

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

BULLETIN 779

OCTOBER 9, 1947.

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Hampton Township) - PERMITTING PIN BALL MACHINE ON LICENSED PREMISES IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
2. ACTIVITY REPORT FOR SEPTEMBER 1947.
3. APPELLATE DECISIONS - MOLLER v. MIDDLETOWN TOWNSHIP.
4. LICENSEES - HEREIN OF EXHIBITS BY MANUFACTURERS OR WHOLESALERS AT RETAILERS' CONVENTIONS - SPECIAL RULING PROHIBITING MANUFACTURERS, WHOLESALERS OR SOLICITORS FROM EXHIBITING "MINIATURES" TO RETAILERS.
5. DISCIPLINARY PROCEEDINGS (Mount Olive Township) - CLUB LICENSEE - NOT IN ACTIVE OPERATION AND DID NOT HAVE EXCLUSIVE, CONTINUOUS POSSESSION FOR THREE YEARS PRIOR TO APPLICATION FOR LICENSE - FALSE ANSWERS IN LICENSE APPLICATION - LICENSE REVOKED.
6. DISCIPLINARY PROCEEDINGS (Camden) - SALE OF ALCOHOLIC BEVERAGES TO AN INTOXICATED PERSON IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - PERMITTING FEMALE EMPLOYEE TO ACCEPT ALCOHOLIC BEVERAGES AS GIFT FROM CUSTOMER IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS.
7. MORAL TURPITUDE - CRIME OF OPERATING A STILL SUBSEQUENT TO REPEAL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - ENGAGING IN ALCOHOLIC BEVERAGE BUSINESS DURING PAST FIVE YEARS - APPLICATION TO LIFT DENIED.
8. APPELLATE DECISIONS - BLACKWELL AND TEITGE v. NORTH PLAINFIELD.
9. RETAIL LICENSEES - DECANTING - PERMISSIBLE FOR WINE DECANTED UNDER REGULATIONS NO. 25 TO HAVE STOPPERS.
10. DISCIPLINARY PROCEEDINGS (Hamilton Township) - LEWD BUSINESS CARDS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
11. DISCIPLINARY PROCEEDINGS (Atlantic City) - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
12. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.
13. APPELLATE DECISIONS - MONTGOMERY ET AL. v. TOWNSHIP OF WASHINGTON (BURLINGTON COUNTY) AND FORD.
14. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 779

OCTOBER 9, 1947.

1. DISCIPLINARY PROCEEDINGS - PERMITTING PIN BALL MACHINE ON LICENSED PREMISES IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

RICHLYN LODGE (a corporation)
Back Road from Swartswood to
Kemah Lake
Hampton Township
P.O. Swartswood, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Hampton.

Dolan and Dolan, Esqs., Attorneys 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 August 26, 1947, you 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."

The file herein discloses that on August 26, 1947, an inspector of the Department of Alcoholic Beverage Control observed two pin ball machines of the usual type on defendant's licensed premises. The secretary of defendant corporation claimed that she did not know it was a violation to have pin ball machines on the licensed premises and immediately made arrangements for the removal of the machines. Although the licensee has been in business only since November 1946, the language of the rule is clear and ignorance of the provisions of the State Regulations cannot be accepted as an excuse.

The licensee has no prior adjudicated record. I shall, therefore, suspend its license for ten days, less five days for the plea, or a net suspension of five days. Re Carteret Club of Trenton, Bulletin 672, Item 12.

Accordingly, it is, on this 25th day of September, 1947,

ORDERED that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Hampton to Richlyn Lodge (a corporation), for premises on Back Road from Swartswood to Kemah Lake, Hampton Township, be and the same is hereby suspended for five (5) days, commencing at 12:01 a.m. October 6, 1947, and terminating at 12:01 a.m. October 11, 1947.

ERWIN B. HOCK
Commissioner.

2. ACTIVITY REPORT FOR SEPTEMBER, 1947

ARRESTS:

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

SEIZURES:

Still - 50 gallons or under - - - - -				3
Over 50 gallons - - - - -				2
Brewed malt beverages - gallons - - - - -				19.50
Illicit alcohol - gallons - - - - -				36.50
Distilled alcoholic beverages - gallons - - - - -				4.40
Wine - gallons - - - - -				32.33
Mash - gallons - - - - -				2800.00
Motor vehicles - cars - - - - -				1

RETAIL LICENSES:

Total number of premises inspected - - - - -				725
Total number of premises where alcoholic beverages were gauged - - - - -				812
Total number of bottles gauged - - - - -				12,875
Total number of premises where violations were found - - - - -				46
Total number of violations found - - - - -				62
Type of violations found:				
Unqualified employees - - - - -	17	Prohibited signs - - - - -		4
Illicit liquor - bottles - - - - -	15	Other mercantile business - - - - -		3
Regulations #38 sign not posted - - - - -	10	Probable fronts - - - - -		1
Disposal permit necessary - - - - -	6	Other violations - - - - -		4
Gambling devices - - - - -	4			

STATE LICENSEES:

Premises inspected - - - - -				5
License applications investigated - - - - -				18

COMPLAINTS:

Complaints assigned for investigation - - - - -				243
Complaints investigated, reviewed and closed - - - - -				281
Investigations completed - not closed administratively - - - - -				11
Investigations assigned, not yet completed - - - - -				210

LABORATORY:

Analyses made - - - - -				101
"Shake-up" cases (alcohol, water and artificial color) - bottles - - - - -				8
Liquor found to be not genuine as labeled - bottles - - - - -				18

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -				13
Persons fingerprinted for non-criminal purposes - - - - -				199
Identification contacts made with other enforcement agencies - - - - -				209
Motor vehicle identifications via N.J. State Police Teletype - - - - -				5

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -				13
Violations involved:				
Sale during prohibited hours - - - - -	6	Permitting hostesses on premises - - - - -		1
Sale to minors - - - - -	3	Permitting immoral activity on premises - - - - -		1
Permitting bookmaking on premises - - - - -	2	Possessing chilled beer (DL licensee) - - - - -		1
Conducting business as a nuisance - - - - -	1	Permitting brawls on premises - - - - -		1
Permitting gambling on premises - - - - -	1	Sale outside scope of license - - - - -		1
Sale to intoxicated persons - - - - -	1	Unqualified employees - - - - -		1
Cases instituted at Department (1 case* also involved cancellation proceedings) - - - - -				
Violations involved:				
Fraud and front - - - - -	3*	Lewdness - - - - -		1
Possessing illicit liquor - - - - -	3	Licensee working while drunk - - - - -		1
Sale during prohibited hours - - - - -	3	Sale outside scope of license - - - - -		1
Permitting pin ball machines on premises - - - - -	2	Sale to minors - - - - -		1
Unqualified employees - - - - -	2	Serving beverages other than ordered - - - - -		1
Failure to file notice of change in application - - - - -	1	Permitting hostesses on premises - - - - -		1
Hindering investigation - - - - -	1	Permitting lottery (punch board) on premises - - - - -		1
Cases brought by municipalities on own initiative and reported to Department - - - - -				
Violations involved:				
Sale to minors - - - - -				2

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - -				48
Appeals - - - - -	26	Seizures - - - - -		3
Disciplinary proceedings - - - - -	13	Applications for license - - - - -		1
Eligibility - - - - -	5			

PERMITS ISSUED:

Total number of permits issued - - - - -				1037
Employment - - - - -	126	Disposal of alcoholic beverages - - - - -		87
Solicitors - - - - -	185	Special wine - - - - -		71
Social affairs - - - - -	445	Miscellaneous - - - - -		123

ERWIN B. HUCK,
Commissioner.

3. APPELLATE DECISIONS - MOLLER v. MIDDLETOWN TOWNSHIP.

HARRY MOLLER,)
 Appellant,)
 -vs-)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF MIDDLETOWN,)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Edward F. Juska, Esq., Attorney for Appellant.
 John M. Pillsbury, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent in denying the application of appellant for a plenary retail distribution license for premises located at the corner of Wilson Avenue and Main Street, Port Monmouth, Middletown Township.

Appellant's application was denied on May 8, 1947 upon the grounds that "public convenience and necessity has not been established". The appeal was filed on May 19, 1947.

The evidence herein establishes that since October 1946 appellant has held a limited retail distribution license for the premises in question. Under said license he may sell any unchilled, brewed malt alcoholic beverages, in quantities of not less than seventy-two fluid ounces, for consumption off the licensed premises but only in original containers. R. S. 33:1-12(3)b. A plenary retail distribution license would permit him to sell any alcoholic beverages for consumption off the licensed premises but only in original containers. R. S. 33:1-12(3)a. At the hearing held herein appellant testified that he conducts a delicatessen store and that many of his customers desired to purchase liquor and cold bottles of beer, which he is not permitted to sell under his present license. Three of his customers testified that the sale of all types of alcoholic beverages at appellant's premises would be desirable.

According to the 1940 Federal census, the Township of Middletown has a population of 11,018. The township had previously issued twenty-three plenary retail consumption licenses and three plenary retail distribution licenses, all of which are presently outstanding.

On behalf of respondent, Committeeman Carton testified that, for the past several years, the Township Committee had refused, except under unusual circumstances, to issue any further licenses on the ground that the township had a sufficient number in general to meet the needs of the public. He further testified that, despite the fact that the nearest plenary retail distribution license is approximately one and one-quarter miles from appellant's premises, the Committee felt that there was no need for the issuance of the license in question because eleven of the twenty-three plenary retail consumption licenses have been issued for premises in the same section of the township in which appellant's premises are located. In determining the need for an additional plenary retail distribution license, the local issuing authority may take into consideration the number of plenary retail consumption licenses already in existence. Gorcica v. Wallington, Bulletin 659, Item 10. It also appears that the Township Committee considered a petition bearing the names of 122 people who favored the issuance of the license, and a petition containing the names of 117 people who opposed the issuance of the license.

Under all the circumstances I conclude that appellant has not sustained the burden of proof in establishing that respondent acted in an arbitrary or unreasonable manner in denying appellant's application.

Furthermore, the issuance of an additional plenary retail distribution license in the Township of Middletown is now prohibited by the State Limitation Law (P.L. 1947, c. 94). See DePadova v. Little Falls, Bulletin 770, Item 9; Scott v. Harmony, Bulletin 773, Item 11.

The respondent's action must be affirmed.

Accordingly, it is, on this 25th day of September, 1947,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

4. LICENSEES - HEREIN OF EXHIBITS BY MANUFACTURERS OR WHOLESALERS AT RETAILERS' CONVENTIONS - SPECIAL RULING PROHIBITING MANUFACTURERS, WHOLESALERS OR SOLICITORS FROM EXHIBITING "MINIATURES" TO RETAILERS.

September 25, 1947

Three Feathers Distributors Inc.
Jersey City, N. J.

Gentlemen:

This confirms your recent telephone inquiry concerning your company, holder of a wholesale liquor license in this state.

You indicate that, at an annual convention to be held by a New Jersey liquor dealers' association on September 29th at the Berkeley Carteret Hotel at Asbury Park, N. J., your company and various other New Jersey wholesale or manufacturing licensees are going to have liquor exhibits or displays.

It is permissible for New Jersey wholesale or manufacturing licensees to have such displays or exhibits at these retail liquor dealers' conventions. It is understood, of course, that if any wholesale or manufacturing licensee plans to serve or give away any sample of its alcoholic beverages at the convention or to solicit or accept orders there, such licensee must first obtain a special permit from this Department. (Re Krueger Brewing Co., Bulletin 71, Item 7; Re Wolber, Bulletin 71, Item 8; cf. Re Quality Cut Rate Liquor Store, Inc., Bulletin 172, Item 1.)

You ask whether your company, in its display, may use "miniatures" from which the alcoholic beverages have been withdrawn. These "miniatures" are bottles or similar containers smaller in size than is permitted for sale under State Regulations No. 23. Since retailers may not possess or sell any "miniatures", it can only lead to confusion for such containers, even though empty, to be exhibited to the retailers in any display. Hence, it is improper that they be displayed.

While it is true that at one time the Department allowed salesmen to exhibit "miniatures" to retailers (Re Wilkinson, Gaddis & Co., Bulletin 100, Item 11; Re Sinsheimer, Bulletin 357, Item 8; Re Frankfort Distilleries Inc., Bulletin 367, Item 4), this view has since been abandoned. For the sake of clarity, I hereby specially rule that no manufacturer or wholesaler or salesman may exhibit to retailers any bottles or other containers of alcoholic beverages, whether empty or not, which are smaller in size than those permitted under State Regulations No. 23.

Very truly yours,
ERWIN B. HOCK
Commissioner

- 5. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - NOT IN ACTIVE OPERATION AND DID NOT HAVE EXCLUSIVE, CONTINUOUS POSSESSION FOR THREE YEARS PRIOR TO APPLICATION FOR LICENSE - FALSE ANSWERS IN LICENSE APPLICATION - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against
 BUDD LAKE WACKY CLUB
 Route 6
 Mount Olive Township
 P.O. Budd Lake, N. J.,
 Holder of Club License CB-4 issued by the Township Committee of the Township of Mount Olive.

CONCLUSIONS AND ORDER

 Budd Lake Wacky Club, by August J. D'Agostino.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to charges alleging that it made false statements in the application for its current license, viz., that it had been in active operation as a club for three years immediately prior to the application and that it had been in exclusive continuous possession and use of club quarters for three years immediately prior to the application, whereas in truth and fact it was not in such active operation and did not have exclusive possession and use of club quarters for a period of three years; such false statements being in violation of R. S. 33:1-25.

On August 25, 1947, when service of the aforementioned charges was made, the defendant-licensee was also served with an order to show cause why its club license should not be cancelled for the reason that it had been improvidently issued in violation of Rules 2, 3 and 4 of State Regulations No. 7.

Before these proceedings were instituted the defendant surrendered its license to the local issuing authority. Such surrender, however, does not bar proceedings to revoke the license. R.S.33:1-31.

A review of the record indicates that, whatever the ultimate intentions of the defendant may have been, it is obvious that it did not qualify for a club license and that false answers in its application led to issuance of the license. As a matter of fact there is extreme doubt that the defendant constituted a bona fide club within the contemplation of the Alcoholic Beverage Law. Under the circumstances I shall revoke the license. No action will be taken on the order to show cause.

Accordingly, it is, on this 26th day of September, 1947,

ORDERED that Club License CB-4, issued by the Township Committee of the Township of Mount Olive to Budd Lake Wacky Club, for premises on Route 6, Mount Olive Township, be and the same is hereby revoked, effective immediately.

ERWIN B. HOCK
 Commissioner.

- 6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO AN INTOXICATED PERSON IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - PERMITTING FEMALE EMPLOYEE TO ACCEPT ALCOHOLIC BEVERAGES AS GIFT FROM CUSTOMER IN VIOLATION OF RULE 22 OF STATE REGULATIONS NO. 20 - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS.

In the Matter of Disciplinary Proceedings against)

DOROTHY DEL DUCA)
 T/a VICTORIA BAR & GRILL)
 2512 Federal Street)
 Camden, N. J.,))

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License C-202 for the 1946-47)
 licensing year and Plenary Retail Consumption License C-128 for the)
 1947-48 licensing year, issued by)
 the Municipal Board of Alcoholic)
 Beverage Control of the City of)
 Camden.)

 Frank M. Lario, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charges:

"1. On March 7, 1947, you sold, served, delivered and allowed, permitted and suffered the service and delivery of an alcoholic beverage to a person actually or apparently intoxicated, and allowed, permitted and suffered the consumption of an alcoholic beverage by such person upon your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"2. On the date aforesaid, you allowed, permitted and suffered a female employed on your licensed premises to accept a beverage at the expense of and as a gift from a customer and patron, in violation of Rule 22 of State Regulations No. 20."

An ABC agent testified that at 11:10 p.m. on March 7, 1947, he entered defendant's licensed premises and took a seat alongside of one Samuel Moffitt who was leaning over the bar. A few minutes thereafter, according to the investigator, this man was served a glass of whiskey by one Anna Stack who was tending bar. The ABC agent's testimony continued as follows: After the man in question consumed this drink, the barmaid, on her own volition, poured another whiskey for him and remarked, "I am having one on you." She then proceeded to the back bar, obtained a bottle of Malcolm Scotch Whisky, poured a drink for herself and placed the drink before her on the front bar. The man refused to pay for the drinks in question because the barmaid had not consumed her drink. After a short discussion, however, the barmaid drank the Scotch whisky, and the customer then gave her a dollar bill. The barmaid rang up seventy-five cents on the cash register, obtained a quarter from the cash drawer and placed the coin on the bar in front of the customer. The ABC agent testified that, in his opinion, the man to whom the drinks had been served was apparently intoxicated. During the course of the investigator's testimony, in substantiation of his opinion, he said, "He was drooping, and his eyes were glassy *** his speech was -- it was sort of broken. He was slow in speaking. He was a little nasty with it at the time. *** He staggered."

Another investigator corroborated, in the main, the testimony of his fellow investigator.

A number of witnesses were produced by defendant. Their testimony is confusing but tends to support the testimony of the investigators. Thus all deny that Moffitt was intoxicated. However, James Cox said that "he wasn't drunk but he had been drinking". Robert Cox said he told his friend "not to drink any more. You haven't been home from work." Moffitt admitted that, before entering defendant's premises, he had had "a couple of drinks". He said he was sick because of fumes inhaled at his work. Secondly, all defendant's witnesses deny that Moffitt had anything to drink after he entered defendant's premises. It is not likely, however, that he sat at the bar for more than twenty minutes without having anything to drink. I believe the investigator's testimony that Moffitt was intoxicated and that two drinks of whiskey were sold and delivered to him while he was in that condition.

As to the second charge: Anna Stack denied that she drank anything. She admits, however, that Moffitt asked her to have a drink with him and that he said, "I'm not going to pay you until you have one with me." She admits that Moffitt paid seventy-five cents for two drinks. I believe the investigators' testimony that Anna Stack did consume the drink and that she admitted the violation to them. Therefore, I find defendant guilty of both charges.

Defendant has a prior record. On January 22, 1946, her license was suspended for a period of fifteen days for possession of illicit liquor. Re Del Duca, Bulletin 692, Item 2. Under all the circumstances I shall suspend defendant's license for a period of forty-five days.

Although this proceeding was instituted during the 1946-47 licensing period, it does not abate but remains fully effective against the renewal license for the present fiscal year. State Regulations No. 16.

Accordingly, it is, on this 29th day of September, 1947,

ORDERED that Plenary Retail Consumption License C-128, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Dorothy Del Duca, t/a Victoria Bar and Grill, for premises 2512 Federal Street, Camden, be and the same is hereby suspended for forty-five (45) days, commencing at 7:00 a.m. October 6, 1947, and terminating at 7:00 a.m. November 20, 1947.

ERWIN B. HOCK
Commissioner.

7. MORAL TURPITUDE - CRIME OF OPERATING A STILL SUBSEQUENT TO REPEAL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - ENGAGING IN ALCOHOLIC BEVERAGE BUSINESS DURING PAST FIVE YEARS - 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. 601
-----)

BY THE COMMISSIONER:

In October 1930 petitioner was found guilty of larceny of an automobile and fined the sum of \$500.00. At the hearing herein he testified that the crime had been committed about ten years prior to the date of his conviction and involved the taking of an automobile without the owner's consent. In 1932, while operating a saloon prior to Repeal, petitioner was fined the sum of \$200.00 for illegal possession of liquor. In April 1937 he was convicted in a Court of Quarter Sessions on a charge of gambling and fined the sum of \$50.00. On October 31, 1939 he was sentenced in a District Court of the United States to serve eighteen months in a Federal penitentiary after he had been found guilty of operating an illicit distillery with intent to defraud the United States of revenue. He served about fourteen months of his term. On March 24, 1942, he pleaded guilty in a Court of Quarter Sessions to a charge of keeping a slot machine and was fined the sum of \$750.00.

It is clear that the conviction for operating a still subsequent to Repeal involved the element of moral turpitude. Petitioner is, therefore, disqualified from being employed by or connected in any business capacity whatsoever with a licensee. R. S. 33:1-26.

It appears that at least five years have elapsed from the date of the last conviction. However, before I exercise my discretion to lift the disqualification, it must also appear to my satisfaction that petitioner has conducted himself in a law-abiding manner during at least five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest. R. S. 33:1-31.2.

At the hearing herein petitioner testified that he has been unemployed since April 1946. Our records show that, for the past four years, a tavern has been operated at 2512 Federal Street, Camden, under licenses issued to his wife, Dorothy Del Duca. The evidence in Re Del Duca, decided herewith, discloses that, during the course of an investigation made on March 7, 1947, ABC agents saw petitioner behind the bar in the licensed premises at 2512 Federal Street. At that time neither the licensee nor any person employed as a manager was present. The bartender called petitioner, who told the bartender not to make a statement and who refused, at first, to give his name to the ABC agents. Petitioner contends that he was never employed on the premises but I am satisfied that, despite his disqualification, he was acting as manager of the licensed premises on March 7, 1947.

In view of such evidence it cannot be concluded that petitioner has conducted himself in a law-abiding manner during at least five years last past.

The petition is, therefore, dismissed.

ERWIN B. HOCK
Commissioner.

Dated: September 29, 1947.

8. APPELLATE DECISIONS - BLACKWELL AND TEITGE v. NORTH PLAINFIELD.

FRED BLACKWELL and CARL TEITGE,)
t/a TWIN CITY RESTAURANT,)
)
Appellants,)
)
-vs-)
)
BOROUGH COUNCIL OF THE BOROUGH)
OF NORTH PLAINFIELD,)
)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Joseph J. Mutnick, Esq., Attorney for Appellants.
Augustus S. Dreier, Esq., Attorney for Respondent.
Sidney Simandl, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from the respondent's refusal to transfer a plenary retail consumption license, formerly held by one Marcois for premises on Route 29, to the appellants for premises at 109-111-113 Somerset Street, North Plainfield, N. J.

The premises for which the application was made is a one-story building, containing three stores. The appellants presently occupy one of such stores known as 109 Somerset Street, where they conduct an eating establishment. The other two stores, known as 111 and 113 Somerset Street, are occupied by other persons and are conducted, respectively, as an auto seat cover business and a vegetable store.

Although the application covered all three stores, which the appellant intended to operate as a single establishment after converting the premises into one large restaurant, no plans or specifications of intended structural changes were submitted with the application.

In addition, it is admitted that the full fee for the person-to-person and place-to-place transfer was not deposited with the issuing authority at the time of filing the application, or at any time thereafter.

Either or both of the foregoing reasons are sufficient to justify the respondent's denial of the appellants' application. Cf. the ruling in Bulletin 762, Item 5; Bodine v. Hope, Bulletin 769, Item 10.

Treating the application, for present purposes, as limited to that portion of the building known as 109 Somerset Street, it appears

that the respondent was also warranted in its denial on the stated ground that there was no necessity for the issuance of the license in view of the nature of the business operated by the appellants. This very issue was heretofore determined on an appeal from the denial of a consumption license for the same premises when conducted by the former owner from whom the appellants purchased the business in June 1941. See Landgraff v. North Plainfield, Bulletin 284, Item 9, decided November 27, 1938. In that case, former Commissioner Burnett sustained the denial, despite the appellant's insistence that "none of the existing licenses in the Borough are issued to restaurants and that social convenience and necessity require the issuance of a license for his restaurant." It was there said:

"The Somerset Restaurant, conducted by appellant, is furnished with a short order lunch counter, booths and tables seating 52 persons, serving approximately 350 patrons each day. From the photographs in evidence, it appears to be a typical lunchroom. Appellant, his wife and two employees testified to occasional requests by patrons for alcoholic beverages but cross-examination established that, despite the lack of a liquor license, no appreciable decrease in the volume of business occurred. In fact, during the dinner hour, it was testified that people stood in line to get in. Two good friends, regular patrons for the past five years, testified they 'sometimes' went elsewhere because no liquor was obtainable there. Appellant admits that a restaurant with a liquor license exists just over the line in the City of Plainfield, three blocks away."

The proofs on the instant appeal fail to show any material change from the situation as it then existed, and, indeed, the premises are, structurally, practically identical with that described in the cited opinion. As in that case, it cannot be determined herein that respondent's "denial, was arbitrary or unreasonable".

The action of the respondent is, therefore, affirmed.

Accordingly, it is, on this 1st day of October, 1947,

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

ERWIN B. HOCK
Commissioner.

9. RETAIL LICENSEES - DECANTING - PERMISSIBLE FOR WINE DECANTED UNDER REGULATIONS NO. 25 TO HAVE STOPPERS.

September 29, 1947

Gambarelli & Davitto
Division of Italian Swiss Colony, Inc.
New York, N. Y.

Gentlemen:

In your letter of September 23rd you inquire whether retail licensees privileged to sell alcoholic beverages for on-premises consumption in New Jersey may purchase bulk wine in 50-gallon barrels and may decant therefrom into containers with stoppers.

So far as the New Jersey Alcoholic Beverage Law and this Department are concerned, there is no upper limit on the size of containers in which the above mentioned retailers may purchase bulk wine and, hence, it is permissible for them to purchase it in 50-gallon barrels.

It is further permissible for these retailers, when receiving the wine at their licensed premises, to transfer it from the barrel into decanters, bottles or other containers so long as they do so in strict accordance with State Regulations No. 25. Those regulations, in permitting decanting of wine from the original bulk container, specify a type of label which the retailer must affix to the receptacles into which the wine is decanted, and they further require that the decanted wine may not be taken out of the licensed premises but shall be used only for the retailer's convenience in serving drinks of wine to his trade for on-premises consumption. Bulletin 224, Item 3 recites the regulations in full, and explains the reason for their adoption.

There is nothing in the regulations which prohibits the use of corks, screw caps or similar stoppers for the decanted wine. To the contrary, the regulations presuppose the permissible usage of such stoppers to keep the decanted wine from deteriorating. To prohibit such stoppers would in large measure defeat the purpose of the regulations, which is to give the retailer a practicable means of converting bulk wine into convenient containers from which he can serve to his patrons for on-premises consumption. Such a purpose contemplates that the decanted wine will stay on the premises for an indefinite period of time before being exhausted, and hence contemplates that it may be suitably stopped by an ordinary cork, or screw cap, or similar stopper in order to prevent deterioration.

Hence, it is hereby ruled that the above mentioned stoppers may be used for decanted wine. Bulletin 392, Item 6, which you mention in your letter, is in no way opposed to this view but deals with an entirely different question concerning decanting.

Lest any retailer be misled, it is well carefully to point out that the above described type of decanting is permissible only with respect to wine. It has no applicability with respect to any other alcoholic beverages.

Very truly yours,
ERWIN B. HOCK
Commissioner.

10. DISCIPLINARY PROCEEDINGS - LEWD BUSINESS CARDS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MAX V. LASZEWSKI)
T/a THUNDERBOLT INN)
S/S Harding Highway)
Hamilton Township)
P.O. Mays Landing, RFD 2, N.J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-23, issued by the Township Committee of the Township of Hamilton.)

Max V. Laszewski, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge that on September 9, 1947, and prior thereto, he allowed, possessed and distributed in or about his licensed premises so-called "business cards" containing obscene, indecent, filthy, lewd, lascivious and disgusting printing thereon, in violation of Rule 17 of State Regulations No. 20.

The departmental file discloses that during the course of an investigation of defendant's premises on September 9, 1947, a number of cards advertising defendant's business were seized when the ABC investigators observed writing on the reverse side of the cards, the connotation of which appeared to be suggestive.

Defendant has no previous adjudicated record. I shall, therefore, suspend defendant's license for a period of twenty days, less five days' remission for the plea entered herein, or a net suspension of fifteen days. Re DeDominico, Bulletin 352, Item 1.

Accordingly, it is, on this 1st day of October, 1947, /

ORDERED that Plenary Retail Consumption License C-23, issued by the Township Committee of the Township of Hamilton to Max V. Laszewski, t/a Thunderbolt Inn, for premises s/s Harding Highway, Hamilton Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 4:00 a.m. October 7, 1947, and terminating at 4:00 a.m. October 22, 1947.

ERWIN B. HOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL J. CARNEY)
T/a ELWOOD CAFE)
164 St. James Place)
Atlantic City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-203 issued by the Board of Commissioners of the City of Atlantic City.)

-----)
Coulomb, McAllister & Hunter, Esqs., by Robert N. McAllister, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging that on August 1, 1947 he possessed two bottles of illicit alcoholic beverages, to wit, two 4/5 quart bottles of "Seagram's Seven Crown Blended Whiskey", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

Defendant has a prior record. On November 6, 1944 his license was suspended for a period of twenty-five days as a result of his plea of guilty to various charges, none of which, however, concerned possession of illicit liquor. Re Carney, Bulletin 640, Item 3.

Under the circumstances I shall suspend defendant's license for a period of twenty days, less five days' remission for the plea entered herein, or a net suspension of fifteen days.

Accordingly, it is, on this 1st day of October, 1947,

ORDERED that Plenary Retail Consumption License C-203, issued by the Board of Commissioners of the City of Atlantic City to Michael J. Carney, t/a Elwood Cafe, for premises 164 St. James Place, Atlantic City, be and the same is hereby suspended for a period of fifteen days, commencing at 7:00 a.m. October 7, 1947, and terminating at 7:00 a.m. October 22, 1947.

ERWIN B. HOCK
Commissioner.

12. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to R. S. 33:1-31.2.)
Case No. 402.)
-----)

CONCLUSIONS
AND ORDER

BY THE COMMISSIONER:

Heretofore, by an order dated January 19, 1945, it was determined that petitioner had been convicted in 1931 of a crime involving moral turpitude. Because of said determination and a subsequent conviction in June 1942, the order denied the petition for relief. Case No. 402, Bulletin 648, Item 9.

It now appears that since June 1942 petitioner has had no further convictions or arrests. Petitioner's only apparent departure from the path of rectitude seems to have been that for some months in 1944 he was employed by the holder of a retail liquor license.

Petitioner alleges that he believed he was permitted to accept the said employment because five years had elapsed from the date of his conviction of a crime involving moral turpitude. This is not true, but while ignorance of the law is no excuse in criminal or disciplinary actions, knowledge of the law is not a necessary ingredient of the good faith essential in rehabilitation proceedings. Re Case No. 330, Bulletin 616, Item 9. I believe that he acted in good faith.

Petitioner produced three witnesses, all neighbors, and one a member of the police force of petitioner's home community. They have all known him practically all his life. They testified that at least for the last five years petitioner's reputation has been good and that they believe him to be an honest and law-abiding person.

The Police Department of petitioner's home community certifies that "this department never had any complaints or investigations on ---- (petitioner) since May 16, 1941."

I find that petitioner has lived an honest and law-abiding life for at least the five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 2nd day of October, 1947,

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

ERWIN B. HOCK
Commissioner.

13. APPELLATE DECISIONS - MONTGOMERY ET AL. v. TOWNSHIP OF WASHINGTON (BURLINGTON COUNTY) AND FORD.

RUSSELL E. MONTGOMERY, BENJAMIN CAVILEER, C. ROY CRAMER, WILLIAM FOX, EARL HILL, HAROLD MAXWELL, MERRITT LEEK, RUTH UPDIKE, ELIZABETH MICK,

Appellants,

-vs-

ON APPEAL CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WASHINGTON (BURLINGTON COUNTY) and MAURICE FORD and FRANCIS FORD, t/a FORD'S INN,

Respondents

William T. Cahill, Esq., Attorney for Appellants.

James M. Davis, Esq., Attorney for Respondents Maurice and Francis Ford.

Powell & Parker, Esqs., by Robert W. Criscuolo, Esq., Attorneys for Respondent Township Committee.

BY THE COMMISSIONER:

This appeal is from the issuance on May 9, 1947 of a plenary retail consumption license to respondents Maurice Ford and Francis Ford for premises located on Main Road, Green Bank, Washington Township, County of Burlington. Since the license was issued prior to May 15, 1947, the provisions of P.L. 1947, chapter 94 do not apply.

Although appellants allege sundry reasons for reversal of the action of respondent Township Committee, the evidence presented at the hearing resolved itself to the question as to whether respondent Township Committee had abused its discretion in issuing another plenary retail consumption license in the township.

The evidence herein discloses that the population of the township, according to the 1940 Federal census, was 518; that previous to the issuance of the liquor license in question there was one plenary retail consumption license issued and outstanding in the community, located approximately one-half mile from respondents' premises; that the township is primarily a rural, district and wooded area; that hunting, boating and fishing facilities attract sportsmen from outside the municipality; and that berry pickers are employed by farmers in the township during the berry season.

One of the members of the respondent Township Committee testified that he voted against the issuance of the license in question because he was of the opinion that there was no need for another liquor establishment. A number of residents of the township voiced the same opinion. The remaining two members of the Township Committee testified that they voted for the issuance of the license in question because they believed it would be convenient for the residents of the township. They further testified that the sole licensee, one Michael Capaccio, indicated that he did not desire the trade of the local residents and that he was indifferent in his attitude toward patrons when they visited his licensed premises to obtain a drink. Committeeman Downs testified that on one occasion when he visited the tavern owned by Capaccio, Michael refused to wait on him and his companion until he had finished a game of shuffleboard in which he was engaged. Another witness testified that Capaccio locked the doors on his establishment at 10:00 or 10:30 in the evenings, allowing those

on the licensed premises to remain, but not permitting other town-folk who desired to patronize his establishment to enter. Michael Capaccio denied these charges. He further testified that although respondents, Ford brothers, were operating for a period of a month at the time of the instant hearing, his business had not fallen off.

Francis Ford testified that, during the month since he and his brother had started operation of their business, a profit had been realized. At the time of the hearing of the within appeal, there was no indication that any complaints had been made to the local police or to the State Department concerning the operation of respondents Fords' tavern.

The determination as to the number of licensed premises to be permitted in a community is a matter confided to the sound discretion of the issuing authority. R. S. 33:1-19 and 24. The burden of showing that an issuing authority's discretion was abused rests with the appellant. Segal et al. v. Clifton et al., Bulletin 732, Item 5.

The State Commissioner's function in appeals of this type is not to substitute his personal opinion for that of the issuing authority, but rather to determine whether reasonable cause exists for its opinion and, if so, to affirm. Rafalowski v. Trenton, Bulletin 155, Item 8; Curry v. Margate City, Bulletin 460, Item 9.

After consideration of the testimony in the instant case, I find that appellants have failed to sustain the burden imposed upon them. The majority of the members of the Township Committee were of the opinion that another license was warranted in the township. In view of the evidence herein, I cannot say that the local issuing authority abused its discretion in approving the application for the license. The action of the Township Committee, therefore, will be affirmed.

Accordingly, it is, on this 2nd day of October, 1947,

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

ERWIN B. HOCK
Commissioner.

14. STATE LICENSES - NEW APPLICATIONS FILED.

Silvio Ferretti

1184 Edgewater Ave., Ridgefield, N. J.

Application for Plenary Winery License filed October 3, 1947.

Tidewater Field Warehouses, Inc.

Hudson Terrace, Fort Lee, N. J.

Application for Public Warehouse License filed October 3, 1947.

Robert H. Graupner, Incorporated

829-841 Market St.

Harrisburg, Pa.

Application for Limited Wholesale License filed October 6, 1947.

Bunnell N. F. Leifried, t/a Long Beach Transfer

Amber and Delaware Ave., Beach Haven, N. J.

Application for Transportation License filed October 6, 1947.