

STATE OF NEW JERSEY
 Department of Law and Public Safety
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL
 1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1214

March 24, 1958

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

March 24, 1958

BULLETIN 1214

1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD -
LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

AGNES J. SIMKINS &)
JOSEPH A. SIMKINS)
Mays Landing Rd. at Patcong Creek)
Egg Harbor Township)
PO Rt. 1, Mays Landing, N. J.,)

CONCLUSIONS
AND ORDER

-----)
Holders of Plenary Retail Consumption)
License C-3, issued by the Township)
Committee of Egg Harbor Township.)

Donald Palese, Esq., Attorney for Defendant-licensees.
David S. Piltzer, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendants have pleaded not guilty to a charge alleging that on August 14, 1957 they sold, served and delivered alcoholic beverages, directly or indirectly, to a minor in violation of Rule 1 of State Regulation No. 20.

"The substance of the evidence presented by the Division is that Michael --- (age 19) purchased six cans of Ballantine beer on the above date at defendants' licensed premises while in the company of other minors who observed him enter such licensed premises and emerge with the beer and bring it to the car in which they were seated.

"Michael testified to the following details of the incident: James ---, Jesse ---, Sue ---, and he had been on a nearby beach on the day in question when James suggested that they drive to the Grove (the name by which defendants' establishment is known) to buy some beer; that Michael, driving his father's car, knew the general direction to the premises and parked the car in front of the place within 15 or 20 feet of the entrance; that James did not want to go for the beer, so Jesse went in and came out in about a minute without any beer; that Michael then went in and the bartender sold him six cans of beer without questioning him as to his age, and he brought the beer to the car; that he is not positive as to the hour he was at the tavern, but imagines it was about 3:00 p.m.; that some time before 4:00 p.m., police officers observed the group drinking beer while parked in a park several miles from the tavern; that when one of the officers asked Jesse where the beer was obtained, Jesse at first said he got it at his home and then when informed that the group could face criminal prosecution, told the officer that the beer had been purchased at the Grove; that thereupon Michael admitted that such was the fact; that later that day, Michael, accompanied by ABC agents and local police officers and two of the other minors, identified the exterior and interior of defendants' tavern as the place where he purchased the beer but could not definitely identify the bartender then on duty

as the person who sold him the beer; that he had been at the Grove on about three previous occasions, on two of which he had been asked for identification and presented his driver's license or some other card, setting forth age as over 21, and had a beer there one night; and that he did not see Lucille A. Simkins, Joseph Simkins or another man weighing over 300 lbs., in the tavern when he purchased the six cans of beer.

"Jesse (age 18) testified that he, and the three other minors were in the vicinity of defendants' licensed premises around 3:00 p.m. on the day in question; that their car was parked 10 to 15 feet from the entrance door; that he entered, asked for beer and was refused by the bartender because he could not produce any identification; that he returned to the car and told Michael to see if he could get some beer; that he saw Michael enter the licensed premises empty-handed and come out after a few minutes carrying a six-pack of Ballantine beer and bring it to the car; that when he was questioned by the police at the park where they were drinking the beer, he at first said that the beer came from home or that it was already in the car; that the officer pointed out that the beer was cold and told him he could be arrested whereupon he told the officer that the beer had been purchased at the Grove; that he accompanied Michael and the officers later that day to such licensed premises, which he identified, but he could not identify the bartender who refused to sell him the beer because he did not pay attention -- he just went in and went out; and that he believes that when he was in the tavern in the afternoon there were only two persons there way down at the end of the bar; and that Michael never purchased alcoholic beverages at any other establishment while he was with him.

"Sue (age 15) testified that the group were in the vicinity of defendants' tavern at about 3:00 p.m. on the above date; that the car was parked right in front of the building; that Jesse went into the licensed premises and came out in a few minutes, and told Michael he could not get any beer; that she saw Michael enter the tavern empty-handed and come out in a couple of minutes with six cans of beer; that this was the first time she was at the premises and knew it as the Grove from the conversation of the boys; and that she and the boys had not stopped at any other tavern that afternoon.

"An ABC agent testified that on the evening of August 14, 1957, these three boys directed him and other officers to the Grove, which he entered with Michael and Jesse; that Michael identified the premises from the exterior and interior as the place where he had purchased the beer that afternoon, but could not identify the bartender then on duty as the person who sold him such beer. The agent further stated that he told Joseph Simkins that the sale had taken place about 4:00 p.m. -- that he was not sure of the time element to the minute.

"One of the licensees and his wife and one of the bartenders and a patron testified on behalf of the licensees.

"Lucille Simkins testified that she entered the premises shortly before 3:00 p.m., since the shift changes at 3:00 p.m., to balance out the register; that James LeFaiver was the bartender who was to take charge of the bar; that shortly thereafter Robert Smith, a patron, entered; that two other persons were in the barroom; that she left the premises at about 3:30 p.m. as her husband, one of the licensees, entered; that John

Galuska was the bartender who had been relieved; and that no one else came in while she was there.

"Joseph Simkins testified as follows: He entered the licensed premises at about 3:20 p.m. as his wife was leaving. Robert Smith was at the bar and remained seated on the one stool until the ABC agent arrived that evening. Two other patrons were at the other end of the bar. He remained there for the balance of the day cleaning equipment. When the ABC agent and Michael and Jesse entered and the agent told him there had been a little trouble, he thought the boys had come in earlier in the day-time when the spare-time bartender was on duty but 'when it came out that they bought the beer at four o'clock' he explained that LeFaiver had been on duty since three o'clock. He asked the boys whether LeFaiver sold them any beer and they could not identify him. He asked LeFaiver, in front of the boys, whether he sold them six cans of beer and LeFaiver said no. The agent, not in the presence of LeFaiver, informed him that one of the boys claimed that he had that day been refused the purchase of beer. He had never seen Jesse before but knew Michael from his previous visits at the tavern. Michael had displayed a card which indicated that he was over 21, but he did not ever see him served with beer or any other alcoholic beverages.

"James LeFaiver testified that he arrived at defendant's tavern at approximately 2:45 p.m. and relieved the other bartender at 3:00 p.m.; then when he went on duty Robert Smith was seated at the bar, Lucille Simkins was just leaving, and her husband was just coming in -- 'she was there while I was on duty. She left the bar. Her husband came in approximately at the time she was leaving, which was around 3:20, something in that vicinity'; that two other persons were seated at the rear of the bar; that Jesse came in sometime between 3:15 and 3:45 p.m., asked for six cans of beer, and when Jesse could not produce any kind of identification, he refused to sell him the beer; that he had previously seen Michael in the premises; that Michael had then displayed an identification card, but he never served him any alcoholic beverages and did not see him or serve him with any alcoholic beverages on the afternoon in question; that he was not asked to identify Jesse when the ABC agent was present and did not tell the agent that he had refused to sell beer to Jesse that afternoon, that he did not think that it was necessary, 'I knew this (the disciplinary proceedings) was coming up any way.'

"Robert L. Smith testified as follows: He arrived at defendants' tavern a few minutes after 3:00 p.m. on August 14th. Lucille Simkins, Joseph Simkins and LeFaiver were there. Two other persons were present. He left the tavern a little after 7:00 p.m. A young man came in about twenty minutes after he arrived, who was not served with nor purchased anything. 'I don't know whether he asked the question or what was going on.' No other patrons entered the tavern for the next half hour or forty-five minutes.

"The testimony of the three minors is positive, clear and logical to establish that Michael purchased six cans of beer at defendants' tavern as charged. Michael's failure to identify the bartender who sold him the beer is not fatal. Re Engle, Bulletin 1001, Item 6. There is no substantial evidence that the minors, especially Sue, had any reason unjustly to accuse the licensees.

"The defense, in the main, is centered about the question as to the time the sale was made. The ABC agent having mentioned 4:00 p.m., the defendants presented evidence of witnesses who were there at 3:00 p.m. or shortly thereafter. However, the minors fixed the time as about 3:00 p.m. and John Galuska, the bartender who was on duty until 3:00 p.m. was not presented as a witness for defendants, although his absence was pointed out by the Hearer to counsel for defendants.

"Defendants, by indirection, seek to eliminate Galuska from consideration, in that LeFaiver advances the self-serving declaration that he was the bartender who refused to serve Jesse between 3:15 and 3:45 p.m., and hence Michael, must of necessity have had to enter the tavern after that time. It is significant that neither Lucille Simkins, who left at 3:20 nor Joseph Simkins, who was there continuously after 3:20, testified that they saw Jesse come in. Further, Jesse was present at the time of the identification of the premises, when Joseph Simkins was told of the refusal to serve Jesse, yet LeFaiver did not then and there mention that he recognized Jesse and refused to serve him nor did Simkins ask LeFaiver if such was the fact.

"Robert Smith says that he came to the tavern a few minutes after 3:00 p.m. and left a little after 7:00 p.m. (clearly incorrect, since the agent entered at 8:00 p.m. or thereafter when Smith was present). Smith further says that Joseph Simkins and Lucille Simkins were present when he arrived while other witnesses placed Joseph there at 3:20 p.m., as Lucille was leaving. He states that a young man wearing a bathing suit, which LeFaiver says Jesse wore that afternoon, entered about twenty minutes after he arrived, to whom he paid little attention and whose conversation he did not hear. I am of the opinion that this vague identification and attempted corroboration of LeFaiver's testimony is contrived. He, too, did not come forward at the time of the identification of the premises when Jesse was present and declare that he saw Jesse there earlier that day.

"I am of the opinion that the preponderance of the evidence establishes that the defendants are guilty as charged and recommend such a finding.

"Agnes J. Simkins, then trading as Jack's Grove, has a prior adjudicated record. Effective September 17, 1951, her license was suspended for ten days for sale to minors. Re Simkins, Bulletin 917, Item 6. Because of such record, I recommend that the minimum penalty of fifteen days for sale to a 19-year-old minor (Re Egg Harbor Bowling Center, Bulletin 1194, Item 9) be increased to suspension of the license for twenty days."

Written exceptions to the Hearer's Report, pursuant to Rule 6 of State Regulation No. 16, together with written argument thereon, were filed with me by the attorney for defendants. I have carefully examined the evidence herein, the Hearer's Report and the exceptions and written argument, and am satisfied that the Hearer's recommendation in this matter should not be disturbed. I adopt the Hearer's conclusions as my conclusions herein. Hence I find defendants guilty as charged, and shall suspend their license for twenty days.

Accordingly, it is, on this 13th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of Egg Harbor Township to Agnes J. Simkins & Joseph A. Simkins, for premises on Mays Landing Rd. at Patcong Creek, Egg Harbor Township, be and the same is hereby suspended for twenty (20) days, commencing at 7:00 a.m. February 25, 1958, and terminating at 7:00 a.m. March 17, 1958.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - UNQUALIFIED EMPLOYEE - PRIOR RECORD - LOCUS POENITENTIAE - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against
AGNES J. SIMKINS & JOSEPH A. SIMKINS
Mays Landing Road at Patcong Creek
Egg Harbor Township
PO Route 1, Mays Landing, N. J.,
Holders of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Egg Harbor.

CONCLUSIONS
AND ORDER

-----)
Donald Palese, Esq., Attorney for Defendant-licensees.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendants pleaded non vult to the following charges:

"1. On July 3, 1957 and on divers dates subsequent thereto during the months of July and August 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Joanne ---, age 19, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.

"2. On July 3, 1957 and on divers dates subsequent thereto during the months of July and August 1957, you employed a person under the age of twenty-one (21) years, viz., Joanne ---, age 19, and allowed, permitted and suffered the employment of such person in and upon your licensed premises without having first obtained or having filed an application for an employment permit from the Director of the Division of Alcoholic Beverage Control; in violation of Rule 3 of State Regulation No. 13."

Acting on information obtained from the Ocean City Police Department, ABC agents obtained two sworn, written statements dated September 18, 1957, and September 30, 1957, from Joanne --- (age 19) wherein she states that in June 1957 she was hired as a waitress by Joseph A. Simkins (one of the

licensees herein) to serve sandwiches on defendants' licensed premises; that she worked four or more week-ends beginning with the week-end of July 3, 1957; that at no time did Simkins inquire of her about her age; that on numerous occasions while working as aforesaid she consumed alcoholic beverages served to her by the bartender (Dan MacKain) who never requested her to sign any written representation as to her age as required by R. S. 33:1-77.

The investigation of the case further discloses that the licensees do not conduct a bona fide hotel or public restaurant; that no permit had been applied for or issued for the aforesaid employment of Joanne; that on September 30, 1957, Joanne directed an ABC agent and a local police officer to the licensed premises, pointed it out as the place where she was employed as aforesaid, and identified Dan MacKain as the bartender who served her the alcoholic beverages she consumed on the licensed premises.

On the day of the hearing the licensees entered their plea of non vult and then presented testimony in mitigation of penalty. I have carefully read the transcript and do not find any extenuating circumstances therein that would impel me to impose less than the established penalty in cases of this kind.

Defendants have a prior adjudicated record. Effective September 17, 1951, the license of Agnes J. Simkins (then trading as Jack's Grove) was suspended for ten days for sale to minors (Re Simkins, Bulletin 917, Item 6) and, effective February 25, 1958, the license of defendants was suspended for twenty days for sale to a minor (Re Simkins, decided herewith).

Although I have discontinued the doctrine of locus poenitentiae effective December 30, 1957, I will not consider the violation in the case decided herewith in fixing the penalty herein because the instant violation occurred and the non vult plea herein was entered prior to the adjudication of said case.

The minimum penalty for the sale of alcoholic beverages to a nineteen-year-old minor is fifteen days (Re Egg Harbor Bowling Center, Bulletin 1194, Item 9). Considering the previous violation in 1951, which was similar to that set forth in Charge 1 herein, I shall suspend defendants' license for twenty days (Re O'Byrne, Bulletin 1201, Item 5), to which five days will be added on Charge 2 (Re Buddy & Steve's Tavern, Inc., Bulletin 1053, Item 5), making a total suspension of twenty-five days. The non vult plea was not entered in these proceedings until the day of the hearing. Therefore, the remission usually granted in cases where the plea is received sufficiently in advance of the hearing will not be allowed (Re Country Manor, Inc., Bulletin 1191, Item 8).

Accordingly, it is, on this 13th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Egg Harbor to Agnes J. Simkins & Joseph A. Simkins, for premises on Mays Landing Road at Patcong Creek, Egg Harbor Township, be and the same is hereby suspended for twenty-five (25) days, commencing at 7:00 a.m. March 17, 1958, and terminating at 7:00 a.m. April 11, 1958.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - APPLICATION TO LIFT GRANTED EFFECTIVE UPON EXPIRATION OF SUSPENSION IMPOSED BY THE DIRECTOR.

In the Matter of Disciplinary Proceedings against)

THOMAS and MAURICE MITCHELL)
T/a MITCHELL'S TAVERN)
Route #12)
Kingwood Township)
P. O. Frenchtown, N.J.,)

CONCLUSIONS AND ORDER

-----)
Holders of Plenary Retail Consumption License C-2, issued by the Township Committee of Kingwood Township.)

Auto. Susp. #146)
In the Matter of a Petition by)

THOMAS and MAURICE MITCHELL)
T/a MITCHELL'S TAVERN)
(same address))

ON PETITION ORDER

To Lift the Automatic Suspension of aforesaid license.)
-----)

Lloyd Fisher, Esq., Attorney for Defendant-licensees,)
Petitioners.)

Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.)

BY THE DIRECTOR:

Defendants pleaded guilty to a charge alleging that they sold and permitted the sale of alcoholic beverages to two minors and permitted the consumption of such beverages by said minors on their licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents obtained signed, sworn statements from Henry --- (age 17) and Joseph --- (age 19) wherein they say that they entered defendants' licensed premises on January 8, 1958, at about 7:30 p.m. and remained on the premises until about 8:00 p.m.; that during this period of time each was served and consumed several glasses of beer; that the service was made by Maurice Mitchell (one of the licensees) who did not require either of them to make any written representation as to his age. Later the ABC agents questioned Maurice Mitchell who admitted the sale and service of beer to both minors.

On February 5, 1958, Maurice Mitchell was fined \$100.00 in the Hunterdon County Court after he had pleaded guilty to a charge of selling alcoholic beverages to the same minors in violation of R. S. 33:1-77. Said conviction automatically suspends defendants' license for the balance of its term. R. S. 33:1-31.1. Because of the fact that these proceedings were pending, the license has not yet been picked up by ABC agents.

Defendants have no prior adjudicated record. The minimum penalty for sale to a seventeen-year-old minor is

twenty days (Re Arnts, Bulletin 1183, Item 8). I shall suspend defendants' license in the disciplinary proceedings herein for twenty days, less five for the plea, leaving a net suspension of fifteen days.

I am considering a letter received from defendants' attorney as a petition to lift the statutory automatic suspension and shall grant the requested relief upon the expiration of the aforesaid suspension.

Accordingly, it is, on this 13th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Kingwood Township to Thomas and Maurice Mitchell, t/a Mitchell's Tavern, for premises on Route #12, Kingwood Township, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. February 24, 1958, and terminating at 2:00 a.m. March 11, 1958; and it is further

ORDERED that the statutory automatic suspension will be lifted, effective at 2:00 a.m. March 11, 1958, at which time the license will be restored to full force and operation.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - CHARGE ALLEGING SALE TO NON-MEMBER DISMISSED - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WITHERSPOON LODGE #178,)

I.B.P.O.E. OF W.)

124-126 Birch Avenue)

Princeton Township)

PO Princeton, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-1,)
issued by the Township Committee)
of Princeton Township.)

Defendant-licensee, by Isadore W. Ware, Jr., President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that (1) on Saturday night, November 16, and early Sunday morning, November 17, 1957, it sold alcoholic beverages to persons not bona fide members or bona fide guests of any member, in violation of Rule 8 of State Regulation No. 7, and (2) on Sunday, November 17, 1957, between 12:01 a.m. and 12:25 a.m., it sold alcoholic beverages in violation of an ordinance of the Township, adopted on May 3, 1937, as amended December 22, 1947.

The file herein discloses that on Saturday, November 16, 1957, at about 11:30 p.m., an ABC agent, who was not a member of defendant club, entered the licensed premises. He ordered a bottle of beer from a barmaid who requested to see his membership card. When the agent said that he had no card,

he was asked to see Lankford Bolling, House Chairman, who wrote the agent's name on a membership card after receiving one dollar from the agent. Thereafter the agent purchased a bottle of beer from the barmaid at 11:55 p.m. and a scotch and water at 12:10 a.m. Another ABC agent, who had remained outside, entered the premises at 12:25 a.m. and observed ten or twelve persons consuming drinks, at least three of which were alcoholic beverages. The agents then identified themselves to the House Chairman.

The local ordinance prohibits sale of alcoholic beverages on Sundays.

Despite the entry of a non vult plea as to both charges, I am, on my own motion, dismissing Charge 1 with a stern warning to the licensee against the continuance of "social" memberships. This system is highly objectionable because it permits any person who enters the club premises to obtain a membership card upon payment of one dollar and thus opens the door to sale to the general public under a club license. The suspension herein will be imposed solely because of the violation set forth in Charge 2.

Defendant has no prior record. I shall suspend defendant's license for fifteen days because of the violation set forth above in Charge 2 (Re Loyal Order of Moose Woodstown Lodge, Bulletin 1053, Item 9). Five days will be remitted for the plea herein, leaving a net suspension of ten days.

Accordingly, it is, on this 5th day of February, 1958,

ORDERED that Club License CB-1, issued by the Township Committee of Princeton Township to Witherspoon Lodge #178, I.B.P.O.E. of W., for premises 124-126 Birch Avenue, Princeton Township, be and the same is hereby suspended for ten (10) days, commencing at 8:00 a.m. February 17, 1958, and terminating at 8:00 a.m. February 27, 1958.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALE TO MINOR DISMISSED.

In the Matter of Disciplinary Proceedings against)

OTT'S SPOT, INC.)
185 State Highway Rt. #17)
East Rutherford, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Mayor and Council of the Borough of East Rutherford.)
-----)

Stephen Toth, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'On September 1, 1957, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person under the age of twenty-one (21) years, viz., Mary ---, age 17, and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing herein Lucy Bode (a waitress on defendant's licensed premises) testified that Mary --- and Leonard --- (an adult) were in defendant's premises on the evening of September 1, 1957, and that she served them at that time. Hence the only issue in the case is whether or not the waitress served an alcoholic beverage to the minor during the course of this visit.

"At the hearing herein Mary --- testified that on the date in question she was seventeen years of age; that, when she and Leonard entered the dining-room of the licensed premises about 10:00 p.m., he ordered a 'bloody Mary' for her and a Schenley and ginger ale for himself; that Leonard also ordered a ham and Swiss cheese sandwich for her; that the waitress left the room but that she did not notice where the waitress went; that the waitress returned and placed a high-ball-glass containing the alleged 'bloody Mary', already mixed, in front of Mary who consumed the contents of the glass. Mary testified that no one on the licensed premises questioned her as to her age. She admitted that she and Leonard had danced quite frequently during the hour they remained on the premises.

"An ABC agent testified that on September 10, 1957, Mary accompanied him to the licensed premises where she identified Lucy Bode as the waitress who had served the drink. The agent further testified that Lucy Bode then stated that she recognized Mary and further said that on the evening in question she had served to Mary only plain tomato juice in response to her request for a 'bloody Mary' and plain ginger ale in response to a subsequent request for Schenley and ginger ale.

"At the time of the hearing Leonard --- was confined as a result of criminal charges pending against him because of an alleged attack on said Mary --- but was produced at the hearing and called to testify. He admitted that he knew Mary but refused to testify as to whether or not he had met her at defendant's premises on the afternoon of September 1, 1957, upon the ground that such evidence might tend to incriminate him.

"On behalf of defendant, Lucy Bode also testified that she has worked 'on and off' during the past ten years in defendant's premises; that dancing starts at 9:00 p.m., after which time patrons are required to pay a federal 'amusement tax.' She further testified that, when Leonard and Mary entered the premises, he ordered Schenley and ginger ale, and that Mary requested a 'bloody Mary' (admittedly a drink containing tomato juice and Vodka); that, when these patrons got up to dance, she noticed that the girl showed signs of intoxication; that she (the waitress) went to the bar which is located in another room and requested the bartender to give her a plain tomato juice for the girl; that the bartender did not place any alcoholic beverages in the tomato juice and that she

then returned to the dining-room with the glass of tomato juice which she served to Mary, and the Schenley and ginger ale which she served to the adult. Lucy Bode further testified that thereafter Leonard ordered a second Schenley and ginger ale for himself, and Mary ordered a Schenley and ginger ale with a twist of lemon; that, pursuant to the second order, she obtained from the bartender one Schenley and ginger ale and one plain ginger ale and served the Schenley and ginger ale to the adult and the plain ginger ale to Mary.

"Ordinarily, testimony similar to that given by defendant's waitress carries little weight. Time and again, testimony given by a defendant or his employee -- that a minor was served non-alcoholic beverages in response to his request for an alcoholic beverage -- has been rejected as completely improbable. However, in this case there has been introduced into evidence eight consecutively numbered guest checks which the waitress identified as checks made out by her on the evening of September 1, 1957, after 9:00 p.m. These checks list the items sold, the total thereof, and the 20% tax thereon. Edward Bode (manager of defendant's premises) testified that these checks are turned in to him daily and that on the following day the total of the amusement taxes is computed on another sheet which was also introduced into evidence. These records appear to be genuine and support the waitress' testimony. Specifically, check 00085 reads as follows:

'tomato juice	15
Schenly lemon	55
Ham Swiss	80
ging. twist	25
Schenly lemon	<u>55</u>
	2.30
Tax	<u>50</u>
	\$ 2.80'

None of the other seven checks issued on September 1 refers to the sale of a 'bloody Mary' or any item similar thereto. Considering the fact that Mary testified on cross-examination that she and Leonard had stopped at three other licensed premises before entering defendant's premises on the evening in question, it is not improbable that she showed signs of intoxication at the time the waitress accepted her order. The statement made by the waitress to the ABC agent shortly after the incident and during the course of the investigation was quite similar to her testimony given at the hearing held herein.

"After carefully considering all the testimony, I conclude that the Division has not established the guilt of the licensee by a fair preponderance of the evidence and I, therefore, recommend that an order be entered dismissing the charge herein."

No exceptions to the Hearer's Report were filed pursuant to Rule 6 of State Regulation No. 16.

After carefully considering the evidence herein, I concur in and adopt the recommended conclusions of the Hearer as my conclusions herein. Hence I shall dismiss the charge.

Accordingly, it is, on this 6th day of February, 1958,

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

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

PHILIP KUGEL & DAVID GLICK)
T/a METUCHEN DELICATESSEN)
422 Main Street)
Metuchen, N. J.,)

CONCLUSIONS AND ORDER

-----)
Holders of Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Metuchen.)

Philip Kugel & David Glick, Defendant-licensees, Pro se.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded guilty to a charge alleging that they sold alcoholic beverages at less than the price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulation No. 30.

The file herein discloses that on December 7, 1957 Philip Kugel, one of the aforesaid licensees, sold a case (12 - 4/5 quart bottles) of Schenley Reserve Blended Whiskey for \$51.74. The then currently effective price with permissible 5% discount on the case lot purchase, was \$54.61. After the sale was consummated, the agent and another who joined him identified themselves to Mr. Kugel who admitted the aforesaid illegal sale.

Defendants have no prior adjudicated record. I shall suspend defendants' license for the minimum period of ten days. Re Davis Pharmacy, Inc., Bulletin 1160, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 3rd day of February, 1958,

ORDERED that Plenary Retail Distribution License D-2, issued by the Borough Council of the Borough of Metuchen to Philip Kugel & David Glick, t/a Metuchen Delicatessen, for premises 422 Main Street, Metuchen, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. February 10, 1958, and terminating at 9:00 a.m. February 15, 1958.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

HENRIETTA DRAYER, FRED A EPPLEY &)
JOSEPH R. WHITE)
T/a NORMANDY CAFE)
1 Wilson Drive)
Lower Township)
PO Cape May RD, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption)
License C-16, issued by the Township)
Committee of Lower Township.)

James, Francis & O'Neill, Esqs., by George B. Francis, Esq.,
Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for the Division of
Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging
that they sold, served and delivered alcoholic beverages to
two minors and permitted the consumption of such beverages by
said minors in and upon their licensed premises, in violation
of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents, acting upon
information received from a municipal police chief, obtained
statements from an 18-year-old and a 19-year-old minor, respec-
tively, that on the evenings of November 13 and 14, 1957 each
had obtained beer at defendants' licensed premises. The state-
ments further disclosed that on each evening in question the
18-year-old had consumed approximately six glasses of beer and
the 19-year-old had consumed approximately three or four glasses
of beer.

Defendants have no prior adjudicated record. I shall
suspend defendants' license for a period of fifteen days.
(Re Longo, Bulletin 1199, Item 8). Five days will be remitted
for the plea entered herein, leaving a net suspension of ten
days.

Accordingly, it is, on this 4th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-16,
issued by the Township Committee of Lower Township to Henrietta
Drayer, Freda Eppley & Joseph R. White, t/a Normandy Cafe, for
premises 1 Wilson Drive, Lower Township, be and the same is hereby
suspended for ten (10) days, commencing at 3:00 a.m. February
17, 1958, and terminating at 3:00 a.m. February 27, 1958.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JAMES J. ERCEG)
3700 Palisade Avenue)
Union City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-217, issued by the Board of Commissioners of the City of Union City.)

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

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he allowed, permitted and suffered mislabeled beer taps on his licensed premises, in violation of Rule 26 of State Regulation No. 20.

The file herein discloses that on December 18, 1957, during the course of a retail inspection of defendant's licensed premises, ABC agents found two kegs containing Rheingold beer connected to taps bearing the brand name "Ballantine."

Defendant has a prior record. Effective March 23, 1952, the local issuing authority suspended his license for five days for a violation of its closing-hour ordinance. However, since this dissimilar violation occurred more than five years ago, it will not be considered in fixing the penalty herein. Re Fuer, Bulletin 1198, Item 4. I shall suspend defendant's license for ten days. Five days will be remitted for the plea, leaving a net suspension of five days. Re Dunkirk, Bulletin 1197, Item 6.

Accordingly, it is, on this 4th day of February, 1958,

ORDERED that Plenary Retail Consumption License C-217, issued by the Board of Commissioners of the City of Union City to James J. Erceg, for premises 3700 Palisade Avenue, Union City, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. February 17, 1958, and terminating at 3:00 a.m. February 22, 1958.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WILLIAM GREEN POST #247, THE AMERICAN LEGION 280 Oak Street Passaic, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-5, issued by the Board of Commissioners of the City of Passaic.)

Milton J. Pashman, Esq., Attorney for Defendant-licensee. Dora P. Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On Sunday, December 8, 1957 at or about 11:00 a.m., you allowed the consumption of alcoholic beverages on your licensed premises; in violation of Section Four (a) of an Ordinance adopted by the Board of Commissioners of the City of Passaic on July 15, 1941 which prohibits any such activity between 3:00 a.m. and 1:00 p.m. on Sunday."

The file herein discloses that on Sunday, December 8, 1957, at about 10:45 a.m., an ABC agent, in an attempt to enter the licensed premises, knocked on its door and in response thereto it was opened by an unidentified male who engaged the agent in a conversation and kept the door open in the course of the same. The agent looked into the rear room of the premises; observed a number of beer bottles on several tables and two men seated at a table drinking an amber-colored beverage. The agent did not identify himself and left the premises after being denied admission because he was not a member of the aforesaid Post. Fifteen minutes later (about 11:00 a.m.) the aforesaid agent and another ABC agent returned to the licensed premises and entered the rear room of the premises after identifying themselves to the doorkeeper. The agents proceeded to the barroom where they observed three men behind the bar and two men standing on the customers' side of the same. On the bar in front of each of the latter two men was a cold bottle of beer. One of the men was consuming a liquid (which subsequent analysis disclosed to be beer) from a glass which he held in his hand.

One of the three men behind the bar was identified as the Commander of the Post and the two men in front of the bar were identified as trustees of the aforesaid association.

By way of mitigation, the attorney for the defendant has submitted a statement, the contents of which I have carefully read together with the file in the case and the reports of the agents involved. The attorney's statement that the agents observed nothing but empty bottles left from the previous

evening is not borne out by the agents' reports. I do not find any extenuating circumstances in this case which would impel me to impose less than the established penalty in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend its license for a period of fifteen days. Re Loyal Order of Moose Woodstown Lodge No. 932, Bulletin 1053, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 13th day of February, 1958,

ORDERED that Club License CB-5, issued by the Board of Commissioners of the City of Passaic to William Green Post #247, The American Legion, for premises 280 Oak Street, Passaic, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. February 24, 1958, and terminating at 3:00 a.m. March 6, 1958.



DIRECTOR