

BULLETIN 1016

MAY 24, 1954.

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1016

MAY 24, 1954.

1. COURT DECISIONS - ESKRIDGE v. DIVISION - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-126-53

JAMES W. ESKRIDGE, t/a JIMMY'S)
TAVERN,)
)
Defendant-Appellant,)
)
-vs-)
)
DIVISION OF ALCOHOLIC BEVERAGE)
CONTROL,)
)
Plaintiff-Respondent.)
-----)

Argued, April 26, 1954: decided, May 10, 1954.

Before Judges Clapp, Freund and Schettino.

Mr. Joseph Tomaselli argued the cause for the defendant-appellant (Messrs. Malandra & Tomaselli, attorneys).

Mr. Samuel B. Helfand argued the cause for the plaintiff-respondent (Mr. Grover C. Richman, Jr., Attorney-General of the State of New Jersey).

The opinion of the Court was delivered by

FREUND, J.A.D.

The appellant, owner of a tavern in the City of Camden and holder of a plenary retail consumption license, appeals from an order of the Director of the Division of Alcoholic Beverage Control, suspending the appellant's license for 5 days for violation of a municipal ordinance providing that "No woman shall be served with beverages directly over any bar. . ." The sole question is whether a U-shaped counter at which women are served with alcoholic beverages is a "bar" within the meaning of the ordinance.

At the outset it should be recalled that there is no common, inherent, natural or constitutional right to engage in the business of selling liquor. The power of the state over the sale of intoxicating beverages is plenary. "It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied." *Paul v. Gloucester Co.*, 50 N.J.L. 585, 595, (E. & A. 1888). *Bumball v. Burnett*, 115 N.J.L. 254, (Sup. 1935). The right of the legislature or of a municipality under legislative authority to regulate the sale of intoxicants is within the police power of the state and is practically limitless. *Meehan v. Excise Commrs.*, 73 N.J.L. 382, (Sup. 1906), affirmed 75 N.J.L. 557, (E. & A. 1907). "As it is a business attended with danger to the community, it may be . . . entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils." *Crowley v. Christensen* 137 U.S. 86, 11 S. Ct. 13, 34 L. Ed. 620, (1890). *Vance v. W. A. Vandercook Co.*, 170 U. S. 438, 18 S. Ct. 674, 42 L. Ed. 1100, (1898). *Eberle v. Michigan*, 232 U. S. 700, 34 S. Ct. 464, 58 L. Ed. 803, (1914)

Thus, the times when, *Walinski v. Mayor &c. Gloucester City*, 25 N.J. Super. 122, (Ch. 1953), the places where, *Lanning v. Board of Excise Commrs.*, 76 N.J.L. 128, (Sup. 1908) and the persons to whom, *Cino v. Driscoll*, 130 N.J.L. 535, (Sup. 1943), intoxicants shall be sold may be determined by the State. *Carter v. Virginia*, 321 U. S. 131, 64 S. Ct. 464, 88 L. Ed. 605, (1944). *Hudson Bergen &c. Assn. v. Hoboken*, 135 N.J.L. 502, (E. & A. 1947). *Essex Holding Corp. v. Hock*, 136 N.J.L. 28, (Sup. 1947). *In re Schneider*, 12 N.J. Super. 449, (App. Div. 1951). *In re Larsen*, 17 N.J. Super. 564, (App. Div. 1952). *In re 17 Club, Inc.*, 26 N.J. Super. 43, (App. Div. 1953).

The facts are undisputed. The plaintiff's premises consist of two large rooms, one of which is an ordinary barroom; the other is described as a "service room, cocktail lounge or dining room." In it there are tables as well as the U-shaped counter which has about 25 stools with leatherette tops and is about two feet distant from a conventional square bar, the same height as the bar and of similar construction, but no liquor is kept behind the counter, nor are there any taps or water connections. Although a bartender is in attendance behind the square bar, waitresses pick up at the main bar and serve at the U-shaped counter the beverages ordered by the customers there seated. The defendant's agents testified that on one occasion at about 11 P.M. there were about 16 women patrons being served at the U-shaped counter and on another occasion approximately 10.

The plaintiff argues strenuously that the counter is not a "bar", because it is devoid of the usual bar equipment and, therefore, does not come within the definition of a "bar". For the purpose of argument, it may be conceded that there is much room in the marketplace of ideas for opposing viewpoints on the question of what constitutes a "bar". Webster's New International Dictionary, 2nd Ed., 1950, defines it as "a counter at which liquor or food is served, usually to customers; --extended to the space immediately behind or in front of it; also, a room containing such a counter; as, luncheon bar, oyster bar, saloon bar; a barroom." Actually, this is a revision of the definition given in Webster's First Edition, that a bar is "a portion of a room behind the counter where liquors for sale are kept." *Mayor &c. of Leesburg v. Putnam*, 103 Ga. 110, 29 S. E. 602, (Sup. 1897). *Latta v. Bell*, 112 N. C. 641, 30 S.E. 15, (Sup. 1898). *Hinton v. State*, 137 Tex. Cr. R. 352, 129 S.W. 2d 670, (Crim. App. 1939). See, too, 9 C.J.S., Page 1537 and 48 C.J.S., Page 148. In determining the question at issue, it has been held, however, that the public display of liquor is not an essential element. The Supreme Judicial Court of Massachusetts held in *Commonwealth v. Rogers*, 135 Mass. 536, (1883) that "it would certainly be difficult, and probably impossible, to define with absolute precision the meaning of the term 'public bar' so as to include everything that would, and exclude everything that would not, constitute such a bar, though under any given set of facts it might not be difficult to determine whether or not they constituted such a bar. Such a bar must obviously be something at which liquors are sold, to be drunk on the premises. . . . We do not think the public display of liquors by any means an essential element in determining the question at issue, as contended by the defendant." *Commonwealth v. Everson*, 140 Mass. 292, 2 N.E. 839, (Sup. Jud. Ct. 1885).

The obvious purpose and intent of the ordinance under attack was that women should be served liquors only when seated at tables and not when seated at a counter where they would be mingling with other customers. Ordinances which forbid the serving of liquor to women except when seated at tables do not violate any constitutional right of either the licensee or the women, and are well within the regulatory power of the state. *Randles v. Washington State Liquor Control Board*, 33 Wash. 2d 688, 206 P. 2d 1209, 9 A.L.R. 2d 531, (Sup. Ct. en banc, 1949). *Adams v. Cronin*, 29 Colo. 488, 69 Pac. 590, 63 L.R.A. 61, (Sup. 1902), affirmed sub. nom. *Cronin v. Adams*, 192 U.S. 108, 24 S.Ct. 219, 48 L. Ed. 365, (1904).

The equal protection clause of the Fourteenth Amendment does not prohibit all classification per se. *Atchison, Topeka & Sante Fe v. Matthews*, 174 U.S. 96, 109, 19 S. Ct. 609, 43 L. Ed. 909, (1899). The ordinance in the instant case is not so discriminatory as to render it invalid. *Goesaert v. Cleary*, 74 Fed. Supp. 735, (Dist. Ct. E.D. Mich. 1947), affirmed 335 U.S. 464, 93 L. Ed. 163, 69 S. Ct. 198, (1948). There, the Court had before it for consideration a statute of the State of Michigan which prohibited women from being licensed as bartenders, except wives or daughters of the owners of the liquor establishment. In holding that this did not violate the equal protection clause of the Fourteenth Amendment, Mr. Justice Frankfurter made observations which are pertinent here. "The Fourteenth Amendment did not tear history up by the roots, and the regulation of the liquor traffic is one of the oldest and most untrammelled of legislative powers. Michigan could, beyond question, forbid all women from working behind a bar. This is so despite the vast changes in the social and legal position of women. The fact that women may now have achieved the virtues that men have long claimed as their prerogatives and now indulge in vices that men have long practiced, does not preclude the States from drawing a sharp line between the sexes, certainly in such matters as the regulation of the liquor traffic. . . . The Constitution does not require legislatures to reflect sociological insight, or shifting social standards, any more than it requires them to keep abreast of the latest scientific standards. . ."

Here, it seems to us that the plaintiff has attempted to circumvent the local ordinance, and while the counter may not be a "bar" within the strict dictionary definition of the word, it is, nevertheless, the kind of structure which the municipality intended to proscribe for women. Ordinarily the true meaning of any word is that which best comports with the subject and general object of the ordinance. *Maritime Petroleum Corp. v. City of Jersey City*, 1 N.J. 287, 298, (1949). *Central R.R. Co. of N.J. v. Division of Tax Appeals*, 8 N.J. 15, 28, (1951). *Walinski v. Mayor &c. Gloucester City*, supra. Moreover, the Director of the Division of Alcoholic Beverage Control has construed similar facilities as a "bar", and it is well settled that administrative interpretations by the Director will not be lightly disturbed; they are accorded great weight. *Cino v. Driscoll*, supra. *Kravis v. Hock*, 137 N.J.L. 252, (Sup. 1948). *Board of National Missions v. Neeld*, 9 N.J. 349, 360, (1952).

Former Director Hock in *Re Choice Liquors, Inc.*, Bulletin 827, Item 5, considered the purpose of the regulation here involved to be "the prohibition against women mingling and drinking with men at the bar." As early as 1934, former Commissioner Burnett in interpreting an identical resolution adopted by the City of Asbury Park, *In re Foster*, Bulletin 41, Item 1, said, "It does not prohibit service to a woman who is seated at a table in the barroom providing that she is not standing at the bar. . . . That intent was plainly to prohibit service to women at the bar." And in *Holderness v. Orange*, Bulletin 257, Item 1, Commissioner Burnett in construing an ordinance that no female was to be served at a public bar said, "The bar has an individuality of its own, measurably distinct from the rest of the premises. It is normally frequented by men. It suggests an informal atmosphere in which all too often the usual amenities and restraints do not prevail. It invites commingling, a commonness which all too often leads to abuses inherent in liquor traffic and of which it was the objective of the ordinance to remedy." Director Cavicchia in *Blue Mirror Inn, Inc.*, Bulletin 961, Item 5, held that, "It is the use to which a facility is put that constitutes it a bar - not its equipment (such as bottles and glasses) or its fixtures (such as beer taps and sinks). . . . I am convinced that the purpose underlying the section in question was to keep women away from any public bar, whatever its equipment or lack of equipment, and to get them seated at tables." We are in accord with the foregoing interpretations and conclude that the U-shaped counter is a bar within the meaning of the ordinance.

Affirmed.

- - - - -

2. NEW LEGISLATION - INCREASE IN CERTAIN LICENSE AND PERMIT FEES.

Assembly No. 304 (1954) was approved by the Governor on May 11, 1954, and thereupon became Chapter 26 of the Laws of 1954. The Act amends the designated sections of our Alcoholic Beverage Law to increase fees as follows:

R. S. 33:1-10(1)a. Plenary brewery license --increase from \$4,000.00 to \$5,000.00.

R. S. 33:1-10(1)b. Limited brewery license.

To brew not more than 50,000 barrels -- increase from \$500.00 to \$625.00.

To brew between 50,000 and 100,000 barrels -- increase from \$1,000.00 to \$1,250.00.

To brew between 100,000 and 200,000 barrels -- increase from \$2,000.00 to \$2,500.00.

To brew between 200,000 and 300,000 barrels -- increase from \$3,000.00 to \$3,750.00.

R. S. 33:1-10(2)a. Plenary winery license -- increase in the basic fee from \$500.00 to \$650.00.

R. S. 33:1-10(3)b. Limited distillery license -- increase from \$1,500.00 to \$2,000.00.

R. S. 33:1-11(1). Plenary wholesale license -- increase from \$2,000.00 to \$3,000.00.

R. S. 33:1-11(2)a. Limited wholesale license -- increase from \$750.00 to \$900.00.

R. S. 33:1-11(2)b. Wine wholesale license -- increase from \$1,000.00 to \$1,500.00.

R. S. 33:1-11(2)c. State beverage distributor's license -- increase from \$500.00 to \$625.00.

R. S. 33:1-14. Public warehouse license -- increase from \$100.00 to \$200.00.

R. S. 33:1-28. Transit insignia (for transportation of alcoholic beverages by licensees in their own vehicles) -- increase from \$2.00 to \$4.00.

R. S. 33:1-67. Solicitors' permits -- increase from \$5.00 to \$10.00 for permit to solicit sale of malt alcoholic beverages; increase from \$5.00 to \$15.00 for permit to solicit sale of other alcoholic beverages.

R. S. 33:1-72. License for sale of warehouse receipts -- increase from \$100.00 to \$200.00.

R. S. 33:1-75. Special permits for home manufacture of wines for personal consumption -- increase from \$1.00 to \$3.00.

WILLIAM HOWE DAVIS
Director.

3. AMENDMENT TO RULE 1 OF STATE REGULATIONS NO. 11, RULE 3 OF STATE REGULATIONS NO. 14, AND RULE 6 OF STATE REGULATIONS NO. 17 - CHANGE IN FEE TO CORRESPOND TO STATUTORY CHANGE.

In view of the recent amendment of the Alcoholic Beverage Law which has increased various statutory fees for state licenses, home "wine-making" permits, solicitors' permits, and transportation insignia (Laws 1954, Ch. 26), it is necessary to similarly amend those parts of the State Regulations of this Division which refer to the old fees.

Hence, the statutory fee for a home "wine-making" permit having been increased from \$1.00 to \$3.00, Rule 1 of State Regulations No. 11 is herewith amended, effective immediately, to read:

"Rule 1. Wine for personal consumption may be manufactured only under the provisions of a Special Wine Permit, issuable by the Director, which authorizes the permittee to manufacture within the home of the permittee or other premises used in connection therewith, and during the permit period, wine in quantities of not more than two hundred (200) gallons. Wine manufactured under the authority of such permit may not be sold under any circumstances, nor may it be used for any purpose other than personal consumption at the permittee's home by the permittee and his family and their bona fide guests. The fee for this permit is three dollars (\$3.00)."

The \$5.00 statutory fee for a solicitor's permit having been increased to \$10.00 for "solicitors employed exclusively by licensees whose licenses permit sale of malt alcoholic beverages only" and having been increased to \$15.00 for "solicitors employed by other" wholesale or manufacturing licensees, Rule 3 of State Regulations No. 14 is herewith amended, effective immediately, to read as follows:

"Rule 3. The fee for Solicitor's Permit is Ten Dollars (\$10.00) per annum for solicitors employed exclusively by licensees whose license permits sale of malt alcoholic beverages only, and is Fifteen Dollars (\$15.00) per annum for solicitors employed by other wholesale or manufacturing licensees. All such permits expire on the June 30th following their issuance unless otherwise specified therein. Each application for such permit shall be accompanied by two (2) identical passport-type photographs of the applicant, two (2) inches by two (2) inches, and which shall have been taken not more than thirty (30) days prior to the date of the application. Each applicant shall be fingerprinted, without charge, under the supervision of the Division of Alcoholic Beverage Control at such time and place as shall be designated from time to time by the Director. The fingerprints shall be marked 'non-criminal' and shall be filed with the Director."

The statutory fee for transportation insignia having been raised from \$2.00 to \$4.00, Rule 6 of State Regulations No. 17 is herewith amended, effective immediately, to read as follows:

"Rule 6. Applications for transportation insignia shall be filed upon a prescribed form with the Director accompanied by the full fee of Four Dollars (\$4.00) for each insignia, in cash, money order or certified check to the order of the Division of Alcoholic Beverage Control."

The foregoing amendments to the Rules in question effect no change other than replacing the new for the old fee.

WILLIAM HOWE DAVIS
Director.

Promulgated Thursday, May 20, 1954.

Effective Thursday, May 20, 1954.

Filed with the Secretary of State (N.J.) Thursday, May 20, 1954.

4. APPELLATE DECISIONS - SIMMONS ET AL. v. LAWNSIDE AND ANDREW'S LIQUOR CO.

LEON F. SIMMONS, ET AL.,)
 Appellants,)
 -vs-)
 BOROUGH COUNCIL OF THE BOROUGH)
 OF LAWNSIDE; MARTHA MORRIS; and)
 ANDREW'S LIQUOR CO., INC.,)
 Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
 Robert Burk Johnson, Esq., Attorney for Appellants.
 Joseph Wm. Cowgill, Esq., Attorney for Respondent Borough Council.
 Benjamin Asbell, Esq., Attorney for Respondent Andrew's Liquor Co., Inc.
 Leighton J. Heller, Esq., Attorney for Objector.

BY THE DIRECTOR:

This is an appeal from the action of respondent Borough Council whereby it granted an application to transfer License D-1 from Martha Morris to Andrew's Liquor Co., Inc., and from premises on Warwick Road near Oak Avenue to premises on Warwick Road near Tavistock Borough.

The petition of appeal alleges that the application "seeks to transfer the license to a building not yet constructed" and further alleges that the action of respondent Borough Council was erroneous because, among other reasons, the advertised Notice of Application for the transfer was defective.

The attorney for respondent Borough Council has advised me, in writing, that he consents to a reversal of the action taken by the Borough Council because the advertised Notice of Application is defective "in that it fails to state that plans and specifications of the new building to which this license was transferred are on file with the Borough Clerk. As a matter of fact, it does not even say that it is being transferred to a building being erected." At the hearing scheduled to be held herein, no one appeared, apparently because all other attorneys were advised by the attorney for the Borough Council that he consented to a reversal of his client's action.

Rule 2 of State Regulations No. 2 requires that, if the application is for a building not yet constructed, the advertised Notice of Application must set forth that "plans and specifications of building to be constructed may be examined at the offices of the Municipal Clerk." A local issuing authority has no jurisdiction to grant an application when there has not been complete compliance with the aforesaid requirement. Haines v. Pemberton, Bulletin 851, Item 10; Yetter v. Ridgefield Park, Bulletin 885, Item 5. Cf. Trotto v. Trenton, Bulletin 46, Item 11; Mulcahy v. Maplewood et al., Bulletin 658, Item 4.

Accordingly, it is, on this 5th day of May, 1954,

ORDERED that the action of respondent Borough Council of the Borough of Lawnside, in transferring License D-1 from Martha Morris to Andrew's Liquor Co., Inc., and from premises on Warwick Road near Oak Avenue to premises on Warwick Road near Tavistock Borough, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

5. APPELLATE DECISIONS - OWL FIELD CLUB, INC. v. NEWARK.

OWL FIELD CLUB, INC.,)
 Appellant,)
 -vs-)
 MUNICIPAL BOARD OF ALCOHOLIC)
 BEVERAGE CONTROL OF THE CITY)
 OF NEWARK,)
 Respondent.)

CONCLUSIONS
AND ORDER

 J. Leroy Jordan, Esq., Attorney for Appellant.
 Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby, by a 2 to 0 vote, it suspended appellant's club license for a period of twenty days, after it had adjudged appellant guilty in disciplinary proceedings on the charges hereafter set forth.

Upon the filing of the appeal an Order, dated January 11, 1954, was entered staying the suspension, pending the determination of this appeal. R. S. 33:1-31.

The charges preferred by respondent against appellant are as follows:

"1. In that you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of an alcoholic beverage to a person not a bona fide member of the club or a bona fide guest of any such member on February 28, 1953; in violation of Rule 8 of State Regulations No. 7.

"2. In that you knowingly employed and had connected in a business capacity, viz., as a bartender to sell and serve alcoholic beverages on the licensed premises, Oley Borris, a non-resident of New Jersey, who had not obtained a requisite employment permit from the Director of the Division of Alcoholic Beverage Control, on February 28, 1953; in violation of Rule 4 of State Regulations No. 13."

In accordance with Rule 8 of State Regulations No. 15, the instant appeal was submitted by stipulation upon the transcript of testimony taken before the respondent Board.

Appellant contends that the action of respondent was erroneous for the following reasons:

"(a) That the findings of the respondents were not made by the entire membership of the Board of Alcoholic Beverage Control due to the fact that one member of the Board became ill and although he presided during the hearing and requested the filing of briefs, due to illness and subsequent death, said member took no part in the discussions and conclusions and order of respondent.

"(b) That the findings of the two members of the Board are against the weight of the evidence.

"(c) That the charges against the appellant were not proved by a preponderance of the evidence.

"(d) That the respondents committed error by their failure to properly construe and interpret Rule 8 of State Regulations #7 relative to bona fide guests.

"(e) That the respondents committed error in their failure to properly construe and interpret Rule 4 of State Regulations #13 and to give the proper consideration to the evidence produced on the part of the appellant.

"(f) That the respondent committed error in failing to order a new hearing after the illness and death of one of its members who presided at the hearings, but did not take part in the conclusions and order of respondents, thereby depriving appellant of the benefit of the conclusions and order of the Municipal Board of Alcoholic Beverage Control of the City of Newark, New Jersey."

Appellant's contention with reference to reasons (a) and (f), that the respondent Board lost jurisdiction to decide the case in question because one of the members thereof died between the time the matter was heard and the time it was determined, is without merit. The common law rule is that a majority of all the members of the Board constitutes a quorum and, in the event of a vacancy, a quorum consists of a majority of the remaining members. Ross v. Miller, 115 N.J.L. 61 (at p. 63). It has also been so ruled in Re Reichenstein, Bulletin 173, Item 9; cf. Manno v. Clifton, 14 N. J. Super. 100.

There appears to be no dispute that an agent of this Division, who was neither a member nor a bona fide guest of a member of appellant's club, was served a bottle of beer by the bartender employed by appellant. The appellant contends that the bartender "believed" the agent to be a guest of a member and, because of mistaken identity on the part of the bartender, the appellant should not be penalized therefor.

The explanation is not an excuse. The fact that the bartender served a nonmember, who was not a bona fide guest of a member, and discovered the violation shortly thereafter is no defense to the charge. It was the bartender's duty to comply with the law by determining the true status of the person before making service of alcoholic beverages to him. In fact, the bartender at the hearing below was asked:

"Q. Now, in a club you know that nobody can be served but members or guests of members?

"A. That's right.

"Q. And therefore isn't it your duty to be positive before you serve anybody to satisfy yourself that they are club members?

"A. Oh, I agree with you on that, but as I said, it was a case of mistaken identity."

There is no evidence in the instant case that any officer of appellant club participated in the aforementioned transaction. A licensee is under a duty, however, to exercise close supervision over the licensed premises and violations occurring there cannot be excused merely because of lack of personal knowledge. Rule 31 of State Regulations No. 20; Stein v. Passaic, Bulletin 451, Item 5; Essex Holding Corp. v. Hock, 136 N.J.L. 28, As was said in Re Paton, Bulletin 898, Item 3, "He (a licensee) cannot hide behind his employees."

I concur with respondent that appellant is guilty of charge 1.

Now, with respect to the alleged nonresidence of Oley Borris, the bartender employed by appellant who had not obtained a requisite employment permit from the Director of the Division of Alcoholic Beverage Control, the evidence appears clear that the employee was not a resident of New Jersey.

Oley Borris admitted giving a statement under oath, wherein he was asked:

"Q. What is your full name and address?"

"A. Oley Borris, and I reside at 89 Somerset St., Newark, N. J. where I live in a room weekends, and my family is at 476 West 165th Street, New York City where I live with my mother."

At the hearing Oley Borris testified that he voted in New York in 1942 but has never voted in New Jersey; that his address on his Social Security card is New York; that in the statement given to the ABC agents he gave his permanent address as 476 W. 165th Street, New York City, where his mother has an apartment; that at the time he was questioned by the agents he knew what he was talking about.

I am satisfied that at the time he was employed by appellant, prior to the date when questioned by the ABC agents, he had not established a residence in New Jersey within the meaning of the term as used in R. S. 33:1-25. In Re Gellert, Bulletin 618, Item 1, it was held that the words "resident" and "residence" as presently used in the Alcoholic Beverage Law contemplate physical presence in addition to domicile. See also Re Madge, Bulletin 1011, Item 7.

At the hearing before the respondent Board James H. Fultz, Sr., President of appellant Club, testified that Oley Borris stated to him at the time he was employed by the appellant Club that he resided in New Jersey; that at no time did he have knowledge that Oley Borris resided in New York. There is a conflict with reference to the statement James H. Fultz, Sr. made to the ABC agents at the time of the investigation and the testimony given at the hearing before the respondent Board regarding his lack of knowledge of the actual residence of Oley Borris. After full consideration thereof, I am not fully satisfied that James H. Fultz, Sr. knew that Oley Borris, employed by the club, was not a resident of New Jersey. Hence I shall dismiss Charge 2.

Sale and service of alcoholic beverages to a person not a bona fide member of a club or a bona fide guest of a member warrants a suspension of fifteen days. Re Ridgefield World War Veterans Association, Inc., Bulletin 923, Item 9.

In view of the fact that I have reversed the respondent's decision with respect to Charge 2, the suspension of appellant's license will be reduced from twenty to fifteen days.

The suspension imposed by respondent was to have become effective at 7:00 a.m. January 11, 1954. When the appeal was filed, an Order staying respondent's order of suspension was entered. I shall now vacate said Order and suspend the license of appellant for fifteen days.

Accordingly, it is, on this 10th day of May, 1954,

ORDERED that the twenty-day suspension of Club License CB-18, issued to Owl Field Club, Inc., by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 19 Quitman Street, Newark, be and the same is hereby modified to a suspension for a period of fifteen days, commencing at 2:00 a.m. May 14, 1954, and terminating at 3:00 a.m. May 29, 1954; and it is further

ORDERED that the Order heretofore entered staying respondent's order of suspension shall continue in effect until the suspension imposed herein shall become effective.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - UNDER CIRCUMSTANCES OF CASE, LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

AMERICAN BEVERAGE CO., INC.)
279-81 Lehigh Avenue)
Newark 8, N.J.,)

CONCLUSIONS
AND ORDER

Holder of State Beverage Distributor's License SBD-54, issued by the Director of the Division of Alcoholic Beverage Control.)

-----)
Leo J. Berg, Esq., Attorney for Defendant-licensee.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Tuesday, March 9, 1954, at about 7:45 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., 24 bottles of Ballantine beer, at retail in their original containers; in violation of Rule 1 of State Regulations No. 38."

The file discloses that on March 9, 1954, at about 7:45 a.m., an ABC agent observed a permittee-helper deliver a case of beer to a dwelling house at 9 Tillinghast Street, Newark, New Jersey, from a truck operated by Charles S. Tolchinsky, Treasurer of the defendant-licensee corporation, who then and there admitted the violation above set forth.

Notwithstanding the minimum fifteen-day penalty (less five days' remission for a plea) for a violation of this kind (see Re Gattuso, Bulletin 587, Item 1; Fleming's Wine & Liquor, Inc., Bulletin 984, Item 6, and others), I can distinguish the facts in this case from the cited cases and I have also considered the explanation of the licensee in mitigation of the offense. In imposing penalty, however, it is not my intention to establish any new precedent with relation to violations of Rule 38. The rule must be observed and violations will be prosecuted as heretofore.

Defendant has no previous adjudicated record.

I shall suspend defendant's license for a period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 30th day of April, 1954,

ORDERED that State Beverage Distributor's License SBD-54, issued by the Director of the Division of Alcoholic Beverage Control to American Beverage Co., Inc., 279-81 Lehigh Avenue, Newark 8, New Jersey, be and the same is hereby suspended for five (5) days, commencing at 7:00 a.m. May 10, 1954, and terminating at 7:00 a.m. May 15, 1954.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against

C. & D., INC.,

Holder of Seasonal Retail Consumption License CS-3, issued by the Mayor and Council of the Borough of Fort Lee for premises:

Stand No. 2, West Side of Pool Palisade Amusement Park Fort Lee, N. J., -and-

Holder of Seasonal Retail Consumption License CS-1, issued by the Mayor and Council of the Borough of Cliffside Park for premises: Palisade Amusement Park Cliffside Park, N. J.

O R D E R

BY THE DIRECTOR:

It appearing that by Order dated January 6, 1954, the licenses then held by the above named defendant were suspended for a period of twenty days, and that a further order was to be entered herein fixing the effective dates for said suspension (Re C. & D., Inc., Bulletin 999, Item 12); and it further appearing that the Mayor and Council of the Borough of Fort Lee has issued to defendant Seasonal Retail Consumption License CS-3 for the summer season from May 1, 1954 until November 1, 1954, and that the Mayor and Council of the Borough of Cliffside Park has issued to defendant Seasonal Retail Consumption License CS-1 for the summer season from May 1, 1954 until November 1, 1954 (both in renewal of licenses held for the previous licensing year) and, further, that defendant's premises have now been reopened for business;

It is, on this 4th day of May, 1954,

ORDERED that Seasonal Retail Consumption License CS-3 for the summer season from May 1, 1954 until November 1, 1954, issued by the Mayor and Council of the Borough of Fort Lee to C. & D., Inc., for Stand No. 2, West Side of Pool, Palisade Amusement Park, Fort Lee, and Seasonal Retail Consumption License CS-1 for the summer season from May 1, 1954 until November 1, 1954, issued by the Mayor and Council of the Borough of Cliffside Park to C. & D., Inc., for premises in Palisade Amusement Park, Cliffside Park, be and the same are hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. May 7, 1954, and terminating at 3:00 a.m. May 27, 1954.

WILLIAM HOWE DAVIS Director.

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 JOHN EMERY)
 Route #130, above Stevens,)
 formerly Route 25)
 Burlington, N. J.,)
 Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Burlington.)

CONCLUSIONS AND ORDER

 John Emery, Defendant-licensee, Pro Se.
 David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages at his licensed premises to a minor in violation of Rule 1 of State Regulations No. 20.

The file discloses that on March 27, 1954 and divers days prior thereto, an employee of the defendant sold and served alcoholic beverages to a 19-year-old minor.

Defendant contends, in mitigation, that before making the sale and service of alcoholic beverages to the minor, his bartender examined a card issued by a Selective Service Board in the minor's possession on which the date of birth of the minor had been changed to make it appear he was an adult.

However, the defendant has not established a defense under the provisions of R. S. 33:1-77, because admittedly the minor did not falsely represent in writing that he was 21 years of age or over. Re Cedar Bar of Bergen County Inc., Bulletin 942, Item 5; Re Smith, Bulletin 890, Item 10. The defendant is guilty as charged.

Defendant has a prior adjudicated record. Effective May 29, 1950, defendant's license was suspended for ten days by the local issuing authority for an "hours" violation.

Under the circumstances, I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Cf. Re Casper and Marlin, Bulletin 877, Item 6.

Accordingly, it is, on this 3rd day of May, 1954,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Burlington to John Emery, for premises at Route #130, above Stevens, formerly Route 25, Burlington, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. May 11, 1954, and terminating at 2:00 a.m. May 21, 1954.

WILLIAM HOWE DAVIS
Director.

9. DISCIPLINARY PROCEEDINGS - POSSESSING INDECENT FIGURE AND DRAWING OR CARTOON - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
 JOSEPH F. EGGIMANN)
 T/a PETE EGGIMANN'S TAVERN)
 1701 "H" Street)
 Wall Township)
 P.O. West Belmar, N. J.,)
 Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Wall.)
 -----)

CONCLUSIONS AND ORDER

Joseph F. Eggimann, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to the following charge:

"On April 1 and 7, 1954, and on divers days prior thereto, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting representations comprised in a certain wooden figure and in a certain drawing or cartoon; in violation of Rule 17 of State Regulations No. 20."

The file discloses that on April 7, 1954, two ABC agents entered defendant-licensee's premises and found displayed therein two obscene figurines which defendant had shown to them on a previous visit, April 1, 1954. During their visit on April 7, defendant engaged in conversation with the agents in the presence of three patrons respecting the disgusting objects and produced for their inspection a filthy drawing. The agents made known their identity, searched the premises and found therein two lewd cartoons which they seized together with the other pornographic matter.

A detailed description of the figurines and drawings would serve no useful purpose. Suffice to say they were obscene, disgusting and indecent. The figurines were openly displayed and the drawings were shown to female customers upon request.

Defendant has no previous adjudicated record. I shall suspend defendant's license for ten days. Re Club Benmar, Inc., Bulletin 874, Item 9; Re Lukas, Bulletin 963, Item 4. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 4th day of May, 1954,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Wall to Joseph F. Eggimann, t/a Pete Eggimann's Tavern, 1701 "H" Street, Wall Township, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. May 10, 1954, and terminating at 2:00 a.m. May 15, 1954.

WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP LICENSED PREMISES CLOSED AND FAILURE TO KEEP LICENSED PREMISES OPEN TO PUBLIC VIEW, IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against THOMAS GRECO 20 Van Houten Street Paterson 1, N. J., Holder of Plenary Retail Consumption License C-161, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Spitz & LaCava, Esqs., Attorneys for Defendant-licensee. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he (1) failed to have his licensed premises closed between 3:00 a.m., and 3:40 a.m., Sunday, March 28, 1954, and (2) failed during said hours to keep the interior of his licensed premises open to public view from the outside thereof; all in violation of an existing local regulation.

It appears from an examination of the file herein, that, on Sunday, March 28, 1954, two ABC agents observed from a vantage point outside, fourteen persons enter through the front door of defendant-licensee's premises between 3:00 a.m., and 3:35 a.m. Shortly thereafter the agents approached the premises, noted the blinds closed, and hearing voices within, tried, without success, to peer into the interior. They knocked on the front door, which was locked, and presently it was opened by John Greco, the licensee, who was recognized as the person who had admitted the other late callers. Identifying themselves, the agents entered and counted at the bar therein eighteen persons who hastily consumed their drinks and departed.

Defendant has no previous adjudicated record. I shall suspend defendant's license on charges (1) and (2) for fifteen and five days, respectively. Re Camarata & Volpe, Bulletin 874, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 5th day of May, 1954,

ORDERED, that Plenary Retail Consumption License C-161, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Thomas Greco, 20 Van Houten Street, Paterson 1, New Jersey, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m., May 12, 1954, and terminating at 3:00 a.m., May 27, 1954.

WILLIAM HOWE DAVIS Director.

11. DISCIPLINARY PROCEEDINGS - AIDING AND ABETTING UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against ALEXANDER TOBIAS T/a TOBY'S INN Corner Brand Rd. & Arkansas Ave. Dover Township P. O. Toms River, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Doyer.

Walter Waverczak, Esq., Attorney for Defendant-licensee. David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he knowingly aided and abetted the transportation of alcoholic beverages, viz., 6 cases each containing 24 12-ounce cans, or a total of 54 quarts of beer, by persons who held no license or permit therefor, contrary to R. S. 33:1-2, in violation of R. S. 33:1-52.

Investigation by this Division revealed that defendant had sold 6 cases of beer to Mike Estak, an elderly male customer, on February 18, 1954, and had assisted the latter in placing them in the trunk of an automobile owned by Donald --- (a minor) allegedly for transportation to a nearby farm. Each case contained 24 12-ounce cans of beer. Thus, the total which was transported was 54 quarts. In fact, the beer had been purchased for a number of minors for their personal consumption and was transported in the aforementioned minor's automobile to a hiding place.

R. S. 33:1-2 provides, among other things, that "... alcoholic beverages intended in good faith to be used solely for personal consumption may be transported in any vehicle from a point within this State to the extent of, not exceeding one-half barrel, or two cases containing not in excess of twenty-four quarts in all, of beer... within any consecutive period of twenty-four hours...."

The transportation was clearly in violation of the provisions of R. S. 33:1-2 and, under the circumstances, defendant is guilty of knowingly aiding and abetting the unlawful transportation, in violation of the provisions of R. S. 33:1-52. Re Anton's Wines & Liquors, Inc., Bulletin 898, Item 5; Re Garibaldi, Bulletin 944, Item 9.

The minimum penalty for an unaggravated first offense of this kind is a suspension of the license for ten days. Re Garibaldi, supra. However, defendant has a prior record. His license was suspended by the local issuing authority for five days, effective June 5, 1950, for sale of alcoholic beverages to minors; and again by the local issuing authority for fifteen days, effective December 1, 1952, for sale of alcoholic beverages to minors. Another license held by this same defendant, individually, for premises 147 E. Fourth Street, Lakewood, was suspended by the local issuing authority for fifteen days, effective January 4, 1953, for permitting a brawl upon the licensed premises and by the State Director for ninety days, effective

September 18, 1953, for permitting foul language on the licensed premises, sale of alcoholic beverages to an intoxicated person and sale of alcoholic beverages during prohibited hours in violation of State Regulations No. 38. Re Tobias, Bulletin 986, Item 4.

Under all the circumstances, including the prior record (cf. Re Csintala, Bulletin 964, Item 4) and the plea, I shall suspend defendant's license for a period of twenty-five days.

Accordingly, it is, on this 4th day of May, 1954,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Dover to Alexander Tobias, t/a Toby's Inn, Corner Brand Rd. & Arkansas Ave., Dover Township, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. May 10, 1954, and terminating at 2:00 a.m. June 4, 1954.

WILLIAM HOWE DAVIS
Director.

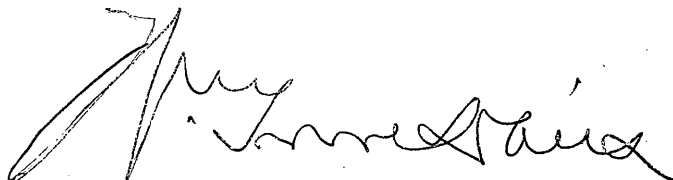
12. STATE LICENSES - NEW APPLICATIONS FILED.

Quinn Freight Lines, Inc.
720 Tonnele Avenue, Jersey City, N. J.
Application filed May 17, 1954 for Transportation License.

Forst Trucking Co., Inc.
255 West Street
New York 13, N. Y.
Application filed May 17, 1954 for Transportation License.

Beacon Fast Freight Co., Inc.
355 Bond Street, Brooklyn, N. Y.
Application filed May 18, 1954 for Transportation License.

Charles Fossani
"Henrietta"
Municipal Basin, Atlantic Highlands, N. J.
Application filed May 20, 1954 for Plenary Retail Transit License for 1954-55 fiscal year.



William Howe Davis
Director.