

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

BULLETIN 276

OCTOBER 31, 1938.

1. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - EMPLOYMENT OF UNQUALIFIED PERSONS.

In the Matter of Disciplinary Proceedings against
LENA DE FILIPO, trading as SHIP'S HAVEN INN, Brielle, New Jersey,
Holder of Plenary Retail Consumption License No. C-6, issued by the Borough Council of the Borough of Brielle.

CONCLUSIONS
AND
ORDER

Ira J. Katchen, Esq., Attorney for the Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging, in substance, that (1) on July 31, 1938 the licensee sold an alcoholic beverage to Margaret R., a minor of the age of twenty years, contrary to R.S. 33:1-77 (Control Act, Section 77) and Rule 1 of State Regulations No. 20; (2) on June 1, 1938 the licensee knowingly employed and had connected in a business capacity with the operation of her licensed premises six minors, without having first obtained special permits to cover said employment, contrary to R.S. 33:1-25 (Control Act, Section 22) and R.S. 33:1-26 (Control Act, Section 23) and Rule 1 of State Regulations No. 11; (3) on August 12, 1938 the licensee knowingly employed and had connected in a business capacity with the operation of her licensed premises three non-residents, without having first obtained special permits to cover said employment, contrary to R.S. 33:1-25 (Control Act, Section 22) and R.S. 33:1-26 (Control Act, Section 23) and Rule 1 of State Regulations No. 11.

As to the first charge: Investigators Grover and Tomaini, of this Department, visited the licensed premises on July 31, 1938 at about 1:30 A.M. Investigator Grover testified that, shortly after 2:00 A.M., six girls entered the premises and stood at the end of the bar; that Nicholas DeGiovanni, the bartender, questioned the girls as to their respective ages; that thereafter the bartender served four glasses of beer and two glasses of soda to those at the bar; that Margaret R., one of the girls, who was served with a glass of beer, appeared to him to be about seventeen years of age; that he and Investigator Tomaini questioned the girl, who at first insisted that she was over twenty-one but later admitted that she was under twenty-one years of age. Margaret R. testified that she was born November 14, 1917; that, at the time the bartender questioned her as to her age, she told him she was twenty-two; that the bartender asked her if she had anything to identify herself as being twenty-two years of age and she told him that she did not, whereupon the bartender served a glass of beer to her, a glass of beer to each of three others in the party, who were over twenty-one, and a glass of soda to the other two, who were under age. Margaret R. was arrested and subsequently fined \$5. and costs for misrepresenting her age.

The bartender, DeGiovanni, testified that, on the morning in question, the other bartender had requested him to "see if you want to serve these girls;" that he first explained to the group the difficulties for himself and his employer if in fact any of them was under age; that he questioned the girls individually as to their respective ages, and saw three drivers' licenses; that he did not obtain any identification from Margaret H. as to her age.

Since it appears from the testimony that the girl was actually under the age of twenty-one years, the licensee is guilty as charged. State vs. Koettgen, 89 N.J.L. 678 (E. & A. 1916).

There are mitigating circumstances which must be taken into consideration in fixing a penalty. The bartender evidently made a sincere attempt to protect himself and his employer. The Hearer reports that the girl, who was served, was youthful in appearance, and it appears that in fact both bartenders were doubtful as to her age and the age of the others in the party. The bartender who made the sale resolved that doubt in favor of his employer instead of following the safer procedure of refusing to serve. The license will be suspended for five days on the first charge.

As to the second charge: Investigators Holman and Chinery visited the licensed premises on June 1, 1938, at some time in the forenoon. Investigator Holman testified that they found an orchestra composed of boys eighteen and nineteen years of age practicing in the grill room; that Frank DeFilipo, who was then in charge of the licensed premises, signed the name of the licensee to an acknowledgment admitting that the boys had been unwittingly employed on the licensed premises and acknowledging receipt of application forms for special permits for the employment of said persons. The licensee testified the orchestra was there on trial; that the members of the orchestra were discharged the next day or the same day the Investigators were there, and that the orchestra had been there less than a week. It is admitted that no applications for the special permits were ever filed with this Department. I find the licensee guilty as to the second charge. License will be suspended for an additional two days because of this violation.

As to the third charge: On August 12, 1938 Investigators Holman and Chinery again visited the licensed premises. Investigator Holman testified that, in checking the employees, they found that three girls, who were employed on the licensed premises, gave their respective addresses as St. Louis, Mo., Michigan and Syracuse, N.Y.; that, at that time, Frank DeFilipo, who was again in charge of the licensed premises, signed the name of the licensee to an acknowledgment that said three persons had been unwittingly employed on the licensed premises and acknowledging, further, receipt of application forms for special permits for the employment of said persons to be filed with this Department within one week from date. On August 26, 1938 applications to employ the three girls were filed with this Department and permits were subsequently issued for two of them, the third having thereafter ceased her employment before the permits were issued.

In a memorandum of law filed subsequent to the hearing, the attorney for the licensee refers to the provisions of Chapter 297, P.L. 1938, amending R.S. 33:1-26, by adding thereto the following:

"And further provided that no permit shall be necessary for the employment in a bona fide hotel or restaurant of any person failing to qualify as to residence so long as such person shall not in any manner whatsoever serve, sell or solicit the sale of any alcoholic beverage or participate in the mixing, processing or preparation thereof."

Aside from the acknowledgment signed on August 12, 1938, wherein it is set forth that the three girls are employed as waitresses, there is no testimony that any of them served, sold or solicited the sale of alcoholic beverages. There is testimony given by the licensee that the licensed premises are conducted as a restaurant. While the duties of waitresses usually include the sale and service of alcoholic beverages, there is no testimony that these girls did in fact sell, serve or solicit such sales. Because of the absence of such testimony, the third charge is dismissed.

The license will be suspended for a total of seven days.

Accordingly, it is on this 23rd day of October, 1938

ORDERED that Plenary Retail Consumption License No.C-6, issued to Lena DeFilipo, trading as Ship's Haven Inn, by the Borough Council of the Borough of Brielle, be and the same is hereby suspended for seven (7) days, beginning October 28, 1938 at 4:00 A. M.

D. FREDERICK BURNETT
Commissioner

2. DISCIPLINARY PROCEEDINGS - UNION CITY - INADEQUATE PENALTIES AND WARNINGS NOT CARRIED THROUGH.

October 24, 1938.

Wilfred G. Turner,
City Clerk,
Union City, N. J.

My dear Mr. Turner:

I have before me staff report and your letter of October 13th enclosing copies of resolutions and orders, notices of suspension and summaries of disciplinary proceedings conducted by the Board of Commissioners on September 14, 1938, against

1. Hans Hansen, 707 Park Avenue
License #DL-8, Rev. #1338; File K-4046
2. Thomas Mullen, 421 43rd Street
License #C-188, Mun. Rev. #36
3. John Ligie, 401 32nd Street
License #C-135, Mun. Rev. #37

I note that Hansen was charged with sale of chilled beer in quantities less than 72 ounces and Mullen and Ligie with sale of alcoholic beverages during hours prohibited by local ordinance; that all three pleaded guilty, and the license of each was suspended for five days.

I appreciate the action of the Board of Commissioners in instituting the proceedings against Mullen and Ligie on its

own initiative and the imposition of the five-day penalties. In the case of Mullen, who, so far as my records indicate, has no previous record, the penalty is in accordance with that which I have consistently recommended for first offenses.

However, Liggie has already suffered one suspension of his license on charges of possession of underproof liquor. At the time his license was suspended for five days on that charge, I received staff report that he was warned by the Board of Commissioners that future violations would result in the revocation of his license. I noted this warning and commended your Board for it in my letter of April 5, 1937. In view of the warning then made, I am at a loss to understand the five-day suspension now imposed.

As to the suspension imposed upon the license of Hansen, I am frankly disappointed in its leniency. According to the staff report, he had, on two occasions prior to the actual buys, been warned that his license did not permit the sale of chilled beer. On both occasions there were found upwards of ten cases of beer in the refrigerator. Despite the two warnings, when my men made the second buy and identified themselves, they found 14 cases of beer in the refrigerator.

Hansen's flagrant disobedience of the warnings of my men and his persistent sales outside the scope of his license, indicate that he is defiant of his obligations as a licensee. Such a course of conduct would have amply justified revocation of the license.

I note that Hansen was warned that any future infractions of the law or regulations would result in his being dealt with more severely. I trust that this warning will mean more than it did in the case of Liggie.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - BAYONNE - PENALTIES THAT DO NOT COMMAND RESPECT RAISE QUESTIONS.

October 24, 1938.

John F. Lee,
City Clerk,
Bayonne, N. J.

My dear Mr. Lee:

I have before me staff report and your letter enclosing resolution and order in disciplinary proceedings conducted by the Board of Commissioners against John L. Gottko, 14 W. 23rd Street.

I note that the licensee was charged with (1) sale of alcoholic beverages during hours prohibited by local ordinance; (2) keeping the licensed premises open in violation of the same ordinance; and (3) sale of alcoholic beverages to persons actually of apparently intoxicated in violation of State Regulations 20, Rule 1. I further note after a finding of guilt on charges 1 and 3 that the license was suspended for one day, a Monday at that!

The report states:

"At 3:00 A.M., the hour at which sales should cease and the licensed premises be closed, all lights in the barroom except the night light behind the bar were extinguished, and the entrance door was locked. The investigators and other customers were permitted to remain. Drinks were purchased at various times, between 3:00 A.M. and 4:30 A.M. At 3:15 A.M., in response to a knock on the door, the licensee unlocked it and admitted three men. Alcoholic beverages were repeatedly served to one of them who was apparently intoxicated when he entered. He left the premises at 4:52 A.M. in a staggering condition. Alcoholic beverages were repeatedly sold to a woman who appeared thoroughly intoxicated and who finally fell asleep at the bar."

In view of my repeated recommendation of a minimum five-day suspension for sales during prohibited hours, I am disturbed to note a mere one-day suspension for this violation, aggravated as it was by sales to intoxicated persons. Shall I take it that the Board of Commissioners is unwilling to inflict penalties that will command respect for the law? Unless a right-about-face is promptly made and penalties commensurate with the offense imposed, I shall feel compelled to handle future disciplinary proceedings against Bayonne licensees direct.

According to my records, Gottko is the person as to whom it was alleged that one Peter P. Zuckerberg was a front during the 1937-38 license period. Synopsis of case in disciplinary proceedings was transmitted to the Board of Commissioners and hearing held on June 7th at which time decision was reserved. I have no record that decision has yet been made. In the meantime, however, I note that although the proceedings were pending against Zuckerberg and before decision was made, the Board of Commissioners permitted Zuckerberg to transfer the license to Gottko. Am I to take it that by permitting the disciplinary proceedings against Zuckerberg to die on the vine, the Board of Commissioners wishes me to understand that it tacitly consents to the fraud perpetrated by Zuckerberg?

It is my earnest recommendation that the Board of Commissioners review its handling of disciplinary proceedings in the past with a view to discharging its plain duty in the future.

I shall watch the outcome of future cases with keen interest.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PLEADINGS, PROCEDURE AND PENALTIES.

October 24, 1938.

Leon D. Falconer, Clerk,
Borough of Wanaque,
Haskell, N. J.

My dear Mr. Falconer:

I have before me staff report and your letter of August 20th enclosing minutes of special meeting of the

Mayor and Council on August 3rd, at which time they heard disciplinary proceedings against Anthony Pallavicini, Park Street, charged with sale of alcoholic beverages to minors.

I note that the licensee was found guilty and his license was suspended for two days.

I am somewhat disturbed to note that although I recommended that the proceedings be instituted charging sale to minors in violation of (1) R.S. 33:1-77 (Control Act, Sec. 77) and (2) State Regulations 20, Rule 1 and (3) Section 10 of borough ordinance adopted May 5, 1937, which prohibits sale to minors, the licensee was found guilty only of sale to minors in violation of the State Regulations and your local ordinance.

However, even though the Mayor and Council made no finding that the licensee was guilty of sale of alcoholic beverages in violation of the Control Act, still, the finding that a sale of alcoholic beverages to a minor occurred in violation of the regulation and the ordinance, necessarily involves a finding that the sale occurred in violation of the Act. Thus, the licensee has been adjudicated to have committed one violation of the Act. He has one strike on him. One more will bar him permanently from ever holding a license.

I also note that although I recommended that the five minors who were sold the alcoholic beverages be summoned as witnesses, apparently the Council made no effort to do so. In all cases involving sale to minors, it is extremely important that the minors who were sold the beverages appear before the issuing authority. It is only in that way that the appearance of the minors can be observed and the explanation of the licensee that they look to be of age, given the acid test. So, also, the licensee's story that only the largest and oldest appearing of the five were served, would be more credible if each of the five were called to testify whether or not he had been served.

I am disappointed in the meagre two-day suspension that was imposed. Sales to minors is one of the greatest problems of liquor control. Unless issuing authorities are alert to stamp them out by constant supervision and the fearless imposition of substantial penalties, the problem will remain unsolved.

It is my recommendation that in future cases of this kind, even for first offenses, a minimum penalty of ten days be imposed. If there are aggravating circumstances present, consideration could well be given to outright revocation of the license.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - PENALTIES - IMPOSING SUSPENSIONS AT THE TIME WHEN THEY HURT.

October 24, 1938.

Wilmer J. Tanier, Jr.,
Borough Clerk,
Somerdale, N. J.

My dear Mr. Tanier:

I have before me staff report and your letter of August 3rd enclosing copies of resolution and order, and notice of suspension dated the same day, in disciplinary proceedings conducted by the Mayor and Council against Joseph Gaines Moore, t/a Cotton Club, Lawnside Park, Evesham Avenue.

I note that the licensee was charged with sale of alcoholic beverages during hours prohibited by your local resolution and employing a person disqualified by reason of non-residence. I further note that he pleaded guilty and the license was suspended for five days.

Expressing no opinion on the merits because the case may come before me on appeal, I nevertheless wish that you would express to the Mayor and Council my appreciation for their prompt action. I am pleased to note that they were not impressed by the defense attorney's plea that the suspension be made operative after Labor Day because the licensee had several picnics booked before that time. All too often, issuing authorities impose suspensions operative during periods when the licensee is doing no business. The time to impose suspensions is when they hurt.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. RETAIL DISTRIBUTION LICENSEES - GIFT OF PAPER CUPS AS ALLEGED SANITARY SERVICE - DISAPPROVED.

Dear Commissioner Burnett:

We sell paper cups to the retail package stores. These retailers in turn have been giving 4 or 6 cups to a customer when they buy a pint of liquor.

Recently my salesmen have told me that these stores will be prevented from giving these cups away as heretofore because of a ruling from your inspectors.

These cups are not given as an inducement to buy liquor especially from that particular retailer but are furnished as a sanitary service to the customer the same as paper towels or tissue in a wash room.

I would appreciate receiving a ruling from your office as to whether this service is really beyond the tenets of the law or is permissible, so that I can notify my salesmen.

Very truly yours,

GROSSMAN PAPER & BAG CO.

October 24, 1938.

Grossman Paper & Bag Co.
Irvington, N. J.

Gentlemen:

Package goods licensees may sell only for off-premises consumption. A customer who takes his purchase home, as the law intends, doesn't need towels, or tissue, or paper cups to conduct his libationary exercises.

It is all out of order for licensees to furnish the inducements to consume liquor in streets, or alleys, or automobiles.

The distribution of paper cups with sales of liquor for off-premises consumption is disapproved.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

7. APPELLATE DECISIONS - SUDOL VS. WALLINGTON.

ADAM SUDOL,	:	
	:	
Appellant,	:	ON APPEAL
	:	
-vs-	:	CONCLUSIONS
	:	
MAYOR AND BOROUGH COUNCIL OF	:	
THE BOROUGH OF WALLINGTON,	:	
	:	
Respondent.	:	
	:	

Chandless, Weller & Selser, Esqs., by Julius Kramer, Esq.,
Attorneys for Appellant.
Louis A. Schiffman, Esq., Attorney for Respondent.
Saul R. Alexander, Esq., Attorney for Pearl Hodorowsky, an Objector.

BY THE COMMISSIONER:

This appeal is from a refusal to renew appellant's plenary retail consumption license for the current fiscal year for premises at #189 Main Avenue, Borough of Wallington, where appellant has conducted a tavern since July 1937.

Respondent contends that the refusal is valid because, in its opinion, appellant is personally unfit for a renewal. An objector to appellant's application, who has joined respondent in resisting the appeal, relies upon the same ground.

Proper liquor control dictates that an issuing authority be free, within the confines of a sound discretion, to determine that a licensee is unworthy of a renewal license. Thus, case after case has been decided where renewals have been denied, and upheld on appeal, because of previous misconduct of the licensee. White vs. Bordentown, Bulletin 130, item 4; Wellens vs. Passaic, Bulletin 134, Item 4; Schelf vs. Weehawken, Bulletin 138, item 10; Girard vs. Trenton, Bulletin 140, item 2; Greenberg vs. Caldwell, Bulletin 141, item 7; Brown vs. Newark, Bulletin 146,

item 9; Hagenbucher v. Somers Point, Bulletin 192, Item 6; American Legion v. Beverly, Bulletin 200, Item 14; Repici v. Hamilton, Bulletin 201, item 8; Hagerty v. Cranbury, Bulletin 202, item 2; Klotz v. Trenton, Bulletin 202, item 7; Callahan v. Keansburg, Bulletin 204, item 6; Kaplan v. Newark, and K. & K. Co., Inc. v. Newark, Bulletin 269, item 6.

However, the determination of unfitness must, in every case, be founded upon valid, concrete and substantial ground. Vuono v. Belleville, Bulletin 163, Item 12; Jones v. Absecon, Bulletin 218, Item 1; Zicherman v. Newark, Bulletin 227, Item 7.

In the present case, respondent and the objector first contend that appellant is unworthy of a renewal because, during the last fiscal year, he defrauded the objector of certain moneys.

However, the evidence fails to sustain this contention. It appears that in July or August 1937, appellant and the objector agreed to become partners in his tavern; that the objector accordingly advanced certain moneys which, with her knowledge, were invested in the business; that, however, respondent on August 16, 1937 refused an application for a transfer of appellant's license to them as partners; that this refusal resulted in a controversy between the appellant and the objector as to how the latter should be repaid the moneys advanced by her.

So far as appears, the affair is strictly a private controversy between appellant and the objector and is to be determined by the parties themselves or by the civil courts, and not by the respondent. It furnished no basis for a determination that appellant was unworthy of a renewal.

Respondent and the objector next contend that appellant is unfit for a license because of his criminal record. In 1922, and again in 1923, appellant was convicted of disorderly conduct and fined \$20.00 and \$25.00 respectively. In 1934, he was convicted of transporting a 5-gallon can of alcohol in violation of the Alcoholic Beverage Control Law, and fined \$100.00 and given a 10-day suspended sentence. He was also arrested (but not convicted) on various charges in 1924, 1928 and 1929.

Concededly, appellant is not mandatorily disqualified by his record. As to his convictions for disorderly conduct (which do not constitute convictions of a "crime", see Case 65, Bulletin 193, Item 11; Case 192, Bulletin 215, Item 3; Case 208, Bulletin 228, Item 4; Case 221, Bulletin 246, Item 7; Re Fieldsboro, Bulletin 253, Item 8. As to his conviction for violating the Alcoholic Beverage Control law, see Re Case 41, Bulletin 166, Item 5; Re Hearing 157, Bulletin 190, Item 12; Re Case 63, Bulletin 195, Item 1; Re Case 188, Bulletin 212, Item 2.

It is contended, however, that appellant's criminal record justifies respondent's determination of his unfitness as a reasonable exercise of discretion. This contention, normally of great weight, is without merit in the instant case for it utterly overlooks the fact that respondent granted appellant a license for the last fiscal year despite that very record.

Had respondent denied the original license, its denial, if based upon appellant's criminal record, would have been sustained. See Sylvester v. South Belmar, Bulletin 38, Item 15; Orofino v. Millburn, Bulletin 45, Item 15; Hodanish v. Trenton, Bulletin 121,

Item 6. But respondent, instead of denying that license, granted it and thus put appellant to the test of future behavior. Respondent may not now dig up appellant's old record after seemingly condoning it. True, if coupled with new misconduct, it may be reverted to as a link in the proof-chain of general unworthiness. But, standing alone, it does not prove present unworthiness for a renewal license. The only question is, what has been the appellant's behavior since the issuance of his original license. Zicherman vs. Newark, supra

Nor does the fact that respondent may have neglected heretofore to investigate appellant's fitness present any excuse for reverting to his old record. It was respondent's duty to inquire into that record on appellant's original application. See R.S. 33:1-24 (Control Act, Sec. 21). Having then failed to do so, it may not do so now, but, in common fairness to appellant who has invested time and money in reliance upon his previous license, must be taken to have condoned that record.

Respondent and the objector further contend that appellant is unworthy of a renewal because of the following facts: In answer to question #39 in his last year's and in his present application (viz., whether he had ever been convicted of any crime), he answered "No" despite his above mentioned convictions. In answer to question #40 of those applications (viz., whether he had ever been convicted of any violation of the Alcoholic Beverage Control law), he admitted his conviction in 1934 but erroneously described it as "December 24, 1933 - Fined \$100 in Passaic Police Court" without mentioning his 10-day suspended sentence.

The applications were prepared for appellant by the Municipal Clerk. There is no evidence that the answers to questions #39 and #40 were deliberately false. The omission of appellant's convictions as a disorderly person, when answering question #39, was proper inasmuch as disorderly conduct, as already indicated, is not a "crime" within the meaning of the Alcoholic Beverage Control law. The failure, in answer to that same question, to reveal his liquor conviction was obviously an innocent mistake since the conviction was readily admitted in answer to question #40. The misdescription of that conviction was also seemingly unintentional. Appellant admitted the really vital fact which would stand against him - viz., conviction of a liquor offense since Repeal. His admission carries a presumption of good faith.

It is settled that a wilfully false answer in an application, especially with reference to the applicant's criminally record, is ample ground for the denial of a license. Rayfield vs. Conover, Bulletin 65, Item 2; Lynch vs. Paterson, Bulletin 107, Item 1. However, where, as here, the error is unintentional, such a denial is not merited. Vuono vs. Belleville, supra.

The action of respondent is, therefore, reversed. Respondent is directed to issue a license to appellant forthwith as applied for, provided, however, that appellant shall first amend the answers to questions #39 and #40 of his pending application to conform to the actual facts.

D. FREDERICK BURNETT
Commissioner

Dated: October 24, 1938.

8. ADVERTISING - ANNOUNCEMENT BY BREWERY OVER THE RADIO OF BOOKLET AVAILABLE FREE OF CHARGE FROM RETAILERS, APPROVED.

October 24, 1938.

A. W. Lewin Co., Inc.,
Newark, N. J.

Gentlemen:

I have yours of October 10th and booklet "Those Were The Days" published by the Peter Breidt Brewing Co.

There is no objection to your announcing over the radio that the booklet is available, free of charge, from retailers. Nor is there any objection to its distribution by your dealers, provided there is no solicitation in violation of Regulations No. 20, Rule 3 (see Re Advertising Distributors of America, Bulletin 173, Item 17).

Whether you may refer to it over the radio is another matter. That depends entirely on what you're going to say. If you will submit the script, I shall be glad to consider it.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. WINERY LICENSES - NOT PERMISSIBLE TO PURCHASE WINE AND RESELL IT UNOPENED IN THE ORIGINAL CONTAINERS.

Dear Sir:

Mr. Paradiso, 257 No. 10th Street, your City, according to his own statement, is holder of Jersey Plenary V and Limited VL License.

He wishes to purchase from me imported Italian wine packed in wicker flasks of not over $\frac{1}{2}$ gallon, and which would have to be resold as is.

Will you kindly favor me with a ruling, as to whether I am permitted to sell this wine, against above mentioned licenses.

Very truly yours,

I. F. RONCALLO.

October 24, 1938.

Mr. I.F. Roncallo,
New York, N. Y.

My dear Mr. Roncallo:

My records show that Mr. Paradiso, 257 North 10th Street, Newark, holds Plenary Winery License V-10 and Limited Winery License VL-12.

A plenary winery licensee may purchase any fermented wines in bottles or otherwise, and rebottle the same for sale.

A limited winery licensee may purchase naturally fermented wines and fruit juices in bottles or otherwise, and rebottle the same for sale.

Mr. Paradiso has the authority to purchase wines from sources outside this State, subject, of course, to the laws of the place of sale. But since both licenses he holds entitle the holder to sell only "his products", it would be essential, if he purchased the wine, that it be rebottled by him before it could be resold. He would have no right to purchase the wine in flasks and resell it unopened in the original flasks. Such a transaction would require a wholesaler's license, which Mr. Paradiso does not have.

If the wine must be resold as is and will not permit of rebottling, it cannot be handled by Mr. Paradiso.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. WHOLESALERS - PREPARATION OF RETAILERS' TAX REPORTS BY WHOLESALERS OR THEIR SALESMEN, IS NOT PERMISSIBLE.

October 24, 1938.

Edwin Slurzberg and Co.,
Jersey City, N. J.

Gentlemen:

The preparation of retailer's tax reports by wholesalers or their salesmen, is not permissible, whether there is a charge for the service or not.

It is not, of course, that it gives the wholesaler what could be said to be a financial interest in the retailer. But it obligates the retailer. The very purpose is to tie him by fear or favor to the wholesaler. It is just that tie that Section 40 of the Act (R.S. 33:1-43, as amended by P.L. 1938, c. 147) was designed to eliminate.

If this were allowed, there would be no end to the favors wholesalers would seek to confer.

Anything of this sort that tends to make retailers under obligation to wholesalers is disapproved.

Very truly yours,

D. FREDERICK BURNETT
Comaissioner

11. SPECIAL WINE PERMITS FOR PERSONAL CONSUMPTION.

By time-honored custom the Italian people love to make their own wine. The State has no desire to interfere with this practice. It does, however, have to regulate this wine-making to be sure that no abuses creep into the privilege.

Toward this end the legislature allows each head of a family to manufacture not more than two hundred (200) gallons.

of wine within a permit year. This wine must be used by the family of the person securing the permit and must not under any circumstances be sold.

The permit costs one dollar (\$1.00). It must be secured before the wine is made. Apply to D. Frederick Burnett, Commissioner, State Department of Alcoholic Beverage Control, 744 Broad Street, Newark, New Jersey.

Dated: October 24, 1938.

D. FREDERICK BURNETT
Commissioner

12. DISCIPLINARY PROCEEDINGS - GAMBLING - 5 DAYS.

In the Matter of Disciplinary Proceedings against ANTHONY FARESICH, 159 - 16th Street, West New York, N. J. Holder of Plenary Retail Consumption License No. C-48, Issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control, Defendant-Licensee, pro se.

BY THE COMMISSIONER:

The licensee is charged with permitting card-playing for money upon his licensed premises, in violation of Rule 7 of State Regulations 20.

He pleads "guilty with an explanation". The facts, briefly, are: On Saturday night, October 1, 1938, between 10 and 11:30 o'clock, the defendant's manager permitted five regular patrons to engage in stud-poker for money at the tavern. At 10:30 p.m., Investigators Hendrickson and Arts of this Department entered the premises and discovered the game. They thereupon notified the West New York police, who, at 11:30 p.m., arrested the manager, the bartender, and the five card players for disorderly conduct, and confiscated two decks of cards and \$7.65 in cash found at the table where the game was being played.

The defendant's explanation is (1) that he was not at the tavern when the game was in progress and (2) that the game was merely a friendly pastime "to kill a few hours". As for the claim that he was away from the premises at the time, a licensee is strictly answerable for the misconduct of his employees upon the licensed premises whether he be present or not. Re Neidenberg, Bulletin 271, Item 4; Re Danker, Bulletin 274, Item 5. It is his responsibility to engage help that know the rules and scrupulously adhere to them. As for the claim that the game was but a sociable means of entertainment, there is only one way to prohibit gambling upon licensed premises, and that is to prohibit all of it.

This is the defendant's first conviction of any offense. His license will be suspended for five (5) days.

Accordingly, it is on this 25th day of October, 1938,

ORDERED that plenary retail consumption license #C-48, heretofore issued to Anthony Faresich, by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of five (5) days, commencing on October 31, 1938, at 3 a.m.

D. FREDERICK BURNETT,
Commissioner.

13. FAIR TRADE - REGULATIONS NO. 30 - AMENDED.

October 26, 1938.

MEMO. TO: COMMISSIONER BURNETT
FROM: N. L. JACOBS

Regulations No. 30 have been in effect two months and their operation has, in the main, been satisfactory. I believe, however, that the following changes should be adopted forthwith in order that the filing and distribution of fair trade contracts and price lists by manufacturers and wholesalers may be facilitated and the enforcement of the regulations aided:

(a) The present requirement that manufacturers and wholesalers mail copies of their fair trade contracts as executed should be eliminated. Any retailer may, upon request, readily obtain a copy of the contract from the manufacturer or wholesaler and in any event he may examine the copy on file at the offices of the Department.

(b) The regulations should be construed to permit price lists to be mailed via third class mail. I do not consider that the minor advantages of first class mail warrant the substantial additional expenditure.

(c) The regulations, in their present form, prohibit sales of alcoholic beverages in violation of fair trade prices duly published in the Department's bulletin; they should be enlarged to prohibit offers of sales at prices which vary from those so published.

In order to effect the foregoing changes Regulations No. 30 should be amended to read as follows, effective immediately:

REGULATIONS NO. 30

Rules Governing the Sale of Alcoholic
Beverages Subject to Fair Trade Contracts.

1. Any manufacturer or wholesaler who has heretofore entered into any Fair Trade contract with any licensed New Jersey retailer, which is now in force and provides that the retailer shall not resell any of the products affected thereby except at stipulated prices, shall file at the offices of the Department of Alcoholic Beverage Control within ten (10) days after the effective date of these rules (a) a copy of the contract as executed; (b) a price list (which may be embodied in the contract itself or in an accompanying document) which shall contain

an explicit statement of the prices stipulated and an adequate description of the articles to which they refer; and (c) an affidavit or affidavits establishing that copies of the price list have been served personally or by first or third class mail upon all retail licensees in New Jersey who are engaged in the sale of any of the products referred to therein.

2. Any manufacturer or wholesaler who shall hereafter enter into any such Fair Trade contract shall, within ten (10) days after its execution, file at the offices of the Department of Alcoholic Beverage Control (a) a copy of the contract as executed; (b) a price list in the form specified in Rule 1; and (c) an affidavit or affidavits to the same effect as provided in Rule 1.

3. Whenever any alteration is effected in any such contract or price list, the manufacturer or wholesaler shall, within ten (10) days thereafter, file at the offices of the Department of Alcoholic Beverage Control (a) a copy of the altered contract or price list; and (b) where the price list is altered, an affidavit or affidavits establishing that copies of the altered price list have been served personally or by first or third class mail upon all retail licensees who are engaged in the sale of any of the products referred to therein.

4. Whenever any such contract and price list or such altered contract or price list is filed at the offices of the Department of Alcoholic Beverage Control, summarized notice thereof shall be published as part of the official bulletins issued by the Department, and all licensees shall be chargeable with notice of the contents of contracts and price lists and alterations thereof so published.

5. Whenever any manufacturer or wholesaler has theretofore filed copies of Fair Trade contract and price list and an affidavit or affidavits of service pursuant to the preceding rules, and sells products which are subject to the provisions of the contract and price list to new customers holding retail licenses, he shall, within ten (10) days thereafter, file at the offices of the Department of Alcoholic Beverage Control an affidavit or affidavits establishing that copies of the price list have been served personally or by first or third class mail upon such new customers holding retail licenses.

6. Whenever any such contract and price list or altered contract or price list is filed and published as aforesaid, no retail licensee shall sell or offer for sale any product referred to therein except (a) at the price stipulated therein by the manufacturer or wholesaler; or (b) pursuant to and within the terms, conditions and limitations of a special permit first obtained from the Department of Alcoholic Beverage Control.

7. Application by a retail licensee for special permit authorizing the sale of any particular product affected by a Fair Trade contract without regard to the price stipulated therein will be entertained in the following situations: (a) where the product was actually possessed by the retailer prior to the execution of the Fair Trade contract; (b) where the retailer is actually closing out his stock for the purpose of discontinuing delivering such product; (c) where the product is damaged or deteriorated in quality and notice is given to the public thereof; and (d) where the sale of the product is by an officer acting under orders of a Court.

8. Violation of any of the foregoing rules shall consti-

tute ground for revocation or suspension of license.

APPROVED, October 27, 1938.

D. FREDERICK BURNETT,
Commissioner.

14. LICENSEES - REDUCTION OF NUMBER - PRINCIPLES APPLICABLE.

MUNICIPAL REGULATIONS - REGULATION AUTOMATICALLY DISQUALIFYING A LICENSEE WHO HAS SUFFERED ANY SUSPENSION FROM OBTAINING A RENEWAL, DISAPPROVED.

October 25, 1938.

James G. Scull,
City Clerk,
Somers Point, N. J.

My dear Mr. Scull:

I have before me proposed ordinance for the City of Somers Point, limiting the number of plenary retail consumption licenses (excepting renewals) to twelve, the number of plenary retail distribution licenses to one and the number of club licenses to four, and note the provision which automatically disqualifies any plenary retail consumption licensee who has suffered a suspension from obtaining a renewal, until the number of such licenses outstanding is less than twelve.

With twenty-two consumption licenses presently outstanding and a resident population, according to the last Federal Census, of but few more than 2,000, I can well appreciate the Council's thought that twelve places are enough. No one could say that the difficulty of finding a licensed place in Somers Point was overburdening. It is apparent that less, rather than more, licenses is your present need. Cf. Rabstein v. Trenton, Bulletin 218, item 9.

In principle, I am wholly in accord with your Council. If the number of licenses is to be cut down, the way to begin is to begin. There is no better way to bring about such reduction than to exclude those who have shown themselves unworthy by violating the law. As I said in Re Hinchcliffe, Bulletin 171, Item 7:

"I believe that the only proper test which can be applied in determining who shall be given renewals is to judge each licensee on his record. The object of the licensing system is to choose the best. This means the best in character, in conduct and in obedience to the law. Denials based on violations give the licensee no just cause for complaint because it is the result of his own misconduct. The essential thing is to adopt a fair and uniform policy, give due notice thereof to all and then follow it impartially without fear or favor. It is substantially the procedure I have heretofore outlined in connection with municipal policies designed to reduce the number of licenses outstanding. Cf. Re Renton, Bulletin 115, Item 8; Re Juska, Bulletin 116, Item 7; Re Trenton, Bulletin 119, Item 9. Through rigid enforcement of your rule, I believe you will eventually have in your City a group of licensees who will obey the law, keep good order and will be a credit to the City and a vindication of such policy."

But I am not so sure that as a practical matter, automatic disqualification is the best solution. I am afraid that the

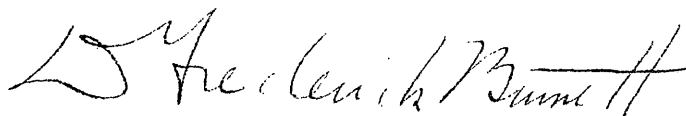
severity of the penalty will result, as you anticipate, in a failure on the part of the Council to suspend. It would mean that however trivial the offense, the renewal would have to be denied. The rule is too inflexible. It is not the proper way to impose penalties. No two offenses are exactly alike. The punishment should fit the crime.

The administration of the liquor law is not a matter of applying hard and fast rules. It is fraught with discretion. It is wholly within the sound discretion of the members of the Council whether any particular license should be renewed. Bellusci v. Newark, Bulletin 273, item 15; Lewis v. Orange et al, Bulletin 268, item 3; Re Bailey, Bulletin 172, Item 10. Such discretion is properly exercised, however, on the basis of the previous conduct of the licensee, on what he has done, rather than arbitrarily on the mere fact, without more, of his having suffered a suspension. It all depends on the facts. If denial is not warranted, the renewal should be granted. If the offense warrants denial, then, of course, the renewal should be denied. Case after case has been decided where renewals have been refused, on the merits, and upheld on appeal because of previous misconduct of the licensee. Kaplan v. Newark, Bulletin 269, item 6; Kirschhoff v. Millville and Beckett, Bulletin 254, item 8; Zicherman v. Newark, Bulletin 227, item 7 and the items cited therein.

I think, therefore, that you should omit the arbitrary rule requiring that in event of any suspension the renewal be denied. It is better that you have a free hand to impose suspensions and refuse renewals as the facts of each case warrant. Such omission need in no wise prejudice the Council's commendable efforts to reduce the number of licenses outstanding. The Council is wholly free to adopt as drastic a policy with respect to renewals as it wishes, provided only that it is reasonable in its conception and is applied uniformly to all. Your decisions will be more highly regarded for having been made on the merits, rather than on the operation of an arbitrary rule that calls the licensee either "safe" or "out" without regard to the nature of the particular offense committed.

Otherwise than as above, the ordinance appears to be in proper form.

Very truly yours,



Commissioner.