

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 752

MARCH 4, 1947.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 752

MARCH 4, 1947.

1. COURT DECISIONS - NEW JERSEY SUPREME COURT - KRAVIS v. ERWIN B. HOCK, DEPUTY COMMISSIONER - RULING OF COMMISSIONER AFFIRMED.

EDWARD KRAVIS,) NEW JERSEY SUPREME COURT

Prosecutor,)

-vs-)

ERWIN B. HOCK, Deputy Commissioner)
of Alcoholic Beverage Control of)
the State of New Jersey,)

Respondent.)

Argued January 22, 1947. Decided

On writ of certiorari.

Before Case, Chief Justice, and Justices Heher and Colie.

For prosecutor: Irving I. Jacobs.

For respondent: Walter D. Van Riper; Samuel B. Helfand.

The opinion of the court was delivered by

Case, Chief Justice. The writ of certiorari brings up a determination by the Commissioner of Alcoholic Beverage Control that prosecutor was ineligible, under the provisions of Title 33, Chapter 1, Revised Statutes of 1937 (the Alcoholic Beverage Control Act), to hold a liquor license or to be employed by any liquor licensee. Cf. Kravis v. Driscoll, 134 N. J. L. 453.

The action by the Commissioner was more than the expression of an opinion. It was, we find, a ruling with the effect imputed to it above, following and in accord with an opinion or decision filed in the Department. Prosecutor does not question the jurisdiction of the Commissioner to act in the premises. He contends that the ruling is not properly supported by proofs and that a plea of nolo contendere is not a conviction within the meaning of the statute.

We think that the proceedings in certiorari are proper under the circumstances.

The substantial reason for the ruling appears clearly and authentically in the record, by admissions and otherwise. It is that the prosecutor had entered a plea of "nolo contendere" to an indictment in the Atlantic County Oyer and Terminer for aiding and abetting in lewd entertainment at the resort known as the Paddock Club in Atlantic City which prosecutor then operated under a plenary retail consumption license, a plea which the Commissioner interpreted as a conviction of a crime involving moral turpitude. By R. S. 33:1-25 and 26 it is provided that no liquor license shall be issued to any person who has been convicted of a crime involving moral turpitude and that no person who would fail to qualify as a licensee shall be knowingly employed by or connected in any business capacity whatsoever with the licensee. Prosecutor's license was temporarily suspended and was later transferred to his mother, and the inquiry instituted by the Commissioner was upon the hypothesis that prosecutor was still connected by employment or otherwise with the management.

The acts of lewdness charged against prosecutor were detailed in the indictment. Sufficient now to say that the crime so described is, by our finding, one of moral turpitude. The question for decision is whether the prosecutor's pleading thereto constituted a "conviction" within the meaning of the statute. Prosecutor rests his argument for the negative of the proposition upon Schireson v. The Board, 130 N. J. L. 570. That decision, if squarely in point, is, of course, controlling upon this court. But there are, we think, substantial distinctions between that case and this.

The Schireson decision went upon the theory (page 575) that the license of a physician to practice medicine is a "right, a property right" and worked to the conclusion that "the record of the judgment and commitment of the appellant, following his plea of nolo contendere to the charges of the indictment, do not amount to a conviction of the designated crime within the contemplation of the statute, supra (viz., R. S. 45:9-1, et seq. -- the statute concerning medicine and surgery) ***" (italics inserted.) We believe that it was the conception of the physician's license as a "property right" which caused the court to regard the revocation of the license as in the nature of a civil suit. But a liquor license is not a property right; it is a mere privilege. Meehan v. Excise Commissioners, 73 N. J. L. 382, affirmed 75 id. 557; Zicherman v. Driscoll, 133 N. J. L. 586; Drozdowski v. Sayreville, 133 N. J. L. 536. "A (liquor) license is in no sense property. It is a mere temporary permit to do what otherwise would be illegal, ***." Voight v. Board of Excise, 59 N. J. L. 358. Further, the opinion in the Schireson case rested in part upon the finding that the controlling "statute, penal in character, must be construed strictly." Quite the contrary principle controls here because the statute (R.S. 33:1-73) enjoins upon us that it "is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed;" and the act in question was actually one of the abuses which seems to be inherent in the liquor traffic, whereas the offense in the Schireson case was wholly unrelated to the practice of medicine, the license for which was in jeopardy. Finally, the Schireson decision was, in its conclusion, narrowly confined to the contemplation of the act regulating the practice of medicine and surgery.

The whole machinery of the Alcoholic Beverage Control statute is designed to control and keep within limits a traffic which, unless tightly restrained, tends toward abuse and debasement. Here we have a man who, as licensee, used his premises for shockingly immoral entertainment. He is indicted for that offense, makes a plea thereto which in the criminal courts is the equivalent of a plea of guilty, and submits himself for sentence. Under stress of the circumstances he transfers his license to his mother and continues in attendance. It is reasonable to assume that the same ideas of management will continue. The Commissioner, endeavoring to comply with the statutory mandate to remedy the abuses inherent in the liquor traffic, has considered that the plea of nolo contendere was, within the meaning and purpose of the statute, a conviction of the offense; and we think that, unless the statute is to fail of its purpose, the view of the Commissioner in this respect must be sound.

We are led, therefore, to conclude that the decision in Schireson v. The Board does not apply and that when the prosecutor faced the Court of Oyer and Terminer and solemnly announced that he was unwilling to defend against the indictment, and submitted himself for sentence, he did, for the purpose of the Alcoholic Beverage Control statute, admit his guilt and that, in so doing, he was, within the meaning of the statute, convicted of the crime charged.

The ruling of the Commissioner is affirmed.

2. REGULATIONS NO. 20, RULE 22 - CONSTRUCTION OF "FEMALE EMPLOYED" IN "HOSTESS" REGULATION - CONCESSIONAIRES AND OFF-DUTY EMPLOYEES INCLUDED.

February 20, 1947

Hrubec's Bar & Liquor Store, Inc.
Perth Amboy, N. J.

Gentlemen:

This acknowledges receipt of your letter of February 14th.

Your inquiry whether (a) your female kitchen concessionaire (who is not an employee) and (b) your barmaid (who is your employee), when off duty, may be served with drinks on your licensed premises at the expense of male customers pertains to Rule 22 of State Regulations No. 20, which provides:

"No plenary or seasonal retail consumption licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron."

The phrase "female employed" is less restrictive than the phrase "female employee". Considering the salutary purpose of the Rule, the phrase "female employed" covers not only female employees but, in addition, any female employed on the licensed premises in any capacity by any person, including herself. Hence your self-employed female kitchen concessionaire is a "female employed" on the licensed premises and, consequently, she may not be served drinks at the expense of patrons on your licensed premises.

So far as the barmaid is concerned, she is at all times a "female employed" on the licensed premises notwithstanding that she is on duty only from 5:00 p.m. to 11:00 p.m. So long as she is employed on licensed premises, she may not drink at the expense of any patron on the licensed premises where she is employed at any time, whether she be on duty or off duty.

Very truly yours,
ERWIN B. HOCK
Deputy Commissioner.

3. APPELLATE DECISIONS - GUARENTE v. HOHOKUS.

JOHN GUARENTE, JR.,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE)	
BOROUGH OF HOHOKUS,)	
Respondent)	

John J. Bogert, Esq., Attorney for Appellant.
 Thomas S. Doughty, Esq., Attorney for Respondent.

This is an appeal from the denial of appellant's application for a plenary retail consumption license for premises at 618 North Maple Avenue, Hohokus.

Appellant offers as reasons for the reversal of respondent's action the following:

1. There is at the present time and will continue to be a growing need and necessity for an additional plenary retail consumption license in the Borough of Hohokus, New Jersey;
2. There is existing at the present time only one plenary retail consumption license within the Borough of Hohokus, which license is issued for a place which is owned by the Borough of Hohokus;
3. Respondent did not base its findings on the evidence presented before it by the appellant.

As to reasons (1) and (2): The Borough of Hohokus is a small municipality. It has an area of approximately one square mile, a population slightly under 2,000 and is principally residential in its occupancy. The small section devoted to business use is apparently similar to that of a typical neighborhood development rather than a large municipal business section.

The municipality is served by one plenary retail consumption licensee whose premises are located in the old hotel building. This hotel has been the location of a consumption liquor business since 1721. In addition, five plenary retail distribution licenses have been issued for various premises in the Borough.

Appellant testifies that he believes that there is a definite public demand for another consumption license and that his proposed premises in the business area and about two hundred feet from the licensed hotel furnishes a desirable location for a second tavern. He arrives at this conclusion through a "sampling" of public opinion, apparently by means of a "public opinion poll" conducted by himself. He presented one other witness who also advanced the opinion that an additional consumption license was desirable in Hohokus now and, in view of the growth in population anticipated by him, would be more desirable in the future.

The minutes of the meetings of the Borough Council at which the application was considered disclose that the application was first

presented to the Council on October 15, 1946, with an application by another person not party hereto, and that numerous persons who favored or opposed the granting of the license were present. Because of the apparent public interest in the question, a special day (October 29, 1946) was fixed for hearing on the two applications.

At the October 29th meeting, attended by the Mayor and all members of the Borough Council, both applications were again considered. Appellant offered certain petitions and letters in support of his "public opinion poll", and two or three persons spoke in favor of the issuance of his license. At least two citizens -- one apparently representing a civic group -- expressed their disapproval of any additional licenses on the ground that no additional licenses were needed and that the public need and convenience were well served by the present license. A member of Council, having apparently conducted his own "public opinion poll", said that, in his opinion, based on his "poll" and his own personal feeling in the matter, the Borough was sufficiently supplied with plenary retail consumption licenses. Apparently a full hearing was held and, upon the question being put to vote, both the pending applications were unanimously denied. It further appears that within a distance of one-half mile in either direction, and along the main highway which bisects the Borough, a tavern exists in each of the adjacent municipalities.

The duty and power to issue retail liquor licenses has been conferred by the Legislature upon municipal issuing authorities (R. S. 33:1-19), subject to review by the State Commissioner of Alcoholic Beverage Control on appeal (R. S. 33:1-22).

The burden on appeal rests upon the appellant to show, by clear and convincing evidence, that respondent's denial of the license sought was an abuse of its discretionary power. Rule 6, State Regulations No. 15. In other words, it is incumbent upon appellant herein to show a real and substantial need for an additional license. Gorcica v. Wallington, Bulletin 659, Item 10.

As to reason (3): It would further appear that the whole question was fully considered by the respondent; that the sampling of public opinion was carefully weighed, and that the consideration of the public opinion and the individual opinions of the members of the Borough Council ended in a determination that there was no public need to be met and no public convenience to be served by the issuance of further plenary retail consumption licenses.

I find that appellant has failed to sustain the burden of proof imposed upon him, and that the finding of the respondent as to the lack of public need and convenience was correct. The record does not disclose any evidence of bias or prejudice in the action taken by the respondent local issuing authority.

The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 24th day of February, 1947,

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

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD -
LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

HERMAN FELDSTEIN)
T/a FELDSTEIN'S RESTAURANT)
414-16 Clifton Avenue)
Lakewood, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-3 issued by the)
Township Committee of the Township)
of Lakewood.)
- - - - -)

I. David Goldstein, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant pleaded non vult to a charge alleging that he pos-
sessed illicit alcoholic beverages at his licensed premises, in
violation of R. S. 33:1-50.

On December 26, 1946, an ABC investigator seized a 4/5 quart
bottle labeled "Teacher's Highland Cream Perfection of Blended Scotch
Whisky" when preliminary tests thereof indicated that the contents
of the bottle were not genuine as labeled. Subsequent analysis of
the contents of the bottle in question by the Department chemist
substantiated the above tests.

Defendant denies any knowledge relative to the violation.
Nonetheless, a licensee is responsible for any "refills" found in
his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has a previous adjudicated record. Effective May 20,
1943, defendant's license was suspended by the local issuing author-
ity for a period of five days as a result of being adjudged guilty
of sale of alcoholic beverages to a minor. Under the circumstances,
I shall suspend defendant's license for a period of twenty days, less
five days' remission for the plea entered herein, or a net suspen-
sion of fifteen days.

Accordingly, it is, on this 24th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-3, issued by
the Township Committee of the Township of Lakewood to Herman
Feldstein, t/a Feldstein's Restaurant, for premises 414-416 Clifton
Avenue, Lakewood, be and the same is hereby suspended for a period
of fifteen (15) days, commencing at 2:00 a.m. March 10, 1947, and
terminating at 2:00 a.m. March 25, 1947.

ERWIN B. HOCK
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - RE: PANAGEAS - ORDER POSTPONING
EFFECTIVE DATE OF SUSPENSION (SEE BULLETIN 749, ITEM 2).

In the Matter of Disciplinary
Proceedings against

NICHOLAS PANAGEAS
T/a PICKWICK RESTAURANT
873-875 Bergen Avenue
Jersey City, N. J.,

ON PETITION
O R D E R

Holder of Plenary Retail Consump-
tion License C-478 issued by the
Board of Commissioners of the
City of Jersey City.

An order having been entered herein on the 10th day of February, 1947, suspending License C-478 held by petitioner, Nicholas Panageas, for a period of ten days commencing at 2:00 a.m. February 24, 1947, and terminating at 2:00 a.m. March 6, 1947; and

It appearing from a verified petition filed herein that, prior to the entry of said order, arrangements had been completed with two fraternal organizations for dinners to be held at petitioner's licensed premises on February 28 and March 5; and

It appearing further that numerous members of the fraternal organizations would be inconvenienced by the suspension of the license for the ten-day period beginning February 24, 1947;

It is, on this 20th day of February, 1947,

ORDERED that the ten-day suspension imposed in this proceeding, instead of commencing at 2:00 a.m. February 24, 1947, shall, in lieu thereof, commence at 2:00 a.m. March 6, 1947, and terminate at 2:00 a.m. March 16, 1947.

ERWIN B. HOCK
Deputy Commissioner.

6. APPELLATE DECISIONS - HELIES v. RARITAN TOWNSHIP (MONMOUTH COUNTY).

DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - RE: HELIES - PREVIOUS
RECORD - LICENSE SUSPENDED FOR 32 DAYS, AS RESULT OF AFFIRMANCE
OF APPEAL AND SUSPENSION IMPOSED HEREIN.

JAMES EDWARD HELIES and
CECELIA HELIES, t/a EDDIE'S,
Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF RARITAN (MONMOUTH
COUNTY),

Respondent

In the Matter of Disciplinary
Proceedings against

CONCLUSIONS
AND
ORDERS

JAMES EDWARD HELIES

T/a EDDIE'S

S/S N. J. State Highway 36

about 1,000 ft. east of Union Ave.

Raritan Township, Monmouth Co.

P. O. Keyport, R.D. 1, N. J.,

Holder of Plenary Retail Consumption

License C-9, issued by the Township

Committee of the Township of Raritan.

Edward W. Currie, Esq., Attorney for Appellants.

J. Frank Weigand, Esq., Attorney for Respondent.

James Edward Helies, Defendant-licensee, Pro Se.

Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

These proceedings are concerned with two separate cases. The first is an appeal from a ten-day suspension imposed against the appellants, James Edward Helies and Cecelia Helies, by the respondent issuing authority after it had found them guilty of sales of alcoholic beverages to minors. The second case involves a disciplinary proceeding brought directly by this Department on a charge of possessing illicit alcoholic beverages against the licensee, James Edward Helies, in whose sole name the license was issued for the current licensing year. To this charge, the licensee has pleaded non vult.

In the appeal case, it is the appellants' contention that the evidence is not sufficient to support the determination made by the local issuing authority. The respondent relies upon the transcript of the evidence taken before it and introduced into evidence pursuant to Rule 8 of State Regulations No. 15. The appellants, however, produced two waitresses as witnesses at the appeal hearing, in addition to Mr. Helies himself.

I have carefully considered the entire record and find that the preponderance of the evidence justified the finding below and warrants a similar finding by me. No useful purpose would be served by needlessly detailing all of the voluminous evidence. It is true

that the testimony of the minors, in certain particulars, is inconsistent and that they gave varying versions of what occurred when first apprehended by local enforcement officials while in possession of a stolen automobile. Their testimony given at the hearing below, however, remains unshaken as to the salient details and no valid reason is suggested as to why they should fabricate a story out of thin air and falsely implicate the appellants in the charged offense.

The appeal will be dismissed and the penalty imposed by the respondent will be reinstated. The appellants' premises were closed for three days prior to the entry of the order staying the suspension. There remain, therefore, seven days of the ten-day suspension still to be served.

With respect to the charge involved in the disciplinary proceedings herein, the licensee, by his plea, admits that, on August 29, 1946, he possessed two bottles of illicit alcoholic beverages. This is the third violation committed by this licensee. In addition to the two cases involved in this decision, the licensee, James Edward Helies, who then held his license in partnership with his wife, received a ten-day penalty in May 1945 for sales of alcoholic beverages during prohibited hours. Consideration of all of the attendant circumstances leads to the imposition of a thirty-day penalty, less five days for the plea, leaving a net penalty of twenty-five days on the instant charge.

With the three days aforesaid deducted from the total suspension of thirty-five days, it results in a net suspension of thirty-two days to be served by the licensee.

Accordingly, it is, on this 25th day of February, 1947,

ORDERED that the appeal be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Raritan to James Edward Helies, t/a Eddie's, for premises on s/s N. J. State Highway #36 about 1,000 feet east of Union Avenue, Raritan Township, be and the same is hereby suspended for a net period of thirty-two (32) days, commencing at 2:00 a.m. March 3, 1947, and terminating at 2:00 a.m. April 4, 1947.

ERWIN B. HOCK
Deputy Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR -
CHARGE OF BOTTLING ALCOHOLIC BEVERAGES DISMISSED - PREVIOUS RECORD -
LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

HARRY R. GOSLIN & EARL S. GOSLIN)
T/a GOSLIN'S TAVERN)
505 - 18th Avenue)
South Belmar, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-1 for the fiscal)
year 1943-44, and now holders of)
Plenary Retail Consumption License)
C-1 for the 1946-47 fiscal year;)
both issued by the Borough Council)
of the Borough of South Belmar.)
- - - - -)

Elvin R. Simmill, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

Licensees pleaded not guilty to the following charges:

"1. During the early part of July 1944, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages at your licensed premises to John ---, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon the licensed premises, in violation of Rule 1 of State Regulations No. 20.

"2. On August 2, 1944, you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages at your licensed premises to John ---, a person under the age of twenty-one (21) years, in violation of Rule 1 of State Regulations No. 20.

"3. On all the occasions aforesaid, you sold alcoholic beverages at your licensed premises to John ---, a minor, in violation of R. S. 33:1-77.

"4. On August 2 and 3, 1944, you, not being the holder of any license so to do, bottled alcoholic beverages for sale, in that you filled and sealed mason jars with beer and sold said jars of beer; such bottling being in violation of R. S. 33:1-78."

The first three charges relate to sale and delivery of alcoholic beverages to the same minor. This minor (John ---) testified in these proceedings that, on or about July 2, 1944, he visited the licensees' tavern, accompanied by two friends, and that all three were served beer by an employee of defendants; that on July 4, 1944, the same three visited the licensed premises again and were all served beer by the same employee; that on August 2, 1944, about 11:45 p.m., accompanied by four friends, he went to the licensed premises and one of the group purchased five quart jars of beer from Earl Goslin, one of the licensees, which they took from the licensed premises and consumed, and that later (about 1:30 a.m.) the said minor,

John ---, returned himself and purchased from Earl Goslin two one-quart jars of beer which he took from the licensed premises and consumed with a friend.

Earl Goslin, one of the licensees, denies making the sales on August 2nd but admits that John --- came to his place on that day accompanied by four friends. Goslin states that he asked the minor to leave as he did not appear to be twenty-one years of age, but admits that one of the group remained behind and satisfied him that he was over twenty-one years of age, whereupon he sold him five one-quart jars of beer which were thereupon taken away from the licensed premises. The bartender whom John --- identified as the person who made the sales to him on the occasion of his first two visits stated that he did not recall selling John --- any alcoholic beverages and, to the best of his recollection, did not see John --- before the agents of the Alcoholic Beverage Control Department brought him to the licensed premises for the purpose of identifying the place and the persons from whom he made the alleged purchases. After considering all the testimony, I am satisfied that John --- is telling the truth as to the times he was actually served. I therefore find the licensees guilty on the first three charges.

As to the fourth charge: The facts, briefly, are as follows: On the night of August 3rd, about 11:00 p.m., two agents of the Alcoholic Beverage Control Department visited the licensed premises. Each agent purchased a one-quart container of beer from a waiter (Walter Bennett), which beer was delivered to him in a one-quart jar with a screw cap or top. On this set of facts the licensees are charged with bottling beer in violation of the statute.

In Bulletin 27, Item 2, Commissioner Burnett ruled that draught beer could be sold for consumption off licensed premises "by the pail or in metal, paper or similar cartons or containers." In Re Salamonis Bulletin 623, Item 13, after referring to the aforesaid ruling, Commissioner Driscoll said:

"However, the ruling is strictly and properly limited to containers of open type. It in no way allows a tavernkeeper to draw beer into any containers with screw cap or any similar device by which it may be virtually sealed."

Since the alleged violation occurred shortly after the ruling in Re Salamonis, and defendants at that time may not have been aware of the ruling, I shall dismiss charge (4).

Defendants have a prior record. In 1941 their license was suspended for three days for a mislabeled beer tap. Under all the circumstances, I shall suspend defendants' license for twenty days.

Accordingly, it is, on this 25th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-1, issued for the fiscal year 1946-47 by the Borough Council of the Borough of South Belmar to Harry R. Goslin and Earl S. Goslin, t/a Goslin's Tavern, for premises 505 - 18th Avenue, South Belmar, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. March 6, 1947, and terminating at 2:00 a.m. March 26, 1947.

ERWIN B. HOCK
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary
Proceedings against)

CHARLES ENGLISH)

343 W. Mt. Pleasant Avenue)

Livingston, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)

tion License C-7, issued by the)

Township Committee of the)

Township of Livingston.)

Donal C. Fox, Esq. and Samuel S. Ferster, Esq., Attorneys for
Defendant-licensee.

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

The defendant pleaded not guilty to a charge alleging that he possessed three 4/5 quart bottles of illicit alcoholic beverages, each of which was labeled "Canadian Club Blended Canadian Whisky", and all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

An ABC agent testified that on March 13, 1946 he tested the defendant's stock of open liquor containers and seized the three bottles in question. A sealed bottle of the same brand of liquor was also taken for comparative purposes.

The contents of the four bottles were chemically analyzed by the Department's expert, who testified that the contents of the three questionable bottles differed substantially in acids, solids and color from the genuine sample of the same product. This witness further testified that each of the three seized bottles contained an alcoholic beverage which was not genuine "Canadian Club Blended Canadian Whisky" as indicated by the label on each of said bottles.

By force of R. S. 33:1-88, therefore, the contents of each of the three seized bottles are "deemed prima facie an illicit beverage" because the container of each bottle "bears a label which does not truly describe its contents."

The force of this presumption was not overcome by any proof. The only testimony offered by the defense was that of the defendant, who merely testified that neither he nor his two sons had tampered with the contents of the bottles. This constitutes no defense to the violation. Cedar Restaurant & Cafe Co. v. Hock, (Sup. Ct.) decided January 29, 1947 (not yet officially reported). This case and that of The Panda v. Driscoll, (Ct. of E. & A.) decided January 17, 1947 (not yet officially reported), dispose of all other contentions raised by the defendant.

I find the defendant guilty as charged.

The defendant's previous record includes a ten-day suspension in August 1944 for permitting gambling on his licensed premises. Under all of the circumstances, I shall suspend the defendant's license for a period of twenty-five (25) days. Cf. Re Gentzle, Bulletin 720, Item 10.

Accordingly, it is, on this 25th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Livingston to Charles English, for premises at 343 W. Mt. Pleasant Avenue, Livingston, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. March 3, 1947, and terminating at 2:00 a.m. March 28, 1947.

ERWIN B. HOCK
Deputy Commissioner.

9. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAIL LICENSEE FROM OTHER THAN NEW JERSEY MANUFACTURER OR WHOLE-SALER - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against)

VIRGINIA PRESTON)
T/a VIRGINIA PRESTON TAVERN)
836 E. Elizabeth Avenue)
Linden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-50, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Linden.)
- - - - -)

Virginia Preston, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant has pleaded non vult to a charge that she purchased alcoholic beverages from a person not the holder of a New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulations No. 20.

During the month of July 1946, the defendant-licensee purchased 36 pint bottles of whiskey from the 18-year-old son of a friend at a price much under the wholesale price of the whiskey. The boy, of course, was not a licensed New Jersey wholesaler or manufacturer. Our investigation discloses that the whiskey was stolen from another retail licensee. The bottles were in bad condition, dirty, and some lacked labels and revenue stamps. Although defendant denies that she knew the whiskey was stolen, she should have been very suspicious that it had not been obtained by the seller by lawful means because of its condition and the youthfulness of the seller.

Under the circumstances and in view of the fact that defendant has no prior record, I shall suspend the license for sixty days and remit five days thereof because of the plea, leaving a net suspension of fifty-five days. Re Bovino, Bulletin 678, Item 15.

Accordingly, it is, on this 27th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-50, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden to Virginia Preston, t/a Virginia Preston Tavern, 836 E. Elizabeth Avenue, Linden, be and the same is hereby suspended for a period of fifty-five (55) days, commencing at 2:00 a.m. March 12, 1947, and terminating at 2:00 a.m. May 6, 1947.

ERWIN B. HOCK
Deputy Commissioner.

10. APPELLATE DECISIONS - KITCHMAN v. MOUNT LAUREL.

ALBERT A. KITCHMAN,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF MOUNT LAUREL,)	
Respondent)	

Sidney W. Bookbinder, Esq., Attorney for Appellant.
Benjamin Marmer, Esq., Attorney for Respondent.

This appeal is from the respondent's denial of appellant's application for a plenary retail consumption license for premises located on Hartford Road, Springville, Mount Laurel Township.

The denial resulted from the unanimous vote of the members of the respondent authority at a meeting held on November 6, 1946, at which time, and for at least six years prior thereto, a maximum of seven consumption licenses were outstanding in the municipality. On December 4, 1946, an ordinance reducing the limitation on consumption licenses from nine, which number had been fixed by ordinance of August 30, 1938, to seven was introduced and finally adopted on December 18, 1946. With a permanent population of approximately 2,200 inhabitants, there can be no question concerning the reasonableness of this reduction. The fact that the reduced quota was officially effected subsequent to the denial of the application cannot avail the appellant, since the question here at issue is whether the license shall now be granted. Cf. Socony-Vacuum Oil Co. v. Mount Holly Township, 135 N.J.L. 112.

In addition to the respondent's opinion that the municipality is sufficiently provided with consumption establishments, the denial was predicated on the lack of need for an additional license in the area where the appellant desires to locate. This area consists mainly of vacant woodland in a section of the township known as Springville. The population of this section, giving the appellant the benefit of the highest estimate made, is no more than 1,000 at the peak of the summer season. During the rest of the year, less than 100 persons reside there. In addition to two small factories and a grocery store located about a quarter of a mile from the proposed premises, the only other business establishment in the vicinity is one operated under a consumption license. The latter premises are situated across the road from the appellant's site and are less than 500 feet distant therefrom.

The recital of the foregoing makes it abundantly clear that there is no public need and necessity for the license applied for and that the respondent's determination was eminently proper. Its action in refusing to grant the application, therefore, is sustained.

Accordingly, it is, on this 27th day of February, 1947,

ORDERED that the petition of appeal be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

11. ACTIVITY REPORT FOR FEBRUARY, 1947

ARRESTS:

Licensees and employees - - - - -	2	Bootleggers - - - - -	5	
Total number of persons arrested - - - - -				7

SEIZURES:

Stillis - 50 gallons and under - - - - -	1
Illicit alcohol - gallons - - - - -	3.00
Wine - gallons - - - - -	135.00
Motor vehicles - cars - - - - -	1

RETAIL LICENSEES:

Total number of premises inspected - - - - -	846
Total number of premises where alcoholic beverages were gauged - - - - -	780
Total number of bottles gauged - - - - -	12,703
Total number of premises where violations were found - - - - -	79
Total number of violations found - - - - -	106
Type of violations found:	
Unqualified employees - - - - -	32
Regulations #38 sign not posted - - - - -	23
Gambling devices - - - - -	11
Illicit liquor - bottles - - - - -	11
Other mercantile business - - - - -	10
Probable fronts - - - - -	6
Disposal permit necessary - - - - -	3
Prohibited signs - - - - -	2
Improper beer taps - - - - -	1
Other violations - - - - -	7

STATE LICENSEES:

Premises inspected - - - - -	3
License applications investigated - - - - -	7

COMPLAINTS:

Complaints assigned for investigation - - - - -	292
Complaints investigated, reviewed and closed - - - - -	235
Investigations completed - not closed administratively - - - - -	6
Investigations assigned, not yet completed - - - - -	162

LABORATORY:

Analyses made - - - - -	102
"Shake-up" cases (alcohol, water, and artificial color) - bottles - - - - -	5
Liquor found to be not genuine as labeled - bottles - - - - -	21

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -	9
Persons fingerprinted for non-criminal purposes - - - - -	203
Identification contacts made with other enforcement agencies - - - - -	160
Motor vehicle identifications via N.J. State Police Teletype - - - - -	5

DISCIPLINARY PROCEEDINGS INSTITUTED:

Cases transmitted to municipalities - - - - -	10
Violations involved:	
Sale during prohibited hours - - - - -	4
Permitting bookmaking - - - - -	3
Permitting gambling on premises - - - - -	2
Sale to minors - - - - -	1
Sale to non-members by clubs - - - - -	1

Cases instituted at Department - - - - -	23
Violations involved:	
Sale to minors - - - - -	8
Possessing illicit liquor - - - - -	6
Sale at discount - - - - -	6
Conducting business as a nuisance - - - - -	1
Permitting hostesses on premises - - - - -	1
Permitting lewdness on premises - - - - -	1
Permitting lottery activity - - - - -	1
Purchase from improper source - - - - -	1
Sale during prohibited hours - - - - -	1
Employing unqualified person - - - - -	1

Cases brought by municipalities on own initiative and reported to Department - - - - -	10
Violations involved:	
Sale to minors - - - - -	5
Sale during prohibited hours - - - - -	3
Permitting gambling on premises - - - - -	2
Conducting business as nuisance - - - - -	1
Furthering illegal activity - - - - -	1
Hindering investigation - - - - -	1
Inadequate view into premises during closing hours - - - - -	1
Licensee working while drunk - - - - -	1
Sale to intoxicated persons - - - - -	1
Permitting brawl on premises - - - - -	1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - -	54
Appeals - - - - -	22
Disciplinary proceedings - - - - -	24
Eligibility - - - - -	5
Seizures - - - - -	1
Applications for license - - - - -	2

PERMITS ISSUED:

Total number of permits issued - - - - -	811
Employment - - - - -	110
Solicitors - - - - -	143
Social affairs - - - - -	319
Disposal of alcoholic beverages - - - - -	131
Special wine - - - - -	3
Miscellaneous permits - - - - -	105

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

In the Matter of Disciplinary)
 Proceedings against)

JOSEPH BRESSLER)
 269 Clifton Avenue)
 Clifton, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-23, issued by the)
 Municipal Council of the City of)
 Clifton.)

-----)
 Joseph Bressler, Defendant-licensee, Pro Se.
 William F. Wood, Esq., appearing for Department of Alcoholic
 Beverage Control.

Defendant pleads non vult to a charge alleging that he possessed a 4/5 quart bottle of "Canadian Club Blended Canadian Whisky", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

On January 27, 1947, an ABC agent tested the contents of the open stock of liquor at defendant's premises and seized the bottle in question when his field tests disclosed that the contents of said bottle were not genuine as labeled. Subsequent chemical analysis by the Department chemist disclosed a difference in the characteristics of the whiskey in the seized bottle when compared with an analysis of a sample of the genuine product. The defendant denies any knowledge of the violation. Nevertheless, the licensee is strictly responsible for any "refills" found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Since no aggravating circumstances appear to have attended the violation and the defendant has no prior record, I shall impose a minimum suspension of fifteen days. Five days will be remitted for the plea, leaving a net suspension of ten days. Re Befort, Bulletin 746, Item 1.

Accordingly, it is, on this 27th day of February, 1947,

ORDERED that Plenary Retail Consumption License C-23, issued by the Municipal Council of the City of Clifton to Joseph Bressler, for premises 269 Clifton Avenue, Clifton, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. March 4, 1947, and terminating at 3:00 a.m. March 14, 1947.

ERWIN B. HOCK
 Deputy Commissioner.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Van Munching & Co., Inc., Room 1002, 53 Park Place, New York, N. Y.
 Application for Limited Wholesale License filed February 27, 1947.

Samuel Tischler, t/a Tischler Motor Freight, Morton Ave.,
 Rosenhayn, N. J.
 Application for Transportation License filed February 28, 1947.

Julius Wile Sons & Co., Inc., 629 Grove St., Jersey City, N. J.
 Application for Public Warehouse License filed March 3, 1947.

New Jersey State Library

Erwin B. Hock
 Deputy Commissioner.