

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Mantua Township) - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
2. DISCIPLINARY PROCEEDINGS (Camden) - CHARGES AS TO ALLEGED POSSESSION OF SLC7 MACHINES AND FAILURE TO REVEAL ENTIRE PREVIOUS RECORD DISMISSED ON GROUND THAT DIVISION HAD FAILED TO SUSTAIN BURDEN OF PROOF.
3. DISQUALIFICATION - PETITIONER CONVICTED OF MANSLAUGHTER AFTER ADMITTEDLY FEIGNING INSANITY - APPLICATION DENIED ON GROUND THAT HIS ASSOCIATION WITH THE INDUSTRY WOULD BE CONTRARY TO PUBLIC INTEREST.
4. DISCIPLINARY PROCEEDINGS (Plainfield) - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES AND PERMITTING PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
5. DISCIPLINARY PROCEEDINGS (Plainfield) - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES AND PERMITTING PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Plainfield) - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES AND PERMITTING PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Plainfield) - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Plainfield) - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
9. DISCIPLINARY PROCEEDINGS (Sayreville) - COMBINATION SALE IN VIOLATION OF RULE 19 OF STATE REGULATIONS NO. 20 - GIFT OR DISCOUNT GRANTED IN VIOLATION OF RULE 20 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
10. DISCIPLINARY PROCEEDINGS (New Brunswick) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
11. APPELLATE DECISIONS - HIGHLAND TAVERN OWNERS ASSOCIATION ET. AL., v. HIGHLANDS AND COHEN.
12. DISCIPLINARY PROCEEDINGS (Jersey City) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
13. DISCIPLINARY PROCEEDINGS (Elizabeth) - PURCHASE OF ALCOHOLIC BEVERAGES BY A RETAILER FROM ANOTHER RETAILER FOR RESALE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
14. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.
15. STATE LICENSES - NEW APPLICATIONS FILED.

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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 868

February 21, 1950

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HOLLY INN, INC.)
Pitman-Jefferson Rd. & Lambs Rd.)
Mantua Township)
P.O. R.F.D #2, Sewell, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Mantua.)

-----)
Holly Inn, Inc., by Joseph D. Noel, President.

William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold alcoholic beverages at retail for a price below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On December 13, 1949, an officer of the licensee-corporation sold to an agent of the State Division of Alcoholic Beverage Control one case containing thirty-six 7-ounce bottles of Blatz beer, an alcoholic beverage, for the price or sum of \$3.90. The minimum consumer price for the beverage mentioned above, as listed in the then current "List of Minimum Resale Prices", effective October 1, 1949, was \$4.

Defendant urges that said violation was purely a mistake. However, a licensee is responsible for violations of the Fair Trade regulations even though the violation is due to a mistake. Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408.

Defendant has no prior adjudicated record. I shall suspend the license for ten days. Remitting five days for the plea will leave a net suspension of five days. Re Alevras, Bulletin 858, Item 7.

Accordingly, it is, on this 3rd day of February, 1950,

ORDERED that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Mantua to Holly Inn, Inc., for premises Pitman-Jefferson Rd. & Lambs Rd., Mantua Township, be and the same is hereby suspended for a period of five (5) days, commencing at 6 a.m., February 13, 1950, and terminating at 6 a.m., February 18, 1950.

ERWIN B. HOCK
Director.

2. DISCIPLINARY PROCEEDINGS - CHARGES AS TO ALLEGED POSSESSION OF SLOT MACHINES AND FAILURE TO REVEAL ENTIRE PREVIOUS RECORD DISMISSED ON GROUND THAT DIVISION HAD FAILED TO SUSTAIN BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against

CAMDEN LODGE NO. 111
Loyal Order of Moose
313-315 Cooper Street, P.O. Box 190
Camden, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Club License CB-31, for the 1948-49 licensing year and CB-10 for the 1949-50 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Frank M. Lario, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to charges alleging that it (1) possessed slot machines on its licensed premises, in violation of Rule 8 of State Regulations No. 20, and (2) failed to reveal its complete prior record of suspensions in its license application in violation of R.S. 33:1-25.

The proceedings were vigorously contested, consumed two days of hearings, and produced a record of some 260 pages of testimony. Nothing is to be gained by detailing the voluminous evidence herein. Suffice it to say that a careful study of the entire record fails to convince me that the defendant's guilt is proved by a preponderance of the evidence. Under the circumstances, I have no alternative other than to dismiss both charges.

The charges, in each instance, were predicated upon statements made in answer to certain questions in the defendant's license application. One of the statements was a description of the licensed premises; the other concerned previous suspensions suffered by the defendant. While the form and content of those statements amply justified the institution of these proceedings, I am satisfied, from a painstaking scrutiny of the evidence and the unusual circumstances disclosed thereby, that the defendant is entitled to the benefit of the doubt concerning its guilt under either of the two charges herein.

The dismissal of this case should not raise any assumption on the part of the defendant that the manner in which the two questions were answered is condoned. The defendant is now fully aware of the Division's position on the issues involved and it should immediately proceed, if it has not already done so, to amend its current application to give complete, accurate and unambiguous answers to the information sought to be solicited therein, and to follow this cautionary advice in all future applications. Doubts, if any, may well be resolved against the defendant in the event that disciplinary proceedings are instituted on the basis of statements hereafter made by it in an application.

Accordingly, it is, on this 6th day of February, 1950,

ORDERED that the charges herein be and the same are hereby dismissed.

ERWIN B. HOCK
Director.

3. DISQUALIFICATION-- PETITIONER CONVICTED OF MANSLAUGHTER AFTER ADMITTEDLY FEIGNING INSANITY-- APPLICATION DENIED ON GROUND THAT HIS ASSOCIATION WITH THE INDUSTRY WOULD BE CONTRARY TO PUBLIC INTEREST.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R.S. 33:1-31.2.

Case No. 814.

CONCLUSIONS

BY THE DIRECTOR:

It appears from the testimony of petitioner that he was taken into custody, on or about June 15, 1935, by police authorities after he had disclosed at the offices of a large newspaper publishing company that he had killed his wife. Petitioner was charged with murder, 1st degree. On December 3, 1935 petitioner, upon advice of medical examiners, was transferred from a city prison to a state hospital. He remained there until some time in June 1944. At that time petitioner was returned to the prison in the city where he had committed the crime and the original complaint of murder, 1st degree, was changed to the lesser offense of manslaughter, 1st degree. Petitioner pleaded guilty to the charge of manslaughter, 1st degree, and on October 18, 1944 was sentenced to a term of from five to ten years in a state prison. The execution of the sentence was stayed, however, and petitioner was released on probation for a period of five years.

The crime of manslaughter to which petitioner pleaded guilty is a crime which involves the element of moral turpitude. Cf. Re Case No. 289, Bulletin 585, Item 11.

The petitioner testified that during an altercation with his estranged wife he stabbed her with a knife. The wife died as a result of the wound inflicted by him. Petitioner testified that he deceived the medical experts by feigning insanity, for which he was sent as a patient to a state mental hospital, instead of standing trial on the murder charge.

Three witnesses testified that they have known him sixteen or more years and that he now bears a good reputation in the community in which he resides.

Despite the fact that petitioner has apparently been law-abiding especially during the past five years, according to the testimony of the character witnesses, I will not grant relief to petitioner. The entry of an order removing statutory disqualification is discretionary. R.S. 33:1-31.2. The seriousness of the crime committed by the petitioner and his admitted actions which led to his removal to a state hospital convince me that his association with the alcoholic beverage industry in any capacity whatsoever would be contrary to the public interest.

The petition is denied.

ERWIN B. HOCK
Director.

Dated: February 7, 1950.

4. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES AND PERMITTING PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

PLAINFIELD LODGE, B.P.O. ELKS #885
116 Watchung Avenue
Plainfield, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Club License CB-216, issued
by the Director of the Division of
Alcoholic Beverage Control.

Carroll W. Hopkins, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that, on Sunday, January 8, 1950, at about 12:45 p.m., it sold, served and delivered, and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, in violation of Section 6 of the local ordinance, and that it permitted its premises to remain open for the sale of alcoholic beverages, in violation of Section 7 of the local ordinance. Both charges involve the same offense.

Section 6 of the local ordinance prohibits the sale, service and delivery of alcoholic beverages between the hours of 2 a.m. on Sunday and 8 a.m. the following Monday. Section 7 of the local ordinance, as amended, provides that club premises may remain open during hours when sales of alcoholic beverages are prohibited only for purposes other than the sale, service, delivery or consumption of alcoholic beverages.

On the day in question, at about 12:45 p.m., ABC agents entered defendant's premises and, in the barroom thereof, observed 13 men, 5 of whom were seated at the bar with glasses of alcoholic beverages in front of them.

The licensee has no previous adjudicated record. In view of all the circumstances, I shall suspend the license for a period of fifteen days, less five days for the plea, making a net suspension of ten days. Cf. Re Dabrowski, Bulletin 687, Item 8.

Accordingly, it is, on this 10th day of February, 1950,

ORDERED that Club License CB-216, issued by the Director of the Division of Alcoholic Beverage Control to Plainfield Lodge, B.P.O. Elks #885, 116 Watchung Avenue, Plainfield, be and the same is hereby suspended for a period of ten (10) days, commencing at 1 a.m., February 20, 1950, and terminating at 1 a.m., March 2, 1950.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES AND PERMITTING PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PLAINFIELD ITALIAN MUTUAL SICK & BENEFIT ASSOCIATION MARIA S.S. ASSUNTA 255 Johnston Avenue Plainfield, New Jersey, CONCLUSIONS AND ORDER

Holder of Club License CB-214, issued by the Director of the Division of Alcoholic Beverage Control.

Albert Fioravanti, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleads non vult to charges alleging that, on Sunday, January 8, 1950, at about 12:15 p.m., it sold, served and delivered, and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, in violation of Section 6 of the local ordinance, and that it permitted its premises to remain open for the sale of alcoholic beverages, in violation of Section 7 of the local ordinance. Both charges involve the same offense.

Section 6 of the local ordinance prohibits the sale, service and delivery of alcoholic beverages between the hours of 2 a.m. on Sunday and 8 a.m. the following Monday. Section 7 of the local ordinance, as amended, provides that club premises may remain open during hours when sales of alcoholic beverages are prohibited only for purposes other than the sale, service, delivery or consumption of alcoholic beverages.

On the day in question, at about 12:15 p.m., ABC agents, upon entering defendant's licensed premises, observed 6 men sitting at the bar with alcoholic beverages in front of them.

The licensee has no previous adjudicated record. In view of all the circumstances, I shall suspend the license for a period of fifteen days, less five days for the plea, making a net suspension of ten days. Cf. Re Dabrowski, Bulletin 687, Item 8.

Accordingly, it is, on this 10th day of February, 1950,

ORDERED that Club License CB-214, issued by the Director of the Division of Alcoholic Beverage Control to Plainfield Italian Mutual Sick & Benefit Association Maria S.S. Assunta, for premises 255 Johnston Avenue, Plainfield, be and the same is hereby suspended for a period of ten (10) days, commencing at 1 a.m., February 20, 1950, and terminating at 1 a.m., March 2, 1950.

ERWIN B. HOCK Director.

6. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES AND PERMITTING PREMISES TO REMAIN OPEN DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MADDALONESI SOCIETY OF MUTUAL AID OF PLAINFIELD, N.J.)
820 East 3rd Street)
Plainfield, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Club License CB-6 issued by the Common Council of the City of Plainfield.)

-----)
Albert Fioravanti, Esq., Attorney for Defendant-licensee.)
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.)

BY THE DIRECTOR:

Defendant pleads non vult to charges alleging that, on Sunday, January 8, 1950, at about 11:50 a.m., it sold, served and delivered, and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, in violation of Section 6 of the local ordinance, and that it permitted its premises to remain open for the sale of alcoholic beverages, in violation of Section 7 of the local ordinance. Both charges involve the same offense.

Section 6 of the local ordinance prohibits the sale, service and delivery of alcoholic beverages between the hours of 2 a.m. on Sunday and 8 a.m. the following Monday. Section 7 of the local ordinance, as amended, provides that club premises may remain open during hours when sales of alcoholic beverages are prohibited only for purposes other than the sale, service, delivery or consumption of alcoholic beverages.

On the morning in question, at about 11:50 a.m., ABC agents, upon entering the club room, observed 7 men, each of whom had alcoholic beverages in front of him, sitting at the bar in defendant's premises.

The licensee has no previous adjudicated record. In view of all the circumstances, I shall suspend the license for a period of fifteen days, less five days for the plea, making a net suspension of ten days. Cf. Re Dabrowski, Bulletin 687, Item 8.

Accordingly, it is, on this 10th day of February 1950,

ORDERED that Club License CB-6, issued by the Common Council of the City of Plainfield to Maddalonesi Society of Mutual Aid of Plainfield, N.J., for premises 820 East 3rd Street, Plainfield, be and the same is hereby suspended for a period of ten (10) days, commencing at 1 a.m., February 20, 1950, and terminating at 1 a.m., March 2, 1950.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MOHAWK LODGE NO. 307, INC., I.B.P.O. ELKS OF THE WORLD 129 Plainfield Avenue Plainfield, New Jersey,

CONCLUSIONS AND ORDER

Holder of Club License CB-5, issued by the Common Council of the City of Plainfield.

J. Leroy Jordan, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to a charge alleging that, on January 7, 1950, it sold alcoholic beverages to persons other than bona fide members or bona fide guests of members of said club-defendant, in violation of Rule 8 of State Regulations No. 7.

Reports by two agents of the State Division of Alcoholic Beverage Control disclose that, on January 7, 1950, at about 10 p.m., one of said agents entered the club premises without objection, after ringing a bell at the entrance. Entering the barroom, he approached the "doorman" with the remark, "I know that this is a club, but can I get a drink," to which the "doorman" replied, "Sure, why not." The agent was then served a glass of beer. At 10:25 p.m. another agent rang the bell. He was admitted by the "doorman" without question and at the request of the first agent was also served a glass of beer. Neither agent was a member or guest of a member of the club.

Defendant, though entering a confessional plea, asks a consideration of its charge that the club was "entrapped" in committing the violation. However, not the slightest evidence to support such contention appears in the record.

Defendant has no prior adjudicated record. No aggravating circumstances appearing, I shall impose the minimum suspension for violations of this character, fifteen days. Remitting five days for the plea will leave a net suspension of ten days. Re East Camden Post #705 VFW, Inc., Bulletin 766, Item 11.

Accordingly, it is, on this 10th day of February, 1950,

ORDERED that Club License CB-5, issued by the Common Council of the City of Plainfield to Mohawk Lodge No. 307, Inc., I.B.P.O. Elks of the World, for premises 129 Plainfield Avenue, Plainfield, be and the same is hereby suspended for a period of ten (10) days, commencing at 1 a.m., February 20, 1950, and terminating at 1 a.m., March 2, 1950.

ERWIN B. HOCK Director.

8. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

LOGGIA ARNALDO DA BRESCIA NO. 377
SONS OF ITALY OF PLAINFIELD, N.J.
216 Richmond Street
Plainfield, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Club License CB-7, issued by the Common Council of the City of Plainfield.

Albert Fioravanti, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on Saturday, January 7, 1950, it sold alcoholic beverages to persons other than club members and their bona fide guests, in violation of Rule 8 of State Regulations No. 7.

Report of two agents of the State Division of Alcoholic Beverage Control discloses that on Saturday, January 7, 1950, between 9:00 p.m. and 9:50 p.m., they entered the defendant's licensed premises and that the bartender sold a bottle of beer to each agent, without any inquiry as to their membership. Club licenses permit the sale of alcoholic beverages only to member and bona fide guests of members of the club. The agents were neither members nor guests of a member of defendant.

Defendant's only prior adjudicated record resulted in a suspension of its license for ten days, effective March 31, 1941, for violations including sale to non-members and other charges. See Bulletin 451, Item 10. This is, therefore, a second violation of a similar character so far as sale to non-members is concerned. Under all of the circumstances, I suspend defendant's license for twenty days, less five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 10th day of February, 1950,

ORDERED that Club License CB-7, issued by the Common Council of the City of Plainfield to Loggia Arnaldo Da Brescia No. 377, Sons of Italy of Plainfield, N.J., 216 Richmond Street, Plainfield, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 1:00 a.m., February 20, 1950, and terminating at 1:00 a.m., March 7, 1950.

ERWIN B. HOCK
Director.

9. DISCIPLINARY PROCEEDINGS - COMBINATION SALE IN VIOLATION OF RULE 19 OF STATE REGULATIONS NO. 20 - GIFT OR DISCOUNT GRANTED IN VIOLATION OF RULE 20 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings Against

LOUIS GOLDEN
T/A GOLDEN'S COLONY LIQUOR STORE
93 Main Street
Sayreville, New Jersey,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Borough Council of the Borough of Sayreville.

Daniel L. Golden, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On January 19, 1950, you sold two bottles of alcoholic beverages for consumption off the licensed premises not at a specified price per bottle thereof, in that you sold in combination one pint bottle of Gordon Gin, one quart bottle of Evening Star Port Wine and a package of cigarettes at a single aggregate price; in violation of Rule 19 of State Regulations No. 20.
- "2. On the occasion aforesaid, in connection with the aforesaid sale of alcoholic beverages for consumption off your licensed premises, you offered and furnished a gift or a discount in price; in violation of Rule 20 of State Regulations No. 20."

On January 19, 1950, an ABC agent observed the licensee as he made a sale to a customer of the gin, wine and cigarettes for the aggregate price of \$3.00, although the correct price of the three items amounted to \$3.07.

Defendant has no prior record. I shall suspend his license for a period of ten days, less five for the plea, making a net suspension of five days.

Accordingly, it is, on this 14th day of February, 1950,

ORDERED that plenary retail distribution license D-1, issued by the Borough Council of the Borough of Sayreville to Louis Golden, t/a Golden's Colony Liquor Store, for premises 93 Main Street, Sayreville, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. February 15, 1950, and terminating at 2 a.m. February 20, 1950.

ERWIN B. HOCK
Director.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

NEW BRUNSWICK LODGE OF ELKS, NO. 324, 40 Livingston Avenue New Brunswick, New Jersey,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-187, issued by the Director of the Division of Alcoholic Beverage Control.

Sigmund Scharf, member of Board of Governors authorized to enter plea.

William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in a bottle bearing a label which did not truly describe its contents, in violation of Rule 28 of State Regulations No. 20.

On January 24, 1950, an inspector employed by the Division of Alcoholic Beverage Control examined thirty-three opened bottles of alcoholic beverages on defendant's premises and seized one 4/5 quart bottle of Hiram Walker's Imperial Blended Whiskey when his field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Division's chemist disclosed that the contents of the seized bottle varied substantially in proof and solids from the contents of a genuine bottle of the same product.

The steward in charge of defendant's licensed premises at the time denied tampering with the contents of the seized bottle and suggested that one of the extra bartenders or waiters hired for an affair held at the club on January 20 may have caused the violation. Nevertheless, the licensee is strictly responsible for the condition of its stock of liquor.

Defendant has no prior adjudicated record. I shall, therefore, suspend defendant's license for the minimum period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. See Bulletin 866, Item 7.

Accordingly, it is, on this 14th day of February, 1950,

ORDERED that plenary retail consumption license C-187, issued by the Director of the Division of Alcoholic Beverage Control to New Brunswick Lodge of Elks, No. 324, for premises 40 Livingston Avenue, New Brunswick, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. February 20, 1950, and terminating at 2 a.m. March 2, 1950.

ERWIN B. HOCK Director.

11. APPELLATE DECISIONS - HIGHLAND TAVERN OWNERS ASSOCIATION ET. AL.,

v. HIGHLANDS AND COHEN
 HIGHLANDS TAVERN OWNERS ASSOCIATION,)
 CHARLES A. MILLER & EDWARD S. RYZNAR,)
 T/A CHARLIE & EDDIE'S TAVERN,)
 EMIEL AUFIERI, T/A EMIEL'S BAR,)
 ANTHONY & ALPHONSE RUSSO, T/A "THE)
 TOPS INN", EDWARD ROBERT BRUSH, T/A)
 VICTORY HOUSE, RICHARD A. LUCAS,)
 ADMINISTRATOR, ESTATE OF FRED MOHR,)
 T/A FRED MOHR'S, AND ANTHONY J. ROMAN,)
 T/A TONY'S SHORE HOTEL,)

ON APPEAL

Appellants,)

-vs-

CONCLUSIONS AND ORDERS

BOROUGH COUNCIL OF THE BOROUGH OF)
 HIGHLANDS AND JACOB D. COHEN,)

Respondents.)

Sidney Simandl, Esq., Attorney for Appellants.
 Benjamin Gruber, Esq., Attorney for Respondent Borough Council of
 the Borough of Highlands.
 Walter Fox, Esq., Attorney for Respondent Jacob D. Cohen.

BY THE DIRECTOR:

This is an appeal from respondent Council's action granting respondent Cohen's application for a plenary retail distribution license for premises at 242 Bay Avenue, Highlands.

The petition of appeal alleges that the action was erroneous for the reason, among others:

"That Councilman William McGowan took part in the proceedings in which the application for adjournment was requested, on two occasions, although he was disqualified because of his interest in the proceedings in that he was an employee of the applicant, Jacob D. Cohen, at his grocery store."

Testimony herein discloses that respondent Cohen's application for license was presented to the Council at a regular meeting held on September 27, 1949. At that meeting written objections to issuance of the license were presented and the Council members, including Councilman McGowan, voted to schedule a hearing upon the objections on September 29th.

At the September 29th hearing the objectors appeared with their counsel who requested one week's adjournment of the hearing "for the purpose of giving the objectors a real opportunity to present their objections" The minutes of this hearing (in evidence herein) show that, immediately after counsel's request for adjournment, the following action was taken:

"Motion was offered by Mr. Loder, seconded by Mr. Rast, that the Council go into caucus, 9:05 P.M.

AYES: Messrs. Hartsgrove, Rast, Loder, Newton, McGowan and Lynch
 NAYS: None

The Council retired for a caucus session.

Council returned to the Table 9:24 P.M.

Motion was offered by Mr. Rast, seconded by Mr. Loder, that the meeting be continued.

AYES: Messrs. Hartsgrove, Rast, Loder, Newton, McGowan and Lynch

Motion was offered by Mr. Loder, seconded by Mr. Rast, that an extension of one week be granted the Tavern Owners' Association.

AYES: Messrs. Loder and Rast.

NAYS: Messrs. Hartsgrove, Newton, McGowan and Lynch.

Mayor Dempsey announced that the motion was lost and the hearing will continue."

Then the objectors' (appellants') attorney raised the question of disqualifying interest on the part of one of the Councilmen whereupon Councilman McGowan stated that if the reference was to him "he has no interest whatsoever." Councilman McGowan then stated, in effect, that his status as an employee of the applicant did not call for his withdrawing from the proceedings but, he stated, if it would make appellants' attorney happy he would withdraw, and "at this point Mr. McGowan withdrew from the table."

The hearing continued, and after interested persons had been heard a motion to grant the license was carried by the following vote:

AYES: Messrs. Hartsgrove, Newton and Lynch.

NAYS: Messrs. Rast and Loder.

The record shows that on September 29, 1949, Councilman McGowan was, and had been for a number of years, an employee of respondent Cohen.

It is a well established rule that no man may be a judge in his own cause. (See Stevens (Kuberski) v. Haussermann, 113 N.J.L. 162, Sup. Ct., 1934.) It should be equally clear that with respect to participation in alcoholic beverage matters coming before a municipal issuing authority the employment of a member of that issuing authority by a licensee or an applicant for license constitutes a disqualifying interest on the part of such member. As the late Commissioner Burnett stated in Marsteller v. Hagenbucher and Somers Point, Bulletin 95, Item 10:

"A member of an official body who has a personal pecuniary interest in the action of that body may not participate in that action. Re Loog, Bulletin #39, Item #3. This fundamental rule has been consistently applied. Re Bischoff, Bulletin #53, Item #5; Re Grichtel, Bulletin #80, Item #7; Re Brundage, Bulletin #84, Item #17; Re Siracusa, Bulletin #89, Item #9."

As was said in Re Brundage, supra:

"... The employee... cannot serve the public and a conflicting private interest at the same time. He must renounce one or the other."

As stated in the opinion delivered by Mr. Justice Heher in Stevens (Kuberski) v. Haussermann, supra:

"Generally, public policy forbids the participation of a member of a municipal governing body in any matter before it which directly or immediately affects him individually ... And it is likewise a firmly established rule that it is immaterial that the result reached is not produced by the vote of the disqualified member ... It is supported by a two-fold reason, viz., first the participation of the disqualified member in the discussion may have influenced the opinion of the other members; and secondly, such participation may cast suspicion on the impartiality of the decision... It being impossible to determine whether the virus of self-interest affected the result, it must needs be assumed that it dominated the body's deliberations, and that the judgment was its product."

Had Councilman McGowan voted to grant the application the inflection would have been deemed to spread so that the action of the Council would have been invalid, even though that action would not have been produced by his vote. (See State et al. v. Crane, 36 N.J.L. 394 (Sup. Ct. 1873).)

As pointed out, Councilman McGowan withdrew from the table before the votes on the application were cast, but his disqualification in the matter extends beyond an abstention from voting on the application. The Councilman did participate in the proceedings and, specifically, voted in the two indicated instances with respect to the question of postponement or adjournment of hearing. And plainly, under the circumstances, the decision against adjournment was not a mere formal act which could reasonably be presumed to have had no bearing upon the end result.

Councilman McGowan was disqualified from participating in any proceedings arising before the Council and pertaining to alcoholic beverage administration. (See Re Siracusa, supra.) His participation in the meeting tainted the whole proceeding and action with illegality. (Cf. Re Gnichtel, supra.) In Re Mohr, Bulletin 557, Item 1, the specific question was whether a license-holding member of a municipal issuing authority could, if he abstained from voting, participate at the authority's meetings in discussions regarding alcoholic beverage matters. While Councilman McGowan was not a licensee but an employee of an applicant, the principle in the two situations is, and must be, the same. And, as former Commissioner Driscoll stated in Re Mohr, supra,

"A Councilman who holds a license is disqualified from participating in any way in alcoholic beverage matters coming before the Council. Such participation if permitted would result in a conflict between private interest and public duty. The previous rulings are collected and discussed in Re Kerner, Bulletin 298, Item 9. As far back as 1935, it was ruled that disqualified members may not satisfy the requirements merely by refraining from voting on the issue presented. They must withdraw entirely from the proceeding for otherwise the purpose of the disqualification will in large part be nullified. (Re Siracusa, Bulletin 89, Item 9.) To 'withdraw entirely' means precisely that."

Finding, as I do, that respondent Council's action, here appealed from was tainted with illegality the action must be set aside.

My disposition of the case on this ground makes it unnecessary to deal here with the other reasons advanced for reversal or affirmation.

Accordingly, it is, on this 15th day of February, 1950,

ORDERED that the action of the respondent Borough Council of the Borough of Highlands, in granting the application of Jacob D. Cohen for a plenary retail distribution license for premises 242 Bay Avenue, Highlands, be and the same is hereby reversed; and it is

FURTHER ORDERED that plenary retail distribution license D-1, issued by the Borough Council of the Borough of Highlands to Jacob D. Cohen, for premises 242 Bay Avenue, Highlands, be and the same is hereby cancelled, set aside and declared null and void, and said Jacob D. Cohen is hereby directed forthwith to cease all alcoholic beverage activity under such license.

ERWIN B. HOCK
Director.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HARRY HITTNER AND SAM HITTNER)
T/A GROVE TAVERN)
313 Grove Street)
Jersey City 2, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-9 issued by the Board of Commissioners of the City of Jersey City.)

-----)
Harry Hittner and Sam Hittner, By Harry Hittner.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed on their licensed premises alcoholic beverages in a bottle bearing a label which did not describe its contents, in violation of Rule 28 of State Regulations No. 20.

On January 26, 1950, an ABC agent examined sixty bottles of alcoholic beverages on defendants' licensed premises and seized a bottle of Canadian Club Blended Canadian Whiskey when his field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Division chemist disclosed that the contents of the seized bottle were not genuine as labeled.

Defendants have no previous adjudicated record. Under the circumstances, I shall suspend defendants' license for the minimum period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. Re Meehan, Bulletin 857, Item 7.

Accordingly, it is, on this 15th day of February, 1950,

ORDERED that plenary retail consumption license C-9, issued by the Board of Commissioners of the City of Jersey City to Harry Hittner and Sam Hittner, t/a Grove Tavern, for premises 313 Grove Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. February 20, 1950, and terminating at 2 a.m. March 2, 1950.

ERWIN B. HOCK
Director.

13. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY A RETAILER FROM ANOTHER RETAILER FOR RESALE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FRANK BRENNAN)
300 First Street)
Elizabeth 1, N.J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-125, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.)

-----)
Frank Brennan, Defendant-licensee, Pro Se.
William F. Wood, Esq., Appearing for Division of Alcoholic

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge that he purchased alcoholic beverages for resale from other retailers, in violation of Rule 15 of State Regulations No. 20.

During the months of November and December 1949, defendant purchased practically all the alcoholic beverages that he sold at his licensed premises from two other retailers.

Defendant has no previous adjudicated record in disciplinary proceedings. I shall suspend the license for fifteen days, remitting five days for the plea, leaving a net suspension of ten days. Re Gem Liquor Store Corporation, Bulletin 840, Item 10.

Accordingly, it is, on this 15th day of February, 1950,

ORDERED that Plenary Retail Consumption License C-125, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Frank Brennan, 300 First Street, Elizabeth, be and the same is hereby suspended for a period of ten (10) days, commencing at 2 a.m., February 15, 1950, and terminating at 2 a.m., February 25, 1950.

ERWIN B. HOCK
Director.

14. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

February 7, 1950

The next official publication of minimum resale prices pursuant to Fair Trade rules (Revised Regulations No. 30) will become effective on April 1, 1950. Prices to be listed must be filed with the office of this Division not later than February 20, 1950. The publication will be a complete pamphlet in accordance with Rule 3 of Regulations No. 30, providing for issuance of quarterly complete publications.

In submitting price listings it is important to note the following:

1. The importance of listing all brands of alcoholic beverages (including malt beverages) is emphasized in light of Rule 6 of Revised Regulations No. 30 which prohibits price advertising of any brand not listed in Fair Trade.
2. It is suggested that close attention be given to the importance of a fair and adequate markup for the retailer.
3. Only manufacturers and wholesalers owning brands or wholesalers having specific written authorization of the owner of brands, may file price listings for publication in minimum resale price pamphlets.
4. Where listers of brands choose to publish a permissive case lot discount, the phrase "Discount of _____% permitted on case lot purchases" should be used.
5. True copies of labels or photostats of labels of brands listed in Fair Trade must be submitted with the price listings, irrespective of whether such labels have been previously submitted.

6. Price listings may be submitted by letter in the same form as heretofore but must bear a statement certifying the existence of a Fair Trade contract between the manufacturer or wholesaler and a licensed New Jersey retailer. It is important to note that copies of such Fair Trade contracts need no longer be filed with the Division.

Notification of the proportionate share of aggregate expenses involved in the publication of the complete pamphlet will be made to participating companies as soon as the pamphlet is mailed to all retail licensees.

ERWIN B. HOCK
Director.

15. STATE LICENSES - NEW APPLICATIONS FILED.

Famous Brands Agency Inc. (State Beverage Distributor's License SBD-143)

956-958 Main Ave.
Clifton, N.J.

Application filed February 14, 1950 for transfer of additional warehouse from 65-67 North 9th Street, Paterson, New Jersey to 32-38 Robert Street, Paterson, N.J.

Vincent Canzanese, (State Beverage Distributor's License SBD-18)
t/a Riverside Beer Distributor
256 Chester Ave.

Delran Twp., PO Riverside, N.J.

Application for additional warehouse at 111 Broad Street, Swedesboro, New Jersey filed February 16, 1950.

New Jersey Apple Growers, Inc.
Cottrell's Road

Browntown, Madison Township, P.O. RD #1, Matawan, N.J.

Application for Limited Distillery License filed February 17, 1950.

Transamerican Freight Lines, Inc.

185 First Street

Jersey City, N.J.

Application for Transportation License filed February 20, 1950.

Louis W. Wright,
t/a Thurman Bottling Co.

1176-86 Thurman Street

Camden, N.J.

Application filed February 21, 1950 for transfer of State Beverage Distributor's License SBD-154 from Alfons Vigelis, t/a Thurman Bottling Co.

Tose, Inc.

25 West Fourth Street

Bridgeport, Montgomery County, Pa.

Application filed February 21, 1950 for transfer of Transportation License T-56 from Mike, Louis and Leonard Tose, d/b/a M. Tose and Sons and Norristown Motor Freight.

Erwin B. Hock
Director.