFECTIVE NOVEMBER 20, 1946.

DEFAULTING RETAILER TO REMAIN IN DEFAULT FOR TEN (10) DAYS AFTER
MAKING FULL PAYMENT.

MANUFACTURERS AND WHOLESALERS TO GIVE RETAILERS WARNING NOTICE TEN
(10) DAYS BEFORE END OF THIRTY-DAY CREDIT PERIOD - FORM OF WARNING
NOTICE PRESCRIBED.

MANUFACTURERS AND WHOLESALERS TO FILE COPY OF WARNING NOTICE WITH
COMMISSIONER ONLY IF RETAILER DEFAULTS - THEN COPY OF WARNING
NOTICE TO BE FILED WITH COMMISSIONER TOGETHER WITH COPY OF DEFAULT
NOTICE.

TO ALL NEW JERSEY LICENSEES:

State Regulations No. 39 (Extension of Credit by Manufacturers and Wholesalers to Retail Licensees) have been in operation for more than a year. Experiences gained in the administration of the regulations have demonstrated their effectiveness toward maintaining an orderly process of uniform maximum credit terms. But most important, the limitation of credit terms to a maximum of thirty days has tended to free retail licensees from economic shackles resulting from the practice of "loading up" beyond their actual purchasing capacities and abilities to pay.

A review of the hundreds of default notices filed by wholesalers against retail licensees reveals the startling conclusion that a preponderantly larger number of retailers are placed on the default list principally through their negligence in properly checking the dates of their invoices for merchandise received, and because many retailers have been careless in watching for the deadline for paying within the thirty-day term prescribed by the regulations.

In an effort to reduce radically the number of defaulting retail licensees, the Department has decided to require wholesalers to serve a warning notice to each retail licensee indebted to them for the purchase of alcoholic beverages, ten days before the expiration of the thirty-day credit period. Furthermore, in all fairness and in the light of the whole purpose of the credit regulations, the Department feels that a retailer who becomes in default despite his receipt of the prescribed ten-day warning notice, should not have his name removed from the default list until ten days after the date of payment of the invoice as to which he was placed in default.

Accordingly, Rules 2(a), 4(a) and 4(b) of State Regulations No. 39 are amended effective November 20, 1946, to read as follows:

"Rule 2. For the purposes of these Regulations:

"(a) A retail licensee shall be deemed in 'default' if he has failed to make payment in full for alcoholic beverages, sold to him after the effective date of these regulations by a manufacturer or wholesaler, within thirty (30) days after delivery to him of such alcoholic beverages, and he shall be deemed to remain in default until such full payment is made and for ten (10) days following the date of such payment.

"Rule 4(a). Each manufacturer and wholesaler shall give written warning notice, personally or by mail, to each retail licensee indebted to him for the purchase of alcoholic beverages, ten (10) days before the expiration of the thirty-day credit period provided in Rule 2(a). The warning notice shall contain the following statement:

"Pursuant to amended Rule 4(a) of State Regulations No. 39, you are hereby given advance notice that payment for alcoholic beverages delivered to you on _____ (date)

invoiced in the amount of \$ _____ has not as yet been made in full. Unless full payment is made by (here insert date when the thirty-day credit period expires) a notice of default must be filed against you with the Department of Alcoholic Beverage Control.

"Each manufacturer and wholesaler shall give written notice, by registered mail, to each retail licensee who is in default to him under Rule 2(a), within five (5) days after the default occurs. The notice shall state the date of delivery in respect to which the default exists and the amount of money in which the retailer is in default, and shall contain the following statement: 'Rule 5 of State Regulations No. 39 prohibits you from accepting delivery of any alcoholic beverages from any manufacturer or wholesaler except for cash until you have paid in full the amount of default shown in this notice and for a period of ten (10) days following the date of such payment.'

"Rule 4(b). Each manufacturer and wholesaler shall file with the Commissioner a copy of each written notice of default required under paragraph 2 of Rule 4(a) within five (5) days after the particular default occurs, and shall file together with such copy of notice of default a copy of the ten-day warning notice required under paragraph 1 of Rule 4(a)."

Rule 2(a), as amended, provides that a defaulting retailer shall remain in default not only until full payment is made but for a period of ten days after such payment.

Rule 4(a), as amended, provides that manufacturers and wholesalers shall give to retailers an advance notice of ten (10) days, warning them that if they have not paid in full by the end of the thirty-day credit period provided in Rule 2(a), they will be duly reported in default.

Rule 4(b), as amended, provides that a manufacturer or wholesaler shall file with the Commissioner, together with the copy of the default notice heretofore required, a copy of the ten-day warning notice required by Rule 4(a) as amended. A copy of the ten-day warning notice is not to be filed with the Commissioner if the particular retailer makes payment in full within the thirty-day credit period. In other words, the manufacturer or wholesaler shall file the ten-day warning notice with the Commissioner only when he reports the particular retailer to be in default. Then a copy of the ten-day warning notice shall accompany the filed copy of the default notice.

ERWIN B. HOCK
Deputy Commissioner.

Promulgated Friday, November 8, 1946.

The following Notice of Caution required by Rule 4(a) is hereby prescribed:

WARNING NOTICE

Date _____

TO: _____
(Name of Licensee)

(Trade Name, if any)

(Street Address) (City) (County)

Pursuant to amended Rule 4(a) of State Regulations No. 39, you are hereby given advance notice that payment for alcoholic beverages delivered to you on _____ (date) invoiced in the amount of \$ _____ has not as yet been made in full. Unless full payment is made by (here insert date when the thirty-day credit period expires) a notice of default must be filed against you with the Department of Alcoholic Beverage Control.

(Name of Manufacturer or Wholesaler)

By: _____

(The blank form hereinabove prescribed shall be 8½ inches in width and 8 inches in length. It may be printed, mimeographed or typed.)

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

JOSEPH MIRAGLIA, MICHAEL MIRAGLIA and ANTHONY MIRAGLIA T/a MIRAGLIA'S CAFE 302 Stevens Street Camden, N. J.,)

CONCLUSIONS AND ORDER

-----)
Holders of Plenary Retail Consumption License C-20 for the licensing year 1945-46, and C-203 for the licensing year 1946-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Frank M. Lario, Esq., Attorney for Defendant-licensees.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendants pleaded not guilty to a charge alleging that they sold and delivered a bottle of wine for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulations No. 38.

The regulation in question reads:

"No licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in original containers for consumption off the licensed premises, on Sunday, or before 9:00 a.m. or after 10:00 p.m. on any other day of the week."

On Saturday, May 18, 1946, an ABC agent entered the defendants' tavern shortly before 11:00 p.m. and, because the bar was crowded with patrons, was compelled to wait for several minutes before being served by one of the bartenders on duty at the time. At approximately 11:00 p.m., the agent observed a man approach Michael Miraglia, one of the licensees, who was preparing a sandwich at the lunch counter which forms a section of the bar. This man leaned over and whispered to Michael Miraglia, who thereupon removed a bottle of wine from a small display bar located in the center of the regular bar, placed it in a paper bag and handed it to the patron. The latter handed Michael Miraglia "what appeared to be a bill, a paper piece of money" which he placed in the cash register.

When the agent identified himself, Michael Miraglia first denied the transaction and then asserted that the sale had been made about nine o'clock that evening, and that the patron had apparently forgotten to take the bottle with him at the time of the purchase, and had returned for that purpose at 11:00 p.m.

The defendants produced two witnesses, one of whom testified that he observed the sale of a bottle of alcoholic beverages to the patron in question at about 9:30 p.m. and that, shortly before 10:00

p.m., he called the attention of Michael Miraglia to the fact that the patron had forgotten the package, whereupon the latter placed it under the counter. The second witness, although stating that he did not observe the sale, heard Michael Miraglia's attention being called to the package and saw him deposit it beneath the bar.

The testimony of these witnesses does not carry the ring of conviction and strikes me as being not very impressive. Be that as it may, however, neither witness was able to testify with any definiteness that the package which they allege was placed under the bar by Michael Miraglia before 10:00 p.m. was the same one handed to the purchaser at 11:00 p.m.

I find, after a careful consideration of the entire record, that the sale was made at 11:00 p.m. as testified to by the ABC agent. Even in the absence of such finding, the violation was nonetheless complete when the bottle of wine, in a paper bag, was delivered by Michael Miraglia to the patron an hour after the deadline established by the regulation for deliveries of alcoholic beverages in original containers for off-premises consumption.

The defendants contend that the State Regulation cannot supersede the prior adopted local ordinance, under which sales of alcoholic beverages are permitted until 2:00 a.m. The law is to the contrary. It is fundamental that a municipal ordinance is inferior in status and subordinate to a state law. A regulation of the State Commissioner of Alcoholic Beverage Control, duly promulgated pursuant to the provisions of R. S. 33:1-39, has the force and effect of a state law. Cino v. Driscoll, 130 N.J.L. 535; cf. also Veix v. Seneca B.&L. Ass'n, 126 N. J. L. 314. To the extent that the local ordinance is inconsistent with the State Regulation, the latter must prevail. State v. Jersey City, 29 N.J.L. 170; Landis v. Vineland, 54 N.J.L. 75; Outwater v. Carlstadt, 66 N.J.L. 510; Singer v. Newark, 79 N.J.L. 386; Woodruff v. West Orange, 97 N.J.L. 465; Armitage v. Camden, 5 N. J. Misc. 129; Avella v. Garfield, 126 N. J. L. 507. This has been the uniform holding of the State Commissioner ever since the inception of the Department. See Re Howell, Bulletin 98, Item 5.

The defendants' previous record includes a net five-day suspension imposed in January, 1945, upon their non vult plea to a charge of sales of alcoholic beverages to minors. See Bulletin 648, Item 12. The penalty for the instant offense will be fixed at twenty days. Cf. Re Chlodnicki, Bulletin 638, Item 10.

Accordingly, it is, on this 8th day of November, 1946,

ORDERED, that Plenary Retail Consumption License C-203, issued for the 1946-47 licensing year to Joseph Miraglia, Michael Miraglia and Anthony Miraglia, t/a Miraglia's Cafe, for premises 302 Stevens Street, Camden, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. November 13, 1946, and terminating at 2:00 a.m. December 3, 1946.

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against ELIZABETH FRICKE and BERNARD FRICKE Route 31 Hillsborough Township P. O. Somerville, N. J., Holders of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Hillsborough.

CONCLUSIONS AND ORDER

W. Eddy Heath, Esq., Attorney for Defendant, Elizabeth Fricke. George W. Allgair, Esq., Attorney for Defendant, Bernard Fricke. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The following charges were preferred in the instant case, to wit:

"1. In the application filed with the Township Committee of Hillsborough Township by Elizabeth Fricke and upon which she obtained the current plenary retail consumption license, which license was later transferred to Elizabeth Fricke and Bernard Fricke, she falsely stated 'No' in answer to Question 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 Bernard Fricke and Anton Fricke had such interest in that they were partners with her in said business; her said false statement being in violation of R. S. 33:1-25.

"2. From May 9, 1946 until July 15, 1946, the said Elizabeth Fricke knowingly aided and abetted Bernard Fricke and Anton Fricke to exercise, contrary to R. S. 33:1-26, the rights and privileges of her plenary retail consumption license in the Township of Hillsborough, and from July 15, 1946 until the present time, Elizabeth Fricke and Bernard Fricke knowingly aided and abetted Anton Fricke to exercise, contrary to R. S. 33:1-26, the rights and privileges of said license, thereby violating R. S. 33:1-52."

Defendants pleaded non vult to those portions of the charges which related to Bernard Fricke, but pleaded not guilty to the allegation therein contained relative to Anton Fricke.

The testimony in the instant case discloses that defendant Elizabeth Fricke is the sister-in-law of defendant Bernard Fricke.

It is admitted that the license was transferred on May 9, 1946 to Elizabeth Fricke alone although Bernard Fricke then had an interest in said license. The reason was that the latter was disqualified from holding a retail liquor license because he was then a non-resident of New Jersey. It appears that, even though Bernard Fricke became a bona fide resident on May 14, 1946, Elizabeth Fricke continued to hold the license individually until July 15, 1946, when the license was transferred to both names.

Anton Fricke is the husband of defendant Elizabeth Fricke. He is disqualified from holding a retail liquor license because he is a German national. Elizabeth Fricke contends that her husband, at no time, has held any interest whatsoever in the license and that she worked for a period of nine years, during which time she saved the money used as payment representing her share in the business in question. Although some suspicion may exist with reference to Anton Fricke's alleged interest in the licensed premises, the evidence before me is insufficient to warrant a finding of guilty. I shall, therefore, dismiss the portions of the charges relating to Anton Fricke.

Both Elizabeth Fricke and Bernard Fricke appear to be qualified to hold a license at the present time. Even though a proper correction has been made by the transfer of the license to both Elizabeth and Bernard Fricke, a violation of the Alcoholic Beverage Control Act has been committed.

Defendants have no previous adjudicated record. I shall, therefore, suspend their license for a period of thirty days. Re Nicomini, Bulletin 686, Item 7.

Accordingly, it is, on this 8th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-7, transferred to Elizabeth Fricke and Bernard Fricke by the Township Committee of the Township of Hillsborough, for premises on Route 31, Hillsborough, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. November 18, 1946, and terminating at 2:00 a.m. December 18, 1946.

ERWIN B. HOCK
Deputy Commissioner.

7. APPELLATE DECISIONS -- SUBURBAN COCKTAIL LOUNGE, INC. v. EAST ORANGE - ORDER REMANDING.

SUBURBAN COCKTAIL LOUNGE, INC.,)
Appellant,)

-vs-

ON APPEAL

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
EAST ORANGE,)
Respondent)

ORDER

George R. Sommer, Esq., Attorney for Appellant.
Walter C. Ellis, Esq., Attorney for Respondent.
Herman C. Silverstein, Esq., Attorney for Objectors.

This is an appeal from respondent's refusal to grant appellant's application for renewal of a plenary retail consumption license to cover enlarged premises known as 60 and 64 Brick Church Plaza, East Orange, N. J., for the fiscal year expiring June 30, 1947. Appellant now holds a plenary retail consumption license for premises known as 62 and rear of 60 Brick Church Plaza, which is not involved in this appeal.

All parties have consented to the entry of an order remanding the matter to respondent for reconsideration. No reason appearing why the matter should not be so remanded,

It is, on this 8th day of November, 1946,

ORDERED that the above matter be and the same is hereby remanded to respondent for reconsideration.

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY DISTRIBUTION LICENSEE AND PERMITTING CONSUMPTION THEREOF ON LICENSED PREMISES CONTRARY TO TERMS OF LICENSE - LICENSE SUSPENDED FOR A PERIOD OF 90 DAYS.

In the Matter of Disciplinary Proceedings against)

OTTO STROHMENGER)
84 Lafayette Street)
Rumson, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-2 issued by the Borough Council of the Borough of Rumson.)
-----)

Otto Strohmenger, Defendant-licensee, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges that (1) he sold alcoholic beverages for consumption on his licensed premises, contrary to the provisions and privileges of his license and in violation of R. S. 33:1-2; and (2) he permitted open bottles of alcoholic beverages and the consumption thereof on his licensed premises, in violation of Rule 14 of State Regulations No. 20.

On September 19, 1946, at about 11:45 a.m., an investigator of the State Department of Alcoholic Beverage Control entered defendant's licensed premises in the basement of defendant's home. Hearing voices in a back room, he entered the same and found three men drinking beer. He seated himself and ordered a glass of whiskey and a bottle of beer -- both of which were served to him by one of the men in the room when he entered. This man was identified as the defendant. The two other customers and the investigator continued to drink their beverages -- the investigator ordering two more glasses of whiskey and one additional bottle of beer, until at about 12:15 p.m. when another investigator entered the premises in much the same manner. He ordered a bottle of beer, which was opened and served to him by the defendant. After paying for this beer, the investigators identified themselves and seized the beer from the customers and the whiskey still remaining in the glass last ordered by the first investigator, plus the whiskey in the bottle from which he had been served. The back room is part of the licensed premises.

From these facts there can be no doubt that defendant, who holds a plenary retail distribution license, is guilty of both charges. The distribution, or "package store", license authorizes only the sale of alcoholic beverages for consumption off the licensed premises and only in the original packages. R. S. 33:1-12, 3a, 3b. In most communities a plenary retail distribution licensee pays less for his license privileges than does a plenary retail consumption licensee. A "D" licensee must be most careful to keep within the privileges conferred by his license. If he uses the opportunity afforded by such a license to conduct a "speakeasy", he must be sufficiently penalized to make him realize his responsibilities and appreciate his privileges.

Were it not for the fact that the defendant has a clear record for the past thirteen years, his license might well be revoked outright. A severe penalty, however, must be imposed. I shall suspend the defendant's license for a period of ninety days.

Accordingly, it is, on this 8th day of November, 1946,

ORDERED that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Rumson to Otto Strohmenger for premises 84 Lafayette Street, Rumson, be and the same is hereby suspended for ninety (90) days, commencing at 9:00 a.m. November 15, 1946, and terminating at 9:00 a.m. February 13, 1947.

ERWIN B. HOCK
Deputy Commissioner.

9. FAIR TRADE - NOTICE OF SUPPLEMENTAL PUBLICATION.

November 13, 1946.

The next official supplemental publication of minimum resale prices, pursuant to Fair Trade rules (Regulations No. 30) will become effective on Monday, December 9, 1946. New items and changes in old items must be filed at the offices of this Department not later than Wednesday, November 20, 1946.

It has been noted that prices for many brands and types submitted by manufacturers and wholesalers for publication in the official supplemental wholesale price pamphlet effective December 1, 1946 represent substantial increases to retailers. It is important that these increases shall be reflected in the price listings for the items in the forthcoming minimum consumer price supplement. It is a matter of economic importance to retailers and to all branches of the industry alike that retailers shall be afforded full and fair markups. The Department desires the maintenance of at least as great a markup for retailers as formerly provided in the OPA schedule; that is, 33-1/3% on spirits, 45% on cordials and liqueurs, and 50% on wines.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is published and mailed to all retail licensees.

DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL

By: John H. Michelson
Assistant Deputy Commissioner.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Charles B. Kane and Granville M. Price, Jr.
T/a Mathis Distributing Co.
123 E. Main St.
Tuckerton, N. J.

Application for Transportation License filed November 12, 1946.

Lawrence Warehouse Company
120 Passaic St.
Rochelle Park, N. J.

Application for Public Warehouse License filed
November 12, 1946.

Monmouth Distributors Inc.
12-14 Norwood Ave.

Long Branch, N. J.

Application for Limited Wholesale License filed
November 12, 1946.

Downing & Perkins Inc.
161 Front St.
Hartford, Conn.

Application for Transportation License filed
November 13, 1946.

Dated November 13, 1946.

Erwin B. Hoek
Deputy Commissioner.