

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

BULLETIN 664

APRIL 27, 1945.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 40 - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF RULE 2 OF STATE REGULATIONS NO. 40 - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR A PERIOD OF 12 DAYS.

In the Matter of Disciplinary)
Proceedings against)

MRS. ESTHER VanHORN)
Highway 33, West of Millhurst)
Manalapan Township)
P. O. Freehold, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-8 issued by the)
Township Committee of the)
Township of Manalapan.)

Esther VanHorn, Defendant-licensee, Pro se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant was served with a copy of the following charges:

- (1) "Between 12 o'clock midnight, Saturday, March 10, 1945 and 7:00 a.m. Sunday, March 11, 1945, viz., until at least 12:18 a.m. of the latter date, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages and permitted the consumption of alcoholic beverages upon your licensed premises, in violation of Rule 1 of State Regulations No. 40.
- (2) "Between 12 o'clock midnight, Saturday, March 10, 1945 and 7:00 a.m. Sunday, March 11, 1945, viz., until at least 12:18 a.m. of the latter date, you failed to have your entire licensed premises closed and you permitted persons other than yourself and your bona fide employees to be and remain on the licensed premises, in violation of Rule 2 of State Regulations No. 40."

Defendant pleaded not guilty as to charge (1) and guilty as to charge (2).

The testimony of the ABC agents discloses that they entered the defendant's premises at 11:15 p.m. on Saturday, March 10, 1945, and that, shortly before midnight, the last drinks were served in the barroom and all patrons excluded therefrom. However, one of the ABC agents, accompanied by a friend, was permitted, with at least four other people, to remain in the service room of the licensed premises until approximately 12:18 a.m. and to consume the drinks which had been served to them a few minutes before or after midnight.

The licensee testified that her clock was five minutes slow, but that fact is not very material because admittedly patrons were consuming beverages in the service room on the licensed premises after the midnight hour. The licensee alleged also that she believed patrons were permitted to consume after midnight any drinks which

they had purchased before that hour. However, Rule 1 prohibits the consumption of alcoholic beverages upon licensed premises after 12:00 o'clock midnight. I find defendant guilty as to charge (1).

Defendant has no prior adjudicated record. The minimum suspension for sales to the public during prohibited hours has been fixed at fifteen days in numerous cases. The only mitigating circumstances herein is that the violation set forth in charge (1) concerned only the consumption of alcoholic beverages after midnight. Considering all the evidence, the license will be suspended for a period of twelve days.

Accordingly, it is, on this 13th day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Manalapan to Mrs. Esther VanHorn, for premises on Highway 33, West of Millhurst, Manalapan Township, be and the same is hereby suspended for twelve (12) days, commencing at 12:01 a.m. April 23, 1945, and terminating at 12:01 a.m. May 5, 1945.

ALFRED E. DRISCOLL
Commissioner.

By: Edward J. Dorton
Deputy Commissioner.

2. APPELLATE DECISIONS - RAPPAPORT v. UNION TOWNSHIP AND DANZIS.

DAVID G. RAPPAPORT,)
T/a DANZIS' PHARMACY,)
Appellant,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF UNION and BENJAMIN)
DANZIS, t/a VILLAGE WINE &)
LIQUOR STORE,)
Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

William Toker, Esq., Attorney for Appellant.
Charles Wagner, Esq., Attorney for Township Committee of Union Township.
Gustave G. Kein, Jr., Esq., Attorney for Respondent, Benjamin Danzis.

This is an appeal from the issuance of a plenary retail distribution license to the respondent, Benjamin Danzis, for premises 1231 Magie Avenue, Union Township.

Appellant, who also conducts a "package liquor" store in the municipality, contends that there is "no need or necessity for an additional retail liquor store in said neighborhood" and, for that reason, the application should have been denied.

Magie Avenue is a heavily trafficked thoroughfare, separating the Township of Union and the City of Elizabeth. The premises in question are located on the north side of Magie Avenue, in an area zoned for business. The nearest distribution establishment is that operated by the appellant, whose premises are one-half mile distant from those licensed to the individual respondent.

Within 150 feet of the premises in question there is presently under construction a group of so-called "garden apartments" which will house 128 families. To the south, on the Elizabeth side, there are approximately two hundred homes within 1500 feet of the respondent's location.

No objections to the issuance of the license were lodged with the local issuing authority, which voted unanimously to grant the application. Two of the members of the Township Committee testified that the neighborhood in question was developing rapidly and that, in their opinion, a distribution license, as distinguished from a consumption license, would fill a distinct need in that vicinity. They stated that, although there were several consumption establishments located between the premises of the respondent and those operated by the appellant, the placing of a "package" store in the section in question was necessary to cater to those residents who preferred to purchase their "package" goods in premises devoted exclusively to sales for off-premises consumption. Cf. Bambo v. Belleville et al., Bulletin 353, Item 6.

Despite the views expressed by the Commissioner concerning the desirability of issuing new licenses for the duration of the war, it remains within the sound discretion of the local issuing authority, in the first instance, to determine whether a license should issue in a particular area. The burden of proving an abuse of such discretion rests upon the appellant. Rule 6 of State Regulations No. 15. The testimony herein does not support the contention that the action of the respondent Township Committee in granting the instant application is so arbitrary and unreasonable as to require that such action be reversed.

No discussion of the other grounds for reversal set forth in the appellant's petition of appeal is necessary, since the record contains no proof in support thereof.

The action of the Township Committee in granting the application herein is affirmed.

Accordingly, it is, on this 16th day of April, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

By: Erwin B. Hock
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF 15 DAYS' SUSPENSION - ILLEGAL SITUATION CORRECTED AND 15 DAYS' SUSPENSION PERIOD HAVING EXPIRED -- APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against)

WILLIAM GIRONDA)
T/a MIAMI CLUB)
1066-68 Broadway)
Bayonne, N. J.,)

O R D E R

Holder of Plenary Retail Consumption License C-171 for the fiscal year 1942-43 and now, together with James Gironda and Joseph Gironda, holder of Plenary Retail Consumption License C-116 for the current (1944-45) year, both issued by the Board of Commissioners of the City of Bayonne.)

Jesse J. Feinberg, Esq., Attorney for Defendant-licensees.

On March 26, 1945 the State Commissioner directed the license herein to be suspended for the balance of its term after finding that the interest of Joseph Gironda was not disclosed in the license application filed by the licensee. In said order leave was given to apply for lifting of such suspension, upon proof of a bona fide correction, after the lapse of fifteen days from April 2, 1945, the effective date of the suspension. Re Gironda, Bulletin 661, Item 3.

Proof has now been presented that a transfer of the license was granted today to James Gironda, William Gironda and Joseph Gironda for the premises in question.

Since it appears that the license has now been placed in the names of all parties interested therein and the business conducted thereunder, and since the fifteen-day period aforesaid has expired, the suspension will be lifted.

Accordingly, it is, on this 17th day of April, 1945,

ORDERED, that the suspension heretofore ordered against Plenary Retail Consumption License C-116, issued to William Gironda and James Gironda for premises 1066-68 Broadway, Bayonne, by the Board of Commissioners of the City of Bayonne and transferred to James Gironda, William Gironda and Joseph Gironda for the same premises, be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

By: Erwin B. Hock
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEES TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)

WEST WILDWOOD SOCIAL CLUB)
751 West Poplar Avenue)
West Wildwood, N. J.,)

Holder of Club License CB-1, issued by the Mayor and Council of the Borough of West Wildwood, which license has been surrendered and a new Plenary Retail Consumption License (C-1) was thereupon issued to)

MICHAEL E. HESINGTON and)
EDWIN A. LUSK)
T/a WEST WILDWOOD CLUB CAFE,)

for the same premises.)

CONCLUSIONS AND ORDER

Harry Tenenbaum, Esq., Attorney for Defendant-licensees.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant club pleaded guilty to charges alleging that (1) since February 26, 1944 it permitted Edwin Lusk and Michael Hesington, and their wives, to exercise the privileges of its license and (2) it falsified its license application by failing to reveal that said individuals were the real and beneficial owners of the business conducted under its license. The club also pleaded not guilty to charges alleging that it falsified its license application by (3) stating that it had been in active operation for three years and (4) stating that it had been in possession of club quarters for the same period.

It is admitted that the proceeds of the club were equally divided, after payment of operating expenses, among the four above named individuals. This was done in the mistaken notion that all of the profits of the club could be retained by them for services rendered. When this unlawful arrangement was explained to them, the club license was surrendered, and a plenary retail consumption license was issued to the individuals Michael E. Hesington and Edwin A. Lusk, for the same premises, conditioned upon its being subject to the penalty to be imposed in the instant proceedings.

All of the members of the local issuing authority have advised the Commissioner that they are "entirely familiar with the West Wildwood Social Club" and that while "the Club during its operation may have technically done violence to your regulation, in its structural (sic) character, nevertheless it was properly conducted and served a real need."

Under all of the circumstances, I shall impose a penalty of ten days upon charges (1) and (2).

The testimony with respect to the remaining charges is in conflict. After a careful review of this testimony it does not appear that the burden of proving the truth of such charges has been sustained and, accordingly, charges (3) and (4) are dismissed.

The foregoing disposition also results in a dismissal of the rule to show cause why the club license should not be cancelled based upon the same grounds as are alleged in charges (3) and (4).

Edwin and Mary Lusk, as owners of the property in question, were served with notice that, if the club license should be revoked, an order might be entered to disqualify the premises, under the authority of R. S. 33:1-31. In view that the license has not been revoked, no such order will be entered. Idem.

Accordingly, it is, on this 16th day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-1, issued by the Mayor and Council of the Borough of West Wildwood to Michael E. Hesington and Edwin A. Lusk, t/a West Wildwood Club Cafe, for premises 751 West Poplar Avenue, West Wildwood, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. April 23, 1945, and terminating at 12:01 a.m. May 3, 1945.

ALFRED E. DRISCOLL
Commissioner.

By: Erwin B. Hock
Deputy Commissioner.

5. APPELLATE DECISIONS - BAROWSKY v. BYRAM TOWNSHIP.

MARY BAROWSKY and PAUL J.)
BAROWSKY,)
Appellants,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF BYRAM,)
Respondent.)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

Dolan & Dolan, Esqs., by John T. Madden, Esq.,
Attorneys for Appellants.
Ackerson J. Mackerley, Esq., by Peter Friedman, Esq., Attorney for
Respondent Township Committee.
Edward C. Pettit, Esq., Attorney for Objectors.

This is an appeal from respondent's refusal to grant a plenary retail consumption license to appellants for premises located on Lackawanna Drive, Lake Lackawanna, in the Township of Byram.

The various grounds advanced by the appellants upon which this appeal is based are (a) the action of the respondent Township Committee was arbitrary, discriminatory and contrary to law and the Rules and Regulations of the Alcoholic Beverage Control Department of the State of New Jersey; (b) appellants were not afforded an opportunity to be heard on written objections filed or to present evidence on their own behalf, and were not informed of the objections made against them; (c) the denial of the license was made by the Township Committee on the basis of letters sent to the Township Committee, without any reasons being adduced or set forth in the letters, all but one of the objectors being summer residents and not permanent residents of Byram Township; (d) one plenary retail consumption license was available for issuance in the Township of Byram, and no objection was made to the character of the appellants, or character of the premises affected; (e) the objections and denial of the license were made without a substantial basis in fact; and (f) appellants are entitled to a license under the circumstances as a matter

of law, and a denial of a license to them is a violation of their personal and property rights.

A resolution duly adopted by the respondent Township Committee on April 6, 1938 limited to twelve the number of liquor licenses to be issued in the Township of Byram.

There are presently eleven plenary retail consumption licenses issued and outstanding in the Township of Byram which, according to the 1940 Federal census, had a population of 373 residents.

The testimony of the various witnesses appears to be substantially in agreement that appellants' premises are located on a small lake used largely by vacationists during the summer season; that there is a license issued and outstanding for premises about 300 feet distant from appellants' premises; that, with the exception of the licensed premises aforementioned, the other ten plenary retail consumption licenses issued and outstanding are for premises located on the main highway running through the Township.

Thomas Sweeney, Chairman of the Township Committee, testified that the application for a license filed by appellants was denied because "The committee as a whole felt it is a residential district up there. We had letters from twenty-three residents and we felt those people had to live up there and the committee as a whole felt the license should be denied. We have one licensee there and felt he could take care of the drinking end very nicely." Three property owners in the immediate vicinity also expressed opinions that there was no need or necessity for another license to be issued. Appellants presented no evidence tending to establish that necessity or convenience of those who resided near this small lake required the grant of an additional license.

The power to issue retail liquor licenses has been conferred upon municipal issuing authorities subject to review by the State Commissioner of Alcoholic Beverage Control on appeal (R. S. 33:1-19; R. S. 33:1-22). It rests within the sound discretion of the local issuing authority either to grant or deny a license. Hochberg v. Bernards, Bulletin 617, Item 11. There is no evidence in the instant case that the denial of the application was inspired by bias or prejudice.

Appellants claim that they were not afforded a proper hearing before the local issuing authority. Rule 8 of State Regulations No. 2 provides:

"No hearing need be held *** if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant."

No objections whatsoever were voiced by any of the witnesses relative to the character of appellants. All witnesses interrogated testified that appellants' characters were beyond reproach. It is apparent, however, that the members of the Township Committee decided that there was no need for an additional license in the section of the Township wherein appellants' premises are located. That is a sufficient reason for denial.

In so far as ground (f) alleged in the appeal is concerned, it was ruled in Bumball v. Burnett, 115 N.J.L. 254, as well as Paul v. Gloucester, 50 N.J.L. 585, that "No one has a right to demand a license; license is a special privilege granted to the few, denied to the many."

The action of respondent Township Committee was not arbitrary or unreasonable and, therefore, is affirmed.

Accordingly, it is, on this 18th day of April, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

By: Edward J. Dorton
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - MISLABELING BEER TAP - ILLICIT LIQUOR (REFILL) - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)

SAM DI FRANK)
T/a GARTON HOTEL)
E/S of Garton Road, south of)
Landis Avenue)
Deerfield Township)
P.O. R.D. 6, Bridgeton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Deerfield.)
- - - - -)

Matthew Aaron, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded guilty to a charge alleging that there was a mislabeled beer tap on his licensed premises, and he pleaded non vult to a second charge that he possessed a 4/5 quart bottle of "Canadian Club Blended Canadian Whiskey 90.4 Proof", which bottle contained alcoholic beverages not genuine as labeled.

With respect to the first charge, it appears that, on February 1, 1945, two of the defendant's beer spigots, both differently labeled, were connected to one barrel of beer. The defendant admitted that, since the latter part of December 1944, he had continued this practice because "when the beer runs through a double coil it is colder." This does not serve to excuse the violation because patrons are entitled, at all times, to receive the alcoholic beverages which they order.

As to the second charge, an ABC agent seized at the licensed premises, on February 1, 1945, a bottle labeled "Canadian Club Blended Canadian Whiskey 90.4 Proof." Chemical analysis disclosed that the acids are substantially lower, and the amount of artificial color substantially greater, than the contents of a genuine sample of the same product.

Even if it be assumed, as the defendant contends, that he personally did not tamper with the bottle in question, he is, nevertheless, guilty as charged. Despite personal innocence, a licensee must be held strictly accountable for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Although only one bottle of questionable liquor is herein involved, the latter charge was included because of the practice which resulted in the institution of charge (1). See Re Vittoria Castle, Bulletin 557, Item 11. In view of the pleas, the absence of any prior record and all of the other attendant circumstances, the charges will be considered together and a ten-day penalty, on both charges, will be imposed.

Accordingly, it is, on this 18th day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Deerfield to Sam DiFrank, t/a Garton Hotel, for premises on E/S of Garton Road, south of Landis Avenue, Deerfield Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. April 23, 1945, and terminating at 12:01 a.m. May 3, 1945.

ALFRED E. DRISCOLL
Commissioner.

By: Edward J. Dorton
Deputy Commissioner.

7. APPELLATE DECISIONS - COOK v. WASHINGTON BOROUGH.

FLORENCE B. COOK,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
COMMON COUNCIL OF THE BOROUGH OF WASHINGTON,)	
Respondent)	

Francis L. Thompson, Esq., Attorney for Appellant.
Edward E. Stover, Esq., Attorney for Respondent.

Respondent denied appellant's application for transfer of her plenary retail consumption license from 106 Belvidere Avenue to 2 East Washington Avenue, Washington, New Jersey. Hence this appeal.

At her former address the appellant operated a hotel which was located in a residential section. When these premises were sold and she was obliged to vacate, she chose a location at the northeast corner of Belleville and Washington Avenues, which intersection is the hub of the community's business center.

Within 250 feet of the proposed site there are now outstanding all of the five remaining consumption licenses issued by respondent. Three are situated on Washington Avenue and two on Belvidere Avenue. In addition, on the southwest corner of the intersection, within 75 feet of appellant's premises, there is a distribution license.

The mere recital of these facts indicates that there was ample justification for respondent's refusal to place an additional consumption license in this already congested area.

The ground of lack of necessity for the license in the neighborhood in question was not given as a reason for denial in respondent's resolution refusing to grant appellant's application for transfer. It has been repeatedly urged that, in fairness to applicants, all of the reasons relied upon by issuing authorities

The aforesaid charges were preferred as a result of discovery by a county detective of four cases of stolen tax-paid liquor in the attic of the premises wherein defendant conducts a tavern. The attic did not constitute part of the licensed premises but was subject to the control of defendant. According to the undisputed testimony of the witnesses, defendant's bartender purchased the four cases of liquor from several men who, in fact, had been implicated in the theft. It appears that the bartender and a friend learned of an opportunity to purchase some Scotch whisky. The bartender borrowed money from defendant, informing defendant that he was purchasing alcoholic beverages for the personal use of himself and his friend, and also that he intended to sell some to other friends. After the purchase had been made, the bartender, unknown to defendant, stored the four cases of liquor in the attic of the licensed premises. The bartender carried the cases of liquor to the attic at a time when defendant was asleep in his living quarters by making use of an outside stairway adjacent to the rear of the building. When defendant discovered, a few days prior to the seizure, that the cases of liquor were in the building, he instructed the bartender to remove them from the premises. The bartender and the licensee both disclaimed any knowledge of the fact that the liquor had been stolen.

Defendant admitted loaning the money used for the purchase of the liquor to his bartender. He testified that he had made similar loans when the bartender bought an automobile and when he purchased a home. This was corroborated by the testimony of the bartender. The previous loans were for legitimate purposes, but suspicion is aroused when a licensee loans money to an employee to purchase alcoholic beverages.

A county detective testified that during the investigation concerning the stolen liquor he spoke to the defendant, who readily admitted that the liquor was stored in his attic. There has been no testimony by anyone to link either the bartender or the defendant in any manner whatsoever with the theft. There is, of course, the possibility that the bartender is protecting the licensee but, on the evidence presented and particularly the sworn testimony of the licensee and the bartender, it is concluded that the Department has not sustained the burden of proof in establishing the guilt of defendant.

Licensee has held a liquor license for five years and has no prior record. After considering all of the testimony, it is concluded that the charges must be dismissed.

Accordingly, it is, on this 19th day of April, 1945,

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

By: Edward J. Dorton
Deputy Commissioner.

9. MORAL TURPITUDE - CRIMES OF MANSLAUGHTER, BURGLARY AND GRAND LARCENY INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - APPLICANT'S EXTENSIVE CRIMINAL RECORD, TOGETHER WITH LONG PENDING INDICTMENT, DOES NOT WARRANT THE EXERCISE OF THE COMMISSIONER'S DISCRETION - APPLICATION TO LIFT DENIED.

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

ON HEARING
CONCLUSIONS

Case No. 390.
-----)

Pursuant to the provisions of R. S. 33:1-31.2, petitioner has applied for an order removing his statutory disqualification from being employed by or connected in any business capacity whatsoever with the holder of a license because of his conviction of a crime involving moral turpitude.

Petitioner's police record from 1925, at which time he was eighteen years old, until 1935, is lengthy. In 1925 he apparently was convicted, in California, of manslaughter and sentenced to an indefinite term in San Quentin Prison. In 1929 he was convicted, in Connecticut, of the crime of burglary, sentenced to the State Reformatory for an indeterminate term and served approximately eighteen months. In 1931 a fine of \$100.00 was imposed on conviction, in New Jersey, of the crime of grand larceny of auto. In 1934 he was arrested and indicted in New Jersey, with others, on a charge of hold-up and robbery. Although nearly eleven years have passed, he has never been tried, and he has apparently taken no steps to secure either a trial or a nolle pros. In 1935 he pleaded non vult to a charge of entering and larceny and was sentenced to from four to six years in the State Penitentiary. On May 23, 1938 he was released on parole. In 1940 he was arrested and questioned but no charges seem to have been made.

There can be no doubt that most, if not all, of petitioner's crimes involve the element of moral turpitude, and petitioner does not suggest otherwise. Petitioner, however, does seek the exercise of the Commissioner's discretionary power to remove the resultant disqualification.

There is no evidence that petitioner has had any trouble with the law during the past five years. However, it has been ruled that a pending indictment is, in itself, a sufficient reason for denial of an order lifting disqualification. Re Case No. 146, Bulletin 479, Item 2. Moreover, in view of the lengthy criminal record and the pending indictment, the Commissioner is not satisfied that petitioner's association with the alcoholic beverage industry would not be contrary to the public interest.

The petition, therefore, is denied.

ALFRED E. DRISCOLL
Commissioner.

By: Edward J. Dorton
Deputy Commissioner.

Dated: April 19, 1945.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)
)
 ANDREW SANDY, JR.)
 108 Market Street)
 Paterson 1, N. J.,)
)
 Holder of Plenary Retail Consumption License C-153, issued by the)
 Board of Alcoholic Beverage Control of the City of Paterson.)
 -----)

CONCLUSIONS AND ORDER

Andrew Sandy, Jr., Defendant-licensee, Pro se.
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that he possessed two 4/5 quart bottles of "Four Roses A Blend of Straight Whiskies", both of which contained alcoholic beverages not genuine as labeled.

On March 19, 1945 an ABC agent tested the defendant's open stock of twenty-one bottles and seized the two bottles in question. Chemical analysis disclosed a substantial variance in acids and solids between the contents of the two bottles and that of a genuine sample of the same product.

In the absence, as here, of any previous record, the usual ten-day penalty will be imposed. Re Muller, Bulletin 662, Item 2.

Accordingly, it is, on this 19th day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-153, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Andrew Sandy, Jr. for premises 108 Market Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. April 24, 1945, and terminating at 12:01 a.m. May 4, 1945.

ALFRED E. DRISCOLL
 Commissioner.

By: Edward J. Dorton
 Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against
 EVER READY SOCIAL CLUB
 861 Main Avenue
 Passaic, N. J.,
 Holder of Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Passaic.

CONCLUSIONS AND ORDER

Joseph J. Weinberger, Esq., Attorney for Defendant-licensee.
 Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded guilty to a charge alleging the possession of illicit alcoholic beverages on its licensed premises, in violation of R. S. 33:1-50.

In the course of a routine retail inspection on March 8, 1945, by agents of the State Department of Alcoholic Beverage Control, the agents found five bottles containing alcoholic beverages that were apparently not genuine as labeled. The seized bottles consisted of: one 4/5 quart bottle labeled "Kinsey Blended Whiskey", one 4/5 quart bottle labeled "Wilson 'That's All' Blended Whiskey", one 4/5 quart bottle labeled "Three Feathers Blended Whiskey Reserve", one 4/5 quart bottle labeled "Golden Wedding Blended Whiskey", and one 4/5 quart bottle labeled "Schenley Reserve Blended Whiskey." A subsequent analysis by the chemist of the State Department of Alcoholic Beverage Control disclosed that the contents of each of these bottles were from five to seven points under proof, low both in solids and acids when compared with analysis of genuine liquor of said brands, and consequently that the contents thereof were not genuine as labeled.

Defendant has no prior adjudicated record. In view of all the circumstances, defendant's license will be suspended for a period of ten days. Re Colucci, Bulletin 655, Item 9.

Accordingly, it is, on this 20th day of April, 1945,

ORDERED, that Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Passaic to Ever Ready Social Club, for premises 861 Main Avenue, Passaic, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. April 30, 1945, and terminating at 12:01 a.m. May 10, 1945.

ALFRED E. DRISCOLL
 Commissioner.

By: Edward J. Dorton
 Deputy Commissioner.

12. APPELLATE DECISIONS - CLAYTON v. BRIELLE.

STANLEY C. CLAYTON,)

Appellant,)

-vs-)

BOROUGH COUNCIL OF THE)
BOROUGH OF BRIELLE,)

Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Anshelewitz & Barr, Esqs., by Max M. Barr, Esq.,
Attorneys for Appellant.

Durand, Ivins & Carton, Esqs., by James D. Carton, Jr., Esq.,
Attorneys for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to grant appellant's application for a plenary retail consumption license for premises on State Highway 35, Brielle.

Respondent does not question the appellant's fitness to hold a liquor license. The application was denied, however, among other reasons, because of the existence of sufficient consumption licenses in the vicinity.

The municipality is a small seashore resort having a permanent population of slightly less than 1000. During the summer months the population is increased because of summer residents, and a large number of temporary visitors patronize fishing boats which leave docks located in the Borough.

Six consumption licenses have already been issued by respondent. Four of these establishments are now located within 800 feet of appellant's premises. One of these is situated immediately across the highway about 50 feet distant. On the same side of the road there is another consumption license within 400 feet.

The six members of the Borough Council voted unanimously to deny the application. All of the councilmen appeared at the appeal hearing and testified that, in their opinion, there is no need for another consumption license in the vicinity in question.

The determination of the desirability of placing a liquor license in a particular section of a municipality rests, in the first instance, within the sound discretion of the local issuing authority. No abuse of such discretion is disclosed by the refusal to locate a fifth consumption license in such close proximity to the other four licenses already outstanding in the vicinity.

Appellant argues that the action of respondent is erroneous because the local ordinance limits the number of plenary retail consumption licenses to nine and only six such licenses have been issued. However, in Levitt v. Liberty, Bulletin 169, Item 4, it was said:

"The fact that the full number of licenses authorized by respondent's ordinance has not been issued and that a vacancy now exists does not thereby entitle appellant to a license. I have already determined that a limitation in mere numbers must give way to a municipality's determination to restrict the number of licenses in a particular area."

Appellant has failed to establish the need for an additional license at the particular location desired and, for that reason, the appeal must be dismissed despite the vacancy under the ordinance. See also Houtkin v. Lakewood, Bulletin 646, Item 1.

Under the circumstances, no useful purpose will be served by discussion of the other grounds upon which respondent based its denial of appellant's application.

The action of respondent is affirmed.

Accordingly, it is, on this 20th day of April, 1945,

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

Alfred C. Driscoll
Commissioner.