

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

BULLETIN 646

JANUARY 16, 1945

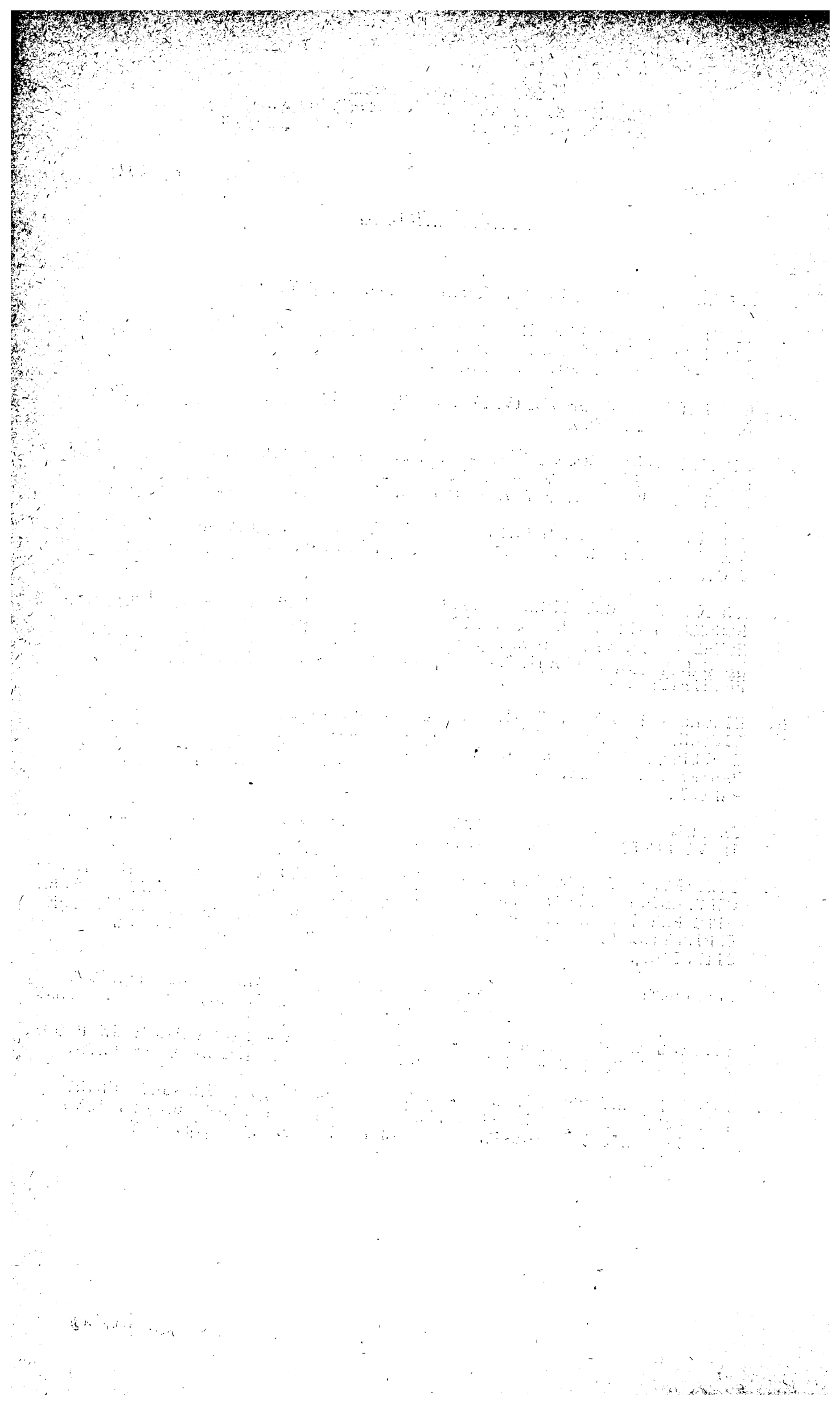
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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 646

JANUARY 16, 1945

1. APPELLATE DECISIONS - HOUTKIN v. LAKEWOOD TOWNSHIP.

BERNARD HOUTKIN,)

Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LAKEWOOD,)

Respondent,)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

I. David Goldstein, Esq., Attorney for Appellant.
J. Elmer Matthews, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from a denial by respondent of appellant's application for a plenary retail distribution license for premises located at 237 Second Street, Lakewood.

The reasons advanced by the respondent for the denial are that there are already in existence sufficient licenses of this type to meet local needs and that it is the express opinion and policy of the municipality not to issue any more.

At the outset, let it be noted that the appellant is apparently qualified to hold such a license and that no question has been raised as to his personal fitness to hold a license.

The respondent, through one of its officials, offered proof that on September 28, 1944, at a meeting of the Township Committee, a plenary retail distribution license was granted to the Lakewood Produce Co. and at that time the Mayor of the township issued a statement to the effect that no more licenses of that type would be issued in Lakewood and that he was making such a statement on behalf of the Township Committee. The Mayor's statement was supported by the statement of another member of the Township Committee. The appellant's application, which was filed September 25, 1944, came up for consideration on October 5, 1944 and was denied for the first reason above stated.

The present ordinance limits the number of plenary retail distribution licenses to ten. Nine licenses have already been issued, leaving one vacancy. The all-year-round population of Lakewood is 8,502, with a winter population of considerably more. The evidence shows the existence of three premises within a distance of approximately 450 feet and two additional premises within a distance of 750 feet from appellant's place of business, for each of which premises plenary retail distribution licenses have been issued. Further, there are eighteen plenary retail consumption licenses outstanding in the township for premises open throughout the year. Nine additional consumption licenses, plenary or seasonal, have been issued to hotels open for a portion of the year.

In Eisen v. Plainfield, Bulletin 68, Item 12, it was held that an applicant personally fit and whose premises are suitable and properly located should receive a license so long as the maximum number fixed by the ordinance has not been issued. However, in Levitt v. Township of Liberty, Bulletin 169, Item 4, it was held that "the fact that the full number of licenses authorized by respondent's ordinance has not been issued and that a vacancy exists does not thereby entitle appellant to a license." In that case the appellant did not establish the need for an additional license at the particular premises in question.

On appeal, the Commissioner should take notice of the particular circumstances surrounding each application, as well as the nature of the area in which the proposed licensed premises are situated. There is no doubt in my mind that the Township Committee felt that this particular area was adequately served as well as every other section of the township and because of that conviction made its declaration of policy.

Appellant has failed to establish the need for an additional license at the particular location desired and for that reason the appeal must be dismissed despite the vacancy under the terms of the ordinance. The refusal of the license has not been shown to be fraudulent, corrupt, or inspired by improper motives. In the absence of such proof, the following language used by Justice Parker in Bumball v. Burnett, 115 N. J. L. 254, at 255, applies to the present case:

"If the ordinance had fixed one hundred as a limit, still the council, in its discretionary power to license or not to license, could stop short of that number at any point, or could license A and refuse B."

However, it is well to point out that the ordinance should be amended to reduce the number of plenary retail distribution licenses to nine. In that way the sincerity of the position of the Township Committee will be further demonstrated. To permit the ordinance to stand unamended invites further difficulties.

Accordingly, it is, on this 4th day of January, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

1. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED.

In the Matter of Disciplinary Proceedings against)

SPIRO PAPPAS)
T/a BRISTOL CAFE)
100 Fourth Avenue)
Asbury Park, N. J.,)

O R D E R

Holder of Plenary Retail Consumption License C-46 issued by the City Council of the City of Asbury Park.)
-----)

Vincent P. Keuper, Esq., Attorney for Defendant-Licensee.
Nathan Davis, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On August 30, 1944 charges were served upon defendant alleging that on August 8, 1944 he sold alcoholic beverages to three minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. Defendant entered a plea of not guilty to said charges.

The three young ladies who are alleged to be minors, and to whom the sales were allegedly made, are all residents of the City of New York. Hearing upon the charges was originally scheduled to be held on September 21, 1944, upon which date it was necessary to adjourn the hearing without date because of the non-appearance of these witnesses. Despite numerous efforts made by agents of the Department of Alcoholic Beverage Control, it has been impossible to arrange with any of these witnesses to appear voluntarily at a hearing, and there is no process by which they may be compelled to return to this State and testify. Without the evidence of these witnesses, the guilt of the defendant cannot be established. Under the circumstances, I have decided to nolle pros the charges.

Accordingly, it is, on this 8th day of January, 1945,

ORDERED, that the above case be nolle prossed.

ALFRED E. DRISCOLL
Commissioner.

3. RECAPITULATION OF ACTIVITY FOR PERIOD FROM JULY 1, 1944 THROUGH DECEMBER 31, 1944

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>OCT.</u>	<u>NOV.</u>	<u>DEC.</u>	<u>TOTAL</u>
Licensees and employees	10	3	8	1	2	3	27
Bootleggers	23	22	16	14	10	9	94
Personating an ABC officer	--	--	--	--	--	1	1
Total number of persons arrested	33	25	24	15	12	13	122
<u>SEIZURES:</u>							
<u>Stillis</u>							
1 to 50 gallons daily capacity	4	1	1	2	4	0	12
50 gallons and more daily capacity	1	0	1	0	0	2	4
Total number of stills seized	5	1	2	2	4	2	16
<u>Mash - gallons</u>	9,855	200	50	350	60	2,999	13,514
<u>Motor vehicles - Trucks</u>	2	2	0	0	0	0	4
Passenger cars	3	1	1	0	1	0	6
Total number of motor vehicles seized	5	3	1	0	1	0	10
<u>Beverage alcohol - gallons</u>	115	34	131	0	.5	0	280.5
<u>Brewed malt alcoholic beverages</u> (beer, ale, etc.) - gallons	35.50	29.25	25.25	15	23	7	135
<u>Wine - gallons</u>	1.50	10.75	39.25	5.5	4	5	66
<u>Distilled alcoholic beverages</u> (whiskey, brandy, etc.) - gallons	4.37	93	4.5	19.5	5	19	145.3
<u>RETAIL LICENSEES:</u>							
Total number of premises inspected	1,165	1,231	1,074	1,249	1,134	991	6,844
Total number of bottles gauged	8,072	8,384	7,500	9,445	8,792	7,298	49,491
Total number of premises where violations were found	72	66	31	45	38	61	313
Total number of violations found	87	90	47	58	46	86	414
<u>Type of violations found:</u>							
Illicit (bootleg) liquor	6	15	14	12	0	4	51
Gambling devices	3	0	7	0	0	5	15
Prohibited signs	0	0	2	0	1	0	3
Unqualified employees	36	29	11	13	12	38	139
"Fronts" (concealed ownership)	4	6	3	1	0	7	21
Improper beer tap markers	1	17	0	2	3	1	24
Stock disposal permits necessary	16	12	3	9	8	7	55
No sign denoting legal sale hours - off-premises consumption (Reg. 38)	15	3	3	4	21	16	62
Other types of violations	6	8	4	17	1	8	44
<u>MILITARY AREA PATROL INSPECTIONS:</u>	417	401	406	474	465	519	2,682
<u>STATE LICENSEES:</u>							
Premises inspected	18	13	29	38	22	40	160
License applications investigated	16	11	9	20	8	13	77

COMPLAINTS:	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	TOTAL
Investigated, reviewed and closed	325	340	232	333	313	186	1,729
Investigation assigned, not yet completed	298	324	297	280	289	306	1,794
<u>LABORATORY:</u>							
Analyses made	54	187	120	134	112	126	733
"Shake-up" cases (alcohol, water and artificial coloring)	8	27	12	12	9	22	90
Liquor found to be not genuine as labeled	0	21	14	11	7	5	58
<u>IDENTIFICATION BUREAU:</u>							
Criminal fingerprint identifications made	23	31	25	23	10	13	125
Persons fingerprinted for non-criminal purposes	450	315	172	201	136	131	1,405
Identification contacts with other enforcement agencies	613	364	245	220	200	130	1,772
Motor vehicle identifications via N. J. State Police Teletype	19	19	6	6	22	12	84
<u>DISCIPLINARY PROCEEDINGS:</u>							
Cases transmitted to municipalities	19	39	25	15	13	14	125
Cases instituted at Department	15	16	20	17	15	11	94
Cancellation proceedings at Department	---	1	1	1	1	---	4
Supplemental charges in cases already instituted at Department	---	---	---	---	2	1	3
<u>HEARINGS HELD AT DEPARTMENT:</u>							
Total number of hearings held	46	42	42	40	40	36	246
Appeals	17	7	5	5	7	6	47
Disciplinary proceedings	12	18	14	19	18	15	96
Eligibility	14	12	17	8	10	10	71
Seizures	2	4	5	5	3	3	22
Lifting of automatic suspension	---	1	---	2	1	---	4
Application for solicitor's permit	1	---	---	---	---	---	1
Application for special permit	---	---	1	---	---	---	1
Application for license	---	---	---	1	1	2	4
<u>PERMITS ISSUED:</u>							
Total number of permits issued	4,621	970	796	1,618	1,271	696	9,972
Unqualified employees	1,962	316	162	176	126	109	2,851
Solicitors	1,628	110	59	51	56	22	1,926
Social affairs	187	233	161	186	210	99	1,076
Home manufacture of wine	53	20	147	880	575	132	1,807
Disposal of alcoholic beverages	106	136	130	131	182	127	812
Miscellaneous permits	685	155	137	194	122	207	1,500

Respectfully submitted,
 Erwin B. Hock
 Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - PERMITTING PINBALL MACHINE ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS, LESS 5 FOR GUILTY PLEA. HEREIN OF PINBALL MACHINES - RULE 7 OF STATE REGULATIONS NO. 20 REMAINS IN FULL FORCE AND EFFECT NOTWITHSTANDING RECENT COURT DECISION.

In the Matter of Disciplinary Proceedings against)
)
 JOSEPH V. KAZNICA)
 582-88 - 21st Avenue)
 Paterson, N. J.,)
)
 Holder of Plenary Retail Distribution License D-57 issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
 -----)

CONCLUSIONS
 AND ORDER

Joseph V. Kaznica, Defendant-Licensee, Pro Se.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to the following charge:

"On December 4, 1944 and theretofore, you possessed, allowed, permitted and suffered on and about your licensed premises a machine or device commonly known as a bagatelle or pinball machine, in violation of Rule 7 of State Regulations No. 20."

The licensee explains that the pinball machine had been located on his premises for only a short time and that the persons who delivered the machine to his store had "sold him the idea that it was legal." Apparently the licensee was so tempted by the blandishments of the agents for the pinball company that he overlooked the fact that Rule 7 of State Regulations No. 20 specifically prohibits licensees from having pinball machines on their licensed premises.

Since this is the first "pinball" violation to come before the Commissioner following the decision of the Court of Errors and Appeals in Stirling Distributors, Inc. v. Keenan, 135 N.J. Eq. 508, a brief statement of the regulations prohibiting the presence of pinball machines on licensed premises may help to clarify the position of the Commissioner on this controversial subject. On October 26, 1944, shortly after the announcement of the decision of the court in the Stirling case, supra, I stated that I saw no reason for encouraging the return of the pinball machine to licensed premises, and that Rule 7 of State Regulations No. 20 continued in full force and effect. Re Strehl, Bulletin 638, Item 11.

Rule 7 of State Regulations No. 20 was last amended in 1942, following the decisions of the Supreme Court in Hunter v. Teaneck, 128 N. J. L. 164 and Stafford v. Garrett, 128 N.J.L. 623. It reads as follows:

"No licensee shall engage in or allow, permit or suffer any pool-selling, book-making or any playing for money at faro, roulette, rouge et noir or any unlawful game or gambling of any kind, or any device or apparatus designed for any such purpose, or any machine or device commonly known as a bagatelle or pin ball machine, on or about the licensed premises."

The opinion of the Court of Errors and Appeals in the Stirling case, supra, did not raise any question with respect to the authority of Rule 7 of State Regulations No. 20. While perhaps not important, it may be noted that the machines before the court in the Stirling case, supra, may be distinguished from those in the Hunter and Stafford cases, supra. The latter two decisions were not mentioned by the Court of Errors and Appeals in its opinion.

Until such time as Rule 7 of State Regulations No. 20 is amended or modified, it will be strictly enforced. The common pinball machine, when found on licensed premises, is an attractive nuisance calculated to invite minors to visit places where they do not belong. Licensees, if they value their licensed privilege, will turn a deaf ear to those who try to locate these machines on their premises.

The licensee has no prior record. I shall, therefore, suspend the license for ten days, less five days for the guilty plea.

Accordingly, it is, on this 9th day of January, 1945,

ORDERED, that Plenary Retail Distribution License D-57, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Joseph V. Kaznica, for premises 582-88 - 21st Avenue, Paterson, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. January 15, 1945, and terminating at 3:00 a.m. January 20, 1945.

ALFRED E. DRISCOLL
Commissioner.

5. MUNICIPAL REGULATIONS - HOURS OF SALE - HEREIN OF COMMISSIONER'S RECOMMENDATION THAT MUNICIPAL REGULATIONS, IN ADDITION TO FIXING HOURS OF PROHIBITED SALE, REQUIRE THAT PREMISES BE CLOSED AND NO CONSUMPTION PERMITTED THEREON DURING HOURS WHEN SALES ARE PROHIBITED.

January 4, 1945

William E. Scott, Township Clerk
Wyckoff, N. J.

Dear Mr. Scott:

The Commissioner has recently received a request for information as to whether or not plenary retail consumption licensed premises in Wyckoff are permitted to remain open and permit consumption of alcoholic beverages on the premises after 2:00 a.m.

According to our records, paragraph 2(e) of a resolution (concerning plenary retail consumption licenses) adopted by the Wyckoff Township Committee on June 26, 1934 provides:

"No 'sales' of 'Alcoholic Beverages' under such 'licenses' may be made between 2 A.M. and 6 A.M. on weekdays and/or between 2 A.M. and 2 P.M. on Sundays."

The Township's week-round 2:00 a.m. hour when sales of alcoholic beverages must stop is altogether proper and desirable and has the Commissioner's strong approval. The Township's regulation does not, however, prohibit consumption of alcoholic beverages on licensed premises after 2:00 a.m. or require that the premises shall be closed by 2:00 a.m. The regulation's omission of "consumption" and "closing of premises" provisions seriously undermines its effectiveness for customers who purchase drinks before the 2:00 a.m. deadline may remain on the premises consuming those drinks until the early morning hours.

The Commissioner asks that you kindly convey to the Township Committee his cordial and sincere request that they proceed to the adoption of an ordinance reading in the following manner:

"AN ORDINANCE CONCERNING THE HOURS FOR THE RETAIL SALE OF ALCOHOLIC BEVERAGES, CONSUMPTION ON LICENSED PREMISES AND CLOSING OF LICENSED PREMISES IN THE TOWNSHIP OF WYCKOFF.

"BE IT ORDAINED by the Township Committee of the Township of Wyckoff:

"1. No plenary retail consumption licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or permit the consumption of any alcoholic beverage upon the licensed premises, on weekdays, between the hours of 2 A.M. and 6 A.M.; on Sundays, between the hours of 2 A.M. and 2 P.M.

"During the hours that sales are prohibited by this section the entire licensed premises shall also be closed, but this closing of premises requirement shall not apply to hotels or to restaurants as defined in Revised Statutes, 53:1-1t.

"2. No plenary retail distribution licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage, on Sunday, or before 9 A.M. or after 10 P.M. of any weekday.

"3. All regulations heretofore adopted in the Township of Wyckoff inconsistent with this ordinance are, to the extent of such inconsistency, repealed.

"4. This ordinance shall take effect upon final adoption and publication according to law."

Please note particularly that an ordinance is indicated. Since July 18, 1939, (when P.L. 1939, c.234, became effective), our municipalities have had authority to enact such regulations only by ordinance, but the act provides that all such regulations adopted before July 18, 1939, whether by ordinance or resolution, shall continue in full force and effect until repealed or changed by ordinance. The Township's "hours" resolution, having been passed before July 18, 1939, is still in effect but it can not be changed except by ordinance.

Observe the recommended "consumption" provision in the first paragraph of Section 1. Observe, also, the "closing of premises" provision in the second paragraph of Section 1. The exception in favor of hotels and restaurants may or may not be appropriate for Wyckoff. If the exception is inappropriate, the second paragraph of Section 1 should, of course, end with the words: "shall also be closed."

Enclosed herewith is a copy of State Regulations No. 38, another copy of which was mailed to you on August 10, 1943. As you already know, State Regulations No. 38 prohibit package sales on Sundays, and before 9 A.M. and after 10 P.M. on weekdays. Paragraph 3(c) of the Wyckoff resolution adopted June 26, 1934, fixes plenary retail distribution license hours of sale which are inconsistent with those established on a state-wide basis by the State Regulations; and the State Regulations prevail. Thus, please note that our suggested Section 2 of the ordinance will conform with the hours fixed in Rule 1 of the State Regulations.

Please advise us of the Township Committee's contemplated action in light of the Commissioner's request herein.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner

By:

Harold J. Saum,
Legal Assistant.

6. MINORS - PERMITTING MINORS TO CONSUME ALCOHOLIC BEVERAGES ON LICENSED PREMISES CONSTITUTES A VIOLATION OF R. S. 33:1-77 IRRESPECTIVE OF WHETHER THE MINOR IS ACCOMPANIED BY HIS OR HER PARENT AND IRRESPECTIVE OF WHETHER THE ORDER WAS GIVEN BY THE PARENT.

PARENTS - HEREIN OF PARENTS WHO MISREPRESENT THE AGE OF MINORS IN VIOLATION OF R. S. 33:1-81.

January 10, 1945.

Mrs. Henry Erben,
Runnemede, N. J.

Dear Mrs. Erben:

I have just received your letter asking "if a boy or girl under 21 is allowed to drink, when in the company of his or her parents, in a night club or tavern". I am interested in your comment that "arguments to this effect have come up" and that you "have heard so many versions" that you "decided to write" the Commissioner to be certain.

The answer to your inquiry is an emphatic "NO". Rule 1 of State Regulations No. 20 provides:

"No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years *** or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

The prohibition contained in the regulation is all-inclusive. Its purpose is to carry out the legislative mandate to protect the youth of our State. While I recognize that some misguided parents have endeavored to "beat" the State law and the State regulations by ordering drinks for their children, the service of alcoholic beverages to these minors or permitting them to consume these drinks on the licensed premises constitutes a violation of the State regulations.

Where a parent misrepresents or misstates the age of his or her child for the purpose of inducing a licensee or any employee of any licensee to sell, serve or deliver any alcoholic beverages to a person under the age of 21 years, the parent may be adjudged "a disorderly person and upon conviction" is subject to "be punished by a fine not exceeding \$200.00". (R.S. 33:1-81). In each case where it appears that the parent, or any other person for that matter, has deliberately misrepresented the age of the minor for the purpose of having a licensee or his agent sell alcoholic beverages to a minor, the facts will be presented to the Prosecutor's office, or in the alternative to the local authorities, with a recommendation that appropriate proceedings be instituted immediately. I have little sympathy for parents who callously choose to jeopardize the welfare of their children and the licensee by deliberately violating the New Jersey law on this subject.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - LICENSE SUSPENDED FOR BALANCE OF TERM WITH PERMISSION TO APPLY FOR ORDER LIFTING SUSPENSION AFTER THE EXPIRATION OF 40 DAYS AND BONA FIDE CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary Proceedings against

BELA HAMPE CATERING CO. INC.,
611 Central Avenue,
East Orange, New Jersey,

Holder of Plenary Retail Consumption License C-14 issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange.

CONCLUSIONS AND ORDER

Charles E. Garrett, Esq., Attorney for Defendant-licensee.
Edward F. Hodges, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded non vult to the following charge:

"In your application, filed with the Municipal Board of Alcoholic Beverage Control of the City of East Orange and upon which you obtained your current plenary retail consumption license, you, after listing the following as the shareholders in your corporation - Charlotte Leibhauser

40 shares, Dominick Matturi 1 share and Joseph Matturi 1 share, falsely stated 'No' to Question 23 which asks: 'Has any corporation, partnership, association or individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact Bela Hampe was and is the real and beneficial owner of all the said shares of stock; such false statement being in violation of R.S. 33:1-25."

Bela Hampe is a national of Hungary. From 1926 to 1934 he, individually, conducted a reputable restaurant in the City of East Orange. In 1934 he caused to be formed a corporation known as Bela Hampe Inc. and the restaurant was thereafter conducted in the name of that corporation for more than five years. In 1939 he caused to be formed a corporation known as Bela Hampe Catering Co. Inc. and, since that time, the restaurant business has been conducted in the name of defendant corporation. A plenary retail consumption license has been held continuously since July 1, 1934, by either Bela Hampe Inc. or Bela Hampe Catering Co. Inc.

In 1934 Bela Hampe was eligible individually to hold a license because of the then existing treaty between the United States and Hungary. Re Guskind, Bulletin 130, Item 5. Hence, the corporation which then obtained the license was not ineligible by reason of the fact that he was then the beneficial owner of more than ten per cent. of its stock. However, on January 21, 1942, it was ruled that, because of the declaration of war by Hungary against the United States, the treaty was necessarily abrogated. See Bulletin 491, Item 8. Thereafter defendant corporation, in which Bela Hampe held, directly or indirectly, more than ten per cent. of the stock, was ineligible to obtain a liquor license.

Since it is admitted that Bela Hampe is now the beneficial owner of all of the stock of defendant corporation, the present situation is unlawful and, hence, I must suspend the license for the balance of its term. Re Rodeo Inc., Bulletin 546, Item 7.

It has been represented to me that defendant corporation has entered into an agreement with Joseph Matturi and Marrio Gomez, who are employees upon the licensed premises, whereby the corporation has agreed to sell the restaurant business to these individuals. Bela Hampe has testified under oath, at a hearing held herein, that, if the sale is consummated, he will no longer have any interest in the restaurant business or the liquor license. An application is about to be made to the local issuing authorities by the purchasers to transfer the plenary retail consumption license, which transfer, if granted, will, of course, be subject to the suspension herein imposed. Under the circumstances, I believe that relief should be granted if the unlawful situation is corrected by the transfer of the license to qualified persons.

Ordinarily, in cases of this kind it has been my practice not to grant any relief until the expiration of sixty days from the date upon which the suspension becomes effective. Re Scharmberg, Bulletin 540, Item 4. However, as I said in Re Bourpalis, Bulletin 586, Item 1:

"There is no rule of thumb by which the penalties in these types of cases can be definitely admeasured. Each case must depend upon its own peculiar circumstances."

In the present case it does not appear that either corporation was organized for the purpose of evading the provisions of the Alcoholic Beverage Law. The licensed premises have been conducted for more than ten years, and neither corporation referred to herein has any prior record. Bela Hampe has applied for citizenship and expects to become a citizen of the United States. In the event that defendant corporation makes a bona fide sale of the business, I shall entertain an application by the bona fide purchasers to lift the suspension after they have obtained a transfer of the license subject to the suspension. However, in no event will the order lifting the suspension become effective until at least forty days have expired from the effective date of the suspension herein imposed.

Accordingly, it is, on this 11th day of January, 1945,

ORDERED that plenary retail consumption license C-14, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange to Bela Hampe Catering Co. Inc., for premises 611 Central Avenue, East Orange, be and the same is hereby suspended for the balance of its term, effective at 2 A.M. January 17, 1945; and it is further

ORDERED that, in the event a correction of the "front" is effected, leave be given as aforesaid to make application to the Commissioner of Alcoholic Beverage Control to lift the suspension.

ALFRED E. DRISCOLL,
Commissioner.

8. APPELLATE DECISIONS - SUBER AND JONES v. MATAWAN AND BROMBERG.
SUBER AND JONES v. MATAWAN, BROWN AND CLAY.

ROBERT S. SUBER, JR., EDMUND JONES,)
ADAM EDMONDS AND EDWARD JONES,)
Appellants,)

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF)
MATAWAN AND HENRY BROMBERG, t/a)
NEW DEAL TAVERN,)
Respondents.)

On Appeal

CONCLUSIONS AND ORDER

ROBERT S. SUBER, JR., EDMUND JONES,)
ADAM EDMONDS AND EDWARD JONES,)
Appellants,)

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF)
MATAWAN AND WILLIAM BROWN AND MAMIE)
CLAY, t/a MIDWAY,)
Respondents.)

Robert S. Hartgrove, Esq., Attorney for Appellants.
Edward W. Currie, Esq., Attorney for Respondent Borough Council.
J. Frank Weigand, Esq., Attorney for Respondent Henry Bromberg.
Harry Spitzer, Esq., Attorney for Respondents William Brown and Mamie Clay.

BY THE COMMISSIONER:

The above appeals were consolidated at the hearing by consent and, since they involve substantially the same issues, they will be decided together.

Appellants filed written objections to the renewal for the present fiscal year of plenary retail consumption licenses held by Henry Bromberg for premises at 21 Orchard Street, and William Brown and Manie Clay for premises at 15 Stillwell Street, Borough of Matawan.

After a hearing held upon said objections, respondent Borough Council, by unanimous vote of the members present at the meeting, renewed both licenses. Hence these appeals.

Appellants reside at various addresses on Stillwell Street. Bromberg's premises are on Orchard Street near its intersection with Stillwell, and Brown and Clay's premises are on Stillwell Street in close proximity to the homes of appellants herein.

At the hearing of these appeals, each of the appellants testified. Eleanor Suber, who is the wife of Robert Suber, and Elizabeth Jones, who is the wife of Edmund Jones, also testified. These witnesses allege that, on numerous occasions while they were outside of each of the licensed premises, they heard the patrons therein using loud, vulgar and profane language and that they have been frequently disturbed during the early morning hours by the playing on each of the licensed premises of a mechanical music-box which they describe as a "piccolo." They allege that minors have been permitted to frequent both places and that, in January 1944, beer was sold to two minors in Bromberg's premises and that, in July 1944, after the local hearing, beer was sold to a minor in the premises operated by Brown and Clay. They complain particularly about alleged conditions on Stillwell Street and Orchard Street for which they say both licensees are responsible. In support of the latter complaint, they testified that patrons of both premises congregate upon the streets and that these persons use vulgar and profane language; that patrons bring containers of beer from the licensed premises and drink the beer in cars parked along the streets.

Henry Bromberg and Manie Clay both deny that their respective licensed premises have ever been conducted improperly, and specifically deny that they have ever sold alcoholic beverages to any minors. They testified that they have never received any complaints of improper conduct in their premises or on the streets in the vicinity of their premises. Appellants admit that they never complained to any of the licensees, but allege that they have complained to the Mayor and to the local Chief of Police.

Chief of Police Sloat of the Borough of Matawan testified that, as a result of complaints received from some of the appellants, he visited this section of the Borough during the day and night. The Chief of Police stated that he found that none of the conditions complained of existed. He further stated that working-people patronized both licensed places and that he had seen these patrons standing and talking on the street but that they were quiet and orderly; that he had frequently visited both licensed places and had never found any violation of the law, and that he had never seen any minors in either place. He testified that he had arrested one man as disorderly on Mr. Bromberg's complaint, and that he was surprised at appellants' complaints because of the respectable, colored people who live in that neighborhood.

Det. Sgt. Flood of the Borough Police testified that, on his tour of duty, he made daily visits to this section of the Borough and that he found conditions quiet. He testified that, during the early morning hours, he had arrested in this vicinity one or two people who were drunk and disorderly.

This is a difficult case because it involves some conditions that are unsatisfactory to appellants for which the licensees cannot be held responsible, and some conditions that are unsatisfactory to appellants for which the licensees may be partly to blame. The mere fact that people congregate on the sidewalks, assuming that the people are orderly, or the fact that patrons are attracted from out of town gives no just cause for complaint against the licensees however annoying it may be to the appellants. On the other hand, appellants have a just cause for complaint if unnecessary noises are permitted on the licensed premises or if the licensed places are conducted in such a manner as to become a nuisance. A licensee must keep his place and his patronage under control. A renewal may be denied because of unsatisfactory conditions on the outside of his licensed premises which are caused by his patrons. Conte v. Princeton, Bulletin 139, Item 8; Repici v. Hamilton, Bulletin 201, Item 8.

The burden of proof herein rests upon the appellants to show that respondent Borough Council abused its discretion in renewing the licenses. In view of the fact that no previous complaint had ever been made to either of the licensees, and after considering the testimony given by the licensees and by members of the local Police Department, I cannot say that respondent Borough Council abused its discretion in renewing the licenses. The conclusions which I have reached herein apply merely to the renewal for the present fiscal year. The appellants may request the Borough Council to institute disciplinary proceedings at any time and may object to renewal for the next fiscal year if unsatisfactory conditions result from the continued operation of the respective places of business. In this connection it may be well to note that appellants are not required to resort to the Court of Chancery to obtain relief against unnecessary noises upon the licensed premises. Rule 5 of State Regulations No. 20 provides:

"No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls, or unnecessary noises, or allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

The local issuing authorities and the Commissioner of Alcoholic Beverage Control have concurrent jurisdiction to institute disciplinary proceedings to suspend or revoke a license for any violation of rules and regulations. R.S. 33:1-31. The licensees would be well advised to restrict the playing of the music machines by their patrons especially after midnight.

After reviewing the testimony and causing a further investigation to be made, I find that the licensed premises of Henry Bromberg are sufficiently separated from the adjoining grocery store, and that the two premises are separate and distinct. Re Rockefeller, Bulletin 200, Item 1. Hence the allegation in the Bromberg appeal that the license was issued in violation of R.S. 33:1-12(1) is without weight.

For the reasons aforesaid, the action of respondent Borough Council, in renewing both licenses, will be affirmed.

Accordingly, it is, on this 12th day of January, 1945,

ORDERED that the action of respondent Borough Council in renewing the licenses of Henry Bromberg, t/a New Deal Tavern, and William Brown and Mamie Clay, t/a Midway, for the current fiscal year, be and the same is hereby affirmed and the appeals herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, ACIDS AND SOLIDS - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against

ADA JOHNSON, SAMUEL & ESTHER KAPLAN, t/a Ada's Cocktail Bar, 491 McBride Avenue, West Paterson, N.J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of West Paterson

Ada Johnson, Samuel & Esther Kaplan, Defendant-Licensees, Pro Se. Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants plead non vult to a charge alleging that they possessed five bottles of alcoholic beverages which were not genuine as labeled, to wit: one 4/5 quart bottle labeled "Carstairs White Seal Blended Whiskey 86.8 Proof", one 4/5 quart bottle labeled "Old Overholt Straight Rye Whiskey 100 Proof", one 4/5 quart bottle labeled "Four Roses A blend of Straight Whiskies 90 Proof", one 4/5 quart bottle labeled "Canadian Club Blended Whiskey 90.4 Proof", and one 4/5 quart bottle labeled "Good Old Guckenheimer Brand Blended Whiskey 86 Proof", such possession being in violation of R. S. 33:1-50.

The file discloses that on October 27, 1944, an investigator of the Department of Alcoholic Beverage Control, after testing fourteen bottles of liquor in defendants' licensed premises, seized the five bottles of whiskey that appeared, after preliminary tests, to vary in color and proof from the contents of authentic bottles. Subsequent analyses of the contents of the bottles in question by the Department chemist indicated variations in proof, acids and solids when compared with an analysis made of genuine samples, respectively.

The defendants disclaim any knowledge as to the refills in question, insisting that their bartender, if anyone, must have tampered with the liquor. Despite personal innocence, however, licensees are strictly accountable for any refills found in their stock of liquor. Re Kurian, Bulletin 517, Item 2.

This is apparently licensees' first adjudicated offense. In view of that I shall, therefore, in this case suspend the license for a period of fifteen days.

Accordingly, it is, on this 12th day of January, 1945,

ORDERED that Plenary Retail Consumption License C-15, issued by the Borough Council of the Borough of West Paterson to Ada Johnson, Samuel & Esther Kaplan, t/a Ada's Cocktail Bar, for premises 491 McBride Avenue, West Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 A.M. January 18, 1945, and terminating at 3:00 A.M. February 2, 1945.

ALFRED E. DRISCOLL, Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR PERIOD OF 15 DAYS, LESS 5 FOR PLEA

In the Matter of Disciplinary Proceedings against)

THOMAS G. RADICS,)
t/a The Hamilton Inn)
186 Hamilton Street)
New Brunswick, New Jersey)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-62, issued by the State Commissioner of Alcoholic Beverage Control.)
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Thomas G. Radics, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded non vult to a charge alleging that on Saturday, December 30, 1944, at about 11:53 P. M., he sold a bottle of wine for consumption off the licensed premises, in violation of Rule 1 of State Regulations No. 38 which prohibits such sale before 9:00 A. M. or after 10:00 P. M. on any weekday.

The sale in question was made to investigators of the Department of Alcoholic Beverage Control by a bartender in the licensed premises. Defendant denies that he had any knowledge of or authorized said sale. However, a licensee, when apprehended for violation of the law, may not hide behind the cloak of his employees. Re Kneller, Bulletin 49, Item 4. The defendant is guilty as charged.

Defendant has no prior record. I shall suspend his license for a period of fifteen days, less five days for the plea, making a net suspension of ten days.

Accordingly, it is, on the 15th day of January, 1945,

ORDERED that plenary retail consumption license C-62, issued by the State Commissioner of Alcoholic Beverage Control to Thomas G. Radics, t/a The Hamilton Inn, for premises 186 Hamilton Street, New Brunswick, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. January 22, 1945, and terminating at 2:00 A. M. February 1, 1945.

Alfred E. Driscoll
Commissioner