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

BULLETIN 509 MAY 14, 1942.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILLING ON SUBSTANTIAL SCALE - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

RUBIN MARGULIES,
541 Avenue C,
Bayonne, N. J.,

Holder of Plenary Retail Consumption License C-145, issued by the Board of Commissioners of the City of Bayonne.

CONCLUSIONS AND ORDER

Daniel G. Kasen, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license in Bayonne, pleads nolo contendere to the charges that he possessed "refilled" bottles of liquor at his tavern and engaged in such "refilling" in violation of the Alcoholic Beverage Law (R. S. 33:1-50, 78).

The facts are that, on February 2, 1942, investigators of this Department, on testing some thirty-two open bottles of liquor at the defendant's tavern, seized nine, all of different brands, which appeared to be questionable. Subsequent analysis by the Department's chemist showed that the respective liquors in these bottles were not genuine as labeled but were "refills." For the illicit character of such "refills", see Re Haney, Bulletin 304, Item 13; Re Jacobs, Bulletin 315, Item 8; Re DiGiacomo, Bulletin 461, Item 1; Re Cutter, Bulletin 479, Item 12.

The defendant, although not disputing the illicit character of this liquor, claims that he never tampered or authorized any tampering with these bottles. He states that, several days before the seizure, he brought these nine bottles and three others (all being then unopened) to his living quarters above the tavern for use at a party being held in honor of his daughter's graduation from the local high school; that, during the evening, some 150 or 200 persons attended the party; that the nine bottles in question were brought down to the tavern a day or two later. The defendant suggests that the liquor in these bottles may in some way have become mixed at the party.

I can place no stock in such a flimsy story. The testimony of the Department's chemist shows that six of the bottles in question, which would have had some trace of artificial coloring if any genuine liquor remained, actually contained no such trace whatsoever, thus indicating that the contents in these six bottles were total "refills." It over-taxes my credulity to believe that the guests at the party drained these six bottles dry and then, for some wholly inexplicable reason, decided to refill them with substantial quantities of other liquor.

Moreover, when the investigators seized the bottles in question and called the defendant's attention to the fact that they tested off, the defendant made no mention whatsoever of the party. Instead, as appears from the testimony of one of the investigators, "He called Investigator Wierenga and I in the back, and we both asked 'Did you refill these bottles?' At first he admitted and then he said, 'No, I am all mixed up - I don't know,' and he seemed extremely nervous at the time."

The only plausible inference is that the "refilling" of the bottles in question actually occurred as a chiseling trade practice in the tavern.

For the serious character of such "refill" violations, see Re Cutter, supra. For the late Commissioner Burnett's comprehensive review of the subject, see Re Jacobs, supra.

I note that the defendant has a substantial past record. In July 1935 the local issuing authority suspended his license for fifteen days for possessing illicit liquor in violation of the Alcoholic Beverage Law. Later, in June 1938, when the defendant was convicted in criminal court for the same offense, his license was automatically suspended for the balance of its term under R. S. 33:1-31.1. A petition to lift that suspension was denied by this Department. Thereafter, in January 1941, the local issuing authority suspended the defendant's then existing license for five days for selling liquor and keeping his tavern open during prohibited hours in violation of the local ordinance. In March 1941 this Department suspended that same license for fifteen days for sale below Fair Trade price in violation of State Regulations 30. See Re Margulies, Bulletin 448, Item 5.

In view of the defendant's previous record and the seriousness of his present "refill" violations, I have no other alternative than to revoke his current license.

Accordingly, it is, on this 5th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-145, heretofore issued to Rubin Margulies by the Board of Commissioners of the City of Bayonne for premises 541 Avenue C, Bayonne, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

2. ELIGIBILITY - ILLICIT COHABITATION - CONVICTION OF OPEN LEWDNESS (FOLLOWED BY SENTENCE TO SERVE EIGHTEEN MONTHS IN THE COUNTY PENITENTIARY) INVOLVES MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

May 7, 1942

Re: Case No. 428

On February 8, 1940, applicant was convicted of open lewdness, sentenced to serve eighteen months in the County penitentiary and released on May 20, 1941. He was then turned over to the United States Immigration authorities, who, he states, took no proceedings against him.

Applicant's story, confirmed by police and probation office records, is that in 1939 he entered this country from Italy, where he left his wife and a child; that shortly thereafter he met another woman and meretriciously cohabited with her for some four months.

A conviction for open lewdness, as applied to illicit cohabitation of man and woman, necessarily implies, as part of the offense, that the parties knew they were living in a meretricious relationship, and deliberately and notoriously persisted in such conduct, to the scandal of the public. Cf. Schoudel v. State, 57 N. J. L. 209. A protracted illicit sexual relationship of that nature indubitably involves moral turpitude. Cf. Re Case No. 66, Bulletin 202, Item 6.

Hence, applicant is disqualified by such conviction from being connected with the liquor industry in this state, and it is therefore recommended that applicant be so advised.

Harry Castelbaum,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

3. APPELLATE DECISIONS - SCHULER v. ROSELLE PARK.

MEINRAD SCHULER,

Appellant,

-vs-

MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF ROSELLE PARK,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Andrew V. Quarriello, Esq., Attorney for Appellant.
Walter C. Alberts, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of transfer of his plenary retail distribution license from 124 Locust Street to 210 Chestnut Street, Borough of Roselle Park.

The petition of appeal alleges that the action of respondent was improper because no objections had been filed to said transfer and because the denial was an abuse of discretion.

Even in the absence of objections, respondent is under a duty to investigate and determine whether an application should be granted and to reach a decision as a result of its independent investigation. Delbono v. New Brunswick, Bulletin 322, Item 12. In the present case, no written objections were filed, but it appears that one of the Councilmen had received verbal objections and that the factual situation was investigated and considered by the members of the Borough Council before a decision was reached.

As to alleged abuse of discretion: Transfer to other premises is a privilege not inherent in a license. If the denial is based on reasonable grounds, it will be affirmed. Van Schoick v. Howell, Bulletin 120, Item 6.

The premises known as 124 Locust Street are located in a residential section. For many years, appellant has conducted this licensed business from his residence and garage and has not been permitted to have on his premises any signs advertising the business. He is growing old. He has sought to transfer to a store known as 210 Chestnut Street, located on a business street. Admittedly, he has sought this transfer solely for the purpose of selling the business, which he is no longer able to conduct. That fact seems to have influenced one member of the Council, who stated that he would have no objection if appellant planned to continue in business. I deem it unnecessary to pass upon the question as to whether the transfer might be denied solely because appellant intended to transfer thereafter to another individual.

The question in this case concerns the validity of respondent's action in view of the large number of licensed places which now exist in the vicinity of 210 Chestnut Street and the proximity of a church to said premises. The evidence shows that, on the opposite side of Chestnut Street in a southerly direction, there are now two places - one licensed for consumption and the other for distribution - both of which are within 450 feet of the premises to which appellant seeks to transfer, and that there are also two additional places - one licensed for consumption and the other for distribution - on Westfield Avenue, a short distance from the intersection of Westfield Avenue and Chestnut Street, within 500 feet of the premises to which appellant seeks to transfer. The evidence also shows that, on the opposite side of Chestnut Street, in a northerly direction, the Community Methodist Church is located within 400 feet of 210 Chestnut Street. The Minister and two members of the congregation appeared at the hearing herein and protested against the transfer on the ground that the granting thereof would be contrary to the welfare of the community.

It is well established that an issuing authority may, in the exercise of sound discretion, decline to issue or transfer a license to premises in a neighborhood already adequately serviced. Golden Inn v. Newark, Bulletin 481, Item 2; Sun Valley Tavern v. Bogota, Bulletin 487, Item 2. It is also well established that an issuing authority may, in the exercise of sound discretion, refuse to permit the establishment of a licensed place in close proximity to a church, even if the church is located more than 200 feet away. Purpuro v. Passaic, Bulletin 425, Item 1.

The burden of proof is upon appellant. While I may sympathize with appellant's efforts to salvage something from a business no longer profitable because of his age and health, nevertheless I find that he has not sustained the burden of showing that the action of respondent was arbitrary or unreasonable. Hence the action of respondent is affirmed.

Accordingly, it is, on this 5th day of May, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - LICENSEE DISQUALIFIED BY NON-RESIDENCE IN STATE FOR FIVE YEARS IMMEDIATELY PRECEDING APPLICATION - ILLICIT LIQUOR - DISCREPANCY IN ACIDS AND SOLIDS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON EXPIRATION OF 15 DAYS UPON SATISFACTORY PROOF OF BONA FIDE TRANSFER OF THE LICENSE TO A QUALIFIED PERSON.

In the Matter of Disciplinary Proceedings against

ARTHUR H. GUSTAVSEN,
T/a GENEVA RESTAURANT,
Brunswick Pike, R. D. #4,
Lawrence Township, N. J.,

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Lawrence (Mercer County).

CONCLUSIONS AND ORDER

Arthur H. Gustavsen, Pro Se.
Abraham Merin, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license in Lawrence Township, pleads guilty to the charges that:

(1) When applying for such license he misrepresented that he had resided in New Jersey for the last five years, in violation of R. S. 33:1-25.

(2) and (3) He possessed "refilled" bottles of liquor at his tavern and engaged in such "refilling," in violation of R. S. 33:1-50, 78.

As to (1): The Alcoholic Beverage Law provides that no one may obtain a retail liquor license in New Jersey without having resided (i.e., having been domiciled) in this State for the five years immediately preceding the application. See R. S. 33:1-25; Looloian v. Greenwich et al., Bulletin 504, Item 6, and cases there cited.

The defendant, in answer to a question in his application asking whether he was such a five years' resident, answered "Yes." Such answer was erroneous since, as the defendant himself admits, his present residence in New Jersey dates back to only December 5, 1937, New York being his "legal residence" theretofore.

In explanation the defendant states that, in previous years, he had worked and stayed in New Jersey for several months at a time; that he did not know the five years' residence required by the statute had to be during the last consecutive five years but thought it was proper for him to add up his present period of residence in New Jersey and his prior sojourns in the State, thus reaching a total of more than five years; that he interpreted the question in the same light and answered "Yes" accordingly.

The question in the application is so specific in asking whether the applicant has resided in New Jersey "during the five

(5) years immediately preceding this application" that the defendant's strained interpretation thereof can scarcely serve as excuse for not having answered correctly.

As to (2) and (3): Investigators of this Department, on testing nineteen opened liquor bottles at the premises in question on January 5, 1942, seized a partially filled bottle labeled "Seagram's Five Crown Blended Whiskey 90 Proof" and a partially filled bottle labeled "Seagram's V. O. Canadian Whiskey - a Blend - 86.8 Proof."

Subsequent analysis by the Department's chemist showed that, although the contents in the "V.O." bottle might well be genuine, the liquor in the "Five Crown" bottle, being 2.2 over proof and having a substantially greater amount of acids and about double the solids found in genuine liquor of that brand, was a "refill." For the illicit character of such "refills", see Re Haney, Bulletin 304, Item 13; Re Jacobs, Bulletin 315, Item 8; Re DiGiacomo, Bulletin 461, Item 1; Re Cutter, Bulletin 479, Item 12.

In mitigation the defendant declares that he has never tampered or authorized any tampering with his liquor stock, and suggests that the "refilling" in question was probably done by one of his past bartenders.

There is nothing in the case to impeach this claim. However, as I stated in Re Leininger, Bulletin 493, Item 1:

> "Licensees are strictly accountable for their liquor stock. Re Moritko, supra. It is their responsibility to see that their employees do not tamper with that stock in any way or for whatsoever purpose. Re 12 East Park Street Tavern Inc., Bulletin 481, Item 9, and cases there cited. Doctored liquor presents so serious a menace to sound liquor control that licensees, as 'masters of their house,' must rigorously be held to this strict accountability even though they may be personally innocent of the tampering. See Re Cutter, Bulletin 479, Item 12."

As to penalty: Since the defendant has no past record and since there are no aggravating circumstances in the present violations, I would ordinarily suspend his license for ten days for the false answer in the application, and an additional ten days for the "refill." In line with the Department's policy, although nothing would be remitted for the guilty plea to the "refill" charges, five days would, however, be remitted for the guilty plea to the false statement charge, thus leaving a net total of fifteen days.

However, as the case stands, the defendant, being actually disqualified by his lack of requisite residence until December 5, 1942, may not be permitted to operate under his improvidently obtained license (which expires June 30, 1942). Hence, I shall suspend that license for the balance of its term. But, in fairness, to permit the defendant an opportunity to salvage something of his original investment, I shall allow this suspension to be lifted on showing that the license has, in a bona fide transaction, been duly sold and transferred to a properly qualified person, except that such suspension will not be lifted until at least full fifteen days have been served in penalty for the present violations. Cf. Re Platner, Bulletin 507, Item 1.

Accordingly, it is, on this 6th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-3, heretofore issued to Arthur H. Gustavsen, t/a Geneva Restaurant, by the Township Committee of the Township of Lawrence for premises on Brunswick Pike, R. D. #4, Lawrence Township, be and the same is hereby suspended for the balance of its term, effective immediately; and it is further

ORDERED, that if it satisfactorily appears, on verified petition and proper proof, that the license in question has, in a bona fide transaction, been transferred to a properly qualified person, the said suspension will be lifted; provided, however, that in no event shall such suspension be lifted prior to the expiration of fifteen (15) days from the effective date of the suspension.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

LABOR TEMPLE ASS'N INC., )
538 Broadway, )
Camden, N. J., ) CONCLUSIONS AND ORDER

Holder of Club License CB-14, )
issued by the Municipal Board )
of Alcoholic Beverage Control )
of the City of Camden. )
- - - - - - - - - - - - - - - - - -)

Albert K. Plone, Esq., Attorney for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to charges that, on February 19, 1942, and prior thereto, it possessed slot machines at its licensed premises in violation of Rules 7 and 8 of State Regulations 20.

The facts, in brief, are that investigators of this Department, while making a routine inspection of the premises in question on February 19, 1942, found a five-cent jack-pot slot machine and also a ten-cent jack-pot slot machine, both in working order, in the barroom on the second floor of the premises. These machines are of the variety commonly known as the "one-armed bandit." Cf. Ukrainian National Home, Bulletin 433, Item 10; Re American Mechanics Club, Bulletin 499, Item 5.

All such machines, and any device or apparatus designed for the purpose of gambling, are strictly barred under the aforesaid Regulations from being on licensed premises. Their mere possession on such premises, without more, constitutes an outright violation. See Re Ukrainian National Home, supra; Re Fraternal Order of Eagles, Bulletin 470, Item 6; Re Dill, Bulletin 477, Item 2; Re Yountakah Country Club, Bulletin 488, Item 4; Re B.P.O. Elks, Bulletin 492, Item 6; Re American Mechanics Club, supra.

However, I note that the defendant has no previous record. In line with the above cited cases, its license will, for the present violation, be suspended for ten days, with five being remitted for the guilty plea, thus leaving a net of five days.

Accordingly, it is, on this 7th day of May, 1942,

ORDERED, that Club License CB-14, heretofore issued to Labor Temple Ass'n Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Camden for premises 538 Broadway, Camden, be and the same is hereby suspended for a period of five (5) days, commencing May 11, 1942, at 2:00 A.M., and concluding at 2:00 A.M., May 16, 1942.

ALFRED E. DRISCOLL,
Commissioner.

6. APPELLATE DECISIONS - VASA TEMPLE ASSOCIATION OF KEARNY, NEW JERSEY, INC. v. TOWN OF KEARNY.

| | |
|---|---|
| VASA TEMPLE ASSOCIATION OF KEARNY, NEW JERSEY, INC., Appellant, -vs- MAYOR AND TOWN COUNCIL OF THE TOWN OF KEARNY, Respondent | ON APPEAL CONCLUSIONS AND ORDER |

Leo J. Michnevich, Esq., Attorney for Appellant.
Calvin S. Koch, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a club license to appellant for its club quarters at 772 Kearny Avenue, Kearny.

The sole reason given by respondent for such denial, as appears from the minutes of the meeting at which respondent voted upon the instant application, is that a local ordinance limits the number of club licenses to five.

Six club licenses are now in existence in the Town. The last such license was issued upon direction of the late Commissioner Burnett in the case of Irish American Association of Kearny, N. J. v. Kearny, Bulletin 293, Item 11, where the application for license was originally denied by the local issuing authority and such action reversed upon appeal. In that case it was pointed out that, although a municipality may limit the number of club licenses, the burden of proof to justify the numerical limitation is upon the municipality. There being no such proof, the ordinance was held unreasonable as to the appellant, Irish American Association of Kearny.

The situation here is the same as in that case. Respondent produced no evidence to support its refusal to issue a seventh club license in the municipality. If this were all, I would, therefore, reverse respondent's action and direct it to issue the license. Cf. Veterans of Foreign Wars v. Wildwood, Bulletin 456, Item 9; Moose v. Washington, Bulletin 484, Item 7.

At the appeal hearing, however, respondent's attorney attempted to show that, although the stated reason for denial was restricted to the ordinance, nevertheless respondent's action was also predicated on the fact that appellant's premises are located in a residential neighborhood. Were this the case, respondent's position might be well taken. Re Cranford American Legion, Bulletin 83, Item 3; Re Passaic Elks, Bulletin 95, Item 4; Re Cranford Veterans, Bulletin 126, Item 11; Re Manasquan River Yacht Club, Bulletin 190, Item 11.

However, it is clear that respondent did not make any independent determination on the question of the character of the vicinity in which appellant's premises are situated. Only one of respondent's eight members appeared at the hearing, and he testified that, while he had that reason in mind when voting on appellant's application, he could not say that a majority of the Council was so minded. It may well be that the Council would not consider the neighborhood to be residential, or that such reason would be sufficient to warrant a denial of a club license to appellant since it appears that at least three of the existing six club licenses are located in residential areas.

Since, in disposing of the matter below, respondent gave no consideration to the question of whether the character of the neighborhood should bar the issuance of a club license to appellant for the premises in question, the case must be remanded to respondent to pass upon that issue. Cf. Dunster v. Bernards, Bulletin 99, Item 1; Merritt v. Tabernacle, Bulletin 156, Item 3; Schwartz et al. v. Carteret, Bulletin 250, Item 4.

Accordingly, the case is remanded to respondent to determine whether, irrespective of the aforesaid ordinance, a club license should issue to appellant.

ALFRED E. DRISCOLL,
Commissioner.

Dated: May 8, 1942.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, COLOR, ACID AND SOLID CONTENT - PREVIOUS WARNING - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )
)
VICTOR TRABB, )
107-9 Brunswick Avenue, ) CONCLUSIONS
Trenton, N. J., ) AND ORDER
)
Holder of Plenary Retail Consumption License C-10, issued by the Board of Commissioners of the City of Trenton. )
- - - - - - - - - - - - - - - - - - )

Victor Trabb, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to the charges of possessing illicit alcoholic beverages, contrary to R. S. 33:1-50,

and the refilling of liquor bottles with other than the original contents, contrary to R. S. 33:1-78.

Two inspectors of the Department seized two bottles - one labeled "Walker's DeLuxe Bourbon Whiskey 90 Proof" and the other labeled "Calvert Special Blended Whiskey 90 Proof." Analysis by the chemist of this Department disclosed the contents of the seized bottles varied in proof, color, acid and solid content from a genuine sample used for comparative purposes. The defendant, although admitting possession of the illicit alcoholic beverages as charged and the refilling of the bottles, testified that he did not refill the bottles but alleged that his clean-up man had poured the liquor from one bottle into another without his knowledge. Licensee's testimony was corroborated by the clean-up man who testified that he had refilled the bottles; that he had seen the regular bartender do the same thing, and therefore did not know it was wrong. The seized liquor constitutes illicit alcoholic beverages. See Re Haney, Bulletin 304, Item 13. The defendant also admitted that on two prior occasions he had been warned by this Department about refilling.

The defendant's mere possession was in violation of R. S. 33:1-50. As to R. S. 33:1-78, he was guilty of the violation of this section in that he is strictly accountable for the conduct of the licensed premises. Further, as master of the establishment, he is responsible for the acts of his employees, irrespective of his personal fault. See Re Jacobs, Bulletin 316, Item 8.

In the usual refill case a ten-day suspension of the license has been imposed. In cases where there has been a prior warning a fifteen-day suspension of the license has been imposed. See Re Kalfus, Bulletin 437, Item 11; Re DeVita, Bulletin 438, Item 10. In the instant case two warnings were given which certainly aggravate the situation.

Accordingly, it is, on this 8th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-10, covering premises located at 107-9 Brunswick Avenue, Trenton, heretofore issued to Victor Trabb by the Board of Commissioners of the City of Trenton, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A.M., May 12, 1942, and concluding at 2:00 A.M., June 1, 1942.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING CRIMINAL RECORD - 10 DAYS' SUSPENSION - SALE OF ALCOHOLIC BEVERAGES TO MINOR (FOURTEEN YEAR OLD BOY) - 30 DAYS' SUSPENSION - TOTAL: 40 DAYS, LESS 5 FOR GUILTY PLEA.

| | |
|---|---|
| In the Matter of Cancellation and Disciplinary Proceedings against | ) |
| FREDERICK DI ORIO, Longport Boulevard and Bass Harbor, Somers Point, N. J., | ) CONCLUSIONS AND ORDER |
| Holder of Plenary Retail Consumption License C-7, issued by the Common Council of the City of Somers Point. | ) |

C. Bruce Surran, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license for a tavern in Somers Point, pleads guilty to the charges that:

(1) In his respective applications for his 1938-9, 1939-40, 1940-1 and 1941-2 licenses, he concealed his criminal record, in violation of R. S. 33:1-25.

(2) and (3). On May 15, 1941 he sold an alcoholic beverage to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations 20.

The facts as to charge (1) are that the defendant falsely denied, in his license applications in question, that he had ever been convicted of a liquor offense or any crime whatsoever, when in fact he had been convicted in 1931 for illegally selling liquor at his home in violation of the National Prohibition Enforcement Act, fined $150.00 and sentenced to thirty days' imprisonment.

Since this Prohibition offense was apparently without aggravating circumstances, it did not, within the rulings of the Department, involve the element of moral turpitude and hence does not peremptorily disqualify the defendant from being a licensee. See R. S. 33:1-25; Re Case 351, Bulletin 433, Item 2, and cases there cited; Re Case 366, Bulletin 445, Item 9.

However, this fact serves as no excuse for the defendant's failure to reveal that conviction in his various applications. An applicant is required to disclose any and all convictions of crime so that the issuing authority, even if there be no mandatory disqualification, may nevertheless properly determine whether, in its sound discretion, the applicant should be viewed as personally fit for a license. See Re Blanker, Bulletin 254, Item 6.

Nor does the defendant take any benefit by his claim that he did not believe his trouble in 1931 actually constituted a conviction. O tempora! O mores! For what reason does the defendant think he was fined $150.00 and spent thirty days in jail.

A full disclosure by the defendant in future applications will enable the local issuing authority to determine whether it will issue him a new license.

The facts as to charges (2) and (3) are that the defendant, on May 15, 1941, sold a pint bottle of blackberry wine to Edward Fisher, a boy then fourteen years of age. Although the minor was wearing long trousers at the time and told the defendant he was twenty-one, it is amply clear that the defendant was not misled since, according to the boy, the defendant, on selling the bottle, glibly remarked, "You look too good for twenty-one."

As to penalty: I note that this is apparently the defendant's first conviction for violations as a licensee. For his failure to reveal his 1931 criminal conviction, the defendant's license, giving due weight to the fact that such conviction did not peremptorily disqualify him, will be suspended for ten days. However, for the sale to the fourteen-year old boy, his license will, in line with the deservedly stern penalties in past decisions involving such a young minor, be suspended for an additional thirty days. See Re Zokas, Bulletin 446, Item 10, and cases there cited. Five days will be remitted from the total suspension, leaving a net of thirty-five days.

I trust that this will convince the defendant of the error of his ways.

It is to be noted that affiliate proceedings were brought in this case to cancel the defendant's license in the event his aforesaid 1931 criminal conviction was deemed to involve moral turpitude and hence disqualified him from obtaining his license. In view of the above ruling that the conviction does not involve such element, the cancellation proceedings are dismissed.

Accordingly, it is, on this 9th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to Frederick Di Orio by the Common Council of the City of Somers Point, for premises on Longport Boulevard and Bass Harbor, Somers Point, be and the same is hereby suspended for a period of thirty-five (35) days commencing at 2:00 A. M. May 14, 1942, and concluding at 3:00 A. M. June 18, 1942.

ALFRED E. DRISCOLL,
Commissioner.

9. LICENSEES - INDUCTION INTO MILITARY SERVICE - TRANSFER OF LICENSE AND BUSINESS TO TRUSTEE FOR DURATION APPROVED - HEREIN OF APPLICATION FOR LICENSE BY THE TRUSTEE.

May 12, 1942

Elmer Friedbauer, Esq.,
Passaic, N. J.

My dear Mr. Friedbauer:

I have before me your letter of May 5th enclosing draft of proposed trust agreement between Emil Tabor and Casmer Tabor.

No opinion is expressed with respect to the validity or sufficiency of the trust agreement in so far as the rights of the trustee and the cestui que trust, inter sese, are concerned.

Since the agreement recites (1) the imminence of the induction of the cestui que trust into military service, (2) that the trustee will hold legal title to the business in trust, (3) that the trustee will have full control, custody and management of the business during the life of the trust, (4) that the trustee will reconvey the corpus of the trust to the cestui que trust upon the latter's release from military service, and (5) that upon death of the cestui que trust, the trustee will transfer the corpus of the trust to the estate of the cestui que trust, I deem the agreement unobjectionable in so far as the administration of the Alcoholic Beverage Law is concerned.

You are expressly cautioned, however, that in any application for license made by the trustee, he must be designated as such, viz., "Casmer Tabor, trustee for Emil Tabor." All licenses issued to the trustee should likewise be issued to him as such.

In addition, in any application for license made by the trustee, the interest of the cestui que trust must be disclosed by appropriate answer to the question (presently #30) therein, which asks: "Has any individual, partnership, corporation or association, other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license? If so, state names, addresses and interest of such individuals, partnerships, corporations or associations", by answering "Yes, Emil Tabor -- presently in U. S. Army, to the extent set forth in trust agreement dated _____, copy attached."

Finally, copy of the trust agreement must be attached to each application for license.

I take it that you are aware that since a transfer of ownership of the licensed business from the cestui que trust to the trustee will occur upon the execution of the trust agreement, it will be necessary to make application for transfer from person to person as in any other case where transfer of the ownership of the licensed business occurs.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

10. APPELLATE DECISIONS - MICHE v. HOBOKEN.

MARIA MICHE,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN,

Defendant

ON APPEAL
CONCLUSIONS AND ORDER

John J. Carlin, Esq., Attorney for Appellant.
John J. Fallon, Esq., by James A. Coolahan, Esq., Attorney for Defendant.

BY THE COMMISSIONER:

Appellant appeals from the revocation of her plenary retail consumption license issued for premises at 93 Washington Street, Hoboken.

The license was revoked on April 21, 1942, after appellant herein had been found guilty of charges alleging that:

"(a) She did on or about the 4th day of April, 1942 and divers other dates, allow, permit or suffer upon the licensed premises, persons of ill repute, contrary to and in violation of Section 4, Regulations No. 20 of the Department of Alcoholic Beverage Control;

"(b) She did on or about the 4th day of April, 1942 and divers other dates, violate the resolution and regulation of the Board of Commissioners of the City of Hoboken passed December 17th, 1935, in that she did allow, permit or suffer in and upon the licensed premises, women conversationalists and other persons of ill repute, and that she did permit the assembling of females in the licensed premises for the enticing of customers."

It is of historical interest to note that the resolution passed on December 17, 1935 forbids "women conversationalists" and the assembling of females on licensed premises for the enticing of customers in the same manner as did an ordinance of the City of Hoboken, approved July 25, 1901. In his opinion, sustaining the constitutionality of that ordinance, Justice Collins of our Supreme Court referred to it as "a regulation that we must concede is a wise one, namely, the debarring of women from forming part of the allurements of drinking places." Hoboken v. Goodman (Sup. Ct. 1902), 68 N. J. L. 217.

The evidence in this case shows that on April 4, 1942, at 2:30 P. M., two lieutenants of the Hoboken Police saw Anna Nowicki seated at the bar of the licensed premises drinking with Isadore Selzer, also known as Jack Taylor. One of the lieutenants testified that he then said to the licensee:

> "This woman at the bar is known to us as a married woman with a child, and it is a violation of the A. B. C. for her to be mixing with men at the bar and as a conversationalist for drinks; it is up to you to correct that, you should take action and tell her get out."

Thereupon the licensee promised the lieutenant that she would tell Anna Nowicki to keep out of her premises.

On the same day at 8:30 P. M., the lieutenants returned to the licensed premises and found Mrs. Nowicki playing darts with the same man. They gave the licensee another warning. At the hearing herein, Anna Nowicki testified that she met Selzer in the licensed premises on the morning of April 4th; that she again visited the licensed premises on April 5th and continued to go there until April 13th, when she, Selzer and another man, all apparently intoxicated, were arrested on Washington Street, Hoboken, a short distance from appellant's premises. Anna Nowicki further testified that she frequented the licensed premises almost daily during the past year; that she would drink beer if she bought it herself and would drink whiskey if strange men, whom she met at the bar, bought it for her, and that between April 5th and April 13th she drank with people she didn't know. She also testified that, during the past year, two women known as "Kitty" and "Dotty" would stay at the bar of the licensed premises until some one bought them a drink.

It is intimated in the testimony that Isador Selzer has a criminal record but there is nothing to show that licensee or her agents knew that he was a criminal or a person of ill repute. So far as appears, Anna Nowicki, "Kitty" and "Dotty" were not criminals or persons of ill repute. The evidence is not sufficient to sustain the first charge.

I am satisfied from the evidence, however, that licensee permitted upon her premises "women conversationalists" within the meaning of that term as used in the resolution and that she permitted the assembling of females in the licensed premises for the enticing of customers in violation of the resolution. The finding of guilt as to the second charge is affirmed.

As to penalty: Appellant produced five witnesses who testified that her premises were conducted in a respectable manner to the best of their knowledge and belief. Appellant has no previous record. It is conceded that the women referred to above received no pay or commission on drinks sold. Nevertheless, respondent had the power to revoke the license. R. S. 33:1-31(h). The penalty to be imposed after a finding of guilt is within the sound discretion of the issuing authority and will not be disturbed unless clearly unreasonable. On the evidence, I cannot say that respondent abused its discretion in revoking the license. As a practical matter, I realize that certain municipalities are faced with special problems. Thus, revocation was affirmed in Bressler v. Conover, Bulletin 45, Item 1, where it appeared that licensee had permitted gambling, and also in Ginsberg v. Rockaway, Bulletin 100, Item 14, where it appeared that licensee had sold during prohibited hours. The City of Hoboken is a water-front municipality and if its Board of Commissioners uniformly adopts a policy of revoking the licenses of those

who permit females to assemble for the enticing of customers, thus furnishing an additional allurement for male patrons, I shall not disturb its policy.

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

Accordingly, it is, on this 12th day of May, 1942,

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

Alfred E. Driscoll
Commissioner.