

41 Sheffield St.  
Jersey City, 5, N. J.  
STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 936

MAY 26, 1952.

TABLE OF CONTENTS

ITEM

1. NEW LEGISLATION - P. L. 1952, C. 126, AMENDING R. S. 33:1-27 TO INCLUDE COAST GUARD AMONG THOSE ARMED FORCES POSTS WHICH ARE EXEMPT FROM REQUIREMENT OF LICENSE AND FEE FOR SALES OF ALCOHOLIC BEVERAGES.
2. STATE REGULATIONS - RULE 7 OF REGULATIONS NO. 13 AMENDED TO CHANGE EXPIRATION DATES OF EMPLOYMENT PERMITS TO MARCH 31ST.
3. DISCIPLINARY PROCEEDINGS (Wallington) - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR 50 DAYS.
4. DISCIPLINARY PROCEEDINGS (Livingston) - PERMITTING BRAWL AND GAMBLING ON LICENSED PREMISES - EMPLOYING HOLDER OF SOLICITOR'S PERMIT - LICENSE SUSPENDED FOR 30 DAYS.  
  
DISCIPLINARY PROCEEDINGS (Newark) - HOLDER OF SOLICITOR'S PERMIT EMPLOYED ON RETAIL LICENSED PREMISES - PERMIT SURRENDERED - CHARGE NOLLE PROSSED.
5. DISCIPLINARY PROCEEDINGS (Lakewood) - PERMITTING PIN BALL MACHINES ON LICENSED PREMISES - PREVIOUS RECORD - LICENSE SUSPENDED FOR 15 DAYS - LICENSED PREMISES NOW CLOSED - ORDER OF SUSPENSION TO BE ENTERED WHEN LICENSEE RESUMES OPERATION.
6. CANCELLATION PROCEEDINGS (Union City) - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.
7. CANCELLATION PROCEEDINGS (Union City) - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P.L. 1951, C. 163, DISMISSED FOR LACK OF PROOF.
8. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL IN MOTOR VEHICLE - VEHICLE AND ALCOHOL FORFEITED - CLAIM OF INNOCENT LIENOR RECOGNIZED.
9. APPELLATE DECISIONS - MATTHEWS ET AL. v. ORANGE AND LAGRAVENIS.
10. MORAL TURPITUDE - BREAKING, ENTERING, LARCENY AND RECEIVING, AND FALSE SWEARING.  
  
DISQUALIFICATION - APPLICATION TO LIFT GRANTED.
11. STATE LICENSES - NEW APPLICATIONS FILED.
12. DISCIPLINARY PROCEEDINGS (Clifton) - ILLICIT LIQUOR - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

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

BULLETIN 936

MAY 26, 1952.

1. NEW LEGISLATION - P. L. 1952, C. 126, AMENDING R. S. 33:1-27 TO INCLUDE COAST GUARD AMONG THOSE ARMED FORCES POSTS WHICH ARE EXEMPT FROM REQUIREMENT OF LICENSE AND FEE FOR SALES OF ALCOHOLIC BEVERAGES.

Senate Bill No. 159 was approved by Governor Driscoll on May 6, 1952 and thereupon became Chapter 126 of the Laws of 1952. The Act reads as follows:

"AN ACT concerning alcoholic beverages, and amending section 33:1-27 of the Revised Statutes.

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

"1. Section 33:1-27 of the Revised Statutes is amended to read as follows:

"33:1-27. All fees collected by the Director of the Division of Alcoholic Beverage Control shall be promptly paid to the State Treasurer, and thereupon shall become part of the free treasury funds of this State.

"Any statute or exemption to the contrary notwithstanding, no license shall be issued to any person except upon payment of the full fee therefor or as above prorated; but no license shall be required and no fee charged in connection with the retail sale of alcoholic beverages for consumption on the premises where sold, when sold at any camp, post or regimental exchange duly organized under the regulations of the United States Army or Navy or Marine Corps or Coast Guard or when sold by any voluntary unincorporated organization of the Armed Forces operating a place for the sale of goods pursuant to the regulations promulgated by the Secretaries of the respective Departments of National Government under which the Armed Services operate or, if the consent of the State Military Board shall have been first obtained, under the State National Guard regulations."

"2. This act shall take effect immediately."

EDWARD J. DORTON  
Acting Director.

Dated: May 19, 1952.

2. STATE REGULATIONS - RULE 7 OF REGULATIONS NO. 13 AMENDED TO CHANGE EXPIRATION DATES OF EMPLOYMENT PERMITS TO MARCH 31ST.

TO ALL LICENSEES:

Administrative experience has demonstrated that it would be advantageous to have Employment Permits expire on March 31st of each year and to require renewal thereof to be made as of April 1st of each year.

Accordingly, effective July 1, 1952, Rule 7 of State Regulations No. 13 is hereby amended as follows:

"Rule 7. Employment permits are not transferable from person to person. All such permits expire on the March 31st following their issuance unless otherwise specified therein. Each application for permit shall be accompanied by two (2) identical passport-type photographs of the applicant, two (2) inches by two (2) inches, and which shall have been taken not more than thirty (30) days prior to the date of the application. Each applicant shall be fingerprinted, without charge, under the supervision of the Division of Alcoholic Beverage Control at such time and place as shall be designated from time to time by the Director. The fingerprints shall be marked 'non-criminal' and shall be filed with the Director."

Employment Permits for the 1952-1953 period will expire March 31, 1953. Employees failing to qualify as to age, residence, or citizenship, who desire to continue their employments on and after April 1, 1953, must obtain renewals of their employment permits before March 31, 1953.

EDWARD J. DORTON  
Acting Director.

Dated: May 1, 1952

Effective July 1, 1952

Filed with the Secretary of State of New Jersey May 9, 1952.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against )

JOHN GAVLAK )  
T/a MAIN STOP )  
35 Main Avenue )  
Wallington, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-16, issued by the Borough Council of the Borough of Wallington. )

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David Young, 3rd, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

On March 24, 1952, an ABC agent seized on defendant's premises one quart bottle labeled "Seagram's Seven Crown Blended Whiskey 86.8 Proof", one quart bottle labeled "PM Blended Whiskey 86 Proof", two quart bottles labeled "Calvert Reserve Blended Whiskey 86.8 Proof" and one quart bottle labeled "Schenley Reserve Blended Whiskey 86 Proof" when his field tests indicated a variance between the labels on the bottles and the contents thereof. An analysis by the Division chemist disclosed that the contents of the said bottles were not genuine as labeled. Defendant denied any knowledge of these discrepancies.

Defendant has a prior adjudicated record. Effective June 25, 1946, his license was suspended for sixty days by the State Commissioner (now Director) for possession of illicit liquor (sixteen bottles). See Bulletin 716, Item 7. Effective June 27, 1951, his license was suspended for fifty days by the State Director for permitting bookmaking, lottery activities and lewdness upon his licensed premises. See Bulletin 910, Item 7.

Considering defendant's past record, there is doubt as to his fitness to hold a license. This is his second similar offense, and the only point in his favor is that more than five years elapsed between these similar violations. However, the question as to whether his license should be renewed may be determined by the local issuing authority, if he applies for renewal of his license for the fiscal year beginning July 1, 1952. Under all the circumstances, including the plea herein, I shall suspend defendant's license for fifty days.

Accordingly, it is, on this 7th day of May, 1952,

ORDERED that Plenary Retail Consumption License C-16, issued by the Borough Council of the Borough of Wallington to John Gavlak, t/a Main Stop, for premises 35 Main Avenue, Wallington, be and the same is hereby suspended for the balance of its term expiring at Midnight, June 30, 1952, effective at 3:00 a.m. May 12, 1952.

EDWARD J. DORTON  
Acting Director.

4. DISCIPLINARY PROCEEDINGS - PERMITTING BRAWL AND GAMBLING ON LICENSED PREMISES - EMPLOYING HOLDER OF SOLICITOR'S PERMIT - LICENSE SUSPENDED FOR 30 DAYS.

DISCIPLINARY PROCEEDINGS - HOLDER OF SOLICITOR'S PERMIT EMPLOYED ON RETAIL LICENSED PREMISES - PERMIT SURRENDERED - CHARGE NOLLE PROCESSED.

In the Matter of Disciplinary Proceedings against DOROTHY GUTMAN T/a GENE'S TAVERN 56 West Mt. Pleasant Avenue Livingston, N. J., Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Livingston.

CONCLUSIONS AND ORDER

In the Matter of Disciplinary Proceedings against HARRY SCHENKEL 52 Aldine Street Newark 8, N. J., Holder of Solicitor's Permit No. 3014, issued by the Director of the Division of Alcoholic Beverage Control.

Jacob Lubetkin, Esq., Attorney for Defendant-licensee and Defendant-permittee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant-licensee has pleaded not guilty to the following charges:

- "1. On or about September 13, 1951, you allowed, permitted and suffered a brawl, act of violence and disturbance in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20.
"2. On or about September 13, 1951 and on divers days prior thereto, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., wagering on the outcome of prize fights, baseball games and other sporting events; in violation of Rule 7 of State Regulations No. 20.
"3. On September 15, 1951 and on divers days prior thereto, you employed and had connected with you in a business capacity Harry Schenkel, a person interested, directly and indirectly, in the wholesaling of alcoholic beverages by reason of his being an officer, director, stockholder of, and holder of a solicitor's permit for employment by Stewart-Hill, Inc., holder of a plenary wholesale license for premises 75 Dorsa Avenue, Livingston, N. J.; in violation of Rule 29 of State Regulations No. 20."

Defendant-permittee, during pendency of the within proceedings, surrendered his solicitor's permit for cancellation. The attorney appearing for the Division has recommended that the charge be nolle prossed. In view of this, the charge preferred against Harry Schenkel will be nolle prossed.

As to the proceedings against defendant-licensee: The first and most important question to be decided is whether Harry Schenkel (father of Dorothy Gutman) was employed on the licensed premises. Harold Baker and Raymond Bataille, patrons of the licensed premises, testified that Harry Schenkel tended bar on numerous occasions on the licensed premises between May 1951 and September 1951, and particularly that they had purchased a number of glasses of beer and a carton of beer from him on the evening of September 13, 1951. On this point I am impressed by the testimony of Kenneth Welch who had tended bar on defendant's premises from May 1951 until his employment by defendant was terminated in November 1951. Welch testified that, while Schenkel "wouldn't stay behind the bar constantly", he "used to tend bar, help around the place". Another patron, Arthur G. Minder, testified that he saw Schenkel acting as bartender on numerous occasions and that he purchased a drink from Schenkel on the evening of September 15, 1951. On behalf of defendant Schenkel denied that he ever tended bar but admitted that he frequently visited the premises and cooked shrimp and prepared sandwiches for the customers. Three patrons testified that they had never seen Schenkel tending bar. It is quite possible that they did not. However, from all the evidence I conclude that Schenkel tended bar and otherwise helped in the conduct of the licensed premises. Salary or compensation is not a requisite to employment. Re William Street Bar & Grill, Bulletin 466, Item 8. I conclude that at the times mentioned in the charges Schenkel was employed on the licensed premises. Kravis v. Hock, 137 N.J.L. 252; Re Jacobs, Bulletin 935, Item 3.

As to Charge 1: The evidence establishes that on the evening of September 13, 1951, a fixture was broken in the men's room on defendant's premises and that Schenkel met Harold Baker near the entrance to the men's room and intimated that Baker had caused the damage. Baker denied the accusation. There is a serious dispute as to what happened thereafter. Schenkel says that he went behind the bar "to get a cigar". The witnesses for the Division say that Schenkel went behind the bar and served drinks. In any event, the argument as to whether Baker was responsible for the damage continued. It is clear that some time later Baker was seated on a stool in front of the bar and Schenkel was behind the bar. The next fact clearly established is that Schenkel reached over the bar and either pushed or struck Baker with his fist, with the result that Baker was floored and became unconscious. Baker testified that he spent seven days in a hospital as a result of the injuries he received. Even if Baker used "vile language", as defendant's witnesses allege, I do not think that he was the aggressor and I conclude that the attack by Schenkel was unjustified under the circumstances. Hence, I find defendant-licensee guilty as to Charge 1. Greenbrier, Inc. v. Hock, 14 N. J. Super. 39.

As to Charge 2: The evidence leads me to conclude, despite Schenkel's denial, that he did engage in gambling on baseball games and fights with various customers while he was employed on the licensed premises. I find defendant-licensee guilty as to Charge 2. Greenbrier, Inc. v. Hock, supra.

As to Charge 3: It was stipulated that on the dates mentioned in the charges Schenkel held a solicitor's permit and was an officer and director of a wholesale licensee. Hence I find defendant-licensee guilty as to Charge 3.

Defendant has no prior record.

Under the circumstances I shall suspend defendant's license on Charge 1 for fifteen days (Re Teevan et al., Bulletin 676, Item 11); on Charge 2 for ten days (cf. Billy Urbanski, Inc., Bulletin 793, Item 3), and on Charge 3 for five days, making a total suspension of thirty days.

Accordingly, it is, on this 12th day of May, 1952,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Livingston to Dorothy Gutman, t/a Gene's Tavern, for premises 56 West Mt. Pleasant Avenue, Livingston, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. May 19, 1952, and terminating at 2:00 a.m. June 18, 1952; and it is further

ORDERED that the disciplinary proceedings instituted against Harry Schenkel be and the same are hereby nolle prossed.

EDWARD J. DORTON  
Acting Director.

5. DISCIPLINARY PROCEEDINGS - PERMITTING PIN BALL MACHINES ON LICENSED PREMISES - PREVIOUS RECORD - LICENSE SUSPENDED FOR 15 DAYS - LICENSED PREMISES NOW CLOSED - ORDER OF SUSPENSION TO BE ENTERED WHEN LICENSEE RESUMES OPERATION.

In the Matter of Disciplinary Proceedings against  
C. L. K., INC.  
T/a LA RHUMBA BAR  
705 Madison Avenue  
Lakewood, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-28, issued by the Township Committee of the Township of Lakewood.  
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C. L. K., Inc., Defendant-licensee, by Harry Cohen, President.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

Defendant pleaded not guilty to a charge alleging that it allowed, permitted and suffered in and upon its licensed premises two bagatelle or pin ball machines, in violation of Rule 7 of State Regulations No. 20.

An ABC agent testified that on April 7, 1952, during the course of a routine inspection of defendant's licensed premises, he observed on the first floor thereof two bagatelle machines in a room adjoining the lobby and described as the "writing room". An inspection of the application for transfer of the license in question to defendant, dated December 6, 1951, disclosed that "Barroom, dance hall, dining room, all rooms 1, 2, 3d floors; playroom, storeroom in the cellar" will constitute the licensed premises.

Harry Cohen, President of defendant corporation, testified that the application should have specified "all guest rooms 1st fl., 2nd fl. and 3rd fl." as was contained in previous applications for licenses for said premises. Harry Cohen further testified that "it was a matter of making an error in typing" by the girl who filled in the application form.

I cannot accept the explanation of Harry Cohen, President of defendant corporation, as a defense to the charge preferred herein. A licensee is bound by the description of his licensed premises as set forth in his application. The maintenance of the machine on any part of the licensed premises was a violation of the Rules and Regulations of the Division of Alcoholic Beverage Control.

I find defendant guilty of the charge preferred in the instant case.

Defendant has no prior record. However, effective March 24, 1951, the within license, then held by Harry Cohen and Mollie Kornfeld, now owners of 40% and 25%, respectively, of defendant's capital stock, was suspended for 25 days on a "farming out" charge. Re Cohen & Kornfeld (Bulletin 901, Item 6 and Bulletin 903, Item 4). The license was transferred to defendant on December 21, 1951, effective January 2, 1952. Under all the circumstances I shall suspend defendant's license for a period of fifteen days.

The records at this Division indicate that defendant's premises are now closed and will remain closed until some time in the autumn. Thus, no effective suspension can be imposed at the present time. The starting date of the suspension herein will be postponed until further order, after the licensed premises shall have reopened for business in the autumn of 1952.

The suspension, which will become effective in the autumn, will operate against the renewal license, if issued to defendant, or against the license if issued or transferred to another person and renewed for the 1952-53 licensing year. See State Regulations No. 16.

Accordingly, it is, on this 8th day of May, 1952,

ORDERED that any license for the 1952-53 licensing period, issued to defendant for this or any other premises, or issued or transferred to any other person for the same premises, shall be suspended for a period of fifteen (15) days, the time to be fixed by subsequent order as aforesaid.

EDWARD J. DORTON  
Acting Director.

6. CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P. L. 1951, c. 163, DISMISSED FOR LACK OF PROOF.

In the Matter of Cancellation )  
Proceedings against )

JACK KAPLAN )  
1618 New York Avenue )  
Union City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Limited Retail Distri- )  
bution License DL-6, issued by the )  
Board of Commissioners of the City )  
of Union City. )  
----- )

Cohen and Turtz, Esqs., by Sydney I. Turtz, Esq., Attorneys for Licensee.

Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

Licensee was ordered to show cause why his limited retail distribution license for the current licensing year should not be suspended, revoked or cancelled and declared null and void for the reason that said license was improvidently issued, in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163).

The pertinent portion of P.L. 1951, ch. 163, which became effective on June 5, 1951, provides as follows:

"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; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto.\*\*\*"

At the hearing herein an ABC agent testified that he visited the licensed premises on August 2, 1951, and made sketches of the interior of the licensed premises. The sketches indicate that, as one entered the store, there were a magazine rack to the left and a newspaper stand to the right. The store contained a cigar case, a candy case, a greeting card case and two refrigerators -- one for the storage of ice cream and the other for the storage of Coca Cola and soda. To the left rear of the store were four shelves containing items, a large majority of which may be designated as groceries. Each of these shelves extended for a distance of approximately ten feet along the left wall of the premises and for an additional distance of approximately ten feet along the rear wall of the premises. Other shelving in the store contained cigars, cigarettes, tobacco and stationery. Crackers and bread were displayed on the top of the candy case, and candies and cakes were displayed on top of one of the refrigerators.

The licensee testified that he has held a limited retail distribution license for the past seventeen or eighteen years. He admits that prior to June 5, 1951 (the date upon which P.L. 1951, ch. 163, became effective), "most of the business, of course, was cigarettes, candy and soda". He testified that, about the middle of June, he was advised of the recent change in the law and "got groceries in". He stated that "in the beginning it was hard" but that gradually, day by day, week by week, the sale of grocery items increased. Between the date of the inspection and the date of hearing there was no substantial change in the physical appearance of the store, but a sign reading "Groceries and Fancy Foods" has been placed upon the premises. The record indicates that the sale of groceries and other foodstuffs amounts to approximately sixty per cent. of the gross sales.

It is impossible to determine the exact nature of the business conducted on the licensed premises on July 1, 1951, when the renewed license for the current licensing year became effective. However, upon the evidence presented, I conclude that the licensee now conducts a bona fide grocery store or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; that the sale of groceries or other foodstuffs is the primary and principal business, and that the sale of alcoholic beverages is merely incidental and subordinate thereto. Under the circumstances, the rule to show cause will be discharged.

Accordingly, it is, on this 28th day of April, 1952,

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

EDWARD J. DORTON  
Acting Director.

7. CANCELLATION PROCEEDINGS - CHARGE ALLEGING THAT LICENSE HAD BEEN IMPROVIDENTLY ISSUED IN VIOLATION OF P. L. 1951, c. 163, DISMISSED FOR LACK OF PROOF.

In the Matter of Cancellation )  
Proceedings against )  
WILLIAM L. MOTTO )  
2600 Summit Avenue )  
Union City, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Limited Retail Distri- )  
bution License DL-7, issued by )  
the Board of Commissioners of the )  
City of Union City. )

----- )  
Lawrence Wolfberg, Esq., Attorney for Licensee. )  
Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic )  
Beverage Control. )

Licensee was ordered to show cause why his limited retail distribution license for the current licensing year should not be suspended, revoked or cancelled and declared null and void for the reason that said license was improvidently issued, in violation of R. S. 33:1-12(3)b (as amended by P.L. 1951, ch. 163).

The pertinent portion of P. L. 1951, ch. 163, which became effective on June 5, 1951, provides as follows:

"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; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto.\*\*\*"

At the hearing herein an ABC agent testified that he visited the licensed premises on August 27, 1951, and made a sketch of the interior of the licensed premises. The sketch indicates that on the left side of the store, as one enters the premises, there were a magazine rack, a counter and a soda fountain. Behind these fixtures and along the left wall were a number of shelves containing cigars, cigarettes, sugar, coffee, cereal, milk in cans, tobacco and toilet articles. Further to the rear and along the left wall were four shelves containing canned goods and various grocery items and two lower shelves containing bottled soda. On the right side of the store, as one enters the premises, there were six cabinets containing candy, crackers, cigars and greeting cards. Along the right wall were shelves containing shoe polish, lamps and oil. Along the rear wall of the premises was a magazine rack, in front of which was a stand containing small books. Almost directly in the center of the store were two tables, on which were displayed cakes, newspapers and candy. A subsequent check made by another ABC agent on October 10, 1951, disclosed that two rack shelves containing cake and bread had thereafter been placed in the center of the store.

The records of the Division of Alcoholic Beverage Control indicate that William L. Motto has held a limited retail distribution

license for the premises in question for more than three years last past.

The licensee testified that in June 1951 he entered into a new lease for the premises, which is to continue for a period of eight years from July 1, 1951. The new lease, at an increased rental, gives him the privilege of selling groceries -- a right which he did not have under his former lease. He further testified that, whereas on June 30, 1951, his store contained only a small amount of groceries, nevertheless his inventory (figured at cost) of grocery items on September 30, 1951, amounted to \$1,300.00. His testimony also indicates that, between June 30 and September 30, his total sales increased about 33-1/3% and that, as of the latter date, his sales of groceries, including ice cream, candy and soda, approximate about two-thirds of his total business. The evidence further indicates that the sale of beer amounts to less than ten per cent. of his business.

It is impossible to determine the exact nature of the business as it was conducted on July 1, 1951, when the renewed license for the current licensing year became effective. However, upon the evidence presented I conclude that the licensee now conducts a bona fide grocery store or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; that the sale of groceries or other foodstuffs is the primary and principal business, and that the sale of alcoholic beverages is merely incidental and subordinate thereto. Under the circumstances, the rule to show cause will be discharged.

Accordingly, it is, on this 28th day of April, 1952,

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

EDWARD J. DORTON  
Acting Director.

8. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL IN MOTOR VEHICLE - VEHICLE AND ALCOHOL FORFEITED - CLAIM OF INNOCENT LIENOR RECOGNIZED.

In the Matter of the Seizure on )  
February 16, 1952 of a Buick )  
sedan and 5 - 1 gallon jugs of )  
alcoholic beverages, on Black )  
Horse Pike, near Kendall Boule- )  
vard, in the Borough of Audubon )  
Park, County of Camden and State )  
of New Jersey. )  
- - - - - )

Case No. 8016

ON HEARING  
CONCLUSIONS AND ORDER

Cobbin & Farr, Esqs., by William R. Farr, Esq., Attorneys for  
Abbott Finance Company.

Harry Castelbaum, Esq., appearing for the Division of Alcoholic  
Beverage Control.

On February 16, 1952 an Audubon police officer halted on the Black Horse Pike in that Borough a Buick sedan bearing Pennsylvania license plates. The driver and owner of the vehicle was Warren T. Frisby, who was accompanied by two other men. The officer discovered five one-gallon glass jugs of what appeared to be alcohol in the car.

The officer took the men, the car, and the alcohol into custody and notified the Division of Alcoholic Beverage Control. Later Frisby and his companions told ABC agents that they drove from

Philadelphia to New Jersey to obtain alcoholic beverages. One of the men, in a written statement, gave the details of the trip, including the fact that the alcohol was placed in the car in the vicinity of Blackwood, New Jersey, and was being transported to Philadelphia.

The contents of one of the gallon jugs were analyzed by the Division Chemist who reports that it has a crude taste and aroma; is fit for beverage purposes; and has an alcoholic content by volume of 40.0%. There were no labels, or stamps indicating the payment of tax on the alcoholic beverages, on the jugs. The alcohol is therefore prima facie illicit. R. S. 33:1-88. It is obviously bootleg alcohol.

The alcohol is an illicit alcoholic beverage. R. S. 33:1-1(i). Such illicit alcoholic beverage and the Buick sedan in which it was transported are subject to seizure and forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

At the seizure hearing in the case held pursuant to R.S. 33:1-66, an appearance was entered on behalf of Abbott Finance Company, which sought recognition of its lien on the Buick sedan.

The finance company loaned the sum of \$300.00 to Warren T. Frisby on December 7, 1950 on the security of a lien on the Buick sedan. This lien was noted on the certificate of title to the car issued by the Department of Revenue of the State of Pennsylvania. The balance presently due on the loan is \$211.19.

In July 1950 the finance company had loaned a lesser sum to Frisby on the same security. At that time it obtained a written statement from Frisby setting forth his employment, references, and other details of his background. This information was checked and found to be accurate. This loan was paid off within about a month. When Frisby reapplied in December for the second loan, the finance company relied upon the previous inquiry. After the seizure, the finance company obtained a report on Frisby from an independent investigating agency. This report sets forth that Frisby was employed as a bartender, and resides with his mother. It did not develop any detrimental information. Frisby does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that the finance company acted in good faith and had no knowledge of the unlawful use to which the Buick sedan was put or of such facts as would have led a person of ordinary prudence to discover such use. I shall therefore, in accordance with R. S. 33:1-66(f), recognize its lien against the Buick sedan to the extent of \$211.19.

I am advised that it is desirable that the Buick sedan be retained for the use of the State conditioned upon payment of the lien claim of \$211.19.

Accordingly, it is DETERMINED and ORDERED that the Buick sedan described in Schedule "A" attached hereto constitutes unlawful property and be retained for the use of the State of New Jersey conditioned upon payment to the Abbott Finance Company of its lien claim in the amount of \$211.19; and it is further

DETERMINED and ORDERED that the 5 1-gallon jugs of alcoholic beverages constitute unlawful property and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and state, county and

municipal institutions, or destroyed in whole or in part, at the direction of the Acting Director of the Division of Alcoholic Beverage Control.

EDWARD J. DORTON  
Acting Director.

Dated: May 2, 1952.

SCHEDULE "A"

- 5 - 1-gallon jugs of alcoholic beverages
- 1 - Buick sedan, Serial No. SC4068PA, Pennsylvania 1951 Reg. 166CG.

9. APPELLATE DECISIONS - MATTHEWS ET AL. v. ORANGE AND LAGRAVENIS.

KATHERINE MATTHEWS, MARY E. PAYNE, )  
 REV. J. VANCE McIVER and REV. )  
 DOUGLAS M. COLLINS, )  
 Appellants, )

-vs-

ON APPEAL  
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC )  
 BEVERAGE CONTROL OF THE CITY OF )  
 ORANGE, and JOSEPH LAGRAVENIS, )  
 t/a PARROW GARDEN, )  
 Respondents. )

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 Robert S. Hartgrove, Esq., Attorney for Appellants.  
 Felix J. Verlangieri, Esq., Attorney for Respondent Municipal Board  
 of Alcoholic Beverage Control.  
 Thomas J. Freda, Esq., Attorney for Respondent Joseph Lagravenis,  
 t/a Parrow Garden.

This is an appeal from the action of respondent Municipal Board in granting the transfer of a plenary retail consumption license held by respondent Joseph Lagravenis from 110 Parrow Street to 111 Parrow Street, Orange.

The petition of appeal alleges that the action of respondent Board was erroneous for reasons which may be summarized as follows:

- (1) the site of the proposed transfer was changed from residential to business zone by municipal governing body to accommodate the respondent-licensee;
- (2) the site upon which respondent-licensee's premises existed was acquired by the municipality for a housing project, and the site of the proposed transfer of the license will be directly opposite to the housing project;
- (3) the proposed licensed premises will be socially undesirable and will adversely affect the health, morals, security and welfare of the community; and
- (4) there is no need for or convenience to be served by the licensed premises in question.

Other reasons for reversal are set forth in petition of appeal but, since no substantial evidence was presented in support of any of the additional reasons, they will be considered as abandoned.

As to reason (1): In December 1951 an existing ordinance was amended by the Board of Commissioners of the City of Orange to change the property known as 111 Parrow Street from a residential zone to a business zone. The issue raised by the appellants, that the zoning ordinance was modified by the municipal governing body for the sole benefit or convenience of the respondent-licensee, can be determined only by a civil court of competent jurisdiction and cannot be considered in the present proceeding.

As to reason (2): The mere fact that the proposed premises are opposite the new housing development is not a sufficient reason for denying a transfer of the license.

As to reason (3): The evidence presented herein discloses that respondent Joseph Lagravenis has operated licensed premises for the past sixteen years at 110 Parrow Street. No complaint has heretofore ever been made regarding the manner in which he has conducted his business. Respondent Lagravenis is compelled to vacate the premises for which his license was issued because that property is included in a tract of land acquired by the municipal housing authority for a public housing project. On January 8, 1952, the members of respondent Board unanimously granted the transfer of his license to premises to be erected at 111 Parrow Street, almost directly opposite his present licensed premises. The section in which both premises are located may be characterized as a mixed residential and business neighborhood.

Two of the appellants live on Parrow Street; one adjacent to the proposed premises, and the other a few doors away. The other two appellants do not reside in the neighborhood but are Pastors of nearby churches. Two other witnesses produced by appellants do not reside in Orange, and another witness does not reside in the neighborhood. Appellants and their witnesses testified that unsatisfactory conditions exist in this section of the city. They ascribe these conditions to the fact that there are too many licensed premises in the neighborhood. However, the major objections made by the witnesses were general in nature. Only in one or two instances did these witnesses attempt to connect respondent-licensee's premises with the unsatisfactory conditions of which they complain. The two appellants who reside on Parrow Street testified that intoxicated persons came from Lagravenis' premises and trespassed on their property. They admitted that they never complained to the licensee or objected to any renewal of his license.

If conditions, both traffic and otherwise, are as depicted by appellants, there is a need for closer supervision by the local police in this section of the municipality. However, in the absence of convincing evidence that the licensee is responsible for, or substantially contributed to, the unsatisfactory conditions, he should not be penalized. The licensee testified that he never received any complaint as to the manner in which he conducted his premises. Appellants have not established, by a preponderance of the evidence, that the licensed premises were improperly conducted.

As to reason (4): The question as to whether licensed premises should be permitted in a particular section of the municipality is a matter confided to the sound discretion of the issuing authority. On appeal, the burden of showing that the municipal issuing authority abused its discretion rests with the appellant. Cf. Re Segal et al. v. Clifton et al., Bulletin 732, Item 5. The fact that respondent-licensee proposes to transfer his license to premises directly across the street will not increase the number of outlets for the sale of alcoholic beverages in that area. Under these circumstances, the fact that the "locus is a low-economic area" is not a sufficient reason for reversal. Bivona v. Hock, 5 N.J. Super. 118.

A transfer of a license may not be denied merely to decrease the number of licenses. Kirschhoff v. Millville, Bulletin 254, Item 8.

There is no evidence that any member of the local issuing authority was improperly motivated.

Upon the evidence adduced herein, I conclude that appellants have failed to sustain the burden of proof in showing that respondent Board abused its discretionary power in transferring the license from place to place. Hence, the action of respondent Board will be affirmed. Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5.

Accordingly, it is, on this 13th day of May, 1952,

ORDERED that the action of respondent Board be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

EDWARD J. DORTON  
Acting Director.

10. MORAL TURPITUDE - BREAKING, ENTERING, LARCENY AND RECEIVING, AND FALSE SWEARING.

DISQUALIFICATION - APPLICATION TO LIFT GRANTED.

In the Matter of an Application )  
to Remove Disqualification because )  
of a Conviction, Pursuant to R. S. )  
33:1-31.2. )  
Case No. 978. )  
----- )

CONCLUSIONS  
AND ORDER

On December 5, 1927, petitioner received a suspended sentence by a Judge of a Court of Special Sessions, as a result of being convicted of breaking, entering, larceny and receiving. On February 19, 1947, petitioner was sentenced by a Judge of a Court of Special Sessions to eighteen months in a County Penitentiary, three months of which he was to remain in custody and the remaining fifteen months of which he was to be on probation. The sentence resulted from a plea of guilty by petitioner to false swearing. Petitioner was released from the penal institution on May 2, 1947. Petitioner has not been convicted of any crime since May 2, 1947. It appears that the false swearing charge arose when petitioner testified under oath at a criminal trial of a person charged with murder contrary to information given previously under oath before a Grand Jury. The crimes of which petitioner was convicted involved moral turpitude.

At the hearing herein three witnesses (a truck driver, a barber, and a businessman), who have known petitioner for a period of more than five years, testified that during the time they have known him he has conducted himself in a law-abiding manner. The Police Department of the municipality in which petitioner resides has certified that no complaints or investigations concerning petitioner are pending.

Petitioner testified that during the past five years he has been engaged in a painting business operated by himself.

Despite the fact that petitioner has not been convicted of any crime during the past five years, it is necessary for him to show

that he has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to public interest. On July 9, 1948, a Municipal Magistrate fined petitioner \$10.00 after he pleaded guilty to gambling with dice, in violation of a local ordinance. The Police Department, in response to the Division's inquiry relative to the gambling charge aforementioned, advised:

"Above subject (meaning petitioner) on 7/9/48 was a member of an eight or ten man house painting crew here in..... The occasion was a 'pay day' and upon completing the days work and getting their weeks pay, the painting crew, along with their boss, started a 'friendly' Crap Game. One of our Police Officers spotted them, and the whole group was arrested for Gambling. All who admitted active participation in the game - as the above - were fined \$10.00 each. The rest were fined \$5.00 on general principles. There was no indication of any connection with 'Professional' gambling. They were arraigned under a Local Ordinance covering 'Vice and Immorality'."

The conviction aforementioned appears to be a single lapse during the last five years. Furthermore, said conviction for violation of a local ordinance does not constitute the conviction of a crime. Re Case No. 314, Bulletin 393, Item 9. I do not believe that this single lapse -- not a "crime" and in itself not serious -- overcomes petitioner's otherwise clear record during that past five years' period and the favorable testimony of his character witnesses. Re Case No. 46, Bulletin 299, Item 9.

From the evidence I conclude that petitioner has conducted himself in a law-abiding manner during the last five years, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 8th day of May, 1952,

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

EDWARD J. DORTON  
Acting Director.

#### 11. STATE LICENSES - NEW APPLICATIONS FILED.

The Old Reading Brewery, Inc.  
Ninth & Laurel Streets, Reading, Pa.  
Application filed May 12, 1952 for Limited Wholesale License.

St. Louis Terminal Warehouse Company  
647 River St., Paterson, N.J.  
Application filed May 15, 1952 for Public Warehouse License.

North America Wines Corporation  
5702 - 48th St., New York, N. Y.  
Application filed May 16, 1952 for transfer of Wine Wholesale License WW-25 from Napa Valley Grape Products, Inc., 335-339 Jackson Ave., New York, N. Y.

EDWARD J. DORTON  
Acting Director.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ROBERT and HELEN PASCH  
T/a BOB PASCH'S BAR & GRILL  
1014 Main Avenue  
Clifton, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-121, issued by the Municipal Council of the City of Clifton.

Milton Schamach, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

Defendants pleaded non vult to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

On January 10, 1952, an ABC agent inspected forty-four opened bottles of alcoholic beverages and seized on defendant's premises one 4/5 quart bottle labeled "Bottled in Bond Old Hickory Straight Bourbon Whiskey 100 Proof" when his field tests indicated a variance between the labels on the bottles and the contents thereof. An analysis by the Division chemist disclosed that the contents of the said bottle were not genuine as labeled.

In alleged mitigation of the violation, defendants state that they obtained a transfer of the license for the premises in question in September 1951 from a former licensee, and that the seized bottle was on the premises when the license was transferred. Our records show that the license was so transferred and that, at the time of the seizure, Robert Pasch stated to the ABC agent that the seized bottle had been open at the time the license was transferred. He also stated to the agent that neither the present licensees nor any of their employees had tampered with the contents of the bottle. While a licensee is strictly accountable for any "refills" found on his licensed premises, I conclude that the seized bottle was, in fact, taken over from a predecessor and that this is a mitigating factor in this case. It might be well to point out that a licensee may request this Division to examine the stock of liquor taken over from a predecessor.

Defendants have no prior adjudicated record. Without departing from the general policy established in Re Rudolph, Bulletin 680, Item 1, I shall, under the circumstances of this case, suspend defendants' license for a period of ten days. Re Sierra, Bulletin 692, Item 5; Re Bensel, Bulletin 694, Item 2. Five days will be remitted for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 2nd day of May, 1952,

ORDERED that Plenary Retail Consumption License C-121, issued by the Municipal Council of the City of Clifton to Robert and Helen Pasch, t/a Bob Pasch's Bar & Grill, for premises 1014 Main Avenue, Clifton, be and the same is hereby suspended for five (5) days, commencing at 7:00 a.m. May 12, 1952, and terminating at 7:00 a.m. May 17, 1952.

New Jersey State Library

*Edward J. Doonan*  
Acting Director.