

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

BULLETIN 1245

OCTOBER 21, 1958.

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

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OCTOBER 21, 1958.

1. APPELLATE DECISIONS - BROADLEY v. CLINTON AND KLINGLER.

JOSEPH BROADLEY, )  
Appellant, )  
-vs- )  
COMMON COUNCIL OF THE TOWN )  
OF CLINTON and WILLIAM KLINGLER, )  
Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Italo M. Tarantola, Esq. and Harry Krieger, Esq., Attorneys  
for the Appellant.  
A. Warren Herrigel, Esq., Attorney for Respondent Common  
Council.  
E. Herbert Kiefer, Esq., Attorney for Respondent William  
Klingler.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Council whereby on November 12, 1957 it approved the application for the issuance of a new plenary retail distribution license to respondent William Klingler for premises known as Unit #104 of Clinton Stores, Inc., Route 22, Clinton. Said license was to become effective on December 2, 1957 provided various alterations on the premises were made and approved by the respondent Council.

"At a regular meeting of respondent Council on November 12, 1957, the date on which Klingler's application was approved, four of the six members of the Council were present. Two members voted 'yes' to approve the application for the license in question, one voted 'no' and one stated 'not voting'. The mayor, who presided at the said meeting, then announced 'The motion to adopt this resolution having been approved by a vote of two to one and one not voting, two absent, therefore I declare this license shall be issued to William Klengler (Klingler), Annandale, New Jersey, as directed by the Common Council'. Thereafter, on December 2, 1957, at a special meeting of the respondent Council with five of the six members thereof being present, a resolution was unanimously adopted approving the premises of Klingler for the issuance of the license thereto.

"Joseph Broadley, the appellant herein, was one of the thirteen applicants for the license now being considered.

"The appeal filed by Broadley sets forth, in substance, the following grounds for reversal of respondent Council's action:

- a. There is no need for a plenary retail distribution license in the municipality.
- b. At a referendum held at the general election in 1955 the voters of Clinton opposed the issuance of a plenary retail distribution license.

- c. The action of the Council in approving the resolution granting the license to respondent Klingler was illegal and void because of the absence of a properly constituted quorum.
- d. The respondent Council at the meeting held on November 12, 1957 was 'under the mistaken apprehension and belief that it could only consider 3 applicants for said license instead of all 13 applicants who had filed applications for such license'.
- e. The selection of respondent Klingler as the person to receive the license in question was not based on any reasonable standard and was 'biased, partial and discriminatory' and 'the actions of the Common Council were arbitrary, capricious and unreasonable and constituted an abuse of its discretion'.

"I shall first dispose of the technical objections entered with reference to the procedure of the respondent Council at the meeting held on November 12, 1957 when the application for the plenary retail distribution license of Klingler was approved.

"It appears from the testimony herein that the Mayor called the meeting to order for the purpose of considering the selection of a person and premises to which the license in question was to be issued. Four members of the respondent Common Council were present at the time. It appears that months prior to this meeting a committee composed of three members of the Common Council was appointed to determine the fitness of the particular premises of the respective applicants for the license. At the meeting aforementioned, for various reasons announced by the attorney as a result of the report of examination made by the members of the committee and as a result of an examination of the applications of the respective applicants, ten applications were ruled to be irregular. The appellant was among the remaining three applicants whose applications and proposed premises were approved for consideration by the respondent Council. One of the members of the Council made a motion to approve the application filed by respondent Klingler, which motion was seconded by another member thereof. The mayor instructed the clerk to proceed with the roll call at which time two members voted in favor of the motion, one against and the fourth member declared himself as 'not voting'.

"The question immediately arises as to the validity of the action taken by respondent Council. Justice Parker, speaking for the Supreme Court in the matter of Kozusko v. Garretson, 102 N.J.L. 508, stated that 'It may well be conceded that when in a parliamentary body a majority vote suffices for effective enactment, and some vote aye and the others remain silent, they are taken as voting in the affirmative. Such we understand to be the law. In line with this is the principle that where a quorum is present, a proposition is carried by a majority of all the votes cast, though some of the members present refuse to vote. 29 Cyc. 1690. This is, or was, the congressional rule. U. S. v. Ballin, 144 U. S. 1. In this state it has been held that the vote of a member present who declined to vote at all should be counted in the affirmative. Mount v. Parker, 32 N. J. L. 341'. However, Justice Parker further stated that where a person had not voted but had expressed himself to be

opposed to the motion, his vote could not be counted as in favor of the resolution. He quotes Chancellor Zabriskie in Abels v. McKeen, 18 N. J. Eq. 462 who said, 'At such a meeting, if a vote is taken and no one dissents, all who do not vote are considered as voting with the majority for the motion. And a vote of three ayes at a meeting of twenty, where no one dissents, is considered as the affirmative vote of all present'. But where a member does dissent his vote cannot properly be counted in the affirmative.

"Although the transcript of the proceedings held before the respondent Council on November 12, 1957 failed to disclose the sentiments of Councilman Harold Martin, he testified at the hearing herein when questioned about his failure to vote, that 'What the councilmen wanted I'd be willing to go along with the majority of the councilmen, what they wanted was all right with me, but I don't want to be implicated in choosing any candidate, anyone of the thirteen. I did not have anything against them. I mean I knew several of them very well, and for me to say what one was better or should have the license, I wouldn't want to get myself involved'. It is apparent from the explanation given by Councilman Martin that, regardless of who might obtain the license, he wished to abstain from voting on the question. Under the circumstances, his refusal to vote must be considered as assenting to the adoption of the resolution and must be counted in the affirmative. Thus, with the four members present, the resolution passed by a vote of three to one.

"Appellant further contends that when the Town of Clinton was incorporated in 1865, the charter provided 'That the Common Council, or a majority of them in Common Council met, shall have the sole and exclusive right and power of licensing and assessing every innkeeper, tavern keeper...'. However, it has been ruled in the case of Manno v. Clifton, 14 N. J. Super. 100, page 102, that a local issuing authority acts pursuant to the provisions of the Alcoholic Beverage Control Act which contains no provision requiring a majority vote of all members of the Council for valid action. R. S. 33:1-19. Therefore, the common law, which requires for valid action the affirmative vote of a mere majority of a quorum, will prevail.

"The appellant also insists that the result of the public referendum held in 1955 on the question whether a new plenary retail distribution license shall be issued in the municipality (which was voted in the negative) should be considered by the respondent Council to be the sentiment of the majority of the people in town. However, the majority of negative votes on such a question does not constitute a mandate. To the contrary, R. S. 19:37-4 provides that 'The result (the number of "yes" and the number of "no" votes at such an election) shall not bind the governing body..., nor be taken or constructed as other than an expression of sentiment by the voters, to be followed or disregarded by the governing body in its discretion'. New Brunswick Boat Club, Inc. v. Highland Park, Bulletin 1229, Item 2.

"The evidence presented at the hearing is far from conclusive that the respondent Council erred when considering only the three applications which, in its opinion, were considered proper as were the proposed licensed premises relating thereto. It appears from the testimony herein that the respondent licensee's premises are quite some distance away

from the nearest liquor establishment. The number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Carriell et al. v. Newark et al., Bulletin 1043, Item 2. Furthermore, it might be well to mention in passing that appellant, in making application for a license of the type in question, must have believed that a need existed for a plenary retail distribution license in the town. The contention of appellant that there is no need or necessity for the issuance of a plenary retail distribution license in the municipality appears to be without merit.

"The Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Weiss v. Newark, Bulletin 1079, Item 7.

"I have considered other contentions presented by the appellant at the instant hearing and the argument of the attorney on behalf of the appellant as set forth in the memoranda filed herein, but find them insufficient to warrant a reversal of the action taken by respondent issuing authority. Under the circumstances of this case, I am satisfied that the members of the respondent Council did not abuse their discretionary power in granting a license to respondent Klingler. Moreover, there is no evidence presented herein that the members of the respondent Council in arriving at their determination were biased, discriminatory, arbitrary or capricious. I conclude that appellant has not sustained the burden of proof imposed upon him in establishing that respondent Council acted in an erroneous manner. Rule 6 of State Regulation No. 15. I recommend that the action of respondent Council in approving the application for the issuance of the license in question to respondent Klingler for premises Unit #104 of Clinton Stores, Inc., Route 22, be affirmed."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by appellant's attorneys, pursuant to Rule 14 of State Regulation No. 15.

After carefully considering the entire record herein, including the transcript of the testimony, the memoranda filed with the Hearer by the attorneys for the respective parties to this appeal prior to the Hearer's recommendation in the matter, the Hearer's Report and the exceptions and written argument submitted by the attorneys for the appellant in furtherance thereof, I concur in and adopt the conclusions set forth in the Hearer's Report as my conclusions herein. I shall affirm the action of the respondent Common Council.

Accordingly, it is, on this 16th day of September, 1958,

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

WILLIAM HOWE DAVIS  
Director.

2. DISCIPLINARY PROCEEDINGS - VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

THEODORE PAWLOWSKI )  
t/a TED PAWLOWSKI TAVERN )  
341 Johnston Avenue )  
Jersey City 4, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-448, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

-----)  
James F. McGovern, Jr., Esq., Attorney for Defendant-licensee.  
Dora P. Rothschild, appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on July 17, 1958 he sold during prohibited hours alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

The file herein discloses that on Thursday, July 17, 1958, at about 10:40 p.m., an ABC agent, investigating a specific complaint that sales were being made in violation of Regulation No. 38, entered defendant's licensed premises and took a seat at the bar. At about 10:50 p.m. the agent saw John Olszlewski, the bartender, make a sale of three cans of Ballantine beer for off-premises consumption to a male patron. The agent thereupon asked the bartender for a pint bottle of port wine "to take out". The bartender complied by handing the agent a pint bottle of California Vincove Port Wine for which the agent paid him 55¢. The agent placed the said bottle of wine in his trouser pocket, left the premises and returned within a few minutes with another agent. Both agents identified themselves to the bartender who admitted aforesaid illegal sale to the agents.

By way of mitigation of penalty, the attorney for the licensee submitted a statement setting forth therein that the bartender was recently employed and acted contrary to the stringent instructions previously given to him by the licensee. The licensee, however, cannot escape the consequences of the aforementioned act of his agent (Rule 33 of State Regulation No. 20). Cf. Re Czaplicki, Bulletin 1170, Item 6.

Defendant has a prior adjudicated record. Effective June 25, 1956 his license was suspended for thirty-five days for a Regulation No. 38 and local "hours" violation (Re Pawlowski, Bulletin 1123, Item 3). Moreover, while defendant was an officer and one of the principal stockholders of Pawlowski's Tavern, Inc., the holder of a license for premises 245 Monmouth Street, Jersey City, the license of that corporation was twice suspended, first effective March 15, 1955 for ten days for a Regulation No. 38 violation in which defendant personally participated (Re Pawlowski's Tavern, Inc., Bulletin 1055, Item 5) and again effective October 3, 1957 for forty days for a Regulation No. 38 and local "hours" violation (Re Pawlowski's Tavern, Inc., Bulletin 1194, Item 3).

The defendant has shown a flagrant disregard of the regulations in that, in effect, this is his fourth similar adjudicated violation within the brief period of four years. Such conduct will not be tolerated. Licensees so involved must suffer severe penalties. Under all the circumstances, I shall suspend the defendant's license for seventy-five days. Cf. Re Woodlawn Bar & Grill, Inc., Bulletin 1060, Item 2, wherein the license was suspended for sixty days (net fifty-five days) for a third "hours" violation within a five-year period. Five days will be remitted for the plea entered herein, leaving a net suspension of seventy days.

Accordingly, it is, on this 17th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-448, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Theodore Pawlowski, t/a Ted Pawlowski Tavern, for premises 341 Johnston Avenue, Jersey City, be and the same is hereby suspended for seventy (70) days, commencing at 2:00 a.m. September 29, 1958, and terminating at 2:00 a.m. December 8, 1958.

WILLIAM HOWE DAVIS  
Director.

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against  
 ROSE SHALLCROSS  
 t/a THE ANTLERS  
 W/s Delsea Drive North of Franklinville  
 Franklin Township  
 PO Franklinville, N. J.,  
 Holder of Plenary Retail Consumption License C-2 for the 1957-58 and 1958-59 licensing years, issued by the Township Committee of Franklin Township.

CONCLUSIONS  
AND ORDER

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 Frank J. Testa, Esq., Attorney for Defendant-licensee.  
 Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to a charge alleging that on April 15, 1958 she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to Arthur ---, age 17, Lloyd ---, age 17, Henry ---, age 20 and Leonard ---, age 20, and allowed, permitted and suffered the consumption of such beverages by said minors in and upon her licensed premises, in violation of Rule 1 of State Regulation No. 20.

"At the hearing herein the four minors testified that on April 15, 1958 at about 11:30 p.m. they arrived at the parking lot of the licensed premises in an automobile owned and operated by Arthur; that they entered the licensed premises in

pairs, Lloyd and Leonard used the side entrance and took seats at one corner of the bar and were followed shortly by Arthur and Henry who used the front entrance and took seats at the bar a few feet to the left of Lloyd and Leonard; that they remained on the premises until about 12 midnight during which time they were served several glasses of beer by Hiram Shallcross, the bartender, who at no time required any written proof of their ages; that at about five or ten minutes before they left the premises, two of them played darts and the other two played shuffleboard; that except for the bartender and two men who entered the premises about five or ten minutes before their departure, there was no one else on the premises during their aforesaid visit; that upon leaving the premises they re-entered their automobile and were on their way home when a police officer stopped their car on the highway at Clayton (about four or five miles from the licensed premises); that Arthur (the driver) was taken into custody by the police officer; that shortly thereafter the officer returned with Arthur and released him and that they then drove home.

"Lloyd testified that he is a laborer; that he consumed four glasses of beer; that he is a friend of Leonard; that the first time he ever visited a barroom was on the date alleged; that it was also the first time he ever drank any beer away from his home; that the licensed premises had a sign on the front of the building which read: 'Antler's Cafe' and that the premises contained a dart board and shuffleboard, and that there were no tables or chairs in the barroom.

"Leonard testified that he is a mechanic's helper; that he consumed four glasses of beer; that he is a friend of Lloyd; that April 15th aforesaid was the first time he and Lloyd visited a tap room.

"Arthur testified that April 15th aforesaid was his second visit to the licensed premises; that on his first visit (about a month prior thereto) Hiram Shallcross questioned him about his age and refused to serve him. On the night in question he consumed seven glasses of beer; that he had not drunk any beer elsewhere on said date; that the aforesaid police officer took him to police headquarters at Glassboro, gave him a drunkometer test and that the result of the same was negative.

"Henry testified that he is employed at a service station; that his only visit to the licensed premises was on the date alleged and that he consumed four glasses of beer.

"An ABC agent testified that he was assigned to investigate the charges herein; that on April 17th he went to the licensed premises with Arthur, Leonard and Henry, all of whom immediately upon entering the premises identified Hiram Shallcross as the bartender who served them with beer on April 15th aforesaid; that at this time Hiram Shallcross was sitting outside of the bar and the licensee was present; that Hiram Shallcross denied that he sold any alcoholic beverages to the minors and stated that he had never seen them before.

"Rose Shallcross, the licensee, testified that for the past four years she has operated the licensed premises; that on April 15th from about 10:00 p.m. to about 12:45 a.m. the next morning, she sat at one end of the bar at the licensed premises from which position she could see patrons entering and leaving the premises; that she did not see any of the minors involved herein anywhere on the premises; that during

such period she observed three female patrons and three male patrons at the bar; that the women were eating pizza pies and drinking beer; that she served the women with the pies; that the three women left about 12:30 a.m. and that she departed shortly thereafter; that she remembers the day in question and seeing the aforesaid patrons on the premises on that day because April 15th was Election Day.

"Hiram Shallcross, son of the licensee, testified that on April 15, 1958 he was tending bar from about 8:00 p.m. to about 2:15 a.m. the following morning; that he opened the premises and went on duty at about 8:00 p.m. because it was Primary Election Day; that none of the four minors were on the licensed premises on that day; that two of them (Arthur and Henry) looked familiar to him; that he believes he had previously refused to serve them; that at about 8:30 p.m. that evening James Hart, a patron, entered the premises and within an hour was joined by two male companions, all of whom remained on the premises until 2:15 a.m. the next morning; that between 9:30 p.m. and 9:45 p.m. that evening three female patrons, Betty Nichols, Constance Bratis and Eleanor Hummell, entered the premises together, took seats at the bar and remained there until about 12:30 a.m. the next morning. At about 1:00 a.m. that morning two male patrons (strangers) entered the premises and left about twenty minutes thereafter; that Hart had visited the licensed premises that week on Tuesday, Friday and Saturday and on prior occasions; that the three female patrons visited the premises 'every once in a while'; that they mostly patronize the package store (which connects with the barroom); that he remembers that the three women left the premises at 12:30 the following morning because at that hour he looked at the clock.

"James Hart testified that on April 15th at about 8:30 p.m. he entered the defendant's licensed premises and sat at the bar until about 2:15 a.m. the following morning with two male friends who followed him into the premises at about 9:00 p.m.; that at about 9:30 p.m. three women (one of whom he knew as Eleanor) came into the premises and took seats at the bar across from where he sat; that one of his male companions who knew all three of the aforesaid women had treated them to a drink; that the three women remained on the premises about two hours but he is not certain when they left; that he did not see any of the aforesaid minors anywhere on the premises; that he was able to see all patrons who occupied stools at the bar; that he has visited the licensed premises 'not too often'; that Hiram Shallcross was on duty as bartender and that Rose Shallcross was in and about the premises and left the same shortly after the three women departed.

"Mrs. Nichols testified that she, Mrs. Bratis and Mrs. Hummell entered defendant's licensed premises on April 15th aforesaid shortly before 10:00 p.m. and remained thereon until approximately 12:30 the following morning; that during their stay they each consumed between 15 and 18 glasses of beer served to them by Mr. Shallcross and that they each ate a small pie served by Mrs. Shallcross, the licensee; that Mr. Hart and his two companions sat at the bar directly across from them and at no time did she see any of the aforesaid minors on the premises and that for the past four or five months she and her aforesaid girl friends visited the licensed premises every second Tuesday of the month because 'that is my night out'. Mrs. Nichols further testified that on some of these occasions she and her friends would attend the cinema or visit the Boysville tavern; that she remembers being at the Antlers (defendant's

licensed premises) on the night of April 15th because it was Election Day; that she did not know that April 15th aforesaid was the third Tuesday of the month; that she did not know on what day of the month the second Tuesday in April fell; that it was not a fixed plan for her and her friends to go out every second Tuesday of the month; that on some occasions these plans were changed and April 8th (the second Tuesday in April) was one of them.

"Mrs. Bratis and Mrs. Hummell were called as witnesses by the defendant and corroborated Mrs. Nichols as to the date and time they were in defendant's licensed premises, who were present and what occurred during their visit and their arrangements for going out together every second Tuesday of the month; that they changed their plans to go out April 8th (the second Tuesday of the month) to Tuesday, April 15th, and that they did not see any of the minors on the premises. Mrs. Bratis further testified that Mrs. Nichols was unavailable on many occasions; that she was unable to recall any change of their original plans to go out on the second Tuesday of the month in the months of February and March 1958; that exclusive of April 8th aforesaid, she does not remember any other date prior to April 15th when their plans were changed; that it was not their custom to go to the licensed premises every second Tuesday of the month; that there were several occasions when they visited Henry's Tavern in Franklinville; that prior to April 15th they went to the Antlers on a Tuesday in the latter part of March; that she was positive of this fact because 'my sister came from Philadelphia and my mother -- They were with us that night'; that they had changed their usual meeting date on this occasion from the second Tuesday in March; that they went to Henry's Tavern about the middle of April and they went to Henry's Tavern in the latter part of March.

"Mrs. Hummell also testified that she fixed April 15th as the date she visited the licensed premises because it was Election Day and that in the afternoon of the same day she had observed that the licensed premises were closed and that the Fire House was being used as a voting poll. In addition, Mrs. Hummell stated that she was not with Mrs. Nichols and Mrs. Bratis in March; that prior to April 15th she was with them in the winter time during a snow storm towards the end of February and that she was not with them in Henry's Tavern in the latter part of March.

"The three female witnesses for the defendant testified that they have been making regular visits to one of three taverns (Antlers, Boysville and Henry's) for a period of four to five months; that they have had a standing appointment to go out together every second Tuesday of the month; that their dates have often been changed to meet the convenience of one of them (Mrs. Nichols) and that there were such changes of dates in April and March 1958. The bartender testified that James Hart visited the licensed premises on three occasions in the week of April 14th, to wit, Tuesday, Friday and Saturday, and that he had also visited the licensed premises on prior occasions. Mrs. Bratis stated in the middle of April they went to Henry's Tavern; that she did not recall any changes of dates for the month of March and then stated that she and her friends were at the Antlers (defendant's licensed premises) towards the end of March. She later corrected herself and stated that there was a change of dates in March and that they went to Henry's and not to the Antlers at the end of March.

"This case presents a clear conflict between the evidence given by the minors and the evidence given by the defendant and her witnesses. I have carefully examined all of the testimony in the case and am satisfied that the facts to which defendant's witnesses testified could easily have occurred at one of the other taverns aforementioned or at defendant's licensed premises on some date other than April 15, 1958.

"I am also satisfied that at the time of the hearing the activities of the minors on the alleged date of the violation were still fresh in their minds. Lloyd testified that on the date in question when he visited defendant's licensed premises he saw a sign on the building which read 'Antler's Cafe'; that it was his first venture into a barroom and that it was also the first time he ever drank beer away from his home. These facts, plus the fact that he was in the car with the other three minors when it was stopped as aforesaid by the police officer, no doubt were strongly imbedded in his mind. Lloyd's statements are corroborated by Leonard who said that April 15th was the first time he and Lloyd visited a tap room. I am unable to find any inconsistencies or defects in the testimony of the minors and cannot conceive of any reason why they would deliberately give false testimony. I find that notwithstanding the exhaustive cross-examination of the minors, their testimony remained unshaken and that they gave an accurate and truthful account of what transpired in the case. Under the circumstances, I conclude that the Division has sustained the burden of proof of defendant's guilt by a fair preponderance of the believable evidence and it is recommended that an order be entered finding the defendant guilty as charged.

"Defendant has a prior adjudicated record. Effective October 3, 1955 when defendant held a license for the same premises in partnership with Hiram B. Shallcross, such license was suspended by the Director of this Division for five days for a sale to a minor. Re Shallcross, Bulletin 1084, Item 4. In addition, the license of the defendant was suspended by the local issuing authority for fifteen days, effective April 22, 1957, for sale to minors. Since the violation herein is the third similar violation within five years and considering the tender age of two of the minors (17) and the number of minors involved, it is further recommended that an order be entered providing that defendant's license be suspended for a period of forty-five days."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by the attorney for the defendant, pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record, including the transcript of the testimony, the Hearer's Report and the exceptions and argument filed herein, I concur in the Hearer's findings and conclusions and adopt his recommendations.

Accordingly, it is, on this 17th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of Franklin Township to Rose Shallcross, t/a The Antlers, for premises on W/s Delsea Drive North of Franklinville, Franklin Township, be and the same is hereby suspended for forty-five (45) days, commencing at 3:00 a.m. September 29, 1958, and terminating at 3:00 a.m. November 13, 1958.

WILLIAM HOWE DAVIS  
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD OF LICENSEE NOT CONSIDERED BECAUSE OF COMPLETE CHANGE OF STOCKHOLDERS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

KELLER'S TAVERN AND GROVE, INC. )  
94 Camptown Road )  
Berkeley Heights, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2 (for the 1957-58 and 1958-59 licensing periods), issued by the Township Committee of Berkeley Heights. )  
----- )

Edward A. Costigan, 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 charge:

"On May 31 and June 1, 1958, 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., Paul ---, age 17, Herbert ---, age 17, David ---, age 18 and John ---, age 20, 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."

The file herein discloses that ABC agents, acting on information received from the Police Departments of Chatham Township and Borough of Chatham, obtained sworn, written statements from Paul --- (age 17), Herbert --- (age 17), David --- (age 18), Donald --- (age 19) and John --- (age 20). From these statements it appears that on Saturday, May 31, 1958, at about 4:00 p.m., John and Donald arrived in the immediate vicinity of defendant's licensed premises in an automobile driven by John; that John alone entered the premises and, without being required to make any written representation of his age, purchased thirty-six twelve-ounce bottles of Schaefer beer from one of two bartenders then on duty and paid for the same with money contributed by John and Donald; that John and Donald brought the beer to John's house where a party attended by aforesaid minors was held that evening; that Herbert and David left the party and, at about 11:45 p.m. the same evening, arrived at the defendant's licensed premises; that Herbert went to the bar where he ordered a ham sandwich from the bartender and consumed two glasses of beer given to him by a male patron standing at the bar; that David was engaged in a game of pool and, in the course of the same, drank a glass of beer brought to him by one of the other players; that at about 12:30 a.m. the following morning John, accompanied by Paul, returned to the licensed premises; that John went to the bar, ordered and was served two glasses of beer (one of which he brought to Paul who was standing near the pool table); that Paul had consumed about half of his glass of beer when the bartender had taken it from him because he appeared to be a minor; that John, Paul, Herbert and David left the premises that morning (June 1, 1958) at about 12:45 a.m. and that at no time was any of them required to make any written representation of his age.

The file further discloses that on June 6, 1958, all of the aforesaid minors identified the licensed premises as the

place where they purchased, consumed or were served aforementioned alcoholic beverages as hereinabove set forth. John pointed out Warren Oppel as the bartender who served him the beer on the morning of June 1, 1958, and was unable to make positive identification of the person who sold him the aforesaid thirty-six bottles of Schaefer beer on May 31, 1958, aforesaid.

By way of mitigation of penalty the attorney for the licensee has submitted a statement setting forth therein that the minor (John) had failed to identify the person who sold him the thirty-six bottles of Schaefer beer on May 31, 1958; that the sale of the beer to the minors Herbert and David had been made indirectly through an adult; that the bartender (Oppel) had taken away the glass of beer from one of the minors (Paul) because he was in doubt as to his age, and that the prior record for an offense committed while the license was being operated under the same corporate name should not be considered in fixing the penalty for the violation herein.

In response to these contentions I wish to point out that it has long been established that the failure of the minor to identify the specific person who made the sale of intoxicating beverages to him is not fatal in disciplinary proceedings against the licensee. Cf. Re Mondelli, Bulletin 1142, Item 8. It is also immaterial whether the service or delivery of the alcoholic beverages was effected by the bartender or indirectly by another; licensees are under the full responsibility of seeing to it that no minor is sold or served or allowed to consume any alcoholic beverages on the licensed premises. Cf. Re Fran-Bo-Car, Inc., Bulletin 1186, Item 3.

The defendant's record is clear except that on January 10, 1956, the corporation's license was suspended for a period of ten days for a similar violation. See Bulletin 1095, Item 11. It appears that the present stockholders were not involved in the previous violation since they took over the entire stock and operation of the corporation about a year after the above violation occurred. Re Sparrow Cigar Co., Inc., Bulletin 832, Item 3; Re Belmar Delicatessen Co., Inc., Bulletin 932, Item 6. Furthermore, the record is barren of any evidence or indication of improper design or motivation in connection with the present members' acquisition of the corporate stock. Under the circumstances I conclude that the penalty to be imposed herein should not be increased because of the prior record. Cf. Re Sparrow Cigar Co., Inc., supra.

The minimum penalty for a sale to a seventeen-year-old minor, where three minors are involved, is twenty-five days (Re Boscarell, Bulletin 1141, Item 11), to which five days will be added because of the quantity of beer sold (Re Daniels, Bulletin 1204, Item 9). I shall suspend the defendant's license for thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 17th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-2 (for the 1958-59 licensing period), issued by the Township Committee of Berkeley Heights to Keller's Tavern and Grove, Inc., for premises 94 Camptown Road, Berkeley Heights, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. September 29, 1958, and terminating at 2:00 a.m. October 24, 1958.

WILLIAM HOWE DAVIS  
Director.

5. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1958 THROUGH SEPTEMBER 30, 1958

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
<b>ARRESTS:</b>				
Total number of persons arrested	19	34	23	76
Licensees and employees	6	11	12	29
Bootleggers	13	23	11	47
<b>SEIZURES:</b>				
Motor vehicles - cars	-	2	3	5
Stills - over 50 gallons	1	1	2	4
- 50 gallons or under	-	1	1	2
Mash - gallons	1,250.00	625.00	150.00	2,025.00
Distilled alcoholic beverages - gallons	6.66	20.09	97.80	124.55
Wine - gallons	15.32	20.42	.25	35.99
Brewed malt alcoholic beverages - gallons	31.62	34.34	4.15	72.00
<b>RETAIL LICENSEES:</b>				
Premises inspected	700	666	587	1,953
Premises where alcoholic beverages were gauged	379	303	429	1,111
Bottles gauged	6,159	5,218	7,247	18,624
Premises where violations were found	79	95	51	225
Type of violations found	142	127	70	339
Unqualified employees	78	44	20	142
Application copy not available	23	25	13	61
Reg. #38 sign not posted	7	17	16	40
Prohibited signs	13	13	6	32
Other mercantile business	7	9	6	22
Disposal permit necessary	4	6	1	11
Improper beer taps	1	-	1	2
Other violations	9	13	7	29
<b>STATE LICENSEES:</b>				
Premises inspected	11	31	23	65
License applications investigated	5	12	10	27
<b>COMPLAINTS:</b>				
Complaints assigned for investigation	525	413	437	1,375
Investigations completed	413	421	458	1,292
Investigations pending	(210)	(202)	170	170
<b>LABORATORY:</b>				
Analyses made	145	181	178	513
Refills from licensed premises - bottled	1	3	1	5
Bottles from unlicensed premises	25	61	36	122
<b>IDENTIFICATION:</b>				
Criminal fingerprint identifications made	17	26	8	51
Persons fingerprinted for non-criminal purposes	300	254	199	753
Identification contacts made w/other enforcement agencies	263	156	157	576
Motor vehicle identifications via N.J.State Police teletype	2	1	2	5
<b>DISCIPLINARY PROCEEDINGS:</b>				
Cases transmitted to municipalities	14	12	14	40
Violations involved	15	12	15	42
Sale during prohibited hours	10	8	11	29
Sale to minors	3	1	1	5
Sale to non-members by club	1	1	2	4
Employee w/o identification card (local reg.)	1	-	-	1
Service to women at a bar (local reg.)	-	1	-	1
Permitting brawl on premises	-	1	-	1
Sale to intoxicated persons	-	-	1	1
Cases instituted at Division	20	23	26	69
Violations involved	28	31	46	105
Sale to minors	10	11	5	26
Sale during prohibited hours	3	7	5	15
Permitting immoral activity on premises	2	1	5	8
Sale below minimum resale price	2	2	2	6
Conducting business as a nuisance	1	-	5	6
Possessing liquor not truly labeled	2	1	1	4
Permitting foul language on premises	1	-	3	4
Sale to intoxicated persons	-	1	3	4
Permitting bookmaking on premises	1	1	1	3
Possessing indecent matter	1	-	2	3
Hindering investigation	1	2	-	3
Permitting lottery activity (numbers)	-	3	-	3
Sale outside scope of license	-	-	3	3
Delivery without bona fide invoice	1	-	1	2
Permitting hostesses on premises	1	-	1	2
Fraud and front	-	-	2	2
Failure to have copy of license application on premises	-	-	2	2
Unauthorized transportation	1	-	-	1
Service to women at a bar (local reg.)	1	-	-	1
Sale during license suspension	-	1	-	1
Possessing contraceptives on premises	-	1	-	1
Retailer employing solicitor	-	-	1	1
Unqualified employee	-	-	1	1
Peddling from vehicle	-	-	1	1
Permitting prostitute on premises	-	-	1	1
Failure to close premises during prohibited hours	-	-	1	1

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
<b>DISCIPLINARY PROCEEDINGS (Continued):</b>				
Cases brought by municipalities on own initiative and reported to Division	11	13	24	48
Violations involved	15	14	30	59
Sale to minors	5	6	14	25
Permitting brawl on premises	2	5	5	12
Sale during prohibited hours	3	1	3	7
Conducting business as a nuisance	3	-	2	5
Permitting immoral activity on premises	1	-	1	2
Purchase from improper source	-	-	2	2
Permitting prostitutes on premises	1	-	-	1
Permitting hostesses on premises	-	1	-	1
Permitting bookmaking on premises	-	1	-	1
Service to women at a bar (local reg.)	-	-	1	1
Sale to intoxicated persons	-	-	1	1
Possessing liquor not truly labeled	-	-	1	1
<b>HEARINGS HELD AT DIVISION:</b>				
Total number of hearings held	39	29	46	114
Appeals	5	5	6	16
Disciplinary proceedings	26	17	25	68
Eligibility	4	3	7	14
Seizures	3	1	2	6
Tax revocations	-	3	4	7
Applications for license	1	-	2	3
<b>STATE LICENSES AND PERMITS ISSUED:</b>				
Total number issued	2,004	1,217	1,247	4,468
Licenses	589	6	4	599
Employment permits	332	247	191	770
Solicitors "	55	65	42	162
Disposal "	94	107	76	277
Social affair "	384	434	418	1,236
Miscellaneous "	269	105	243	617
Transit insignia	259	223	244	726
Transit certificates	22	30	29	81

WILLIAM HOWE DAVIS  
DIRECTOR

Dated: October 9, 1958

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 JOHN GAVLAK )  
 t/a MAIN STOP )  
 35 Main Avenue )  
 Wallington, N. J., )  
 Holder of Plenary Retail Consumption License C-14 (for the 1957-58 and 1958-59 licensing years), issued by the Borough Council of the Borough of Wallington. )

CONCLUSIONS AND ORDER

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 Leo J. Berg, Esq., Attorney for Defendant-licensee.  
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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 their contents, in violation of Rule 27 of State Regulation No. 20.

The file herein discloses that on May 15, 1958, an ABC agent, while testing and gauging the licensee's open bottles of alcoholic beverages, seized a number of such bottles because they appeared to have been refilled, and submitted the same to the Division's chemist for analysis. The chemist's report shows that, when compared with the samples of the genuine product of the labeled brands, the contents of two of these bottles (labeled "Calvert Reserve American Blended Whiskey 86 Proof" and "Seagram's Seven Crown American Blended Whiskey 86 Proof") varied substantially in solids and acids.

By way of mitigation of penalty the attorney for the defendant has submitted a statement setting forth therein that the licensee had no knowledge of the offense charged herein. I have carefully examined the file in the case, together with the report of the agent, and do not find any extenuating circumstances in the case which would impel me to impose less than the established penalties in cases of this kind.

Defendant has a prior adjudicated record. Defendant's license was suspended for sixty days effective June 25, 1946, for a violation similar to the one charged herein (Re Gavlak, Bulletin 716, Item 7); effective June 27, 1951, defendant's license was suspended for fifty days on charges of permitting gambling on premises and possession of lewd matter (Re Gavlak, Bulletin 910, Item 7); effective May 12, 1952, defendant's license was suspended for fifty days for a violation similar to the present one (Re Gavlak, Bulletin 936, Item 3). The minimum suspension in cases of this kind, where two bottles are involved, is fifteen days. Re Kiken, Bulletin 1187, Item 11. Under all the circumstances and considering the defendant's past record, I shall suspend defendant's license for twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 9th day of September, 1958,

ORDERED that Plenary Retail Consumption License C-14, 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 twenty (20) days, commencing at 3:00 a.m. September 16, 1958, and terminating at 3:00 a.m. October 6, 1958.

WILLIAM HOWE DAVIS  
Director.

7. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON RESUMPTION OF BUSINESS.

In the Matter of Disciplinary Proceedings against T-BAR & GRILL, INC. t/a T-BAR 257 Market Street Newark, N. J., Holder of Plenary Retail Consumption License C-328 (for the 1957-58 licensing year), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. ORDER

Herman Blank, Esq., Attorney for Defendant-licensee. Stanley Blasi, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

By order dated June 17, 1958, I suspended defendant's license for sixty-five days. Because defendant was not conducting business at that time, the order provided that the effective dates for said suspension would be fixed by a subsequent order after the premises shall have reopened for business. Bulletin 1237, Item 1.

It appears that the license for the 1958-59 licensing year was renewed in the name of Theodore S. Meth, Receiver in Bankruptcy of defendant, and that on September 9, 1958, the Municipal Board granted a transfer from said Receiver to T-Bar Associates, a corporation. A recent investigation of the premises discloses that they are in a satisfactory condition to permit the transferee to reopen for business as soon as the transfer is endorsed on the face of the license certificate.

Accordingly, it is, on this 15th day of September, 1958,

ORDERED that the sixty-five-day suspension heretofore imposed on License C-328 shall commence at 2:00 a.m. September 22, 1958, and terminate at 2:00 a.m. November 26, 1958.

WILLIAM HOWE DAVIS  
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

Abbey Wines, Inc., t/a New Jersey Wines, Garden Wines, Valley Stream Wines & California Products Storeroom #1, Meadow Yards, P.R.R., Newark Turnpike, Kearny, N.J. Application filed October 16, 1958 for Plenary Winery License.

New Jersey State Library

*William Howe Davis*  
William Howe Davis  
Director.