

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 963

APRIL 6, 1953.

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1. NEW LEGISLATION - REVISION OF VARIOUS SECTIONS OF THE ALCOHOLIC BEVERAGE LAW TO CORRECT DESIGNATION OF COURTS, TO CHANGE "DEPARTMENT" TO "DIVISION" AND "COMMISSIONER" TO "DIRECTOR", ETC.

Senate Bill No. 29 was approved by the Governor on March 19, 1953, and thereupon became Chapter 32 of the Laws of 1953. It revised R. S. 33:1-1, 35, 66, 81, and also R. S. 33:3-10.

Primarily, this revision corrects references to various courts and court procedures in the above sections. At the same time, reference in various of these sections to Department of Alcoholic Beverage Control and to the Commissioner thereof has been appropriately corrected to Division of Alcoholic Beverage Control and Director respectively. The revision also appropriately corrects references to other officials by substituting their present for their outmoded titles or designations.

The above mentioned Chapter 32 of the Laws of 1953, effective immediately, reads as follows:

"AN ACT concerning intoxicating liquors, and revising parts of the statutory law.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 33:1-1 of the Revised Statutes is amended to read as follows:

33:1-1. For the purpose of this chapter, the following words and terms shall be deemed to have the meanings herein given to them:

a. 'Alcohol.' Ethyl alcohol, hydrated oxide of ethyl or neutral spirits from whatever source or by whatever process produced.

b. 'Alcoholic beverage.' Any fluid or solid capable of being converted into a fluid, suitable for human consumption, and having an alcoholic content of more than one-half of one per centum ($1/2$ of 1%) by volume, including alcohol, beer, lager beer, ale, porter, naturally fermented wine, treated wine, blended wine, fortified wine, sparkling wine, distilled liquors, blended distilled liquors and any brewed, fermented or distilled liquors fit for use for beverage purposes or any mixture of the same, and fruit juices.

c. 'Building.' A structure of which licensed premises are or may be a part, including all rooms, cellars, out-buildings, passageways, closets, vaults, yards, attics, and every part of the structure of which the licensed premises are a part, and of any other structure to which there is a common means of access, and any other appurtenances.

d. 'Commissioner.' The Director of the Division of Alcoholic Beverage Control.

e. 'Container.' Any glass, can, bottle, vessel or receptacle of any material whatsoever used for holding alcoholic beverages, which container is covered, corked or sealed in any manner whatsoever.

f. 'Eligible.' The status of a person who is a citizen of the United States, a resident of this State, of good moral character and repute, and of legal age.

g. 'Governing board or body.' The board or body which governs a municipality, including a board of aldermen in municipalities so governed; but in every municipality having a board of public works which exercises general licensing powers such board shall be considered as the governing board or body.

h. 'Importing.' The act of bringing or causing to be brought any alcoholic beverage into this State.

i. 'Illicit beverage.' Any alcoholic beverage manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, possessed or transported in violation of this chapter, or on which any Federal tax or tax imposed by the laws of this State has not been paid; and any alcoholic beverage possessed, kept, stored, owned or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport in violation of the provisions of this chapter.

j. 'Licensed building.' Any building containing licensed premises.

k. 'Licensed premises.' Any premises for which a license under this chapter is in force and effect.

l. 'Magistrate.' Any County Court, criminal judicial district court, municipal court or county district court.

m. 'Manufacturer.' Any person who, directly or indirectly, personally or through any agency whatsoever, engages in the making or other processing whatsoever of alcoholic beverages.

n. 'Municipality.' Any city, town, township, village, or borough, including a municipality governed by a board of commissioners or improvement commission, but excluding a county.

o. 'Municipal board.' The municipal board of alcoholic beverage control as established by this chapter.

p. 'Officer.' Any sheriff, deputy sheriff, constable, police officer, member of the department of State police, or any other person having the power to execute a warrant for arrest, or any inspector or investigator of the Division of Alcoholic Beverage Control.

q. 'Original container.' Any container in which an alcoholic beverage has been delivered to a retail licensee.

r. 'Person.' Any natural person or association of natural persons, association, trust company, partnership, corporation, organization, or the manager, agent, servant, officer, or employee of any of them.

s. 'Premises.' The physical place at which a licensee is or may be licensed to conduct and carry on the manufacture, distribution or sale of alcoholic beverages, but not including vehicular transportation.

t. 'Restaurant.' An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted.

u. 'Retailer.' Any person who sells alcoholic beverages to consumers.

v. 'Rules and regulations.' The rules and regulations established from time to time by the director.

w. 'Sale.' Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, including deliveries from without this State and deliveries by any person without this State intended for shipment by carrier or otherwise into this State and brought within this State, or the solicitation or acceptance of an order for an alcoholic beverage, and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell, and the gratuitous delivery or gift of any alcoholic beverage by any licensee.

x. 'Unlawful alcoholic beverage activity.' The manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of any alcoholic beverage in violation of this chapter, or the importing, owning, possessing, keeping or storing in this State of alcoholic beverages with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse or transport alcoholic beverages in violation of this chapter, or the owning, possessing, keeping or storing in this State of any implement or paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages with intent to use the same in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of this chapter, or to aid or abet another in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of alcoholic beverages in violation of this chapter, or the aiding or abetting of another in any of the foregoing activities.

y. 'Unlawful property.' All illicit beverages and all implements, vehicles, vessels, airplanes, and paraphernalia for the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of illicit beverages used in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of illicit beverages or owned, possessed, kept or stored with intent to use the same in the manufacture, sale, distribution, bottling, rectifying, blending, treating, fortifying, mixing, processing, warehousing or transportation of illicit beverages, whether such use be by the person owning, possessing, keeping, or storing the same, or by another with the consent of such person; and all alcoholic beverages, fixtures and personal property located in or upon any premises, building, yard or inclosure connected with a building, in which an illicit beverage is found, possessed, stored or kept.

z. 'Wholesaler.' Any person who sells an alcoholic beverage for the purpose of resale either to a licensed wholesaler or to a licensed retailer, or both.

Any definition herein contained shall apply to the same word in any form. Thus 'sell' means to make a 'sale' as above defined.

2. Section 33:1-35 of the Revised Statutes is amended to read as follows:

33:1-35. The Director of the Division of Alcoholic Beverage Control and each other issuing authority may make, or cause to be made, such investigations as he or it shall deem proper in the administration of this chapter and of any and all other laws now or which may hereafter be in force and effect concerning alcoholic beverages, or the manufacture, distribution or sale thereof, or the collection of taxes thereon, including the inspection and search of premises for which the license is sought or has been issued, of any building containing the same, of licensed buildings, examination of the books, records, accounts, documents and papers of the licensees or on the licensed premises.

Every applicant for a license, and every licensee, and every director, officer, agent and employee of every licensee, shall, on demand, exhibit to the director or other issuing authority, as the case may be, or to his or its deputies or investigators, or inspectors or agents all of the matters and things which the director of the division or other issuing authority, as the case may be, is hereby authorized or empowered to investigate, inspect or examine, and to facilitate, as far as may be in their power so to do, in any such investigation, examination or inspection, and they shall not in any way hinder or delay or cause the hindrance or delay of same, in any manner whatsoever. Investigations, inspections and searches of licensed premises may be made without search warrant by the director, his deputies, inspectors or investigators, by each other issuing authority and by any officer.

For the purpose of any investigation, examination or inspection, revocation, rule to show cause and every other proceeding authorized under this chapter or appropriate for its enforcement, the director, his deputy directors, attorneys and legal assistants designated to act on his behalf, and each other issuing authority may examine, under oath, any and all persons whatsoever and compel by subpoena the attendance of witnesses and the production of books, records, accounts, papers and documents of any person or persons and the director, his deputy directors, inspectors and investigators and each other issuing authority may take any oath or affirmation of any person to any deposition, statement, report or application required in the administration of this chapter, or of any and all other laws now or which may hereafter be in force and effect concerning alcoholic beverages, or the manufacture, distribution and the sale thereof, or the collection of taxes thereon.

The fees of witnesses required to attend before the director or other issuing authority shall be the same as those allowed to witnesses in the Superior Court.

The above enumerations of purposes and powers shall not be construed as exclusive and shall not limit such power to investigate, examine and subpoena for any purpose consonant with the administration and enforcement of this chapter.

If a person subpoenaed to attend any hearing refuses or fails to appear or to be examined, or to answer any question or to produce any books, records, accounts, papers and documents when ordered so to do by the director, the director or other issuing authority, as the case may be, may apply to the Superior Court to compel the person to comply forthwith with the subpoena, direction or order of the director or the other issuing authority, as the case may be.

Each deputy director shall have and exercise all the powers conferred by this chapter upon the director to the extent that the same shall be delegated to him by the director by rules and regulations.

One of such deputy directors shall be designated by the director with power to perform all of the duties of the director in case of his absence or inability to act for any cause and who shall also have authority to so act in the event of the death of the director until a successor has been appointed and qualified.

3. Section 33:1-66 of the Revised Statutes is amended to read as follows:

33:1-66. a. Any officer knowing, or having reasonable cause to believe, that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize all property which he shall know, or have reasonable ground to believe is unlawful property, including in the case of illicit alcoholic beverages within any vehicle, the vehicle containing the same, and to arrest all persons whom he shall know, or have reasonable ground to believe, are committing, or have committed, a misdemeanor under this chapter and to make complaint against such persons as in other cases of misdemeanors. All property when seized shall be under the jurisdiction of the Director of the Division of Alcoholic Beverage Control subject to this chapter.

Any seized property shall be returned to any person claiming the same upon execution and delivery by him to the director of a bond in a form and with sureties satisfactory to the director in a sum double the retail value of the property, as appraised by the director, conditioned, (1) to pay to the director for the use of the State the full retail value of such property in case the same shall appear to have been unlawful property, and (2) in case it shall appear that said property was not unlawful property, to pay such part of the retail value thereof as may represent the value of the outstanding right, title, interest, lien or claim of any other person, to such other person, which bond shall be enforceable, as other obligations for payment of money, by civil action in any court of competent jurisdiction, first by the director, to be instituted within one year from the date thereof, and, secondly, by such other person as third party beneficiaries, at any time after final judgment in

such action by the director, or after the expiration of said year in case no such action shall have been instituted by the director in the meantime.

In lieu of such bond, the claimant to the seized property may pay to the director for the use of the State the retail value thereof in cash, as appraised by the director, under protest, subject to the right of the person making the payment to recover such sum upon establishing that the property was not unlawful property by an action to be commenced within one year from the date of such payment, and not thereafter, in any court of competent jurisdiction.

Such claimant may, in lieu of either remedy, bring an action for the replevin of the property against the director in any court of competent jurisdiction according to the forms and procedure including the delivery of a bond, of such court, such action to be commenced within thirty days from the seizure of such property and not thereafter.

If the director shall be satisfied that property seized was not unlawful property he may return the same to the person from whom or the place from which the same was taken. If any seized property shall not be reclaimed within thirty days, after determination by him that such property is unlawful property, and subject to rules and regulations, the director shall forfeit such property and may, in his discretion, order that the seized property in whole or in part be sold, destroyed or retained for the use of hospitals and State, county and municipal institutions. The forfeiture of any seized property shall terminate all property interests therein and in any proceeds therefrom, including the interests of the owner, any conditional vendor, chattel mortgagee or other lienor and all other persons.

No such forfeiture, sale, destruction or retention for use of hospitals and State, county and municipal institutions shall be had except after hearing, of which notice, of not less than fifteen nor more than thirty days, shall be given by mail to all persons known or believed by the director to have an interest in the seized property and by publication twice in a newspaper to be designated by the director and circulating in the county where the property was seized, once in each of the two consecutive calendar weeks preceding such hearing. After such hearing, the director shall file his determination in the form of an order which shall be subject to review by the Superior Court in a proceeding in lieu of prerogative writ.

All moneys received by the director hereunder shall be reserved during the time allowed any person an opportunity of establishing a right thereto and shall immediately thereafter be accounted for by the director as in the case of license fees received hereunder.

All sales by the director shall convey the director's right, title and interest which shall be that of sole and absolute ownership, free and clear of all outstanding title, rights, interest and liens.

Property seized and released shall thereafter be subject to further seizure because of ownership, possession or use thereof in connection with further unlawful alcoholic beverage activities.

b. All alcoholic beverages, fixtures and personal property located in or upon any premises, building, yard or inclosure connected with a building, in which an illicit beverage is found, possessed, stored or kept, are hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section.

c. All alcoholic beverages manufactured, sold, imported or transported in violation of rules and regulations, together with any vehicle containing the same, are hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section.

d. Any contrivance, preparation, compound, tablet, substance or recipe advertised, designed or intended for use in the manufacture of alcoholic beverages for personal consumption or otherwise in violation of this chapter is hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section. Any person who shall advertise, manufacture, sell or possess for sale, or cause to be advertised, manufactured, sold or possessed for sale property declared unlawful under this paragraph, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00), or imprisonment for not less than thirty days and not more than six months, or both.

e. The director upon being satisfied that a person whose property has been seized or forfeited pursuant to the provisions of this section has acted in good faith and has unknowingly violated the provisions thereof, may order that such property be returned upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the director.

The director may, upon being satisfied that a common carrier, whose vehicle has been seized under the provisions of this chapter, has acted in good faith and had no knowledge at the time of the seizure, that the vehicle contained illicit alcoholic beverages, order that the seized vehicle be returned to the common carrier.

f. The director, upon being satisfied that a person having a bona fide and valid lien upon or interest in property seized or forfeited pursuant to the provisions of this section has acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use, may, in his discretion and subject to rules and regulations, recognize the validity and priority of such claim or interest. Where the validity and priority of a lien or interest have been so recognized by the director, he may (1) order, where it appears that the amount or value of such lien or interest exceeds the value of the property plus costs, that the property be returned to the innocent claimant upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the director, or (2) order that the property be sold and that the amount of the lien or value of the interest, which amount or value shall be established to the satisfaction of the director, be paid out of the proceeds of sale after having deducted therefrom the reasonable costs incurred in connection with the seizure, such costs to be determined by the director.

4. Section 33:1-81 of the Revised Statutes is amended to read as follows:

33:1-81. It shall be unlawful for

(a) a minor to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing, or having served or delivered to him or her, any alcoholic beverage; or

(b) a minor to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages, or to purchase, attempt to purchase or have another purchase for him or her any alcoholic beverage; or

(c) any person to misrepresent or misstate his or her age, or the age of any other person for the purpose of inducing any licensee or any employee of any licensee, to sell, serve or deliver any alcoholic beverage to a minor.

Any person who shall violate any of the provisions of this section shall be deemed, and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine not exceeding fifty dollars (\$50.00).

5. Section 33:2-6 of the Revised Statutes is amended to read as follows:

33:2-6. The determination of the director shall be in the form of an order which shall be subject to review by the Superior Court by a proceeding in lieu of prerogative writ.

6. Section 33:3-10 of the Revised Statutes is amended to read as follows:

33:3-10. Any person, corporation, partnership or member of any association or any agent, servant or employee of any person, corporation, partnership or member of any association who shall have sold, bartered, given away, furnished or otherwise disposed of to any person whatsoever any alcohol for internal consumption, whiskey, gin, brandy, wine or any other alcoholic beverage of any nature whatsoever containing any poisonous chemical or chemicals or any poisonous ingredients of any description whatsoever which shall have caused serious injury to the health or bodily condition of any person or shall have caused the death of any person shall be guilty of a high misdemeanor and shall be punishable by a fine of not exceeding two thousand dollars (\$2,000.00), or imprisonment at hard labor or otherwise not exceeding ten years, or both.

Nothing in this section is intended to diminish, alter or in anywise change or in anywise affect the provisions of sections 2A:113-1 to 2A:113-5 of the New Jersey Statutes.

7. This act shall take effect immediately."

DOMINIC A. CAVICCHIA
Director.

Dated: March 26, 1953.

2. DISCIPLINARY PROCEEDINGS - PERMITTING OBSCENE LANGUAGE - PERMITTING GAMBLING - PERMITTING LOTTERY TICKETS - PERMITTING FEMALE TO TEND BAR IN VIOLATION OF LOCAL REGULATION - CONDUCTING BUSINESS IN SUCH MANNER AS TO BECOME A NUISANCE - LICENSE SUSPENDED FOR BALANCE OF TERM (90 DAYS).

In the Matter of Disciplinary Proceedings against

DOMINIC J. PONE
T/a DON'S CAFE
698 South Clinton Avenue
Trenton 10, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-247, issued by the Board of Commissioners of the City of Trenton.

Nicholas M. Giordano, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On December 4, 10 and 12, 1952, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.
- "2. On December 4, 5, 10 and 12, 1952, you engaged in and allowed, permitted and suffered gambling in and upon your licensed premises, viz., the playing of a dice game, commonly known as 'Buck Dice', for stakes of drinks of alcoholic beverages; in violation of Rule 7 of State Regulations No. 20.
- "3. On December 12, 1952, you had custody of and allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as a 'raffle' or 'drawing', in and upon your licensed premises; in violation of Rule 6 of State Regulations No. 20.
- "4. On December 5 and 10, 1952, you employed, allowed, permitted, suffered and had female bartenders who served alcoholic beverages at the bar of your licensed premises who were not female licensees or the wife, mother or sister of any licensee; in violation of Section 55 of an Ordinance adopted June 7, 1945 by the Board of Commissioners of the City of Trenton amending and supplementing an Ordinance adopted by said Board of Commissioners on June 23, 1936.
- "5. On the occasions aforesaid, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance, in that you made offers to procure females for patrons for the purpose of prostitution, introduced females to patrons for such purpose and otherwise conducted the licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that on the morning of December 4, 1952, an ABC agent (hereafter described as the first agent) entered defendant's licensed premises. While there he had a conversation

with the licensee concerning Ruth ---, who lived nearby and who, the licensee indicated, was a prostitute. Later a woman known as Helen --- entered and, although she used filthy language during a conversation with a bartender, the licensee made no effort to stop her from using such language.

On the afternoon of December 4, 1952, the first agent and three other ABC agents entered defendant's premises. Helen was still there and continued to use filthy language without reproach. Ruth was also there at that time but left in a cab after promising to return. The licensee told the first agent that it "was all arranged" and that Ruth would return. When she did not do so, the licensee said that he would "bawl her out."

On the morning of December 5, 1952, another agent entered defendant's premises and observed Mabel --- tending bar. Mabel was a relative through marriage, but was not the wife, mother or sister of the licensee.

On the afternoon of December 5, 1952, the first agent was again present on defendant's premises and asked the licensee if he (the agent) was wasting his time. The licensee replied "not if Ruth comes in" and advised the agent to return at 9:30 p.m. The agent did return at that time, but Ruth was not present.

On the afternoon of December 10, 1952, the first agent, accompanied by another ABC agent, again visited defendant's premises. Later Ruth entered. The first agent asked Ruth if she was not going to take him out as he understood she was supposed to the other day (meaning December fifth). Ruth replied that she must have forgotten but would be back in an hour. Ruth left and did not return. The licensee told the agent "you can't figure women out." During the course of this visit a woman named Loretta assisted the licensee in tending bar. A male bartender and Loretta used foul and obscene language without objection by the licensee. The male bartender and Loretta also danced in a very suggestive manner to the amusement of the licensee and the customers.

On the afternoon of December 12, 1952, the first agent and two other ABC agents visited defendant's premises. The licensee told the first agent that Ruth would be in soon. While waiting for Ruth to appear, the licensee endeavored to contact two other females -- one through a male patron then in the place, and the other by telephone. The licensee gave the impression that these females were prostitutes. During this afternoon Helen was present and she and the licensee conversed in loud voices about women, using much profanity and obscene language during the course of the conversation. Ruth came in later and, after the licensee had a conversation with her, the licensee told the first agent to give her "a few bucks." Ruth left the premises and did not return. The agents then identified themselves. After the agents identified themselves, they searched the premises and found a chance book for a turkey raffle on the back bar.

On each of the four days mentioned above the agents observed "buck dice" being thrown for drinks. The licensee participated in these dice games.

I have carefully reviewed the file with respect to all five charges in this case, and particularly with respect to the fifth charge. It is to be noted that in the fifth charge it is not alleged -- nor is the available evidence sufficient for an allegation -- that the licensee permitted a prostitute on his licensed premises, or solicitation for prostitution, or the making of arrangements for illicit sexual intercourse on his licensed premises, or that he engaged in procuring for prostitution on his licensed premises. Indeed, all of the agent's conversation with the licensee and

the alleged prostitute, as well as the "arrangements" in progress, could be indicative of an attempt by the licensee, in concert with the alleged prostitute, to encourage continued patronage by holding out the lure of arrangements to be consummated at some time in the future. The available evidence does, however, sufficiently establish -- and this should command the careful attention of the local issuing authority even though the licensee has no record prior to that established by this case -- that the licensed place of business has been conducted in a manner offensive to common decency and public morals.

Considering the multiple violations and the repetitive character thereof, it is obvious that the licensee has been exercising the privileges of his license without regard for the salutary provisions of State and local alcoholic beverage regulations. I shall suspend the license for a period of ninety days -- which suspension, because it will become effective on April 2, 1953 as hereinafter ordered, will be for the full balance of the term, i.e., through June 30, 1953. Should the defendant apply for a renewal of the license, it is for the local issuing authority, within its sound discretion, to determine whether he is a fit person and whether the application should be granted.

Accordingly, it is, on this 25th day of March, 1953,

ORDERED that Plenary Retail Consumption License C-247, issued by the Board of Commissioners of the City of Trenton to Dominic J. Pone, t/a Don's Cafe, for premises 698 South Clinton Avenue, Trenton, be and the same is hereby suspended, effective at 2:00 a.m. April 2, 1953, for the balance of its term expiring at midnight, June 30, 1953.

DOMINIC A. CAVICCHIA
Director.

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE - ILLEGAL SITUATION NOT CORRECTED - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY TO LIFT SUSPENSION AFTER 30 DAYS, IF SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against)

CHARLES DONEMAN)
89 Garden Street)
Hoboken, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-82, issued by the Board of Commissioners of the City of Hoboken.)

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Rudolph R. Naddeo, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that: (1) by a false answer in his license application he concealed the fact that Charles Porcuri had an interest in the license issued to him, in that said Charles Porcuri was the real and beneficial owner of the licensed business, in violation of R. S. 33:1-25; (2) by a false answer in his license application he concealed the fact that he permitted said Charles Porcuri to retain all of the profits derived from the licensed business, in violation of R. S. 33:1-25; and (3) he knowingly aided and abetted said Charles Porcuri to exercise the rights and privileges of the said license, in violation of R. S. 33:1-52.

The file herein discloses that, although at first the unlawful situation recited in the charges was denied by defendant-licensee and the aforementioned Charles Porcuri, both later signed statements, under oath, admitting that Charles Doneman paid no part of the consideration for the transfer of the license to him and thus has no interest in the license, and that Charles Porcuri paid the consideration for the said transfer to Doneman and is the sole beneficial owner of the licensed business. The explanation offered for this subterfuge is that Porcuri originally applied to the local issuing authority for the transfer of the license then held by Herbert and Loretta Grater for premises at 1314 Washington Street; that the transfer was to be from the Graters to Porcuri and from 1314 Washington Street to 89 Garden Street, which latter premises were owned by Porcuri, but that when objection to such transfer was filed with the issuing authority, Porcuri withdrew his application and there was substituted therefor a similar application, for a person-to-person and place-to-place transfer, filed by Doneman, Porcuri's brother-in-law. That application was granted and, thereupon, Doneman proceeded to "front" for Porcuri.

It is also admitted that, in 1941, Porcuri was convicted of the crime of simple assault and battery. It has been held that, ordinarily, the crime of simple assault and battery does not involve moral turpitude; and, since nothing appears in this case to warrant a different conclusion, Porcuri is not, in my opinion, disqualified to hold a license by reason of his conviction, aforementioned. Re Stagg, Bulletin 846, Item 5. (However, this expression is not intended as a final determination of Porcuri's fitness to hold a license and will not be binding should that question be raised directly on any application for a transfer of a license hereafter filed by him.)

Defendant has no prior adjudicated record. Under all of the circumstances, the license would normally be suspended for thirty days, the minimum suspension when the undisclosed party in interest has a non-disqualifying criminal record. Re Stagg, supra; Re Benson, Bulletin 742, Item 6. However, since the unlawful situation continues to exist I shall suspend the license for the balance of the term. In the event that the unlawful situation is corrected, application may be made to me for the lifting of such suspension, but in no event will an order lifting the suspension be entered prior to the expiration of thirty days from the effective date hereof.

Accordingly, it is, on this 24th day of March, 1953,

ORDERED that Plenary Retail Consumption License C-82, issued by the Board of Commissioners of the City of Hoboken to Charles Doneman, 89 Garden Street, Hoboken, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. March 30, 1953; and it is further

ORDERED that in the event a correction of the illegal situation is effected, leave will be given to make application to me for the lifting of the suspension, as aforesaid.

DOMINIC A. CAVICCHIA
Director.

- 4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AND FAILURE TO HAVE PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - POSSESSING INDECENT STATUETTE AND FIGURES - PERMITTING OBSCENE LANGUAGE - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

ANDY LUKAS)
 T/a ANDY'S CAFE)
 987 State Street)
 Perth Amboy, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-113, issued by the)
 Board of Commissioners of the)
 City of Perth Amboy.)

 Andy Lukas, Defendant-licensee, Pro Se.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that, on March 7, 1953, (1) he sold, served and delivered alcoholic beverages during prohibited hours, in violation of a local ordinance; (2) he failed to have his licensed premises closed during said hours, in violation of a local ordinance; (3) he sold and delivered alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38; (4) he possessed and allowed upon his licensed premises an indecent statuette and two other indecent figures, in violation of Rule 17 of State Regulations No. 20, and (5) he allowed upon his licensed premises foul, filthy and obscene language, in violation of Rule 5 of State Regulations No. 20.

The file herein discloses that at 1:00 a.m. on March 7, 1953, while two ABC agents were in defendant's licensed premises, a man entered and whispered to the bartender, Stanley F. Podgorski. The bartender went to the beer cooler and returned with a large paper bag which apparently contained canned beer. The patron took the bag from the bartender and left the premises. At 2:00 a.m. these two ABC agents were outside the licensed premises with a third ABC agent. At that time the exterior lights were extinguished and window blinds closed so that the interior was not visible from the outside. The agents remained outside and at 2:15 a.m. they observed two men being admitted to the premises. About ten minutes later the agents entered the licensed premises and identified themselves. At that time three patrons and the bartender had alcoholic beverages in front of them. Stanley F. Podgorski admitted he had sold canned beer at 1:00 a.m. and that he had sold alcoholic beverages after 2:00 a.m.

Upon subsequent investigation the agents found an indecent statuette and two other indecent figures in drawers of the back bar. While the agents were in the licensed premises, the bartender continually used foul, filthy and obscene language while conversing with patrons.

Despite the fact that defendant was not present when the violations occurred, he is responsible for the acts of his agents and employees in the conduct of the business. Rule 31 of State Regulations No. 20; Essex Holding Corp. v. Hock, 136 N.J.L. 28.

Defendant has no prior record. I shall suspend defendant's license for a period of thirty days because of the violations set forth in charges 1, 2 and 3 (Re Bader, Bulletin 927, Item 2); for an

additional period of ten days because of the violation set forth in charge 4 (Re Club Benmar, Inc., Bulletin 874, Item 9) and for an additional period of ten days because of the violation set forth in charge 5 (Re Hyett, Bulletin 947, Item 2). Five days will be remitted for the plea entered herein, leaving a net suspension of forty-five days.

Accordingly, it is, on this 25th day of March, 1953,

ORDERED that Plenary Retail Consumption License C-113, issued by the Board of Commissioners of the City of Perth Amboy to Andy Lukas, t/a Andy's Cafe, for premises 987 State Street, Perth Amboy, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. March 31, 1953, and terminating at 2:00 a.m. May 15, 1953.

DOMINIC A. CAVICCHIA
Director.

5. MORAL TURPITUDE - COMMERCIALIZED GAMBLING HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

March 19, 1953.

Re: Case No. 641

On June 4, 1943, subject was fined \$100.00 by a municipal judge after he pleaded guilty to a charge of possession of gambling material. The aforesaid conviction was apparently under a local ordinance and does not constitute a conviction of a crime. Re Case No. 978, Bulletin 936, Item 10. On June 4, 1951 he pleaded non vult to a charge of gambling and as a result thereof was sentenced by a county judge on June 20, 1951 to a term of one to two years in a state prison, being released on parole from the penal institution on March 25, 1952.

The latter conviction followed subject's arrest on March 2, 1951, when law-enforcement officers conducted a raid upon an apartment in which subject, his wife, and relatives of his wife resided. A very large sum of money was found in a safe located in the bedroom which subject and his wife occupied. One hundred and fifty to two hundred result slips were also found in the house. At the hearing, subject testified that the money found in the safe was the property of his mother who in concert with other persons conducted "a lottery that consisted of twenty-six hundred numbers at a dollar a week"; that "Approximately \$1,565.00 was paid in prizes and then there was \$650.00 paid in commissions to the agents"; and "After expenses were made, if they had \$400.00 left, they were lucky, and that would be divided between three or four fellows." Subject further testified that he was employed as an agent by his mother and received a commission of twenty-five per cent of the money collected for numbers which he sold.

The lottery with which subject was connected operated on a large scale. Although he stated that the lottery was owned by his mother and associates of his late father who died in 1947, he admitted that he was engaged in the illegal enterprise from 1946 until his home was raided in 1951. He further admitted that after the death of his father, when he intended "to quit," his mother influenced him to "build a bigger book" and that, because she influenced him to do so, he continued to engage in the illegal enterprise until the raid occurred in 1951.

Conducting extensive commercial gambling in the form of a large-scale lottery in a state where it is prohibited, although the operator may be a "lieutenant" of the real owner, involves moral turpitude. Re Case No. 283, Bulletin 337, Item 14.

From a review of the evidence, and taking into account the severe sentence imposed by the court, I am satisfied that subject was engaged in the lottery as a "lieutenant" of the owners. Therefore, I conclude that the crime of which subject was convicted involves the element of moral turpitude. Re Case No. 283, supra.

I recommend that subject be advised that, in the opinion of the Director, he has been convicted of a crime involving moral turpitude and, hence, is disqualified by statute from being associated in any capacity with the alcoholic beverage industry; and that, in the opinion of the Director, any licensee in this state who employs him, or permits him to be associated in any capacity with his license, would subject his license to suspension or revocation. R. S. 33:1-25, 26.

Clarence E. Kremer
Attorney.

APPROVED:
DOMINIC A. CAVICCHIA
Director.

6. DISQUALIFICATION - PRICE APPLICATION DENIED - FIVE YEARS' GOOD CONDUCT - APPLICATION TO LIFT GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 1028.
-----)

BY THE DIRECTOR:

On December 10, 1943 petitioner pleaded nolo contendere to the charge of aiding and abetting a lewd exhibition, and as a result thereof a Judge of a County Court imposed a sentence as follows: "Sentence suspended, probation three years, to pay \$30.00 a month for 33 months, payment not to start until after third month". Petitioner has never been convicted of any other crime. It has previously been determined that the crime of which he was convicted as aforesaid involved moral turpitude. Case No. 566, Bulletin 698, Item 4. Petitioner was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this state.

An earlier petition to remove petitioner's disqualification was denied on February 28, 1952, for the reason that within the five-year period before the filing of such petition petitioner had worked on licensed premises in this state after he had been advised of his ineligibility for such employment. Case No. 943, Bulletin 928, Item 9. He was advised that he might file a new petition after November 21, 1952.

At the hearing herein, petitioner testified that he has been law-abiding for at least five years last past. In fact he testified that, except for the crime of which he was convicted in 1943, he has not been in any difficulty with the law. He further testified that he has not been connected with the alcoholic beverage industry in any capacity since November 21, 1947; that, during the five years last past, he has worked off and on as a salesman but that, due to illness, he is not presently employed. He explained that, during the period he was unemployed, he has supported himself by income from property and investments and by the surrender of an insurance policy and

submitted documentary evidence in support thereof. He gave as his reason for seeking removal of his disqualification his desire to be "reinstated" so that he may reenter the alcoholic beverage industry in this state in case he wants to do so.

He produced, as witnesses, a lawyer and a funeral director who reside in the same municipality as petitioner and a businessman from a neighboring community, all of whom have known petitioner for more than ten years. Each testified that petitioner bears a good reputation in the community and that, so far as he knows, petitioner has been law-abiding for at least five years last past.

Under the circumstances, I find that petitioner has been law-abiding for more than five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 23rd day of March, 1953,

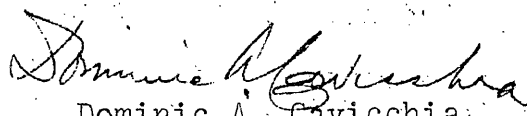
ORDERED that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

DOMINIC A. CAVICCHIA
Director.

7. STATE LICENSES - NEW APPLICATION FILED.

New York Terminal Warehouse Co., Incorporated
577-579 East 19th Street
Paterson, N. J.

Application filed April 1, 1953 for Public Warehouse License.


Dominic A. Cavicchia
Director.