

BULLETIN 863

JANUARY 3, 1950.

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - STIEGLER ET ALS. v. MONTVILLE TOWNSHIP AND KUFTA.
2. MORAL TURPITUDE - COMMERCIALIZED GAMBLING MAY OR MAY NOT INVOLVE MORAL TURPITUDE - UNDER FACTS OF CASE APPLICANT HELD TO BE NOT INELIGIBLE TO BE EMPLOYED ON LICENSED PREMISES.
3. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.
4. APPELLATE DECISIONS - LEEDIE v. TRENTON AND TANKEL.
5. DISCIPLINARY PROCEEDINGS (Jersey City) - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
6. DISCIPLINARY PROCEEDINGS (Passaic Township) - PERMITTING BOOK-MAKING AND GAMBLING ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (New Brunswick) - PERMITTING LICENSED PREMISES TO BE USED IN CONNECTION WITH ILLEGAL ACTIVITY RESULTING IN A CONVICTION IN CRIMINAL PROCEEDINGS (POSSESSION OF SLOT MACHINE) - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
8. DISCIPLINARY PROCEEDINGS (Passaic Township) - PERMITTING BOOK-MAKING AND GAMBLING ON LICENSED PREMISES - NO REMISSION FOR PLEA OF NON VULT ENTERED ON DATE OF HEARING - LICENSE SUSPENDED FOR 20 DAYS.
9. DISCIPLINARY PROCEEDINGS (Lodi) - HOSTESSES - SALE OF ALCOHOLIC BEVERAGES AND FAILURE TO KEEP LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF MUNICIPAL REGULATION - FAILURE TO DISPLAY LICENSE CERTIFICATE IN PLAIN VIEW ON THE LICENSED PREMISES IN VIOLATION OF RULE 16 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 90 DAYS.
10. DISCIPLINARY PROCEEDINGS (Newark) - CHARGE OF LEWDNESS AND IMMORAL ACTIVITIES DISMISSED - HOSTESSES - LICENSE SUSPENDED FOR 20 DAYS.
11. DISCIPLINARY PROCEEDINGS (North Bergen) - SALE OF ALCOHOLIC BEVERAGES BEYOND TERMS OF LICENSE - AIDING AND ABETTING NON-LICENSEE TO SELL ALCOHOLIC BEVERAGES - PERMITTING MINORS TO CONSUME ALCOHOLIC BEVERAGES ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
12. STATE LICENSES - NEW APPLICATIONS FILED.
13. DISCIPLINARY PROCEEDINGS (Woodbury) - SALES TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.



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

BULLETIN 863

JANUARY 3, 1950.

1. APPELLATE DECISIONS - STIEGLER ET ALS. v. MONTVILLE TOWNSHIP AND KUFTA.

HAROLD R. STIEGLER, WARD WITTY,)
WILLIAM MUDROCK, JERRY BENTLEY,)
JOHN LINDA, BRUNO KOWALSKI,)
SAMUEL FOGELSON and FLORENCE)
FOGELSON,)
Appellants,) ON APPEAL
CONCLUSIONS AND ORDER

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF MONTVILLE, and FRANK G. KUFTA,)
trading as KUFTA'S PACKAGE STORE,)
Respondents.)

Scerbo, Porzio & Kennelly, Esqs., by Ralph Porzio, Esq., Attorneys
for Appellant Harold R. Stiegler.
Sidney Simandl, Esq., Attorney for Appellants Ward Witty, William
Mudrock, Jerry Bentley, John Linda,
Bruno Kowalski, Samuel Fogelson and
Florence Fogelson.
David Young 3rd, Esq., Attorney for Respondents.

BY THE DIRECTOR:

This is an appeal from the issuance of a plenary retail distribution license to the respondent, Frank G. Kufta, for premises located on Main Road in the Township of Montville, Morris County, N. J.

The history of this litigation dates from a period more than two years ago when the respondent Committee denied a distribution license to one Fogelson for premises located several miles from that involved in this case. Such denial was affirmed on the ground that the 16 plenary retail consumption licenses already outstanding provided more than sufficient licensed establishments to cater to the needs of the local residents. See Bulletin 780, Item 10, decided October 20, 1947. It was there said:

"With a population of 3,207 according to the last Federal census, the township has outstanding 16 plenary retail consumption licenses, or one such license for every 200 persons residing there. The mere recital of these figures amply supports the reasonableness of the respondent's policy against the issuance of any additional licenses in the township."

In May 1948, the respondent Committee granted a distribution license to John Kufta, brother of the individual respondent herein, for the very same premises involved in these proceedings. Upon appeal, I reversed the issuance of such license upon the ground that the evidence there presented failed to indicate any justification for a deviation from the Committee's stated policy referred to in the above quotation. See Bulletin 830, Item 11, decided January 24, 1949.

Despite this background, the respondent Committee, by a vote of 2 to 1, granted the instant application. It is immediately apparent that, unless there has been a material change in the existing circumstances, the issuance of the present license cannot be sustained.

No citations are necessary to support the established proposition that a local issuing authority may not arbitrarily discriminate between applicants and make fish of one and fowl of another. Such action would be tantamount to an abuse of the discretion residing initially in the local issuing authority to determine the proper action to be taken with respect to an application for a liquor license.

On the other hand, before I may reverse the action of the issuing authority, the record must convincingly demonstrate that such an abuse of discretion exists and, in reaching my decision, I may not substitute my personal views for those of the individual members of the issuing authority.

With these principles in mind, I have carefully examined the complete record in this case and have come to the conclusion that no such abuse of discretion exists in this case. The two favoring Committeemen testified that, when the John Kufta license was cancelled, they were besieged with protests against such cancellation by persons who had been patronizing the premises and, for the first time, they became convinced that a substantial sentiment exists in the municipality for an exclusive distribution premises where patrons could purchase their "package" liquors. As one of them stated, "The public has a demand for a place to go to get alcoholic beverages and they do not care about going into the taverns to get it, that is a good percentage of them, they prefer to stop at the package store whereby they can get what they want and be on their way." And again, "Ever since the license was taken away from John Kufta, that is really when the people drew it to our attention that they were so surprised and wished something could be done to have the distribution license." The other favoring Committeeman testified, "During that seven months Mr. Kufta had been opened, there were people who came to me and told me they never realized a package store was so convenient and necessary to the Township." Similar testimony was given by four local residents.

The opinion expressed by the Committeemen assumes added force when it is considered that no other distribution license exists in the entire municipality. Indeed, under the so-called statewide Limitation Law (P.L. 1947, c. 94) the Township, with a population of only 3207, may not issue more than one distribution license. As former Commissioner Burnett said in Bambo v. Belleville et al., Bulletin 353, Item 6:

"A package goods license fills a need quite distinct from that supplied by the tavern and it may well be an important matter of social convenience and necessity that such a license be granted."

As appears above, the issue herein is whether the respondent Committee abused its discretion in granting the instant application. In view of the evidence presented, it was within the sound discretion of the Committee to determine whether the local sentiment for a licensed establishment operating under a distribution license was a sufficient reason to approve the application. The issue is, perhaps, a debatable one but, after a careful examination of the entire record, I cannot find that no reasonable justification exists for the determination of the Committee and, accordingly, I have no alternative other than to sustain its action.

Accordingly, it is, on this 16th day of December, 1949,

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

ERWIN B. HOCK
Director.

2. MORAL TURPITUDE - COMMERCIALIZED GAMBLING MAY OR MAY NOT INVOLVE MORAL TURPITUDE - UNDER FACTS OF CASE APPLICANT HELD TO BE NOT INELIGIBLE TO BE EMPLOYED ON LICENSED PREMISES.

December 16, 1949.

Re: Case No. 607

On October 2, 1947, applicant was fined \$1,000.00 by a Judge of a Court of Special Sessions as a result of his plea of guilty to a charge of bookmaking brought pursuant to R.S. 2:135-3. It appears that applicant was employed by another person in connection with this illegal enterprise. The question is whether or not a single conviction of the crime of bookmaking involves moral turpitude.

The law-enforcement officer who made the raid on applicant's establishment at the time in question, testified as follows: "***It is what we would call a small place. There were no boards on the walls and there were no loud speakers, a small radio, two tables and a few chairs, but there was nothing that would indicate that it was a high-grade establishment for bookmaking. It was a small place in a small town."

The officer further testified that after the raid he learned that applicant was "only a small fry" working for a large bookmaker.

Commercialized gambling may or may not involve moral turpitude. In Case No. 239, Bulletin 305, Item 9, it was held that the conviction of the head of a ring conducting gambling establishments, where the activities of the ring were attended by methods of violence, did involve moral turpitude. In Case No. 283, Bulletin 337, Item 14, the conviction of a "lieutenant" of the real operator of a lottery conducted on a large scale was held to involve moral turpitude. So also multiple convictions showing a reckless disregard for law were held to warrant the conclusion that the last offense involved moral turpitude. See Re Case No. 246, Bulletin 293, Item 10; Re Case No. 145, Bulletin 468, Item 2. In the instant matter none of the aforesaid elements is found.

I am of the opinion that the single crime of which petitioner was convicted did not involve moral turpitude. Cf. Re Case No. 220, Bulletin 263, Item 8; Re Case No. 378, Bulletin 460, Item 1; Re Case No. 143, Bulletin 500, Item 6; Re Tumulty, Bulletin 558, Item 2; Re Case No. 601, Bulletin 796, Item 12.

Although, in my opinion, applicant is not disqualified by statute because of the aforesaid conviction, nevertheless, if applicant applies for a liquor license, it will be the responsibility of the local issuing authority to determine to its satisfaction whether applicant is a fit person to be associated with the alcoholic beverage industry.

Clarence E. Kremer
Attorney.

APPROVED:
ERWIN B. HOCK
Director.

3. 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. 800)
-----)

BY THE DIRECTOR:

On September 22, 1938, petitioner was ruled ineligible to obtain a solicitor's permit because of his convictions of crimes involving moral turpitude. Re Case No. 230, Bulletin 272, Item 3. On October 18, 1949, petitioner filed a petition to have his disqualification removed. At the hearing it was disclosed that petitioner had been working on licensed premises for a period of approximately five years despite the above mentioned ruling that he was ineligible to do so. His petition was denied with leave to file a new petition for removal of the disqualification then existing after December 18, 1949. Re Case No. 800, Bulletin 861, Item 3.

The petitioner has reapplied to have his disqualification removed. The evidence presented herein indicates that petitioner has not worked on licensed premises or been arrested or convicted of any crime since the denial of his former petition on November 18, 1949.

After careful consideration of the entire record presented herein, I conclude that petitioner's association with the alcoholic beverage industry will not be detrimental to the public interest. Hence I shall grant the relief sought.

Accordingly, it is, on this 21st day of December, 1949,

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

ERWIN B. HOCK
Director.

4. APPELLATE DECISIONS - LEEDIE v. TRENTON AND TANKEL.

REV. ALEXANDER J. LEEDIE,
S.V.D.,)

Appellant,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE
CITY OF TRENTON, and SAMUEL TANKEL,)

Respondents.)

John J. Rafferty and Philip Blacher, Esqs., Attorneys for Appellant.
Louis Josephson and John A. Brieger, Esqs., Attorneys for Respondent
Board of Commissioners.
Sidney Simandl and Herman Belopolsky, Esqs., Attorneys for Respondent
Samuel Tankel.

BY THE DIRECTOR:

This is an appeal from respondent Board's action granting 1949-1950 renewal of respondent Tankel's plenary retail consumption license for premises at 52-54 Pennington Avenue, Trenton.

Respondent Tankel has operated a licensed liquor establishment at his present premises since 1935. The license in question, as renewed, contains the following special conditions: "That no intoxicating liquor be sold, served, furnished or consumed, in the room in the rear of the bar located on the first floor of said licensed premises and, that no music of any nature or kind be played upon or in said licensed premises, excepting music furnished by radio or television."

Appellant alleges, in substance, as his grounds of appeal that the liquor establishment in question is conducted in such a manner as to constitute a nuisance, in that there congregate in the vicinity of the licensed premises a large number of patrons who (1) use profanity and make other loud and boisterous noises; (2) discard and break empty bottles in the streets and yards of the adjacent property owners; and (3) engage in brawls outside of the premises and commit other acts of immoral and obnoxious nature.

Appellant, pastor of a church located a short distance from respondent Tankel's licensed premises, produced nineteen witnesses who testified regarding the noise and acts of vulgarity outside the licensed premises over a long period of time prior to renewal of the license. There is testimony of disorderly conduct occurring in the licensed premises on one or two occasions. However, the most serious complaints, as testified to by appellant's witnesses, are the use of profanity, indecent acts and gestures, and breaking of bottles in the vicinity of the liquor establishment in question.

Seven witnesses testified, for respondent Tankel, that they did not hear or see anything wrong in or near the licensed premises which might in any way be classified as disorderly. Respondent Tankel testified that he has always respected the rights of his neighbors and denied ever having seen or heard any of the alleged indecent acts or remarks, respectively, either in the licensed premises or in the vicinity thereof.

Mrs. Edith Moore, whose duties include the inspection of licensed premises on behalf of the local issuing authority, testified that between December 1948 and June 30, 1949, pursuant to her official position, she had visited respondent Tankel's liquor establishment at different hours at least one day a week. She testified that she had not seen or heard anything wrong in the tavern or vicinity during any

of her visits; neither had any complaint from any person been made to her concerning disorderly conduct, either in the premises in question or in the vicinity thereof, excepting that made on June 22, 1949 by appellant when he presented a petition containing names of objectors to the renewal of respondent Tankel's license. Mrs. Moore testified that as a result of the complaint by Rev. Leedie, she personally made further investigations but found nothing to justify the complaint.

Patrolman William H. Sparks, whose assignment is to inspect business licenses in the city, testified that for six years prior to July 1948 he was on duty in the vicinity of respondent Tankel's licensed premises. During that time, according to the testimony, his attention was called only once to the fact that there were broken bottles in Elizabeth Alley. He further testified that he spoke to respondent Tankel concerning this and, although some of the bottles were not brands handled by Tankel, the licensee cooperated by detailing a man to clean up the debris.

Patrolman August E. Blackwell testified that for a year and a half prior to March 1949, he patrolled the vicinity in which respondent Tankel's tavern is located. Patrolman Blackwell further testified that, upon finding empty bottles in Elizabeth Alley, he spoke to Mr. Tankel and the bottles were removed.

Testimony herein clearly indicates that deplorable conditions existed in the neighborhood of respondent Tankel's premises and that these conditions presented a police problem warranting drastic action on the part of respondent Board. However, Tankel's license was renewed from year to year for some fourteen years and no proceedings were brought against Tankel in connection with any offensive conduct. Testimony for appellant falls short of adequate affirmative proof that the conduct of the particular premises caused the conditions complained of. Cf. Weber v. Lakewood, Bulletin 657, Item 3; Salmanowitz v. Hightstown, Bulletin 807, Item 2. At the hearing on this appeal, the witnesses for appellant were in substantial agreement that since July 1, 1949, conditions in the vicinity of Tankel's premises have greatly improved, and some of those witnesses found nothing to warrant any criticism as to conditions in the vicinity since that renewal date. It appears not unlikely that the great improvement may have resulted in large part from the special conditions imposed upon the granting of the 1949-1950 renewal and, perhaps, from the very taking of this appeal.

The determination as to whether a retail liquor license should be renewed rests within the sound discretion of the municipal issuing authority. The renewal here appealed from was granted by the unanimous vote of respondent Board. Under all the circumstances of this case and on the record before me I am unable to conclude that appellant has sustained the burden of proving respondent Board's action, here appealed from, to be so unreasonable or abusive of the Board's discretionary authority as to warrant a reversal. I shall, therefore, affirm the Board's action.

Pointed comment is appropriate here. A licensee's responsibility for the conduct of his licensed premises in strict observance of the Alcoholic Beverage Law, State Regulations, and local ordinances, is a heavy one. Respondent Tankel's responsibility to be conscientious and vigilant in this regard appears to be heightened in the situation created by the peculiar circumstances and general character of the neighborhood involved. Respondent Tankel must realize this. He must continue to comply strictly with the special conditions imposed upon the granting of his renewal. He must understand clearly that my decision in this appeal is necessarily founded upon the testimony and record now before me -- that while adequate affirmative proof

of his having caused conditions complained of is here lacking, there is strong suspicion that the conduct of his establishment contributed to such conditions. It is to be borne carefully in mind that respondent Board has full opportunity (in the exercise of its duty, under R.S. 33:1-24, to enforce primarily the Alcoholic Beverage Law and regulations so far as they pertain or refer to or are in any way connected with retail licenses) to consider the manner in which the premises are hereafter conducted and, in the event of a violation, to take prompt and effective action.

Accordingly, it is, on this 22nd day of December, 1949,

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

ERWIN B. HOCK
Director.

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

In the Matter of Disciplinary Proceedings against

JAMES McMAHON
22 St. Pauls Avenue
Jersey City 6, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-246, issued by the Board of Commissioners of the City of Jersey City.

James McMahan, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises alcoholic beverages in a bottle bearing a label which did not truly describe its contents, in violation of Rule 28 of State Regulations No. 20.

On November 29, 1949, an agent of the State Division of Alcoholic Beverage Control seized on defendant's licensed premises one 4/5 quart bottle labeled "Four Roses Fine Blended Whiskey" when his field test indicated a variance in the contents thereof from the whiskey described on the label. An analysis by the Division chemist confirmed this finding and established that said bottle contained an alcoholic beverage not truly described on its label. See Rule 28, State Regulations No. 20.

Defendant has no previous adjudicated record. I shall suspend the license for fifteen days, the minimum suspension for such cases. Re Rudolph, Bulletin 680, Item 1. Remitting five days for the plea will leave a net suspension of ten days.

Accordingly, it is, on this 27th day of December, 1949,

ORDERED that Plenary Retail Consumption License C-246, issued by the Board of Commissioners of the City of Jersey City to James McMahan, for premises 22 St. Pauls Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 3, 1950, and terminating at 2:00 a.m. January 13, 1950.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING AND GAMBLING ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

DAVID ACHILLE)
T/a STIRLING HOTEL)
E/S Main Avenue)
Passaic Township)
P.O. Stirling, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Passaic.)

Robert Carey, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge as follows:

"On September 24, 26, 27, 28 and 29, 1949, and on divers other dates, you allowed, permitted and suffered bookmaking and gambling on and about your licensed premises; in violation of Rule 7 of State Regulations No. 20."

On each of the days aforesaid an agent of the State Division of Alcoholic Beverage Control, with a State Policeman, observed a great amount of activity principally centered around one man, on two of the days, and around this man and another man on the third day. Both men were openly taking "bets" ("making book") on horses.

The licensee claims that he tried but without success to stop this illegal practice.

In the absence of any prior adjudicated record, I shall suspend the license for twenty days. Remitting five days because of the plea will leave a net suspension of fifteen days. Re Ferment, Bulletin 635, Item 5.

Accordingly, it is, on this 28th day of December, 1949,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Passaic to David Achille, t/a Stirling Hotel, for premises E/S Main Avenue, Passaic Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. January 4, 1950, and terminating at 2:00 a.m. January 19, 1950.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - PERMITTING LICENSED PREMISES TO BE USED IN CONNECTION WITH ILLEGAL ACTIVITY RESULTING IN A CONVICTION IN CRIMINAL PROCEEDINGS (POSSESSION OF SLOT MACHINE) - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against FRATERNAL ORDER OF EAGLES N.B. AERIE OF EAGLES #1329 22-24-26 Easton Avenue New Brunswick, N. J.,

CONCLUSIONS AND ORDER

Holder of Club License CB-6, issued by the Board of Commissioners of the City of New Brunswick.

Charles M. Morris, Jr., Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On or about September 14, 1949, and prior thereto, you allowed, permitted and suffered your licensed premises and licensed business to be used in furtherance and aid of and in connection with an illegal activity or enterprise resulting in a conviction in a criminal prosecution in that, on September 15, 1949, William Fedderson, was convicted as a disorderly person in the Municipal Court of the City of New Brunswick, Middlesex County, N. J., as a result of the presence of a slot machine in a room of your licensed building to which access could be had from your licensed premises; in violation of Rule 4 of State Regulations No. 20."

On September 14, 1949, three police officers of the City of New Brunswick and a Middlesex County detective visited defendant's premises and found a slot machine in a small room which is not part of defendant's licensed premises but which adjoins a large service room which constitutes a part of defendant's licensed premises. In order to enter the small room where the slot machine was stored it is necessary to pass through the service room.

On September 15, 1949, William Fedderson, president of defendant Aerie of Eagles, pleaded non vult in a Magistrate's Court to a charge of being a disorderly person, contrary to R.S. 2:202-16, in that he did permit a gambling device in the rooms occupied by the New Brunswick Fraternal Order of Eagles, as a result of which he was fined \$25.00.

Defendant alleges that the slot machine had not been used for some time prior to the seizure, and that the proceeds of the machine when it was in use were used for purposes consistent with the high aims and ideals of the association and not for the personal gain of any individual. These facts, however, constitute no excuse for the violation. See Bulletin 492, Item 6.

Defendant has no prior record. I shall suspend its license for a period of ten days, less five days for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 28th day of December, 1949,

ORDERED that Club License CB-6, issued by the Board of Commissioners of the City of New Brunswick to Fraternal Order of Eagles, N.B. Aerie of Eagles #1329, for premises 22-24-26 Easton Avenue, New Brunswick, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. January 9, 1950, and terminating at 2:00 a.m. January 14, 1950.

ERWIN B. HOCK

8. DISCIPLINARY PROCEEDINGS - PERMITTING BOOKMAKING AND GAMBLING ON LICENSED PREMISES - NO REMISSTON FOR PLEA OF NON VULT ENTERED ON DATE OF HEARING - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against SAMUEL ORLANDO T/a SAM'S BLUE ROOM W/S Main Avenue Passaic Township P.O. Stirling, N. J., Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Passaic.

CONCLUSIONS AND ORDER

Joseph Rosenberg, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charge:

"On September 27, 28 and 29, 1949, and on divers other dates, you allowed, permitted and suffered bookmaking and gambling on and about your licensed premises; in violation of Rule 7 of State Regulations No. 20."

On November 4, 1949, at the time and place specified in the notice of hearing of said charge, defendant appeared with his attorney. The Division thereupon proceeded to produce and examine its witnesses, four in number, who were extensively cross-examined by defendant's attorney. At the close of the Division's case the attorney for defendant asked leave to withdraw the plea of not guilty and enter a plea of non vult. This motion, with the consent of the prosecution, was allowed.

It clearly appears that defendant was guilty as charged; that the plea was changed after defendant had heard the evidence against him, and that, realizing the implications of said testimony, he decided he could not establish his innocence and thereupon changed his plea to a confessive one in the hope of securing the remission usually granted for a prompt confession of guilt.

There can be no doubt that defendant had full knowledge of the alleged activity. The bookmaker worked openly and without any but the slightest attempt to hide his activity.

The defendant has no prior adjudicated record. I shall, therefore, suspend the license for twenty days. Re Ferment, Bulletin 635, Item 5. Since the confessive plea was not entered until after the Division had presented its case on the day of the hearing, I will deny any remission of the penalty because of the plea. Cf. Jagielski, Bulletin 593, Item 6. Licensees have every opportunity and sufficient time to determine whether or not they have a defense to the Division's charges. They cannot be permitted to gamble on the strength of the Division's case and then, finding it too strong to controvert, change their plea.

Accordingly, it is, on this 28th day of December, 1949,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Passaic to Samuel Orlando, t/a Sam's Blue Room, for premises on W/S Main Avenue, Passaic Township, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. January 4, 1950, and terminating at 2:00 a.m. January 24, 1950.

ERWIN B. HOCK Director.

- 9. DISCIPLINARY PROCEEDINGS - HOSTESSES - SALE OF ALCOHOLIC BEVERAGES AND FAILURE TO KEEP LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF MUNICIPAL REGULATION - FAILURE TO DISPLAY LICENSE CERTIFICATE IN PLAIN VIEW ON THE LICENSED PREMISES IN VIOLATION OF RULE 16 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against
 LUCKY STRIKE CLUB TAVERN & RESTAURANT, INC.
 T/a PETER J'S RENDEZVOUS LUCKY STRIKE CLUB
 8 Sherman Avenue
 Lodi, N. J.,
 Holder of Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Borough of Lodi.

CONCLUSIONS AND ORDER

Lucky Strike Club Tavern & Restaurant, Inc., Defendant-Licensee,
 Pro Se.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant corporation pleaded non vult to charges alleging that (1) on November 13th it allowed, permitted and suffered a female employed on its licensed premises to accept beverages at the expense of and as a gift from customers, in violation of Rule 22 of State Regulations No. 20; (2) on said date it sold and served alcoholic beverages on its licensed premises between 4:00 a.m. and 4:45 a.m., and failed to keep the said licensed premises closed between the said hours on said date, all in violation of a municipal ordinance as adopted September 27, 1948 and amended January 24, 1949; and (3) conducted its licensed business without having its current license certificate displayed thereon, in violation of Rule 16 of State Regulations No. 20.

At about 3:30 a.m., on Sunday, November 13, 1949, agents of the State Division of Alcoholic Beverage Control entered defendant's licensed premises. At about 4:00 a.m., the bartender-president of said defendant corporation turned out most of the lights, closed and locked the door, and returning to the bar continued, together with the secretary of said corporation who also acted as bartender, to serve the twenty or more customers remaining. Several additional customers were, upon knocking at the "locked door", admitted, and some left. The clandestine activity continued with approximately forty drinks of alcoholic beverages, including two drinks to each of the agents, served to the customers, until at about 4:45 a.m., the agents made their identity known and ordered the premises closed.

The ordinance violated provides, inter alia:

"Section 2: No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or suffer the consumption of any alcoholic beverage on the licensed premises...on other (than New Year's Day) Sundays between the hours of 4:00 a.m. and noon.

"During the hours that sales are hereinabove prohibited the entire licensed premises shall also be closed....."

Meanwhile, the licensee's cloakroom attendant, a woman, was observed being offered by a customer a number of drinks of whiskey, which she accepted and consumed.

It also appears that the current license certificate was not displayed in full view and, in fact, was only discovered after a search by the defendant's secretary, in a drawer under the bar.

This type of after-hours operation smacks of the "speakeasy". It is not the way to operate a lawful and legitimate business. Such practices are not only contrary to the best public interest but if they become widespread will react adversely on the whole industry. Cf. A.J.S. Corporation, Bulletin 678, Item 12.

As to prior record it should be noted that, although the defendant has only had its license for approximately six months, its license was suspended for a period of four days by the local issuing authority effective October 17, 1949, less than four weeks prior to the violation charged herein. After a careful consideration of the entire record including the confessional plea and the aforesaid prior record, I shall suspend the license for ninety days.

Accordingly, it is, on this 28th day of December, 1949,

ORDERED that Plenary Retail Consumption License C-17, issued by the Mayor and Council of the Borough of Lodi to Lucky Strike Club Tavern & Restaurant, Inc., t/a Peter J's Rendezvous Lucky Strike Club, 8 Sherman Avenue, Lodi, be and the same is hereby suspended for a period of ninety (90) days, commencing at 3:00 a.m. January 3, 1950, and terminating at 3:00 a.m. April 3, 1950.

ERWIN B. HOCK
Director.

10. DISCIPLINARY PROCEEDINGS - CHARGE OF LEWDNESS AND IMMORAL ACTIVITIES DISMISSED - HOSTESSES - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

PALM HOUSE, INC.)
1000 Broad Street)
Newark 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-971 for the 1948-49 and 1949-50 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

Saul C. Schutzman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to charges as follows:

"1. On or about Friday night, November 26, and early Saturday morning November 27, 1948, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, in that a female entertainer performed in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulations No. 20.

"2. On or about Friday night November 26, and early Saturday morning November 27, 1948, you allowed, permitted and suffered females employed at your licensed premises to accept beverages at the expense of and as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20."

As to Charge 1: Two ABC agents testified that, while they were in defendant's premises on the evening of November 26, 1948, they observed a male entertainer and a female entertainer on an elevated stand behind the bar. They stated that the male entertainer played the piano and sang a number of unobjectionable songs, and that the female entertainer, who was dressed in an evening gown, also sang a number of unobjectionable songs. Each performance lasted approximately fifteen to twenty minutes. The female entertainer, while singing, engaged in bodily movements accompanied by the occasional throwing of the skirt of her dress. These activities might well be characterized as vulgar and coarse and of a nature to be avoided on licensed premises. Often the line of distinction between vulgarity and immorality is indeed thin. Licensees who flirt with conduct so borderline as to require a determination, do so at their peril.

After careful consideration I conclude that the aforesaid activities engaged in by the female entertainer, while vulgar and coarse, were not lewd or immoral within the meaning of Rule 5 of State Regulations No. 20. Hence, charge one is dismissed.

As to Charge 2: After the testimony presented by the Division had been completed, defendant's attorney asked to be permitted to plead non vult to Charge 2 and, in any event, said he had no testimony to offer in respect thereto.

It appears from the testimony that at least two of defendant's said female employees accepted several drinks from and at the expense of one of the investigators, and that several other customers also paid for drinks furnished to said employees. The service was made by defendant's bartender. Rule 22 of State Regulations No. 20 provides:

"No****licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron."

Defendant is guilty of Charge 2.

Defendant has no prior adjudicated record. I shall suspend its license for a period of twenty days, the minimum suspension for Charge 2 (Re Grether, Bulletin 571, Item 2).

Although this proceeding was instituted during the 1948-49 licensing period, it does not abate but remains fully effective against the renewal license for the 1949-50 licensing year. State Regulations No. 16.

Accordingly, it is, on this 28th day of December, 1949,

ORDERED that Plenary Retail Consumption License C-971, issued for the 1949-50 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Palm House, Inc., for premises 1000 Broad Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. January 4, 1950, and terminating at 2:00 a.m. January 24, 1950.

ERWIN B. HOCK
Director.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BEYOND TERMS OF LICENSE - AIDING AND ABETTING NON-LICENSEE TO SELL ALCOHOLIC BEVERAGES - PERMITTING MINORS TO CONSUME ALCOHOLIC BEVERAGES ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOHN A. GROSS CORP.
T/a GROSS BAR & GRILL
4404 Dell Avenue
North Bergen, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the Township of North Bergen.

Sol Schulman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that it (1) sold alcoholic beverages outside of and beyond the terms of its license as defined in R.S. 33:1-12(1), in violation of R.S. 33:1-2; (2) thereby aided and abetted a non-licensee to sell alcoholic beverages, in violation of R.S. 33:1-52; and (3) permitted and suffered the service and delivery to and the consumption of alcoholic beverages by minors upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

On October 1, 1949, agents of the State Division of Alcoholic Beverage Control, upon entering defendant's licensed premises, observed what they later learned was a social gathering of the John A. Gross Social Club being conducted in the rear or sitting room of the licensed premises. It appears that tickets for the affair were sold for \$1.50 each, entitling the purchasers to dinner and beverages. The John A. Gross Social Club has no liquor license nor did it secure a special permit, as it well could have, for the instant social affair. Such an arrangement is a sale as defined in R.S. 33:1-1(w), which provides in part: "Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, including *** serving with meals***." Cf. Renner, Bulletin 115, Item 4. The beer being so sold was admittedly purchased from the defendant-licensee, who, because some of its servants and employees are officers of the club, must be charged with the knowledge that the beer was intended for resale by the unlicensed club. Such sale for resale constitutes a violation of R.S. 33:1-2.

The agents further observed three minors, guests of the club and, respectively, aged 17, 19 and 20, sitting at a long table with other guests of the club. The said minors were, in the opinion of the agents, obviously under 21 years of age. On the table and near said minors was a half-filled pitcher containing what appeared to be beer. In front of each was a glass containing portions of a similar liquid. The pitcher being subsequently emptied was passed to the head of the table and brought to the bar by a member of the club. The pitcher was refilled with beer by John A. Gross, president of the corporate-licensee, and was then returned to the table where the minors were seated and placed directly in front of the minors. Each of said minors poured himself a glass of the beer from the pitcher and consumed a portion thereof. The agents then identified themselves and seized the partially consumed glasses in front of each minor. Analysis by the Division chemist discloses that the glasses contained

"a malt alcoholic beverage fit for beverage purposes", i.e., beer. This fully warrants a finding that defendant was guilty as charged. Cf. Essex Holding Corp., Bulletin 727, Item 3; Essex Holding Corp. v. Hock, 136 N.J.L. 28.

Defendant alleges in mitigation that the violation complained of in charges one and two occurred because of an oversight in failing to secure a permit for the social affair. It is also alleged that the minors "grabbed the pitcher of beer from another table" and that the minors could easily have been taken for more than 21 years of age, facts not borne out by the agents' report, and that total surveillance is humanly impossible. Cf. Essex Holding Corp., supra.

Defendant's only prior record, a conviction against John Gross at a time he held the license individually, occurred in 1942. I shall not, because of the seven years intervening, consider this prior record as in aggravation. Considering all the circumstances, I shall suspend the license for five days on charges one and two, and, considering the age of the youngest minor, for fifteen days for the minors charge. Re Andy's Inc., Bulletin 732, Item 3. Remitting five days for the plea will leave a net suspension of fifteen days.

Accordingly, it is, on this 28th day of December, 1949,

ORDERED that Plenary Retail Consumption License C-7, issued by the Board of Commissioners of the Township of North Bergen to John A. Gross Corp., t/a Gross Bar & Grill, for premises 4404 Dell Avenue, North Bergen, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. January 4, 1950, and terminating at 3:00 a.m. January 19, 1950.

ERWIN B. HOCK
Director.

12. STATE LICENSES - NEW APPLICATIONS FILED.

The United Distributors Corp.
501 Cass Street
Trenton, N. J.

Applications filed December 20, 1949 for transfer of Wine Wholesale License WW-23 and Limited Wholesale License WL-43 from United Distributors Co.

Warren Distributing Co.
9 Hanover St.
Phillipsburg, N. J.

Application filed December 28, 1949 for transfer of State Beverage Distributor's License SBD-56 from Joseph J. Pianelli.

ERWIN B. HOCK
Director.

13. DISCIPLINARY PROCEEDINGS - SALES TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHARLES CAMP COTTON)
T/a NEWTON HOTEL)
3 and 5 Delaware Street)
Woodbury, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the City Council of the City of Woodbury.)
-----)

Charles Camp Cotton, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he sold, served and delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages at his licensed premises to David ---, a minor, in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file herein discloses that on the evening of November 14, 1949, David ---, eighteen years of age, entered defendant's premises on two occasions and on each occasion purchased a 4/5 quart bottle of Roma Port Wine from Lawrence Jones, who was then acting as bartender in defendant's licensed premises.

At the time of the violation defendant was in Germany on governmental business, and knew nothing of the violation until his recent return to this country. Nevertheless a licensee is responsible for the acts of his agents or employees in the conduct of the licensed business. Re Kneller, Bulletin 49, Item 4.

Defendant has no prior record. I shall suspend defendant's license for ten days, less five for the plea, leaving a net suspension of five days.

Accordingly, it is, on this 29th day of December, 1949,

ORDERED that Plenary Retail Consumption License C-3, issued by the City Council of the City of Woodbury to Charles Camp Cotton, t/a Newton Hotel, for premises 3 and 5 Delaware Street, Woodbury, be and the same is hereby suspended for five (5) days, commencing at 7:00 a.m. January 2, 1950, and terminating at 7:00 a.m. January 7, 1950.

Erwin B. Heck
Director.

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