

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

BULLETIN 547

JANUARY 15, 1943

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF,
SOLIDS AND COLORING - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary)
Proceedings against)

LARRY KLUNCK,)
515 - 517 Paterson Plank Road,)
Union City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-169, issued by the)
Board of Commissioners of the City of)
Union City.)

George R. Sommer, Esq., Attorney for Defendant-Licensee.
Abraham Merin, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to the following charge:

"On or about August 13, 1942 you possessed an illicit alcoholic beverage at your licensed premises, viz., - one 4/5th quart bottle labeled 'Four Roses Rye, a Blend of Straight Whiskies', which bottle contained an alcoholic beverage which was not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On August 13, 1942 a Storekeeper-Gauger employed by the Alcohol Tax Unit, Internal Revenue Service, examined thirty opened bottles at the licensed premises. He seized the bottle mentioned in the charge when it was found to be slightly below proof and to contain artificial coloring.

Subsequent analysis by a chemist employed by the Alcohol Tax Unit disclosed that the solid content of the seized liquor was 589 grams per hundred liters as compared with 195 grams per hundred liters in a genuine sample. The seized liquor also contained 35% artificial coloring, whereas the genuine sample contained all genuine coloring.

Defendant testified that he employs seventeen people, including four bartenders; that "Four Roses" is a slow-moving item; that he did not tamper with the contents of the seized bottle and that his employees denied that they refilled the seized bottle.

I note that defendant has held a license for more than six years and that he has no previous record. Since no aggravating circumstances appear in this case, I shall suspend his license for the minimum period of ten days.

Accordingly, it is, on this 7th day of January, 1943,

New Jersey State Library

ORDERED, that Plenary Retail Consumption License C-169, issued by the Board of Commissioners of the City of Union City to Larry Klunck for premises 515-517 Paterson Plank Road, Union City, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A.M. on January 12, 1943, and concluding at 3:00 A.M. on January 22, 1943.

ALFRED E. DRISCOLL
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

LOUIS MAKLARY,)
T/a UNCLE LOUIE'S TAVERN)
183 Prospect Street)
South River, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-19 issued by the Borough Council of the Borough of South River.)
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Louis Maklary, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded guilty to the following charge:

"On or about August 3, 1942 you possessed an illicit alcoholic beverage at your licensed premises, viz., one 4/5th quart bottle labeled 'Canadian Club Blended Canadian Whiskey', which bottle contained an alcoholic beverage which was not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On August 3, 1942 an agent employed by the Alcohol Tax Unit, Internal Revenue Service, examined fourteen opened bottles on the licensed premises. He seized the bottle mentioned in the charge because it appeared to be too high in proof.

Subsequent analysis by a chemist employed by the Alcohol Tax Unit disclosed the following:

	<u>Proof</u>	<u>Acids</u>	<u>Solids</u>
Seized bottle	94.2	38.4	152
Authentic sample	90.5	26.4	147

It thus appears that the contents of the seized bottle were substantially higher in proof and acids than the contents of a genuine sample.

Defendant testified that he has no regular employees but that his son occasionally helps him. He testified that he can offer no explanation as to the manner in which the violation occurred. Defendant has held a license since Repeal and has never before been

found guilty of any violation. Our records show that, on March 7, 1938, there was found on his licensed premises a bottle of gin which was slightly lower in proof than a genuine sample of the same product, and that a warning letter was then sent to defendant. However, considering that the warning was given nearly five years ago, and that the present violation concerns a single bottle, I shall suspend the license for the minimum period of ten days.

Accordingly, it is, on this 7th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-19, heretofore issued by the Borough Council of the Borough of South River to Louis Maklary, t/a Uncle Louie's Tavern, for premises 183 Prospect Street, South River, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. January 12, 1943, and concluding at 2:00 A.M. January 22, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. APPLICATION TO TRANSFER PLENARY WINERY LICENSE - OBJECTIONS THERETO CONSIDERED AND DISMISSED - APPLICATION TO TRANSFER CONDITIONALLY GRANTED. MUNICIPAL REGULATION SPECIFYING MINIMUM DISTANCE BETWEEN LICENSED PREMISES CONSIDERED.

In the Matter of an Application)
by)
PURE WINES, INC.,)
to transfer Plenary Winery License)
V-38 from 500 - 90th Street, North)
Bergen, N. J., to 8121 Bergenline)
Avenue, North Bergen, N. J.)
-----)

CONCLUSIONS
AND ORDER

Charles F. Echontille, Esq., Attorney for Pure Wines, Inc.
George Heftler, Esq., Attorney for Giant Liquors, Inc., an Objector.
Samuel Moskowitz, Esq., Attorney for Hudson-Bergen County Retail Liquor Dealers Association, an Objector.
Thomas F. Norton, Esq., Attorney for George W. Baumann, Lessor of premises 8121 Bergenline Avenue, North Bergen.

BY THE COMMISSIONER:

Pure Wines, Inc. is the holder of Plenary Winery License V-38, which by its terms confers upon the licensee the right to sell wine at retail on the licensed premises for consumption off said premises. On November 21, 1942 said licensee filed with me an application to transfer its license from 500 - 90th Street, North Bergen, to 8121 Bergenline Avenue, North Bergen. On the same day it duly published in a newspaper its notice of application for transfer of said license and republished said notice on November 28, 1942. The application for the transfer is still pending because the licensee has not yet produced the necessary copy of its Federal permit to operate at the Bergenline Avenue address.

On December 21, 1942 Giant Liquors, Inc., the holder of a plenary retail distribution license issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen for premises at 8111 Bergenline Avenue, filed with me a written objection to the transfer. The objection alleges, in effect, that it would be unfair to permit the holder of a winery license having the privilege of

selling wines at retail to locate "next door" to objector's premises.

A hearing has been held upon said objection. At the hearing the Hudson-Bergen County Retail Liquor Dealers Association argued that the transfer should be denied because it would violate the spirit of the local ordinance hereafter considered.

The premises to which applicant seeks to transfer was formerly conducted as a public garage, but is now vacant. The garage is located about eight blocks to the south of the applicant's present premises. Directly adjoining the garage is a super-market. Giant Liquors, Inc. conducts its business in a limited area located in the front part of the super-market facing on Bergenline Avenue. There is testimony that a fairly large percentage of the business done by Giant Liquors, Inc. consists of the sale of wine. The President of Pure Wines, Inc. stated that the major part of its business consisted of the sale of wines at retail.

It should be noted that the only question that should be considered herein is the welfare of the community. No licensee has a "right" to conduct its business in any area free of competition. Moreover, it appears that this objector's license permits it to sell any alcoholic beverages in original containers for consumption off the licensed premises, whereas, according to the terms of the license held by Pure Wines, Inc., it may sell at retail for off-premises consumption only wine manufactured pursuant to its license. If there were nothing to the case other than the objection of Giant Liquors, Inc., the objection would be dismissed without further comment.

The added allegation that the transfer would be contrary to the spirit of a municipal ordinance calls for additional consideration since it involves a matter relating to the general welfare of the community. The ordinance in question was adopted by the Board of Commissioners of the Township of North Bergen on December 4, 1940. Section 7 thereof provides:

"No Plenary Retail Distribution Licenses, excepting renewals, shall be issued for or transferred to any premises within 750 feet of any other premises for which a Plenary Retail Distribution License shall then be outstanding, provided, however, that such licenses may be transferred to any premises located within 750 feet of the premises for which such license was outstanding at the time of the adoption of this ordinance.***"

Clearly, the granting of the transfer applied for would not contravene the express language of the ordinance which by its terms affects only retail licenses, and does not (and could not) apply to the license held by the applicant herein.

The purpose of a municipal regulation specifying the minimum distance between licensed premises is not to protect licensees against the competition of other licensees. The essential purpose of such a regulation is to provide a handy rule of thumb to keep vicinities from being overcrowded with such places. (See Franklin Stores Co. et al. v. Newark et al., Bulletin 381, Item 7.) Any consideration of the spirit of the ordinance must be in light of its purpose. It has not been demonstrated, nor is there evidence, that the granting of the transfer applied for will, in terms of the general welfare of the community, bring about an overcrowding of "distribution" licenses in the particular Bergenline Avenue neighborhood.

Thus, I cannot reasonably determine that the transfer would be contrary to the spirit of the ordinance.

The determination as to whether this license should be transferred rests within the sound discretion of the Commissioner. I conclude from the evidence presented that the transfer of this manufacturing license, to a building apparently suited for such purpose, would not be against public interest merely because the sale of wine by the State licensee might compete to some extent with the business of the objecting retail licensee. I conclude further from a study of the record in this case that the transfer would not be contrary to the spirit of the municipal ordinance requiring a minimum distance between retail licensed premises.

There are also certain equitable principles present in this case which tend to confirm the result reached herein. The objections were not filed until after the applicant herein, on December 18, 1942, began to renovate the garage at considerable expense so that it might comply with the Federal requirements as to a bonded winery. The present premises at 500 - 90th Street are desired by the owner thereof to be used as a defense plant, and notice to vacate said premises has been served upon Pure Wines, Inc. If the transfer applied for is denied, it will be necessary for the licensee to suspend operation of its business. Under all the circumstances, I conclude that the objection herein should be dismissed.

Accordingly, it is, on this 8th day of January, 1943,

ORDERED, that the objections herein be dismissed, and that the transfer applied for be granted if and when applicant produces the required copies of its Federal permits and otherwise completes its application.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)
JOHN WEBER)
Route #6 near Great Meadows)
Liberty Township)
P.O. Great Meadows, N. J.,)
Holder of Plenary Retail Consumption License C-4 issued by the)
Township Committee of the Township of Liberty.)
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CONCLUSIONS
AND ORDER

John Weber, Pro Se.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to a charge alleging that:

"On or about May 2, 1941 you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Edward Courtney and

William B. Crawford, persons actually and apparently intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The evidence herein shows that, on May 2, 1941, at about 5:30 P. M., one Raymond Aber met Courtney and Crawford in a store which is located about a mile from defendant's premises. Aber testified that at that time both Courtney and Crawford were intoxicated and not fit to drive a truck; that he told them to go upstairs and sleep it off, but that they did not respond. Apparently Courtney and Crawford left the store, entered a truck owned by one of them, and drove in a direction away from Weber's tavern. I come to this conclusion because of the testimony given by George A. Tichenor, who says that he met the two men on the same day between 6:30 P.M. and 7:00 P.M. at a point about two miles from Weber's tavern. Tichenor testified that both of these men were then under the influence of liquor and that he advised them to drive to the side of the road and to sleep a while. Testimony shows that Courtney and Crawford entered defendant's premises on the same evening at about 7:30 P. M. James C. Kelsey, who was then in defendant's premises, testified that these two men came to the bar and ordered drinks which were served to them by Joe Weber and John Weber, Jr., who are sons of the licensee. Kelsey further testified that Courtney's head fell on the bar after he had been served his third, fourth or fifth drink. The licensee's son testified that Courtney made the startling statement: "Let's join the German Army." The Commissioner may take judicial notice that such an outrageous remark in these times could only originate with an enemy of this country, one out of his mind, or a drunk. None of the persons in the categories mentioned should be served alcoholic beverages. The enemy should be incarcerated, the crazy persons sent to an asylum, and the unfortunate drunk put to bed. It appears that, shortly thereafter, Kelsey and Courtney entered into a dispute concerning the military forces of the United States, during the course of which Kelsey drew a gun and shot Courtney in the hand.

On behalf of defendant, John Weber, Jr. testified that he served one drink each to Courtney and Crawford, and that neither of these men was drunk at the time he was served. Joseph Weber denied that he had served drinks to either of these men. Defendant apparently argues that, because the evidence further shows that Courtney, after he had been shot, followed Kelsey to the latter's home located some distance away, the inference must be drawn that he was not intoxicated, or apparently intoxicated, at that time. I do not agree that any such inference must necessarily be drawn from that testimony.

I believe the evidence given by the disinterested witnesses who were summoned by, and testified on behalf of, the Department rather than the testimony of the two sons of the licensee who were employees at defendant's tavern. Hence, I find the defendant guilty as charged. I shall suspend the license for a period of twenty days.

Accordingly, it is, on this 8th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Liberty to John Weber, for premises on Route #6 near Great Meadows, Liberty Township, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 A.M. January 13, 1943, and terminating at 3:00 A.M. February 2, 1943.

ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - REEVES v. NEWARK.

EURLEE REEVES,)

Appellant,)

-vs-)

ON APPEAL

CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF NEWARK,)

Respondent)

Kesselman & Berg, Esqs., by Sol L. Kesselman, Esq., Attorneys for Appellant.

Raymond Schroeder, Esq., by Louis A. Fast, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from respondent's action whereby it suspended for a period of ten days her plenary retail consumption license C-7 issued for 241 Warren Street, Newark.

Respondent duly served upon appellant a copy of a charge alleging that, on September 28, 1942, she violated Section 1 of Ordinance #3021 of the City of Newark. The charge, so far as is material herein, also recites:

"Section 1 of said Ordinance reads as follows:

"(a) No licensee or other person shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, between the hours of 2:45 A.M., and 7:00 A.M., on weekdays, or between the hours of 2:45 A.M., and noon, on Sundays.***

"(c) No licensee or other person shall allow, suffer or permit any licensed premises to remain open or allow, suffer or permit the consumption of alcoholic beverages on licensed premises, between the hours of 3:00 A.M., and 7:00 A.M., on weekdays or between the hours of 3:00 A.M., and noon on Sundays.***"

After a hearing held upon said charges, respondent entered written Conclusions wherein it dismissed the charge in so far as it concerned the alleged violation of sub-section (c) and found licensee guilty of the charge in so far as it concerned the violation of sub-section (a) of Section 1 of said Ordinance. Respondent suspended the license for five days on the present charge, and for an additional five days because appellant's license had been previously suspended in another proceeding.

The facts are not in dispute. On September 28, 1942, at about 4:12 A.M., members of the Police Department of the City of Newark saw a number of persons in defendant's premises. The door was locked. The police officers were admitted by the licensee after they had identified themselves. In the licensed premises they found the licensee, her husband, a bartender and a clean-up man. Those present in the licensed premises were waiting to admit a representative of a telegraph company who had been summoned to make repairs. The policeman said that, when they entered, they saw two

glasses partly filled with a liquid, one in front of the bartender and the other in front of the clean-up man. It has been stipulated that the licensee herself opened a bottle of beer before 2:45 A.M. and drank parts of it "every once in a while" until 4:00 A.M.

It is doubtful whether this evidence is sufficient to sustain a finding of guilt as to the alleged violation of sub-section (a). However, the evidence is sufficient to show that the licensee allowed, suffered or permitted the consumption of alcoholic beverages on licensed premises during prohibited hours in violation of sub-section (c). At the hearing herein the attorney for appellant agreed to a request made by respondent's attorney that the Conclusions be amended to show that appellant was found guilty of sub-section (c) rather than of sub-section (a). In any event, the charge alleged a violation of Section 1 of the ordinance, and on appeal I am authorized to make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of the Alcoholic Beverage Law. R. S. 33:1-38. Upon the evidence I find that appellant was guilty of violating sub-section (c) of Section 1 of said ordinance, and hence I affirm the action of respondent.

There is no merit to appellant's contention that she is not guilty of "allowing, suffering or permitting" the consumption of alcoholic beverages on licensed premises during prohibited hours if, as alleged, she herself consumed the alcoholic beverages. The clear intent of the ordinance is to prevent the consumption of alcoholic beverages on the licensed premises during prohibited hours by the licensee or any person.

Accordingly, it is, on this 8th day of January, 1943,

ORDERED, that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED, that the ten-day suspension heretofore imposed by respondent, and held in abeyance pending disposition of this appeal, is hereby restored, to commence at 2:45 A.M. January 12, 1943, and to terminate at 2:45 A.M. January 22, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - DELIBERATE VIOLATION - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
SAUL B. KELLER,
T/a KELLER'S TAVERN
524 Centennial Avenue
Cranford, N. J.,
Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Cranford.

CONCLUSIONS
AND ORDER

Saul B. Keller, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that on November 18, 1942 he sold a quart bottle of Wilson "That's All"

Whiskey below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

The plea includes an admission by the defendant's bartender, who sold the item, that he was aware when making the sale that the Fair Trade price was higher than that charged for the item in question.

The Department record discloses that defendant has no previous record. I therefore shall suspend his license for a period of fifteen days, with a remission of five days for the plea, making a total of ten days.

Accordingly, it is, on this 8th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-6, heretofore issued to Saul B. Keller, trading as Keller's Tavern, by the Township Committee of the Township of Cranford, for premises 524 Centennial Avenue, Cranford, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A.M. on January 13, 1943 and terminating at 1:00 A.M. on January 23, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO PERSON (SOLDIER) ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR BALANCE OF TERM AND IN ADDITION THERETO THE FIRST TWO MONTHS OF THE 1943-44 LICENSE YEAR.

In the Matter of Disciplinary Proceedings against)
 RICHARD A. CONSTANTINO)
 117 S. Mississippi Avenue)
 Atlantic City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-127 issued by the Board of Commissioners of the City of Atlantic City.)
 -----)

Martin Bloom, Esq., Attorney for Defendant-Licensee.
 Richard C. Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to charges that, on August 1, 1942, he sold alcoholic beverages to James C--- and Rose G---, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20, and to Private Roy S---, a person actually and apparently intoxicated, in further violation of Rule 1 of State Regulations No. 20.

It appears that, on the day in question, Private Roy S---, of the United States Army, entered the licensed premises and struck up an acquaintance with James C---, age 18, Rose G---, age 19, and Virginia S---, age 15, who were seated in a booth upon the premises. Several rounds of alcoholic drinks were ordered from and served by the bartender. Virginia was the only one in the group who ordered

and was served non-alcoholic beverages. The bartender has admitted, in a signed statement, that he did not question the minors as to their ages, stating that he was too busy and that James and Rose appeared to be of age. However, I personally observed James and Rose, and am of the opinion that the youthfulness of their appearances belies the bartender's assertion that they looked to be of age. His assertion, especially when viewed in the light of his statement that he was "too busy" to inquire as to their ages, is merely a futile attempt to justify his conduct in making service of alcoholic beverages to them. A licensee's obligation to observe and obey the law may not be cast aside because he is "too busy."

It further appears that Private S--- had been drinking prior to entering these premises. He stated: "I was drinking and was feeling my drinks, and after the one or two that I had in this saloon, I went to sleep because I had quite a bit to drink." His condition was variously described by his minor companions as "dead drunk" and "intoxicated" because he "looked it, acted it, smelled of liquor and was half asleep." Even the bartender admitted that when Private S--- entered the premises "he was dead drunk and I told him to get out of the place." Apparently, however, he did not see fit to enforce his mandate because, without further ado, he proceeded to serve liquor at the booth while the soldier was seated there.

As to sales to minors, the usual penalty heretofore imposed has been ten days where there were no aggravating circumstances. Here, however, no effort was made to question the minors as to their ages, despite their apparent youth, and the only excuse offered is that the bartender was too busy - which is no excuse at all. Hence, on the minors charges alone, double the usual penalty would be well merited. Cf. Re Cancro, Bulletin 538, Item 10.

As to sales to intoxicated soldiers, the Commissioner has heretofore indicated, in the case of Re Traverso, Bulletin 519, Item 12, that licensees who indulge in such practices must expect to face heavy-fisted penalties. The penalty of revocation in that case was clearly warranted by the fact that the licensee, in addition to selling to intoxicated soldiers, openly flaunted his disregard for the law by his failure to answer charges that he deliberately deceived this Department and the local issuing authority by holding a license as a "front" for a disqualified person. In the Traverso case, supra, the following statement appeared:

"It is an unpatriotic act for a licensee or anyone else to sell, serve or give alcoholic beverages to a man in the uniform of his country who is at the time actually or apparently intoxicated. I can imagine few more contemptible or dangerous activities. Those who violate the regulation previously cited are a menace to our national security.

"On one or more occasions we have stated that we would not tolerate the sale of alcoholic beverages to men in uniform where they were actually or apparently under the influence of liquor. We meant exactly what we said. The licensee is guilty as charged. The license in this case will therefore be revoked and the licensee thereby disqualified from holding or receiving any other license for a period of two years. This admittedly harsh penalty is entirely warranted under the circumstances. This country is at war. It is the duty of licensees as well as civilians to protect rather than to harm members of our armed forces.

"Licensees who either fail to recognize this duty or to assume the full measure of responsibility with respect thereto will not be permitted to continue in business in this State."

The question now arises whether a penalty of revocation should be visited upon the licensee in the instant case. He has no previous record, has frankly admitted to his employee's wrongdoing, and the evidence discloses that he did not himself participate in these violations. Were it not for these factors, I might well, under the circumstances of this case, impose the extreme penalty of revocation. On the other hand, despite the presence of these factors, I cannot overlook, in determining the extent of penalty to be imposed, the seriousness of the instant violations or the flagrant disregard of the law and regulations evinced by this licensee's employee, for whose acts the licensee is strictly accountable.

In imposing a suspension here I am also mindful that the licensed premises are situated in a seashore resort community where licensees have a propensity for closing for various lengths of time during the winter months. In fact, these licensed premises are presently closed, and it is doubtful that the licensee has any intention of reopening same, except during the Easter season, until Memorial Day.

The purpose of a suspension is to punish. Hence, I shall order that this license be suspended for the balance of its term, and, further, if any license is issued to this licensee or for these premises for the 1943-44 fiscal year, it shall stand suspended during the first two months thereof.

Accordingly, it is, on this 11th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-127, issued by the Board of Commissioners of the City of Atlantic City to Richard A. Constantino for premises at 117 S. Mississippi Avenue, Atlantic City, be and the same is hereby suspended for the balance of its term, effective immediately; and it is further

ORDERED that, if any license is issued to this licensee or any other person for the premises in question for the 1943-44 fiscal year, such license shall be under suspension until 12:01 A.M. September 1, 1943.

ALFRED E. DRISCOLL,
Commissioner.

8. MILITARY FORCES - (U. S. NAVAL BASE, CAPE MAY) - SALES TO MINORS - COOPERATION OF SHORE PATROLS - IDENTIFICATION CARDS AND APPEARANCE OF ENLISTED MEN INVOLVED AS WITNESSES.

U. S. NAVAL BASE
Naval Annex, Admiral Hotel,
Cape May, N. J.

January 9, 1943

From: Commanding Officer
To: Commanding Officer, Naval Air Station, Cape May, N.J.

Subject: Violations of New Jersey Alcoholic Beverage Law.

1. An arrangement has been made to assist the New Jersey Department of Alcoholic Beverage Control in the prosecution of licensees of establishments which serve alcoholic beverages to enlisted men who are under age.

2. Pursuant to such arrangement, you are requested to immediately direct members of the shore patrol under your command to cooperate with the local police and the investigators of the New Jersey Department of Alcoholic Beverage Control by seizing and delivering to you the identification card of any enlisted man to whom alcoholic beverages are served in licensed establishments in violation of said law forbidding such service to minors whenever requested to do so by said authorities.

3. In all such cases, upon receipt of an identification card, you are authorized to cause a certified photostatic copy thereof to be made and furnished to the proper representative of the New Jersey Department of Alcoholic Beverage Control upon request therefor.

4. You are further directed to permit any such enlisted men to appear for the purpose of giving testimony in connection with the prosecution of licensees of such establishments whenever said Department considers their appearance necessary provided they are furnished transportation to and from Newark, New Jersey, by and at the expense of said Department.

5. By copy of this letter the Commanding Officers of all other units and activities, U. S. Naval Base, Cape May, N. J. are directed to comply with the provisions of paragraph 4 of this letter.

H. B. MECLEARY

9. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING AND GAMBLING ON LICENSED PREMISES - PERMITTING LOTTERY TO BE CONDUCTED ON LICENSED PREMISES - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

HENRY STANCZAK)
 47 Washington Avenue)
 Paterson, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-364, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
 -----)

Nussman & Kaplan, Esqs., Attorneys for Defendant-Licensee.
 Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to charges alleging that on October 8, 1942, and for some time prior thereto, he (1) permitted book-making and gambling on his licensed premises, and (2) permitted a lottery to be conducted on his licensed premises.

Investigators of this Department report that on October 8, 1942 they entered the defendant's tavern and there observed several men seated at a table playing "rhum", a card game commonly known as "rhummy." A percentage of the winnings was deducted for the "house" and deposited in a box.

While this game was in progress, a man entered the premises and, seating himself at the bar, proceeded to check tickets in a "numbers" lottery in full view of the bartender. He later sold a ticket in this lottery to one of the card players and also to one of the investigators.

The bartender, who is the licensee's brother, participated in the card game by making occasional wagers on which of the players held the highest spade for that particular hand. During the game one of the players placed a bet with the bartender on a horse race, after making his selection from a horse race sheet furnished to him by the bartender. After making their identity known, the investigators made a thorough search of the premises and found a cigar box under the bar containing a large number of horse race betting slips and the sum of \$69.48, representing a portion of the moneys wagered with the bartender. A balance sheet was also found which indicated that the sum of \$105.50 was placed with the bartender on the results of the races of the day before and the sum of \$53.25 had been won by the bettors.

In a written statement obtained from the bartender, he admitted that, for almost four months prior to October 8, 1942, he had been accepting bets on horse races at the tavern and that the "numbers" man had visited the tavern daily for the purpose of selling the lottery tickets.

It is apparent that this tavern has been operating as a disorderly (gambling) house over an extended period of time. The premises have been used as a headquarters for a "numbers" writer and also for a "bookie." This type of establishment, with its union of liquor and commercialized gambling, is a thorn in the side of enforcement authorities whose duty it is to keep the sale of alcoholic beverages within legal bounds. The adequate administration of the Alcoholic Beverage Law alone presents sufficient difficulties without having to be concerned with whether any infractions of the general criminal statutes are also being committed on licensed premises. Violations of this nature warrant such penalties as will virtually insure their elimination. This means a substantial suspension of the license, if not outright revocation.

In the instant case, however, there are certain mitigating circumstances which I shall take into account in fixing the penalty. The licensee was very cooperative in disclosing information to the Commissioner which led to the satisfactory termination of a matter, somewhat affiliated with these proceedings, in which the Department was vitally concerned. It was only as a result of this cooperation by the licensee that the Department was enabled to uncover a situation that was hindering it in the fair and impartial enforcement of the liquor laws. In view of this material assistance rendered to the Department by the licensee I shall, instead of the more substantial penalty indicated by the seriousness of the violations herein involved, suspend the license for a period of thirty days. Five days of this penalty will be remitted for the guilty plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 11th day of January, 1943,

ORDERED, that Plenary Retail Consumption License C-364, heretofore issued to Henry Stanczak for premises 47 Washington Avenue, Paterson, by the Board of Alcoholic Beverage Control of the City of Paterson, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 A.M. on January 18, 1943 and terminating at 3:00 A.M. on February 12, 1943.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - RITTENGER v. BORDENTOWN AND BENSEL.

ANNA C. RITTENGER,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF BORDENTOWN and ADA)
 BENSEL,)
)
 Respondents)
)

ON APPEAL
CONCLUSIONS AND ORDER

Robert Peacock, Esq., Attorney for Appellant.
 Jay B. Tomlinson, Esq., Attorney for Respondent, Board of Commissioners of the City of Bordentown.
 Powell & Parker, Esqs., by Robert W. Criscuolo, Esq., Attorneys for Respondent-Licensee, Ada Bensel.

BY THE COMMISSIONER:

This is an appeal from the action of the respondent Board of Commissioners of the City of Bordentown in granting a plenary retail consumption license to Ada Bensel for the current 1942-43 license year for premises at 13 Burlington Street, Bordentown, N. J.

The appellant and respondent Ada Bensel are sisters. Their mother, Minnie W. Rittenger, who held a license for these premises, died testate on August 4, 1940, survived by a son and the two daughters above mentioned. Following the death of their mother, the appellant, as executrix of her mother's estate, applied for and obtained an extension of the decedent's license.

The third paragraph of the last will and testament of Minnie W. Rittenger, the decedent, reads as follows:

"Third: I hereby devise my property known as No. 13 Burlington Street in the City of Bordentown to my daughter Anna Rittenger for the term of her natural life or until she may sell the same directing that she maintain the property as a home for herself and my daughter Ada Bensel and her family so long as they may desire and that thereafter the property may be sold by my daughter Anna Rittenger at such price as she shall deem for the best interest of my estate and the proceeds of the sale shall be equally divided between my three children Anna, Ada and Lewis and in the event of the death of any of them prior to such sale then the children of the deceased parent shall take the parent's share."

The appellant made no attempt to secure a license for the 1941-42 license year and, on July 1, 1941, her sister, Mrs. Bensel, obtained a plenary retail consumption license for the ensuing year for the premises in her name. No objections appear to have been interposed by the appellant to the granting of this license to her sister. Respondent Bensel was in possession and control of the premises and exercised the license privilege for the entire license period ending June 30, 1942. Prior to the expiration of the latter license, Mrs. Bensel applied to the respondent Board of Commissioners for the renewal of her license. To this application a written objection was interposed by the appellant. The latter asserts that, under the terms of her mother's will, she has legal title to the premises and that the respondent had no lawful right to grant a license to the premises where the owner objects to the same.

A local issuing authority is not the proper forum to try technical title or the definitive right to possession to real and personal property. The reason for this is obvious. In many instances the membership of local issuing authorities is composed of laymen. These gentlemen have neither the training nor the time to hear and determine intricate questions involving title or the right to possession of real and personal property. Cf. Brown v. Morris Canal and Banking Co. (E. & A.), 27 N. J. L. 648, 652.

Under the present law, and perhaps in contrast to earlier statutes, a plenary retail consumption license is granted to a person or corporation. The license is a personal privilege exercisable only by the licensee. Any person who exercises or attempts to exercise the rights and privileges of the license except the licensee is guilty of a misdemeanor. R. S. 33:1-26. The operation of the license privilege is, however, confined to a particular premises, designated by the statute as "licensed premises." It is clear that no retail license may be issued to any individual except for a specific place of business.

In previous cases wherein the present question has been touched upon, it has been held that there is no requirement in the Alcoholic Beverage Control statute that the licensee be the owner of the licensed premises. Re Pierson, Bulletin 38, Item 12. While it has been stated that an applicant for a license must have an interest in the property (Procoli v. Trenton, Bulletin 28, Item 6; Caplan v. Trenton, Bulletin 29, Item 11), in earlier decisions it has been determined that "any interest will suffice." Re Pierson, *supra*. In Yacula v. Jersey City, Bulletin 144, Item 7, the Commissioner stated:

"While the applicant for a license must have an interest in the place sought to be licensed, there is no requirement as to the quantum of such interest."

While this latter statement of the law is preferable to the earlier rulings, it appears to throw little light upon the real problem. In Re Backer, Bulletin 449, Item 4, the Department's position was summarized as follows:

"The logical conclusion is that this legal interest in the premises which a licensee must have, must be a possessory estate. It may be of freehold or not of freehold, but it must be an estate. If not of freehold, it must be a lease, a demise of the premises for a term such as a tenancy for years or from month to month, or a tenancy at will. But it must be at least a tenancy. The licensee, during his possession of the premises, must hold against all the world, including the owner." (Underlining ours).

The statute (R. S. 33:1-1 et seq.) does not contain any provision covering the question of title.

Far more important than the question of title and the interest of the applicant therein is the question of the applicant's authority over, and his ability to control, the premises whereon the license privileges are to be exercised. Local issuing authorities are required, when passing upon applications for licenses, to give studious consideration to the ability and the authority of the applicant to control the premises whereon the license privilege is sought to be exercised. The right of a licensee to exercise the license privilege thereon terminates coincidental with his loss of possession and control over the "licensed premises."

Issuing authorities, in the performance of their duties, are not required to determine disputes respecting title, possession, or rights therein and thereto. In the exercise of their sound judgment, they may issue a license in those cases where they find that the applicant has a colorable right to possession and complete control of the premises.

The crux of the present appeal is, therefore, whether Mrs. Bensel is in possession and control of the licensed premises under color of right. The respondent-licensee asserts that, by virtue of the will of her mother, she is entitled to possession and control of the premises.

The record herein discloses that the appellant turned over the tavern and business to her sister on or about July 1, 1941, and that the latter has remained in possession and control of the same since the above date. The appellant declares that she turned over possession of the premises pursuant to an agreement which was to have been reduced to writing and executed by the parties. Her position seems to be that her sister refuses either to execute an agreement or to surrender possession and control of the premises to her as requested. Assuming the position taken by the appellant to be correct, while it may warrant her seeking an adjudication of her rights in a court of appropriate jurisdiction, it did not require respondent Board of Commissioners either to try title to the real estate or to determine the rights of the sisters with respect to the possession of the premises in question.

In view of the respondent Bensel's possession and control of the premises as disclosed by the record, her colorable claim of right thereto, and in view of the cited provision in the will itself, it cannot be said that respondent issuing authority acted improperly or abused the discretion given it by the Alcoholic Beverage Law in issuing the renewal license. The question of title and the right to possession remain for decision by a court of competent jurisdiction in an appropriate proceeding.

The action of respondent is affirmed.

Accordingly, it is, on this 12th day of January, 1943,

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

Alfred E. Trissell
Commissioner.

CHECKED BY No. 2

New Jersey State Library