

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1080 Broad Street Newark 2, N. J.

BULLETIN 820

NOVEMBER 10, 1948.

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

BULLETIN 820

November 10, 1948

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR
15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

HOWARD R. HOTCHKISS)

T/a FREEHOLD INN)

Highway 9-4 Freehold-Adelphia Rd.)

Freehold Township)

P.O. R.D. 2, Freehold, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-3, issued by the)
Township Committee of the Township)
of Freehold.)

John E. Toolan, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on
July 6, 1948, he possessed an illicit alcoholic beverage, to wit, a
4/5 quart bottle of "Canadian Club Blended Canadian Whisky", which
bottle was not genuine as labeled, in violation of R. S. 33:1-50.

The defendant has no previous record. The usual fifteen-day
suspension, less five days for the plea, leaving a net suspension of
ten days, will be imposed. Re Gast, Bulletin 817, Item 5.

Accordingly, it is, on this 21st day of October, 1948,

ORDERED that Plenary Retail Consumption License C-3, issued by
the Township Committee of the Township of Freehold to Howard R.
Hotchkiss, t/a Freehold Inn, for premises on Highway 9-4 Freehold-
Adelphia Road, Freehold Township, be and the same is hereby suspended
for a period of ten (10) days, commencing at 1:00 a.m. November 1,
1948, and terminating at 1:00 a.m. November 11, 1948.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - CHARGES OF SALE TO A MINOR AND TO NON-MEMBERS DISMISSED - HEREIN OF SO-CALLED "GUEST MEMBERSHIP" CARDS.

In the Matter of Disciplinary)
Proceedings against)

LITHUANIAN CITIZENS INDEPENDENT)

AID CLUB)

Throckmorton Street)

Freehold, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-1 for the)
1947-48 and 1948-49 licensing years,)
issued by the Borough Council of)
the Borough of Freehold.)

Theodore D. Parsons, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esc., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that (1) it sold and served alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20; and (2) it sold and served alcoholic beverages to persons neither members of its club nor guests of such members, in violation of Rule 8 of State Regulations No. 7.

John Quinn, an adult, accompanied by Elsie ---, a minor, went to the licensed premises on the evening of April 17, 1948. They joined John Quinn's uncle, who was seated at the bar, and the uncle and nephew engaged in a conversation.

The minor testified that the bartender, Lawrence Ramauskas, who is vice-president of the club, served her two glasses of beer which she drank. Her testimony, however, is somewhat sketchy and, among other things, she was unable to recall who ordered the drinks for her.

John Quinn's version of the events which occurred on the night in question must be substantially discounted in view of his admission that "I had plenty of beer before I got there". It appears that he and the minor had visited four other taverns and, in addition, he had consumed two quarts of beer at his aunt's house prior to coming to the club. It further appears that, several months before, an overcoat belonging to John Quinn had disappeared from the club. He accused Lawrence Ramauskas of being responsible for its disappearance and threatened "to get even with him for that".

In any event, John Quinn's testimony not only fails to corroborate the service of alcoholic beverages to the minor but is inconsistent with her testimony. He stated that Elsie --- had first been served with a "coke" and that later three beers were brought to the bar. He was unable to say who ordered the beer or whether the minor consumed any of it because "I didn't observe much".

The bartender categorically denied that he served John Quinn or the minor any beverages on the occasion in question. He testified that, when they appeared at the bar, he refused to serve them because he knew that John Quinn was not a member of the club, that he had previously been told not to come there, that he appeared to be under the influence of liquor and that, as regards the female, she obviously looked like a minor.

Substantiation of the bartender's story was given by a former member of the local governing body who had also been Police Commissioner in the municipality for several years. He is not a club

member. He testified that "Mr. Quinn was insisting on buying a drink. I noticed there wasn't any glasses in front of him. And Mr. Quinn said, 'My money is as good as anyone else's.' Lawrence says, 'You are not a member of the club and I can't sell you a drink.'"

With respect to the second charge, there is some testimony in the record from which it might be inferred that John Quinn had been served with alcoholic beverages at the club on prior occasions. This testimony, however, is vague and indefinite and, in any event, the evidence fails to negative, as it must, that on those occasions John Quinn was a bona fide guest of a club member.

The uncle of John Quinn did not appear at the hearing and, while admittedly he is not a bona fide member of defendant club, the evidence fails to establish, as in the case of his nephew, that he was not a bona fide guest of a member on any of the times when he was served with alcoholic beverages there.

After reviewing all of the testimony, I conclude that the evidence is insufficient to establish the licensee's guilt of the charges alleged. Under the circumstances, I shall dismiss the charges herein.

During the course of the hearing it was disclosed that, several years ago, the defendant initiated the practice of issuing "guest membership" cards to persons who were not bona fide members of its club. It was explained by both the vice-president and secretary of the club that the holder of a "guest membership" card is not entitled to attend meetings or vote on any club matters, cannot become an officer of the club and that, in fact, the privileges under such card were limited to the purchase of drinks at the bar. It is needless to state, at this late date, that the mere possession of such card does not establish the holder either as a bona fide member of the club, or a bona fide guest of a member, within the meaning of the Alcoholic Beverage Law or the State Regulations pertaining to the persons who may lawfully be served with alcoholic beverages by a club licensee. See R. S. 33:1-12(5) and Rule 8 of State Regulations No. 7.

While, technically, the issuance of such "guest" card does not constitute a violation of the cited statute or regulation, the service of alcoholic beverages to the holder of such a card, merely on the strength of the card alone, does constitute such a violation. Cf. Peditto, Bulletin 178, Item 7. A bona fide guest has been defined as a person expressly invited to the club by a bona fide member and who, on arrival at the club, is not only sponsored but also personally attended by his host. Re Perth Amboy Calabrese Social Club, Bulletin 213, Item 4. Succinctly stated, no legal significance attaches to a guest card. If the person is a bona fide guest, within the foregoing definition, he may be served with alcoholic beverages by a club licensee irrespective of his possession of the so-called guest card. If he is not a bona fide guest, he may not be so served even with such a card.

It would be the better part of wisdom for the defendant to digest thoroughly the foregoing explanatory remarks and, as a precautionary measure, to cease the issuance of such cards and to retrieve all such cards already outstanding. This will go a long way toward insuring that only properly qualified persons are served alcoholic beverages at the defendant's licensed premises.

Accordingly, it is, on this 22nd day of October, 1948,

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

ERWIN B. HOCK
Commissioner.

3. APPELLATE DECISIONS - GARRETT-WILLIAM HOTEL CO., INC. v. BASS RIVER TOWNSHIP.

GARRETT-WILLIAM HOTEL CO., INC.,)

Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF BASS RIVER,)

Respondent)

-----)
Emerson Richards, C. Bruce Surran and William Charlton, Esqs.,
Attorneys for Appellant.

Powell and Parker, Esqs., by Robert W. Criscuolo, Esq., Attorney for
Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application filed by appellant on March 24, 1948 for a plenary retail consumption license for premises located on State Highway Route No. 4, Township of Bass River, Burlington County. Appellant filed plans providing for structural changes in the building already in being, and in addition thereto for the erection of cabins to be used in conjunction therewith.

The Township of Bass River has a population, according to the 1940 Federal Census, of 599 persons. There are two plenary retail consumption licenses presently issued and outstanding in the community.

Respondent contends that it denied the application by reason of the existence of an ordinance, adopted November 24, 1947, limiting the number of plenary retail consumption licenses in the township to two. No exception in favor of bona fide hotels was contained in said ordinance. Other reasons advanced by the respondent for denial were that (1) public convenience and necessity did not require the issuance of an additional license, (2) it was not the policy of the Township Committee to issue licenses for the locality of the proposed licensed premises, and (3) that appellant's proposed licensed premises was not a bona fide hotel, but rather a cabin colony.

Appellant alleges that the action of respondent was erroneous in that appellant proposed to construct a hotel containing at least 50 sleeping rooms and, as such, was entitled to have a license. See Section 8 of P.L. 1947, chapter 94. The main building contains 14 sleeping rooms. The separate cabins would contain 36 sleeping rooms. Even assuming that this would constitute a hotel with 50 sleeping rooms, appellant is not entitled to a license. The Act is in addition to and not in exclusion of municipal regulations limiting the number of licenses. See Section 9 of P.L. 1947, chapter 94. The sole question is whether the municipal regulation is reasonable.

Assuming that the premises do constitute a bona fide hotel, nevertheless, the effect of the municipal limitation may not be overcome in the absence of an affirmative showing by the appellant that public necessity and convenience dictate the issuance of the license sought. See Current v. Fredon, Bulletin 184, Item 1.

"There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed."

Appellant produced three witnesses, residents of New York City, who testified that they have occasion to travel by automobile from New York City to Atlantic City and are acquainted with the particular vicinity in which the proposed hotel is to be erected. They further testified that in their opinion the issuance of a liquor license to the proprietor of the proposed hotel would constitute a public convenience. William Garrett, an officer and stockholder of the appellant corporation, testified that it is his intention to use the facilities of the proposed hotel exclusively for the accommodation of members of the negro race. He further testified that in his opinion there is a need for a liquor license at the proposed hotel. By stipulation of the parties hereto, it was agreed that the testimony of a witness produced by appellant who lives in Philadelphia would also indicate a need for and a convenience to be served by a liquor license at the hotel in question.

Two members of the Township Committee testified at the hearing that in their opinion there was no need or necessity for another license to be issued in the municipality.

The testimony offered by appellant does not convince me that public convenience and necessity require that the appellant be granted a consumption license despite the limitation imposed in the municipal ordinance. On the contrary, it would appear that a community with 599 inhabitants, and in which there are presently two plenary retail consumption licenses, is amply supplied with liquor establishments.

The burden of proving that public convenience and necessity require the granting of a license rests with the appellant. The convenience of a comparatively few guests of a hotel such as that contemplated must be weighed and considered in the light of the general policy in the community.

The limitation of two liquor licenses to be issued by the Township of Bass River has been in existence for eleven years, the limitation having been originally imposed by a resolution dated June 28, 1937, and it appears to have been a reasonable exercise of the authority delegated to the members of the Township Committee. See R. S. 33:1-40.

The appellant has not shown that the numerical restriction contained in the local ordinance is unreasonable, either generally or as applied to its individual case. Hence, the action of the respondent cannot be said to have been either arbitrary or capricious. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 22nd day of October, 1948,

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

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR -
LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary)
Proceedings against)

JOSEPH ROCCO)
T/a ROCCO'S BAR)
Highway #9-4)
Howell Township)
P.O. R.D. #2, Freehold, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-9 for the 1947-48)
and 1948-49 licensing years, issued)
by the Township Committee of the)
Township of Howell.)

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

BY THE COMMISSIONER:

Defendant pleads not guilty to charges alleging that he sold,
served and delivered alcoholic beverages to a minor, in violation of
R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

Elsie ---, age 17 years, testified that on the evening of April 10,
1948 she consumed a glass of coke with rum and a glass of coke with
whiskey which were served to her on defendant's licensed premises by
an employee of defendant-licensee. Elsie testified that she was
accompanied by an adult, John Quinn. The latter, although somewhat
confused as to the exact type of liquor served, did corroborate the
fact that his girl companion was served two drinks containing alcoholic
beverages.

The waitress who allegedly made service at the table to the minor
and her male companion, testified that she did not remember seeing the
couple in the dining room on the night in question. Another waitress
who did not wait on the couple remembered seeing them in the premises
on the evening of April 10, 1948.

I am satisfied from the testimony that Elsie --- and John Quinn
were in the licensed premises on the evening of April 10, 1948, and
that the girl was served with and permitted to consume alcoholic beverages
on defendant's licensed premises.

Defendant has no previous adjudicated record. Because of the
youthfulness of the minor, however, I shall suspend defendant's license
for a period of fifteen days.

Although this proceeding was instituted during the licensing year
1947-48, it does not abate but remains fully effective against the
renewal license for the 1948-49 licensing year. State Regulations
No. 16.

Accordingly, it is, on this 22nd day of October, 1948,

ORDERED that Plenary Retail Consumption License C-9, issued for
the present licensing year by the Township Committee of the Township
of Howell to Joseph Rocco, t/a Rocco's Bar, Highway #9-4, Howell
Township, be and the same is hereby suspended for a period of fifteen
(15) days, commencing at 2:00 a.m. November 1, 1948, and terminating
at 2:00 a.m. November 16, 1948.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - CHARGES OF SALE TO A MINOR DISMISSED - SALE TO AN INTOXICATED PERSON - EMPLOYMENT OF DISQUALIFIED PERSON (NON-RESIDENCE) - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

EDWARD KURAS

T/a EDDIE'S SPORTS TAVERN

W/S Alternate #4 Route

Marlboro, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-9 for the 1947-48)
and 1948-49 licensing periods,)
issued by the Township Committee)
of the Township of Marlboro.)
-----)

Edward Kuras, Defendant-licensee, Pro Se.

Edward F. Ambrose, Esc., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The following charges were preferred against the defendant:

"1. On Saturday night, April 17, 1948, and early Sunday morning, April 18, 1948, you sold alcoholic beverages to Elsie ---, a minor; in violation of R. S. 33:1-77.

"2. On Saturday night, April 17, 1948, and early Sunday morning, April 18, 1948, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises, to Elsie ---, a person under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such person upon your licensed premises; in violation of Rule 1 of State Regulations No. 20.

"3. On Saturday night, April 17, 1948 and early Sunday morning April 18, 1948, you sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to John Quinn, a person who was actually and apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such person on the licensed premises; in violation of Rule 1 of State Regulations No. 20.

"4. On Saturday night April 17, 1948 and early Sunday morning April 18, 1948 and prior thereto, you knowingly employed on your licensed premises and had connected with you in a business capacity, viz., as a bartender to sell and serve alcoholic beverages, Peter Kuras, a non-resident of New Jersey, who had not obtained a requisite employment permit from the Commissioner of Alcoholic Beverage Control; in violation of Rule 4 of State Regulations No. 13."

Defendant pleaded non vult to charges (3) and (4), and entered a plea of not guilty to charges (1) and (2).

The testimony of Elsie ---, age 17 years, discloses that on April 17, 1948 she and John Quinn, an adult, visited defendant's licensed premises. Elsie testified that she drank part of a glass of beer served to her by Peter Kuras, an employee of defendant-licensee. She admitted that she previously "drank the coke" with a sandwich. John Quinn testified at first that he observed a glass of beer on the bar in front of Elsie but he "didn't see her drinking any". Later, Quinn testified that Elsie took a "mouthful of beer". A State Trooper testified that when he saw Elsie at the bar there was a glass of beer in front of her. Apparently, he did not see her drinking any of the beer.

Peter Kuras, father of defendant, testified that he served a glass of "coke" and a glass of club soda to Elsie but no beer had been served to her on the evening in question.

Three witnesses testified that they were present when Elsie and her companion were on the premises, but that no beer had been served to her.

A careful review of the testimony leaves grave doubt that Elsie was either sold or served any alcoholic beverages. Furthermore, although it is possible that she consumed at least part of a glass of beer which had been served to her companion, I conclude that the available evidence is insufficient to support a finding that the defendant allowed, permitted or suffered Elsie to consume this beer. Taking all the testimony into consideration it appears that several glasses of beer had accumulated on the bar in front of the companion and that Elsie may have surreptitiously taken a swallow out of one of those glasses. Consequently, charges (1) and (2) are dismissed.

In view of the fact that the defendant has no prior record, I shall suspend defendant's license for a period of twenty-five days because of his admitted guilt as to charges (3) and (4). Five days will be remitted because of the plea entered on these charges, leaving a net suspension of twenty days.

Although this proceeding was instituted during the 1947-48 licensing year, it does not abate but remains fully effective against the renewal license for the 1948-49 licensing year. State Regulations No. 16.

Accordingly, it is, on this 22nd day of October, 1948,

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Marlboro to Edward Kuras, t/a Eddie's Sports Tavern, W/S Alternate #4 Route, Marlboro, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. November 1, 1948, and terminating at 2:00 a.m. November 21, 1948.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR -
 LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

JACK EISENBERG
 T/a JACK'S BAR
 East Main Street
 Marlboro, N. J.,

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-2 for the 1947-48)
 and 1948-49 licensing years,)
 issued by the Township Committee)
 of the Township of Marlboro.)

Jack Eisenberg, Defendant-licensee, Pro Se.
 Edward F. Ambrose, Esc., appearing for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

Defendant pleads guilty to a charge alleging that he sold and served to, and permitted the consumption of alcoholic beverages on his licensed premises by, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file in the instant case discloses that on April 17, 1948, a girl seventeen years of age was served one or two glasses of beer by the defendant.

Defendant has no previous adjudicated record. In view of the fact that the girl was seventeen years of age, I shall suspend defendant's license for a period of fifteen days, less five days' remission for the plea entered herein, making a net suspension of ten days.

Although this proceeding was instituted during the 1947-48 licensing year, it does not abate but remains fully effective against the renewed license for the current fiscal year. State Regulations No. 16.

Accordingly, it is, on this 22nd day of October, 1948,

ORDERED that Plenary Retail Consumption License C-2, issued for the 1948-49 licensing year by the Township Committee of the Township of Marlboro to Jack Eisenberg, t/a Jack's Bar, for premises East Main Street, Marlboro, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. November 1, 1948, and terminating at 2:00 a.m. November 11, 1948.

ERWIN B. HOCK
 Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR -
 LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

LESTER D. COOK)
 T/a COOKIE'S BAR)
 East Main Street)
 Marlboro, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-1 for the 1947-48)
 and 1948-49 licensing years,)
 issued by the Township Committee)
 of the Township of Marlboro.)

 Lester D. Cook, 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 alleging that he sold and served to, and permitted the consumption of alcoholic beverages on his licensed premises by, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file in the instant case discloses that on April 17, 1948, a girl seventeen years of age was served one or two glasses of beer by the defendant.

Defendant has no previous adjudicated record. In view of the fact that the girl was seventeen years of age, I shall suspend defendant's license for a period of fifteen days, less five days' remission for the plea entered herein, making a net suspension of ten days.

Although this proceeding was instituted during the 1947-48 licensing year, it does not abate but remains fully effective against the renewed license for the current fiscal year. State Regulations No. 16.

Accordingly, it is, on this 22nd day of October, 1948,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Marlboro, for the 1948-49 licensing year, to Lester D. Cook, t/a Cookie's Bar, for premises East Main Street, Marlboro, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. November 1, 1948, and terminating at 2:00 a.m. November 11, 1948.

ERWIN B. HOCK
 Commissioner.

8. DISQUALIFICATION - CRIME OF MAINTAINING DISORDERLY HOUSE (PROSTITUTION) INVOLVES MORAL TURPITUDE - MISCONDUCT OF APPLICANT WITHIN FIVE YEARS LAST PAST (LIVING IN ADULTERY) - APPLICATION TO LIFT DENIED.

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

CONCLUSIONS

Case No. 704.
-----)

BY THE COMMISSIONER:

On June 24, 1943 petitioner was sentenced for a period of nine months to a county penitentiary, as a result of his plea of guilty to maintaining a disorderly house (prostitution). The operation of the prison sentence was suspended and petitioner was placed on probation for a period of three years.

The crime of maintaining a house of prostitution, per se, involves the element of moral turpitude. Re Case No. 148, Bulletin 466, Item 4.

It appears from an examination of the record that petitioner was the holder of a plenary retail consumption license and that part of the premises in which his liquor business was conducted was used for immoral purposes.

In order to grant petitioner's request for removal of his disqualification, I must, under the statute, be satisfied that he has been leading a law-abiding life for 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. During the course of the present hearing, petitioner admitted that he now lives, and for a number of years last past has been, living in adultery. It is, therefore, apparent that under the circumstances presented in this case petitioner cannot be considered a law-abiding person.

The petition is denied.

ERWIN B. HOCK
Commissioner.

Dated: October 25, 1948.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

GORMAN'S LIQUOR STORES, INC.
606 Paterson Plank Road
Union City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-
bution License D-16, issued by
the Board of Commissioners of the
City of Union City.

John J. Meehan, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the charge of selling a 4/5 quart bottle of Schenley Reserve Blended Whiskey below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

The file in the instant case discloses that on October 2, 1948, an ABC agent purchased from an officer of defendant corporation a 4/5 quart bottle of Schenley Reserve Blended Whiskey for \$3.90, whereas the Fair Trade price for a 4/5 quart bottle of this particular brand of whiskey was \$4.04. See Bulletin 814.

Defendant has a previous adjudicated record. Effective June 16, 1947, defendant's license was suspended for a period of ten days less five days as a result of its plea of non vult to a similar violation. Re Gorman's Liquor Stores, Inc., Bulletin 788, Item 2. Under the circumstances, I shall suspend the 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. Cf. Bulletin 676, Item 8.

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

ORDERED that Plenary Retail Distribution License D-16, issued by the Board of Commissioners of Union City to Gorman's Liquor Stores, Inc., 606 Paterson Plank Road, Union City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. November 1, 1948, and terminating at 9:00 a.m. November 16, 1948.

ERWIN B. HOCK
Commissioner.

10. DISQUALIFICATION - PREVIOUS PETITION TO LIFT 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.)

CONCLUSIONS
AND ORDER

Case No. 702.
-----)

BY THE COMMISSIONER:

In a prior proceeding, decided on May 27, 1942, it was ruled that the petitioner was disqualified because he had been convicted of the crime of maintaining a house of prostitution. As a result of said conviction, petitioner was sentenced to one year in prison, the operation of which sentence was suspended by the court.

It appears that relief was denied petitioner at the prior hearing because between November 1939 and July 1941 petitioner was the undisclosed half-owner of certain licensed premises, and from July 1941 to the date of hearing was the undisclosed sole owner of other licensed premises for which the license had been issued in the name of his wife. See Re Case No. 153, Bulletin 513, Item 1.

Petitioner has reapplied to have his disqualification removed. Fingerprint records indicate that petitioner has not been arrested or convicted of any crime since the denial of his former petition, and there is no evidence to indicate that he has worked at any time on licensed premises.

Petitioner testified that the business licensed in his wife's name was sold in 1942 and that during the war, from 1942 to 1944, he was employed in a large manufacturing plant. He further testified that since 1944 he has been the owner and operator of a confectionery store.

Petitioner produced four witnesses, two of whom live in the city where he formerly resided, and two of whom live in the municipality where petitioner now lives and operates his confectionery business. The former two witnesses testified that petitioner bore a good reputation in the city where he previously resided, and the latter two witnesses testified that petitioner bears a good reputation for being a law-abiding citizen in the municipality wherein he now lives and conducts his business establishment.

The Police Department of the municipality in which petitioner lives has certified to this Department that there are no pending complaints against petitioner or pending investigations concerning his conduct.

I conclude, therefore, that petitioner has rehabilitated himself and during the past five years has become a law-abiding citizen. I shall grant the relief sought.

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

ORDERED that petitioner's statutory disqualification because of the crime of which petitioner was convicted be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

ERWIN B. HOCK
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF STATE REGULATIONS NO. 38 - PRIOR RECORD MORE THAN FIVE YEARS OLD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

HARRY LYNESSE
316-318 Grand Street
Paterson 1, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-175, issued by the
Board of Alcoholic Beverage Control
of the City of Paterson.

Murner & Murner, Esqs., by James J. Murner, Esq., Attorneys for
Defendant-licensee.
William F. Wood, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge that he sold alcoholic beverages in original containers for off-premises consumption after 10:00 p.m., in violation of Rule 1 of State Regulations No. 38.

On Thursday, September 30, 1948, at about 10:50 p.m., the bartender then in charge of defendant's licensed premises sold two quart bottles of beer for off-premises consumption to an investigator of the State Department of Alcoholic Beverage Control. It is urged in excuse of said sale that the defendant was not on the licensed premises at the time. Such a plea may not be considered. The licensee is responsible at all times for the proper conduct of his licensed premises. Cf. Essex Holding Corp. v. Hock, 136 N.J.L. 28.

Defendant's only prior record, a suspension of two days by the local issuing authority in 1942 for the violation of a local ordinance, will not be considered in fixing the penalty herein because of the lapse of time. In the absence of any other aggravating circumstances, I shall suspend the license for the minimum period of fifteen days. Re Dallio, Bulletin 753, Item 12. Remitting five days thereof because of the plea will leave a net suspension of ten days.

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

ORDERED that Plenary Retail Consumption License C-175, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Harry Lyness, for premises 316-318 Grand Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. November 8, 1948, and terminating at 3:00 a.m. November 18, 1948.

ERWIN B. HOCK
Commissioner.

12. APPELLATE DECISIONS - MURPHY v. WASHINGTON TOWNSHIP (MERCER COUNTY) AND O'NEILL.

JOHN MURPHY,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF WASHINGTON (MERCER
COUNTY), and CHARLES O'NEILL,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Robert E. Dietz, Esq., Attorney for Appellant.

Harvey T. Satterthwaite, Esq., Attorney for Respondent Township
Committee.

Frank I. Casey, Esq., Attorney for Respondent Charles O'Neill.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Township Committee in granting a renewal for the current fiscal year of a plenary retail distribution license held by respondent Charles O'Neill.

The premises owned by respondent O'Neill are located on Route 25, Windsor-Hightstown Road, Township of Washington. On said plot of ground there is a one-story frame building and an adjoining one-story building constructed of concrete blocks. There is an open archway between both buildings so that the entire premises may be considered as a single place of business. It appears that the public barroom is located in the frame structure, and the portion of the building constructed of concrete blocks is used as a restaurant and dance hall.

Respondent O'Neill has held a plenary retail consumption license since June 1944. The record is not entirely clear as to the extent of the licensed premises, but I am satisfied that the premises licensed for consumption included both the frame building and the concrete block building. Said consumption license has been renewed by the Township Committee for each fiscal year to and including the present fiscal year, and no question as to the validity of said license is raised herein.

In May 1946 respondent O'Neill applied for and obtained a plenary retail distribution license for premises on Route 25, Windsor-Hightstown Road. Again the record is not entirely clear as to the extent of the premises to be covered by this license, but I am satisfied from a review of the testimony that the premises covered by the plenary retail distribution license are exactly the same as the premises covered by the plenary retail consumption license. They are described identically in the applications filed for the present fiscal year. The plenary retail distribution license was renewed for the 1946-47 fiscal year, the 1947-48 fiscal year, and also the present fiscal year. It was from the last renewal that the present appeal is filed.

Appellant contends that a plenary retail consumption license and a plenary retail distribution license may not be lawfully issued for the same premises and, in the alternative, that the plenary retail distribution license should be cancelled because no operations have been conducted thereunder.

There is no specific provision of the Alcoholic Beverage Law which would prevent the issuance of a plenary retail consumption license and a plenary retail distribution license for the same premises. However, Rule 14 of State Regulations No. 20 provides:

"No retail distribution licensee shall permit any alcoholic beverages sold by him to be consumed on the licensed premises, nor shall he permit their containers to be opened on the licensed premises."

If, therefore, respondent O'Neill were operating under the provisions of his plenary retail distribution license, it would be unlawful for him to permit his customers to consume liquor on the licensed premises as he frankly admits he has been doing. He contends, however, that he is operating under his plenary retail consumption license, and that he is conducting no activities whatsoever under his plenary retail distribution license.

Although it has been determined that mere non-user (i.e., discontinuance of previous user) does not automatically void a license (Re Tarantola, Bulletin 570, Item 5), it is well established that liquor licenses should be granted only when warranted by public convenience and necessity. That public convenience and necessity does not warrant the granting of the plenary retail distribution license here in issue is obvious; its privileges are not presently being exercised nor have they been exercised since May 1946, when the license was originally granted.

The conclusion is inescapable that the plenary retail distribution license was improvidently issued.

Accordingly, it is, on this 29th day of October, 1948,

ORDERED that the action of the respondent Township Committee in issuing a plenary retail distribution license for the 1948-49 licensing year to the respondent Charles O'Neill for premises State Highway Route 25-35, between Windsor and Hightstown, E/S, Washington Township, Mercer County, be and the same is hereby reversed; and said license is hereby cancelled, effective immediately.

ERWIN B. HOCK
Commissioner.

13. APPELLATE DECISIONS - JACKO v. PERTH AMBOY - ORDER OF DISCONTINUANCE.

ANDREW JACKO,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY
OF PERTH AMBOY,

Respondent

ON APPEAL
ORDER OF DISCONTINUANCE

Matthew F. Melko, Esq., Attorney for Appellant.
Francis M. Seaman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to grant a transfer of the plenary retail consumption license held by the appellant for premises at 466 State Street to premises at 481 State Street, Perth Amboy, New Jersey.

The appellant, with the consent of the respondent, is now desirous of withdrawing the appeal.

Since no cause appears to the contrary, it is, on this 26th day of October, 1948,

ORDERED that the within appeal be and the same is hereby discontinued.

New Jersey State Library

Erwin B. Hock
Commissioner.