

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

BULLETIN 597

DECEMBER 8, 1943

TABLE OF CONTENTS

ITEM

1. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED IN DISCIPLINARY PROCEEDINGS BY LOCAL ISSUING AUTHORITY FOR A PERIOD OF 25 DAYS - APPLICATION TO LIFT GRANTED.
2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR PLEA.
3. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR MARRIED WOMAN AGED TWENTY YEARS AND THREE MONTHS - LICENSEES PAID FINES OF \$100.00 EACH - FACTS EXAMINED - APPLICATIONS TO LIFT GRANTED.
4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.
5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO PERSONS OTHER THAN BONA FIDE MEMBERS AND GUESTS, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 AND R. S. 33:1-2 - 30 DAYS' SUSPENSION, LESS 5 FOR PLEA.
6. CANCELLATION PROCEEDINGS - LICENSE ISSUED TO PERSON DISQUALIFIED BY REASON OF PREVIOUS CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE CANCELLED.

DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSON ACTUALLY OR APPARENTLY INTOXICATED AND PERMITTING THE CONSUMPTION OF SAME UPON THE LICENSED PREMISES, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - FALSE ANSWER IN LICENSE APPLICATION - EMPLOYING DISQUALIFIED PERSON ON THE LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - PENALTY IMPOSED IN CANCELLATION PROCEEDINGS.
7. MORAL TURPITUDE - CRIME OF KEEPING A DISORDERLY HOUSE FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICANT FOUND NOT TO HAVE CONDUCTED HIMSELF IN A LAW-ABIDING MANNER AS REQUIRED BY R. S. 33:1-31.1 - APPLICATION TO LIFT DENIED.
8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER BY CLUB LICENSEE IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - PERMITTING GAMBLING ON LICENSED PREMISES - LICENSE REVOKED.
9. APPELLATE DECISIONS - DECKER v. MONTCLAIR.
10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

RECEIVED
JAN 10 1964

RECEIVED

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

RECEIVED
JAN 10 1964

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

BULLETIN, 597

DECEMBER 8, 1943.

1. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - LICENSEE PAID FINE OF \$100.00 - LICENSE SUSPENDED IN DISCIPLINARY PROCEEDINGS BY LOCAL ISSUING AUTHORITY FOR A PERIOD OF 25 DAYS - APPLICATION TO LIFT GRANTED.

In the Matter of Petition by)

RAYMOND L. POWERS)
T/a ESSEX CAFE)
17 South Essex Street)
Dover, N. J.,)

ON PETITION
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-22 issued by the Board)
of Aldermen of the Town of Dover.)

Samuel C. Meyerson, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

It appears from petition filed herein that on November 19, 1943, the licensee pleaded guilty in the Court of Common Pleas of Morris County to an indictment alleging that he had sold alcoholic beverages to a minor, and it further appears that he has paid the fine of \$100.00 imposed as a result of said conviction.

It further appears from said petition, and from the records of this Department, that the Board of Aldermen of the Town of Dover had previously suspended petitioner's license for a period of twenty-five days, effective from August 17, 1943, at 7:00 A.M., to September 11, 1943, at 7:00 A.M., after the licensee, in proceedings instituted by said Board of Aldermen, had pleaded guilty to charges of selling alcoholic beverages to a minor and employing a minor to sell and serve alcoholic beverages.

The indictment in the criminal proceedings, and the charges in the disciplinary proceedings which relate to the sale of alcoholic beverages to a minor, were based upon the same facts. Because of the conviction in the criminal proceedings, petitioner's license has been automatically suspended for the balance of its term. R. S. 33:1-31.1. The petitioner herein prays that the automatic suspension may be lifted.

This case concerns the sale of several glasses of beer to a girl who was then eighteen years and six months of age, and the additional charges in the disciplinary proceedings arose from the fact that this girl was permitted to serve several glasses of beer to other patrons upon the licensed premises.

It has been the policy of this Department to lift an automatic suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4. Under all the circumstances, the penalty imposed by the Board of Aldermen appears to be adequate. Hence the relief prayed for in the petition will be granted.

Accordingly, it is, on this 23rd day of November, 1943,

ORDERED, that the automatic suspension of License C-22, held by Raymond L. Powers, t/a Essex Cafe, be and the same is hereby lifted, effective immediately. The license certificate may be returned to the licensee.

ALFRED E. DRISCOLL
Commissioner.

By: Edward J. Dorton
Deputy Commissioner and
Counsel.

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

MICHAEL J. LAFFEY)
29 E. Hanover Street)
Trenton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-202, issued by)
the Board of Commissioners of the)
City of Trenton.)

Frank J. Casey, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that, on October 22, 1943, he sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On the occasion in question, two glasses of beer were served to the minor by a bartender at the defendant's premises. The minor was eighteen years old.

The defendant, who has held a liquor license ever since Repeal, has never heretofore suffered a suspension of his license. I shall impose the usual ten-day penalty, with remission of five days for the plea, leaving a net suspension of five days. Re Tersigni, Bulletin 595, Item 1.

Accordingly, it is, on this 24th day of November, 1943,

ORDERED, that Plenary Retail Consumption License C-202, heretofore issued by the Board of Commissioners of the City of Trenton to Michael J. Laffey, for premises 29 E. Hanover Street, Trenton, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A.M. November 29, 1943 and terminating at 2:00 A. M. December 4, 1943.

ALFRED E. DRISCOLL
Commissioner.

3. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR MARRIED WOMAN AGED TWENTY YEARS AND THREE MONTHS - LICENSEES PAID FINES OF \$100.00 EACH - FACTS EXAMINED - APPLICATIONS TO LIFT GRANTED.

In the Matter of a Petition by)

RICHARD GERHARDT)

T/a GERHARDT'S)

Union Turnpike)

Jefferson Township, N. J.,)

To Lift the Automatic Suspension)

of Plenary Retail Consumption)

License C-4 issued by the Township)

Committee of Jefferson Township.)

-----)

In the Matter of a Petition by)

HERBERT W. HUFF)

T/a HUFF'S TAVERN)

Brady Park)

Lake Hopatcong)

Jefferson Township, N. J.,)

To Lift the Automatic Suspension of)

Plenary Retail Consumption License)

C-12 issued by the Township Committee)

of Jefferson Township.)

-----)

Richard Gerhardt, Pro Se.

Herbert W. Huff, Pro Se.

ON PETITIONS
CONCLUSIONS AND ORDERS

BY THE COMMISSIONER:

It appears from petitions filed by the above named licensees that, on November 19, 1943, each licensee pleaded guilty in the Court of Special Sessions, Morris County, to separate indictments alleging that he had sold alcoholic beverages to a minor, and that, as a result thereof, each licensee paid a fine of \$100.00.

From said petitions, and from the records of this Department, it appears that, on October 4, 1943, the Township Committee of Jefferson Township suspended both licenses considered herein from October 5, 1943 to October 10, 1943, after both licensees, in disciplinary proceedings instituted by the Township Committee, had pleaded guilty to a charge of selling alcoholic beverages to a minor. However, at the same time the Township Committee in each case further resolved and ordered that, in view of the "previous good record as a licensee and the extenuating circumstances of the case, this order be and hereby is suspended." This procedure, which resulted in no effective suspension of either license, is not approved.

Because of the conviction in the criminal proceedings, the license of each petitioner has been automatically suspended for the balance of its term. On November 22, 1943 both licenses were picked up by agents of this Department. The petitions filed herein pray that the automatic suspensions may be lifted.

These cases concern the sale of alcoholic beverages to a married woman who was then twenty years and three months of age and who, on the same day, visited the licensed premises of both petitioners herein.

It has been the policy of this Department to lift an automatic suspension when, and only when, the license has been suspended for what appears, in view of all the facts, to be a sufficiently penalizing length of time. Re Solitare, Bulletin 538, Item 4. The penalties imposed by the Township Committee appear to be inadequate even if full weight be given to the extenuating circumstances in these cases. However, it appears that each licensee has also paid a substantial fine in the criminal proceedings, and that each license has now been under suspension for one day under the statutory automatic suspension. Considering all the circumstances, the relief prayed for in each petition will be granted.

Accordingly, it is, on this 23rd day of November, 1943,

ORDERED, that the automatic suspension of License C-4, held by Richard Gerhardt, t/a Gerhardt's, and the automatic suspension of License C-12 held by Herbert W. Huff, t/a Huff's Tavern, be and the same are hereby lifted, effective immediately. The license certificates may be returned to the respective licensees.

ALFRED E. DRISCOLL
Commissioner.

By: Edward J. Dorton
Deputy Commissioner and
Counsel.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR,
IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS
NO. 20 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

BENJAMIN & FERDINANDO CIANCIO)
T/a REX TAVERN)
W/S Fort Dix Road)
Wrightstown, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-1, issued by the)
Borough Council of the Borough)
of Wrightstown.)

Felcone & Felcone, Esqs., by Joseph J. Felcone, Esq., Attorneys)
for Defendant-Licensees.)
Milton H. Cooper, Esq., Attorney for Department of Alcoholic)
Beverage Control.)

BY THE COMMISSIONER:

The defendants pleaded guilty to charges alleging that they sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On October 22, 1943 a minor female, aged eighteen years, was served two glasses of beer at the defendants' tavern. Since there is no prior adjudicated record, the usual penalty of ten days will be imposed. Re Tersigni, Bulletin 595, Item 1. Five days will be remitted for the guilty plea, leaving a net penalty of five days.

Accordingly, it is, on this 24th day of November, 1943,

ORDERED, that Plenary Retail Consumption License C-1, heretofore issued by the Borough Council of the Borough of Wrightstown to Benjamin & Ferdinando Ciancio, t/a Rex Tavern, for premises W/S Fort Dix Road, Wrightstown, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A.M. November 29, 1943 and terminating at 2:00 A.M. December 4, 1943.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO PERSONS OTHER THAN BONA FIDE MEMBERS AND GUESTS, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 7 AND R. S. 33:1-2 - 30 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against:

FEDERATION OF YUGOSLAV WORKERS
CLUB INC., SLOGA #78
619 Ferry Avenue
Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-31 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

Federation of Yugoslav Workers Club Inc., Sloga #78, Pro Se, by
Anthony Madiraca, President.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, through its President, pleads non vult to (1) the sale and service of alcoholic beverages on Sunday, October 24, 1943, in violation of the municipal ordinance, and (2) the sale of alcoholic beverages to persons other than bona fide members and their bona fide guests, in violation of Rule 5 of State Regulations No. 7 and R. S. 33:1-2.

Inasmuch as these violations appear to be the defendant's first adjudicated offenses and no aggravating circumstances appearing, I shall impose the minimum penalty. The license will be suspended for a period of fifteen days on the first charge and for an additional period of fifteen days on the second charge. Five days will be remitted because of the plea of non vult, making a net suspension of twenty-five days. See Re Germania Mannerchor, Bulletin 570, Item 11.

Accordingly, it is, on this 29th day of November, 1943,

ORDERED, that Club License CB-31, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Federation of Yugoslav Workers Club Inc., Sloga #78, for premises 619 Ferry Avenue, Camden, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 A.M. December 3, 1943, and terminating at 2:00 A.M. December 28, 1943.

ALFRED E. DRISCOLL
Commissioner.

6. CANCELLATION PROCEEDINGS - LICENSE ISSUED TO PERSON DISQUALIFIED BY REASON OF PREVIOUS CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE CANCELLED:

DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSON ACTUALLY OR APPARENTLY INTOXICATED AND PERMITTING THE CONSUMPTION OF SAME UPON THE LICENSED PREMISES, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - FALSE ANSWER IN LICENSE APPLICATION - EMPLOYING DISQUALIFIED PERSON ON THE LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-26 AND RULE 1 OF STATE REGULATIONS NO. 11 - PENALTY IMPOSED IN CANCELLATION PROCEEDINGS.

In the Matter of Disciplinary Proceedings against

NICK POSSAY
65 Ferry Street
South River, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-5 for the fiscal year 1942-43 and now holder of Plenary Retail Consumption License C-5 for the current (1943-44) year, both issued by the Borough Council of the Borough of South River.

Rospond and Rospond, Esqs., by Felix Rospond, Esq.,
Attorneys for Defendant-Licensee.
Milton H. Cooper, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee entered a plea of not guilty to charges alleging (1) the violation of Rule 1 of State Regulations No. 20 (selling alcoholic beverages to a person actually or apparently intoxicated and permitting the consumption of the same by such person upon the licensed premises), and (2) false answers in his application for his then current license (concealing a criminal record).

Defendant-licensee entered a plea of guilty to charges alleging that he knowingly employed a disqualified person (his wife - a non-citizen) upon the licensed premises in violation of R.S. 33:1-26 and Rule 1 of State Regulations No. 11.

The first charge concerns the alleged sale or service of alcoholic beverages to one Frank Rog. Two ABC investigators entered defendant's premises on the evening of November 14, 1942 between 11:30 P.M. and 11:45 P.M. They testified that, when they entered, Rog appeared to be intoxicated because he was unsteady on his feet and staggered back and forth. They further testified that, at 12:15 A.M. on the morning of November 15, 1942, they saw defendant-licensee serve three glasses of beer at the bar -- one to a soldier who paid for the three drinks, one to Rog and the third to a girl; that Rog, after staggering around, finally seated himself on a chair and began to drink the beer. The investigators thereupon seized the beer, identified themselves to the licensee and summoned the South River Police, who took Rog to Police Headquarters. About fifteen minutes later, Rog was examined by a medical doctor, who expressed the opinion that he was then under the influence of liquor.

Defendant-licensee testified that he left the barroom shortly before 12:15 A.M. He denied that he had served a glass of beer to

Rog, and stated that he knew nothing of the alleged service until the investigators identified themselves to him upon his return. Nicholas Kowan, a civilian, testified that, at or about the time mentioned by the investigators, he had purchased the three glasses of beer from a bartender; that he had handed one to Rog and told him to sit down; that Rog was then a little intoxicated, but "I don't know for sure how drunk he was." The bartender was not produced at the hearing. Another patron, who was called by defendant, testified that when he entered the licensed premises on the evening of November 14, at about 11:15 P.M., Rog, who was drunk, had asked for a beer at the bar but was refused.

From the above facts I am satisfied that Rog was intoxicated on the evening in question and that he was permitted by the licensee or his agents to consume alcoholic beverages while he was intoxicated. Although I have no reason to doubt the testimony of the investigators, it is unnecessary to decide who actually purchased the alcoholic beverages or to decide whether the alcoholic beverages were served by the licensee personally or by his agent or bartender. The mere fact that an intoxicated person was permitted to consume alcoholic beverages on the licensed premises constitutes a violation of Rule 1 of State Regulations No. 20 and hence I find defendant guilty as to the first charge.

As to the charge of false answers in his application for the 1942-43 license, defendant admits the convictions set forth in the charge. Defendant further admits that, in his application for the then current year, the word "No" appears in answer to Question 23, "Have you ever been convicted of any crime?"

Defendant's criminal record discloses that he and his wife were arrested on December 13, 1924 and charged with maintaining a disorderly house. Possay was apparently operating a tavern at that time. Both Possays subsequently entered pleas of not guilty to the indictments and were tried by a jury and convicted. Possay was sentenced to pay a fine of \$250.00 and ordered imprisoned in State's Prison for not more than three years and not less than one year. Execution of the prison sentence was suspended.

In 1925 Possay entered a plea of guilty following an indictment charging him with keeping a slot machine and, upon conviction, was fined \$100.00. In 1936 defendant entered a plea of non vult to an indictment charging him with a violation of the Alcoholic Beverage Law (possession of illicit liquor), and upon conviction was placed on probation for two years. In disciplinary proceedings arising out of the possession of illicit liquor, defendant's license was suspended for thirty days. Despite this record and defendant's admittedly false answer in his application for the then current license, as well as in previous years, the latter urges that there was no intent on his part to deceive the local issuing authority. Defendant states that he does not read English; that the application was filled out by the Borough Clerk, and he thereafter signed and swore to the same. Defendant filed his first application for a license on June 8, 1934. Therein he admitted that he had been convicted of a crime. He specified that the crime was "disorderly house" and that the conviction occurred in 1926 in the Middlesex County Court of Quarter Sessions. In 1934 the local issuing authority granted him a license and thereafter renewed the license from year to year. Subsequent to 1934 defendant did not disclose the conviction for maintaining a disorderly house, nor did he at any time disclose the slot machine conviction. In mitigation defendant alleges that, while the answer to Question 33 in the 1942-43 application was "No", the answer to the following question disclosed the fact that he had been convicted in 1936 of possessing illicit liquor.

The Clerk of the Borough of South River in 1934 was called as a witness by the defendant. He testified that in 1934 he had received an opinion from the Borough Attorney that "he might go on with the defendant's license" in view of the fact that the disorderly house charge had been made a long time before. He also testified that while he was clerk he ordinarily filled out applications. Irrespective of who filled out the defendant's application, it is perfectly apparent that it contained a false answer to a very material question, for which Possay must assume full responsibility. I find defendant guilty as charged.

It should be noted that it is no part of the duty of municipal agents to fill out applications for liquor licenses. Indeed, the practice is fraught with danger, both to the municipality and to the applicant. An applicant who cannot truthfully fill out his own application is hardly likely to meet the exacting standards required of those engaged in the sale of alcoholic beverages in this State. The purpose of the application is to provide municipal issuing authorities, each year, with a full and complete opportunity to judge the character and fitness of the applicant for the very special privilege of selling alcoholic beverages. R. S. 33:1-34 requires, inter alia, municipal issuing authorities "to receive applications", "to investigate applicants and to inspect premises sought to be licensed" and "to conduct public hearings on applications and revocations."

At the same time that the charges were served herein, defendant was served with a notice to show cause why his license should not be cancelled and declared null and void for the following reason:

"Said license was improvidently issued in violation of R. S. 33:1-25 in that you were disqualified from obtaining such license by reason of your conviction of crime involving moral turpitude."

Where, as in the instant case, the element of prostitution is involved in the conviction for maintaining a disorderly house, the crime unquestionably involves moral turpitude. R. S. 33:1-25 specifically prohibits the issuance of a license to any person "who has been convicted of a crime involving moral turpitude."

Where a person who has been convicted of a crime that may or may not involve the element of moral turpitude, depending upon the circumstances of the particular case, subsequently is granted a license by a municipal issuing authority, it may perhaps be presumed that the issuing authority passed upon the issue of moral turpitude and reached the conclusion that it was not involved. There can be no such presumption in those cases where, as in this case, moral turpitude is an integral part of the crime involved in the defendant's conviction. In the latter case I must necessarily conclude that the issuing authority did not consider the question of moral turpitude for, if it had, the license would not have been granted.

Defendant, having been convicted of a crime involving moral turpitude, is not eligible to hold an alcoholic beverage license in this State.

Municipal issuing authorities, if they expect to retain their present control over the issuance of retail licenses, must accept the full measure of responsibility imposed upon them by the Law and carefully consider the character, reputation and record of all applicants. The facts in this case indicate that the municipal issuing authority treated a very solemn responsibility in a very off-hand manner.

In view of my finding that the defendant is not qualified to hold a license, it is unnecessary for me to fix a penalty in the disciplinary proceedings. The license will be cancelled.

Accordingly, it is, on this 29th day of November, 1943,

ORDERED, that defendant's plenary retail consumption license C-5, issued by the Borough Council of the Borough of South River, be and the same is hereby cancelled and declared null and void; and it is further

ORDERED, that all operations under the aforesaid license must cease immediately and that the same must be surrendered to the Borough Council of the Borough of South River.

ALFRED E. DRISCOLL
Commissioner.

7. MORAL TURPITUDE - CRIME OF KEEPING A DISORDERLY HOUSE FOUND TO INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICANT FOUND NOT TO HAVE CONDUCTED HIMSELF IN A LAW-ABIDING MANNER AS REQUIRED BY R. S. 33:1-31.1 - APPLICATION TO LIFT DENIED.

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. 255
-----)

BY THE COMMISSIONER:

In this proceeding Nick Possay prays that the statutory disqualification resulting from his conviction of a crime involving moral turpitude be lifted pursuant to R. S. 33:1-31.2.

On February 20, 1925 Nick Possay pleaded guilty in the Middlesex County Court of Quarter Sessions to a charge of keeping a slot machine and was fined \$100.00. On March 9, 1925 he was convicted in the same Court of the crime of keeping a disorderly house and was fined \$250.00 and sentenced to State Prison for not more than three years or less than one year. The execution of the prison sentence was suspended. On April 3, 1936 he pleaded non vult in the same Court to the crime of possessing illicit liquor, was convicted and placed on probation for two years.

The crime of keeping a disorderly house is a crime which per se involves moral turpitude where it appears, as in this case, that the accused person harbored a prostitute on his premises. Hence the petitioner was, by his conviction of this crime, disqualified to hold an alcoholic beverage license in this State or to be employed by the holder of such a license.

R. S. 33:1-31.2 provides:

"Any person convicted of a crime involving moral turpitude, may after the lapse of five years from the date of conviction, apply to the commissioner for an order removing the resulting statutory disqualification from obtaining or holding any license or permit under this chapter. Whenever any such application is made and it appears to the satisfaction of the commissioner that at least five years have elapsed from the date of conviction, that the applicant has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to the public interest, the commissioner may, in his discretion and subject to rules and regulations, enter an order removing the applicant's disqualification from obtaining or holding a license or permit because of the conviction.***"

While more than five years have elapsed since the petitioner's last criminal conviction in 1936, I am not satisfied that he has conducted himself in a law-abiding manner during the last five years. Nor am I satisfied that applicant's continued association with the alcoholic beverage industry will not be contrary to the public interest. The use of the words "law-abiding manner" by the Legislature is, in my opinion, significant. It is evident that the Legislature intended to require not only that the petitioner's record be free from technical criminal convictions during the required period, but also that his standard of conduct during the period be such as to permit the Commissioner to find that, in general, he had lived in a "law-abiding manner."

In concurrent proceedings I have found the petitioner guilty of permitting the consumption of alcoholic beverages on his licensed premises by a person actually or apparently intoxicated, in violation of Rule 1 of State Regulations No. 20. The applicant was also found guilty of employing a disqualified person on his licensed premises, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11. The regulations promulgated by the Commissioner have the force of law. The violations of the regulations and of the statute by the petitioner are a complete answer to the allegation that he has conducted himself in a law-abiding manner during the period since his last conviction. Under the circumstances I am unwilling to exercise the discretionary powers vested in me by the statute.

Accordingly, it is, on this 29th day of November, 1943,

ORDERED, that petitioner's application for an order lifting his statutory disqualification because of the conviction of the crime involving moral turpitude be and the same is hereby denied.

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER BY CLUB LICENSEE IN
 LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING
 NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE -
 PERMITTING GAMBLING ON LICENSED PREMISES - LICENSE REVOKED.

In the Matter of Disciplinary)
 Proceedings against)

FOURTH WARD YOUNG DEMOCRATIC CLUB)
 219 Ferry Street)
 Trenton, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Club License CB-16, issued)
 by the Board of Commissioners of the)
 City of Trenton.)
 -----)

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

BY THE COMMISSIONER:

The defendant was served with charges alleging that (1) it falsely concealed in its license application that Frank Caparello had an interest in its license and business; (2) since January 8, 1942 it permitted Frank Caparello to exercise the rights and privileges of its license; (3) it falsely concealed in its license application that a member of its governing body had been convicted of the crime of tampering with an electric meter and that its Vice-President had been convicted of the crime of adultery; and (4) it permitted gambling on its licensed premises.

Although three of defendant's members appeared at the hearing, neither of them was apparently authorized to enter a plea on defendant's behalf. Accordingly, the Hearer entered a not guilty plea on the record.

The defendant club was organized in 1936 and continued to function without a liquor license until January 1942, when its first license was issued to it. Shortly prior thereto, Frank Caparello, nominally designated as the club's only trustee, entered into an arrangement with the defendant whereby it was agreed that the income of the club, including the bar receipts, was to be divided between himself and the club, the former's share being fixed at 60% and the latter's at 40%. Pursuant to this arrangement, Frank Caparello assumed complete control of the club's finances, despite the fact that the club had a duly elected treasurer. These moneys were kept by Frank Caparello at his home and no deposits were made in the club's bank account subsequent to April 1942. The club's share of the income was used for social affairs, political contributions, payment of the mortgage covering its property, and the like. Frank Caparello's share was used for the salaries of bartenders and any unexpended balance was retained by him. He purchased all of the liquor stock, paid all of the liquor bills and exercised complete control over the bartenders.

In a signed statement obtained from the President of the club, he states that the license fee was paid jointly by the club and Frank Caparello, each contributing a proportionate share in accordance with the arrangement concerning the distribution of income. Although this is denied by Frank Caparello, he admits that he personally paid the entire fee in cash from income of the club which he had in his possession.

A significant extract from the club's minutes of a meeting held in December 1941 reads as follows:

"Motion was made by Frank Richetti that the 60-40 Basis received by F. Capparello be made a Permanent Order & any member that talks about it on the outside will be overlooked (sic)."

I find that Frank Caparello has an unlawful interest in the defendant's club license and the business conducted thereunder, and that such business was operated substantially, if not completely, for his personal gain and benefit.

It is denied that the member of defendant's governing body has ever been convicted of a crime as alleged in the third charge. There is apparently some question whether he, or another person of the same name, is to be credited with the crime charged. However, there is no question that the Vice-President, who executed the license application for the current licensing year, was convicted of a crime, and that this conviction was not revealed therein.

If the foregoing were not sufficient to revoke the license, the flagrant violation involved in the fourth charge indubitably would lead to such result. Various forms of gambling apparently took place at the licensed premises almost every afternoon and evening. The extent of this unlawful commercial enterprise may be gleaned from a statement of the club's income for the calendar year 1942, which shows that over \$3,000.00 was received as "donations" from the persons participating in the gambling. Although Frank Caparello objects to this sum being characterized as the "house cut" (he employs the more dignified term of "donations"), it is obvious that these moneys represent a percentage paid to the club by its members for the privilege of partaking in the gambling games. The evidence satisfies me that the club premises were operated as a "disorderly house", i.e., a place where the law is being habitually violated.

Political clubs are ostensibly organized for the purpose of increasing interest in good government. They reflect little credit, however, upon the political party whose name they adopt when they persist in operating their headquarters in violation of the law. Club licensees obviously should not be encouraged in such conduct by allowing them the privilege of dispensing alcoholic beverages.

In order that there may be an effective dissolution of the unholy union of gambling and liquor on the defendant's premises, its license will be revoked.

Accordingly, it is, on this 29th day of November, 1943,

ORDERED, that Club License CB-16, issued by the Board of Commissioners of the City of Trenton to Fourth Ward Young Democratic Club for premises 219 Ferry Street, Trenton, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

WILLIAM H. DECKER CO.,
trading as DECKER'S,

Appellant,

-VS-

BOARD OF COMMISSIONERS OF THE
TOWN OF MONTCLAIR,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Inlander & Cohen, Esqs., by Harry G. Cohen, Esq.,
Attorneys for Appellant.
George S. Harris, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the refusal of the Board of Commissioners of the Town of Montclair to renew a plenary retail distribution license for the year 1943-44 for premises located at 19 Church Street, Montclair, and originally issued to William H. Decker Co., trading as "Decker's."

The testimony discloses that the nominal appellant had for several years conducted a plenary retail distribution business at said premises and had been granted a renewal of a license for the fiscal year 1942-43. On or about June 12, 1943, it made an assignment for the benefit of creditors. The assignee took possession of the premises and, at a subsequent date, which does not appear in the record, disposed of the assets. Some reference was made by counsel for the respondent that the interest in the license was likewise disposed of to an attorney, but this is not borne out by the testimony. At any rate, however, the assignee made no attempt to continue the business. On July 20, 1943 an application was filed in the name of William H. Decker Co., t/a "Decker's", for a renewal of the license. On July 20, 1943 the Town of Montclair adopted, on final reading, an amended ordinance reducing the number of plenary retail distribution licenses to be outstanding in the municipality from thirteen to twelve. On August 31, 1943 a public hearing was held on the application in question and, by unanimous vote of the Board of Commissioners, the application was denied. It is admitted that "Decker's" constituted the thirteenth licensed place, and without "Decker's" the number of plenary retail distribution licenses in the municipality would be twelve -- the number set forth in the amended ordinance. William H. Decker did not appear at the hearing, and it appears further that the affidavit attached to the petition of appeal was not executed by him but by one of the members of the law firm prosecuting the appeal. The application for renewal, while executed by the nominal appellant, was nevertheless accompanied by a check in the amount of \$800.00 drawn to the order of Josephine C. Aquino and signed by Belleville Liquor Store, Inc., by Josephine C. Aquino, President, and endorsed by the said Josephine Aquino to the order "Town of Montclair, N.J." Counsel for appellant admits that, if the application for renewal is granted, it is his intention to apply for a transfer of the license to the said Belleville Liquor Store, Inc.

The position of the respondent is that William H. Decker Co. was simply the nominal applicant and is not the real party in interest; and furthermore, that Decker does not intend to operate the place and never did intend so to operate. These contentions are adequately borne out by the facts. While it is true that William H. Decker Co., the original licensee, did in fact sign the application for the license, from that time on Decker dropped completely out of the picture. The check for the amount of the license fee is issued by the Belleville Liquor Store, Inc., and it is stated quite frankly that the Belleville Liquor Store, Inc. will attempt to secure a transfer of the license from Decker in the event it is granted. Decker did not appear at the hearing before the Board of Commissioners when his application for license was considered, nor did he participate at all in the proceedings before the Board. The affidavit attached to the petition of appeal was executed by one of the members of the law firm prosecuting the appeal. It is, therefore, quite evident that Decker is not the real party in interest but is simply lending his name to the proceedings in an effort to accommodate the Belleville Liquor Store, Inc., which is the applicant in fact.

The Alcoholic Beverage Law clearly contemplates that the application for a license or for transfer of a license shall be filed only by the person who is the real owner of the business to be conducted under the license sought.

Counsel for the appellant contends that, under the case of Falkenberg v. Parsippany-Troy Hills, Bulletin 405, Item 1, the applicant is clearly entitled to have the license issued to it and that the municipality can then pass upon the question of transfer to the Belleville Liquor Store, Inc. when such application is presented to it. With this contention I am unable to agree. In the cited case, Falkenberg was the real applicant. It is perfectly obvious that in the present case the municipality considers Belleville Liquor Store, Inc. the actual applicant. The municipality in good faith appears to have assumed that when Decker made an assignment for benefit of his creditors he was unable to continue the business and was to give up his license. Such being the case, the municipality followed its apparently established, and commendable, practice of amending the numerical limitation ordinance so as to reduce by one the number of plenary retail distribution licenses to be outstanding in the Town of Montclair.

Under all the circumstances, and considering all the facts which have been fully presented, I feel that the action of the municipality should be affirmed.

Accordingly, it is, on this 30th day of November, 1943,

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

ALFRED E. DRISCOLL
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE
APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-
LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE -
ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

JOSEPHINE BELZA
T/a MIAMI GARDENS
Brunswick Pike & Bakers Basin Rd.
Lawrence Township
P.O. Trenton, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-12, issued by the Township
Committee of the Township of Lawrence,
and transferred during the pendency
of these proceedings to

JOHN J. BELZA

for the same premises.

John J. Connell, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded non vult to the following
charges:

"1. In your application, filed with the Township
Committee of the Township of Lawrence and upon which you
obtained your current plenary retail consumption license
for premises at Brunswick Pike and Bakers Basin Road, you
falsely stated 'No' to Question 30, which asks: 'Has any
individual....other than the applicant, any interest,
directly or indirectly, in the license applied for, or in
the business to be conducted under said license?', whereas
in truth and fact John J. Belza was so interested in that
he was the real and beneficial owner of the said business;
such false statement being in violation of R. S. 33:1-25.

"2. From January 1, 1941 and until the present time,
you knowingly aided and abetted the said John J. Belza to
exercise, contrary to R. S. 33:1-26, the rights and privi-
leges of your plenary retail consumption license for the
aforesaid premises, thereby yourself violating R. S. 33:1-52."

It appears from affidavits submitted by the defendant and by
the real owner of the license, John J. Belza, that the sole reason
for this condition was John J. Belza's failure to qualify as a licen-
see under a local (Lawrence Township) residence requirement and that
there was no other reason why the license had been taken out in the
name of Josephine Belza, who is a sister of John J. Belza. I am
advised by the local issuing authority that the license has now been
transferred, effective November 17, 1943, to John J. Belza, subject
to the outcome of disciplinary proceedings (these proceedings now
pending against Josephine Belza).

While there is no question that the law was violated by this "front", under all the circumstances, and particularly in view of the fact that there appears to be no reason except that of residence why the license should not have been issued to John J. Belza, I shall impose a minimum suspension of ten days, Re DiDonato, Bulletin 591, Item 9, which suspension shall apply to the license as now held by John J. Belza pursuant to the specific terms of its transfer.

Accordingly, it is, on this 30th day of November, 1943,

ORDERED, that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Lawrence to Josephine Belza, t/a Miami Gardens, for premises on Brunswick Pike & Bakers Basin Rd., Lawrence Township, and transferred during the pendency of these proceedings to John J. Belza, t/a Miami Gardens, for the same premises, be and the same is hereby suspended for ten (10) days, effective at 2:00 A.M. December 6, 1943 and terminating at 2:00 A.M. December 16, 1943.

Alfred E. Driscoll
Commissioner.