

BULLETIN 1023

JULY 12, 1954.

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 1023

JULY 12, 1954.

1. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

XAVER KNEHR )  
T/a CHARLIE'S TAVERN )  
712 Grove Street )  
Irvington 11, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the Town of Irvington. )  
----- )

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he sold and served alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on the evening of April 18, 1954, sales and services of beer were made by the defendant to four minors (age 16, 17, 19 and 19 respectively). Again, on April 29, 1954, the defendant sold beer for consumption on the licensed premises and four quart-cartons thereof for consumption off the licensed premises to two 17-year-old minors, one of whom had obtained beer on the evening of April 18, 1954, aforesaid.

No reasonable or justifiable excuse may be accepted for the sale and service of alcoholic beverages to the minors, especially the 16 and 17-year-old boys.

Defendant has no prior adjudicated record. In view of the age of the youngest minor and the number of minors involved, I shall suspend defendant's license for a period of thirty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of thirty days.

Accordingly, it is, on this 8th day of June, 1954,

ORDERED that Plenary Retail Consumption License C-59, issued by the Board of Commissioners of the Town of Irvington to Xaver Knehr, t/a Charlie's Tavern, for premises 712 Grove Street, Irvington, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 15, 1954; and it is further

ORDERED that, if any license be issued to this licensee or to any other person for the premises in question for the 1954-55 licensing year, such license shall be under suspension until 2:00 a.m. July 15, 1954.

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING THAT LICENSEE PERMITTED PROSTITUTES AND LEWDNESS AND IMMORAL ACTIVITIES ON LICENSED PREMISES DISMISSED - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT FIGURINE) - HOSTESS - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against )

FRANK OLIVER JACKSON & ROSITA )  
JACQUELYN JACKSON )  
T/a JACKSON'S TAVERN )  
109 Fulton Avenue )  
Lakewood, N. J., )

CONCLUSIONS AND ORDER

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Holders of Plenary Retail Consumption License C-20 for the 1952-53 and 1953-54 licensing years, issued by the Township Committee of the Township of Lakewood. )

James J. Myers, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants originally entered a plea of not guilty to the following four charges:

"1. On May 1, 2, 3 and 5, 1953, you allowed, permitted and suffered prostitutes in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On the occasions aforesaid, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"3. On May 1 and 5, 1953, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing an obscene, indecent, filthy, lewd, lascivious and disgusting representation; in violation of Rule 17 of State Regulations No. 20.

"4. On May 5, 1953, you allowed, permitted and suffered Hope ---, a female employed on your licensed premises, to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20."

Prior to the taking of testimony at the Hearing herein defendants withdrew their plea of not guilty as to charges 3 and 4 and entered a plea of non vult thereto, the not guilty plea standing as to charges 1 and 2.

Eight persons testified, at the Hearing, with respect to the general good reputation of defendants' establishment but these witnesses admitted that they were not on the premises or did not remember being there on the occasions mentioned in the charges.

A finding of guilt under extremely serious charges 1 and 2 would call for revocation of license. My intensive examination of the testimony adduced at the Hearing convinces me that the testimony of the Division's agents is correct and true in every detail with respect to the events which took place on defendants' premises at the times in question. There is no doubt in my mind that there were probably prostitutes on the premises and as to the fact that

there was solicitation for prostitution and the making of arrangements for illicit sexual intercourse. There is, however, serious doubt in my mind that the evidence is sufficient to support a finding of guilt under charges 1 and 2.

In proceedings such as these it is not necessary to establish guilt beyond a reasonable doubt but, rather, to establish guilt by a preponderance of the evidence. I find that the Division has failed to prove that defendants "allowed, permitted and suffered" prostitutes in and upon their licensed premises in violation of Rule 4 of State Regulations No. 20, and has failed to prove that they "allowed, permitted and suffered" lewdness and immoral activity in and upon their licensed premises; viz., solicitation for prostitution and the making of arrangements for illicit sexual intercourse in violation of Rule 5 of State Regulations No. 20. The point is that the Division's proof fell short of establishing liability of defendants, personally or through acts of their agents, for the unwholesome occurrences which took place. A licensee's responsibility is a heavy one which cannot be escaped by his physical absence or lack of personal knowledge (Rule 31 of State Regulations No. 20) but the Division's fair burden is also a heavy one and it is axiomatic that there can be no finding of guilt when, despite strong suspicion, the evidence leaves a doubt that guilt of the violation charged has been proved. When such doubt exists it must be resolved in the licensee's favor. Charges 1 and 2 are dismissed. (Cf. Re Washington Cafe, Bulletin 841, Item 6; Re Yorkus, Bulletin 662, Item 5; Re Silidker, Bulletin 405, Item 5.)

The "matter" in charge 3 was a figurine manifestly obscene and indecent in character. On that charge the license will be suspended for ten days. (See Re Club Benmar, Inc., Bulletin 874, Item 9.) On charge 4 the license will be suspended for twenty days. (See A. & J. Cocktail Lounge, Bulletin 1014, Item 8, citing Re Goldberg, Bulletin 962, Item 4.) Thus, for guilt under both of these charges the total suspension will be thirty days.

Although these proceedings were instituted during the 1952-1953 license year they do not abate but remain fully effective. (State Regulations No. 16.)

Accordingly, it is, on this 21st day of June, 1954,

ORDERED, that the Plenary Retail Consumption License C-20 issued by the Township Committee of the Township of Lakewood to Frank Oliver Jackson and Rosita Jacquelyn Jackson, t/a Jackson's Tavern, 109 Fulton Avenue, Lakewood, be and the same is hereby suspended for the balance of its term, effective at 2:00 a. m. June 28, 1954; and it is further

ORDERED that if any license is issued to these licensees or to either of them or to any other person for the premises in question for the 1954-1955 license year, such license shall be under suspension until 2:00 a.m. July 28, 1954.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

CAMDEN LODGE #111, LOYAL ORDER OF MOOSE )  
313-5 Cooper Street )  
Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-12, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )

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Frank M. Lario, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Sunday, March 28, 1954, at about 2:30 P.M., you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages, directly or indirectly, upon your licensed premises; in violation of Section 5 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934 which Section prohibits any such activity after 2:00 A. M. on Sunday."

The file herein discloses that on Sunday, March 28, 1954, at about 2:30 p.m., ABC agents, who were in defendant's licensed premises, observed some fifty persons being served alcoholic beverages at the bar. Leroy Knettle, who identified himself as a part-time bartender on the occasion, gave the agents a sworn statement wherein he said that an initiation of new members into the defendant Lodge was being conducted at the club that day and, as is the custom, beer was served free to those attending the ceremony.

In a memorandum submitted to the Division defendant seeks to excuse its action on the ground that newly installed officers of the Lodge were not aware of the fact that the gratuitous dispensation of the beer constituted a sale of the beer. However, R. S. 33:1-1(w) defines a "sale" to include "the gratuitous delivery or gift of any alcoholic beverage by any licensee." A gift of alcoholic beverages by a licensee is a sale. See Re Mucci Post, Veterans of Foreign Wars, Bulletin 850, Item 1.

Defendant has a prior adjudicated record. Effective November 19, 1937, its license was suspended for five days by the local issuing authority for Sunday "hours" violation and possession of slot machines, and effective October 24, 1939, its license was again suspended for seven days by the same authority for similar violations. Since the similar violations occurred more than ten years ago, I shall not consider them in fixing the penalty in this case. Re Chlodnicki, Bulletin 973, Item 7. I shall suspend defendant's license for a period of fifteen days, less five days for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 9th day of June, 1954,

ORDERED that Club License CB-12, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Camden Lodge #111, Loyal Order of Moose, for premises 313-5 Cooper Street, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 15, 1954, and terminating at 2:00 a. m. June 25, 1954.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT SONGS, INDECENT LANGUAGE, INDECENT STORIES) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOSEPH, SYLVIA and MORTON BERGER  
T/a THE GLEN  
699-701 Bloomfield Avenue  
Bloomfield, N. J.,

CONCLUSIONS  
AND ORDER

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Holders of Plenary Retail Consumption License C-28, issued by the Town Council of the Town of Bloomfield.

Saul C. Schutzman, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to the following charge:

"On Saturday night, May 1, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that a male entertainer sang songs, recited stories and uttered words and phrases having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulations No. 20."

The file herein discloses that on Saturday night, May 1, 1954, ABC agents entered defendants' premises and observed therein about forty patrons of both sexes seated at the bar, behind which on a dais was an entertainer who regaled them for over an hour with filthy and lascivious parodies and double entendre stories so disgusting and suggestive in import that a detailed presentment would serve no useful purpose. While the agents were present the same entertainer appeared in two subsequent shows in which his performance was unobjectionable. At the conclusion of the third show the agents made known their identity to the bartender, Joseph Berger (one of the defendants herein) and to Glen Covington, the entertainer, who in a sworn statement attested to the above facts.

Defendants have no prior adjudicated record. I shall suspend defendants' license for a period of fifteen days. Re S. E. W. Inc., Bulletin 891, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 14th day of June, 1954,

ORDERED that Plenary Retail Consumption License C-28, issued by the Town Council of the Town of Bloomfield to Joseph, Sylvia and Morton Berger, t/a The Glen, 699-701 Bloomfield Avenue, Bloomfield, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 21, 1954 and terminating at the expiration of the licensed term, midnight June 30, 1954.

WILLIAM HOWE DAVIS  
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO WOMEN DIRECTLY OVER A BAR IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 5 DAYS, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against

THE SPORT CENTER  
805-813 Federal Street  
Camden, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-103, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

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The Sport Center, Defendant-licensee, by Richard A. Deighan, President. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded nonvult to the following charge:

"On Saturday night, May 8 and early Sunday morning, May 9, 1954, you served beverages to women directly over a bar on your licensed premises; in violation of Section 10 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, as amended by Ordinance adopted September 12, 1935."

The pertinent clause of Section 10 of the ordinance hereinabove referred to provides:

"No woman shall be served with beverages directly over any bar \*\*\*."

The file discloses that on Saturday night, May 8, and early Sunday morning, May 9, 1954, ABC agents visited defendant's licensed premises. The agents observed numerous patrons of both sexes consuming alcoholic beverages while seated at a U-shaped counter about eighteen inches from a conventional square bar. These drinks had been obtained by barmaids from a bartender at the conventional bar and carried by the barmaids to the U-shaped counter.

When the agents made known their identity to Richard A. Deighan, President of the defendant-licensee, he contended that the aforesaid structure was not a bar. He further stated that he had sought an oral opinion from the local law enforcement agency respecting the facilities on his premises and was assured that such facilities were not in conflict with its rules and regulations.

The facts in the instant case are strikingly similar to those in Re Eskridge, Bulletin 994, Item 6. In that case, the charges being the same, the Director held that the U-shaped structure adjacent to and not connected with a bar was in fact a "bar" within the meaning of the ordinance. His Conclusions and Order were affirmed on appeal to the N. J. Superior Court, Appellate Division (unreported) in a decision rendered after the violation herein was committed. See Re Eskridge v. Division, Bulletin 1016, Item 1.

Defendant has no prior adjudicated record. Under the circumstances of this case I shall suspend defendant's license for five days. Two days will be remitted for the plea entered herein, leaving a net suspension of three days.

Accordingly, it is, on this 17th day of June, 1954,

ORDERED that Plenary Retail Consumption License C-103, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to The Sport Center, for premises 805-813 Federal Street, Camden, be and the same is hereby suspended for three (3) days, commencing at 2:00 a.m. June 28, 1954, and terminating at the expiration of the license at Midnight, June 30, 1954.

WILLIAM HOWE DAVIS  
Director.

6. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR LICENSE - CRIMINAL CONVICTION EXPUNGED BY COURT ORDER - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary )  
Proceedings against )  
MICHAEL NYKUN )  
Main Street )  
Independence Township )  
P. O. Great Meadows, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-4, issued by the )  
Township Committee of the Township )  
of Independence. )  
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Richard D. Van Horn, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"In your application dated May 11, 1953, filed with the Independence Township Committee, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 33, which asks: 'Have you or has any person mentioned in this application, ever been convicted of any crime?', whereas in truth and fact you had been convicted on or about December 7, 1928 in the Warren County Court of Special Sessions (now Warren County Court) of the crime of atrocious assault and battery; said false statement being in violation of R. S. 33:1-25."

The facts constituting the basis of the charge preferred herein are sufficiently set forth in the charge to obviate the necessity of further repetition.

Since the institution of these proceedings, however, pursuant to R. S. 2A:164-28, the criminal conviction of the defendant has been ordered by a court of competent jurisdiction expunged from the record. (See Case No. 1137, decided simultaneously herewith.)

Although defendant is not now ineligible to hold a liquor license, a suspension must be imposed because of the false statement made in defendant's application for the 1953-1954 license.

Under the circumstances of this case, and in view of the fact that defendant has no prior adjudicated record, I shall suspend the license for a period of twenty days. Re Hillcrest Tavern, Inc., Bulletin 1000, Item 3.

Accordingly, it is, on this 18th day of June, 1954,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Independence to Michael Nykun for premises on Main Street, Independence Township, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 29, 1954; and it is further

ORDERED, that if any license be issued to this licensee or to any other person for the premises in question for the 1954-55 licensing year, such license shall be under suspension until 3:00 a.m. July 19, 1954.

WILLIAM HOWE DAVIS  
Director.

7. DISQUALIFICATION - CONVICTION EXPUNGED BY COURT ORDER - NO ORDER TO LIFT DISQUALIFICATION REQUIRED.

In the Matter of an Application )  
to Remove Disqualification )  
because of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )  
Case No. 1137. )  
-----)

CONCLUSIONS

BY THE DIRECTOR:

On December 7, 1928 petitioner pleaded non vult to the crime of atrocious assault and battery, as a result of which he was sentenced to a state prison for a term of one year. The operation of the sentence was suspended and petitioner was fined \$50.00.

Atrocious assault and battery is a crime involving moral turpitude. Re Case No. 330, Bulletin 616, Item 9. Since the hearing in this matter petitioner has submitted a true copy of an order, dated May 21, 1954, entered by a County Court, wherein the conviction aforementioned has been ordered expunged from the record and reciting that petitioner has been relieved from such disability as heretofore existed by reason of said conviction. (R.S. 2A:164-28.)

In view of said order by a court of competent jurisdiction in a proceeding instituted for that purpose, the disability of petitioner has been removed. Re Case No. 739, Bulletin 840, Item 3. Hence, it is unnecessary to enter any order in this proceeding.

Under the circumstances, petitioner is eligible to be associated with the alcoholic beverage industry despite the conviction disclosed herein, provided, however, that he is otherwise fully qualified.

WILLIAM HOWE DAVIS  
Director.

Dated: June 18, 1954.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 HELEN HLADYCZ  
 T/a BROAD STREET TAVERN  
 171 Broad Street  
 Perth Amboy, N. J.,  
 Holder of Plenary Retail Consumption License C-3, issued by the Board of Commissioners of the City of Perth Amboy.

CONCLUSIONS AND ORDER

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 Helen Hladycz, Defendant-licensee, Pro Se.  
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded guilty to the following charge:

"On May 20, 1954, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents, viz.,

One quart bottle labeled 'Seagram's Seven Crown Blended Whiskey 86.8 Proof';

in violation of Rule 27 of State Regulations No. 20."

The file herein discloses that on May 20, 1954, an ABC agent entered the licensed premises to make a routine inspection therein and observed the licensee, who was behind the bar, remove a bottle from a stand underneath the bar and place it in a cardboard box used for garbage.

The agent obtained this bottle and found it to be a quart bottle labeled "Seagram's Seven Crown Blended Whiskey 86.8 Proof." The licensee signed a sworn statement wherein she admits that, about ten minutes before the agent entered, she poured a small quantity of "Philadelphia Blended Whiskey" into the "Seagram's" bottle and endeavored to conceal such bottle when the agent entered. Subsequent analysis disclosed that the contents of the seized bottle were not genuine as labeled.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Charette, Bulletin 940, Item 11; Re Dellerson, Bulletin 962, Item 6.

Accordingly, it is, on this 18th day of June, 1954,

ORDERED that Plenary Retail Consumption License C-3, issued by the Board of Commissioners of the City of Perth Amboy to Helen Hladycz, t/a Broad Street Tavern, for premises 171 Broad Street, Perth Amboy, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 28, 1954; and it is further

ORDERED that if any license be issued to said licensee or to any other person for the premises in question for the 1954-55 licensing year, such license shall be under suspension until 2:00 a.m. July 8, 1954.

WILLIAM HOWE DAVIS  
 Director.

By: Edward J. Dorton  
 Deputy Director.

## 9. ELECTIONS - MUNICIPAL ORDINANCE RATIFICATION REFERENDUM - SPECIAL ELECTION WITHIN INTENDMENT OF RULE 2 OF STATE REGULATIONS NO. 20.

June 9, 1954

Hon. Frank Harris  
Chief of Police, Wayne Township, N. J.

Dear Chief Harris:

We have been advised by Township Clerk MacDonald that a municipal ordinance ratification referendum election will be held pursuant to R. S. 40:49-27 in Wayne Township on June 15, 1954, with polling hours from 8:00 a.m. to 9:00 p.m. to vote on the question:

Shall an ordinance of the Township Committee of the Township of Wayne entitled, "An Ordinance Providing for the Construction of a Municipal Building in and by the Township of Wayne, in the County of Passaic, New Jersey, Appropriating \$218,400.00 Therefore, and Authorizing the Issuance of \$208,000.00 Bonds or Notes of the Township for Financing Such Appropriation, adopted November 24, 1953, be ratified?"

Since R. S. 40:49-27 provides that a referendum election such as this may be held subject to the provisions of (inter alia) R. S. 40:49-10 which, in turn, provides that such election "shall be conducted and canvassed by the same officers and in the same manner as nearly as may be as prescribed by the laws regulating general elections", the referendum election is therefore a special election within the intendment of Rule 2 of State Regulations No. 20. Cf. Re Dooling, Bulletin 310, Item 8; Re Malone, Bulletin 971, Item 2.

Rule 2 of State Regulations No. 20 provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer any alcoholic beverage, or allow, permit or suffer the consumption of any alcoholic beverage in or upon the licensed premises, in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

R. S. 33:1-24 makes it your duty to enforce the foregoing rule. If you have not already done so, you should notify all retail licensees in Wayne Township of the requirements of the rule.

If a violation is found, the licensee should be ordered to discontinue immediately, any alcoholic beverages involved should be seized as evidence, and the licensee should be reported to me for disciplinary proceedings giving name, address, license number, time, nature and details of the violation.

Very truly yours,  
WILLIAM HOWE DAVIS  
Director.

10. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF TAX PAID ALCOHOLIC BEVERAGES ALLEGEDLY TO BE DISTRIBUTED AT THE POLLS ON ELECTION DAY. - CLAIMANT ESTABLISHED THAT BEVERAGES WERE INTENDED FOR PERSONAL USE AND NOT FOR USE AS ALLEGED - ALCOHOLIC BEVERAGES RETURNED.

In the Matter of the Seizure on ) Case No. 8214  
November 4, 1952 of 17 pint )  
bottles and 2 - 4/5 quart bottles ) ON HEARING  
of whiskey on the Town Hall parking ) CONCLUSIONS AND ORDER  
lot, in the Township of Madison, )  
County of Middlesex and State of )  
New Jersey. )

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Benjamin Kleinberg, Esq., Attorney for James Tortorice.  
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 17 pint bottles and two 4/5 quart bottles of whiskey, described in a schedule attached hereto, seized on November 4, 1952 on the Town Hall parking lot in Madison Township, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by local officers on suspicion that the whiskey was to be distributed at polling places on the above date -- Election Day. However, the whiskey can be forfeited only for a violation of the Alcoholic Beverage Law.

Such whiskey, although transported and found in a motor vehicle when seized, was within the amount that may be transported for personal consumption in any motor vehicle, without a license for that purpose. R. S. 33:1-2. Therefore, the crucial question is whether it was intended for other than personal consumption, in which event it is subject to forfeiture. R. S. 33:1-1(i) and (y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing, pursuant to R. S. 33:1-66, James Tortorice appeared and sought return of the whiskey.

Tortorice has submitted evidence which tends to establish that he is the owner of the seized whiskey. He denies that he distributed any whiskey at any polling place on that day, or that the seized whiskey was intended for that purpose. There is no evidence to the contrary. He states that he was transporting the whiskey to an address in Laurence Harbor for use at a party for election workers after the polls were closed.

Such is a personal use without any element of commerce or sale present.

While good government dictates there should not be gifts of liquor to influence or reward political activity, and under some circumstances it is a misdemeanor under the Election Laws, it does not appear to be in violation of the Alcoholic Beverage Law. See and compare Re Carone, Bulletin 51, Item 9, Re Shapiro, Bulletin 94, Item 11, Re Tice, Bulletin 145, Item 1, and Re Bolton, Bulletin 310, Item 1. The whiskey will be returned to James Tortorice.

Accordingly, it is DETERMINED and ORDERED that the 17 pint bottles and 2 - 4/5 quart bottles of whiskey be returned to James Tortorice.

Dated: June 9, 1954

WILLIAM HOWE DAVIS  
Director.

SCHEDULE "A"

- 17 - pint bottles of whiskey
- 2 - 4/5 quart bottles of whiskey

11. SEIZURE - FORFEITURE PROCEEDINGS - INTERSTATE TRANSPORTATION OF ALCOHOLIC BEVERAGES - CLAIMANT ESTABLISHED THAT ALCOHOLIC BEVERAGES WERE BEING TRANSPORTED IN CONFORMITY WITH PROVISIONS OF THIS STATE GOVERNING SUCH TRANSPORTATION - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES RETURNED TO CLAIMANT.

In the Matter of the Seizure on April 14, 1954 of a quantity of alcoholic beverages and an Oldsmobile sedan, at the 36 Mile Post on the north-bound lane of the New Jersey Turnpike, in the Township of Mount Laurel, County of Burlington and State of New Jersey. Case No. 8586 ON HEARING CONCLUSIONS AND ORDER

Estelle Gandy, Pro Se. Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and further pursuant to a stipulation dated April 22, 1954 signed by Estelle Gandy, to determine whether a quantity of taxpaid alcoholic beverages, and an Oldsmobile sedan, described in a schedule attached hereto, seized on April 14, 1954 at the 36 Mile Post on the north-bound lane of the New Jersey Turnpike, in the Township of Mount Laurel, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by a New Jersey State Trooper during the course of his routine patrol of traffic when he discovered 72 pints and 12 four-fifth quarts of alcoholic beverages in the Oldsmobile sedan. The motor vehicle was being operated by William L. Woodten. Estelle Gandy and Lawrence Gandy were passengers therein. All of these persons reside in New York City. Woodten had in his possession an appropriate invoice for the alcoholic beverages from a Washington, D. C. retail liquor dealer.

Although the transportation of the alcoholic beverages appeared otherwise to be in conformity with State Regulations No. 18, Rule 2, governing transportation of alcoholic beverages through the state, the vehicle and alcoholic beverages were taken into custody and later turned over to the Division of Alcoholic Beverage Control pending determination whether such alcoholic beverages were intended for lawful use, and could lawfully be brought into New York.

Pending hearing in the case Estelle Gandy deposited \$100.00, under protest, pursuant to R. S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the Oldsmobile sedan and thereafter obtained return of such motor vehicle. She has stipulated that such Director should determine, in the present proceedings, whether such sum should be forfeited, or returned to her.

At the seizure hearing held pursuant to R. S. 33:1-66 and such stipulation, Estelle Gandy appeared and sought return of the aforesaid deposit of \$100.00 and the alcoholic beverages.

Under the law of the State of New York a person apparently may bring alcoholic beverages into that state provided he accompanies the vehicle in which they are transported and they are for personal consumption only and not for resale. Seizure Case No. 8234, Bulletin 979, Item 2.

According to the testimony of the three persons involved, Estelle Gandy, employed as a domestic, resided with her father at

a New York address. The father died on April 4th, and his funeral was held in South Carolina on April 11th. On April 9th Estelle Gandy and five other persons, including Woodten and Lawrence Gandy, left New York in the Oldsmobile sedan to attend the funeral. Shortly before Estelle Gandy left South Carolina, there was a discussion among the relatives concerning the purchase of alcoholic beverages by her or Woodten, in Washington, where the price was cheaper, to be placed in the Oldsmobile because only three persons were coming back to New York in the car. The whiskey was to be brought to Estelle Gandy's home and used to "celebrate" the funeral, which is described as a customary gathering of friends and relatives. Various relatives contributed sums of money, which were handed to Estelle, who later turned it over to Woodten.

Estelle and her companions stayed overnight in Washington. On the morning of April 14th, Woodten purchased the alcoholic beverages from a local retail liquor dealer and they were on the way home when apprehended.

Woodten has been employed as a merchant seaman for the past five years and Lawrence Gandy is employed as a porter in an automobile accessory store. None of the persons involved appear to have any previous criminal record for violating any liquor laws.

The account given of the purchase and ultimate use of the alcoholic beverages appears to be logical, the quantity purchased does not appear to be excessive under the circumstances, and the background of the persons involved does not appear to disclose a tendency to engage in unlawful alcoholic beverage activity. I shall therefore give Estelle Gandy the benefit of the doubt, and accept her assurance that the alcoholic beverages were intended for the use she describes.

The alcoholic beverages will therefore be returned to her, and the deposit of \$100.00 will be returned to her, after deduction therefrom of the costs of the seizure and storage of the motor vehicle and alcoholic beverages. However, to insure that she reports the importation of the alcoholic beverages into New York to the appropriate liquor law enforcement agency of that state, a copy of these conclusions will be forwarded to such agency.

Accordingly, it is DETERMINED and ORDERED that the costs of the seizure and storage of the motor vehicle and alcoholic beverages be deducted from the deposit of \$100.00 and the balance returned to Estelle Gandy; and it is further

DETERMINED and ORDERED that the alcoholic beverages, more fully described in Schedule "A" attached hereto, be returned to Estelle Gandy.

WILLIAM HOWE DAVIS  
Director.

Dated: June 21, 1954.

SCHEDULE "A"

60 - pint bottles of whiskey  
12 - pint bottles of gin  
12 - 4/5 quart bottles of whiskey  
1 - Oldsmobile sedan, Engine No. G395298,  
N. Y. Reg. 3 G-9818

12. AUTOMATIC SUSPENSION - LICENSE SUSPENDED BY LOCAL ISSUING AUTHORITY - SUSPENSION LIFTED.

In the Matter of a Petition by )  
SPARKS & EARL, INC. )  
T/a NEILLEY'S )  
365 River Road )  
Clifton, N. J., )

ON PETITION  
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension of )  
Plenary Retail Consumption License )  
C-130, issued by the Municipal )  
Board of Alcoholic Beverage Control )  
of the City of Clifton. )  
-----)

Joseph N. Donatelli, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a verified petition filed herein and from the records of this Division that on March 30, 1954, William Anastos, an officer of Sparks & Earl, Inc., was fined \$100.00 and costs in the Magistrate's Court of Clifton after he pleaded non vult to a charge of selling alcoholic beverages to minors in violation of R. S. 33:1-77. Said conviction resulted in the automatic suspension of the license held by said corporation for the balance of its term. R. S. 33:1-31.1. The petition herein prays that the automatic suspension be lifted at 3:00 a.m. June 23, 1954.

It appears from the records of the Division that on April 19, 1954, the Municipal Board suspended the license of said corporation for ninety days, less five for the plea, after it had pleaded non vult in disciplinary proceedings to a charge alleging that it permitted the sale of alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20. Said suspension was imposed to commence on March 30, 1954, and to terminate at 3:00 a.m. June 23, 1954. The action of the Municipal Board was affirmed on appeal by order dated June 11, 1954. Sparks & Earl, Inc. v. Clifton.

The complaint in the criminal proceedings and the charge in the disciplinary proceedings were based upon the sale of alcoholic beverages to ten minors.

The facts of the case indicate that the suspension heretofore imposed by the Municipal Board was adequate. Hence the relief sought will be granted.

Accordingly, it is, on this 18th day of June, 1954,

ORDERED that the automatic suspension of the license held by petitioner be lifted effective at 3:00 a.m. June 23, 1954. In the meantime the statutory suspension of the license shall remain in full force and effect.

WILLIAM HOWE DAVIS  
Director.

13. ELIGIBILITY - COMMERCIALIZED GAMBLING - CRIME FOUND TO INVOLVE MORAL TURPITUDE UNDER CIRCUMSTANCES OF CASE.

June 17, 1954.

Re: Case No. 653

Applicant seeks a determination as to whether or not he is ineligible for employment by the holder of a liquor license in New Jersey by reason of his conviction of crime.

In August 1953, applicant was arrested and charged with violation of N. J. S. 2A:121-3. At the time of his arrest he possessed "numbers slips" and money derived from the sale thereof. He admitted that he had been engaged in "writing numbers" for seven months as a principal. Subsequently, on October 29, 1953, applicant was found guilty and was sentenced to a term of 1 to 2 years in State Prison and fined \$500.00. The prison sentence was suspended upon payment of the fine and applicant was placed on probation for 1 year.

It has uniformly been held that one who has been convicted of commercialized gambling as a principal has been convicted of crime involving moral turpitude. Re Cottman, Bulletin 987, Item 1; Re Homestead Inn, Bulletin 989, Item 3.

I recommend, therefore, that applicant be advised that, in the opinion of the Director, he has been convicted of crime involving moral turpitude, and that any licensee who employs him or permits him to be connected in any business capacity with his licensed premises would subject his license to suspension or revocation. R. S. 33:1-25, 26. I further recommend that applicant also be informed that, because of his conviction in 1953, he is ineligible for relief by way of removal of disqualification under R. S. 33:1-31.2 until after October 29, 1958.

Anthony Meyer, Jr.  
Attorney.

APPROVED:  
WILLIAM HOWE DAVIS  
Director.

14. DISCIPLINARY PROCEEDINGS -- MISLABELED BEER TAP -- LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA

In the Matter of Disciplinary Proceedings against

PETER CHARLES BILLINGS  
T/a WHITE LAKE INN  
At Squires Corner on the  
Blairstown Stillwater Road  
Hardwick Township  
P.O. Blairstown R.D. 2, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Hardwick.

VanHorn & VanHorn, Esqs., Attorneys for Defendant-licensee.  
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he allowed, permitted and suffered a mislabeled beer tap on his licensed premises, in violation of Rule 26 of State Regulations No. 20.

The file herein discloses that on May 6, 1954, during the course of a routine inspection, an ABC agent found a barrel of Stegmaier's Bock beer connected to a tap which bore the name "Ballantine."

Defendant has no prior adjudicated record. I shall suspend defendant's license for three days. One day will be remitted for the plea entered herein, leaving a net suspension of two days. Re Palchik, Bulletin 980, Item 6.

Accordingly, it is, on this 21st day of June, 1954,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Hardwick to Peter Charles Billings, t/a White Lake Inn, for premises At Squires Corner on the Blairstown Stillwater Road, Hardwick Township, be and the same is hereby suspended for two (2) days, commencing at 7:00 a.m. June 28, 1954, and terminating at 7:00 a.m. June 30, 1954.

William Howe Davis  
Director.