

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

BULLETIN 655

MARCH 7, 1944. ⁵

1. HOURS OF SALE - STATE REGULATIONS NO. 40 LIMITING THE HOURS FOR SALE AND DELIVERY BY PLENARY AND SEASONAL RETAIL CONSUMPTION LICENSEES AND CLUB LICENSEES FOR ON-PREMISES CONSUMPTION - SALE, DELIVERY AND CONSUMPTION PROHIBITED BETWEEN THE HOURS OF 12:00 O'CLOCK MIDNIGHT AND 7:00 A. M.

MIDNIGHT CURFEW - REGULATIONS PROMULGATED TO IMPLEMENT THE REQUEST OF WAR MOBILIZATION DIRECTOR BYRNES.

February 26, 1945

State Regulations No. 40 are hereby promulgated:

REGULATIONS NO. 40

Rule 1. No plenary retail consumption, seasonal retail consumption or club licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage or permit the consumption of any alcoholic beverage upon licensed premises between the hours of 12:00 o'clock midnight and 7:00 a.m. of the following morning.

Rule 2. During the hours that sales are hereinabove prohibited, the entire licensed premises shall be closed and no persons other than the licensee and bona fide employees of the licensee shall be permitted to be or remain thereon; but this closing of premises requirement shall not apply to bona fide hotels, bona fide clubs offering hotel facilities other than the service of alcoholic beverages, or to bona fide restaurants.

Rule 3. A violation of these regulations shall be cause for suspension or revocation of license.

These regulations are effective at 12:00 o'clock midnight, Thursday, March 1, 1945.

ALFRED E. DRISCOLL
Commissioner.

EXPLANATORY STATEMENT

TO MUNICIPAL OFFICIALS AND ALL RETAIL LICENSEES:

To insure an even-handed enforcement of War Mobilization Director Byrnes' midnight curfew "request", I have promulgated the above regulations, effective at midnight, March 1, 1945, prohibiting the sale, service, delivery and consumption of alcoholic beverages on the premises of plenary and seasonal retail consumption licensees and club licensees between the hours of 12:00 o'clock midnight and 7:00 a.m. The regulations require that such licensed premises shall be closed during the designated hours. The closing requirement, however, does not apply to bona fide hotels, bona fide clubs offering hotel facilities, or to bona fide restaurants.

Although the midnight curfew "request" was not initiated by me, I deemed it the Department's responsibility to implement that "request" with a State regulation. The purpose of the regulation is

to protect patriotic licensees, who will voluntarily cooperate with the Federal agencies by the observance of the curfew, against the threat of less conscientious competitors beyond the immediate reach of the Federal authorities and to provide a sound basis for local and State enforcement activities.

This is not the appropriate time to discuss the wisdom of the Byrnes "request." Suffice it to say that our armed forces are engaged in fighting a hard war. The civilian population must accordingly accept, cheerfully, stringent directives presumably released for the purpose of furthering the nation's all-out war effort, both at home and abroad.

It is fitting that during this war period there should be but one quarterback calling the signals in so far as national policies are concerned. It is to be hoped that these signals will be clear, decisive, effective and, in the future, recognize an orderly administrative procedure.

It is, however, pertinent to observe that home front "requests" should be tailored to meet home front conditions. This is particularly true where these "requests" and directives seek to curb the normal activities of a large segment of our population, a major portion of which is directly engaged in the war effort and feels itself entitled to a normal relaxation upon the completion of a night shift of work.

I cannot refrain from expressing regret that the Federal Government chose, in the first instance, to ignore the States and elected to do by indirection that which could be much better accomplished by direct action.

A "request", or even a directive, is a rather frail prop to rely upon in so important a matter as a nation-wide 12:00 o'clock midnight curfew. The orderly administrative method of handling this important problem would have been for the Federal authorities to have clearly defined the national policy, consulted with the states, promulgated supporting Federal regulations having the force of law in their limited fields, and to have requested the several states to adopt supporting state regulations having the force of law, or, where necessary, state laws. This would have permitted the immediate mobilization of all law enforcement agencies, including, in particular, the local police, in support of the national policy.

Experience indicates that the imposition of sanctions is a poor substitute for positive law enforcement.

The Commissioner has specific authority under the Alcoholic Beverage Law to promulgate these regulations. See R. S. 33:1-3; R. S. 33:1-39. The regulations have the force of law in this State. Upon their effective date, they will give local and state policing authorities an effective basis for affirmative action against violators. This is as it should be. Our police traditionally enforce laws and regulations rather than requests or directives. These regulations are being served upon all licensees in this State in accordance with the practice of the Department. This is likewise as it should be. Our citizens are entitled to the privilege of reading and studying the laws they are called upon to observe.

The regulations will remain in force until modified or abrogated by the Commissioner. This will occur immediately following any announcement of a change in national policy.

It is suggested that, at least during an experimental period, municipalities refrain from the costly adoption of municipal ordinances implementing the Federal policy, since it may be modified.

I wish to call to the particular attention of the municipal authorities their statutory duty (R. S. 33:1-24) to enforce primarily the State rules and regulations so far as the same pertain to municipal licenses. Municipal police are urged to report any violations of the regulations to the proper local authorities for appropriate disciplinary action.

I wish to call to the particular attention of persons who may seek to take advantage of the situation by operating speakeasies that they will be subject to arrest by municipal and State police and State Alcoholic Beverage Control and Federal agents. State and Federal indictments will be sought and, in every instance, severe jail sentences will be asked for.

The prohibited hours set forth in the regulations, namely, 12:00 o'clock midnight to 7:00 a.m., are State-wide in their application. If, however, a municipal regulation is more restrictive as to either the closing hour, the opening hour, or both, the municipal regulation shall prevail.

Package stores and the sale of package goods will continue to be governed by State Regulations No. 38 prohibiting the sale of package goods after 10:00 p.m. and before 9:00 a.m. on week days and all day on Sundays.

ALFRED E. DRISCOLL
Commissioner.

2. ADVERTISING - HANDBILLS PROMOTING "DOUBLE HEADERS" DISAPPROVED AS DESIGNED TO UNDULY PROMOTE THE CONSUMPTION OF ALCOHOLIC BEVERAGES.

February 20, 1945

Mr. John W. Edghill, Jr.
Atlantic City, N. J.

Dear Sir:

Investigation reveals that handbills have been used for distribution to the patrons in your tavern advertising "double header" drinks.

This sort of advertising is distinctly improper. In the first place, it smacks of fraud since your ordinary whiskey glasses are one ounce, while the so-called "double header" glasses, instead of being double that amount, are $1\frac{1}{4}$ ounces.

Moreover, this type of advertising, which seeks to urge patrons to buy, not the normal size drinks, but the "double headers", is a practice unduly designed to increase the consumption of alcoholic beverages and as such I distinctly disapprove of it (R. S. 33:1-39).

I note the claim of your father, who manages the business, that these handbills had been obtained by your brother some weeks ago while he was a partner with you on the license; that the handbills were used only a short time and were then destroyed; and that no such handbills are being used at the present time. In view of these claims, I shall take no further steps in this matter.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

3. COURT DECISIONS - NEW JERSEY SUPREME COURT - PATRICK v. ALFRED E. DRISCOLL, COMMISSIONER - ORDER OF FORFEITURE ENTERED BY COMMISSIONER AFFIRMED.

NEW JERSEY SUPREME COURT
No. 249 January Term 1945

MANNING PATRICK,)
Prosecutor,)

-vs-

ALFRED E. DRISCOLL, Commissioner)
of Alcoholic Beverage Control of)
the State of New Jersey,)
Respondent)
-----)

Argued January 17, 1945. Decided _____ Filed February 15, 1945.
On writ of certiorari.

Before Justices Case, Bodine and Porter.

For prosecutor, Vincent S. Haneman; Samuel D. Hoffman.
For respondent, Walter D. Van Riper, Attorney General;
Joseph A. Murphy, Assistant Deputy Attorney General.

The opinion of the court was delivered by

Case, J. The writ brings up an order of forfeiture made, after seizure and due hearing, on April 6, 1944, by Alfred E. Driscoll, Commissioner of Alcoholic Beverage Control of the State of New Jersey, under the authority, as he conceived, of R. S. 33:2-1, et seq., and particularly of Sections 2, 3 and 5, which provide as follows:

2. "Any such still or distilling apparatus or parts thereof not registered pursuant to section 33:2-1 of this title, together with all articles, implements or paraphernalia used or adaptable for use in connection therewith and all personal property of whatsoever kind, found in a building or in any yard or inclosure connected with a building or on the premises in which such still or distilling apparatus or parts thereof are found, are declared to be unlawful property."

3. "Any officer knowing or having reasonable cause to believe that any still or distilling apparatus or any parts thereof constitute such unlawful property, it shall be his duty *** to seize such still or distilling apparatus or parts thereof, together with all articles, implements or paraphernalia used or adaptable for use in connection therewith and all personal property of whatsoever kind, found in a building or in any yard or inclosure connected with a building or on the premises in which such still or distilling apparatus or parts thereof are found.***"

5. "If after such hearing the commissioner determines that the seized property constitutes such unlawful property he shall declare such property forfeited.***"

The seized articles upon which most stress is laid are four automobiles consisting of three Ford trucks and a station wagon. One of these vehicles was at the scene when the officers arrived; the others were driven in while the seizure was in progress. It must be assumed for the purposes of this review that the prosecutor manufactured illicit apple brandy at his dwelling and that he unlawfully

sold that liquor; indeed prosecutor so admits. The still was being operated at the time of the seizure in the cellar of his home located on a 26 acre farm which was owned and occupied by himself and his wife. The brandy was made on the farm from cider there expressed. The cider was kept in vats about 480 feet from the dwelling and piped to the still through an underground conduit. At the same time that the illicit still was being operated in the house, prosecutor's wife was conducting a licensed tavern on the farm premises only 164 feet from the dwelling. In addition, the Patricks operated a picnic ground at the back of their lawn along the bank of a bit of water known as Farrington Lake. Although other articles were seized, prosecutor now demands only the mentioned motor vehicles, a few pieces of furniture (consisting of a kitchen table, a single bed, 3 chairs and a dresser) and 96 bottles of tax-paid alcoholic beverages (92 bottles of brandy, whiskey, gin and rum and 4 bottles of wine). The liquor was seized in the house located where the still was, the motor vehicles on the grounds in close proximity thereto and the furniture in a room which was a part of the cider press structure -- a "sort of a living room alongside (the cider press) containing furniture as if someone was sleeping there."

Prosecutor builds his case in part upon the proposition that the automobiles were not on the premises when the officers arrived and began their seizure and were not found in the building where the still was or -- so prosecutor contends -- in any yard or enclosure connected therewith; and in part upon the argument that the statute authorized the seizure or forfeiture of personal property only if that property was actually used or was adaptable for use in the operation of an illegal still. The commissioner contends that under the statute, supra, every article of personal property on the farm was subject to seizure and forfeiture.

Upon the facts in proof it is apparent that the prosecutor and his wife were so circumstanced that they could, if they would, operate an integrated business in illicit liquor beginning with the production of the raw materials and extending through the various stages of manufacture to the sale and consumption of the product and the use of the by-products. The facilities and opportunities were there; and since there was an admitted violation in respect of manufacture and sale, we must concede to the commissioner, under the broad terms of the statute, a fair field in declaring forfeit such articles as were reasonably adaptable for use in the prohibited enterprise. Mrs. Patrick was part owner of the premises and co-occupant of the house, in the cellar of which the still, steaming and warm at the time of seizure, was operated. We attach no conclusive significance to the fact that the automobiles were not on the spot when the officers first came. They were such chattels as would well fit into the transportation of either the original materials or the finished product. They were, to use the statutory expression, "adaptable for use in connection" with the distilling; and they were, actually, when seized, on the premises and in such proximity to the building where the still was as to be, in our finding, within the "yard." The cider vats were feeding into the still room as actually as though immediately adjacent thereto and were, we consider, a part of the apparatus. The furniture had the semblance of being for the use and convenience of one called upon to operate the cider flow and the processes to which that function contributed. The tax-paid liquor had suspicious proximity to the room of unlawful manufacture; it was found in the same house. It is not unreasonable to believe that it was there for some function so related to the operation as to be a part thereof; perhaps so that the tax-paid liquor and the illicit brandy might be blended, fortified, mixed or processed, the one with the other. All alcoholic beverages located in any building where an illicit beverage is found are subject to seizure and forfeiture under R. S. 33:1-66(b).

We are not prepared to hold in the broad terms of respondent's contention; but we consider that all of the articles under dispute were reasonably adaptable for use in connection with the operation of the still. It was within the legislative province to declare such chattels forfeit. The articles are, we think, within the comprehension of the statutory authority, even limiting that authority, as we do for the purposes of this decision, to the seizure and forfeiture of articles that are adaptable for use in connection with the prohibited act. So limited, neither the statute nor the forfeiture violates any constitutional provision. Goldsmith, Jr. - Grant Company v. United States, 254 U. S. 505, 65 Law Ed. 376.

The order under review will be affirmed, with costs.

4. APPELLATE DECISIONS - CHARNACK v. SEA BRIGHT (CASE NO. 2).

Case No. 2)	
MAX CHARNACK,)	
)	
Appellant,)	ON APPEAL
)	CONCLUSIONS AND ORDER
-vs-)	
)	
BOROUGH COUNCIL OF THE)	
BOROUGH OF SEA BRIGHT,)	
)	
Respondent)	
-----)	

Frankel & Frankel, Esqs., by Charles Frankel, Esq., Attorneys for Appellant.
 Leon E. Reussille, Jr., Esq., Attorney for Respondent.
 Frederic C. Ritger, Esq. and Edward W. Wise, Esq., Attorneys for Objectors.

BY THE COMMISSIONER:

In a previous appeal between the same parties, the matter was remanded to respondent for the purpose of taking formal action upon appellant's application for a plenary retail consumption license for premises located at 1128-1130 Ocean Avenue, Sea Bright. Charnack v. Sea Bright, Bulletin 644, Item 1. After the entry of the order in the previous case, respondent considered the appellant's application at a meeting held on December 21, 1944. At that meeting a motion to deny the application upon the ground that appellant's premises are too close to other licensees was adopted by a vote of three in favor and one against and, accordingly, appellant's application was denied. Thereupon appellant filed this appeal.

The premises for which the license is sought was originally part of a large restaurant, including the ground floors of three buildings described in the testimony as Nos. 1124, 1128 and 1130 Ocean Avenue, Sea Bright. Some time ago a plenary retail consumption license covering the entire restaurant was in existence and was held by George H. Krauss and Charles E. Betz, doing business as Harry's Lobster House. Subsequently, Krauss and Betz reduced the size of their restaurant to cover only the ground floor of the building at 1124 Ocean Avenue and their plenary retail consumption license was then limited by the local issuing authorities so as to exclude from their license the ground floors of the buildings known as 1128 and 1130 Ocean Avenue. At the present time the licensees, Krauss and Betz, hold a plenary retail consumption license which covers only the premises known as 1124 Ocean Avenue.

It appears that, for some time after the changes recited above were made, the buildings at 1128 and 1130 were vacant and were deteriorating. In January 1944 the appellant herein purchased both of these buildings from the Borough which had acquired title thereto. Appellant then applied to respondent for a plenary retail distribution license for the ground floor of the two buildings which he had purchased, and that license was issued to him and he is still the holder thereof although he has never conducted any operations thereunder.

Appellant now seeks to obtain a plenary retail consumption license for the ground floor of 1128-1130 Ocean Avenue, and offers to surrender the plenary retail distribution license which he holds for the same premises. The issue in this case is whether, under all the circumstances, respondent abused its discretion in refusing to issue the plenary retail consumption license.

The number of retail licensed premises of each particular class which should be permitted in any particular section of a municipality is confided to the sound discretion of the local issuing authorities. Santoriello v. Howell, Bulletin 252, Item 8; Alpert v. Asbury Park, Bulletin 380, Item 2; Curry v. Margate City, Bulletin 460, Item 9; Savoy v. Asbury Park, Bulletin 626, Item 8.

The evidence herein shows that, in addition to the plenary retail consumption license issued for Harry's Lobster House, similar licenses have been issued for premises known as "Swedish Hop" directly across the street but separated by a railroad, and for Rome's Hotel and Axelsen's, both of which are located in the immediate vicinity. The permanent population of the Borough is approximately 900, but is increased to many thousands during the summer. The total number of plenary retail consumption licenses in existence in the Borough is thirteen, eight of which are used only during the summer months. Appellant states in support of his appeal that there is no restaurant, other than Harry's Lobster House, which serves alcoholic beverages during the winter months. Aside from that testimony, he fails to show any special need for the issuance of another plenary retail consumption license in that section of the Borough.

After considering all the evidence, I conclude that appellant has not sustained the burden of proof in establishing that respondent acted arbitrarily or abused its discretion. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 19th day of February, 1945,

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

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - LICENSE SUSPENDED FOR THE BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT UPON CORRECTION OF ILLEGAL SITUATION AND EXPIRATION OF 40 DAYS' SUSPENSION - ILLEGAL SITUATION CORRECTED AND SUSPENSION PERIOD HAVING EXPIRED - APPLICATION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against)

BELA HAMPE CATERING CO., INC.)
611 Central Avenue)
East Orange, N. J.,)

ON PETITION
O R D E R

Holder of Plenary Retail Consump-)
tion License C-14 issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
East Orange.)

Charles E. Garrett, Esq., Attorney for Petitioners,
Joseph Maturri and Ramiro Gomez.

BY THE COMMISSIONER:

On January 11, 1945 I suspended defendant's license for the balance of its term, effective at 2:00 a.m. January 17, 1945, after it had pleaded non vult to a charge alleging that it had falsely answered a question in its application for a license. Re Bela Hampe Catering Co., Inc., Bulletin 646, Item 7. In said order it was provided that bona fide purchasers of the business might apply to me to lift the suspension after they had obtained a transfer of the license subject to the suspension; provided further, however, that, in any event, a forty-day suspension must be served.

Pursuant to said leave, Joseph Maturri and Ramiro Gomez have filed a verified petition wherein it is set forth that they have entered into a binding agreement to purchase the restaurant and cocktail business now operated by defendant, and that the purchase will be completed upon the transfer of the license to them. In said petition it is further set forth that, upon completion of the purchase, Bela Hampe will have absolutely no ownership or beneficial interest in said business except to the extent of holding a certain chattel mortgage given to secure the balance of the purchase price.

The petition further sets forth that on February 16, 1945 the Municipal Board of Alcoholic Beverage Control of the City of East Orange transferred the license, subject to the suspension imposed, from Bela Hampe Catering Co., Inc. to Joseph Maturri and Ramiro Gomez.

It appearing from the facts set forth in the verified petition that the unlawful situation has been corrected, and it further appearing that the forty-day suspension will expire on February 26, 1945, at 2:00 a.m., the suspension will be lifted effective at that time.

Accordingly, it is, on this 20th day of February, 1945,

ORDERED, that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-14, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange, be and the same is hereby restored to full force and operation, effective February 26, 1945, at 2:00 a.m.

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - CHARGE OF PERMITTING A BRAWL ON LICENSED PREMISES, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against)

MRS. BRONISLAWA LOJKO)
T/a GOLDEN SLIPPER)
189 Burnet Street)
New Brunswick, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-35, issued by the Board of Commissioners of the City of New Brunswick.)
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William C. Egan, Esq., Attorney for Defendant-Licensee.
Edward F. Hodges, Esq., appearing for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to a charge that on October 31, 1944 she allowed, permitted and suffered in and upon her licensed premises a disturbance or brawl, in violation of Rule 5 of State Regulations No. 20.

The testimony of the patrons present on the evening of October 31, 1944 discloses that during a fight on the licensed premises between two soldiers, one soldier was fatally stabbed by his adversary. The testimony of the witnesses indicates that no disturbance occurred prior to the time when the actual fight took place. Albert Drew, a civilian, stated that he was standing at the bar when the brawl suddenly started and that previous thereto "***there wasn't any arguing about it and what it started over I could not say." The remaining witnesses who testified concurred in this statement.

The employee who tended bar testified that at the time of the occurrence of the brawl he was sitting near the end of the bar eating his dinner. Another man had replaced him temporarily as bartender in order to give him an opportunity to eat his meal. This employee testified, furthermore, that there was no disturbance previous to the actual combat but that when he saw one of the soldiers brandishing a knife he immediately rushed from the premises in order to summon the aid of the military police or civilian police who might at that time be in the immediate vicinity. I am satisfied that the other man who was behind the bar had no opportunity to interfere before the stabbing occurred. The licensee testified that she was not present when the actual melee took place but after being notified, immediately came downstairs to the tavern.

The evidence adduced in the instant case fails to involve in any way the licensee or her employees with the disturbance, brawl or the resulting fatality that occurred on the licensed premises. I might further add that the premises were closed by order of the local police authorities immediately after the commission of the homicide and were closed for two weeks while an investigation was being made. The police have the power to temporarily close licensed premises in cases of public emergency. Re O'Neill, Bulletin 24, Item 4. Under the circumstances, I shall dismiss the charge filed herein.

Accordingly, it is, on this 23rd day of February, 1945,

ORDERED, that the charge herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

7. DISCIPLINARY PROCEEDINGS - PERMITTING GAMBLING ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - PERMITTING A LOTTERY KNOWN AS "NUMBERS GAME" ON LICENSED PREMISES, IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)

LEO KEILP)
 T/a MIDWAY TAVERN)
 248 County Avenue)
 Secaucus, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consump-)
 tion License C-19, issued by the)
 Town Council of the Town of)
 Secaucus.)

 Kesselman & Berg, Esqs., Attorneys for Defendant-Licensee.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to charges (1) that he allowed, permitted and suffered gambling on the licensed premises, in violation of Rule 7 of State Regulations No. 20; and (2) that he allowed, permitted and suffered conduct of a lottery known as the "numbers game" on the licensed premises, in violation of Rule 6 of State Regulations No. 20.

The file discloses that, on January 12, 1945, an ABC agent observed two patrons in the presence of the licensee engage in a card game. At the conclusion of each of the two hands played, a small amount of money was collected by the successful player. On January 24, 25 and 26, 1945 the agent placed small bets on various numbers with the licensee, who immediately entered a telephone booth on the premises. On January 29, 1945 the agent placed small bet on sundry numbers with the bartender, who is the father-in-law of the licensee. At this juncture of the proceedings, pursuant to pre-arranged plans, two other ABC investigators, accompanied by four county detectives, entered the premises, identified themselves and seized the evidence.

The within licensee has no previous adjudicated record. However, in view of his actual participation in the lottery and his acquiescence in the playing of cards for money, I shall suspend his license for a period of twenty days, with a remission of five days for the plea, making a net suspension of fifteen days.

Accordingly, it is, on this 26th day of February, 1945,

ORDERED, that Plenary Retail Consumption License C-19, issued by the Town Council of the Town of Secaucus to Leo Keilp, t/a Midway Tavern, for premises 248 County Avenue, Secaucus, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. March 5, 1945, and terminating at 2:00 a.m. March 20, 1945.

ALFRED E. DRISCOLL
 Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)

LINTONIA PURE FOOD SHOP, INC.)
528-530 Federal Street and)
529-31-33 Taylor Avenue - rear,)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-30 issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)
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Edward West, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On December 15, 1944, you possessed illicit alcoholic beverages at your licensed premises, viz., two 4/5 quart bottles labeled 'Heublein's The Club Manhattan Cocktails', both of which bottles contained alcoholic beverages not genuine as labeled; such possession being in violation of R. S. 33:1-50."

The file in this case shows that on December 15, 1944, two ABC agents, upon entering defendant's barroom, observed the bartender pouring liquor into two Heublein bottles which were on a shelf under the bar. They seized the two bottles and a bottle of Lansdowne whiskey.

In its letter wherein defendant sets forth alleged mitigating circumstances, it says:

"**the barkeeper had been, while waiting on other customers, openly and without concealment at one end of the bar, mixing himself his own particular family brand of cocktails consisting of two parts of rye (Lansdowne Reserve, 86% proof) to one part of sweet Vermouth, 12 1/2% proof, and a dash of Angostura bitters. The barkeeper had used for that purpose, lacking other containers, two empty bottles as outlined in your charge, which were partially filled and had to add enough Rye and bitters to fill the bottles after which he was going to take the same home for his family's celebration of the Christmas Holiday. There were, at the time, almost fifteen customers at the bar and he was constantly being interrupted, consequently the operation which would ordinarily only take an experienced man such as this was about half a minute had to be temporarily abandoned and the bottles left as they were."

It seems rather unusual that the bartender should have been mixing these drinks for his private use during a busy period of the day. In any event, he should have known that it is not permissible to mix cocktails and store them in any kind of bottle. See Re Berkeley-Carteret Hotel Inc., Bulletin 87, Item 1. The Heublein

bottles, when seized, admittedly contained Lansdowne whiskey and, hence, the alcoholic beverages in the bottle constituted an illicit beverage. R. S. 33:1-88. A licensee, when apprehended for violation of the law, may not hide behind the cloak of his employees. Re Kneller, Bulletin 49, Item 4. The defendant is guilty as charged.

As to penalty: Defendant has held its license since 1939, and has no prior adjudicated record. Under the circumstances, I shall suspend the license for the minimum period of ten days.

Accordingly, it is, on this 27th day of February, 1945,

ORDERED, that Plenary Retail Consumption License C-30, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Lintonia Pure Food Shop, Inc., for premises 528-530 Federal Street and 529-31-33 Taylor Avenue - rear, Camden, be and the same is hereby suspended for ten (10) days, commencing at 12:01 a.m. March 6, 1945, and terminating at 12:01 a.m. March 16, 1945.

ALFRED E. DRISCOLL
Commissioner.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against

ROCCO COLUCCI
310 John Street
South Amboy, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-22, issued by the Common Council of the City of South Amboy.

John E. Mullane, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging that he possessed a 4/5 quart bottle of "Philadelphia Blended Whiskey 86.8 Proof" and a 4/5 quart bottle of "Turret Blended Whiskey 86 Proof", which bottles contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

On January 24, 1945 an ABC agent, while making a routine inspection at the defendant's premises, seized the two bottles of liquor in question. Upon a chemical analysis they were found to vary in proof, solids and acids when compared with genuine samples of the same products.

The licensee, although disclaiming any knowledge of how the violation actually occurred, proffered the explanation that his employeé may have tampered with the contents of the bottles. Despite the defendant's personal innocence, however, he must, nevertheless, be held strictly accountable for the condition of his liquor stock. Re Kurian, Bulletin 517, Item 2.

There are no aggravating circumstances in the instant case. The licensee has no previous record. In view of these facts, I shall suspend his license for a period of ten days. Re Dressler, Bulletin 619, Item 6.

Accordingly, it is, on this 2nd day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-22, issued by the Common Council of the City of South Amboy to Rocco Colucci, for premises 310 John Street, South Amboy, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. March 12, 1945, and terminating at 12:01 a.m. March 22, 1945.

ALFRED E. DRISCOLL
Commissioner.

10. ELIGIBILITY - CRIME OF LARCENY AND RECEIVING FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT ADVISED THAT HE IS DISQUALIFIED TO BE EMPLOYED BY A LIQUOR LICENSEE IN NEW JERSEY.

March 5, 1945

Re: Case No. 563

Applicant, an Italian national fifty-nine years of age, seeks a determination by the State Commissioner of Alcoholic Beverage Control as to whether or not he is eligible to be employed by a liquor licensee in this state. R. S. 33:1-25, 26.

On November 17, 1944 applicant was convicted by a Judge of a Court of Special Sessions of the crime of larceny and receiving. As a consequence thereof, a fine of \$250.00 was imposed upon him.

The facts surrounding the crime disclose that applicant, an independent contractor, was hired to carry away waste remnants of cloth from a textile mill. Applicant testified that in return for this service he was permitted to retain the remnants for his own use. The record received from the Prosecutor's office of the county wherein the offense was alleged to have been committed indicates that applicant surreptitiously misappropriated 2500 yards of good cloth and 75 dozen handkerchiefs of a combined value of \$425.00. Applicant testified that, inasmuch as the cloth was deposited in barrels by employees of the mill before delivery to him, he considered it to be waste material.

Larceny and receiving are crimes which ordinarily involve moral turpitude. Re Case No. 272, Bulletin 569, Item 10. Nothing appears in the instant case to free applicant's conviction of that element. Although he claims to be actually innocent of the crime, he may not in this proceeding collaterally attack his conviction in the criminal court.

Accordingly, it is recommended that applicant be declared disqualified from obtaining an employment permit to work for a liquor licensee in New Jersey.

Clarence E. Kremer
Attorney.

APPROVED:
ALFRED E. DRISCOLL
Commissioner.

11. ACTIVITY REPORT FOR FEBRUARY, 1945

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - - 8 Bootleggers - - - - - 11
Total number of persons arrested - - - - - 19

SEIZURES: Stills - 1 to 50 gallons daily capacity - - - - - 1
50 gallons and more daily capacity - - - - - 0
Total number of stills seized - - - - - 1
Mash - gallons - - - - - 1,050
Motor vehicles - Trucks - - - - - 0
Passenger cars - - - - - 3
Total number of motor vehicles seized - - - - - 3
Beverage alcohol - gallons - - - - - 0
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - - 40
Wine - gallons - - - - - 1,264
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - - 32

RETAIL LICENSEES:
Total number of premises inspected - - - - - 848
Total number of bottles gauged - - - - - 6,995
Total number of premises where violations were found - - - - - 56
Total number of violations found - - - - - 78
Type of violations found:
Illicit (bootleg) liquor - - - 8 Improper beer tap markers - - - 3
Gambling devices - - - 10 Stock disposal permits necessary - - - 7
Prohibited signs - - - 3 No sign denoting legal sale hours - - -
Unqualified employees - - - 29 off-premises consumption - - - 7
"Fronts" (concealed ownership) - 3 Other types of violations - - - 8

MILITARY AREA PATROL INSPECTIONS: - - - - - 423

STATE LICENSEES:
Premises inspected - - - - - 38
License applications investigated - - - - - 8

COMPLAINTS:
Investigated, reviewed and closed - - - - - 254
Investigation assigned, not yet completed - - - - - 269

LABORATORY:
Analyses made - - - - - 100
"Shake-up" cases (alcohol, water and artificial coloring) - - - - - 9
Liquor found to be not genuine as labeled - - - - - 2

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made - - - - - 10
Persons fingerprinted for non-criminal purposes - - - - - 162
Identification contacts with other enforcement agencies - - - - - 250
Motor vehicle identifications via N. J. State Police Teletype - - - - - 11

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities - - - - - 20
Cases instituted at Department - - - - - 7

HEARINGS HELD AT DEPARTMENT:
Total number of hearings held - - - - - 27
Order to show cause - - - 1 Seizures - - - - - 6
Appeals - - - - - 3 Tax revocations - - - - - 2
Disciplinary proceedings - - 8 Application for license - - - - 1
Eligibility - - - - - 6

PERMITS ISSUED:
Total number of permits issued - - - - - 619
Unqualified employees - - - - - 156
Solicitors - - - - - 41
Social affairs - - - - - 115
Home manufacture of wine - - - - - 9
Disposal of alcoholic beverages - - - - - 108
Miscellaneous permits - - - - - 190

Respectfully submitted,
Erwin B. Hock
Deputy Commissioner.

12. HOURS OF SALE - THE BYRNES CURFEW AND STATE LAWS GOVERNING PERMISSIVE HOURS FOR THE SALE OF ALCOHOLIC BEVERAGES.

In the midst of the furor caused by the so-called Byrnes "request" for a 12:00 midnight nationwide curfew, the public may have overlooked the fact that the Byrnes "request" requires no change in the hours during which the sale of alcoholic beverages is permitted in 20 out of the 48 states. In the following states a midnight closing (or earlier) was in effect prior to February 26, 1945:

- | | |
|--------------|---------------|
| Delaware | Maine |
| Kentucky | Vermont |
| South Dakota | New Hampshire |

The states named below permit the sale of distilled spirits by the package only:

- | | |
|----------------|----------------|
| Alabama* | South Carolina |
| Arkansas | Texas |
| Georgia | Tennessee |
| Idaho | Utah |
| Iowa | Virginia |
| North Carolina | Washington |
| Oregon | West Virginia |

*Hotels and restaurants are permitted to sell by the drink.

In addition, there were the "dry" states of

- | | | |
|--------|-------------|-----------|
| Kansas | Mississippi | Oklahoma. |
|--------|-------------|-----------|

On November 26, 1942 military authorities established a curfew providing for midnight termination of sales to members of the armed forces in Arizona, California, Nevada, Idaho, Montana, Oregon and the State of Washington. California thereafter found it advisable to support the military curfew by the adoption of State regulations terminating the sale of alcoholic beverages to civilians as well as to members of the armed forces at 12:00 midnight. California State law previously provided a uniform 2:00 a.m. closing.

In Louisiana a state law imposed a military curfew on sales to members of the armed forces at 12:00 midnight. In Virginia a similar law established an 11:00 p.m. military curfew, and a Texas law provided for an 11:30 p.m. curfew, all for members of the armed forces. In New Jersey, the Department has opposed any attempt to discriminate as between members of the armed forces and the civilian population unless the discriminatory action was initiated by military authorities, in which case state regulations require licensees to honor the military curfew.

The following states have closing regulations which, in numerous instances, permitted sales beyond 12:00 midnight:

- Arizona - 1:00 a.m.
- Colorado - 2:00 a.m. (cities under 50,000 population, 12:00 midnight)
- Connecticut - 1:00 a.m.
- District of Columbia - 2:00 a.m.
- Florida - local law governs
- Illinois - local law governs
- Indiana - 12:00 (exceptions in larger cities for weekend)
- Louisiana - 4:00 a.m.
- Maryland - local law governs
- Massachusetts - 1:00 a.m.
- Michigan - 2:00 a.m.
- Minnesota - 12:00 (exceptions in larger cities)
- Missouri - 1:30 a.m.
- Montana - 2:00 a.m.
- Nebraska - 1:00 a.m.
- Nevada - local law governs
- New Jersey - local law governs, except package sales are governed by Regulations No. 38
- New Mexico - Monday 12:00; other days 2:00 a.m.
- New York - 3:00 a.m.; N.Y.C. 4:00 a.m.; County Boards, except in N.Y.C., may further restrict hours. Some counties have adopted 2:00 a.m. or 1:00 a.m. closing regulations; 2 counties have 12:00 midnight closing.
- North Dakota - 2:00 a.m. - beer; spirits governed by local regulations.
- Ohio - Generally 1:00 a.m.; except night clubs, in some instances as late as 2:30 a.m.
- Pennsylvania - 2:00 a.m.
- Rhode Island - 12:00 midnight for saloons (men only); 1:00 a.m. for restaurants
- Wisconsin - 1:00 a.m. (exceptions in larger cities)
- Wyoming - 1:00 a.m.

Alfred E. Griswold
Commissioner.

Dated: March 7, 1945.