

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

BULLETIN 540

DECEMBER 4, 1942

- 1. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN HOLDER OF EMPLOYMENT PERMIT TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 11 - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN PERMITTEE CONTRARY TO CONDITION OF EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-26 - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

PHILIP ONOFRIETTI,)
18 Cutler Street,)
Newark, N. J.,)

Holder of Plenary Retail Consumption License C-35, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

In the Matter of Disciplinary Proceedings against)

SALVATORE ONOFRIETTI,)
17 High St.,)
Newark, N. J.,)

Holder of Employment Permit No. 350, issued by the State Commissioner of Alcoholic Beverage Control)

CONCLUSIONS AND ORDER

Philip Onofrietti, Pro Se.
Salvatore Onofrietti, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to a charge of permitting his employee, Salvatore Onofrietti, who holds an employment permit for a person disqualified by reason of non-citizenship, to sell alcoholic beverages, in violation of R. S. 33:1-26, and also in violation of rule 3 of State Regulations No. 11.

The defendant-permittee has likewise pleaded guilty to a charge of selling alcoholic beverages contrary to the terms and conditions of his employment permit.

Both proceedings will be disposed of herein since they arise out of the same transaction.

On September 24, 1942 investigators of the Department of Alcoholic Beverage Control purchased alcoholic beverages from the defendant-permittee on the premises of the defendant-licensee. Both defendants, however, stated that the violation occurred only because of the father's (the permittee) desire to help his son (the licensee) in the business.

The stated excuse advanced in mitigation of the violation can be given little consideration. Both defendants knew that the permit specifically provided that the father, permittee, "shall not in any manner whatsoever, serve, sell or solicit the sale...of any alcoholic beverages." Despite this fact, the permittee wilfully violated the condition of his permit and the licensee acquiesced by allowing the permittee to serve alcoholic beverages.

Since no previous record appears against either licensee or permittee, the usual penalties of five days and thirty days, respectively, will be imposed. Two days of the licensee's suspension and five days of the permittee's suspension will be remitted because of the guilty plea.

Accordingly, it is, on this 24th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-35, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Philip Onofrietti, for premises 18 Cutler Street, Newark, N. J., be and the same is hereby suspended for a period of three (3) days, commencing on November 30, 1942, at 2:45 A. M., and concluding on December 3, 1942, at 2:45 A. M.; and it is further

ORDERED, that Employment Permit No. 350, heretofore issued to Salvatore Onofrietti by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, commencing on November 30, 1942, at 2:45 A.M., and concluding on December 25, 1942, at 2:45 A. M.

ALFRED E. DRISCOLL,
Commissioner.

2. APPELLATE DECISIONS - LINCOLN AVENUE CORPORATION v. WILDWOOD.

LINCOLN AVENUE CORPORATION,)
a corporation of the State)
of New Jersey,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE)
CITY OF WILDWOOD,)

Respondent)

-----)

A. J. Cafiero, Esq., Attorney for Appellant.
Irving Shenberg, Esq., Attorney for Respondent.
Harry Tenenbaum, Esq., Attorney for Bernard Solomon, an Objector.

BY THE COMMISSIONER:

This is an appeal from denial of appellant's application for transfer of its 1941-42 plenary retail consumption license from premises 231 East Lincoln Avenue to premises at the corner of Oak and Atlantic Avenues.

It is stipulated between appellant and respondent that the sole reason for the denial of the application was "that to permit the transfer would be violative of the purpose of an existing ordinance which does not permit the issuance of any new license, and that to transfer the present license would subject the Commissioners to grant

another license for these premises and thus increase the present number." It was further stipulated that the premises to which the license was sought to be transferred are suitable in all respects.

Respondent urges that since the premises presently licensed are a hotel, it will be compelled to relicense those premises, notwithstanding the existing ordinance limiting the number of licenses to be issued, citing Ignatz v. Phillipsburg, Bulletin 167, Item 16. As noted in the stipulation, this was the sole reason for denying the application for transfer.

The decision in the Ignatz case turned on the then existing law that a hotel was entitled to a license notwithstanding a limitation of the number of licenses to be issued. The line of cases so holding came to an end with the Ignatz case and the law since that time is as first stated in Current v. Fredon, Bulletin 184, Item 1, wherein it was held that:

"***While hotels are distinguishable from ordinary drinking places and are not to be discriminated against in the issuance of licenses; see cases supra; also Retail Liquor Dealers Association v. Plainfield, Bulletin 70, Item 1 and Peck v. West Orange, Bulletin 147, Item 1; nevertheless it does not follow that a hotel is ipso facto entitled to a license just because it is a hotel. There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed."

To the same effect see Braunstein v. Bridgeton, Bulletin 216, Item 10; Paini v. Bloomsbury, Bulletin 300, Item 13; DeVivo v. Highlands, Bulletin 427, Item 5. Cf. Cassullo v. White, Bulletin 399, Item 4, where no limitation of number was involved and a limitation of distance was declared invalid.

There is no evidence in this case that the respondent municipality has limited the issuance of licenses to "bona fide" hotels, nor is there any evidence that respondent has adopted any policy with respect thereto.

It may well be that an application of the test of public necessity and convenience to the facts in the case of Ignatz v. Phillipsburg, supra, would support the result therein. In the instant case, however, a careful examination of the facts fails to disclose any evidence indicating that public convenience and necessity would require the issuance of a license for the premises 231 East Lincoln Avenue.

Hence, even assuming that the premises presently licensed constitute a hotel (a matter as to which there is a substantial doubt), there is no compulsion on the respondent to issue a new license for those premises in the event the present license is transferred to other premises. It follows that the respondent, in the event of transfer, will be under no compulsion to increase its quota of licenses.

The right to transfer a license from place to place, which the statute affords, cannot be nullified or otherwise diminished by municipal regulation, or denied, except for good cause. Since the only reason for denying the transfer in this case was without substance as a matter of law, the action of respondent is reversed.

The objector who appeared at the hearing objected to the granting of the transfer because "he owns a saloon opposite and considered there were enough in the vicinity to serve the community at large." The testimony indicates that there is a heavy concentration of licensed premises in the vicinity to which the transfer is sought. However, the testimony also indicates that the vicinity in question is the center of summer activity containing the amusement features of the resort and "everything else." Although there are eighteen consumption licenses within fifteen hundred feet of the premises to which the transfer is sought, one of those eighteen is the license involved in this appeal, and, consequently, its transfer to another premises within the area would not increase the concentration. In the light of the testimony, the objection is without merit.

Although the 1941-42 license which appellant sought to transfer in the present case has expired pending disposition of this appeal, nevertheless the instant decision is not moot but, on the contrary, is dispositive of the same issues which may arise should appellant seek a similar transfer of its current 1942-43 license.

Accordingly, it is, on this 24th day of November, 1942,

ORDERED, that the action of respondent, in refusing transfer of appellant's 1941-42 plenary retail consumption license from 231 East Lincoln Avenue to the corner of Oak and Atlantic Avenues, be and the same is hereby reversed; and that, although no order is being entered herein requiring respondent to transfer appellant's 1941-42 license since it has already expired, the instant decision should nevertheless be deemed dispositive of the same issues which may arise should appellant apply for a similar transfer of its existing license.

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - REMAINING OPEN IN VIOLATION OF LOCAL ORDINANCE - MINIMUM PENALTY OF 15 DAYS! SUSPENSION RECOMMENDED IN THE ABSENCE OF AGGRAVATING CIRCUMSTANCES OR PREVIOUS RECORD.

November 27, 1942

Eric V. Disbrow
Jefferson Township Clerk
Oak Ridge, N. J.

My dear Mr. Disbrow:

I have before me your letter of November 3rd re the Township Committee's disciplinary proceedings against Lester V. Walker, t/a Walker's Woodport Lodge, charged with selling alcoholic beverages after the local 3:00 A.M. curfew hour. From the report of Investigator Ratti of this Department (who participated in the case), I note that the licensee pleaded guilty. It is further noted, from the Township Committee's resolution and order, that the license was suspended for five days.

As I understand the facts, the tavern continued to operate after 3:00 A.M. behind closed doors and with dimmed lights, and actually conducted business in this "speakeasy" fashion with some eleven patrons (in addition to the Department investigators) until 3:45 A.M.

Please convey to the members of the Township Committee my appreciation for their institution and conduct of these proceedings on the Department's recommendation. However, I am disappointed in

the comparatively lenient penalty which was imposed. I take it that, when imposing it, the Committee was under the impression that I am still recommending the minimum penalty of a five-day suspension in hours violation cases. As I have expressed to several local issuing authorities, it is now my recommendation that, in all cases where a licensee sells during prohibited hours or is open during such hours for the evident purpose of "chiseling"; the minimum penalty be at least a fifteen-day suspension of license (with no more than five remitted for entry of a guilty plea in advance of hearing). Where the licensee has a past record or aggravating circumstances appear in the case, the penalty should be increased commensurately. The continuing persistence of hours violations throughout the State has convinced me of the necessity for hiking up penalties to this new recommended minimum.

I have every confidence that the Township Committee will adhere to this new minimum in its future cases.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWERS IN LICENSE APPLICATION - SUPPRESSION OF MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FAILURE TO DISCLOSE CHATTEL MORTGAGE IN ANSWER TO QUESTION 29 IN APPLICATION - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON BONA FIDE CORRECTION AND EXPIRATION OF 60 DAYS.

In the Matter of Disciplinary Proceedings against
DORIS SCHARMBERG,
9266 Hudson Boulevard,
North Bergen, N. J.,
Holder of Plenary Retail Consumption License C-52, issued by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen.

CONCLUSIONS
AND ORDER

Doris Scharmberg, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charges:

"1. In your license application for the year 1942-43 you falsely stated 'No' in answer to Question 28 by stating that no one other than yourself had any interest in the business conducted under your license, said false statement being in violation of R. S. 33:1-25.

"2. From on and about June 22, 1942, and until the present time, you knowingly aided and abetted Harry Scharmberg, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

"3. In the aforesaid application you falsely stated 'No' in answer to Question 29 by stating that there was no chattel mortgage on any furniture, fixtures, goods or equipment used in connection with the alcoholic beverage business operated under the license, said false statement being in violation of R. S. 33:1-25."

As to Charges 1 and 2, Harry Scharmberg, husband of the licensee, originally held the license. As an alien and a German national, he was not eligible to obtain renewal of his plenary retail consumption license for the present fiscal year. Re Aliens, Bulletin 491, Item 8. Because of the existence of this impediment, he transferred the license to his wife. There was no consideration for the transfer. Actually the husband shared in the profits from the business and actually the license was held by the wife for him to be transferred to him as of the time he might obtain his citizenship.

As to Charge 3, it appears from departmental records that, at the time the application was filed, there was a chattel mortgage on file affecting the furniture and fixtures of the licensed premises. At the hearing proof was presented to show that the chattel mortgage had been thereafter paid and cancelled.

As to penalty: The "front" still exists. Hence I have no alternative but to suspend the operation of the license for the balance of the term.

I am advised that Harry Scharmberg has applied for naturalization. In the event that he becomes a citizen of the United States and thereafter applies for and obtains transfer of this license from his wife to himself, subject to suspension herein imposed, I shall entertain his petition to lift this suspension. The same right will be afforded to a bona fide purchaser of the business who obtains a transfer of the license, subject to the suspension. However, in no event will an order lifting suspension be entered until at least sixty (60) days have expired from the effective date of the suspension herein imposed.

Accordingly, it is, on this 25th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-52, heretofore issued to Doris Scharmberg for premises 9266 Hudson Boulevard, North Bergen, N. J., by the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen, be and the same is hereby suspended for the balance of its term, effective November 27, 1942, at 3:00 A.M.

It is further ORDERED that, in the event a correction of the existing "front" is effectuated, leave be given, as aforesaid, to make application to the Commissioner of Alcoholic Beverage Control to lift the suspension.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINOR - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

WILLIAM KELLY, T/a KELLY'S BAR AND GRILL, Main Street, Wrightstown, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Borough Council of the Borough of Wrightstown.)

Joseph J. Felcone, Esq., Attorney for Defendant-Licensee. William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded not guilty to charges alleging that on June 26, 1942 he sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and also Rule 1 of State Regulations No. 20.

It appears that, on the date in question, the minor, a private in the United States Army, successively visited four taverns wherein he purchased and was served alcoholic beverages. As a result of a very serious altercation that took place in the fourth tavern, the minor was questioned by the local police and admitted in a signed statement that one of the four taverns he had entered was that of William Kelly located on Main Street, Wrightstown.

When the matter was referred to the Department of Alcoholic Beverage Control, the minor was taken by Departmental investigators to the premises in question, which he readily identified as one of the taverns visited by him on June 26, 1942. He also identified the table at which he had sat and the waitress who had served him with three Tom Collins drinks.

At the hearing, the minor again identified the waitress who had served him with the alcoholic beverages. He further stated that she had worn a blue uniform when making such service and that she had not questioned him about his age.

The waitress, although stating that she did not remember having served the drinks to the minor, admitted that she usually is dressed in the type of uniform described by the minor. The licensee testified that he had no recollection of the occasion in question and was not positive that he was at the licensed premises at the time.

Although the minor's story is not substantiated by the testimony of witnesses, I find that the other corroborating circumstances of his ready identification of the premises, the table where he was seated and the waitress who had served him, lend substantial credibility to his testimony. Moreover, the fact that two of the aforesaid four licensees pleaded guilty to charges of having served the minor with alcoholic beverages on June 26, 1942 (see Re Murphy, Bulletin 540, Item 7, and Re Rasimowicz, Bulletin 540, Item 8) also tends to support the minor's version of what occurred on that day.

He also impressed the Hearer as being a straightforward, truthful witness and not one who would manufacture a story out of thin air. I find the licensee guilty as charged.

At the time of the violation the minor was twenty years and seven months old. I personally observed the minor at the hearing and, although he was dressed in the same uniform as on the day of the violation, I am of the opinion that the youthfulness of his face should have caused the prudent licensee to have questioned him concerning his age and thereupon to have adopted the safeguards provided by the law. R. S. 33:1-77. In fixing the penalty, however, I shall take into consideration the fact that the minor lacked but five months of his majority on the day in question and that no aggravating circumstances seem to have attended the violation. I shall, therefore, impose the usual penalty of ten days in this case.

Accordingly, it is, on this 30th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-8, heretofore issued to William Kelly, t/a Kelly's Bar and Grill, by the Borough Council of the Borough of Wrightstown, for premises at Main Street, Wrightstown, be and the same is hereby suspended for a period of ten (10) days, commencing December 7, 1942, at 2:00 A.M., and concluding December 17, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINOR - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

P. JAMES CALLAGHAN,
105 East Hanover Street,
Trenton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the City of Trenton.)

John L. Heher, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded not guilty to charges alleging that on June 26, 1942 he sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and also Rule 1 of State Regulations No. 20.

The events leading up to the institution of these proceedings are related in Re Kelly, Bulletin 540, Item 5.

As in that case, the minor accompanied investigators of this Department to these licensed premises, which he identified as one of four that he had visited on June 26, 1942 and where he also identified the bartender who had served him two Tom Collins drinks and two beers.

The bartender was not produced as a witness at the hearing. The licensee testified that he did not recall seeing the minor in his licensed premises on June 26, 1942.

As in the Kelly case, supra, I find that the minor's identification of the licensed premises and the bartender who had served him, plus an admission by the licensee that the bartender was on duty at the time the minor stated that he was served with the alcoholic beverages, are corroborative of the minor's testimony concerning the sale to him at the licensed premises on the day in question. In addition, the guilty pleas entered by two of the four licensees and the impression of sincerity given by the minor when testifying are also indicative of the truthfulness of his story. See Re Kelly, supra.

The licensee contends, however, that no proof was offered that the beverages served to the minor were actually alcoholic. A similar contention was found to be devoid of merit in the case of Re La Corte, Bulletin 469, Item 1, where it was said:

"The statute defines an alcoholic beverage as being, inter alia, 'Any fluid....suitable for human consumption, and having an alcoholic content of more than one-half of one per cent by volume, including....beer.' R. S. 33:1-1(b). The testimony of the minors shows that 'beer' was specifically ordered and that the waiter returned with drinks pursuant to such order. Presumably, the usual beer, which, as I may judicially notice, contains more than one-half of one per cent by volume, was served on this occasion. See Lewinsohn v. United States, 278 F. 421, 425, 426 (CCA 7, 1921). Also see State v. Marks, 65 N.J.L. 84, 87 (Sup. Ct. 1900)."

Further, the licensee testified that the "beer" he sells contains more than one-half one per cent of alcohol by volume.

I find the licensee guilty as charged and shall suspend his license for ten days. Cf. Re Kelly, supra.

Accordingly, it is, on this 30th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-13, heretofore issued to P. James Callaghan for premises 105 East Hanover Street, Trenton, N. J., by the Board of Commissioners of the City of Trenton, be and the same is hereby suspended for a period of ten (10) days, commencing December 7, 1942, at 2:00 A.M., and concluding December 17, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,

Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINOR - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

MARY C. MURPHY,)
28 South Warren Street,)
Trenton, N. J.,)

Holder of Plenary Retail Consumption License C-233, issued by the Board of Commissioners of the City of Trenton, and transferred during the pendency of these proceedings to)

JAMES J. MURPHY)
for the same premises.)

Abraham S. Lewis, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded non vult to charges alleging that:

(1) and (2): On June 26, 1942 she sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and also Rule 1 of State Regulations No. 20; (3) she falsified her license application by denying that anyone other than herself was interested in the license or the business conducted thereunder, whereas James J. Murphy, Elizabeth Murphy and Ellen McDermott were so interested, in violation of R. S. 33:1-25; and (4) she permitted the said James J. Murphy, Elizabeth Murphy and Ellen McDermott to exercise the rights and privileges of her license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

As to (1) and (2): This is one of the related cases referred to in Re Kelly, Bulletin 540, Item 5. The minor was here served one glass of beer. As in the Kelly case, supra, the license will be suspended for ten days for this violation. Five days will be remitted because of the guilty plea.

As to (3) and (4): The license for these premises was originally in the name of John J. Murphy, father of Mary C. Murphy and the three persons mentioned in charges (3) and (4). Upon his death, leaving a will in which his property was divided equally among his four children, the license was extended to James J. Murphy and Mary Murphy, as executors of the Estate of John J. Murphy. Shortly thereafter James J. Murphy renounced his executorship, leaving Mary Murphy as sole executrix of the estate. In June 1937 Mary Murphy, when filing her application for renewal, was incorrectly advised by the Clerk that the license could not be renewed in her representative capacity and, since the local quota for licenses was exhausted, it would be necessary that she first transfer the license to herself individually, and thereafter renew the license in her name as an individual and not in her capacity as executrix. Pursuant to such advice, the license has ever since been applied for and issued in her name individually.

These facts are corroborated by an inspector of the local issuing authority who is in charge of the investigation of all license applications filed with the Board. In addition, the inspector testified that the local Board has always been aware of the true situation and has considered that Mary Murphy, although holding the license in her own individual name, nevertheless was acting as a representative of all of the legatees of John J. Murphy.

Upon being informed that the license could not continue to remain solely in Mary Murphy's name, an agreement was entered into between Mary Murphy, Elizabeth Murphy and Ellen McDermott, on the one hand, and James J. Murphy on the other hand, whereby the former assigned all of their right, title and interest to the license and business conducted thereunder to the latter. The license has since been transferred by the local issuing authority to the present sole owner, James J. Murphy. Thus, the prior unlawful situation has been fully corrected.

It is clear that at no time did Mary Murphy, or anyone else, deceive the local authority, nor was there ever any intent to deceive such authority. Indeed, the only reason for the occurrence of the violation was the incorrect advice received from the Clerk of the local Board. I am satisfied that all of the parties herein concerned have at all times acted in good faith and that there was no attempt on the part of any of those parties to create a subterfuge or to evade any of the provisions of the Alcoholic Beverage Law. Under all of the circumstances, although technically the licensee is guilty of charges (3) and (4), I shall withhold the imposition of any penalty for this apparently wholly inadvertent and unwitting violation.

Accordingly, it is, on this 30th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-233, heretofore issued to Mary C. Murphy for premises 28 South Warren Street, Trenton, N. J. by the Board of Commissioners of the City of Trenton, and transferred during the pendency of these proceedings to James J. Murphy for the same premises, be and the same is hereby suspended for a period of five (5) days, commencing December 7, 1942, at 2:00 A.M., and concluding December 12, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINOR - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

FRANK RASIMOWICZ, T/a EXTENSION TAVERN, Olden Avenue Extension, Ewing Township, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Ewing.

Joseph J. Felcone, Esq., Attorney for the Defendant-Licensee. William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded guilty to charges alleging that on June 26, 1942 he sold, served and delivered alcoholic beverages to a minor, in violation of R. S. 33:1-77 and also Rule 1 of State Regulations No. 20.

Two other charges, viz., service of alcoholic beverages to intoxicated persons and permitting a brawl on the licensed premises, were dismissed because of lack of evidence.

This tavern is the last of four visited by this minor on June 26, 1942. For the background of this case see Re Kelly, Bulletin 540, Item 5. The plea includes an admission that the minor was served four glasses of beer at these licensed premises on the day in question. The usual penalty of ten days will be imposed, less five days for the guilty plea.

Accordingly, it is, on this 30th day of November, 1942,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued to Frank Rasimowicz, t/a Extension Tavern, for premises at Olden Avenue Extension, Ewing Township, N. J., by the Township Committee of the Township of Ewing, be and the same is hereby suspended for a period of five (5) days, commencing December 7, 1942, at 2:30 A.M., and concluding December 12, 1942, at 2:30 A. M.

ALFRED E. DRISCOLL, Commissioner.

9. ELIGIBILITY - SUMMARY ORDER FOR SUPPORT IN DOMESTIC RELATIONS COURT IS NOT A CONVICTION OF A CRIME WITHIN THE MEANING OF R. S. 33:1-25 - APPLICANT DECLARED ELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

November 30, 1942

Re: Case No. 471

Applicant seeks a ruling as to whether his conviction of failing to support his family is a crime involving moral turpitude, and hence renders him ineligible to work for a liquor licensee or hold a liquor license in this State. R. S. 33:1-25, 26.

In 1938 an order was entered in the Essex County Juvenile and Domestic Relations Court directing applicant to pay a portion of his earnings for the support of his children. In 1941 he was brought back into that Court because he had failed to report to the Probation Officer and to adequately support his wife. At this time he was sentenced to serve one year in the County Penitentiary, from which he was recently released.

A summary order for support in the Domestic Relations Court is not a conviction of a "crime" within the meaning of R.S. 33:1-25. Re Case No. 299, Bulletin 356, Item 7; Re Case No. 340, Bulletin 421, Item 13.

It is therefore recommended that applicant be advised that he is eligible to hold a liquor license or be employed by a liquor licensee in this State.

Harry Castelbaum,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

- 10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - FAILURE TO DISCLOSE MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON BONA FIDE CORRECTION AND EXPIRATION OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)

WILHELM FERDINAND LEHTONEN,)
Union Avenue,)
Lakehurst, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-4 issued by the Borough Council of the Borough of Lakehurst.)
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Robert A. Lederer, Esq., Attorney for Defendant-Licensee.
Richard C. Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charges:

"1. In your license application dated June 18, 1942, filed with the Borough Council of the Borough of Lakehurst, upon which Plenary Retail Consumption License C-4 for the year 1942-43 was granted to you, you falsely stated 'No' in answer to Question 28 in said application, which question asks: 'Has any individual.....other than the applicant, any interest directly or indirectly in the license applied for or in the business to be conducted under said license?', whereas in truth and in fact John H. Wuorela was so interested in that he was the real and beneficial owner of the licensed business; such false statement being in violation of R. S. 33:1-25.

"2. From on and about July 1, 1942 and until the present time, you knowingly aided and abetted John H. Wuorela, a non-licensee, to exercise the rights and privileges of your license contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

It appears from the departmental file that Wilhelm F. Lehtonen made application for a liquor license in his name merely to accommodate one John H. Wuorela. This arrangement was agreed to because Wuorela was and is disqualified from holding a license by reason of the fact that he has resided in New Jersey only since August 1940.

The defendant admits that at no time did he have any financial interest in the business and that at all times Wuorela, the holder of an employment permit, actually conducted the business armed with a power of attorney given by the defendant to Wuorela. Defendant also admits that he knew these acts were a violation of the law.

Since the present method of operation is improper and there has not been a correction of the "front", I shall suspend the license for the balance of the fiscal year. Because of the guilty plea and the frank disclosure of all the facts of the defendant and since Wuorela is apparently disqualified only by lack of residential requirement, I shall entertain an application to lift said suspension upon transfer of the license to a duly qualified licensee after the expiration of thirty days from the effective date hereof.

As to affiliate proceedings concerning Wuorela, employment permittee, see Re Wuorela, Bulletin 540, Item 11.

Accordingly, it is, on this 2nd day of December, 1942,

ORDERED, that Plenary Retail Consumption License heretofore issued to Wilhelm Ferdinand Lehtonen by the Borough Council of the Borough of Lakehurst, for premises on Union Avenue, Lakehurst, be and the same is hereby suspended for the balance of its term, effective immediately; and it is further

ORDERED, that if and when transfer of the license to a duly qualified purchaser is granted by the local issuing authority, application may be made to me by said purchaser to vacate said suspension; provided, however, that in no event shall said suspension be vacated prior to the expiration of thirty (30) days from the effective date thereof.

ALFRED E. DRISCOLL,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION FOR EMPLOYMENT PERMIT - FAILURE TO DISCLOSE MATERIAL FACTS - EXERCISE OF THE RIGHTS AND PRIVILEGES OF THE LICENSE BY DISQUALIFIED PERSON - EMPLOYMENT PERMIT SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against JOHN HJALMAR WUORELA Union Avenue Lakehurst, N. J.,

CONCLUSIONS AND ORDER

Holder of Employment Permit No. 4060, issued by the State Commissioner of Alcoholic Beverage Control.

Robert A. Lederer, Esq., Attorney for Defendant-Permittee. Richard C. Gossweiler, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to the following charges:

1. That in his application for employment permit, dated July 7, 1942, he falsely denied that he was interested directly or indirectly in any alcoholic beverage license, whereas in fact he was interested in plenary retail consumption license C-4 granted to Wilhelm Ferdinand Lehtonen, said false statement being in violation of R. S. 33:1-25.

2. That since July 1, 1942 he, not being a licensee, exercised the rights and privileges of the license of Wilhelm Ferdinand Lehtonen, in violation of R. S. 33:1-26.

The facts concerning the instant case are set forth in Re Lehtonen, Bulletin 540, Item 10.

The defendant-permittee obtained an employment permit from this Department and conducted the business under a power of attorney given to him by the licensee, Lehtonen.

As to penalty: I have previously stated that I would not tolerate the use of employment permits as a device to permit operation of licensed premises by disqualified persons. See Re Haight, Bulletin 482, Item 5. Under the circumstances of this case, I shall suspend the permit for the balance of the fiscal year.

Accordingly, it is, on this 2nd day of December, 1942,

ORDERED, that Employment Permit No. 4060, heretofore issued to John Hjalmar Wuorela by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for the balance of the fiscal year, effective immediately.

ALFRED E. DRISCOLL, Commissioner.

12. MORAL TURPITUDE - FACTS EXAMINED - CRIME OF STEALING ELECTRICITY FOUND TO INVOLVE MORAL TURPITUDE.

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.)

CONCLUSIONS
AND ORDER

Case No. 147.
-----)

BY THE COMMISSIONER:

Petitioner in this proceeding prays that it be determined that neither of the crimes of which he was convicted involved moral turpitude or, in the alternative, that his disqualification resulting from said convictions be lifted pursuant to R. S. 33:1-31.2.

In November 1933 petitioner was found guilty in a Court of Special Sessions of the crime of stealing electricity by tampering with wires, as a result of which he was fined \$50.00 and placed on probation for one year. In March 1935 he was found guilty in a Court of Quarter Sessions of the crime of possessing illicit liquor, as a result of which he was fined \$100.00.

It is argued that the crime of stealing electricity did not involve moral turpitude because the petitioner had no knowledge that the electric wires had been tapped. However, the question of his guilt or innocence cannot be redetermined herein in view of his guilty plea in the criminal proceeding. I conclude that, despite the apparently small amount of electricity stolen, the crime which was fraudulent in character involved moral turpitude. Re Platner, Bulletin 507, Item 1. In view of this finding, it is unnecessary to determine whether petitioner's second conviction involved moral turpitude.

At the hearing herein, two businessmen and a police officer, each of whom has known petitioner for more than fifteen years, testified that petitioner's reputation has been good since the time of his last conviction. Fingerprint records disclose that petitioner has not been convicted of any crime since March 1935. I conclude, therefore, that petitioner has been law-abiding for more than five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 2nd day of December, 1942,

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

Alfred E. Griswold
Commissioner.