

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

BULLETIN 773

AUGUST 7, 1947.

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

BULLETIN 773

AUGUST 7, 1947.

1. DISCIPLINARY PROCEEDINGS - SALE BELOW FAIR TRADE MINIMUM - SALES TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HARRY GRIFFITH)
Sea Breeze on Delaware Bay Shore)
Fairfield Township)
P.O. Box 46, Fairton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Fairfield.)
-----)

Harry Griffith, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he (1) sold a bottle of alcoholic beverages below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30, and (2) and (3) 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.

On June 24, 1947, an eighteen-year-old minor was served two bottles of beer at the defendant's licensed premises by a barmaid. The latter also sold the minor a pint bottle of Carstairs White Seal Whiskey for the sum of \$2.18, whereas the fixed Fair Trade price was \$2.26. See Bulletin 765, page 2.

The defendant has no previous record. The usual ten-day penalty for each violation will be imposed, resulting in a total suspension for a period of twenty days. Five days will be remitted for the plea, leaving a net penalty of fifteen days.

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

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Fairfield to Harry Griffith, for premises at Sea Breeze on Delaware Bay Shore, Fairfield Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. August 4, 1947, and terminating at 2:00 a.m. August 19, 1947.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CLUB LIDO)
Evesham Avenue)
Lawnside, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-1, issued by the Borough Council of the Borough of Lawnside.)
-----)

Robert Burk Johnson, 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 June 21, 1947 and on divers days prior thereto, it sold alcoholic beverages to persons other than club members and their bona fide guests, in violation of Rule 8 of State Regulations No. 7.

The report of the investigation herein discloses that, on Saturday, June 21, 1947, an ABC agent purchased a glass of whiskey and a bottle of beer from a member of the club who was then acting as bartender. Before he was served, however, the bartender handed him a membership card and requested him to sign the club register. This was a mere subterfuge. Such practices will not be tolerated. Clubs which obtain a club license for a fee much lower than the fee fixed for consumption licensees must confine sales and service of alcoholic beverages strictly within the limited privileges conferred by the license.

In view of the fact that defendant has no previous adjudicated record, I shall suspend its license for fifteen days, less five days' remission for the plea entered herein, or a net suspension of its license for a period of ten days. Cf. Re First Ward Democrat Club, Bulletin 739, Item 1.

Accordingly, it is, on this 30th day of July, 1947,

ORDERED that Club License CB-1, issued by the Borough Council of the Borough of Lawnside to Club Lido, for premises Evesham Avenue, Lawnside, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. August 5, 1947, and terminating at 3:00 a.m. August 15, 1947.

ERWIN B. HOCK
Commissioner.

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

BULLETIN 773

AUGUST 7, 1947.

1. DISCIPLINARY PROCEEDINGS - SALE BELOW FAIR TRADE MINIMUM - SALES TO MINOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HARRY GRIFFITH)
Sea Breeze on Delaware Bay Shore)
Fairfield Township)
P.O. Box 46, Fairton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Fairfield.)
-----)

Harry Griffith, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging that he (1) sold a bottle of alcoholic beverages below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 30, and (2) and (3) 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.

On June 24, 1947, an eighteen-year-old minor was served two bottles of beer at the defendant's licensed premises by a barmaid. The latter also sold the minor a pint bottle of Carstairs White Seal Whiskey for the sum of \$2.18, whereas the fixed Fair Trade price was \$2.26. See Bulletin 765, page 2.

The defendant has no previous record. The usual ten-day penalty for each violation will be imposed, resulting in a total suspension for a period of twenty days. Five days will be remitted for the plea, leaving a net penalty of fifteen days.

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

ORDERED that Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Fairfield to Harry Griffith, for premises at Sea Breeze on Delaware Bay Shore, Fairfield Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. August 4, 1947, and terminating at 2:00 a.m. August 19, 1947.

ERWIN B. HOCK
Commissioner.

2. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CLUB LIDO)
Evesham Avenue)
Lawnside, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-1, issued by the Borough Council of the Borough of Lawnside.)

-----)
Robert Burk Johnson, 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 June 21, 1947 and on divers days prior thereto, it sold alcoholic beverages to persons other than club members and their bona fide guests, in violation of Rule 8 of State Regulations No. 7.

The report of the investigation herein discloses that, on Saturday, June 21, 1947, an ABC agent purchased a glass of whiskey and a bottle of beer from a member of the club who was then acting as bartender. Before he was served, however, the bartender handed him a membership card and requested him to sign the club register. This was a mere subterfuge. Such practices will not be tolerated. Clubs which obtain a club license for a fee much lower than the fee fixed for consumption licensees must confine sales and service of alcoholic beverages strictly within the limited privileges conferred by the license.

In view of the fact that defendant has no previous adjudicated record, I shall suspend its license for fifteen days, less five days' remission for the plea entered herein, or a net suspension of its license for a period of ten days. Cf. Re First Ward Democrat Club, Bulletin 739, Item 1.

Accordingly, it is, on this 30th day of July, 1947,

ORDERED that Club License CB-1, issued by the Borough Council of the Borough of Lawnside to Club Lido, for premises Evesham Avenue, Lawnside, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. August 5, 1947, and terminating at 3:00 a.m. August 15, 1947.

ERWIN B. HOCK
Commissioner.

3. APPELLATE DECISIONS - SUSSEX COUNTY TAVERN ASSOCIATION v. HAMPTON TOWNSHIP ET ALS. - ORDER OF DISCONTINUANCE.

SUSSEX COUNTY TAVERN ASSOCIATION,)
 Appellant,)
 -vs-)
 TOWNSHIP COMMITTEE OF THE TOWNSHIP)
 OF HAMPTON and GEORGE J. CAIROLI and)
 LENA CAIROLI, trading as G-J BAR,)
 Respondents)

ON APPEAL
CONCLUSIONS AND ORDER

William C. Egan, Esq., Attorney for Appellant.
Dolan and Dolan, Esqs., Attorneys for Respondents.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license to respondents George J. Cairoli and Lena Cairoli, for the 1946-47 licensing period, for premises situate on Swartswood-Branchville Road, Township of Hampton, Sussex County.

Through their respective attorneys, the parties hereto have agreed by a formal stipulation that the appeal be withdrawn. No cause appearing to the contrary,

It is, on this 29th day of July, 1947,

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

ERWIN B. HOCK
Commissioner.

4. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

The next official publication of minimum resale prices pursuant to Fair Trade rules (Regulations No. 30) will become effective on September 2, 1947. Price listings must be filed with the offices of this Department not later than Friday, August 8, 1947.

It is my decision that the publication shall combine all of the prices into one complete pamphlet superseding the June 1947 publication.

In submitting price lists to the Department for this complete publication, it is requested that:

(1) A complete schedule of all items offered for sale by manufacturers and wholesalers in this State shall be submitted. Exceptions will be considered if good cause be shown on or before Friday, August 8, 1947. However, listers must recognize the extreme disadvantage they impose upon retailers who are restricted in sales promotion of brands not listed in Fair Trade pamphlets. Pursuant to a Department ruling, brands of alcoholic beverages not listed in Fair Trade publications may not be price-advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in New Jersey.

(2) Traditional markups of 33-1/3% on spirits, 45% on cordials and liqueurs and 50% on wines should be maintained.

(3) Only manufacturers and wholesalers owning brands to be listed in Fair Trade, or wholesalers having specific written authorization from the owners of brands, may file price listings for publication in minimum resale price pamphlets.

(4) In accordance with a request by the Department in 1943, permissive discounts for case lot purchases of items listed in Fair Trade were dropped. However, shortages of supplies and other factors which prompted the Department's suggestion for abrogating case lot discounts in Fair Trade no longer exist. In order to afford New Jersey licensees an equitable position of competition with licensees in adjoining states, the Department will again accept price filings which set forth a permissive discount for case lot purchases of listed brands. Where listers of brands choose to restore a permissive case lot discount, the phrase "Discount of ____% permitted on case lot purchases" should be used.

Notification of the proportionate share of aggregate expenses involved in the publication of the complete pamphlet will be made to participating companies as soon as the pamphlet is mailed to all retail licensees.

Dated: July 31, 1947.

ERWIN B. HOCK
Commissioner.

5. COURT DECISIONS - NEW JERSEY SUPREME COURT - ESSEX HOLDING CORP. v. HOCK - COMMISSIONER SUSTAINED.

ESSEX HOLDING CORP., a New Jersey corporation,

Prosecutor,

-vs-

ERWIN B. HOCK, Deputy Commissioner of the State Department of Alcoholic Beverage Control of the State of New Jersey,

Respondent

NEW JERSEY SUPREME COURT
No. 225 May Term 1947.

Argued May, 1947; decided

On Certiorari.

For the prosecutor, Harold Simandl.

For the respondent, Walter D. Van Riper (Samuel B. Helfand and E. A. Tschupp, of counsel).

Before Justices Bodine, Heher and Wachenfeld.

The opinion of the court was delivered by

WACHENFELD, J.

The prosecutor is the holder of a plenary retail consumption license in the City of Newark and seeks to set aside the determination of the Deputy Commissioner of the State Department of Alcoholic Beverage Control finding that the prosecutor allowed, permitted and suffered the consumption of alcoholic beverages on its licensed premises by certain minors on December 15, 1945 in violation of Rule 1 of State Regulations No. 20 and suspending its retail consumption license for a period of twenty days.

The prosecutor operates a large hotel consisting of many sleeping rooms, public bar and restaurant, night club and a number of large rooms and halls which are rented on special occasions for weddings, banquets, etc.

On the night in question, December 15, 1945, there were a number of functions being held in the various banquet rooms in the prosecutor's establishment. In the Terrace Annex a Christmas banquet had been arranged for a certain paint company and when the reservation was sought an inquiry was made as to whether or not there were going to be any minors and the plant manager, who was arranging the affair, replied, "I doubt it."

The hotel's general manager, its banquet manager and maitre d'hotel were apparently all men of broad experience. The hotel employed only a few "regular" waiters and "extra" waiters were obtained from the local waiters' union to serve these various private parties which were held in the banquet rooms. The hotel was obliged to take the men assigned by the union having jurisdiction and they were warned by the hotel management against serving minors.

The customary procedure on these occasions was to place in the middle of the tables pitchers of beer to be consumed by the guests, but because of the difficulties which arose, the waiters on this occasion were instructed not to place the pitchers of beer on the tables but to put them on side tables so that the guests could help themselves. When the guests arrived between seven and seven-thirty p.m., they were "screened" to determine whether any minors were present and an inquiry was made of the committee in reference thereto and answered in the negative. Certain supervisory visits were made after the dinner was started in an attempt to enforce the instructions given and to see that there were no disorders or intoxication and that minors were not being served.

The testimony nevertheless revealed that ten minors of high school age attended this dinner and were seated at various tables with adults. The instructions given to some of the waiters apparently were disregarded and they placed pitchers of beer on the tables they were serving. Three of these minors were sixteen years of age and the fourth was seventeen and all four of them admitted consuming a number of glasses of beer. The evidence indicates that the waiters were not present when this occurred, and some of the youngsters, being conscious of the fact that they were not supposed to imbibe, "sneaked the beer when the older men were not looking." During the speech-making and presentations the waiters were excluded from the room.

The beer consumed by some of the patrons under age, together with their attempts to smoke cigars, brought about a physical discomfort which was noticeable and occasioned the investigation made by the agents of the Department of Alcoholic Beverage Control.

The Commissioner exonerated the prosecutor of the charge of selling to minors but found it guilty of permitting and suffering the consumption of alcoholic beverages upon licensed premises. To review that conclusion this writ was allowed.

Rule 1 of State Regulations No. 20 provides:

"No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

The prosecutor's main contention is that unless there was knowledge of the facts complained of, it does not come within the prohibition of "allowed, permitted or suffered."

In construing this section consideration must be given to the legislative intent, and inquiry should be made to determine if it concluded to make the offense complete without guilty knowledge. The lawmakers may declare an act criminal irrespective of the knowledge or motive of the doer of such act and the court has no right to insert an element not intended by the Legislature. Cedar Restaurant & Cafe Co. v. Hock, 135 N. J. L. 156.

The Legislature, amongst other things, in R. S. 33:1-73 provided:

"INTENTION AND CONSTRUCTION OF LAW

"This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed."

Although statutes penal in character must be construed strictly, the injunction of the Legislature as hereabove indicated enjoins us to the contrary in reference to liquor traffic. Kravis v. Hock, 135 N. J. L. 259. Our courts have held that 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 County, 50 N. J. L. 585; Hudson Bergen County Retail Liquor Stores Association v. Driscoll, Commissioner et al., 135 N. J. L. 502. Or as was said in Crowley v. Christensen, 137 U. S. 86, 34 L. Ed. 620:

"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."

The prevention of the sale to, or the consumption by, minors of liquor upon licensed premises is of the utmost importance. Its purpose is to protect our youth and thereby make more secure the foundation of society. The intent of the Legislature and the rules and regulations of the department governing enforcement clearly encompass the responsibility of the licensee for the consumption of alcoholic beverages by minors under the circumstances complained of.

Although the word "suffer" may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356, 23 A. (2d) 140.

The writ is therefore dismissed.

6. ACTIVITY REPORT FOR JULY, 1947

ARRESTS:

Bootleggers - - - - - 9

SEIZURES:

Still - over 50 gallons - - - - - 1
 Brewed malt beverages - gallons - - - - - 27.37
 Wine - gallons - - - - - 218.32
 Illicit alcohol - gallons - - - - - 1.95

RETAIL LICENSEES:

Total number of premises inspected - - - - - 823
 Total number of premises where alcoholic beverages were gauged - - - - - 397
 Total number of bottles gauged - - - - - 6373
 Total number of premises where violations were found - - - - - 111
 Total number of violations found - - - - - 130
 Type of violations found:
 Gambling devices - - - - - 32 Disposal permit necessary - - - - - 4
 Regulations #38 sign not posted - - - - - 23 Prohibited signs - - - - - 2
 Unqualified employees - - - - - 20 Other mercantile business - - - - - 1
 Illicit liquor - bottles - - - - - 14 Price pamphlet not displayed - - - - - 1
 Improper beer taps - - - - - 12 Other violations - - - - - 15
 Probable front - - - - - 6

STATE LICENSEES:

License applications investigated - - - - - 25

COMPLAINTS:

Complaints assigned for investigation - - - - - 382
 Complaints investigated, reviewed and closed - - - - - 396
 Investigations completed - not closed administratively - - - - - 11
 Investigations assigned, not yet completed - - - - - 255

LABORATORY:

Analyses made - - - - - 111
 "Shake-up" cases (alcohol, water and artificial color) - bottles - - - - - 5
 Liquor found to be not genuine as labeled - - - - bottles - - - - - 18

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - - 8
 Persons fingerprinted for non-criminal purposes - - - - - 365
 Identification contacts made with other enforcement agencies - - - - - 387
 Motor vehicle identifications via N.J.State Police Teletype - - - - - 12

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - - 14
 Violations involved:
 Sale during prohibited hours - - - - - 4 Permitting noise - - - - - 1
 Sale to minors - - - - - 4 Permitting prostitutes - - - - - 1
 Possession of mislabeled beer taps - - - - - 3 Sale outside scope of license - - - - - 1
 Permitting brawls on premises - - - - - 1 Possessing chilled beer (DL licensee) - - - - - 1
 Permitting immoral activity - - - - - 1
 Cases instituted at Department (1 case* also involves cancellation proceedings) - - - - - 14
 Violations involved:
 Possessing illicit liquor - - - - - 4 Permitting bookmaking on premises - - - - - 1
 Sale during prohibited hours - - - - - 4 Sale to minors - - - - - 1
 Fraud and front - - - - - 2* Sale to non-members by clubs - - - - - 1
 Sale outside scope of license - - - - - 2 Sale under Fair Trade price - - - - - 1
 Failure to afford view into premises during prohibited hours - - - - - 1

CANCELLATION PROCEEDINGS:

Cases instituted by Department - - - - - 1
 Violation involved: Issuance in violation of Limitation Law

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - - 31
 Appeals - - - - - 8 Seizures - - - - - 2
 Disciplinary Proceedings - - - - - 13 Applications for license - - - - - 2
 Eligibility - - - - - 6

PERMITS ISSUED:

Total number of permits issued - - - - - 5554
 Employment - - - - - 1801 Disposal of alcoholic beverages - - - - - 38
 Solicitors - - - - - 2717 Special wine - - - - - 26
 Social affairs - - - - - 348 Miscellaneous - - - - - 574

ERWIN B. HOCK
 Commissioner.

7. MANUFACTURERS AND WHOLESALERS OF MALT BEVERAGES REMINDED THAT THEIR PRODUCTS MAY BE LISTED IN FAIR TRADE PURSUANT TO STATE REGULATIONS NO. 30 - NOTICE HEREWITH THAT RULING PROHIBITING PRICE ADVERTISING OF ALCOHOLIC BEVERAGES NOT LISTED IN FAIR TRADE WILL BE AMENDED TO INCLUDE MALT BEVERAGES EFFECTIVE SEPTEMBER 2, 1947.

TO ALL MANUFACTURERS AND WHOLESALE DISTRIBUTORS OF MALT BEVERAGES:

In the wake of recent predatory price wars among retail licensees who sell malt beverages in original containers, it has been revealed that many manufacturers and wholesalers are under the erroneous impression that consumer prices of malt beverages are excluded from price listings in minimum resale price pamphlets issued in accordance with State Fair Trade Regulations No. 30.

The listing of brands and minimum resale prices of all alcoholic beverages, including malt beverages, is voluntary in New Jersey. Beers and malt beverages have never been excluded from the right to Fair Trade protection and enforcement pursuant to State Regulations No. 30. The only reason that malt beverages have not previously been listed in minimum resale price pamphlets is that manufacturers and wholesalers have chosen not to avail themselves of Fair Trade contracts and listings.

The Department, in accordance with the aforesaid regulations, will accept Fair Trade listings and contracts establishing minimum resale prices of malt alcoholic beverages should manufacturers and wholesalers wish to file.

The next complete minimum resale price publication will become effective on September 2, 1947. Manufacturers and wholesalers of malt beverages desiring to list their brands and minimum consumer prices, pursuant to Fair Trade contracts, may submit their listings not later than Friday, August 8, 1947.

Manufacturers and wholesalers of malt beverages are placed on notice that the Department's special ruling prohibiting price-advertising of alcoholic beverages not listed in Fair Trade publications, will be amended effective September 2, 1947, to include malt beverages. In effect, therefore, any alcoholic beverages, including malt beverages, which are not listed in the next forthcoming complete minimum resale price publication effective September 2, 1947, may not be price-advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in this State thereafter.

For your information and guidance, I refer you to State Regulations No. 30 (Fair Trade) in the pamphlet of Rules and Regulations, and urge you to acquaint yourselves thoroughly with the provisions.

ERWIN B. HOCK
Commissioner.

Dated: July 31, 1947.

8. DISCIPLINARY PROCEEDINGS - SALE OFF LICENSED PREMISES - HEREIN OF PERAMBULATING LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HENRY L. KASER)
T/a COLES MILL TAVERN)
Coles Mill Road)
Franklin Township (Gloucester)
County)
P.O. Franklinville, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-9, issued by the Township Committee of Franklin Township.)
-----)

Henry L. Kaser, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charges:

"1. On June 28, 1947, and prior thereto, you sold alcoholic beverages off your licensed premises, on the public highway in the Wilson Lake section of Clayton, N. J., contrary to R. S. 33:1-26; in violation of R. S. 33:1-2.

"2. On the occasions and at the place aforesaid, you peddled, bartered and otherwise sold alcoholic beverages from a vehicle, in violation of Rule 3 of State Regulations No. 17.

"3. On June 28, 1947, you used your licensed vehicle bearing transportation insignia to deliver alcoholic beverages without the driver of the vehicle having in his possession bona fide invoices or manifests stating the names of the purchaser of each item of alcoholic beverages and the kind and quantity of the alcoholic beverages being delivered in said vehicle to each of said purchasers; in violation of Rule 3 of State Regulations No. 17."

The departmental file in the instant case discloses that on June 28, 1947, defendant sold a case containing twenty-four 12-ounce bottles of beer to an ABC agent. This transaction took place from defendant's truck which was parked on a public street.

It appears that defendant loaded his truck with assorted brands of liquor and beer to be sold to occupants of various cottages located some distance from his licensed premises. Defendant claims that he had standing orders from these customers and, in addition thereto, carried other brands of alcoholic beverages for the accommodation of these patrons in the event they wished other brands or a greater quantity than was usually purchased. This method of doing business is contrary to law and the rules and regulations of the Department of Alcoholic Beverage Control. There can be no perambulating licensed premises from which alcoholic beverages may be sold. Re Pinto, Bulletin 639, Item 4.

I shall suspend defendant's license for ten days, less five days' remission for the plea entered herein, or a net suspension of five days. Re Pinto, supra.

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

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of Franklin Township to Henry L. Kaser, t/a Coles Mill Tavern, Coles Mill Road, Franklin Township (Gloucester County), be and the same is hereby suspended for a period of five (5) days, commencing at 3:00 a.m. August 11, 1947, and terminating at 3:00 a.m. August 16, 1947.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OFF LICENSED PREMISES - HEREIN OF PERAMBULATING LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ABRAHAM POMERANTZ, ROBERT FRIED)
and DAVID D. RUDDY)
T/a MT. VERNON DELICATESSEN)
86A Mt. Vernon Place)
Newark 6, N. J.,)

CONCLUSIONS
AND ORDER.

Holders of Plenary Retail Distribution License D-103, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Fox and Schackner, Esqs., by Donal C. Fox, Esq., Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants plead guilty to the following charges:

"1. On July 2, 1947, and prior thereto, you sold alcoholic beverages off your licensed premises, on the public highway in the vicinity of 175-177 Norman Road, Newark, N.J., contrary to R. S. 33:1-26; in violation of R. S. 33:1-2.

"2. On the occasions and at the place aforesaid, you peddled, bartered and otherwise sold alcoholic beverages from a vehicle, in violation of Rule 3 of State Regulations No. 17.

"3. On July 2, 1947, you used your licensed vehicle bearing transportation insignia to deliver alcoholic beverages without the driver of the vehicle having in his possession bona fide invoices or manifests stating the names of the purchaser of each item of alcoholic beverages and the kind and quantity of the alcoholic beverages being delivered in said vehicle to each of said purchasers; in violation of Rule 3 of State Regulations No. 17."

The Department file in the instant case discloses that, on July 2, 1947, Abraham Pomerantz, one of defendant-licensees, sold two 12-ounce cans of beer to an ABC agent. The sale in question took place from an automobile parked on a public highway in the City of Newark. Pomerantz at the time was engaged in selling beer to workmen employed on a construction project located a short distance from defendants' licensed premises.

South Amboy is a city with less than 12,000 inhabitants. Under the provisions of P. L. 1897, ch. 30, the Mayor has the power to veto any resolution of the Common Council and, if he vetoes a resolution, a vote of two-thirds of all the members of the Council is necessary to override his veto. See R. S. 40:108-1.

Appellant alleges that, after he filed his application, he was assured by the individual members of the Common Council that his application would be granted, and also that he proceeded with the erection of a building between April 22, 1947 and May 9, 1947. Even if this be so, it is well established that a local issuing authority acts only at a formal meeting and is not bound by any prior informal remarks made by any of its members. Stein v. West New York, Bulletin 101, Item 7; Hobbs v. Lower Penns Neck, Bulletin 372, Item 6; Neri v. Brick, Bulletin 743, Item 1.

The appellant is also presumed to know the law which confers the veto power upon the Mayor and, hence, he proceeded at his own risk between April 22, 1947 and May 9, 1947. Appellant also alleges that a fourth Councilman, who failed to appear at the meeting held on May 9, 1947, had promised to furnish the necessary vote to override the Mayor's veto. This testimony is denied by the fourth Councilman, who originally voted against the granting of the application and who testified at the hearing herein that he is still opposed to the granting of the application.

The records of this Department show that thirty-six plenary retail consumption licenses were outstanding in South Amboy when appellant's application was denied; and the city had a population of but 7,802 according to the 1940 Federal census. Regarding the merits, it appears from the record before me that appellant has shown no public need for the issuance of an additional plenary retail consumption license in South Amboy or, more particularly, for an additional license at appellant's premises. The evidence reveals the existence of a plenary retail consumption license for premises on Highway No. 35 almost directly opposite appellant's premises, and the existence of other nearby plenary retail consumption licenses on said highway in an adjoining municipality. After considering all the evidence, I conclude that appellant has not sustained the burden of establishing that the action of respondent was erroneous.

Furthermore, and apart from the merits, issuance of the new license applied for is prohibited by the State Limitation Law (Chapter 94 of the Laws of 1947). See Depadova v. Little Falls, Bulletin 770, Item 9.

The respondent's action must be affirmed.

Accordingly, it is, on this 4th day of August, 1947,

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

ERWIN B. HOCK
Commissioner.

11. APPELLATE DECISIONS - SCOTT v. HARMONY TOWNSHIP.

THOMAS SCOTT,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF HARMONY,)
)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Saul N. Schechter, Esq., Attorney for Appellant.
No appearance on behalf of Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for the fiscal year 1946-1947 for premises known as Scott Mountain Inn, located on Montana Road in the Township of Harmony.

The application was denied on April 12, 1947. The petition of appeal was filed with the State Commissioner on May 12, 1947, and hearing held thereon on May 27, 1947. Harmony Township, according to the 1940 Federal census, has a population of 1,465. There are presently six plenary retail consumption licenses issued and outstanding in the township.

The appellant testified that if granted a license he intended to renovate and improve the premises so that it would be available for use as a hotel and restaurant. Appellant produced several witnesses who testified that there is a need for a place in the community such as that described by appellant.

Several objectors appeared and voiced their objections to the issuance of another license in the community. All were practically in agreement that the condition of the building as it now exists prevents its use as a restaurant and hotel. According to the testimony of Ruth May, the premises in question are located on a dirt road and the place is in a run-down condition. The objectors were also in agreement that there is no need for or convenience to be served by the issuance of a license for the premises in question.

The action of the members of the respondent Township Committee was unanimous in denying the license sought by appellant.

The burden is upon the appellant to show that the action of respondent in denying the license was erroneous. Under the circumstances, I conclude that the appellant has not established that the members of the Township Committee acted in an arbitrary or unreasonable manner in denying his application for a license.

Furthermore, apart from the merits, issuance of the license applied for is prohibited by the State Limitation Law -- Chapter 94 of the Laws of 1947. (See DePadova v. Little Falls, Bulletin 770, Item 9).

Accordingly, it is, on this 4th day of August, 1947,

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

ERWIN B. HOCK
Commissioner.

12. DISQUALIFICATION - CARRYING CONCEALED WEAPONS, UNDER CIRCUMSTANCES HEREIN, DOES NOT INVOLVE MORAL TURPITUDE - NO ORDER TO LIFT REQUIRED.

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

CONCLUSIONS

Case No. 324.
-----)

BY THE COMMISSIONER:

Petitioner was convicted on January 26, 1931 of the crime of carrying concealed weapons and as a result thereof was sentenced to twelve months in a county penitentiary by a Judge of a Court of Quarter Sessions. At the expiration of ten months of the sentence imposed, petitioner was released from the penal institution. Again, on May 6, 1942, petitioner was convicted of possession of lottery slips. He was sentenced to a county penitentiary by a Judge of a Court of Special Sessions for a period of two months as a result of this conviction.

Petitioner now seeks removal, pursuant to R. S. 33:1-31.2, of the statutory disqualification that may exist by reason of these convictions. Question arises at the outset whether either of the offenses of which petitioner stands convicted is a crime involving moral turpitude. If not, there is no disqualification to be removed.

The crime of carrying a concealed weapon may or may not involve the element of moral turpitude, depending upon the circumstances. When the crime stands alone, unattended by other crimes or intent to commit other crimes, it does not ordinarily involve moral turpitude. Re Case No. 265, Bulletin 307, Item 12; Re Case No. 169, Bulletin 193, Item 3.

Investigation by this Department discloses that petitioner was apprehended by police officers while a passenger in an automobile. The police searched petitioner and found that he had a loaded revolver. Petitioner thereafter was immediately placed under arrest and as a result of the possession of the revolver he was charged with and convicted of carrying concealed weapons. Under the circumstances, the crime of carrying a concealed weapon, standing alone, does not appear to involve moral turpitude.

In so far as the conviction for possession of lottery slips is concerned, I am satisfied that this did not involve moral turpitude.

I therefore find that petitioner has never been convicted of a crime involving moral turpitude. Therefore, no order removing disqualification because of a conviction is required. Re Case No. 131, Bulletin 451, Item 7; Re Case No. 77, Bulletin 387, Item 9; Re Case No. 68, Bulletin 364, Item 3.

ERWIN B. HOCK
Commissioner.

Dated: August 5, 1947.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Boyce Motor Lines, Inc.
237 Colden St., Jersey City, N. J.
Application for Transportation License filed July 30, 1947.

The Barry Wine Company, Inc.
54 Park Place, New York, N. Y.
Application for Wine Wholesale License filed August 1, 1947.

Walter Jankowitz
269 Silzer St., Perth Amboy, N. J.
Application for Transportation License filed August 4, 1947.

Blatz Brewing Company
1120 North Broadway, Milwaukee, Wisconsin.
Application for Limited Wholesale License filed August 6, 1947.

William Derasmo and Edward Terrazzi
145 - 34th St., Union City, N. J.
Application for Transportation License filed August 6, 1947.

Application for Transfer of Plenary Wholesale License filed
August 7, 1947 from

Abbott Distributors
Room 407, 784-786 Broad St., Newark, N. J., to

Samuel and Henrietta Packman, t/a Packman Bros.
310-318 North Indiana Ave., Atlantic City, N. J.

Midlands Distilling Co., Inc.
223-25-27-29-31 Orient Ave., Jersey City, N. J.
Application for Rectifier and Blender License filed August 7, 1947.

ERWIN B. HOCK
Commissioner.

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

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

CONCLUSIONS
AND ORDER

Case No. 466)
-----)

BY THE COMMISSIONER:

In a prior proceeding, decided on May 29, 1946, I ruled that the crime of robbery of which petitioner was convicted in February 1933 involved the element of moral turpitude. Although petitioner had not been convicted of any other crime, the petition for relief filed at that time was denied because petitioner had been working on licensed premises despite a warning that he was ineligible to be so employed.

The petitioner has reapplied to have his disqualification removed. The petitioner has not been arrested or convicted since the denial of his former petition, and there is no evidence to indicate that he has worked on licensed premises since January 10, 1946. Petitioner testified that he did odd jobs for a period of the time and that, from February 1947 to date, he has been employed as a carpenter's helper.

Petitioner produced three character witnesses who have testified that he bears a reputation for being a law-abiding citizen in the community in which he resides. Under the circumstances, I have decided to grant the relief sought.

Accordingly, it is, on this 5th day of August, 1947,

ORDERED that petitioner's statutory disqualification because of the conviction described in Bulletin 713, Item 6, be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.

ERWIN B. HOCK
Commissioner.

15. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GEORGE CARRIGAN)
13 Hamilton Avenue)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-270, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
-----)

George Carrigan, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he sold and served alcoholic beverages during prohibited hours, in violation of a local ordinance.

On Sunday, July 13, 1947, at about 10:45 a.m., ABC agents observed three men being served with beer on the licensed premises. The local ordinance prohibits the sale and service of alcoholic beverages between the hours of 3:00 a.m. and 1:00 p.m. on Sundays.

In the absence, as here, of any prior adjudicated record, the usual fifteen-day suspension will be imposed. Five days will be remitted for the plea, leaving a net suspension of defendant's license for a period of ten days. Re Drwiegá, Bulletin 713, Item 11.

Accordingly, it is, on this 5th day of August, 1947,

ORDERED that Plenary Retail Consumption License C-270, issued by the Board of Alcoholic Beverage Control of the City of Paterson to George Carrigan, 13 Hamilton Avenue, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. August 12, 1947, and terminating at 3:00 a.m. August 22, 1947.

Erwin B. Hock
Commissioner.