

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

BULLETIN 510

MAY 20, 1942.

1. NEW LEGISLATION - SECTION 33:1-10 OF THE REVISED STATUTES AMENDED - LIMITED DISTILLERY LICENSE FEE INCREASED FROM \$1,000.00 TO \$1,500.00 - PLENARY DISTILLERY LICENSE FEE DECREASED FROM \$7,500.00 TO \$5,000.00 - WINE CONTAINERS TO HAVE ATTACHED THERETO LABEL SETTING FORTH SUCH INFORMATION AS SHALL BE REQUIRED BY RULES AND REGULATIONS PROMULGATED BY THE COMMISSIONER.

Assembly Bill No. 342 was approved by Governor Edison on May 6, 1942, and thereupon became Chapter 154 of the Laws of 1942. It was effective immediately.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-10 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-10 of the Revised Statutes is amended to read as follows:

"33:1-10. Class A licenses shall be subdivided and classified as follows:

"Plenary brewery license. 1a. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be four thousand dollars (\$4,000.00).

"Limited brewery license. 1b. The holder of this license shall be entitled, subject to rules and regulations, to brew any malt alcoholic beverages in a quantity to be expressed in said license, dependent upon the following fees and not in excess of three hundred thousand barrels of thirty-one fluid gallons capacity per year and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be graduated as follows: To so brew not more than fifty thousand barrels of thirty-one fluid gallons capacity per annum, five hundred dollars (\$500.00); to so brew not more than one hundred thousand barrels of thirty-one fluid gallons capacity per annum, one thousand dollars (\$1,000.00); to so brew not more than two hundred thousand barrels of thirty-one fluid gallons capacity per annum, two thousand dollars (\$2,000.00); to so brew not more than three hundred thousand barrels of thirty-one fluid gallons capacity per annum, three thousand dollars (\$3,000.00).

"Plenary winery license. 2a. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any fermented wines, and to blend, fortify and treat wines, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter and to churches for religious purposes, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be five hundred dollars (\$500.00). Upon the payment of an additional fee of one hundred dollars (\$100.00) the holder of this license shall have the right to sell wine at retail on the licensed premises; provided, however, that such sales shall be made only for consumption off the licensed premises. The containers of all wine sold at retail by such licensee shall have attached thereto a label setting forth such information as shall be required by the rules and regulations of the commissioner of alcoholic beverage control.

"Limited winery license. 2b. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any naturally fermented wines and fruit juices in a quantity to be expressed in said license, dependent upon the following fees and not in excess of five thousand gallons per year and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and to sell at retail to consumers; provided, however, that such sale to consumers shall be made only for consumption off the licensed premises and then only when the winery at which such naturally fermented wines and fruit juices are manufactured is located and constructed upon a tract of land owned exclusively by the holder of such limited winery license, which said tract of land shall have an area of not less than three acres and have growing and under cultivation upon said land at least twelve hundred grape vines; and provided, further, that such naturally fermented wines and fruit juices shall be manufactured only from fresh grapes or fruit grown in this State. The containers of all wine sold to consumers by such licensee shall have attached thereto a label setting forth such information as shall be required by the rules and regulations of the commissioner of alcoholic beverage control. The fee for this license shall be graduated as follows: to so manufacture between twenty-five hundred and five thousand gallons per annum, two hundred dollars (\$200.00); to so manufacture between one thousand and twenty-five hundred gallons per annum, one hundred dollars (\$100.00); to so manufacture less than one thousand gallons per annum, fifty dollars (\$50.00).

"Plenary distillery license. 3a. The holder of this license shall be entitled, subject to rules and regulations, to manufacture any distilled alcoholic beverages and rectify, blend, treat and mix, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be five thousand dollars (\$5,000.00).

"Limited distillery license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to manufacture and bottle any alcoholic beverages distilled from fruit juices and rectify, blend, treat, mix, compound with wine and add necessary sweetening and flavor to make cordial or liqueur, and to sell and distribute to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State, to any persons pursuant to the laws of the places of such sale and distribution and to warehouse these products. The fee for this license shall be one thousand five hundred dollars (\$1,500.00).

"Supplementary limited distillery license. 3c. The holder of this license shall be entitled, subject to rules and regulations, to bottle and rebottle, in a quantity to be expressed in said license, dependent upon the following fees, alcoholic beverages distilled from fruit juices by such holder pursuant to a prior plenary or limited distillery license, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be graduated as follows: To so bottle and rebottle not more than five thousand wine gallons per annum, one hundred dollars (\$100.00); to so bottle and rebottle not more than ten thousand wine gallons per annum, two hundred fifty dollars (\$250.00); to so bottle and rebottle without limit as to amount, five hundred dollars (\$500.00).

"Rectifier and blender license. 4. The holder of this license shall be entitled, subject to rules and regulations, to rectify, blend, treat and mix distilled alcoholic beverages, and to fortify, blend and treat fermented alcoholic beverages, and prepare mixtures of alcoholic beverages, and to sell and distribute his products to wholesalers and retailers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse. The fee for this license shall be two thousand five hundred dollars (\$2,500.00).

"Bonded warehouse bottling license. 5. The holder of this license shall be entitled, subject to rules and regulations, to bottle alcoholic beverages in bond on behalf of all persons authorized by Federal and State law and regulations to withdraw alcoholic beverages from bond. The fee for this license shall be five hundred dollars (\$500.00). This license shall be issued only to persons holding permits to operate internal revenue bonded warehouses pursuant to the laws of the United States.

"2. This act shall take effect immediately."

2. NEW LEGISLATION - SECTION 33:1-4(d) OF THE REVISED STATUTES AMENDED.

Assembly Bill No. 343 was approved by Governor Edison on May 6, 1942, and thereupon became Chapter 155 of the Laws of 1942. It was effective immediately.

The purpose of this legislation was to permit the Commissioner to fix the amount of the bond to be filed by an inspector or investigator of this Department "in such sum as may be deemed by him to be proper but not to exceed seven thousand dollars (\$7,000.00)."

Prior to the adoption of this amendment the law arbitrarily fixed the amount of the bond at \$7,000.00 which, in some instances, was more than required under the circumstances.

3. NEW LEGISLATION - SECTION 33:1-12 OF THE REVISED STATUTES AMENDED - THE ISSUANCE OF SEASONAL RETAIL CONSUMPTION LICENSES FOR PREMISES FOR WHICH A PLENARY RETAIL CONSUMPTION LICENSE COULD NOT BE ISSUED PROHIBITED, AS HERETOFORE RULED BY THE DEPARTMENT - PLENARY RETAIL TRANSIT LICENSE FEE REDUCED FROM \$150.00 TO \$25.00 FOR BOATS BETWEEN 5 AND 25 TONS GROSS TONNAGE.

Assembly Bill No. 344 was approved by Governor Edison on May 6, 1942, and thereupon became Chapter 156 of the Laws of 1942. It was effective immediately.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-12 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-12 of the Revised Statutes is amended to read as follows:

"33:1-12. Class C licenses shall be subdivided and classified as follows:

"Plenary retail consumption license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than two hundred dollars (\$200.00) and not more than two thousand dollars (\$2,000.00). The governing board or body of each municipality may, by ordinance, enact that no plenary retail consumption license shall be granted within its respective municipality.

"Seasonal retail consumption license. 2. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises, during the summer season from May first until November first, inclusive, or during the winter season from November fifteenth until April fifteenth, inclusive; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except the keeping of a hotel or restaurant, or the sale of cigars and cigarettes at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages) is carried on. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at seventy-five per centum (75%) of the fee fixed by said board or body for plenary retail consumption licenses. The governing board or body of each municipality may, by ordinance, enact that no seasonal retail consumption license shall be granted within its respective municipality.

"Plenary retail distribution license. 3a. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption off the licensed premises, but only in original containers. The governing board or body of each municipality may, by ordinance, enact that this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated by ordinance at not less than one hundred dollars (\$100.00), and not more than one thousand dollars (\$1,000.00). The governing board or body of each municipality may, by ordinance, enact that no plenary retail distribution license shall be granted within its respective municipality.

"Limited retail distribution license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises, but only in original containers. The fee for this license shall be fixed by the governing body or board of the municipality in which the licensed premises are situated, by ordinance at not less than twenty-five dollars (\$25.00) and not more than fifty dollars (\$50.00). The governing board or body of each municipality may, by ordinance, enact that no limited retail distribution license shall be granted within its respective municipality.

"Plenary retail transit license. 4. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption only on railroad trains, airplanes and boats, while in transit. The fee for this license shall be one hundred fifty dollars (\$150.00), except for boats not exceeding twenty-five tons gross tonnage the fee for which shall be twenty-five dollars (\$25.00), and further except for boats under five tons gross tonnage, the fee for which shall be ten dollars (\$10.00). A license issued

under this provision to a railroad or air transport company shall cover all dining and club cars and planes operated by any such company within the State of New Jersey. A license for a boat issued under this provision shall apply only to the particular boat for which issued.

"Club license. 5. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages but only for immediate consumption on the licensed premises and only to bona fide club members and their guests. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than fifty dollars (\$50.00) and not more than one hundred fifty dollars (\$150.00). The governing board or body of each municipality may, by ordinance, enact that no club licenses shall be granted within its respective municipality. Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and which comply with all conditions which may be imposed by the commissioner of alcoholic beverage control by rules and regulations.

"2. This act shall take effect immediately."

4. NEW LEGISLATION - SECTION 33:1-28 OF THE REVISED STATUTES AMENDED - COMMISSIONER NO LONGER REQUIRED TO FURNISH ONE FREE TRANSIT INSIGNIA.

Assembly Bill No. 345 was approved by Governor Edison on May 6, 1942, and thereupon became Chapter 157 of the Laws of 1942. It was effective immediately.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-28 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-28 of the Revised Statutes is amended to read as follows:

"33:1-28. Licensees, except public warehouse licensees, may transport alcoholic beverages in their own vehicles, solely, however, for their own respective business in connection with and as defined in their respective licenses, without possessing a transportation license; provided, however, that such vehicles while so used shall be marked in the manner prescribed for all vehicles authorized to transport alcoholic beverages as shall be provided in rules and regulations. Each vehicle so used shall bear a transit insignia to be furnished by the commissioner at a fee of two dollars (\$2.00) each.

"2. This action shall take effect immediately."

5. NEW LEGISLATION - SECTION 33:1-11 OF THE REVISED STATUTES AMENDED - PLENARY AND LIMITED EXPORT WHOLESALE LICENSES ELIMINATED - PLENARY, LIMITED AND WINE WHOLESALE LICENSES, AS WELL AS STATE BEVERAGE DISTRIBUTOR'S LICENSES, ENLARGED TO INCLUDE THE PRIVILEGES OF OUT-OF-STATE SALES - PLENARY WHOLESALE LICENSE FEE INCREASED FROM \$1,500.00 TO \$2,000.00.

Assembly Bill No. 347 was approved by Governor Edison on May 6, 1942, and thereupon became Chapter 158 of the Laws of 1942. It was effective immediately.

It reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-11 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 33:1-11 of the Revised Statutes is amended to read as follows:

"33:1-11. Class B licenses shall be subdivided and classified as follows:

"Plenary wholesale license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute alcoholic beverages to retailers and wholesalers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and salesroom. The fee for this license shall be two thousand dollars (\$2,000.00).

"Limited wholesale license. 2a. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute brewed malt alcoholic beverages and naturally fermented wines to retailers and wholesalers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and salesroom. The fee for this license shall be seven hundred fifty dollars (\$750.00).

"Wine wholesale license. 2b. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute any naturally fermented, treated, blended, fortified and sparkling wines, to retailers and wholesalers, licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and salesroom. The fee for this license shall be one thousand dollars (\$1,000.00).

"State beverage distributor's license. 2c. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute unchilled, brewed, malt alcoholic beverages in original containers only, in quantities of not less than one hundred forty-four fluid ounces, to retailers licensed in accordance with this chapter, and to sell and distribute without this State to any person pursuant to the laws of the places of such sale and distribution,

and to maintain a warehouse and salesroom. The holder of this license may sell unchilled, brewed, malt alcoholic beverages in original containers only, in quantities of not less than one hundred forty-four fluid ounces, at retail; provided, however, that such sales shall be made only for consumption off the licensed premises. This license shall not be issued to any person holding a plenary or limited brewery license, nor shall it be issued to any person directly or indirectly interested in any brewery within or without this State. This license shall not be issued for premises in or upon which any retail business, except the sale of malt alcoholic beverages and non-alcoholic beverages, is carried on. The fee for this license shall be five hundred dollars (\$500.00).

"2. This act shall take effect immediately."

6. NEW LEGISLATION - SECTIONS 33:1-21, 33:1-21.1 TO 21.15, AND 33:1-40.2 OF THE REVISED STATUTES REPEALED.

Assembly Bill No. 349 was approved by Governor Edison on May 6, 1942, and thereupon became Chapter 159 of the Laws of 1942. It was effective immediately.

Prior to the decision of the Supreme Court in Dover v. Van Kirk, 123 N. J. L. 507, the sections enumerated above controlled the issuance of licenses in counties of the Sixth Class. In the cited case the Supreme Court declared the legislation in question to have been unconstitutional. Therefore the present repealer to eliminate some dead wood.

7. REGULATIONS NO. 18 - SUPPLEMENTAL RULES GOVERNING TRANSPORTATION OF ALCOHOLIC BEVERAGES.

Rule 1 of Regulations No. 18 (Supplemental Rules Governing Transportation of Alcoholic Beverages), among other things, now provides for the issuance of a special permit to allow alcoholic beverages sold without this State by the holder of a New Jersey export wholesaler's license to be transported from the licensed premises, warehouse, salesroom or office of such export wholesaler in New Jersey to a point outside this State. In view of the recent statutory amendment (P. L. 1942, c. 158, Bulletin 510, Item 5), which eliminates the plenary export and limited export licenses and grants out of State sales privileges to holders of plenary wholesale, limited wholesale, wine wholesale and state beverage distributor's licenses, Rule 1 of Regulations No. 18 is hereby amended to read as follows, effective immediately:

"1. Alcoholic beverages sold without this State, pursuant to the laws of the place of sale, by the holder of a New Jersey manufacturer's or wholesaler's license and not intended for delivery, use or sale in New Jersey, may be transported from the licensed premises, warehouse, salesroom or office of such manufacturer or wholesaler in New Jersey or from a licensed public warehouse, to a point outside this State in any vehicle, provided that such vehicle carries a special permit issued by the Commissioner, together with a

waybill or similar document stating the names and addresses of the consignor and consignee, the nature and quantity of the alcoholic beverages being transported, the place at which they were received and the place of their destination."

Dated: May 15, 1942.

8. REGULATIONS NO. 19 - TRANSPORTATION OF ALCOHOLIC BEVERAGES BY RAILROAD CARRIERS.

Rule 1-b of Regulations No. 19, among other things, provides that railroad carriers may transport alcoholic beverages not intended for delivery, sale or use in New Jersey from the licensed premises, warehouse, salesroom or office of a licensed New Jersey export wholesaler to a point outside this State. In view of the recent statutory amendment (P. L. 1942, c. 158, Bulletin 510, Item 5) which eliminates the plenary export and limited export licenses and grants out of State sales privileges to holders of plenary wholesale, limited wholesale, wine wholesale and state beverage distributor's licenses, Rule 1-b of Regulations No. 19 is hereby amended to read as follows:

"Alcoholic beverages not intended for delivery, sale or use in New Jersey may be transported (1) from a licensed public warehouse or the licensed premises, warehouse, salesroom or office of a licensed New Jersey manufacturer or wholesaler to a point outside this State, and (2) between piers of import located within this State and points outside this State, without such license, provided that the railroad carrier is the holder of a special permit issued by the Commissioner authorizing such transportation and shall furnish to the Commissioner, on demand, a waybill or copy thereof or similar document stating the names and addresses of the consignor and consignee and the nature and quantity of the alcoholic beverages being transported."

Dated: May 15, 1942.

9. SCHEMES DESIGNED UNDULY TO INCREASE CONSUMPTION OF ALCOHOLIC BEVERAGES - LICENSEES ARE NOT PERMITTED TO SELL "MEAL TICKETS" REDEEMABLE FOR DRINKS - CONTRARY TO SOUND PUBLIC POLICY.

May 15, 1942

Benjamin & Ferdinando Ciancio,  
T/a Rex Tavern,  
Wrightstown, N. J.

Gentlemen:

It is reported to me that you sell to your customers "meal tickets" good for \$3.00 in trade.

The ticket states on its face, "Ticket good for meals to amount shown on margin" and "No discount unless paid in advance." When questioned, you freely admitted that no meals were served on your licensed premises and that, in addition to drinks, the only thing that the ticket could be used for was the purchase of peanuts, pigs' feet, pigs' knuckles, pickled sausages and potato chips. You also claimed that you could not explain the meaning of the statement that no discount would be allowed unless payment was made in advance

It is quite obvious what you are doing.

In the first place, I doubt if a hungry man after a day in the field would consider the peanuts, pigs' feet and related items to be a meal. Apparently, you agree because you admit that you serve no meals.

In the second place, your claim that you do not know the meaning of the statement on the ticket that no discount is allowed unless payment is made in advance is incredible. You know as well as I do that the meal ticket technique, which you have applied to your bar business, involves the payment in advance of a lump sum, in consideration of which meals (or, in your case, drinks) to a greater value are served thereafter.

The scheme is nothing but a device designed unduly to increase consumption of alcoholic beverages. You are directed to cease and desist from engaging in the practice forthwith, under pain of suspension or revocation of your license if you persist.

You will redeem paid-up tickets outstanding, in cash, in the amount still remaining unpunched. If any are outstanding but not paid for, you will collect only for the amount punched.

Very truly yours,  
ALFRED E. DRISCOLL,  
Commissioner.

- 10. DISCIPLINARY PROCEEDINGS - PERMITTING MINOR, HOLDER OF EMPLOYMENT PERMIT, TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS: 11 - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.
- DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY MINOR PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

JULIA LEOSHKO,  
691 Boulevard,  
Bayonne, N. J.,

Holder of Plenary Retail Consumption License C-124, issued by the Board of Commissioners of the City of Bayonne,

WALTER LEOSHKO,  
691 Boulevard,  
Bayonne, N. J.,

Holder of Employment Permit No. 9208, issued by the State Commissioner of Alcoholic Beverage Control.

Julia Leoshko }  
Walter Leoshko } Pro se.

Abraham Merin, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to the charge of permitting an employee, Walter Leoshko, a minor, who holds an

CONCLUSIONS  
AND ORDER

employment permit for a person disqualified by reason of age, to sell alcoholic beverages in violation of Rule 3 of State Regulations No. 11. Defendant-permittee has pleaded guilty to a charge of selling and serving alcoholic beverages contrary to the condition upon which his permit was issued. Both proceedings will be considered and disposed of herein since they arose out of the same incident.

On March 13, 1942, investigators of this Department, upon entering the premises of the licensee, observed Walter Leoshko, son of the licensee, engaged in cleaning windows. The investigators walked to the bar and the permittee stopped his work and asked them what they would have and served them with alcoholic beverages, accepting the money for the sale. At the time there was no one in the licensed premises to wait on customers except the permittee. It is admitted by the licensee and permittee that they knew that a sale of alcoholic beverages by the permittee was contrary to the Regulations.

The violation in question appears to have occurred as a result of the son's misguided effort to help his mother. Since no previous record appears against either licensee or permittee, the usual minimum penalties of five days and thirty days, respectively, will be imposed. Two days of the licensee's suspension and five days of permittee's suspension will be remitted because of the guilty pleas. See Re Stein, Bulletin 458, Item 3 and Re Hochheiser, Bulletin 500, Item 2.

Accordingly, it is, on this 14th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-124, heretofore issued to Mrs. Julia Leoshko for premises 691 Boulevard, Bayonne, by the Board of Commissioners of the City of Bayonne, be and the same is hereby suspended for a period of three (3) days, commencing at 3:00 A.M., May 18, 1942, and concluding at 3:00 A.M. May 21, 1942; and it is further

ORDERED, that Employment Permit No. 9208, heretofore issued to Walter Leoshko by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 A.M., May 18, 1942, and concluding at 3:00 A.M., June 12, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

11. APPELLATE DECISIONS -- GENE'S PIZZERIA, 644 INC. v. BAYONNE.  
APPELLATE DECISIONS - DE RUSSO v. BAYONNE.

DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS -  
5 DAYS' SUSPENSION - OPEN DURING PROHIBITED HOURS - 5 DAYS'  
SUSPENSION - TOTAL: 10 DAYS' SUSPENSION WITH NO REMISSION FOR  
GUILTY PLEA.

GENE'S PIZZERIA, 644 INC., )

Appellant, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF BAYONNE, )

Respondent. )

----- )  
JOSEPH DE RUSSO, )

Appellant, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF BAYONNE, )

Respondent. )

ON APPEAL AND  
DISCIPLINARY PROCEEDINGS

CONCLUSIONS  
AND ORDER

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In the Matter of Disciplinary )  
Proceedings against )

JOSEPH DE RUSSO, )  
908 Broadway, )  
Bayonne, N. J., )

Holder of Plenary Retail Consump- )  
tion License C-127, issued by the )  
Board of Commissioners of the City )  
of Bayonne. )  
----- )

Ben M. Horwech, Esq., Attorney for Gene's Pizzeria, 644 Inc. and  
Joseph DeRusso.  
Edward Griffin, Esq., Attorney for Board of Commissioners of the  
City of Bayonne.  
Abraham Merin, Esq., Attorney for State Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

These three cases involve (1) an appeal by Gene's Pizzeria,  
644 Inc., a plenary retail consumption licensee at 644 Broadway,  
Bayonne; (2) an affiliate appeal by Joseph DeRusso, a plenary retail  
consumption licensee at 908 Broadway, Bayonne; and (3) a disciplin-  
ary proceeding by this Department against the latter licensee. For  
convenience, all three cases are being decided together.

As to the appeals: On April 9, 1942, the Board of Commis-  
sioners of the City of Bayonne found the said licensees, Gene's  
Pizzeria, 644 Inc. and Joseph DeRusso, guilty of having sold an alco-  
holic beverage to a minor in violation of R. S. 33:1-77 and Rule 1

of State Regulations 20, and, in penalty, suspended their respective licenses for thirty days. Thereupon, both the licensees took the present appeals, claiming the evidence to be insufficient to warrant any finding of guilt against them, and obtained an ad interim stay of the suspensions pending disposition of such appeals.

By stipulation of counsel, both appeals are being decided on the testimony taken below.

Such testimony discloses that, on the evening of May 14, 1941, Edward Skowron and Joseph Kopacz visited four taverns in Bayonne. Although Kopacz was apparently twenty-one or over, Skowron was still a minor at the time, being then not quite twenty years of age.

Both Skowron and Kopacz state that Gene's Pizzeria was the second tavern and DeRusso's the fourth tavern at which they stopped; that, on Skowron's order, they had a round of beer at each of these two places (Skowron at one time stating, however, that actually they had two rounds at Gene's Pizzeria); and that no questions were asked as to Skowron's age.

Since Skowron virtually admitted, under press of cross-examination, that he may have been too drunk to actually recollect the taverns which he visited, his testimony, standing alone, would scarcely sustain any finding of guilt.

However, there is no sign that Kopacz suffered any such disability. To the contrary, Kopacz not only identified the places which he and his companion visited but, as to the two in question, specifically identified Joseph Heycéy, a bartender at Gene's Pizzeria, as the person who sold and served beer to them there, and DeRusso as the person who sold and served at the DeRusso tavern.

Although both these identified persons squarely deny that they ever sold or served any beer to Skowron and Kopacz, the mere fact of such denials, coming from a plainly interested source, is not sufficient to nullify the essentially clear and sincere sounding testimony of Kopacz who, so far as appears, has no interest at stake in the case or any reason to falsely implicate these licensees.

Hence I conclude, after carefully perusing all the evidence, that respondent's finding of guilt against these licensees may not be viewed as error.

There is intimation in the appellants' petitions of appeal that they further claim the thirty-day suspension to be an excessive penalty and merely the result of "tension" in Bayonne. I see no merit to this claim. The penalty to be administered in a local disciplinary proceeding rests within the sound discretion of the municipality. The power of the State Commissioner to reduce any such penalty on appeal may properly be exercised only when the penalty is manifestly unreasonable. Dzieman v. Paterson, Bulletin 233, Item 10, and cases there cited; Schmidt v. Morristown, Bulletin 457, Item 7.

While the thirty-day suspensions in question for sale of beer to a nineteen year old boy (almost twenty) are indubitably heavy-fisted, I cannot say that they necessarily exceed the limits of reason. Cf. Ziomek v. Clementon, Bulletin 381, Item 3; Howell v. Branchville, Bulletin 385, Item 5. See Wellens v. Passaic, Bulletin 134, Item 4.

Hence the present appeals are dismissed, and the said thirty-day suspensions reinstated.

For completeness of the record, it should be noted that the other two of the four taverns where Skowron and Kopacz were served beer on the evening in question were likewise given a thirty-day suspension by the Bayonne Board and have served such suspension.

As to the disciplinary proceeding by this Department against DeRusso, that licensee has pleaded guilty to the charges that (1) he sold and served alcoholic beverages during the prohibited Sunday hours in Bayonne - viz., 3:00 A. M. to 12:00 Noon, and (2) failed to render his premises inaccessible to the general public during those hours, all in violation of Section 1 of Bayonne ordinance of December 3, 1940.

The facts as to these violations are that, on Sunday morning, March 29, 1942, two investigators of this Department kept DeRusso's tavern under surveillance for about three-quarters of an hour. At about 9:45 A. M. they observed a man enter a rear door in the building. Shortly thereafter one of the investigators entered that same door, found himself in a hallway and knocked at a door there. DeRusso opened this door and, in answer to the investigator's question "Are you open?" replied "For a while", and took the investigator through the kitchen into the barroom. There, at the bar, were two men drinking beer and a woman drinking coffee. The investigator ordered, was served and paid for two drinks of Carstairs whiskey and also bought a cigar. In the interim, the fellow investigator entered (apparently through the rear door) and similarly bought a drink of Black and White Scotch. After the two men and the woman at the bar had left the premises using the rear door, the investigators identified themselves. DeRusso then stated that business was "tough" and that he was "not really open" but merely thought the investigators "were friendly, otherwise I would not allow you in."

At the hearing in the case DeRusso, claiming mitigating circumstances, sought to minimize the whole affair by asserting that he did not actually sell but merely gave the drinks to the investigators; that the other two men in the barroom were merely a helper and a butcher seeking to collect a bill; and that he was not really open for business.

The evidence is amply sufficient to convince me that this self-serving minimization by DeRusso is sheer fiction.

Normally, the penalty for these "hours" violations would be a five-day suspension of license for the sale and service, and an additional five days for keeping the tavern open, thus totalling ten days. See Re William Street Bar & Grill, Bulletin 466, Item 8. Since the licensee tried to sell me a "cock and bull" story on mitigating circumstances, nothing will be remitted for his guilty plea.

Hence, in reinstating the aforesaid thirty-day suspension of DeRusso's license, ten days will be added thereto, thus making a total of forty days.

Accordingly, it is, on this 15th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-133, issued to Gene's Pizzeria, 644 Inc. for 644 Broadway, Bayonne, by the

Board of Commissioners of the City of Bayonne, be and the same is hereby suspended for thirty (30) days, commencing May 18, 1942, at 3:00 A. M., and concluding at 3:00 A. M. June 17, 1942; and it is further

ORDERED, that Plenary Retail Consumption License C-127, issued to Joseph DeRusso for 908 Broadway, Bayonne, by the Board of Commissioners of the City of Bayonne, be and the same is hereby suspended for forty (40) days, commencing May 18, 1942, at 3:00 A. M., and concluding at 3:00 A. M. June 27, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

12. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )  
Case No. 221. )  
----- )

CONCLUSIONS  
AND ORDER

In Eligibility Case No. 368, Bulletin 448, Item 4, petitioner herein was declared ineligible to be employed by a liquor licensee because of his conviction, in 1934, of the crimes of conspiracy to steal and receiving stolen goods.

Five years having elapsed since the conviction, petitioner has applied for a removal of his disqualification, in accordance with the procedure set forth in R. S. 33:1-31.2.

At the hearing herein, the steward of the reformatory where petitioner was confined from May 1934 to February 1937 testified that his conduct therein was excellent. His parole officer testified that he was released from supervision on August 29, 1938. He further testified as follows:

"In our supervision we never had any reason to doubt that he would become a good citizen. I am happy to be able to say that whatever difficulty he has been in is a thing of the past in our opinion and that my superiors feel exactly the same as I do about his past and his future."

A police officer and two other individuals who have known petitioner for more than twenty years testified that petitioner's conduct has been beyond reproach since his release from the reformatory. The Chief of Police of the municipality wherein he resides has advised that no investigations or complaints are pending against him.

I am satisfied from the record that petitioner has not been convicted of any crime within the past five years and that, by his conduct since February 1937, he gives every evidence of having

rehabilitated himself. Hence I conclude that his connection with the alcoholic beverage industry would not be contrary to public interest.

Accordingly, it is, on this 16th day of May, 1942,

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

*Alfred E. Griswold*  
Commissioner.

CHECKED BY NO. 3