

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

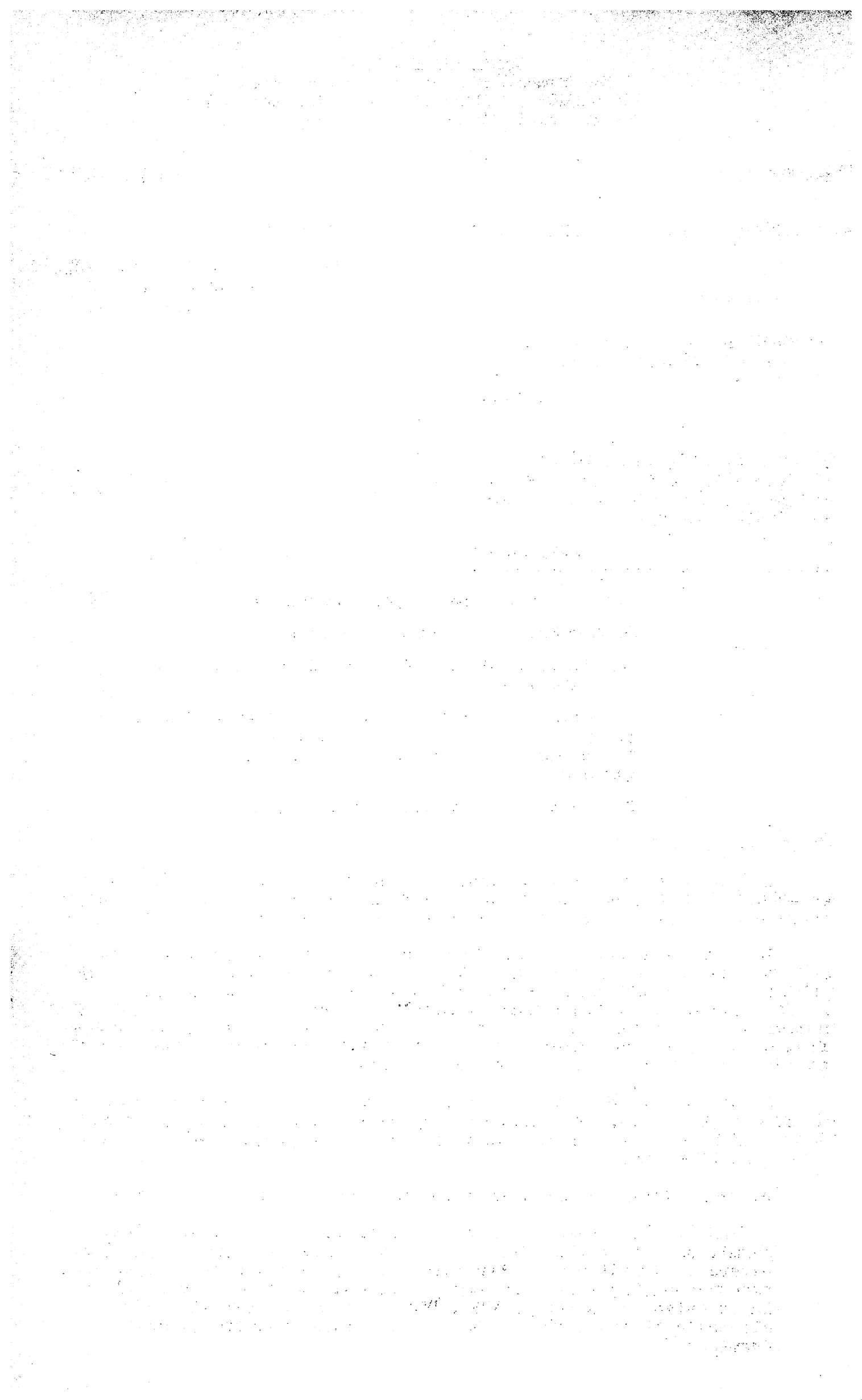
BULLETIN 1003

MARCH 2, 1954.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1003

MARCH 2, 1954.

I. COURT DECISIONS - HOLMES v. CAVICCHIA - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
Appellate Division
A-36-53

FLORENCE HOLMES and ELWOOD HOLMES,)
trading as RIVERVIEW INN,)

Appellants,)

-vs-)

DOMINIC A. CAVICCHIA, Director of)
the Division of Alcoholic Beverage)
Control of the Department of Law)
and Public Safety,)

Respondent.)
-----)

Argued January 18, 1954. Decided February 4, 1954.

Before Eastwood, Jayne and Francis, JJ.

Mr. James M. Davis, Jr. argued the cause for
the appellants.

Mr. Samuel B. Helfand, Deputy Attorney General,
argued the cause for the respondent.

Mr. Theodore D. Parsons, Attorney General,
Attorney.

The opinion of the Court was delivered by

EASTWOOD, S. J. A. D.

In this appeal, the appellants contend that the proofs failed to establish that the beverage sold to certain minors had sufficient alcoholic content as to bring the sales within the proscribed regulation.

There were admittedly six minors who visited the premises owned and operated by the appellants. Each of the minors testified that on the occasion in question, he ordered from, was served by and paid Elwood Holmes, one of the licensees, for the "beer" they consumed. The number of glasses of "beer" ordered, served, paid for and drunk ranged from 3 to 10, and each minor testified that he had been served "beer" at the appellants' tavern on prior occasions.

In defense of the charge, Elwood Holmes testified that he recognized the young men, that he knew they were minors; that he had not served them beer, but on the contrary, had served them "7-Up", a non-alcoholic beverage.

The Regulation No. 20 alleged to have been violated provides:

"Rule 1. No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises."

The appellants contend that the minors were not qualified as experts to recognize the beverage served them as beer having an alcoholic content prohibited by the statute; that there was no competent evidence before the Director that the appellants had served alcoholic beverages to any of the six minors and, therefore, the suspension of license imposed as a punishment by the Director should be reversed.

R. S. 33:1-1, as amended by P. L. 1953, c. 32, provides, inter alia:

"For the purpose of this chapter, the following words and terms shall be deemed to have the meaning herein given to them:

* * * * *

"b. 'Alcoholic beverage.' Any fluid *** having an alcoholic content of more than one-half of one per centum (1/2 of 1%) by volume, including alcohol, beer, lager beer, ale, porter * * *."

And, R. S. 33:1-1.1 further provides:

"In any proceeding for any violation of this chapter * * * any alcohol, beer, lager beer, ale, porter * * * shall be presumed * * * to contain more than one-half of one per cent of alcohol by volume."

As heretofore stated, the minors testified that they ordered beer by the glass and that in response to their orders Holmes served them and received payment. There is an implication that a purchaser has received that which he has ordered and paid for. State v. Marks, 65 N. J. L. 84, 87 (Sup. Ct. 1900); Lewinsohn v. U. S., 278 Fed. 421, 426 (C. C. A. 7th, 1921); 48 C. J. S., "Intoxicating Liquors", sec. 371a, p. 548 and sec. 371c, p. 549.

We are of the opinion that in this day and age where through the mediums of radio, television, magazines, newspapers and other propagandizing facilities, the public is introduced to the sensual experience of the advertised article and, in particular, beer and other alcoholic beverages, the listening, viewing and reading public become aware of these products quite early in life. In addition, we would expect that the minors, in the matter sub judice, being normally subjected to the aforementioned mediums and having been frequenters of appellants' tavern on prior occasions and being known to the bartender, were not unaware of beer nor hampered in their ready recognition that the beverage received was that advertised and generally known to be beer.

The fact that "beer" is presumed to contain alcohol is not a novel principle to the Courts of this State. In the case of Murphy v. Montclair, 39 N. J. L. 673 (Sup. Ct. 1877), the issue was the alleged violation of statute prohibiting sale of "ale, porter, beer or other malt or spirituous liquors as a beverage", without a license. The Court stated at page 675:

"The words 'ale, porter, beer,' when used in statutes relative to licenses, have no uncertain meaning. Each means a certain liquor made from malt, containing a certain percentage of alcohol.

"Had the state of demand charged the sale of two glasses of porter, it would hardly have been seriously argued that an assertion that it was a malt or spirituous liquor, would have been essential. But it is said that beer may mean either a malt liquor or an innocent beverage, known as spruce beer, small beer, ginger beer, &c.

"I think there is nothing in this, for even if the court can judicially recognize the existence of the various distinctions in the quality of these beverages, yet the word 'beer', as here

used, has a well-defined signification. The words 'by night,' in the Crimes Act, (sec. 93,) have no more a distinctly ascertained meaning than either of these words, when used as here in an act concerning licenses.

"As there is no need of specifying that 'by night' was meant the portion of the natural light within the twilights, (State v. Robinson, 6 Vroom 73,) so, in this instance, there is no need of asserting that the word 'beer' meant what the word usually implies when used in statutes to regulate the selling of malt or spirituous liquors. ..."

Cf. 48 L. R. A., p. 309 (1912). Other jurisdictions hold to this viewpoint. Williams v. State, 36 S. E. 2d 839 (1946); State v. Schrader, 55 N. W. 2d 232 (1952); Barnes v. Commonwealth, 204 S. W. 2d 801 (1947); Bell v. State, 154 S. W. 2d 650 (1941).

We find decisions holding that technical proof may be required to establish the alcoholic quantity of beer where there is evidence that the beverage was "qualified beer", i.e., spruce beer, small beer, ginger beer, near beer and the like, but where there is no evidence that the beverage is other than that generally known as "beer" the courts have held the implied alcoholic character to be recognized and judicially noticeable. Berry v. United States, 275 Fed. 680 (C. C. A. 7th, 1921) ("some sort of liquid"); Keen v. United States, 11 Fed. 2d 260 (C. C. A. 8th, 1926) ("home brew beer"). As to the connotation of beer in its unrestricted sense see Murphy v. Montclair, supra; 25 L.R.A. 446; 48 L.R.A. 308; 5 Words and Phrases, Beer, 257; Black, Intoxicating Liquors, sec. 17, page 19.

In addition, "In any proceeding for any violation of this chapter * * * any alcohol, beer, lager beer, ale, porter * * * shall be presumed * * * to contain more than one-half of one per cent of alcohol by volume." (R.S. 33:1-1.1), and possessing this character, the sale of such beverage to minors would be in violation of Alcoholic Beverage Control regulations.

An interesting decision, and quite pertinent here, is that of the Supreme Court of Wisconsin in Briffitt v. State, 58 Wis. 39, 16 N. W. 39, 46 Am. Rep. 621 (Sup. Ct. 1883), stating:

"* * * malt liquor, as ale or beer, was made and used as a beverage before the time of Herodotus, and has continued to be made and used all along down the ages, and in various countries, until the present time. At the present time we all know that this malt liquor, under the generic name of 'beer', is made and used in most European countries, and in our own, and is a common beverage. As long as laws for licensing the sale of intoxicating liquors have existed, brandy, whisky, gin, rum, and other alcoholic liquids have been held to be intoxicating liquors per se; and why? Simply because it is within the common knowledge and ordinary understanding that they are intoxicating liquors. By this rule of common knowledge courts take judicial notice that certain things are verities, without proof; * * * If a witness on the stand were asked whether whisky is intoxicating, he would be apt to smile as at a joke, and an intelligent witness, when asked the same question in relation to beer, might smile with equal reason.

"* * * It is true, that to a limited extent, there are other kinds of beer, or of liquor called beer, such as small beer, spruce beer, ginger beer, etc., but such definitions are placed as remote and special, and not primary or general. So it may be said of other substances having a common name and meaning, such as milk or tea. * * * When asked to take a drink of milk or a

cup of tea, it would not be necessary to prove what is meant. Why is it more necessary to prove what is meant by a glass or drink of beer? When beer is called for at the bar, in a saloon or hotel, the bar-tender would know at once, from the common use of the word, that strong-beer -- a spirituous or intoxicating beer -- was wanted; and if any other kind was wanted, the word would be qualified, and the particular kind would be named, as root beer or small beer, etc. When, therefore, the word 'beer' is used in court by a witness, the court will take judicial notice that it means a malt and an intoxicating liquor, as such meaning will be a presumption of fact, and in the meaning of the word itself there will be prima facie proof that it is malt or intoxicating liquor that is meant."

Clearly, there was sufficient evidence to support the Director's findings that the appellants unlawfully had served the minors an alcoholic beverage in violation of the Regulation.

The order is affirmed.

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2. APPELLATE DECISIONS - PISANO v. POMPTON LAKES.

ANNA A. PISANO, trading as)
DEW DROP INN,)

Appellant,)

-vs-)

BOROUGH COUNCIL OF THE BOROUGH)
OF POMPTON LAKES,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Anna A. Pisano, Appellant, Pro Se.
Nathan Bernstein, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from denial of renewal for the 1953-54 licensing year of appellant's License C-4 for premises at 422 Ringwood Avenue, Pompton Lakes.

On June 29, 1953, I revoked, effective immediately, the license which appellant then held for the 1952-53 licensing year. Re Pisano, Bulletin 977, Item 3. It thus appears that on June 30, 1953, appellant herein was not the holder of a license.

At the time scheduled for hearing herein appellant failed to appear. Rule 10 of State Regulations No. 15 provides that the failure of the appellant to appear at the time and place designated for the hearing of an appeal shall be cause for the dismissal of the appeal.

Accordingly, it is, on this 4th day of February, 1954,

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

DOMINIC A. CAVICCHIA
Director.

S. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1953 THROUGH DECEMBER 31, 1953

	1st Quarter			2d Quarter			Total
	July,	Aug.,	Sept.	Oct.,	Nov.,	Dec.	
ARRESTS:							
Total number of persons arrested	78			60			138
Licensees and employees	20			13			33
Bootleggers	58			47			105
SEIZURES:							
Motor vehicles - cars	7			6			13
- trucks	2			0			2
Stills - over 50 gallons	4			4			8
- 50 gallons or under	7			5			12
Alcohol - gallons	4.67			.50			5.17
Mash - gallons	25,250.00			1,400.00			26,650.00
Distilled alcoholic beverages - gallons	181.00			97.90			278.90
Wine - gallons	202.79			262.58			465.37
Brewed malt alcoholic beverages - gallons	81.10			51.21			132.31
RETAIL LICENSEES:							
Premises inspected	3,306			3,079			6,385
Premises where alcoholic beverages were gauged	1,830			2,055			3,885
Bottles gauged	36,310			39,377			75,687
Premises where violations were found	295			239			534
Violations found	441			490			931
Type of violations found:							
Unqualified employees	237			308			545
Reg. #38 sign not posted	19			20			39
Disposal permit necessary	15			18			33
Other mercantile business	15			10			25
Prohibited signs	9			8			17
Gambling devices	3			4			7
Improper beer taps	2			4			6
Probable fronts	1			0			1
Other violations	140			118			258
STATE LICENSEES:							
Premises inspected	29			44			73
License applications investigated	50			36			86
COMPLAINTS:							
Complaints assigned for investigation	1,324			1,071			2,395
Investigations completed	1,192			1,093			2,285
Investigations pending	(167)			93			95
LABORATORY:							
Analyses made	311			347			658
Refills (from licensed premises) - bottles	3			2			5
Bottles from unlicensed premises	72			92			164
IDENTIFICATION BUREAU:							
Criminal fingerprint identifications made	66			66			132
Persons fingerprinted for non-criminal purposes	765			540			1,305
Identification contacts made w/other enforcement agencies	701			484			1,185
Motor vehicle identifications via N.J. State Police teletype	12			11			23
DISCIPLINARY PROCEEDINGS:							
Cases transmitted to municipalities	33			31			64
Violations involved:							
Sale to minors	13			10			23
Sale during prohibited hours	12			15			27
Permitting hostesses on premises	5			1			6
Permitting bookmaking on premises	2			2			4
Sale to intoxicated persons	2			2			4
Failure to afford view into premises during prohibited hours	1			3			4
Permitting females at bar (local reg.)	1			1			2
Permitting brawls on premises	0			2			2
Possessing chilled beer (DL licensee)	1			0			1
Storage of licensed premises	1			0			1
Sale to non-members by club	1			0			1
Permitting lottery activity (pool)	0			1			1
Bottling alcoholic beverages for sale	0			1			1
Cases instituted at Division	48			44*			92
Violations involved:							
Sale to minors	16			6			22
Sale during prohibited hours	9			11			20
Permitting immoral activity on premises	4			5			9
Fraud and front	5			2			7
Sale below minimum resale price	2			5			7
Permitting foul language on premises	3			3			6
Permitting hostesses on premises	3			3			6
Mislabeling beer taps	2			4			6
Possessing illicit liquor	4			1			5
Permitting gambling (cards, dice) on premises	2			2			4
Sale outside scope of license	2			2			4

*Includes two cancellation proceedings - licenses improvidently issued to clubs not bona fide

	1st quarter			2d Quarter		Total
	July,	Aug.,	Sept.	Oct.,	Nov.,	
DISCIPLINARY PROCEEDINGS (Cont'd)						
Cases transmitted to municipalities (Cont'd)						
Violations involved:						
Permitting females at bar (local reg.)	3			0		3
Hindering investigation	1			2		3
Sale to non-members by clubs	1			2		3
Permitting lottery activity (numbers, punch boards, pools)	1			2		3
Sale to intoxicated persons	2			0		2
Permitting slot machines on premises	1			1		2
Permitting bookmaking on premises	1			1		2
Conducting business as a nuisance	0			2		2
Act or happening	1			0		1
Permitting prostitutes on premises	1			0		1
Permitting brawls on premises	1			0		1
Employing unqualified persons	1			0		1
Unauthorized transportation	1			0		1
Sale on Election Day	0			1		1
Improper advertising	0			1		1
Seller-permittee employed by retailer	0			1		1
Cases brought by municipalities on own initiative and reported to Division	25			40		65
Violations involved:						
Sale to minors	12			18		30
Permitting brawls on premises	5			13		18
Sale during prohibited hours	6			3		9
Permitting lottery activity on premises	3			1		4
Permitting bookmaking on premises	1			2		3
Conducting business as a nuisance	2			0		2
Permitting immoral activity on premises	0			2		2
Permitting gambling (cards) on premises	0			1		1
Violation of special condition	0			1		1
CANCELLATION PROCEEDINGS instituted at Division	2			0		2
Violations involved:						
Licensee non-resident	1			0		1
License issued in excess of DL limitation	1			0		1
HEARINGS HELD AT DIVISION:						
Total number of hearings held	96			110		206
Appeals	16			12		28
Disciplinary proceedings	43			51		94
Eligibility	19			28		47
Seizures	13			13		26
Tax revocations	3			5		8
Order to show cause	1			0		1
Application for license	1			1		2
PERMITS ISSUED:						
Total number of permits issued	5,790			3,786		9,576
Employment	734			293		1,127
Solicitors	2,961			242		3,203
Disposal of alcoholic beverages	376			259		635
Social affairs	1,069			1,097		2,166
Special wine	116			1,292		1,408
Miscellaneous	524			501		1,025

DOMINIC A. CAVICCHIA
Director.

Dated: January 12, 1954.

4.

ACTIVITY REPORT FOR JANUARY 1954

ARRESTS:			
Total number of persons arrested	-----	37	
Licensees and employees	----- 13		
Bootleggers	----- 17		
SEIZURES:			
Motor vehicles - cars	-----	6	
- trucks	-----	1	
Still - over 50 gallons	-----	1	
Alcohol - gallons	-----	26.00	
Mash - gallons	-----	1,745.00	
Distilled alcoholic beverages - gallons	-----	52.06	
Wine - gallons	-----	2.50	
Brewed malt alcoholic beverages - gallons	-----	5.25	
RETAIL LICENSEES:			
Premises inspected	-----	1,010	
Premises where alcoholic beverages were gauged	-----	648	
Bottles gauged	-----	11,816	
Premises where violations were found	-----	70	
Violations found	-----	107	
Type of violations found:			
Unqualified employees	----- 39	Gambling devices	----- 2
Reg. #38 sign not posted	----- 9	Other mercantile business	----- 2
Prohibited signs	----- 8	Improper beer taps	----- 1
Disposal permit necessary	----- 4	Other violations	----- 42
STATE LICENSEES:			
Premises inspected	-----	5	
License applications investigated	-----	10	
COMPLAINTS:			
Complaints assigned for investigation	-----	427	
Investigations completed	-----	389	
Investigations pending	-----	125	
LABORATORY:			
Analyses made	-----	135	
Bottles from unlicensed premises	-----	10	
IDENTIFICATION BUREAU:			
Criminal fingerprint identifications made	-----	29	
Persons fingerprinted for non-criminal purposes	-----	118	
Identification contacts made with other enforcement agencies	-----	129	
Motor vehicle identifications via N. J. State Police teletype	-----	9	
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities	-----	11	
Violations involved:			
Sale during prohibited hours	----- 5		
Sale to minors	----- 3		
Serving women at a bar (local reg.)	----- 2		
Permitting hostesses on premises	----- 1		
Cases instituted at Division	-----	22	
Permitting immoral activity on premises	----- 4	Sale outside scope of license	----- 1
Fraud and front	----- 4	Mislabeling beer taps	----- 1
Sale during prohibited hours	----- 3	Hindering investigation	----- 1
Permitting hostesses on premises	----- 3	Permitting hookmaking on premises	----- 1
Sale below minimum resale price	----- 2	Possessing illicit liquor	----- 1
Sale to minors	----- 2	Failure to file notice of change in application	----- 1
Unauthorized transportation	----- 2	Conducting business as a nuisance	----- 1
Serving women at a bar (local reg.)	----- 1	Unqualified employees	----- 1
Employing female bartender (local reg.)	----- 1	Permitting lottery activity (numbers)	----- 1
Permitting foul language on premises	----- 1		
Cases brought by municipalities on own initiative and reported to Division	-----		18
Violations involved:			
Sale to minors	----- 11	Permitting hookmaking on premises	----- 1
Sale during prohibited hours	----- 3	Serving women at a bar (local reg.)	----- 1
Permitting brawl on premises	----- 2	Unqualified employees	----- 1
HEARINGS HELD AT DIVISION:			
Total number of hearings held	-----	35	
Appeals	----- 10		
Disciplinary proceedings	----- 12	Seizures	----- 7
Eligibility	----- 3	Applications for license	----- 1
PERMITS ISSUED:			
Total number of permits issued	-----	523	
Employment	----- 95	Social affairs	----- 179
Solicitors	----- 39	Social wine	----- 19
Disposal of alcoholic beverages	----- 89	Miscellaneous	----- 109

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT SONGS AND STORIES) - PRIOR RECORD AND WARNING - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against)

McFADDEN'S LOUNGE, INC.)
88-94 Halstead Street)
Newark 6, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-853, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Carl & Wm. Abruzzese, Esqs., by Carl Abruzzese, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to the following charge:

"On Friday night, August 21, 1953 and early Saturday morning, August 22, 1953 and on Friday night, August 28, 1953 and early Saturday morning, August 29, 1953, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, in that male entertainers sang songs, recited stories and uttered words and phrases having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning, in violation of Rule 5 of State Regulations No. 20."

An ABC agent testified that at 10:00 p.m. on August 21, 1953, he and another agent visited defendant's licensed premises; that there were eighty or ninety patrons, mostly couples, in the premises; that at 10:30 p.m. two brothers (identified as William and Thomas McFadden) played musical instruments, sang songs, and recited stories; that during the course of their performance each used the words "bitch" and "bastard" and told double-entendre stories connoting sexual activities (the recitation of the stories and repetition of the songs would serve no useful purpose, although it may be said that they were unquestionably suggestive); that he and his fellow agent left the premises at 12:30 a.m., August 22, 1953. The ABC agent further testified that he and the same agent, who had accompanied him on the previous visit the week before, entered the defendant's premises at 10:45 p.m. on August 28, 1953; that when they walked into the premises the McFadden brothers, aforementioned were in the process of entertaining the patrons; that they sang songs and recited various stories and sayings having relationship to sexual activities; that Thomas McFadden used the words "bitch" and "G-- D--- you" on several occasions; that Thomas McFadden changed the words of part of an old-time song, substituting words which gave the song an indecent meaning; that at 1:05 a.m., August 29, 1953, the agents identified themselves to Thomas McFadden (president of defendant corporate-licensee) who called over his brother William; that the latter stated that the material used in the show was accumulated by him over a period of thirty years in show business and admitted that the songs were risque and had double meanings.

It was stipulated by the attorneys for the respective parties that if the other ABC agent, who had accompanied the agent who testified herein to defendant's licensed premises on the occasions in question, were called to testify, his testimony would be similar to that of his colleague.

William McFadden testified that some of the material that he and his brother Thomas used was "picked up through the years from other entertainers." On cross-examination he admitted that some of the expressions could "in a slang way" be interpreted to mean an act of sexual intercourse.

Thomas McFadden corroborated in substance the testimony of his brother William.

After consideration of all the testimony, I am convinced that the agent's testimony truly represented the suggestive and off-color nature of the songs and stories, respectively, used by both Thomas and William McFadden during their performances at the times in question. Such "shows" and conduct have no place on licensed premises.

Ordinarily, when there is no past record, the suspension of the license for a violation of the type now under consideration would be fifteen days. Re S. E. W., Inc., Bulletin 891, Item 5. However, defendant was advised by letter, dated November 30, 1949, that agents of this Division, while making an undercover check of defendant's licensed premises, witnessed a team of two men, billed and introduced as the "McFadden Boys, Bill & Tom," perform, and that many of the "side remarks" uttered by the said performers "went well beyond any humor and bordered dangerously close to being classified as smutty." At that time defendant was warned to "clean up the entertainment." Although the licensee, in a writing signed by Thomas L. McFadden, as president, promised to dispense with objectionable material in the show, it is now apparent that such promise was deliberately broken.

Defendant has a prior adjudicated record. Effective January 16, 1950, its license was suspended by the local issuing authority for ten days, as the result of its plea of non vult to the sale of alcoholic beverages to a minor. Under all the circumstances, I shall suspend defendant's license for a period of twenty-five days.

Accordingly, it is, on this 2nd day of February, 1954,

ORDERED that Plenary Retail Consumption License C-853, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to McFadden's Lounge, Inc., 88-94 Halstead Street, Newark, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 7:00 a. m. February 9, 1954, and terminating at 7:00 a. m. March 6, 1954.

DOMINIC A. CAVICCHIA
Director.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ISIDOR KLEIN)
302 Mulberry Street &)
2 Mulberry Place)
Newark 5, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-131, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Isidor Klein, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On December 28, 1953, you sold at retail two 4/5 quart bottles of Seagram's Seven Crown Blended Whiskey and one 4/5 quart bottle of Schenley Reserve Blended Whiskey, alcoholic beverages, at less than the aggregate of their prices listed in the then currently effective Minimum Resale Price List published by the Director of the Division of Alcoholic Beverage Control; in violation of Rule 5 of State Regulations No. 30.

"2. On the occasion aforesaid while an inspector and an investigator of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety were conducting an investigation, inspection and examination at your licensed premises, you failed to facilitate and hindered and delayed and caused the hindrance and delay of such investigation, inspection and examination; in violation of R.S. 33:1-35."

The file herein discloses that on December 28, 1953 two ABC agents visited the defendant's licensed premises. One of the agents ordered "two 4/5 quart bottles of Seagram's Seven Crown Blended Whiskey" and "one 4/5 quart bottle of Schenley Reserve Blended Whiskey." The agent asked the defendant the price of the three bottles of whiskey and the agent was told \$13.47. He then asked the defendant if that was the best he could do and, when advised by defendant that it was, the agent left the premises by the front door. The defendant, after leaving the premises by way of the side door, intercepted the agent on the street and suggested that if he returned in a little while, he could have the whiskey previously ordered for \$13.00. The other agent in the meantime left defendant's premises. The agent, who had ordered the whiskey aforementioned, returned a short time thereafter and purchased "two 4/5 quart bottles of Seagram's Seven Crown Blended Whiskey" and "one 4/5 quart bottle of Schenley Reserve Blended Whiskey" for which he paid defendant \$13.00. The listed minimum resale price of the three items in question, effective October 1, 1953, was \$13.47. The agent then left the defendant's premises and met his fellow agent. Both returned to the premises and made known their identity to the defendant. One of the agents asked the defendant to show him the copy of his liquor application and was told to "get it yourself." The agent then requested the defendant to permit him to inspect the cash register but this request was refused. The agent asked defendant to produce the minimum resale price book but again the request was met with a refusal on the part of defendant. The agent stated to defendant that the matter would be reported to the Director, at which time the defendant exclaimed, "I don't give a damn what you do. Go

ahead and close the place up." The defendant, when asked, declined to make a written statement with reference to the matter.

Defendant has no prior adjudicated record. The minimum penalty imposed for a violation of the kind set forth in Charge (1) is a suspension for a period of ten days, Re Johnson, Bulletin 997, Item 12. I shall suspend defendant's license for an additional period of fifteen days because of the violation set forth in Charge (2), Re Kaplan & Paszun, Bulletin 955, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 2nd day of February, 1954,

ORDERED that Plenary Retail Consumption License C-131, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Isidor Klein, 302 Mulberry Street & 2 Mulberry Place, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. February 9, 1954, and terminating at 2:00 a.m. March 1, 1954.

DOMINIC A. CAVICCHIA
Director.

DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against
MICHAEL PAPP & ELIZABETH PAPP
T/a PARADISE
301 Union Street
Trenton 10, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-188, issued by the Board of Commissioners of the City of Trenton.

Michael Papp and Elizabeth Papp, licensees pro se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded guilty to a charge alleging that they allowed a mislabeled beer tap on their licensed premises in violation of Rule 26 of State Regulations No. 20.

The file herein discloses that on January 8, 1954, during the course of a routine inspection, an ABC agent found a barrel of Rubsam & Horrmann Crown beer connected to a tap which bore the name "Sunshine Beer."

Defendants have no prior record. I shall suspend defendants' license for three days, the minimum suspension imposed for a violation of this character. One day will be remitted for the plea entered herein, leaving a net suspension of two days. Re Palchik, Bulletin 980, Item 6.

Accordingly, it is, on this 2nd day of February, 1954,

ORDERED that Plenary Retail Consumption License C-188, issued by the Board of Commissioners of the City of Trenton to Michael Papp & Elizabeth Papp, t/a Paradise, for premises 301 Union Street, Trenton, be and the same is hereby suspended for two (2) days, commencing at 2:00 a.m. February 8, 1954, and terminating at 2:00 a.m. February 10, 1954.

DOMINIC A. CAVICCHIA
Director.

8. DISCIPLINARY PROCEEDINGS - SALE OF BEVERAGES TO WOMEN AT BAR IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against

LOU-MAR CAFE (A Corp.)
T/a LOU-MAR CAFE
14 Jersey Avenue
New Brunswick, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-83, issued by the Board of Commissioners of the City of New Brunswick.

Heston N. Potts, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On December 10 and 11, 1953, and on divers days prior thereto, women were served with alcoholic or other beverages directly over and drank at a bar in and upon your licensed premises; in violation of Section 26 of an Ordinance adopted by the Board of Commissioners of the City of New Brunswick on February 7, 1939, as amended by Ordinance adopted September 1, 1942."

Section 26 of an ordinance adopted by the Board of Commissioners of the City of New Brunswick on February 7, 1939, provides:

"No woman shall be served with alcoholic, or other beverages, directly over, or drink at, any bar."

The file herein discloses that defendant's licensed premises has two bars, hereinafter designated as "Bar A" and "Bar B." "Bar A" has beer taps and behind this structure there is a back bar. "Bar B" has no beer taps and behind this structure there is no back bar. On December 10, 1953, ABC agents observed a bartender serve a glass of beer to a female who was seated at "Bar B" but the agents did not identify themselves. On December 11, 1953, the same agents observed a bartender serve a highball, consisting of ginger ale and Seagram's 7 Crown whiskey, to a female seated at "Bar B." The agents identified themselves to the bartender, Louis Toth, President of defendant corporation. Mr. Toth admitted the service, but stated that he believed "Bar B" was not a bar because it was separated by a small open space from "Bar A." It is clear that "Bar B" is a bar within the meaning of this term as used in the ordinance. See Re Blue Mirror Inn, Inc., Bulletin 961, Item 5; Re Eskridge, Bulletin 994, Item 6.

Defendant has no prior adjudicated record. Under all the circumstances, including the plea entered herein, I shall suspend defendant's license for a period of five days. Re Farrell, Bulletin 992, Item 5.

Accordingly, it is, on this 28th day of January, 1954,

ORDERED that Plenary Retail Consumption License C-83, issued by the Board of Commissioners of the City of New Brunswick to Lou-Mar Cafe (A Corp.), t/a Lou-Mar Cafe, for premises 14 Jersey Avenue, New Brunswick, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. February 8, 1954, and terminating at 2:00 a.m. February 13, 1954.

DOMINIC A. CAVICCHIA
Director.

9. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED BY DIRECTOR - APPLICATION TO LIFT GRANTED.

Auto. Susp. #96
 In the Matter of Petition by)
 MICHAEL SICKLE & MARY SICKLE)
 T/a SICKLE'S BAR & GRILL)
 North Side Valley Road)
 Passaic Township)
 P.O. Stirling, N. J.,)

ON PETITION
 CONCLUSIONS AND ORDER

To Lift the Automatic Suspension)
 of Plenary Retail Consumption License)
 C-5 issued by the Township Committee)
 of the Township of Passaic.)

 Abe P. Friedman, Esq., Attorney for Petitioners.

BY THE DIRECTOR:

It appears from a verified petition filed herein that on February 5, 1954, Mary Sickle (one of the petitioners herein) received a six-months' suspended sentence and was placed on probation for one year by a Judge of the County Court of Morris County after she had pleaded non vult to a charge alleging that she had sold alcoholic beverages to minors in violation of R. S. 33:1-77.

The conviction in the criminal proceedings has resulted in the automatic suspension of the license held by petitioners for the balance of its term. R. S. 33:1-31.1. The petition herein prays that the automatic suspension of the license may be lifted.

It appears from the records of the Division of Alcoholic Beverage Control that by order dated June 23, 1953, I suspended petitioners' license for a net period of thirty days after they had pleaded non vult in disciplinary proceedings to a charge alleging that they had sold and permitted the sale of alcoholic beverages to minors and has also pleaded non vult to another dissimilar charge. Said suspension was effective from 2:00 a.m. June 29, 1953, to 2:00 a.m. July 29, 1953. See Re Sickle, Bulletin 977, Item 6.

The charge in the criminal proceeding and the charge in the disciplinary proceedings which allege the sale of alcoholic beverages to minors were based upon the same facts. The case concerns the sale of alcoholic beverages to five minors, three of whom were 18 years of age and two of whom were 17 years of age.

The suspension heretofore imposed by me is adequate under the circumstances of the case. Hence the relief sought will be granted.

Accordingly, it is, on this 5th day of February, 1954,

ORDERED that the automatic suspension of License C-5, now held by Michael Sickle & Mary Sickle, t/a Sickle's Bar & Grill, for premises on North side Valley Road, Passaic Township, be and the same is hereby lifted and said license is hereby restored to full force and operation, effective immediately.

DOMINIC A. CAVICCHIA
 Director.

10. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against JOSEPH CARPEL T/a BRANCH BROOK BAR & GRILL 13 Washington Avenue Belleville, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the Town of Belleville.

Joseph Carpel, Defendant-licensee, Pro Se. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Friday night, January 22, 1954, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Louis ---, U. S. Navy and Anthony ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20."

The file herein discloses that three ABC agents were in defendant's licensed premises on the evening of Friday, January 22, 1954. At about 11:30 p.m. the agents observed defendant-licensee as he served a glass of beer to Louis ---, 19 years of age, and a drink of vodka and ginger ale to Anthony ---, 19 years of age. After the minors paid the bartender and consumed part of their drinks, the agents identified themselves to the minors and the licensee. Each minor told the agents that he had previously purchased and consumed two similar drinks on the evening in question.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Schwaebische Alb, Bulletin 995, Item 8.

Accordingly, it is, on this 4th day of February, 1954,

ORDERED that Plenary Retail Consumption License C-13, issued by the Board of Commissioners of the Town of Belleville to Joseph Carpel, t/a Branch Brook Bar & Grill, for premises 13 Washington Avenue, Belleville, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. February 15, 1954, and terminating at 2:00 a.m. February 20 1954.

DOMINIC A. CAVICCHIA Director.

1. CANCELLATION PROCEEDINGS - NON-RESIDENTS OF NEW JERSEY - ORDER TO SHOW CAUSE DISCHARGED UNDER CIRCUMSTANCES OF CASE.

In the Matter of Cancellation)
 Proceedings against)
)
 LOUIS H. COPELEY & MADELEINE)
 COPELEY)
 T/a MONTANA FARM)
 Mt. Benevolence-Egypt Road)
 Hampton Township)
 P.O. R.D. 2, Newton, N. J.,)
)
 Holders of Plenary Retail Consump-)
 tion License C-10, issued by the)
 Township Committee of the Township)
 of Hampton.)
 -----)

CONCLUSIONS
AND ORDER

George H. Skolsky, Esq., Attorney for Louis H. Copeley and Madeleine Copeley.
 Vito A. Concilio, Esq., Attorney for Township of Hampton.
 James E. Quinn, Esq., Attorney for Marion McKeown and Charles McKeown.
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Notice was served upon Louis H. Copeley and Madeleine Copeley, t/a Montana Farm, to show cause why License C-10, issued to them by the Township Committee of the Township of Hampton, should not be cancelled and declared null and void on the ground that such license was improvidently issued to non-residents of New Jersey, in violation of R. S. 33:1-25.

The following facts appear from the file herein and from the evidence taken on the return day of the order to show cause. On May 2, 1953, Louis H. Copeley and Madeleine Copeley, his wife, who then resided at 259 West 11th Street, New York City, purchased the property known as Montana Farm from Peter Montana and Marie Montana, his wife, with the intention of using it eventually as a residence. During the course of negotiations for the purchase of this property the Copeleys had learned that Emil Montana, a brother of Peter Montana, held a plenary retail consumption license covering said premises and that it would be necessary for them to arrange to take over the license if they desired to buy the property. When the interested parties agreed to this arrangement, Emil Montana agreed to consent to the transfer of the license which he then held. Accordingly, on June 9, 1953, Louis H. Copeley and Madeleine Copeley duly filed with the Township Committee an application for the transfer of the license, and disclosed therein that they were not actual and bona fide residents of the State of New Jersey. Nevertheless the Township Committee transferred the license to them and thereafter renewed the license in their names for the present licensing year. The Copeleys did not conduct any alcoholic beverage activity under the license.

It further appears that during the pendency of these proceedings Marion McKeown and Charles McKeown, her husband, filed with the Township Committee of the Township of Hampton an application to transfer the license to them. At the hearing Marion McKeown testified that she and her husband have resided in Hampton Township for thirty-seven years; that her husband presently operates a restaurant elsewhere, and that they intend to operate a restaurant at the premises in question if and when the transfer of the license is granted.

No question of a false statement is involved in this proceeding because Louis H. Copeley and Madeleine Copeley disclosed in the application for transfer and the application for renewal that they were not residents of the State of New Jersey. Admittedly they were not qualified to hold a license at the time the applications were filed, but I do not believe that they should be penalized because of a mistake made by the Township Committee in transferring the license to them and thereafter renewing said license. Furthermore, the testimony adduced at the hearing indicates that the Copeleys have correctively and sufficiently acquired New Jersey residence under R. S. 33:1-25. Under all the circumstances of this case I shall discharge the order to show cause. Investigation, de hors the record proper, reveals that the Township Committee has not acted on the McKeown application and that no fee was deposited in connection therewith. Of course the Committee is without jurisdiction to grant transfer of the license unless and until the application shall have been completed in keeping with the person-to-person and place-to-place transfer requirements of R. S. 33:1-26, Paragraphs 4 and 3.

Accordingly, it is, on this 1st day of February, 1954,

ORDERED that the order to show cause herein be and the same is hereby discharged.

DOMINIC A. CAVICCHIA
Director.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Francini Wine Company
222 Broome Street
Newark, N. J.

Application filed February 25, 1954 for Plenary Winery License.

John Van Bueren
East Side New Jersey Avenue between Davis and Burk Avenues
Wildwood, N. J.

Application filed February 25, 1954 for transfer of State Beverage Distributor's License SBD-44 from Packman Brothers, Inc., 310-316 N. Indiana Avenue, Atlantic City, N. J.



William Howe Davis
Director.