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

BULLETIN 474 AUGUST 20, 1941.

1. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE IMPERSONATORS IN AND UPON THE LICENSED PREMISES - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

M. POTTER, INC.,
15 Central Ave.,
Newark, N. J.,

Holder of Plenary Retail Consumption License No. C-655 for the past fiscal year (1940-41) and presently holder of Plenary Retail Consumption License No. C-697 for the current fiscal year (1941-42), both issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

David Endler, Esq., Attorney for the Licensee Corporation.
Stanton J. MacIntosh, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has entered a plea of guilty to a charge which alleged that known female impersonators were permitted in and upon the licensed premises, in violation of Rule 4 of State Regulations No. 20.

The file discloses that investigators of this Department observed in the licensed premises a group of men whose voices, gestures and actions were effeminate. The evidence then available was not considered adequate to establish knowledge on the part of any officer of the corporation or responsible employee that the men observed in the premises were female impersonators. Subsequently, the President of the licensed corporation was cautioned by members of the local police department specifically against permitting in the licensed premises female impersonators, often known as "fags" and "fairies."

Subsequently, investigators of this Department again on two occasions observed groups of men in the premises. These male patrons embraced one another, kissed one another and danced with one another. Staff reports show that these patrons disported themselves in manner entirely inconsistent with the normal conduct of men. In fairness to the licensee, however, it should be noted that no actual acts of immorality were committed.

The question of penalty has received careful consideration. The presence of female impersonators in and upon licensed premises presents a definite social problem. The mere thought of such perverts is repugnant to the normal person. The deep-rooted personal contempt felt by a normal red-blooded man might well influence a decision and cause the imposition of an overly heavy-fisted penalty. Certainly, if the licensed premises were conducted in such manner as

to constitute a nuisance, and such circumstances were shown as to indicate the commission of unnatural intercourse in the licensed premises, outright revocation may be well deserved. Re McCracken v. Caldwell, Bulletin 456, Item 5. Again, facts and circumstances within the knowledge of a licensee might be ample justification for a drastic thirty-day suspension. Re Orsi, Bulletin 326, Item 1.

On consideration of the problem and factors involved, and on the basis of Departmental experience, I believe that the minimum penalty for this violation, in the absence of any aggravating circumstances, and with a completely clear previous record against a licensee, should be fifteen days. The usual five days will be remitted for entry of the guilty plea, thereby saving the Department the time and expense incident to proving its case.

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 7th day of August, 1941,

ORDERED, that Plenary Retail Consumption License No. C-697, heretofore issued to M. Potter, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is suspended for a period of ten (10) days, effective August 11, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - INSUFFICIENT IDENTIFICATION OF PREMISES WHERE ALLEGED SALE TOOK PLACE - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against HARRY GOLDBERG, 524 Broadway, Newark, N. J., Holder of Plenary Retail Distribution License D-65 for the fiscal year expiring June 30, 1941, and now holder of similar license D-19 for the current (1941-42) fiscal year, both licenses having been issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	ON HEARING CONCLUSIONS AND ORDER

Herman N. Goldberg, Esq., Attorney for Defendant.
Charles Basile, Esq., Attorney for State Department of Alcoholic Beverage Control.

The defendant pleads not guilty to charges that he sold an alcoholic beverage to a minor in violation of the statute and state rule. See R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Although such charges were preferred during the last licensing year (1940-41), they do not thereby abate. See State Regulations No. 15.

The gist of the Department's evidence in the case is that on Armistice Day last a group of seven boys, while returning in an automobile from a parade in Belleville, stopped at a combination delicatessen and liquor store; that the driver, John Szubski (then 18 years old), went into the store accompanied by another of the boys, Joseph Otlowski (then not quite 17), and there bought a quart of wine; that, as a result of drinking such wine, a third boy in the group, Joseph Patterman (then 15 or 16), became quite drunk by the time he reached home (an incident which led to the whole matter's coming to the attention of the Newark Police and this Department); that some days later Szubski and Otlowski, when brought to this neighborhood by Newark police officers and investigators of this Department, identified the defendant's store as the place where the wine was purchased, and the defendant as the seller.

Although there is much to vouchsafe the correctness of these boys' identification of the defendant and his store - viz., that both Szubski and Otlowski agree on the identification and that they base their recognition of the defendant's store on such concrete facts as the presence of a large nearby gasoline station (at which they claim they had stopped on their drive), an exterior sign at the defendant's store advertising delicatessen and liquor, and their memory of the interior of the store - there are, on the other hand, many circumstances which cast substantial doubt upon the acceptability of their identification.

Thus, it appears that the boys were not familiar with the neighborhood where the wine was purchased; that they had been driving around for some 20 or 30 minutes through a misty night before making their random stop for the wine; that, as to the interior of such store, Szubski recalls the wine being taken from a stand on the side of the store and toward the front, whereas Otlowski recalls the stand being located in the rear; further, that although Otlowski testified that the large gasoline station at which they had stopped was a block from the store where the wine was bought (and actually there is such a station a block below the defendant's store), Szubski, the driver of the automobile, testified that the station was some three or four blocks away; that, although both these boys testified they first stopped for the wine and then at the gasoline station, Patterman (the third minor who testified on behalf of the Department) stated they pulled in at the station first, thus differing in which direction from the gasoline station the store was located.

The Hearer, who took a view of the defendant's store and the neighborhood, reports that there are actually a number of gasoline stations along Broadway throughout this entire neighborhood (although none so prominent as the one which is a block below the defendant's store); that there is, a short distance above the defendant's store and on the same block and side of the street, another combination delicatessen and liquor store, but which has no exterior sign; that some five blocks above the defendant's store there is a combination delicatessen and liquor store which is near a gasoline station, has an exterior sign, and whose premises both inside and out resemble the defendant's.

The Hearer further reports that, as to the defendant, there is nothing unusual in his appearance which would, on a single brief encounter, tend to impress him on a casual purchaser's memory.

Now, although I can hazard a guess that the wine may have been purchased at the defendant's store, nevertheless, in view of all the circumstances and the fact that the defendant earnestly denies that these boys were in his store, I cannot, in full fairness to the licensee, feel morally convinced that the purchase occurred there and not perhaps at one of the other combination stores in this or even in some other vicinity.

The case is unlike Re La Corte, Bulletin 469, Item 1, involving suspension of license for sale to minors. There, although there was some doubt as to the minors' identification of the specific person who had served them, there was no doubt as to their identification of the place where they were served.

Hence, I find the defendant not guilty.

Accordingly, it is, on this 7th day of August, 1941,

ORDERED, that the present proceeding be and hereby is dismissed.

E. W. GARRETT,
Acting Commissioner.

3. APPELLATE DECISIONS - GREENBERG v. ELIZABETH.

SALES TO MINORS - KNOWN PROSTITUTES AND IMMORAL ACTIVITIES ON LICENSED PREMISES - REVOCATION AND DENIAL OF RENEWAL AFFIRMED.

ABRAHAM GREENBERG,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ELIZABETH,)
Respondent.)

Daniel G. Kasen, Esq., Attorney for Appellant.
Raymond A. Leahy, Esq., Attorney for Respondent.

Appellant appeals from the revocation, on June 23, 1941, of his plenary retail consumption license, C-102, which had been issued for the fiscal year 1940-41 and also from denial of renewal of said license for the present fiscal year. The premises are located at 1111 Elizabeth Avenue, Elizabeth.

Revocation followed a hearing on charges alleging that:

"On or about February 25, 1941, and on divers days prior and subsequent thereto you sold, served, delivered or allowed, permitted or suffered the service or delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, in violation of State Regulation No. 20, Rule 1.

"On or about February 25, 1941, and on divers days prior and subsequent thereto, you did allow, permit or suffer in or upon the licensed premises prostitutes or other persons of ill-repute, in violation of State Regulation No. 20, Rule 4.

"On or about February 25, 1941, and on divers days prior and subsequent thereto you did allow, permit or suffer in or upon your licensed premises lewdness and immoral activities, and allowed and permitted the licensed premises to be conducted in such a manner as to become a nuisance, in violation of State Regulation No. 20, Rule 5."

The amended petition of appeal sets forth that the charges are too vague and indefinite; that the finding of guilt is contrary to the weight of the legally admissible evidence and that the penalty of revocation constitutes a grave abuse of discretion.

In my opinion, the form of the charges is sufficient. Re Sengebush, Bulletin 311, Item 8; Re Orsi, Bulletin 390, Item 1. Moreover, appellant demanded and received from respondent before hearing herein a bill of particulars which sets forth the names of the individuals referred to in the charges.

At the hearing of the appeal, Susanne -----, born December 20, 1920, testified that she frequented the licensed premises four or five times a week from February 1940 to April 1941; that she had been served beer and whiskey at the licensed premises and, specifically, that about the middle of February 1941, the licensee served her with four drinks of Four Roses Whiskey at the bar in the licensed premises. The licensee and his brother, the bartender, deny that they sold alcoholic beverages at any time to Susanne but I believe her testimony and find that the evidence is sufficient to sustain the finding of guilt on the first charge as to this minor.

The evidence at the hearing on appeal concerning the second and third charges was given by Susanne -----, mentioned above, by Rose ----- and Bernice -----. There is no evidence that any of these girls or Mildred -----, who is mentioned in testimony given by Susanne, had ever been convicted as a prostitute. The licensee and his brother, Jack, swear that all of these girls were merely customers and that, so far as they knew, none of these girls were prostitutes. If this were all, the evidence would not be sufficient to sustain the second charge. However, Susanne ---- says that shortly after licensee took over the premises, in February 1940, he told her it would be all right to go out with men and to make sure that she got paid for it before she went out; that the licensee would indicate it was all right by smiling or shaking his head. Bernice ----- testified that she was told substantially the same thing by the licensee and that he also had arranged to signal her when it was all right to go out with a man. The most damaging testimony was given by Susanne -----, who admitted that, about the middle of February 1941, she had intercourse in a rear booth of the premises with a strange man after receiving a signal from the licensee, and who testified that she saw Mildred ----- have intercourse with two different men; the first intercourse having taken place in the rear booth in February 1941 and the second in the men's toilet of the premises in March 1941. This testimony was unshaken in any material respect despite a severe cross-examination. Rose ----- also testified that, in May 1941, she, on two consecutive evenings, had intercourse with a man in the rear booth. Despite licensee's denial, I cannot believe that he was ignorant of the character of these girls and that he knew nothing of the immoral activities which occurred on the licensed premises. The witnesses testified

that licensee was present on each occasion. The evidence is sufficient to sustain the finding of guilt on the second and third charges.

Revocation was not an unreasonable or excessive penalty under the circumstances of this case. I do not find that the penalty of revocation constitutes a grave abuse of discretion since the question of penalty is primarily to be decided by the local issuing authority. There is no excuse for permitting this sort of conduct on licensed premises. Pallie v. Caldwell, Bulletin 191, Item 1; Procoli v. Hamilton, Bulletin 413, Item 6; Stein v. Passaic, Bulletin 451, Item 5; McCracken v. Caldwell, Bulletin 456, Item 3; Kuhta v. Paterson, Bulletin 460, Item 10. The action of respondent in revoking the license for the fiscal year 1940-41 is affirmed. It follows that the denial of renewal for the present fiscal year was proper and said action by respondent is likewise affirmed.

Accordingly, it is, on this 9th day of August, 1941,

ORDERED, that the appeals filed herein be and the same are hereby dismissed; and it is further

ORDERED, that respondent's order of revocation of Plenary Retail Consumption License C-102, for premises at 1111 Elizabeth Avenue, Elizabeth, held in abeyance pending disposition of the instant appeals, be and the same is hereby restored to full force, effective immediately, and that the order entered herein on June 24, 1941 extending the term of said license be and the same is hereby vacated, effective immediately.

E. W. GARRETT,
Acting Commissioner.

4. NEW LEGISLATION - HOTELS AND RESTAURANTS - EMPLOYEES - HOTELS AND RESTAURANTS MAY EMPLOY, ON AND AFTER JULY 4, 1942, PERSONS FAILING TO QUALIFY AS TO AGE OR RESIDENCE WITHOUT PERMIT, PROVIDED SUCH PERSONS DO NOT SERVE, SELL OR SOLICIT THE SALE, OR PARTICIPATE IN THE MIXING, PROCESSING OR PREPARATION OF ALCOHOLIC BEVERAGES.

Assembly Bill No. 335 was approved by Governor Edison on July 28, 1941, and thereupon became Chapter 295 of the Laws of 1941.

Since no effective date is stated, it will become effective, pursuant to R. S. 1:2-3, on July 4, 1942.

The new matter is underlined.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-26 of the Revised Statutes.

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

"1. Section 33:1-26 of the Revised Statutes is hereby amended to read as follows:

"33:1-26. All licenses shall be for a term of one year from the first day of July in each year. The respective fees for any such license shall be prorated according to the effective date of such license and based

on the respective annual fee as in this chapter provided. Where the license fee deposited with the application exceeds such prorated fee, a refund of the excess shall be made to the licensee. Licenses are not transferable except as hereinafter provided. A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises. No retail license of any class shall be issued to any holder of manufacturer's or wholesaler's license, and no manufacturer's or wholesaler's license shall be issued to the holder of a retail license of any class. Any person who shall exercise or attempt to exercise, or hold himself out as authorized to exercise, the rights and privileges of a license except the licensee and then only with respect to the licensed premises, shall be guilty of a misdemeanor.

"In case of death, bankruptcy, receivership or incompetency of the licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the commissioner or other issuing authority may, in his or its discretion, extend said license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law as aforesaid. Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this chapter.

"On application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises, and after publication of notice of intention to apply for transfer, in the same manner as is required in case of an application for license as to said premises, the commissioner or other issuing authority may transfer, upon payment of a fee of five dollars ($5.00), any license issued by him or it respectively to a different place of business than that specified therein, by indorsing permission upon such license.

"On application made therefor setting forth the same matters and things with reference to the person to whom a transfer of license is sought as are required to be set forth in connection with an original application for license, which application for transfer shall be signed and sworn to by the person to whom the transfer of license is sought and shall bear the consent in writing of the licensee to such transfer, and after publication of notice of intention by the person to whom the transfer of license is sought, to apply for transfer in the same manner as is required in the case of an original application for license, the commissioner or other issuing authority, as the case may be, may transfer any license issued by him or it respectively to such applicant for transfer by indorsing the license. Such application and

the applicant shall comply with all requirements of this chapter pertaining to an original application for license and shall be accompanied, in lieu of the license fee required on the original application, by a fee of ten per centum (10%) of the annual license fee for the license sought to be transferred, which ten per centum (10%) shall be retained by the commissioner or other issuing authority, as the case may be, whether the transfer be granted or not, and accounted for as other license fees.

"The action of the other issuing authority in granting or refusing to grant any application for a transfer of license to a different place of business or person shall be subject to appeal to the commissioner within thirty days from the date such action was taken.

"No person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee; but specialized technical workers, required in any business may, with the approval of the commissioner, and subject to rules and regulations, be employed although failing to qualify as to residence or citizenship. Persons failing to qualify as to age, residence or citizenship may, with the approval of the commissioner, and subject to rules and regulations, be employed by any licensee, but such employee, if disqualified by age or citizenship, shall not, in any manner whatsoever serve, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage; and further provided, that no permit shall be necessary for the employment in a bona fide hotel or restaurant of any person failing to qualify as to age or residence so long as such person shall not in any manner whatsoever serve, sell or solicit the sale of any alcoholic beverage, or participate in the mixing, processing or preparation thereof."

ALFRED E. DRISCOLL,
Commissioner.

Dated: August 12, 1941.

5. NEW LEGISLATION - SALES BY LICENSED NEW JERSEY MANUFACTURERS AND WHOLESALERS TO ORGANIZATIONS OF ARMY OR NAVY PERSONNEL OPERATING PURSUANT TO WAR, NAVY OR NATIONAL GUARD REGULATIONS.

Assembly Bill No. 481 was approved by Governor Edison on August 4, 1941, and thereupon became Chapter 326 of the Laws of 1941.

It was effective immediately.

It reads as follows:

"AN ACT concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes.

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

"1. The holders of any valid and unrevoked Class A or Class B license, as defined in sections 33:1-10 and 33:1-11 of the Revised Statutes, except the holder of a bonded warehouse bottling license, shall be entitled, subject to rules and regulations, to distribute and sell alcoholic beverages within the limits of their licenses to any voluntary unincorporated organization of army or navy personnel operating a place for the sale of goods pursuant to regulations promulgated by the Secretary of War or the Secretary of the Navy, or, if the consent of the State Military Board shall have first been obtained, under the State National Guard regulations.

"2. This act shall take effect immediately."

ALFRED E. DRISCOLL,
Commissioner.

Dated: August 12, 1941.

6. NEW LEGISLATION - TAXATION OF ALCOHOLIC BEVERAGES SOLD BY LICENSED NEW JERSEY MANUFACTURERS AND WHOLESALERS TO ORGANIZATIONS OF ARMY OR NAVY PERSONNEL OPERATING PURSUANT TO WAR, NAVY OR NATIONAL GUARD REGULATIONS.

Assembly Bill No. 482 was approved by Governor Edison on August 4, 1941, and thereupon became Chapter 327 of the Laws of 1941.

It was effective immediately.

It reads as follows:

"AN ACT concerning the taxes imposed upon alcoholic beverages, and supplementing chapter forty-three of Title 54 of the Revised Statutes.

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

"1. No tax imposed by chapter forty-three of Title 54 of the Revised Statutes shall be payable on any sale of alcoholic beverages by any person holding a valid and unrevoked license to sell alcoholic beverages, issued pursuant to the provisions of section 33:1-10 or section 33:1-11 of the Revised Statutes, to a voluntary unincorporated organization of army or navy personnel operating a place for the sale of goods pursuant to regulations promulgated by the Secretary of War or the Secretary of the Navy, or, if the consent of the State Military Board shall have been obtained, under the State National Guard regulations, when said sale is accompanied by the delivery of such beverages to any such organization.

"2. This act shall take effect immediately."

ALFRED E. DRISCOLL,
Commissioner.

Dated: August 12, 1941.

7. ELIGIBILITY - FORGERY - LARCENY - MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

August 12, 1941.

Re: Case No. 387

The Alcoholic Beverage Law disqualifies persons convicted of a "crime involving moral turpitude" from obtaining a liquor license or working for a liquor licensee in this State. R.S.33:1-25, 26.

Applicant requests a determination as to whether his criminal record brings him within this disqualification. Re Turpitude, Bulletin 173, Item 15.

In 1935 applicant was convicted in New Jersey for forgery and apparently also for larceny (theft of mail) and was sentenced to imprisonment for six months in the county penitentiary. Upon his release he was extradicted to New York and there convicted for forgery and sentenced to six months in the workhouse. In 1939, several years after his release from the workhouse, he was again convicted in New York for forgery (but apparently on an indictment which had lain dormant for several years), and given a suspended sentence.

It appears that all these convictions, though scattered over several years, arose from a single course of criminal misconduct by applicant during 1935.

As to such misconduct, applicant testifies that one day in 1935, when out of employment for some six months, he entered the vestibule of an apartment house and there stole a person's mail which he recognized as containing a bank statement; that, several days thereafter, he repeated a similar theft of another person's mail which he likewise recognized as a bank statement; that, from study of the signatures on the cancelled vouchers enclosed in the

envelopes, he forged the names of these persons on nine or ten checks (totaling some $450.00) drawn upon their banks (one such bank being in New Jersey and the other in New York); that he engaged in this illegal activity for some ten days before being caught.

Independent investigation by this Department reveals that applicant's misconduct was apparently longer and more extensive than he claims.

Now, forgery is a crime which, by its very nature, presumably or normally involves moral turpitude. Re Ulhich, Bulletin 70, Item 2; Re Case No. 243, Bulletin 292, Item 3. So, by the same token, is the crime of stealing mail when in aid of forgery. Cf. Re Case No. 224, Bulletin 248, Item 6 (rifling the mails).

In the present case, even assuming applicant's version of the facts to be correct, such facts, since they show deliberate intent to commit these serious crimes and also that they were conducted on a substantial scale, confirm rather than rebut the presence of moral turpitude.

Although this period of applicant's misconduct in 1935 was his only "slip" and his six months' prior unemployment may well have been the prompting cause for his illegal activity, nevertheless such circumstances, while showing that applicant suffered a moral lapse under stress and is not a confirmed criminal, do not eliminate the actual element of turpitude from his offenses during that lapse. See Re Case No. 376, Bulletin 460, Item 4.

Accordingly, it is recommended that applicant be declared disqualified by his said record from obtaining a liquor license or working for a liquor licensee in this State.

Nathan Davis,
Attorney-in-Chief.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

8. INVITATIONS - THE DEPARTMENT, LIKE CAESAR'S WIFE, MUST BE ABOVE SUSPICION.

August 13, 1941

TO THE STAFF:

It has come to my attention that within the past few days many members of the Department, including myself, have received invitations to attend parties given by organizations which may at some future date be subject to regulation and/or control by this Department.

While I am sure that such invitations have been extended innocently and with only the best of intentions, none-the-less the wholesale distribution of such invitations to members of the Department should be discouraged lest a deservedly cynical public become even more cynical.

It is certainly not my desire to interfere with any pleasure which might be afforded the recipient of such invitation and under no circumstances do I wish to interfere with your private lives. Nevertheless, under the circumstances, I feel that it will be for the best interests of the Department if we discourage the issuance of invitations in this manner, and I therefore request that the recipients refrain from taking advantage thereof.

This bulletin is not intended to apply to individual cases where representatives of the Department are assigned to represent the Department.

ALFRED E. DRISCOLL,
Commissioner.

9. APPELLATE DECISIONS - DRUCKER v. TRENTON.

SUFFICIENT LICENSES IN VICINITY - OBJECTIONS OF RESIDENTS IN MIXED RESIDENTIAL AND BUSINESS NEIGHBORHOOD - DENIAL OF TRANSFER AFFIRMED.

SADIE DRUCKER,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE CITY OF TRENTON,)
Respondent.)

Gustave H. Wishnevsky, Esq., Attorney for Appellant.
John A. Brieger, Esq., Attorney for Respondent.

Appellant appeals from denial of transfer of her plenary retail distribution license D-19, issued for the fiscal year 1940-41, from 905 Brunswick Avenue to 1109 Hamilton Avenue, Trenton.

The answer sets forth that the transfer was denied because the granting thereof was objected to by a large number of owners and residents of properties within the immediate vicinity of the premises to which the transfer was sought and because another plenary retail distribution license in that section of the city was not advisable.

The premises formerly licensed at 905 Brunswick Avenue are located nearly two miles northwest of the premises to which the transfer is sought. On the southerly side of Hamilton Avenue, between Park and Olden Avenues, which is the block upon which 1109 Hamilton Avenue is located, there are thirteen buildings containing small stores on the first floor and approximately thirteen buildings devoted solely to residential purposes. On the north side of Hamilton Avenue, directly opposite the premises to which transfer is

sought, there are fourteen residences and a few small stores. In 1927 this portion of Hamilton Avenue was zoned for business, but there is evidence that the stores described herein were then in existence and a witness testified that since that time the trend in this section has been from business use to residential use. Despite the fact that this section is zoned for business, it appears that at the present time it is, in fact, a mixed residential and business section. At the hearing before respondent, seven people who resided near 1109 Hamilton Avenue objected to the transfer of the license.

It appears also that a plenary retail distribution license has been issued for premises at 547 Hamilton Avenue, which is located about one-half mile west of the premises in question and that there is another plenary retail distribution license at the corner of Olden Avenue and State Street, a distance of approximately three-quarters of a mile from the premises in question.

Transfer of a license to other premises is a privilege not inherent in the license. The issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. Van Schoick v. Howell, Bulletin 120, Item 6.

General objections to transfer within a business neighborhood are, ordinarily, not sufficient reason for denying a transfer. DeChristie v. Gloucester, Bulletin 121, Item 10; Conn v. Kearny, Bulletin 173, Item 1. However, where the transfer is sought to a section of a municipality which is of a mixed residential and business character, denial of the transfer does not constitute an abuse of respondent's discretion. Welstead v. Matawan, Bulletin 133, Item 2; Borkowski v. Clifton, Bulletin 139, Item 5; Morrovitz v. Bellmawr, Bulletin 329, Item 9. Moreover, respondent's conclusion that the existing plenary distribution licenses are sufficient to serve the needs of those residing in this section of the city does not appear to be unreasonable. Cf. Grand v. East Orange, Bulletin 447, Item 5.

The action of respondent is affirmed.

Accordingly, it is, on this 14th day of August, 1941,

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

ALFRED E. DRISCOLL,
Commissioner.

10. RUNNING BY THE DANGER SIGNALS - SALE OF LIQUOR TO MINORS - VIOLATION BY 1/10 OF 1% ENDANGERS THE 99.9% OF THE INDUSTRY WHO CAREFULLY OBSERVE IN EVERY RESPECT THE LAW AND THE RULES AND REGULATIONS.

In the Matter of Disciplinary Proceedings against VITO La CORTE, 294 Fifteenth Avenue, Newark, N. J., Holder of Plenary Retail Consumption License C-409, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark for the fiscal year expiring June 30, 1941, and presently operating under Special Permit No. AI-179 issued by the Acting Commissioner of Alcoholic Beverage Control.	ON PETITION FOR CLEMENCY CONCLUSIONS

Mario V. Farco, Esq., Attorney for Defendant-Licensee.

BY THE COMMISSIONER:

I have before me the petition of Vito LaCorte praying for a reduction of the forty-day suspension penalty heretofore imposed by this Department by Order dated the 9th day of July, 1941.

It appears from the Conclusions and Order aforesaid that an admittedly heavy penalty was imposed by Acting Commissioner Garrett because LaCorte's violation included the serving of beer to four minors, one of whom was a girl "barely fifteen years of age," and also because LaCorte had a prior record of twenty days' suspension for serving a sixteen and an eighteen year old minor and for possessing illicit liquor. Re LaCorte, Bulletin 469, Item 1.

A violation of the Statute and of the State Regulations prohibiting the sale of an alcoholic beverage to a minor on one occasion is a serious matter and warrants the infliction of a penalty calculated to prevent the reoccurrence of such a serious offense. A second similar violation is doubly serious and indicates either that the penalty imposed in the first instance was not sufficiently drastic, or such callousness on the part of the licensee as to evidence a complete lack of appreciation on his part as to the seriousness of the offense committed.

While I appreciate the difficult problem confronting a licensee when faced with a border-line case involving a hasty determination of the age of his prospective customer, none the less it must be recognized that, in many instances, it is the licensee who has created the problem by his previous course of conduct in serving those of questionable age. In border-line cases where the safety signals established by the statute have been observed, the licensee is entitled to the sympathetic consideration of this Department. No such consideration is warranted, however, where sales are made to

minors whose youth and age is apparent from even the most casual scrutiny, and where the provisions of the statute have been entirely disregarded.

I do not intend to tolerate the violation of this important provision of the statute covering the sale of alcoholic beverages to minors. Nor will I countenance a violation of the Rules and Regulations supporting the same, and persons found guilty of such violations will be dealt with accordingly. In taking this position, I am sure that I have the wholehearted support of the entire industry, which has indicated that it has no sympathy for habitual violators who, by their activities, tend to bring discredit upon the industry as a whole. It is perhaps well at this time to repeat the advice given by my distinguished predecessor, when he said:

> "The best advice I can give you is that if you doubt the prospective purchaser is an adult, don't sell. It will, in the long run, be the safest way to insure your keeping your license." Re Mount's, Bulletin 159, Item 9.

This advice was rendered prior to the amendment to Section 77 of Title 33 of Revised Statutes. Therefore, to the sound advice previously given, it should be added that, in every instance when the licensee is in doubt, he should observe the safeguards given him by the amendment.

The findings in this case and in the prior case appear to be entirely warranted. Therefore, in view of all the facts, I am of the opinion that the forty-day penalty is not excessive.

The claim that the penalty imposed will work great financial hardship upon LaCorte and his family, while it invokes our sympathetic attention, is none the less not a valid reason for reducing the penalty. For the Department to seek, in each disciplinary case, to evaluate the financial condition and resources of the licensee and impose a penalty accordingly would be assuming a virtually impossible task. Hence, sound policy requires that, in the main, penalties be measured strictly and solely in accordance with the gravity of the offense and the licensee's past record.

This is in accord with the policy of this Department, which in the past has denied reduction of penalty where the same has been sought on the basis of financial hardship. See Re Maire, Bulletin 435, Item 9, and Re Janulis, Bulletin 442, Item 5.

The petition for clemency is denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: August 14, 1941.

11. WHOLESALERS - PREPARATION OF RETAILERS' TAX REPORTS BY WHOLESALERS OR THEIR SALESMEN IS NOT PERMISSIBLE - POLICY RESTATED.

August 18, 1941.

It has been brought to my attention that there is a growing tendency on the part of some wholesalers, or the salesmen thereof, to make up retailers' tax reports.

My predecessor, on one or more occasions, ruled:

"The preparation of retailer's tax reports by wholesalers or their salesmen, is not permissible, whether there is a charge for the service or not." Bulletin 276, Item 10.

To permit the preparation of retailers' tax reports by wholesalers, or their salesmen, whether for a financial consideration or as a favor, would destroy the hard and fast rule this Department has established in an effort to eliminate the tied house. The Legislature has indicated (R.S. 33:1-43, as amended P.L. 1940, Chapter 234) its opposition to any tie, and it is the duty of this Department to carry out the legislative intent.

We are not in a position to distinguish between favors and therefore must frown upon all alike. Anything of this sort which tends to place retailers under obligation to wholesalers is disapproved.

ALFRED E. DRISCOLL,
Commissioner.

12. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

August 18, 1941.

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will become effective on or about Tuesday, September 9, 1941. New items and changes in old items must be filed at the offices of this Department not later than Monday, August 25, 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.

Alfred E. Driscoll
Commissioner.