

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

BULLETIN 438

JANUARY 14, 1941.

1. APPELLATE DECISIONS - MOOSE ET AL. v. TRENTON.

MUNICIPAL REGULATIONS ESTABLISHING THE HOURS LICENSED PREMISES MUST BE CLOSED MAY BE PROPERLY APPLIED TO CLUB LICENSES - THEY MAY, HOWEVER, BE UNREASONABLE AS REGARDS SUCH CLUB LICENSES IF THEY EXEMPT RESTAURANTS AND HOTELS BUT NOT CLUB LICENSES.

TRENTON LODGE 164 LOYAL ORDER OF)
MOOSE, POLISH FALCONS NO. 59,)
POLISH FALCONS NO. 145, MAGYAR HOME,)
INC., ANCIENT ORDER OF HIBERNIANS)
OF STATE OF NEW JERSEY, POLISH)
AMERICAN WAR VETERANS POST 81, and)
EAGLES AERIE NO. 100,)

Appellants,)

-vs-)

CITY COUNCIL OF THE CITY OF TRENTON)
(now Board of Commissioners of the)
City of Trenton),)

Respondent)

ON APPEAL
CONCLUSIONS

Walter D. Cogle, Esq., Attorney for Appellants.
John A. Brieger, Esq., Attorney for Respondent.

Appellants pray that certain sections of a local ordinance be set aside, vacated, repealed, changed, altered, amended or otherwise modified. See R. S. 35:1-41 and Mack's Long Bar, Inc. v. Newark, Bulletin 425, Item 5.

At the time of the filing of the appeal, appellants were the holders of club licenses issued by the City Council of the City of Trenton. Our records, however, show that Polish Falcons No. 59, apparently a bona fide club, now holds a plenary retail consumption license.

Appellants contend that Sections 18, 19 and 29 of Ordinance 41 of the City of Trenton (approved June 24, 1936 and still in effect) do not apply to club licensees because respondent has no power to regulate club licensees, and further contend that if said regulations do so apply they are unreasonable as applied to them.

The Sections in question provide:

"18. No alcoholic beverages shall be sold, served, delivered or consumed, nor shall any licensee suffer or permit the sale, service, delivery or consumption of any alcoholic beverage, directly or indirectly, upon the licensed premises between the hours of 2:00 o'clock A.M. and 7:00 o'clock A.M. on week-days, except on the morning of January 1, or between the hours of 2:00 o'clock A.M. and 5:00 o'clock P.M. on Sundays. These hours shall be construed to indicate standard time or daylight saving time during such period as each is in effect in the City of Trenton."

"19. No licensee shall suffer any person, patron or customer to consume any alcoholic beverages upon the licensed premises after the hour set for closing and during the hours when the sale, delivery, service or consumption of alcoholic beverages are forbidden.

"No licensee shall suffer any person, other than employee, to remain upon the licensed premises after the hour set for closing and during the hours when the sale, delivery, service or consumption of alcoholic beverages are forbidden; provided, however, that this provision shall not apply to restaurants and the public dining rooms of hotels."

"29. During the hours that the sale, delivery, service, or consumption of alcoholic beverages is forbidden by these rules and regulations, the licensed premises (excepting restaurants and public dining rooms in hotels) shall and must remain closed and locked to all persons, except employees who clean or perform other necessary work in and about the premises during such prohibited hours; and the entire interior of the bar or business room, or any other room where alcoholic beverages are sold, delivered or consumed, shall and must be kept open to full view from the public thoroughfare or from adjacent rooms to which the public is freely admitted."

It will be noted that the above sections do not specifically exempt bona fide clubs.

No testimony was presented at the hearings. The case was argued orally and briefs were submitted by both sides.

It is contended by appellants that the powers granted to respondent by R. S. 33:1-40 do not apply to club licensees; that such licensees must be regulated, if at all, by the Commissioner of Alcoholic Beverage Control. This contention is based on R. S. 33:1-12(5), which provides:

"CLUB LICENSE. 5. The holder of this license shall be entitled, subject to rules and regulations, to sell, only to bona fide club members and their guests, alcoholic beverages intended for immediate consumption on the licensed premises. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by resolution or ordinance, at not less than fifty dollars and not more than one hundred and fifty dollars. The governing board or body of each municipality may, by ordinance, enact that no club licenses shall be granted within its respective municipality. Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and comply with all conditions which, subject to rules and regulations, may be imposed by the commissioner."

Appellants argue that a proper construction of R.S.33:1-12(5) limits the power of the governing board or body, as regards club licensees, to the fixing of a fee for club licenses; the adoption of an ordinance, if it so desires, that no club licenses shall be granted; and the issuance of club licenses.

I do not agree with appellants' argument that R.S. 33:1-12(5) limits or affects the powers conferred by R. S. 33:1-40. In the Alcoholic Beverage Law club licenses are grouped with five other types, which are designated as "Class C" licenses, all of which grant the privilege of selling at retail. The provisions of R. S. 33:1-40 apply to all licensees selling at retail and I conclude, therefore, that this section of the law applies to club licensees as well as all other retail licensees. The last sentence in R. S. 33:1-12(5) does not disclose a contrary legislative intent because it concerns merely the qualifications of club licensees and the words "comply with all conditions which, subject to rules and regulations, may be imposed by the commissioner" apply only to the necessary qualifications of club licensees and not to the control of said licensees.

Accordingly, I conclude that the ordinance in question applies to appellant licensees.

There remains to be considered the question as to whether these sections of the ordinance are unreasonable as applied to appellants.

Section 18 and the first paragraph of Section 19 prohibit sale, service, delivery or consumption of alcoholic beverages at all retail premises during designated hours. In my opinion, it is not unreasonable to require all retail licensees, including bona fide clubs, to cease alcoholic beverage activities between 2:00 A.M. and 7:00 A.M. on weekdays and 2:00 A.M. and 5:00 P.M. on Sundays. The regulation applies to all retail licensees. Cf. Re Wenzel, Bulletin 19, Item 7.

The second paragraph of Section 19 and the whole of Section 29, however, which require licensed premises to close during the aforesaid hours, both specifically exempt from their respective provisions "restaurants and public dining rooms of hotels".

Undoubtedly, respondent would have had the power to exempt also club licensees and other licensees who could qualify for club licenses. Re Biaselin, Bulletin 109, Item 4; Re Dwyer, Bulletin 126, Item 16; Re Grosso, Bulletin 151, Item 10; Peck v. West Orange, Bulletin 171, Item 10. The question to be determined, therefore, is whether the failure to so exempt appellants from the effect of the second paragraph of Section 19 and the whole of Section 29 renders these sections unreasonable as applied to appellants. In Crystal Lunch, Inc. v. Perth Amboy, Bulletin 274, Item 9, the Commissioner decided that an ordinance was not unreasonable which required restaurants to close between 2:00 A.M. and 5:00 A.M. while it permitted clubs and hotels to remain open during those hours for purposes other than the sale of alcoholic beverages. The Commissioner therein determined that a municipality might validly distinguish between restaurants on the one hand and hotels and clubs on the other hand and fix reasonable hours for the closing of restaurants. However, a club serves a public purpose essentially different from that served by a restaurant. Apart from alcoholic beverage activities, a bona fide club functions for fraternal purposes. The club is but an association of several citizens; the clubhouse is in the nature of a common home. Societa Operaia v. Trenton, Bulletin 41, Item 5.

It is difficult to conceive of any sufficient reason why a bona fide club should be required to close its premises for all purposes between 2:00 A.M. and 7:00 A.M. on weekdays and between 2:00 A.M. and 5:00 P.M. on Sundays, while restaurants and public dining

rooms of hotels are permitted to remain open during those hours for purposes other than the sale of alcoholic beverages. If a club serves liquor during prohibited hours, its license can be suspended or revoked. I conclude, therefore, that while it is perfectly reasonable to prohibit sale, service and delivery of alcoholic beverages in clubs as well as all other licensed premises during the hours mentioned herein, the provisions of the ordinance which, in effect, require bona fide clubs to be closed during those hours for all purposes, are unreasonable, particularly so long as restaurants and public dining rooms of hotels are permitted to remain open during those hours for purposes other than the sale of alcoholic beverages.

Since no proceedings have ever been instituted against any of appellants for violating the ordinance, the question remains as to what, if any, relief should be afforded herein. The mere fact that the second paragraph of Section 19 and the whole of Section 29 of Ordinance 41 may be unreasonable as applied to appellants is no reason why these sections should be set aside in toto. Under these circumstances, no order will be entered herein rescinding the ex parte approval heretofore given. But the opinion herein expressed will, for present purposes, be considered merely as advisory to the parties. It is suggested, therefore, that respondent amend the second paragraph of Section 19 and Section 29 so as to exempt restaurants, public dining rooms of hotels, and premises operated by club licensees or other licensees who could qualify for club licenses. Such amendment would obviate any danger that other retail licensees could avoid the provisions of the ordinance merely by designating their premises as a club. If the ordinance is not so amended, this advisory opinion will serve as authority that the second paragraph of Section 19 and the whole of Section 29 of said Ordinance will be held unreasonable as applied to appellants if the matter comes before me in a future appeal from disciplinary proceedings instituted by respondent against bona fide clubs.

E. W. GARRETT,
Acting Commissioner.

Dated: January 4, 1941.

2. ELIGIBILITY - ISSUING WORTHLESS CHECK - AGGRAVATED CIRCUMSTANCES - MORAL TURPITUDE -- APPLICANT DECLARED INELIGIBLE FOR EMPLOYMENT BY LIQUOR LICENSEE.

January 8, 1941

Re: Case No. 358

Hearing was held to determine whether applicant's conviction in 1937 of issuing a worthless check involves the element of moral turpitude, hence disqualifies him from employment by a liquor licensee. See R. S. 33:1-25, 26.

Applicant testified that in 1936 he opened a butcher business and also acted as a jobber of meats; that at times he issued post-dated checks to wholesalers with whom he dealt; that in the latter part of 1936 he issued three post-dated checks totaling \$1200.00 to three wholesalers. The wholesalers were never paid, despite applicant's claim that he had sufficient money to make good the checks within a few days after they were issued. His explanation is that they refused to accept the money, but instead wanted him to pay his entire indebtedness to them, which included additional bills to those represented by the checks; that being unable to do so, he was arrested, and thereafter, with the lapse of time, he spent the money.

The wholesaler's version of applicant's business practices, as reported by the Probation Office, is that when the concern delivered the goods to applicant "they were under the impression that he was conducting a meat business, but later discovered he was merely peddling the goods to other merchants at a lower price than he bought them for."

He pleaded non vult to the charge involving the \$150.00 check, while the other two charges were nolle prossed. He was placed on probation for four years and ordered to make restitution (which he has only partially completed to date).

Further light on applicant's methods of doing business is furnished by the fact that, while this is his only conviction, he admits three other arrests for similar offenses.

Thus, in October 1933 he was arrested for issuing a worthless check to one of his creditors. He says that this was a post-dated check, which he made good after the case was adjourned without date.

On April 28, 1936 he was arrested for issuing a worthless check. This complaint was withdrawn because he made good the check.

On April 30, 1936 applicant was arrested for issuing another worthless check, was held for the Grand Jury, made good the check, and the case was ultimately dismissed in October 1936.

In view of applicant's previous difficulties in connection with checks (which, despite his proffered explanation, I believe he knew to be worthless when issued), it is evident that when he issued the three checks which led to his conviction, he did so from lack of proper business ethics and not merely because of inadvertence or poor judgment.

The crime of issuing worthless checks may or may not involve moral turpitude, depending upon the facts of the case. While the crime of which applicant has been convicted is based only upon the issuance of one check, nevertheless the issuance of the others, even though he avoided criminal conviction therefor by making them good, is an aggravating circumstance which imparts the element of moral turpitude to his conviction. Re Case 230, Bulletin 272, Item 3.

It is recommended that the applicant be declared ineligible for employment by a liquor licensee.

Harry Castelbaum,
Attorney.

APPROVED:

E. W. GARRETT,
Acting Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - SECOND OFFENSE - PRIOR CONVICTION OF DISSIMILAR OFFENSE - 25 DAYS' SUSPENSION - OVERSIZED PRICE SIGNS - FIRST CONVICTION AFTER PREVIOUS WARNINGS - 10 DAYS' SUSPENSION - TOTAL: 35 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
 Proceedings against)

THEODORE P. JANULIS,)
 381 Springfield Avenue,)
 Newark, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Distri-)
 bution License No. D-64, issued)
 by the Municipal Board of Alco-)
 holic Beverage Control of the)
 City of Newark.)
 - - - - -)

Samuel S. Ferster, Esq., Attorney for Defendant-Licensee.
 Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

The defendant, a plenary retail distribution licensee who operates a combination delicatessen and "package" liquor store in Newark, pleads guilty to the charges of (1) there selling liquor below Fair Trade price in violation of Rule 6 of State Regulations No. 30, and (2) permitting, in his show window, a price-advertising sign larger than 1½ inches by 1½ inches in violation of Rule 3 of State Regulations No. 21.

In thus pleading guilty the defendant asks, however, that the reports of the Department's investigators in the case be reviewed and the defendant given the benefit of any mitigating circumstance there appearing.

The facts, as revealed by those reports, are as follows:

As to (1): On the afternoon of November 17, 1940 Investigator Carson ordered a pint bottle of Wilson "That's All" Blended Whiskey at the defendant's store. When the defendant first quoted \$1.33 (the correct Fair Trade price) as the price for this item, the investigator replied that he could get the same liquor elsewhere "for \$1.25 or even less." The defendant thereupon charged the investigator \$1.20 and completed the sale.

I do not see any mitigating circumstance here. There is no sign of entrapment or undue persuasion by the investigator. The plain fact is that the defendant, when faced with the prospect of losing a sale at the Fair Trade price, simply and readily "cut" that price to gain the sale. This type of licensee is as much a "chiseler" as the less cautious licensee who, instead of first trying for the full Fair Trade price, immediately quotes a figure below that price.

As to (2): When the investigator visited the store, he observed a large sign, approximately 2½ feet long and 1 foot high, posted on the side of one of the store's show windows (and apparently facing, not directly onto the street, but the recessed entrance-way into the store), which advertised in large black letters against a white ground "Seagram's 7 Crown Blended

Whiskey" at "25¢." This sign, apparently intended for use inside a tavern to there advertise sale of that liquor for 25¢ the drink, indubitably gave, when appearing on the defendant's show window of his "package" store, the rather startling impression that bottles of the advertised item could be obtained for 25¢. These facts show no mitigating circumstance.

As to penalty: The defendant has a past record on both these types of violation. As to Fair Trade, in January 1940 he pleaded guilty, in a disciplinary proceeding before this Department, to sale below proper price during December 1939, whereupon his license was suspended for ten days (with five days being remitted for his guilty plea). As to improper price-advertising signs, the defendant was specifically warned, in both August and September of 1936 and again in December of 1937, against the use of over-sized price signs then found in his windows.

In addition, the Newark Board of Alcoholic Beverage Control, in March 1937 (shortly before this Department took over the disciplinary work of that Board - Re Newark, Bulletin 236, Item 8), found the defendant guilty of permitting lottery slips on his licensed premises, but suspended sentence.

In view of such past record, the defendant's license will be suspended for twenty-five days for his present Fair Trade violation, and for an additional ten days for the price sign violation, or a total of thirty-five days. Five days will be remitted for his guilty plea, leaving a net of thirty days' suspension.

Accordingly, it is, on this 8th day of January, 1941,

ORDERED, that Plenary Retail Distribution License No. D-64, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Theodore P. Janulis for premises at 381 Springfield Avenue, Newark, N. J., be and the same is hereby suspended for a period of thirty (30) days, commencing January 13, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

4. DISCIPLINARY PROCEEDINGS - COMMERCIALIZED GAMBLING - "BLACK JACK" - GAME "CUT" FOR AND ON BEHALF OF CLUB - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

LINCOLN PLEASURE CLUB, INC.,)
11 Boston Street,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-43,)
issued by the Municipal Board of)
Alcoholic Beverage Control of)
the City of Newark.)

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Herman L. Levenson, Esq., Attorney for Defendant-Licensee.
Charles Basile, Esq., Attorney for the State Department of
Alcoholic Beverage Control.

The licensee has pleaded guilty to the charge of having allowed and permitted gambling on the licensed premises, to wit, playing at a card game known as "black jack" for money, on November 10, 1940 and divers days prior thereto, in violation of Rule 7 of State Regulations No. 20.

The usual penalty for this violation where it appears to have been non-commercialized gambling, is five days.

A review of the reports and statements taken by the police of the City of Newark and submitted to this Department, discloses that one of the stewards of the club was "cutting the game" for and on behalf of the club. Under these circumstances it cannot be said that the gambling permitted was non-commercialized; hence a greater penalty will be imposed.

By entering this plea in ample time before the day fixed for hearing the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for ten days less five days for the plea.

Accordingly, it is, on this 8th day of January, 1941,

ORDERED, that Club License CB-45, heretofore issued to Lincoln Pleasure Club, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, commencing January 13, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
Proceedings against)

PHILIP ERDELYI,)
T/a Lakeview Wines & Liquors,)
285 Lakeview Avenue,)
Clifton, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-)
bution License D-17, issued by)
the Municipal Council of the)
City of Clifton.)

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John J. Roegner, Esq., Attorney for the Defendant-Licensee.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling alcoholic beverages on November 22, 1940 at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

Reports of the Department agents who took part in the investigation show that on the afternoon of November 22, 1940 the defendant-licensee delivered two one-quart bottles of Old "Mr. Boston" Pinch Bottle Blended Whiskey to a private residence in Passaic and collected, in payment, \$2.10 for each quart bottle. The minimum consumer price at which a quart bottle of this whiskey could be sold at that time was \$2.59. Bulletin 416.

The minimum penalty for sale below Fair Trade price is ten days. Since the instant offense is the defendant-licensee's first violation of record, the minimum penalty will be imposed.

By entering the guilty plea in ample time before the date set for hearing, the defendant-licensee has saved the Department the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 8th day of January, 1941,

ORDERED, that Plenary Retail Distribution License D-17, heretofore issued to Philip Erdelyi by the Municipal Council of the City of Clifton, be and the same is hereby suspended for a period of five (5) days, effective January 13, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

6. EDUCATIONAL CAMPAIGN.

January 7, 1941

To: E. W. Garrett, Acting Commissioner.

Herewith list of addresses made by members of the Department in connection with Educational Campaign during the period June 1, 1940 to December 31, 1940, and the organizations before which appearances were made:

1940

June

3	Park Men's Club of New Brunswick	David J. H. Murray
5	Police Training School of Elizabeth	William S. Codd Philip Finzel
6	Dover Chamber of Commerce	William S. Codd
6	Arthur J. Holeton Post #192 of the American Legion of Wenonah	Frank M. Middleton
11	N. J. Retail Liquor Stores Association	Earle W. Garrett Sydney B. White
25	Rotary Club of Pitman	Frank M. Middleton

July

18	N. J. State Police Training School	Edward Lurie Stanton J. MacIntosh
25	Montclair Kiwanis Club	Sydney B. White

Aug.

8	Jersey City Retail Liquor Dealers Association, Inc., Div. #7	Edward Lurie
14	Hudson-Bergen County Retail Liquor Stores Association	Edward Lurie Richard E. Silberman
20	Asbury Park Lions Club	David J. H. Murray
21	Schenley Distillers Corporation	Stanton J. MacIntosh Menoth G. Battista
25	N. J. State Culinary Alliance & Bartenders League	Sydney B. White
29	State Convention of N. J. Association of Chiefs of Police	Earle W. Garrett

Sept.

13	The Research Council on Problems of Alcohol	Earle W. Garrett
17	N. J. State Hotel Association	Earle W. Garrett
23-26	Eighth Annual Convention of N. J. Licensed Beverage Association	Stanton J. MacIntosh Earle W. Garrett

Oct.

10	St. Paul's Brotherhood of the St. Paul's Lutheran Church of Collingswood	Bayard M. Sullivan
13	American Wine Association	Earle W. Garrett
14	National Association of Alcoholic Beverage Importers, Inc.	Earle W. Garrett
15	The Research Council on Problems of Alcohol	Earle W. Garrett
16	Associated Wineries of New Jersey	Earle W. Garrett
17	Dinner honoring Burlington County's oldest licensee, Charles A. Braddock	Earle W. Garrett
18	Crescent Temple of Trenton	David J. H. Murray
24	The Old Guard of Westfield, N. J.	David J. H. Murray

Nov.

12	Bergen County Distribution Licensees Association	Earle W. Garrett
19	National Council of State Liquor Dealers' Associations	Earle W. Garrett
26	N. J. Licensed Beverage Association, Ocean County Division No. 10	David J. H. Murray

Dec.

3	N. J. Licensed Beverage Association, Pennsauken Division	Earle W. Garrett
5	Suburban Junior Woman's Club	Richard E. Silberman
11	Mount Holly Service Club	Frank M. Middleton
13	Camden Kiwanis Club	Earle W. Garrett
18	Rotary Club of Newton	Earle W. Garrett
23	American Business Club of Trenton	Sydney B. White
30	Gloucester County Game and Fish Association	Frank M. Middleton

Respectfully submitted,
S. B. White,
Chief Inspector.

7. APPELLATE DECISIONS - MOLLER v. JACKSON

SALES TO MINORS - SUSPENSION BY MUNICIPALITY APPEALED ALLEGING INSUFFICIENT EVIDENCE AND ENTRAPMENT - SUSPENSION AFFIRMED.

IDA MOLLER,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
)	
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF JACKSON,)	
)	
Respondent)	
-----)	

Joseph A. Citta, Esq., Attorney for Appellant.
Percy Camp, Esq., Attorney for Respondent.

Appellant appeals from a five-day suspension imposed on her license C-6 for premises located on Lakewood-Trenton Road, Jackson's Mills, Township of Jackson. The penalty was imposed after appellant had been found guilty of selling alcoholic beverages to a minor.

The only grounds set forth in the petition of appeal upon which evidence was introduced at the hearing herein were that:

- (1) The evidence was not sufficient to warrant a suspension of the license; and
- (2) The alleged violation was an entrapment.

Appellant, her husband, William Moller, who is employed as bartender, and James Edgar, another bartender, testified that they were on the licensed premises between the hours of 10:00 P.M. and 11:00 P.M. on Saturday, August 24, 1940, when the violation is alleged to have occurred; that there was a large crowd in the barroom; and that Robert Applegate, the minor, was not present on the licensed premises on the evening in question. These witnesses also denied that Philip Grant or Kenneth Grover visited the premises at that time.

On the other hand, Robert Applegate, who was born February 19, 1921, testified that he entered the licensed premises on the evening of August 24, 1940, purchased from Edgar, the bartender, a glass of beer which he consumed, and later purchased from William Moller two cans of beer, which were produced at the hearing. Applegate further testified that neither of the bartenders had inquired as to his age.

Philip Grant testified that he and Kenneth Grover, a police officer of Jackson Township, had entered the licensed premises at about 10:30 P.M. on August 24, 1940; that Applegate entered about ten minutes later and purchased the glass of beer from Edgar and two cans of beer from William Moller; that no one questioned Applegate as to his age and that there were then four or five people in the barroom. Kenneth Grover corroborated this testimony and Chief of Police Frank Booth testified that he had sent Philip Grant into the licensed premises at the time in question. The evidence is clearly sufficient to warrant the suspension of the license.

As to entrapment: The minor entered the licensed premises in accordance with arrangements previously made with the police officers or Grant, who appears to have been acting in conjunction with the police. The Hearer reports that Robert Applegate was youthful in appearance, although he was tall and weighed approximately one hundred and fifty pounds. There is no evidence that any trickery, persuasion or fraud was resorted to by the law officers or those under their control. Under these facts, no entrapment has been shown. Re Sandago, Bulletin 249, Item 1; Re Beatty, Bulletin 249, Item 2; Re Fischer, Bulletin 249, Item 3. No reason appears for disturbing the action taken by respondent below.

Accordingly, it is, on this 8th day of January, 1941,

ORDERED, that the action of respondent be and the same is hereby affirmed and the appeal is hereby dismissed; and it is further

ORDERED, that my order entered herein on October 8, 1940, staying the effect of respondent's order of suspension pending determination of appeal, is hereby vacated, effective January 15, 1941, at 7:00 A.M.; and it is further

ORDERED, that, in lieu of the suspension heretofore imposed by respondent, appellant's license C-6 for premises located on Lakewood-Trenton Road, Jackson's Mills, Township of Jackson, Ocean County, New Jersey, be and the same is hereby suspended from January 15, 1941 at 7:00 A.M. to January 20, 1941, at 7:00 A.M.

E. W. GARRETT,
Acting Commissioner.

8. DISCIPLINARY PROCEEDINGS - DEVICE IN THE NATURE OF A SLOT MACHINE - "FINAL FINISH" - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

WILLIAM SAXON,)
345 Market Street,)
Paterson, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License No. C-151, issued by the Board of Aldermen of the City of Paterson.)
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William Saxon, Pro Se.
Robert R. Hendricks, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to charges that, on October 9, 1940, and on divers days prior thereto, he possessed on his licensed premises a "Final Finish" four-ball machine, a device in the nature of a slot machine, which was used for the purpose of playing for valuable things, and that he permitted gambling by redeeming in merchandise the winnings of persons playing said device, in violation of Rules 7 and 8 of State Regulations No. 20.

The Department file discloses that the "Final Finish" four-ball machine is a one-shot device which operates in substantially identical manner as the "Turf Champ" five-ball one-shot machine described in Re Litchenstein, Bulletin 436, Item 7, excepting that the "Final Finish" machine employs four balls instead of five and is equipped with an automatic ticket ejector and cash pay-off drawer.

While the cash pay-off drawer on this particular machine was locked at the time of the investigation, Walter White, the bartender in charge of the premises, admitted to the investigators that the tickets, ejected by the machine whenever a hit was made, were redeemed with drinks at the bar.

The machine is clearly a device in the nature of a slot machine. The minimum penalty for possessing such a device and permitting it to be used for gambling is ten days. Re Breslin, Bulletin 434, Item 10; Re Litchenstein, supra.

By entry of the plea, the Department has been saved the time and expense of proving its case. Five days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 8th day of January, 1941,

ORDERED, that Plenary Retail Consumption License No. C-151, heretofore issued to William Saxon by the Board of Aldermen of the City of Paterson, be and the same is hereby suspended for a period of five (5) days, effective January 13, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

ARTHUR HUGHES,)
Route 34 (Valley Drive),)
Matawan Township,)
P.O. R.D. 2, Matawan, N.J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-7 issued by the Township Committee of the Township of Matawan.)
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Arthur Hughes, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge that on December 5, 1940 he sold alcoholic beverages below the Fair Trade price, in violation of Rule 6 of State Regulations 30.

The Department file discloses that on December 5, 1940 investigators entered the barroom of the licensed premises and asked the licensee the price of a pint of Wilson "That's All" Whiskey.

The licensee stated that the price was \$1.30. The investigators observed that this product was marked on the shelf at the quoted price. The minimum consumer price of Wilson "That's All" Whiskey, published in Bulletin 424 of this Department, is \$1.33. The sale at \$1.30 was, therefore, in violation of the State Regulations. The licensee gave the investigators a signed statement in his own handwriting, acknowledging the sale and stating that it was in error since he had "overlooked the new price", and assuring the Department that it will "not happen again".

The price of the product in question was fixed at \$1.33 per pint, effective July 22, 1940, and was published in Bulletin 416 of this Department. The previous price from October 9, 1939 until that date was published in Bulletin 350 at \$1.15 per pint. Giving the licensee the benefit of all doubt and presuming that the sale in question was not the result of deliberate chiseling, it appears at best that the licensee failed to use due care in changing the prices on his liquor stock. This Department goes to considerable time and expense in seeing that Fair Trade lists are published and served upon licensees for their benefit. Carelessness in marking liquor stock from these price lists does not excuse a violation. Re Schwarz Drug Co., Bulletin 307, Item 5.

The minimum penalty for sale below Fair Trade price is ten days. Re Buczek, Bulletin 436, Item 12. Because of the guilty plea, the Department has been saved the time and expense of proving its case. Five days of this penalty will therefore be remitted.

Accordingly, it is, on this 9th day of January, 1941,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to Arthur Hughes by the Township Committee of the Township of Matawan, be and the same is hereby suspended for a period of five (5) days, effective January 13, 1941, at 3:00 A.M.

E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN PROOF, COLOR, ACID AND SOLID CONTENT - FIRST CONVICTION AFTER PREVIOUS WARNING - 15 DAYS' SUSPENSION, WITH NO REMISSION FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against
NICHOLAS J. DeVITA,
T/a DEMPSEY'S,
Hainesville,
Sandyston Township, N.J.,
Holder of Plenary Retail Consumption License No. C-4, issued by the Township Committee of the Township of Sandyston.

CONCLUSIONS
AND ORDER

Nicholas J. DeVita, Pro Se.
Robert R. Hendricks, Esq., Attorney for State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of possessing an illicit alcoholic beverage in violation of R.S.33:1-50.

On September 4, 1940 an agent of the Alcohol Tax Unit of the United States Internal Revenue Service inspected some twenty-two open bottles of liquor in the defendant's licensed premises and, as a result of his tests, seized one bottle of Four Roses Whiskey. Analysis by the Federal chemist showed that the contents of the seized bottle varied in proof, color, and acid and solid content from a genuine sample used for comparative purposes.

The defendant, although admitting possession of the illicit alcoholic beverage as charged, disclaims any knowledge, and is unable to give any explanation, of how the contents of the seized bottle came to be altered or refilled.

The seized liquor constituted an illicit alcoholic beverage. Re Haney, Bulletin 304, Item 13. Hence the defendant's mere possession of such at his tavern was a violation of the Alcoholic Beverage Law (R. S. 33:1-50), for which he is strictly accountable, even though he be personally innocent of the refilling. See Re Orbach, Bulletin 406, Item 10, and the cases cited therein.

As to penalty: Where, as in the instant case, it does not appear that the seized liquor was bootleg and there is no affirmative proof that the defendant-licensee took part in or was responsible for the refilling, the penalty for this violation would be, under ordinary circumstances, suspension of license for ten days. Re Orbach, supra. The defendant-licensee, however, has been warned in the past by this Department concerning allegedly refilled liquor found on his licensed premises. His license, therefore, will be suspended for fifteen days. Re Kalfus, Bulletin 437, Item 11.

Accordingly, it is, on this 10th day of January, 1941,

ORDERED, that Plenary Retail Consumption License No. C-4, heretofore issued by the Township Committee of the Township of Sandyston, be and the same is hereby suspended for a period of fifteen (15) days, effective January 15, 1941, at 7:00 A.M.

E. W. GARRETT,
Acting Commissioner.

11. ELIGIBILITY - VIOLATION OF GAME LAWS AND SIMPLE ASSAULT AND BATTERY - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

January 11, 1941

Re: Case No. 359

Applicant was convicted in 1933 of violating the game laws and, in default of payment of a fine of \$23.00, was sentenced to 23 days in jail. In 1939 he was arrested on a charge of atrocious assault and battery, and, after remaining some 26 days in jail, he pleaded non vult to a reduced charge of simple assault and battery and was sentenced to the time that he had already spent in jail.

The conviction in 1933 for violation of the game laws was occasioned by applicant's unsuccessful efforts to shoot wild ducks while the season was closed and without a license. No moral turpitude is involved in this conviction.

As to the conviction for assault and battery in 1939, applicant testified that the conviction arose out of a fist fight which he had with another man. The records of the County Probation Office disclose that while applicant was originally charged with atrocious assault and battery with a blunt instrument, he was permitted to plead to a charge of simple assault and battery after pre-trial investigation had indicated that applicant had not been the aggressor in the altercation and that no weapon had been used. Under these circumstances, the crime does not involve moral turpitude. See Re Case No. 166, Bulletin 180, Item 7; Re Case No. 216, Bulletin 238, Item 7; Re Case No. 342, Bulletin 423, Item 11.

It is recommended that applicant be advised that he is not disqualified, by reason of the aforesaid convictions, from being employed by a liquor licensee in this State.

Robert R. Hendricks,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.



Acting Commissioner.

