

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

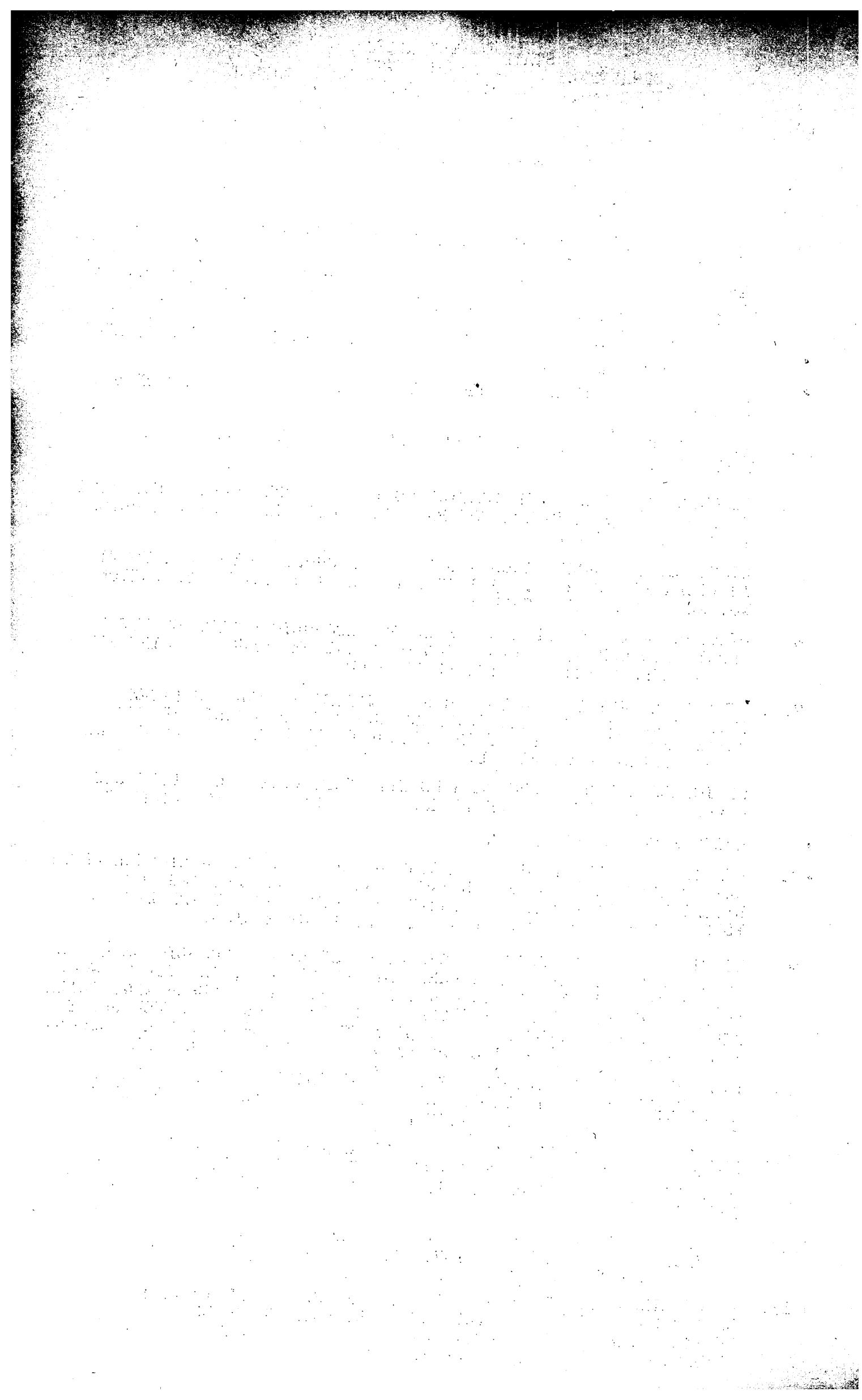
BULLETIN 615

APRIL 25, 1944

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

BULLETIN 615

APRIL 25, 1944

1. DISCIPLINARY PROCEEDINGS - FARMING OUT LICENSE - ILLEGAL SITUATION CORRECTED - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against :

FEDERATION OF YUGOSLAV WORKERS :

CLUB INC., SLOGA #78 :

619 Ferry Avenue :

Camden, New Jersey, :

CONCLUSIONS  
AND ORDER

Holder of Club License CB-31, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. :  
----- :

Edward V. Martino, Esq., Attorney for Defendant-Licensee.  
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to charges that the Club was a "front" for one Thomas Wyiss, or Weiss.

A study of the various statements and other evidence obtained during the investigation discloses that the Club compensated Thomas Wyiss, bartender and custodian, by allowing him to keep the profits of the bar, over and above a pre-determined "cost," including a profit for the Club. In effect, therefore, defendant "farmed out" its license to him. Re Criscenzo, Bulletin 611, Item 11.

When the charges were served and the matter explained to the Club officers, the unlawful arrangement was discontinued immediately. Thereafter the bartending duties were taken over by various members and Wyiss was paid a weekly salary as custodian.

As I have indicated, practices as here indulged in can well lead to serious disregard of the purpose of alcoholic beverage control. Even the appearance of evil is to be avoided.

In view of the prompt correction and my belief that the violation was unintentional, I would ordinarily suspend the license for a period of ten days. However, defendant's license was previously suspended for twenty-five days for sales during prohibited hours and sales to non-members. See Bulletin 597, Item 5. Under the circumstances, I shall suspend the license in this proceeding for a period of fifteen days. Re Ahlers, Bulletin 600, Item 3.

Accordingly, it is, on this 14th day of April, 1944,

ORDERED that Club License CB-31, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Federation of Yugoslav Workers Club Inc., Sloga #78, for premises 619 Ferry Avenue, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A.M. April 21, 1944 and terminating at 2:00 A.M. May 6, 1944.

ALFRED E. DRISCOLL,  
Commissioner

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES BY CLUB LICENSEE TO NON-MEMBERS - PERMITTING SLOT MACHINES ON LICENSED PREMISES - 40 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against :

PENNS GROVE LODGE NO. 820, LOYAL ORDER OF MOOSE, Haylor Avenue and West Main St. Penns Grove, New Jersey :

CONCLUSIONS AND ORDER

Holder of Club License CB-104, issued by the State Commissioner of Alcoholic Beverage Control. :

John M. Summerill, Jr., Esq., Attorney for Defendant-Licensee. Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, through its attorney, pleads guilty to the following charges:

- "1. On Sunday morning, March 5, 1944, at and about 10:30 A.M., you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages upon your licensed premises in violation of Section 5 of an Ordinance adopted by the Borough Council of the Borough of Penns Grove, on March 5, 1935, which Ordinance prohibits any such activity on Sunday.
"2. On the occasion aforesaid, you sold alcoholic beverages to persons other than bona fide members of your club and their bona fide guests in violation of Rule 5 of State Regulations No. 7, and since such sales exceeded the terms of your license as defined by R. S. 33:1-12(5), you thereby also violated R.S. 33:1-2.
"3. On the occasion aforesaid, you possessed, allowed, permitted and suffered on and about your licensed premises four slot machines or devices in the nature of slot machines which might be used for the purpose of playing for money and other valuable things, in violation of Rule 8 of State Regulations No. 20."

The file discloses that several investigators of the Department of Alcoholic Beverage Control, who were not members of the defendant fraternal association, visited the licensed premises at or about 10:30 A.M. on Sunday morning, March 5, 1944. Each of the investigators purchased alcoholic beverages and also operated slot machines installed in a wall niche opposite the bar.

On the first charge for sales of alcoholic beverages on Sundays, the usual penalty is fifteen days. Re Germania Mannerchor, Bulletin 570, Item 11. As to the second charge, sales of alcoholic beverages to non-members, the minimum penalty is fifteen days. Re Dunellen Lodge No. 1488, B.P.O. Elks, Bulletin 582, Item 2. As to the last charge for possession of slot machines, the usual penalty is ten days. Re Oneida Boat Club, Bulletin 585, Item 12.

By entering a guilty plea in ample time before the date of the hearing, the licensee has saved the Department both time and expense. Therefore, five days of the total penalty of forty days will be remitted, making a net suspension of the license for a period of thirty-five days.

Accordingly, it is, on this 14th day of April, 1944,

ORDERED that Club License CB-104, heretofore issued by the State Commissioner of Alcoholic Beverage Control to Penns Grove Lodge No. 820, Loyal Order of Moose, for premises Haylor Avenue and West Main Street, Penns Grove, be and the same is hereby suspended for a period of thirty-five (35) days, commencing at 1:00 A.M. April 20, 1944, and terminating at 1:00 A.M. May 25, 1944.

ALFRED E. DRISCOLL,  
Commissioner

3. APPELLATE DECISIONS - ASBURY AMBASSADOR HOTEL CORPORATION v. ASBURY PARK.

ASBURY AMBASSADOR HOTEL CORPORATION,	:	
	:	
Appellant,	:	On Appeal
v.	:	
CITY COUNCIL OF THE CITY OF ASBURY PARK,	:	CONCLUSIONS AND ORDER
	:	
Respondent	:	

Alvin Newman, Esq., Attorney for Appellant.  
Charles Frankel, Esq., Attorney for Respondent and Objectors.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to approve appellant's application for a plenary retail consumption license for hotel premises at 217 Third Avenue, Asbury Park.

At the appeal hearing, the several objectors who appeared withdrew their opposition to the application when the appellant signified its willingness to accept a license specially conditioned as hereinafter set forth.

Thereafter, respondent, by a unanimous vote of its present membership of three Councilmen (there being two vacancies) adopted a formal resolution in which it requested the Commissioner of Alcoholic Beverage Control to "remand said matter concerning the application of the Asbury Ambassador Hotel Corporation back to the Council of Asbury Park" for the purpose of permitting it to issue the license subject to the several conditions agreed upon by all parties in interest at the appeal hearing. Among other things, the resolution made reference to the hearing before the Commissioner and recited:

"during which hearing the appellant testified that it would be willing to accept said license under certain conditions hereinafter enumerated and the objectors who

appeared testified that their objections would be removed if the conditions hereinafter enumerated were imposed, and it appearing that the conditions hereinafter enumerated would tend to remove all objections to the issuance of said license..."

Accordingly, it is, on this 14th day of April, 1944,

ORDERED, that the proceedings herein be remanded to respondent for its further consideration consistent with the afore-said resolution, and that any license issued to the appellant herein for the premises in question shall be made subject to the following conditions to be inserted in the license certificate:

- "1. No alcoholic beverages shall be sold, served or delivered in the main dining room located on the main floor of the licensed premises except to patrons seated at tables.
- 2. The licensee shall not sell, serve, deliver or allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverages in its main dining room except between the hours of 7:00 A.M. and 10:00 P.M. on weekdays, or between the hours of noon and 10:00 P.M. on Sundays, and in its cocktail lounge located on the street level except between the hours of 7:00 A.M. and midnight on weekdays, or between the hours of noon and midnight on Sundays.
- 3. There shall be no orchestra, singing, dancing or other form of entertainment whatsoever, except the playing of radios, upon the licensed premises.
- 4. The licensee shall not display any exterior signs, or any interior signs visible from the exterior, advertising the sale or service of alcoholic beverages."

ALFRED E. DRISCOLL,  
Commissioner

4. MORAL TURPITUDE - CRIME OF COUNTERFEITING INVOLVES MORAL TURPITUDE.  
DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION TO LIFT GRANTED.

In the Matter of an Application :  
to Remove Disqualification be- : CONCLUSIONS  
cause of a Conviction, Pursuant : AND ORDER  
to R. S. 33:1-31.2. :  
Case No. 325. :

BY THE COMMISSIONER:

Petitioner, in this proceeding, prays that his disqualification resulting from the conviction of a crime be lifted pursuant to R. S. 33:1-31.2.

On November 17, 1924, petitioner pleaded guilty to the crime of counterfeiting and was sentenced to the United States Penitentiary at Atlanta, Georgia, for a period of three years. On March 24, 1927, the petitioner was discharged from the Federal prison. The counterfeiting charge was preferred against petitioner after it was discovered by Federal agents that the petitioner was in possession of, and attempting to pass, counterfeit money.

Counterfeiting is a crime involving moral turpitude. See U. S. ex rel Alessio v. Day, 42 F. (2nd) 217 (C.C.A. 2, 1930). Similarly, the crime of possessing and attempting to pass counterfeit money, knowingly acquired, is a crime involving moral turpitude. Cf. Case No. 71, Bulletin 199, Item 9.

According to police records, both State and Federal, submitted herein, petitioner has never been in any other trouble. Three substantial citizens of the community in which petitioner resides testified at the hearing. These witnesses have known petitioner for ten or more years and are in agreement that the petitioner is, and has been for more than five years last past, a respected and law-abiding citizen of the municipality in which he lives. I am, therefore, satisfied that petitioner has been leading an honest and law-abiding life for at least five years last past and am of the opinion that his association with the alcoholic beverage industry will not be contrary to public interest. Hence, his disqualification will be removed.

Accordingly, it is, on this 14th day of April, 1944,

ORDERED that petitioner's statutory disqualification because of the conviction set forth above be and the same is hereby lifted, pursuant to provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against :

FELIX PICCOLO  
54 Ellison Street  
Paterson, 1, N. J., :

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-172, issued by the Board of Alcoholic Beverage Control of the City of Paterson :

Anthony J. Visconti, Esq., by Edward F. Johnson, Esq.,  
Attorney for Defendant-Licensee.  
Milton H. Cooper, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to charges alleging that,

during the month of August 1943, he sold, served and delivered alcoholic beverages to two minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The two minors testified that they went to defendant's premises on one occasion during August 1943 with other girls. One minor testified that there were about eight in the party and the other stated that there were thirteen. Both minors were positive in their testimony that, on this occasion, a waiter served a drink of Carstairs whiskey and lemon to each of them. One of these minors testified that, before serving the drinks, the waiter had asked if all of the girls were old enough to drink and that all of them had indicated to him that they were at least twenty-one years of age. The waiter told a third minor who is not mentioned in the charges that she "looked too young" and this girl then ordered a non-alcoholic drink. The waiter did not ask any member of the party to sign a written statement as to her age.

The licensee testified that he never saw the girls in his place of business and his manager testified that the records of the business for the month of August showed that no party of thirteen had been served. The manager described in detail how the records of the business were kept and stated that the largest party served that month consisted of ten persons. He stated, however, that it would be possible for a large party to split its bill into two or more checks and that where this occurred a single check would not show the exact number of persons in the party.

I am unable to reach the conclusion that the testimony of the minors is false. There is nothing in the record to suggest any reason for their committing perjury and the Hearer advises me that he was satisfied, after observing their demeanor on the witness stand, that they were telling the truth. The ages of the minors in question who were served are sixteen and eighteen years. The situation would be more aggravated were it not for the fact that both minors verbally misrepresented their age. However, they were not required to sign a written statement that they were twenty-one years of age or over. Mere verbal inquiry is not sufficient and the licensee must follow the provisions of R.S. 33:1-77 if he desires to avoid the consequences of selling to minors. Re Wooby, Bulletin 606, Item 6. There is a strong possibility that if the waiter had insisted that these young girls sign written statements, they, too, would have changed their order. I find the licensee guilty as charged and shall suspend his license for fifteen days.

Accordingly, it is, on this 14th day of April, 1944,

ORDERED that Plenary Retail Consumption License C-172, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Felix Piccolo, for premises 54 Ellison Street, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 A.M. April 20, 1944 and terminating at 3:00 A.M. May 5, 1944.

ALFRED E. DRISCOLL,  
Commissioner

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - THIRD SIMILAR ADJUDICATED OFFENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against :

WOODROW WILSON DEMOCRATIC CLUB OF CAMDEN, N. J., 1181 Liberty Street, Camden, New Jersey, :

CONCLUSIONS AND ORDER

Holder of Club License CB-9 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. :  
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Milton C. Nurock, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to the following charge:

"On Sunday, February 20, 1944, at about 7:40 P.M., you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages upon your licensed premises, in violation of Section 5 of an Ordinance adopted by the Board of Commissioners of the City of Camden, on December 27, 1934, which ordinance prohibits any such activity after 2:00 A.M. on Sunday."

Investigators Schuler and Lockwood of the Department of Alcoholic Beverage Control testified that on the evening of Sunday, February 20, 1944, they saw three or four men enter the Club premises and that, at about 7:30 P.M., they followed another man as he entered. They state that they went directly to the barroom; that seventeen men were at or near the bar, and that all of the men had glasses containing a beverage which appeared to be beer. The agents further testified that Joseph Ross, who is employed as bartender by the Club, was behind the bar; that Ross was wearing a white apron, and that Bruno Cizechanowicz, a member of the Club, was also behind the bar. Investigator Lockwood testified that he saw Ross serve several drinks drawn from the beer tap, and that he saw Ross take money from those he served. Both agents testified that, after recognizing Schuler as an ABC agent, Cizechanowicz told the men in the premises that there would be no more drinks served that evening, and that all the men except Ross, Cizechanowicz and two officers of the Club immediately left the premises. The agents seized the contents of several glasses, and subsequent analysis by the Department chemist disclosed that the seized beverage was beer. The agents found that the cash register contained the sum of \$110. In a conversation subsequently held, the officers of the Club admitted to the investigators that they had been caught selling alcoholic beverages.

On behalf of defendant, the bartender, Ross, testified that he was cleaning up the premises and that he did not sell any alcoholic beverages. He admits that he gave to Lockwood a glass of beer which, he says, was drawn on Saturday night. Cizechanowicz testified that, when the investigators entered, there were eight

members of the Board of Directors in the room, and that he and Ross were taking an inventory. Nathan Rudolph, financial secretary of the Club, testified that he was present at the same time as the investigators; that he did not see any sale or service of alcoholic beverages, and that the money in the cash register represented the receipts for the previous week.

After considering all the testimony, I find no reason to doubt the direct testimony of the investigators that beer was being sold and served during prohibited hours on Sunday. I am not impressed by the testimony offered by the defendant. The defendant is guilty as charged.

As to penalty: This is the third violation by defendant of the local ordinance prohibiting Sunday sales. In February 1939 its license was suspended by the local issuing authority for a period of five days for selling during prohibited hours on Sunday and for selling alcoholic beverages to non-members. On October 22, 1943, I suspended its license for a period of forty days for an identical violation. Re Woodrow Wilson Democratic Club of Camden, N. J., Bulletin 592, Item 2. The privileges of its license have been repeatedly abused by this defendant. Fees for club licenses are fixed at a substantially lower figure than those for retail licenses. It is particularly harmful to the latter when the holders of club licenses engage in unfair competition with them by attract-patrons during prohibited hours. Under all the circumstances, I shall revoke the license.

Accordingly, it is, on this 17th day of April, 1944,

ORDERED that Club License CB-9, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Woodrow Wilson Democratic Club of Camden, N. J. for premises 1181 Liberty Street, Camden, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,  
Commissioner

7. MUNICIPAL OFFICIALS - TOWNSHIP COMMITTEEMAN HOLDING LICENSE OR INTERESTED IN ALCOHOLIC BEVERAGE BUSINESS DISQUALIFIED FROM PARTICIPATING IN ANY WAY IN ALCOHOLIC BEVERAGE MATTERS COMING BEFORE TOWNSHIP COMMITTEE.

OFFICIALS AND OFFICERS CHARGED WITH ENFORCEMENT OF ALCOHOLIC BEVERAGE LAWS INELIGIBLE TO HOLD ALCOHOLIC BEVERAGE LICENSE.

RULINGS COLLECTED HEREIN.

April 18, 1944

Dear Mr. Gersh:

I have your letter of April 12th asking for the ruling on the question:

"Is there any legal prohibition against ownership of a tavern by an elected township official, as, for example, Township Committeeman?"

Section 33:1-20 of the Revised Statutes reads:

"No license shall be issued under this chapter by any issuing authority to any member thereof or to any corporation, organization or association in which any member thereof is interested directly or indirectly; but in any such case application for such license may be made by such member, corporation, organization or association directly to the commissioner who is hereby authorized to issue such license, subject to rules and regulations, upon the same terms and conditions and for the same fee as other licenses of the same class are issued or are issuable by the said governing board or body. In addition to the fee for such license, which shall be payable to the municipality, a fee of ten dollars shall be payable to the commissioner to be accounted for by him as are license fees."

A Township Committeeman, who holds an alcoholic beverage license, is disqualified from participating in any way in alcoholic beverage matters coming before the Township Committee. Such participation, if permitted, would result in a serious conflict between private interest and public duty. Numerous previous rulings on the subject are collected and discussed in Re Kerner, Bulletin 298, item 9. It has been ruled, as far back as 1935, that disqualified members may not satisfy the requirements merely by refraining from voting on the issue presented. They must withdraw entirely from the proceedings for otherwise the essential purpose of the disqualification would in large part be nullified. (Re Siracusa, Bulletin 89, Item 9; Re Mohr, Bulletin 557, item 1.

The indicated disqualification applies, of course, not only to a Township Committeeman but also to a member of a Borough Council or Board of Commissioners or other form of municipal governing body, and to members of a Municipal Alcoholic Beverage Board which is the license issuing authority in certain municipalities.

Furthermore, the disqualification extends not alone to the designated officials who hold alcoholic beverage licenses, but to such of those officials who own, lease or sublease licensed premises; or who otherwise have a disqualifying financial interest in, or connection with, the retailing, wholesaling or manufacturing of alcoholic beverages. Specific rulings on these various disqualifying interests and relationships are set forth in Re Kerner, which sets forth also rulings covering situations where no disqualification attaches if the official's alcoholic beverage interests and relationships are sufficiently removed from his official duties as to make the danger of abuse remote.

There is another important matter. Members of a local governing body (or issuing authority), and all other persons, are ineligible to hold alcoholic beverage licenses if they are charged or entrusted with the enforcement of the alcoholic beverage laws. Thus, one serving on a municipal Police Committee may not be a licensee (Re Everson, Bulletin 162, item 10); nor may a policeman (Re Scott, Bulletin 109, item 5); or a Police Recorder (Re Branigan, Bulletin 129, item 3); or a constable (Re Osborne, Bulletin 174, item 16); or a magistrate or Justice of the Peace (Re Lederer, Bulletin 196, item 15); Re Sugrue, Bulletin 227, item 2).

Very truly yours,

ALFRED E. DRISCOLL,  
Commissioner

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

LILLIE RICE,  
118 Belmont Avenue,  
Newark, New Jersey,

CONCLUSIONS

Holder of Plenary Retail Consumption License C-347 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, and transferred during the pendency of these proceedings to

AND ORDER

LILLIE RICE and HERMAN M. RICE,  
for the same premises.

Lillie Rice, Pro Se.

Gaylord R. Hawkins, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to charges alleging that (1) in her application for the current fiscal year she failed to reveal the fact that her husband, Herman M. Rice, was interested in the license and the business conducted thereunder, and (2) from July 1, 1938, and until the date upon which the charges were preferred, she permitted her husband, Herman M. Rice, to exercise the rights and privileges of the license granted to her.

Since July 1, 1938, Lillie Rice and her husband, Herman M. Rice, have owned and operated a tavern and restaurant at 118 Belmont Avenue, Newark, but the liquor license for each year from July 1, 1938, to and including July 1, 1943, was taken out in the name of the wife alone. The only apparent reason why both parties did not originally apply for the license was that, during the year 1935, a judgment for a substantial sum of money was entered against Herman M. Rice. This judgment was satisfied in September 1942, but no attempt to correct the unlawful situation, so far as the liquor license is concerned, was made until after this proceeding had been started. On April 6, 1944, the license was duly transferred by the Municipal Board of Alcoholic Beverage Control of the City of Newark from Lillie Rice to Lillie Rice and Herman M. Rice.

Since there is no previous record, and the unlawful situation has been corrected, I shall suspend the license for a period of ten days. Re Briggs, Bulletin 580, Item 3.

Accordingly, it is, on this 18th day of April, 1944,

ORDERED that plenary retail consumption license C-347, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Lillie Rice, for premises 118 Belmont Avenue, Newark, and transferred during the pendency of these proceedings to Lillie Rice and Herman M. Rice for the same premises, be and the same is hereby suspended for ten (10) days, commencing at 2 A.M. April 25, 1944, and terminating at 2 A.M. May 5, 1944.

ALFRED E. DRISCOLL,  
Commissioner

- 9. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO A PERSON ACTUALLY OR APPARENTLY INTOXICATED, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED-DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary :  
 Proceedings against :

MAUD EISENHARDT :  
 t/a Victory Tavern :  
 9 and 11 West Main Street :  
 Chester Township :  
 P.O. Maple Shade, N. J. :

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consump- :  
 tion License C-2, issued by the :  
 Township Committee of Chester :  
 Township. :

Alex Denbo, Esq., by Jerome Sarnoff, Esq., Attorney for  
 Defendant-Licensee.  
 Milton H. Cooper, Esq., Appearing for Department of Alcoholic  
 Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to two charges alleging that she sold and served alcoholic beverages to three minors, all members of the naval forces, on December 26 and 27, 1943, in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20.

A "not guilty" plea was entered to a third charge alleging that she sold and served alcoholic beverages to one of the minors (a disabled veteran of this war) while he was actually and apparently intoxicated, in violation of Rule 1 of State Regulations No. 20.

Two of the minors are nineteen years old and the other is eighteen. From statements taken from the minors it appears that, on the occasion of their last visit to the defendant's premises on December 27, 1943, they were each served at least ten drinks of alcoholic beverages by the defendant's bartender.

As to the third charge, no useful purpose will be served by detailing the testimony of the minors concerning the allegation that one of them was served while intoxicated. After having carefully considered the testimony, I find that it is not sufficient to sustain so serious a charge as that involved herein. The third charge is, therefore, dismissed.

The penalty usually imposed in cases involving an unaggravated sale of alcoholic beverages to minors, is a suspension for a period of ten days. The fact that three minors were served on two separate occasions, and that they were permitted to consume so large a quantity of alcoholic beverages, warrants the imposition of a twenty-day penalty. Five days will be remitted because of the guilty plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 18th day of April, 1944,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued by the Township Committee of Chester Township to Maud Eisenhardt, t/a Victory Tavern, for premises 9 and 11 West Main Street, Chester Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 A.M. April 24, 1944 and terminating at 2:00 A.M. May 9, 1944.

ALFRED E. DRISCOLL,  
Commissioner

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against :

GUIDO PIOTTI  
701 So. Fourth Street  
Camden, N. J. :

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-55, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

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Guido Piotti, Pro Se.  
Edward F. Hodges, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that he sold, served and delivered alcoholic beverages on his licensed premises on Sunday, March 12, 1944, in violation of local ordinance.

Shortly before noon on the Sunday in question, two ABC agents, upon entering the defendant's tavern, observed four patrons consuming alcoholic beverages while sitting at a table in the rear sitting room.

The defendant's explanation, given in a written statement at the time of the violation, is that no charge was made for the liquor served to the four men, who are "old friends of the family" and were visiting him "for the purpose of a reunion and celebrating the birth of our new baby." It appears, however, that the blessed event occurred some forty days before. In any event, the local regulation interdicts not only the sale, but as well, the service and delivery of alcoholic beverages, between 2:00 A.M. and midnight on Sunday. Moreover, under the Alcoholic Beverage Law (R.S. 33:1-1 (w)) a "sale" includes "the gratuitous delivery or gift of any alcoholic beverage by any licensee."

The defendant has a clear record ever since September 1934 when he was fined \$100.00 for violating the local regulation prohibiting the sale of alcoholic beverages on Sunday. Because of the lapse of almost ten years, I shall not consider the instant violation aggravated thereby.

The license will be suspended for a period of fifteen days, with remission of five days because of the guilty plea, leaving a net penalty of ten days.

Accordingly, it is, on this 18th day of April, 1944,

ORDERED, that Plenary Retail Consumption License C-55, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Guido Piotti, for premises 701 So. Fourth Street, Camden; be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. April 24, 1944 and terminating at 2:00 A.M. May 4, 1944.

ALFRED E. DRISCOLL,  
Commissioner

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BY HOLDER OF SOLICITOR'S PERMIT CONTRARY TO THE TERMS THEREOF, IN VIOLATION OF R.S. 33:1-2 - SOLICITOR'S PERMIT SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against :

JOHN JACOB BETSKOFF,  
1607 Park Boulevard,  
Camden, New Jersey, :

CONCLUSIONS  
AND ORDER

Holder of Solicitor's Permit  
No. 2120, issued by the State  
Commissioner of Alcoholic  
Beverage Control. :

Elmer Bertman, Esq., Attorney for Defendant-permittee.  
Harry Castelbaum, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to the following charge:

"On or about October 13, 1943 and October 26, 1943, you sold alcoholic beverages to a retail alcoholic beverage licensee in this state not pursuant to and within the terms of the solicitor's permit then held by you, in violation of R. S. 33:1-2."

The investigation of the Department of Alcoholic Beverage Control, to which I have referred for the purpose of imposing an appropriate penalty in this case, discloses that the defendant, the holder of a solicitor's permit, purchased a number of cases of whiskey from two retail licensees in this State for delivery and sale to a third retail licensee. Defendant's conduct was not permitted by the terms of his permit and was in clear violation of R.S. 33:1-2.

In mitigation of the penalty to be imposed, defendant states that he did not realize that his conduct was contrary to the terms of his permit or the State Law. In view of the fact that the defendant has held a solicitor's permit for a period of approximately eight years, I can give little weight to his statement. The truth of the matter is that the defendant was engaged in a dangerous "racket".

A determined and sustained effort is being made by the Department of Alcoholic Beverage Control to eliminate the so-called "black market" in the liquor trade. For his contribution to the "black market", I must suspend defendant's permit for the balance of its term.

Accordingly, it is, on this 18th day of April, 1944,

ORDERED that Solicitor's Permit No. 2120, issued by the Department of Alcoholic Beverage Control to John Jacob Betskoff, be and the same is hereby suspended for the balance of its term, effective immediately.

ALFRED E. DRISCOLL,  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - 15 DAYS' SUSPENSION, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against :

MARIE DeVITO,  
t/a COTTAGE BAR & GRILL,  
346 Belleville Pike,  
North Arlington, N. J., :

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-16, issued by the Mayor and Council of the Borough of North Arlington. :

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Marie DeVito, Pro se.  
Milton H. Cooper, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non-vult to charges that she sold and served to and permitted the consumption of alcoholic beverages by two minors on her licensed premises, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file discloses that two minors, both 18 years of age and members of the armed forces, were served several glasses of beer and a glass of whiskey apiece by an employee of the licensee. Even though a licensee is personally innocent she must be held strictly accountable for the acts of her servant or employee. Re Kurian, Bulletin 517, Item 2.

The defendant's record discloses a previous suspension of seven days in 1943 by the local issuing authority for a violation of a special condition in her license.

I shall suspend the license for fifteen days, less five days remission for the plea entered herein, or a net suspension of the license for a period of ten days.

Accordingly, it is, on this 19th day of April, 1944,

ORDERED that Plenary Retail Consumption License C-16, heretofore issued by the Mayor and Council of the Borough of North Arlington to Marie DeVito, t/a Cottage Bar & Grill, for premises 346 Belleville Pike, North Arlington, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 A.M. April 24, 1944, and terminating at 2:00 A.M. May 4, 1944.

ALFRED E. DRISCOLL,  
Commissioner

13. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF 10 DAYS.

In the Matter of Disciplinary Proceedings against  
MONTY'S TAVERN, INC.  
1247 Woodbridge Ave.  
Raritan Township  
P.O. RFD 1, Perth Amboy, N. J.

Holder of Plenary Retail Consumption License C-29, issued by the Board of Commissioners of Raritan Township, Middlesex County

CONCLUSIONS  
AND ORDER

In the Matter of Disciplinary Proceedings against  
NICHOLAS MONTAPERTO  
Meadow Road,  
Piscataway, N. J.

Holder of Employment Permit No. 1193 for the fiscal year expiring June 30, 1942, issued by the State Commissioner of Alcoholic Beverage Control.

Edmund A. Hayes, Esq., by John T. Keefe, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.  
William F. Wood, Esq., Appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee pleaded non-vult to four charges alleging, in substance, that it falsely concealed in its license application that Nicholas Montaperto was the real and beneficial owner of all its corporate stock.

The defendant-permittee pleaded non-vult to charges alleging, in substance, that he falsely concealed in his application for permit that he was the owner of the stock of the corporate defendant.

In December 1940 Nicholas Montaperto caused 198 of the 200 shares of stock issued by the defendant-licensee to be held on his behalf by other persons. The reason for so concealing the fact that he actually owned all of the stock was that, at that time, the Alcoholic Beverage Law (R.S. 33:1-25) required that a holder of more than ten per cent of the stock of a corporate licensee be a five-year resident of this state. Since March 1943, however, that requirement has been changed to provide for a bona-fide residence of no specified duration.

No proof of a correction of the unlawful situation has been submitted. Under the circumstances, I must suspend the license for the balance of its term. If a bona fide correction is made, application may then be made to me to lift the suspension upon proof of such correction but, in no event, will the suspension be lifted until the license has remained suspended for ten days. In view of this disposition of the disciplinary charges, the order to show cause why the license should not be cancelled because improvidently issued, is dismissed.

In addition, it may be noted that no useful purpose will be served by imposing any penalty in the proceedings against the defendant-permittee since, in view of the change in the residence requirement as aforesaid, he need no longer hold a permit for employment on licensed premises.

Accordingly, it is, on this 19th day of April, 1944,

ORDERED that Plenary Retail Consumption License C-29, issued by the Board of Commissioners of Raritan Township, Middlesex County to Monty's Tavern, Inc., for premises 1247 Woodbridge Avenue, Raritan Township, be and the same is hereby suspended for the balance of its term, viz., until June 30, 1944, effective at 2:00 A.M. April 24, 1944; and it is further

ORDERED that application may be made to me to lift such suspension upon proof of a bona fide correction but, in no event, will such suspension be lifted until ten (10) days have elapsed from the effective date of the suspension herein.

*Alfred E. Griswold*

Commissioner