

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

BULLETIN 432

NOVEMBER 26, 1940.

I. CONSCRIPTION - EFFECT ON CURRENT LIQUOR LICENSES AND ON APPLI-
CATIONS FOR RENEWALS - THE ALTERNATIVE SOLUTIONS.

November 14, 1940

Louis Horvath, Jr., Vice-President,
Franklin Township Tavern Association,
New Brunswick, N. J.

My dear Mr. Horvath:

You inquire for the procedure to be followed by those who hold liquor licenses and are selected for military duty under the Selective Service Act.

The question is timely. Soon many of our young men will be called to the colors and it is possible that among them will be some of our licensees.

So far as current licenses are concerned, no great obstacle is presented. It is lawful for an absentee owner to employ a manager to conduct his business, and the manager may have power of attorney or other authority to control the owner's business affairs as the owner sees fit, although the full responsibility for compliance with the law remains with the owner. Re Blank, Bulletin 177, Item 6.

The difficulty will come when renewal time arrives.

Applications for licenses may not be signed by agents, attorneys, or managers, or made by them on behalf of principals. Re Rosenbaum, Bulletin 188, Item 5. The ruling in Re Tabor, Bulletin 362, Item 5, is not to the contrary, but merely to indicate the authorization which the agent or manager must have from the owner to procure the temporary interim permit provided for in the Rosenbaum ruling. The law expressly requires (R. S. 33:1-25) that the application shall be duly sworn to by the applicant, except the application of a corporation which shall be duly sworn to by the president or vice-president.

There are two courses which may be followed.

The application for the license may be sent to the absent party, wherever he may be, and he may sign it and execute the affidavit either as applicant for the license on his own behalf or as president or vice-president of the applicant corporation, as the case may be. There is no requirement that the application be executed or the affidavit taken within the State. The application may then be returned to the license issuing authority for consideration in regular course. The advertising and purchase of Federal Tax Stamp may be attended to by the manager. The applicant may be represented at the municipal hearing, if hearing is held, by his manager or by attorney.

Military service outside of the State will not break the continuity of residence within the State, if the domicile to which it is proposed to return is continuously in New Jersey.

The alternative for individual licensees which may very well be the more convenient solution is to form a corporation and to transfer the license to the corporation, in which event there will be no difficulty in making the application for renewal if the president or vice-president of the corporation, either of whom may lawfully execute the application on behalf of the corporation, is permanently situated at home in New Jersey.

Either course may be followed. It is up to each licensee to choose.

Of course, if the license is now held by a corporation and either the president or vice-president remains at home, then he, as aforesaid, may execute the application and no special arrangements are necessary.

As regards the tax reports, I presume that if the holder of the license is absent, they may be signed by a duly authorized agent or attorney. But as to that you should inquire of the Beverage Tax Division of the State Tax Department at 109 West State Street, Trenton, for it is wholly in the Tax Department's jurisdiction.

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

2. DISCIPLINARY PROCEEDINGS - SALE OF UNCHILLED BEER IN QUANTITY LESS THAN 72 FLUID OUNCES - 5 DAYS ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against)	
)	
EMIL SCHREIBER,)	CONCLUSIONS
5019 Hudson Avenue,)	AND ORDER
West New York, N. J.,)	
Holder of Limited Retail Distribution License DL-9, issued by the Board of Commissioners of the Town of West New York.)	
-----)	

Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.
Emil Schreiber, Pro Se.

The licensee has pleaded guilty to a charge of selling alcoholic beverages not pursuant to and within the terms of his limited retail distribution license in that he sold unchilled beer in a quantity of less than seventy-two fluid ounces, contrary to R. S. 33:1-12(3b), in violation of R. S. 33:1-2.

The penalty for this violation is ten days. Cf. Re Haze-winkel, Bulletin 295, Item 2.

By entering the plea, the licensee has saved the Department the time and expense of proving its case. The license, therefore, will be suspended for five days instead of ten days.

Accordingly, it is, on this 9th day of November, 1940,

ORDERED, that Limited Retail Distribution License DL-9, heretofore issued to Emil Schreiber by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of five (5) days, effective November 12, 1940, at 6:00 A.M.

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - SLOT MACHINE ON LICENSED PREMISES - 5 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

SOPHIA GERTZEN,)
9100 Atlantic Ave.,)
Margate City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Con-)
sumption License C-6, issued by)
the Board of Commissioners of)
the City of Margate City.)

Sophia Gertzen, Defendant-Licensee, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge that on July 23, 1940 she possessed, and allowed, permitted and suffered a Keeney's "Triple Entry" machine, a slot machine and device in the nature of a slot machine on her licensed premises, in violation of Rule 8 of State Regulations No. 20.

The usual penalty for this violation is ten days.
Re Morrisey & Walker, Inc., Bulletin 423, Item 8.

By entering this plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five days instead of the usual ten days.

Accordingly, it is, on this 8th day of November, 1940,

ORDERED, that Plenary Retail Consumption License C-6, heretofore issued to Sophia Gertzen by the Board of Commissioners of the City of Margate City, be and the same is hereby suspended for a period of five (5) days, effective November 11, 1940, at 2:00 A. M.

E. W. GARRETT,
Acting Commissioner.

4.

REFERENDA CONCERNING ALCOHOLIC BEVERAGES

August 30, 1940.

The present New Jersey Alcoholic Beverage Law (R.S. 33:1-1 et seq.) authorizes municipal referenda relating to alcoholic beverages on five specific questions; viz:

- R.S. 33:1-44: "Shall the retail sale of alcoholic beverages, other than brewed malt alcoholic beverages and naturally fermented wine, for consumption on the licensed premises by the glass or other open receptacle pursuant to chapter 1 of the title Intoxicating Liquors of the Revised Statutes (§33:1-1 et seq.), be permitted in this municipality?"
- R.S. 33:1-45: "Shall the retail sale of all kinds of alcoholic beverages, for consumption on the licensed premises by the glass or other open receptacle pursuant to chapter 1 of the title Intoxicating Liquors of the Revised Statutes (§33:1-1 et seq.), be permitted in this municipality?"
- R.S. 33:1-46: "Shall the sale of all alcoholic beverages at retail, except for consumption on railroad trains, airplanes and boats, and the issuance of any retail licenses, except as aforesaid, pursuant to chapter 1 of the title Intoxicating Liquors of the Revised Statutes (§33:1-1 et seq.), be permitted in this municipality?"
- R.S. 33:1-47: "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?"
- R.S. 33:1-47.1: A question as to whether or not the hours between which the sale of alcoholic beverages at retail may be made in the municipality, on weekdays, Sundays, either or both, shall be fixed as requested in the petition for the referendum.

Since December 6, 1933, when the law became effective, such referenda have been held in the following municipalities:

<u>R.S. 33:1-44</u>	<u>R.S. 33:1-45</u>	<u>R.S. 33:1-46</u>	<u>R.S. 33:1-47</u>	<u>R.S. 33:1-47.1</u>	<u>Result</u>	<u>Date Held</u>
				(1) Allendale	Yes	11/5/35
			Avalon		Yes	11/6/34
		Barrington			Yes	11/2/37
			Bernards		Yes	11/8/38
			Bloomfield		Yes	11/6/34
				(2) Bogota	Yes	11/2/37
			Boonton (Town)		No	11/5/35
		Bridgeton			Yes	11/6/34
		Bridgeton			Yes	11/8/38
			Burlington (Twp.)		No	11/8/38
				(3) Camden	No	11/2/37
			Cape May		Yes	11/6/34
			Chatham (Boro)		No	11/8/38
		Collingswood			No	11/5/35
	Commercial				No	11/5/35
	Delanco				No	11/5/35
			Dennis		No	11/6/34
		Dennis			Yes	11/5/35
		Dennis			No	11/7/39
			Deptford		Yes	11/5/35
			Dover (Town)		Yes	11/2/37
	Downe				No	11/6/34
		Downe			No	11/2/37
			Dunellen		Yes	11/6/34
			East Orange		No	11/6/34
				(4) East Orange	No	11/5/35
			East Orange		No	11/8/38
Elk					No	11/3/36
			Englewood		Yes	11/6/34
			Ewing		Yes	11/5/35
		Fairfield			Yes	11/6/34
		Fairfield			Yes	11/8/38
			Fairfield		No	11/8/38
				(5) Florence	No	11/7/39
			Freehold (Boro)		No	11/8/38
			Gloucester (Twp.)		No	11/6/34
				(6) Gloucester (Twp.)	No	11/2/37
			Gloucester City		Yes	11/5/35
	Greenwich (Twp.) (Cumberland Co.)				No	11/5/35
		Haddon			Yes	11/8/38
		Haddonfield			No	11/6/34
			Hamilton (Twp.) (Mercer Co.)		No	11/6/34
				(7) Hamilton (Twp.) (Mercer Co.) (Both questions)	Yes	11/8/38

<u>R.S. 33:1-44</u>	<u>R.S. 33:1-45</u>	<u>R.S. 33:1-46</u>	<u>R.S. 33:1-47</u>	<u>R.S. 33:1-47.1</u>	<u>Result</u>	<u>Date Held</u>
		Harrison (Twp.)			No	11/6/34
		Hopewell (Twp.)			No	11/5/35
		(Cumberland Co.)				
			Hopewell (Twp.)		Yes	11/8/38
			(Mercer Co.)		No	11/8/38
			Jamesburg		No	11/8/38
			Kingwood		No	11/8/38
				(8) Kingwood		
				(Both questions)	Yes	11/7/39
			Landis		Yes	11/5/35
			Lawrence (Twp.)			
			(Mercer Co.)		No	11/6/34
			Lawrence (Twp.)			
			(Mercer Co.)		No	11/2/37
	Linwood				No	11/5/35
			Little Egg Harbor		Yes	11/5/35
	Little Silver				No	11/5/35
			Lower		Yes	11/6/34
			Magnolia		Yes	11/5/35
			Manasquan		Yes	11/2/37
		Mansfield (Twp.)				
		(Burlington Co.)			Yes	11/3/36
				(9) Mansfield		
				(Twp.)		
				(Burlington Co.)	No	11/8/38
			Mansfield (Twp.)		No	11/7/39
			(Burlington Co.)		No	11/3/36
			Marlboro		Yes	11/7/39
			Marlboro		No	11/6/34
	Maurice River				No	11/6/34
	Merchantville				No	11/6/34
		Merchantville			Yes	11/6/34
			Merchantville		No	11/6/34
			Midland Park		No	11/6/34
				(10) Midland Park	No	11/8/38
			Montgomery		No	11/6/34
				(11) Montgomery		
				(Both questions)	No	11/7/39
		Moorestown			No	11/5/35
			North Cape May		Yes	11/7/39
			North Wildwood		Yes	11/6/34
			Oxford		No	11/5/35
			Paulsboro		No	11/5/34
			Phillipsburg		No	11/6/34
				(12) Plainfield	No	11/7/39
					Yes	11/5/35
			Ridgefield Park		Yes	11/6/34
				(13) Riverside	No	11/7/39
			Rocky Hill		Yes	11/8/38
			Roxbury		Yes	11/2/37
			Runnemede		No	11/6/34
				(14) Runnemede	Yes	11/8/38
			Sea Isle City		Yes	11/6/34
					Yes	11/5/35
	Shrewsbury (Boro)			(15) Somerville	No	11/8/38
			Southampton		No	11/6/34
				(16) Southampton	No	11/8/38
			South Orange		No	11/6/34
			Springfield (Twp.)			
			(Burlington Co.)		No	11/8/38
			Stafford		Yes	11/5/35
			Stafford		Yes	11/8/38
			Stone Harbor		Yes	11/6/34
			Union (Twp.)			
			(Ocean Co.)		Yes	11/5/35
		Upper			Yes	11/7/39
		Upper Deerfield			No	11/6/34
		Upper Deerfield			No	11/2/37
	Upper Freehold				Yes	11/5/35
			Verona		No	11/6/34
			Verona		No	11/2/37
			Wall		Yes	11/8/38
			Warren		Yes	11/8/38
		Washington (Twp.)				
		(Gloucester Co.)			No	11/6/34
			Washington (Twp.)			
			(Mercer Co.)		No	11/7/39
			West Deptford		Yes	11/5/35
			Westville		No	11/6/34
			Westville		No	11/2/37
			Wildwood		Yes	11/6/34
			Woodbine		Yes	11/6/34
	Woodstown				Yes	11/2/37

(1) "Shall the sale of Alcoholic Beverages, at retail, be permitted in this Municipality on Sundays except between the hours of 2:00 A.M. and 12:00 Noon?"

- (2) "Shall the sale of all alcoholic beverages be permitted on Sunday, except between the hours of 3 A.M. and 12 o'clock Noon?"
- (3) "Shall the sale of alcoholic beverages be permitted on Sundays in the municipality after 1 P.M.?"
- (4) "Shall the sale of Alcoholic Beverages at retail be permitted in this Municipality between the hours of 12 Midnight Saturday and 2 A.M. Sunday?"
- (5) "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality between the hours of 1:00 P.M. and 12:00 Midnight, Eastern Standard Time, except for that period between the last Sunday in April and the last Sunday in September of each year when the times aforementioned shall be computed in accordance with Eastern Daylight Saving Time?"
- (6) "Shall the sale of alcoholic beverages be permitted in the Township of Gloucester on Sundays after 1 P.M."
- (7) "Shall the sale of Alcoholic Beverages be permitted in this Municipality between the hours of 1 P.M. on Sunday and 2 A.M. on Monday?"
 "Shall the sale of Alcoholic Beverages be permitted in this Municipality between the hours of 12 o'clock midnight on Saturday and 2 A.M. on Sunday?"
- (8) "Shall the sale of alcoholic beverages at retail be permitted in the Township of Kingwood, in the County of Hunterdon on week days between the hours of six o'clock in the forenoon until two o'clock in the forenoon of the succeeding day."
 "Shall the sale of alcoholic beverages at retail be permitted in the Township of Kingwood, in the County of Hunterdon on Sundays between the hours of twelve o'clock noon until two o'clock in the forenoon of the succeeding day."
- (9) "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality between the hours of twelve o'clock noon and twelve o'clock midnight?"
- (10) "Shall the sale of alcoholic beverages at retail be permitted on Sundays in the Borough of Midland Park between the hours of 1 P.M. and 12 P.M. midnight Eastern Standard Time except between the last Sunday in April and the last Sunday in September of each year when the time shall be computed in accordance with Eastern Daylight Saving Time?"
- (11) "Shall the sale of alcoholic beverages be permitted in this municipality between the hours of 12 o'clock midnight on Saturdays and 2:00 A.M. on Sundays, and between 12 o'clock noon on Sundays and 12 o'clock midnight on Sundays?"
 "Shall the sale of alcoholic beverages be permitted in this municipality between the hours of 12 o'clock midnight on Sundays and 2:00 A.M. on Mondays?"
- (12) "Shall the sale of alcoholic beverages be permitted in this municipality between the hours of 1 P.M. Sunday and 1 A.M. Monday?"
- (13) "Shall the sale of Alcoholic beverages at retail be permitted in this municipality on Sundays between the hours of 12:00 o'clock midnight Saturday and 2:00 A.M. and between the hours of 2:00 P.M. and 12:00 midnight, Eastern Standard Time, except for that period between the last Sunday in April and the last Sunday in September of each year when the times aforementioned shall be computed in accordance with Eastern Daylight Saving Time."
- (14) "Shall the sale of alcoholic beverages at retail be permitted in this municipality on Sundays between the hours of 12:00 o'clock midnight Saturday and 3:00 A.M., and between the hours of 1:00 P.M. and 12:00 midnight, Eastern Standard Time, except for that period between the last Sunday in April and the last Sunday in September of each year when the times aforementioned shall be computed in accordance with Eastern Daylight Saving Time?"
- (15) "Shall the sale of alcoholic beverages be permitted on Sundays between the hours of 12:00 Midnight Saturday and 2:00 A.M. on Sunday in this municipality?"
- (16) "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality between the hours of one o'clock P.M. and twelve o'clock midnight?"

Referenda, other than those listed above, have also been held in Evesham, Merchantville, Milltown, Penns Grove, Runnemede, Rutherford, Trenton, Union City, Wildwood Crest and Wyckoff, but either for failure to submit a question authorized by the Alcoholic Beverage Law or for failure to comply with the procedure required by the Alcoholic Beverage Law, they are merely advisory, and have no binding effect.

* * * * *

5. APPELLATE DECISIONS - ABBOTT v. SOUTH BELMAR.

NELSON T. ABBOTT,)
)
 Appellant,)
)
 -vs-)
)
 BOROUGH COUNCIL OF THE)
 BOROUGH OF SOUTH BELMAR,)
)
 Respondent)
 - - - - -)

ON APPEAL
CONCLUSIONS AND ORDER

Joseph A. Citta, Esq., Attorney for Appellant.
Elvin R. Simmill, Esq., Attorney for Respondent.

Appellant appealed from a two-day suspension imposed on his license No. C-5 issued for premises at 415 - 18th Avenue, South Belmar.

Respondent imposed the suspension, effective August 28, 1940 and August 29, 1940, after it had found appellant guilty on a charge of playing music in his licensed premises after midnight in violation of a local ordinance. On the filing of this appeal, an order was entered herein, on August 28, 1940, staying respondent's order until further order of the Commissioner.

Respondent appeared at the hearing herein, but appellant failed to appear. In accordance with the provisions of Rule 10 of State Regulations No. 14, the appeal is hereby dismissed.

Respondent requested at the hearing herein that the sentence be duly considered because it was the intention of the governing body that this license be suspended during the summer season. I shall not allow an appeal to be used solely for the purpose of postponing a suspension until the summer season is ended.

Accordingly, it is, on this 13th day of November, 1940,

ORDERED, that my order entered herein on August 28, 1940 is hereby vacated, effective June 27, 1941, at 7:00 A.M. (Daylight Saving Time); and it is further

ORDERED, that in lieu of the suspension heretofore imposed by respondent, appellant's license No. C-5, for premises at 415 - 18th Avenue, South Belmar, be and the same is hereby suspended from June 27, 1941, at 7:00 A.M. (Daylight Saving Time) to June 29, 1941, at 7:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

6. PLENARY WINERY LICENSE - MAY SELL ITS WINES AT RETAIL IF QUALIFIED AND IF PAYING REQUISITE ADDITIONAL FEE - SUCH RETAIL SALES, HOWEVER, MAY NOT BE CONDUCTED AT PREMISES WHICH MERELY CONSTITUTE AN AUTHORIZED WAREHOUSE OF THE WINERY - HEREIN OF WHERE SUCH SALES MAY BE MADE.

In the Matter of Application)
of)

TRENTINI'S WINERY,)
635 Jackson Street,)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Winery)
License No. V-3, for License)
for an Additional Warehouse.)
- - - - -)

Andrew Stern, Secretary and Treasurer of Trentini's Winery,
appearing for the Winery.
Various Objectors appearing by their attorney or other
representative.

Applicant is a plenary winery licensee which, because it has paid the basic \$500.00 winery fee and the optional \$100.00 retail fee and is otherwise apparently qualified, is permissibly engaged in the business of making and storing its wines and selling such wines at both wholesale and retail at premises at 635 Jackson Street, Camden, which constitute both its licensed premises and warehouse. See R. S. 33:1-10(2)a, as recently amended by L. 1940, c. 85 (such amendment authorizing the retail privilege).

The winery now applies (under R. S. 33:1-15) for what may be called an auxiliary license for an "additional warehouse and salesroom" at 420 Kaighn Avenue in the same City, for the purpose, among others, of there likewise selling its wines at retail.

Since the Alcoholic Beverage Law, although authorizing warehouses for a plenary winery licensee, nowhere provides for any place to be technically designated as its "salesroom", such application must be viewed as being merely for license for an additional warehouse, and so much as seeks the so-called "salesroom" will be disregarded.

In net, the question thus presented is whether the winery, if granted the additional warehouse privilege, may there permissibly sell its wines at retail.

As to such question, the recent statutory amendment, which has granted a plenary winery licensee the privilege of retailing its wines, simply states that this privilege may be exercised at the winery's "licensed premises."

Now, in a broad sense, a winery's warehouse, whether the original or an additional, is, as such warehouse, an actual part of the winery's total "licensed premises", since the winery's right to maintain the original warehouse derives from the winery's general license and its right to maintain any additional warehouse derives from an auxiliary license for such warehouse. See R. S. 33:1-1(k).

However, it does not follow that a winery's warehouse is therefore per se a part of the winery's "licensed premises" at which, within the purview of the recent amendment, the winery may sell at retail.

Indeed, for the reasons hereinafter stated, I find to the contrary.

The fundamental scheme of the whole Alcoholic Beverage Law is that a manufacturer or wholesaler of alcoholic beverages shall not engage in, or be connected with, the retailing of such beverages. Thus, R. S. 33:1-43 in general prohibits a manufacturer or wholesaler from being interested, directly or indirectly, with such retailing. The evident and salutary purpose of this divorcement is to prevent the recurrence of the so-called "tied house" (i.e., manufacturers and wholesalers controlling retail outlets) which caused so many of the evils leading to Prohibition. See Re Bardusch, Bulletin 255, Item 1.

The recent granting of the general retail privilege to a plenary winery licensee stands out, like other departures from that fundamental scheme, as a plain exception and hence should, in consonance with the Alcoholic Beverage Law as a whole, be strictly and not liberally construed.

Under such properly strict construction, I deem that "licensed premises", as used in the recent amendment to define the place where a plenary winery may sell its wines at retail, do not include premises which are no more than an authorized warehouse (whether original or additional) of the winery. Were it otherwise, a plenary winery could, after paying the basic \$500.00 fee and the added \$100.00 retail fee, seek, under guise of additional warehouses, to open up and operate multiple retail outlets throughout the State. I cannot believe that this was the legislative intent.

Moreover, it is apparent, from the very use of the word "warehouse" and also from the fact that the Alcoholic Beverage Law authorizes such warehouses only for the licensees with manufacturing and wholesaling privileges and never to an outright retailer (R. S. 33:1-10, 11, 12), that such warehouse may, at most, be used only with the licensee's manufacturing and wholesaling business and not in the exercise of any retailing privilege granted to it for selling direct to consumer. Cf. Re Courtney, Bulletin 42, Item 3 (ruling that a distillery licensee, which has only manufacturing and wholesaling privileges, may carry on any integral part of such manufacturing and wholesaling business at its warehouse).

As to what actually does constitute the "licensed premises" at which a plenary winery may sell its wines at retail, such are those premises which the winery has, in answer to specific question in its application for its winery license, designated as the "licensed premises" - such premises being the place where the winery may (irrespective of whether it has any warehouse at all or where such warehouse may be) conduct its general winery business. In the present case this is the winery's premises at 635 Jackson Street. The fact that such premises are also its present warehouse is immaterial.

Since, in view of the foregoing, the present applicant thus has no right to sell its wines at retail at the additional warehouse which it seeks, and since the applicant avowedly wants the additional warehouse only if it may have such right to sell there at retail, its application must be denied.

Furthermore, the granting of a license for an additional warehouse lies within the discretion of the State Commissioner. R. S. 33:1-15. In view that applicant wishes to sell at retail at the additional warehouse, and, further, that (as pointed out by various objectors) there are already a sufficient number of retail liquor places in the vicinity of this proposed warehouse (there being some nineteen taverns and two package stores within a radius of three blocks), proper policy requires that such warehouse, even if otherwise permissible, nevertheless be denied. Cf. Re Ricchiuti, Bulletin 114, Item 4.

Accordingly, it is, on this 16th day of November, 1940,

ORDERED, that the present application be and the same is hereby denied.

E. W. GARRETT,
Acting Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - ONLY EVIDENCE AS TO AGE OF ALLEGED MINOR GIVEN BY HIMSELF, WHO, BY OTHER EVIDENCE, HAS PROVEN HIMSELF UNWORTHY OF BELIEF - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against

LUSTBADER & CO.,
175 Spruce St.,
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-36, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.
Philip Lustbader, Esq., Attorney for the Licensee.

This licensee was charged with having sold alcoholic beverages to James Marion Croom, a minor, contrary to R. S. 33:1-77 and Rule 1 of State Regulations 20.

Croom was arrested on July 30, 1940 by several officers of the Newark Police Department on a criminal charge wholly unrelated to these proceedings. While searching his home, the officers found a pint bottle of wine which Croom said he had purchased at the premises of this licensee on July 26, 1940. The police reports containing Croom's statement that he was nineteen years old were then transmitted to this Department, whereupon these proceedings were instituted.

At the hearing the licensee pleaded "not guilty". Although contending that it had no knowledge of whether Croom had purchased the wine at its licensed premises, it admitted such to be the fact for the purposes of this case, and rested its defense on the single issue of whether Croom was, in fact, a minor. The sole question for decision, therefore, is whether it sufficiently appears from the evidence that Croom was under twenty-one years of age on July 26, 1940.

The only evidence of Croom's age came from his own lips. He testified that he was born at Kinston, North Carolina on January 4, 1921. There is no other proof in the record, documentary or otherwise, concerning his age. A check with the authorities at Kinston, and also at Raleigh, the capital of North Carolina, shows no record of his birth. So far as his outward appearance is concerned, the transcript contains an observation made by the Hearer that Croom appeared to be about twenty-three years of age, and by the Department's attorney that he looked "not younger than 23 and not older than 25".

Assuming, but not deciding, that the unsupported testimony of Croom would of itself be sufficient to warrant a finding of guilt against this licensee, nevertheless no such finding may here be made in view of Croom's conduct after the present charges were brought, which seriously impeaches his credibility. It appears that several weeks before the date scheduled for the hearing of this case, Croom appeared at the office of licensee's attorney, apparently in response to a prior unsuccessful attempt to interview him at his home. At that time a signed statement was obtained from Croom concerning the date and place of his birth. Several days thereafter he again appeared at the attorney's office, this time wholly unsolicited and solely on his own initiative, and offered to leave the jurisdiction prior to the hearing date for a consideration of \$200.00. The attorney refused to become a party to any such transaction and told Croom that the case would be defended on its merits.

Ordinary principles of fairness dictate that a licensee should not be convicted on the uncorroborated evidence of an alleged minor who has proven himself unworthy of belief. It may be that he is under twenty-one years of age. However, in the present posture of this case I can place little, if any, credence in his evidence, and therefore conclude that the Department has not sustained the burden of proving the truth of the charge brought against this licensee. It follows that these proceedings must be dismissed.

Accordingly, it is, on this 15th day of November, 1940,

ORDERED, that these proceedings be and the same are hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

8. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

November 18, 1940

Re: Case No. 350

Hearing was held to determine whether applicant has been convicted of a crime involving moral turpitude and is hence disqualified (under R. S. 33:1-25, 26) from holding a liquor license or working for a liquor licensee in New Jersey.

Applicant was arrested in March 1936 on charge of robbery and in December 1936 on charge of receiving stolen goods, but was released on both occasions.

Thereafter he was arrested in January 1937 and was, pursuant to his plea of guilty, convicted in February 1939 of apparently violating the Federal Oleomargarine Act, given a suspended jail sentence of a year and a day, fined \$500.00, and placed on two years' probation.

In explanation of such conviction, applicant testified, inter alia, that he and a partner were in the butter and egg business in Newark; that, as part of their business, they had a butter-whipping machine with which they legitimately whipped up tubs of butter for various butter dealers and charged for such service; that, on the occasion in question, they were caught in the job of using the machine to beat up and color, for a certain dealer, a number of tubs of oleomargarine to make the resultant product look like butter; that he (the applicant) "thought the idea didn't look so good, but whether it was illegal or not I wasn't sure"; that he and his partner had been engaging in such a practice of beating up and coloring oleomargarine for others for about a month.

Although applicant further states that he but "imagines" it was the dealer's intent to sell such tubs of treated oleomargarine on the market as butter, it is reasonably clear that applicant must have recognized this as the actual intent.

Now, whether a violation of the Federal Oleomargarine Act involves moral turpitude depends, on analogy to like violation of the Federal Pure Food Act, upon the facts in each particular case. See Re Ulhich, Bulletin 70, Item 2. Where, as here, the violation is the illegal beating up and coloring of tubs of oleomargarine to give it the appearance of butter so that its owner might be able to distribute it fraudulently on the market as butter, I believe such violation, being in aid of a reprehensible fraud on the public, involves the element of moral turpitude.

It is, therefore, recommended that applicant be advised that his said conviction disqualifies him from holding a liquor license or working for a liquor licensee in this State.

Nathan Davis,
Attorney-in-Chief.

APPROVED:

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - FAIR TRADE VIOLATION - SALES MADE AND CUSTOMERS PERMITTED ON PREMISES DURING PROHIBITED HOURS - EMPLOYING MINOR AS BARTENDER - 13 DAYS' SUSPENSION ON PLEA OF GUILTY.

In the Matter of Disciplinary Proceedings against MRS. MARY COOK, 108 Prospect Ave., Bayonne, N. J., Holder of Plenary Retail Consumption License C-173, issued by the Board of Commissioners of the City of Bayonne.

CONCLUSIONS AND ORDER

Mary Cook, Defendant-Licensee, Pro Se. Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of (1) selling a pint bottle of Wilson "That's All" Whiskey below Fair Trade; (2) selling alcoholic beverages before 12:00 o'clock noon on Sunday, September 8, 1940; (3) failing to close, lock and make the licensed premises inaccessible to persons other than herself and her employees during prohibited hours on said date, in violation of an ordinance adopted by the Board of Commissioners of the City of Bayonne on June 2, 1936, as amended January 2, 1940; and (4) knowingly employing a minor as a bartender, in violation of Rule 1 of State Regulations 11.

The usual penalty for the first charge is ten days. The usual penalty for each of the other charges is five days, or a total of twenty-five days.

By entering this plea in ample time before the date fixed for hearing, the Department has been saved the time and expense of proving its case. The first three charges are identical with those set forth in Re Zuchnowski and Chrzanowski, Bulletin 428, Item 11. In conformity therewith the license will, therefore, be suspended for ten days instead of the usual twenty days on the first three charges. The usual penalty for the fourth charge is five days, less two days for the guilty plea, making a total penalty of thirteen days.

Accordingly, it is, on this 19th day of November, 1940,

ORDERED, that Plenary Retail Consumption License C-173, heretofore issued to Mary Cook by the Board of Commissioners of the City of Bayonne, be and the same is hereby suspended for a period of thirteen (13) days, effective November 25, 1940, at 3:00 A.M.

E. W. GARRETT, Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT - PETITION TO LIFT SUSPENSION GRANTED AFTER TEN DAYS ELAPSED ON PROOF THAT SITUATION NOW CORRECTED.

In the Matter of Disciplinary Proceedings against
)
)
 KATHRYN E. McGRATH,
 15th Street and Boulevard,
 Surf City, Ocean County, N. J.,
)
 Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Borough Council of the Borough of Surf City.
)

ON PETITION
CONCLUSIONS AND ORDER

Joseph A. Citta, Esq., Attorney for Defendant-Licensee.

On November 1, 1940 I suspended the defendant's license for the balance of its term after defendant had pleaded guilty to charges that she was a mere "front" for Patrick McGrath, who was disqualified from holding a liquor license in this State by reason of his lack of the statutory five years' residence.

At the time of the suspension, leave was granted to the defendant to present a verified petition, accompanied by proper proof that the "front" situation was fully corrected, for an order lifting the suspension after ten days of such suspension had been served. Re McGrath, Bulletin 431, Item 7.

On November 16, 1940 the defendant filed such petition accompanied by proof that the business has been sold to J. Worden Taylor; that Taylor is now the sole and exclusive owner of the business; that neither the defendant nor anyone else other than Taylor has any interest therein; and that the license heretofore suspended was transferred, subject to said suspension, by the Mayor and Borough Council of the Borough of Surf City from Kathryn E. McGrath to J. Worden Taylor on November 16, 1940.

I am satisfied from the petition and accompanying proofs that the "front" situation has been fully corrected. Hence, since more than ten days have elapsed since the suspension became effective, the petition for immediate lifting of such suspension is granted.

Accordingly, it is, on this 19th day of November, 1940,

ORDERED, that the suspension heretofore imposed on the defendant's license on November 1, 1940 for the balance of its term be and the same is hereby lifted; and it is further

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued by the Mayor and Borough Council of the Borough of Surf City to Kathryn E. McGrath for premises 15th Street and Boulevard, Surf City, Ocean County, N. J. and transferred on November 16, 1940 to J. Worden Taylor, be and the same is hereby restored to full force and operation, effective immediately.

E. W. GARRETT,
Acting Commissioner.

11. SOLICITOR'S PERMIT - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS.

November 20, 1940.

Re: Case No. 349

In May 1937 applicant, in a Court of Quarter Sessions, pleaded non vult to a violation of the Control Act and was fined \$100.00.

At the hearing he testified that this conviction resulted from the seizure, on June 4, 1934, of bottles of whiskey which bore no tax stamps and which were found in a store then operated by applicant and his brother-in-law. This case was fully investigated by this Department in 1934 and a review of the file discloses that applicant then held a liquor license for the store; that the seized bottles were a small part of the total stock, the balance of which contained proper tax stamps. I do not believe, from a review of the facts set forth in the file, that the crime involved moral turpitude.

On three occasions during 1940 appellant pleaded guilty, in a Recorder's Court, to charges of possessing lottery slips, and was fined \$100.00 each on the first two convictions and \$200.00 on the last conviction. He testified that during all of the present year he has been employed in a cigar store as a clerk at \$18.00 per week and that he was arrested after the police had visited the cigar store and found number slips on the premises. He testified that he had no interest in the lottery. It thus appears that he was merely a minor employee at a small weekly salary. He was not one of the master minds or one of the lieutenants who put into operation the unlawful activity. Re Case No. 295, Bulletin 551, Item 10; Re Case No. 296, Bulletin 353, Item 12. I do not believe that these convictions involved moral turpitude.

The question remains as to whether, in view of his record, applicant is a fit person to hold a solicitor's permit. He has been offered a position by a New Jersey wholesale licensee and says that he is anxious to sever his connection with the cigar store. Applicant has no criminal record other than that set forth herein and under all the circumstances I recommend that the solicitor's permit be granted. However, applicant should be advised that he now has one strike against him. Another violation of the Alcoholic Beverage Law will mandatorily disqualify him from holding a liquor license or being employed by a liquor licensee in New Jersey.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

APPROVED:

E. W. GARRETT,
Acting Commissioner.

12. WHOLESALERS - RETAILERS - SPECIAL CHRISTMAS GIFT BOXES -
PERMISSIBLE SUBJECT TO CERTAIN RESTRICTIONS.

November 25, 1940

Federal Wine & Liquor Company,
Jersey City, N. J.

Gentlemen:

I understand that you have a special Christmas box for Charley's Jamaica Rum to be sold to retailers at 50¢ each during the coming holiday season.

You ask if the sale of the box is permissible.

For that, we must look to Regulations No. 34 pertaining to discriminatory discounts, to Regulations No. 21 concerning equipment, signs and other advertising matter, and to Rule 20 of Regulations No. 20 pursuant to which retailers are prohibited from furnishing gifts or similar inducements with the sale of alcoholic beverages for off-premises consumption, excepting only advertising novelties of nominal value.

The inducements presently prohibited by Rule 4 of Regulations No. 34, are inducements in the nature of rebates or allowances of money or alcoholic beverages, except for the samples authorized by Rule 8, or discounts otherwise than as expressly allowed in Rules 5 and 6. As the sale of the Christmas box is not such a rebate, allowance or discount, it is not an inducement prohibited by Rule 4.

It is provided in Rule 1 of Regulations No. 21 that manufacturers and wholesalers shall not furnish equipment to retailers (by sale, loan, gift or otherwise), excepting only tapping accessories aggregating, with cleaning and repairing service, not in excess of \$20.00 worth for each retail premises in any one license year. If these special boxes, many of which have no special Christmas connection and are more properly gift boxes, were furnished in quantity and as a regular thing throughout the year, then it would very probably be necessary to consider them as equipment within the meaning of and as prohibited by Regulations No. 21. But if in limited quantities, and of small value, and confined to the Christmas holiday season, I see no objection.

With the same limitations as to quantity, value and seasonal distribution, I see no objection, so far as Rule 20 of Regulations No. 20 is concerned, whether or not the box carries advertising matter.

Subject to the foregoing, and to the further restriction that such advertising copy as appears on the boxes must be proper and conform with the rules, you are advised that the furnishing of gift boxes as proposed will be permissible from December 1, 1940 to December 31, 1940, both inclusive.

Whether or not the privilege will be afforded in subsequent years will depend entirely on the manner in which it is exercised by the industry.

Very truly yours,

E. W. Garrett

Acting Commissioner.