

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

BULLETIN 511

MAY 27, 1942

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1. NEW LEGISLATION - SUBTITLE 8 OF TITLE 54 OF THE REVISED STATUTES, COMMONLY KNOWN AS THE BEVERAGE TAX ACT, AMENDED - DOES NOT INCREASE ANY OF THE PRESENT TAX RATES - PROVISION MADE FOR HEARINGS IN CASES INVOLVING ILLICIT BEVERAGES - A PER DIEM CHARGE MAY BE MADE IN CERTAIN REEXAMINATIONS - ANY STATE LICENSEE PERMITTED TO SELL ALCOHOLIC BEVERAGES GRANTED TAX EXEMPTION ON OUT-OF-STATE SHIPMENTS - PROVIDES A TAX EXEMPTION FOR TRANSPORTATION LICENSEES IN CERTAIN CASES.

The Committee Substitute for Assembly No. 263 was approved by Governor Edison on May 9, 1942, and thereupon became Chapter 171 of the Laws of 1942. It becomes effective July 1, 1942.

It reads as follows:

"AN ACT concerning the alcoholic beverage tax law, and amending sections 54:41-2, 54:42-2, 54:42-3, 54:43-1, 54:43-2, 54:44-4, 54:44-5 and 54:46-1 of the Revised Statutes, and supplementing chapter forty-seven of Title 54 of the Revised Statutes.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Section 54:41-2 of the Revised Statutes is amended to read as follows:

"54:41-2. As used in this subtitle:

"'Alcoholic beverages' means liquors, fruit brandy, beer, wines and sparkling wine, as defined in this section.

"'Beer' means beer, lager beer, ale, stout, porter, and all similar fermented malt beverages having an alcoholic content of one-half of one per centum (1/2 of 1%) or more by volume.

"'Bonded warehouse' means the warehouse of any licensed manufacturer or licensed wholesaler or licensed warehouseman for which the licensee has given special security to obtain certain privileges given by this subtitle.

"'Commissioner' means the State Tax Commissioner.

"'Container' means the receptacle immediately surrounding the alcoholic beverage and not the carton, box, case, sack, bag or other covering in which such containers may be packed, placed, or transported.

"'Department' means the State Tax Department.

"'Fruit brandy' means a distillate, or a mixture of distillates, obtained solely from the fermented juice or mash of fruit (1) distilled at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to brandy; and (2) bottled at not less than 80° proof; and shall also include

such distillates, aged for a period of not less than fifty years, and bottled at not less than 72° proof, in cases where the reduction in proof below 80° is due solely to losses resulting from natural causes during the period of ageing.

"'Licensed manufacturer' means any person holding a valid and unrevoked brewery, winery, distillery, or rectifier's license issued pursuant to the provisions of any relevant law of this State.

"'Licensed transporter' means any person holding a valid and unrevoked license or permit to transport alcoholic beverages pursuant to the provisions of any relevant law of this State.

"'Liquors' means all distilled or rectified spirits, alcohol, brandy, whisky, rum, gin and all similar distilled alcoholic beverages, including all dilutions and mixtures of one or more of the foregoing, such as liqueurs, cordials and similar compounds, having an alcoholic content of one-half of one per centum (1/2 of 1%) or more by volume, but does not include fruit brandy.

"'Person' means a natural person, an association, a partnership or a corporation.

"'Return' means the return of alcoholic beverages by a customer to the source from which such beverages were obtained, upon the cancellation of a sale, and shall include: (a) actual receipt of the beverages on the licensed premises of the source or in a licensed public warehouse for the account of the source; or (b) the sending of the beverages by the customer to another person upon instructions of the source; but shall not include any other disposition, such as samples, breakage, shortage, merchandising credits, or beverages dumped on the premises of the customer, except where such dumping is done under the supervision of the State Tax Commissioner or his representative.

"'Sale' means and includes, in addition to its ordinary meaning, any exchange, gift, loss, theft, or other disposition. In every case where alcoholic beverages are exchanged, given, lost, stolen or otherwise disposed of, they shall be deemed to have been sold, unless, in case of loss by fire, proof is furnished to the satisfaction of the commissioner, that the alcoholic beverages have been so destroyed that they could not have been put to any use.

"'Sparkling wine' means champagne and other effervescent wine charged with carbon dioxide, whether artificially or as the result of secondary fermentation of the wine within the container.

"'State licensee' means any person holding a valid and unrevoked license or special permit, issued by the State Commissioner of Alcoholic Beverage Control, and who has posted a bond with the State Tax Commissioner to secure the payment of the alcoholic beverage taxes.

"'Taxpayer' means a person chargeable with the payment of a tax pursuant to the provisions of this subtitle.

"'Treasurer' means the Treasurer of the State of New Jersey.

"'Vermouth' means any compound made by the mixture of extracts from macerated aromatic flavoring materials with wines and manufactured in such manner that the product possesses the taste, aroma, and characteristics generally attributed to vermouth.

"'Warehouse receipt' means a certificate or receipt given upon the storage of alcoholic beverages in a United States custom or United States internal revenue warehouse under Federal bond.

"'Wines' means all wines whether known as 'dry wines,' 'sweet wines,' 'still wines,' or 'fortified wines' and any artificial or imitation wine or compound sold as wine, and any fruit juice containing one-half of one per centum ($1/2$ of 1%) or more of alcohol by volume, and any other beverage containing alcohol produced by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar, which beverage contains one-half of one per centum ($1/2$ of 1%) or more of alcohol by volume, but shall not mean or include vermouth, or cider containing less than three and two-tenths per centum ($3\ 2/10\%$) of alcohol by volume.

"2. Section 54:42-2 of the Revised Statutes is amended to read as follows:

"54:42-2. The commissioner shall have power, whenever he deems it expedient, to make or cause to be made by his deputies, directors, or other employees, an examination or investigation of the books, records, papers, vouchers, accounts and documents of any person engaged in, or convicted under an indictment charging the performance of any act in violation of Federal or State statutes or charging conspiracy in connection with the manufacture, distribution, transportation, storage, warehousing, importation, solicitation, or sale of alcoholic beverages, or of any person engaged in purchasing, transferring, selling or agreeing to sell warehouse receipts, receipts, certificates, contracts or other documents given upon the storage of alcoholic beverages, and of the premises of any such person, for the purpose of administering the provisions of this or any other law of this State imposing taxes upon the sale or delivery of alcoholic beverages. Every such person and every director, officer, agent or employee of every such person shall exhibit to the commissioner, his deputy, directors, or other employees, statements of assets under oath and all of the books, records, papers, vouchers, accounts, documents, and premises of said person, and facilitate as far as it may be in his or their power, any such examination or investigation. The commissioner, his deputies, directors, or other employees, may take the oath of any person signing a deposition, statement, return or report required by the commissioner in the administration of this or any other law of this State imposing taxes upon the sale or delivery of alcoholic beverages.

"If, upon examination of the reports, books, records, papers, vouchers, accounts, and documents of any person, there shall appear any errors, inaccuracies, or willful omissions in connection with the recording of transactions covering the manufacture, distribution, transportation, storage, warehousing, importation, solicitation, or sale of alcoholic beverages, or if the commissioner, his deputy,

directors, or other employees, has reason to believe that there are irregularities in the reports, books, records, papers, vouchers, accounts, and documents of any person, he may notify said person that he deems necessary a re-examination of all such reports, books, records, papers, vouchers, accounts, and documents, or any part thereof, and for the services of the commissioner, his deputies, directors, or other employees, whether permanent employees of the department or not, such person shall, where the re-examination has been made at the request of such person, become indebted to the commissioner in a sum equal to ten dollars (\$10.00) per day for work done by the commissioner, or each deputy, director, or other employee in connection with such re-examination, and the commissioner may collect the same by suit on contract in any court of competent jurisdiction. The commissioner may remit or waive the payment of the whole or any part of the cost of any such re-examination.

"Any person, against whom an assessment for taxes imposed by this subtitle is made in excess of fifty dollars (\$50.00), may by written application made within thirty days from date of assessment request such re-examination after payment of the taxes or posting satisfactory security to cover the assessment and costs of re-examination at the rate hereinabove set forth.

"3. Section 54:42-3 of the Revised Statutes is amended to read as follows:

"54:42-3. The commissioner, his deputies, directors, or other employees so designated by him shall have power to conduct hearings and to administer oaths to, and to examine under oath, any person engaged in, or convicted under an indictment charging the performance of any act in violation of Federal or State statutes or charging conspiracy in connection with the manufacture, distribution, transportation, storage, warehousing, importation, solicitation, or sale of alcoholic beverages, or of any person engaged in purchasing, transferring, selling or agreeing to sell warehouse receipts, receipts, certificates, contracts or other documents given upon the storage of alcoholic beverages and the directors, officers, agents and employees of any such person and all other witnesses, relative to the alcoholic beverage business of such person, in respect to any matter incident to the administration of this subtitle or any other law of this State imposing taxes upon the sale or delivery of alcoholic beverages.

"4. Section 54:43-1 of the Revised Statutes is amended to read as follows:

"54:43-1. There are hereby levied and imposed upon any sale of alcoholic beverages made within this State or upon any delivery of alcoholic beverages made within or into this State the following excise taxes:

"a. Beer -- three and one-third cents (\$0.03 1/3) a gallon or fraction thereof.

"b. Liquors -- at the rate of one dollar (\$1.00) a gallon, except fruit brandies which shall be taxed at the rate of fifty cents (\$0.50) a gallon.

"c. Wines -- at the rate of ten cents (\$0.10) a gallon.

"d. Vermouth -- at the rate of fifteen cents (\$0.15) a gallon.

"e. Sparkling wines -- at the rate of forty cents (\$0.40) a gallon.

"5. Section 54:43-2 of the Revised Statutes is amended to read as follows:

"54:43-2. No tax imposed by this subtitle shall be payable on any sale of alcoholic beverages by any State licensee for resale and consumption outside of this State, or directly for consumption outside of this State, when said sale is accompanied by the actual transportation of such beverages out of this State and by the delivery of such beverages in full compliance with the laws of the place or places of delivery; provided, evidence of such sales and deliveries satisfactory to the commissioner is submitted. If any such beverages shall thereafter be brought back into this State the State licensee who shall have sold such beverages and transported or caused the same to be transported out of this State shall then pay such tax unless the same has been paid by some other person.

"No tax imposed by this subtitle shall be payable by the holder of a special or temporary permit issued by the State Commissioner of Alcoholic Beverage Control to dispose of alcoholic beverages theretofore acquired by the permittee while engaged as a State licensee, on any sale heretofore or hereafter made of such beverages, for resale and consumption outside of this State, or directly for consumption outside of this State when the sale shall have been accompanied by the actual transportation of the beverages out of this State and by the delivery of such beverages in full compliance with the laws of the place or places of delivery; provided, evidence of such sales and deliveries satisfactory to the commissioner is submitted. If any such beverages shall thereafter be brought back into this State, the holder of said special or temporary permit shall then pay such tax unless the same has been paid or secured by some other person.

"No tax imposed by this subtitle shall be payable by the holder of a transportation license issued by the State Commissioner of Alcoholic Beverage Control, when the delivery of alcoholic beverages from without this State shall have been made at the instance of or to the holder of a manufacturer's, wholesaler's, including State beverage distributor's, or plenary retail transit license issued pursuant to the provisions of Title 33 of the Revised Statutes, as amended, or when such delivery is made to another person who has paid or secured the payment of the tax thereon, except, that the holder of a transportation license shall be liable for the tax on all alcoholic beverages given into his custody as set forth on a waybill, bill of lading, or other evidence of delivery from a consignor without this State which are not delivered to the consignee within the State of New Jersey, unless proof is furnished satisfactory to the commissioner of other disposition out of this State.

"No tax imposed by this subtitle shall be payable on any sale or delivery of alcoholic beverages or alcohol intended for use and actually used in the manufacture or sale of the following products or for the following purposes; provided, evidence of such sale, delivery, and intended use satisfactory to the commissioner is submitted:

"a. Denatured alcohol produced and used pursuant to Acts of Congress and regulations promulgated thereunder.

"b. Patent, proprietary, medicinal, pharmaceutical, antiseptic and toilet preparations.

"c. Flavoring extracts, syrups and food products.

"d. Scientific, chemical, mechanical and industrial products and purposes.

"e. Use for medical and dental purposes.

"The delivery of alcoholic beverages from without this State into a licensed public warehouse in this State for temporary storage by any person other than the holder of a license issued pursuant to the provisions of Title 33 of the Revised Statutes, shall be exempt from the tax imposed by this law; provided, such alcoholic beverages, when released from storage are actually transported outside of this State by a licensed transporter. If any such licensed transporter shall fail to consummate the delivery of any such alcoholic beverages to a point outside of this State, such licensed transporter and the person to whom he shall deliver such alcoholic beverages in this State shall be liable for the tax due by reason of the delivery or other disposition of such alcoholic beverages.

"The importation into this State of alcoholic beverages by the individual owner thereof, for personal consumption and not for sale or delivery to any other person, in quantities not exceeding one-quarter barrel or one case containing not in excess of twelve quarts in all of beer, and one gallon of wine, and one gallon of other alcoholic beverages, within any consecutive period of twenty-four hours shall be exempt from the tax imposed by this law.

"The importation into this State of alcoholic beverages which are not intended for sale or delivery herein and which pass through this State in continuous transportation and are delivered to a point outside of this State shall be exempt from the tax imposed by this law. If any transporter shall fail to consummate the delivery of any such alcoholic beverages to a point outside of this State, such transporter and the person to whom he shall deliver such alcoholic beverages in this State shall be liable for the tax due by reason of the delivery or other disposition of such alcoholic beverages.

"6. Section 54:44-4 of the Revised Statutes is amended to read as follows:

"54:44-4. The commissioner, upon application made to him may release any property from the lien of any certificate, judgment or levy procured by him provided payment be made to him or, a deposit be made with him of such bond or other security as he shall deem adequate to secure the payment of any debt evidenced by any such certificate, judgment, or levy, the lien of which is sought to be released. The commissioner when satisfied that any assessment of tax or of any penalty for which a certificate or judgment has been filed is not presently collectible, may, upon application made to him, reassess the tax or penalty in an amount deemed equitable and expedient and, after payment of the tax and penalty as reassessed, release any property from the lien of any certificate, or judgment for the amount of said tax and penalty obtained under the provisions of section 54:44-3 of this Title or cancel said judgment. Each such release or warrant of satisfaction of judgment shall be given under his seal, and may be recorded in any office in which conveyances of real estate may be recorded.

"7. Section 54:44-5 of the Revised Statutes is amended to read as follows:

"54:44-5. The commissioner may compromise any claim for taxes, penalties, or interest, which shall be alleged to be due pursuant to the provisions of this or any other law of this State imposing taxes upon the sale or delivery of alcoholic beverages.

"8. Section 54:46-1 of the Revised Statutes is amended to read as follows:

"54:46-1. Any person who shall be aggrieved by any decision of the commissioner denying any hearing requested hereunder, or by any order, finding or assessment having the effect of fixing, correcting, amending or modifying the amount of any tax to be paid by such person, or by any decision declining so to do, or by any certification of debt to the clerk of a court, may appeal from the action of the commissioner in making any such decision, assessment, finding or order, or issuing any such certificate, to the State Board of Tax Appeals by filing a petition of appeal with that board within sixty days after date of such decision, order, finding, or assessment, in the manner and form and subject to such terms and conditions as the board shall by reasonable rules and regulations prescribe, but no such appeal shall stay the collection of any such tax or the enforcement of the same by entry as a judgment, unless as provided by order of such board, after giving security approved by the commissioner or the board.

"The judgment or order of the State Board of Tax Appeals respecting any matter arising under the provisions of this subtitle may be reviewed by certiorari in the same manner as other judgments of said board.

"9. In case the holder of a license or permit issued pursuant to the provisions of Title 33 of the Revised Statutes, as amended, or any officer, employee, agent or attorney thereof shall give, offer or promise any gift or gratuity to the commissioner or any deputy, director, or other employee of the commissioner, with intent to induce him to perform improperly or to neglect or omit to perform his duties under this subtitle,

such act shall constitute a cause for revocation or suspension of said license or permit by the State Commissioner of Alcoholic Beverage Control or by any other issuing authority. The commissioner, upon ascertaining that such gift, offer or promise has been made, may forward to the issuing authority a statement of the facts relevant thereto.

"10. This act shall take effect July first, one thousand nine hundred and forty-two."

2. APPELLATE DECISIONS -- SHAMROCK, INC. v. BOROUGH OF MIDDLESEX.

SHAMROCK, INC.,)
Appellant,)

-vs-

MAYOR AND COUNCIL OF THE)
BOROUGH OF MIDDLESEX,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Maurice M. Bernstein, Esq., Attorney for Appellant.
Joseph J. Mutnick, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from revocation of Plenary Retail Consumption License C-3, which now covers premises known as 235 Bound Brook Road, Borough of Middlesex.

The license was revoked after appellant had been found guilty of violating a condition imposed by respondent in a resolution renewing said license for the present fiscal year. The condition will be hereinafter stated and considered.

Carl H. Bieler, now President of Shamrock, Inc., is the owner of two adjacent plots of land located on Bound Brook Road. One plot, which is known as 229 Bound Brook Road, has a frontage of 114 feet thereon and extends back for a distance of 236 feet. The adjoining property, known as 235 Bound Brook Road, has a frontage of 75 feet thereon and extends back for a distance of 234 feet. Appellant formerly held a license for a building located on the first described plot. The building was set back 90 feet from the road. On February 11, 1941 this building was completely destroyed by fire. Thereafter, appellant duly applied to respondent for a transfer of its license from 229 Bound Brook Road to the adjoining property at 235 Bound Brook Road. The premises to which the transfer was sought consist of a one-story frame building located close to the road and directly opposite a place licensed for on-premises consumption in the name of Herman Mann, being separated from Mann's premises merely by the width of the road, a distance of about 50 feet.

Objections to the transfer were filed by Mann and the Middlesex Borough Beverage Association. A committee of the Borough Council having inspected the premises at 235 Bound Brook Road required, as a condition precedent to the consideration of the application, that certain alterations be made. In accordance with these requirements,

appellant installed therein a ladies' toilet and a new floor, altered the front, and installed three fire extinguishers. At the hearing held upon said objections on May 7, 1941, the President of appellant corporation presented to the members of the Borough Council a sketch of a new building, which, he stated, was to be erected at 229 Bound Brook Road to replace the destroyed building. After hearing all parties, respondent adopted the following resolution:

"WHEREAS, a transfer of a Plenary Retail Consumption License has heretofore been granted to Shamrock, Inc., for premises #229 Bound Brook Road; and

"WHEREAS, by reason of fire, the aforementioned premises have been demolished and said Shamrock, Inc., now seeks a transfer of said license from premises #229 Bound Brook Road in order to continue its business; and

"WHEREAS, the applicant has represented to this body that it seeks the transfer to #235 Bound Brook Road for a temporary period and until such time that the old premises, namely, #229 Bound Brook Road, may be rebuilt and made fit to carry on its business; the said applicant representing to this body that it will rebuild the old premises and make said premises suitable to carry on its business; and

"WHEREAS, this body is of the opinion that the premises to which the transfer is now sought is a suitable and fit place and in order to meet the end of justice the transfer to said location should be allowed for temporary premises;

"NOW, THEREFORE, BE IT RESOLVED that the transfer of said license held by Shamrock, Inc. for 229 Bound Brook Road to 235 Bound Brook Road be allowed and granted as a temporary location."

The testimony leads me to conclude that shortly thereafter appellant entered into a contract with a building contractor to erect a building, at a cost of \$7,000.00, in accordance with the sketch previously submitted. However, no work appears to have been done since that time in accordance with the terms of the contract, except, perhaps, a small amount of excavation work.

In June 1941 appellant duly applied to respondent for a renewal of its license at 235 Bound Brook Road. On June 27, 1941 the President of appellant again appeared at a Council meeting, presented plans and specifications for the building to be erected at 229 Bound Brook Road in accordance with the sketch previously submitted, and notified the members of the Borough Council that, due to financial difficulties, it would be impossible to erect the building before October 1, 1941. Apparently, the members of the Council were impressed by his plea and decided that it would be satisfactory if the building were completed before January 1, 1942. Thereupon, respondent adopted the following resolution:

"WHEREAS, this Body has heretofore issued a transfer of the liquor license heretofore issued to Shamrock, Inc., from #229 Bound Brook Road to #235 Bound Brook Road, and

"WHEREAS, such transfer was made in part, by reason of the fact that the premises herein at which the Shamrock, Inc., formerly conducted its business, had been demolished by fire; and

"WHEREAS, in the interest of justice and equitable treatment this Body has heretofore issued a transfer from place to place as hereinabove set forth; and

"WHEREAS, said Shamrock, Inc., is presently constructing a new building upon its old location with intention of reinstating its business at its old location;

"NOW, THEREFORE, BE IT RESOLVED that application for renewal license unto Shamrock, Inc., be granted, subject, however, to revocation in the event that said Shamrock, Inc. does not complete the building intended to be used by it as a tavern at the old location by January 1, 1942."

In accordance with the terms of the resolution the license was renewed for the present fiscal year. Since that date no steps have been taken to replace the old building. After January 1, 1942 respondent instituted disciplinary proceedings to revoke the license for violation of the condition and, as a result of the proceedings, found appellant guilty and revoked its license, effective March 2, 1942. Hence this appeal.

Appellant does not seriously contest any of the above facts. It contends, however, that the revocation should be set aside because (1) the condition was unreasonable, and (2) appellant was prevented from complying with the condition because of circumstances beyond its control.

As to (1): Appellant seemingly contends that the condition is unreasonable because respondent approved the premises now occupied by it as fit for use as licensed premises. There is a vast difference between mere temporary use during an emergency and a permanent use. Three of the members of the Borough Council and the Mayor testified that they would never have approved the present premises as a permanent location. In part, they based this conclusion upon the proximity of the present premises to the road, which is a main highway, as well as its proximity to the premises licensed to Herman Mann. They also describe the present premises as a fire hazard. It is my opinion that the condition imposed by the respondent was entirely reasonable. In any event, appellant accepted the condition without question and cannot, at this late date, object thereto.

As to (2): Respondent contends that appellant acted in bad faith and never intended to rebuild at the old premises. After examining the testimony, I do not reach that conclusion. Carl H. Bieler testified that considerable difficulty was experienced in collecting the insurance money on the old building; that when the

insurance money was finally collected, it was much less than he expected, and that very little was left after a mortgage on the old premises was paid off. He testified that in October 1941 he made arrangements to raise additional money to rebuild, but that at that time the contractor repudiated the contract because of rising costs and priorities, which prevented him from obtaining certain material. I think that appellant acted in good faith.

Under these circumstances, the penalty was unnecessarily severe. Undoubtedly, respondent had the power under R.S. 33:1-32 to revoke the license for violation of the condition. The power to revoke, however, includes the power to suspend. Eckert v. Paterson, Bulletin 114, Item 13. The evidence supports the finding below and appellant should not be permitted to continue to operate in violation of the condition. Under the powers granted to me by R. S. 33:1-38, I shall affirm the finding of guilt but I shall reduce the penalty from revocation to suspension for the balance of the fiscal year. This will prevent further unlawful operation but will not debar appellant from obtaining a license for two years, which would be the result of the revocation of the license.

The action of respondent is affirmed. The penalty is reduced from revocation of the license to suspension of the license for the balance of the fiscal year.

Accordingly, it is, on this 15th day of May, 1942,

ORDERED, that the order heretofore entered herein on February 24, 1942, staying respondent's order of revocation, be and the same is hereby vacated, and, in lieu thereof, it is further

ORDERED, that Plenary Retail Consumption License C-3, issued by the Mayor and Council of the Borough of Middlesex to Shamrock, Inc., for premises located at 235 Bound Brook Road, be and the same is hereby suspended for the balance of the present fiscal year, effective May 19, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - SUPPRESSION OF MATERIAL FACTS IN APPLICATION - AIDING AND ABETTING NON-LICENSEES (DISQUALIFIED AS TO CITIZENSHIP) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - FRANK DISCLOSURE AND SITUATION CORRECTED BY BONA FIDE TRANSFER TO QUALIFIED PURCHASER - 10 DAYS' SUSPENSION.

DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF A LICENSE IN VIOLATION OF R. S. 33:1-26, 52 - EMPLOYMENT PERMITS SUSPENDED FOR BALANCE OF TERM.

In the Matter of Cancellation and Disciplinary Proceedings against

STEINER INC.,
2411 Pacific Avenue,
Atlantic City, N. J.,

Holder of Plenary Retail Consumption License C-163 issued by the Board of Commissioners of the City of Atlantic City and transferred during pendency of these proceedings to

PHILIP GOLD,
401 Pacific Avenue,
Atlantic City, N. J.

CONCLUSIONS
AND ORDER

In the Matter of Disciplinary Proceedings against

MAX LICKSTEIN,
2413 Pacific Avenue,
Atlantic City, N. J.,

Holder of Employment Permit 7079, issued by the State Commissioner of Alcoholic Beverage Control.

In the Matter of Disciplinary Proceedings against

REBA LICKSTEIN,
2413 Pacific Avenue,
Atlantic City, N. J.,

Holder of Employment Permit 7078, issued by the State Commissioner of Alcoholic Beverage Control.

Martin Bloom, Esq., Attorney for Defendant-Licensee and Defendant-Permittees.

Richard E. Silberman, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee, Steiner Inc., pleads non vult to various charges which, for convenience, may here be combined and restated as follows:

- (1) and (2): The defendant, in its license applications for 1938-9, 1939-40, 1940-1 and 1941-2, suppressed the fact that Max and Reba Lickstein, each an officer, director and beneficial owner of more than ten per cent of the stock of the corporation, were Russian aliens, such suppression being in violation of R. S. 33:1-25.

- (3) The defendant, in these applications, further suppressed the fact that the said Licksteins, although listed as the holders of but one share of stock apiece with Max Goldstein holding the remaining fifty-eight of the corporation's shares, actually owned all the shares and were the real and beneficial owners of the business, such suppression likewise being in violation of R. S. 33:1-25.
- (4) The defendant permitted the said Licksteins to exercise the rights and privileges of its respective licenses until October 28, 1941, in violation of R.S. 33:1-26, 52.
- (5) On October 28, 1941, Max Goldstein's fifty-eight shares were transferred to Max Lickstein (thus making Lickstein the record as well as the beneficial owner of such shares), an act which, if it had occurred before the application for license, would, in view of Lickstein's alienage, have prevented the issuance of the license. See R. S. 33:1-12.1, 25, 31.

The defendant-permittees, Max and Reba Lickstein, similarly plead non vult to the charge that, during the time indicated in charge (4) above, they actually exercised the rights and privileges of the license.

The pertinent facts are undisputed. During the 1937-8 fiscal year, Max Lickstein and his wife, Reba, bought all the shares of stock (sixty) in the defendant corporation. However, lacking American citizenship and being aliens (Russian) of a country having no reciprocal trade treaty with the United States, they were both disqualified, under the New Jersey Alcoholic Beverage Law, from either holding any liquor license or owning, directly or indirectly, more than ten per cent of the stock in any corporate retail liquor licensee in this State. See R. S. 33:1-12.1, 25; Re Aliens, Bulletin 92, Item 7; Re McGuigan, Bulletin 228, Item 2.

To evade this restriction, the Licksteins put fifty-eight of the shares of stock in the name of Max Goldstein as a "front" for them, and represented themselves as owning no more than one share apiece. The Licksteins then conducted the licensed business under this fraudulent guise until October 28, 1941, at which time they had Goldstein's fifty-eight shares of stock put directly in Max Lickstein's name. While this step ended the "front", it nevertheless still left the corporation in an untenable position since, as already explained, Lickstein's alienage disqualified him from owning, whether directly or indirectly, more than ten per cent of the shares of the corporate stock.

However, at the hearing in the case, proof was offered that, since institution of the present proceedings, the whole situation has been corrected by a transfer of the license to an actual and qualified purchaser. It thus appears that, on April 23, 1942, the license was transferred by the Board of Commissioners of Atlantic City to one Philip Gold for premises some distance away at 401 Pacific Avenue, Atlantic City. The evidence at the hearing indicates that the transfer was bona fide; that the transferee is a properly qualified person; and that the Licksteins have no further interest in the license, have actually gone into a different business (viz., selling candy, taffy, etc. on the Atlantic City Boardwalk), and will not be employed in any capacity whatsoever by the transferee.

Accordingly, in line with past cases involving a "front" to evade the citizenship requirement, and where there is a frank plea of

guilty and a bona fide correction, the license will be suspended for ten days. See Re Lindeman, Bulletin 428, Item 10; Re Mania, Bulletin 507, Item 2. For the Department's more stringent policy to be followed in this or any other type of "front" case after July 1, 1942 (i.e., the commencement of the coming licensing year), see my Release of May 16, 1942.

The said ten-day suspension of license in the present case is fully effective against the transferee both under State Regulations 15 and also by virtue of the fact that the transfer was granted on the express condition that it be wholly subject to the outcome of these proceedings. See Re Byer, Bulletin 477, Item 4.

It should be noted that affiliate proceedings were brought in this case to cancel the license outright as having been improvidently issued because of the Licksteins' disqualification. In view of the above correction and the penalty being imposed herein, such proceedings for cancellation are dismissed. Cf. Re Martinek, Bulletin 347, Item 1.

As to the employment permits now being held by the Licksteins but in which, from their testimony, they are no longer interested, such permits will be suspended forthwith for the balance of their terms.

Accordingly, it is, on this 16th day of May, 1942,

ORDERED, that Plenary Retail Consumption License C-163, heretofore issued by the Board of Commissioners of the City of Atlantic City for 2411 Pacific Avenue, Atlantic City, and later transferred by said Board to Philip Gold, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 A. M. May 19, 1942, and concluding at 12:01 A. M. May 29, 1942; and it is further

ORDERED, that Employment Permits #7079 and #7078, issued to Max Lickstein and Reba Lickstein, respectively, by the State Commissioner of Alcoholic Beverage Control, be and the same are hereby suspended, effective immediately, for the balance of their terms.

ALFRED E. DRISCOLL,
Commissioner.

4. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 217
-----)

BY THE COMMISSIONER:

In Eligibility Case No. 239, Bulletin 305, Item 9, petitioner herein was declared ineligible to be employed by a liquor licensee because of his conviction in 1934 of the crime of conspiracy to distribute slot machines. Five years having elapsed since his conviction, the petitioner has applied for a removal of his disqualification in accordance with the procedure set forth in R. S. 33:1-31.2.

At the hearing herein, it was disclosed that petitioner was paroled in December 1935 after serving nineteen months of a two and one-half to three year sentence and thereafter has had a perfect parole record. Petitioner has since been gainfully employed in the real estate business by a reputable corporation. His employer, who is also Jury Commissioner in the county in which petitioner had resided for over a year, testified that he has known petitioner for twenty-five years and while in his employ the petitioner has been in a position of trust and responsibility. In his opinion, the petitioner always did and does bear a fine reputation and is known in his community as a reputable person. The Solicitor and Chief of Police of the municipality in which the petitioner has resided for the past three and one-half years both testified that the petitioner's conduct has been beyond reproach; that they both highly respected him as a citizen of the community and knew of their own knowledge that he was highly regarded in the community. The Chief of Police of the municipality wherein petitioner resides testified that no investigations or complaints are pending against petitioner. I am satisfied from the record that the petitioner has not been convicted of any crime within the five years last past nor has he had any trouble of any nature whatsoever accruing from his conduct since December 1935. Petitioner gives every evidence of having most adequately rehabilitated himself and of living a perfectly normal, honest and respectable life. Hence I conclude that his connection with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 20th day of May, 1942,

ORDERED, that his statutory disqualification because of conviction herein described be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

5. ELIGIBILITY - ROBBERY BY SIXTEEN YEAR OLD BOY DOES NOT INVOLVE MORAL TURPITUDE - NO PREVIOUS OR SUBSEQUENT RECORD - APPLICANT HELD NOT DISQUALIFIED.

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

CONCLUSIONS
AND ORDER

Case No. 191.
-----)

BY THE COMMISSIONER:

The Alcoholic Beverage Law provides that no one convicted of a crime involving moral turpitude may obtain a liquor license or work for a liquor licensee in New Jersey. See R. S. 33:1-25, 26.

In June 1931 the petitioner, then sixteen years of age, was convicted of having engaged in a robbery, and was fined \$50.00 and released on three years' probation.

It appears that petitioner and three other youths had held up a man who was parked in an automobile on the highway and had robbed him of \$8.00; that, although the other three were carrying guns, petitioner was without any such weapon, having apparently "been called in at the last minute" to join the illegal enterprise.

Petitioner states that this was the first occasion of trouble for himself or any of the boys, and that he had joined them in their criminal venture "because I was pretty light-headed."

Normally, the crime of robbery per se involves moral turpitude. See Re Case 159, Bulletin 486, Item 4, and cases there cited; Re Case 183, Bulletin 498, Item 7.

However, the Department has adopted and followed the benign rule concerning adolescents that, in any crime by a person under eighteen years of age, the youth of the offender will be viewed as a highly pertinent - although not necessarily decisive - circumstance in determining whether such crime involved moral turpitude. For the leading case (decided by the late Commissioner Burnett), see Re Case 36, Bulletin 141, Item 9 ("breaking and entering" by a boy of sixteen). Also see Re Case 158, Bulletin 488, Item 2, and cases there cited; Re Case 425, Bulletin 507, Item 9.

In the present case, viewing the youth of the petitioner when committing the crime and the fact that he was never in any such trouble either before or after, it appears, in line with the aforesaid rulings, that this single serious lapse of some eleven years ago, when petitioner was sixteen, does not involve the element of moral turpitude.

Although the petitioner has twice been convicted of motor vehicle violations (once in 1933 and again in 1939), such offenses do not constitute "crimes" within the meaning of the Alcoholic Beverage Law (R. S. 33:1-25, 26). See Re Case 133, Bulletin 170, Item 7; Re Case 299, Bulletin 356, Item 7; Re Case 318, Bulletin 394, Item 17.

It thus appearing that the defendant has never been convicted of any crime involving moral turpitude, his criminal record does not peremptorily disqualify him from engaging in the liquor industry in this State.

Accordingly, it is unnecessary to pass upon his presently pending petition for removal of any such disqualification. See R. S. 33:1-31.2. See Re Case 158, supra.

ALFRED E. DRISCOLL,
Commissioner.

6. BULLETIN ITEM CORRECTED.

Bulletin 510, Item 4, last line, should be corrected to read:

"2. This act shall take effect immediately."

Alfred E. Driscoll
Commissioner.