

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

BULLETIN 710

MAY 15, 1946.

TABLE OF CONTENTS

ITEM

1. NEW LEGISLATION - STATE-WIDE LIMITATION OF THE NUMBER OF PLENARY AND SEASONAL RETAIL CONSUMPTION AND PLENARY RETAIL DISTRIBUTION LICENSES.
2. STATE-WIDE LIMITATION OF RETAIL LICENSES (CHAPTER 147 OF THE LAWS OF 1946) - INTERPRETATION AND EXPLANATION OF THE NEW LAW.
3. NEW LEGISLATION - EXTENSION OF LICENSE TO EXECUTOR OR ADMINISTRATOR OF DECEASED LICENSEE - APPEAL TO STATE COMMISSIONER FROM MUNICIPAL AUTHORITY'S ACTION GRANTING OR REFUSING EXTENSION - P. L. 1946, CHAPTER 316, AMENDING REVISED STATUTES 33:1-22.
4. NEW LEGISLATION - RETAIL LICENSE FEES - INCREASE FROM \$1,000.00 TO \$2,000.00 IN MAXIMUM PERMITTED FEE FOR PLENARY RETAIL DISTRIBUTION LICENSE - P. L. 1946, CHAPTER 272, AMENDING REVISED STATUTES 33:1-12.
5. NEW LEGISLATION - MINORS - P. L. 1946, CHAPTER 246, AMENDING REVISED STATUTES 33:1-81.
6. DISCIPLINARY PROCEEDINGS (Jersey City) - CHARGE OF ADVERTISING ALCOHOLIC BEVERAGES NOT AVAILABLE FOR SALE AT THE LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 21, DISMISSED.
7. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS IN DISCIPLINARY PROCEEDINGS BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.
8. DISCIPLINARY PROCEEDINGS (Paterson) - PERMITTING BOOKMAKING ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.
9. APPELLATE DECISIONS - NEW JERSEY TAVERN ASSOCIATION ET AL. v. LAKEHURST AND DAVID RUSSAKOW - DISMISSED.
10. APPELLATE DECISIONS - NEW JERSEY TAVERN ASSOCIATION ET AL. v. LAKEHURST AND HARRY RUSSAKOW.
11. DISCIPLINARY PROCEEDINGS (National Park) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

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

BULLETIN 710

MAY 15, 1946.

1. NEW LEGISLATION - STATE-WIDE LIMITATION OF THE NUMBER OF PLENARY AND SEASONAL RETAIL CONSUMPTION AND PLENARY RETAIL DISTRIBUTION LICENSES.

Senate Bill No. 74 was approved by Governor Edge on April 24, 1946, and thereupon became Chapter 147 of the Laws of 1946. The new law, effective April 24, 1946, reads as follows:

"AN ACT concerning alcoholic beverages; limiting the number of licenses to sell alcoholic beverages at retail, and supplementing chapter one, Title 33, of the Revised Statutes.

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

"1. For the purposes of this act any license for a new license term, which is issued to replace a license which expired on the last day of the license term which immediately preceded the commencement of said new license term or which is issued to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new license term, shall be deemed to be a renewal of the expired or expiring license; provided, that said license is of the same class and type as the expired or expiring license, covers the same licensed premises, is issued to the holder of the expired or expiring license and is issued pursuant to an application therefor which shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses.

"2. Except as otherwise provided in this act, no new plenary retail consumption or seasonal retail consumption license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than one for each one thousand of its population as shown by the last then preceding Federal census; and no new plenary retail distribution license shall be issued in a municipality unless and until the number of such licenses existing in the municipality is fewer than one for each three thousand of its population as shown by the last then preceding Federal census.

"3. Nothing in this act shall prevent the issuance and existence of one plenary or seasonal retail consumption license and one plenary retail distribution license in a municipality whose population as shown by the last then preceding Federal census is less than one thousand.

"4. Nothing in this act shall prevent the renewal of licenses existing on the effective date of this act, or the transfer of such licenses or the renewal of licenses so transferred.

"5. Nothing in this act shall prevent the issuance in a municipality of a seasonal retail consumption license to a person who held such a license in the municipality for the

same premises, and for the same seasonal period, during the then next preceding summer or winter season, nor shall anything in this act prevent the transfer of such a license so issued.

"6. Nothing in this act shall prevent the issuance of a new license, application for which was duly and properly filed on or before April first, one thousand nine hundred and forty-six.

"7. Nothing in this act shall be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the expiration of the license renewal period if the State commissioner shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control.

"8. Nothing in this act shall prevent the issuance, in a municipality of a new license to a person who, having held a license of the same class in the municipality, surrendered his license or permitted it to expire because of his induction into or service in the armed forces of the United States; provided, however, that such ex-licensee shall have filed the application for a new license within one year from the completion of his active service in said armed forces.

"9. Nothing in this act shall prevent the issuance of seasonal retail consumption licenses, in a municipality, in excess of the number of licenses permitted in section two if the State commissioner shall determine that the municipality is in a resort area; provided, however, that in no event shall the combined total number of plenary and seasonal retail consumption licenses exceed one to each one thousand of the municipality's peak seasonal population as such population shall be determined by the commissioner from the best available estimate thereof.

"10. Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel containing fifty (50) sleeping rooms or who may hereafter construct and establish a new hotel containing at least fifty (50) sleeping rooms.

"11. This act is in addition to and not in exclusion of municipal regulations, limiting the number of licenses to sell alcoholic beverages at retail, duly adopted pursuant to the authority granted by section 33:1-40 of the Revised Statutes.

"12. This act shall take effect immediately."

2. STATE-WIDE LIMITATION OF RETAIL LICENSES (CHAPTER 147 OF THE LAWS OF 1946) - INTERPRETATION AND EXPLANATION OF THE NEW LAW.

It is most important that the operation and effect of this new law be clearly understood -- particularly by municipal officials and licensees. Accordingly, the law (which is set forth in full in Bulletin 710, Item 1) will here be taken up, section by section.

Section 1 is not new. It merely repeats, word for word, the definition of license renewal, as distinguished from a new license, which is set forth in R. S. 33:1-96 as amended by Chapter 187 of the Laws of 1944.

The license year ends on June 30th. To be a renewal, a license must be of the same class and type and must be for the same licensed premises as the expired or expiring license; must be to the holder of the expired or expiring license; and the application must have been filed not later than thirty days after July 1st. Otherwise a license is not a renewal but a new license. Since the Act is directed against new licenses, a licensee may find himself out of business, if his application for renewal is not filed promptly, and, in any event, on or before July 30, 1946.

Section 2 establishes a limitation of one plenary or seasonal retail consumption license to each 1,000 of the municipality's population, and one plenary retail distribution license to each 3,000 of population.

The section limits plenary and seasonal consumption licenses in the aggregate.

The population is figured as of the latest Federal census and there are no fractions. Thus, for the purpose of this section, a municipality having one plenary retail distribution license could not issue a new and additional such license unless its population, by the last then preceding Federal census, was 6,000 or more.

Section 3 provides that, in so far as the Act is concerned, there may be one plenary or one seasonal retail consumption license and one plenary retail distribution license in a municipality even though the municipality's population (by the last Federal census) was less than 1,000.

Section 4 provides that the Act shall not prevent renewal and transfer of licenses existing on the Act's effective date -- April 24, 1946.

This means, of course, that all licenses legally outstanding on April 24, 1946 may be renewed or transferred, in the sound discretion of the local issuing authority, despite the fact that the limitation quotas (Section 2) are exceeded.

Seasonal retail consumption licenses are issuable for the summer season (May 1st to November 1st, inclusive) or for the winter season (November 15th to April 15th, inclusive) -- Revised Statutes, 33:1-12(2). Strictly, a license for the 1946 summer season could not be a renewal of a license for the 1945 summer season. But for the purposes of the Act's limitation, Section 5 treats a seasonal license as a renewal of a former seasonal license if the "renewal" is for the same seasonal period (i.e., summer or winter season); and if issued for the same premises and to the same person who held a seasonal license in the municipality during the then next preceding summer or winter season.

Section 6 provides that the Act shall not prevent issuance of a new license (though in excess of the quotas set forth in Section 2 if the application for such license was duly and properly filed on or before April 1, 1946.

If an application was filed on or before April 1, 1946, the license, in so far as the Act is concerned, is legally issuable even after April 24, 1946. The determination to grant or deny a pending application which was filed on or before April 1, 1946, rests, in the first instance, with the municipal issuing authority. Section 6 does not mean that such application must be granted.

As already pointed out, Section 1 of the new law provides that a license application to be one for renewal must be filed not later than thirty days after July 1st. Section 7 provides that the Act shall not prevent issuance of a new license to a person who files application therefor within sixty days after the renewal period has expired (i.e., within 60 days after July 30th) if the State Commissioner shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control. This section is designed not to weaken the renewal period requirement but to permit the sixty-day extension only in cases of undue hardship.

Section 8 provides, in effect, that the new law does not apply under certain circumstances, to ex-licensee veterans. The law's limitation does not prevent issuance of a new license in a municipality to a person who held a license of the same type in the municipality and who surrendered the license or permitted it to expire because of his induction into the armed forces if the ex-licensee veteran files application for the new license within one year from completion of his active service in the armed forces. The section does not apply to all veterans but only to the indicated ex-licensee veterans.

As already pointed out, Section 2 of the new law provides that there shall be no new plenary or seasonal retail consumption license unless the number of such licenses, taken together, is fewer than one to each 1,000 of the municipality's population. Section 9 permits new seasonal retail consumption licenses in a municipality despite the provisions of Section 2 if the State Commissioner determines that the municipality is in a resort area. The section will permit only new seasonal licenses in such resort areas; and in no case may the combined number of plenary and seasonal consumption licenses exceed one to each 1,000 of the municipality's peak seasonal population as determined by the State Commissioner.

Section 10 provides that the new limitation law shall not apply to hotels containing fifty or more sleeping rooms.

Section 11 provides that the new law is in addition to and not in exclusion of municipal regulations limiting the number of retail licenses.

Of course, the new law does not permit issuance of a retail license in a municipality which is dry by referendum, or where issuance is prohibited by ordinance, or where no fee is duly fixed by municipal regulations.

The law does not permit issuance of a license in violation of a municipality's numerical limitation regulation. Where a municipal ordinance fixes license quotas more restrictive than those fixed in the new law, the municipal regulation prevails. Where the State law's quotas are more restrictive, the law prevails.

The fact that a municipality may have adopted no formal regulation limiting the number of licenses does not mean that the municipal issuing authority must grant a license application filed with it. Many municipalities without limitation ordinances have had a policy of issuing no new licenses. Even where a new license is not prohibited by the law, the determination to grant or deny a retail license application rests, in the first instance, with the municipal issuing authority (R. S. 33:1-19), and a municipality's action upon an application is appealable to the State Commissioner pursuant to R. S. 33:1-22. The new law merely fixes a maximum and, in a given municipality, far fewer licenses than would be permitted by the law may be ample to serve that municipality's public needs.

It is very important to reemphasize the fact that a new license may not be issued in violation of a municipality's limitation ordinance. The various exceptions in the law will not permit issuance of a new license unless such issuance is permitted also by the municipal regulation. For example, where a municipality has a limitation ordinance and the quota is filled, Section 8 (ex-licensee veterans) and Section 10 (fifty-room hotels) would not permit issuance of a new license unless the ordinance were first amended or supplemented to provide for the indicated exceptions.

ERWIN B. HOCK
Deputy Commissioner.

May 15, 1946.

3. NEW LEGISLATION - EXTENSION OF LICENSE TO EXECUTOR OR ADMINISTRATOR OF DECEASED LICENSEE - APPEAL TO STATE COMMISSIONER FROM MUNICIPAL AUTHORITY'S ACTION GRANTING OR REFUSING EXTENSION - P. L. 1946, CHAPTER 316, AMENDING REVISED STATUTES 33:1-22.

Assembly Bill No. 401 was approved by the Governor on May 6, 1946, and thereupon became Chapter 316 of the Laws of 1946. The Act, amending Revised Statutes 33:1-22 and effective immediately, reads as follows:

"AN ACT to amend an act entitled 'An act concerning alcoholic beverages,' passed December sixth, one thousand nine hundred and thirty-three, and amending section 33:1-22 of the Revised Statutes.

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

"1. Section 33:1-22 of the Revised Statutes is amended to read as follows:

"33:1-22. If the other issuing authority shall refuse to issue any license, or if the other issuing authority shall refuse to extend said license for a limited time not exceeding its term, to the executor or administrator of a deceased licensee, or to such person who shall be appointed by the courts having jurisdiction, in the event of the incompetency of any licensee, the applicant shall be notified forthwith of such refusal by a notice served personally upon the applicant, or sent to him by registered mail addressed to him at the address stated in the application. Such applicant may within thirty days after the date of service or of mailing of such notice, appeal to the commissioner from the action of the issuing authority. If the other issuing authority shall issue a license, or grant an extension of said license for a limited

time not exceeding its term, to the executor or administrator of a deceased licensee, or to such person who shall be appointed by the courts having jurisdiction, in the event of the incompetency of any licensee, any taxpayer or other aggrieved person opposing the issuance of such license may, within thirty days after the issuance of such license, appeal to the commissioner from the action of the issuing authority. The commissioner shall fix a time for the hearing of the appeal and before hearing the same, shall give at least five days' notice of the time so fixed to such applicant, such taxpayer, or other aggrieved person and other issuing authority.

"Where an appeal is taken from the denial of an application for a renewal of a license, the commissioner may, in his discretion, issue an order upon the respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the term of the license pending the return of the order to show cause. If it shall appear upon the return of the order to show cause that the action of the respondent issuing authority is prima facie erroneous and that irreparable injury to the appellant would otherwise result, the commissioner may, subject to such conditions as he may impose, order that the term of the license be extended pending a final determination of the appeal.

"2. This act shall take effect immediately."

Heretofore, the law did not provide for an appeal to the State Commissioner from a municipal issuing authority's action granting or denying extension of a license to an executor or administrator of a deceased licensee or to a person appointed by a court of competent jurisdiction in the event of an incompetent licensee. This Act amends Revised Statutes 33:1-22 to permit an appeal to the Commissioner in these situations as in other cases.

4. NEW LEGISLATION - RETAIL LICENSE FEES - INCREASE FROM \$1,000.00 TO \$2,000.00 IN MAXIMUM PERMITTED FEE FOR PLENARY RETAIL DISTRIBUTION LICENSE - P. L. 1946, CHAPTER 272, AMENDING REVISED STATUTES 33:1-12.

Assembly Bill No. 344 was approved by the Governor on May 3, 1946, and thereupon became Chapter 272 of the Laws of 1946. Chapter 272 amends Revised Statutes 33:1-12 by making but one change -- to increase the maximum permitted fee for a plenary retail distribution license (Revised Statutes 33:1-12(3a)) from \$1,000.00 to \$2,000.00. The Act reads as follows:

"AN ACT concerning the sale of 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 non-alcoholic 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 two thousand dollars (\$2,000.00). 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."

The Act does not provide for an effective date. Thus it does not take effect until July 4, 1946. (Revised Statutes 1-2-3)

5. NEW LEGISLATION - MINORS - P. L. 1946, CHAPTER 246, AMENDING REVISED STATUTES 33:1-81.

Assembly Bill No. 350 was approved by the Governor on May 2, 1946, and thereupon became Chapter 246 of the Laws of 1946. The Act, amending Revised Statutes, 33:1-81 and effective immediately, reads as follows:

"AN ACT to prohibit any minor from entering any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing, or having served, or delivered to him or her, any alcoholic beverage and to prohibit any minor from consuming any alcoholic beverage on any such premises or from purchasing, attempting to purchase or have another purchase for him or her, any alcoholic beverage, and amending section 33:1-81 of the Revised Statutes.

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

"1. Section 33:1-81 of the Revised Statutes is amended to read as follows:

"33:1-81. It shall be unlawful for

"(a) a minor to enter any premises licensed for the retail sale of alcoholic beverages for the purpose of purchasing, or having served or delivered to him or her, any alcoholic beverage; or

"(b) a minor to consume any alcoholic beverage on premises licensed for the retail sale of alcoholic beverages, or to purchase, attempt to purchase or have another purchase for him or her any alcoholic beverage; or

"(c) any person to misrepresent or misstate his or her age, or the age of any other person for the purpose of inducing any licensee or any employee of any licensee, to sell, serve or deliver any alcoholic beverage to a minor.

"Any person who shall violate any of the provisions of this section shall be deemed and adjudged to be a disorderly person, and upon conviction thereof, shall be punished by a fine not exceeding fifty dollars (\$50.00).

"All proceedings under this section shall conform to the procedure and practice set forth in subtitle 15 of the Title Administration of Civil and Criminal Justice (§§2:201-1 et seq.).

"2. This act shall take effect immediately."

This Act adds to Revised Statutes, 33:1-81 (the "disorderly persons" supplement) the indicated paragraphs (a) and (b) and reduces the maximum permissible fine from \$200.00 to \$50.00.

Revised Statutes, 33:1-81 does not, of course, relieve licensees of their responsibility under Revised Statutes, 33:1-77 or Rule 1 of State Regulations No. 20.

6. DISCIPLINARY PROCEEDINGS - CHARGE OF ADVERTISING ALCOHOLIC BEVERAGES NOT AVAILABLE FOR SALE AT THE LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 21, DISMISSED.

In the Matter of Disciplinary Proceedings against)

METROPOLITAN LIQUOR CORP. T/a BETTINGER'S 5 Journal Square. Jersey City 6, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-94 issued by the Board of Commissioners of the City of Jersey City.)

Nathan L. Jacobs, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads not guilty to the following charge:

"On Monday afternoon, November 26, 1945, and for at least a week prior thereto, you permitted and suffered in and on your licensed premises, viz., in your street show window thereof, matter advertising the sale of Roma Vintner's Select Zinfandel when such alcoholic beverages were not actually available for sale at your licensed premises, in violation of Rule 4 of State Regulations No. 21."

Rule 4 of State Regulations No. 21 reads as follows:

"No retail licensee shall permit or suffer in or on the licensed premises any sign or other matter advertising the sale of any particular brand or type of alcoholic beverage unless such brand or type of alcoholic beverage is actually available for sale at such premises."

The Rule quoted above does not by its terms refer to price advertising.

Briefly, the facts are as follows: On the afternoon of November 26, 1945, agents of the Department of Alcoholic Beverage Control investigated a complaint that there was a display in the defendant's window of Roma Vintner's Select Wine with a price tag of 65¢, whereas the Fair Trade price was 82¢. A photograph of the particular window display, marked Exhibit S-3, shows six bottles of such brand with a price tag of 65¢ attached thereto. One agent entered the store and inquired of the clerk who waited upon him if he had any Roma or Perrone Brand "Red Wine." The clerk offered him a bottle of Roma Estate Claret Wine at the proper minimum consumer price for this item, namely, 65¢. The agent stated he desired Roma Vintner's Select wine and the clerk replied that what he had offered the agent "was the same thing." Upon the agent's insistence that he wanted Roma Vintner's Select Wine, the clerk looked over the shelves and under the counter and, in reply to the agent's question as to whether or not he had any of that particular brand, said, "No, this is the same

thing." The agent then left the licensed premises without calling the clerk's attention to the bottles in the window, and advised the clerk that he intended to call up his "boss" to find out just what brand he wanted. The testimony of both the clerk and the agent indicates that the former was still looking for the article requested as the agent left the premises.

About 3:45 p.m. the same agent reentered the premises and was waited upon by a different clerk. He then requested Roma Vintner's Select Wine and the clerk, according to the testimony of the agent, replied, "The only bottles we have are in our window and cost 82¢." The agent testified he then noticed one bottle of this particular brand on the shelf and pointed it out to the clerk, who offered it to the agent for 82¢, which price the agent refused to pay. At that point the agent called in his associate and they instructed the clerk to summon someone in charge. One of the officers of the company appeared and the agents, after identifying themselves, inquired why they could not buy the particular bottle at 65¢. The officer of the company said that a mistake had been made on the price tag, and that the correct price was 82¢.

No sales were made and, hence, no violation of Regulations No. 30 is involved.

Defendant, through its officers, denies any violation or intention to violate any of the rules of this Department.

A careful reading of Rule 4 of State Regulations No. 21 raises a substantial doubt as to whether a violation thereof had been committed by the defendant. The Department contends that the violation consists in having an article advertised in the show window of the licensed premises which was not "actually available for sale." The testimony does not support the charge that the article was not "actually available for sale" even though the price tags on the bottles in the show window were incorrect. Had the agent been able to purchase the particular article in question for less than the Fair Trade price, the situation would have been entirely different.

After a careful reading of all the testimony and a study of the regulations in question, I am unable to find that defendant corporation has violated the same. The charge must, therefore, be dismissed.

Accordingly, it is, on this 6th day of May, 1946,

ORDERED, that the charge herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

7. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS IN DISCIPLINARY PROCEEDINGS BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)
EARL E. ROSENBERGER)
T/a BERLIN HEIGHTS INN)
69 White Horse Pike)
Berlin, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension)
of License C-3 issued by the)
Borough Council of Berlin Borough,)
Camden County, New Jersey.)
-----)

William T. Cahill, Esq., Attorney for Petitioner.

It appears from the verified petition filed herein that on May 7, 1946, petitioner entered a plea of non vult in the Court of Special Sessions, Camden County, to charges alleging that he had sold alcoholic beverages to minors and that, as a result of said plea, petitioner was sentenced to pay a fine of \$100.00, which fine has been paid.

It further appears from the records of the Department of Alcoholic Beverage Control that the Borough Council of Berlin Borough, in disciplinary proceedings, had previously suspended petitioner's license for a period of sixty days, effective from midnight September 4, 1945, and terminating at midnight November 3, 1945, after defendant, in said proceedings, had pleaded guilty to charges alleging that he had sold alcoholic beverages to minors and had given false answers in his application for a license.

The criminal proceedings and the charges alleging sales to minors in the disciplinary proceedings were based on the same facts. Because of the criminal conviction, petitioner's license has been automatically suspended for the balance of its term. R.S. 33:1-31.1. Petitioner requests herein that the automatic suspension may be lifted.

The case involves the sale of alcoholic beverages to three boys - two of whom were sixteen years of age and one of whom was seventeen years of age.

In his letter advising the Department of Alcoholic Beverage Control of the result of the disciplinary proceedings, the Borough Clerk said:

"Council felt that in the case of Rosenberger due to family conditions, sickness and other matters they would permit him to hold his license after suspension period to enable him to recuperate his finances and then not renew or relicense him for 1946-47 period."

In order to carry out the wishes of the Borough Council, the relief sought in the petition will be granted.

Accordingly, it is, on this 8th day of May, 1946,

ORDERED, that the automatic suspension of License C-3, issued by the Borough Council of Berlin Borough to Earl E. Rosenberger, t/a Berlin Heights Inn, for premises at 69 White Horse Pike, Berlin, be lifted, and said license is hereby restored to full force and operation, effective immediately.

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against)

ROBERT F. HAYDEN and)
BERNARD DiPAOLA)
102 Belmont Avenue)
Paterson 2, N. J.,)

Holder of Plenary Retail Consumption License C-61, issued by the Board of Alcoholic Beverage Control of the City of Paterson, and transferred during the pendency of these proceedings to)

EDWARD O'BRIEN and)
LEOPOLD BACHETTE)

for the same premises.)

CONCLUSIONS AND ORDER

Edward P. R. McNamara, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendants plead not guilty to a charge alleging that, on October 19, 22 and 23, 1945, and other previous occasions, they allowed, permitted and suffered bookmaking on and about their licensed premises, in violation of Rule 7 of State Regulations No. 20.

An inspector from the Department of Alcoholic Beverage Control testified that he and an ABC investigator visited defendants' licensed premises on October 18, 1945 and October 19, 1945. On the latter date, the inspector stated, he placed bets of one dollar each on two horses with Robert F. Hayden, one of the defendant-licensees, to be delivered to one Louis Frey, whom he met at the defendants' tavern on the previous day. The inspector further testified that he and the same investigator visited defendants' premises again on October 22nd, at which time defendant Hayden handed him a five-dollar bill which the inspector had won on the bets placed on October 19, 1945. Thereafter, the inspector testified, he gave money and a slip of paper with names of horses and the races and track in which they were to compete to defendant Hayden, who thereupon handed these to Leonard Hummell, the bartender. Frey came into the tavern a short time thereafter and the bartender handed him the money and slip of paper which he had received from the inspector. The inspector further testified that on October 23rd, in the presence of Leonard Hummell, the bartender, he placed a bet with Frey. By pre-arrangement, several other ABC agents, together with a local detective, entered the licensed premises and took Frey into custody. The ABC investigator who accompanied the inspector on his visits to the tavern on October 19th, 22nd and 23rd corroborated the testimony of the inspector in all respects with reference to the placing of bets in the licensed premises.

Defendant, Robert Hayden, entered a complete denial concerning most of the happenings testified to by the inspector and investigator of the Alcoholic Beverage Control Department. He did admit, however, that he received both money and a slip of paper from the ABC inspector, but stated that he was unaware what they were for. Hayden also admitted that he received an envelope from Louis Frey which he gave to the person later identified as an ABC inspector, but that he did not know what it contained. When asked did he make any bets himself,

Hayden replied, "No -- unless I get a good thing once in a while." Hayden's testimony, offered in defense of the charges preferred herein, appears too naive for belief.

I am satisfied that defendant Hayden was aware that horse racing bets were being accepted on the licensed premises not only by his employee, but that he himself participated in the unlawful practice. Bernard DiPaola apparently is an inactive partner. I therefore find defendants guilty as charged. Defendants have no previous adjudicated record. Under the circumstances, I shall suspend their license for a period of twenty days. Re Ferment, Bulletin 635, Item 5.

Although the defendants' license was transferred to Edward O'Brien and Leopold Bachelette during the pendency of these proceedings, the present penalty is effective against the transferee by virtue of Rule 3 of State Regulations No. 16.

Accordingly, it is, on this 8th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-61, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Robert F. Hayden and Bernard DiPaola, for premises 102 Belmont Avenue, Paterson, and transferred during the pendency of these proceedings to Edward O'Brien and Leopold Bachelette for the same premises, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. May 17, 1946, and terminating at 3:00 a.m. June 6, 1946.

ERWIN B. HOCK
Deputy Commissioner.

9. APPELLATE DECISIONS - NEW JERSEY TAVERN ASSOCIATION ET AL. v. LAKEHURST AND DAVID RUSSAKOW - DISMISSED.

NEW JERSEY TAVERN ASSOCIATION,)	
OCEAN COUNTY TAVERN ASSOCIATION)	
and WILLIAM D. DALY,)	
)	ON APPEAL
Appellants,)	O R D E R
-vs-)	
BOROUGH COUNCIL OF THE BOROUGH)	
OF LAKEHURST and DAVID RUSSAKOW,)	
)	
Respondents)	

William C. Egan, Esq., Attorney for Appellants.
No appearance on behalf of Respondent Borough Council.
Albert Kushinsky, Esq., Attorney for Respondent David Russakow.

This is an appeal from the alleged granting of a plenary retail distribution license to respondent David Russakow.

It appearing at the hearing that no license has been issued to David Russakow,

It is, on this 10th day of May, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

EDWARD J. DORTON
Deputy Commissioner.

10. APPELLATE DECISIONS - NEW JERSEY TAVERN ASSOCIATION ET AL. v. LAKEHURST AND HARRY RUSSAKOW.

NEW JERSEY TAVERN ASSOCIATION,)
OCEAN COUNTY TAVERN ASSOCIATION)
and WILLIAM D. DALY,)

Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH)
OF LAKEHURST and HARRY RUSSAKOW,)

Respondents)
-----)

William C. Egan, Esq., Attorney for Appellants.
No appearance on behalf of Respondent Borough Council.
Albert Kushinsky, Esq., Attorney for Harry Russakow.

This is an appeal from the issuance of a plenary retail distribution license by respondent Borough Council to respondent Harry Russakow for premises on Union Avenue, Lakehurst. The license was granted at a meeting of respondent Borough Council held on March 7, 1946.

On behalf of appellants, William D. Daly testified that he is President of New Jersey Tavern Association, a member of Ocean County Tavern Association, and a retail licensee in another municipality. He testified that in his opinion there is no need for a plenary retail distribution license in the Borough of Lakehurst because four plenary retail consumption licenses are already in existence. The Borough Clerk testified as to the population of the Borough and the existence of the United States Naval Air Station located nearby.

The evidence produced by appellants failed to establish that the members of respondent Borough Council abused their discretionary power in issuing one plenary retail distribution license in the Borough, or that the issuance of said license was otherwise improper.

The motion to dismiss the appeal is granted.

Accordingly, it is, on this 10th day of May, 1946,

ORDERED, that the within appeal be and the same is hereby dismissed.

EDWARD J. DORTON
Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary)
 Proceedings against)
)
 CONRAD BITTNER)
 T/a BITTNER'S CAFE)
 Grove Avenue & Columbia Blvd.)
 National Park, N. J.,)
)
 Holder of Plenary Retail Consump-)
 tion License C-1, issued by the)
 Borough Council of the Borough)
 of National Park.)
 -----)

CONCLUSIONS AND ORDER

Conrad Bittner, Defendant-licensee, Pro se.
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded guilty to a charge alleging that, on March 11, 1946, he possessed a 4/5 quart bottle labeled "Four Roses A Blend of Straight Whiskies", a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", a 4/5 quart bottle labeled "Black & White Fine Old Blended Scotch Whisky", and a 4/5 quart bottle labeled "Blended Scotch Whisky of the White Horse Cellar", all of which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On March 11, 1946, an investigator of the Department of Alcoholic Beverage Control tested 18 open bottles of alcoholic beverages at defendant's premises and seized the four bottles mentioned in the charge. Preliminary tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Department Chemist confirmed the fact that the whisky in each of the four seized bottles was not genuine as labeled.

Defendant has no previous adjudicated record. I shall, therefore, suspend his license for a period of twenty days. Re Johnson, Bulletin 680, Item 10.

Accordingly, it is, on this 14th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of National Park to Conrad Bittner, t/a Bittners Cafe, for premises Grove Avenue & Columbia Blvd., National Park, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. May 22, 1946, and terminating at 2:00 a.m. June 11, 1946.

Erwin B. Hook
 Deputy Commissioner.