

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

BULLETIN 589

OCTOBER 18, 1943.

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

BULLETIN 589

OCTOBER 18, 1943.

1. COURT DECISIONS - NEW JERSEY COURT OF ERRORS AND APPEALS - GRANT LUNCH CORPORATION v. ALFRED E. DRISCOLL, COMMISSIONER - COMMISSIONER SUSTAINED.

10712 May Term, 1943 No. 19

NEW JERSEY COURT OF ERRORS
AND APPEALS

No. 19 May Term, 1943

GRANT LUNCH CORPORATION,)
Appellant,)
-vs-)
ALFRED E. DRISCOLL,)
Commissioner, etc.,)
Respondent)
-----)

Appeal from Supreme Court.

Per Curiam.

The judgment under review herein should be affirmed for the reasons expressed in the opinion delivered by Mr. Justice Case in the Supreme Court, reported at 129 N. J. L. 408.

Endorsed:

"FILED SEP 16, 1943
J. A. BROPHY,
CLERK."

2. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED BY MUNICIPAL ISSUING AUTHORITY FOR A PERIOD OF TEN DAYS, LESS 5 FOR GUILTY PLEA - PREMISES CLOSED FOR SEVEN DAYS - APPLICATION TO LIFT GRANTED.

In the Matter of Petition by)
ISAAC KERENSKY,)
T/a CONGRESS INN)
512 Grammercy Place)
Atlantic City, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

To lift the Automatic Suspension of Plenary Retail Consumption License C-19 issued by the Board of Commissioners of the City of Atlantic City.
-----)

Paul M. Salsburg, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from petition filed herein that on October 1, 1943 the licensee pleaded guilty in the Court of Quarter Sessions, Atlantic County, to an indictment alleging that he had sold alcoholic beverages to minors and that he has paid the fine of \$100.00 imposed as a result of said conviction. Because of said conviction petitioner's license was automatically suspended for the balance of its term and was picked up by an investigator of this Department on October 2, 1943. See R. S. 33:1-31.1.

It further appears from the petition that the Board of Commissioners of the City of Atlantic City, on October 7, 1943, suspended petitioner's license for a period of ten days, less five for a guilty plea, effective retroactively from October 2, 1943, at 10:00 A. M., to October 7, 1943, at 10:00 A.M., after the licensee, in disciplinary proceedings instituted by said Board, had pleaded guilty to charges of selling alcoholic beverages to minors.

The petitioner herein prays that the automatic suspension of his license be lifted by the Commissioner.

The indictment in the criminal proceeding and the charges in the disciplinary proceedings were based upon the same facts. This case concerns the sale of a glass of alcoholic beverages to a girl nineteen years of age and two boys each seventeen 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. Cf. Re Solitare, Bulletin 538, Item 4. Petitioner has no previous record. Under all the circumstances, I shall lift the suspension on October 9, 1943, at 10:00 A.M., at which time seven (7) days of the suspension will have been served.

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

ORDERED, that the automatic suspension of License C-19, held by Isaac Kerensky, t/a Congress Inn, for premises 512 Grammercy Place, Atlantic City, be lifted at 10:00 A.M. on Saturday, October 9, 1943. The license may be returned to the licensee at that time.

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - INDIAN POND TAVERN INC. v. UNION CITY.

INDIAN POND TAVERN INC.,)
 Appellant,)
 -vs-)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF UNION CITY,)
 Respondent)
 -----)

ON APPEAL
CONCLUSIONS AND ORDER

Louis Steisel, Esq., Attorney for Appellant.
Cyril J. McCauley, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from the revocation of the plenary retail consumption license issued to appellant for premises 301 - 33rd Street, Union City, for the present fiscal year. My decision is based upon the record of the testimony and exhibits presented at the appeal hearing.

Respondent alleges in its answer to the petition of appeal that it revoked appellant's license because the "licensee permitted a prostitute in and upon the licensed premises, that licensee permitted the licensed premises to be conducted in such a manner as to become a nuisance, and that licensee permitted a female to attend in said licensed premises and solicit customers to purchase drinks or make assignations for improper purposes."

The appellant contends, in substance, that the evidence is insufficient to sustain respondent's action in revoking the license. The respondent produced the testimony of two women, who were frequenters of appellant's tavern. Both stated that they were introduced to male patrons of the tavern by the manager, who is the husband of appellant's President, and who also acts as bartender. These male patrons purchased drinks for the women and, on occasion, solicited them for the purpose of sexual intercourse. Although the illicit relations did not actually take place at the licensed premises, I am satisfied from the evidence that the manager knew that arrangements for immoral purposes were made at the tavern, and that, moreover, he encouraged the practice. One of the women testified that, whenever she left the tavern in the company of a male customer, the manager invariably, on the occasion of her next visit to the tavern, would ask her either directly or indirectly whether she had had improper relations with the customer. In further aggravation of this reprehensible conduct, it also appears that this woman is a minor, aged eighteen years, and although the manager testified that he questioned her twice concerning her age, he nevertheless continued to serve her alcoholic beverages and permitted others to purchase liquor for her at the tavern.

Several nearby residents testified that immoral and obscene acts occurred in automobiles parked outside the tavern, and in the rear yard of the tavern. They further stated that, especially on weekends, the noise from the automatic phonograph and the loud singing and shouting of the patrons kept them awake until the early hours of the morning.

A careful review of the entire record in this case can lead to but one conclusion, namely, that the testimony amply supports the grounds upon which respondent revoked appellant's license and that the penalty imposed is commensurate with the seriousness of the violations committed by appellant.

The action of respondent is, therefore, affirmed.

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

ORDERED, that respondent's action in revoking the Plenary Retail Consumption License of Indian Pond Tavern Inc. for premises 301 - 33rd Street, Union City, for the present fiscal year, be and the same is hereby affirmed.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSON ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - 40 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

VINCENT T. SACCO)
T/a CRYSTAL CLUB)
112 Monmouth Street)
Red Bank, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-21 for period 1942-43, and now holder of Plenary Retail Consumption License C-21 for the current period (1943-44), issued by the Mayor and Council of the Borough of Red Bank.)

Quinn & Doremus, Esqs., by Vincent K. McCue, Esq., Attorney for Licensee.

William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded not guilty to a charge alleging that he sold, allowed and permitted the sale of alcoholic beverages to Technical Sergeant Peter _____, who was at the time actually and apparently intoxicated, and that he permitted the consumption of these beverages by the Sergeant, in violation of Rule 1 of State Regulations No. 20.

The testimony presented was in some respects in sharp conflict. After having carefully studied the transcript, I am convinced that alcoholic beverages were sold and served to the Sergeant by the licensee's agent and that he was permitted to consume the same by the licensee at a time when he was actually and apparently intoxicated.

Rule 1 of State Regulations No. 20 provides as follows:

"No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises." (Underscoring ours.)

In reaching my decision I have been particularly impressed by the testimony of four witnesses, namely, Messrs. Gallagher and Parker, and Investigators Penn and Kingsley.

When the Sergeant entered defendant's premises he was apparently sober. As a result of the drinks which he consumed while on the licensed premises, his condition changed from one of apparent sobriety to one of apparent intoxication. On leaving the premises he required assistance. When he returned to his camp he was examined and pronounced intoxicated. By way of explanation, the licensee states that he was of the opinion that the soldier had been taken sick and that in any event he had ordered his bartender not to serve him any further alcoholic beverages. The licensee's injunction to the bartender, however, came too late to prevent a serious violation of the regulations.

It is a reprehensible practice for any licensee to sell alcoholic beverages to anyone, be he a civilian or a man in uniform, when that person is actually or apparently intoxicated. It is dangerous to the safety of our country and the mission of our armed forces to serve a man in uniform who has already had enough. The members of our armed forces who are stationed in New Jersey are subject to the call of duty on a moment's notice. It is, therefore, essential that they be, at all times, in such condition that they can normally perform the duties for which they are now training. It is, therefore, incumbent upon our citizens, be they licensees, bartenders or members of the general public, to cooperate with the officers of our various Services to the end that their men may be returned to their posts in proper condition.

Accordingly, I find the licensee guilty as charged. I have, after considering all of the facts, come to the conclusion the license should be suspended for a period of forty days.

Although this proceeding was instituted during the license period ending June 30, 1943, it does not abate, but remains fully operative against the defendant's renewed license for the current 1943-44 period. State Regulations No. 15.

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

ORDERED, that Plenary Retail Consumption License C-21, held by Vincent T. Sacco, t/a Crystal Club, for premises at 112 Monmouth Street, Red Bank, be and the same is hereby suspended for a period of forty (40) days, commencing at 2:00 A.M. Wednesday, October 13, 1943, and terminating at 2:00 A.M. Monday, November 22, 1943.

ALFRED E. DRISCOLL
Commissioner.

5. COURT DECISIONS - NEW JERSEY SUPREME COURT- CINO AND MESSINA v. ALFRED E. DRISCOLL, COMMISSIONER - CASE REMANDED FOR REHEARING.

ORTENZIO CINO and THOMAS)
MESSINA, trading as "T" BAR)
AND GRILL,)

NEW JERSEY SUPREME COURT
NO. 224 MAY TERM 1943.

Prosecutors,)

-vs-)

ALFRED E. DRISCOLL, Commissioner)
of the State Department of Alco-)
holic Beverage Control of the)
State of New Jersey,)

Respondent)

Argued May 5, 1943; decided September 27, 1943.

On certiorari.

Before Justices Parker, Heher and Perskie.

For prosecutors; Harold Simandl.

For respondent; Clarence Kremer.

The opinion of the court was delivered by

PERSKIE, J. This case presents for review prosecutors' challenge of the affirmance, by the State Commissioner of Alcoholic Beverage Control, of the temporary suspension of their plenary retail consumption license to sell alcoholic beverages. N.J.S.A. 33:1-31.

The basic question for decision is whether the Commissioner (N.J.S.A. 33:1-3) in the discharge of his duty "to hear and conduct" and "to render a decision" on prosecutors' appeal (N.J.S.A. 33:1-38) was obliged, as urged, to hear the testimony de novo, or whether he could legally use, as he did, a verified transcript of the testimony upon which the local issuing authority based the challenged temporary suspension.

Prosecutors are the holders of a plenary retail consumption license to sell alcoholic beverages on their premises at 257 Market Street, Newark, N. J. N.J.S.A. 33:1-12. They were tried and convicted by the Municipal Board of Alcoholic Beverage Control, hereafter referred to as Newark Board, on a complaint which, among other things, charged that, on August 4, 1942, prosecutors did sell for consumption on their licensed premises, alcoholic beverages to Leonard Zaleski and John Joseph Makowski, minors, in violation of Rule No. 1, of Regulations No. 20, of the Department of Alcoholic Beverage Control, adopted in 1933 and prohibiting the sale and consumption of alcoholic beverages on licensed premises "to any person under the age of twenty-one years," and also in violation of N.J.S.A. 33:1-77, as amended and approved in 1939 and providing, subject to defenses not here raised, that "any person who sells alcoholic beverage to a minor shall be guilty of a misdemeanor." The Newark Board suspended prosecutors' license for twenty-five days.

In due season and in accordance with the Regulations for appeals prescribed by the Alcoholic Beverage Control, prosecutors appealed to the Commissioner who continued the statutory stay of their suspension. N.J.S.A. 33:1-31.

In their petition of appeal, prosecutors alleged, among other things, that the action of the Newark Board was erroneous in that it "was contrary to the weight of the evidence." Be that as it may, it is clear that prosecutors did not agree to present their appeal to the Commissioner either upon an agreed statement of facts or upon an available stenographic transcript of the proceedings before the Newark Board. Rule 8 of Regulations No. 14.

Concededly, the Commissioner did not take testimony de novo on the merits of the charges. Without notice to counsel for prosecutors, the Commissioner, in pursuance of Rule 14 of Regulations No. 14, "relaxed or dispensed" his rules for this appeal (cf. *Ogden v. Robertson*, 15 N.J.L. 124, 126, as to the suggested impropriety for so doing) and, over objection, he used the testimony given by the minors at the hearing before the Newark Board. This testimony admittedly formed the basis for the suspension by the Newark Board. Additionally, and over further objections, the Commissioner used police teletype messages as to the whereabouts of the minors and also used ex parte affidavits of the minors which had been admitted for prosecutors for the limited purpose of identifying signatures thereto. On the proofs so used, the Commissioner affirmed the action of the Newark Board. Thereafter, on application, he continued the stay of the suspension pending application for a writ of certiorari which was granted with a continuance of the stay.

We think that the Commissioner fell into reversible error.

1. The meaning of the word "appeal" in its "original and strictly technical sense" was a proceeding which was introduced into equity practice from the "civil law" and "by which the whole cause was removed from a lower to an appellate court" and was there tried "de novo" upon evidence newly introduced. Today, it may be "similarly" used in law cases. It has become "a term of general application in the law." It is a term which has "various meanings in different jurisdictions and circumstances." Its meaning depends upon the "statutory provisions relating to appellate procedure and the different senses in which the word 'appeal' is used therein." Cf. 4 C.J.S. Appeal and Error, sec. 17, p. 79, 3 C.J. sec. 28, p. 314.

The asserted obligation on the part of the Commissioner to have taken testimony de novo must therefore be found in the statute, i.e., the Alcoholic Beverage Law (N.J.S.A. 33:1-1, et seq.), or it does not exist. Cf. 5 C.J.S. Appeal and Error, sec. 1525, p. 246, 4 C.J. sec. 2646, p. 726, *Valentino v. Bird*, 57 N.J.L. 538, 21 A. 606, *Feeney v. Rueger*, 57 N.J.L. 356, 31 A. 217. True, this statute does not expressly provide that the hearing of the appeal by the Commissioner shall be a hearing on testimony de novo, nor does it expressly provide that the hearing of the appeal by the Commissioner shall be, for example, as it is on appeal from the Bureau to the Pleas under our Workmen's Compensation Act (P.L. 1921, c. 229, p. 731, 734, 735), a trial de novo merely in the sense of "providing a new mind for the consideration of the testimony adduced." Cf. *Charlock v. M.W. Kellogg Co.*, 4 N.J. Misc. R. 260, 132 A. 297; *Sweigard v. Richards*, 118 N.J.L. 394, 193 A. 188; *Calicchio v. Jersey City Stock Yards Co.*, 125 N.J.L. 112, 116, 14 A. 2d. 465. But it is also true that a statute "often speaks as plainly by inference, and by means of the purpose that underlies it, as in any other manner." And "that which is clearly implied is as much a part of the law as that which is expressed." Cf. *Brandon v. Montclair*, 124 N.J.L. 135, 11 A. 2d. 304, aff. 125 N.J.L. 367, 15 A. 2d. 598; *Kobylarz v. Mercer*, 130 N.J.L. 44, 52, 31 A. 2d. 208.

A reading of our Alcoholic Beverage Law discloses that our legislature vested plenary, original and appellate power in the Commissioner "to supervise", inter alia, the sale of alcoholic beverages in such a manner as "to promote temperance and eliminate the racketeer and bootlegger." N.J.S.A. 33:1-3.

For enumerated causes, the Commissioner may, on hearing and notice, suspend or revoke any license whether issued by him or by any other issuing authority. N.J.S.A. 33:1-31. In such a proceeding, as in every other proceeding authorized by the statute, or appropriate for its enforcement (N.J.S.A. 33:1-35), the Commissioner "may examine, under oath, any and all persons whatsoever", compel by "subpoena the attendance of witnesses", and "production of books, records", etc. Such powers are, "in our ordinary tribunals deemed essential to the ascertainment of truth." Cf. VanEmburch v. Paterson &c. Trenton Co., 70 N.J.L. 668, 670, 59 A. 461. The Commissioner is given the power "to establish procedure and rules" relating to appeals. N.J.S.A. 33:1-38. These and other powers vested in the Commissioner by the statute clearly bespeak the legislative mind to concentrate the responsibility of attaining the expressed objectives of the statute in one of its own choosing. It is the duty of the Commissioner to hear, conduct and decide appeals. We construe that duty, in the circumstances exhibited, to mean that the Commissioner is obliged to conduct a hearing on testimony de novo as if that obligation had been expressly stated in the statute. That this is so finds persuasive expression in the rules of the Department of Alcoholic Beverage Control pertaining to appeals heard, conducted and decided by the Commissioner.

We are told and this is not denied that these rules, presently in force, were promulgated by the first Commissioner who was elected by a joint session of the legislature contemporaneously with the creation of the Department of Alcoholic Control. P.L. 1933, c. 436, p. 1180, now N.J.S.A. 33:1-3. The following are some of the applicable rules:

"Regulations No. 14. Appeals"

"6. All appeals shall be heard de novo, and the parties may introduce oral testimony and documentary evidence, but the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed, shall rest with the appellant."

"8. Where none of the material facts is disputed, or where there is available a stenographic transcript of the proceedings before the issuing authority, the parties may agree to present the appeal upon an agreed statement of facts or upon such stenographic transcript. Subject to the approval of the Commissioner, the agreed statement of facts or the stenographic transcript may be filed with the Commissioner at any time prior to the time fixed for the hearing of the appeal, in lieu of a hearing of the appeal."

"14. The rules herein contained shall be considered as general rules governing the conduct of appeals, and since they are designed to facilitate the hearing of appeals and advance justice, they may be relaxed or dispensed with by the Commissioner in any case where a strict adherence to them will result in injustice."

It is not a good answer to say, as it is said for the Commissioner, that the "purpose" of rule 6, supra, was "to hear testimony

anew only where the possibilities for taking testimony before some of the municipal boards were not available so that a proper record could be prepared" and since here there was a proper record of the "entire proceedings before the issuing authority" there was no need for the taking of the testimony de novo. That answer begs the question. The Commissioner either did or did not have the power to promulgate the stated rules. We hold that he did have the power. N.J.S.A. 33:1-38, 33:1-39. And having exercised that power these rules have the force and effect of law. Cf. Franklin Stores Co. v. Burnett, 120 N.J.L. 596, 1 A. 2d. 25; Gaine v. Burnett, 122 N.J.L. 39, 4A 2d. 37, aff. 123 N.J.L. 317, 8A. 2d. 604; Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408, 410, 29A 2d. 888, aff. ___ N.J.L. ___, ___ A. 2d. ___; State v. Elliott, 129 N.J.L. 169, 170, 28A. 2d. 597.

Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Comm., 127 N.J.L. 329, 22A. 2d. 523. The contemporaneous construction thus given to a law of the state for over a decade is necessarily respected by us. State v. Kelsey, 44 N.J.L. 1; Graves v. State, 45 Id. 203, aff. Id. 347; Central R.R. Co. v. Thayer Martin, 114 N.J.L. 69, 80, 175 A. 637; Burlington County v. Martin, 128 N.J.L. 92, 28A. 2d. 116; Martini v. Civil Service Comm., 129 N.J.L. 599, 603, 30A. 2d. 569.

2. No proper foundation was otherwise laid for the use of the testimony of the minors before the Newark Board. There is no suggestion that the minors were dead. N.J.S.A. 2:97-15. The Commissioner used Exhibits R-3 and R-4. Exhibit R-3 is a teletype message sent by the Newark Police Department to the State Police of Dickson City, Pennsylvania, asking the latter to check and ascertain if the minors were at their alleged home in Dickson City. Exhibit R-4 was a teletype reply message stating that Makowski was in the United States Army and that Zaleski was unknown in the city and no such street as named (wrong name of street was given) was located in the City of Dickson. These messages were hearsay. Their use was clearly improper. The justification for the use of testimony given at a former trial was not established. See Birney v. Mitchell, 34 N.J.L. 337, 341; N.Y.L.E. & W.R.R. Co. v. Haring, 47 N.J.L. 137, 139.

3. The affidavits of the minors, as already observed, were offered for a limited purpose. While it is true that by these affidavits each minor cast grave doubt upon his former identification of prosecutors' place of business and of their bartender who allegedly sold them the liquor as charged, it is also true that prosecutors were entitled, as a matter of right, on this sharply disputed issue, "to the ordinary and reasonable opportunity of the cross examination" of the minors. Prout v. Bernards Land & Sand Co., 77 N.J.L. 719, 73 A. 486, 25 L.R.A. (N.S.) 683; Test v. Test, 131 N.J.Eq. 197, 24A. 2d. 226.

4. Neither prosecutors' tenuous legal status as licensees to sell alcoholic beverages (Meehan v. Excise Commission, 73 N.J.L. 382, 286, 64A. 689, aff. 75 N.J.L. 557, 70 A. 363; Franklin Stores Co. v. Burnett, supra, p. 598; Grant Lunch Corp. v. Driscoll, supra, p. 410), nor the character of the proceeding, be it quasi-judicial (Balling v. Elizabeth, 79 N.J.L. 197, 199, 74 A. 277), or administrative (Morgan v. United States, 298 U. S. 468, 30 L. ed. 1288; Morgan v. United States, 304 U.S. 1, 82 L. ed. 1129), could operate to deprive the prosecutors from a hearing of their appeal under the Alcoholic Beverage Law in accordance with the fundamental judicial requirements of "fair play." Cf. Redcay v. Board of Education, 128 N.J.L. 281, 284, 25 A. 2d. 632.

Without the improper use of the stated proofs, there was no other competent proof necessary to support the result reached by the Commissioner. Cf. *Friese v. Nagle Packing Co.*, 110 N.J.L. 58, 166 A. 307.

The order of the Commissioner affirming the suspension is reversed. The cause is remanded to the Commissioner who shall hear the appeal consistently with this opinion. No costs are allowed.

A true copy
James J. Gavin,
Clerk.

6. ELIGIBILITY - FACTS EXAMINED - CRIME OF ATROCIOUS ASSAULT AND BATTERY FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS NOT ELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

October 11, 1943

Re: Case No. 512

This is a proceeding to determine subject's eligibility to work for the holder of a New Jersey liquor license.

On January 18, 1940 subject was convicted on a charge of atrocious assault and battery and sentenced to serve two to three years in a State prison. It appears that, during a brawl in a tavern, subject cut several of the participants with a knife. He was paroled on July 21, 1941. The crime in question involves moral turpitude. Re Case No. 474, Bulletin 543, Item 10.

It is recommended that subject be advised that he is ineligible to be employed by the holder of a New Jersey liquor license.

In view of the fact that the statutory five years have not elapsed since his conviction, subject cannot apply for the removal of his disqualification until after July 21, 1946. R.S. 33:1-31.2.

Gaylord R. Hawkins,
Attorney.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING EXERCISE OF THE RIGHTS AND PRIVILEGES OF A LICENSE IN VIOLATION OF R. S. 33:1-26; FALSE ANSWER IN LICENSE APPLICATION; FAILURE TO REPORT CHANGE IN FACTS AS REQUIRED BY R. S. 33:1-34; PERMITTING KNOWN PROSTITUTE ON LICENSED PREMISES IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20; PERMITTING IMMORAL ACTIVITIES ON LICENSED PREMISES IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20; PERMITTING A FEMALE EMPLOYED ON THE LICENSED PREMISES TO ACCEPT BEVERAGES IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20; SALE OF ALCOHOLIC BEVERAGES TO A MINOR IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20; SALE OF ALCOHOLIC BEVERAGES TO A PERSON ACTUALLY OR APPARENTLY INTOXICATED; DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary)
 Proceedings against)

REBECCA HECK)
 19 S. Egg Harbor Road)
 Hammonton, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-17 for fiscal year)
 1941-42, and holder of Plenary)
 Retail Consumption License C-15 for)
 fiscal year 1942-43, issued by the)
 Town Council of the Town of)
 Hammonton.)
 - - - - -)

Paul M. Salsburg, Esq., Attorney for Defendant-Licensee.
 William F. Wood, Esq., Attorney for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. From on or about May 5, 1941 to and including June 15, 1941, you, not being the licensee, exercised, attempted to exercise and held yourself out as authorized to exercise the rights and privileges of Plenary Retail Consumption License C-21 for the year 1940-41 issued for premises 19 So. Egg Harbor Road, Hammonton, New Jersey, by the Town Council of the Town of Hammonton, to Roy Henderson, your predecessor in interest, in violation of R. S. 33:1-26.

"2. In your application for license dated June 16, 1941, filed with the Town Council of the Town of Hammonton, upon which Plenary Retail Consumption License C-17 for the current year was granted, you falsely stated 'No' in answer to Question 41 therein, which asks, 'Has applicant received any loan of money (excluding ordinary credit), directly or indirectly from any.....wholesale liquor concern or any person connected therewith in any capacity whatsoever?', whereas in truth and fact on or about May 5, 1941 you had received directly and indirectly a loan of seventy dollars from Remo Farinelli, holder of a state beverage distributor's license; said false statement being in violation of R. S. 33:1-25.

"3. You failed, within ten days after the occurrence thereof, to file with the Hammonton Town Council, written notice of a change in the facts set forth in your aforesaid application

for license by reason of the receipt by you on or about July 1, 1941 of a loan of \$300.00 directly and indirectly from Remo Farinelli, the holder of a state beverage distributor's license; said failure being in violation of R. S. 33:1-34.

"4. On or about the date last aforesaid and on divers days prior thereto, you allowed, permitted and suffered Rovena Hatcher, a known prostitute and person of ill repute, in and upon your licensed premises, in violation of Rule 4 of State Regulations No. 20.

"5. On or about the date last aforesaid you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises and allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance in that you allowed, permitted and suffered said Rovena Hatcher, female employed on your licensed premises, to solicit a male patron for the purpose of prostitution and allowed, permitted and suffered said Rovena Hatcher to rob and pick the pockets of a patron in your licensed premises while said patron was in an intoxicated stupor, in violation of Rule 5 of State Regulations No. 20.

"6. On or about the date last aforesaid and on divers days prior thereto, you allowed, permitted and suffered a female employed on your licensed premises to accept beverages at the expense of and as a gift from customers and patrons, in violation of Rule 22 of State Regulations No. 20.

"7. On or about the date last aforesaid and on divers days prior thereto you sold alcoholic beverages to Rovena Hatcher, a minor, in violation of R. S. 33:1-77.

"8. On or about the date last aforesaid and on divers days prior thereto you sold, served, delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Rovena Hatcher, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by said person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"9. On or about the date last aforesaid you sold, served, delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to a person actually and apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such a person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"10. On or about the date last aforesaid and on divers days prior thereto you sold alcoholic beverages and possessed such beverages with intent to sell the same not pursuant to and within the terms of your plenary retail consumption license in that you sold alcoholic beverages on the floor above your licensed premises, which floor is off your licensed premises; said sale and possession being in violation of R. S. 33:1-2."

As to charge (1): Defendant has owned the Hammonton Hotel, located at 19 S. Egg Harbor Road, Hammonton, for more than thirty-eight years. In June 1940 she entered into a written lease with one Roy Henderson whereby she leased the entire premises to him.

Henderson obtained a plenary retail consumption license for said premises for the fiscal year 1940-41 and began to operate thereunder on July 1, 1940. He was not successful. He failed to pay the rent as it became due after January 1, 1941. In May 1941 he entered into some arrangement with Joseph Heck, son of defendant, not clearly explained in the testimony. At one point Joseph Heck testified that Henderson told him he could operate the place under his license for a consideration of the back bills due defendant, and in another place he testified that Henderson permitted him to work there and to apply the proceeds of the liquor business against the indebtedness due to defendant for rent. In any event, the license remained in the name of Roy Henderson until June 16, 1941, when, after unsuccessful efforts to obtain a release from liability under the lease, he removed the license certificate from the premises and surrendered it to the Town Clerk. No licensed business was conducted at the hotel from June 16, 1941 to June 30, 1941. On July 1, 1941 Rebecca Heck obtained a license for "1 room on first floor and basement" of the hotel. She operated under that license during the fiscal year 1941-42. She renewed her license for the following fiscal year.

Remo Farinelli, t/a Hammonton Bottling Co., holder of a State Beverage Distributor's license, carried an account on his books under the name of "Hammonton Hotel." His records show that alcoholic beverages were sold and charged to this account between March 2, 1941 and June 15, 1941. The account shows an entry as follows: "May 3 - Pd. in full - \$18.50." There is also evidence that, on May 5, 1941, a delivery to the licensed premises was receipted for by Joseph Heck. Farinelli testified at the hearing that on all sales made before June 15, 1941, he never intended to sell to anybody other than Roy Henderson; that Henderson was the licensee and that he knew Henderson was responsible for all sales made before that date. He admitted that Henderson had paid the "Hammonton Hotel" account in full on May 3, 1941 and testified that thereafter payments were made on delivery.

There is a close question in this case as to whether Henderson farmed out his license or merely employed Joseph Heck as his agent to conduct the business. However, in view of the fact that Henderson permitted the licensed premises to be conducted under his license until the date of its surrender, I conclude that Joseph Heck was acting as his agent and that the deliveries were made by Farinelli to Joseph Heck as agent for Roy Henderson. Hence I shall dismiss the first charge.

As to charge (2): It is admitted that on or about May 5, 1941 Remo Farinelli loaned \$70.00 in cash to Joseph Heck. Farinelli testified that this was a personal loan made to Joseph Heck, whom he had known for fifteen years. The money was subsequently used to pay a deposit to the Gas and Electric Companies which serviced the Hammonton Hotel. Since I have found that Roy Henderson was the licensee on May 5, 1941 and until June 16, 1941, it follows that the loan was not made, directly or indirectly, to a licensee, and hence the answer to Question 41 was correct. The second charge is dismissed.

As to charge (3): This charge is based upon a statement made to our investigators by Rebecca Heck on March 24, 1942 containing the following:

"Q Did you ever have any money dealings with Mr. Remo Farinelli, the State Beverage Distributor, or your beer man?

"A He was very kind to us when we first started and we were short of money. On July 1, 1941 he loaned us the money, \$300.00 to put up for our present license, this money I paid back to Mr. Farinelli and the whole thing is paid now."

Subsequently she denied to our investigators that any such loan was made and later told them that her original story was true.

At the hearing herein, Rebecca Heck, Joseph Heck and Remo Farinelli all denied under oath that there had ever been any loan made by Farinelli to either defendant or her son except the \$70.00 loan previously referred to. Defendant and her son testified that the \$300.00 license fee for the 1941-42 license was paid out of money received from her son, who was then employed in a shipyard. While the original statement made by defendant raises grave suspicion, I shall accept their sworn testimony and dismiss charge (3).

As to charges (4), (5), (6), (7), (8) and (9): These charges arose from a complaint by Julius Bulovas that he had been served drinks on the licensed premises while he was intoxicated and that money had then been stolen from him on the premises by Rovena Hatcher, an alleged minor. At the hearing Bulovas testified that on March 13, 1942 he, Rovena Hatcher and Joseph Heck had some drinks at defendant's premises; that they left and went to Ronchetti's, where Bulovas became intoxicated; that they returned to Heck's, where Bulovas and Rovena had additional drinks, after which he fell asleep. It appears that after Bulovas awoke he found his money gone, accused Rovena of stealing his money and had her arrested. Subsequently she admitted that she had taken his money and returned some of it.

Joseph Heck testified that, when they returned from Ronchetti's, Bulovas was intoxicated but swore that no drinks were served to Bulovas after his return to the licensed premises. He denied that he knew anything about the stolen money until the following morning.

From the evidence presented, there is not much doubt in my mind that Rovena was a prostitute and person of ill repute. Defendant and her son, however, both deny that they had any reason to know her true character. They say she registered at the hotel on December 17, 1941 under the name of "Mrs. J. D. Wilkins, Rocky Mount, N.C." and that she was never employed on the licensed premises. Rovena has left the State of New Jersey and cannot be found. See Re Ronchetti, Bulletin 519, Item 3.

On the evidence presented, I conclude that the Department has failed to establish that the licensee or her agents had any knowledge or reason to believe that the girl was a known prostitute or person of ill repute. Re Foster and Clauss, Bulletin 248, Item 4. It has likewise failed to establish that she was an employee or a minor, or that she solicited or was permitted to rob a patron. The uncorroborated testimony of Bulovas that he was served after he returned to the premises in an intoxicated condition is denied under oath by defendant's son. It may well be that defendant is escaping punishment solely because the disappearance of the girl has prevented disclosure of the full facts in the case. Nevertheless I am required to decide cases upon the evidence presented, and hence must dismiss charges (4), (5), (6), (7), (8) and (9).

No evidence was presented as to charge (10) and defendant and her son denied that any alcoholic beverages were ever sold except in the barroom. This charge must also be dismissed.

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

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

ALFRED E. DRISCOLL
Commissioner.

- 8. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING THE SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF R. S. 33:1-2 AND AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF A LICENSE IN VIOLATION OF R. S. 33:1-52, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

REMO FARINELLI)
T/a HAMMONTON BOTTLING CO.)
209-211 E. Orchard Street)
Hammonton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of State Beverage Distributor's License SBD-105 for fiscal year 1941-42, and holder of State Beverage Distributor's License SBD-105 for fiscal year 1942-43, issued by the State Commissioner of Alcoholic Beverage Control.)
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L. Scott Cherchesky, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. From on or about May 5, 1941 until June 15, 1941 you sold alcoholic beverages and possessed such beverages with intent to sell the same not pursuant to and within the terms of your State beverage distributor's license in that you sold alcoholic beverages to Rebecca Heck, a non-licensee, for other than personal consumption in her home; said sale and possession being in violation of R. S. 33:1-2.

"2. On or about the dates aforesaid you knowingly aided and abetted Rebecca Heck to sell alcoholic beverages without a license contrary to R. S. 33:1-50, in that you sold alcoholic beverages to said Rebecca Heck for resale; in violation of R. S. 33:1-52.

"3. On or about May 5, 1941 and July 1, 1941 you, a wholesaler of alcoholic beverages, were directly and indirectly interested in the retailing of alcoholic beverages not pursuant to and within the terms of your state beverage distributor's license, in that you made loans of seventy dollars and three hundred dollars on the dates aforesaid to Rebecca Heck, a retailer of alcoholic beverages; said interest being in violation of R. S. 33:1-43."

The facts concerning the alleged violations are fully set forth in Re Heck, Bulletin 589, Item 7, decided herewith. It is unnecessary to repeat the facts and conclusions therein set forth. I find defendant not guilty as to each charge.

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

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

Alfred E. Biswell
Commissioner.