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

BULLETIN 520 JULY 20, 1942.

1. NEW LEGISLATION - SENATE, NO. 296.

Senate Bill No. 296 was approved by Acting Governor Scott on June 25, 1942, and thereupon became Chapter 264 of the Laws of 1942. It was effective immediately.

It reads as follows:

"AN ACT concerning alcoholic beverages, and supplementing chapter one of Title 33 of the Revised Statutes.

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

"1. There shall be no discrimination in the sale of alcoholic liquors by distillers, importers, and rectifiers of nationally advertised brands of alcoholic liquors to duly licensed wholesalers of alcoholic liquors in this State.

"2. In the event any distiller, importer, or rectifier shall refuse to sell to any individual wholesaler any amount of alcoholic liquor or comply with the provisions of this act, then the wholesaler shall petition the Commissioner of Alcoholic Beverage Control setting forth the facts and demanding a hearing thereon to determine whether such refusal to sell is arbitrary or not.

"3. If the Commissioner of Alcoholic Beverage Control is satisfied with the ability of the wholesaler to pay for such merchandise as ordered, he shall order the distiller, importer, or rectifier to complete said sale of alcoholic liquor to the wholesaler.

"4. In the event the distiller, importer, or rectifier refuses to complete the sale or comply with the terms of the order of the commissioner, the commissioner shall issue an order to every licensed wholesaler prohibiting the purchase by such wholesaler of any alcoholic liquor product of the said distiller, importer or rectifier directly or indirectly until there is strict compliance by the distiller, importer, or rectifier with the order of the Commissioner of Alcoholic Beverage Control.

"5. The State Commissioner of Alcoholic Beverage Control shall adopt and promulgate such rules and regulations as may be necessary to carry out and insure compliance with the provisions of this act.

"6. This act shall take effect immediately."

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2. APPELLATE DECISIONS - DERRICO v. MONTCLAIR.

GIRO DERRICO, trading as RECREATION TAVERN,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE TOWN OF MONTCLAIR,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

McCarter, English & Egner, Esqs., by Gerald M. F. McLaughlin, Esq., Attorneys for Appellant.
Nathan L. Jacobs, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, Giro Derrico, has held a plenary retail consumption license for a tavern at 59 Bay Street in Montclair for 1940-41 (and prior licensing years). Toward the close of that year appellant filed applications with respondent, the Board of Commissioners of the Town of Montclair, for transfer of his license to 1 Grant Street and also for renewal of the license, as thus transferred, for the ensuing 1941-42 licensing year.

Upon respondent's denial of both applications, appellant filed the instant appeal to this Department. See R.S. 33:1-22, 26.

As justification for its action, respondent contends, inter alia, that the proposed site where appellant wishes to operate his tavern is in a congested and predominantly residential neighborhood and that various residents of this neighborhood are in active protest against the proposed change. In response, appellant contends that both the old and the proposed locations are actually in the same neighborhood; that the neighborhood is business throughout; and that, hence, despite the objectors, no sound reason exists for denying the change in location. See Conn v. Kearny, Bulletin 173, Item 1.

The actual facts are that appellant's old site at 59 Bay Street is just off the intersection of that street and Glenridge Avenue - a business intersection which has been described as the local "four corners" for the general neighborhood. The proposed site where appellant wishes to operate is some two hundred feet to the north at the intersection of Bay and Grant Streets.

From the evidence at the hearing and the report of the Hearer who (on stipulation of counsel) personally viewed the locations in question, I find that such locations stand on a substantially different footing; that the business aspect of the neighborhood going north from the "four corners" almost completely disappears; that hence, although the proposed site is only some two hundred feet away, it is located in a neighborhood which is predominantly residential in character and which reaches down to the said "four corners." I further note the convincing testimony of a principal of a nearby school that Grant Street - at the head of which appellant proposes to locate his tavern - is one of the three most "desirable" residential streets in this congested and rather poor neighborhood.

In view of such facts, I cannot say that respondent, faced with protests from various of the residents, has abused its discretion in refusing appellant the requested change in location. See Sun Valley Tavern, Inc. v. Bogota, Bulletin 487, Item 2.

Moreover, respondent, in further justification for its action, points out that appellant was convicted in criminal court in this State in 1928 for maintaining a lottery, was fined $250.00 and placed on probation for three years; that, despite such conviction, he falsely swore in all his respective applications for his 1940-41 and prior licenses that he had never been convicted of any crime; that, in March 1941, the Acting State Commissioner, in a disciplinary proceeding against appellant, found him guilty of such false swearing and suspended appellant's license for five days. See Re Derrico, Bulletin 452, Item 4.

Although appellant revealed his criminal conviction in the applications in question, this came after he had already been brought up and suspended in the said disciplinary proceedings.

Clearly, a licensing authority, when learning that a licensee has falsely concealed his criminal record in past applications, may, if it sees fit, properly refuse thereafter to deal with or issue any further license to him. Any contrary ruling would signally tend to defeat sound liquor control.

The fact that this Department brought disciplinary proceedings against appellant and imposed a suspension upon his then existing license in no way ousted respondent of its jurisdiction, as the local licensing authority, to determine whether, in view of appellant's past falsifications, any additional license should be issued to him in Montclair. Kaplan v. Newark, Bulletin 269, Item 6; Orsi v. Newark, Bulletin 352, Item 2; Orsi v. Burnett et al., Bulletin 359, Item 13. Cf. Re DiOrio, Bulletin 509, Item 8. Nor is respondent precluded by the fact that the suspension was not more severe than five days from viewing the matter in a stricter light. What may have struck the Acting State Commissioner as mitigating circumstances, warranting leniency in his opinion, is not binding upon respondent. Indeed, coming down to bedrock, there is virtually no excuse for an applicant in falsely answering "No" to the plain, homely and matter-of-fact question in the application, "Have you.....ever been convicted of a crime?" See Lynch v. Paterson, Bulletin 107, Item 1; Bradford v. Paulsboro, Bulletin 392, Item 11.

Appellant contends that the members of respondent knew that he had concealed his criminal record when granting his last application for license; that, therefore, they must be viewed as having condoned that falsification and cannot now resurrect it as ground for denying any further license to him. See Zicherman v. Newark, Bulletin 227, Item 7; Sudol v. Wallington, Bulletin 276, Item 7; Cicalese v. Newark, Bulletin 280, Item 9; Holzberg v. Orange, Bulletin 384, Item 4.

Whatever might otherwise be the validity of such an argument, I do not find sufficient evidence in the record that the members of respondent were, when granting appellant's last application for license, actually aware that he had been concealing his criminal record. The most that is shown is that in 1937 two of the five members may have been informed that appellant had such a record. There is nothing definitive to show that these two were further aware that appellant had been concealing his conviction; and nothing whatsoever to show that the other three members were aware either of the concealment or even the conviction itself.

It is unnecessary to consider the additional grounds advanced by respondent in support of its denial of the applications in question.

In view of the foregoing, respondent's action is affirmed.

Accordingly, it is, on this 30th day of June, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - HINDERING AND DELAYING INVESTIGATION IN VIOLATION OF R. S. 33:1-35 - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - FAILURE TO CLOSE PORTION OF LICENSED PREMISES CONTAINING BAR AND PERMITTING PERSONS TO REMAIN THEREIN DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

| | |
|---|---|
| In the Matter of Disciplinary Proceedings against<br><br>LOYAL ORDER OF MOOSE #217,<br>6 Lilly Street,<br>Lambertville, N. J.,<br><br>Holder of Plenary Retail Consumption License C-83, issued by the State Commissioner of Alcoholic Beverage Control. | CONCLUSIONS AND ORDER |

Thomas J. McGuire, Secretary, Loyal Order of Moose #217.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee has pleaded guilty to charges which may be summarized as follows:

(1) On or about March 8, 1942, it hindered and delayed investigation of its licensed premises in violation of R. S. 33:1-35.

(2) On Sunday, March 8, 1942, it sold alcoholic beverages during prohibited hours in violation of the local ordinance adopted January 13, 1942.

(3) It failed to close that part of the licensed premises containing the bar and permitted persons to remain therein during prohibited hours in violation of the aforesaid ordinance.

The record in this case discloses that on Sunday, March 8, 1942, investigators of this Department sought admittance to the licensed premises. Upon being refused permission, these investigators disclosed their identity and stated that they desired to inspect the premises in question. Notwithstanding this disclosure

of their identity, one Oscar Sands, subsequently identified as licensee's steward, refused to permit them to enter and attempted by force to close the door, thereby catching the leg of one of the agents. In a statement subsequently signed by Sands, he admitted that after the agents had disclosed their identity he knew they were investigators attached to the Department of Alcoholic Beverage Control. His excuse for not admitting them was that he was following instructions "not to admit anyone who did not possess a paid-up card." Sands further admitted that the barroom was open and that he had sold one highball to a person named "Hap", in violation of the local ordinance.

The violation, in two instances, of the local ordinance by a club licensee is in itself sufficiently serious to warrant a substantial penalty. Even more serious, however, was the refusal on the part of the licensee's steward to admit the agents of this Department after they had disclosed their identity. The rowdyism and strong arm methods herein used in barring entry to the Department's agents are reminiscent of the Prohibition Era. It is entirely possible that the agent whose leg was trapped might have been seriously injured as a result of Sands' effort to bar the entry of the agents. The licensee is responsible for the acts of its employees. Sound law enforcement requires that licensees cooperate with, rather than hinder, the activities of the control agents. Where this cooperation is lacking substantially increased penalties may be expected.

On charge (1) the license will be suspended for fifteen days.

As to charges (2) and (3) the license will be suspended for a period of five days on each charge. This makes a total suspension of twenty-five days, less a remission of five for the guilty plea.

Although this proceeding was instituted during the licensing term which expires at midnight tonight, it does not abate but remains fully effective against the renewal license for the fiscal year 1942-43. State Regulations No. 15.

Accordingly, it is, on this 30th day of June, 1942,

ORDERED, that Plenary Retail Consumption License C-83 for the fiscal year 1942-43, heretofore issued to Loyal Order of Moose #217 by the State Commissioner of Alcoholic Beverage Control for premises at 6 Lilly Street, Lambertville, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A.M. July 6, 1942, and concluding at 2:00 A.M. July 26, 1942.

ALFRED E. DRISCOLL,
Commissioner.

4. APPELLATE DECISIONS - TAYLOR v. SOUTH RIVER AND DUTTKIN.

GEORGE E. TAYLOR,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF SOUTH RIVER and ALEX DUTTKIN, trading as DUTTKIN'S BOWLING CENTER,
Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

George S. Applegate, Jr., Esq., Attorney for Appellant.
George L. Burton, Esq., Attorney for Respondent Borough Council of the Borough of South River.
Morris Spritzer, Esq., Attorney for Respondent Alex Duttkin, t/a Duttkin's Bowling Center.

BY THE COMMISSIONER:

This appeal is from the action of the respondent Borough Council in issuing, last January, a plenary retail consumption license to respondent Duttkin for 1941-2 for "Duttkin's Bowling Center" at 165 Whitehead Avenue in the Borough of South River.

Appellant is a clergyman and resident in the Borough, and was one of a number of objectors who lodged protest below against the granting of this license.

The chief issue in the case arises from the fact that, in May 1941, some months before granting of the license in question, the Borough Council, by a vote of 4-2, had outright denied Duttkin's application for transfer of a then existing consumption license to these same premises on the ground (inter alia) that sufficient liquor places already exist along Whitehead Avenue in this vicinity. On Duttkin's appeal to this Department, the Council's action was, in July 1941, expressly affirmed on the basis of the above stated ground. See Duttkin v. South River, Bulletin 470, Item 8.

When Duttkin filed his present application for direct issuance of a license to him for these premises, the members of the Borough Council were the same as those who had acted upon his previous application. However, three of the councilmen who had voted "No" in that prior instance changed to "Yes" in the present case, thus resulting in a vote of 5-1 in Duttkin's favor.

It is axiomatic that, under the Alcoholic Beverage Law, the question of issuance (or transfer) of a municipal liquor license is entrusted, in the first instance, to the sound and bona fide discretion of the local issuing authority. In discharge of that function, the local issuing authority, when acting upon an application, is not bound by any doctrine of res judicata to reach the same decision as upon some previous application involving the same applicant and premises. To the contrary, each individual application is necessarily to be considered on its own full merits. Cf. Lavelle v. Way, Bulletin 140, Item 1; Bradford v. Paulsboro, Bulletin 410, Item 3. The evident and salutary purpose of such a doctrine is to enable the municipality to benefit by its own sound

experience and to avoid repetition of what it honestly believes to have been a past mistake.

However, while giving full recognition to this doctrine, proper liquor control clearly dictates that an issuing authority may not be permitted to "back and fill" in the applications before it without sound reason therefor. Where, as here, it has squarely reversed its position, the burden is upon it to convincingly explain such reversal. VanKesteren et al. v. Camp, Bulletin 296, Item 7; Merkowsky et al. v. Bayonne et al., Bulletin 386, Item 4. Cf. Northend Tavern, Inc. v. Northvale, Bulletin 493, Item 5.

Hence, in the present case, were there actual change in the facts or in the membership of the Borough Council, the reversal might well be accounted for. See Northend Tavern, Inc. v. Northvale, supra. However, there is neither claim nor showing of such change in facts or membership. The only claim advanced for the change in vote of the three councilmen who had previously voted against Duttkin's application is that they did not understand or give full weight to the fact that the license was to be for a "high-class bowling center" and not the usual tavern; that, on full reflection, they therefore believed they did an injustice in the past case; that, so far as Whitehead Avenue is concerned, their real position is against having any additional tavern-type of establishment there.

I cannot accept this claim as convincing in view of the vigorous and determined stand which these same councilmen apparently took at the last appeal where all the facts were fully and bitterly threshed out. Moreover, from the various liquor places along Whitehead Avenue in this vicinity, it would appear that, of the two decisions reached by the Council, the first was the more reasonable and compatible with liquor control.

Hence, I must hold the Borough Council to its former determination. See Merkowsky et al. v. Bayonne et al., supra.

Although appellant claims that there is actual public need for a liquor license at his bowling alleys, such issue has already been determined against him in the prior appeal. See Duttkin v. South River, supra.

Accordingly, it is, on this 30th day of June, 1942,

ORDERED that the action of the Borough Council, in issuing the license in question, be and the same is hereby reversed and that such license be set aside and voided.

ALFRED E. DRISCOLL,
Commissioner.

5. RECAPITULATION OF ACTIVITY FOR PERIOD FROM JANUARY 1, 1942 THROUGH JUNE 30, 1942

To: Alfred E. Driscoll, Commissioner

| ARRESTS: | JAN. | FEB. | MAR. | APR. | MAY | JUNE | TOTAL |
|---|---|---|---|---|---|---|---|
| Licensees and employees | 0 | 5 | 5 | 5 | 3 | 4 | 22 |
| Bootleggers | 16 | 21 | 12 | 21 | 13 | 7 | 90 |
| Personating an A.B.C. officer | 0 | 0 | 1 | 0 | 0 | 0 | 1 |
| Total number of persons arrested | 16 | 26 | 18 | 26 | 16 | 11 | 113 |
| **SEIZURES:** | | | | | | | |
| Stills | | | | | | | |
| 1 to 50 gal. daily capacity | 3 | 3 | 1 | 0 | 5 | 1 | 13 |
| 50 gal. and more daily capacity | 4 | 0 | 3 | 1 | 1 | 0 | 9 |
| Total number of stills seized | 7 | 3 | 4 | 1 | 6 | 1 | 22 |
| Mash - gallons | 1,325 | 0 | 1,100 | 750 | 710 | 0 | 3,885 |
| Motor vehicles - Trucks | 0 | 0 | 0 | 1 | 1 | 0 | 2 |
| Passenger cars | 2 | 0 | 0 | 2 | 0 | 3 | 7 |
| Total number of motor vehicles seized | 2 | 0 | 0 | 3 | 1 | 3 | 9 |
| Beverage alcohol - gallons | 7.75 | 89 | 17.56 | 135.47 | 0 | 0 | 249.78 |
| Brewed malt alcoholic beverages (Beer, ale, etc.) - gallons | 4.75 | 30.48 | 27.03 | 20.30 | 63.10 | 5.16 | 150.82 |
| Wine - gallons | 154.50 | 330.33 | 156.50 | 1,064.07 | 265.75 | 0.85 | 1,972 |
| Distilled alcoholic beverages (Whiskey, brandy, etc.) - gallons | 7.08 | 0 | 41.50 | 0 | 0.75 | 0 | 49.33 |
| **RETAIL LICENSEES:** | | | | | | | |
| Number of premises in which were found | | | | | | | |
| Illicit (bootleg) liquor | 5 | 8 | 6 | 3 | 3 | 6 | 31 |
| Gambling devices | 6 | 2 | 1 | 3 | 2 | 1 | 15 |
| Prohibited signs | 3 | 2 | 3 | 3 | 0 | 0 | 11 |
| Unqualified employees | 91 | 94 | 79 | 102 | 50 | 89 | 505 |
| "Fronts" (concealed ownership) | 4 | 2 | 6 | 8 | 3 | 6 | 29 |
| Improper beer tap markers | 2 | 0 | 5 | 1 | 1 | 0 | 9 |
| Stock disposal permits necessary | 11 | 5 | 5 | 7 | 1 | 0 | 29 |
| Other types of violations | 6 | 3 | 10 | 11 | 7 | 4 | 41 |
| Total number of premises where violations were found | 123 | 114 | 109 | 136 | 62 | 106 | 650 |
| Total number of premises inspected | 1,716 | 1,659 | 1,722 | 1,863 | 1,357 | 1,865 | 10,182 |
| Total number of unqualified employees found | 124 | 122 | 103 | 127 | 66 | 123 | 665 |
| Total number of bottles gauged | 14,549 | 14,874 | 14,070 | 15,192 | 11,163 | 14,318 | 84,166 |
| **STATE LICENSEES:** | | | | | | | |
| Premises inspected | 58 | 30 | 50 | 62 | 27 | 27 | 254 |
| License applications investigated | 9 | 13 | 13 | 10 | 36 | 599 | 680 |
| **COMPLAINTS:** | | | | | | | |
| Investigated, reviewed and closed | 190 | 139 | 243 | 339 | 314 | 360 | 1,585 |
| Investigation assigned, not yet completed | --- | --- | --- | --- | --- | 459 | |

| LABORATORY: | JAN. | FEB. | MAR. | APR. | MAY | JUNE | TOTAL |
|---|---|---|---|---|---|---|---|
| Analyses made | 153 | 149 | 143 | 134 | 140 | 116 | 835 |
| "Shake-up" cases (alcohol, water and artificial coloring) | 30 | 12 | 18 | 15 | 20 | 17 | 112 |
| Liquor found to be not genuine as labeled | 32 | 14 | 23 | 4 | 11 | 4 | 88 |
| **IDENTIFICATION BUREAU:** | | | | | | | |
| Criminal fingerprint identifications made | 24 | 20 | 23 | 36 | 36 | 17 | 156 |
| Persons fingerprinted for non-criminal purposes | 58 | 85 | 116 | 107 | 137 | 420 | 923 |
| Identification contacts with other enforcement agencies | 204 | 59 | 72 | 114 | 138 | 259 | 846 |
| Motor vehicle identifications via N.J. State Police Teletype | 63 | 7 | 14 | 3 | 11 | 11 | 109 |
| **DISCIPLINARY PROCEEDINGS:** | | | | | | | |
| Cases transmitted to municipalities | 48 | 36 | 22 | 28 | 35 | 22 | 191 |
| Cases instituted at Department | 14 | 18 | 22 | 45 | 36 | 23 | 158 |
| Cancellation proceedings | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| **HEARINGS HELD AT DEPARTMENT:** | | | | | | | |
| Appeals | 3 | 3 | 6 | 6 | 7 | 7 | 32 |
| Disciplinary proceedings | 24 | 20 | 24 | 24 | 40 | 37 | 169 |
| Eligibility | 10 | 6 | 11 | 16 | 12 | 8 | 63 |
| Seizures | 19 | 8 | 5 | 2 | 8 | 7 | 49 |
| Application for special permit | 1 | 0 | 0 | 0 | 0 | 0 | 1 |
| Petition to modify penalty | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Noise complaint | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Objections to issuance of license | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Tax revocations | 1 | 11 | 16 | 3 | 10 | 3 | 44 |
| Application for club license | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| Total number of hearings held | 58 | 48 | 62 | 51 | 77 | 63 | 359 |
| **PERMITS ISSUED:** | | | | | | | |
| Unqualified employees | 354 | 508 | 560 | 461 | 456 | 452 | 2,791 |
| Solicitors | 78 | 71 | 92 | 98 | 92 | 49 | 480 |
| Social affairs | 156 | 202 | 120 | 213 | 192 | 205 | 1,088 |
| Home manufacture of wine | 296 | 51 | 3 | 5 | 1 | 1 | 357 |
| Disposal of alcoholic beverages | 66 | 70 | 69 | 60 | 66 | 47 | 378 |
| Extension of permit | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| Miscellaneous permits | 65 | 152 | 249 | 161 | 148 | 168 | 943 |
| Total number of permits issued | 1,015 | 1,054 | 1,093 | 998 | 955 | 923 | 6,038 |

Respectfully submitted,
Sydney B. White,
Chief Inspector.

6. APPELLATE DECISIONS - MEISLER v. INDEPENDENCE TOWNSHIP.

FREDERICK MEISLER, )

Appellant, )

-vs- ) ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF INDEPENDENCE TOWNSHIP, )

Case No. 2. Respondent. )

Lloyd L. Schroeder, Esq. and George H. Richenaker, Esq., Attorneys for Appellant.

BY THE COMMISSIONER:

Appellant appeals from respondent's action, taken on September 10, 1941, whereby he was denied a plenary retail consumption license for a building located on the northerly side of Route 6 in the Township of Independence. The case has been submitted to me upon a stipulation of facts entered into between appellant and Harvey Bartow, Clerk of Independence Township, and upon a brief submitted by attorneys for appellant.

The building in question is owned by Anna C. Meisler, wife of appellant. These premises had been used as a tavern continually from 1934 to July 1, 1941 and are so located and constructed that they are apparently not suited for any business other than a tavern or restaurant business. On June 19, 1941, Roy K. Goldecker, who then held a plenary retail consumption license for said premises, moved therefrom without notifying the owner or appellant or, apparently, his creditors. The Goldecker license expired on June 30, 1941 and he has not renewed his license for the present fiscal year. On July 19, 1941 Frederick Meisler duly applied to respondent for a plenary retail consumption license for his wife's premises and, on August 2, 1941, that application was denied solely because of the provisions of a Township ordinance adopted October 4, 1940.

Appellant herein, by his attorney, Mr. Richenaker, thereupon duly appealed to this Department from the action taken by respondent on August 2, 1941, but that case, which is designated in our records as Meisler v. Independence, Case No. 1, was discontinued by consent of said attorney on September 4, 1941.

On September 6, 1941 appellant filed a new application for a plenary retail consumption license for said premises and at a meeting of the Township Committee, held on the same day, he appeared with his attorney and requested the members of the Township Committee to amend the ordinance in question so that they could grant a license for the Meisler property. On September 10, 1941 the application and request were denied for the following stated reason:

> "A motion was made by Schenck that the liquor ordinance be left as it is at present and that the application of Frederick Meisler be denied. Seconded by Merrell.
> Yea - Merrell and Schenck
> No - Sutton."

Section 1 of the ordinance adopted by respondent on October 4, 1940 provides:

> "1. The number of plenary retail consumption licenses outstanding in the Township of Independence at any one time shall not exceed six, provided that this shall not prevent the renewal of such licenses outstanding upon the adoption of this ordinance or the transfer of such licenses and the renewal of licenses so transferred."

It has been stipulated that at the time the ordinance was adopted, nine plenary retail consumption licenses were outstanding in the Township and that, on August 2, 1941, eight plenary retail consumption licenses were then outstanding.

The ordinance in question prohibits the existence of more than six plenary retail consumption licenses, and there are, at present, eight such licenses in existence. These eight remain in existence because they come within the proviso that the ordinance shall not prevent the renewal of such licenses outstanding upon the adoption of the ordinance. Now, it is clear that appellant did not hold a license at the time the ordinance was adopted. The question remains whether either of appellant's applications can be considered to be an application for renewal of the Goldecker license which was outstanding when the ordinance was adopted.

Because Meisler was not the holder of the license on the last day of the previous license term, neither application can be considered an application for a renewal within the meaning of P. L. 1939, c. 281, as construed by Commissioner Burnett in Bulletin 344, Item 10. But, aside from the provisions of P. L. 1939, c. 281, which may be invalid because of defective language, such an application has never been considered an application for renewal. In the case of Beringer v. Camden and Mazer, Bulletin 144, Item 5 (decided October 22, 1936), the facts were very similar to the facts in the present case. In that case one Clark held a license which expired June 30, 1936. On July 22, 1936 Fannie Mazer applied for a license for the same premises and the issuance of a license to her was reversed on appeal. In that case it was said:

> "The application of Fannie Mazer was for a new license and not for a renewal or a transfer. The cases cited by her counsel were decided under an early statute which distinguished between new and old places of business. Lockwood v. Boonton, 88 N.J.L. 561 (Sup. Ct. 1916). There is no basis, however, for making such a distinction under the present Alcoholic Beverage Control Act. See In Re N. J. Licensed Beverage Ass'n., Bulletin 141, Item 2; Rajca v. Belleville, Bulletin 101, Item 1."

I conclude that neither of appellant's applications is within the proviso of the ordinance, and, hence, respondent could not have lawfully granted a license to appellant. An ordinance, until repealed or set aside, is binding upon the respondent municipality. Bachman v. Phillipsburg, 68 N.J.L. 552 (Sup. Ct, 1902).

Appellant argues, further, that I should set aside or modify the ordinance under the powers granted in R. S. 33:1-38 and R. S. 33:1-41. In Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct, 1940), the Supreme Court expressed some doubt that a state

administrative officer may flatly repeal a municipal ordinance solemnly passed in accordance with statutory authority. In a proper case, I would not hesitate to exercise the power apparently conferred by R. S. 33:1-41 so that the Supreme Court might definitely decide that question. However, in the present case I do not find that the ordinance is unreasonable in itself or as applied to appellant. There is nothing in the record to show that the limitation fixing an ultimate limit of six such licenses in the Township is unreasonable in itself. As to appellant, the most that he has shown is that he, or, more strictly speaking, his wife, is inconvenienced because a license cannot be obtained for the premises in question. However, as was said in Spezio v. Jamesburg, Bulletin 492, Item 10:

> "Moreover, the fact that a particular property has been operated as a tavern for a long period of time neither entitles it to a preferential position over other properties in the community nor is a sufficient reason for excepting it from the operation of a reasonable policy of limitation. A license is a personal privilege, exercisable only by the licensee. No place is entitled to a license more than another. Re Konesky, Bulletin 217, Item 7.
>
> "While I am sympathetic with appellant's plea that he will suffer financially if not given a liquor license, the test in the issuance of licenses is not the deprivation of an individual but rather the welfare of the community at large. Where private and public interests conflict, the latter must necessarily prevail. Fine v. Elizabeth, Bulletin 346, Item 18; DeVivo v. Highlands, Bulletin 427, Item 5."

In the present case respondent denied both applications and refused to amend the ordinance. The question as to whether the welfare of the community at large required a license in that section of the Township or a license for a restaurant at the premises considered herein, was, apparently, considered below, because the matter was thoroughly discussed at the meeting of the Township Committee held on September 6, 1941. I cannot conclude, from the stipulated facts, that the action of respondent was unreasonable.

The action of respondent is affirmed.

Accordingly, it is, on this 30th day of June, 1942,

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

ALFRED E. DRISCOLL,
Commissioner

7. REFERENDA - NO POWER IN MUNICIPAL GOVERNING BODY TO ADOPT ORDINANCE INCONSISTENT THEREWITH - SALE CONTRARY TO REFERENDUM IS MISDEMEANOR.

July 2, 1942

TO ALL LICENSEES IN JAMESBURG, N. J.:

It has been brought to my attention that, on June 30, 1942, the Borough Council of Jamesburg adopted an ordinance purporting to allow the sale of alcoholic beverages on Sunday except between the hours of 2:00 A.M. and 1:00 P.M.

Our records disclose that at the General Election held on November 8, 1938, there was submitted the question: "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?". According to the certification received from the Borough Clerk, the vote on the above question was "Yes" 418, "No" 530.

R. S. 33:1-47, which authorizes referenda on the question of Sunday sales, expressly provides that, if a majority shall vote in the negative, it shall be unlawful for any person to sell alcoholic beverages on Sunday and, so long as such referendum remains effective, all ordinances or regulations inconsistent with the result thereof shall have no effect.

Hence, the effect of the 1938 referendum in Jamesburg is to prohibit all sales of alcoholic beverages on Sunday until it is superseded by a subsequent referendum bringing about a different result. The Borough Council has no power to adopt any ordinance inconsistent with the referendum, and hence cannot permit sales at any time on Sunday.

Violation of the referendum is a misdemeanor for which the offender may be punished by fine or imprisonment or both, and is also cause for the suspension or revocation of the license.

In view of the foregoing, you are hereby advised that you may not sell any alcoholic beverages between the hours of midnight Saturday and midnight Sunday. Any sales between those hours will result not only in arrest but will cause the immediate institution of disciplinary proceedings by this Department.

Kindly give me your pledge of compliance by return mail.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

8. MORAL TURPITUDE - CRIME OF CARRYING CONCEALED WEAPONS DOES NOT PER SE INVOLVE MORAL TURPITUDE - FACTS EXAMINED - ELEMENT OF MORAL TURPITUDE FOUND.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

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| In the Matter of an Application to Remove Disqualification because of Convictions of Crimes Pursuant to R. S. 33:1-31.2. | CONCLUSIONS AND ORDER |
| Case No. 229. | |

BY THE COMMISSIONER:

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

Petitioner has a long criminal record which commenced in 1910 and continued until 1931. His offenses during this period include loitering, disorderly person, carnal abuses, maintaining gambling houses, assault and battery, illicit transportation of liquor and carrying concealed weapons. In 1924, during the Prohibition Era, he was fined $500. for the illegal transportation

of liquor. His last crime, which was committed in 1931, was that of carrying concealed weapons. For this offense he was sentenced to one year in the Essex County Penitentiary of which term he served ten months. Although the crime of carrying concealed weapons does not, per se, involve moral turpitude, I am satisfied, in view of petitioner's previous and lengthy history of criminal misconduct, that such element was actually present in this case.

Petitioner, however, has never been arrested or in any trouble since his release from jail. To show that he has turned over a new leaf, petitioner produced three character witnesses, all of whom testified that they have known the petitioner for at least twenty years. They testified that they have been in close contact with the petitioner since 1931; that they have been close to him socially as well as having done business with him on many occasions. All hold petitioner in high regard. They further testified that they live in the immediate vicinity of the petitioner and that he bears a fine reputation for being an honest, conscientious, hard working, law abiding, member of society.

Petitioner has lived at the same address for the past ten years with his wife and family. He has been engaged in the trucking business and on many occasions has done work for the City of Newark.

It appears from the evidence that petitioner's regeneracy has been complete since 1931. It further appears that since 1931 he has not been in any trouble of any nature, nor are there any pending investigations or complaints against him.

I conclude that his association with the alcoholic beverage industry will therefore not be contrary to the public interest.

Accordingly, it is, on this 10th day of July, 1942,

ORDERED, that petitioner's statutory disqualification because of convictions of crimes be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SLOT MACHINE - PREVIOUS RECORD - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

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| In the Matter of Disciplinary Proceedings against<br><br>BOROUGH OF VINELAND REPUBLICAN CLUB,<br>215 S. East Boulevard,<br>Vineland, N. J.<br><br>Holder of Club License CB-7 for fiscal year 1941-42 and now holder of Club License CB-6 for the current fiscal year, issued by the Board of Commissioners of the Borough of Vineland. | ) | CONCLUSIONS AND ORDER |

Dan Vivarelli, Recording Secretary, for Licensee, Pro Se.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to charges alleging that, on January

26, 1942, it possessed on its licensed premises two jackpot slot machines in violation of Rule 8 and Rule 7 of State Regulations No. 20.

Mere possession of a slot machine on licensed premises is a violation of State Regulations. Yountakah Country Club, Inc., Bulletin 488, Item 4. The usual penalty for this offense is ten days.

Licensee's prior record is not clear. In August 1939, its license was suspended for three days after it had been found guilty of selling to non-members. The penalty, therefore, is fifteen days from which five will be deducted because of the guilty plea herein, thus making a net suspension of ten days.

This proceeding, although instituted during the last licensing period, does not abate but remains effective against defendant's renewal license for the current fiscal year. State Regulations No. 15.

Accordingly, it is, on this 9th day of July, 1942,

ORDERED, that Club License CB-6 for the current fiscal year, issued by the Board of Commissioners of the Borough of Vineland to Borough of Vineland Republican Club for premises at 215 South East Boulevard, Vineland, be and the same is hereby suspended for a period of ten (10) days, commencing at 1:00 A.M. on July 14, 1942, and ending at 1:00 A.M. on July 24, 1942.

ALFRED E. DRISCOLL,
Commissioner.

10. ELIGIBILITY - APPLICANT'S CONVICTION OF POSSESSING MARIJUANA CIGARETTES FOUND TO INVOLVE THE ELEMENT OF MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE IN THIS STATE.

July 13, 1942

Re: Case No. 444.

In February 1941 applicant, then about twenty years of age, was convicted of possessing 13 marijuana cigarettes and sentenced to an indefinite term, not to exceed three years, in a penitentiary. He was released on parole in May 1942.

The probation department reports that the cigarettes were found in applicant's hotel room and that at the time applicant stated that he had them for his own use, although the police suspected that he was selling them. There was also found some cigarette shells, two plungers for filling the shells and a stolen radio amplifier. Applicant was also charged with petty larceny, receiving stolen property and concealing stolen property. The larceny charge was dropped, he was acquitted of receiving stolen property and the jury disagreed on the charge that he concealed stolen property.

Applicant's story, at the hearing, was that he did not use the cigarettes, or know that they were in his room, and that he assumed they belonged to a girl friend for whom he covered up when the police questioned him; that he had three pounds of ordinary smoking tobacco in the room and that he used the cigarette shells

and plunger to manufacture ordinary cigarettes for his own use. The report of the penitentiary physician tends to confirm applicant's claim that he is not a drug addict.

However, the comparatively large number of marijuana cigarettes, the negation that they were for applicant's personal use, the improbability that they could have been in his room without his knowledge, and the suspicious paraphernalia found with the cigarettes, are circumstances which aggravate the offense in that they raise a strong inference that applicant, or the persons with whom he associated, dealt in marijuana cigarettes and that the cache of cigarettes found in his room was a source of supply.

In view of the above, I believe that applicant's conviction of possessing marijuana cigarettes involved the element of moral turpitude.

It is therefore recommended that applicant be advised that he is ineligible to hold a liquor license or be employed by a liquor licensee in this State.

Harry Castelbaum,
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

11. REGULATIONS NO. 34 - NOTICE TO DISTILLERS, MANUFACTURERS AND WHOLESALERS.

There has come to my attention the ever-increasing practice of the filing of price statements upon which appear two separate sets of prices for the same product, setting forth reductions and increases effective on two separate dates.

I am familiar with the reasons for this type of price listing establishing "deal periods", with which I am wholly unsympathetic. I shall be prepared to discuss that objectionable device more fully at some future time.

However, for the present, I am concerned with possible confusion among retail licensees when served with a wholesale price statement which sets forth two sets of prices on the same product with two separate effective dates.

Therefore, it is my decision, effective immediately, that no wholesale price statement incorporating two price listings on the same product with two separate effective dates, will be accepted for proper filing pursuant to Regulations No. 34.

To accomplish proper filing, a price statement must clearly set forth a single effective date with a single set of prices for each of the containers of a particular product. Should listers desire to file a price change for the same product effective at a later date, a separate statement must be filed with an affidavit of service establishing a separate mailing to retail licensees.

Your earnest cooperation in the strict compliance with my decision will be appreciated.

CHECKED BY No. 2

Alfred E. Driscoll
Commissioner.

Dated: July 15, 1942.