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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1884 November 19, 1969

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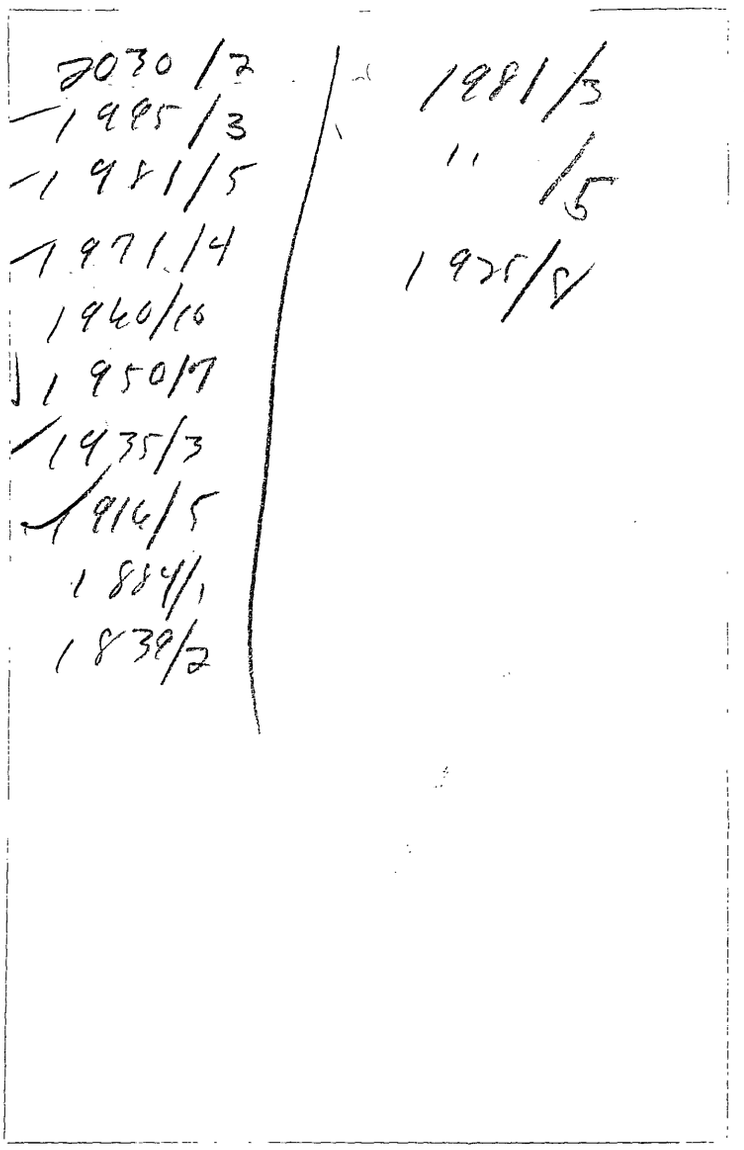
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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1884 November 19, 1969

1. DISCIPLINARY PROCEEDINGS - GAMBLING (SALE OF FOOTBALL POOL TICKETS - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against McGuire Holiday Motel (A New Jersey Corporation) N/S Wrightstown-Cookstown Rd. Wrightstown, New Jersey Holder of Plenary Retail Consumption License C-10 issued by the Borough Council of the Borough of Wrightstown	CONCLUSIONS AND ORDER

Richman, Berry & Ferren, Esqs., by Grover C. Richman, Jr., Esq., Attorneys for Licensee
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On November 29, December 4 and 6, 1968, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as a 'football pool' and on said date of December 6, 1968, you also possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, slips, tickets, records, documents, memoranda, and other writings pertaining to the aforementioned gambling activity; in violation of Rule 7 of State Regulation No. 20.

"2. On November 29, December 4 and 6, 1968, you allowed, permitted and suffered tickets and participation rights in a lottery commonly known as a 'football pool' to be sold and offered for sale in and upon your licensed premises, and on said date of December 6, 1968, you also possessed, had custody of and allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

Two members of the New Jersey State Police participated in the investigation which resulted in the lodging of the charges.

Edward Werse, a Detective of the State Police, testified that he entered the licensed premises (which he described as a "restaurant-cocktail establishment" with a motel in the rear) on November 29 at approximately 11:30 a.m., positioned himself at "the corner of the right side" of the bar and ordered a drink of beer. Entry is made through the front door, the bar is to the left, the restaurant to the right. The bar was 22 to 25 feet long. Tending bar was a "tall, thin fellow, light

hair, wearing glasses, who had a jacket with the name 'Hal' on it." No other persons were tending bar at the time. The bartender was later identified as Harold Browning. There were no other patrons in the barroom. Werse and Hal engaged in general conversation.

Between 12:15 and 1:30 p.m. Werse observed four white males in military uniform receive football pool tickets from Hal. They were seated two stools or three feet distant from Werse. In describing the transaction between the military personnel and Hal, Werse testified, "I saw Hal give these individuals football slips, and they sat at the bar and made them out, and they gave them back to Hal with money. I could not see how much money was passed between the individuals and the bartender. Hal took the football things and money and put them in the pocket of his jacket." The group discussed football. Werse asked Hal "if I could have a ticket." Hal said "Yes" and handed Werse a ticket. Werse filled out the ticket and handed Hal $2.00 and the stub. The detective described the ticket as a football pool ticket. He departed from the premises "about 1:30, 1 o'clock, in that area."

Werse returned to the barroom on December 4 at approximately 12:25 p.m., sat at the same area as on the date previous and ordered a beverage of Hal who was again tending bar. Twelve or fifteen patrons were at the bar. While conferring with Hal, the detective purchased two football pool tickets from him for a dollar each. He filled out the tickets and handed the stubs and $2.00 to Hal. Previous to this occurrence he had observed Hal giving football tickets to other patrons in the barroom. Prior to departing from the premises at 1:05 p.m., Werse received five additional blank tickets from Hal after informing him that he could sell them to friends. He did not pay for those tickets

Accompanied by State Trooper Louis Parisi, Detective Werse returned to the licensed premises on December 6 at noontime and sat at "the corner of the bar to the extreme opposite end of the front door." Parisi proceeded to the restaurant portion of the premises. Hal was tending bar unassisted. Approximately eight or nine patrons were at the bar. Werse handed Hal the football pool tickets that he had received from him on the occasion of his previous visit. Hal said, "O.K., Ed. Thanks a lot."

Werse made a telephone call and after an interval, three state troopers including Trooper Parisi entered the barroom and executed a search warrant. Football slips and money were taken from Hal's person. It was the detective's opinion that Hal had engaged in gambling on the outcome of football games with him and that the transactions he witnessed on November 29 and on December 4 between Hal and other patrons constituted the same type activity. Finally, Werse testified that, in each instance he described, the tickets or slips were filled out at the bar.

On cross-examination, Werse testified that the barroom and restaurant are "separated by a wall and entry-way between the bar and restaurant part with a sliding, folding door between." Concerning the activity of November 29th, Werse testified that Hal had the tickets on his person and after the tickets were filled in he returned the tickets and the money in his jacket. He did not recall where Hal had the tickets on December 4th. After Werse handed Hal the filled-in tickets and the money, Hal placed the filled-in tickets and the money in his jacket pocke When Werse returned to the barroom on December 6th and handed Hal the five tickets he had received on December 4th and $5.00, Hal placed the tickets and the money in his jacket pocket.

A search was made of the premises by other law enforcement officers. He does not know of anything found in the barroom or cash register pertinent to the charges.

State Trooper Louis Parisi testified that after conferring with Detective Werse on the morning of December 6th he proceeded to the licensed premises at approximately 11:50 a.m. and positioned himself at "a table which you can consider adjacent to the bar from which

you can observe the bar area, and I had lunch." At noontime Werse entered and positioned himself at the far end of the bar directly across from Parisi. Hal was the only person tending bar. He observed Hal serving patrons, conversing with them and then receive papers from several patrons and put them in the pocket of a "three-quarter suburban car coat" which was on a stool behind the bar. He observed Hal received three slips and currency from Werse. Shortly after Werse made a telephone call, additional law enforcement officers arrived and Hal was arrested. A search of Hal's clothes revealed that he had a number of football bet slips in his pockets and cash. A search of the bar area by Trooper Parisi revealed two pads of football bet slips in a drawer at the right front of the bar. A legal size yellow sheet of paper containing football pool bets taken during the current week and the previous week were found alongside the register. Hal admitted to the State Police officers that he was making book and that he had just started to make book a few days previous.

In defense of the charges, David Greenberg, a part owner of the corporate licensee and its general manager, testified that he hired Browning as a bartender four years previous to the incidents in question. At the time of the hiring he gave him specific instructions that gambling, in any form, would not be tolerated. He was not aware of any gambling activities being conducted on the licensed premises.

On cross-examination, the witness asserted that Browning admitted to him (after the raid) that he had recently started accepting bets and regretted doing so.

Kenzo Hachtmann, who assisted the prior witness in managing the establishment for the past three years, testified that he never saw Browning engage in any kind of gambling on the licensed premises. Immediately upon learning of Browning's arrest, he dismissed him from his employment. He never saw football pool tickets upon the premises.

Ellen M. Dallas, employed as a waitress at the licensed premises, testified that she was not aware of any gambling activities being carried on by Browning, saw no evidence of any gambling activity and that Browning never discussed the subject of gambling with her.

Harold C. Potter, who was employed part time at the licensed premises including working in the kitchen and tidying up the bar, testified that he saw no evidence of gambling nor did he see any football tickets in the licensed premises. He never discussed gambling with Browning.

The testimony of George C. Barmore, who was employed at the licensed premises at various jobs, including dishwashing, cooking, bringing in beer and tidying the bar, was similar to the testimony offered by Potter.

In brief, the licensee argued that it did not allow, permit or suffer gambling activity upon the licensed premises and that the licensee had no knowledge, actual or constructive, of the alleged proscribed activities.

In adjudicating matters of this kind, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960); Howard Tavern, Inc. v. Division of Alcoholic Beverage Control, not officially reported, reprinted in Bulletin 1491, Item 1.

In appraising the factual picture presented herein the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

I am imperatively persuaded that Detective Werse's testimony, wherein he graphically depicted the football pool tickets gambling activity the licensee's bartender engaged in on November 29 and December 4 and 6, 1968, was credible.

This testimony was amply fortified by the finding of football pool tickets and the sheet containing memoranda of the bartender's gambling activity in the bartender's clothing and in a drawer in the bar and alongside the cash register. Additionally, it will be recalled that Greenberg (the general manager of the corporate licensee and a stockholder thereof) candidly asserted that the bartender admitted to him that he (the bartender) had recently commenced engaging in the sale of football pool tickets.

However, the fact that the managing agents of the licensee had no knowledge of the occurrences, is immaterial and of no consequence for the reason that, in disciplinary proceedings, it is a basic principle that a licensee is fully accountable for all violations committed or permitted by his servants, agents or employees. Knowledge on the part of the employer is not a prerequisite to a finding of guilt where an employee participates in the misdeeds. Rule 33 of State Regulation No. 20. Cf. In Re Schneider, 12 N.J. Super. 449 (App.Div. 1951).

After carefully considering and evaluating all of the evidence adduced herein, and the legal principles applicable thereto, I conclude that the Division has proved its case by clear and convincing testimony and by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charges.

The licensee has no prior adjudicated record of suspension of license. Hence, I further recommend that the license be suspended for sixty days. Re Garwood House, Inc., Bulletin 1839, Item 2, wherein the Director said "I consider the acceptance of football pool bets such as these to be part of commercialized gambling activity, equivalent to the acceptance of horse race or numbers bets."

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the transcript of the testimony, the exhibits, the memorandum of counsel for the licensee, the Hearer's report and the exceptions and argument filed with reference thereto, I concur in the findings and

recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of September 1969,

ORDERED THAT Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Wrightstown to McGuire Holiday Motel (A New Jersey Corporation), for premises N/S Wrightstown-Cookstown Rd., Wrightstown, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Monday, September 29, 1969, and terminating at 2 a.m. Friday, November 28, 1969.

Joseph M.Keegan,
Director.

2. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - POSSESSION OF INDECENT MATTER - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against

Betty D. Fasanella)
t/a Andy's Tavern)
244 Alexander Street) CONCLUSIONS
Princeton Township) AND ORDER
PO Princeton, N.J.,)

Holder of Plenary Retail Consumption)
License C-3, issued by the Township)
Committee of the Township of Princeton.)

Pellettieri and Rabstein, Esqs., by Charles J. Casale, Jr., Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On Sunday, March 2, 1969, between 9:15 P.M. and 9:35 P.M., you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages on your licensed premises, in violation of Section 15 of an Ordinance adopted by the Township Committee of the Township of Princeton on May 3, 1937, as amended December 8, 1958.

"2. On Sunday, March 2, 1969, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter, viz., a booklet entitled 'The Maidens 1968 Calendar, A Portfolio of Selected Girls From Down the Street Or Up Your Alley' and four reproductions of cartoons with accompanying legends, all of which matter being obscene, indecent, filthy, lewd, lascivious, and disgusting; in violation of Rule 17 of State Regulation No. 20."

A motion made by the Division attorney to amend the first charge by correcting the effective date of Section 15, as amended (the applicable ordinance therein cited) to August 17, 1964, was granted at the hearing herein.

The Division bottomed its case primarily upon the testimony of two ABC agents who were specifically assigned to investigate alleged sales of alcoholic beverages by the licensee during prohibited hours. Their version may be briefly summarized as follows: On Sunday, March 2, at approximately 8 p.m., they stationed themselves at a point of observation outside the licensee's premises. They noted that the lights in the premises were on, and the shades were partially drawn. At 9:15 p.m. Agent P was admitted to the premises and seated himself at the bar. The main room of the premises contained an L-shaped bar, a pool table and several tables and chairs. To the rear was a kitchen used for preparing sandwiches. At this time four men were seated at a table playing cards with drinks in front of them, one man was seated at the bar on the customers' side, and Joseph Fasanella (husband of the licensee and bartended) asked him, "What do you want? What are you doing here? We are closed." The agent turned and stared at the patrons at the table and the man at the bar and asked, "Closed?" The reply was, "Yes, we closed at nine o'clock, but we are just here for a friendly gathering." The agent started to leave, whereupon the bartender asked him, "What do you want?" and the agent ordered a bottle of Schaefer beer. Fasanella went to the beer cooler behind the bar, obtained a bottle of beer, served it to the agent and accepted forty cents in payment therefor. He noted that he was served this beer at 9:20 p.m.

At 9:33 p.m. Agent H knocked on the back door and one of the patrons went to the door. He informed the agent that the premises were closed. When he was refused admittance, Agent H identified himself and obtained entry into the premises. Both agents had a conversation with Fasanella, who insisted that he had a right to serve alcoholic beverages until 9:30 p.m. because the establishment was operating under a restaurant license. He explained that the persons in the premises were friends of his who were associated with the Princeton University basketball team and were gathered for a party to be held later that evening. During the conversation the bartender changed his story with respect to the service of the beer to Agent P and stated, "I didn't give it to him; somebody else gave it to him." He also continued to maintain that he had a right to serve alcoholic beverages until 9:30 p.m. since he was operating a restaurant.

The remainder of the beer served to Agent P and that served to the other patrons was put into sample bottles by the agent for analysis by the Division chemist, whose report certified for the Director shows that the contents were alcoholic beverages fit for beverage purposes.

In the course of their inspection of the premises the agents found a calendar booklet, cartoons and drawings which they considered to be lewd and obscene. These drawings, the cartoons and booklet were admitted into evidence and form the basis for the second charge herein. In the kitchen they noted a price list posted on the wall for sandwiches which were sold from between forty cents and seventy cents. The refrigerator contained cold cuts of meat. There were no tablecloths on the tables in the tavern proper, nor were there any knives and forks on the tables. It was the opinion of both agents that this establishment was not regularly and principally used for the purpose of providing meals to the public; it was merely a tavern operation which incidentally served sandwiches.

Betty D. Fasanella (the licensee) testified that she has been engaged in the tavern business for the past twenty-two years and that her tavern is closed on Sundays. Until last September meals were served, but after that date she discontinued serving hot food and served only sandwiches, usually during lunch time. A certificate issued by the local Board of Health permitted the sale of food and drink at the premises. She considered the said certificate to be a restaurant license.

On the date charged, the witness and a Mrs. Silvestre (wife of one of the patrons) were cooking in her own private apartment above the tavern for a party of friends of hers to celebrate the victory of the Princeton University basketball team. She denied authorizing anyone to serve alcoholic beverages to patrons other than to her friends who were specifically invited for this affair, and she further insisted that the premises had been closed since 12 midnight on the previous night. Mrs. Fasanella also denied knowledge of the calendar booklet or the cartoons which were found on the premises.

On cross examination she stated that the tavern was not open on Sundays because "we are not supposed to be open on Sundays." She was then asked:

"Q Would you say your establishment is regularly and principally used for the purpose of providing meals to the public?
A No, I don't think so.
Q Do you have a dining room?
A Yes, in the bar.
Q You have a barroom but do you have a separate dining room?
A No. We have tables and chairs [in the barroom]."

And further:

"Q Which of the two businesses is incidental to the other? Which is the main business?
A I think the liquor business.
Q The food is incidental?
A Right."

Joseph Fasanella (husband of the licensee) testified that a private party was planned for some of the coaches of the basketball team on that night. The doors of the premises were locked, although the lights were on. When the agent was admitted to the premises he was informed that this was a private party but the agent made no "attempt" to leave. The witness then said to him, "While you are here I'll give you a beer." However, the agent did not pay for the beer. They discussed the question of the time and the agent insisted it was three minutes after nine. "As soon as he said that I had nothing more to say" although the witness insisted that it was actually a few minutes before nine when Agent P was served.

On cross examination Fasanella admitted that he served beer to the agent and that Agent H entered the premises at about 9:15, rather than 9:33 as testified to by the agent.

Joseph J. Fasanella, Jr. testified, with respect to the kitchen facilities, that, although the licensee had spent a considerable sum of money for restaurant equipment, they had not served any hot meals since September 1968. Most of the food business consisted of cold sandwiches and beverages served during lunch time. He could not state whether the proceeds from the sale of alcoholic beverages was greater than that from the sale of food; nor could he produce any records with respect thereto except to say that the business consists equally of the sale of food and alcoholic beverages.

Robert E. Silvestre (an employee of Princeton University) testified that he arrived at the licensed premises at approximately 7:30 or 7:45 and had three or four beers during the course of the night. He observed the agent enter the premises but did not see him pay for the beer served to him nor did he see Fasanella receive any money therefor. He estimated that Agent P entered the premises at about 8:40 p.m. because he was watching a television program

broadcast between 8:30 and 9:00; his best recollection was that the agent's entry was made during the course of that program. He also estimated that Agent H entered the premises at about "5 or ten after" 9:00 p.m. although he had no written notes or record to support his testimony.

Robert W. Fern (who is employed in the real estate department of Princeton University) testified substantially to the same effect as the prior witness.

Charles W. Krukowski (another patron at the premises on the date charged herein) stated that he was playing cards and did not see the service of beer to the agent, nor did he recall hearing the cash register ring or seeing any money exchanged.

Agent H, testifying in rebuttal, denied saying to Fasanella that it was three minutes after nine, and in fact mentioned to him that it was 9:33 when he approached the back door of and entered the premises.

In the consideration and evaluation of this matter certain long-established principles are the guide posts. Disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the credible evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960); Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

The applicable ordinance as amended reads, in so far as pertinent, as follows:

> "15. No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage on the licensed premises except as follows:
>
> * * * * *
>
> (b) On Sundays:
>
> * * * * *
>
> (3) in plenary retail consumption licensed premises, but only in bona fide hotels and restaurants in conjunction with bona fide meals, and only in the public rooms thereof, including public rooms which may be reserved by groups of persons to whom such meals are to be served, and only between 12:30 o'clock P.M. and 9:00 o'clock P.M.
>
> The hours hereinabove mentioned shall be according to Standard or Daylight Saving Time, whichever shall officially be in effect in the Township.
>
> For the purposes of this section 'restaurant' or 'hotel' means an establishment regularly and principally used for the purpose of providing meals or lodging to the public, having adequate kitchen and dining room equipment for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment is conducted."

The definition of a "restaurant" as set forth in the ordinance follows the wording of the definition contained in R.S. 33:1-1(t). From the record herein it is clear that the licensed premises did not contain the facilities required in order to denominate it or to constitute it as a restaurant as defined in the ordinance.

Counsel for the licensee advocates that, because the Board of Health issued a license permitting service of food and drink on the licensed premises, it therefore became a restaurant. However, my examination of this license reveals that it merely states that an inspection of the premises was made and that the premises complied "with the requirements of an Ordinance regulating the licensing and inspection of eating and drinking establishments." Nowhere on the license does it mention the word "restaurant." Any facility which serves any kind of food, even if it only serves hot dogs, pizza or hamburgers, is required to have this license. Obviously these premises were not "regularly and principally used for the purpose of providing meals" nor was it an establishment "in which no other business, except such as is incidental to such establishment is conducted. In fact the licensee frankly admits that the sale of alcoholic beverages was its primary business and that sandwiches were served, mostly at lunch time, as an accommodation to patrons and incidental to the sale of alcoholic beverages.

Under the strict provisions of this ordinance the licensee was prohibited from selling or serving, or permitting the sale and service of, alcoholic beverages in these premises to anyone, including friends, at any time on Sunday.

Licensee's attorney, in his memorandum submitted in summation, makes mention of the testimony that the licensee did not sell the beer to the agent but gave it to him gratuitously. However, "sale" is defined in R.S. 33:1-1(w) as:

> "Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, including ... the solicitation or acceptance of an order for an alcoholic beverage, and including exchange, barter, traffic in, keeping and exposing for sale, serving with meals, delivering for value, peddling, possessing with intent to sell, and the gratuitous delivery or gift of any alcoholic beverage by any licensee." (Emphasis supplied)

Thus the admitted service and delivery of the beer to the agent, as well as the admitted service and delivery of beer to the other patrons, is a violation of the terms of the ordinance and fully establishes the first charge herein.

Furthermore, even if this establishment were indeed a restaurant (which I conclude that it is not), the testimony establishes beyond doubt that the sale and service of the alcoholic beverages to Agent P was made after 9 p.m. The time issue becomes very important if this charge were based upon the aforementioned assumption. In assessing the testimony I have had an opportunity to observe the demeanor of the witnesses as they testified. Testimony, to be believed, must not only proceed from the mouths of credible witnesses but must be credible in itself and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954). The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

In applying these principles it should be emphasized that the agents were assigned specifically to investigate alleged sale during prohibited hours. Common sense would dictate that they would be more likely to be accurate with respect to the time because time was within the nature of their investigation. Thus I

am of the view that the truth lies in their testimony; their account relating to the time they entered the licensed premises is more persuasive and convincing than that of the licensee's witnesses who, of course, did not record the time the agents entered the said premises. Consequently, the testimony of the licensee's witnesses stands in a less convincing light.

What is significant and seriously affects the credibility of Joseph Fasanella is his frank admission in his direct testimony of his conversation upon confrontation with the ABC agent, as follows:

> "When Mr. H came in I says, due to the fact the he had showed his ABC card, I says, 'What is it you want? I have a right to be open. I have a restaurant license', and I said, 'I am allowed to serve food and drinks.' <u>But I made a mistake telling him I thought the ordinance read 9:30.</u>" (Emphasis supplied.)

This makes it crystal clear that this witness, who was in fact the manager and bartender at these premises, felt it perfectly proper for him to remain open on Sundays until 9:30 and make sales and serve alcoholic beverages until that time. His denial that the agent paid for the drink in the light of Agent P's specific testimony with respect thereto, and Agent H's statement that he saw sixty cents on the bar in front of Agent P (change from a dollar bill) further, in my opinion, dilutes his credibility.

I find the testimony of several other witnesses for the licensee lacking in forthrightness and credibility as, for example, when Joseph Fasanella, Jr. stated that he did not know whether the food or the drink was the primary source of income and the primary business of this establishment, and when he insisted that they were substantially equal (the licensee was more forthright in admitting that this was simply not so). Or when Robert Fern, who appeared voluntarily as a witness on behalf of the licensee, steadfastly denied that he ever discussed any of the facts in this matter with either the licensee or her attorney. I am persuaded and find as a fact that the first charge has been established by a fair preponderance of the credible evidence. It is therefore recommended that the licensee be found guilty of the first charge.

With respect to the second charge, the licensee does not deny that the calendar booklet and cartoons, the possession of which is the subject of this charge, were found on the licensed premises. Her husband stated to the agents that they were left there by a customer. However, she contends, in her attorneys' memorandum, that "the materials herein are not obscene or otherwise objectionable under Rule 17 because they are mere caricatures which are intended for humor only. There is no capacity for these writings to appeal to the pruient interest. But even more basic is the fact that there are no standards by which to judge the licensee's conduct stated in testimony or in the Commission's regulations."

The exhibits admitted into evidence in support of this charge I find to be the following: Two of them show an elephant with an arrow sticking out of the end of his trunk, which is in a horizontal position. The privates of the animal are resting on a block. Behind the block is a man with a mallet over his head. Under the drawing is the legend "Polish Cannon." The third is a drawing of a man and woman swinging on a vine. The woman is below the man and, instead of holding the vine, she is holding the man by his enlarged private part. The legend reads, "The vine, Jane, grab the Goddamn Vine"! A magazine calendar entitled

"The Maidens 1968 Calendar, A Portfolio of Selected Girls From Down The Street or Up Your Alley", contains indecent drawings for each month of the year 1968. They display nudes, with bare breasts, buttocks and fully delineated front view sketches.

My examination of the calendar and the cartoons satisfies me that they are unmistakably obscene and lewd as measured by any standards or criteria, and come within the purview of Rule 17 of State Regulation No. 20. The contentions of counsel were similarly raised in Re Novembre, Bulletin 1056, Item 2, in which case the Director cited State v. Weitershausen, 11 N.J. Super. 487, 491-2, as follows:

> "Although the words obscene and indecent are commonly used and understood they are probably not susceptible of precise legal definition. Cf. Commonwealth v. New, 142 Pa. Super. 358, 16 A. 2d 437 (1940); United States v. Levine, 83 F. 2d 156 (2d Cir. 1936). In the Isenstadt case (Commonwealth v. Isenstadt, 318 Mass. 543, 62 N.E. 2d 840 (1945), Justice Qua recently expressed principles which may be accepted as controlling. He stated that material may be deemed obscene and indecent within a statutory prohibition if it has a substantial tendency to deprave or corrupt its readers or viewers by 'inciting lascivious thoughts or arousing lustful desire;' the material is to be judged in the light of the customs and habits of thought of the time and place and where reasonable men may differ the question is one of fact ...."

In McFadden's Lounge Inc. v. Division of Alcoholic Beverage Control, 33 N.J. Super. 61, 66 (App. Div. 1954), the court stated that the stringency of Rule 5 of State Regulation No. 20, a"disciplinary rule governing the conduct of those who have been granted the special privilege of vending alcoholic beverages at a designated location ... must be measured in its relation to the reasonably apprehended evils of the trade."

Our courts have uniformly held that the standard applied by this rule to licensed premises has been more restrictive than to non-licensed premises. Davis v. New Town Tavern, 37 N.J. Super. 376 (App.Div. 1955), where the court rules (p. 378):

> "What is lewdness or immorality for purposes of a rule regulating premises licensed for the sale of alcoholic beverages may be determinable on a distinctly narrower basis than for purposes of regulation of commercial entertainment generally."

Referring once more to McFadden's Lounge, the court pointed out (p. 68):

> "...we are not presently concerned with the preliminary censorship of a book or of an oral address or lecture. Our immediate interest and attention is confined to the disciplinary action taken against the licensee of a public tavern, whose privileges may lawfully be tightly restricted to limit to the utmost the evils of the trade. Vide, Paul v. Gloucester County, 50 N.J.L. 585 (E. & A. 1888) ... In re Schneider [12 N.J. Super. 449 (App. Div. 1951] ."

Finally, the responsibility of a licensee may, in some circumstances, be imposed where, regardless of his knowledge, there is a failure to prevent the prohibited conduct by those entrusted with the management of the licensed premises. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct. 1947).

This Division has consistently ruled that nudes, semi- nudes and indecent photographs and cartoons have no place on liquor-licensed premises. The seized material are of the nature denounced by the regulation set forth in the second charge.

Applying the views above expressed, I conclude that the possession of the aforementioned material was a violation of Rule 17 of State Regulation No. 20. It is, therefore, recommended that the licensee be found guilty of the second charge.

Licensee has a prior adjudicated record of suspension of license by the Director for fifteen days effective February 2, 1948 for possession of illicit liquor. Re Fasanella, File S-2465.

It is further recommended that the prior record of suspension for dissimilar violation occurring more than five years ago be disregarded; that the license be suspended on the first charge for fifteen days (Re Samuel P. Lambert Post #3020, Bulletin 1869, Item 7) and on the second charge for fifteen days (Re Teddy's Sea Food Restaurant, Inc., Bulletin 1812, Item 4), or a total of thirty days.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the memorandum submitted in summation on behalf of the licensee, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 23d day of September, 1969,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Princeton to Betty D. Fasanella, t/a Andy's Tavern, for premises 244 Alexander Street, Princeton Township, be and the same is hereby suspended for thirty (30) days, commencing at 12:01 a.m. Tuesday, September 30, 1969, and terminating at 12:01 a. m. Thursday, October 30, 1969.

Joseph M. Keegan
Director

3. DISCIPLINARY PROCEEDINGS - PURCHASE FROM ANOTHER RETAILER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Glad-Ed Tavern, Inc.
492 Market St.
Newark, N.J.

Holder of Plenary Retail Consumption License C-567 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark

CONCLUSIONS AND ORDER

Martin Gelber, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on divers dates between June 9 and July 24, 1969, it purchased alcoholic beverages from another retailer, in violation of Rule 15 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re M.V. Patterson, Inc., Bulletin 1849, Item 5.

Accordingly, it is, on this 22d day of September, 1969,

ORDERED that Plenary Retail Consumption License C-567, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Glad-Ed Tavern, Inc. for premises 492 Market Street, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, September 29, 1969, and terminating at 2:00 a.m. Thursday, October 9, 1969.

Joseph M. Keegan
Director

4. DISCIPLINARY PROCEEDINGS - ORDER IMPOSING DEFERRED SUSPENSION.

In the Matter of Disciplinary Proceedings against Kearny Yacht Club, A Corp. 427 Passaic Avenue Kearny, N.J. Holder of Plenary Retail Consumption License C-11 issued by the Town Council of the Town of Kearny and transferred during the pendency of these proceedings to The New Skyway Diner, Inc. t/a Skyway Diner 2nd Street and Central Avenue Kearny, N.J.	SUPPLEMENTAL ORDER

Edward A. Dreskin, Esq., Attorney for Licensee Kearny Yacht Club
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

On January 22, 1969, I entered an order herein suspending the license of Kearny Yacht Club for thirty-five days (for concealed interest in the license and employment of a person convicted of crime involving moral turpitude) and deferring the effective date thereof because it appeared that the licensed business was not then being conducted. Re Kearny Yacht Club, Bulletin 1843, Item 4.

Thereafter, the license was transferred to The New Skyway Diner, Inc., t/a Skyway Diner, for premises 2nd Street and Central Avenue, Kearny.

Report of recent inspection discloses that the licensed business has been resumed by the transferee at the new premises. Consequently, the suspension may now be reimposed.

Accordingly, it is, on this 8th day of October, 1969,

ORDERED that Plenary Retail Consumption License C-11, issued to the New Skyway Diner, Inc., t/a Skyway Diner, for premises 2nd Street and Central Avenue, Kearny, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Wednesday, October 15, 1969, and terminating at 2:00 a.m. Wednesday, November 19, 1969.

Joseph M. Keegan,
Director

5. DISCIPLINARY PROCEEDINGS -SALE TO A MINOR - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against J. & M. Bar & Liquors, Inc. 210 Marlton Avenue Camden, N.J., Holder of Plenary Retail Consumption License C-68, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden	CONCLUSIONS and ORDER

Toll, Friedman and Pinsky, Esqs., by Nathan A. Friedman, Esq., Attorneys for Licensee
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 31, 1969 it sold a case and a six-pack of cans of beer to a minor, age 17, in violation of Rule 1 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days effective January 9, 1961 for sale to minors.

The prior record of suspension of license for similar violation occurring more than five but less than ten years ago considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Scheltz, Bulletin 1678, Item 2.

Accordingly, it is, on this 30th days of September 1969,

ORDERED that Plenary Retail Consumption License C-68 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to J. & M. Bar & Liquors, Inc., for premises 210 Marlton Avenue, Camden, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, October 7, 1969, and terminating at 2 a.m. Monday, October 27, 1969.

Joseph M. Keegan,
Director

6. DISCIPLINARY PROCEEDINGS - ORDER RE IMPOSING SUSPENSION STAYED DURING APPEAL.

In the Matter of Disciplinary Proceedings against

Rova Farms Resort, Inc.
Cassville and Trenton Road
Box 17, RD 3 Jackson, N.J.

Holder of Plenary Retail Consumption License C-2 issued by the Township Committee of the Township of Jackson

SUPPLEMENTAL ORDER

Arthur Kimmel, Esq., by Jay G. Trachtenberg, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

On August 7, 1969, I entered Conclusions and Order herein suspending the license for twenty days, effective August 14, 1969, for hindering investigation. Re Rova Farms Resort, Inc., Bulletin ---, Item ---.

Prior to the effectuation of the order of suspension, on appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

On September 29, 1969, the appeal was dismissed by stipulation. The suspension may now be reimposed.

Accordingly, it is, on this 1st day of October, 1969,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Jackson to Rova Farms Resort, Inc. for premises Cassville and Trenton Road, Jackson, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Monday, October 6, 1969, and terminating at 3:00 a.m. Sunday, October 26, 1969.

Joseph M. Keegan
Director

7. STATE LICENSES - NEW APPLICATIONS FILED.

C. Schmidt & Sons, Inc. of New Jersey
2530 South Broadway
Camden, New Jersey

Application filed November 14, 1969 for place-to-place transfer of Limited Wholesale License WL-11 from 1999 Federal Street, Camden, New Jersey.

Joseph M. Keegan
Director