Mr. Ernest M. Tapner, DP
26 Rose Avenue,
Madison,
Morris County, New Jersey.

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

BULLETIN 879 JUNE 19, 1950

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ITEM

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

BULLETIN 879 JUNE 19, 1950.

1. NEW LEGISLATION - P. L. 1950, C. 145, SUPPLEMENTING STATE LIMITATION LAW (P. L. 1947, C. 94) TO MAKE FURTHER EXCEPTION IN FAVOR OF CERTAIN FORMERLY LICENSED VETERANS.

Senate Bill No. 234 was, after having been provisionally vetoed, approved by the Governor on May 26, 1950, and thereupon became Chapter 145 of the Laws of 1950. The act reads as follows:

"A SUPPLEMENT to 'An act concerning alcoholic beverages; limiting the number of licenses to sell alcoholic beverages at retail, and supplementing chapter one, Title 33 of the Revised Statutes,' approved May first, one thousand nine hundred and forty-seven (P.L. 1947, c. 94).

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. Nothing in the act to which this act is a supplement shall prevent the issuance, in a municipality, of a new license to sell alcoholic beverages at retail, to a person who, having served honorably in the armed forces of the United States and having held a license of the same class in the municipality, transferred said license to his spouse within the last past fifteen years and having served some time during said fifteen years in the armed forces of the United States, and whose spouse, during his service in the armed forces of the United States, surrendered said license or permitted it to expire; provided, that no license of the same class has been issued in said municipality since the surrender or expiration of said license; and provided further, that such person has filed or shall file his application for a new license within one year from the effective date of this act.

"2. In any county of the sixth class, any person who held a license to sell alcoholic beverages at retail for a period of two years prior to serving in the armed forces of the United States and who permitted said license to lapse, may apply for such license from the municipality originally issuing the same, and such municipality may, if the applicant is otherwise eligible for such license, issue the same regardless of any jurisdictional dispute between such municipality and an adjoining municipality as to boundary lines; provided, that application for said license is made or has been made within six months of the honorable discharge of the applicant from the armed forces of the United States.

"3. This act shall take effect immediately."

- - - - - - -

Dated: June 15, 1950.

ERWIN B. HOCK
Director.

2. APPELLATE DECISIONS - BRIODY AND ZINNA v. JERSEY CITY; BOYLE'S TAVERN, INC. AND MANDEL.

PETER BRIODY and VITO ZINNA,
Appellants,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF JERSEY CITY; BOYLE'S TAVERN, INC., and CHARLES MANDEL,
Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Robert C. Gruhin, Esq., Attorney for Appellants.
John B. Graf, Esq., by Jacob J. Levey, Esq., Attorney for Respondent City of Jersey City.
Samuel Schwartz, Esq., Attorney for Respondent Boyle's Tavern, Inc.
Ezra L. Nolan, Esq., Attorney for Respondent Charles Mandel.

BY THE DIRECTOR:

This is an appeal from the action of respondent Municipal Board in granting a person-to-person transfer of a plenary retail consumption license from respondent Boyle's Tavern, Inc., allegedly to respondent Charles Mandel for premises at 459 Ocean Avenue, Jersey City.

From the municipal clerk's certification in this matter (Rule 22 of State Regulations No. 6), it appears that the transfer was granted, not to Charles Mandel alone, but to him and "Ely S. Mandel". Although appellants' failure to join Ely S. Mandel as a respondent on this appeal might perhaps be viewed as fatal, it is unnecessary to pass upon such issue. As appears below, the appeal on its merits is without foundation and I am resting my decision thereon.

Appellants are alleged creditors of one John M. Boyle, owner of 80% of the shares of stock and also president of Boyle's Tavern, Inc., the transferring licensee.

The application for this transfer came up for action at the Municipal Board's meeting on March 21, 1950. Before the official opening of the meeting, the attorney for the above creditors filed two letters of protest with the City Clerk, one on behalf of each creditor, alleging that the above John M. Boyle was indebted to each of the objectors in the amount of $1,400.73. (An additional objection contained in the letters alleging that there had been improper advertisement of notice of application was abandoned by the objectors.)

These letters were presented at the meeting of the Municipal Board and the objectors' attorney also appeared at that meeting. He reiterated to the Board his clients' position of protest, based merely upon the alleged fact that John M. Boyle owed money to his clients. Although giving the attorney full opportunity to state this protest at the meeting, the Board indicated that its function was not to act as a "collecting agency" when sitting on these matters and, apparently on the assumption that the mere fact of John M. Boyle's alleged indebtedness was an irrelevant issue, the Board refused to schedule any separate hearing which could only be for the purpose of presenting evidence to establish the alleged debt.

The sole ground of the present appeal is that the Municipal Board acted improperly in refusing to schedule such a hearing (Rules 8 and 9 of State Regulations No. 6), and that the transfer should therefore be set aside.

I find appellants' position to be without merit. It has specifically and consistently been held that, where an application is filed for transfer of license, the mere fact that the transferring licensee is indebted to creditors is not a valid objection against granting the transfer. As was aptly stated by the late State Alcoholic Beverage Commissioner Burnett in Re Rhodes, Bulletin 176, Item 5:

> "Transfers may not be denied just because a licensee owes money....
>
> "Transfers of liquor licenses may be denied if the liquor law or regulations have been violated, or if the person to whom the license is to be transferred is disqualified or the premises unsuitable -- in short, only because of the public welfare and not in aid of private creditors.
>
> "If a licensee owes money, he may be sued like any other debtor in the law courts which is the only forum where cases of that kind are properly heard. The Alcoholic Beverage Control Act cannot be used as a club over his head to collect private debts."

For a recent application of this doctrine, see Ascher v. Asbury Park et al., Bulletin 828, Item 3. Cf. Re Hommell, Bulletin 123, Item 7.

It follows, a fortiori, that where, as here, the objection is based on the mere fact of alleged indebtedness of a stockholder or officer of the transferring licensee, such objection is without efficacy to stay the transfer. Proper redress for such alleged debt lies in the civil courts, and is neither a pertinent nor a germane issue on the question of the transfer.

Since the objectors' protest was based on an irrelevant issue, the Municipal Board, after hearing their attorney's statement of their protest at its meeting of March 21, 1950, acted in no way improperly or prejudicial to their interest in refusing to schedule a hearing for substantiation of the indebtedness allegedly owing by John M. Boyle.

The action of the Municipal Board is affirmed.

Accordingly, it is, on this 7th day of June, 1950,

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

ERWIN B. HOCK
Director.

3. APPELLATE DECISIONS - WALKER v. WAYNE.

WILLIAM WALKER and ETHELREDIS V. WALKER, Appellants,	)	
-vs-	)	ON APPEAL CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WAYNE, Respondent.	)	

Charles Gorgas, Esq., Attorney for Appellants.
C. Alfred Wilson, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the denial by respondent of an application by appellants for a plenary retail distribution license for premises on Berdan Avenue, Township of Wayne.

According to the Answer filed herein, the application was denied because (1) such a license would extend the "variance use" of the premises to be licensed, in violation of the Township Zoning Ordinance; (2) application to the Board of Adjustment for a variance to permit the sale of alcoholic beverages was denied; and (3) public convenience and necessity does not require the issuance of the license applied for.

The premises for which appellants seek a license is located in an "A" zone restricted to residential use only. On or about September 12, 1947, the Board of Adjustment, after application and hearing, granted a variance in favor of the premises to permit the operation of "a general store for the sale of grocery and other foods". The necessary permission was granted by the respondent Township Committee.

An issuing authority may not be required to issue a liquor license for premises where it appears that the issuance of such a license would violate a local zoning ordinance. Nasso v. Bridgewater, Bulletin 744, Item 10; William Talbot, St. John Baptist School for Girls et al. v. Keppler et al., Bulletin 117, Item 1, and cases cited.

Appellants contend, however, that the variance hereinbefore obtained by them, permitting the "sale of groceries and other foods", permits the sale of alcoholic beverages.

I conclude that the sale of alcoholic beverages is an extension of the variance as hereinbefore set forth. It is clear from the whole history of legislation regulating the sale of alcoholic beverages that there has never been any intention that "alcoholic beverages" are "food". As the Court said in Speak v. Closter (unreported; Sup. Ct. Apr. 4, 1934):

> "No one conscious of the use and abuse of malt liquors can regard the license as other than authorizing a new use in a zoned area."

Cf. Vogel v. Bridgewater, 121 N.J.L. 236; Green v. Newark, 131 N.J.L. 336; National Lumber Products Co. v. Ponzio, 133 N.J.L. 95.

Clearly, appellants considered that such use would be an extension of their permitted variance. They asked the Board of Adjustment to extend their present variance, and unsuccessfully appealed to the Township Committee seeking to reverse the adverse finding of the said Board.

Whether the zoning ordinance is valid is not a question within my cognizance. Until it is set aside by a court of competent jurisdiction, I shall assume that its provisions are reasonable. Murchio v. Wayne, Bulletin 379, Item 7.

Under the circumstances of this case, it is unnecessary to consider the question of public convenience and necessity, or the effect of P.L. 1947, c. 94.

The action of respondent is affirmed.

Accordingly, it is, on this 8th day of June, 1950,

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

ERWIN B. HOCK
Director.

4. APPELLATE DECISIONS - HERZOG AND RILEY v. NEWARK.

ADELINE, THERESA, BERTRAND HERZOG, and HORACE and METHA RILEY,

Appellants,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

James R. Giuliano, Esq., Attorney for Appellants.
Charles Handler, Esq., by Harry A. Pine, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellants' license for a period of ten days after finding them guilty in disciplinary proceedings of the following charge:

"On or about March 5th, 1950 you allowed, permitted and suffered in and upon the licensed premises, a disturbance, brawl and unnecessary noises and allowed, permitted and suffered the licensed place of business to be conducted in such manner as to become a nuisance, in violation of Rule 5 of State Regulations No. 20."

There is no serious dispute about the facts of the case. Shortly after 6:00 p.m. on the evening of Sunday, March 5, 1950, one James Bracken entered appellants' premises. He testified that he was sober although he had previously had some drinks at home where a christening party was being held. After having one or two drinks of whiskey at the bar, Bracken and another customer went to a "cue ball" machine which was located in about the middle of the tavern and about fifteen feet from the bar. After playing one game, Bracken returned to the bar and had another drink of whiskey and then returned to the machine where he continued to play the game with his friend. Up to this point his conduct appears to have been proper, although Frank Thompson, the bartender, was once required to warn him that he should not bounce the ball on the "cue ball" machine.

In the rear of the licensed premises, at about the same time, Charles Pisano, Sr., Charles Pisano, Jr. and two other men were playing shuffleboard. They decided to leave and, as they passed the "cue ball" machine, Bracken turned and struck Charles Pisano, Sr. Without retaliating, Charles Pisano, Sr. rushed out through the front door of the premises and summoned policemen who happened to be passing in a radio car. As his father was leaving the premises, Charles Pisano, Jr. approached Bracken and was struck two or three times by Bracken. Apparently other customers who were nearby attempted to stop the disturbance, which lasted only one or two minutes and was over before the policemen entered the premises.

It is clear from the above facts that a brawl or disturbance occurred on appellants' premises. However, I can find no evidence which would indicate that appellants or their bartender "allowed, permitted or suffered" this brawl or disturbance. Admittedly there had been no argument or quarrel between these parties prior to the time Bracken struck the first blow. Frank Thompson, the bartender, was behind the bar and fifteen feet away. He "hollered" at the parties to "cut it out" and ran to the telephone booth to summon the police. Before he completed his call, the radio patrolmen entered the premises. The whole disturbance was over within one or two minutes. I am unable to find, from the testimony, that the bartender failed to do his full duty under the circumstances of the case. Of course, where a fight occurs after a prolonged argument, or as a result of sales to intoxicated persons, a licensee will not be excused if a sudden brawl arises. Plikaytis v. Harrison, Bulletin 754, Item 1, and cases therein cited. However, the evidence herein is not sufficient to sustain the finding of guilt in this case. Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3, and cases therein cited. Under the circumstances, I have no alternative except to reverse the action of respondent.

Accordingly, it is, on this 5th day of June, 1950,

ORDERED that the action of respondent, whereby it found appellants guilty of the aforesaid charge and suspended their license for ten days, be and the same is hereby reversed.

ERWIN B. HOCK
Director.

5. APPELLATE DECISIONS - ATLANTIC COUNTY LICENSED BEVERAGE ASSOCIATION AND MONTORO v. HAMILTON TOWNSHIP; POWELL AND SCHRUL.

ATLANTIC COUNTY LICENSED BEVERAGE ASSOCIATION, and JOSEPH V. MONTORO,

Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HAMILTON (Atlantic County), and ROBERT E. POWELL, JR., and WILLIAM A. SCHRUL,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Sidney Simandl, Esq. and James R. Giuliano, Esq., Attorneys for Appellant Atlantic County Licensed Beverage Association.
Joseph V. Montoro, Pro Se.
John E. Iszard, Esq., Attorney for Respondent Township Committee.
Lawrence Milton Freed, Esq., Attorney for Respondents Robert E. Powell, Jr., and William A. Schrul.

BY THE DIRECTOR:

This is an appeal from respondent Committee's action on February 6, 1950, granting respondent Schrul's application for a plenary retail consumption license transfer from Robert E. Powell, Jr. to him, and for transfer from proposed premises on "West Side Black Horse Pike, R.D. 2, Mays Landing" to proposed premises on "North Side Black Horse Pike, one-half mile above McKee City Circle, R.D. 2, Mays Landing".

Appellants allege that respondent Committee's transfer-granting action was illegal and should be reversed, in that:

"(a) The license allegedly transferred from Robert E. Powell, Jr. to William A. Schrul was never actually issued by the Township Committee of the Township of Hamilton and, therefore, never having legally existed could not be legally transferred.

"(b) The Township Committee of the Township of Hamilton failed to pass the necessary resolutions for the purpose of legally transferring the alleged license from Robert E. Powell, Jr. to William A. Schrul.

"(c) The Respondent Powell, from the time that he acquired the conditional license heretofore granted by the Township of Hamilton, never intended to erect a building on said ground and there exists from the entire record in this case substantial doubt that he ever intended to use the said license, but that on the contrary the sole purpose in acquiring the said license was for the purpose and with the intent to effect a resale of said license.

"(d) The Respondent, Robert E. Powell, Jr. never was a qualified person to hold a license and that any attempt to grant a license to him was void because of his lack of qualification, in that he was not a bona fide resident of the State of New Jersey.

"(e) Appellants allege that there was no need for the license allegedly issued to Respondent Robert E. Powell, Jr. and that there is certainly no need for any license on the site set forth in the application of the Respondent, William A. Schrul. Appellants therefore urge since

there is no public need or necessity for said license, that any attempt on the part of the Township Committee to transfer said license be voided and for nothing holden by this Honorable Board.

"(f) That the entire action of the Respondent Board was erroneous, contrary to law, contrary to public need and contrary to public policy."

By resolution of November 18, 1946, respondent Committee granted the plenary retail consumption license application of Robert E. Powell, Jr., subject to due completion of the proposed premises.

On June 30, 1947, respondent Committee adopted a resolution authorizing issuance of the 1946-1947 license, effective immediately, for the sole purpose of permitting a 1947-1948 renewal.

In April of 1947, the Township Clerk, at the Committee's direction, had written to respondent Powell and had stated that, if some action were not shown in the near future regarding construction of the proposed premises, no 1947-1948 license would be granted.

On July 21, 1947, respondent Committee adopted a resolution setting forth "that the application of Robert E. Powell, Jr. for a renewal of his plenary retail consumption license for the year 1947-48, be denied, as the licensee has not complied with the Township Committee's request".

Respondent Committee, on August 28, 1947, adopted a resolution setting forth that the denying-resolution of July 21, 1947 be rescinded and granting respondent Powell's application for a 1947-1948 renewal, subject to the special condition that the proposed premises be completed in keeping with the filed and approved plans and specifications.

On June 28, 1948, respondent Committee adopted a resolution authorizing issuance, effective immediately, of the 1947-1948 license for the sole purpose of permitting a renewal, and granting respondent Powell's 1948-1949 renewal application subject to the special condition that the proposed premises be completed in keeping with the filed and approved plans and specifications.

By resolution of June 29, 1949, respondent Committee authorized issuance of the 1948-1949 license, effective immediately, for the sole purpose of permitting a renewal, and granting respondent Powell's application for 1949-1950 renewal, subject to the same completion-of-premises special condition as theretofore.

On February 6, 1950, respondent Committee adopted a resolution authorizing issuance of the 1949-1950 license effective immediately, for the sole purpose of permitting a transfer from person to person and from place to place, and granting respondent Schrul's application for the person-to-person and place-to-place transfer herein appealed from, subject to the special condition that the proposed new premises be completed in keeping with the plans and specifications filed with and approved by the Committee.

It seems clear that, except as to the rescinding resolution of August 28, 1947, respondent Committee's resolutions with respect to the various conditional grantings and authorizations of immediately effective issuance were in proper form and substance and that the 1949-1950 license to respondent Powell was, pursuant to the resolution of February 6, 1950, sufficiently and legally in being to support a

transfer. Therefore, apart from the indicated rescinding resolution, I find that Items (a) and (b) of appellants' alleged grounds for reversal are without merit.

It has been ruled and held that when an issuing authority reaches a final determination on an application for license it has no jurisdiction to reconsider its action at a subsequent meeting. (Re Hendrickson, Bulletin 47, Item 10; Plager v. Atlantic City, Bulletin 80, Item 11, and bulletins and court decisions cited therein.) Thus it appears that, if a taxpayer or other aggrieved person had duly appealed from respondent Committee's action of August 28, 1947 (providing for rescinding of the earlier denial and the granting of 1947-1948 renewal), a reversal would have been called for without regard to the merits of the application. But no such appeal was then filed. Error in an issuing authority's switching from denying to granting should be corrected upon direct appeal in the manner and within the limitations expressly provided in the statute and not collaterally. With respect to an attack upon the impropriety of respondent Committee's action of August 28, 1947, appellants are out of time in this appeal from the subsequent granting of a transfer. (See Re Board of Commissioners of West New York, Bulletin 166, Item 9.)

Similarly out of time in this appeal is the issue of respondent Powell's residence as, under the circumstances here present, are questions concerning respondent Powell's bona fide intentions, or the lack thereof, to operate under an alcoholic beverage license.

Respondent Schrul was convicted in 1931 under a charge of manufacturing and possessing liquor and was imprisoned for four months and fined $500.00. I find that the crime of which respondent Schrul was convicted was not a crime involving moral turpitude and, hence, is not disqualifying. (See Re Case No. 294, Bulletin 351, Item 5; Re Case No. 378, Bulletin 554, Item 4.)

There remains the question of public convenience and necessity with respect to the proposed location for which the transfer application was granted. The application was granted (by unanimous vote of the Township Committee) and the burden is on appellants to show that there is no public need for license at the premises in question. Unless the burden is met, the local action must be considered reasonable at least, as here, in the absence of any charge of improper motivation on the part of the issuing authority. There are no licensed premises within one thousand feet of the Schrul property. Had I been a member of the municipal issuing authority, I might well have voted against the granting of the application. However, my function in appeals on this question is not to substitute my opinion for that of the municipal issuing authority but, instead, to determine if reasonable cause exists for theirs. (Cf. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale and Payne, Bulletin 493, Item 5.)

On the record before me, I find that appellants have not sustained the burden of proving that respondent Committee's action granting transfer of license from person to person and from place to place was arbitrary, unreasonable or otherwise in abuse of its discretionary authority. That action, therefore, will be affirmed.

Accordingly, it is, on this 9th day of June, 1950,

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

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE) - HOSTESSES - LICENSE SUSPENDED FOR 90 DAYS.

In the Matter of Disciplinary Proceedings against

RUSSELL'S BAR & RESTAURANT, INC.
Verona Ave., bet. Brenta & Sorrento Aves.
Egg Harbor Township
P.O. West Atlantic City, N. J.,

Holder of Plenary Retail Consumption License C-22, issued by the Township Committee of the Township of Egg Harbor.

CONCLUSIONS AND ORDER

Russell's Bar & Restaurant, Inc., Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges as follows:

"1. During the early morning hours of Friday, May 12, 1950, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, in that entertainers performed in a lewd, indecent and immoral manner, in violation of Rule 5 of State Regulations No. 20.

"2. On the occasion aforesaid, you allowed, permitted and suffered females employed on 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."

Three agents of the Division of Alcoholic Beverage Control visited the defendant's licensed premises early on the morning of Friday, May 12, 1950, to witness a show which they had been informed would be very "risque". With respect to charge 1, the evidence discloses that during the course of the show two female entertainers, Dorothy W---- and Terry R----, both performed "strip-tease" dances. The "strip-tease" performed by Dorothy W---- consisted of removing a full-length lace or net cape leaving her garbed only in a scanty brassiere and scanty lace or net pants. In this very brief attire she performed bumps and grinds in close proximity to the faces of several male patrons seated at the edge of the dance floor and subsequently she left the dance floor by walking down a narrow aisle where she again performed bumps and grinds in close proximity to various male patrons' faces. Shortly thereafter Terry R---- also performed a "strip-tease" by removing a gown which left her garbed solely in very scanty lace pants and so brief a brassiere that only the lower part of her breasts were covered. In addition to bumps and grinds she also performed the "shimmy". While thus performing she mingled with the audience and caused her breasts to sway violently from side to side in close proximity to the faces of several of the male patrons. At the conclusion of the dance Terry R---- removed the brassiere and stood before the audience without covering from the waist up.

It is obvious that the performances of both Dorothy W---- and Terry R---- were "lewd, indecent and immoral". Their mingling with the audience to perform either bumps, grinds or the "shimmy" in close proximity to the faces of male patrons aggravated the lewd, indecent and immoral character of the performance.

With respect to charge 2, one of the agents purchased, at his expense, a drink for one of the performers, and several other performers were observed drinking at the expense of male customers. The rule provides:

"No plenary or seasonal retail consumption 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." (Rule 22, State Regulations No. 20.)

Defendant has no prior adjudicated record. Considering the plea on the one hand and the aggravating circumstances on the other, I shall suspend the license for a period of ninety days.

Accordingly, it is, on this 2nd day of June, 1950,

ORDERED that Plenary Retail Consumption License C-22, issued by the Township Committee of the Township of Egg Harbor to Russell's Bar & Restaurant, Inc., for premises Verona Ave., bet. Brenta & Sorrento Aves., Egg Harbor Township, be and the same is hereby suspended for the balance of its term, effective at 7:00 a.m. June 9, 1950; and it is further

ORDERED that if any license be issued to this licensee, or any other person, for the premises in question for the 1950-51 licensing year, such license shall be under suspension until 7:00 a. m. September 7, 1950.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - CLUB NOT IN ACTIVE OPERATION FOR AT LEAST THREE YEARS PRIOR TO SUBMITTING APPLICATION - NO DETERMINATION MADE AS TO CHARGES IN DISCIPLINARY PROCEEDINGS - LICENSE CANCELLED.

In the Matter of Disciplinary Proceedings against

THIRD WARD REPUBLICAN CLUB OF NEWARK, N. J.
19 Rose Street
Newark 8, N. J.,

Holder of Club License CB-68, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

James A. Curtis, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant was ordered to show cause why its current Club License for premises at the above address, issued July 1, 1949 by the Municipal Board of Alcoholic Beverage Control of the City of Newark, should not be suspended, revoked or cancelled for the following reason:

"Said license was improvidently issued in violation of Rule 4 of State Regulations No. 7, in that your club had not been in exclusive continuous possession and use of a clubhouse or club quarters for at least three (3) years continuously immediately prior to the submission, in or about May, 1949, of your application for license."

In addition, three disciplinary charges were preferred against defendant alleging in effect that (1) in its application dated May 17, 1949, it falsely denied that any individual other than the applicant had any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license, whereas in fact Prosper Brewer had such an interest; (2) in said application it falsely denied that it had agreed to pay any person any percentage of the profits derived from the licensed business, whereas in fact it had agreed to permit Prosper Brewer to retain all of said profits; (3) in said application it evaded and suppressed the material facts that National Newark and Essex Banking Co. held an unpaid conditional bill of sale for a Motorola television set sold to Prosper Brewer, and that National Cash Register Co. held an unpaid conditional bill of sale for a cash register sold to defendant, both of which fixtures were used in defendant's premises. In said charges it is alleged that the false statements and evasion and suppression of material facts constituted violations of R.S. 33:1-25.

Defendant had originally pleaded "not guilty" to the order to show cause and to all of the above charges, but later changed its plea of "not guilty" on the order to show cause to "non vult". Although maintaining its plea of "not guilty" to the three disciplinary charges, defendant waived hearing thereon, resting its case on the evidence already in the hands of the Division.

As to the order to show cause, defendant club was incorporated on February 29, 1932, under another name, and, by an amendment to the certificate of incorporation, obtained the right to use its present name on September 27, 1943. It appears that for some time the club held meetings at the home of Prosper Brewer. During the years 1946, 1947 and 1948, it hired a room for its meetings at $3.00 per night in a building then known as the Graham Building, 188 Belmont Avenue, Newark. The Graham Building contained numerous meeting rooms and an auditorium. The club used various rooms in the Graham Building and was never in exclusive and continuous possession of any portion thereof. By a lease dated December 1, 1948, it rented its present quarters at 19 Rose Street, Newark, at a stated monthly rental for a period of one year from January 1, 1949, with an option to renew the lease. From the above statement of facts it appears that the club has not been in exclusive, continuous possession and use of a clubhouse or club quarters for at least three years continuously prior to the submission of its application for a license. Since it has failed to comply with Rule 4 of State Regulations No. 7, I shall cancel the license.

Under the circumstances, there is no need to make a determination with respect to defendant's guilt or innocence on the disciplinary charges.

Accordingly, it is, on this 5th day of June, 1950,

ORDERED that Club License CB-68, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Third Ward Republican Club of Newark, N. J., for premises 19 Rose Street, Newark, be and the same is hereby cancelled, effective immediately.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - PERMITTING LICENSED PREMISES TO REMAIN OPEN, IN VIOLATION OF LOCAL REGULATION - FAILURE TO KEEP LICENSED PREMISES OPEN TO PUBLIC VIEW, IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

HERMAN WEINER
44 Broadway
Paterson 1, N. J.,

Holder of Plenary Retail Consumption License C-219, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

George S. Grabow, 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 he (1) sold alcoholic beverages on his licensed premises between the hours of 3:00 a.m. and 3:45 a.m., on Saturday, May 6, 1950, (2) failed to have his licensed premises closed during said hours, and (3) failed during said hours to keep the interior of his licensed premises open to public view from the outside thereof; all in violation of an existing local regulation.

From about 2:30 a.m. until 3:35 a.m. on Saturday, May 6, 1950, ABC agents observed from outside the licensed premises an appearance of activity which indicated that the business was operating full blast. The agents, because of the black paint on the front windows and door, were unable to get any view of the interior of the licensed premises. Several people left the premises about 3:15 a.m., and some entered after knocking at a closed front door. Agents then secured entrance after knocking on a locked door and identifying themselves. Upon entering, they found some twenty or more customers sitting at the bar, some being served alcoholic beverages, and most of the others with unfinished drinks before them. Municipal regulations prohibit the sale of alcoholic beverages on weekdays after 3:00 a.m. and before 7:00 a.m., provided that during said hours the entire licensed premises must be closed (exceptions are not pertinent hereto), and that during said hours the entire interior of licensed premises shall be kept open to public view from the outside thereof.

I also wish to call licensee's attention to the continuing violation of the ordinance, i.e., the "open to public view" portion thereof. Unless and until the paint on the doors and windows is removed sufficiently so that he may comply with the municipal regulation, the licensee may be subject to further disciplinary action.

The facts alleged in mitigation are at variance with those admitted by the plea and deserve no consideration. The large number of people present on the licensed premises, the locked doors and the carefully hidden activity, must be considered as aggravating circumstances in fixing the penalty herein.

Defendant's only prior adjudicated record, in 1944, concerning sale to minors, resulted in a fifteen-day suspension, effective March 25, 1945. Bulletin 659, Item 2. Because of the time elapsed since the prior violation, it will not be considered in fixing the penalty herein.

I shall suspend the license for twenty days on charges (1) and (2), and add five days for charge (3), Re Vitrone, Bulletin 661, Item 5. Remitting five days for the plea will leave a net suspension of twenty days.

Accordingly, it is, on this 2nd day of June, 1950,

ORDERED that Plenary Retail Consumption License C-219, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Herman Weiner, 44 Broadway, Paterson, be and the same is hereby suspended for a period of twenty (20) days, commencing at 3:00 a.m. June 8, 1950, and terminating at 3:00 a.m. June 28, 1950.

ERWIN B. HOCK
Director.

9. 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.

Case No. 839.

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

Petitioner renews his application for relief pursuant to the condition of an Order dated October 25, 1949 dismissing a petition seeking the removal of his disqualification as described therein. Case No. 775, Bulletin 858, Item 12.

Since that date, petitioner, quitting his job in a brewery as a truck driver and warehouse laborer, has been employed in the leather tanning business. He is now laid off because of a slackening of business and desires to seek work again in the brewing business.

Three persons, all residents of petitioner's home city who have known him and his family for from eight to ten years, testify that petitioner has been, during at least the last past five years, and still is a law-abiding and honest person. They know of no reason why the petitioner should not be connected with the alcoholic beverage business.

Accordingly, it is, on this 25th day of May, 1950,

ORDERED that petitioner's statutory disqualification because of the conviction described in Conclusions and Order in Case No. 775, dated October 25, 1949, be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.

ERWIN B. HOCK
Director.

10. DISQUALIFICATION - APPLICATION TO LIFT AGAIN DENIED BECAUSE APPLICANT HAD BEEN EMPLOYED ON LICENSED PREMISES DURING FIVE-YEAR PERIOD.

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

Case No. 826.

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

This is the third application filed by petitioner for the removal of his disqualification. On January 10, 1947, I denied his first application because it appeared that, although he had theretofore been ruled disqualified to be employed by the holder of a liquor license, he nevertheless was so employed in February 1945 by his wife and her partner, and was actually in charge of a licensed tavern operated by them. It further appeared that during said employment he permitted the licensed premises to be open and sold alcoholic beverages after the closing hour fixed by local ordinance and hindered an investigation by ABC agents. See Bulletin 746, Item 3. On December 20, 1948, I denied his second application because of the facts set forth above which led me to conclude that he had not been law-abiding during the five-year period immediately preceding the filing of said application. See Bulletin 826, Item 8. On February 8, 1950, five years had elapsed from the date on which the aforesaid violations were committed, and petitioner thereafter filed with me his third and present application.

At the hearing herein petitioner denied that he had worked on any licensed premises since February 1945. However, an investigation of the licensed premises operated by his wife and her partner was made by ABC agents on October 7, 1949, and October 10, 1949. At the time of the first investigation the petitioner was sweeping the barroom, and at the time of the second investigation he was repairing the air-conditioning equipment. At that time petitioner's wife admitted that petitioner had been cleaning the premises one day a week for a month past, and had been making various repairs. She stated that she thought that her husband was merely prohibited from tending bar. I have decided to give her the benefit of the doubt and, hence, I shall not institute disciplinary proceedings against the licensees for employing an unqualified person. However, the petitioner is presently disqualified not only from acting as bartender, but from "being employed by or connected in any business capacity whatsoever with a licensee". R.S. 33:1-26. This means that the employment or the utilization of the services of the petitioner in any way, with or without compensation, on the licensed premises is prohibited.

Under all the circumstances, and in the exercise of my discretion, the instant petition for relief is denied, with leave to reapply after October 10, 1950.

Accordingly, it is, on this 5th day of June, 1950,

ORDERED that the petition herein be and the same is hereby denied, with leave to reapply after October 10, 1950.

ERWIN B. HOCK
Director.

11. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ANTHONY LUCHIO
848 Second Avenue
Elizabeth 4, N. J.,

Holder of Plenary Retail Consumption License C-7, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he possessed alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 28 of State Regulations No. 20.

On April 13, 1950, an inspector employed by the Alcohol Tax Unit, Internal Revenue Service, Treasury Department, examined 40 bottles of alcoholic beverages in defendant's premises and seized two quart bottles labeled "Seagram's Seven Crown Blended Whiskey" and two quart bottles labeled "Calvert Reserve Blended Whiskey" when field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist disclosed that the contents of the seized bottles were not genuine as labeled.

Defendant has no previous adjudicated record. I shall, therefore, suspend defendant's license for a minimum period of twenty days, less five days' remission for the plea entered herein, leaving a net suspension of fifteen days. Re Albino, Bulletin 782, Item 6.

Accordingly, it is, on this 6th day of June, 1950,

ORDERED that Plenary Retail Consumption License C-7, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Anthony Luchio, for premises 848 Second Avenue, Elizabeth, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. June 12, 1950, and terminating at 2:00 a.m. June 27, 1950.

Edwin B. Hock
Director.