

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

Mr. Ambrose

September 13, 1961

BULLETIN 1407

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STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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BULLETIN 1407

1. APPELLATE DECISIONS - PASSAIC COUNTY RETAIL LIQUOR DEALERS
ASSOCIATION ET AL v. LITTLE FALLS, BERENSEN AND GAITA.

PASSAIC COUNTY RETAIL LIQUOR DEALERS')
ASSOCIATION AND NELSON KLANER: HELEN)
KLANER AND VINCENT DRANSFIELD ON)
BEHALF OF OBJECTORS,)
Appellants,) ON APPEAL
CONCLUSIONS
AND ORDER
v.)
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF)
LITTLE FALLS, CHARLES BERENSEN AND)
ALFONSE GAITA,)
Respondents.

Sellinger & Chester, Esqs., by William E. Sellinger, Esq.,
Attorneys for Appellants.
Winne & Banta, Esqs., by Edward G. Evertz, Esq. and
Harry Castelbaum, Esq., Attorneys for Respondent Berensen.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Appellants appeal from the action of respondent Township Committee whereby it granted the application of respondent Charles Berensen for a person-to-person and place-to-place transfer of a plenary retail consumption license from Alfonse Gaita and from premises 154-156 Newark-Pompton Turnpike to Charles Berensen and to premises at the corner of Main Street and Woodside Avenue, Little Falls.

"The petition of appeal alleges that the action of the Township Committee was erroneous for reasons which may be summarized as follows:

- (a) The said transfer was not consistent with public need and necessity.
- (b) The proposed use by the transferee was not within the purview of a plenary retail consumption license.
- (c) The action was improper because the Mayor, who cast the deciding vote therefor, is the father-in-law of the respondent-transferor Alfonse Gaita and is in conflict of interest.
- (d) The action of the respondent was arbitrary, unjustifiable and erroneous.

"Respondent Charles Berensen in his answer denies appellants' allegations and sets forth four separate defenses which are substantially as follows:

- (a) The respondent Mayor and Township Committee acted lawfully and in reasonable exercise of their discretion.

- (b) That the relationship of father to son-in-law, so far as the transfer is concerned, is not a disqualifying interest per se.
- (c) The Mayor acted in accordance with his sworn public duty, and
- (d) That the conflict of interest theory does not apply where the only alleged beneficiary is the transferor.

"The evidence herein discloses that by resolution dated March 6, 1961, the Township Committee of the Township of Little Falls granted respondent Charles Berensen's application for transfer of the plenary retail consumption license held by Alfonse Gaita at premises 154 Newark-Pompton Turnpike to the applicant for premises at the S/E side of Main Street and Woodside Avenue, upon condition that the transfer shall not become effective until the building to be erected at the proposed site shall have been completed and made suitable for the operation of the licensed business.

"The Township Committee of the Township of Little Falls consists of the Mayor and four councilmen. The Mayor, Dr. James Stokes, is the father-in-law of the transferor, Alfonse Gaita.

"The evidence further discloses the following facts which, it appears, are not substantially in dispute: Alfonse Gaita married the daughter of Mayor Stokes and the couple received from the Mayor \$2,000 as a wedding gift. In 1959, Gaita had completed an apprenticeship in mortuary science and became a licensed embalmer and funeral director. Desiring to establish his own business, Gaita sought to purchase the premises on Pompton Avenue for a funeral home. The premises were formerly operated as a tavern and Gaita entered into an agreement with the owner to purchase the premises including the licensed business. Not having the full purchase price, he borrowed from his relatives additional moneys to finance the transaction and to make alterations adaptable to a funeral home. He then applied for a variance of the zoning ordinance which the Township Committee granted in 1960. Thereafter, Mr. Gaita found himself in financial straits and decided to dispose of the license. The following answers to the questions propounded reflect his financial status:

'Q. I seem to recollect, Mr. Gaita, that on direct examination you indicated it was very necessary for you, from an economical standpoint, to recoup whatever loss you might have on purchase of the liquor license itself. Is that a fair statement?

A. Yes.

Q. Would it place you in a position of very serious financial embarrassment if you couldn't transfer this liquor license to another party?

A. Yes sir.

Q. How serious would it be? Would it possibly put you in bankruptcy?

A. Only the future can, in my opinion, determine that; depending on the type of business I am in presently and just how well that business does.'

"Mr. Gaita asserted further that he did not borrow any funds from his father-in-law, but did consult him with reference to this transaction.

"At the meeting of respondent Township Committee on March 6, 1961, the stenographic transcript of which was offered in evidence at the hearing on appeal, considerable objections were raised by residents of the community to the granting of the transfer. The objections were predicated upon two principal contentions: (1) the transfer of the license to the proposed premises would be undesirable and deleterious to the interest of the residents of the vicinity, and (2) the participation of the Mayor in any matter pertaining to a license held by the transferor who is his son-in-law constitutes a conflict of interest which is highly improper.

"After a full discussion of the merits of the application in question, two councilmen voted in favor of and two opposed the granting of the application. The Mayor who, it appears from the evidence, had tried to influence the committeemen who voted to deny the application, stated that since the vote was a tie and because the application met the legal requirements, he felt in conscience he was doing the right thing and cast the deciding vote in the affirmative.

"It is my opinion that a consideration of the alleged conflict of interest issues raised in this matter will be dispositive of the appeal. I shall therefore direct my remarks to that question. Although Mayor Stokes may have acted honestly and with a sincere desire to do what he thought to be right, I cannot believe that he was altogether unmindful of the fact that his daughter is married to the transferor and is in a position to gain or lose by his act; that the transferor consulted him regarding the advisability and the probability of the transfer; that his act could materially improve the financial difficulties of his son-in-law; and that he endeavored to persuade other committeemen to vote in favor of the application.

"The granting of a liquor license involves an act judicial in nature, and the standards of disqualifying interests can be no less exacting respecting a Township Committee acting as a liquor license issuing authority than in the case of purely judicial action. Township Committee of Freehold Township v. Gelber, 26 N.J. Super 388, 98 At. 2nd 63. As was said by the Court (Per Curiam) in McNamara v. Saddle River, 64 N.J. Super. 431 (App. Div. 1960):

'We are satisfied, moreover, that the situation here is comparable with that in Aldom v. Borough of Roseland, 42 N.J. Super. 495 (App. Div. 1956) (per Judge, now Mr. Justice, Francis), so as to warrant the conclusion that the action impugned was sufficiently quasi-judicial in nature to call for application of the principle of disqualifying interest.'

"A public office is a public trust. Committeemen as fiduciaries and trustees of the public interest must serve that interest with the highest fidelity. The law tolerates no mingling of self-interests. It demands exclusive loyalty. Driscoll v. Burlington-Bristol Bridge Co., 8 N.J. 433, 474 (1952) certiorari denied Bell v. Driscoll, 344 U. S. 838, 73 S. Ct. 34, 97 L. ed. 652 (1952); Ames v. The Board of Education of Montclair, 97 Eq. 60, 64 (Ch. 1925). A quasi-judicial act of a municipal body is rendered voidable by the voting participation of a member thereof who is at the time subject to a direct or indirect private interest which is at variance with the impartial performance of his public duty. Aldom v. Borough of Roseland, 42 N.J. Super. 493, 501. Quaere as to whether the interest of Mayor Stokes as a Borough Committeeman and as the father-in-law of Gaita, who would gain by the said transfer, required him to disqualify himself and to refrain from joining in the deliberate act of the governing body in approving the said application?

"Judge, now Mr. Justice Francis, speaking for the Appellate Division, in Aldom v. Borough of Roseland, supra, states the position in the following language:

'The interest which disqualifies is not necessarily a direct pecuniary one, nor is the amount of such an interest of paramount importance. It may be indirect; it is such an interest as is covered by the moral rule: no man can serve two masters whose interests conflict. Basically the question is whether the officer, by reason of a personal interest in the matter, is placed in a situation of temptation to serve his own purposes to the prejudice of those for whom the law authorizes him to act as a public official. And in the determination of the issue, too much refinement should not be engaged in by the courts in an effort to uphold the municipal action on the ground that his interest is so little or so indirect. Such an approach gives recognition to the moral philosophy that next in importance to the duty of the officer to render a righteous judgment is that of doing it in such a manner as will beget no suspicion of the pureness and integrity of his action. People ex rel. Schenectady Illuminating Co. v. Board of Sup'rs, 88 Misc. 226, 151 N.Y.S. 830 (Sup. Ct. 1914), affirmed 166 App. Div. 758, 151 N.Y.S. 1012 (App.Div. 1915); Tuscan v. Smith, 130 Me. 36, 153 A. 289, 73 A.L.R. 1344 (Sup. Jud. Ct. 1931); In re Conant, 102 Me. 477, 67 A. 564 (Sup. Jud. Ct. 1907); 43 Am. Jur., Public Officers, ss 266 (1942). More specifically, it has been said in connection with the making of a municipal contract:

"If his interest in the contract (here, sheet metal foreman of the proposed corporate contractor) is such as would tend in any degree to influence him in making the contract, then the instrument is void because contrary to public policy, the policy of the law being that a public officer in the discharge of his duties as such should be absolutely free from any influence other than that which may directly grow out of the obligations that he owes to the public at large." Stockton Supply Co. v. Wheeler, 68 Ca. App. 592, 229 P. 1020, 1024 (App. Ct. 1924). (Insertion ours).'

"It may very well be that Mayor Stokes was acting zealously in seeking to dissuade Committeeman DeYoung from the position that he was taking for he reminded him that he had voted to approve an application for a transfer some time before. It is my belief that although the Mayor manifested a ~~deviation~~^{deviation} of public duty he was, nevertheless, subjected to a psychological pressure to advance his daughter's interests and that that pressure tended to influence his vote in the affirmative.

"The rule of law governing 'disqualifying interest' is succinctly set forth in McNamara v. Saddle River Borough, supra, wherein it was said:

'If there is "interest", there is disqualification automatically, entirely without regard to actual motive, as the purpose of the rule is prophylactic, that is, to prevent the possibility of an official in a position of self-interest being influenced thereby to deviate from his sworn duty to be guided only by the public interest in voting as such official. Van Itallie v. Franklin Lakes, 28 N.J. 258, 268 (1958); Griggs v. Princeton Borough, 33 N.J. 207, 219 (1960). The question whether disqualifying interest exists in any particular case is

necessarily factual and depends upon the circumstances of the particular case. Ibid. See cases collected in S. & L. Associates Inc. v. Washington Twp., 61 N.J. Super. 312, 329, 330, 335 (App. Div. 1960).'

"In my judgment, the rule is applicable in the instant case and nullifies the Mayor's vote on the application in question.

"It has been argued here that the degree of affinity is too remote to be applicable under the facts and circumstances in this case. New Jersey Statutes 2A:15-49 states as follows:

'No judge shall sit when he is related in the third degree to any of the parties to the act, which degree shall be computed as at common law.'

"Yet the strict policy for impartial administration of justice implied in the statute suggests a broader inquiry as to the scope of legislative intent. The ties of affinity are often stronger than those between collateral or lineal kinsman by blood. Bennett v. Van Riper, 47 N.J. Eq. 563, 566 (E. & A. 1890); Wilson v. Green Acres Country Club, 41 Super. 530, 125 At. 2nd 539. Indeed, it would be a matter of dismay if the statute were required to be construed, for example, to permit a judge to sit in a matter concerning his wife's brother.

"The issue of disqualification of municipal committeemen due to conflict of interest is whether there is a potential for conflict, not whether the public servant succumbs to the temptation or is even aware of it. (emphasis ours). Griggs v. Princeton Borough, 33 N.J. 207. In the cited case the persons were men of integrity and were motivated by sincerity of purpose, nevertheless, the court held it was the existence of such interest which was decisive, not whether such interest was actually influential. Cf. Zell v. Borough of Roseland, 42 N.J. Super. 75, 82 (App. Div. 1956); Aldom v. Roseland, supra.

"In view of the aforesaid, it is deemed unnecessary to consider the other points raised by appellants in their petition of appeal.

"Considering all the facts and circumstances herein and the legal principles applicable thereto, I conclude that appellants have established their case by a fair preponderance of evidence and I recommend that an order be entered reversing the action of respondent Township Committee."

Written exceptions to the Hearer's Report and written argument thereon were filed with me pursuant to Rule 14, State Regulation No. 15.

After carefully considering the entire record, including the exceptions to the Hearer's Report and written argument thereon, I agree with the stated conclusions of the Hearer and adopt his recommendation.

In the exceptions to the Hearer's Report it is pointed out that the Committeemen, including those who voted in the negative on the 1960-1961 transfer application, voted in the affirmative on an amendatory resolution to make such transfer effective immediately for the sole purpose of permitting grant of Berensen's application for 1961-1962 renewal and on a resolution conditionally granting such renewal application. I do not deem such action to have been in correction or validation of the original action. If the Mayor had not voted there would have been a two-to-two tie and very likely an appeal as from a denial in which event the burden of establishing that the local action was erroneous and should be set aside would have been reversed

(Rule 6, State Regulation No. 15).

With a reversal of grant of application for 1960-1961 license transfer the action on Berensen's application for 1961-1962 renewal also falls (Rule 6, State Regulation No. 15).

As shown in the Township's records, Alfonse Gaita filed on June 5, 1961 (with fee of \$300.00) an application for 1961-1962 renewal for the premises at 154-156 Newark-Pompton Turnpike, That filing was made in protection against the possibility of reversal in the instant appeal. Gaita may now publish his two notices of such 1961-1962 renewal application and, thereafter, the Township Committee may act upon such application.

Accordingly, it is, on this 13th day of July 1961,

ORDERED that the action of respondent Township Committee, in granting application for the transfer in question, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 55 DAYS LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

RED ROBIN CAFE & RESTAURANT, INC.)
414 - 38th Street)
Union City, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-222 for the 1960-61 licensing year and now holder of Plenary Retail Consumption License C-139 for the 1961-62 licensing year, issued by the Board of Commissioners of the City of Union City.)

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

BY THE DIRECTOR:

Defendant pleaded guilty to the following charge:

"On Saturday, June 3, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Anthony ---, age 17 and Edmund ---, age 19, 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 Regulation No. 20."

On Saturday evening, June 3, 1961; ABC agents visited defendant's licensed premises and observed two minors (Anthony ---, age 17 years, and Edmund ---, age 19 years, who were both in the uniform of the United States Navy) consuming whiskey highballs which had been served by the bartender Charles A. Tourso.

Both minors and Tourso signed statements to the effect that these drinks had been served to the minors without any effort made to ascertain their ages. Tourso was thereafter placed under arrest for selling alcoholic beverages to minors, in violation of R.S. 33:1-77.

Defendant has a prior adjudicated record. Effective July 6, 1942, its license was suspended for five days by the Board of Commissioners of Union City for "refills." Effective January 31, 1955, its license was suspended for five days by this Division for sale to minors (Bulletin 1048, Item 9). Effective July 7, 1958, its license was suspended for three days by the Board of Commissioners of Union City for violation of a local ordinance relating to unnecessary noises. Effective June 20, 1960, its license was suspended by the Board of Commissioners of Union City for ten days for sale to a minor.

The minimum penalty for the sale of alcoholic beverages to two minors (one of whom is 17 years of age) is twenty days (Re Greer, Bulletin 1370, Item 9). However, because of the similar violation which occurred within a ten-year period, the dissimilar violation which occurred within a five-year period and the similar violation which occurred within a five-year period twenty days will be added making a suspension of forty days (Re Blackwell, Bulletin 1215, Item 12). Furthermore an additional fifteen days will be imposed because this is the defendant's fourth violation within the past ten years (Re Black, Bulletin 1293, Item 5), thus making a total suspension of fifty-five days. Five days will be remitted for the plea entered herein, making a net suspension of fifty days.

Accordingly, it is, on this 11th day of July 1961,

ORDERED that Plenary Retail Consumption License C-139, issued by the Board of Commissioners of the City of Union City to Red Robin Cafe & Restaurant, Inc., for premises 414 - 38th Street, Union City, be and the same is hereby suspended for fifty (50) days, commencing at 3 a.m. Wednesday, July 19, 1961, and terminating at 3 a.m. Thursday, September 7, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - HOSTESSES - UNQUALIFIED EMPLOYEE -
 PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

WONDER BAR, INC.)
 t/a WONDER BAR)
 40 Westfield Avenue)
 Elizabeth 3, N. J.)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption)
 License C-240 (for the 1960-61 and)
 1961-62 licensing years), issued by)
 the City Council of the City of)
 Elizabeth.)

 Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On Friday night May 26 and early Saturday morning May 27, 1961, and on divers days prior thereto, you allowed, permitted and suffered females (known as Claudia Wheeler and Ruth Brown) employed on your licensed premises to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20.
- "2. On Friday night May 26 and early Saturday morning May 27, 1961, and prior thereto, you employed and allowed, permitted and suffered the employment in and upon your licensed premises of a person (aforementioned Ruth Brown) who was not a bona fide resident of the State of New Jersey; contrary to and in violation of Rule 4 of State Regulation No. 13."

ABC agents visited the defendant's licensed premises on April 7, April 22 and May 5, 1961, and left the premises on each occasion about 1 a.m. the following morning without identifying themselves. On their first and third visits Claudia Wheeler (employed as an entertainer) accepted a drink at the expense of one of the agents; on their second visit the agents observed Claudia consume a drink which was paid for by a patron.

On May 26, 1961, at about 11:30 p.m., an ABC agent, accompanied by another agent and preceded (10:40 p.m.) by three other agents, entered the premises and observed Claudia and Ruth Brown (employed as a female entertainer) consuming drinks at the bar and conversing with male patrons. The reports of the agents also disclosed that Morris Schnur (one of the two bartenders on duty) served two drinks to Claudia Wheeler and one to Ruth Brown at the expense of the agents; that between 10:40 and 11:30 p.m. aforesaid three agents observed the two entertainers accept drinks which were paid for by the patrons; that about 12:35 a.m. two of the agents identified themselves to Claudia Wheeler, Ruth Brown and Irving Schnur (president and principal stockholder of the corporate licensee) and that Claudia Wheeler, in the presence of Irving Schnur, verbally stated that she had accepted drinks that night at the expense of patrons and the agents.

The investigation further discloses that Ruth Brown was an unqualified non-resident employee.

By way of mitigation the attorney for the defendant has submitted a statement which I have carefully read, together with the file and the reports of the agents. I, however, do not find any extenuating circumstances in this case which would impel me to impose less than the usual penalty in cases of this kind.

Defendant has a prior adjudicated record. Effective February 6, 1946, when the license was held in the names of Ruth and Irving Schnur, their license was suspended by the local issuing authority for ten days for sales to minors. Effective January 14, 1952, when the license was held in the name of Irving Schnur, his license was suspended by the then Director of this Division for three days for employing a non-resident entertainer. Re Schnur, Bulletin 923, Item 12. Effective August 24, 1952, its license was suspended by the local issuing authority for five days for sales to minors. Effective April 1, 1957, its license was suspended by the Director of this Division for thirty days for lewd entertainment and employing unqualified non-residents (Re Wonder Bar, Inc., Bulletin 1165, Item 3) and effective January 5, 1959, its license was suspended by the local issuing authority for thirty days for sale to a minor. The usual suspension by this Division for the violations charged herein is twenty-five days. Re The Holly Club, Inc., Bulletin 1232, Item 2. However, because of the similar violation (Charge 2) which occurred more than five, but less than ten, years ago; a similar violation (Charge 2) which occurred within the past five years, and the two dissimilar violations which occurred within a five-year period, twenty days will be added (cf. Re Blackwell, Bulletin 1215, Item 12), making a total suspension of forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 12th day of July 1961,

ORDERED that Plenary Retail Consumption License C-240, issued by the City Council of the City of Elizabeth to Wonder Bar, Inc., t/a Wonder Bar, for premises 40 Westfield Avenue, Elizabeth, be and the same is hereby suspended for forty (40) days, commencing at 2 a.m. Wednesday, July 19, 1961, and terminating at 2 a.m. Monday, August 28, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING - MITIGATING CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BLUE TAP ROOM, INC.)
t/a BLUE TAP ROOM, INC.)
65 Ferry Street)
South River, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5 (for the 1960-61 and 1961-62 licensing years), issued by the Borough Council of the Borough of South River.)

John V. Burns, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On April 27 and 28, 1961, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

On the afternoon of April 27, 1961, two ABC agents visited defendant's premises. Andrew Fraser was tending bar. The bartender accepted a two-dollar bet on a horse race from one of the agents and went to the package-store department of the premises where he was out of the agent's sight.

The same agents returned to the premises on the afternoon of April 28, 1961. Fraser was again tending bar. Each agent gave a two-dollar bet on a horse race to the bartender and, when Frank Olchaskey entered the premises, the bartender gave the bets and slips to him. The bartender then gave to one of the agents the sum of \$7 as a pay-off on the bet placed on the previous day.

On May 1, 1961, another ABC agent entered the premises and Fraser, who was tending bar, refused to accept a bet from him and stated that "the A.B.C. is all over town". When ABC agents again visited the premises on May 2, May 3 and May 4, Fraser refused to take any bets from them. On May 4 the agents identified themselves to the bartender. A search of the premises failed to disclose any documentary evidence of betting. On said date, Frank Olchaskey was on the premises and was searched by the agents who found no bet slips in his possession. The agents then obtained a written statement from Fraser wherein he admitted that he had accepted bets on April 27 and April 28 and passed them on to Olchaskey. He stated that he had done so merely as an accommodation to the agents and that he had not accepted bets from other patrons.

Defendant has no prior record. In attempted mitigation, defendant's attorney states that all the stock of defendant corporation is owned by Steve P. Schreindorfer, his wife and sister-in-law; that none of the stockholders knew that any bets were ever accepted on the premises and that Fraser, who was a relief bartender, was immediately discharged. The usual penalty imposed for a violation of this kind,

where the licensee or any of his employees are involved, is twenty-five days. Re Kosakowski, Bulletin 1369, Item 7. However, as mitigating circumstances, I find that bets were refused on three subsequent dates and that there is no evidence that bets were accepted from any patrons other than the agents. Under the facts of this case I shall suspend defendant's license for twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 11th day of July 1961,

ORDERED that Plenary Retail Consumption License C-5 for the 1961-62 licensing year, issued by the Borough Council of the Borough of South River to Blue Tap Room, Inc., t/a Blue Tap Room, Inc., for premises 65 Ferry Street, South River, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m., Wednesday, July 19, 1961 and terminating at 2:00 a.m., Thursday, August 3, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SALE TO NON-MEMBERS - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JAMES ELMS LODGE OF ELKS #1180, I.B.P.O.E. of W. 265 Chestnut Street Passaic, N. J.)

CONCLUSIONS AND ORDER

Holder of Club License CB-6 (for the 1960-61 and 1961-62 licensing years), issued by the Board of Commissioners of the City of Passaic.)

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On Sunday, June 18, 1961, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a person not a Bona fide member of your club or a bona fide guest of any such member; in violation of Rule 8 of State Regulation No. 7."

On Sunday, June 18, 1961 at about 2:20 p.m., an ABC agent entered the defendant's licensed premises wherein he purchased and partially consumed two mixed drinks, served to him by Ira Lewis, the bartender. Lewis did not inquire of the agent if he were a member or a bona fide guest of a member of said club. At about 2:35 p.m., aforesaid agent (non-member) was joined by another agent. Both agents identified themselves to Lewis who verbally admitted aforesaid violation.

Defendant has a prior adjudicated record. Effective June 16, 1959 the Director suspended defendant's license for fifteen days for sale to non-members and sale outside scope of license. Bulletin 1286, Item 9. The minimum suspension for a sale by a club to non-members or those who are not bona fide guests of members is fifteen days. Re Ukrainian American Citizens Club, Bulletin 1322, Item 1. Because

of the prior similar violation within the past five years, I shall suspend defendant's license for thirty days. Re Ukranian American Citizens Club, supra. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 13th day of July 1961,

ORDERED that Club License CB-6, issued by the Board of Commissioners of the City of Passaic to James Elms Lodge of Elks #1180, I.B.P.O.E. of W., for premises 265 Chestnut Street, Passaic, be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m., Monday, July 24, 1961, and terminating at 3:00 a.m., Friday, August 18, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

VIRGINIA S. KURDYLA)
t/a ZENA'S TAVERN)
206 No. 3rd Street)
Harrison (Town) N.J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C#61 (for the 1960-61 and 1961-62 licensing years), issued by the Town Council of the Town of Harrison.)

Joseph F. McCarthy, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

- "1. On June 17, 1961 and on divers days prior thereto, you engaged in and allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets on horse races and in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.
- "2. On June 17, 1961 and on divers days prior thereto, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game', to be sold and offered for sale in and upon your licensed premises, and on the aforementioned date of June 17, 1961, you possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

At 12:55 p.m. and at 1:05 p.m. on Saturday, June 17, 1961, ABC agents placed horse race bets with defendant who telephoned the bets to an unknown person. Thereafter, as defendant left the premises she was intercepted by one of the agents who had placed a bet with her.

Within a short time (by prearrangement) two police officers arrived and took defendant into custody.

A search of the banquet hall which is part of defendant's licensed premises uncovered slips containing "numbers" bets and horse race bets. Defendant, in a written statement given the agents, admitted that she had accepted horse race bets from two agents and also horse race bets and "numbers" bets from other patrons. She stated that she had just begun to accept the type of bets in question as a favor for some of her customers.

Defendant has a prior adjudicated record. Effective July 4, 1943 her license was suspended for ten days by the local issuing authority for sale of alcoholic beverages to minors. Again effective June 2, 1958, defendant's license was suspended for three days by the local issuing authority for an "hours" violation. The minimum penalty in a case of this kind where a licensee or employee is involved in a gambling violation, is twenty-five days. Re Mauriello, Bulletin 1351, Item 7. In view of the fact that more than five years have elapsed since the dissimilar violation committed in 1943, it will not be taken into consideration in fixing the penalty herein. However, because of the dissimilar violation occurring in 1958, five days will be added to the suspension imposed in the instant matter. I shall suspend defendant's license for a total of thirty days, less five days for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 13th day of July 1961,

ORDERED that Plenary Retail Consumption License C-61 issued by the Town Council of the Town of Harrison to Virginia S. Kurdyla, t/a Zena's Tavern, for premises 206 No. 3rd Street, Harrison, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, July 24, 1961 and terminating at 2:00 a.m., Friday, August 18, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - GAMBLING - LOTTERY - LICENSE SUSPENDED FOR 25 DAYS LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

ALBERT W. & JEANETTE C. JOHNSON)
 404 - 36th Street)
 Union City, N. J.)

CONCLUSIONS
 AND ORDER

 Holders of Plenary Retail Consumption)
 License C-189 (for the 1960-61 and)
 1961-62 licensing years), issued by)
 the Board of Commissioners of the City)
 of Union City.)

Defendant-licensees, Pro se.
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendants entered a plea of non vult to the following charges:

- "1. On June 13 and 14, 1961, and on divers days prior thereto, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game' on all of said dates and occasions, and on horse races on the said date of June 13, 1961; in violation of Rule 7 of State Regulation No. 20.
- "2. On June 13 and 14, 1961, and on divers days prior thereto, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises, and on the said date of June 14, 1961 you possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

On June 13, 1961, between 12:20 p.m. and 3 p.m., ABC Agent S visited the licensed premises herein and observed Jeanette C. Johnson (known as "Jean"), who is the wife of the co-licensee Albert W. Johnson, accept small pieces of paper from at least eighteen persons who entered the premises; that each person went directly to Jean and gave her money, after she had made notations on a scratch pad. After each bet Jean then would enter the ladies' room where presumably she secreted those slips of paper as would appear from subsequent search thereof.

On June 14, 1961, between 11:45 a.m. and 3:30 p.m., ABC Agents S and T assumed seats at the center of the bar at the above licensed premises and observed the said Jeanette C. Johnson accept small pieces of paper with money wrapped around the pieces of paper and noted that she followed the same procedure as observed by Agent S on June 13 -- that she would immediately proceed to the ladies' room.

The agents were then joined by a local police officer, identified themselves and made a careful search of the premises. In the towel-rack of the ladies' room they found a run-down sheet with number bets on the same. It consisted of seven number plays totaling \$3.50 in bets. The sheet consisted also of two white slips of paper with a carbon paper in between the same. A matchcover containing a number was also seized and Johnson admitted that it was a number bet. A search of the men's room disclosed an Armstrong Daily Scratch Sheet

secreted in the towel box.

Jeanette C. Johnson was placed under arrest and charged with possession of number slips, in violation of R.S. 2A:170-18. She executed a written statement wherein she admitted that she had accepted number bets from various patrons in her tavern on the dates set forth in the charges, for which she received a commission on the gross amount of the bets placed with her. She further admitted that the Armstrong racing form was placed in the men's room for the convenience of the patrons who desired to check the daily races.

Defendants have no prior adjudicated record. I shall suspend their license for twenty-five days, the minimum suspension imposed in commercialized gambling cases when a licensee or employee is involved. Re Frega & Campbell, Bulletin 1299, Item 6. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 12th day of July 1961,

ORDERED that Plenary Retail Consumption License C-189 issued by the Board of Commissioners of the City of Union City to Albert W. & Jeanette C. Johnson, for premises 404 - 36th Street, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3 a.m. Wednesday, July 19, 1961, and terminating at 3 a.m. Tuesday, August 8, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

KATHLEEN CORRIS & HELEN RICCARDI)
t/a RICKY'S TAVERN)
250 Fourth Street)
Elizabeth, N. J.)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-167, for the 1960-61 and 1961-62 licensing years, issued by the City Council of the City of Elizabeth.)

Defendant-licensees, by Helen Riccardi, a partner.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that during prohibited hours they sold, served and delivered alcoholic beverages in their original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

At 11:00 p.m., Saturday, June 3, 1961, two ABC agents who were in defendants' tavern asked for and received from Francis Riccardi, husband of one of the licensees and known as Ricky, a pint bottle of whiskey which they took with them from the premises after paying \$2.75 for their purchase. The agents did not identify themselves on this visit.

At 8:45 p.m., June 9, 1961, the same agents visited defendants'

tavern wherein Ricky was tending bar. At 10:00 p.m. Helen Riccardi, co-licensee herein, arrived and seated herself at the customers' side of the bar. At 11:16 p.m. one of the agents asked Ricky for a pint of whiskey to go. Ricky walked to the side door, looked up and down the street, then returned and handed the agent a sealed pint bottle of the brand requested, for which he accepted \$2.75 in payment. The agents left with their purchased but returned immediately and identified themselves to Ricky, who verbally admitted the after hours sale.

Defendants have a prior adjudicated record. Effective February 13, 1961, the local issuing authority suspended their license for ten days for a violation similar to that charged herein. Since the prior violation occurred within a five-year period, I shall double the minimum penalty and suspend defendants' license for thirty days. Re Murphy, Bulletin 1298, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 27th day of July 1961,

ORDERED that Plenary Retail Consumption License C-167, issued by the City Council of the City of Elizabeth to Kathleen Corris & Helen Riccardi, t/a Ricky's Tavern, for premises 250 Fourth Street, Elizabeth, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, August 7, 1961, and terminating at 2:00 a.m., Friday, September 1, 1961.



William Howe Davis
Director