

BULLETIN 856

OCTOBER 31, 1949.

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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 856

OCTOBER 31, 1949.

1. COURT DECISIONS - CORAL LOUNGE AND COCKTAIL BAR, INC. v. HOCK, DIRECTOR, ETC. - ORDERS AFFIRMED. (APPELLANT FORMERLY KNOWN AS TEN PIN BAR, INC.)

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-354-48 September Term, 1949

CORAL LOUNGE AND COCKTAIL BAR,)
INC.,)

Appellant,)

-vs-)

ERWIN B. HOCK, Director of the)
Division of Alcoholic Beverage)
Control, et als.,)

Respondents.)
-----)

Argued September 26, 1949. Decided October 6, 1949.

On appeal from Division of Alcoholic Beverage Control.

Before McGeehan, Colie and Eastwood, JJ.

Mr. Arthur J. Sills argued the cause for appellant.

(Jacob L. Triarsi, Attorney.)

Mr. Anthony Meyer, Jr., Deputy Attorney General, argued the cause for respondent, Hock.

Mr. Julius R. Pollatschek argued the cause for Union County Retail Liquor Stores Association.

The opinion of the court was delivered by

COLIE, J.

Coral Lounge and Cocktail Bar, Inc. appeals from two orders of the Director of the Division of Alcoholic Beverage Control. The first order reverses the action of the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth in granting to Ten Pin Bar, Inc. broad package privileges. The second order is one deleting from the license certificate a notation thereon which would allow appellant to sell alcoholic beverages for off-premises consumption from portions of the licensed premises other than the public barroom.

On May 28, 1948, Chapter 98, Laws of 1948, now R.S. 33:1-12.23 became effective; the first section of which reads as follows:

"The holder of a plenary retail consumption license or a seasonal retail consumption license, after the effective date of this act, may sell and display for sale alcoholic beverages in original containers for consumption off the licensed premises only in the public barroom of the licensed premises, such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by

the glass or other open receptacle for consumption on the licensed premises; provided, however, that where, prior to the effective date of this act, alcoholic beverages in original containers for off-premises consumption were sold and displayed for sale by the holder of such license, either to the exclusion of sale for consumption on the licensed premises or upon a portion of the licensed premises other than the public barroom, such sale and display shall be permitted as heretofore and notwithstanding renewal or transfer of the license either from person to person or place to place, subject to rules and regulations to be promulgated by the commissioner."

The Municipal Board on June 24, 1948 granted to Ten Pin Bar, Inc., a plenary retail consumption license with the broad package privilege for premises at 10-12 Center Street, Elizabeth, New Jersey. Thereafter, Ten Pin Bar, Inc. changed its name to Coral Lounge and Cocktail Bar, Inc. and its location. The change of name and location of the premises are immaterial to the question involved.

The question for determination is whether the licensee was selling alcoholic beverages in original containers for off-premises consumption "upon a portion of the licensed premises other than the public barroom" prior to May 28, 1948. The Director of Alcoholic Beverage Control answered in the negative, and the present appeal attacks that finding on four grounds, the first two of which are directed to the constitutionality of R. S. 33:1-12.23. The attack upon constitutional grounds is twofold. It is argued that the statute is defective in that it delegates powers to an administrative agency without setting up reasonable standards for the agency's guidance. The contention is that the language "upon a portion of the licensed premises other than a public barroom" is vague, indefinite and incapable of reasonable interpretation. The requisite standard or guide appears in the section under attack wherein a barroom is defined as "a room containing a public bar, counter or similar piece of equipment". The argument is untenable for it seems clear to us that a barroom means that portion included within the four walls of the room in which the bar is located. The other leg of the constitutional argument is predicated upon the ground of alleged discrimination. Suffice it to say that the statute affects alike all persons similarly situated and that the standard set up therein is reasonable. The suggestion that the granting of broad package privileges to other licensees is evidence of discrimination is without merit since the factual situations in each instance were dissimilar.

It is next said that the package department was in fact upon a portion of the licensed premises other than the public barroom and that the director erred in finding to the contrary. The fact is that the so-called package department was nothing more nor less than a small closet, just large enough for two persons, set off by wooden partitions in a corner of the barroom.

For the reasons stated, the orders under appeal are affirmed.

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2. COURT DECISIONS - HRABAR v. HOCK, DIRECTOR, ETC. - ORDER AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-355-48 September Term, 1949

JOHN HRABAR, Trading as THE ROOST,)
Appellant,)

-vs-

ERWIN B. HOCK, Director of the)
Division of Alcoholic Beverage)
Control, et als.,)
Respondents.)

Argued September 26, 1949. Decided October 6, 1949.

On appeal from Division of Alcoholic Beverage Control.

Before McGeehan, Colie and Eastwood, JJ.

Mr. Arthur J. Sills argued the cause for appellant.

(Jacob L. Triarsi, Attorney.)

Mr. Anthony Meyer, Jr., Deputy Attorney General, argued the cause for respondent, Hock.

Mr. Julius R. Pollatschek argued the cause for Union County Retail Liquor Stores Association.

PER CURIAM.

This appeal is from an order of the Director of the Division of Alcoholic Beverage Control reversing the action of the Municipal Board of Alcoholic Beverage Control in granting "broad package privileges" to appellant.

So far as the legal questions involved are concerned, they do not differ from and are controlled by our decision in Coral Lounge and Cocktail Bar, Inc. v. Hock, N.J. Super. , decided this date.

As to the factual situation, the so-called package department was separated from the barroom by a partition four feet or waist high which was insufficient, in the judgment of the Director, to make the package department "a portion of the licensed premises other than a public barroom". In that finding we concur.

The order under appeal is affirmed.

3. COURT DECISIONS - BISCAMP ET AL. v. TEANECK ET AL. - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
No. A-119, September Term, 1949

HARRY J. BISCAMP and FRED W. HESS, JR.,)

Appellants,)

-vs-)

TOWNSHIP COUNCIL OF THE TOWNSHIP OF TEANECK and the STATE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL,)

Respondents.)

Argued September 26, 1949. Decided October 6, 1949.

Before McGeehan, Colie and Eastwood, JJ.

Mr. Walter H. Jones, attorney for and of counsel with appellants, argued the cause.

Mr. Charles J. Tyne, attorney for and of counsel with respondent, Township Council of the Township of Teaneck, argued the cause.

Mr. Samuel B. Helfand argued the cause for the respondent, State Commissioner of Alcoholic Beverage Control. (Mr. Theodore D. Parsons, Attorney General, Attorney.)

The opinion of the Court was delivered by

EASTWOOD, J.

Appellants seek a reversal of a determination by the State Commissioner of Alcoholic Beverage Control (now Director of the Division of Alcoholic Beverage Control, in the Department of Law and Public Safety), affirming the denial by the Township Council of Teaneck of appellants' applications for a transfer of their plenary retail consumption license to a new location and a renewal thereof.

On November 18, 1947, the Township Council approved appellants' application for transfer of a plenary retail consumption license, which they had acquired from the holder thereof, from premises located on Bennett Road, to vacant land known as 803 Cedar Lane, upon condition that a contemplated building would be erected thereon in conformity with plans accompanying the applications. The building was never constructed. On June 4, 1948, appellants filed an application with the Township Council, seeking a transfer of the license from 803 Cedar Lane to another vacant lot known as 251 Fort Lee Road, accompanying the application with plans for a proposed building, for which no building permit was ever obtained. At the same time, appellants applied for a renewal of the license at the proposed new location. Both applications were denied by the Township Council, on the ground that the proposed premises are too near a public park and that Fort Lee Road is narrow, too near the intersection of two heavily travelled roadways; and if appellants' applications were granted, traffic hazards would increase.

Appellants concede the well settled rule that the issuance, renewal and transfer of liquor licenses rest in the sound discretion of the issuing authorities. *Zicherman v. Driscoll*, 133 N.J.L. 586 (Sup. Ct. 1946). We have reviewed the record in the case sub judice and conclude that there is a complete absence of proof indicating any abuse of discretion by the Township Council. On the contrary, the minutes of the meeting of the Township Council evince a sympathetic attitude towards appellants and a manifest desire to find some solution for their problem. It appears, however, that the Township Council were of the opinion that the denial of the applications was for the public welfare. Concluding, as we have, that appellants have not successfully borne the burden of proving abuse of discretion by the Township Council, its action may not be judicially disturbed. *Brandon v. Montclair*, 124 N.J.L. 135 (Sup. Ct. 1940); *affd* 125 Id. 367 (E. & A. 1940); *Oliva v. City of Garfield*, 1 N. J. Reports 184, at p. 189 (Sup. Ct. 1948).

We find no merit in appellants' contention that the action of the governing body was a violation of Section 1 of the Fourteenth Amendment. They argue that they "cannot legally be denied a right which has been granted by the municipal authorities to others under substantially similar circumstances". The record does not support any such alleged discrimination against appellants. Assuming, but not conceding, that other licenses were granted under somewhat similar circumstances, it does not follow that the governing body should further perpetuate earlier unwise action. In the case of *Potts v. Board of Adjustment of the Borough of Princeton*, 133 N.J.L. 230 (Sup. Ct. 1945), Mr. Justice Heher, speaking for the Supreme Court, stated:

".....Ill-advised or illegal variances do not furnish grounds for a repetition of the wrong. If that were not so, one variation would sustain if it did not compel others, and thus the general regulation eventually would be nullified."

In the comparatively recent case of *Greenway Homes v. River Edge*, 137 N.J.L. 453 (Sup. Ct. 1948), Mr. Justice Jacobs stated:

"The record before us does not in any sense establish that type of discriminatory municipal action aimed at prosecutor which might warrant voiding the ordinance as being in violation of the Constitution of the United States under the doctrine of *Yick Wo v. Hopkins*, 118 U.S. 356; 30 L. Ed. 220 (1886)."

The order of the Commissioner affirming the Township Council's denial of appellants' applications is affirmed, without costs.

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4. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against)

JAMES CINDRARIO)
1105-1107 Bergenline Avenue)
Union City, N. J.,)

ON PETITION
O R D E R

Holder of Plenary Retail Consumption License C-45, issued by the Board of Commissioners of the City of Union City.)

John J. Meehan, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On October 3, 1949, the license herein was suspended for a period of forty-five days, commencing at 3:00 a.m. October 17, 1949 and terminating at 3:00 a.m. December 1, 1949.

It appears from a petition filed herein that, prior to October 3, 1949, defendant had made arrangements for two wedding receptions, more fully referred to in the said petition, to be held at his licensed premises, one on Saturday, November 19, 1949, and one on Sunday, November 27, 1949. The petition further recites that the one reception will be attended by at least 100 to 125 guests, and the other reception will be attended by approximately 200 guests, and that none of the parties in said weddings are in any way connected with the liquor business conducted by the licensee or are in any way involved in the disciplinary proceedings resulting in the suspension.

It appearing, therefore, that numerous innocent persons will be inconvenienced by the suspension of defendant's license on November 19 and November 27, 1949,

It is, on this 6th day of October, 1949,

ORDERED that the suspension of forty-five days heretofore imposed in these proceedings shall commence at 3:00 a.m. October 17, 1949, and continue in effect until 3:00 a.m. November 19, 1949; that thereafter said suspension shall be lifted until 3:00 a.m. November 20, 1949, when it shall again become effective and continue in effect until 3:00 a.m. November 27, 1949; and that thereafter said suspension shall be lifted until 3:00 a.m. November 28, 1949, when it shall again become effective and continue in effect until 3:00 a.m. December 3, 1949.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 REQUIRING BONA FIDE INVOICES OR MANIFESTS COVERING SHIPMENTS - HEREIN OF APPLICATION OF RULE TO STATE BEVERAGE DISTRIBUTOR LICENSEES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against

MORRIS GLASSMAN, FRANK KIPNIS)
and DAVID FRANKLIN)
T/a IDEAL BEVERAGE CO.)
Rear 110 Pine Street)
Montclair, N. J.,)

CONCLUSIONS
AND ORDER

Holder's of State Beverage Distri-)
butor's License SBD-66, issued by)
the Director of the Division of)
Alcoholic Beverage Control.)

-----)
Leo J. Berg, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they delivered alcoholic beverages in their licensed vehicle without the driver having in his possession bona fide invoices or manifests, in violation of Rule 3 of State Regulations No. 17.

In Bulletin 845, Item 6, I ruled that, so far as State Beverage Distributor licensees are concerned, the requirements of the above rule would be satisfied with respect to alcoholic beverages then being delivered to regular customers who desire periodic deliveries on standing orders, if the driver of the vehicle had in his possession a route card bearing the name, address and standing order of the customer and having space thereon in which may be entered at the time of delivery (1) the date of delivery, (2) the quantity delivered, (3) size of container delivered, (4) brand delivered, and (5) price charged. I ruled also that, in addition to route cards aforesaid, there must be carried in the vehicle, while delivering to consumers, a loading list setting forth the total quantity of alcoholic beverages loaded for delivery, indicating as to each brand loaded the total quantity of each size of container.

On August 1, 1949, ABC agents stopped a licensed vehicle owned by defendants, and driven by Frank Kipnis (one of the licensees), while deliveries were being made in Pompton Lakes, New Jersey. An examination of the route cards carried by the driver disclosed that many of the cards did not bear the name of the customer; that none of the cards set forth the "standing order" or disclosed the quantity, size of container or brand of the alcoholic beverages previously delivered on said date. The loading list carried by the driver did not indicate as to each brand loaded the total quantity of each size of container.

Defendants should immediately adopt the sample form of route card set forth in Bulletin 845, Item 6, if they have not already done so.

Defendants have no previous adjudicated record. I shall suspend their license for ten days, less five days' remission for the plea entered herein, leaving a net suspension of five days. Cf. Bulletin 844, Item 12.

Accordingly, it is, on this 6th day of October, 1949,

ORDERED that State Beverage Distributor's License No. SBD-66, issued by the Director of the Division of Alcoholic Beverage Control

to Morris Glassman, Frank Kipnis and David Franklin, t/a Ideal Beverage Co., for premises rear 110 Pine Street, Montclair, be and the same is hereby suspended for five (5) days, commencing at 7:00 a.m. October 17, 1949, and terminating at 7:00 a.m. October 22, 1949.

ERWIN B. HOCK
Director.

6. APPELLATE DECISIONS - DODD v. BRIDGEWATER.

HARRY DODD,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF BRIDGEWATER,)	
)	
Respondent.)	

Leo J. Berg, Esq., Attorney for Appellant.
Charles A. Reid, Jr., Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the denial of an application for a plenary retail distribution license for premises situated on Old York Road and Robert Street, Bradley Estate, Township of Bridgewater.

At the hearing before the respondent Township Committee on July 11, 1949, four committeemen voted against the issuance of the license and one committeeman voted in favor thereof. The reason given for the denial was "That there already exists a sufficient number of license establishments to satisfy the needs of the residents".

The appellant alleges in his petition filed in the within case that the action of the respondent Township Committee in denying the application for a plenary retail distribution license was arbitrary and unreasonable and constituted an abuse of discretion.

Appellant testified that, although Committeeman Johansen assured him that he would receive favorable action on his application for the license in question, Committeeman Johansen voted against the granting of said license. Committeeman Johansen did not appear at the time the appeal was heard at this Division. I might add, however, that the alleged promise of Committeeman Johansen, even if true, is nevertheless incompetent to limit the freedom of the full Township Committee when passing on any application before it. Cf. Pergola v. Jamesburg, Bulletin 398, Item 6.

Appellant produced three witnesses, including Committeeman Tuttle who had voted in favor of the issuance of the license and who testified that there was a need for and a convenience to be served by the issuance of a plenary retail distribution license to appellant for the premises in question. A petition containing approximately 250 names was presented on behalf of appellant's application.

The population of the township, according to the 1940 Federal census, was 4,934. Twenty-five plenary retail consumption licenses have been issued in the township, approximately one for each 200 residents. There is no plenary retail distribution license in the township at the present time. However, according to the evidence presented herein, two of the twenty-five plenary retail consumption licenses outstanding in the township are located on Old York Road, 1,000 feet and 1,600 feet, respectively, from appellant's proposed premises.

Determination of the number of retail alcoholic beverage establishments to be permitted in any particular community is a matter confided to the sound discretion of the local issuing authority. In determining whether a plenary retail distribution license should be issued, a local issuing authority may properly take into consideration the number of retail consumption licenses, which licenses, subject now to P.L. 1948, c. 98, carry the privilege of selling alcoholic beverages in original containers for off-premises consumption. See Boody v. Gloucester, Bulletin 300, Item 11, and Bank v. Bridgewater, Bulletin 842, Item 3.

The burden of proving that respondent's action was unreasonable or an abuse of its discretionary authority has not been sustained. The respondent's action is therefore affirmed.

Accordingly, it is, on this 6th day of October, 1949,

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

ERWIN B. HOCK
Director.

7. ALIENS - HEREIN OF ALIEN NATIONALS OF ITALY - EFFECT OF TREATY, WHICH ENTERED INTO FORCE ON JULY 26, 1949, BETWEEN THE UNITED STATES AND ITALY.

October 20, 1949.

TO ALL MUNICIPAL ISSUING AUTHORITIES:

The New Jersey Alcoholic Beverage Law specifies that no alien may obtain a retail liquor license or may, except on special permit, be employed by a retail liquor licensee in New Jersey (R.S. 33:1-25, 26).

However, this provision is necessarily subject to those treaties which the Federal government has entered with various foreign countries guaranteeing their nationals the same trade privileges in the United States as our own nationals. Such treaties supersede our State law by reason of the fact that, under the Federal Constitution, treaties executed by the President and ratified by the Senate become part of the supreme law of the land and take priority over State law. Hence, nationals of those foreign countries which have a treaty of the type in question with the United States are exempt from the above restrictions against aliens in the New Jersey Alcoholic Beverage Law (Bulletin 228, Item 2).

From time to time we have pointed out the foreign countries having such a treaty with the United States. The latest country to be added to this list is Italy. A prior treaty of the type in question with Italy had terminated ten or more years ago (Bulletin 304, Item 8). We have now been formally advised by the U. S. State Department that a new treaty of this type has recently been consummated between this country and Italy and that it entered into force on July 26, 1949.

Hence, along with various other aliens covered by treaties of the type in question, Italian nationals are now no longer disqualified by reason of alienage from obtaining a retail liquor license or working for a retail liquor licensee in New Jersey. All such aliens, however, must fully comply with all the other provisions and requirements in the Alcoholic Beverage Law in this state and the rules and regulations adopted thereunder.

ERWIN B. HOCK
Director.

October 10, 1949

8. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1949 THROUGH SEPTEMBER 30, 1949

	JULY	AUG.	SEPT.	TOTAL
ARRESTS:				
Licensees and employees	16	28	15	59
Bootleggers	1	5	1	7
ABC agent impersonator	15	22	13	50
	0	1	1	2
SEIZURES:				
Motor vehicles - cars	0	4	1	5
- trucks	0	0	1	1
Still - over 50 gallons	0	0	4	4
- 50 gallons or under	2	1	1	4
Alcohol - gallons	.12	0	0	.12
Mash - gallons	0	700.00	1,250.00	1,950.00
Distilled alcoholic beverages - gallons	3.75	10.42	57.93	72.10
wine - gallons	44.22	4.42	51.97	100.61
Brewed malt alcoholic beverages - gallons	61.65	248.18	21.05	330.88
RETAIL LICENSEES:				
Premises inspected	758	855	782	2,395
Premises where alcoholic beverages were gauged	723	647	892	2,262
Bottles gauged	12,618	12,451	15,542	40,611
Premises where violations were found	19	48	40	107
Violations found	21	59	50	130
Type of violations found:				
Unqualified employees	6	33	27	66
Reg. #38 sign not posted	1	6	5	12
Probable fronts	3	3	2	8
Other mercantile business	1	3	3	7
Gambling devices	0	2	4	6
Improper beer taps	3	1	0	4
Disposal permit necessary	1	2	1	4
Prohibited signs	0	2	1	3
Other violations	6	7	7	20
STATE LICENSEES:				
Premises inspected	16	32	33	81
License applications investigated	22	11	12	45
COMPLAINTS:				
Complaints assigned for investigation	273	402	277	952
Investigations completed	282	461	310	1,053
Investigations pending	(140)	(133)	133	133
LABORATORY:				
Analyses made	105	101	114	320
"Shake-up" cases (alcohol, water & artificial color)-bottles	2	8	11	21
Liquor found to be not genuine as labeled - bottles	8	7	14	29
IDENTIFICATION BUREAU:				
Criminal fingerprint identifications made	11	8	10	29
Persons fingerprinted for non-criminal purposes	349	265	180	794
Identification contacts made with other enforcement agencies	326	203	138	667
Motor vehicle identifications via N.J. State Police teletype	6	6	9	21
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	4	4	16	24
Violations involved:				
Sale during prohibited hours	3	0	4	7
Sale to minors	0	1	4	5
Permitting brawls on premises	1	0	2	3
Permitting slot machines on premises	0	1	1	2
Employing female bartender	1	0	0	1
Permitting hostesses on premises	0	1	0	1
Permitting bookmaking on premises	0	1	0	1
Unqualified employees	0	1	0	1
Sale to intoxicated persons	0	0	6	6
Sale to non-members by clubs	0	0	1	1
Possessing contraceptives on premises	0	0	1	1
Hindering investigation	0	0	1	1
Cases instituted at Division	15	16	14	45
Violations involved:				
Possessing illicit liquor	3	3	6	12
Sale to minors	1	3	4	8
Sale during prohibited hours	2	3	2	7
Delivery without bona fide invoices	2	1	1	4
Fraud and front	1	2	0	3
Sale below Fair Trade price	1	0	0	1
Permitting immoral activity on premises	1	0	0	1
Permitting bookmaking on premises	1	0	0	1
Permitting female impersonator on premises	1	0	0	1
Permitting hostesses on premises	0	1	0	1
Sale to non-members by clubs	1	0	0	1
Solicitor employed by retailer	1	0	0	1
Permitting brawls on premises	1	0	0	1
Mislabeling beer taps	0	3	0	3
Permitting pin ball machines on premises	0	2	0	2
Purchase from improper source	0	1	0	1
Sale outside scope of license	0	0	1	1
Sale contrary to conditions of permit	0	0	1	1
Permitting slot machines on premises	0	0	1	1
Failure to afford view into premises during prohibited hours	0	0	1	1

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
DISCIPLINARY PROCEEDINGS (Cont'd):				
Cases brought by municipalities on own initiative and reported to Division:	4	7	4	15
Violations involved:				
Sale to minors	1	2	2	5
Sale during prohibited hours	2	2	0	4
Permitting brawls on premises	0	3	0	3
Permitting noise on premises	1	0	1	2
Hindering investigation	1	0	0	1
Permitting bookmaking on premises	1	0	0	1
Permitting lottery activity (numbers)	1	0	0	1
Permitting prostitutes on premises	0	1	0	1
Sale to intoxicated persons	0	0	1	1
Permitting immoral activity on premises	0	0	1	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	29	34	34	97
Appeals	6	4	4	14
Disciplinary proceedings	9	16	17	42
Eligibility	8	9	8	25
Seizures	6	5	3	14
Tax revocations	0	0	1	1
Applications for license	0	0	1	1
PERMITS ISSUED:				
Total number of permits issued	5,789	1,124	994	7,907
Employment	1,722	289	149	2,160
Solicitors	2,765	124	116	3,005
Disposal of alcoholic beverages	151	105	116	372
Social affairs	337	447	411	1,195
Special wine	90	35	75	196
Miscellaneous	724	126	129	979

ERWIN B. HOCK
Director.

9. DISCIPLINARY PROCEEDINGS - HOSTESSES - EMPLOYING UNQUALIFIED PERSON-
TRANSFEREE OF LICENSE PERMITTING PREMISES TO REMAIN OPEN DURING
PROHIBITED HOURS - PRIOR RECORD - LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary Proceedings against
FRANK PAUL ELIA
20 Smith Street
Paterson, N. J.,

Holder of Plenary Retail Consumption License C-202, issued for the 1948-49 licensing period by the Board of Alcoholic Beverage Control of the City of Paterson, transferred to and renewed for the 1949-50 licensing period by

CONCLUSIONS
AND
ORDER

IRVING ALPERN,
for the same premises,
and subsequently transferred to
ANTHONY D. PARUTA
for premises located at 78 Market St.
Paterson, N. J.

A. Leon Kohlreiter, Esq. and Harold P. Altshuler, Esq., Attorneys
for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges preferred against him:

"1. On divers days between June 1, 1948, and September 13, 1948, you allowed, permitted and suffered Dollie Louise Jordan, a female employed on your licensed premises, to accept beverages at the expense of and as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20.

"2. On divers days between June 1, 1948 and September 13, 1948, you knowingly employed on your licensed premises, Dollie Louise Jordan, a non-resident of New Jersey, who had not obtained a requisite employment permit from the Commissioner of Alcoholic Beverage Control; in violation of Rule 4 of State Regulations No. 13."

At the hearing herein, Dollie Louise Jordan testified that she is a resident of New York State; that she was employed by defendant as a singer and dancer from about June 1, 1948 to September 13, 1948; and that she had never obtained an employment permit from the Commissioner (now Director) of Alcoholic Beverage Control. Miss Jordan further testified that defendant introduced her to male customers in the licensed premises and that on September 13, 1948 she drank alcoholic beverages with and at the expense of four male customers.

Frank Paul Elia was unable to be present at the adjourned date for the hearing because of illness. It was stipulated by counsel, in order to expedite the matter, that his testimony would be in the nature of a denial of the testimony of Dollie Louise Jordan regarding her hostess activities.

I am satisfied, however, from the testimony of Dollie Louise Jordan, that she had accepted drinks from and at the expense of customers during her employment with defendant, and that he encouraged her activities in this regard. I find defendant guilty of both charges 1 and 2.

This is not the first time that defendant permitted such practices to take place on his licensed premises. Effective January 6, 1948, defendant's license was suspended for sixty days, less five days' remission because of his plea of non vult to charges of (a) allowing, permitting and suffering females employed on the licensed premises to accept beverages at the expense of customers; (b) serving alcoholic beverages other than ordered; and (c) employing non-residents who did not hold employment permits. At that time I stated that "Under all the circumstances, including the long period over which the alleged practice continued, I am constrained to wonder if the licensee is a fit person to be entrusted with the privilege conferred by a liquor license. The practices carried on at his premises will not be tolerated."

As indicated above, the license in question was transferred during the pendency of these proceedings to Irving Alpern, who, on April 24, 1949, committed a further violation by permitting the licensed premises to remain open during prohibited hours. Re Alpern (decided herewith). It further appears that thereafter Irving Alpern obtained a renewal of the license for the present licensing year, and that the license was subsequently transferred to Anthony D. Paruta for premises at 78 Market Street, Paterson.

Under all of the circumstances, I shall suspend the license for a period of 120 days.

Although the proceedings referred to herein were instituted against prior licensees, any transfer is subject to the penalty which may be imposed herein. The proceedings referred to do not abate by reason of the expiration of the licensing year on June 30, 1949, but remain fully effective against the license for the present licensing period. State Regulations No. 16.

Accordingly, it is, on this 11th day of October, 1949,

ORDERED that Plenary Retail Consumption License C-202, issued for the 1949-50 licensing period by the Board of Alcoholic Beverage Control of the City of Paterson to Irving Alpern, for premises 20 Smith Street, Paterson, and transferred to Anthony D. Paruta, for premises 78 Market Street, Paterson, be and the same is hereby suspended for a period of one hundred and twenty (120) days, commencing at 3:00 a.m. October 17, 1949, and terminating at 3:00 a.m. February 14, 1950.

ERWIN B. HOCK
Director.

10. DISCIPLINARY PROCEEDINGS - PERMITTING PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS - SUSPENSION INCLUDED IN RE ELIA.

In the Matter of Disciplinary Proceedings against)
IRVING ALPERN)
20 Smith Street)
Paterson 1, N. J.,)

Holder of Plenary Retail Consumption License C-202 for the 1948-49 licensing year, issued by the Board of Alcoholic Beverage Control of the City of Paterson, renewed in his name for the 1949-50 licensing year, and subsequently transferred to)

CONCLUSIONS

ANTHONY D. PARUTA)
for premises at)
78 Market Street, Paterson, N.J.)

Wendell W. Furrey, Esq., Attorney for Defendant-licensee.
Edward F. Ambrosé, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Sunday, April 24, 1949, between 3:00 a.m. and 3:30 a.m., you failed to have your entire licensed premises closed; in violation of Section II of an Ordinance adopted by the Board of Alcoholic Beverage Control for the City of Paterson on May 27, 1948, which requires that licensed premises, other than hotels, restaurants as defined in R.S. 33:1-1t, and other establishments where the principal business is other than the sale of alcoholic beverages, shall be closed on Sundays between the hours of 3:00 a.m. and 1:00 p.m."

On Sunday, April 24, 1949, an ABC agent, who was then present in defendant's premises, observed the defendant selling drinks to patrons at about 3:15 a.m. Another agent entered the premises at 3:27 a.m., at which time there were approximately twenty-seven persons on the premises, many of whom were consuming drinks. Shortly after the second agent entered, the bartender refused to serve any more drinks, and the agents then identified themselves.

It is unnecessary to fix any period of suspension in this case because the guilt of defendant herein has been taken into consideration in fixing the period of suspension in Re Elia, decided herewith.

ERWIN B. HOCK
Director.

Dated: October 11, 1949.

11. DISCIPLINARY PROCEEDINGS - PREDECESSOR IN INTEREST ALLOWED, PERMITTED AND SUFFERED LEWDNESS AND IMMORAL ACTIVITIES ON LICENSED PREMISES - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against)

JOSEPH ALBERTI & JOHN C. ALBERTI)
T/a ALBERTI'S BAR & GRILL)
570 Main Avenue)
Passaic, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-152 for the 1948-49 and 1949-50 licensing years, issued by the Board of Commissioners of the City of Passaic.

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Robert M. Kronman, Esq., Attorney for Defendant-licensees.
Peter P. Zangara, Esq., Attorney for Joseph Sirvent, previous licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to the following charges preferred against them:

"1. On September 13, 1948, your predecessor in interest, Joseph Sirvent (from whom your plenary retail consumption license was transferred for the same premises on January 10, 1949), allowed, permitted and suffered lewdness and immoral activities in and upon the licensed premises in that he permitted patrons to engage in illicit sexual intercourse in the rear room of his tavern; in violation of Rule 5 of State Regulations No. 20.

"2. On September 13, 1948, your aforesaid predecessor in interest, Joseph Sirvent, allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance in that he conducted the licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

A woman witness produced by the Division testified that she and two male companions visited defendants' premises on the morning of September 13, 1948. The group, according to the witness, sat at the bar and the woman had a glass of beer. One of the male companions deposited a coin in the juke box and invited her to dance with him and she accepted his invitation. They danced in the barroom, or, as the witness described it, "went through the motions of dancing", and then "danced" through a doorway leading to a large room and continued "dancing" until they entered a small room adjoining, the door of which closed after them. In this room, the witness testified, was a stairway and sundry boxes containing bottles. The witness further testified that in the small room there also was a table and that her male companion forced her on the table and that they engaged in sexual intercourse. The witness contends that she uttered a scream and attempted to free herself from the grasp of her companion, but to no avail. She said she followed the man back to the barroom but did not inform the bartender or any other person relative to the occurrence that had just taken place. The witness further stated that her male companions left her in the liquor establishment and that she telephoned for a taxicab to take her home. Upon the arrival of the taxicab, she left the defendants' premises. On the way home in the taxicab the witness testified that she did not tell the driver of her experiences in defendants' tavern.

The man who was identified by the woman witness as the person who had forced her to engage in sexual intercourse with him was produced as a witness by the Division. The witness invoked his personal privilege and refused to answer questions put to him relating to the alleged incident on the grounds that the answers might tend to incriminate him.

Joseph Sirvent, who held the liquor license for the premises at the time in question, testified that he was present at about 8:30 a.m. when the woman and the men entered the licensed premises, and that he served a glass of beer to the woman. He testified that he left the tavern at 8:45 a.m. to go to the bank and that, when he returned at about 10:00 a.m., the girl and her male companions were sitting at the bar. Shortly thereafter her companions left. The woman made a telephone call and, about a half-hour later, a taxicab arrived at the licensed premises and the woman left.

Michael Sylvester, who tended bar during Joseph Sirvent's absence, testified that he told the couple that dancing was prohibited in the barroom and that they then went into the adjoining room, seated themselves at a table and, about five minutes thereafter, ordered drinks from him. Sylvester further testified that, shortly after the service of drinks, the girl and her companion returned to the bar. The witness denied hearing any screams, being advised of, or having knowledge of, any act of indecency involving the woman taking place on the licensed premises.

The taxicab driver testified that he received a telephone call and that, when he arrived at defendants' licensed premises, the woman was seated at the bar. The driver testified that he drove the woman to her destination and that she praised Sirvent's business establishment.

After careful study of the testimony I am satisfied that the immoral conduct referred to herein took place on the licensed premises at the time in question.

The design of the Alcoholic Beverage Control statute is to control and keep within limits a traffic which, unless tightly restrained, tends toward abuse and debasement. Kravis v. Hock, 135 N.J.L. 259 (p. 262).

Knowledge of the fact by the licensee or his employees that wrongdoing has taken place on the licensed premises is not a necessary ingredient to make the offense complete under the Alcoholic Beverage Law. Cf. Essex Holding Corp. (a corporation) v. Hock, 136 N.J.L. 28. As the Court said in Guastamachio v. Brennan, 128 Conn. 356; 23 Atl. (2d) 140:

"While it may well be that 'suffer' as used in the regulation would not render the permittee responsible for the acts of a trespasser upon the premises, we conclude that it is effective to make him responsible, regardless of knowledge or negligence, for failure to take effectual measures to prevent prohibited conduct by those occupying them with his authority."

I find that immoral activity referred to in Charge 1 was allowed, permitted and suffered on the licensed premises, in violation of Rule 5 of State Regulations No. 20. Charge 2 is dismissed.

Defendants have no previous adjudicated record. Under the peculiar circumstances of this case, I shall suspend the license for a period of sixty days.

Although this proceeding was instituted during the 1948-49 licensing period, it does not abate but remains fully effective against the renewal license for the 1949-50 licensing year. State Regulations No. 16.

Accordingly, it is, on this 11th day of October, 1949,

ORDERED that Plenary Retail Consumption License C-152, issued for the 1949-50 licensing year by the Board of Commissioners of the City of Passaic to Joseph Alberti & John C. Alberti, t/a Alberti's Bar & Grill, for premises 570 Main Avenue, Passaic, be and the same is hereby suspended for a period of sixty (60) days, commencing at 3:00 a.m. October 17, 1949, and terminating at 3:00 a.m. December 16, 1949.

ERWIN B. HOCK
Director.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Eastern Motor Express, Inc.

541 Johnston Ave.

Jersey City, N. J.

Application for Transportation License filed October 5, 1949.

Northwest Airlines, Inc.

1885 University Ave.

St. Paul, Minnesota.

Application for Plenary Retail Transit License filed October 6, 1949.

A. C. E. Transportation Co., Inc.

241 James St.

Akron, Ohio.

Application for Transportation License filed October 13, 1949.

O. K. Bottling Co., Inc.

Rear 70 Barnt Ave.

Trenton, N. J.

Application for transfer of State Beverage Distributor's License SBD-170 from Anton Metterle, t/a O. K. Bottling Co., filed October 13, 1949.

Erwin B. Hock

Director.