

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

BULLETIN 796

MARCH 2, 1948.

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

BULLETIN 796

MARCH 2, 1948.

1. DISCIPLINARY PROCEEDINGS - PERMITTING PIN BALL MACHINE ON
LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

STANLEY PASTERNAK)
132-34 Third Street)
Elizabeth 1, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-6, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Elizabeth.)
-----)

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

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On January 23, 1948 and theretofore, you allowed,
permitted and suffered on and about your licensed premises,
a machine or device commonly known as a bagatelle or pin
ball machine, in violation of Rule 7 of State Regulations
No. 20."

The file herein discloses that on January 23, 1948 an ABC agent
observed a bagatelle machine on defendant's licensed premises. The
defendant claimed he did not know it was a violation to have a
bagatelle machine on the licensed premises and immediately made
arrangements for the removal of the machine. Ignorance of the State
Regulations cannot be accepted as an excuse.

The defendant has no previous adjudicated record. I shall,
therefore, suspend his license for a period of ten days, less five
days' remission for the plea, or a net suspension of five days.
Re Carteret Club of Trenton, Bulletin 672, Item 12.

Accordingly, it is, on this 19th day of February, 1948,

ORDERED that Plenary Retail Consumption License C-6, issued by
the Municipal Board of Alcoholic Beverage Control of the City of
Elizabeth to Stanley Pasternak for premises 132-34 Third Street,
Elizabeth, be and the same is hereby suspended for a period of five
(5) days, commencing at 2:00 a.m. March 1, 1948, and terminating at
2:00 a.m. March 6, 1948.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION - SALE TO NON-MEMBERS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CARPATHO-RUSSIAN AMERICAN CITIZEN CLUB) 205 Romanowski Street) Carteret, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-4, issued by the Borough Council of the Borough of Carteret.)

-----) Carpatho-Russian American Citizen Club, by John Kuzma, President. William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charges:

"1. On January 23, 25 and 30, 1948, you sold alcoholic beverages for consumption off the licensed premises, in violation of Rule 8 of State Regulations No. 7.

"2. On January 23 and 30, 1948, you sold alcoholic beverages to persons not bona fide members of your club or bona fide guests of a member, in violation of Rule 8 of State Regulations No. 7.

"3. On January 23 and 30, 1948, respectively, without first having obtained a special permit so to do, you sold a 4/5 quart bottle of Four Roses Blended Whiskey and a quart bottle of Philadelphia Blended Whisky below the minimum consumer price published in Bulletin 785 of this Department, in violation of Rule 6 of State Regulations No. 30."

The file in the instant case discloses that on January 23, 1948 an ABC inspector purchased a 4/5 quart bottle of Four Roses Blended Whiskey for off-premises consumption. The agent paid \$4.00 for this item, whereas the established retail price for said product was \$4.39. Bulletin 785. On January 25, 1948 the ABC agent again visited defendant's premises and while there observed a man purchase a bottle of liquor for off-premises consumption. On January 30, 1948 three ABC agents purchased and consumed alcoholic beverages on defendant's licensed premises and one agent purchased a quart bottle of Philadelphia Blended Whisky for \$4.50. The established minimum retail price of this product was \$4.98. Bulletin 785. On this occasion the ABC agents made known their identity to the bartender.

The ABC agents who were served with alcoholic beverages in defendant's licensed premises are not members of defendant club, nor were they bona fide guests of a member thereof.

Defendant has no previous adjudicated record. Under the circumstances, I shall suspend defendant's license for a period of forty days, less five days' remission for the plea entered herein, leaving a net suspension of thirty-five days. Cf. Metz & Mininsohn, Bulletin 764, Item 10.

Accordingly, it is, on this 20th day of February, 1948,

ORDERED that Club License CB-4, issued by the Borough Council of the Borough of Carteret to Carpatho-Russian American Citizen Club, for premises 205 Romanowski Street, Carteret, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 2:00 a.m. March 1, 1948, and terminating at 2:00 a.m. April 5, 1948.

ERWIN B. HOCK
Commissioner.

3. DISCIPLINARY PROCEEDINGS - PERMITTING PIN BALL MACHINES ON LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

PLAZA OPERATING COMPANY (a corp.))
T/a PLAZA HOTEL, BAR & RESTAURANT)
S.E. Cor. 5th & Cooper Streets)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-62, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

Frank S. Farley, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charge:

"On August 21, 1947, you possessed, allowed, permitted and suffered on and about your licensed premises two machines or devices commonly known as bagatelle or pin ball machines, in violation of Rule 7 of State Regulations No. 20."

An ABC investigator testified that during the course of a routine inspection of defendant's licensed premises he observed two pin ball machines near the entrance to the main barroom then under construction.

Edward R. Savo, an employee of defendant, testified that the machines were maintained for the accommodation of the hotel guests and were never at any time in the barroom. He also testified that the machines were removed from the premises immediately after the alleged violation was called to the attention of the person in charge.

It is set forth in defendant's renewal application for the current license that the entire building constitutes the licensed premises. Consequently, the maintenance of the machines on any part of the premises was a violation of the Rules and Regulations of the Department of Alcoholic Beverage Control.

I find defendant guilty of the charge preferred in the instant case.

Defendant has no prior adjudicated record. I shall, therefore, suspend its license for a period of ten days. Re Carteret Club of Trenton, Bulletin 672, Item 12.

Accordingly, it is, on this 25th day of February, 1948,

ORDERED that Plenary Retail Consumption License C-62, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Plaza Operating Company (a corp.), t/a Plaza Hotel, Bar & Restaurant, for premises S.E. cor. 5th & Cooper Streets, Camden, be

and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 2, 1948, and terminating at 2:00 a.m. March 12, 1948.

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - CLUB LICENSE - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION - SALE TO NON-MEMBERS - SALE TO WOMEN DIRECTLY OVER BAR IN VIOLATION OF LOCAL ORDINANCE - PRIOR RECORD - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GERMANIA MANNERCHOR)
1031-1035 North 27th Street)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-3, issued)
by the Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

-----)
Defendant-licensee, by Daniel G. C. Silber, official representative)
of defendant in these proceedings.)

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

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charges:

"1. On Saturday night and early Sunday morning, January 10 and 11, 1948, you sold alcoholic beverages for consumption off the licensed premises, in violation of Rule 8 of State Regulations No. 7.

"2. On January 11, 1948, you sold alcoholic beverages to persons not bona fide members of your club or bona fide guests of a member, in violation of Rule 8 of State Regulations No. 7.

"3. On the occasion last mentioned, you served an alcoholic beverage to a woman directly over a bar, in violation of section 10 of an ordinance concerning alcoholic beverages adopted by the Board of Commissioners of Camden on December 27, 1934 as amended on September 12, 1935."

Defendant's licensed premises are limited to the basement of a building located at 1031-1035 North 27th Street, Camden. On the first floor of said building, directly above the basement, is an auditorium which is owned or controlled by defendant but which is not part of its licensed premises. On the evening of Saturday, January 10, 1948, the auditorium was rented by defendant to a man and his wife for a wedding party, and six half-barrels of beer were sold by defendant to the persons who had rented the auditorium. The barrels were carried from the licensed premises to the auditorium, and the beer was served to the persons who attended the wedding reception. It is evident from the above recital of the facts that the alcoholic beverages were sold by defendant for off-premises consumption and, hence, defendant is guilty as to charge (1).

Later, on the morning of January 11, 1948, two ABC agents, who had previously been in the auditorium, entered the basement of the building and purchased and consumed various drinks of alcoholic beverages. The agents were not members of, or guests of members of, defendant organization. In alleged mitigation, defendant states that the agents had played at a shuffleboard in the basement for some time before they

purchased the drinks and, hence, it was assumed that they were guests of some member. However, the agents were not accompanied by a member when they purchased the drinks, and they were not questioned at any time. While the agents were present in the basement they observed a drink being served over the bar to a woman who was apparently a guest of one of the members. The defendant is guilty as to charges (2) and (3).

Defendant has a prior record. In May 1943 its license was suspended for a period of thirty days, less five for a guilty plea, on charges of selling alcoholic beverages during prohibited hours and selling alcoholic beverages to non-members. Hence this is a second violation of a similar character so far as sale to non-members is concerned. Under all the circumstances I shall suspend the license for fifty days, less five days for the plea entered herein, making a net suspension of forty-five days.

Accordingly, it is, on this 25th day of February, 1948,

ORDERED that Club License CB-3, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Germania Mannerchor, for premises 1031-1035 North 27th Street, Camden, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. March 2, 1948, and terminating at 2:00 a.m. April 16, 1948.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against
JOHN JENNINGS, JR.
S/W Cor. Virginia Ave. & Line St.
Upper Penns Neck Township
P.O. R.D. Penns Grove, N. J.,
Holder of Plenary Retail Distribution License D-1 issued by the Township Committee of the Township of Upper Penns Neck, and transferred during the pendency of these proceedings to
JOHN JENNINGS, JR. and JEROME JENNINGS,
for the same premises.

CONCLUSIONS
AND ORDER

John M. Summerill, Jr., Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charges:

"1. In your undated applications for license, filed with the Township Committee of the Township of Upper Penns Neck, upon which you obtained your current and prior plenary retail distribution licenses, you falsely stated 'No' in answer 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 Jerome Jennings, a person disqualified by reason of lack of age, had such an interest in that he was co-owner with you of the said business; such false statements being in violation of R. S. 33:1-25.

"2. From November 6, 1946 until the present time, you knowingly aided and abetted Jerome Jennings to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail distribution licenses, thereby yourself violating R. S. 33:1-52."

The record indicates that prior to November 6, 1946, the defendant-licensee and his brother, Jerome Jennings, then a minor, decided to jointly go into the retail liquor business. It was admitted by the defendant that Jerome Jennings' name did not appear in the original application for license because the latter was only twenty years of age at the time the application was filed.

On November 6, 1946, the Township Committee of the Township of Upper Penns Neck granted a plenary retail distribution license to John Jennings, Jr., pursuant to the original application filed by him. The application was granted subject to the completion of the building in which the licensed business is now being conducted. The license was issued in April 1947 after the building had been completed.

Jerome Jennings, a disabled veteran, became twenty-one years of age on December 15, 1946. Nine days thereafter he entered into a formal partnership agreement with his brother, John Jennings, Jr., a veteran, by the terms of which agreement the licensed business was to be conducted by both brothers. It will be noted that, at the time the license was granted, Jerome Jennings was a minor but that at the time the license was issued and operation under the license began, both brothers were of full age.

Both brothers contend that they spoke to the Township Clerk in June 1947 concerning a transfer of the license to both names, and that the Clerk advised them that it was then too late to obtain a transfer before July 1, 1947. John Jennings, Jr., the defendant, alleges that for this reason he applied for renewal of the license in his own name. The current license has since been transferred to both brothers, and the illegal situation has, therefore, been corrected.

The answer to Question 30 in the application for renewal filed by John Jennings, Jr. was incorrect. However, I do not believe that there was any deliberate intent to mislead the issuing authority. Since no aggravating circumstances appear in this case I shall suspend the license for a period of twenty days, the minimum penalty established for "front" cases.

Accordingly, it is, on this 25th day of February, 1948,

ORDERED that Plenary Retail Distribution License D-1, issued by the Township Committee of the Township of Upper Penns Neck to John Jennings, Jr., for premises at s/w cor. Virginia Ave. & Line Street, Upper Penns Neck Township, and transferred during the pendency of these proceedings to John Jennings, Jr., and Jerome Jennings, for the same premises, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. March 3, 1948, and terminating at 9:00 a.m. March 23, 1948.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION AS TO RIGHT OF POSSESSION OF LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

AUGUSTUS HUTCHINS)
34 Straight Street)
Paterson, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-117, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)

Nicholas A. Carella, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to charge as follows:

"In your applications dated November 25, 1946, and June 14, 1947, filed with the Board of Alcoholic Beverage Control of the City of Paterson, upon which you obtained transfer of plenary retail consumption license for the 1946-47 and renewal thereof for the 1947-48 licensing periods respectively, for premises 166 - 16th Avenue, Paterson, N. J., you, after describing the licensed premises as the first floor in the frame building at that location, falsely stated, in answer to Question 8(a), that the premises were leased or rented from Lena Stein, whereas in truth and fact you had neither leased nor rented, nor had any possession or right to possession of the premises sought to be licensed; said false statement being in violation of R. S. 33:1-25."

The answer set forth in the charge was in fact the answer given to Question 8(a) in each of the two applications.

The owner of the premises at 166 - 16th Avenue testified that she never leased the premises to Mr. Hutchins, nor did she give him any right of possession therein. The premises, particularly that part to which the license was transferred in 1946, has been leased for residential purposes to one tenant for over five years. She and her son live there and she has never agreed to give up her possession nor has she ever received any eviction notice.

Apparently the defendant's only interest in said premises was in securing a place to which the license could be transferred pending the finding of a suitable site for the operation of the business. He testified that he never operated and never had any intention of operating his licensed business at 166 - 16th Avenue; that he never saw the inside of the premises. The defendant contends that he was guided by an attorney's advice (not the attorney appearing for him in the instant action) and that he thought his attorney's assertion that everything was all right was correct. However, incorrect advice by an attorney does not excuse the violation.

Defendant is guilty as charged.

The license in question was subsequently transferred from 166 - 16th Avenue to 34 Straight Street, Paterson, a place apparently suitable, and defendant apparently is entitled to possession there. Under the circumstances I shall suspend the license for ten days.

Accordingly, it is, on this 25th day of February, 1948,

ORDERED that Plenary Retail Consumption License C-117, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Augustus Hutchins for premises 34 Straight Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. March 8, 1948, and terminating at 3:00 a.m. March 18, 1948.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against
STEPHEN R. GORDON
Lakeside Road
West Milford Township
P.O. Hewitt, N. J.,
Holder of Plenary Retail Consumption License C-20, issued by the Township Committee of the Township of West Milford, and transferred during the pendency of these proceedings to
STEPHEN SCHMIDT
for the same premises.

CONCLUSIONS
AND ORDER

Stephen R. Gordon, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charges:

"1. In your application filed with the Township Committee of the Township of West Milford, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30 which asks: 'Has any individual, partnership, corporation or association, 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 The Lakeside Company, a corporation ineligible for license by reason of non-residence of a stockholder holding more than 10% of its stock, and Stephen Schmidt were so interested as the real and beneficial owners of said license and business, said false statement being in violation of R. S. 33:1-25.

"2. From December 1936 and until the present time, you knowingly aided and abetted The Lakeside Company, and from May 15, 1947 and until the present time, you knowingly aided and abetted Stephen Schmidt to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52."

The Lakeside Company, the stock of which has always been owned by members of defendant's family, was incorporated in 1909. It owns a tract of land at Greenwood Lake. The licensed building was erected in 1929 on a part of this tract of land. In 1936 defendant obtained a plenary retail consumption license for the licensed building and, until May 15, 1947, the net profits therefrom were used to reduce a mortgage which had been given on the entire tract by The Lakeside Company. During the aforesaid period of time one-third of the stock of The Lakeside Company was owned by defendant; one-third of the stock was owned by his brother, William Gordon, who resides in Buffalo, New York, and one-third of the stock was owned by his niece, Elva Clark, who also resides in Buffalo, New York.

On May 15, 1947, defendant entered into a lease with Stephen Schmidt, whereby the latter was to "operate as a bartender and employee" of The Lakeside Company and to retain all the profits as his earnings. On December 8, 1947, a five-year lease of the licensed premises was granted to said Stephen Schmidt, and shortly thereafter the license was transferred from defendant to Stephen Schmidt. It thus appears that at the present time the illegal situation has been corrected.

Defendant alleges that he had no intention of violating the provisions of the Alcoholic Beverage Law; that no profits were distributed to the stockholders of the corporation; and that he was seeking merely to protect the interests of his brother and niece. Nevertheless it appears that these non-residents, who were disqualified by non-residence from holding more than 10% of the stock of the licensed corporation, were permitted to participate indirectly in the profits arising from the operation of the licensed business and the license was improperly "farmed out" for a period of time to Stephen Schmidt. Under all the circumstances, I shall suspend the license now held by Stephen Schmidt for a period of thirty days. Cf. Re Serti, Bulletin 750, Item 6.

Accordingly, it is, on this 26th day of February, 1948,

ORDERED that Plenary Retail Consumption License C-20, issued by the Township Committee of the Township of West Milford to Stephen R. Gordon, for premises on Lakeside Road, West Milford Township, and transferred during the pendency of these proceedings to Stephen Schmidt, for the same premises, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. March 1, 1948, and terminating at 2:00 a.m. March 31, 1948.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - PIN BALL MACHINES - PERMITTING LICENSED PREMISES TO BE USED IN CONNECTION WITH ILLEGAL ACTIVITY IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

AMERICAN LEGION)
CAPTAIN JAMES MacFARLAND POST #79)
S/W Cor. Jones St. & Bordentown Rd.)
Burlington, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-147 issued by the State Commissioner of Alcoholic Beverage Control.)

Sidney W. Bookbinder, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On or about March 19, 1947, and on divers days prior thereto, particularly on November 16, 1946, you allowed, permitted and suffered your licensed premises and your licensed business to be used in furtherance and aid of and in connection with an illegal activity or enterprise, to wit, the possession of three slot machines or devices in the nature of slot machines which may be used for the purpose of playing for money or other valuable thing in a room in your licensed building adjacent to your licensed premises; in violation of Rule 4 of State Regulations No. 20."

On March 19, 1947, an ABC agent found three slot machines in a rear room on the first floor of the building occupied by defendant-licensee.

The file herein shows that on December 10, 1946 defendant was advised by the Department that the presence of the machines would be construed as a violation of Rule 4 of State Regulations No. 20, and that on January 3, 1947 defendant advised the Department that "the machines in question have been removed from the room near the bar-room and as a matter of fact have been completely removed from the premises which is occupied by the Post as a home." Nevertheless, as stated above, the machines were discovered in the rear room on March 19, 1947.

Defendant has no prior adjudicated record.

Under the circumstances, I shall suspend the license for a period of ten days. Five days will be remitted because of the plea, leaving a net suspension of five days.

Accordingly, it is, on this 27th day of February, 1948,

ORDERED that Club License CB-147, issued by the State Commissioner of Alcoholic Beverage Control to American Legion, Captain James MacFarland Post #79, s/w cor. Jones St. & Bordentown Road, Burlington, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. March 1, 1948, and terminating at 2:00 a.m. March 6, 1948.

ERWIN B. HOCK
Commissioner.

- 9. DISCIPLINARY PROCEEDINGS - PIN BALL MACHINES - PERMITTING LICENSED PREMISES TO BE USED IN CONNECTION WITH ILLEGAL ACTIVITY IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

SCULLY-BOZARTH POST #1817)
 VETERANS OF FOREIGN WARS)
 S/S River Bank, between)
 Wood & Talbot Sts.)
 Burlington, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Club License CB-46, issued)
 by the State Commissioner of)
 Alcoholic Beverage Control.)

Maurice S. Fayman, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On or about March 19, 1947, and on divers days prior thereto, particularly on June 26, 1946, you allowed, permitted and suffered your licensed premises and your licensed business to be used in furtherance and aid of and in connection with an illegal activity or enterprise, to wit, the possession of twelve slot machines or devices in the nature of slot machines which may be used for the purpose of playing for money or other valuable thing in a room in your licensed building adjacent to your licensed premises; in violation of Rule 4 of State Regulations No. 20."

On March 19, 1947, an ABC agent found twelve slot machines in a room east of the center corridor on the first floor of the building occupied by defendant-licensee. The file herein shows that on July 19, 1946 two officials of defendant club called at the offices of this Department and were advised that the presence of the machines in the room where they were found would constitute a violation of Rule 4 of State Regulations No. 20. Nevertheless, as stated above, the machines were found in said room on March 19, 1947.

In 1940 defendant's license was suspended for five days after it pleaded guilty to charges of selling alcoholic beverages to non-members and selling alcoholic beverages for off-premises consumption. Because of the length of time which has elapsed the prior violation will not be considered in imposing a penalty herein.

Under the circumstances, I shall suspend the license for a period of ten days. Five days will be remitted because of the plea, making a net suspension of five days.

Accordingly, it is, on this 27th day of February, 1948,

ORDERED that Club License CB-46, issued by the State Commissioner of Alcoholic Beverage Control to Scully-Bozarth Post #1817, Veterans of Foreign Wars, for premises S/S River Bank, between Wood & Talbot Streets, Burlington, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. March 1, 1948, and terminating at 2:00 a.m. March 6, 1948.

ERWIN B. ROCK
 Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR-TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MORRIS SCHEY & BENJAMIN A. SELZER T/a BEN-MOR LIQUORS 120 Market Street Passaic, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-24, issued by the Board of Commissioners of the City of Passaic.

Hammer & Hammer, Esqs., by David H. Hammer, Esq., Attorney for Defendant-licensees. William F. Wood, Esc., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded non vult to a charge alleging the sale of alcoholic beverages at retail for a price below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On February 7, 1948, an inspector of the State Department of Alcoholic Beverage Control purchased at defendants' premises one pint bottle of Calvert Reserve Blended Whiskey for the price of \$2.50. The minimum retail price of said item as established in Bulletin 785, effective December 2, 1947, is \$2.54 per pint.

Since this is the defendants' first violation, I shall impose the minimum ten-day penalty. Five days will be remitted because of the plea, leaving a net suspension of five days. Re 20th Century Bar, Inc., Bulletin 762, Item 4.

Accordingly, it is, on this 27th day of February, 1948,

ORDERED that Plenary Retail Distribution License D-24, issued by the Board of Commissioners of the City of Passaic to Morris Schey & Benjamin A. Selzer, t/a Ben-Mor Liquors, for premises 120 Market Street, Passaic, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. March 8, 1948, and terminating at 9:00 a.m. March 13, 1948.

ERWIN B. HOCK Commissioner.

11. MUNICIPAL REGULATIONS - WOMEN - PROHIBITION AGAINST STANDING OR SITTING AT PUBLIC BAR - PRIOR APPROVAL CONFIRMED.

March 1, 1948

Joshua V. Davidow, Esq.
Bridgeton, N. J.

Dear Mr. Davidow: Re: Sec. 4a Pennsauken ordinance

On behalf of several associations of liquor dealers, you have requested that I reconsider my prior approval of an ordinance adopted by the Township Committee of the Township of Pennsauken on December 15, 1947, which reads:

"No licensee shall allow, permit or suffer any female to sit or stand at any public bar on the licensed premises."

I have carefully considered the arguments advanced in your brief, and also the reply brief submitted by Mr. Salter for the Township Committee, and I have reached the conclusion that the ordinance is valid and that my approval thereof should not be disturbed.

No challenge is made upon the right of the municipal body to regulate, under its inherent police power and the specific provisions of the Alcoholic Beverage Law, the class of persons who may lawfully be permitted to frequent licensed premises in its community. It is no longer open to question that such power exists, constitutionally and otherwise, even to the total exclusion of all females from licensed premises. See Holderness v. Orange, Bulletin 257, Item 1, and cases therein cited.

The sole contention is that the ordinance is arbitrary and unreasonable because of uncertainty and indefiniteness. I find no such infirmities in the ordinance. The argument is made that the ordinance embodies no definition of "sit or stand" or of "public bar". These words are easily understood and have well-defined meanings. There is here no ambiguity concerning the ordinary acceptation of the quoted words nor of the purpose and intent of the ordinance as a whole. Ever since the inception of this Department, ordinances of similar import and language have received the approval of the Commissioner and it is highly significant that no litigated case has ever been presented to the Commissioner involving any such contention as that made herein. As early as July 1934, the late Commissioner Burnett used the following pertinent language in commenting upon the interpretation to be given to a regulation prohibiting the service of alcoholic beverages to a woman over a bar (Re Foster, Bulletin 41, Item 1):

"Whether a woman is standing at the bar is a mere question of fact and no different or more difficult than to determine whether a man is 'at the bar'. He may be standing in the outer ranks, three or four deep, unable physically to touch the bar, and still you and I would agree that he was standing 'at the bar'. So may she."

It might be well, at this point, to set forth the established principles of construction pertaining to an ordinance of this type. Where the subject matter of an ordinance, as here, is within the police power of a municipality, there exists a presumption that the ordinance is reasonable and the burden of showing the contrary is upon those who attack it. If such an ordinance may operate reasonably in some instances and unreasonably in others, the ordinance is not void in toto, and no justiciable issue arises until it is demonstrated that, in a particular case, the ordinance has been unreasonably applied. See, e.g., North Jersey Street Ry. Co. v. Jersey City, 75 N.J.L. 349.

With these principles in mind, it is apparent that the ordinance in question is a valid exercise of the discretionary power vested in the municipal body to legislate upon this subject in the interest of the public welfare. It may be conceded that exceptional circumstances may exist in particular cases that would render the operation of the ordinance oppressive and unreasonable. This, however, is only to say that such exceptional circumstances will prevent a finding that the licensee has "allowed, permitted or suffered" the alleged violation. Cf. Essex Holding Corp. v. Hock, 136 N.J.L. 28.

In other words, the scope of the offense which the ordinance defines is not to be judicially narrowed by envisioning extreme possible situations under which a conviction may not be warranted. There will be sufficient opportunity to consider and control any such contingencies if and when they shall arise.

It is only necessary to add that the ordinance was properly approved in accordance with the statute (R. S. 33:1-40). On November 13, 1947, I approved a copy of the proposed ordinance and, on December 18, 1947, three days after its adoption, I confirmed that approval. See Orange v. Cecero, 132 N.J.L. 238.

The foregoing necessarily results in a discharge of the Order to Show Cause which was issued by me on January 20, 1948.

Very truly yours,
ERWIN B. HOCK
Commissioner.

12. ELIGIBILITY - FACTS EXAMINED - COMMERCIALIZED GAMBLING MAY OR MAY NOT INVOLVE MORAL TURPITUDE - APPLICANT NOT INELIGIBLE TO HOLD A LICENSE OR BE EMPLOYED BY LIQUOR LICENSEE.

February 27, 1948.

Re: Case No. 601

On January 30, 1947, applicant was fined \$1,000.00 and sentenced to a term of not less than one year nor more than two years in State Prison as a result of his plea of non vult to a charge of maintaining premises for gambling purposes. The operation of the prison sentence, however, was immediately suspended.

It appears from the testimony of applicant, proprietor of a restaurant, that he had accepted \$1.00 and \$2.00 bets on horses for a period of approximately six weeks when he was apprehended by the police. Applicant contends that he was employed by another person in connection with this illegal business. The question is whether or not this single conviction of the crime in question involved moral turpitude.

Commercialized gambling may or may not involve moral turpitude. In Case No. 239, Bulletin 305, Item 9, it was held that the conviction of the head of a ring conducting gambling establishments, where the activities of the ring were attended by methods of violence, did involve moral turpitude. In Case No. 283, Bulletin 337, Item 14, the conviction of a "lieutenant" of the real operator of a lottery conducted on a large scale, it was held, did involve moral turpitude. So also in a case wherein it was held multiple convictions showed a reckless disregard for law warranting the conclusion that the last offense involved moral turpitude. See Re Case No. 246, Bulletin 293, Item 10; Re Case No. 145, Bulletin 468, Item 2. In the instant matter none of the elements aforementioned is found.

I conclude that the single crime of which petitioner was convicted did not involve moral turpitude. Cf. Re Case No. 220, Bulletin 263, Item 8; Re Case No. 578, Bulletin 460, Item 1; Re Case No. 143, Bulletin 500, Item 6; Re Tumulty, Bulletin 558, Item 2.

Although applicant is not disqualified by statute because of the aforesaid conviction, it is, nevertheless, the responsibility of the local issuing authority to determine to its satisfaction whether applicant is a fit person to be associated with the alcoholic beverage industry.

APPROVED:
ERWIN B. HOCK
Commissioner.

Clarence E. Kremer
Attorney.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Alfred Renzi, t/a Hammonton Distributing Co.
Rear 209-211 E. Orchard St., Hammonton, N. J.
Application filed February 20, 1948 for transfer of State Beverage Distributor's License SBD-105 from Remo Farinelli, t/a Hammonton Bottling Co.

W. A. Haller Corporation
1429 Walnut St., Philadelphia 2, Pennsylvania.
Application filed March 1, 1948 for Plenary Wholesale License

ERWIN B. HOCK
Commissioner.

14. DISCIPLINARY PROCEEDINGS - ORDER SUSPENDING LICENSE STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.

In the Matter of Disciplinary Proceedings against)

PLAZA OPERATING COMPANY (a corp.))
T/a PLAZA HOTEL, BAR & RESTAURANT)
S.E. Cor. 5th & Cooper Streets)
Camden, N. J.,)

O R D E R

Holder of Plenary Retail Consumption License C-62, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
-----)

BY THE COMMISSIONER:

It appearing that Conclusions and Order were entered herein on February 25, 1948, suspending Plenary Retail Consumption License C-62 for premises s.e. corner 5th and Cooper Streets, Camden, effective at 2:00 a.m. March 2, 1948, and terminating at 2:00 a.m. March 12, 1948; and

It further appearing that the licensee has notified the Commissioner in writing of its intention to apply to a Justice of the Supreme Court for a writ of certiorari to review the said Conclusions and Order, and for that reason has requested that the aforesaid suspension be stayed in the meantime;

It is, on this 2nd day of March, 1948,

ORDERED that the effective date of the suspension in the Order dated February 25, 1948 be and the same is hereby stayed until a further Order is entered herein, upon condition, however, that application for a writ of certiorari shall be made to a Justice of the Supreme Court on or before March 15, 1948, and thereafter prosecuted with due diligence, and upon the further condition that the State Commissioner shall receive the moving papers to be used by the licensee on said application on or before March 8, 1948.

ERWIN B. HOCK
Commissioner.

March 3, 1948

15. ACTIVITY REPORT FOR FEBRUARY 1948.

ARRESTS:

Total number of persons arrested - - - - -	14
Licensees and employees- - - - -	2
Bootleggers- - - - -	12

SEIZURES:

Stillis - 50 gallons or under - - - - -	1
Distilled alcoholic beverages - gallons- - - - -	2.23
Wine - gallons - - - - -	646.25
Brewed malt beverages - gallons- - - - -	10.64

RETAIL LICENSEES:

Premises inspected - - - - -	704
Premises where alcoholic beverages were gauged - - - - -	722
Bottles gauged - - - - -	10,988
Premises where violations were found - - - - -	32
Violations found - - - - -	35
Type of violations found:	
Unqualified employees- - - - 13	Probable fronts- - - - - 2
Reg. 38 sign not posted- - - 10	Improper beer taps - - - 1
Disposal permit necessary- - - 3	Other violations - - - - 6

STATE LICENSEES:

Premises inspected- - - - -	11
License applications investigated - - - - -	14

COMPLAINTS:

Complaints assigned for investigation- - - - -	304
Investigations completed - - - - -	305
Investigations pending - - - - -	200

LABORATORY:

Analyses made- - - - -	107
"Shake-up" cases (alcohol, water and artificial color) - bottles - - - - -	4
Liquor found to be not genuine as labeled - bottles- - - - -	6

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made- - - - -	12
Persons fingerprinted for non-criminal purposes- - - - -	176
Identification contacts made with other enforcement agencies - - - - -	191
Motor vehicle identifications via N. J. State Police Teletype- - - - -	16

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities- - - - -	8
Violations involved:	
Sale during prohibited hours - - - - 4	Sale to non-members by clubs - - - - 1
Sale to minors - - - - - 2	Licensee working while drunk - - - - 1
Permitting brawls on premises- - - - 2	
Cases instituted at Department - - - - -	12
Violations involved:	
Sale outside scope of license- - - - 3	Serving women at a bar - - - - - 1
Sale to minors- - - - - 3	Permitting pin ball machines on premises - 1
Sale to non-members by clubs- - - - 2	Mislabeled beer taps- - - - - 1
Fraud and front - - - - - 2	Employment of solicitor by retailer- - - - 1
Sale under Fair Trade price - - - - 2	
Cases brought by municipalities on own initiative and reported to Department - - - - -	4
Violations involved:	
Sale to minors- - - - - 2	Failure to afford view into premises
Sale during prohibited hours- - - - 1	during prohibited hours- - - - - 1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - -	25
Appeals - - - - -	2
Disciplinary Proceedings- - - - -	12
Eligibility - - - - -	3
Petition to Review- - - - -	1
Seizures- - - - -	5
Tax Revocations - - - - -	2

PERMITS ISSUED:

Total number of permits issued - - - - -	737
Social affairs- - - - -	251
Disposal of alcoholic beverages - - - 181	Solicitors' - - - - - 154
	Employment- - - - - 83
	Miscellaneous - - - - - 68

William S. Heck
Commissioner.