

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

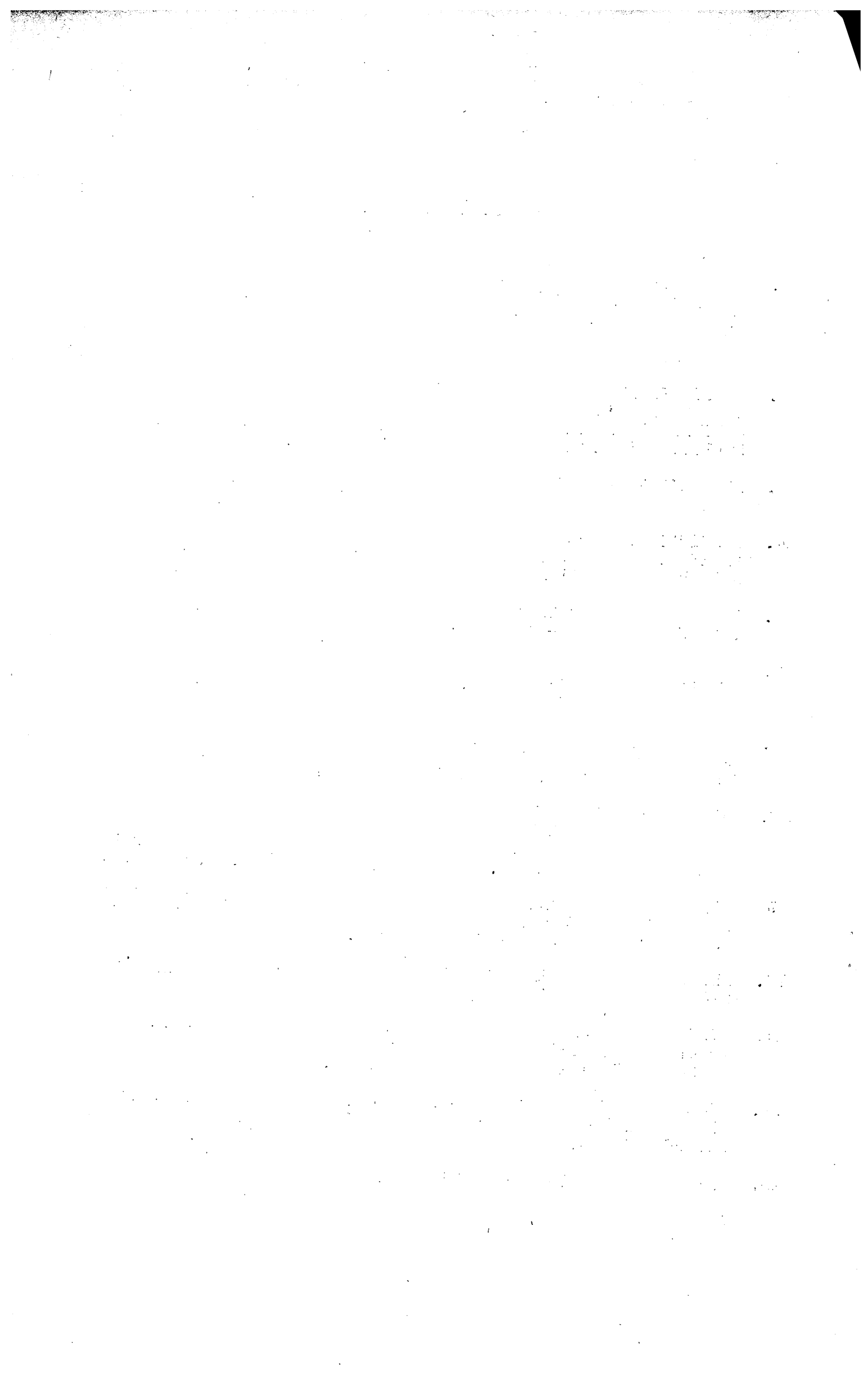
BULLETIN 591

OCTOBER 28, 1943

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The sale of distilled spirits in excess of five gallons to one person at one time without having paid the special tax imposed on wholesale liquor dealers is, primarily, a violation of a Federal law. Since the violation, the record shows that the necessary special tax stamp had been issued to the defendant-licensee by the Federal authorities. This retroactive validation apparently satisfies the Federal government. There appears to be no need for further punitive action by this Department. Hence, I shall impose no additional penalty as to charge (2). Cf. Re Caruso, Bulletin 415, Item 14.

I shall remit five days for the plea of guilty entered herein, making a net suspension of the license for a period of ten days.

Accordingly, it is, on this 15th day of October, 1943,

ORDERED, that Plenary Retail Distribution License D-2, issued by the Mayor and Council of the Borough of Wharton to John P. Wagi, trading as Jack's Liquor Store, for premises 25 North Main Street, Wharton, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A.M. October 19, 1943, and terminating at 1:00 A.M. October 29, 1943.

ALFRED E. DRISCOLL
Commissioner.

- 2. DISCIPLINARY PROCEEDINGS - VIOLATION OF R. S. 33:1-67 BY HOLDER OF SOLICITOR'S PERMIT - AIDING AND ABETTING A LICENSEE TO SELL CONTRARY TO R. S. 33:1-2 AND IN VIOLATION OF R. S. 33:1-52 - SOLICITOR'S PERMIT SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

WALTER COWELL THOMAS)
1156 Washington Street)
Easton, Pennsylvania,)

CONCLUSIONS
AND ORDER

Holder of Solicitor's Permit)
No. 1346, issued by the State)
Commissioner of Alcoholic)
Beverage Control.)
-----)

Walter Cowell Thomas, Pro Se.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charges:

"1. On or about April 14, 1943 you solicited an order from John P. Wagi, a retail liquor licensee of New Jersey, to sell alcoholic beverages to Robert Clinton Moyer, a retail liquor licensee of Pennsylvania, such solicitation not being pursuant to or within the terms of your solicitor's permit authorizing your employment by Phillipsburg Beverage Co., and hence being in violation of R. S. 33:1-67.

"2. At the time aforesaid you knowingly aided and abetted John P. Wagi, a retail liquor licensee, to sell, contrary to R. S. 33:1-2, alcoholic beverages to Robert Clinton Moyer for the purpose of resale and not for consumption; such aiding and abetting being in violation of R. S. 33:1-52."

The file discloses that the defendant, a solicitor employed by the Phillipsburg Beverage Co., made arrangements with a retail liquor licensee of New Jersey to sell a quantity of alcoholic beverages to a retail liquor dealer of the State of Pennsylvania. Defendant's permit merely authorizes him to solicit business for his employer aforementioned.

In explanation of the transaction whereby the alcoholic beverages were sold by one liquor retailer to another, defendant stated that he was not aware that he was instrumental in causing any violations of the Alcoholic Beverage Control Act. Even though defendant is a non-resident, his admission that he was ignorant of the law is not a justifiable excuse. It may be said in defendant's favor, however, that he displayed a fine spirit by his voluntary appearance and frank disclosure at a departmental hearing involving an affiliate matter.

I shall, therefore, suspend the permit issued to defendant for a period of fifteen days, less five days for the plea entered herein, making a net suspension of ten days. See Re Wagi, decided herewith, as to the penalty which may be imposed in future cases.

Accordingly, it is, on this 15th day of October, 1943,

ORDERED, that Solicitor's Permit No. 1346, issued by the State Commissioner of Alcoholic Beverage Control to Walter Cowell Thomas for premises 1156 Washington Street, Easton, Pennsylvania, be and the same is hereby suspended for a period of ten (10) days, commencing on October 19, 1943 and terminating on October 29, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. ELIGIBILITY - FACTS EXAMINED - APPLICANT FOUND ELIGIBLE FOR EMPLOYMENT BY A LIQUOR LICENSEE IN THIS STATE.

October 18, 1943

Re: Case No. 515

Subject was convicted as a disorderly person in 1919, as a violator of the Motor Vehicle Act in 1923, and in a bastardy proceeding in 1933.

None of the foregoing represent convictions of crimes. Cf. Re Case No. 318, Bulletin 394, Item 17 (bastardy); Re Case No. 500, Bulletin 580, Item 7 (disorderly person and Motor Vehicle Act).

In 1938 subject, while in the coal business, was arrested for a violation of the Weights and Measures Act, as a result of which he was fined \$125.00. It appears that, in making a delivery of coal, he failed to have a certified weight slip and a slip showing the origin of the coal. The proceeding under this Act is summary and the offense does not subject the accused to indictment. The punishment imposed is by way of fine and may be recovered in a civil

proceeding as a penalty. Such a proceeding is penal, as distinguished from criminal, and does not constitute a conviction of a crime within the meaning of the Alcoholic Beverage Law. Cf. Latimer v. Wilson, 103 N. J. L. 159 (Ct. of E. & A. 1926); Huff v. C. W. Goddard Coal Co., 106 N. J. L. 19 (Sup. Ct. 1929).

It is recommended that subject be advised that he has not been convicted of a crime and that he is, therefore, eligible for employment by a liquor licensee in this State.

Samuel B. Helfand
Attorney.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - PREVIOUS RECORD - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

HELEN B. SICA
T/a HOLLYWOOD INN
Cor. Clifton & Washington Sts.
Dover Township
P.O. Toms River, N. J.,

CONCLUSIONS
AND ORDER

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

Helen B. Sica, Defendant-Licensee, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded guilty to a charge alleging that, on July 4, 1943, she sold alcoholic beverages after permissible hours, in violation of local regulation.

The agents report that, on the occasion in question, they were sold alcoholic beverages by a waitress employed by the licensee, at 3:30 A.M., or thirty minutes past the closing hour fixed by municipal ordinance. The licensee was not present at the time of the violation.

The previous record of this licensee discloses that she suffered a five-day suspension imposed upon her by the Township Committee on a charge of selling alcoholic beverages to minors on April 9, 1943. Under all of the circumstances, I must suspend the license for twenty days, less five days for the guilty plea, or a net suspension of fifteen days.

Accordingly, it is, on this 18th day of October, 1943,

ORDERED, that Plenary Retail Consumption License C-3, heretofore issued by the Township Committee of the Township of Dover to Helen B. Sica, t/a Hollywood Inn, for premises corner of Clifton and Washington Streets, Dover Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A.M. October 25, 1943 and terminating at 2:00 A.M. November 9, 1943.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN SOLIDS AND ACIDS - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against
JULES BERNSTEIN and
DOROTHY STERN,
21 Broadway,
Paterson, New Jersey,
Holder of Plenary Retail Consumption License C-10 issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS
AND ORDER

David Newman, Esq., Attorney for Defendants.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded guilty to the following charge:

"On or about July 23, 1943 you possessed illicit alcoholic beverages at your licensed premises, viz., one 4/5 quart bottle labeled 'Carstairs Blended Whiskey' and two 4/5 quart bottles labeled 'Calvert Reserve Blended Whiskey', which bottles contained alcoholic beverages which were not genuine as labeled; such possession being in violation of R. S. 33:1-50."

On July 23, 1943, a Junior Inspector attached to the Alcohol Tax Unit, Internal Revenue Service, examined thirty-two opened bottles and seized the three bottles mentioned in the charge because the color of the contents appeared darker than it should have been. Subsequent analysis by the Federal Chemist disclosed that the contents of the seized bottle of "Carstairs" was substantially lower in acids and substantially higher in solids than the contents of genuine samples, and also that the contents of the two bottles of "Calvert" were substantially higher in solids than the contents of genuine samples. At the time of the seizure each of the licensees denied any knowledge of the "refills".

The licensees requested an opportunity to present their testimony as to the violation, and the request was granted. At a hearing held solely for this purpose, Jules Bernstein testified that he had not tampered with the contents of the seized bottles and that a porter, whom he has since discharged, admitted, after the violation was discovered, that he had taken some drinks from the seized bottles and that he had refilled the seized bottles with other liquor.

As to penalty: Despite the personal innocence of the licensees, they must be held strictly responsible for any "refills" found in their stock of liquor. Re Kurian, Bulletin 517, Item 2. The record of defendants is otherwise clear. No aggravating circumstances appear and, in the absence thereof, I shall suspend the license for ten days, which is the minimum penalty in cases of this kind.

Accordingly, it is, on this 19th day of October, 1943,

ORDERED that plenary retail consumption license C-10, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Jules Bernstein and Dorothy Stern, for premises 21 Broadway, Paterson, be and the same is hereby suspended for ten (10) days commencing at 3 A. M. October 25, 1943, and terminating at 3 A. M. November 4, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

KATHERINE PROBINSKY)
t/a Kaye's Corner)
3511 Pacific Avenue)
Wildwood, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-))
tion License C-16, issued by the))
Board of Commissioners of the))
City of Wildwood.))
- - - - -)

W. Russell Epler, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult, with a statement, to charges alleging, in substance, that on August 30, 1943 she sold alcoholic beverages to, and permitted the consumption of alcoholic beverages upon her licensed premises by, Dorothy _____, Dolores _____, Rita _____ and Coast Guardsmen George _____ and John _____, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The charges were preferred as a result of an investigation made by A.B.C. investigators. In mitigation of penalty, defendant avers that, in response to an inquiry by her agent, the three girls stated their ages to be twenty-one years. This was substantiated by one of the girls but denied by the other two.

The defendant cannot successfully defend herself against the charge of selling or serving to minors unless she can show compliance with all the provisions of R. S. 33:1-77, namely, (a) that the minor falsely represented in writing that he or she was twenty-one years of age or over (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one years of age or over, and (c) that the sale was made in

good faith, relying upon such representation and appearance and in the reasonable belief that the minor was actually twenty-one years of age or over. (Underlining ours.) Re Lombardi, Bulletin 588, Item 8.

Defendant also alleges that, in response to a similar inquiry, the two Guardsmen in question produced identification cards which showed they were above the age of twenty-one years. It appears that these cards were in fact liberty cards which did not belong to the young men. An identification card has a photograph of the holder and states his age, while a liberty card only states the name and age of the holder. An examination of the identification card bearing a picture of the holder, in contrast to a liberty card, would have prevented the subterfuge which the minors sought to perpetrate on the licensee. The mere acceptance of the liberty cards as conclusive proof that the Guardsmen were of full age likewise does not constitute a valid defense. Re Lombardi, supra. A third Guardsman, who was a member of the party, was not served because of his failure to produce such a card.

Apparently there was some doubt in the mind of the licensee's agent with respect to the ages of these customers, otherwise she would not have made any inquiry with respect to age. Under the circumstances, it was her duty to follow the procedure prescribed in R. S. 33:1-77. Had she done so, the chances are that she would have avoided violating the law and the minors would have been refused the service of alcoholic beverages. Her failure to follow the statute leaves me no other alternative than to impose an appropriate penalty. The public policy of this State has been clearly stated in the statute prohibiting the sale of alcoholic beverages to minors.

Dorothy _____ and Dolores _____ were each seventeen years of age and Rita _____ was nineteen. Coast Guardsmen George _____ and John _____ were eighteen and nineteen years of age, respectively.

The usual penalty for sale of alcoholic beverages to minors, where there are no aggravating circumstances, is ten days. Re Kurtz, Bulletin 585, Item 5. Although the licensee has no previous record, the sale of alcoholic beverages to five minors, some of whom were seventeen and eighteen years old, is an aggravating factor which ordinarily would warrant that the usual penalty of ten days be doubled. Re Konvitz, Bulletin 539, Item 8. However, in fixing the penalty I shall take into consideration the fact that licensee's agent apparently did receive false assurances as to the age of some of the minors and refused to serve the Guardsman who failed to produce a liberty card. Re Panetta, Bulletin 564, Item 1.

In view of all the circumstances of this case I shall suspend the license for fifteen days, less five days for the plea of non vult, leaving a net penalty of ten days.

Accordingly, it is, on this 19th day of October, 1943,

ORDERED that Plenary Retail Consumption License C-16 issued by the Board of Commissioners of the City of Wildwood to Katherine Probinsky, t/a Kaye's Corner, for premises 3511 Pacific Avenue, Wildwood, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A. M. October 25, 1943 and terminating at 2:00 A. M. November 4, 1943.

ALFRED E. DRISCOLL
Commissioner.

7. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT 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. 300.)
-----)

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

This matter is before me on a petition praying the removal of a disqualification resulting from the conviction of a crime, pursuant to R. S. 33:1-31.2.

In February 1931, petitioner was arrested charged with breaking, entering, robbery and burglary. At that time he was nineteen years old. Subsequently he pleaded non vult to the breaking and entering, the other charges having been dropped, and was sentenced to three years probation. He was discharged from probation on September 11, 1933.

Petitioner testifies that his sole skirmish with the law arose out of his association with a group of boys in a "club". The principal activity sponsored by this "club" seems to have been petty thievery. In petitioner's first attempt to qualify as a member he acted as "lookout". It was his last effort and he has no further record. In April 1940 he was married and since that time has lived happily with his wife.

The petitioner presents three witnesses, one of whom says she has known petitioner and his family for many years and states that his reputation as a law-abiding citizen is good. Another witness who has known petitioner for over ten years in a social way, sees him often and is in his social group, says she believes his reputation to be good and that everyone thinks well of him. The third witness has known petitioner for about twelve years, has been in business with him and, since petitioner's marriage, has met his family and sees him three or four times a week. He says his reputation is very good and that he has never seen or heard anything that would lead him to the opinion that petitioner is anything but a law-abiding, reputable citizen.

From all of the foregoing I am satisfied that petitioner has led a law-abiding life for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest. Hence, petitioner's disqualification will be removed.

Accordingly, it is, on this 19th day of October, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 BROAD STREET NEWARK, N. J.

8.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST, 1943 TO SEPTEMBER 30TH, 1943
AS REPORTED TO THE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered Revoked Expired	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	423	\$ 162,089.80	42	\$ 16,950.00	7	\$ 700.00						472	\$ 179,739.80
Bergen	774	256,590.23	228	55,393.00	45	4,299.73	24	\$ 1,095.00	4	\$ 768.06	1	1074	318,146.02
Burlington	175	56,929.66	15	3,750.00	30	3,675.00	1	25.00			1	220	64,379.66
Camden	430	184,814.18	51	18,675.00	54	4,996.99					1	534	208,486.17
Cape May	120	52,254.63	10	2,900.00	7	698.08					1	136	55,852.71
Cumberland	77	22,900.00	7	1,700.00	26	2,750.00						110	27,350.00
Essex	1361	683,266.64	335	157,521.60	77	10,193.84	15	750.00			4	1784	851,732.08
Hampden	105	29,642.00	10	1,600.00	5	300.00						120	31,542.00
Hudson	1519	626,991.50	264	105,231.03	46	5,916.58	43	1,675.00			3	1869	739,814.11
Hunterdon	68	17,770.00	1	300.00	1	150.00						70	18,220.00
Mercer	420	176,214.73	44	11,200.00	37	4,737.95			1	88.02	1	501	192,240.70
Middlesex	574	226,420.84	42	11,710.00	30	2,600.00	1	25.00			1	646	240,755.84
Monmouth	449	182,378.89	70	19,998.00	19	2,320.49	6	200.00	21	6,934.45	1	564	211,831.83
Morris	296	89,130.00	65	16,100.00	24	2,100.00	1	25.00	9	1,211.16	1	394	108,566.16
Ocean	148	67,875.33	22	8,575.00	6	600.00						176	77,050.33
Passaic	856	330,800.00	114	32,450.00	26	3,125.00	9	400.00	1	125.00		1006	366,900.00
Union	50	15,750.00	4	550.00	10	875.00						64	17,175.00
Somerset	175	58,394.83	24	5,575.00	8	800.00						207	64,769.83
Sussex	132	28,488.37	11	1,550.00	3	160.00			3	450.00		149	30,648.37
Warren	533	263,210.27	122	41,450.00	53	6,225.00	12	550.00				720	311,435.27
Warren	130	34,496.77	12	2,182.50	17	1,830.00			1	150.00		160	38,659.27
TOTALS	8815	\$3,566,408.67	1493	\$515,361.13	531	\$59,053.66	112	\$4,745.00	40	\$9,726.69	15	10976	\$4,155,295.15

ALFRED E. DRISCOLL, Commissioner.

Respectfully submitted,
ERWIN B. HOCK
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF A LICENSE PRIOR TO ACQUISITION THEREOF, IN VIOLATION OF R. S. 33:1-26 - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against)

JOSEPH DI DONATO,)
444 - 58th Street,)
West New York, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-75 issued by the Board of Commissioners of the Town of West New York.)

Theodore Cohen, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charge:

"From September 11, 1934 until June 30, 1935 you exercised the rights and privileges of the plenary retail consumption license then being held by Herbert F. Burns for premises at 444 - 58th Street (formerly 14th Street), West New York, New Jersey, and thereafter until June 30, 1939 you exercised the rights and privileges of the successive plenary retail consumption licenses then being held by Frank Di Donato for the same premises, and thereafter until June 30, 1943 you exercised the rights and privileges of the successive plenary retail consumption licenses then being held by Daniel Di Donato for the same premises; your exercise of the rights and privileges of those licenses being in violation of R. S. 33:1-26."

At the hearing held herein defendant testified that Herbert F. Burns was a partner in the licensed business from September 1934 to June 30, 1935. There is some information in the file from which it might be inferred that, during that period of time, defendant herein did not want to have the license in his name because of his possible liability under a lease involving premises which he had previously vacated. In any event, the interest of Burns in the licensed business terminated in June 1935. Thereafter licenses for the premises in question were obtained in the name of Frank Di Donato and later in the name of Daniel Di Donato, both of whom are sons of defendant. In June 1943 the license was transferred from Daniel Di Donato to Joseph Di Donato, and renewed in the name of Joseph Di Donato for the current fiscal year. Defendant frankly admits that, at all times mentioned in the charges, he had an undisclosed interest in the license and the licensed business.

As to penalty: The unlawful situation has been corrected. For the greater period of the time mentioned in the charge, the case involves a family relationship between the parties. Defendant has testified that the sole reason why he placed the various licenses in the name of his sons was "because it was my sons". It clearly appears that defendant exercised the rights and

privileges of successive licenses issued in the names of other persons. Under all the circumstances I shall suspend the license for a period of ten days.

Accordingly, it is, on this 22nd day of October, 1943,

ORDERED that plenary retail consumption license C-75 issued by the Board of Commissioners of the Town of West New York to Joseph Di Donato for premises 444 - 58th Street, West New York, be and the same is hereby suspended for a period of ten (10) days commencing at 3 A. M. October 26, 1943, and terminating at 3 A. M. November 5, 1943.

ALFRED E. DRISCOLL
Commissioner.

10. ELIGIBILITY - FACTS EXAMINED - APPLICANT FOUND ELIGIBLE
FOR EMPLOYMENT BY A LIQUOR LICENSEE IN THIS STATE.

October 22, 1943

Re Case No. 518.

Applicant, now twenty years of age, desires to manage the licensed business recently purchased by his brother, who has been called for the Army, and seeks a determination as to whether or not he is disqualified by reason of conviction of a crime.

The charge on which the applicant was convicted was burglary. The record shows a conviction in February of 1940, and a sentence of probation for one year.

The applicant, who at the time of his conviction was sixteen and one-half years old, gives an explanation of the crime which leads one to believe that the act of burglary was committed by an older companion, who disappeared before trial. His theory and explanation is rather borne out by the fact that no jail sentence was imposed. The applicant has no other record, either prior or subsequent to this one instance. He is married, lives with his wife and, in spite of his youth, seems to be a substantial and successful business man of his community.

In cases of this kind, involving one so young, it would seem that we must endorse the humanitarian principles laid down by the late Commissioner Burnett and determine that, under all the circumstances in this particular instance, the conviction did not involve moral turpitude. Re Case No. 36, Bulletin 149, Item 1.

I recommend that applicant be advised that he may be employed in licensed premises upon the issuance to him of the proper permit, but that he cannot in any manner serve, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverages because of his age.

Edward F. Hodges
Attorney.

APPROVED:

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWERS IN APPLICATIONS CONCEALING MATERIAL FACTS DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against ROSELLE FOOD SHOP, INC., 234 East 9th Avenue, Roselle, N. J.

Holder of Plenary Retail Distribution License D-4, for the 1942-43 fiscal year, issued by the Mayor and Borough Council of the Borough of Roselle.

In the Matter of Disciplinary Proceedings against MITCHEL SOKAL, 234 East 9th Avenue, Roselle, N. J.

Holder of Employment Permit No. 1746, for the 1942-43 fiscal year, issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

In the Matter of Disciplinary Proceedings against DAVID SOKAL, 711 Pennington Street, Elizabeth, N. J.

Holder of Employment Permit No. 1747, for the 1942-43 fiscal year, issued by the State Commissioner of Alcoholic Beverage Control.

In the Matter of Disciplinary Proceedings against ABRAHAM SOKAL, 24 Garden Drive, Roselle, N. J.

Holder of Employment Permit No. 1748, for the 1942-43 fiscal year, issued by the State Commissioner of Alcoholic Beverage Control.

Harold L. Fisher, Esq., Attorney for Defendant-Licensee and Defendant-Permittees. Julius Kwalick, Esq., Attorney for prospective purchaser of licensed premises. Richard C. Gossweiler, Esq., Attorney for State Department of Alcoholic Beverage Control

BY THE COMMISSIONER:

Defendant, a corporate licensee for the fiscal year 1942-43, entered a plea of not guilty to charges alleging that it falsely answered "No" to Question 23 in its application for a license, by stating that no individuals other than those listed had a beneficial interest in the stock of the corporation, whereas, in fact and in violation of R. S. 33:1-25, Mitchel Sokal, David Sokal and Abraham Sokal were alleged to have such an interest.

The defendant-permittees entered a plea of not guilty to a charge alleging that in their applications for employment permits they falsely answered Question 13 and in so doing suppressed the fact that they were the real and beneficial owners of the stock in the Roselle Food Shop, Inc., the defendant-licensee.

Since the charges arise out of the same facts, the proceedings have been consolidated and will be disposed of together.

The attorney for the Department of Alcoholic Beverage Control contends that the three Sokals actually owned the beneficial interest in the stock of the Roselle Food Shop, Inc. and that Meyer Kahn, Harold L. Fisher and his wife, whose names were disclosed in the application, were in fact holding the stock for them.

It appears from the defendants' testimony that the Sokals originally intended to buy the business and for that purpose secured a loan of \$1000.00 (actually \$1400.00) from the Cardinal Commerce Corporation. During the course of the negotiations the Sokals found the terms of purchase unduly burdensome and decided to abandon their plans. Fisher, their attorney, who, from time to time had been called upon to support his father-in-law, Meyer Kahn, thereupon decided that he would purchase the business in order to help the latter. He was unwilling, however, to assume responsibility for the business unless the Sokals would run it for him since they had had considerable experience, whereas neither he nor his father-in-law had had any experience in the alcoholic beverage business. This was agreed. Meyer Kahn personally invested \$500.00. Fisher personally "put up" \$1000.00. Defendant corporation, if it did not assume, at least proceeded to pay, out of the earnings, the loan previously negotiated with the Cardinal Commerce Corporation, the proceeds of which had apparently been delivered to the vendor. 180 shares of stock were transferred to Meyer Kahn, 10 shares to Fisher, a non-resident, and 10 shares to Fisher's wife, likewise a non-resident. This is the defendants' story.

While there are grave doubts in my mind with respect to the propriety of the defendants' activities, the evidence presently before me does not convincingly prove that the Sokals were anything other than employees of the defendant corporation.

Despite the Department's failure to sustain the burden of proof, there remains in my mind a grave suspicion with respect to the interest of the Sokals in the license. It is my considered judgment that the full story of the concealed manipulation of the defendant's corporate stock and the transaction incident to the purchase of the same by Fisher and/or the Sokals was not disclosed at the hearing. It further appears from the record in this case that Meyer Kahn held his stock for someone other than himself. The reasonable inference to be drawn from the testimony appearing in the present inadequate record is that he held all or a major portion of his stock for Fisher, a non-resident, and the corporation was accordingly disqualified from holding a license in this State. R. S. 33:1-25. Fisher states that he invested \$1000.00

in the new venture and received 20 shares of stock for himself and his wife, while Kahn invested \$500.00 and received 180 shares of stock. Thus, Fisher and his wife received a 10% interest in the business for \$1000.00, while Kahn received a 90% interest for \$500.00. The explanation for this strange procedure tends to confirm my conviction that the corporation failed to disclose the true ownership of its corporate stock in its application for license.

It is, however, unnecessary at this time to either amend the present charges or to institute new proceedings in view of the fact that the corporate defendant did not apply for a license for the current year. The Sokals likewise have failed to apply for renewal of the permits previously held by them. The license and permits referred to in the charges have expired by their terms.

For the reasons herein stated, it is, on this 22nd day of October, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
FREE BRIDGE TAVERN, INC.,
110 Bridge Street,
Trenton, New Jersey,
Holder of Plenary Retail Consumption License C-125 issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS
AND ORDER

Joseph J. Felcone, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On September 21, 1943, there was sent by registered mail to defendant-licensee a copy of the following amendatory charge:

"After 10:00 P. M. on Friday, September 10, 1943, and before 9:00 A. M., on Saturday, September 11, 1943, you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a pint bottle of whiskey, at retail in its original container, for consumption off the licensed premises, thereby violating Rule 1 of State Regulations No. 38 which prohibits any such type of sale or delivery after 10:00 P. M. and before 9:00 A. M. on any weekday."

The letter which accompanied the charge advised defendant that a hearing upon the amendatory charge would be held at the offices of this Department on September 28, 1943, at 2 P. M. The letter also advised the defendant-licensee as follows:

"If you desire to contest the charge, you should appear at the Department on that date prepared to proceed with the case.

"If, on the other hand, you intend to enter a plea of guilty to the charge and want your confession of guilt to be considered by the Commissioner as a possible mitigating circumstance in the case, you should in order to expedite the matter, enter the plea three days in advance of the date of the hearing. Such plea may, if you wish, be entered by letter."

No plea was entered prior to the date scheduled for hearing. The Department was, therefore, required to subpoena all necessary witnesses and was forced to expend witness fees.

On the date scheduled for hearing the president of defendant corporation and the attorney for the corporation appeared at the offices of this Department and entered a plea of guilty to the charge. The only question to be decided concerns the penalty to be imposed.

The file discloses that, at approximately 12:25 A. M. on September 11, 1943, Samuel Tomaselli, president of defendant corporation, sold in the licensed premises a pint bottle of whiskey to a cab driver. There is a suspicion that the cab driver obtained the whiskey for the purpose of reselling it to soldiers. Whether or not this is so, the whiskey was delivered to the soldiers at some point other than the licensed premises. The president of defendant corporation testified that the cab driver told him that he was purchasing the whiskey for a relative of a stockholder in defendant corporation. In any event, it is clear that the sale was made in violation of Rule 1 of State Regulations No. 38 which prohibits the sale and delivery of alcoholic beverages in original containers for off-premises consumption after 10 P. M. and before 9 A. M. on any weekday.

Ordinarily I would suspend the license for a period of fifteen days and, if the plea of guilty had been previously entered so as to save the Department the time and expense of trying the case, I would remit five days from the penalty because of the guilty plea. Licensees, however, cannot delay the entry of their plea until the date of hearing and then, after the Department has been put to the expense and trouble of subpoenaing its witnesses, expect any credit for the entry of the plea. In future cases I will deny any remission of the penalty when the entry of the guilty plea is unduly delayed. However, since this is the first case in which this question has formally been raised, I will suspend the license in this proceeding for a period of ten days.

Accordingly, it is, on this 22nd day of October, 1943,

ORDERED that plenary retail consumption license C-125, issued by the Board of Commissioners of the City of Trenton to Free Bridge Tavern, Inc. for premises at 110 Bridge Street, Trenton, be and the same is hereby suspended for a period of ten (10) days commencing at 2 A. M. October 26, 1943, and terminating at 2 A. M. November 5, 1943.

ALFRED E. DRISCOLL
Commissioner.

13. FAIR TRADE - NOTICE - SUPPLEMENTAL PUBLICATION.

IMPORTANT NOTICE OF PUBLICATION OF FAIR TRADE
SUPPLEMENT PURSUANT TO REGULATIONS NO. 30.

It has become increasingly apparent that confusion in the application of mark-ups provided for in OPA Regulation MPR445, effective August 31, 1943, has resulted in the listings of minimum resale prices in the fair trade publication, effective September 13, 1943 and now in force, which are in conflict with permitted OPA maximums. In many instances, prices listed in the current minimum resale price publication are higher than the price levels determined by the application of the formula for mark-ups provided for in OPA regulations.

In order that proper adjustments may be made by listers to correct the conflict between listed minimums and OPA maximums, it is my decision that a supplemental minimum resale price pamphlet shall become effective on Monday, November 15, 1943.

New items and changes in old items must be filed at the offices of this Department not later than Wednesday, November 3, 1943.

In submitting price lists to the Department for this supplemental publication, it is suggested that listers closely check their prices now appearing in the complete pamphlet which was effective September 13, 1943, and apply the formula of mark-ups prescribed in OPA Regulation MPR445 strictly and accurately to the fractional cent. In the event that any item is found at variance and in conflict with OPA maximums, submit a corrected listing for the item involved.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the supplemental price list is mailed to all retail licensees.

Dated: October 26, 1943.

Alfred E. Driscoll
Commissioner.