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

BULLETIN 712

MAY 31, 1946.

1. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL ORDERED
FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure) Case No. 6973
on April 6, 1946, of a still)
and a quantity of alcoholic)
beverages in a dwelling owned)
and occupied by Max Faerber,) ON HEARING
located on Broadway, in the) CONCLUSIONS AND ORDER
Borough of Norwood, County of)
Bergen and State of New Jersey.)
-----)

George W. Weleck, Esq., Attorney for Max Faerber.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic
Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether a small still and a quantity of alcoholic beverages, itemized in a schedule hereinafter set forth, seized on April 6, 1946, in Max Faerber's dwelling, located on Broadway, Norwood, N. J., constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

On the day in question the unregistered still exploded and caused a fire. Norwood police officers arrived on the scene, and seized the still and various containers with illicit alcoholic beverages. They arrested Faerber on charge of possessing an unregistered still and illicit alcoholic beverages. The seized property was subsequently turned over to the State Department of Alcoholic Beverage Control.

Faerber gave the police a signed statement in which he claims that he recently purchased the still and that it exploded the first time he attempted to operate it.

The still was not registered with the State Commissioner of Alcoholic Beverage Control, as required by R. S. 33:2-1. Hence, such still, and the alcoholic beverages seized therewith in the building, constitute unlawful property and are subject to forfeiture. In addition, the premises are subject to padlocking. R. S. 33:2-3, R. S. 33:2-5.

When the matter came on for hearing, pursuant to R.S. 33:2-4, Max Faerber appeared, with counsel, and sought to avoid padlocking of the premises. He did not oppose forfeiture of the seized property.

Mr. Faerber testified that he resides at the premises with his wife and one child; that he is employed as a painter, does not have any previous criminal record and has never sold any alcoholic beverages. He claims that he purchased the still for the purpose of manufacturing alcoholic beverages, for his own use, from grapes grown on his property, unaware that this was unlawful. He further testified that he does not own any other premises.

Mr. Faerber now has a criminal record and has paid a fine in criminal court. The still and alcoholic beverages will be confiscated. The still was not of the size generally used for the commercial manufacture of illicit alcohol. It is apparently Mr. Faerber's first offense of this nature. The premises constitute his family home. Under these circumstances, padlocking of the premises would seemingly impose an undue hardship. Padlocking will therefore be waived.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property and that the same be and hereby is forfeited, in accordance with the provisions of R. S. 33:2-5, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK
Deputy Commissioner.

Dated: May 17, 1946.

SCHEDULE "A"

- 1 - copper cooker
- 1 - galvanized cooler with copper coils, rubber hose attached
- 8 - 1 gallon jugs of wine
- 6 - containers with other alcoholic beverages

2. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PERMITTING GAMBLING ON LICENSED PREMISES, IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 MARCEL BARBIER and FRANK KLAUS
 49 Belmont Avenue
 Garfield, N. J.,
 Holder of Plenary Retail Consumption License C-50, issued by the City Council of the City of Garfield.
 -----)

CONCLUSIONS AND ORDER.

John D. Vasilyk, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendants have pleaded non vult to charges alleging (1) the sale of alcoholic beverages for off-premises consumption, in violation of Rule 1 of State Regulations No. 38; and (2) that they allowed, permitted and suffered gambling on their licensed premises, in violation of Rule 7 of State Regulations No. 20.

On March 23, 1946, about 10:40 p.m., agents of the State Department of Alcoholic Beverage Control saw one of the licensees sell in original containers three bottles of whiskey, which said bottles were carried off the licensed premises. At 11:15 p.m., one of the investigators purchased a quart bottle of wine from said defendant after asking him for a bottle of wine "to take out".

On March 29, 1943, two investigators of the Department of Alcoholic Beverage Control, directed to a basement room by one of the defendants, observed a game of "poker" for money stakes being played by eight men, and five men watching the "game". This was more than the usual "sociable" game of cards -- bets ranged up to \$2.00. Further, the game was conducted clandestinely in the rear of the cellar of the licensed premises. In a written statement given to the aforesaid agents, Marcel Barbier, one of the partners, stated that the game had been going on "for about two months". When players wanted alcoholic beverages, one of the spectators took their orders and with money from a "kitty" obtained drinks from the bar upstairs. The usual penalty in instances where the "house" does not participate therein and the game involves nominal stakes is five days. Re Smith, Bulletin 603, Item 7.

The game was conducted in a furtive manner. The stakes were not nominal but high. It was admitted that the game had been going on for some two months. In my opinion these facts constitute aggravating circumstances. I therefore am imposing a penalty of ten days for the gambling charge.

With respect to the violation of State Regulations No. 38, I shall suspend the license for a minimum period of fifteen days. Re VanHarken, Bulletin 678, Item 10.

Defendants have no prior adjudicated record. Five days shall be remitted because of the plea, leaving a net suspension of twenty days.

Accordingly, it is, on this 20th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-50, issued by the City Council of the City of Garfield to Marcel Barbier and Frank Klaus, for premises 49 Belmont Avenue, Garfield, be and the same is hereby suspended for a period of twenty (20) days, commencing at 4:00 a.m. May 29, 1946, and terminating at 4:00 a.m. June 18, 1946.

ERWIN B. HOCK
Deputy Commissioner.

3. APPELLATE DECISIONS - CUFF v. SALEM.

PAULINE B. CUFF,)
Appellant,)
-vs-)
COMMON COUNCIL OF THE CITY)
OF SALEM,)
Respondent)
-----)

ON APPEAL
CONCLUSIONS AND ORDER

N. Norris Mangan, Esq. and Frank M. Lario, Esq., Attorneys for Appellant.
William R. Smith, Esq., Attorney for Respondent.
W. A. Lucas, Esq., Attorney for Objectors.

This is an appeal from the respondent's refusal to grant the appellant's application for transfer of her plenary retail consumption license from premises 107-111 Market Street to premises 25 Market Street, Salem, N. J.

The appellant is presently located on the westerly side of Market Street about 150 feet northerly of Broadway. Her proposed site is situated on the same side of Market Street and about 1400 feet northerly of her present tavern.

The major reason for denial of the transfer is the residential character of the vicinity surrounding 25 Market Street. The

intersection at Broadway and Market Street is the hub of the city's business section. Between that intersection and the appellant's present site are all business properties. Going northerly thereof, the street becomes increasingly residential. Thus between Griffith Street, the nearest street to the north of Broadway, and Hancock Street, near the southwest corner of which appellant seeks to transfer, there are about forty private residences and about eight business properties. The business properties consist of stores, gas stations and lumber and coal yards.

At the hearing held by the respondent, some ten residents living in the vicinity appeared and objected to the transfer on the ground that the neighborhood, predominantly residential in character, was not the proper place for a tavern. According to the record, none of the residents appeared to testify in favor of the transfer.

The character of the neighborhood, viewed in the light most favorable to the appellant, is mixed residential, business and industrial. The dominating characteristic, however, in view of the ~~large number of homes existing there, is residential.~~ In such a neighborhood, a large measure of discretion is invested in the issuing authority to determine whether to place a consumption establishment there. If this were strictly a business area, the mere general objections of the neighboring residents would not ordinarily be a sufficient reason for refusing the application in question. Cf. DeChristie v. Gloucester, Bulletin 121, Item 10; Conn v. Kearny, Bulletin 173, Item 1; Drucker v. Trenton, Bulletin 474, Item 9; Sun Valley Tavern, Inc. v. Bogota, Bulletin 487, Item 2. Where, however, the neighborhood, as here, is mixed residential and business, a refusal to transfer a license within that neighborhood is neither arbitrary nor unreasonable. See Samalonis v. Pennsauken, Bulletin 622, Item 1.

The foregoing disposition renders it unnecessary to consider the additional reason given by respondent in support of its denial of the application.

The action of respondent is affirmed.

Accordingly, it is, on this 24th day of May, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against LLOYD U. WILCOX S/S Egg Harbor Road above Mail Avenue Deptford Township P.O. R.D. Sewell, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Deptford.

Hendrickson & Wick, Esqs., by John B. Wick, Esq., Attorney for Defendant-licensee. Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On March 20, 1946, investigators of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "Calvert Distilled London Dry Gin" and a 4/5 quart bottle labeled "Hiram Walker's Distilled London Dry Gin" when their field tests disclosed that the contents of said two bottles were not genuine as labeled. Subsequent analyses by the Department chemist warrants the conclusion that each of said bottles had been at least partially refilled with a higher proof alcoholic beverage.

In submitting the plea, defendant disclaims all knowledge of the "refills". However, "possession" is the gravamen of the violation and such a claim does not in any way affect defendant's liability. Re Barrale, Bulletin 705, Item 5.

The minimum suspension for so-called "two-bottle" cases is fifteen days. Re Nurse, Bulletin 680, Item 7. Defendant has no prior adjudicated record. I shall suspend his license for fifteen days.

Accordingly, it is, on this 21st day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-8, issued by the Township Committee of the Township of Deptford to Lloyd U. Wilcox, for premises S/S Egg Harbor Road above Mail Avenue, Deptford Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. May 28, 1946, and terminating at 2:00 a.m. June 12, 1946.

ERWIN B. HOCK Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against HERBERT PARLATO T/a WOOD-RIDGE TAVERN 275-277 Hackensack Street Wood-Ridge, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Wood-Ridge.

Arthur J. O'Dea, Esq., Attorney for Defendant-licensee. Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On March 29, 1946, an investigator of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" when his field test disclosed that the contents of said bottle were not genuine as labeled. At that time, defendant in a written statement admitted that he had partly "refilled" the said bottle with another "Canadian" whisky.

Analysis of the contents of the seized bottle by the Department chemist confirms the field test and the admissions of the defendant. It should be clear to all licensees that a customer is entitled to receive exactly what he orders. Retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1; Re Mazza, Bulletin 680, Item 11.

This is defendant's first adjudicated violation. I shall suspend his license for the minimum period of fifteen days. Re Mazza, supra.

Accordingly, it is, on this 24th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Wood-Ridge to Herbert Parlato, t/a Wood-Ridge Tavern, for premises 275-277 Hackensack Street, Wood-Ridge, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. June 3, 1946, and terminating at 2:00 a.m. June 18, 1946.

ERWIN B. HOCK Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)

FRANK ARGENZIANA)
T/a FRANKS TAVERN)
Madison Hill Rd. & Palisade Ave.)
Clark Township)
P.O. R.F.D. 2, Rahway, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Board of Commissioners of the Township of Clark.)
-----)

Frank Argenziana, Defendant-licensee, Pro se.
Edward F. Ambrose, Esc., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On April 30, 1946, an investigator of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "Four-Roses A Blend of Straight Whiskies" when his field tests disclosed that the contents thereof were not genuine as labeled.

Defendant, in a written statement, admitted that he had "refilled" said bottle with a blended whiskey because "I was out of 'Four Roses' and I have some customers that drink it *** I did not want to lose my customers".

Subsequent analysis by the Department chemist warrants the conclusion that the seized bottle had been at least partly refilled with a whiskey containing artificial color -- that a blended whiskey had been added to a blend of straight whiskies.

Retailers are prohibited from refilling bottles. A customer is entitled to receive exactly what he orders. Cf. Re Leda, Inc., Bulletin 678, Item 1.

Defendant's promise submitted with his plea that "I will see to it that it will never happen again" seems rather out of place when we consider that his license was suspended for ten days in August, 1945, as a result of a similar type of a violation. Bulletin 676, Item 6. Because of his record, I shall suspend defendant's license for thirty days, double the usual penalty of fifteen days (Re Rudolph, Bulletin 680, Item 1) for "one-bottle" cases. Cf. Re Union of Brotherly Love, Bulletin 618, Item 7. Any further violation of any kind may well result in a revocation of defendant's license.

Accordingly, it is, on this 24th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-6, issued by the Board of Commissioners of the Township of Clark to Frank Argenziana, t/a Franks Tavern, for premises Madison Hill Rd. & Palisade Ave., Clark Township, be and the same is hereby suspended for a period of thirty (30) days, commencing at 12:01 a.m. June 1, 1946, and terminating at midnight, June 30, 1946.

ERWIN B. HOCK
Deputy Commissioner.

9. LICENSED PREMISES - APPLICATIONS FOR PREMISES NOT YET CONSTRUCTED AND WHICH WILL NOT BE COMPLETED BY JUNE 30TH. HEREIN EXTREMELY IMPORTANT RULING WITHOUT WHICH MANY PERSONS WHOSE APPLICATIONS HAVE BEEN GRANTED WILL BE UNABLE TO OBTAIN RENEWALS.

TO ALL MUNICIPAL LICENSE ISSUING AUTHORITIES:

The Alcoholic Beverage Law makes it the duty of municipal issuing authorities to investigate not only a license applicant's personal qualifications but also to investigate the premises sought to be licensed. (Revised Statutes, 33:1-24). The State Commissioner has consistently ruled that where application is made for a building not yet constructed, or for a building in process of construction, the most the municipal issuing authority may do is to grant the application subject to the express condition (imposed in the authorizing resolution, pursuant to Revised Statutes, 33:1-32) that the premises as described in the plans and specifications prepared and submitted by the applicant and found acceptable by the issuing authority shall first be completed. (Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8; Re Murphy, Bulletin 389, Item 11).

The State Commissioner's ruling, in the cited and other bulletin items, has always been that while a municipal issuing authority may grant an application subject to the indicated special condition, the license may not be actually issued until the premises are completed in accordance with the filed plans and specifications.

Unless a license has been actually issued and is in effect on June 30th, it may not be renewed for the new license year beginning July 1st. Under our Alcoholic Beverage Law, a renewal must be to the holder of the expired or expiring license; otherwise, it is a new license. (Revised Statutes, 33:1-96). The issuance of a new license is prohibited in many municipalities by municipal ordinance and, now, by the new State limitation law -- Chapter 147 of the Laws of 1946, effective upon approval by the Governor on April 24th.

During the license year 1945-1946, a number of municipal issuing authorities have granted applications for premises not yet constructed and, beyond all question, a number of the applicants concerned will be unable to complete their premises by June 30, 1946. In all fairness to those applicants who have acted in complete good faith and whose failure to complete the contemplated premises has been due to no fault of their own but to the unavailability of building materials, the ruling heretofore made (and contained in Re Harris and other bulletin items) is hereby modified, but only for the following limited purpose and to the following extent:

Where a municipal issuing authority has granted an application for premises not yet constructed, it may amend its authorizing resolution (or motion) by a resolution setting forth that the original resolution (or motion) dated _____, is hereby amended to provide that the license is authorized to be issued, effective immediately, for the sole purpose of permitting a renewal for the license year 1946-1947.

If the indicated amendatory resolution is passed a copy should, of course, be forwarded at once to this Department.

Where the indicated amendatory resolution is passed and the license issued thereunder, and a renewal application (for the license year 1946-1947) is filed, then if the issuing authority determines to grant the application for renewal, its resolution granting that application must impose (or reimpose) a special condition reading in the following manner:

"... provided, however, that the license shall not be actually issued unless and until the premises as described in the plans and specifications prepared, submitted and found acceptable by this issuing authority, shall first be completed."

Thus, the license certificate, for the year 1946-1947, will not be issued and delivered to the applicant until the special condition has been complied with.

A copy of the resolution imposing the indicated special condition must be forwarded to this Department for the State Commissioner's approval required by Revised Statutes, 33:1-32.

Furthermore, the applicant's published Notices of Application shall contain the following words: "Plans and specifications of the premises to be constructed may be examined at the office of the Municipal Clerk." (State Regulations No. 2).

There are a few instances in which an application for a place-to-place transfer of an existing license has been granted for a building not yet constructed or for a building in course of construction. In those instances, if it is apparent that the licensee will have no licensed premises on July 1 (because his new premises have not been completed and because he has lost possession of his old premises by expiration of his lease, eviction, etc.), the ruling and comments hereinabove made shall apply. In other words, the issuing authority may, in those cases, amend its transfer-authorizing resolution (substituting the word "transferred" for the word "issued"). In that event the transfer should be endorsed on the 1945-1946 license certificate. The application for the 1946-1947 renewal should be filed for the new uncompleted premises and not for the old premises. If renewal is granted, it should be made subject to the special condition set forth above, and the license certificate for the year 1946-1947 will not be issued or delivered to the applicant until the special condition has been complied with.

The situation is different where a licensee's application for a place-to-place transfer has been granted but where the licensee still has the old licensed premises and will continue to have the old premises on and after July 1st. He will probably wish to continue operation of the business and under those circumstances it would appear the proper course to apply for a renewal (1946-1947) for the old premises. If the renewal is granted, then, if and when (after July 1st) the new premises are completed, he may file a new application for a place-to-place transfer to those premises.

The intent of this emergency ruling is to permit relief in hardship cases. Whether or not the indicated relief is to be granted in a specific case rests, in the first instance, in the sound discretion of the issuing authority.

ERWIN B. HOCK
Deputy Commissioner.

Dated: May 27, 1946.

10. APPELLATE DECISIONS - ANDERSON v. BRANCHBURG TOWNSHIP.

SIMON ANDERSON, trading as)
 FRIENDLY INN,)
)
 Appellant,)
)
 -vs-)
)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF BRANCHBURG,)
)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Appellant.
 Beekman & Beekman, Esqs., by John H. Beekman, Jr., Esq.,
 Attorneys for Respondent.

The appellant appeals from the denial of his application for a plenary retail consumption license for premises on Old Route No. 28, North Branch, Branchburg Township, N. J.

Among other things, the application was denied because of the number of consumption establishments already existing in the vicinity in question.

The appellant's premises consist of a two-room frame building surrounded by ten tourists' cabins, located on State Highway No. 28. The highway presents the usual scene found on rural throughfares, with much vacant land and scattered houses. Six other consumption licenses are now outstanding on that highway. Five of these licenses are located within a mile and a quarter to the west and the sixth is located within a half-mile to the east. Thus, all six licenses are situated on a stretch of the highway only a mile and three-quarters in length.

The mere recital of the foregoing facts makes it obvious that the refusal to issue a seventh consumption license within the area in question was founded upon a reasonable exercise of the discretion lodged in the respondent to determine, in the first instance, the number of licenses to be located in any given section of the municipality.

It would not be amiss to add that, with a population of 1300 and eight consumption licenses now outstanding in the Township, there would appear to be more than ample facilities to service the liquor needs of the municipality as a whole.

The action of the respondent is affirmed.

Accordingly, it is, on this 27th day of May, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against)

MARY J. CALLAHAN)
T/a CALLAHAN'S BAR)
2400 Atlantic Avenue)
Atlantic City, N. J.,)

CONCLUSIONS

Holder of Plenary Retail Consumption License C-90 issued by the Board of Commissioners of the City of Atlantic City, and transferred during the pendency of these proceedings to)

AND ORDER

JOHN P. CALLAHAN)
T/a "CALLAHAN'S BAR")

for the same premises.)
-----)

Julius Waldman, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to charges alleging that (1) she falsified her application by stating that no other individual had any interest in the license applied for or in the business to be conducted thereunder, whereas in fact her brother, John P. Callahan, was the true owner of said business; and (2) she permitted her said brother to exercise the rights and privileges of her license.

John P. Callahan entered the armed forces of the United States in May 1943. For some years prior thereto he had operated a tavern in Philadelphia. While John was in military service he arranged, through his brother William, to purchase the licensed business formerly conducted by one Patrick McGahn at the premises in question. Since John was not at that time a resident of New Jersey, he arranged to have his sister, Mary, apply for the transfer of the license from Patrick McGahn to herself. In making application for the license, Mary did not disclose that her brother, John, was the real party in interest.

It appears that John P. Callahan was honorably discharged from military service on December 22, 1945, after serving in five campaigns in Europe. It has been represented to me that he did not thereafter take immediate steps to transfer the license to himself because at that time he did not feel himself physically able to engage immediately in business. The charges herein were served on May 1, 1946, and on May 9, 1946 the license in question was duly transferred, subject to the outcome of these proceedings, by the local issuing authority from Mary J. Callahan to John P. Callahan. Apparently the transferee now resides in Atlantic City, New Jersey.

There was some indication that William Callahan might also have an interest in the license and the business conducted thereunder, but the available evidence was not sufficient to warrant such a conclusion.

In Re Nicomini, Bulletin 686, Item 7, it was indicated that the minimum ten-day suspension previously imposed in cases of this kind would be increased when the "front" situation was created or continued after January 1, 1946. In the instant case the "front" was created prior to January 1, 1946, but, since it was continued after January 1, 1946, it would seem to warrant an increased penalty. John P. Callahan, however, actually had only eight days following his discharge from service to correct the situation. To apply the policy set forth in Re Nicomini, *supra*, would seem unduly harsh. Upon the evidence presently before me, the situation seems to have been corrected by the transfer of the license to John P. Callahan. Because of the special circumstance herein, I shall suspend the license for a period of ten days. Re Karbowski, Bulletin 676, Item 3.

Accordingly, it is, on this 24th day of May, 1946,

ORDERED, that Plenary Retail Consumption License C-90, issued by the Board of Commissioners of the City of Atlantic City to Mary J. Callahan, t/a Callahan's Bar, and transferred during the pendency of these proceedings to John P. Callahan, t/a Callahan's Bar, for premises 2400 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 12:01 a.m. June 4, 1946, and terminating at 12:01 a.m. June 14, 1946.

ERWIN B. HOCK
Deputy Commissioner.

12. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES BY RETAIL LICENSEE WITHOUT BONA FIDE INVOICES OR MANIFESTS, IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 - PERMITTING MINOR TO BE EMPLOYED ON LICENSED PREMISES, IN VIOLATION OF R. S. 33:1-26 AND RULE 3 OF STATE REGULATIONS NO. 13 - LICENSE SUSPENDED FOR A PERIOD OF 5 DAYS.

In the Matter of Disciplinary Proceedings against)

PETER McIVER)
555-557 Route 29)
Hillside, N. J.,)

CONCLUSIONS
AND ORDER

Holder of State Beverage Distributor's License SBD-107, issued by the State Commissioner of Alcoholic Beverage Control.)
-----)

Sol L. Kesselman, Esq., Attorney for Defendant-licensee.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded not guilty to charge (1) alleging that, on June 2, 1945, he transported alcoholic beverages in his licensed vehicle, bearing transportation insignia, for which he had no bona fide invoices or manifests stating the names of the purchasers of each item of alcoholic beverages and the kind and quantity delivered in such vehicle to each purchaser, in violation of Rule 3 of State Regulations No. 17.

Defendant pleaded guilty to charge (2) alleging that, on Saturday, June 2, 1945, and on divers Saturdays theretofore, he knowingly employed a minor in his licensed business without requisite permit from the State Department of Alcoholic Beverage Control, in violation of R.S. 33:1-26 and Rule 3 of State Regulations No. 13.

Inspector Kenney of the State Department of Alcoholic Beverage Control testified that, on Saturday, June 2, 1945, he stopped defendant's truck and, although there were 79 cases of bottled beer thereon, the driver had in his possession only two invoices covering three cases of beer. Inspector Kenney further testified that the driver produced a number of manila cards on which were the names and addresses of customers, the dates when deliveries had been made, and the brands of merchandise, together with the prices paid therefor. The driver selected certain cards, according to Inspector Kenney, which indicated 59 deliveries to be made on the day in question. Inspector Kenney further testified that both the driver and the defendant stated the additional cases of beer on the truck were primarily for the purpose of accommodating customers who might desire to increase their regular order from the number of cases shown on the cards.

Neither defendant nor his employee disputed to any extent the testimony of the ABC Inspector. There is no evidence that defendant or his employee actually solicited any customers to purchase alcoholic beverages.

Rule 3 of State Regulations No. 17 provides:

"No licensee privileged to sell alcoholic beverages directly to a consumer shall use his licensed vehicle bearing transportation insignia to deliver alcoholic beverages unless the driver of the vehicle has in his possession bona fide invoices or manifests stating the names of the purchaser of each item of alcoholic beverages and the kind and quantity of the alcoholic beverages being delivered in said vehicle to each of said purchasers. No such licensee shall transport in said vehicle, while making deliveries, any alcoholic beverages other than the amount shown in said invoices or manifests. No such licensee shall peddle, barter or otherwise sell alcoholic beverages from any vehicle."

Obviously, the cards used by defendant cannot be considered tantamount to an invoice or manifest. The amount of alcoholic beverages delivered pursuant to defendant's card system has been and is subject to fluctuation. Defendant's method, at least so far as the additional cases of beer are concerned, may aptly be described as "peddling". This is the very thing the rule in question was promulgated to correct. Invoices setting forth the quantity of alcoholic beverages, the brand, and the name of the customer, describe with certainty the order previously given. Defendant's system should be revamped without delay in accordance with Rule 3 of State Regulations No. 17. I find defendant guilty of charge (1).

Defendant has no previous adjudicated record. Under the circumstances, I shall suspend his license for a period of five days because of both violations committed herein.

Accordingly, it is, on this 27th day of May, 1946,

ORDERED, that State Beverage Distributor's license SBD-107, issued by the State Commissioner of Alcoholic Beverage Control to Peter McIver, 555-557 Route 29, Hillside, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 a.m. June 3, 1946, and terminating at 12:01 a .m. June 8, 1946.

ERWIN B. HOCK
Deputy Commissioner.

13. DISCIPLINARY PROCEEDINGS - CHARGE OF POSSESSION OF ILLICIT LIQUOR
NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against)

ALICE M. MITCHELL)
Cor. Woodbury Blackwood Road)
and Hurffville Road)
Deptford Township /)
P.O. R.D. Blackwood, N. J.,)

O R D E R

Holder of Plenary Retail Consumption License C-10 issued by the)
Township Committee of the Township)
of Deptford.)
-----)

Alice M. Mitchell, Defendant-licensee, Pro se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant is charged with possession, in violation of R. S. 32:1-50, of an illicit alcoholic beverage, viz., a 4/5 quart bottle labeled "Three Star Laird's Apple Brandy", which bottle contained beverages not genuine as labeled.

On March 15, 1946, ABC agents tested twenty-eight opened bottles of liquor, and seized the bottle mentioned in the charge, when their preliminary tests indicated that the color reaction was much darker than usual. Defendant and her bartender denied that they had ever tampered with the contents of the seized bottle.

After thorough investigation, a Department representative frankly stated that there was insufficient evidence to prove the charge and he thereupon moved that the case be nolle prossed. Cf. Re Walaitis, Bulletin 689, Item 9.

Accordingly, it is, on this 27th day of May, 1946,

ORDERED, that the charge in the above cause be and the same is hereby nolle prossed.

Erwin B. Hack
Deputy Commissioner.