

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

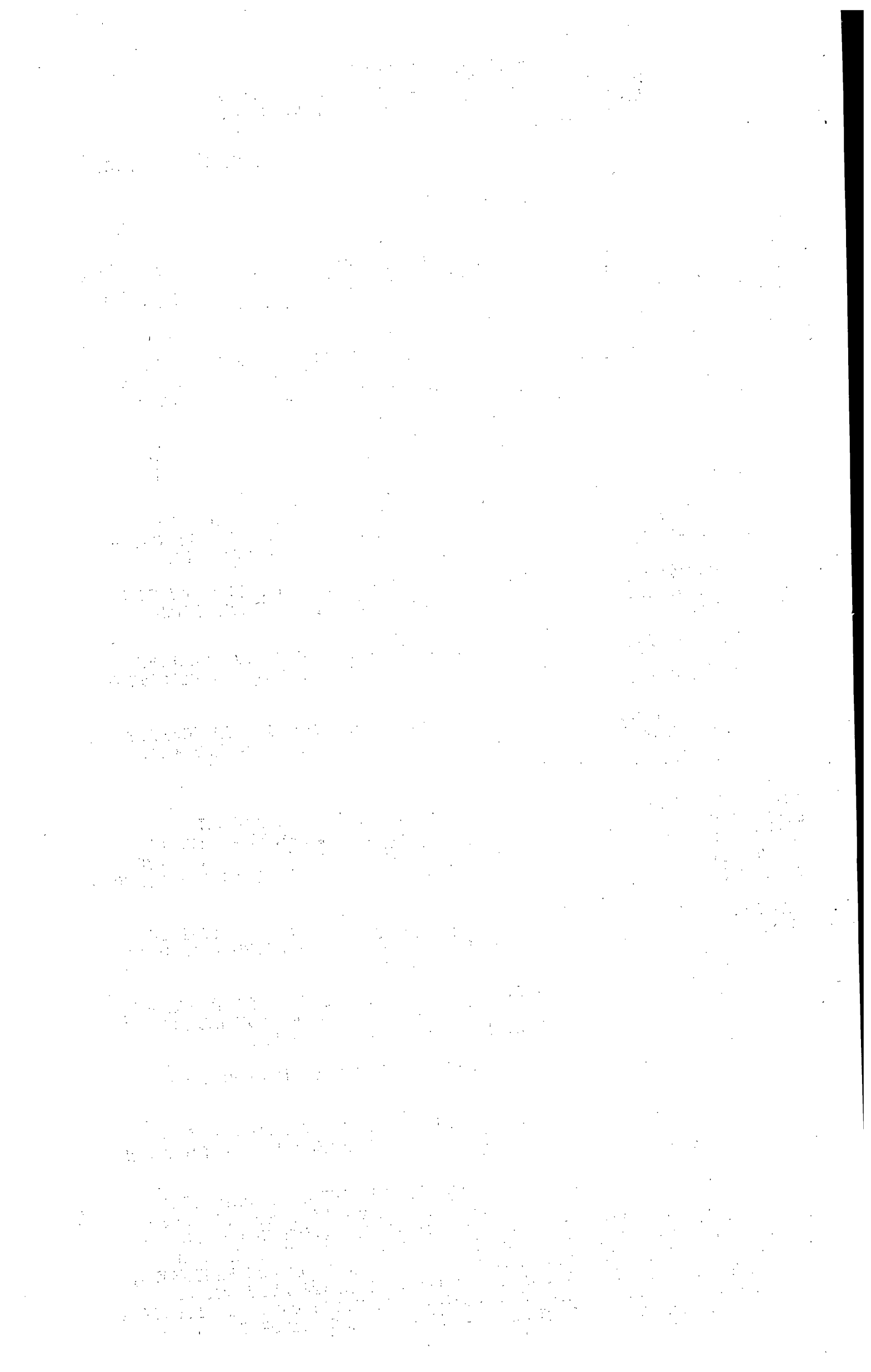
BULLETIN 587

OCTOBER 5, 1943.

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

BULLETIN 587

OCTOBER 5, 1943

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

LEO GATTUSO )  
T/a LEO'S BAR )  
65 Roosevelt Avenue )  
Paulsboro, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-10, issued by the )  
Borough Council of the Borough of )  
Paulsboro. ----- )

Leo Gattuso, Pro Se.

Edward F. Ambrose, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded guilty to a charge alleging that, on Friday, August 27, 1943, he sold a bottle of wine for consumption off his licensed premises, in violation of Rule 1 of State Regulations No. 38.

This is the first case to be instituted under the new Regulations No. 38 which went into effect on August 16, 1943. Rule 1 of those Regulations reads as follows:

"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."

The licensee admits that he sold a bottle of wine to a colored patron at 12:30 A.M. of the morning in question. The only explanation offered by the licensee is that his premises "was filled with all white trade" and "when I was confronted with a colored customer.....I perhaps became confused." No valid defense is discernible in this explanation.

In a statement accompanying the promulgation of these Regulations (see Bulletin 580, Item 1) I said:

"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."

The normal penalty for selling alcoholic beverages during prohibited hours contrary to local regulation is fifteen days. See Re Disbrow, Bulletin 540, Item 3. Since the violation herein is of a similar nature, I shall, until experience dictates otherwise, adopt the same penalty for an unaggravated violation of Regulations No. 38. If, however, this penalty does not serve as a sufficient deterrent against future infractions of these Regulations, I shall not hesitate to increase it as substantially as the occasion warrants.

The wise licensee will take heed.

In view of the guilty plea, five days of the penalty will be remitted, leaving a net suspension of ten days.

Accordingly, it is, on this 24th day of September, 1943,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Paulsboro to Leo Gattuso, trading as Leo's Bar, for premises 65 Roosevelt Avenue, Paulsboro, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A.M. September 28, 1943, and terminating at 1:00 A.M. October 8, 1943.

ALFRED E. DRISCOLL  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
FRANK J. McWALTERS  
637 Ocean Avenue  
Jersey City, N. J.,  
Holder of Plenary Retail Distribution License D-126 issued by the Board of Commissioners of the City of Jersey City.  
-----

CONCLUSIONS  
AND ORDER

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

BY THE COMMISSIONER:

The licensee pleaded guilty to a charge alleging that, on Friday, September 3, 1943, he sold a bottle of whiskey for consumption off his licensed premises, in violation of Rule 1 of State Regulations No. 38.

Since the licensee has no previous record and no aggravating circumstances attended the violation, I shall suspend the license for fifteen days. Five days will be remitted for the plea, leaving a net penalty of ten days. See Re Gattuso, Bulletin 587, Item 1.

Accordingly, it is, on this 24th day of September, 1943,

ORDERED, that Plenary Retail Distribution License D-126, issued by the Board of Commissioners of the City of Jersey City to Frank J. McWalters for premises 637 Ocean Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. September 28, 1943, and terminating at 2:00 A.M. October 8, 1943.

ALFRED E. DRISCOLL  
Commissioner.

3. HOURS OF SALE - STATE REGULATIONS NO. 38 AND MUNICIPAL HOURS REGULATIONS PERMIT NO EXCEPTION IN FAVOR OF "AFTER HOUR" SALES FOR MEDICINAL USE.

CONSUMPTION LICENSEES - MAY NOT SELL ALCOHOLIC BEVERAGES FOR MEDICINAL USE CONTRARY TO TERMS OF LICENSE - HEREIN OF PRESCRIPTIONS AND REQUESTS FROM PHYSICIANS, DRUGGISTS AND DENTISTS.

September 23, 1943

Development Syndicate, Inc.  
Clayton, N. J.

Gentlemen:

I have your letter of September 16th, asking for a ruling on the following questions relating to the "after hour" sale of alcoholic beverages:

"Can a doctor, druggist or dentist get whiskey themselves on a note, or can they send a prescription and get it by the bottle between 10 P.M. and 9 A.M. and on Sundays? Or can they send a plain bottle and get whiskey poured in it from the Bar Supply during these times on prescriptions?"

The answer to all of these questions is NO.

Regulations No. 38 read:

"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."

The regulations apply to all sales by retail licensees of alcoholic beverages in original containers for consumption off the licensed premises. There are no exceptions in favor of "after hour" sales for medicinal or any other purposes. To meet circumstances where a bona fide medicinal need exists, the Alcoholic Beverage Law provides:

"Druggists and pharmacists duly registered under the laws of this state as such may, upon their respective registered premises as aforesaid, without license hereunder, purchase and use alcoholic beverages for the compounding of physicians' prescriptions and for the preparation of mixtures and medicines, unfit for use as beverages, and sell same after being so compounded or prepared, subject to rules and regulations; but they may not sell alcoholic beverages otherwise than as aforesaid and particularly shall not sell the same in either original containers or by glass or other open containers, except under a license obtained under this chapter permitting the same." (Revised Statutes, 33:1-29, paragraph 1.)

If bottles of "prescription liquor" were permitted to be sold at any and all hours, I have no doubt that the late hour demand therefor might become so epidemic as to undermine the necessary and desirable purposes sought to be accomplished by Regulations No. 38. During the era of Prohibition, the overwhelming majority of physicians and pharmacists deplored the subterfuge of effecting the sale of liquor for beverage purposes under the guise of filling a prescription.

If the doctor, druggist or dentist sends a plain bottle and requests that it be filled, you must refuse to do so. That is true at all times -- irrespective of Regulations No. 38 or the municipal regulation of hours of sale. Such a sale for consumption off the licensed premises would be contrary to the terms of the license (Revised Statutes, 33:1-12, paragraph 1), and would violate Revised Statutes, 33:1-2.

Your letter presents one further situation and question:

"Veterinarian calls at 3:55 A.M. Sunday, demands a bottle of Rum for a sick animal. We explain Regulations 38. He then calls personally with a bottle of liquid and demands 3 ounces of Rum be given him or put in the bottle. Refused and took plenty abuse.

"Question. What would you have done in this case?"

Answer: I believe I should have done precisely as you did. Further, I want to congratulate you upon your refusal (under the difficult circumstances indicated in your letter) to violate the law and the State Regulations. Let me emphasize the fact, however, that these circumstances are not new; certainly, they cannot be ascribed to Regulations No. 38. I suspect that there will always be sudden and so-called "emergencies" calling for alcoholic beverages during hours when their sale is prohibited either by local referendum, ordinance or state regulation -- whether on a Sunday or sometime in the small hours of the morning. And if the emergency is real, it may be met by persons other than retail licensees.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

4. MORAL TURPITUDE - CRIME OF OPERATING ILLICIT STILL IN VIOLATION OF THE ALCOHOLIC BEVERAGE CONTROL LAW FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR 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. )  
Case No. 295. )  
- - - - - )

CONCLUSIONS  
AND ORDER

BY THE COMMISSIONER:

In 1935 petitioner was convicted on the charge of operating an illicit still in violation of the Alcoholic Beverage Control Act and fined \$200.00. In 1936 he was convicted in a Federal court apparently on charges of defrauding the government of taxes in the operation of the same still. On April 3, 1936 he was sentenced to serve a year and a day in a Federal penitentiary and released on November 3, 1936. The crime in question involves moral turpitude. Case No. 496, Bulletin 574, Item 6.

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.

After his release from the penitentiary, petitioner worked for a silk company for about seven months and then took odd jobs until January 1938, when he was employed as a chemical worker in the manufacture of synthetic quinine. In June 1943 he was unable to continue his employment because of a physical disability and has since worked as a truck driver. He was married in 1925 and lives with his wife and two children.

The president of a bank, who has known petitioner for more than ten years, testified that petitioner has conducted himself in a law-abiding manner for the last five years and has had a good reputation in the community. Similar testimony was given by the president of a dye works who has known petitioner for ten years and by the owner of a textile mill.

I find that petitioner has conducted himself in a law-abiding manner during the five years immediately past. I conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 24th day of September, 1943,

ORDERED, that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN LICENSE APPLICATION  
CONCEALING MATERIAL FACTS - PREVIOUS RECORD - LICENSE REVOKED.

In the Matter of Disciplinary )  
 Proceedings against )  
 )  
 ALMAC TAVERN (a corporation) )  
 5 Railroad Plaza )  
 New Brunswick, N. J., )  
 )  
 Holder of Plenary Retail Consump- )  
 tion License C-58 for fiscal year )  
 1942-43, issued by the Board of )  
 Commissioners of the City of )  
 New Brunswick. )  
 - - - - - )

CONCLUSIONS  
AND ORDER

Lewis D. Busch, Esq., Attorney for Defendant-Licensee.  
 Milton H. Cooper, Esq., Attorney for Department of Alcoholic  
 Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult, with an explanation, to the follow-  
ing charge:

"In your application, filed with the Board of Commis-  
 sioners of the City of New Brunswick and upon which you  
 obtained your current plenary retail consumption license  
 for the 1942-43 period, you, after listing your stockholders  
 as William A. Anklowitz 8 shares, Juanita Joskowitz 1 share,  
 and Jack Anklowitz 1 share, falsely stated 'No' in answer to  
 Question 23, which asks: 'Has any.....individual other than  
 the stockholders hereinbefore set forth any beneficial interest,  
 directly or indirectly, in the stock held by said stockholder?',  
 and also falsely stated 'No' in answer to Question 24, which  
 asks: 'Has any stockholder of the applicant corporation any  
 beneficial interest, directly or indirectly, in the stock of  
 any other stockholder of the applicant corporation?', whereas  
 in truth and fact Max (or Maier) Joskowitz and Juanita  
 Joskowitz had a beneficial interest in four of the aforesaid  
 shares of stock listed in William A. Anklowitz's name; such  
 false statement being in violation of R. S. 33:1-25."

The explanation offered at the hearing herein does not in any  
 way affect the false statement in the application or the admitted  
 fact that, prior to September 5, 1942, the corporate set-up was used  
 as a "cloak" to hide the unlawful interest of Juanita Joskowitz or  
 Max Joskowitz in the licensed business. The explanation offered is  
 that, on September 5, 1942, one Emanuel Mackinoff purchased, in good  
 faith, the shares which were beneficially owned by Juanita Joskowitz  
 or Max Joskowitz, and that, at present, Mackinoff and William A.  
 Anklowitz each own 50% of the shares of defendant corporation. It  
 is argued that it would be unfair to impose a severe penalty in  
 this case because Mackinoff did not participate in the present  
 violation.

It is true that in many cases lenient penalties have been  
 imposed where, as here, it appeared that a "front" had been created  
 for persons lacking the necessary residential requirements and where  
 it further appeared that the unlawful situation had been corrected.  
 This licensee, however, has a bad record. In January 1942 the local  
 issuing authority suspended its license for six days after it had

pleaded guilty to a charge of permitting a lottery on its licensed premises. On February 15, 1943 I suspended its license for the balance of the 1942-43 fiscal year after finding defendant guilty of a charge of permitting prostitutes on its licensed premises. Re Almac, Bulletin 554, Item 10. The evidence in the latter case showed that members of the armed forces had had illicit relations with these prostitutes following "pick-ups" at the licensed premises. When the violations in the latter case occurred, Mackinoff was the owner of 50% of the stock in defendant corporation. Under these circumstances I do not believe that the defendant corporation or Mackinoff are entitled to any favorable consideration in fixing a penalty in this case.

Defendant applied for a renewal of its license for the present fiscal year. It is reported that the latter application has not been finally adjudicated. In this case I can and will terminate the interest of the defendant in the liquor business. I shall revoke defendant's license which it held for the fiscal year 1942-43. The penalty imposed will render defendant ineligible to obtain a license for the present fiscal year or at any time before the expiration of two years from the date of the order herein.

Accordingly, it is, on this 24th day of September, 1943,

ORDERED, that Plenary Retail Consumption License C-58, for fiscal year 1942-43, issued by the Board of Commissioners of the City of New Brunswick to Almac Tavern (a corporation) for premises at 5 Railroad Plaza, New Brunswick, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL  
Commissioner.

6. APPELLATE DECISIONS - MULLER v. DUMONT.

JOSEPH MULLER, JR. and GEORGE )  
MULLER, Executors under the )  
Last Will and Testament of )  
Joseph Muller, Sr., deceased, )  
Appellants, )

ON APPEAL  
CONCLUSIONS AND ORDER

-vs-

THE MAYOR AND COUNCIL OF THE )  
BOROUGH OF DUMONT, )  
Respondent )  
----- )

Winne & Banta, Esqs., by Horace F. Banta, Esq., Attorneys for )  
Appellants. )  
Albert J. Wuytack, Esq., Attorney for Respondent. )

BY THE COMMISSIONER:

This is an appeal from the action of the respondent denying appellants' application for renewal of a plenary retail consumption license for the current license year.

During the license year 1942-43, Joseph Muller, Sr. was the holder of a plenary retail consumption license for premises known as Muller's Hotel, 130 New York Avenue, Dumont. In May of 1943 the

licensee died and his sons, Joseph Muller, Jr. and George Muller, qualified as executors of his Last Will and Testament. On May 27, 1943 respondent extended the then current license for the balance of its term to the executors. R. S. 33:1-26. Thereafter, respondent denied the application of the executors for renewal of the license for the present fiscal year.

No answer was filed by the respondent, as required by Rule 4 of State Regulations No. 14.\* In explanation for its failure to file an answer, counsel for the respondent stated orally at the hearing on the appeal that the municipality "takes (the) position that the appellants herein have been the holders of a license heretofore and have conducted their premises to the satisfaction of Council and to the citizenry up until this time and that in the Council's deliberations on whether or not this renewal should be granted they more or less acceded to the wishes of the neighbors in the immediate vicinity of the licensed premises and would prefer that the Commissioner hear this case de novo or anew and take the place of the Council." In a similar vein, counsel for the respondent, when asked to present his case, reported, "I have no case but I suppose the petitioning objectors wish to be heard."

The Control Law, R. S. 33:1-18, charges the Commissioner with the responsibility for the issuance of manufacturers', wholesalers', plenary retail transit, transportation and public warehouse licenses. The legislature, in the Control Law, expressly delegated to and charged municipal issuing authorities with responsibility for the issuance of all other (retail) licenses, excepting only those cases wherein the members of the issuing authority are interested in the application.

"It shall be the duty of the governing board or body of each municipality, except in such municipalities as shall have created municipal boards pursuant to this chapter, in which latter event it shall be the duty of such respective municipal boards, to administer the issuance of all other licenses within their respective municipalities, in accordance with this chapter, and forthwith to report the issuance of all such licenses to the commissioner. The issuing authorities constituted by this section are sometimes hereinafter referred to as 'other issuing authority'."  
(Underlining ours.)

Compare R. S. 33:1-20, not here applicable.

Attention should also be called to the following provisions of R. S. 33:1-24:

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Rule 4, Regulations 14.

\*Within five days after service of the notice and petition of appeal, each respondent shall file an answer with the Commissioner, and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent issuing authority shall include a statement of the grounds for its action.

"It shall be the duty of each other issuing authority to receive applications for such licenses as such other issuing authority is authorized to issue; to investigate applicants and to inspect premises sought to be licensed; to conduct public hearings on applications and revocations; to enforce primarily the provisions of this chapter and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses; to maintain proper records; to keep full and correct minutes; and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this chapter. The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this chapter to each said other issuing authority." (Underlining ours.)

It is an established principle of law that a discretionary function expressly delegated cannot, in turn, be redelegated; that the discretionary administration of a function vested by statute exclusively in a municipal body cannot be conferred, in turn, by that body upon some other person or authority. This is true even though the person to whom the authority is sought to be redelegated is the Commissioner. The latter may not take the place of the local issuing authority.

The Control Law further provides, R. S. 33:1-22, that if the issuing authority refuses to grant a license, the applicant may appeal to the Commissioner from the action of the issuing authority. The provision for appeal from the action of the issuing authority presumes that the latter has investigated the applicant, inspected the premises sought to be licensed, conducted a public hearing and, whenever necessary in the exercise of its sound discretion pursuant to the authority vested in it by the Control Law, reached a decision squarely on the merits of the application. Where it appears that the issuing authority has not assumed the full measure of its responsibility and has failed to pass upon the merits of the application, I would ordinarily be required to remand the case to the issuing authority for proper action, in accordance with the provisions of the Control Law.

This would be the rule, in the instant case, were it not for the fact that it appears from the record that the appellants had heretofore "conducted" the licensed premises "to the satisfaction of Council" and that the objections to the granting of the license, with possibly a single exception, do not appear to have been relevant to the application before the issuing authority. Objectors presented a petition signed by some 31 residents of the Borough. Five of the citizens whose names appeared on the petition appeared at the hearing on the appeal and were heard. The reasons advanced by the objectors, as set forth in their petition, are as follows:

"We, \*\*\* respectfully request that no new liquor license be issued to any new owner or operator at this location. Upon the repeal of Prohibition, Mr. Joseph Muller, Sr. (now deceased) was granted a liquor license after many of his neighbors signed a petition therefor signifying their approval. They felt at that time that he would maintain a quiet and inoffensive establishment and it would occupy his time in his late years. While the hotel has been conducted in an orderly manner during these

years, we feel that a new operator may endeavor to expand the business and create a nuisance, thereby depreciating the value of the surrounding property.\*\*\*" (Underlining ours.)

The objections as set forth in the petition, are against a new owner or operator. The appellants are not new owners or operators. They have applied for a renewal of the license in their capacity as personal representatives of the estate of Joseph Muller, Sr., deceased. It has been heretofore decided that if an executor or administrator obtains an extension of a license for the balance of its term, he may, in pursuance of his functions as personal representative of the decedent's estate, apply for a renewal of the license for the next fiscal year. (See Re Deighan, Bulletin 355, Item 9; see also Warr v. Wyckoff, Bulletin 581, Item 8.) It follows that issuing authorities may, in the exercise of their sound discretion, grant the application of the executors for the purpose of permitting them to complete the administration of their estate.

No one seems to have objected previously to the respondent with respect to the conduct of the tavern from the time the first license was issued in 1933. At the hearing herein one objector testified that the noise made by beer trucks disturbed his sleep during the daytime and that one of the executors used loud and indecent language outside the licensed premises. These conditions, if they exist, should be corrected. This testimony, in itself, however, is not sufficient to sustain the action of the respondent. If the future conduct of the premises is objectionable, charges may be brought looking to the suspension or revocation of the license. In any event, upon an application being made for a transfer of the license, the Borough Council should carefully consider the qualifications of the new owner, as well as the objections to the "new owner or operator" as set forth in the petition herein. The reasonable views of citizens residing in the neighborhood should weigh heavily with the issuing authority when considering such an application.

It was argued on the appeal that the licensed premises are located in an area zoned for residential purposes. The premises have been operated as an hotel since 1895 and it was stipulated on the record that the property in question comes within the exception of the zoning ordinance respecting non-conforming use.

On the record in this appeal and in view of the fact that there appears to have been no substantial objections to the conduct of the licensed premises during the lifetime of Joseph Muller, Sr. or since the operation of the premises by his personal representatives, the action of the respondent will be reversed.

Accordingly, it is, on this 24th day of September, 1943,

ORDERED, that the action of respondent in denying appellants' renewal application be and the same is hereby reversed; and it is further

ORDERED, that respondent issue a plenary retail consumption license to Joseph Muller, Jr. and George Muller, Executors under the Last Will and Testament of Joseph Muller, Sr., deceased.

ALFRED E. DRISCOLL  
Commissioner.

7. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - LICENSEE PAID FINE OF \$150. - LICENSE PREVIOUSLY SUSPENDED BY MUNICIPAL ISSUING AUTHORITY FOR 10 DAYS - APPLICATION TO LIFT GRANTED UPON EXPIRATION OF SUSPENSION IMPOSED BY ISSUING AUTHORITY.

In the Matter of Petition by )

JOHN LA PIGA, )  
t/a Spruce Run Tavern, )  
State Highway #30, )  
Lebanon Township, )  
P.O. Glen Gardner R.F.D., N.J. )

ON PETITION.

CONCLUSIONS AND ORDER.

To lift the Automatic Suspension )  
of Plenary Retail Consumption )  
License C-1 issued by the Township )  
Committee of the Township of )  
Lebanon. )  
-----

Anthony M. Hauck, Jr., Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from petition filed herein that on September 20, 1943, the licensee pleaded guilty in the Court of Common Pleas of Hunterdon County to an indictment alleging that he had sold alcoholic beverages to a minor, and that he has paid the fine of \$150. imposed as a result of said conviction. It further appears from the petition and from our records that the Township Committee of the Township of Lebanon had previously suspended petitioner's license for a period of ten days, effective from September 20, 1943 at 6 A. M. to September 30, 1943 at 6 A. M., after the licensee, in proceedings instituted by the Township Committee, had pleaded guilty to charges of selling alcoholic beverages to a minor.

The indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts. Because of the criminal conviction petitioner's license has been automatically suspended for the balance of its term. R.S. 33:1-31.1. The petitioner herein prays that the automatic suspension may be lifted when the suspension imposed by the Township Committee expires.

This case concerns the sale of several bottles of beer to a boy who was then 17 years of age. It has been the policy of this Department to lift an automatic suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4.

Under all the circumstances, the penalty imposed by the Township Committee appears to be adequate. Hence I shall grant the relief prayed for in the petition.

Accordingly, it is, on this 29th day of September, 1943,

ORDERED that the automatic suspension of License C-1, held by John LaPiga, t/a Spruce Run Tavern, be lifted at 6 A. M. on Thursday, September 30, 1943. The license may be returned to the licensee at that time.

ALFRED E. DRISCOLL  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION  
CONCEALING MATERIAL FACT - ILLEGAL SITUATION CORRECTED -  
10 DAYS' SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )  
JARWIN WINES & LIQUORS INC. )  
514 Ferry Street )  
Newark, 5, New Jersey )  
Holder of Plenary Retail Distribution )  
License D-170, issued by the Municipal )  
Board of Alcoholic Beverage Control )  
of the City of Newark )

CONCLUSIONS  
AND ORDER

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Jarwin Wines & Liquors Inc., by Charles Karp, President.  
Harry Castelbaum, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge alleging that it falsely concealed in its license application the real interest of Charles Karp as the owner of more than 10% of the capital stock of the licensee.

In 1941 Charles Karp purchased practically all the shares of the defendant-licensee corporation. At that time he was a resident of New York State and ineligible to hold a liquor license in this State because the New Jersey law then required five years' residence in this State prior to the submission of the application. Likewise, at that time the Alcoholic Beverage Law provided that no Class "C" retail license could be issued to a corporation (with certain exceptions not here applicable), unless each owner, directly or indirectly, of more than 10% of its stock qualified in all respects as an individual applicant. Presumably it was for this reason that Karp placed his stock in the name of a third party who was then a resident of this State. It was also, presumably, for this reason that the corporation failed to disclose Karp's interest in its application for license.

In March of this year the Alcoholic Beverage Control Law was amended. Five years' prior residence is no longer required. In its place the law now requires actual residence in the State at the time the application is made and continued residence in the State during the enjoyment of the license. R.S. 33:1-25, P.L. 1943, Chapter 46. Mr. Karp subsequently moved to New Jersey and now states that he has moved his family to Newark where he plans to live in the future. He is therefore eligible to hold more than 10% of the stock of defendant-corporation in his own name without jeopardizing its right to hold the license.

It further appears that on September 2, 1943, the shares in question were actually transferred to Mr. Karp and that subsequently thereto, and in accordance with R.S. 33:1-34, the local issuing authority was notified of the change in the stock ownership.

In view of the illegal setup, I must penalize the defendant. In the absence of any previous record, and in view of the fact that the unlawful situation has now been corrected, I shall impose the minimum suspension of ten days. Re Tenafly Tavern, Inc., Bulletin 568, Item 6; Re Swiss Town House, Inc., Bulletin 583, Item 10.

Accordingly, it is, on this 29th day of September, 1943,

ORDERED that Plenary Retail Distribution License D-170, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jarwin Wines & Liquors Inc., for premises at 514 Ferry Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A. M. October 4, 1943 and terminating at 2:00 A. M. October 14, 1943.

ALFRED E. DRISCOLL  
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against )

FLETCHER PARKER )  
Delaware Parkway & Bayshore Road )  
Villas, Lower Township )  
P.O. Cape May, RFD, New Jersey )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Township Committee of Lower Township. )

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A. J. Cafiero, Esq., Attorney for Defendant-Licensee.  
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

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

The licensee who conducts a retail distribution store, by his employees, sold beer and wine to minor boys, one 19 and the other 20½. While the licensee does not seem to have been personally involved in the sale, the doctrine of respondeat superior is well established in the Alcoholic Beverage Control Law. Licensees must of necessity be held responsible for the acts of their employees and servants. Re Kurian, Bulletin 517, Item 2.

Since this is defendant's first adjudicated offense, and there appears to be no aggravating circumstances, I shall impose the minimum penalty of ten days' suspension. Cf. Re Abrams, Bulletin 562, Item 8. Five days of the suspension will be remitted because of the plea, making a net suspension of five days.

Accordingly, it is, on this 29th day of September, 1943,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of Lower Township, to Fletcher Parker for premises at Delaware Parkway & Bayshore Road, Villas, Lower Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 A. M. October 4, 1943 and terminating at 2:00 A. M. October 9, 1943.

ALFRED E. DRISCOLL  
Commissioner.

10. MORAL TURPITUDE - CRIME OF EMBEZZLEMENT FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR 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. 297.  
-----)

BY THE COMMISSIONER:

In 1931 petitioner, then fifty-nine years of age, was convicted on a charge of embezzlement and sentenced to serve one year in a county penitentiary. He had been accused of appropriating the funds of a bank. The crime in question involves the element of moral turpitude. Re Case No. 258, Bulletin 564, Item 4.

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 license or holding a liquor license in this State by reason of his conviction of a crime involving moral turpitude.

Since his release from the penitentiary in 1931, petitioner has been engaged in selling fire insurance. He also worked as chief checker for a sugar refinery from 1932 until 1941. He is married and lives with his son. His fingerprint returns disclose no other convictions.

An executive of a fire insurance company who has known petitioner for thirty-five years testified that petitioner has been an agent of his company for the last five years, during which time petitioner has conducted himself in a law-abiding manner and has had a good reputation in the community. Similar testimony was given by another insurance company executive who has known petitioner fifty years. The Assistant Vice-President of the refinery company which employed petitioner in 1932 testified he has known petitioner for sixty years. He corroborates the testimony of the insurance executives.

I find that petitioner has conducted himself in a law-abiding manner during the five years immediately past. I conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 4th day of October, 1943,

ORDERED, that 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.

ALFRED E. DRISCOLL  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - PERMITTING A BRAWL UPON THE LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20 - IMPROPER SUBSTITUTION OF ALCOHOLIC BEVERAGES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 22 - EMPLOYMENT OF NON-RESIDENTS, IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - SALE OF ALCOHOLIC BEVERAGES ON ELECTION DAY, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

THE SEA BEACH CORPORATION  
T/a THE PLANTATION  
51 Brighton Avenue  
Long Branch, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Seasonal Retail Consumption License CS-2, issued by the Board of Commissioners of the City of Long Branch.

Giordano, Golden & Hurley, Esqs., Attorneys for Defendant-Licensee.  
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee offers a plea of non vult to charges (1) that it suppressed the fact of the ownership of more than 10% of its stock by Ceil Burken and Murray Brand, or one of them, in violation of R. S. 33:1-25; (2) that it allowed, permitted and suffered a brawl upon its licensed premises, in violation of Rule 5 of State Regulations No. 20; (3) that it served alcoholic beverages other than those ordered, in violation of Rule 4 of State Regulations No. 22; (4) that it employed various non-residents without permit, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11; and (5) that it sold and delivered alcoholic beverages to consumers on Election Day while the polls were open for voting, in violation of Rule 2 of State Regulations No. 20.

The plea will be accepted.

After a careful reading of the statements and other proofs submitted, I find that Ceil Burken is the beneficial owner of all of the shares of stock of the defendant corporation; that she is a resident of the State of New York, and therefore disqualified as an individual to hold a license in this State. R. S. 33:1-25. The corporation in which she holds an undisclosed beneficial interest in more than 10% of its stock is likewise disqualified to hold a license in New Jersey. I find further that the brawl in question resulted in a stabbing of a waiter by another employee. The defendant's bartender admits substituting other alcoholic beverages when, "due to the scarcity", the licensee was "out of" the brand ordered. If all of these violations were not enough, it further appears that at least three non-residents have been employed on the licensed premises without permits. Finally, on September 21, 1943, Primary Election Day, an investigator from the Department, accompanied by a detective from the local police force, was admitted to the licensed premises and served whiskey in violation of Rule 2 of State Regulations No. 20.

The corporation has surrendered its seasonal retail consumption license. Neither the surrender nor the expiration of the license, however, bars proceedings to revoke it. R. S. 33:1-31, State Regulations No. 15. Re Blake, Bulletin 484, Item 6.

A proper penalty in this case requires the revocation of the license disqualifying the defendant corporation from holding a license for a period of two years.

Accordingly, it is, on this 4th day of October, 1943,

ORDERED, that Seasonal Retail Consumption License CS-2, issued by the Board of Commissioners of the City of Long Branch to The Sea Beach Corporation, t/a The Plantation, for premises at 51 Brighton Avenue, Long Branch, be and the same is hereby revoked, effective immediately.

*Alfred E. Discoll*  
Commissioner.