Mr. Ambrose

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

BULLETIN 1405 September 7, 1961

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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.

BULLETIN 1405 September 7, 1961

1. STATE REGULATIONS- ADOPTION OF REVISED STATE REGULATION NO. 21 (EQUIPMENT, SIGNS AND OTHER ADVERTISING MATERIAL.)

NOTICE TO ALL LICENSEES:

Revised State Regulation No. 21, copy attached, supersedes in its entirety the present State Regulation No. 21, which is hereby promulgated and made effective as of September 1, 1961.

The revised regulation is the cumulative effort of the liquor control officials of Connecticut, New York and New Jersey to attain regional uniformity in the advertising and promotional field. This tri-state action for constructive understanding and material progress in the field of uniformity among the States is a pioneering effort to eliminate confusion on the part of the industry in adapting its advertising to meet the requirements of the separate States and is the result of intensive study and many conferences and meetings between the respective State officials and with the various segments of the liquor industry. It is believed that the revised regulation will not only protect, and be in the best interests of, the public but the restraints therein imposed will be recognized by the vast majority of the liquor industry as being necessary and reasonable in their nature.

It is also recognized that although the revised regulation accomplishes an essential purpose in affording to the trade a certain definitive guide to proper advertising and promotional products, all of the principles pertaining to the advertising and promoting of the sale of alcoholic beverages cannot be codified into one formal regulation. To anticipate all manner of situations, in view of the ever constant changes in advertising and promotional ideas, is a virtual impossibility. Hence, to effectuate proper control, some reliance must still be placed upon special rulings designed to meet special situations and made pursuant to the power conferred by R. S. 33:1-39 upon the State Director to make such special rulings and findings as may be necessary for the proper regulation and control of the liquor industry and for the prevention of practices designed to unduly increase the consumption of alcoholic beverages. Accordingly, such situations which are not specifically within the scope of Revised Regulation No. 21 and which have heretofore, or will in the future, be governed by special rulings are not to be viewed as having been superseded by the foregoing revised regulation.

Licensees would do well, to avoid improprieties, to heed our long standing and consistent suggestion to the trade that the format of any specific advertising or promotional plan be submitted to this Division before it is put to use so that we may make such comments with respect thereto as may be pertinent under the circumstances.

Dated: August 30, 1961

William Howe Davis
Director

STATE REGULATION NO. 21

EQUIPMENT, SIGNS AND OTHER ADVERTISING MATERIAL

Rule 1. No manufacturer or wholesaler of alcoholic beverages shall, directly or indirectly, furnish by sale, loan, gift or otherwise, or deliver, service or repair any fixtures, equipment, signs or advertising material of any kind to any retail licensee or at any retail licensed premises in the State of New Jersey except as follows:

(a) A New Jersey licensed brand owner or, if the brand owner is not licensed in New Jersey, one New Jersey licensed wholesaler designated by the brand owner for such purpose, may furnish to retailers inside advertising material, including signs and window displays, which shall have no intrinsic, utilitarian or secondary value whatsoever to the retailer other than advertising on the retailer's licensed premises; provided that the total cost thereof in any one retail establishment shall not exceed One Hundred Dollars ($100.00), exclusive of cost of installation, to any one such brand owner or designated wholesaler in any calendar year, and provided further, that in no event shall the cost of any window display to any one such brand owner or designated wholesaler, at any one time, in any one retail establishment, exceed Twenty-five Dollars ($25.00), exclusive of cost of installation. Brand owners of malt alcoholic beverages (and their designees) are excluded from the stipulated maximum allowable expenditures hereinabove mentioned and are restricted to the amount set forth in paragraph (e) hereof.

(b) A New Jersey licensed manufacturer or wholesaler may furnish to retailers, for use on the retailer's licensed premises, (1) tap markers as described in Rule 26 of State Regulation No. 20, the cost of which shall not exceed Two Dollars and Fifty Cents ($2.50) each; (2) advertising material and specialties including advertising trays, coasters, napkins, stirrers, scrapers, scraper holders, ash trays, change mats, place mats, table tents, calendars, and bottle pourers which bear the name, brand or trade-mark of the manufacturer or wholesaler; and (3) other advertising specialties for which written approval has first been obtained from the Director of the Division of Alcoholic Beverage Control; provided that the cost of any single item (except tap markers) shall be nominal and the total cost of all such items (exclusive of tap markers) supplied by any one manufacturer or wholesaler to any one retail establishment in any calendar year shall not exceed Fifty Dollars ($50.00). Manufacturers of malt alcoholic beverages and wholesalers (insofar as malt alcoholic beverages are concerned) are excluded from the stipulated maximum allowable expenditures hereinabove mentioned and are restricted to the amount set forth in paragraph (e) hereof.

(c) Manufacturers and wholesalers may furnish to retailers for use at the licensed premises or for redistribution to the public advertising material and specialties including recipe booklets, circulars, handbills, can and bottle openers, bottle pourers, match books and other advertising specialties for which written approval has first been obtained from the Director of the Division of Alcoholic Beverage Control and which bear the trade name, symbol or insignia of the manufacturer or wholesaler; provided that the cost of any single item or unit shall be nominal and the total cost of all such items or units supplied by the manufacturer or wholesaler to any one retail establishment, in any calendar year, shall not exceed Fifty Dollars ($50.00). Manufacturers of malt alcoholic beverages and wholesalers (insofar as malt alcoholic beverages are concerned) are excluded from the stipulated maximum allowable expenditures hereinabove mentioned and are restricted to the amount set forth in paragraph (e) hereof.

(d) Manufacturers and wholesalers of malt alcoholic beverages may clean and repair beer lines between barrels and faucets in retail premises and may furnish tapping accessories (such as rods, taps, hose and pressure regulators); provided, however, that the aggregate cost of any service rendered and any material used in connection with the cleaning and repairing of coils and tapping accessories furnished shall not exceed Thirty Dollars ($30.00) for the first beer tap plus Fifteen Dollars ($15.00) for each additional beer tap for each licensed premises in any calendar year.

(e) Manufacturers of malt alcoholic beverages and wholesalers (insofar as malt alcoholic beverages are concerned) may furnish permissible equipment, signs and other advertising material and specialties as above indicated in categories (a), (b) and (c) in combined total cost not to exceed One Hundred Dollars ($100.00), exclusive of cost of installation, to any one retail establishment in any calendar year.

Rule 2. No retail licensee shall possess, allow, permit or suffer in or upon the licensed premises any advertising material or advertising specialties, furnished directly or indirectly by any manufacturer, importer or wholesaler, other than the items specified in Rule 1 hereof.

Rule 3. No retail licensee shall allow, permit or suffer any sign or other advertising material bearing the name, brand or trade-mark of any manufacturer, importer or wholesaler of any alcoholic beverage, or the name, brand or trade-mark of any alcoholic beverage, to be affixed to, placed or displayed on the exterior of the licensed premises or upon any exterior door or display or show window thereof.

Rule 4. No retail licensee shall allow, permit or suffer in or upon the licensed premises any sign or other material advertising any particular brand or type of alcoholic beverage unless such brand or type of alcoholic beverage is actually available for sale at such premises.

Rule 5. No retail licensee shall directly or indirectly advertise or allow, permit or suffer the advertising of price of any alcoholic beverage, or size of other than the original container thereof, on the exterior of the licensed premises or in the show window or door thereof or in the interior thereof when visible from the exterior; except, however, that placards not exceeding one and one-half (1 1/2) inches by one and one-half (1 1/2) inches and advertising the price of alcoholic beverages being sold in original containers for consumption off the licensed premises and the containers themselves may be displayed within the show window of the licensed premises.

Rule 6. No manufacturer, importer, wholesaler or retailer shall include in any advertising material or other advertisement, directly or indirectly, in any manner or by any means, device or medium;

(a) Any statement, illustration, design, device or representation that is false or misleading;

(b) Any statement, design, device, matter or representation which is obscene or indecent or which is obnoxious or offensive to the commonly and generally accepted standards of fitness and good taste;

(c) The words "bond", "bonded", "bottled in bond", "aged in bond" or phrases containing these or synonymous terms, unless the distilled spirits so advertised were in fact bottled in bond under the Bottling in Bond Act of the United States;

(d) The terms "double distilled", "triple distilled" or any similar term;

(e) Any statement which is inconsistent with the label on the product;

(f) Any statement, design or device which represents or which tends to create or give the impression that the use of the alcoholic beverage has curative or therapeutic effects;

(g) Any statement of, or reference to, price which is deceptive or misleading or tends to deceive or mislead or which stresses and features a pecuniary appeal in a blatant or gaudy manner;

(h) Any illustration of a female which is not dignified, modest and in good taste;

(i) Any scene in which is portrayed a child or objects (such as toys) suggestive of the presence of a child or in any manner portrays the likeness of a child or contains the use of figures or symbols which are traditionally associated with children;

(j) Any statement design, device or representation relating to any refund, exchange or money back guarantee, irrespective of truth or falsity;

(k) Any portrayal of an athlete or athletes or athletic events in such manner as to imply that the consumption of alcoholic beverages improves athletic prowess or physical stamina, or any portrayal or suggestion that athletes recommend drinking alcoholic beverages;

(l) The name of or depiction of any biblical character;

(m) Any reference by name or other identification to any retailer selling the products advertised unless the advertisement has been placed and paid for by the retailer;

(n) Any statement of a nature which fosters or tends to foster or encourage intemperance;

(o) Any statement which induces, or tends to induce, minors to purchase or consume alcoholic beverages.

Promulgated Wednesday, August 30, 1961.
Effective Friday, September 1, 1961.
Filed with the Secretary of State (N. J.) Wednesday, August 30, 1961.

2. APPELLATE DECISIONS - 279 CLUB, INC. v. NEWARK (CASE NO. 2)

279 Club, Inc., a New Jersey corporation, (Case #2)

Appellant,

v.

Municipal Board of Alcoholic Beverage Control of the City of Newark,

Respondent.

ON APPEAL

CONCLUSIONS AND ORDERS

Waldor & Beckerman, Esqs., by Milton A. Waldor, Esq., Attorneys for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board whereby on March 8, 1961 it unanimously denied appellant's application for renewal of its plenary retail consumption license for the 1960-61 licensing period for premises 279 West Kinney Street, Newark.

"Upon the filing of the petition of appeal, an order dated March 10, 1961 was entered by the Director extending the term of the 1959-60 license until further order herein. Rule 12 of State Regulation No. 15.

"Appellant alleges in its petition of appeal that (a) respondent acted in an arbitrary, capricious and discriminatory manner; (b) it violated constitutional right of appellant; (c) hearing was improperly held since there has been no chargeable conviction of appellant with respect to the allegation of sale of marihuana on premises; (d) appellant had no knowledge and is in no way responsible for said allegation and (e) son of appellant has not been tried or convicted in the Essex County Court of said allegation.

"Respondent Board in its answer denies the aforesaid allegations in the petition of appeal and contends that its decision was based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the renewal should not be granted'.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcript of the proceedings held before the respondent Board was received in evidence, pursuant to Rule 8 of said Regulation. There was also received in evidence a transcript of the testimony of one Dolores Green on March 29, 1961 in a criminal matter before the Essex County Court (Law Division)

wherein Bernard Weissman (son of Saul Weissman) was charged with 'illegal possession and sale of a narcotic drug'.

"This is a second appeal in this particular case. At the conclusion of the hearing of the first appeal, the matter was remanded by the State Director to respondent Board which was ordered to schedule a hearing and then proceed pursuant to the provisions of the local ordinance applicable thereto. Bulletin 1367, Item 1.

"The respondent Board held such hearing on March 1, 1961 and thereafter denied renewal of appellant's license for the current licensing term.

"At the hearing below, Police Captain Weber testified that he is in command of the Fourth Precinct and supervises the area in which appellant's licensed premises are located; that he made no recommendation to approve or disapprove the renewal of appellant's license for the 1960-61 licensing period; that he never received any complaints relative to appellant's premises but based his attitude with reference to renewal 'on the incident that happened on May 10, 1960 where a Barney Weissman was charged with the sale of marihuana'.

"Hugh McNulty, a police detective attached to the narcotics squad, testified that on May 10, 1960 he apprehended Bernard Weissman (hereinafter called Bernard) at the appellant's licensed premises; that subsequent thereto Bernard was indicted for possession and sale of marihuana; that although he did not see Bernard actually working on defendant's premises, Bernard admitted to him that he managed the tavern.

"It was stipulated by the attorneys representing the respective parties that Detective Daniel Kohlman, if called as a witness for respondent, would substantially testify in the same manner as Detective McNulty.

"Dolores Green testified before the respondent Board that about a week prior to May 10, 1960 at defendant's licensed premises she had purchased marihuana from Bernard who was tending bar. During the criminal proceedings referred to herein, Dolores testified on direct examination that she made all of the alleged purchases of marihuana in Bernard's car. When cross-examined concerning the place of purchase, Dolores said that she made one purchase in appellant's premises and explained the difference in testimony thusly: 'I just don't see what difference if I got it from his car, what difference it made whether I got it out of the tavern, the answer is yes. I don't think it really mattered where I had been already to court for it'.

"Bernard testified that since May 10, 1960 he was not employed on the appellant's premises but used to assist his father by giving a hand at the premises when the bartender failed to report for duty or when he want home for supper and, furthermore, he closed up the place at night. He admitted in his testimony that during the week prior to May 10th he worked on and off in appellant's premises but denied ever selling marihuana to Dolores Green.

"Saul Weissman testified that he is president of appellant corporate-licensee and that his son, Bernard, was not employed by him but that he did help out occasionally; that he never had knowledge that marihuana or any other narcotic drug was being sold or dispensed on the licensed premises.

"I am satisfied that Dolores Green was telling the truth when she testified that she made a purchase of marihuana from Bernard while he was in appellant's premises. Her testimony at the criminal trial wherein the indictment charged Bernard with sale of marihuana on a public street might explain why Dolores did not specifically mention that a purchase of marihuana was made in appellant's tavern.

"I find from the evidence herein that Bernard was employed in the appellant's establishment although he may not have been actually compensated for such services. Salary or compensation is not a requisite to employment. In Re Vlaminck, Bulletin 147, Item 4, Commissioner Burnett stated:

> 'The foregoing rulings apply irrespective of whether any salary or wage or compensation whatsoever is paid either Mrs. Vlaminck or the children. The operative words of the Statute are: "shall be knowingly employed by or connected in any business capacity whatsoever with the licensee." To employ means to make use of the services of another, to have or keep at work; to entrust with some duty. The Statute does not say "hire". "Employ" emphasizes the idea of services to be rendered, whereas "hire" places the accent on wages to be paid. The Statute clinches the case by the alternative "or connected in any business capacity whatsoever with the licensee".'

"There is nothing in the record to indicate that appellant's constitutional rights have been violated. Insofar as the ultimate disposition of the criminal charge involving Bernard is concerned, the outcome thereof would not affect the matter now under consideration.

"Although Saul Weissman may have been absent from time to time from the licensed premises due to illness, his claim of ignorance of the event which took place with reference to the marihuana incident cannot be accepted herein. It has been a ruling of this Division that even in the absence of actual knowledge, a licensee cannot escape the consequences of the occurrence of such an incident such as is charged herein to have taken place on his licensed premises. He cannot hide behind his employees. Re Paton, Bulletin 898, Item 3.

"Justice Oliphant, speaking for the New Jersey Supreme Court in Zicherman v. Driscoll, 133 N.J.L. 586, said:

> 'The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 N.J.L. 585; Voight v. Board of Excise, 59 N.J.L. 358; Meehan v. Excise Commissioners, 73 N.J.L. 382, aff'd 75 N.J.L. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson,

98 N.J.L. 661; Fornarotto v. Public Utility Commissioners, 105 N.J.L. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses.'

"In view of the aforesaid and because of the absence of any evidence tending to show that respondent Board was arbitrary, discriminatory or capricious or that its members were improperly motivated, I recommend that an order be entered affirming respondent's action in denying appellant's application for renewal of its license and dismissing the appeal filed herein."

Exceptions to the Hearer's Report and argument in substantiation thereof were filed with me pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including the transcript of proceedings before respondent Board, the Hearer's Report and exceptions and written argument thereto, I concur in the findings and conclusions of the Hearer and shall adopt his recommendation. I shall affirm the action of respondent and enter an order accordingly.

Accordingly, it is, on this 29th day of June, 1961,

ORDERED that the action of respondent be and the same is hereby affirmed and it is further

ORDERED that my previous order dated March 10, 1961, extending the term of the license then held by appellant, be vacated effective at midnight, June 30, 1961, at which time all activity under the license as extended shall terminate.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE (HOMOSEXUALS) - LICENSE SUSPENDED FOR 40 DAYS.

In the Matter of Disciplinary Proceedings against

Helen Janet Borisewski
t/a Helene's
19 St. George Avenue
Roselle, N. J.

Holder of Plenary Retail Consumption License C-2 for the 1960-61 and 1961-62 licensing periods, issued by the Mayor and Council of the Borough of Roselle.

CONCLUSIONS AND ORDER

Kovacs & Anderson, Esqs., by Oliver R. Kovacs, Esq., Attorneys 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 has pleaded not guilty to the following charge:

> 'On October 21, 22, 28, 29, November 5, 6, 12 and 13, 1960, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g. females impersonating males, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness, immoral activity and foul, filthy and obscene language and conduct by such persons and by others in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"Four of the Division's agents participated in the investigation leading to the proceedings herein. In the testimony and comment hereinafter set forth, the agents will be identified as 'R', 'G', 'S' and 'D'. Agent R and G testified that they visited the defendant's licensed premises on all of the dates mentioned in the charge and S and D testified that their only visit was on the night of November 12th and that they remained in the said premises until the early morning of November 13, 1960.

"Agent R testified at length with reference to visits made to defendant's licensed premises and it was stipulated and agreed by the attorneys for the respective parties that if Agent G were interrogated, his testimony would be considered identical and would corroborate the testimony of Agent R.

"Agent R testified that the licensed premises are located on the ground floor of a frame dwelling-type building; that as you walk through the entrance from the street you enter a small room with an 8 foot L-shaped bar on the left and there are shelves with bottles of alcoholic beverages, a couple of tables and chairs and a beer cooler

against the rear wall; that at the far end of the room there are a 'couple of steps' leading to a second barroom containing a small bar, a couple of tables and chairs, a juke box and a dance area; that there is a sign above the doorway leading to the rear room reading 'Club Room'. Agent R further testified that at 10:40 p. m. on October 21, 1960 he and Agent G entered the front room where he observed six male patrons and then proceeded to the second barroom where Marilyn Trygar (hereinafter referred to as Marilyn) was tending bar; that after he and Agent G took seats at a table opposite the bar, he noticed five females seated at the bar and several females broken up into groups of three and four seated at tables; that his attention was attracted to one of the females seated at the bar who was called 'Chick' because she wore male slacks, shoes, sweater and shirt, had a male-type haircut, wore no make-up and moved around in masculine fashion; that the other four females were attired in slacks, loafers, male type shirts and sweaters; that three of them had some facial make-up and a couple wore feminine jewelry; that of seven females at the tables, three had short cropped haircuts, male type attire and acted in a masculine manner; that on a couple of occasions, the more masculine females would walk in a mannish manner when going to the ladies room and while seated at the tables they would purchase drinks at the bar, bring them to their female companions and would light the cigarettes for them; that on an occasion one of the apparent lesbians proceeded to the dance floor with her girl friend and Marilyn shouted 'No dancing together' and the two went back to their seats; that he and Agent G left the premises at 1:25 a. m. on October 22nd.

"Agent R testified that on October 28th at 9:45 p. m. he and Agent G again entered defendant's premises and after remaining in the front barroom for twenty minutes, went upstairs to the other barroom and observed the defendant tending bar; that they seated themselves at a table opposite the bar and noticed five females (including Chick), three of whom were the same females seen on the prior visit and were dressed in the same manner as on the former occasion, seated at the bar; that these three females acted in a masculine manner and were observed purchasing drinks for other females at the bar; that one of the apparent lesbians patted one of the other females on her buttocks while another apparent lesbian kissed one of the females on her neck; the apparent lesbians would, at times, ask the other females for a dance and would take the lead and dance, cheek to cheek; that an apparent lesbian, while dancing with her female companion, was heard to make an indecent proposition to her; that the agent asked Chick for a dance and she said 'Are you kidding?' and walked away to the merriment of the defendant and other patrons seated at the bar; that Agent G asked one of the apparent lesbians to dance and she said 'I don't dance with boys', which again caused laughter among the other patrons; that he and Agent G left the premises at 2:00 o'clock on the morning of October 29th.

"Agent R further testified that he and Agent G again entered defendant's premises at 11:10 p. m. on November 5th and went directly to the rear barroom where Marilyn was on duty behind the bar; that he recognized Chick as well as six other females from the previous visits and that they all were dressed in a similar manner as on previous occasions; that the apparent lesbians again assumed the male role, being aggressive in their actions and purchasing the drinks for their female companions; that he heard Chick ask a female for a dance, which dance Chick took the lead part and danced cheek to cheek and at the completion of the dance Chick returned to the bar; that defendant entered the upper barroom and as she stood at the juke box, the female who had danced with Chick reached out and tickled the defendant between the navel and the lower portion of her stomach and as the defendant pulled away, the female said 'I just wanted to touch it' and then defendant permitted her stomach to protrude and permitted the female to touch her again; that after a conversation with the

female, the latter kissed defendant on her cheek and defendant then went to the lower barroom; that the female patronage increased to twelve in the upper barroom, six or seven of whom could be described as apparent lesbians; that defendant and a man called Jack came into the upper barroom and danced on a few occasions during which time Jack was seen 'grabbing' defendant by her breast and also 'by her buttocks'; that Jack also grabbed other female patrons by their buttocks; that when Jack bent over defendant and 'put his lips around Helen's right breast over her blouse', she laughed; that Jack sang an off-color song while dancing on his toes; that he and Agent G left at 2:15 a. m. on the morning of November 6th.

"Agent R further testified that he and Agent G entered defendant's premises at 11:25 p.m. on November 12th and upon entering the upstairs bar observed ten females and three males seated at the bar and two males at a table; that he recognized Chick who was dressed in the same fashion as on the prior visits; that the apparent lesbians would ask their female companions to dance and the dance would be the same as was seen on the other visits; that a female called Lulu used no make-up and was dressed in a big striped male-type sweater, no shirt underneath, slacks and wearing loafers, was with another 'feminine type' girl whom she kissed on a couple of occasions, poured the girl's drinks for her and a few times they danced cheek to cheek; that Chick asked Lulu if she could dance with her girl friend and when Lulu consented, Chick took the male part and the females danced cheek to cheek; that fifty per cent of the females present were apparent lesbians; that everyone sang 'Happy Birthday Dear Lulu' and Marilyn came from the kitchen carrying a small cake; that Lulu said 'Don't I get a kiss for my birthday?', at which time her girl friend kissed her on the lips and Lulu then kissed some other girls in the same fashion including Marilyn; that he (Agent R) and Marilyn had some conversation about the type of girls and she finally said 'I can't say anything. I just work here'; that he and Agent G identified themselves to the defendant and when she was questioned in the kitchen about apparent lesbians and asked to look into the bar, defendant said 'I don't see any. How can you tell?'; that when questioned about Jack she claimed she did not recall the incident and added 'We flagged him. He's a slob. He doesn't even come in here any more'; that when the agent pointed out Chick to her, she said that she couldn't tell if she was a lesbian; that when Marilyn was asked about Chick with whom she had danced, Marilyn said 'She's not feminine but she's a female'; that defendant asked the agents to give her a break and said that she would not let those people whom the agents described as apparent lesbians come into the place any more.

"The attorney for the defendant cross-examined Agent R in great detail concerning his opinion as to what constituted a female homosexual. Agent R answered 'Well, there are a number of things. Take her over-all appearance, her attire, the manner in which she dresses, her speech, her actions, whether they be masculine or feminine, just everything in general, the way she conducts herself. When you see a female all clad in male attire, male shoes, male-type haircut the same as I'm wearing now, from that, to me, she's an apparent lesbian.' During the lengthy cross-examination of Agent R his testimony given on direct examination remained unshaken.

"Agent S testified that at 11:45 p.m. on Saturday, November 12th, he and Agent D entered defendant's premises; that about 12:10 a.m. on Sunday, November 13th he and Agent D went to the rear barroom and took seats at a table next to the table where Agents R and G were seated; that there were ten females at the bar and four females seated at tables; that of the females in the rear room ten 'were attired either in male-type trousers or female-type slacks. Some

had white male-type dress shirts on. They had the Perry Como-type sweaters. Others wore bulky knit pullover seaters. Some had oxford-type laced shoes. Others had loafers and some wore male-type jewelry such as cuff links and male-type rings and watches. They all wore their hair short. Their actions were masculine when lighting a cigarette or drinking their drinks. When walking about, they seemed to walk with a heavy step'; the females 'seemed to be teamed up with one female seeming to take the active part of the pair and the other being more passive' and 'at times, they would look at each other very intimately and touch each other's arms and place their arm around their waist and look into each other's eyes' and when dancing 'the female who was leading the dance had her partner's hand by the wrist and had placed it on her breast and kept it there and they danced cheek to cheek'; that at the hearing Chick was dressed in normal female attire but when he observed her on the night in question she wore male-type pants with cuffs and zipper front, white shirt with a slim 'Jim' black tie, black laced shoes and a red sweater, which he had seen worn by men.

"Agent S was cross-examined by the defendant's attorney with reference to the appearance and mannerisms of the various females in defendant's establishment but repeated, in substance, his description of the females as given by him on direct examination. It was stipulated that Agent D's testimony on both direct and cross-examination would be similar to that given by Agent S.

"On behalf of defendant, a retired police officer, a manager of a retail clothing store, the person whom the agents referred to as Chick and the licensee herself testified at the instant hearing.

"Lieutenant Woodruff, formerly of the local police department, testified that he had, on occasion over a period of fourteen months, visited defendant's premises; that he observed males and females in equal numbers and that some of the girls wore slacks and blouses, while others wore skirts, sweaters and dresses; that he never saw any females in the place who appeared to him to be sexual deviates and that the establishment was not a gathering place for homosexuals. Officer Woodruff testified that he was not in defendant's premises on any of the dates which formed the basis of the charge.

"David Peres testified that he manages a retail store and that the trend in so far as women's apparel is concerned appears to indicate no difference in men's and women's dungarees other than the measurements thereof; that the garments have front zippers and the shirts are identical, except the cut and the fact that women's shirts button one way, whereas men's button the other. Examples of the mannish type clothing worn by some females were exhibited and marked in evidence herein.

"Chick testified that she is six fee in height, weighs 178 pounds and is 'very masculine in build, being athletically inclined'; that she was a member of the armed forces from 1945 to 1953 and received an honorable discharge with the rank of captain; that in the course of her training in the service she became very familiar with the problems attached to sex deviates; that she is not a lesbian and and in her opinion and from her observation she could definitely state that the defendant's premises were not frequented by persons who appeared to be female sexual deviates; that she recalled being in the premises at the times referred to by the agents; that she wears loafers, bobby sox, slacks with zipper fronts, blouses which have men's collars but recognized as women's apparel; that she does not use make-up other than lipstick and does not wear jewelry 'necessarily when I go bowling'; that she is single but keeps company with a gentleman; that she lives in a municipality somewhere around fifty or sixty miles from the

defendant's premises and usually stops there on her way home.

"Defendant testified that on November 5, 1960 she was tending bar in the front barroom and Marilyn tended bar in the rear barroom; that there were approximately fifteen patrons (more female than males) in the rear barroom; that Chick, whom she knew about eight months, was present at the time; that some of the females wore slacks, sweaters, blouses or shirts; that some had plain slacks and some had fly fronts; that two females sat near the juke box and as she (defendant) came along, one of the girls told her that the fly front of her tan dress was open and that the girl may have touched her; that she remembered Jack but denied that she ever heard him sing an off-color song or that he ever grabbed her breast or committed any other personal indignity toward her; that she barred Jack from the premises because of his disorderly conduct; that she recalled the evening of November 12th because a female patron by the name of Lulu had a birthday and that there was a 'bowling crew' and others numbering twenty patrons, 'Maybe more girls' than men; that some of the girls had slacks, some skirts and dresses, and some kissed Lulu; that she (defendant) is not a homosexual. Defendant further testified that since the night when the agents identified themselves she has screened everyone who enters and had refused to serve a female who 'was dressed more so in masculine attire'.

"I have set out in detail the pertinent testimony given by the witnesses in the instant matter. Although some of the evidence may seem repetitious, the primary purpose is to show that on the respective visits of the agents the females in question on the defendant's premises invariably followed a pattern in their dress, mannerisms and demeanor. Thus, it tends to eliminate any contention on the part of the defendant that the congregating of said females on the premises constituted merely an isolated occasion so as to absolve the licensee or her employees of knowledge thereof. As was stated by Commissioner Driscoll in Bilowith v. Passaic, Bulletin 527, Item 3 'Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises.'

"It is not necessary to establish by the evidence beyond doubt that the specified patrons in defendant's premises were in actuality homosexuals. The evidence presented by the agents with reference to the conspicuous guise, demeanor, carriage and appearance of the females in question meets the required proof that they were apparent homosexuals. 'It is often in the plumage that we identify the bird.' See Paddock Bar, Inc. vs. Division of Alcoholic Beverage Control, 46 N. J. Super. 405.

"I would have to be naive, indeed, to believe the testimony of defendant who feigned ignorance of the existing conditions during the time when both she and the agents were in the premises, Further, I am not impressed with the testimony of Chick, considering her appearance and activities on all the occasions when the agents visited the licensed premises.

" I believe the testimony of the agents and therefore recommend that defendant be found guilty on the charge preferred herein.

"Defendant has no prior adjudicated record. In view of the fact that each night there was a comparatively small number of homosexuals on the premises and since there was comparatively little, if any, improper conduct at any time other than the incident between the defendant and a female patron aforementioned, I recommend that an order be entered suspending defendant's license for forty days. Re Rubinroit, Bulletin 1356, Item 2."

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by defendant's attorneys, pursuant to Rule 6 of State Regulation No. 16.

I have carefully considered the record herein, consisting of the transcript of the proceedings, exhibits, physician's letter addressed to the attorneys for defendant, the Hearer's Report, exceptions and written argument with reference thereto, and concur in the findings and conclusions of the Hearer and adopt his recommendation. Hence, I find defendant guilty as charged. I shall suspend defendant's license for a period of forty days.

Accordingly, it is, on this 29th day of June 1961,

ORDERED that Plenary Retail Consumption License C-2 for the 1961-62 licensing year, issued by the Mayor and Council of the Borough of Roselle to Helen Janet Borisewski, t/a Helene's, for premises 19 St. George Avenue, Roselle, be and the same is hereby suspended for forty (40) days, effective at 2:00 a.m., Wednesday, July 12, 1961, and terminating at 2:00 a.m., Monday, August 21, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

Gus Chagaris
t/a Gus's Tap Room
8 East Main Street
Freehold, N. J.

Holder of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Freehold.

CONCLUSIONS

AND

ORDER

Parsons, Canzonia, Blair & Smith, Esqs., by Rocco Ravaschiere, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Defendant pleaded not guilty to the following charge:

'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., Daniel R. ---, age 17, on December 4 and 9, 1960, and on divers days prior thereto and Ronald T. ---, age 18, on December 4, 1960 and on an occasion prior thereto, and allowed, permitted and suffered the consumption of alcoholic beverages by said persons in and upon your licensed premises on the above stated respective dates; in violation of Rule 1 of State Regulation No. 20.'

"Daniel ---, age 17 years of age, testified that from the middle of the summer of 1960 until December 9, 1960 inclusive, on 'forty or fifty' occasions he had visited defendant's licensed premises; that he remembered December 4, 1960 (the day that he put a spring in his car) when he and Ronald were in defendant's premises at which time bartender Harold Musgrave served him a bottle of beer and served two bottles of beer to Ronald and that neither was questioned regarding his age; that about 4:30 p.m. on December 9, 1960 (his girl's birthday), prior to entering defendant's premises, he waved to Ted Fariello 'who was coming down the street toward the movies where I was parked, pretty close to the movies'; that he (Daniel) entered the front door of the premises, took a seat at the bar and Musgrave served him a glass of beer from the tap; that he also purchased from Musgrave a half-pint bottle of Gallagher and Burton whiskey for off-premises consumption; that Musgrave put the bottle in a bag and that he (Daniel), after making payment for the beer and whiskey, carried the bottle of whiskey from the premises; that he walked across the street where he observed Fariello standing by the movies and at Fariello's request, he drove him home; that he showed the bottle of whiskey to Fariello before placing it on the seat of the car.

"Theodore Fariello testified that on the afternoon of December 9, 1960 at '3, 3:30, 4, something like that' he was standing in front of the movies located across the street from defendant's premises when he saw Daniel 'about two or three stores down from the movies'; that Daniel waved to him and then corssed the street and went into the defendant's premises; that five or ten minutes thereafter he saw Daniel with a paper bag in his hand 'in the middle of the road' coming from the direction of defendant's premises; that he asked Daniel 'for a ride home' and that Daniel 'showed me a bag and bottle. The only reason I remember it is because it said "Gallagher" on it, Gallagher and Burton's something.' During cross-examination the attorney for the defendant questioned the motive which prompted the witness to give a signed statement to agents of the Division of Alcoholic Beverage Control (the contents of such statement being in substantial agreement with the testimony given on direct examination). Fariello insisted that, although he had given a statement after Daniel had told him it was for the purpose of helping the deceased son of Shirley Burdge, the statement and the testimony given at this hearing were truthful.

"Ronald testified that he was not in defendant's premises with Daniel on December 4, 1960 although he acknowledged that he had given a written signed statement to ABC agents that he had been there and obtained beer on said occasion. The attorney for the Division pleaded surprise. Thus, such statement could be used only to neutralize his testimony and could not be used to establish the truth of the pending charge with reference thereto. State v. D'Adame, 84 N.J.L. 386 (Ct. of E & A).

"Harold Musgrave testified that he is employed as a bartender by defendant and although he remembered seeing Daniel around town, he neither saw nor served him in the licensed premises.

"Defendant also produced William McGackin whom Daniel testified he had seen in defendant's premises. The testimony of McGackin (as well as James Hope and Roger Jones by stipulation) was that although they knew Daniel, they had never seen him in defendant's premises.

"Daniel's testimony of his recollection of the dates (December 4 and December 9th) when he visited the defendant's licensed premises and his activities while there was very specific. Daniel identified

Musgrave as the bartender who served him on the dates set forth in the charge. Daniel's testimony that he had been in the defendant's premises on 'forty or fifty' occasions has no material evidential value insofar as the matter under consideration is concerned. However, I am satisfied that Musgrave served beer to Daniel on December 4th and again on December 9th and at the latter date Daniel also purchased the bottle of whiskey for off-premises consumption. I believe Fariello's testimony to be true that he saw Daniel enter defendant's premises and later come from the direction of defendant's premises carrying a bag which Fariello subsequently ascertained to be a half-pint bottle of Gallagher and Burton's whiskey.

"I disbelieve the testimony of Musgrave that he has never seen Daniel in defendant's premises. The testimony of the other three youths that they never saw Daniel in the premises is not sufficient proof to establish that he was not there. Assuming but not admitting that Daniel was mistaken in this or some other matter, the courts have consistently held that the maxim 'falsus in uno, falsus in omnibus' is not a principle or a positive rule of law; that it is quite possible for a witness to vary his testimony and to tell somewhat conflicting stories and still not be guilty of giving willfully, knowingly or intentionally false testimony as to a material fact. (See Coleman v. Public Service Coordinated Transport, 120 N.J.L. 384.)

"I recommend that insofar as Daniel is concerned defendant be found guilty of the violations on December 4 and 9, 1960. However, as to Ronald, the evidence is not too clear as to the alleged violation and thus I recommend that the part of the charge involving the sale and consumption of beer to him be dismissed.

"Defendant has a prior adjudicated record. Effective March 4, 1942 his license was suspended by the municipal issuing authority for one day for hindering an investigation. Inasmuch as this dissimilar violation happened more than five years ago, it should not be considered in fixing the penalty herein. It is recommended that an order be entered suspending defendant's license for twenty days, the minimum penalty imposed for sale of alcoholic beverages to a 17-year-old minor. (Re Maillard, Bulletin 1384, Item 6.)"

Written exceptions to the Hearer's Report and written argument in substantiation thereof were filed with me by defendant's attorney within the time limited by Rule 6 of State Regulation No. 16.

After carefully considering the entire record herein, including the transcript of the testimony, the Hearer's Report, the exceptions and written argument filed herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 28th day of June, 1961,

ORDERED that any renewal for the 1961-62 licensing year or transfer of Plenary Retail Consumption License C-3, issued by the Borough Council of the Borough of Freehold to Gus Chagaris, t/a Gus's Tap Room, for premises 8 East Main Street, Freehold, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Thursday, July 6, 1961, and terminating at 2:00 a.m., Wednesday, July 26, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

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

In the Matter of Disciplinary Proceedings against

Stephen J. Witkowski & Edmund Witkowski t/a Old Spot Cafe
1401 So. Clinton Avenue
Trenton, New Jersey,

Holders of Plenary Retail Consumption License C-219, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Henry F. Gill, Esq., Attorney for Defendant-licensees
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On April 29, May 2, 5 and 6, 1961, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

An ABC agent visited defendants' licensed premises on the early afternoon of April 29, 1961. During this visit Stephen J. Witkowski (who was tending bar) answered numerous telephone calls and referred the callers to Henry J. Blickert (a patron) who was in the rear sitting-room and who took the calls from another telephone located therein. The agent went to the sitting-room where Blickert refused to take a horse-race bet from the agent and then asked him if he knew the bartender. The agent said that he did. After the agent returned to the barroom, Blickert came to him and accepted a $2 bet on a horse running that day.

The same agent returned to the premises on the early afternoon of May 2, 1961. Edmund Witkowski was then tending bar and answered numerous telephone calls which were then taken by Blickert who was again in the sitting-room. Thereafter the agent went to the sitting-room where Blickert accepted from him $6 as bets on horses running that day.

The same agent and another ABC agent entered the premises on the early afternoon of May 5, 1961, and sat at the bar. Edmund Witkowski was tending bar and, at the request of one of the agents, gave him a pencil and paper. After this agent had recorded three $2 bets on a paper, Blickert came to the bar and accepted $6 and the paper from the agent in the presence of the bartender.

The same agent and a third ABC agent entered the premises about 10:45 a.m. on May 6, 1961, and sat at the bar. They had in their possession six one-dollar bills, the numbers on which had previously been recorded. Edmund Witkowski was tending bar and answered telephone calls which, as previously, were referred to Blickert who was in the sitting-room. Later one of the agents went to the sitting-room and Blickert accepted from him three $2 bets on horse races. As pre-arranged, Trenton de-

tectives then entered and placed Blickert under arrest. They found $357 in his possession and numerous bets slips. Edmund Witkowski verbally admitted to the agent that he knew the patron had been accepting bets on the premises during the prior six weeks, but later denied such knowledge after Stephen J. Witkowski entered and denied that he had any such knowledge.

Defendants have a prior record. Effective March 7, 1960, their license was suspended by the local issuing authority for five days for sale to minors. In attempted mitigation the attorney for defendants alleges that defendants did not themselves engage in the prohibited conduct or have any knowledge of the patron's operations. While it may be true that neither licensee accepted any money, they had knowledge of and participated in the gambling activity at least to the extent that they passed the telephoned bets to the "bookie." I shall suspend defendants' license for twenty-five days, the minimum suspension for violations in which a licensee or his agent participates in the gambling activity (Re Horstmann, Bulletin 1338, Item 5), to which five days will be added for the prior dissimilar violation within the past five years, making a total suspension of thirty days. Five days will be remitted for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 26th day of June 1961,

ORDERED that any renewal for the 1961-62 licensing year or transfer of plenary retail consumption license C-219, issued by the Board of Commissioners of the City of Trenton to Stephen J. Witkowski & Edmund Witkowski, t/a Old Spot Cafe, for premises 1401 So. Clinton Avenue, Trenton, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, July 10, 1961, and terminating at 2 a.m. Friday, August 4, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - PURCHASE BY RETAILER FROM RETAILER - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Four Hundred-21st Avenue, Inc. t/a Bookstaber's Drug Store 400 - 21st Avenue Paterson 3, New Jersey Holder of Plenary Retail Distribution License D-45, issued by the Board of Alcoholic Beverage Control for the City of Paterson.	CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

The defendant pleaded non vult to the following charge:

"On May 2, 1961, you, a New Jersey plenary retail distribution licensee, without authority of a special permit first obtained from the Division of Alcoholic Beverage Control, purchased or

obtained twenty-five cases of various kinds and brands of alcoholic beverages from Saul Z. Steinweiss, t/a Towne Pharmacy, holder of a plenary retail distribution license for premises 1 Sheridan Avenue, Hohokus, New Jersey; in violation of Rule 15 of State Regulation No. 20."

The investigation of this case disclosed that on May 2, 1961 the defendant, without first obtaining a special permit from this Division, purchased twenty-five cases of assorted brands of whiskey from Saul Z. Steinweiss, another retail licensee.

By way of mitigation, the attorney for the defendant has submitted a statement setting forth therein, among other things, that in September 1960, the defendant executed a chattel mortgage for $10,000 as part of the purchase price of the licensed premises; that the mortgage contained a clause requiring the defendant to carry a minimum of $10,000 in his liquor stock; that defendant was not certain whether he was in compliance with this clause; that because of the lateness of the hour, he was unable to reach a liquor salesman and that he purchased the twenty-five cases of whiskey from Mr. Steinweiss, a friend, to replenish his stock. It is quite apparent that the defendant could have easily avoided this unlawful purchase. Moreover, it is the duty of every licensee to strictly adhere to the rules and regulations of the Division at all times.

Defendant has no prior adjudicated record. Considering the large amount of alcoholic beverages involved, I shall suspend the defendant's license for twenty days. Cf. Re Mansueto, Inc., Bulletin 1308, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

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

ORDERED that any renewal for the 1961-62 licensing year or transfer of Plenary Retail Distribution License D-45, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Four Hundred-21st Avenue, Inc., t/a Bookstaber's Drug Store, for premises 400 - 21st Avenue, Paterson, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m., Wednesday, July 5, 1961 and terminating at 9:00 a.m., Thursday, July 20, 1961.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED, AFTER TERMINATION OF PROCEEDINGS TO REVIEW.

In the Matter of Disciplinary Proceedings against

Murphy's Tavern, Inc.
135 Mulberry Street
Newark 2, New Jersey,

Holder of Plenary Retail Consumption License C-461 (for the 1959-60, 1960-61 and 1961-62 licensing years), issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

ORDER

BY THE DIRECTOR:

On December 27, 1960, the defendant's license was suspended for sixty days. See Bulletin 1374, Item 2. Pending defendant's appeal to the Superior Court, Appellate Division, the suspension was stayed by the Court. On June 26, 1961, the suspension was affirmed by said Court and, therefore, it may now be reimposed.

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

ORDERED That the sixty-day suspension heretofore imposed against plenary retail consumption license C-461, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Murphy's Tavern, Inc., for premises 135 Mulberry Street, Newark, be and the same is hereby reimposed, commencing at 2 a.m. Tuesday, July 18, 1961, and terminating at 2 a.m. Saturday, September 16, 1961.

WILLIAM HOWE DAVIS
DIRECTOR.

8. STATE LICENSES - NEW APPLICATION FILED.

Menotti Lembo
t/a Lembo Distributing Company
53 West Grand Street, rear
Elizabeth, New Jersey.

Application filed September 1, 1961 for Additional Warehouse License on State Beverage Distributor's License SBD-106 for premises 44-48 West Jersey Street corner Sterling Place, Elizabeth, New Jersey.

William Howe Davis
Director