Mr. Saum

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 899 MARCH 5, 1951.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 899 MARCH 5, 1951.

1. ACTIVITY REPORT FOR FEBRUARY 1951

ARRESTS:

Total number of persons arrested		17
Licensees and employees	4	
Bootleggers	13	

SEIZURES:

Motor vehicles - trucks	1
Stills - over 50 gallons	2
- 50 gallons or under	2
Alcohol - gallons	32.64
Mash - gallons	11,918.83
Distilled alcoholic beverages - gallons	20.70
Wine - gallons	41.87
Brewed malt alcoholic beverages - gallons	8.73

RETAIL LICENSEES:

Premises inspected	748
Premises where alcoholic beverages were gauged	621
Bottles gauged	10,327
Premises where violations were found	50
Violations found	57

Type of violations found:

Unqualified employees	4
Regulations #38 sign not posted	3
Gambling devices	2
Prohibited signs	1
Other mercantile business	1
Other violations	46

STATE LICENSEES:

Premises inspected	19
License applications investigated	14

COMPLAINTS:

Complaints assigned for investigation	346
Investigations completed	332
Investigations pending	129

LABORATORY:

Analyses made	119
"Shake-up" cases (alcohol, water and artificial color) - bottles	10

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	18
Persons fingerprinted for non-criminal purposes	162
Identification contacts made with other enforcement agencies	158
Motor vehicle identifications via N. J. State Police Teletype	19

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities		17
Violations involved:		
Sale during prohibited hours	5	
Sale to minors	5	
Permitting females at bar	4	
Sale to non-members by clubs	1	
Permitting brawls	1	
Permitting bookmaking	1	
Cases instituted at Division		13
Violations involved:		
Hindering investigation	4	
Sale during prohibited hours	3	
Permitting immoral activity	3	
Sale to minors	2	
Possessing illicit liquor	2	
Storage off licensed premises	1	
Violation of special condition	1	
Delivery without bona fide invoices	1	
Possessing contraceptives	1	
Permitting females at bar	1	
Failure to file notice of change in application	1	
Fraud and front	1	
Cases brought by municipalities on own initiative and reported to Division		14
Violations involved:		
Sale to minors	5	
Permitting bookmaking	3	
Permitting brawls	3	
Sale during prohibited hours	2	
Permitting immoral activity	1	
Conducting business as a nuisance	1	
Permitting gambling	1	
Hindering investigation	1	
Licensee working while drunk	1	

HEARINGS HELD AT DIVISION:

Total number of hearings held		27
Appeals	2	
Disciplinary proceedings	17	
Eligibility	4	
Seizures	1	
Tax revocation	1	
Applications for license	1	
Applications for certificate	1	

PERMITS ISSUED:

Total number of permits issued		578
Employment	131	
Solicitors'	83	
Disposal of alcoholic beverages	66	
Social affairs	172	
Special wine	3	
Miscellaneous	123	

Dated: March 1, 1951.

ERWIN B. HOCK, DIRECTOR

2. APPELLATE DECISIONS - TRENTON UNITED LICENSED BEVERAGE ASSOCIATION ET AL. v. TRENTON ET AL.

TRENTON UNITED LICENSED BEVERAGE ASSOCIATION and UNITED LICENSED BEVERAGE ASSOCIATION OF NEW JERSEY, Appellants,	
-vs-	ON APPEAL CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE CITY OF TRENTON, and THE 655 CLUB, Respondents.	

Sidney Simandl, Esq., Attorney for Appellants.
John A. Brieger, Esq., Attorney for Respondent Board of Commissioners.
Michael J. Savko, Esq., Attorney for Respondent The 655 Club.

BY THE DIRECTOR:

This appeal seeks reversal of respondent Board's granting of a 1949-1950 club license to respondent Club.

Point 4 of the Petition of Appeal sets forth that respondent Board's granting of a club license to respondent Club was in violation of the express terms of the city's numerical limitation ordinance. The pertinent ordinance provision reads:

> "The number of club licenses issued and outstanding in the City of Trenton at the same time shall not exceed 31, provided, however, that this limitation shall not prevent the issuance of renewals of club licenses to clubs holding such licenses at the time this regulation was adopted, and further provided that this limitation shall not prevent the transfer of licenses according to law. No new club license shall be issued to any club.....unless and until the number issued and outstanding shall be reduced.....to less than 31." (Paragraph 3, Section 46 of an ordinance adopted by Trenton's governing body, then City Council, on June 23, 1936.)

Paragraph 4, Section 46 of the 1936 ordinance reads:

> "The City Council shall have the power to change the limitation on the number of any class of licenses from time to time by resolution, should it so deem fit and necessary."

With respect to the question of authority to change an ordinance by mere resolution (as, for example, by the resolution granting the license herein appealed from), it is well established that no such authority exists. American Malleables Co. v. Bloomfield, 83 N. J. L. 728 (E. & A. 1912). With specific regard to municipal regulations effecting numerical limitation of alcoholic beverage licenses in New Jersey, our Alcoholic Beverage Law provides that such regulations adopted prior to July 1, 1937, shall continue in full force and effect until repealed, amended or otherwise altered by ordinance. R. S. 33:1-40.

When the license was issued to respondent Club, thirty-one other club licenses were issued and outstanding in the City of Trenton and, thus, the issuance herein appealed from was in contravention of the City's numerical limitation ordinance.

The evidence indicates that respondent Board's granting of respondent Club's application was based upon and prompted by, in large measure at least, the City Counsel's legal memorandum. That memorandum, dated February 21, 1950, cites, and quotes from, decisions of

this Division (then Department) and concludes:

"...it is evident and clear that the law of this state is that a municipality cannot deny an application for a club license based upon the sole ground of a 'numerical limitation' fixed by local ordinance... Why then go through the foolish motions of denying for the mere purpose of being reversed..."

The memorandum quotes from the late Commissioner Burnett's Conclusions in Societa Operaia Di Mutuo Succorso Villaalba v. Trenton, Bulletin 41, Item 5 (1934):

"Consumption and distribution licenses do not stand on the same footing as club licenses. In the former, the objective is commercial, in the latter fraternal. The Legislature has recognized this by providing a special license for benevolent, charitable, fraternal, social, religious, recreational and athletic organizations, if not operated for private gain. The club may not sell to the public generally but only to bona fide members and guests and then only for immediate consumption. As against maximum and minimum fees of $2,000. and $200. for consumption licenses, the respective limits for club licenses are but $150. and $50. The obvious purpose was to recognize these clubs as a natural outlet for man's innate desire for fellowship with his own kind and to afford them the opportunity to furnish their bona fide members and guests with alcoholic beverages for a nominal fee amidst self-regulated, decent, home-like surroundings. It would be utterly un-American to allow some citizens special privilege to drink in their homes and refuse it to others. The club is but an association of several citizens; the clubhouse is in the nature of a common home. To grant the beverage privilege to one club and deny it to another, equally qualified, is unfair. It lacks both economic and social justification. True, a municipality has the power to limit the number of club licenses but the burden of proof to justify such a numerical limitation should be placed upon the municipality. It is so held."

The appeal in the cited case, and in all such cases prior to the instant appeal, was from municipal denial of a club license application. The instant appeal, the first in the history of the Department (now Division) from municipal granting of a club license application in contravention of a numerical limitation ordinance, calls for careful reconsideration of the entire subject.

A plenary retail consumption license issued in violation of an operative numerical limitation ordinance is void. Re Loeb, Bulletin 206, Item 14. A municipal ordinance is, while unrepealed, binding upon the action of the municipal governing body itself so that such governing body has no jurisdiction to grant a license in violation thereof. Bachman v. Phillipsburg, 68 N. J. L. 552 (Sup. Ct. 1902). It seems plain that the legal principle enunciated in the Bachman case applies with respect to numerical limitation ordinances and irrespective of whether such ordinances relate to retail consumption or distribution or to club licenses.

I find that respondent Board had no jurisdiction to grant the 1949-1950 license to respondent Club and, therefore, that such license was void. The 1950-1951 renewal based upon such void license must likewise be, and is, declared void. My determination of this appeal on jurisdictional grounds makes it unnecessary to consider, here, other grounds for reversal advanced by appellant.

Attention has been directed to the fact that the appeal herein is the first to have been brought from a municipal authority's issuance of a club license in violation of an existing numerical limitation ordinance -- that heretofore the various appeals with respect to municipal action upon club license applications have been from denial of the applications. The express, worthy reason for reversal of the denials was to give primacy to non-discrimination. But an ironical turn is encountered when we face, as now, the situation of an appeal from a granting of license in violation of an operative ordinance. With the specific issue of such granting before me, there can be no legally sound determination other than to invalidate the license. If reversals on appeal from municipal denial of application were to persist along with reversals on appeal from municipal granting of application, the result would not constitute a safeguard against discrimination. To the contrary, the result would be a fostering of the very discrimination against which the heretofore followed decisions were leveled. For example, in a municipality with a quota-filled club license ordinance, if the municipal issuing authority were favorably inclined toward a particular applicant for a new club license, it could deny the application and look, on appeal, for reversal and an order to issue the license. If the municipal issuing authority were against the licensing of another applicant, it could grant the application and look, on appeal, for reversal and an order declaring the license void. If a club license application were filed with the State Director (which might be arranged simply by making a member of the municipal issuing authority a full-fledged member of the organization (R. S. 33:1-20)), the applicant could look for favorable action on the application.

The preceding paragraph is not meant to apply to respondent Board's motivation in issuing a license to respondent Club. The whole record herein negatives the existence of any ulterior motivation on the part of the Board. However, the instant case sharply illustrates the preceding paragraph's point. With persistence of the heretofore followed decisions, the Club could reapply for license and have the new application denied. Then, assuming that the Club were fully qualified for license under R. S. 33:1-12(5) and State Regulations No. 7, and that the ordinance alone were the ground for denial, the Club could, on appeal from such denial, look for an order directing issuance of the license.

No one is entitled to an alcoholic beverage license as a matter of right. See Paul v. Gloucester, 50 N.J.L. 585 (E. & A. 1888); Meehan v. Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906), affd. 75 N.J.L. 557 (E. & A. 1908); Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935).

A municipal governing body may, by ordinance, prohibit issuance of club licenses. R. S. 33:1-12(5). A municipal governing body may amend a numerical limitation ordinance adopted pursuant to R. S. 33:1-40. Our Alcoholic Beverage Law does not provide for an appeal from an ordinance prohibiting issuance of club licenses. It does provide (R. S. 33:1-41) for appeals to the State Director from numerical limitation ordinances. In the Opinion by Justice Case in Phillipsburg v. Burnett, 125 N.J.L. 157, at p. 161 (Sup. Ct. 1940), it was stated:

> "The statutory language granting the right of appeal from limitations in number of licenses is not entirely clear; but the proposition that a state administrative officer may flatly repeal a municipal ordinance, solemnly passed in accordance with statutory authority contained within the immediate text, is rather startling."

The instant appeal was taken pursuant to R. S. 33:1-22, not R. S. 33:1-41, but, on the question of a particular ordinance's effective validity, there would appear to be, in many if not most instances, no practical difference between an administrative finding that the ordinance is invalid and an administrative finding that the ordinance is unreasonable as applied to the appellant. In both instances (assuming the findings were to stand), the ordinance would be ineffective. These immediate comments relate, of course, not to ordinances generally but to numerical limitation ordinances which are expressly authorized in R.S. 33:1-40. It is obvious that ordinances flatly prohibiting additional licenses may be fraught with local political consequences. It is apparent that such consequences may be substantial and onerous with respect to ordinance prohibition of additional club licenses when potential applicants therefor may be constituted of organizations and groups which are patriotic, religious, or political in character. Club licenses are not issued to serve public convenience and necessity. They are issued to permit sales of alcoholic beverages only to an organization's bona fide members and their bona fide guests. All strait legal questions aside it would seem clear, since our law provides for municipal issuance and municipal limitation of club licenses, that the political burdens incident to an ordinance limiting the number of club licenses should be borne by the municipality.

As hereinabove set forth, it is my finding that respondent Board had no jurisdiction to grant the 1949-1950 license to respondent Club and, therefore, that such license was void and that the 1950-1951 renewal based thereupon must be declared void.

Accordingly, it is, on this 19th day of February, 1951,

ORDERED that respondent Board's action granting the club license application of respondent Club be and the same is hereby reversed and such license is declared void; and it is further

ORDERED that the current club license issued to respondent Club be and the same is hereby set aside and declared null and void, and said respondent, The 655 Club, is hereby directed forthwith to cease all alcoholic beverage activity under such license.

ERWIN B. HOCK
Director.

3. APPELLATE DECISIONS - LOCAL #2111, UNITED STEELWORKERS OF AMERICA, C. I. O. v. TRENTON.

LOCAL #2111, UNITED STEELWORKERS OF AMERICA, C.I.O.,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF TRENTON,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

George Pellettieri, Esq., Attorney for Appellant.
Sidney Simandl, Esq., Attorney for Objectors, Trenton United Licensed Beverage Assn. and United Licensed Beverage Assn. of N.J.

BY THE DIRECTOR:

This appeal seeks reversal of respondent Board's denial of appellant's application for a club license.

Respondent Board's resolution of denial was adopted June 1, 1950, by a vote of four-to-none. When the resolution was adopted, two of the Commissioners explained their negative votes -- one expressing the opinion that the proposed premises were unsuitable and inadequate and that the neighborhood was not conducive to any further liquor dispensing establishments; the other stating that he objected to any additional club licenses in Trenton.

On September 28, 1950, respondent Board passed a resolution consenting to reversal, by the Director, of the denial herein appealed from. The resolution's preamble states that appellant had filed plans and specifications for proposed enlargement of the premises "which meet the objections and grounds for the denial of the application". This resolution was adopted by a vote of three-to-two.

An ordinance of the City of Trenton provides:

> "The number of club licenses issued and outstanding in the City of Trenton at the same time shall not exceed 31, provided, however, that this limitation shall not prevent the issuance of renewals of club licenses to clubs holding such licenses at the time this regulation was adopted, and further provided that this limitation shall not prevent the transfer of licenses according to law. No new club license shall be issued to any club.....unless and until the number issued and outstanding shall be reduced .....to less than 31." (Paragraph 3, Section 46 of an ordinance adopted by Trenton's governing body, then City Council, on June 23, 1936.)

On June 1, 1950, when respondent Board denied appellant's application the quoted club license ordinance quota was already filled. It is my finding that respondent Board had no jurisdiction to grant the application since such granting would have been in contravention of the operative numerical limitation ordinance. Bachman v. Phillipsburg, 68 N.J.L. 552; (Sup. Ct. 1902). Earlier decisions enunciating a principle inconsistent herewith will not hereafter be followed. (See the extended discussion of the matter in Conclusions and Orders in the appeal decided herewith: Trenton United Licensed Beverage Association and United Licensed Beverage Association of New Jersey v. Board of Commissioners of the City of Trenton and The 655 Club, Bulletin 899, Item 2.) Respondent Board's action will be affirmed.

My determination of this appeal on jurisdictional grounds makes it unnecessary to consider, here, other grounds advanced for affirmance.

Accordingly, it is, on this 26th day of February, 1951,

ORDERED that respondent Board's action denying the application be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

4. APPELLATE DECISIONS - TOWN COCKTAIL BAR, INC. v. NUTLEY.

TOWN COCKTAIL BAR, INC., trading as TOWN COCKTAIL BAR,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE TOWN OF NUTLEY,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

William Osterweil, Esq., Attorney for Appellant.
William F. Gorman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellant's license for fifteen days after finding appellant guilty of a charge of selling alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

Upon the filing of the appeal an order was entered by me staying the respondent's order of suspension until the entry of a further order herein.

It is admitted that on the evening of May 7, 1950, Lillian --- (who was then sixteen years of age) entered defendant's premises with Russell Weber, Henry Moorhouse (both of whom were of full age) and Barbara --- (who was also a minor). There is conflicting testimony as to whether the party entered defendant's premises at 9:30 p.m. or 11:30 p.m., but the members of the party had been at a wedding reception earlier in the evening and I am inclined to believe that the correct time of their entry into appellant's premises was approximately 11:30 p.m. In any event, they remained there for approximately an hour to an hour-and-a-half. Barbara --- testified that during the course of her visit she had nothing to drink, and the sole question, therefore, is whether or not appellant, on the evening in question, sold alcoholic beverages to Lillian --- or permitted her to consume alcoholic beverages on the licensed premises. Apparently there was conflicting testimony on this issue at the hearing below, but respondent found appellant guilty of the charge. The petition of appeal alleges, among other reasons, that the finding of respondent was contrary to the weight of the evidence. In accordance with the provisions of Rule 6 of State Regulations No. 15, the appeal was heard de novo.

At the hearing herein Lillian --- testified that she ordered a "rum and coke" and that it was served to her by Walter McCarthy who was tending bar and who had been introduced to her earlier in the same evening by Russell Weber. She says that she does not remember the kind of glass in which the drink was served, but significantly she made no mention of the presence of a "jigger" on the bar. Lillian further testified that she consumed about one-quarter of her drink and that she did not finish the drink because she "didn't like it". It appears that at the hearing below she was asked, "Was it (the drink) any different from ordinary Coca-Cola" and she replied, "I don't know." At the hearing herein she testified that McCarthy placed a glass of beer in front of her male companions but that she did not know who paid for any of the drinks, although at the hearing below she testified that Henry Moorhouse had paid for the drinks.

It appears that at a subsequent date Lillian --- visited appellant's premises with ABC agents and identified Walter McCarthy as the person who had made the sale to her.

Respondent's case must stand or fall upon the testimony of Lillian ---. On the record her testimony is wholly uncorroborated. Barbara --- testified that Lillian --- had a drink, but that she did not know what it was and that she did not hear anyone order the drink. Henry Moorhouse testified that he did not hear any drinks ordered, and that he does not remember if there was a drink placed before Lillian ---. Russell Weber testified that he did not hear Lillian --- order any drink, and that he does not know what she had. I am disregarding his testimony on this point because the attorney for respondent pleaded surprise and effectively neutralized his testimony by examining him concerning a statement given to ABC agents by Weber wherein he said that Lillian had "rum and coke". The effect of the cross-examination, however, was merely to neutralize the witness' testimony and it may not be considered a corroboration of the testimony given by Lillian. Russell Weber testified that, to the best of his knowledge, the drinks were served by Joseph McLaughlin, another bartender.

On behalf of appellant, Joseph McLaughlin testified that he was tending bar at about 11:00 p.m. when the party entered appellant's premises. He says that Weber ordered two beers and a coke, and that he served a glass of beer to each of the men and a glass of Coca-Cola to Lillian, charging therefor the sum of thirty cents. He said that no mention was made of "rum and coke"; that it was the practice to serve Coca-Cola in an eight-ounce glass, but that, if a "rum and coke" was ordered, he would bring to the bar an eight-ounce glass of Coca-Cola with a jigger of rum and a piece of lemon peel, and would pour the rum from the jigger to the glass in the presence of the customer. According to his testimony, no alcoholic beverages were served to Lillian in the licensed premises.

Walter McCarthy testified that, between 7:00 p.m. and midnight on May 7, 1950, he was in his apartment located above the licensed premises, and that Joseph McLaughlin was tending bar during his absence. He stated that he remembered the evening because it was his birthday and a birthday party was being held in his honor in his apartment. His wife substantially corroborated this testimony and stated that her husband was in their apartment between 6:00 p.m. and shortly before midnight, when her husband left with some guests who planned to get the midnight bus for New York.

The testimony of Walter McCarthy is weakened because he subsequently gave a statement to ABC agents wherein he says that he returned from the birthday party about 10:30 p.m. and remained on the licensed premises until closing hour. However, even if this be true, the preponderance of the evidence indicates that the members of the party were served by Joseph McLaughlin and not by Walter McCarthy.

In view of the fact that the testimony given by Lillian is uncertain in many respects and is uncorroborated, and the further fact that the testimony given by Joseph McLaughlin is positive and unshaken, I conclude that the finding of guilt was contrary to the weight of the evidence.

Since I must conclude that the finding of guilt was contrary to the weight of the evidence, I have no alternative except to reverse the action of respondent.

Accordingly, it is, on this 21st day of February, 1951,

ORDERED that the action of respondent, whereby it found appellant guilty of the aforesaid charge and suspended its license for fifteen days, be and the same is hereby reversed.

ERWIN B. HOCK
Director.

5. APPELLATE DECISIONS - NEIBART AND KEENAN v. PATERSON ET AL.

ESTHER NEIBART and EMMETT KEENAN,)
Appellants,)
-vs-) ON APPEAL
) ORDER
BOARD OF ALCOHOLIC BEVERAGE CONTROL
OF THE CITY OF PATERSON, and SLACO,)
INC., and LEW BROWN, INC.,
Respondents.)

- -

Sidney Simandl, Esq., Attorney for Appellants.
Joseph R. Brumale, Esq., Attorney for Respondent Board.
Emil Weisser, Esq., Attorney for Respondents Slaco, Inc. and Lew Brown, Inc.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board whereby it granted the transfer of a plenary retail consumption license from respondent Lew Brown, Inc. to respondent Slaco, Inc. The premises in question are located at 147 Ellison Street, Paterson.

The attorneys for the respective parties herein have filed a written consent to the entry of an order dismissing the appeal with prejudice. No reason appearing to the contrary,

It is, on this 23rd day of February, 1951,

ORDERED that the appeal herein be and the same is hereby dismissed with prejudice.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - PRIOR SUSPENSION FOR BALANCE OF TERM LIFTED UPON CORRECTION OF ILLEGAL SITUATION - SUSPENSION TO CONTINUE FOR 35 DAYS FROM ITS EFFECTIVE DATE.

In the Matter of Disciplinary)
Proceedings against
)
CLUB TRIO INC.
Highway 26) ON PETITION
South Brunswick ORDER
P. O. Monmouth Junction, N. J.,)

Holder of Plenary Retail Consump-)
tion License C-5, issued to Joseph
Ortepio & Chas. Helfin, and trans-)
ferred on October 2, 1950, to Club
Trio Inc., by the Township Committee)
of the Township of South Brunswick.

- -

Petitioner, by Joseph Ortepio, President.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

By order dated January 23, 1951, the license of Club Trio Inc. was suspended for the balance of its term, effective at 2:00 a.m. January 29, 1951, with leave to file a petition for relief upon correction of the illegal situation. In said order it was provided that in no event would relief be given prior to the expiration of thirty-five days from the date upon which the suspension becomes effective. See Bulletin 896, Item 1. The petition filed herein alleges that the illegal situation has been corrected, and requests

that petitioner be permitted to resume operation under its license prior to the expiration of thirty-five days from the effective date thereof.

It appears from the testimony given at the hearing held upon the petition that five shares of stock of Club Trio Inc. have been transferred from Thomas Carlino to Anthony M. Bentivegna, and that Anthony M. Bentivegna is now a bona fide resident of New Jersey. Thus, on the evidence presented, I conclude that the illegal situation has been corrected. Concerning the request for a reduction of the period of suspension, Joseph Ortepio testified that he was "more or less misinformed" as to the residential requirement of stockholders and that, at the time the corporation was formed, it was "mentioned" that a stockholder in a licensed retail corporation must have resided in New Jersey for three months before becoming qualified to hold the stock. Notwithstanding the ultimate correction, the record indicates that Anthony M. Bentivegna was not a resident of New Jersey at the time of the filing of defendant's application for transfer of the license. See R. S. 33:1-25. Applicants for licenses are required to answer all questions fully and frankly. A mistake as to the law does not excuse the violation. Hence, the request for a reduction of the period of suspension will be denied.

Accordingly, it is, on this 23rd day of February, 1951,

ORDERED that Plenary Retail Consumption License No. C-5, issued by the Township Committee of the Township of South Brunswick, be restored to full force and operation effective at 2:00 a. m. March 5, 1951. Until that time the suspension heretofore imposed shall remain in full force and effect.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOHN PETER BENEDETTI
T/a ACE TAVERN
13 East Front Street
Trenton 9, N. J.,

Holder of Plenary Retail Consumption License C-229, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Frank I. Casey, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to a charge alleging that he sold and served alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

It appears from an examination of the file in the instant case that on January 18, 1951, the defendant sold and served alcoholic beverages to a 19-year-old soldier.

Defendant has a previous adjudicated record. On December 14, 1950, the local issuing authority suspended the imposition of penalty after defendant pleaded non vult to a charge of sale of alcoholic beverages to a minor.

Ordinarily, the penalty for a "minors" violation of the type in question is ten days. Cf. Re Powers, Bulletin 855, Item 8. In view of the previous violation on a similar charge, I shall suspend defendant's license for a period of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 15th day of February, 1951,

ORDERED that Plenary Retail Consumption License C-229, issued by the Board of Commissioners of the City of Trenton to John Peter Benedetti, t/a Ace Tavern, for premises 13 East Front Street, Trenton, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. February 26, 1951, and terminating at 2:00 a.m. March 13, 1951.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 - PREVIOUS RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
JOHN BENASH, SOPHIE BENASH, JOSEPH BENASH, LEO BENASH, ALFRED BENASH and STEPHEN BENASH)
West side Mantua-Sewell Road)
Mantua Township)
P.O. Sewell, N. J.,)
Holders of Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Mantua.)

CONCLUSIONS AND ORDER

Bruce A. Wallace, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they delivered alcoholic beverages in their licensed vehicle without accompanying invoices or manifests, in violation of Rule 3 of State Regulations No. 17.

On January 27, 1951, an International truck, bearing transportation insignia issued by the Division of Alcoholic Beverage Control to defendants, was examined by ABC agents. The truck was found to contain a large quantity of cases of malt beverages, assorted brands of whiskey, gin and wines, and a quarter-barrel of beer. The driver of the truck was unable to produce delivery slips or invoices, or similar documents, containing the information required by Rule 3 of State Regulations No. 17, aforesaid.

In 1939, a license held by John Benash, one of the defendants herein, was suspended by the local issuing authority for seven days as a result of sale of alcoholic beverages during prohibited hours and employing a disqualified person. In view of the elapsed time since this violation was committed, I shall not consider same in calculating the penalty to be imposed in this proceeding. Effective November 27, 1950, however, the defendants' license was suspended by me for five days when the driver of another truck of defendants transported alcoholic beverages without having invoices, manifests or similar documents in his possession. Bulletin 891, Item 7.

Ordinarily, the penalty for a violation of this type would warrant a suspension of the license for ten days, with five days being remitted in the event of a plea of guilty or *non vult*. Bulletin 891, Item 7, *supra*. Inasmuch as the previous violation was similar to that committed in the instant case, I shall suspend defendants' license for a period of twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 26th day of February, 1951,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Mantua to John Benash, Sophie Benash, Joseph Benash, Leo Benash, Alfred Benash and Stephen Benash, for premises West side Mantua-Sewell Road, Mantua Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. March 5, 1951, and terminating at 9:00 a.m. March 20, 1951.

ERWIN B. HOCK
Director.

9. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RALPH BELVEDERE and FRANK PINTOZZI)
T/a BLUE FLAME INN)
8 Sherman Avenue)
Lodi, N. J.,)

Holders of Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Borough of Lodi.)

CONCLUSIONS AND ORDER

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A. Leon Kohlreiter, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded *non vult* to a charge that they permitted the consumption of alcoholic beverages on their licensed premises after 5:00 a.m. on Sunday, in violation of a local ordinance.

On Sunday morning, December 17, 1950, at about 5:25 a.m., agents of the State Division of Alcoholic Beverage Control, securing entrance to the licensed premises, discovered the defendants and two bartenders on duty there and about twenty-five customers at the bar. A large number of the customers had beer and other alcoholic beverages in glasses before them and were consuming the beverages.

The pertinent ordinance, as amended on July 10, 1950, and then effective, provides among other things:

"Section 2: No licensee shall....suffer the consumption of any alcoholic beverages on the licensed premises....on other (other than New Years) Sundays between the hours of 5:00 A.M. and Noon...."

Defendants, who both acquired their interest in the licensed business recently, have no prior adjudicated record. I shall suspend the license for the minimum, fifteen days, usual in such cases. Remitting five days for the plea, will leave a net suspension of ten days.

Accordingly, it is, on this 19th day of February, 1951,

ORDERED that Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Borough of Lodi to Ralph Belvedere and Frank Pintozzi, t/a Blue Flame Inn, for premises 8 Sherman Avenue, Lodi, be and the same is hereby suspended for a period of ten (10) days, commencing at 4:00 a.m. February 26, 1951 and terminating at 4:00 a.m. March 8, 1951.

ERWIN B. HOCK
Director.

10. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH J. BURBOL & BIRT BURBOL
T/a AIRSHIP TAVERN
Naval Air Station Road
Manchester Township
P.O. Lakehurst, N. J.,

Holders of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Manchester.

CONCLUSIONS AND ORDER

Joseph J. Burbol & Birt Burbol, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered, and allowed, permitted and suffered the service and delivery of an alcoholic beverage on their licensed premises to minors, in violation of Rule 1 of State Regulations No. 20.

On the night of Saturday, January 27, 1951, and early morning of Sunday, January 28, 1951, several glasses of beer were served to each of two youths, both of whom were twenty years of age, by a barmaid on the defendants' licensed premises.

The fact, even if true, that one of these boys, both of whom were in the United States Navy, displayed to the barmaid an I. D. card showing him to be twenty-two years of age, is no defense. The only defense permitted by the statute is the establishment of all the following facts: (1) false representation of his age in writing by the said minor, (2) that his appearance was such that an ordinary prudent person would believe the false representation, and (3) that the sale was made in good faith, relying on such representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. R. S. 33:1-77. None of the facts required appear here.

In the absence of aggravating circumstances and the lack of a prior adjudicated record, I shall suspend the license for ten days. Re Dolan et al., Bulletin 777, Item 7. Remitting five days because of the plea will leave a net suspension of five days.

Accordingly, it is, on this 14th day of February, 1951,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Manchester to Joseph J. Burbol & Birt Burbol, t/a Airship Tavern, Naval Air Station Road, Manchester Township, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. February 19, 1951, and terminating at 2:00 a.m. February 24, 1951.

ERWIN B. HOCK

11. DISCIPLINARY PROCEEDINGS - BAGATELLE OR PIN BALL MACHINE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

CALDRONEY-KLAIBER, FROST POST 876, VETERANS OF FOREIGN WARS
44 River Edge Road
River Edge, N. J.,

Holder of Club License CB-1, issued by the Mayor and Borough Council of the Borough of River Edge.

CONCLUSIONS AND ORDER

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Caldroney-Klaiber, Frost Post 876, Veterans of Foreign Wars, by Edward Carter, Adjutant.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded <u>non vult</u> to a charge alleging that on December 26 and 29, 1950, it allowed, permitted and suffered on or about its licensed premises a machine commonly known as a bagatelle or pin ball machine, in violation of Rule 7 of State Regulations No. 20.

On December 26, 1950, an ABC investigator on routine inspection observed a device known as a "Bally 'Hot Rods'" bagatelle machine, situated about five feet from the bar in the barroom. Subsequent thereto, on December 29, 1950, an ABC inspector visited the licensed premises and operated the machine. The machine, according to the ABC inspector, gives odds for automatic free games for first ball entering the stall. The player has absolutely no control over the balls when the shooter forces them on the playing surface of the game.

Defendant has no previous adjudicated record. The license will be suspended for a period of ten days, less five days' remission for the plea entered herein, leaving a net suspension of five days. <u>Re Kaznica</u>, Bulletin 646, Item 4.

Accordingly, it is, on this 6th day of February, 1951,

ORDERED that Club License CB-1, issued by the Mayor and Borough Council of the Borough of River Edge to Caldroney-Klaiber, Frost Post 876, Veterans of Foreign Wars, 44 River Edge Road, River Edge, be and the same is hereby suspended for a period of five (5) days, commencing at 7:00 a.m. February 12, 1951, and terminating at 7:00 a. m. February 17, 1951.

ERWIN B. HOCK
Director.

12. DISQUALIFICATION REMOVAL PROCEEDINGS - TWO CONVICTIONS FOR BREACH OF PEACE DURING THE FIVE YEARS LAST PAST - APPLICATION DENIED.

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

Case No. 889.

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

On March 29, 1939, when petitioner was twenty years of age, he was sentenced to serve a term of from six to nine years in the State Prison after he pleaded non vult in a Court of Special Sessions to charges of robbery and larceny and receiving. He was paroled from prison on April 8, 1943. These crimes involve moral turpitude and, hence, petitioner is now disqualified from holding a license or being employed in any business capacity whatsoever on licensed premises. Under these circumstances it is unnecessary to pass upon the question as to whether or not either of his two prior convictions (namely, one in 1936 for petty larceny, and the other in 1937 for petty larceny) involve moral turpitude.

Five years have elapsed since his last conviction of a crime. However, on August 12, 1946, petitioner was convicted in a Police Court on a charge of breach of the peace and fined $10.00, and on June 20, 1948, he was again convicted in a Police Court on a charge of breach of the peace and received a suspended sentence. Because of these two convictions I am unable to conclude that he has conducted himself in a law-abiding manner during the past five years. Hence I must deny his application for relief under the provisions of R. S. 33:1-31.2. He will not be eligible to apply for relief under this Section prior to June 20, 1953.

Accordingly, it is, on this 13th day of February, 1951,

ORDERED that the petition herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Liebmann Breweries, Inc.
36 Forrest St., Brooklyn 6, N. Y.
Application for Additional Salesroom at 10-12-14-16 Brick Church Plaza filed February 23, 1951.

Henrich and Stirnweiss Distributors
292 Baldwin St., New Brunswick, N. J.
Application filed February 28, 1951 for transfer of Limited Wholesale License WL-59 from Thomas D. Henrich & George H. Stirnweiss, t/a Henrich & Stirnweiss, Distributors.

ERWIN B. HOCK
Director.

14. DISCIPLINARY PROCEEDINGS - PRIOR SUSPENSION FOR BALANCE OF TERM LIFTED UPON CORRECTION OF ILLEGAL SITUATION - FULL SUSPENSION OF 90 DAYS SERVED - SUSPENSION LIFTED, EFFECTIVE IMMEDIATELY.

In the Matter of Disciplinary Proceedings against

C. O. CLUB, INC.
Corner Wood Ave. & Georges Road
North Brunswick
P. O. RFD 4, New Brunswick, N. J.,

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of North Brunswick.

ON PETITION
ORDER

Russell Fleming, Esq., Attorney for Petitioner.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On Octobet 20, 1950, I suspended defendant's license for the balance of its term, effective at 2:00 a.m. October 26, 1950, after I had previously found defendant guilty of various charges. Re C. O. Club, Inc., Bulletin 888, Item 4. In said order defendant was given leave to make application to lift said suspension after ninety days thereof had been served, upon its proof that the illegal situation had been corrected. Defendant made application for lifting of the suspension.

On February 2, 1951, the matter was set down for hearing, at which time defendant by its president, Charles Oliveri, appeared. Said Charles Oliveri then testified that Anthony Oliveri and Ann Oliveri had sold their respective interests in the licensed corporation to himself, Charles, and his wife Emma Oliveri; that the said Anthony and Ann Oliveri had resigned as officers in said corporation, and that their stock had been properly transferred to Charles Oliveri and Emma Oliveri so that each holds fifty per cent. of the corporate stock now issued and outstanding, and in return therefor the C. O. Club, Inc., defendant herein, had transferred to Ann Oliveri the grocery store and gasoline station business owned by the C. O. Club, Inc., together with the stock and fixtures in said store, and had leased the said store premises to the said Ann Oliveri; and that Anthony Oliveri has no interest of any kind in the license or the licensed business and is not and will not be employed in said business.

The local issuing authority has been notified of the changes in stockholding and officers of the defendant corporation, pursuant to provisions of R. S. 33:1-34.

From the evidence submitted it appears that the unlawful situation has been corrected. Ninety days of the suspension imposed have expired and, under all the circumstances, I shall lift the suspension heretofore imposed.

Accordingly, it is, on this 1st day of March, 1951,

ORDERED that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of North Brunswick to the C. O. Club, Inc. be restored to full force and operation, effective immediately.

Erwin B. Hock
Director.