

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

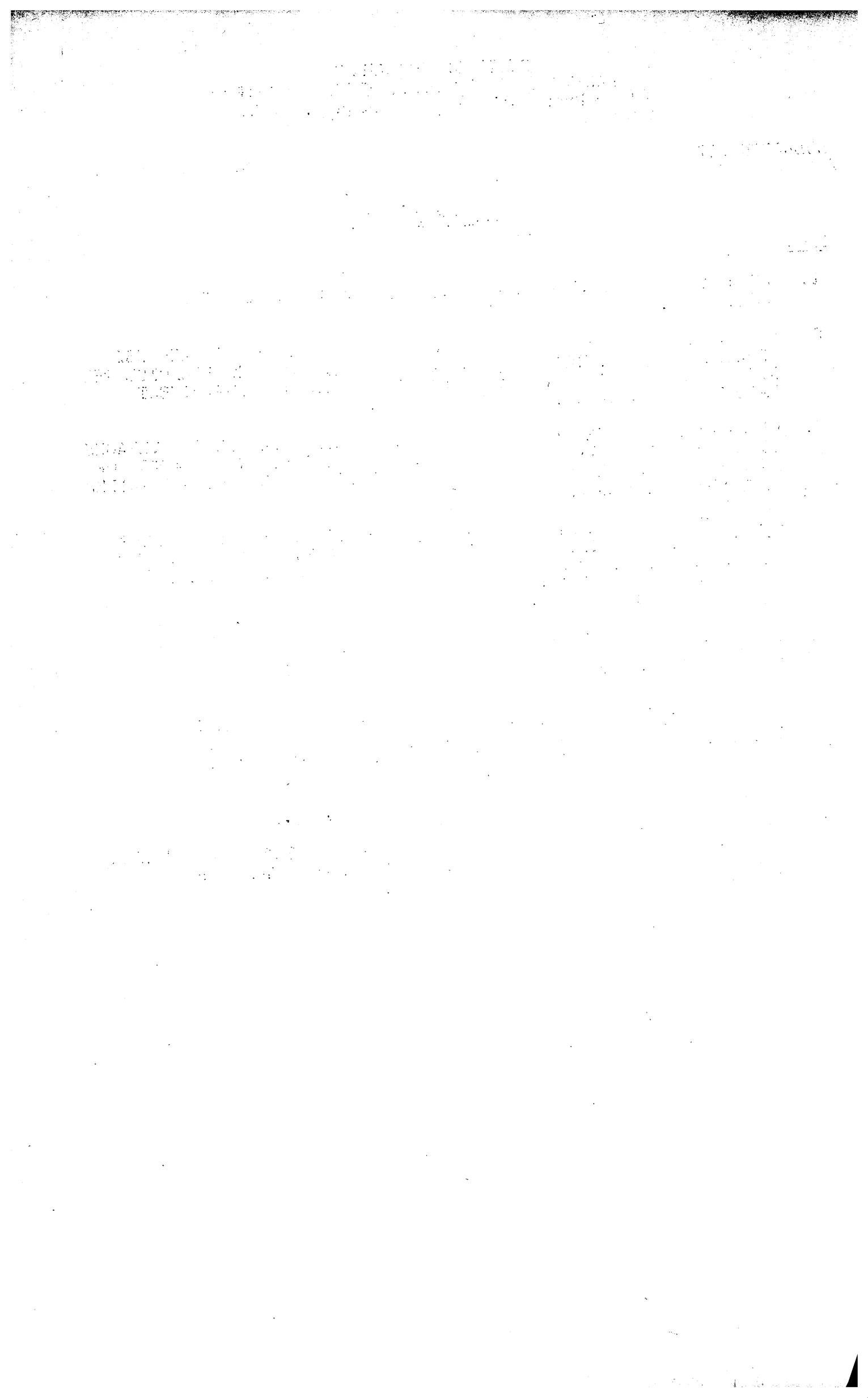
BULLETIN 627

JULY 10, 1944.

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

BULLETIN 627

JULY 10, 1944.

1. APPELLATE DECISIONS - ORMOND v. EAST ORANGE AND SCHAFMAN AND LAIFER.

ARCHIE H. ORMOND,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY
OF EAST ORANGE and JOSEPH
SCHAFMAN and SAMUEL LAIFER,

Respondents.

THE PARK AVENUE METHODIST CHURCH,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY OF
EAST ORANGE and JOSEPH SCHAFMAN
and SAMUEL LAIFER,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER.

Lehlbach & Ormond, Esqs., Attorney for Appellants.

Luke M. McKenny, Esq., Attorney for Respondent Municipal Board of
Alcoholic Beverage Control of the City of
East Orange.

Louis J. Goldberg, Esq., Attorney for Respondents Joseph Schafman
and Samuel Laifer.

BY THE COMMISSIONER:

The above entitled cases come before me on appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of East Orange granting a plenary retail distribution license to Joseph Schafman and Samuel Laifer, partners, for premises at 271 North Grove Street, East Orange. The issues, being common to the two cases, were consolidated for hearing by agreement of counsel.

The petitions of appeal, as amended, set forth the following grounds of objection: (1) the location for which the license was issued is within two hundred feet of a church; (2) there was no public necessity or convenience to be served by the granting of the license.

R. S. 33:1-76 (Alcoholic Beverage Law) provides, with certain exceptions not material to this case, no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church. The law does not distinguish between plenary retail consumption and plenary retail distribution licenses so far as Section 76 is concerned. This, despite the fact that the privilege of the respondent licensee is limited to the sale of alcoholic beverages by the package for off-premises consumption and that he may not now exercise that privilege on Sundays. State Regulations No. 38.

R. S. 33:1-76 further provides;

"Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed."

The issue raised by the objection that the licensed premises are within two hundred feet of the "nearest entrance" of the church is admittedly a very close one.

The Park Avenue Methodist Church is situated near the northwest corner of North Grove Street and Park Avenue. The two-story brick building wherein the licensed premises are located occupies the southwest corner of North Grove Street and Park Avenue. On the ground floor of the latter building are several stores fronting on Park Avenue and opposite the church; while the licensed premises are farthest from the corner of the two stores with entrances facing North Grove Street.

A traffic separation on which is located shrubbery occupies the center of Park Avenue and requires pedestrians to cross the avenue at or near the intersection. Between the church and the improved sidewalk on Park Avenue there is likewise a low hedge extending along and parallel with the paved public walk. The property line on the northerly side of Park Avenue is approximately 12 feet 6 inches closer to the church than this paved public walk.

The door of the church nearest the licensed premises is on an angle to Park Avenue. As a result, one corner of the steps leading to this doorway touches the property line, while the Grove Street corner (of the same steps) is 7 feet 6 inches away from the property line. The walk connecting these steps with the public sidewalk runs obliquely through a break in the hedge. An extension of the latter also borders the easterly side of the approach to the church, terminating near the property line. The distance from the public sidewalk to the steps, measured along the side of the church-walk located nearest Grove Street, is 24 feet 9 inches, made up as follows: From the public sidewalk to the property line 17 feet 3 inches, from the property line to the steps 7 feet 6 inches, as previously noted. This paved church walk constitutes the "entrance" to the church within the meaning of R. S. 33:1-76, since it is there that the members of the church leave the improved public sidewalk and begin their entrance to the church. Re Grove Liquors, Inc., Bulletin 397, Item 3. The hedge previously referred to separates the public walk from the premises occupied by the church. Together with a wire fence, extending diagonally from the church steps to the intersection of the paved sidewalk on Grove Street and Park Avenue, it effectively confines the public to the improved sidewalk. Judging from the pictures which were offered in evidence, the barrier hedge and fence have occupied their present locations for a considerable period of time and apparently have been accepted by the public.

At the hearing the appellants and respondents, respectively, presented surveys, prepared by licensed engineers and surveyors, showing varying measurements. Testimony by these engineers and surveyors -- predicated upon their respective surveys -- varied as to the distance between the church and the liquor store. It became apparent that neither survey was made in accordance with the established rule set forth by Commissioner Burnett in Aldarelli v. Asbury Park, Bulletin 186, Item 12:

"***the rule hereafter will be that the measurement will be made in the direction indicated by the statute in straight lines along the side of walls and street lines nearest to church (or school) and tavern thus to get the shortest distance between them.***"

(See also St. Mary's Greek Catholic Church v. Manville, Bulletin 187, Item 1.)

It was necessary, in order to carry out the full intent and meaning of the statute and the above quoted rule, to have representatives of the Department of Alcoholic Beverage Control measure the distance from the entrance of the licensed premises to the entrance of the Park Avenue Methodist Church. According to the measurements so taken, the distance between the entrances is less than the required 200 feet.

If a pedestrian were to walk from the entrance of the licensed premises on North Grove Street on the pavement nearest to the building line, using the public crosswalk on Park Avenue and thence along the side of the pavement on Park Avenue nearest the church, to the beginning of the church walk, the distance from the entrance to the liquor store to the paved walk leading through the hedge to the church would be approximately 7 inches over 179 feet. Even if we assume that the entrance of the church is at the property line rather than where it appears to be, only 17 feet 3 inches would be added to the distance and the total of 196 feet 10 inches falls short of meeting the statutory requirement. The appellant church seems to have won its case by a few feet.

I am committed to the view that Section 76 of the Alcoholic Beverage Law is to be liberally construed in favor of churches and schools. See also R. S. 33:1-73.

It is to be noted that the statute provides that the distance is to be measured from the nearest entrance of the church to the nearest entrance of the premises sought to be licensed, thus indicating that churches are to be protected to the full limit of the law. The statute does not refer to doorways. The required 200 feet may not be pieced out by technicalities. Memorial Presbyterian Church v. Newark, Bulletin 191, Item 8. The rule must be applied realistically.

The respondents appear to have acted in good faith. Their misinterpretation of the 200 foot rule is understandable.

Under the circumstances, it is unnecessary for me to consider the second objection raised by the appellants. I note, however, after a careful reading of the testimony, that the appellants do not appear to have sustained the burden of proof on this point.

Accordingly, it is, on this 26th day of June, 1944,

ORDERED, that the action of respondent, Municipal Board of Alcoholic Beverage Control of the City of East Orange, in issuing a plenary retail distribution license to Joseph Schafman and Samuel Laifer for premises on North Grove Street, East Orange, be and the same is hereby reversed; and it is further

ORDERED, that said license be and the same is declared void, effective June 30, 1944, at 2:00 A.M.; that all operations thereunder cease at that time; and that the license certificate be surrendered to the Secretary of the Municipal Board of Alcoholic Beverage Control of the City of East Orange.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN LICENSE APPLICATION AND AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)
)
 HOWARD KELLY,)
 T/a KELLY'S BOAT BAR)
 107-109 Jackson Street)
 Cape May, N. J.,)
 Holder of Plenary Retail Consumption License C-6 issued by the Board of Commissioners of the City of Cape May.)
 -----)

CONCLUSIONS AND ORDER

Howard Kelly, Pro Se.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to charges alleging (1) that in his application for his current license he falsely denied that any other individual had any interest, directly or indirectly, in the license applied for, whereas one Leolin Tice was so interested; and (2) that he aided and abetted the said Leolin Tice to exercise the rights and privileges of his plenary retail consumption license.

Howard Kelly and Leolin Tice are stepbrothers. Tice owns the building in which the licensed business is conducted and also owns some of the fixtures used in conducting the business.

The evidence introduced at the hearing consists of a written statement signed by Howard Kelly and witnessed by an ABC investigator and Leolin Tice, and also certain account books which were found upon the licensed premises. In the statement, Kelly admitted that he and his stepbrother had been partners since the license was first taken in Kelly's name in 1937. The account books showed certain payments made to Tice.

At the hearing held herein both Kelly and Tice denied that they were partners in the licensed business. It appears from their sworn testimony that, prior to 1937, Tice had rented the property to another individual who had conducted a licensed business therein, and that in 1937 he loaned Howard Kelly the sum of \$3,000.00 and leased the premises to him at a yearly rental of \$500.00. Kelly then applied for and obtained a license in his name and has renewed the license from year to year since that time. Both Kelly and Tice testified that the payments to the latter which appear in the account book are repayments on the original loan of \$3,000.00, which was not fully repaid until January 1, 1943, and also payments upon the annual rental due to Tice as landlord. Apparently Kelly has devoted his full time to the operation of the licensed business since 1937, and Tice has assisted him only for a few hours at a time during the busy season. The licensee has a bank account, but most of the business seems to have been handled on a cash basis rather than payment by check.

After considering all the evidence, I have reached the conclusion that the Department has not sustained the burden of proof in establishing that a partnership existed between these parties.

Defendant did not have the benefit of legal advice when he gave the statement to the ABC investigator, and the repayment of the loan to Tice would not of itself establish the existence of a partnership between the stepbrothers. I think that the entries in the account book have been adequately explained. Under all the circumstances, I shall dismiss the charges.

It appears that, prior to 1935, Leolin Tice was twice convicted of crimes which may involve moral turpitude. Under the circumstances, he may not be employed by or connected in any business capacity with the licensee until at least he has obtained from me a ruling as to his eligibility or obtained an order removing his statutory disqualification.

Accordingly, it is, on this 26th day of June, 1944,

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO A PERSON ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary)
Proceedings against)
JOHN SOBOLEWSKI)
1 Reid Street)
South River, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-39, issued by the)
Borough Council of the Borough of)
South River, which license has been)
extended to)
JULIA SOBOLEWSKI, Administratrix,)
Estate of John Sobolewski,)
for the same premises.)
- - - - -)

CONCLUSIONS
AND ORDER

Stanley S. Dickerson, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charge:

"On Saturday evening, November 28, 1942, and early on Sunday morning, November 29, 1942, you sold, served and delivered and allowed, permitted and suffered the service of alcoholic beverages to a soldier who was actually or apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon the licensed premises, in violation of Rule 1 of State Regulations No. 20."

The Department's case consisted of testimony given by two of its investigators who have been connected with the Department for a long period of time. Both testified that, after they entered the licensed premises at about 11:15 P.M. on Saturday, November 28, 1942,

they saw defendant serve two glasses of beer to a soldier who, in their opinion, was intoxicated. Apparently, the attention of the investigators had been attracted to the soldier as the latter was extending a general invitation to knock him down. No disturbance occurred. As to the physical condition of the soldier, one investigator said that "the soldier's hair was disarranged, he had foam running from his mouth, his coat was open, shirt loosened up, hat off and his eyes had a whitish-like cast." The testimony of the other investigator concerning the physical condition of the soldier was substantially the same.

A local police officer and two military policemen were summoned to the licensed premises by one of the investigators, and arrived there shortly before midnight. At the hearing herein, the police officer testified that in his opinion the soldier was not intoxicated. The police officer also testified that he immediately asked the soldier to walk a line across the width of the room and that the soldier walked the line "perfectly straight." A corporal attached to the military police said that he did not think the soldier was drunk, that no saliva was coming from his mouth, and that he permitted him to go because he had no ground for holding him for drunkenness or disorderliness. A private attached to the military police said that he believed the soldier was not drunk, but he knew that he had been drinking. He further testified that he saw no saliva running from the soldier's mouth.

The soldier testified that he was not intoxicated; that no saliva was running from his mouth; that his coat was open because the tavern was warm; and that his hair was always unruly. He said that he entered the licensed premises about 6:30 P.M., had one glass of beer, and then left the premises in company with another soldier. He returned about 9:30 P.M., having consumed no alcoholic beverages in the meantime. After he returned to the licensed premises he had a sandwich and two glasses of beer. The licensee substantially corroborated the soldier's testimony and said that he was not drunk.

I am satisfied from the testimony that the soldier was not drunk in the sense of being helpless or unable to control his actions. The serious question to be considered is whether or not he was apparently intoxicated at the time the alcoholic beverages were served to him. This is a very difficult question to determine in any case. The testimony of the investigators as to the physical condition of patrons is entitled to great weight. Re Roselle, Bulletin 279, Item 8. On the other hand, the testimony of the police officer and the two members of the military police, who appear to be totally disinterested, raises a grave doubt as to whether this soldier was apparently intoxicated at the time he was served. This is a serious charge. The burden of proof is upon the Department and, after considering all the testimony, I conclude that the Department has not sustained the burden of showing that defendant is guilty as charged.

Accordingly, it is, on this 26th day of June, 1944,

ORDERED, that the charge herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - CHARGES OF FALSE ANSWER IN LICENSE APPLICATION AND AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

ANTHONY J. KILCHESTY)
JOHN A. KILCHESTY, Attorney-in-Fact,)
24 West Front Street,)
Florence, New Jersey,)

CONCLUSIONS AND ORDER

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

N. Morton Rigg, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee, through his Attorney-in-Fact, pleads not guilty to the following charges:

(1) In his application for a license he falsely answered "No", in answer to Question #30, that no one other than himself had any interest in the business to be conducted under the license, whereas, in truth and fact, the said Mary Kilchesty (Mary Kilchauskas) was so interested, said statement being in violation of R. S. 33:1-25.

(2) From July 1, 1936 and until the present time, he knowingly aided and abetted Mary Kilchesty (Mary Kilchauskas) to exercise the rights and privileges of his license, contrary to R. S. 33:1-26, in violation of R. S. 33:1-52.

Mary Kilchesty is a widow, a Lithuanian by birth, speaks and understands very little of the English language. She is the owner of the property where the licensed premises are located and, prior to 1936 and since then, has occupied part of the premises as living quarters. Prior to 1936 she rented the licensed premises to one George Lockwood, who operated the same as a tavern. In 1936 Lockwood gave up the business and an application was made at that time by Anthony J. Kilchesty, her son, for a license, which was granted. Thereafter the said Anthony J. Kilchesty conducted the licensed premises until his induction in the army, when he gave a power of attorney to his brother, John A. Kilchesty, who is now operating the licensed premises for him.

An agent of the Department of Alcoholic Beverage Control, in making a routine check-up, discovered certain information in the check book which led him to suspect that the business was in fact owned by the mother and that the present licensee was simply a "front" for her. The information consisted of "stub" notations showing the payment of taxes on the property and a payment on the mortgage. As a result of this investigation, the agent secured a statement from John A. Kilchesty in which he stated that because the mother was not a citizen the license was originally taken out by his

brother, Anthony J. Kilchesty, but that Mary Kilchesty was and still is the real owner. This statement was offered in evidence. No statement was secured from Mary Kilchesty and no attempt was made to secure any information from her at the time of the investigation because of her lack of knowledge of the English language.

The matter proceeded to formal hearing, at which time John A. Kilchesty denied that the mother ever was or is the real owner of the licensed business, and stated that in fact the real owner is Anthony J. Kilchesty, the brother now in service. John A. Kilchesty testified that his brother told him when he entered service to take out \$40.00 a week for his salary, give his mother \$60.00 a month and "anything she needed for living expenses" and deposit the rest of the money in the bank and hold it until his return from service. John A. Kilchesty further testified that he has done this and that the balance standing in the account for the benefit of his brother, at the time of the hearing, was approximately \$1,800.00. He admitted signing the statement previously referred to but testified that he was in a hurry to leave for Philadelphia and failed to read the second page of the statement which contained the reference to the mother owning the business. The agent of this Department who secured the statement and John A. Kilchesty were the only witnesses.

I am not impressed with the explanation of John A. Kilchesty regarding his signing the statement without reading the second page. However, I must give due weight to his testimony given under oath at the hearing, which testimony, if true, would establish the innocence of defendant.

Undoubtedly, a close relationship has existed between Anthony J. Kilchesty and his mother, and it is evident that his intention has always been to provide for the mother's wants and to keep up the property. There is nothing to indicate that the mother has had anything to do with the conduct of the business or has exercised any control over it. In Re Mintz, Bulletin 530, Item 6, I gave the benefit of the doubt to the defendant and there mentioned that it was a case involving a son with a high sense of loyalty and responsibility to his family. To a large degree I find the same situation exists here. Then, too, I feel that one serving his country should have every legal right protected and jealously safeguarded and no action adverse to his interests should be taken except upon the clearest and most convincing proof, which, in my opinion, does not exist in this case. Hence, I shall dismiss the charges.

Accordingly, it is, on this 26th day of June, 1944,

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

5. 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 - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)
 PAUL P. SHANNON)
 T/a EMPIRE BAR)
 634½ Landis Avenue)
 Vineland, N. J.,)
 Holder of plenary Retail Consumption License C-5, issued by the)
 Board of Commissioners of the)
 Borough of Vineland.)
 -----)

CONCLUSIONS
 AND ORDER

Carlton W. Rowand, Esq., Attorney for Defendant-Licensee.
 Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that (1) he falsely concealed in his license application that Nellie Sturts is the real and beneficial owner of the license and business conducted thereunder, and (2) he permitted the said Nellie Sturts to exercise the privileges of the license nominally issued to him.

On January 13, 1944 the defendant executed a statement in which, among other things, the following appears:

- "Q Did you obtain that license (the license herein involved) on a transfer from a man known as French Riley?
- A Yes.
- Q And did that transfer occur some time back last September, or thereabouts?
- A Around September 18th I got the license.
- Q Ever since you obtained that particular license, is it not a fact that you have been holding it on behalf of and for the benefit of Nellie Sturts?
- A Yes.
- Q Is it not further a fact that actually you even obtained the license on her behalf?
- A Yes, that's right.
- Q Is it not further a fact that, since you have been holding the license, you have not received any of the monies from the operation of the tavern?
- A That's right.
- Q Is it not further a fact that you, yourself, invested no money whatsoever in this particular business or license?
- A That is right.
- Q Have you been giving all this information of your own free will and voluntary without threats or promises?
- A That's right."

At the hearing held herein, the defendant repudiated this statement, insisting that he had been intimidated into signing it.

At the outset, it should be noted that the issue here is not concerned with the admissibility of the defendant's statement into evidence, since no objection to its introduction was made by counsel for the defendant. Indeed, when the Department offered the statement as one of its exhibits, the defendant's counsel affirmatively stated that he had no objection to its being marked into evidence.

Rather, the question here resolves itself into one of credibility, i.e., whether I should believe the facts set forth in the defendant's statement, on the one hand, or his denial of those facts made at the hearing herein, on the other hand.

Much of the testimony appearing in the stenographic record deals with the circumstances under which the defendant signed his statement. Both the defendant and the alleged undisclosed principal, Nellie Sturts, were subpoenaed to attend an investigative hearing (see R. S. 33:1-35) at the offices of the Department of Alcoholic Beverage Control on January 13, 1944, a day prior to the institution of the present proceedings. They were accompanied by their legal representative who, incidentally, is not the attorney who appeared on their behalf at the hearing herein. The defendant contends that it was this legal representative who exercised such duress over him that he finally signed the statement against his will. The defendant admits that no person connected with the Department of Alcoholic Beverage Control threatened him and thereby secured the execution of the statement. Whatever duress, if any, there was, therefore, was allegedly occasioned by the defendant's personal attorney.

In explaining the repudiation of the statement, the defendant testified that, when he appeared at the Department on January 13, 1944 with his attorney, the latter, after speaking with one of the Department's representatives, conferred in private with the defendant. According to the defendant, this is what occurred between him and his attorney:

"These are his very words, 'Shannon', he said, 'it is all off. A certain party came up here and spilled the beans. My advice is make a clean breast of it.' And I said, 'Clean breast of what? I haven't done anything.' And he said, 'Do as I tell you. If not, you will be arrested before you leave this building.'"

Apart from the fact that it is difficult to believe that the attorney, who is a respected member of the bar, would attempt any compulsion against his own client, it is apparent that the advice goes no further than to urge the defendant to make a "clean breast of it." I find that the statement given by the defendant on January 13, 1944 was made, as appears therein, of the defendant's "own free will and voluntary without threats or promises."

I further find, as a fact, that the admissions contained in the defendant's statement represent the true situation and that he was merely holding the license as a "front" for Nellie Sturts. Many corroborating evidences of this are to be found in the record. There are, in the first place, the usual tell-tale signs, such as the defendant's lack of knowledge concerning the details of the transfer of the license to him and of the operation of the business. He also displayed a complete ignorance of the books and records which, it is to be noted, were kept by Nellie Sturts.

The defendant further testified that, about three weeks after he purchased the business, he found out, for the first time, that the former proprietor owed Nellie Sturts about \$2400.00, which was supposed to represent the balance due on a loan made by her. It is incredible that Nellie Sturts, who was aware from the beginning of the alleged negotiations between the prior licensee and the defendant, would wait some three weeks after the consummation of the sale before

acquainting the defendant with the fact that she was a creditor of the business. What is more inconceivable is that the defendant should, as he claims to have done, blithely assume this indebtedness and agree to pay the full amount to Nellie Sturts.

The strongest corroboration of all, however, comes from the lips of Nellie Sturts herself. On January 13, 1944, immediately after the defendant signed his statement, she verbally admitted to the representative of the Department of Alcoholic Beverage Control, in the defendant's presence, that the business actually belonged to her, and referred to the equipment at the premises as "my equipment." None of these statements were negated by the defendant. On the contrary, at the conclusion of this conversation, the defendant significantly remarked, "Well, I held out as long as I could."

The motivation for the "front" is also patent. Nellie Sturts had previously held a license in her own name in the neighboring municipality of Franklin Township. This license had been twice suspended, once for five days beginning February 16, 1942, and again, on charges which included lewdness and immoral activities on the licensed premises, for a period of ten months commencing August 31, 1942 and terminating at the end of that licensing year, to wit, June 30, 1943. In addition, the same premises had theretofore been licensed to her husband. His license was revoked outright on June 21, 1940. It is quite apparent that, with this background, any issuing authority would be extremely hesitant, to say the least, about granting her a liquor license.

The mere recital of this past record demonstrates that the only proper penalty that may here be imposed is an outright revocation of the license.

Accordingly, it is, on this 26th day of June, 1944,

ORDERED, that Plenary Retail Consumption License C-5, heretofore issued by the Board of Commissioners of the Borough of Vineland to Paul P. Shannon, t/a Empire Bar, for premises 634 $\frac{1}{2}$ Landis Avenue, Vineland, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

JOSEPH SAN FILIPPO)
T/a FOTO BAR)
676 Main Avenue)
Clifton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-136, issued by the Municipal Council of the City of Clifton.)
-----)

Frank W. Shershin, Esq., Attorney for Defendant-Licensee.
Milton H. Cooper, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads not guilty to the following charges:

"1. On or about January 30, 1944, and on divers days prior thereto, you sold alcoholic beverages at your licensed premises to Seaman Alfred J. ---- and Private Vincent ----, minors, in violation of R. S. 33:1-77.

"2. On the occasions aforesaid, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to Seaman Alfred J. ---- and Private Vincent ----, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The two minors in question testified that they were served beer and Carstairs and coke by the licensee on the occasions of their visits to the licensed premises. Alfred ----, one of the minors, testified that he went to the licensed premises with Vincent ----, on January 30, 1944, to sell the licensee some whiskey which Vincent ---- and a friend of his had stolen from another licensed premises in the vicinity. Vincent ---- admits visiting the licensee for the purpose of selling the stolen whiskey.

The licensee denies serving the said minors on the occasions of their visits to his place. With respect to the visit of January 30, 1944, he states that the two minors did come to his place and attempt to sell him some stolen whiskey, which he refused to buy.

It is apparent from the record that the two minors in question have an unsavory record, one of them being involved in at least one theft and both being involved in an attempt to sell stolen goods. The Department offers no other testimony than that of the two minors in question, and the case presents a square conflict between their testimony and that produced on behalf of the licensee.

The licensee, in addition to his denial, offers the testimony of another witness who testified that he saw the two minors enter the

licensed premises one evening, talk to the licensee for a few minutes and leave. The other witness states that the minors were not served anything intoxicating on the occasion of this visit. He further states that the licensee told him after the two minors had departed that they had attempted to sell him some stolen whiskey but that he had refused to purchase it from them.

In the face of this testimony the licensee is entitled to the benefit of the doubt, and I must conclude that the Department has failed to carry the burden of proof. Therefore, the charges must be dismissed.

Accordingly, it is, on this 28th day of June, 1944,

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

7. APPELLATE DECISIONS - RAPETTI v. ATLANTIC CITY.

PETER RAPETTI,)
Appellant,)
-vs-)
BOARD OF COMMISSIONERS OF THE)
CITY OF ATLANTIC CITY,)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Frank S. Farley, Esq. and Julius Waldman, Esq., Attorneys for Appellant.
Samuel Backer, Esq., by John Rauffenbart, Esq., Attorney for Respondent.
John Rauffenbart, Esq., Attorney for Objector, Elsie McGee Bittinger.
Frederic M. P. Pearse, Esq., by Max Mehler, Esq., Attorney for Objector, Church of the Ascension.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to transfer appellant's plenary retail consumption license from 1015 Atlantic Avenue to 1614 Pacific Avenue in Atlantic City.

Respondent contends, inter alia, that appellant's proposed site is within 200 feet of the Church of the Ascension on Pacific Avenue, which objects to the transfer; that, hence, such transfer is peremptorily barred under the Alcoholic Beverage Law at R. S. 33:1-76 which (with certain exceptions here immaterial) prohibits any retail liquor license from being located within 200 feet of a church (or school) unless that institution grants an express waiver.

The proposed premises to which transfer is sought are at the southeast corner of Pacific and Mt. Vernon Avenues, and are flush with the public sidewalk. The church is at the other end of the block on the opposite side of Pacific Avenue, and likewise stands flush with the public walk.

To determine whether such proposed site is actually within the forbidden 200-foot zone of the church, measurement, under R.S. 33:1-76, is (expressing the rule in generality) to be made along the public way over which a pedestrian would normally travel in walking between the nearest entrances of the respective premises. See Aldarelli v. Asbury Park, Bulletin 186, Item 12; Re Lizak, Bulletin 446, Item 5.

In the present case it would seem clear that such route is from the nearest church entrance on Pacific Avenue west to the intersection at Mt. Vernon Avenue and thence across Pacific Avenue to the nearest entrance of the proposed premises, a distance which, when properly measured, is admittedly less than 200 feet.

However, appellant urges (and this is his sole contention) that Mt. Vernon Avenue should not, in view of all the facts, be deemed a proper crosswalk; that the nearest proper crosswalks in this vicinity are at Kentucky Avenue (some 160 feet to the east of Mt. Vernon Avenue) and at Illinois Avenue (a similar distance to the west).

The facts on this issue are: Pacific Avenue is an important and heavily traveled thoroughfare in the city. Although that avenue is intersected in the main by regular cross streets at intervals of some 300 feet (such as Kentucky and Illinois Avenues), there are various minor and comparatively narrow side streets, some dead-ending at Pacific Avenue and others continuing across it.

Mt. Vernon Avenue is one of these minor "through" cross streets. It is some three blocks in length, running two blocks north of Pacific Avenue and a block or so south (ending at or near the Boardwalk). It has a different width on each block of its run and, on at least one of the blocks where it is narrowest (viz., between the Boardwalk and Pacific Avenue), it has a public walk on only one side of the street. However, it carries regular vehicular traffic (albeit "one way"); has regular public walks apparently throughout its entire length; has regular street numbering; and contains various buildings which front on it. As for pedestrian traffic at the particular intersection in question, there is sufficient evidence to show that many persons actually cross Pacific Avenue there.

Appellant, in urging that such intersection should not be deemed a proper crosswalk over Pacific Avenue, points out that the intersection is somewhat irregular (since Mt. Vernon Avenue is wider on one side of Pacific Avenue than on the other, and also since its curb lines are not flush); that, although most of the intersections on Pacific Avenue, including those at Kentucky and Illinois Avenues, have traffic lights, this intersection has none; further that, although the Police Department has marked crosswalks at various of the intersections, again including Illinois and Kentucky Avenues, this intersection has not been so marked; that, moreover, it is not a proper bus stop; that, all in all, the intersection should be viewed as a dangerous place for a pedestrian to cross the heavily traveled Pacific Avenue, and that the proper crosswalks in this vicinity should hence be deemed to be at Illinois or Kentucky Avenues.

Appellant also produced a traffic sergeant of the Atlantic City Police Department who testified that, in his opinion, the intersection in question should not be deemed a proper crosswalk.

Having in mind the purpose of Section 76, the protection of churches and schools, I cannot agree that the Mt. Vernon Avenue intersection should not be regarded as a proper crosswalk. It seems clear that where, as here, a regular, albeit perhaps narrow, city

street is occupied by normal buildings, is regularly numbered, has public walks for pedestrian through travel, carries regular vehicular traffic and is some 160 feet from the nearest parallel street, it is to be viewed, for the purpose of measuring the 200-foot distance in question, a proper crosswalk over even so busy a thoroughfare as Pacific Avenue. The comparatively slight irregularity of the intersection is immaterial. Equally immaterial is the fact that the crossings at Kentucky and Illinois Avenues may be more important and, in view of the traffic light and delineated crosswalks there, may afford a safer crossing than Mt. Vernon Avenue. For, it can scarcely be said that a pedestrian crossing at the latter avenue should be viewed as a jaywalker and must, to cross Pacific Avenue properly, detour some 160 feet to the north or south, cross over, and then double back to Mt. Vernon Avenue.

Hence I conclude that appellant's proposed premises are within the forbidden 200 feet of the church; that, since the church has granted no waiver to appellant, the transfer in question is barred by R. S. 33:1-76.

This conclusion is in no way altered by the fact that Elsie McGee Bittinger (one of the objectors in this case) has a plenary retail consumption license for the northwest corner of Mt. Vernon and Pacific Avenues, a site which is nearer the church than appellant's proposed site, or by the further fact that she was originally located at appellant's proposed premises. For, the church granted an express waiver to her when she was at those premises and has also granted a similar waiver to her for her present location.

In view of the foregoing, respondent's action in denying the transfer in question must be affirmed.

It is unnecessary to consider the similar question whether the transfer is also barred under local ordinance, which provides that no further liquor licenses shall be permitted within 300 feet of an existing liquor place.

Accordingly, it is, on this 28th day of June, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

8. DISCIPLINARY PROCEEDINGS - APPLICATION FOR A WRIT OF CERTIORARI HAVING BEEN DENIED BY THE NEW JERSEY SUPREME COURT - ORDER ENTERED DETERMINING SUSPENSION PERIOD.

ADELINO VASQUEZ ABAD,)
)
 Appellant,)
)
 -vs-)
)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF NEWARK,)
)
 Respondent)

ORDER

BY THE COMMISSIONER:

It appearing that, by Conclusions and Order herein dated May 12, 1944, the twenty-five day suspension by respondent of appellant's plenary retail consumption license was restored to commence at 2:00 A. M. May 19, 1944 and to terminate on June 13, 1944; and

It further appearing that, by Order dated May 17, 1944, said suspension was stayed until further order entered herein, on condition that application for a writ of certiorari be made to the New Jersey Supreme Court, or to a Justice of said Court, within eleven days thereafter; and

It appearing that appellant applied for a writ of certiorari within time to Justice Parker of the Supreme Court, who has concluded that allocatur of the certiorari should be denied;

It is, on this 29th day of June, 1944,

ORDERED, that the twenty-five day suspension by respondent of appellant's Plenary Retail Consumption License C-222 (as renewed), for premises 218 Mulberry Street, Newark, is hereby restored to commence at 2:00 A. M. July 3, 1944, and to terminate at 2:00 A. M. July 28, 1944.

Alfred E. Dunsell
Commissioner.