

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

BULLETIN 580

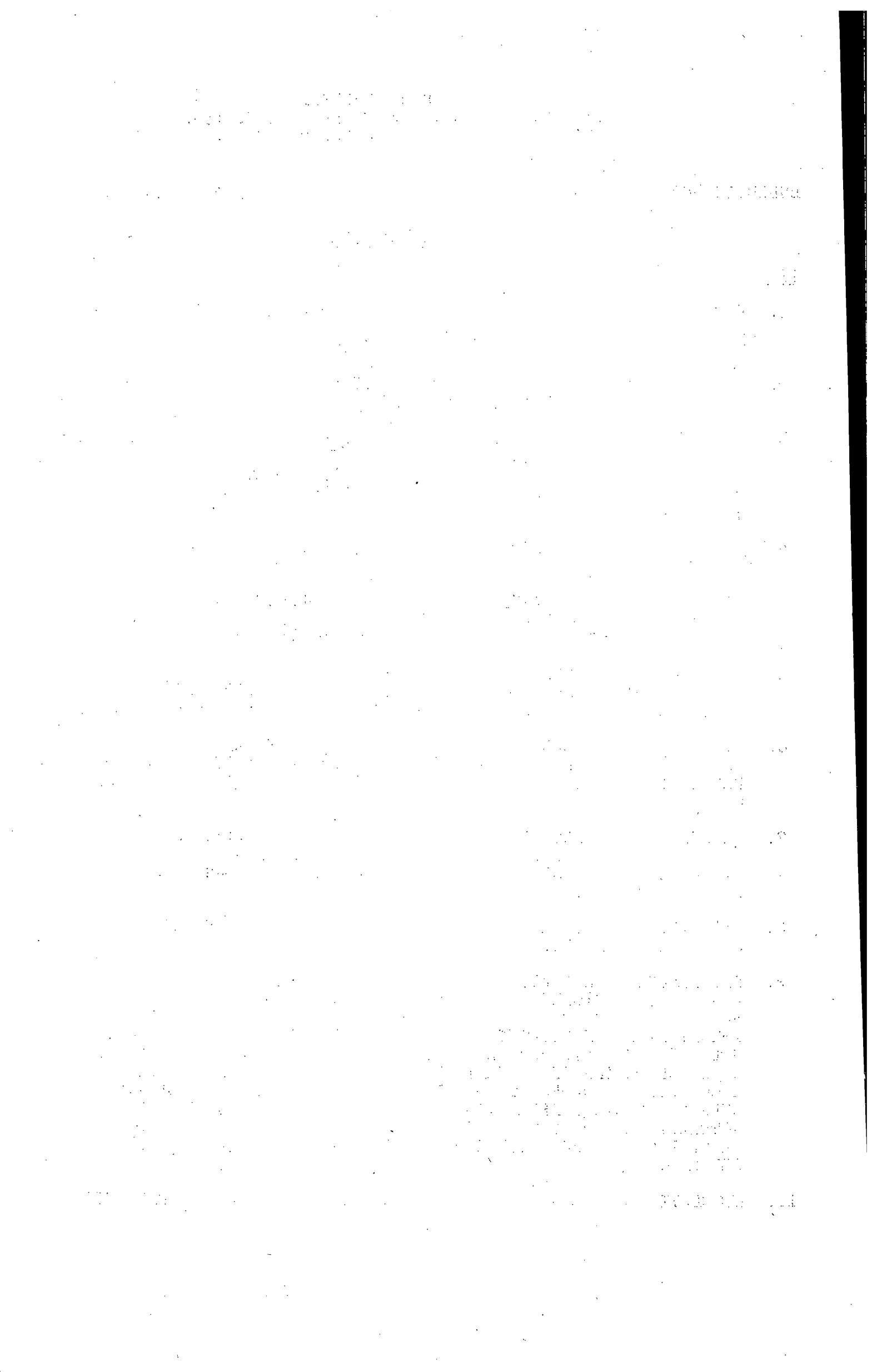
AUGUST 17, 1943.

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

BULLETIN 580

AUGUST 17, 1943.

1. HOURS OF SALE - STATE REGULATIONS NO. 38 LIMITING HOURS FOR SALE AND DELIVERY BY RETAIL LICENSEES OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION.

REGULATIONS NO. 38

1. No licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in original containers for consumption off the licensed premises, on Sunday, or before 9:00 A.M. or after 10:00 P. M. on any other day of the week.

2. Rule 1 shall not be construed to permit the sale or delivery of any alcoholic beverage during hours when such sale or delivery is prohibited by an applicable municipal regulation or referendum.

3. Each licensee permitted to sell at retail for off-premises consumption shall keep prominently displayed, on or near the entrance to the licensed premises and clearly visible from the exterior, a sign not less than 10 x 12 inches in size stating clearly and legibly the legal hours during which the sale of alcoholic beverages in original containers for off-premises consumption is permitted.

4. Any violation of these rules shall subject the license to suspension or revocation.

These rules are effective Monday, August 16, 1943, at 9:00 A.M.

ALFRED E. DRISCOLL
Commissioner.

Dated: August 10, 1943.

Suggested Type of Notice

LEGAL HOURS OF SALE
for alcoholic beverages
FOR OFF-PREMISES CONSUMPTION
9 A. M. to 10 P. M. Weekdays *
SALE AND DELIVERY FOR OFF-PREMISES CONSUMPTION PROHIBITED ON SUNDAYS.

* NOTE: If municipal regulations are more restricted, insert municipal hours. See Rule 2 above.

AN EXPLANATORY STATEMENT

Within recent months, the Department of Alcoholic Beverage Control has been confronted by a new and distinct problem -- the hours of sale for package goods.

Because of the shortage in manpower and the need for the conservation of power, light, heat, etc., and because of the very definite shortage in available supplies of alcoholic beverages, including, more recently, beer, individual retailers and representative groups within the industry, throughout the State, have urged a state-wide limitation upon hours for the sale of alcoholic beverages in original containers for off-premises consumption. There is good reason to believe that if the shortage continues many retailers may, over a period of time, find themselves unstocked and out of business or unable to renew their licenses another year unless hours of sale are substantially reduced. Although the shortening of hours offers no guarantee that all retailers will stretch out their available supplies, it may be an important means of enabling them to do so.

Further, and perhaps even more important, indiscriminate "bottle drinking" raises special and distinctive problems. It has been demonstrated that inordinately late hours for the sale of alcoholic beverages in original containers are undesirable in so far as the general civilian population is concerned, and more particularly so with respect to essential war workers and New Jersey's large concentration of military and naval personnel. The sale of bottle goods in the late hours of the night or early hours of the morning to those who have no place to consume the same except upon the public streets, in parks or automobiles, tends to place in jeopardy the whole license system.

Reduction in the hours within which package goods may be sold is in keeping with the policy lately inaugurated in many of our states. It brings New Jersey generally in line with regulations in New York and Pennsylvania. In the former, no liquor or wine store may remain open on Sunday. In the latter, off-premises sales are also prohibited on Sunday.

For the benefit and well-being of the trade itself and in the interest of the common good, I am, pursuant to the authority vested in me by Title 33 of the Revised Statutes, and in particular Section 1-39 thereof, promulgating State Regulations No. 38, effective Monday, August 16, 1943, at 9:00 A. M.

Regulations No. 38 will be strictly enforced. Those found guilty of violating the same may anticipate either a very substantial suspension or even revocation of their licenses. There is no excuse for the violation of hours' regulations by those engaged in a privileged business. The cooperation of all retail licensees is anticipated. It is their business that is placed in jeopardy by those who violate the law or the regulations.

Likewise, full cooperation in the enforcement of these regulations is expected from all municipal authorities, including police officials. R. S. 33:1-24 imposes on municipal officials the primary responsibility for the enforcement of the Alcoholic Beverage Law and the regulations of this Department in so far as the same are in any way applicable to retail licensees.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF AND SOLIDS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
 SAVERIO PETRUCELLI
 112 West Market Street
 Newark, N. J.,
 Holder of Plenary Retail Consumption License C-706, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.
 -----)

CONCLUSIONS AND ORDER

Saverio Petrucelli, Pro Se.
 Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleads non vult to a charge alleging that, on or about June 14, 1943, he possessed, in violation of R.S. 33:1-50, a quart bottle of "Wilson 'That's All' Blended Whiskey 90 Proof", the contents of which were not as labeled and varied from a genuine sample.

An investigator of this Department observed, while making a routine inspection, that the contents of a one quart bottle of Wilson "That's All" Blended Whiskey appeared to be off color. Subsequent analysis made by departmental chemist of the whiskey taken from this bottle indicated that it contained a natural whiskey instead of a blend as called for by the label. Comparison of this liquor with that of an authentic sample of Wilson "That's All" Blended Whiskey disclosed a discrepancy in both proof and solid content.

The licensee denied that he had refilled the bottle and also disclaimed any knowledge of the manner in which the violation occurred. Despite the absence of any personal participation in the violation or such lack of knowledge, the licensee must be held strictly accountable for any "refills" found in his liquor stock. Re Kurian, Bulletin 517, Item 2.

Since this licensee has no previous adjudicated record, I shall suspend the license for a period of ten days. Re Kurian, supra.

Accordingly, it is, on this 9th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-706, heretofore issued to Saverio Petrucelli by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 112 West Market Street, Newark, be and the same is hereby suspended for ten (10) days, commencing on August 16, 1943, at 2:00 A.M., and terminating on August 26, 1943, at 2:00 A. M.

ALFRED E. DRISCOLL
 Commissioner.

3. DISCIPLINARY PROCEEDINGS - FRONT - SUPPRESSION OF MATERIAL FACT IN LICENSE APPLICATION, IN VIOLATION OF R. S. 33:1-25 - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

STELLA BRIGGS)
T/a BRIGGS' CAFE)
1197 Lansdown Avenue)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-108, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, and transferred during the pendency of these proceedings to)

MIECZYSLAW DERENGOWSKI)

for the same premises.)

Harry M. Mendell, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges which allege, in substance, that in her application for her license for the current fiscal year she suppressed the material fact that Mieczyslaw Derengowski was the real and beneficial owner of the license and business, said suppression being in violation of R. S. 33:1-25, and also that from December 1938 until July 2, 1943, she knowingly aided and abetted Mieczyslaw Derengowski to exercise the rights and privileges of her successive licenses, in violation of R. S. 33:1-52.

In December 1938 a plenary retail consumption license for the premises in question was issued to defendant. At the beginning of each fiscal year thereafter, to and including the year beginning July 1, 1943, she renewed the license in her own name. It is admitted that Mieczyslaw Derengowski, father of defendant, was at all times the real and beneficial owner of the licensed business.

On August 3, 1943, after the institution of these proceedings, the local issuing authority granted a transfer of the license to Mieczyslaw Derengowski. It appears, therefore, that the unlawful situation has been corrected.

As to penalty: The files disclose that this family "front" was created because of a certain judgment standing against the father. It is represented that neither defendant nor her father realized that they were violating the law. However, in various license applications, defendant falsely denied, under oath, that any individual other than herself had any interest in the licenses or the business to be conducted thereunder. All questions in applications must be answered frankly and honestly. Under the circumstances, I shall suspend the license for a period of ten days. Re Freeman, Bulletin 579, Item 3.

Accordingly, it is, on this 9th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-108, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Stella Briggs, t/a Briggs' Cafe, for premises 1197 Lansdown Avenue, Camden, and transferred to Mieczyslaw Derengowski for the same premises, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. August 16, 1943, and terminating at 2:00 A.M. August 26, 1943.

ALFRED E. DRISCOLL

4. MORAL TURPITUDE - CRIME OF CONSPIRACY (SELLING NARCOTICS) INVOLVES THE ELEMENT OF MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR MORE THAN FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 286
-----)

BY THE COMMISSIONER:

In 1930 petitioner was convicted on the charge of conspiracy in selling narcotics in violation of the Harrison Act and sentenced to serve the time already spent in jail, namely, twenty-seven days. The crime in question *per se* involves the element of moral turpitude. See Re Case No. 445, Bulletin 521, Item 7.

Petitioner represents that he has been law-abiding for at least five years last past, and hence, pursuant to R. S. 33:1-31.2, seeks removal of his disqualification from working for a liquor licensee or holding a liquor license in this State by reason of his conviction of a crime involving moral turpitude.

Petitioner denies that he ever engaged in "peddling" narcotics. He alleges his conviction resulted from the activities of a Federal agent who, while posing as a customer of his grocery store, induced him on two occasions to act as a go-between with a sailor for the sale of cocaine to the agent.

A retired business man, who has known petitioner for more than eleven years, testified that, during that time, petitioner has conducted himself in a law-abiding manner and has had the reputation of being a good citizen in the community where he resides. Similar testimony was given by a housewife who has known petitioner for more than eight years, and a friend who has known him for over ten years.

I find that petitioner has conducted himself in a law-abiding manner during the five years immediately past. Despite his record of thirteen years ago, I believe that he is making a sincere effort to live down his past. I conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 9th day of August, 1943,

ORDERED, that the petitioner's statutory disqualification because of the conviction described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2. Petitioner, who was born in Italy, has applied to become a citizen of the United States but has not obtained his final papers. He may not obtain a license in the absence of proper proof that he is a citizen. If he desires to be employed on licensed premises, he must obtain an employment permit prior to the commencement of said employment.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - VIOLATION OF R. S. 33:1-43 BY HOLDER OF SOLICITOR'S PERMIT - EMPLOYMENT BY A WHOLESALER AND A RETAILER OF ALCOHOLIC BEVERAGES - SOLICITOR'S PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary)
Proceedings against)

CARMINE J. SICILIANO)
1 Norwood Court.)
Long Branch, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Solicitor's Permit)
No. 213 issued by the State)
Commissioner of Alcoholic)
Beverage Control.)

Carmine J. Siciliano, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a solicitor's permit, pleads guilty to the following charge:

"From March 7, 1943 and until June 3, 1943, while you were interested in the wholesaling of alcoholic beverages by reason of your employment as a solicitor for McKesson Liquor Co., holder of a New Jersey plenary wholesale license, you were at the same time also interested in the retailing of alcoholic beverages at the retail licensed premises of Vincent T. Sacco, at 112 Monmouth Street, Red Bank, New Jersey, by reason of your employment on said retail licensed premises; such being in violation of R.S.33:1-43."

It appears that defendant, while working as a solicitor for the wholesale licensee, was also working nights as bartender for the retail licensee. He discontinued his employment as a bartender on June 3, 1943. Defendant frankly admits the charge and represents that the violation occurred because of his ignorance of the law.

In view of the guilty plea and the absence of prior record or aggravating circumstances, a five-day suspension of the defendant's permit will be imposed. Cf. Re Cohen, Bulletin 390, Item 8.

Accordingly, it is, on this 9th day of August, 1943,

ORDERED, that Solicitor's Permit No. 213, issued to Carmine J. Siciliano by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for five (5) days, effective at 12:01 A.M. August 16, 1943, and terminating at 12:01 A.M. August 21, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - PERMITTING LOTTERY ON LICENSED PREMISES, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 20 - PERMITTING GAMBLING ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

CHARLES MARION)
227-229 Market Street)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-15 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-190 for the current (1943-44) year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

Carl H. Auerbach, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to charges (1) that he allowed, suffered and permitted conduct of a lottery known as the "numbers game" on the licensed premises, in violation of Rule 6 of State Regulations No. 20; and (2) that he allowed, permitted and suffered gambling on the licensed premises, in violation of Rule 7 of State Regulations No. 20.

The plea will be accepted as fully equivalent to a plea of guilty. Re Fennia Grill, Inc., Bulletin 568, Item 7.

It would appear that the bartender employed by the licensee on the licensed premises, on at least four days within three weeks, actually participated in selling of participation rights in the lottery known as the "numbers game."

The defendant, in entering his plea, asked leave to make a statement in mitigation. In that statement he disclaimed all personal responsibility for the gambling and stated that his bartender was solely responsible for the gambling which was conducted contrary to his express instructions.

It is noted that the violation occurred during the last of April and early in May of this year. At the time of the hearing, some six weeks after the final violation charged, the defendant, in answer to an inquiry, said he was still employing the bartender. Further investigation discloses that on July 14th, two months after the last violation and three weeks after the hearing, the same bartender who participated in this "numbers game" gambling was in charge of the licensed premises. There is no doubt that the operation of the "numbers game" and the sale of "numbers" on this licensed premises was a usual occurrence and that the violations charged by the Department were not the result of sporadic activity of the bartender.

Under the circumstances herein, I am not warranted in giving any consideration to a claim for leniency. I shall suspend the license for a period of twenty days.

Although this proceeding was instituted during the license period ending June 30, 1943, it does not abate but remains fully operative against the defendant's renewal license for the current 1943-44 period. State Regulations No. 15.

Accordingly, it is, on this 10th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-190, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden for the current fiscal year, to Charles Marion, for premises 227-229 Market Street, Camden, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 A.M. August 13, 1943, and terminating at 2:00 A.M. September 2, 1943.

ALFRED E. DRISCOLL
Commissioner.

7. ELIGIBILITY - FACTS EXAMINED - CONVICTION OF DISORDERLY CONDUCT FOUND NOT TO INVOLVE MORAL TURPITUDE - APPLICANT DECLARED NOT DISQUALIFIED TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

August 10, 1943.

Re: Case No. 500

Applicant seeks determination of his eligibility to be employed by the holder of a liquor license.

The record discloses that, in 1937, and again in 1939, applicant was arrested and convicted on charges of being a disorderly person. In each case the only sentence of the court was six months' probation. Conviction of disorderly conduct does not involve moral turpitude. Re Case No. 377, Bulletin 458, Item 5; Re Case No. 131, Bulletin 451, Item 7; Re Case No. 65, Bulletin 193, Item 11.

There are other various charges disclosed in this man's record; all of them that resulted in convictions were under the Motor Vehicle Act. The applicant testified that he has been employed as a truck driver. Charges of violation of the Motor Vehicle Act do not involve moral turpitude. Re Case No. 133, Bulletin 170, Item 7.

Since applicant has never been convicted of a crime involving moral turpitude within the meaning of R. S. 33:1-25 and 26, he is not disqualified by the statute.

It is recommended, therefore, that the applicant be advised that he is not disqualified by reason of the aforesaid convictions from holding a liquor license or being employed by a liquor licensee in this State.

Edward F. Hodges
Attorney.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ON PETITION TO RECONSIDER PENALTY -
SUSPENSION REDUCED.

In the Matter of Disciplinary)
 Proceedings against)
)
 ANNITA WINE & LIQUOR CO., INC.)
 805 Summit Avenue)
 Union City, N. J.,)
)
 Holder of Plenary Retail Distribu-)
 tion License D-9, issued by the)
 Board of Commissioners of the)
 City of Union City.)
 -----)

ON PETITION
ORDER

Benedict A. Beronio, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

On July 29, 1943 I suspended the license considered herein for a period of fifteen days, commencing at 3:00 A.M. August 3, 1943, and terminating at 3:00 A.M. August 18, 1943. The suspension was imposed after defendant had pleaded non vult to two charges which are set forth in the Conclusions and Order previously entered herein.

Petitioner has filed herein a duly verified petition wherein it is alleged that, on January 7, 1943, a written notice of change of stockholders was sent to the local issuing authority, and wherein it is requested that the penalty heretofore imposed be reduced.

Without passing upon the question as to whether the notification which failed to disclose the true interest of Catalano was a sufficient compliance with the provisions of R. S. 33:1-34, I find, upon reconsideration, that both charges were so intimately connected that the minimum penalty heretofore imposed in "front" cases of this type should, in fairness to defendant, have been imposed herein. I conclude, therefore, that defendant will have been sufficiently punished if the license herein is suspended for ten days instead of fifteen days.

Accordingly, it is, on this 10th day of August, 1943,

ORDERED, that the suspension herein imposed be lifted after ten days thereof have expired, and that Plenary Retail Distribution License D-9, issued by the Board of Commissioners of the City of Union City to Annita Wine & Liquor Co., Inc. be restored to full force and operation, effective at 3:00 A.M. August 13, 1943.

ALFRED E. DRISCOLL
Commissioner.

"5. On and about March 11 and 12, 1943 you allowed, permitted and suffered Lillian Simon, a female employed on the licensed premises, to accept beverages at the expense of a patron, in violation of Rule 22 of State Regulations No. 20.

"6. On and about March 12, 1943 you permitted Warren Dempsey, a person actually and apparently intoxicated, to play 'darts' at your licensed premises, in violation of Rule 7 of Regulations Governing Dart-Playing on Licensed Premises as set forth in Bulletin 255, Item 4.

"7. On and about March 13, 1943 you served beverages directly over the bar to a woman, Lillian Simon, in violation of an ordinance adopted by the Board of Commissioners of the City of Camden on September 12, 1935, amending Section 10 of an ordinance adopted by that Board on December 27, 1934.

"8. On and about March 18, 1943, and on divers prior dates between then and February 22, 1943, you served alcoholic beverages at your licensed premises to Thomas Richard ---, a minor, in violation of R. S. 33:1-77.

"9. On and about March 18, 1943, and on divers prior dates between then and February 22, 1943, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages at your licensed premises to Thomas Richard ----, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"10. On all the dates aforesaid, and on divers other dates, you allowed, permitted and suffered known prostitutes or persons of ill-repute in and upon the licensed premises, in violation of Rule 5 of State Regulations No. 20."

Before pleading, the defendant, by his attorney, presented a motion for a more complete bill of particulars.

The record discloses that in a letter dated May 4, 1943, received by the Department on May 5, 1943, the day before the trial, defendant, apparently relying on R. S. 33:1-70, demanded certain particulars of the charges.

I have heretofore determined and ruled that the provisions of the above section of Title 33 of the Revised Statutes "reserving to all defendants the right to require a bill of particulars as in other cases" relates exclusively to criminal trials for violation of the chapter and has no application to disciplinary proceedings before the Commissioner. Cf. Peditto v. Palmyra, Bulletin 389, Item 13; cf. Re Doyle, Bulletin 469, Item 2.

It appears, however, that the Department, as a matter of grace, and in an effort to be helpful and to be absolutely fair, accepted the demand for the bill of particulars and answered it to the full extent of its knowledge, excepting possibly where information requested was particularly within the knowledge of the defendant.

The motion for more specific answers to the bill of particulars made at the trial and without notice was properly denied. It has been held that

"A demand for further particulars made as the cause is moved for trial is not promptly made and comes too late."

N. J. Criminal Practice and Procedure - O'Regan & Schlosser, Page 79.

See also State v. Claypoole, 5 N. J. Misc. 627, affirmed 104 N. J. L. 446.

In State v. Dolbow, 117 N. J. L. 560, it was held that an application for a bill of particulars is addressed to the discretion of the court and the rulings thereon will not be disturbed unless the accused has suffered thereby.

I find (1) that the demand for more complete particulars made at the trial was too late; (2) that the answers made to the demand were sufficient and disclosed the full knowledge of the prosecution in the cause; and (3) in view of the result herein, that defendant did not suffer by reason of the refusal to give more complete particulars.

The defendant next presented a motion attacking the jurisdiction of the Commissioner.

There is no doubt that the control and regulation of the alcoholic beverage business is a proper and necessary exercise of the police power of the State. Gain v. Burnett, 122 N. J. L. 39, affirmed 123 N. J. L. 317.

It has been held: The right to regulate the sale of intoxicating liquors at retail by the legislature or other authority under legislative power given is within the police power of the State. Meehan v. Board of Excise Commissioners of Jersey City, 73 N.J. L. 382, affirmed 75 N. J. L. 557. Such right is practically limitless. Franklin Stores Company v. Burnett, 120 N. J. L. 596. See also Township of Dover v. Van Kirk, 123 N. J. L. 507.

Title 33 of the Revised Statutes of 1937 is a valid delegation of this police power and specifically authorizes and directs me, among other things, to suspend and revoke any license issued by me or by any other issuing authority for, inter alia,

"Any violation of any ordinance, resolution or regulation of any other issuing or governing board or body."

R. S. 33:1-31(h).

The argument by the defendant that my action under the provisions of R. S. 33:1-40 in approving the ordinance of the City of Camden was a delegation of my authority to hear charges in violation thereof cannot be maintained. Under the provisions of the Act I have no authority to delegate any of the power granted me thereby. The municipality adopting these regulations has concurrent jurisdiction with me to hear charges of violation of any of the rules, whether made by the local municipality, the Legislature or by me. R. S. 33:1-24.

Subsequent to the denial of the preliminary motions, the defendant pleaded not guilty to all charges.

A close examination of the record and the testimony adduced at the three sessions of the trial herein causes me to find as a fact that the licensee, who had heretofore, as disclosed by the records

of the Department, suffered a penalty whereby his license was suspended for a period of fifteen days, ending on February 23, 1943, permitted:

On said day, gambling by patrons on the premises in the playing of "darts" and "quoits" for drinks and for money, and that the bartender actually held the stakes for some of the games. There can be no serious doubt that two of the witnesses, one of whom was the minor referred to in charges 8 and 9, played "darts" for drinks, the loser paying for the drinks for the winner; or can there be any real doubt that the other witness, Jessie Howard, was involved in a "quoit" game for money, and that the bartender held the stakes for this game and paid the money eventually to the winner thereof;

On February 23, 1943 and on subsequent days, allowed the sale, service, delivery to and consumption of alcoholic beverages by a man who was actually and apparently intoxicated. On one occasion it was necessary to carry him from the licensed premises at closing time.

The same intoxicated person, during one of the times when he was intoxicated, was permitted to play "darts." The testimony as to this violation well illustrates the importance of the regulation prohibiting intoxicated persons from playing "darts" on licensed premises. Re Bulletin 255, Item 4.

As to the sale to females directly over the bar, in violation of a city ordinance, I find that there was at least one sale and probably several. So, also, as to the acceptance of beverages at the expense of patrons by female employees of the licensee.

As to the sale to the minor, the evidence shows that Thomas -----, seventeen years and seven months of age, habitually frequented the licensed premises and had been so doing for some time and, while it appears that he had endeavored to mislead the licensee as to his age, the licensee never secured a written statement from him as to his age and the minor did not appear to be twenty-one years old. There can be no doubt that he was served alcoholic beverages in the licensed premises, not only on the dates charged, but on many other occasions.

It will serve no purpose to further detail the evidence in this case. This particularly in view of the brief filed by the defendant wherein he agrees that if it is decided I have jurisdiction over all of the charges from 1 to 9, the plea of nolo contendere can be entered thereto. Although I cannot accept the plea at this late day, I find defendant guilty of charges 1 to 9.

This brings us to consideration of the evidence relating to charge 10. There is little doubt that many people of ill repute and possibly some prostitutes were allowed on the licensed premises. There is, however, no persuasive evidence that the licensee knew that these persons were of ill repute or were prostitutes. Possibly he should have, but in the present posture of the evidence I must rule that the Department has failed to carry the burden of proof. As to charge No. 10, I find the licensee not guilty.

As to the penalty: It will be noted that the licensee was found guilty of nine charges covering seven violations on eight different days, practically every day during a period of twenty-three days that the licensed premises were under actual investigation. Three of the violations were sales to intoxicated persons above referred to. Six times, at least, female employees accepted drinks at

the expense of patrons. At least on two occasions females were served directly over the bar. There were several sales to a minor in addition to the "dart" game indulged in by the intoxicated person and the two or three times that gambling was allowed.

It must further be noted that this period followed immediately the reopening of the licensed premises after a suspension of fifteen days for charges of selling during prohibited hours and permitting female employees to accept drinks at the expense of customers.

It is obvious that the licensee devotes very little actual or effectual supervision of the conduct of the licensed premises, for which conduct he is absolutely responsible. The habitual and practically constant violations of one or more of the rules of the Department, local ordinances or of the statutes, persuades me that the licensee is not a fit and proper person to be afforded the privilege of a license. Any penalty of closing or suspension, in view of the conduct of the licensed premises and the prior record, could not be adequate, nor would a continuation of this license serve the public interest. I shall revoke the license.

Although this proceeding was instituted during the licensing period ending June 30, 1943 and the license during the pendency thereof was transferred to other premises, it does not abate. State Regulations No. 15. No license for the 1943-44 period has been granted, although application therefor is pending. The fact that the license has expired by its terms does not affect the penalty which will result in disqualifying Russell C. Utter for two years from holding or receiving another liquor license in this State. R. S. 33:1-31. Cf. Zabrycki, Bulletin 500, Item 4.

Accordingly, it is, on this 10th day of August, 1943,

ORDERED, that Plenary Retail Consumption License C-153, for the fiscal year 1942-43, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Russell C. Utter, t/a Club Royal, for premises at 245 Erie Street, Camden, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

10. REGULATIONS NO. 38 - IMPORTANT CLARIFICATION AND INTERPRETATION.

August 13, 1943.

State Regulations No. 38, promulgated August 10th and effective at 9:00 A.M., August 16, 1943, provide that:

"1. No licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any alcoholic beverage at retail in original containers for consumption off the licensed premises, on Sunday, or before 9:00 A.M. or after 10:00 P.M. on any other day of the week.

"2. Rule 1 shall not be construed to permit the sale or delivery of any alcoholic beverage during hours when such sale or delivery is prohibited by an applicable municipal regulation or referendum.

"3. Each licensee permitted to sell at retail for off-premises consumption shall keep prominently displayed, on or near the entrance to the licensed premises and clearly visible from the exterior, a sign not less than 10 x 12 inches in size stating clearly and legibly the legal hours during which the sale of alcoholic beverages in original containers for off-premises consumption is permitted.

"4. Any violation of these rules shall subject the license to suspension or revocation."

In order that these regulations may be clearly and thoroughly understood, the following points should be emphasized:

I. The regulations apply to plenary retail consumption, seasonal retail consumption, plenary retail distribution and limited retail distribution licensees. Thus, they cover not only package stores but also taverns, hotels, restaurants, delicatessen stores and combination stores, i.e., all retail licensees privileged to sell alcoholic beverages in original containers for off-premises consumption.

II. The regulations apply, also, to the retail privileges of the plenary winery, limited winery and state beverage distributor's license.

III. The regulations do not apply to the retail sale of draught malt alcoholic beverages by the pail, carton, pitcher or similar containers. They do apply, however, to retail sale for off-premises consumption of malt alcoholic beverages by the bottle whether sealed or opened.

IV. A licensee is not required to sell or deliver during all the hours when sale and delivery are permitted by the regulations. He may commence sale and delivery later than 9:00 A.M. on weekdays and stop earlier than 10:00 P. M.

V. The regulations apply to sale and delivery only and not to the closing of premises. Municipal ordinances or resolutions fixing hours during which premises shall be closed must, as heretofore, be complied with.

Alfred E. Duscoll
Commissioner.