Mr. MacIntosh

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

BULLETIN 453 APRIL 9, 1941.

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ITEM

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

BULLETIN 453 APRIL 9, 1941.

1. MANUFACTURERS AND WHOLESALERS - OTHER MERCANTILE BUSINESS - WHEN PERMISSIBLE - APPLICABILITY OF STATE REGULATIONS NOS. 21 AND 34.

RETAILERS - OTHER MERCANTILE BUSINESS - WHEN PERMISSIBLE - HEREIN OF SODA KING SYPHONS AND SUPER-CHARGERS.

April 1, 1941

Walter Kidde Sales Co.,
Bloomfield, N. J.

Gentlemen:

I have yours of March 18th regarding your Soda King Rechargeable Syphon and Soda King Super-Chargers, which we may consider together as both will be subject to the same rulings so far as the Alcoholic Beverage Law is concerned.

Your inquiry resolves into two questions: (1) The law as it affects your selection of a wholesaler or distributor, and (2) as it affects your retailers.

As to (1):

It has heretofore been ruled (Re Krueger, Bulletin 128, Item 1) that a brewery was not to distribute "Tapsters" and sell them to retail liquor licensees, except within the permissible limits of Regulations No. 21, notwithstanding that the Tapsters did not carry the brewery's name or trade-mark. The thought, apparently, was that the scheme of distribution tied up the Tapster with the brewery's own product, despite the absence of the name on the Tapster, or that it inferred that the Tapster was being marketed solely for use in conjunction with the brewery's products. Be that as it may, I find nothing in your plan tying up your Syphon or Super-Chargers with any specific brand or line of alcoholic beverages. Quite obviously, they are marketed for use with all alcoholic beverages. Quite obviously, they are also not the fixtures, equipment, signs, advertising matter or tapping accessories contemplated by Regulations No. 21. Consequently, the reason being absent, the Krueger ruling will not apply. The sale of mercantile items other than alcoholic beverages by liquor wholesalers to their retailers is not basically wrong or objectionable. With certain wholesalers it is an established practice, as witness the extensive grocery businesses conducted by Greenspan of Perth Amboy and Austin-Nichols of Brooklyn. It follows that it will be permissible, so far as our law is concerned, for McKesson & Robbins, which is not the holder of a wholesale liquor license, or the McKesson Liquor Co, which is the holder of a wholesale liquor license, to distribute the two products as independent mercantile items and without tying them up with McKesson's liquor lines, as you wish.

The distribution of an item or line of merchandise other than alcoholic beverages, as part of an independent business enterprise, by the holder of a wholesale liquor license, is not in and of itself forbidden by Rule 4 of Regulations No. 34, which generally prohibits the sale or gift of anything of value from wholesaler to

retailer for the purpose of circumventing Regulations No. 34, although I give you fair warning that if these other mercantile items are used for that purpose and violations of Regulations No. 34 are committed, they will surely be prosecuted, and the fact that they were brought about in the course of what was held out to be a separate and independent mercantile business will be no excuse.

As to (2):

If the retailers who will handle the Syphons and Super-Chargers do not hold liquor licenses, they are not within our jurisdiction and it is no concern of ours. But if they hold retail liquor licenses, then it is our concern and the law affects them as follows: If the retailer holds a plenary or seasonal retail consumption license (the license issued to taverns, restaurants and hotels), he may not sell either the Syphon or the Super-Chargers for such licensees are prohibited by law (R. S. 33:1-12) from conducting any mercantile business other than the sale of alcoholic beverages on the licensed premises. If, on the other hand, the retailer holds a plenary retail distribution license (the license to sell package goods), then it all depends on the local regulation. Municipal governing bodies have the power (R. S. 33:1-12) to provide by ordinance that plenary retail distribution licenses shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on. If the municipality has such an ordinance, plenary retail distribution licensees may not sell the Syphon or Super-Chargers, for it would involve the conduct of other mercantile business which the ordinance would prohibit. If there is no such ordinance, then the sales would be permissible.

Neither the Syphon nor the Super-Chargers may be classified under the statute as a "liquor accessory." We have no such classification. The statute does speak of "accessory beverages." That means items such as bottled soda and ginger ale. But your products are not "accessory beverages."

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

2. EGG-NOG - EASTER DISPENSATION.

April 3, 1941

Ann M. Baumgartner, Secretary,
Municipal Board of Alcoholic Beverage Control,
Camden, N. J.

Dear Mrs. Baumgartner:

In past years special dispensation to consumption licensees to serve egg-nog during the Easter holidays has been granted without resultant abuse.

This year, the privilege will be repeated commencing Thursday, April 10th and ending Monday, April 14th, at midnight.

The late Commissioner, D. Frederick Burnett, loved to say that the first real day of Spring was his New Year Day. With this memory recalled, may I wish you a good Eastertide, a happy New Year, and a joyous Spring.

Sincerely,
E. W. GARRETT,
Acting Commissioner.

3. ACTIVITY REPORT FOR MARCH, 1941

To: E. W. Garrett, Acting Commissioner

ARRESTS: Total number of persons - - - - - - - - - - - - - - - 25
Licensees - 0 Permittees - 7
Persons not holders of licenses or permits - 18

SEIZURES: Stills - total number seized- - - - - - - - - - - - 9
Capacity 1 to 50 Gallons - - - - - - - 4
Capacity 50 Gallons and over - - - - - - 5

Motor Vehicles - total number seized- - - - - - - - 2
Trucks - 0 Passenger cars - 2

Beverage Alcohol- - - - - - - - - - - - - - - - - - 69 Gallons

Mash - total number of gallons- - - - - - - - - 5800

Alcoholic Beverages
Beer, Ale, etc.- - - - - - - - - - - - - - - - 4 Gallons
Wine -808 "
Whiskys and other hard liquor - - - - - - -105 "

RETAIL INSPECTIONS:
Licensed premises inspected - - - - - - - - - - 2255
Violations disclosed:
Illicit (bootleg) liquor - - - - - - 12
Gambling violations- - - - - - - - - 40
Sign violations- - - - - - - - - - - 33
Unqualified employees- - - - - - - - 75
Other mercantile business- - - - - - 5
Disposal permits necessary - - - - - 3
"Front" violations - - - - - - - - - 5
Improper beer markers- - - - - - - - 1
Other violations found - - - - - - - 19
Total violations found - - - - - - - - - - 193
Total number of bottles gauged- - - - - - - - -21475

STATE LICENSEES:
Plant Control inspections completed - - - - - 41
License applications investigated - - - - - - 11

COMPLAINTS:
Investigated and closed - - - - - - - - - - - - 179
Investigated, pending completion- - - - - - - - 319

LABORATORY:
Analyses made - - - - - - - - - - - - - - - - - - 122
Alcohol and water and artificial coloring cases - - - - - 17
Poison and denaturant cases - - - - - - - - - 1

HEARINGS HELD:
Appeals - - - 8 Disciplinary proceedings- - 38
Seizure - - - 8 Eligibility - - - - - - - - 12

PERMITS ISSUED:
Unqualified employees - - - - - - - - - - - - - 346
Home manufacture of wine- - - - - - - - - - - - 5
Solicitors- 99
Social Affairs- - - - - - - - - - - - - - - - - - 131
Disposal of alcoholic beverages - - - - - - - - 69
Miscellaneous permits - - - - - - - - - - - - - 81
Total - 731

Respectfully submitted,

S. B. White,
Chief Inspector.

4. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES TO MINORS - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against GEORGE KUNZE, 180 Wilson Ave., Newark, N. J., Holder of Plenary Retail Consumption License No. C-204 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

George Kunze, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of selling alcoholic beverages to minors in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The Department file discloses that, on February 22, 1941, two sisters, one fifteen years of age and the other eighteen years of age, visited the licensed premises accompanied by two male acquaintances who were both over twenty-one years of age. The exact factual situation, which appears only in statements given to officers of the Newark Police Department, is not entirely clear. One of the adults states that the licensee asked him the girls' ages and that he informed the licensee that the girls were twenty-one and twenty-three years of age respectively; further, that this adult had been so informed by the two sisters. This person says that the older sister drank beer but that he does not know what the younger girl was served. In her statement, the fifteen year old girl denies that she was served anything harder than Coca Cola. The eighteen year old sister admits drinking beer and states that her younger sister drank Coca Cola. The second adult, in his statement, sets forth that he does not recall what the minors were served.

The licensee was charged with serving both minors. The younger girl may not in fact have been so served. She says that she was not and she should know. However, the licensee has pleaded guilty to the charges, which, while possibly not constituting an express admission, at least does not deny that both minors were served.

The usual penalty for sale of an alcoholic beverage to minors in the absence of aggravating circumstances is ten days. Re DeGeeter, Bulletin 449, Item 2. Since this is the licensee's first violation of record, and since there is some doubt as to whether or not a fifteen year old girl in fact was served with an alcoholic beverage, a ten day penalty will be imposed. Cf. Re Morganstern and Oliner, Bulletin 292, Item 9.

By entering a guilty plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case, for which five days of the penalty will be remitted.

Accordingly, it is, on this 2nd day of April, 1941,

ORDERED, that Plenary Retail Consumption License C-204, heretofore issued to George Kunze by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for five (5) days, effective April 7, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE BY FARMING OUT THE LICENSE - FAILURE TO FILE WRITTEN NOTICE OF CHANGE OF FACTS AS SET FORTH IN APPLICATION - BOTH PERSONS QUALIFIED - FULL AND FRANK DISCLOSURE - SUSPENSION FOR BALANCE OF TERM, WITH LEAVE TO PETITION TO LIFT AFTER TEN DAYS IF SITUATION CORRECTED.

In the Matter of Disciplinary Proceedings against CHARLES L. KLOEBER, JR., Tappan Road, Northvale, N. J., Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Northvale.	CONCLUSIONS AND ORDER

Charles L. Kloeber, Jr., Pro Se.
Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to charges of knowingly aiding and abetting one Peter W. Pontier, a non-licensee, to exercise the rights and privileges of his license contrary to R.S. 33:1-26, in violation of R. S. 33:1-52, and failure to file written notice with the Borough Council of the Borough of Northvale of a change of facts as set forth in his application for license for 1940-41 by reason of the interest in said license and the business to be conducted thereunder acquired by Peter W. Pontier on or about October 1, 1940, in violation of R. S. 33:1-34.

The investigation file discloses that the property which houses the licensed premises belonged to Charles Kloeber, father of the licensee, who died suddenly in April 1939; that the title thereto vested by operation of law in the mother of the licensee; that because of the sudden death of the father, who also conducted a grocery and vegetable business in another municipality, plans previously made by the family had to be changed in that the licensed business could not be sufficiently supervised by the licensee since he of necessity had to step in to take the father's place in the grocery and vegetable business mentioned; that thereupon a lease was entered into between Minnie Kloeber, landlord, and Peter W. Pontier and Catherine Pontier, as tenants, for the licensed premises, and an agreement between Charles Kloeber, the licensee, and Peter W. Pontier, for the operation of the business, purporting to have the latter act as manager for the former, but which by its very terms indicates clearly that the license privileges were being "farmed out" to Pontier by the licensee.

It further appears that all parties in interest believed that this arrangement was sufficient in law and a practice which would not be violative of the Alcoholic Beverage Law.

From the inception of the investigation, all parties in interest have cooperated with investigators of this Department and made frank admissions of the facts.

The licensee has evinced a willingness to transfer the license to Pontier, who is qualified under the Alcoholic Beverage Law.

The license will be suspended for the balance of the term, with leave to apply to lift said suspension, as hereinafter set forth.

Accordingly, it is, on this 4th day of April, 1941,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued to Charles L. Kloeber, Jr. by the Borough Council of the Borough of Northvale, be and the same is hereby suspended for the balance of its term, effective April 5, 1941, at 1:00 A.M.

It is further ORDERED, that if and when transfer of the license to a duly qualified person is granted by the local issuing authority, application may be made to me to vacate said suspension, provided, however, that in no event will said suspension be vacated prior to the expiration of ten (10) days from the effective date hereof.

E. W. GARRETT,
Acting Commissioner.

6. ELIGIBILITY - POSSESSION OF ILLICIT ALCOHOLIC BEVERAGES - NO AGGRAVATING CIRCUMSTANCES - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

April 2, 1941

Re: Case No. 371

On February 10, 1937 applicant pleaded non vult to a charge of possessing illicit alcoholic beverages and was placed on probation for one year and fined $100.00. On April 23, 1937, upon payment of the fine, he was discharged from probation. His record is otherwise clear.

It appears that on October 9, 1936 investigators of this Department seized about five gallons of untaxed alcoholic beverages in the rear of a confectionery store then owned by applicant. Although the investigators report that they observed several men drinking there, applicant denies that he had ever sold any of the liquor. He explains that he had been in business only a short time prior thereto and, on occasion, would treat his customers to a drink in order to keep their patronage; that the seized liquor was delivered to him the night before and that he had intended to take it home for his personal consumption.

Possession or sale of alcoholic beverages in violation of the Alcoholic Beverage Law does not per se constitute a crime involving moral turpitude. Cf. Re Case No. 41, Bulletin 166, Item 5; Re Case No. 157, Bulletin 190, Item 12; Re Case No. 65, Bulletin 195, Item 1; Re Case No. 188, Bulletin 212, Item 2; Re Case No. 549, Bulletin 432, Item 11; Re Case No. 566, Bulletin 445, Item 10; Re Case No. 567, Bulletin 447, Item 7. In view that the evidence does not disclose any

illicit activity on a large commercial scale, and that the sentence imposed was comparatively light, I do not believe applicant's conviction involved that element.

However, applicant is cautioned that he has one "strike" against him by virtue of this violation of the Alcoholic Beverage Law; another "strike" and he will be permanently out. R.S.33:1-25.

It is recommended that applicant be declared eligible to hold a liquor license or be employed by a liquor licensee in this State despite his aforesaid conviction.

Samuel B. Helfand,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

7. APPELLATE DECISIONS - CARHART v. CLARK.

ISSUANCE OF LICENSE APPEALED ALLEGING UNSUITABLE NEIGHBORHOOD, NO PUBLIC NECESSITY AND MUNICIPAL QUOTA EXHAUSTED AT TIME APPLICATION WAS FILED - APPARENT CONSIDERATION OF ISSUES BY MUNICIPAL LICENSE ISSUING AUTHORITY ON THE MERITS - NO ABUSE OF DISCRETION SHOWN - ISSUANCE AFFIRMED, SUBJECT TO SPECIAL CONDITIONS.

WILLIAM CARHART,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CLARK, and COLAS DITZEL,)
Respondents.)

Walter Nowak, Esq., Attorney for the Appellant.
Harry Weltchek, Esq., Attorney for the Respondents.

This is an appeal from the issuance of a Plenary Retail Consumption License to respondent Ditzel for premises at Westfield Avenue and Raritan Road, Clark Township.

At a meeting of the Township Committee held on December 17, 1940, the local zoning ordinance was amended so as to include within a business district the premises of Ditzel and an area about one-half mile to the south thereof, the ordinance fixing the quota of eleven plenary retail consumption licenses, then exhausted, was amended to increase the number to twelve, and the application of Ditzel for a liquor license was granted.

At the outset, it should be pointed out that this Department does not have jurisdiction to consider any attack upon the validity of the local zoning ordinance. So long as such ordinance remains in effect, I must assume that its provisions are reasonable. Cf. Re Adams, Bulletin 70, Item 4; Murchio v. Wayne, Bulletin 379, Item 7.

Appellant contends, however, that the neighborhood in which Ditzel's premises is located is, in fact, residential in character, and therefore, despite the vicinity being zoned for business, is nevertheless not a proper locale for a liquor license. Cf. Corradi v. Closter, Bulletin 219, Item 3. Testimony shows that Raritan Road (known to the south of Westfield Avenue as Palisade Avenue) is one of the principal traffic arteries of the municipality; that southerly from the licensed premises there are only two homes within approximately one and one-quarter miles, and two businesses, both taverns, within one-half mile; that, northerly from the licensed premises, Raritan Road is zoned for business to a point about a half-mile therefrom and that, within that distance, there are seventeen scattered homes, two roadstands, a vegetable store and two taverns, the nearest of which taverns is over 2000 feet away. I find that the sparsely settled neighborhood in which the premises in question is located is neither residential nor business, but rather rural in character. In this type of neighborhood, the determination of whether a liquor license shall there be located rests within the sound discretion of the issuing authority.

Appellant contends further that there is no necessity for another liquor license either in the municipality or in the particular vicinity. Whether or not this argument might perhaps have been availing if the premises of Ditzel were to be operated as an ordinary tavern need not be here decided since the evidence shows that Ditzel intends to conduct a bona fide restaurant and to cater primarily to food patrons, with the sale of alcoholic beverages only incidental to the service of meals. One of the members of the local issuing authority testified that had the application been for an ordinary saloon, it would have been denied; that nowhere in the municipality was there any place where a person could obtain a regular dinner or a full course meal; that, in the opinion of the Township Committee, there was a definite need in the municipality for a restaurant of the type to be operated by Ditzel. The appellant and other objectors who testified at the appeal hearing, while denying the necessity for such an establishment in the Township, admit that there is no bona fide restaurant located there and that the nearest such restaurant is in a neighboring municipality about four miles away; that, as aforesaid, there is no other license within 2000 feet of Ditzel's premises.

In this posture of the evidence, I cannot say that the determination of the Township Committee as to the need for a high-class restaurant with a liquor license at the premises in question is arbitrary or unreasonable. At best, there is only a difference of opinion on this question. There is no charge that the Township Committee was motivated in its action by bad faith, except as may inferentially appear from the fact that one of the Committeemen, who is a real estate agent, was one of two persons instrumental in arranging for the purchase of the property for Ditzel and received a portion of the commission therefor. It does not appear, however, that such fact in anywise influenced the particular Committeeman or the Committee as a whole to vote in favor of the granting of the license. The mere fact that a member of an issuing authority has acted as a real estate agent for an applicant for a liquor license does not, ipso facto, taint the issuance of a license to such applicant. Nor is the member disqualified from participating in a consideration of the application. See Re Grant, Bulletin 124, Item 7.

Lastly, appellant asserts that the license was improvidently issued because at the time of the filing of the application the quota for consumption licenses, then fixed at eleven, was exhausted. There is no merit to this assertion. The decision of whether the issuance

of a license will exceed the number permitted by ordinance is to be made in accordance with the situation existing at the time the license is granted, and not when the application is filed. Cf. Widlansky v. Highland Park, Bulletin 209, Item 7; Garrison v. Bridgeton, Bulletin 301, Item 3; Schuttenberg v. Keyport, Bulletin 327, Item 3; Italian American Citizens Club v. Greenwich, Bulletin 392, Item 9; Turner v. Walpack, Bulletin 418, Item 3.

Upon consideration of the entire record, I conclude that the appellant has failed to sustain the burden of proving that the respondent issuing authority abused its discretion in granting a liquor license to Ditzel for the purpose intended. However, in view of the express desire of the Township Committee that the service of alcoholic beverages at the licensed premises should be only incidental to the sale of food there, adequate restrictions to effectuate that desire should be imposed upon the license. Cf. Betsy Ross, Inc. v. Union, Bulletin 435, Item 12.

Accordingly, the action of respondent Township Committee in granting Plenary Retail Consumption License C-12 to respondent Ditzel for premises located at Westfield Avenue and Raritan Road, Clark Township, is hereby affirmed, subject, however, to the following conditions to be inserted in the license:

"1. The licensed premises shall be operated and conducted as a bona fide restaurant without a bar, except a small service bar, and the license shall be effective in such premises only so long as the licensed premises is operated and conducted as a bona fide restaurant without a bar, except a small service bar;

2. No alcoholic beverages shall be sold or served except to patrons seated at tables upon the licensed premises;

3. There shall be no orchestra, singing, dancing or other form of entertainment whatsoever, except the playing of a radio and phonograph, upon the licensed premises."

E. W. GARRETT,
Acting Commissioner.

Dated: April 4, 1941.

8. DISCIPLINARY PROCEEDINGS - BRAWLS AND DISTURBANCES - 10 DAYS' SUSPENSION - SALES TO AN INTOXICATED PERSON - 10 DAYS' SUSPENSION - TOTAL: 20 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against YAMOS, INC., 366 - 18th Avenue, Newark, N. J., Holder of Plenary Retail Consumption License C-993, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Philip Kozloff, Esq., Attorney for the Defendant-licensee.
Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges (1) of having permitted a brawl and disturbance in and upon its licensed premises, in violation of Rule 5 of State Regulations No. 20, and (2) of having sold and served alcoholic beverages to, and permitted the consumption of such beverages by, an intoxicated person, in violation of Rule 1 of State Regulations No. 20.

Department investigators who were present on the licensed premises on the morning of February 6, 1941 report that shortly after 12:30 A.M. they saw Frank Clines, the food concessionaire on the premises, who was then intoxicated, purchase and consume a glass of whiskey at the bar; that twice thereafter Clines was seen to purchase alcoholic beverages from the bartender and take the same, on a tray, into the rear room where he was sitting with several persons; that between 12:30 A.M. and 1:40 A.M. Clines threatened several patrons with his fists and became involved in at least three minor scuffles; that, at about 1:40 A.M., Clines became engaged in another scuffle which ended, temporarily, with his being forcibly pushed, by one of the tavern patrons, into the kitchen; that a few minutes later Clines rushed out of the kitchen brandishing a long carving knife in a menacing manner and in apparent search of one of the persons with whom he had been quarreling; that after dashing through the barroom and out the front entrance, Clines fell and cut himself severely. Aside from terrifying the tavern patrons and cutting himself when he fell, there appear to have been no casualties.

The investigators further report that while each of the preceding brawls and disturbances in which Clines had participated had been quickly broken up by patrons or employees of the defendant-licensee, no steps were taken at any time, by the latter, to remove Clines from the premises. While perhaps none of these preliminary altercations was of great magnitude, in itself, the frequency and regularity of their occurrence was enough to have put the defendant-licensee, or its agents, on notice that something serious might result from their continuance. That nothing more tragic than Clines' self-inflicted wound did occur appears to have been sheer good fortune.

In view of all the circumstances, I will suspend the license of the defendant-licensee for ten days on the charge of permitting a

brawl and disturbance on the licensed premises. As to the charge of selling alcoholic beverages to an intoxicated person, the license will be suspended for another ten days. Re M. F. Tavern, Inc., Bulletin 407, Item 1.

By the entry of the guilty plea the Department has been saved the time and expense of proving its case. Five days of the total penalty will, therefore, be remitted.

Accordingly, it is, on this 4th day of April, 1941,

ORDERED, that Plenary Retail Consumption License C-993, heretofore issued to Yamos, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of fifteen (15) days, effective April 9, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against JULIUS COMMERCIO & VINCENT SANTIMONE, 364 - 15th Avenue, Newark, N. J., Holder of Plenary Retail Consumption License C-777, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Nicholas Monaco, Esq., Attorney for Defendant-Licensees.
Charles Basile, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensees have pleaded guilty to charge of having sold alcoholic beverages to a minor on February 27, 1941, in violation of R. S. 33:1-77.

It appears from reports submitted by the Newark Police Department that a minor, 18 years of age, entered the licensed premises with an adult sister; that the bartender in charge, on order of the latter, served both a glass of beer; that immediately thereafter a patron took offense at a remark made by the minor in question, and thereafter both of them were ejected from the premises; that the adult sister notified the Newark Police, who arrested the bartender, and held the two women as material witnesses.

By entering the plea of guilty, the licensees have saved the Department the time and expense of proving its case.

Pursuant to the established policy of this Department, the penalty usually imposed for such violation, in the absence of aggravated circumstances, is a suspension of the license for ten days, less five for the plea.

Accordingly, it is, on this 4th day of April, 1941,

ORDERED, that Plenary Retail Consumption License C-777, heretofore issued to Julius Commercio & Vincent Santimone by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective April 7, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

10. APPELLATE DECISIONS - GESANG-VEREIN BOONTON, INC. v. MONTVILLE.

APPLICATION FOR CLUB LICENSE DENIED FOR FAILURE TO HAVE EXCLUSIVE, CONTINUOUS POSSESSION AND USE OF CLUB QUARTERS FOR THREE YEARS - DENIAL AFFIRMED.

GESANG-VEREIN BOONTON, INC.,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF MONTVILLE TOWNSHIP,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

John Rosenbaum, Esq., Attorney for Appellant.
David Young, 3rd, Esq., Attorney for Respondent.
William C. Egan, Esq., Attorney for Objectors.

Appellant appeals from denial of a club license for premises on the southerly side of Millers Lane, Township of Montville.

About the year 1920 the Boonton Maenner Chor Society was organized as a singing club for men. At first it met at the homes of its members. Later it was able to hire quarters in a hall which is no longer in existence. Thereafter and about seven years ago it obtained permission to use the third floor of the Library Building, Boonton, on Friday evening of each week and met there weekly. On February 2, 1939 appellant was incorporated. Apparently it is the same organization formerly known as Boonton Maenner Chor Society, the name having been changed at the time of incorporation because it had been decided to admit women to membership, which fact made the former name inappropriate.

On September 10, 1940 appellant rented, for a period of ten years, the "Starkey Farm," the premises for which application was made. It has erected a frame building, 24 ft. by 36 ft., described as a "stand and storage room, little hall and kitchen." However, appellant still holds its meetings every Friday night on the third floor of the Library Building, Boonton, which the President of appellant corporation testified is sublet from the Knitters Union, which in turn leases it from the Town of Boonton, owner of the building.

R. S. 33:1-12(5) provides that club licenses may be issued only to such corporations, associations and organizations *** as comply with all conditions which, subject to rules and regulations, may be imposed by the Commissioner. State Regulations No. 7 provide, among other things, that no club license shall be issued to any club unless, immediately prior to submission of its application, it shall have been in exclusive, continuous possession and use of a clubhouse or club quarters for at least three years.

Even if the frame building on the "Starkey Farm" be considered a clubhouse or club quarters, it has been in use not more than seven months. Appellant has never been in exclusive possession of the third floor of the Library Building which is rented by the Town of Boonton to the Knitters Union. Hence, I conclude that appellant is not eligible, at present, to obtain a club license.

For the reasons aforesaid, the action of respondent is affirmed.

Accordingly, it is, on this 4th day of April, 1941,

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

E. W. GARRETT,
Acting Commissioner.

11. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - NOT IN ACTIVE OPERATION OR IN EXCLUSIVE, CONTINUOUS POSSESSION AND USE OF CLUB QUARTERS FOR THREE YEARS - FALSE STATEMENTS IN APPLICATION RESPECTING OFFICERS AND MEMBERS - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against NORTH ITALIAN AMERICAN CLUB, INC., 57 Brookway Avenue, Englewood, N. J., Holder of Club License CB-2, issued by the Common Council of the City of Englewood.	CONCLUSIONS AND ORDER

No appearance on behalf of defendant-licensee.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

On February 24, 1941 the defendant club licensee was served with an order to show cause why its club license should not be cancelled for the reason that said license was issued in violation of R. S. 33:1-12(5) in that the club had not been in active operation for three years continuously, immediately prior to making application for said license, nor had the club been in exclusive, continuous possession and use of a clubhouse or club quarters for the same period of time, as required by Rule 2 of State Regulations No. 7. At the same time disciplinary proceedings were also instituted, charging the defendant club licensee with (1) making false

statements in its application for license dated June 10, 1939 in that it falsely listed, as members of the governing body, and as President and Treasurer, respectively, L. Gambino and F. Toninni, persons who were, at that time, neither officers nor members of the governing body of the club, in violation of R. S. 33:1-25; (2) and (3) knowingly aiding and abetting Attilio Bongiovanni and James Gragnano, non-licensees, to exercise the rights and privileges of its license, contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

After the institution of these proceedings but before the date set for hearing, the license of the defendant club was tendered for surrender to the local issuing authority. At the hearing herein no appearance was entered on behalf of the defendant club.

Surrender of license is accepted as terminating and dismissing disciplinary proceedings of this nature only where the circumstances surrounding the misrepresentation and concealment of improper interests are unaggravated in character. See Re Amatuzio, Bulletin 413, Item 2; Re Hulteck, Bulletin 406, Item 2; Re Marchisio, Bulletin 403, Item 5. In any event, surrender of license, or, as in this case, tender of surrender, does not bar proceedings to revoke the license. R. S. 33:1-31.

For several years prior to 1937 the North Italian American Club, Inc. occupied premises at 57 Brookway Avenue, which it rented, at a regular monthly rental, from a corporation controlled by Attilio Bongiovanni, a member and officer of the club. In 1937 membership in the club dropped off and, shortly thereafter, the club apparently ceased to function as such. This period of inactivity, during which time there were neither meetings, elections of officers, collection or payment of dues nor payment of any rent for use of the premises at 57 Brookway Avenue, appears to have continued until at least June 7, 1940 (the date when investigation was started by this Department), when a "reorganization" meeting, at which Bongiovanni was elected President of the club, took place.

Despite the fact that the club had ceased to function during the period between 1937 and 1940, club licenses, in the name of the North Italian American Club, Inc., were taken out each year. In a statement given to investigators of this Department, Bongiovanni admitted that he had paid for these licenses out of his own money in order "to keep the organization together." Apparently a regular retail business, with the "club members" as customers, was conducted thereunder. At the time of the investigation by this Department, James Gragnano was found to be operating the bar business. Bongiovanni, in another statement given to the investigators, admitted that since October 1939 he had permitted Gragnano, in return for a monthly rental, to conduct the alcoholic beverage business under the club license because "Gragnano.....is out of work. I own the building and tried to help him out and also help myself because the building was vacant and I was receiving no revenue from the building."

At the hearing Louis Gambino, the person listed in the application for club license for the year 1939-1940 as President and member of the governing body, testified that he was neither President nor a member of the club at that time. Frank Toninni, the person listed in the same application as Treasurer and member of the governing body, likewise testified that he was not an officer of the club at that time.

It is clear that the business conducted under the club license issued in the name of the North Italian American Club, Inc. since 1937, has been solely for the private gain of Bongiovanni. In view of the fact that the "club's" misstatements have been deliberate and the licensed business has been fraudulently operated under the guise of a club license for the private gain of an individual, mere surrender of the license is not enough. Under circumstances as aggravated as these, outright revocation is indicated. Re Polish American Citizens Club Inc., Bulletin 419, Item 3.

Accordingly, it is, on this 4th day of April, 1941,

ORDERED, that Club License CB-2, heretofore issued to North Italian American Club, Inc. by the Common Council of the City of Englewood, be and the same is hereby revoked, effective immediately.

E. W. GARRETT,
Acting Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against L. W. JOHNSON, INC., 4 Washington St., East Orange, N. J., Holder of Plenary Retail Distribution License D-2, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange.	CONCLUSIONS AND ORDER

L. W. Johnson, Inc., by L. W. Johnson, President.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade, in violation of Rule 6 of State Regulations No. 30.

The Department file discloses that, on March 11, 1941, an investigator purchased a one-fifth gallon bottle of Heublein Club Cocktails (The Club Dry Martini) from the President of the defendant licensee corporation, for the sum of $2.15. The minimum consumer price at which one-fifth gallon bottles of this product could lawfully be sold at the time was in fact $2.40. Bulletin 440.

In connection with its guilty plea, the licensee alleges that the bottle in question was on the shelves and in the window bearing price tags marked $2.15, the price at which this item was sold; that all other items in the store bore price tags at the correct resale prices, and that this fact bears out its claim that the sale was a "mistake" and an "oversight." However, carelessness in changing price tags is no excuse. Re Blum, Bulletin 442, Item 9.

The minimum penalty for sale below Fair Trade price is ten days. Since the instant offense is the licensee's first violation of record, the minimum penalty will be imposed.

By entering a guilty plea in ample time before the date set for hearing, the Department has been saved the time and expense of proving its case, for which five days of the penalty will be remitted.

Accordingly, it is, on this 8th day of April, 1941,

ORDERED, that Plenary Retail Distribution License D-2, heretofore issued to L. W. Johnson, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of East Orange, be and the same is hereby suspended for five (5) days, effective April 14, 1941, at 6:00 A.M.

E. W. Garrett

Acting Commissioner.