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

BULLETIN 470 JULY 29, 1941.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN COLOR AND SOLID CONTENT - BLENDED WHISKEY IN A BOTTLE CALLING FOR A STRAIGHT - PRIOR CONVICTION OF EMPLOYMENT OF A FEMALE CONTRARY TO LOCAL REGULATION - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

MORRIS ROSENBERG,
598 W. Market St.,
Newark, N. J.,

Holder of Plenary Retail Consumption License No. C-505 for the fiscal year expiring June 30, 1941, and now holder of Plenary Retail Consumption License No. C-406 for the current fiscal year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Irving J. Rosenberg, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant pleads not guilty to the charge of possessing illicit liquor at his tavern in violation of the Alcoholic Beverage Law (R. S. 33:1-50).

On November 27, 1940 an agent of the Alcohol Tax Unit of the Federal Bureau of Internal Revenue, on testing ten open bottles of liquor at the defendant's tavern, seized one bottle, about three-quarters full, labeled "Four Roses Rye, a Blend of Straight Whiskies," which tested off.

The analysis of the Federal chemist to whom this bottle was submitted by the agent shows that its contents, although not varying materially in proof or in acids from genuine liquor of that brand, did vary substantially in solids (being about four times greater than the genuine) and also in coloring matter (being half artificial and half natural, whereas the genuine is all natural coloring).

From these sharp variations in solids and coloring, I conclude, as did the Federal chemist, that the liquor in this bottle was actually a "refill."

Indeed, the defendant himself virtually admits such fact. He thus explains that, on November 26, the day before the bottle was seized, he had left the tavern in charge of an employee from 11:00 A.M. until 5:00 P.M.; that, after seizure of the bottle, he questioned this employee and learned that he (the employee), while in charge of the tavern, had treated himself and a friend to drinks from this bottle (which contained one of the more expensive liquors in the tavern) and replaced what he had taken with a cheaper whiskey.

The employee, who apparently has been working at the tavern as porter, waiter and occasional bartender, testified in corroboration of this story.

Even accepting this story (which is not without its weaknesses - such as the employee's failure to remember what he used in the "refill," etc.), the defendant is not thereby exonerated from responsibility. The employee's "refilling," albeit with tax-paid liquor, constituted an illegal act of both rectifying and bottling, and hence rendered the contents of the bottle in question an illicit beverage. Re Haney, Bulletin 304, Item 13. The defendant's mere possession of such liquor at his tavern was, irrespective of his personal innocence as to the "refilling," a violation of the Alcoholic Beverage Law. Re Orbach, Bulletin 406, Item 10; Re Heuring, Bulletin 445, Item 12. Also see Re Wnoroski, Bulletin 454, Item 6; Re Yanero, Bulletin 455, Item 6; Re Birban, Bulletin 457, Item 10.

Hence, I find the defendant guilty as charged.

As to penalty: If the defendant had no past record, his license would, since no aggravating circumstances appear in this case, be suspended for ten days for his present offense. See the cases above cited. Such strict accountability is necessary in these "refill" cases to insure that tampering with liquor by licensees or their employees be peremptorily wiped out. Actually, however, the defendant has a past record. He pleaded guilty, in a previous disciplinary proceeding by this Department in June 1939, to the charge of employing a female to tend bar and sell and serve drinks at his tavern, contrary to local regulation, whereupon his license was suspended for five days, with two being remitted because of the guilty plea, or a net of three days. Re Rosenberg, Bulletin 323, Item 11.

Hence, in view that the defendant has such past record, his license will, for his present offense, be suspended for fifteen instead of ten days.

This proceeding, although instituted during the last licensing year (which expired June 30, 1941), does not in anywise abate, but remains fully effective against the defendant's renewal license for the current (1941-42) year. State Regulations No. 15.

Accordingly, it is, on this 15th day of July, 1941,

ORDERED, that Plenary Retail Consumption License No. C-406, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Morris Rosenberg, for 598 W. Market Street, Newark, for the current fiscal year, be and hereby is suspended for a period of fifteen (15) days, commencing July 21, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - SITUATION CORRECTED - REVOCATION MITIGATED TO A SUSPENSION OF 60 DAYS.

In the Matter of Disciplinary Proceedings against ESTHER E. SMALLWOOD, N/E Boulevard and Oxford St., Landis Township, P.O. Vineland, N. J., Holder of Plenary Retail Consumption License No. C-9 issued by the Township Committee of the Township of Landis.	ON PETITION CONCLUSIONS AND ORDER

Moe A. Joseph, Esq., Attorney for Petitioner.

On June 4, 1941 the above license was revoked because the licensee, since 1936, had been holding successive plenary retail consumption licenses as a "front" for one Santini. See Re Smallwood, Bulletin 464, Item 2. It was there said:

> "In view that this case thus involves a 'front' for a person disqualified in point of citizenship from March 1939 and who also actually has a substantial criminal record; that this 'front' was furthered by Santini's obtaining from this Department an employment permit on the false representation that he had no interest in any liquor license in New Jersey, was merely to be an employee at the tavern in question, and had no criminal record; that the defendant, the nominal licensee, actually aided in the entire illegality, not only by falsely representing herself to the local issuing authority as owner of the tavern but also by making a false plea to this Department that she could not, as owner of the tavern, 'do all my work alone' and would, therefore, like to have an employment permit issued to Santini 'to take care of the cleaning around the place'; and, further, that the evidence as to correction of the 'front' is highly dubious; -- in view of all such facts, outright revocation of the defendant's license is the only proper penalty."

Miss Smallwood has filed a petition for modification of penalty. In such petition it is alleged, among other things, that subsequent to the hearing and pending the decision in the disciplinary proceedings she had, as owner of the business since November 1940, "expended the sum of approximately twelve hundred dollars in making improvements to her establishment, consisting of an addition to the building and to the bar."

Because of this pertinent fact occurring after the trial of the disciplinary proceedings, the petition was entertained and hearing scheduled for the purpose of taking testimony on such issue.

At such hearing, petitioner produced paid bills, cancelled checks and contracts in substantiation of the expenditure of $1200.00. In addition she also presented evidence of payments of $100.00 monthly to Santini ever since November 1940 on account of

the purchase price of the business, and also that payment of $35.00 monthly rental has been made by her to Santini ever since that time. Further documentary evidence, not theretofore produced, was also presented by her, all of which indicates that petitioner is now the sole and bona fide owner of the business.

I am now satisfied that a correction of the prior unlawful arrangement existing between petitioner and Santini has been satisfactorily proved. I am fortified in this determination by the fact that no request has been made by Santini for any modification of the revocation of his employment permit. See Re Santini, Bulletin 464, Item 3. This is further evidence that the correction is bona fide since Santini may no longer be employed on the premises or be associated in any way with petitioner in the operation of the business.

The penalty of outright revocation will, therefore, be changed to a suspension. However, in view of the circumstances disclosed at the disciplinary hearing, which appear in the above cited paragraph from the Conclusions in that case, I shall, in modifying the revocation, prescribe a penalty equivalent to a suspension for sixty days.

Accordingly, it is, on this 15th day of July, 1941,

ORDERED, that the aforementioned Order of June 4, 1941 be and hereby is modified from a revocation of Esther E. Smallwood's then existing plenary retail consumption license for 1940-41 for premises N/E Boulevard and Oxford Street, Landis Township, to a suspension thereof from June 5th (the date upon which she was relieved of her license) through June 30, 1941 (the balance of its term), and further, that no license shall be issued to Esther E. Smallwood or for said premises for the current fiscal year prior to August 4, 1941, thus constituting, in toto, the equivalent of a suspension for a period of sixty (60) days.

E. W. GARRETT,
Acting Commissioner.

3. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

July 16, 1941

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will be made on or about Wednesday, August 6, 1941. New items and changes in old items must be filed at the offices of this Department not later than Wednesday, July 23, 1941.

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

E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT FOR NON-LICENSEE - 10 DAYS' SUSPENSION - PETITION TO MODIFY BECAUSE OF SEASONAL BUSINESS GRANTED - 5 DAYS' SUSPENSION POSTPONED UNTIL AFTER LABOR DAY.

In the Matter of Disciplinary Proceedings against

LAKE HOPATCONG YACHT CLUB, Bertrand Island, Mt. Arlington, N. J.,

Holder of Club License CB-2 for the fiscal year expiring June 30, 1941, and now holder of Club License CB-1 for the current (1941-42) fiscal year, issued by the Mayor and Council of the Borough of Mt. Arlington.

ON PETITION
CONCLUSIONS AND ORDER

Petitioner, Pro Se.

On July 11, 1941 I suspended petitioner's license for ten days commencing July 14, 1941 upon its guilty plea to charges that it denied in its application that any person other than itself was interested in such application or in the business to be conducted thereunder, and also aiding and abetting a non-licensee to exercise the rights and privileges of its license. See Re Lake Hopatcong Yacht Club, Bulletin 469, Item 6. A more serious penalty was not imposed because of licensee's frank admission of the facts and its cooperation in effecting an immediate correction of the prior unlawful situation.

A petition has now been filed by the licensee alleging that it is a "family club" of over thirty years' existence; that its membership is elective and not open to the general public; that its license is not operated as a commercial enterprise for profit but rather as an accommodation for its members; that it is active only during the summer months; that in addition to the regularly scheduled events held at its premises, many invitation card parties have been scheduled during the remainder of the present season; that, as a result, a suspension of ten days at this time against it is, in effect, the equivalent of a much greater suspension if inflicted at any other season of the year.

Cognizance may be taken of the fact that Lake Hopatcong is a summer resort and that the yachting season is limited to the warmer months of the year.

While a suspension should be of sufficient force to act as a deterrent of future violations, it should not, on the other hand, be unreasonably onerous. As was said in Re Jay's, Bulletin 318, Item 10, involving an Asbury Park licensee:

> "Suspensions are imposed not to destroy a licensee but to teach him that the law is made to be obeyed and to deter others from violations. The period of suspension is not to be chosen by the licensee any more than its length. It is not to be imposed on any principle that the timing should be when the punishment would hurt him the least. That would be but an idle gesture. It is only when the shoe pinches that the homework becomes

effective. No lesson is learned unless it impresses. Therefore, on general principles, the fact that the suspension happens to bear onerously is a mere rub of the green which licensees, penalized for violations, will have to take in stride.

"There is, however, this to be said for the petitioner: The season at Asbury Park is but fourteen weeks....."

It was there ruled that the last five days of a forty-day suspension should be postponed until shortly after Labor Day.

I shall here follow the course pursued in the Jay case, supra, and permit five days of the suspension to be served during the second week in September, when licensee's season, although past its peak, is, nevertheless, not at its lowest ebb. Petitioner's request that the balance of its present period of suspension be delayed until the month of November, when the club is practically inactive, may not be granted, since it would result in a suspension in form only and render nugatory the penalty heretofore ordered. Cf. Re Silver Palm Corporation, Bulletin 417, Item 10.

Accordingly, it is, on this 16th day of July, 1941,

ORDERED, that the ten-day suspension heretofore imposed in this case and already in effect since 3:00 A.M. (Daylight Saving Time) July 14, 1941, shall continue to run until five days of such suspension have been served, and that the remaining five days be hereby postponed until, and become effective at, 3:00 A.M. (Daylight Saving Time) September 9, 1941.

E. W. GARRETT,
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

CLIMACO FERRARI,
194 Eighth Ave.,
Newark, N. J.,

Holder of Plenary Retail Consumption License C-579 for the license year expiring June 30, 1941 and now holder of Plenary Retail Consumption License C-501 for the current (1941-1942) licensing year, both licenses having been issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Climaco Ferrari, Pro Se.
Abraham Merin, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to the charge that during prohibited hours on May 3, 1941 he sold alcoholic beverages in his licensed premises, in violation of Newark Ordinance No. 3930, adopted December 21, 1938.

Reports of investigators disclose that they entered the licensed premises, which is a restaurant, at 3:20 A.M. on May 3, 1941; that they ordered a meal, and after they were served they ordered and were served at 3:45 A.M. two glasses of beer. They also observed other customers in the premises being served alcoholic beverages.

The usual penalty for such violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case, for which two days will be remitted.

This proceeding, though instituted during the last licensing term which expired June 30, 1941, does not abate, but remains effective against defendant's renewal license for the current term.

Accordingly, it is, on this 16th day of July, 1941,

ORDERED, that Plenary Retail Consumption License C-501, heretofore issued to Climaco Ferrari by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is suspended for a period of three (3) days, effective July 21, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - DEVICES DESIGNED FOR GAMBLING - "COMET" - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

FRATERNAL ORDER OF EAGLES, Hoboken Aerie #603, 126 Hudson Street, Hoboken, N. J.,

Holder of Club License CB-5, issued by the Board of Commissioners of the City of Hoboken.

CONCLUSIONS AND ORDER

Fraternal Order of Eagles, Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

Licensee has pleaded guilty to charges that on May 17, 1941 it possessed two five-cent slot machines and one ten-cent slot machine, which might be used for the purpose of playing for money or other valuable thing, and devices or apparatus designed for the purpose of gambling, in violation of Rules 7 and 8 of State Regulations No. 20.

According to staff report, investigators discovered the machines on the licensed premises while making a routine inspection. Two of the machines are known as "Comet" and the third bore no name, but the three of them are the common type so-called "One Arm Bandits" which contain coins and a jack pot. They pay money to the player if he is lucky enough to draw certain combinations when he operates the one arm lever which spins the wheels.

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

Subsequent to the institution of these proceedings, the above mentioned license has expired and has been renewed by the issuance of Club License CB-5 for the present fiscal year. Such renewal license is subject to the suspension imposed herein. State Regulations No. 15.

Accordingly, it is, on this 17th day of July, 1941,

ORDERED, that Club License CB-5, heretofore issued to the Fraternal Order of Eagles, Hoboken Aerie #603, by the Board of Commissioners of the City of Hoboken, for the present fiscal year, be and the same is hereby suspended for five (5) days, effective July 21, 1941, at 2:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

7. LICENSEES - EMPLOYEES - MEMBERS OF THE LEGISLATURE - MEMBERS OF THE LEGISLATURE ARE NOT DISQUALIFIED FROM HOLDING LIQUOR LICENSES OR BEING EMPLOYED BY LICENSEES NOR, IF SO ENGAGED, FROM PARTICIPATING IN ALCOHOLIC BEVERAGE MATTERS IN THE LEGISLATURE - CONNECTION BY LEGISLATORS WITH LIQUOR LICENSEES DISAPPROVED TO PREVENT SUSPICION OF TIE-UP BETWEEN POLITICS AND LIQUOR.

Hon. Joseph B. Sugrue, July 19, 1941
Newark, N. J.

My dear Judge Sugrue:

I have yours of July 17th, inquiring whether an individual employed by a brewery is disqualified from being seated as a member of the Legislature of the State of New Jersey.

As you put the question, the answer is, of course, "No." That would be a matter for the Legislature to determine. I take it that your real inquiry is whether a member of the Legislature of the State of New Jersey may be employed by a licensed New Jersey brewery.

There is nothing in the Alcoholic Beverage Law or the State Rules and Regulations which specifically prohibits any public official, a member of the Legislature or otherwise, from being employed by a New Jersey licensee. However, this Department has ruled that the common law doctrine in the matter will be followed, and has, therefore, in many instances, held that certain public officials who hold liquor licenses or are employed by licensees are disqualified by reason of self interest from participating in any way in any alcoholic beverage matters coming before them in their official capacity. Thus, members of local governing bodies who issue licenses are disqualified by reason of self interest from acting in alcoholic beverage matters; local police magistrates are likewise disqualified, since they are charged with enforcement of the liquor law; but, on the other hand, County Freeholders, although public officials, are connected with the liquor law in so remote a degree that I have held they are not disqualified in any way. The rulings are collected and the reasons restated in Re Kerner, Bulletin 298, Item 9.

The specific case which you now pose has never come before this Department for official ruling. Members of the Legislature, it is true, are sometimes concerned with alcoholic beverage matters. If, however, they were to be disqualified by reason of self interest because of being liquor licensees or employed by licensees, then every member of the bar who is also a member of the Legislature should be disqualified from participating in bills concerning lawyers, and it would not be a much greater step to say that all members of the Legislature who, as lawyers, are employed as counsel by licensees, should also be disqualified.

I therefore rule that a member of the Legislature of the State of New Jersey is not disqualified from being employed by a licensee or holding a liquor license in this State, nor is he disqualified from participating in any alcoholic beverage matter which may come before him as a legislator.

However, I do wish to caution you that I do not approve of such connection by legislators with liquor licensees. One of the evils which brought about Prohibition and which the dry forces might well seize upon in an attempt to again bring that about, was the alleged tie-up between politics and liquor.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

8. APPELLATE DECISIONS - DUTTKIN v. SOUTH RIVER.

SUFFICIENT LICENSES IN VICINITY - DENIAL AFFIRMED.

ALEX DUTTKIN,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF SOUTH RIVER,)
Respondent.)

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for Appellant.
John E. Toolan, Esq., by Huyler E. Romond, Esq., Attorney for Respondent.

Respondent denied appellant's application for transfer of Joseph Skarzinski's plenary retail consumption license for premises 77 Division Street, to himself for premises 165 Whitehead Avenue, South River. Hence this appeal.

The record discloses that one of the reasons (among others) for such denial was that nine of the forty consumption licenses outstanding in the municipality are already located on Whitehead Avenue, which is between three-quarters of a mile and a mile in length, and that such number is sufficient for that street. Although such reason was not specifically mentioned in respondent's answer to the petition of appeal, it appears from the testimony of one of the two Councilmen who voted in favor of appellant's application (the total vote being four against, two in favor) that the matter of the sufficiency of licensed establishments existing on Whitehead Avenue was discussed by

respondent's members prior to the vote on the instant application. Three of the Councilmen testified that such was one of the grounds upon which their decision was based. The Mayor, who, though not voting on the application since there was no tie necessitating his vote, also voiced the same objection to this transfer.

Whitehead Avenue is mixed residential and business in character. It is one of the three major thoroughfares in the Borough. One of the present consumption establishments on Whitehead Avenue is but 180 feet from appellant's premises.

No citations are necessary to support the proposition that the right to transfer is not inherent in a license and that an issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. This Department has heretofore sustained local issuing authorities in their refusal to permit any additional consumption licenses on main thoroughfares in order to prevent a frequency of such places along such streets. Cf. Rosenvinge v. Metuchen, Bulletin 249, Item 6; Alpert v. Asbury Park, Bulletin 380, Item 2; Baselici v. Asbury Park, Bulletin 381, Item 4; Paradise Restaurant, Inc. v. Wrightstown, Bulletin 466, Item 6. In view of the present concentration of licenses on Whitehead Avenue, respondent's refusal to add a tenth license on that street cannot be said to be arbitrary or unreasonable.

Appellant contends, however, that public need and convenience require that a license be issued to him because the proposed premises are equipped with bowling alleys. He produced numerous persons who bowl at the premises and who testified that they are desirous of being able to obtain a "drink of beer" while bowling.

It appears, however, that there are two other licensed places containing bowling alleys in the municipality. In the recent case of DeCicco et al. v. Manville, Bulletin 467, Item 1, the same contention was made in a situation quite similar to the one at bar. In holding that the appellant had not sustained the burden of proof, it was there said:

> "Likewise, the further fact that bowling alleys are being operated at the proposed site and that various patrons there have expressed desire to be able to drink with their game falls far short of any requisite public need mandating a license for the proposed premises. The two bowling places in the Borough which have liquor licenses seem sufficient for those bowlers who need the refreshment of alcoholic beverages at their play."

Such ruling is likewise here applicable.

Appellant's premises are located on the corner of Whitehead and Russell Avenues. In an attempt to overcome respondent's aforesaid objection, appellant offered, at the hearing, to close the entrance on Whitehead Avenue and to use only the entrance on Russell Avenue. As precedent therefor, he refers to the case of Doherty v. Atlantic City, Bulletin 58, Item 8. In that case, the sole issue was whether the premises were located in a residential neighborhood. One entrance was on a business street and the other on a residential street. The only objections were general in nature from persons residing on the residential street. It was held that such mere general objections were not sufficient to sustain a denial of a license on a business street, and the action of the issuing authority was, therefore, reversed on condition that the entrance of the premises be altered so that the premises front exclusively on the business street. Such condition obviously left the aforesaid general objections without any weight.

Here, however, changing the entrance from Whitehead Avenue to Russell Avenue would not meet the express policy against lining up any further liquor licenses on Whitehead Avenue. Such change would not remove the premises from Whitehead Avenue. Moreover, it did not appear in the Doherty case that any of the members of the local body were opposed to the issuance of a license to the premises as altered. In this case, however, three of the Borough Councilmen testified that they would still be opposed to the granting of a license to appellant's premises even if the entrance on Whitehead Avenue were permanently barred. In this posture of the record, I would not be justified in compelling respondent to accede to appellant's request to change the entrance and grant the transfer.

The foregoing renders it unnecessary to pass upon the other grounds assigned by respondent for its denial in this case.

The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 21st day of July, 1941,

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

E. W. GARRETT,
Acting Commissioner.

9. NEW LEGISLATION - AMENDMENT TO R. S. 33:1-12.1 - STOCKHOLDER OF CORPORATION, EXCEPT A BONA FIDE HOTEL, OWNING MORE THAN TEN PER CENT OF STOCK MUST QUALIFY AS AN INDIVIDUAL APPLICANT - NOT APPLICABLE TO RENEWALS - APPLICANT-TENANT AT FEDERAL, STATE, COUNTY OR MUNICIPAL AIRPORT EXEMPT.

Senate Bill No. 362 was approved by Governor Edison on June 27, 1941, and thereupon became Chapter 230 of the Laws of 1941.

Since no effective date is stated, it became effective on July 4, 1941, pursuant to R. S. 1:2-3.

The new matter is underlined.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-12.1 of the Revised Statutes of the State of New Jersey.

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

"1. Section 33:1-12.1 of the Revised Statutes of the State of New Jersey, be and the same is hereby amended to read as follows:

"33:1-12.1. Class C licenses; qualifications of stock owners.

"No class C license shall be issued to any corporation, except for premises operated as a bona fide hotel, unless each owner, directly or indirectly, of more than ten per centum (10%) of its stock qualifies in all respects as an individual applicant, anything to the contrary contained in this chapter notwithstanding. This section shall not apply to the renewal of any license. This section shall not prevent the issuance of a class C license to a corporation for a business conducted or to be conducted by the corporation, as a tenant, at any airport owned or operated by the Federal, State, county or municipal government."

E. W. GARRETT,
Acting Commissioner.

Dated: July 24, 1941.

10. MORAL TURPITUDE - INCEST INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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

Case No. 124

ON HEARING
CONCLUSIONS AND ORDER

In 1929 petitioner, then 16 years of age, was convicted of the crime of incest. He was sentenced to an indeterminate term in the reformatory, but upon his commitment was found by a psychiatrist to be subject to recurrent manic episodes, whereupon he was sent to a state hospital for observation and treatment. He remained in the hospital for approximately eleven months, during which time he responded favorably to his treatment and was then returned to the reformatory, from which he was released on parole in July 1930. Petitioner's fingerprint record discloses no other criminal convictions since that time.

Incest, from its very nature, is a crime involving moral turpitude. Because of the gravity of the offense, even petitioner's youth and apparent mental instability at the time of its commission do not free the crime of the element of moral turpitude. Cf. Re Sebold, Bulletin 149, Item 3.

At the hearing to remove his disqualification, petitioner testified that he has been a resident of New Jersey for twenty-three years and is presently employed in the Receiving Department of a wholesale liquor licensee (permission so to be employed having been granted by this Department pending the outcome of his hearing herein); that prior thereto he had been "on the W.P.A." and in a C.C.C. Camp, had peddled vegetable produce, worked on moving vans and had done other odd jobs to earn a living.

Petitioner produced as character witnesses a business acquaintance, a social acquaintance and a former employer, who have known petitioner for five, eight and ten years respectively, and all of whom testified that during the course of their acquaintanceship with him he has been leading a law-abiding life.

The only indication that petitioner may not have been leading a law-abiding life for the past five years is his arrest in 1940 for desertion, which culminated in his appearance in a Family Court, where he was ordered to pay his wife part of his earnings. Desertion not being a crime involving moral turpitude in the absence of aggravating circumstances (Re Case No. 286, Bulletin 346, Item 15), I do not believe that this single lapse is so serious as to overcome petitioner's otherwise clear record since 1930.

The Chief of Police in the municipality where petitioner resides has certified that there are no complaints or investigations pending against him.

It is concluded that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 24th day of July, 1941,

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

E. W. GARRETT,
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN COLOR AND SOLID CONTENT - SUSPENSION OF 10 DAYS HERETOFORE IMPOSED AND STAYED NOW REIMPOSED.

In the Matter of Disciplinary Proceedings against

JAMES YANERO,
286 West Market St.,
Newark, N. J.,

Holder of Plenary Retail Consumption License C-81 for the fiscal year expiring June 30, 1941, and now holder of Plenary Retail Consumption License C-60 for the current fiscal year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

ON PETITION
ORDER

Fred Frieman, Esq., Attorney for Defendant-Licensee.

On April 15, 1941, I ordered the suspension of the license then held by this licensee for a period of ten (10) days, effective April 21, 1941, after the licensee had pleaded guilty to charges of possessing an illicit alcoholic beverage in violation of R. S. 33:1-50, and rebottling an alcoholic beverage in violation of R. S. 33:1-78 (Re Yanero, Bulletin 455, Item 6).

Thereafter, the licensee filed a petition requesting that the order of suspension be stayed pending the decision in almost identical disciplinary proceedings against Morris Rosenberg, 598 W. Market Street, Newark, N. J. The petition alleged "that it would be grossly inequitable if he were required to serve a suspension and thereafter there was an adjudication of not guilty in the proceedings against Morris Rosenberg." Based on this petition, on April 19, 1941 I ordered that the original order of suspension be stayed until further order.

The Rosenberg case has now been decided (Re Rosenberg, Bulletin 470, Item 1), and his license suspended for a period of fifteen (15) days instead of the usual ten (10) days, in view of his past record.

No reason appears, therefore, why the penalty heretofore imposed against James Yanero should not be put into full force and effect.

This proceeding, although instituted during the last licensing year (which expired June 30, 1941), does not in any wise abate, but remains fully effective against the defendant's renewal license for the current (1941-42) year. State Regulations No. 15.

Accordingly, it is, on this 24th day of July, 1941,

ORDERED, that Plenary Retail Consumption License C-60, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to James Yanero, 286 West Market Street, Newark, for the current fiscal year, be and the same is hereby suspended for a period of ten (10) days, commencing July 28, 1941, at 3:00 A.M. (D.S.T.).

E. W. GARRETT,
Acting Commissioner.

12. SPECIAL PERMITS - MUNICIPAL CONSENT - REASONS REQUIRED - GROUNDS FOR REFUSAL INADEQUATE - PERMIT ISSUED.

In the Matter of an Application of)
)
HILLSBOROUGH TOWNSHIP DEMOCRATIC ASSOCIATION, Flagtown, N. J.,) CONCLUSIONS
)
For Special Permit.)

Clarkson A. Cranmer, Esq., Attorney for Township of Hillsborough.
Hillsborough Township Democratic Association, by Joseph Vaccarelle, Secretary.
Percival Bardsley, an Objector, and appearing for the New Jersey Liquor Dealers League.
Rev. John Heinrichs, an Objector, Pro Se.
Rev. Geo. Scholten, an Objector, Pro Se.
Rev. Earl Hutchinson, an Objector, Pro Se.

The Hillsborough Township Democratic Association has applied to this Department for a special permit to sell and serve alcoholic beverages at the Association's clambake to be held on Sunday, July 27, 1941, at the Norz Grove, South Branch Road, South Branch, in the Township of Hillsborough.

The application does not bear the municipal clerk's certification that the Township Committee consents to the permit and that issuance thereof would not be contrary to local regulations or policy, nor does it bear the certification of the Township's chief law enforcement officer that he has no objection.

Although this Department has, under R. S. 33:1-74, the power to issue such permit without consulting the municipality involved, nevertheless it has been this Department's consistent policy to require, before granting any such permit, that the applicant obtain, or make reasonable effort to obtain, the mentioned certifications. Re Green, Bulletin 31, Item 3; Re Special Permits, Bulletin 40, Item 7; Re Ramsey Democratic Club, Bulletin 71, Item 10; Re Atlantic City Elks Reunion Association, Bulletin 260, Item 4; Re Blanda, Bulletin 264, Item 4.

The salutary purpose of such procedure is well stated by the late Commissioner in Re Ramsey Democratic Club, supra:

"The reason why I insist upon obtaining the written approvals of the chief of police and the clerk of the municipality where the social affair is held, is to ascertain whether there are any local ordinances or resolutions prohibiting sales of alcoholic beverages or limiting the hours thereof, or whether the granting of a permit would in anywise violate the declared policy of a municipality, or whether the governing board has any sound objection to the character of the individual, group or organization which purposes to conduct the social affair or whether there is any other reason why the permit should be refused by me."

Hence, where such municipal approval is withheld for good cause, this Department has denied the permit. Re Ramsey Democratic Club, supra; Re Atlantic City Elks Reunion Association, supra. On the other hand, mere refusal of municipal consent will not prevent issuance of the permit if such refusal is without sufficient cause. See Re Ramsey Democratic Club, supra.

In the present case, applicant claimed that municipal approval was arbitrarily withheld and requested a hearing thereon. Accordingly, after notice to the Township Committee, Clerk, and chief law enforcement officer, such hearing was held.

From the testimony, it appears that applicant is a political club which has been in active existence in the Township since 1931; that there are some fifty members in the club at the present time; that thus far, about fifty tickets have been sold for their clambake; that the only alcoholic beverage which the club wishes to dispense at that affair is beer.

It further appears that on July 18, 1941, the Township Committee, by vote of 1 - 1 (the third committeeman not being present), refused to grant approval for issuance of the permit; that, as a result, the Township Clerk and the chief law enforcement officer refused to certify approval on the application.

The Chairman of the Township Committee (who voted against approval) testified that he opposes the permit (1) because of local opposition to service of alcoholic beverages at these affairs when held on Sunday; (2) because any such permits would, in effect, unfairly compete with the several regularly licensed places in the Township which have picnic groves; and (3) because these latter groves have better sanitation facilities than the grove at which applicant plans to run its clambake.

The objectors who appeared at the present hearing voiced objections which, in sum total, are the same as those advanced by the Chairman.

As to (1) and (2): It appears that the Township has actually granted consent in the past for liquor permits for Sunday affairs at unlicensed places -- viz., for outings of the Township Volunteer Fire Co. on August 27, 1939 and August 25, 1940. Indeed, an application by the Township Volunteer Fire Co. for an outing on Sunday, August 3, 1941, (to be held on unlicensed premises) is presently pending before the Department and has been given the approval of the Township Committee.

From these instances, I think it clear that the municipal policy, if any, has been to give consent for these permits, even though they be for Sunday outings and even though they be for

unlicensed premises. There appears to be no reason why applicant, whose fitness to hold such a permit is not contested, should be denied a like privilege of dispensing alcoholic beverages under similar circumstances.

As to (3): Although it is asserted that the sanitation facilities of the grove in question are not equal to those of the liquor licensed groves, nevertheless there is no claim that the grove is actually unfit for the proposed outing. It appears that general picnics and outings have been held, in the past, at this same grove without objection on the part of the municipality that the grove was unfit.

In view of the foregoing, I do not see adequate ground in this case for denying to the present applicant the privilege of a special permit such as has been accorded to other groups for outings in the Township.

Hence, the permit being applied for is granted.

E. W. GARRETT,
Acting Commissioner.

Dated: July 25, 1941.

13. DISCIPLINARY PROCEEDINGS - DEVICE IN THE NATURE OF A SLOT MACHINE - GAMBLING ON LICENSED PREMISES - BALLY "RECORD TIME" FIVE-BALL ONE-SHOT - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against THE 134 TAVERN, INC., 128 Locust Avenue, Wallington, N. J., Holder of Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Wallington.	CONCLUSIONS AND ORDER

The 134 Tavern, Inc., Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

Licensee has pleaded guilty to charges that on March 31, 1941 it allowed, permitted and suffered on the licensed premises a Bally "Record Time" five-ball one-shot machine, a slot machine and device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing, in violation of Rule 8 of State Regulations No. 20, and allowed, permitted and suffered gambling in that it redeemed in cash the winnings of persons playing said machine in violation of Rule 7 of State Regulations No. 20.

According to staff report, the machine is operated by inserting a five-cent coin in a slot. Five balls appear, and one or more of the numbers in a semi-circle bearing numbers one to seven at the top of the machine, light up. The first four balls move into a slot in the upper left-hand corner. A pin drops to prevent the fifth ball going into the slot. When this ball drops into a pocket with a number corresponding to the number in the semi-circle, a hit is made and a pay-off, according to the odds shown, is made to the player.

The investigators played the machine, made a hit, and were paid off with a glass of beer and two nickels.

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

Accordingly, it is, on this 28th day of July, 1941,

ORDERED, that Plenary Retail Consumption License C-3, heretofore issued to The 134 Tavern, Inc. by the Mayor and Council of the Borough of Wallington, be and the same is hereby suspended for five (5) days, effective August 4, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. Garrett

Acting Commissioner.