

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

BULLETIN 358

NOVEMBER 4, 1939.

1. ADVERTISING - TRAYS - HEREIN OF THE COLLECTOR'S URGE.

Dear Commissioner:

A certain tavern owner has inquired from me if he is violating the law or your regulations in any way for the following hobby:

He decorates the upper portion of his walls, with different trays resting on the molding; the trays advertise various makes of beverages, which he does not sell and some of which are not now manufactured; it is purely a decorative scheme.

Respectfully yours,
Kenneth C. Hand

November 1, 1939

Kenneth C. Hand, Esq.,
Elizabeth, N. J.

My dear Mr. Hand:

If this is all there is to it, I have no objection.

Your client, of course, is aware that the rules provide:

"No retail licensee shall permit or suffer in or on the licensed premises any sign or other matter advertising the sale of any particular brand or type of alcoholic beverage unless such brand or type of alcoholic beverage is actually available for sale at such premises."

I am accepting your statement at full face value in the belief that the natural urge to collect something, be it treasures or trophies or trays, should be reasonably gratified where the objects are not of themselves disbarred from appearance in taverns.

If, however, experience shows that the assembly or setting gives the appearance of an advertising medium rather than a collector's museum, your client will have to comply with the rule, decorative qualities notwithstanding.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. LICENSED PREMISES - DESTRUCTION BY FIRE - PROCEDURE IN ORDER TO CARRY ON BUSINESS.

October 26, 1939

Mr. John G. Jones,
Harrison, N. J.

My dear Mr. Jones:

I have yours and understand that your entire tavern and stock were destroyed by fire.

If the license certificate has also been destroyed, it may be replaced by the issuance by the Mayor and Council of a certified copy. The procedure is in Re Rich, Bulletin 50, Item 8.

What other steps you must take depends on what you propose to do.

It is permissible for you to transfer the license to other premises. If that is your thought, then when you have found new premises, go directly to the Town Clerk, and he will give you application forms and the necessary information for applying to the Council for the transfer. Of course, you may not resume business in the new place until your license has been formally transferred by the Council.

Or, you may choose to rebuild your old premises. If that is the case, then when the renovations are completed petition the Council to examine the premises. The Council, after causing inspection to be made, may express as its finding, by formal resolution, that the premises are adequate and suitable. Thereupon your business may be resumed.

Of course, whether you transfer your license to new premises or eventually resume business at the old premises, your Federal Tax Stamp, if that also has been lost, must be replaced. For that, communicate directly with the Bureau of Internal Revenue, Post Office Building, Newark.

It is possible for you to conduct your business temporarily in other premises, while the premises damaged by the fire are being repaired, provided you first obtain a special permit from this office to do so. The cost of the permit is \$10.00. Information regarding the application is available on request.

I cordially suggest, if you have not already done so, that you notify at once the Beverage Tax Division of the State Tax Department, to whom you may write at 1060 Broad Street, Newark.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Maurice E. Ash,
Senior Inspector.

3. APPELLATE DECISIONS - KABUS v. CAMP.

WILLIAM KABUS, trading as)
 HAUNTED LODGE BAR & GRILL,)
)
 Appellant,)
)
 -vs-)
)
 HONORABLE PERCY CAMP, JUDGE OF)
 THE COURT OF COMMON PLEAS IN)
 AND FOR OCEAN COUNTY, AND)
 ISSUING AUTHORITY,)
)
 Respondent)

ON APPEAL
CONCLUSIONS

 Giordano, Golden & Hurley, Esqs., by Morris J. Stern, Esq.,
 Attorneys for Appellant.
 No Appearance on behalf of Respondent.

BY THE COMMISSIONER:

Appellant, holder of a plenary retail consumption li-
cense, appeals from a thirty-day suspension by respondent for
possessing illicit liquor at his tavern on Hooper Avenue, Osborn-
ville, Brick Township.

On July 1, 1939 Investigators Holman and Chinery of
this Department visited the tavern on routine inspection. Holman,
on testing the contents of fourteen open liquor bottles at the back
bar, found one, labeled "Treetop" Applejack Brandy 90 proof, whose
contents seemingly did not conform to the label. He sealed and
seized this bottle, took an unopened one of the same label for the
purpose of comparison, and kept both bottles in his personal pos-
session until delivering them over to Investigator Burke of this
Department who, in turn, delivered them to the Department's chemist

Analysis revealed that the contents in the suspected
"Treetop" bottle were 7 points below proof and, unlike the genuine
"Treetop" product, contained artificial coloring.

Appellant testified that he is unable to account for such
variation. His son and daughter-in-law who apparently manage the
tavern (the latter being there when the Investigators made their
inspection) testified to the same effect.

From the chemical analysis it is clear that the liquor
in the suspected "Treetop" bottle was a refill. Hence, it con-
stituted an illicit beverage and appellant's mere possession of it
at his tavern was a violation of the Alcoholic Beverage Control
Law (R. S. 33:1-50), irrespective of whether or not he is person-
ally innocent of the refilling. See Re Jacobs, Bulletin 315, Item
8 and Re Tunen, Bulletin 316, Item 8, where I carefully reviewed
how the problem of refills strikes at the root of liquor control.

Appellant's claim that he was too ill to attend the
hearing before respondent and so did not in reality have his day in
court is answered, if any answer is needed, by the fact that he has
had his full day at the hearing on appeal, where his case was tried
de novo and where, as already shown, the evidence conclusively
establishes the violation of which respondent found him guilty.

As to the extent of the suspension of appellant's license, viz., thirty days, such is in line with the minimum penalty which I have recommended for all cases of possession of a refill where no adequate explanation is offered. See Re Jacobs, supra.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 28, 1939.

4. ALCOHOL - NON-BEVERAGE PURPOSES - THE MAXIMUM QUART HOLDS GOOD FOR A HORSE.

Dear Sir:

Please advise how or may we sell 190 proof grain alcohol in large quantities (5 gallons) for the sole purpose of rubbing race horses. We can obtain affidavits from the Belmont stables that same alcohol will be used only externally on race horses.

Yours very truly,
Palace Drug Stores, Inc.

October 31, 1939

Palace Drug Stores, Inc.,
Jersey City, N. J.

Gentlemen:

You have taken time by the forelock but are you not somewhat over-bullish as to the New Jersey market for horse liniment?

Even so, five gallons at a clip is too much - albeit a horse. The rule, as you know, is no more than one quart at a time.

Hence the affidavit won't help.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. LICENSED PREMISES - ALTERATIONS OR REPAIRS ON SUNDAYS - WHEN PERMISSIBLE.

October 30, 1939

Bond Wine & Liquor Store,
Camden, N. J.

Gentlemen:

If there is no prohibition under the general ordinances of the City of Camden against doing the work of making alterations to your store front on a Sunday, then you may go ahead and do so for there is nothing in the State Alcoholic Beverage Law or Regulations or the Camden ordinance pertaining to alcoholic beverages which would prohibit it.

The Camden regulation of alcoholic beverage hours, which is in Section 5 of ordinance adopted December 27, 1934, provides that from 2:00 A.M. Sunday until 7:00 A.M. Monday there shall be no sale, service or delivery of any such beverages. It does not require that the premises shall be closed nor bar the making of alterations.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 31, 1939

Re: Case No. 301

Hearing was held to determine whether applicant for a solicitor's permit has been convicted of a crime involving moral turpitude and hence is disqualified from obtaining such permit. R.S.33:1-25, 26.

In October 1937 applicant was, on pleading guilty, convicted in New York City Magistrate's Court of depositing a "slug" in a subway turnstile in violation of the New York Criminal Code, fined \$1.00 and sentenced to one day's imprisonment.

Applicant testified that, just before entering the subway, he went into an "Automat" to eat and obtained twenty nickels in exchange for a dollar bill, spent five of the nickels for food and put the rest in his pocket; that in the same pocket there was a "token" which he had won the day before when playing a "pin-ball" machine; that, on entering the subway after leaving the "Automat", he reached into that pocket for one of the nickels but pulled out the "token" by mistake and deposited it in the turnstile slot.

In view of applicant's testimony and the comparatively trifling sentence that was imposed upon him, I do not believe that the offense bespeaks moral turpitude.

In May 1939, applicant was arrested when about to buy drug from a "dope" peddler, but apparently nothing resulted from the arrest. However, he was thereafter again arrested, and in July 1939, was, on pleading guilty, convicted in Federal Court of possessing and selling narcotics in violation of Federal law, and released on five years' probation.

In explanation, applicant testified that he became a drug addict while serving abroad during the World War; that, on his return, he abstained from the habit for many years but then once more succumbed to it; that, on June 6 and 8 last, he "lent" (i.e., on the understanding of later receiving a like amount in return) a small quantity of heroin to a fellow addict who pleaded that he and his wife and sister-in-law were in desperate need of the drug; that this addict was, however, then secretly acting as an "informer"; that, on June 13 (apparently when arrested) he (applicant) was found with heroin in his possession; that the drug, however, was solely for his own use; that he has never acted as a "dope" peddler; that, since his arrest four months ago, he has again broken away from his drug habit.

The Assistant Federal District Attorney who handled the criminal prosecution confirms applicant's story and states that applicant, although convicted of selling as well as possession, was guilty only of "technical", and not commercial, sale.

Although commercialized selling of drugs contrary to law involves moral turpitude (Re Case No. 300, Bulletin 353, Item 13), I do not believe that, as here, the possession of a narcotic by an addict for personal use, or his "lending" a drug to a fellow sufferer in the (perhaps misguided) charity of seeking to relieve him, is an offense involving moral turpitude.

However, there yet remains the question whether applicant should, within the Commissioner's discretion, be considered unfit, because of his drug addiction, to obtain a solicitor's permit. His sincere-sounding and manful determination to abstain from the habit and hence to rehabilitate himself, and his avowal of success for the last four months, appeal strongly to the charitable impulse of lending him every possible aid. Unfortunately, however, I do not, despite this humane urge to help, believe that he should, at least for the present, be considered qualified for a solicitor's permit. The liquor business, because of the ever present danger of grave social abuse, is subject to many restrictions and regulations designed to protect the public interest. Thoroughgoing protection of that interest demands that a person, to obtain a liquor license or permit, must be of a tried responsibility so as to insure steady compliance with the rules. That consideration outweighs all else.

It is, therefore, with regret that I recommend that applicant be denied a solicitor's permit.

Nathan Davis,
Attorney-in-Chief.

APPROVED:

A hard case. If this decision were to bar him from all employment whatsoever, I would give him a chance. As it is, all it does is to bar him from soliciting for a liquor house. Every other employment, except in connection with the liquor industry, is still open to him. Liquor of itself has inherent temptations. It is better for the industry and for him too that he seek employment elsewhere. I therefore approve the denial to him of a solicitor's permit.

D. FREDERICK BURNETT,
Commissioner.

7. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED, PADLOCK DENIED.

In the Matter of the Seizure of)	Case #5212
a number of still parts at)	
86 Brighton Avenue, in the Town)	ON HEARING
of Kearny, County of Hudson and)	CONCLUSIONS AND ORDER
State of New Jersey.)	

Maxwell M. Plotkin, Esq., Attorney for the Up-To-The-Minute Building & Loan Association.
 Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On January 9, 1939, Kearny police officers seized an unregistered dismantled still, consisting of the items set forth in Schedule "A" annexed hereto, found in the cellar of a two family dwelling at 86 Brighton Avenue. The seized property was turned over to this Department. Thereafter, Charles Harris was arrested, when investigation disclosed that he had operated the still in the first floor apartment, but he has since been acquitted.

At a hearing held herein, Up To The Minute Building & Loan Association appeared to contest padlocking. No one contested that the seized still parts were not registered with this Department, and hence are unlawful property. R. S. 33:2-2. No reason appears why they should not be forfeited. R. S. 33:2-5.

Accordingly, it is ORDERED that the seized property 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 in part at the direction of the Commissioner.

As to padlocking: Samuel A. Cohen, treasurer of the association and the agent in charge of the premises in question, testified that he met Charles Harris while collecting rent from Mrs. Marcus Williams (sister of Charles Harris), who was the tenant of the second floor apartment; that, about August 1938, he rented the first floor apartment to Harris, who was employed as a truck driver; that Harris stated that the apartment was to be occupied by his mother, who was then living in the South but who was expected in Kearny within a few months. Cohen stated that thereafter he collected rent at the premises on a number of occasions, the last visit being about a month prior to the seizure; that he always called upon Mrs. Williams, who paid him the rent for both apartments; that he had no occasion to visit the first floor apartment, since he had the impression that Harris' mother had not as yet arrived; and that he did not know that Harris had installed a still in his apartment.

It further appears that Charles Harris abandoned the premises immediately after the seizure, and that the building and loan association, as a further evidence of its good faith, has since evicted Mr. and Mrs. Marcus Williams because it was disclosed at the hearing that Mr. Williams knew the still was in the first floor apartment but did not notify either the association or the police authorities.

In view of the foregoing, good cause has been shown why the premises should not be padlocked.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 29, 1939.

SCHEDULE "A"

- 1 - 25 gallon copper cooker
- 1 - galvanized funnel
- 1 - pressure tank
- 1 - gas burner
- 1 - copper coil
- 1 - air pump

8. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED, PADLOCK ISSUED.

In the Matter of the Seizure of) a still on premises owned by) Baldassaro D'Angelo, located in) the Township of Hamilton, County) of Atlantic and State of New) Jersey.) - - - - -)	Case #5294 ON HEARING CONCLUSIONS AND ORDER
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Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Investigators of this Department discovered a large unregistered alcohol distillery in a building owned by Baldassaro D'Angelo located in the Township of Hamilton, Atlantic County. They seized the still equipment, appurtenant paraphernalia, and a quantity of mash (described in Schedule "A", annexed hereto) as unlawful property under the provisions of R. S. Title 33, Chapter 2.

At a hearing held to determine whether the seized property should be confiscated and the premises padlocked, no one appeared to contest the proceedings, and no cause appears why confiscation and padlocking should not result in the instant case.

Accordingly, it is determined that the seized property constitutes unlawful property, and it is ordered 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 in part at the direction of the Commissioner.

It is further ordered that the building in which the illicit still was found, owned by Baldassaro D'Angelo, located in the Township of Hamilton, County of Atlantic and State of New Jersey, shall not be used or occupied for any purpose whatsoever for a period of six months, commencing the 1st day of December, 1939.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 31, 1939.

SCHEDULE "A"

- 1 - 250 gallon wooden cooker
- 2 - 50 gallon iron preheaters
- 1 - 50 gallon iron drum with copper coil
- 2 - iron stove bases
- 1 - 50 gallon iron pressure tank
- 1 - Hand force pump
- 2 - 30 gallon galvanized tubs
- 17 - empty 5 gallon cans
- 1 - 10 gallon wooden filter
- 6 - empty 50 gallon barrels
- 3 - 250 gallon hogsheads with mash
- 18 - 50 gallon barrels with mash

9. DISCIPLINARY PROCEEDINGS - FAILURE TO CLOSE LICENSED PREMISES ON TIME - INADEQUATE PENALTY IN BAYONNE.

October 31, 1939

John F. Lee,
City Clerk,
Bayonne, N. J.

My dear Mr. Lee:

I have before me staff report and your letter of October 19th re disciplinary proceedings conducted by the Board of Commissioners against Chester Roszkowski, t/a Chester's Bar and Grill, 15-17 East 21st Street, charged with sale or delivery of alcoholic beverages and permitting his licensed premises to be open during prohibited hours, and note that his license was suspended for one day.

The enclosed resolution and order states the matter succinctly, viz.:

"There was no proof adduced at the hearing that alcoholic beverages were sold or served after 3 A.M. The licensee explained without contradiction that the alcoholic beverages seen on the table after 3 A.M. were served before that time. The licensee however, under the terms of an ordinance is obliged to close the licensed premises at 3 A.M. and not merely to refrain from selling or serving alcoholic beverages after that time. This Board is of the opinion that the violation is more technical than real and that the licensee did not intend to violate the ordinance. However he is guilty of a violation and a penalty must be imposed. This Board desires that all licensees hereby take notice that they are required to keep the licensed premises entirely closed after 3 o'clock whether they claim to operate as a restaurant or otherwise. The penalties to be hereafter meted out for violation of this kind shall be much more severe than that which is now imposed."

Bayonne has ordained a closing hour. That means that the licensee is obliged to close up and not merely to refrain from selling or serving.

The ordinance can be enforced. The best way is to impose such penalties irrespective of excuses or protests of innocence that everyone learns that the ordinance was made to be obeyed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. ENFORCEMENT DIVISION ACTIVITY REPORT FOR OCTOBER, 1939.

To: D. Frederick Burnett, Commissioner

ARRESTS: Total number of persons - - - - - 39
 Licensees - 0 Non-licensees - 39

SEIZURES: Stills - total number seized - - - - - 6
 Capacity 1 to 50 gallons - - - - - 4
 Capacity 50 gallons and over - - - - - 2

Motor Vehicles - - - total number seized - - - - 10
 Trucks - 1 Passenger Cars - 9

Alcohol
 Beverage Alcohol - - - - - 1,071 Gallons

Mash - Total number of gallons - - - - - 18,600

Alcoholic Beverages
 Beer, Ale, etc. - - - - - 34 Gallons
 Wine - - - - - 8 "
 Whiskies and other hard liquor - - - - - 195 "

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1770
 Illicit (bootleg) liquor - - - - - 4
 Gambling violations - - - - - 14
 Sign violations - - - - - 30
 Unqualified employees - - - - - 99
 Other mercantile business - - - - - 8
 Disposal permits necessary - - - - - 7
 "Front" violations - - - - - 1
 Improper beer markers - - - - - 2
 Other violations found - - - - - 26

Total violations found - - - - - 191

Total number of bottles gauged - - - - - 12,132

STATE LICENSEES:

Plant Control inspections completed - - - - - 86
 License applications investigated - - - - - 12

COMPLAINTS:

Investigated and closed - - - - - 428
 Investigated, pending completion - - - - - 426

LABORATORY:

Analyses made - - - - - 112
 Alcohol and water and artificial coloring
 cases - - - - - 15
 Poison and denaturant cases - - - - - 0

Respectfully submitted,
 E. W. Garrett,
 Chief Deputy Commissioner.

11. TAPPING ACCESSORIES - PRESSURE REDUCER, INSTALLED BETWEEN BARREL AND FAUCET, IS A TAPPING ACCESSORY IN THE CONTEMPLATION OF REGULATIONS NO. 21 AND MAY BE FURNISHED TO RETAILERS WITHIN THE \$20.00 QUOTA.

My dear Commissioner:

My client, Christian Feigenspan Brewing Co., has been requested by tavern owners on numerous occasions to furnish them with a device to be used in connection with the dispensing of draught beer known in the trade as a restrictive coil. The mechanical features of this device are as follows: It is a piece of block tin coil inserted in the beer line between the barrel and the faucet. It is of much smaller diameter than the line itself. By building up a high pressure on the pump attached to the barrel and forcing the beer through the small orifice in this coil, the dispenser is able to draw a glass of beer containing an almost precisely similar amount of foam on each glass, thus resulting in better and more economical serving by the tavern owner. Its cost, including installation, is approximately \$3.00.

Will you kindly advise me if this device may, under the exceptions contained in paragraph 1(b) of your Regulations 21, be furnished by my client to retail consumption licensees subject to the \$20.00 limitation therein contained.

Very truly yours,

Roy C. Collins.

November 1, 1939.

Roy C. Collins, Esq.,
Newark, N. J.

My dear Mr. Collins:

The device may be considered a tapping accessory in the contemplation of Regulations 21, and may be furnished by the brewery to retailers in accordance with Rule 1(b) of those regulations provided it does not cause the aggregate cost or reasonable value of the services rendered and accessories furnished with respect to each licensed premises to exceed the allowable \$20.00 per year.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

12. LICENSEES - CHANGE OF NAME - HEREIN OF RESUMPTION OF MAIDEN NAME BY DIVORCEE.

October 31, 1939.

Ralph R. Feigelson, Esq.,
Union City, New Jersey.

Dear Mr. Feigelson:

When a married woman who is the holder of a liquor license issued in her marriage name becomes a divorcee and wishes thereafter to operate under her maiden name, no transfer of the license is necessary. To the same effect, see Re Dodd, Bulletin #222,

Item 8, where a woman holding a license in her marriage name re-married and thereafter operated under her new name, and Re D'Amato, Bulletin #260, Item 3, where a club, otherwise remaining the same, changed its name.

However, the woman should in writing forthwith notify the issuing authority from whom she obtained the license, and also the State Tax Department, Beverage Tax Division, of the change in name. Furthermore, when obtaining a renewal license she should take it out in the name she is then actually using. Until such renewal, I suggest that, in her business correspondence or advertising or official reports, or whenever referring to herself as the licensee, she sign as "Miss --- ---, formerly Mrs. --- ---." See Re Dodd, supra.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - ELECTION DAY REGULATIONS - CASE DISMISSED.

MUNICIPAL REGULATIONS - ELECTION DAY CLOSING - A REGULATION THAT EXEMPTS RESTAURANTS, DRUG STORES AND ESTABLISHMENTS WHERE THE PRINCIPAL BUSINESS IS OTHER THAN THE SALE OF ALCOHOLIC BEVERAGES FROM CLOSING ON ELECTION DAY DOES NOT REQUIRE BONA FIDE RESTAURANTS OR DRUG STORES TO BE CLOSED IRRESPECTIVE OF WHAT CONSTITUTES THEIR PRINCIPAL BUSINESS.

In the Matter of Disciplinary)
Proceedings against)

NATHAN ZORN,)
219 Frelinghuysen Ave.,)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License No. C-329, issued)
by the Municipal Board of Alco-)
holic Beverage Control of the)
City of Newark.)
-----)

Samuel B. Helfand, Esq., Attorney for the State Department of)
Alcoholic Beverage Control.)
Sidney Simandl, Esq., Attorney for the Defendant-Licensee.)

BY THE COMMISSIONER:

The defendant, a retail liquor licensee in Newark, is charged with keeping his licensed premises open between 8:00 A.M. and noon on Primary Election Day, 1938.

State Regulations 20, Rule 2, prohibits licensees from selling or offering or delivering to any consumer any alcoholic beverage while the polls are open for voting. There was no violation, therefore, of the State rule.

The Newark regulation, however, requires retail liquor places to be closed on Election days during the hours the polls are open for voting, "provided, however, that restaurants, drug

stores, and establishments where the principal business is other than the sale of alcoholic beverages, may remain open during the above prohibited hours for such other purpose only". (Resolution of Newark Municipal Board of Alcoholic Beverage Control, September 20, 1934).

On the Primary Day in question, defendant's premises were open for business, but only for restaurant purposes.

The question, therefore, is whether the defendant comes within the excepting proviso.

The charge against this defendant was made, and the case tried and argued, on the basis that the words "where the principal business is other than the sale of alcoholic beverages" applied to restaurants.

In his application for a license defendant had answered Question 8 as follows:

"Will the applicant conduct any business other than the sale of alcoholic beverages on the premises sought to be licensed?.....If so, what business? Restaurant. State principal business. Tavern."

The defendant's manager testified that the application, as originally executed, set forth, in response to the last subdivision of the question: "Restaurant - Bar - Equal", but that when he presented the application at the Newark City Hall for filing a clerk, on seeing an attached photograph of the licensed premises, stated that they should be described as primarily a tavern, and accordingly struck out the words "Restaurant - Bar - Equal" and inserted "Tavern." The application, one of the exhibits in the case, confirms the changes so testified.

It was therefore contended that the defendant, having elected or at least allowed his principal business to be stated as being a tavern instead of a restaurant, had made his own bed and must lie in it and so could not lawfully operate his restaurant at any time on any Election Day so long as the polls were open for voting.

It is not necessary to consider defendant's arguments as to the meaning of the term "principal", or as to whether or not the defendant is bound by the alteration made by the clerk in the presence of his manager, or whether the regulation is now valid in view of the transfer of the rule-making power from local Excise Boards to governing bodies of municipalities, or as to whether the defendant is bound by the regulation in spite of his ignorance, or as to the right of respondent to require in applications, under Question 8, subsidiary questions not prescribed by the State Commissioner.

For, as written and as punctuated, the words "where the principal business is other than the sale of alcoholic beverages" modify and apply only to the generic term "establishments."

Let us see what the Board must have had in mind in making these exceptions. There is no reason why restaurants or drug stores should be closed up on an Election Day. They do not come within the reason of the rule. True, if they have a liquor license, they may not sell or serve alcoholic beverages while the polls are open any more than any other licensee. But that is no

reason why they should be closed down in respect to business utterly independent of the alcoholic beverage line. There was reasonable ground, therefore, for making these two exceptions. There was no need for qualifying the permission so long as they were bona fide restaurants and drug stores. But, evidently, restaurants and drug stores did not cover all the purposed exceptions which the Newark authorities had in mind, for they expanded the exception to include other establishments, as, for instance, department stores, grocery stores and delicatessens, but qualified the general term "establishments" by confining it to those where the principal business is other than the sale of alcoholic beverages.

I therefore rule that the places specifically exempted by the Newark regulation, viz., restaurants and drug stores, are not affected by the further requirement that the principal business must be something other than the sale of alcoholic beverages.

A restaurant is defined to be

"An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted."

R. S. 33:1-1(t).

Besides defendant's bar, there is a large dining room on the licensed premises containing chairs and tables sufficient to accommodate 40 to 50 patrons. The kitchen is adequately equipped for the preparation and cooking of food. Defendant holds a municipal restaurant license; maintains a daily menu; has a regular chef (from 7:00 A.M. until 5:00 P.M.); a dishwasher and a waitress. He serves meals both in the barroom and the dining room.

I find as fact that defendant's premises constitute a bona fide restaurant.

He therefore comes within the exception.

Hence the case is dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 2, 1939.

14. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - FIVE DAYS ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against)

ESTELLE SAWCZUK,)
285 West Kinney Street,)
Newark, New Jersey,)

Holder of Plenary Retail Consumption License No. C-251,)
issued by the Municipal Board of Alcoholic Beverage Control)
of the City of Newark.)

-----)

Charles W. Chadwick, Esq., Attorney for licensee.)
Henry F. Schenk, Esq., Attorney for the Department of)
Alcoholic Beverage Control.)

BY THE COMMISSIONER:

The defendant has pleaded guilty to charges of selling alcoholic beverages and permitting the licensed premises to be open on Sunday morning, in violation of Newark ordinance.

The usual penalty is a suspension of five days for each offense, or a total of ten days.

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

Accordingly, it is, on this 3rd day of November, 1939, ORDERED, that Plenary Retail Consumption License C-251, heretofore issued to Estelle Sawczuk by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective November 8th, 1939 at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

CONCLUSIONS

AND ORDER

15. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - FIVE DAYS ON PLEA OF GUILT.

In the Matter of Disciplinary Proceedings against
 VALLATESE POLITICAL CLUB INC.,
 424 - 15th Avenue,
 Newark, New Jersey,
 Holder of Club License CB-43,
 issued by the Municipal Board
 of Alcoholic Beverage Control
 of the City of Newark

CONCLUSIONS AND ORDER

Alfredo Stanco, Secretary, for Defendant-Licensee.

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.

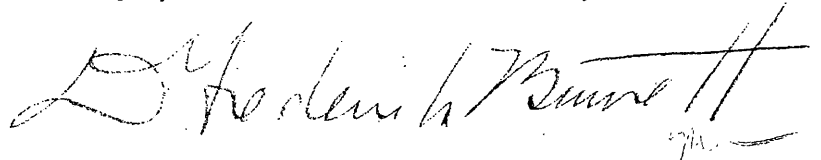
BY THE COMMISSIONER:

The licensee has pleaded guilty to charges of selling alcoholic beverages on Primary Election Day.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five (5) days.

Accordingly, it is, on this 3rd day of November, 1939,

ORDERED, that Club License CB-43, heretofore issued to Vallatese Political Club Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five days, effective November 8, 1939 at 3:00 A.M.



Commissioner.