

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

BULLETIN 515

JUNE 12, 1942.

1. NOTICE OF APPLICATION - ADVERTISING - LEGAL NEWSPAPERS -
WHAT CONSTITUTES.

May 29, 1942.

J. Madison Drake, Publisher,
The Belvidere Apollo,
Belvidere, New Jersey.

Dear Mr. Drake:

The Alcoholic Beverage Law (R.S. 33:1-25) requires that every applicant for a liquor license shall publish a notice of his intention to apply for such license, once a week for two weeks successively, in a newspaper published and circulated in the municipality in which the licensed premises are located. If there is no such newspaper, then the applicant for license must advertise in a newspaper published and circulated in the county in which the premises are located.

In addition to being published and circulated in the municipality or county where the licensed premises are located, as the case may be, the law (R.S. Cum. Supp. 35:1-2.2; P.L. 1941, c. 409) requires that the newspaper meet the following qualifications:

- (1) It must be entirely printed in the English language;
- (2) It must be a newspaper of general circulation possessing an average news content of not less than thirty-five per centum (35%);
- (3) It must have been published continuously in the municipality where its publication office is situate for not less than two years;
- (4) It must have been entered for two years as second-class mail matter under the postal laws and regulations of the United States;
- (5) In case it cannot meet the above qualifications itself but has acquired another newspaper which does meet the qualifications, it is deemed to meet the qualifications if published in the same municipality and entered in the same post office as was the acquired newspaper.

If "The Phillipsburger" to which you refer meets the requirements above set forth and if it is published and circulated in Phillipsburg, then all applicants for licenses in that Town must advertise in "The Phillipsburger." If, on the other hand, "The Phillipsburger" does not meet the above requirements or is not published and circulated in Phillipsburg, then applicants for licenses in that Town may advertise in any other newspaper published and circulated in Warren County which meets the requirements.

Noting your statement that "The Phillipsburger" is

printed in Washington, I point out that merely because a newspaper is printed in a certain municipality does not necessarily mean that such municipality is its place of publication. A newspaper is considered as published at the place where it is first issued for public distribution. See Re Steiner, Bulletin 35, Item 2.

If you feel that "The Phillipsburger" does not comply with the foregoing, your remedy is to appeal from the issuance of any licenses based upon notices of application advertised in such newspaper. Until the matter is brought into issue on appeal and I have had an opportunity to hear all parties concerned, I can express no opinion as to the legality of "The Phillipsburger" as an advertising medium for such purposes.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

- 2. DISQUALIFICATION - APPLICATION TO LIFT - POSSESSION AND OPERATION OF ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)
Case No. 219.)
-----)

CONCLUSIONS
AND
ORDER

BY THE COMMISSIONER:

In 1934 petitioner pleaded non vult to the charge of possessing illicit still parts. He was fined \$100. and placed on probation for three years. Petitioner's story is that he operated a small still for a short time because he was hard-pressed for money.

Possession and operation of an illicit still since Repeal involves the element of moral turpitude. Re Case No. 173, Bulletin 504, Item 7 and cases therein cited; Re Case No. 197, Bulletin 502, Item 10. Petitioner is therefore presently disqualified from holding a liquor license or working for a liquor licensee in this State. R.S. 33:1-25, 26.

Petitioner, now thirty-five years of age, has always resided in the one municipality in this State. His record is clear of any other convictions. He has apparently been industrious from his early youth and in later years was employed, for the most part, in various factories, earning between \$18. and \$20. a week. He married in 1927 and his wife has, from time to time, worked in a porcelain factory and is at present so employed. In 1934, while temporarily out of work, he engaged in the illicit liquor activities.

In September 1935 petitioner's brother opened a licensed tavern and petitioner went to work there as a bartender and is still so employed. He swears that he did not know that he was disqualified from working in a tavern because of his conviction; that

while he knew that a criminal could not be so employed, he did not consider himself to be a criminal or that he had a criminal record. His good faith is evidenced convincingly by the fact that he voluntarily disclosed his conviction in his pending application for transfer of the license to himself, his brother having been recently inducted into the Army.

When his application for transfer came up for consideration, he was advised that there was some question as to his eligibility to hold a license because of such conviction. The municipality deferred action upon the application for transfer, presumably in order to allow petitioner time to file the instant petition for removal of such disqualification. See R.S. 33:1-31.2.

While acting as bartender in the tavern in 1936, petitioner refilled a bottle of taxpaid liquor with other taxpaid liquor, for which his brother's license was suspended for thirty days. Petitioner says that he did not think he was doing wrong because it was all "government stuff." The Department file shows that only one bottle of liquor was involved and that there were no aggravating circumstances in the case. The penalty of thirty days was then the minimum penalty imposed for that type of offense.

Petitioner states that it is a small tavern, which, while providing a scant income, nevertheless brings in some rental to his mother, who owns the property, and also affords him a livelihood; that he has a heart ailment which prevents him from accepting work of a more strenuous nature.

A paper and twine salesman, the night superintendent of a paper mill, and an employee of a large porcelain plant, each of whom has known petitioner for many years, testified that he has always been considered to be a decent and law-abiding citizen and of good character.

The police records of the municipality where the petitioner resides disclose no complaints or criminal investigations pending against him.

In view of petitioner's clean background, except for his single criminal offense, I shall accept his explanation that he was actually ignorant of the fact that his conviction disqualified him from being employed on licensed premises. As to his conduct while working in the tavern, I do not believe that the single instance of refill of taxpaid, not bootleg liquor, while not to be countenanced, is a serious reflection upon his character. In any event, since that time (nearly six years) he has not been guilty of any misconduct.

In view of the above, I conclude that the petitioner has been law-abiding for at least five years last past and that the public interest would not be harmed by petitioner's continued association with the liquor industry.

Accordingly, it is, on this 29th day of May, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

- 3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSEE MAY NOT IGNORE FAIR TRADE PRICE AND SELL TWO HALF-GALLON CONTAINERS AT THE PRICE FIXED FOR A ONE-GALLON CONTAINER - NO INTENT TO CHISEL - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
 Proceedings against)
)
 DAVE'S COLONIAL LIQUORS, INC.,)
 1523 Atlantic Avenue,)
 Atlantic City, N. J.,)
)
 Holder of Plenary Retail Dis-)
 tribution License D-20, issued)
 by the Board of Commissioners)
 of the City of Atlantic City.)

CONCLUSIONS
 AND
 ORDER

William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-corporation has pleaded guilty to the charge of selling two 1/2 gallon jugs of Italian Swiss Colony Special California Sauterne (Dry White) Wine below the minimum Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

On March 30, 1942, the date of the sale, the minimum consumer price for the item in question was \$1.55 and 88¢ per half gallon. See Bulletin 480. When the investigators asked for a gallon of this wine the manager of the licensee told them that he had no gallon bottles. He did, however, sell them two 1/2 gallon bottles for \$1.60. A licensee is not permitted to sell two 1/2 gallon containers for the price fixed for a one gallon container. See Re Schwartz, Bulletin 341, Item 7. The minimum consumer price for the item sold was \$1.76. However, I do not find any deliberate attempt to chisel on the price of the items and hence I shall impose the minimum penalty of ten days, with five days taken off for the guilty plea.

Accordingly, it is, on this 1st day of June, 1942,

ORDERED that plenary retail distribution license D-20, heretofore issued to Dave's Colonial Liquors, Inc. for premises 1523 Atlantic Avenue, Atlantic City, by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 A.M. June 8, 1942, and concluding at 12:01 A.M. June 13, 1942.

ALFRED E. DRISCOLL,
 Commissioner.

- 4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSEE MAY NOT IGNORE FAIR TRADE PRICE AND SELL TWO HALF-GALLON CONTAINERS AT THE PRICE FIXED FOR A ONE-GALLON CONTAINER - NO INTENT TO CHISEL - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
 Proceedings against)

CALDWELL, INC.,)
 3301-3303 Atlantic Ave.,)
 Atlantic City, N. J.,)

CONCLUSIONS)
 AND)
 ORDER)

Holder of Plenary Retail Dis-)
 tribution License D-1, issued)
 by the Board of Commissioners)
 of the City of Atlantic City.)

William F. Wood, Esq., Attorney for State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to the charge of selling two 1/2 gallons of Italian Swiss Colony Special California Sauterne (Dry White) Wine (the Fair Trade price being \$1.76) for \$1.55, in violation of Rule 6 of State Regulations No. 30.

Departmental records disclose that on March 30, 1942, the minimum consumer price for 1/2 gallons of the wine mentioned in the charge was 88¢. The manager of the defendant-licensee, when asked for a gallon of the wine by investigators of this Department, advised that he had no gallons but would and did sell them two 1/2 gallons for \$1.55. The minimum consumer price for the item sold was \$1.76. See Bulletin 480. A licensee may not sell two 1/2 gallon containers for the same price fixed for a one-gallon container. See Re Schwartz, Bulletin 341, Item 7. However, I find no deliberate attempt on the part of the defendant-licensee in the instant case to cut-rate on the price of the item. Hence, I shall impose the minimum penalty of ten days, with five days taken off for the guilty plea.

Accordingly, it is, on this 1st day of June, 1942,

ORDERED that plenary retail distribution license D-1, heretofore issued to Caldwell, Inc. for premises 3301-3303 Atlantic Avenue, Atlantic City, by the Board of Commissioners of the City of Atlantic City, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 A.M. June 8, 1942, and concluding at 12:01 A.M. June 13, 1942.

ALFRED E. DRISCOLL,
 Commissioner.

5. ELIGIBILITY - LARCENY BY SEVENTEEN YEAR OLD BOY DID NOT INVOLVE MORAL TURPITUDE - NO SUBSEQUENT RECORD - APPLICANT HELD NOT DISQUALIFIED.

June 5, 1942.

Re Case No. 434.

In 1935, applicant, then about seventeen and a half years of age, stole a motor vehicle parked on the street and went for a "joy-ride." He was caught, convicted in police court of grand larceny and placed on probation for one year.

About a month later, he was found guilty in police court of stealing seven radiator caps from various automobiles and given a suspended sentence.

His version of the first offense is that, while he and some companions of his own age were sitting in a car parked near their usual gathering place, they dared him to drive the car, knowing that he had never driven one before. He took up their challenge, drove off alone and was caught. As to the second offense, he says that he has no clear recollection of what occurred; that he must have been making a collection of radiator caps.

Normally, a conviction of larceny resulting from the theft of an automobile involves moral turpitude. Re Case No. 192, Bulletin 495, Item 3. However, when committed by a person under eighteen years of age, the youth of the offender is a highly pertinent circumstance in determining whether that element is present in the case. Re Case No. 191, Bulletin 511, Item 5.

The evidence here presented indicates that the applicant indulged in a boyish prank, both in taking the car for a "joy-ride" and in taking a few radiator caps. The light sentence imposed in each case shows that the court did not regard the offenses as serious in nature. Applicant has not been in any trouble, either before or after these incidents.

In view of the foregoing, applicant's convictions did not involve the element of moral turpitude. See Re Case No. 261, Bulletin 305, Item 13; Re Case No. 72, Bulletin 375, Item 6.

It is, therefore, recommended that applicant be advised that his criminal record does not peremptorily disqualify him from being connected with the liquor industry in this State.

Harry Castelbaum,
Attorney.

Approved:

Alfred E. Driscoll,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SUPPRESSION OF MATERIAL INFORMATION IN APPLICATION FOR CLUB LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

YOUNG MEN'S REPUBLICAN CLUB, 1560 Chambers St. (2nd Floor), Hamilton Township, P. O. Trenton, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-5 issued by the Township Committee of the Township of Hamilton.)

No Appearance for Licensee. Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee was charged as follows:

"1. From on or about November 18, 1941 until December 31, 1941, you knowingly aided and abetted Willard Guyer, a non-licensee, to exercise the rights and privileges of your license contrary to R.S. 33:1-26, in violation of R.S. 33:1-52.

"2. From on or about December 31, 1941 until the present time, you knowingly aided and abetted Joseph W. Pae, a non-licensee, to exercise the rights and privileges of your license contrary to R.S. 33:1-26, in violation of R.S. 33:1-52.

"3. In your application for license dated October 30, 1941, filed with the Township Committee of the Township of Hamilton, upon which Club License CB-5 for the current year was granted, you falsely stated 'Yes' in answer to Question 20 therein, which asks, 'Has the club been in active operation in the State of New Jersey for at least three (3) years immediately prior to this application?', whereas in truth and fact your club had not been in active operation in the State of New Jersey for said period; said false statement being in violation of R.S. 33:1-25.

"4. You evaded and suppressed a material fact in answer to Question 21 of your aforesaid application, which asks, 'Has the club been in exclusive continuous possession and use of the premises for which license is sought for at least three (3) years immediately prior to this application? -- If not, state reason.' by answering 'No. New head quarters are larger and equipped', whereas in truth and fact your club had not been in exclusive, continuous possession and use of any headquarters for three years immediately prior to the application; said evasion and suppression being in violation of R.S. 33:1-25."

The licensee failed to appear in defense of the proceedings. In view thereof, no useful purpose would be served in detailing the evidence produced by the Department. It is only

necessary to say that such evidence amply supports the truth of the charges.

I also note that the defendant's license was suspended by the Hamilton Township Committee for five days in February 1942 for sales to non-members.

After these proceedings were instituted, the defendant surrendered its license to the local issuing authority. Such surrender, however, does not bar proceedings to revoke the license. R.S. 33:1-31. Revocation of this license is the only effective penalty that may here be entered since it will mandatorily disqualify the licensee from receiving any other liquor license for a period of two years from the date hereof. R.S. 33:1-31.

Accordingly, it is, on this 5th day of June, 1942,

ORDERED that Club License CB-5, heretofore issued to Young Men's Republican Club by the Township Committee of the Township of Hamilton for premises 1560 Chambers Street (2nd Floor), Hamilton Township, P.O. Trenton, N. J., be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

- 7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - FALSE ANSWERS IN LICENSE APPLICATION - SUPPRESSION OF MATERIAL FACTS - FAILURE TO DISCLOSE CRIMINAL RECORD - LICENSE SUSPENDED 115 DAYS.

AUTOMATIC SUSPENSION - R.S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO A MINOR - LICENSEE PAID FINE OF \$300. - LICENSED PREMISES CLOSED FOR 115 DAYS - PETITION TO LIFT GRANTED.

In the Matter of Disciplinary Proceedings against)

FRANK W. GEIGER,)
t/a Country Grill Inn,)
East Side State Highway #30)
about 1/2 mile from Annandale,)
Clinton Township, N. J.,)

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Clinton.)

CONCLUSIONS

AND

In the Matter of a Petition by)

ORDER

FRANK W. GEIGER,)
t/a Country Grill Inn,)
East Side State Highway #30)
about 1/2 mile from Annandale,)
Clinton Township, N. J.,)

To lift the automatic suspension of said license.)

Emmett D. Topkins, Esq., Attorney for Licensee and Petitioner.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant was ordered to show cause why his license should not be cancelled for the following reason:

"Said license was issued to you in violation of R.S. 33:1-25 in that you were convicted in the Hunterdon County courts in 1922 of possessing and manufacturing intoxicating liquor, in 1927 of possessing and selling intoxicating liquor, and in 1934 of possessing slot machines, crimes involving moral turpitude."

The following charges were also served upon the licensee:

"1. On or about February 2, 1942, you sold alcoholic beverages to Irene Betty Sedner (Sidner), a minor, in violation of R.S. 33:1-77.

"2. On or about February 2, 1942, you sold, served, delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to Irene Betty Sedner (Sidner), a person under the age of twenty-one years of age, and allowed, permitted and suffered the consumption of alcoholic beverages by said person on your licensed premises, in violation of Rule 1 of State Regulations No. 20.

"3. In your application for license dated November 7, 1941, filed with the Clinton Township Committee, upon which plenary retail consumption license C-5 for the current fiscal year was granted, you suppressed material facts by answering only 'Yes, for bootlegging in 1924' in answer to question 30 which asks, 'Have you ... ever been convicted of any crime? - If so state details as to each conviction, ... date thereof, nature of the crime, court in which the conviction was entered and sentence imposed', whereas in truth and fact you were convicted in the Hunterdon County courts on October 17, 1922 for possessing and manufacturing intoxicating liquor, on October 11, 1927 for possessing and selling intoxicating liquor, and on April 3, 1934 for possession of slot machines; said suppression of facts being in violation of R.S. 33:1-25.

"4. In your aforesaid application for license, you falsely stated 'No' in answer to question 35 thereof which asks, 'Have you ... ever had any interest, directly or indirectly, in any application for an alcoholic beverage license in New Jersey?', whereas in truth and fact you had such an interest in applications for license filed with the Readington Township Committee in 1933, 1934 and 1935 which were denied, and with the Branchburg Township Committee in 1936 which was granted; said false statement being in violation of R.S. 33:1-25.

"5. In your application for license dated June 16, 1936, filed with the Branchburg Township Committee upon which plenary retail consumption license C-1 for the fiscal year 1936-37 was granted, you falsely stated 'No' in answer to question 8 which asks, 'Have you ... ever been convicted of any crime?', whereas in truth and fact you were convicted in the Hunterdon County courts on October 17, 1922 for possessing and manufacturing intoxicating liquor, on October 11, 1927 for possessing and selling intoxicating liquor, and on April 3, 1934 for possession of slot machines; said false statement being in violation of R.S. 33:1-25.

"6. In your application for license dated June 16, 1936, filed with the Branchburg Township Committee upon which plenary retail consumption license C-1 was granted, you falsely stated 'No' in answer to question 7 which asks, 'Has any person ... other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Anthony and Ralph Gagliardi were so interested; said false statement being in violation of R.S. 33:1-25.

"7. From on or about January 29, 1936, and until August 4, 1936, you aided and abetted Anthony and Ralph Gagliardi, non-licensees, to exercise the rights and privileges of your license last mentioned contrary to R.S. 33:1-26, in violation of R.S. 33:1-52."

The licensee appeared in opposition to the rule to show cause and pleaded guilty, with an explanation to the charges.

As to the order to show cause: In October 1922, Frank W. Geiger was convicted in a County court in Hunterdon County of possessing and manufacturing intoxicating liquor. He was fined \$250. He appealed the case but, apparently, the appeal was not prosecuted and the fine was not paid. In October 1927, he was convicted of possessing and selling liquor and was fined \$750. In April 1934, he was convicted of possessing a slot machine and fined \$50. The evidence shows that there were no aggravating circumstances involved in either of the prohibition violations. In the absence of aggravating circumstances, the prohibition violations did not involve moral turpitude. Nor did the possession of a slot machine, of itself, involve moral turpitude. Therefore, the order to show cause must be dismissed.

As to the charges: The only mitigating circumstances offered as to charges (1) and (2) are that the girl, who was born on August 20, 1925, told the licensee at the time of the sale that she was over the age of twenty-one. She impressed the hearer as being between eighteen and nineteen years of age. Sales to minors are not only contrary to the law but against sound public policy. If there was sufficient doubt in licensee's mind to prompt an inquiry as to the age of the young

girl, he should have fully complied with the law. As to charges (3) and (5), licensee testified that he was advised by an attorney that he was not required to disclose any of his three convictions. The advice, if given, was erroneous. As to charges (4), (6) and (7), applicant admits that he held a license in Branchburg Township from January 1936 to August 1936. Although, for the purpose of expediting these proceedings applicant pleaded guilty to charges (6) and (7), he contended at the hearing herein that, in fact, neither Anthony nor Ralph Gagliardi had any interest in the license which he held more than five years ago. It is unnecessary to consider this testimony in view of the guilty plea.

On February 5, 1942, Frank W. Geiger pleaded guilty, in the Court of Special Sessions of Hunterdon County, to an allegation for sale of liquor to a minor. The allegation was based upon the sale referred to in charge (1) herein. Thereupon, the licensee was fined \$300. On February 10, 1942, his license was picked up because of the automatic suspension thereof resulting from his conviction. R.S. 33:1-31.1. He has petitioned herein for an order lifting the automatic suspension of his license.

Without attempting to fix a penalty for each separate charge set forth above, I shall fix the total penalty in the disciplinary proceedings at the number of days he has been closed under the automatic suspension of his license. Cf. Re Sandago, Bulletin 249, Item 1; Re Haino, Bulletin 295, Item 7; Re DiBuono, Bulletin 501, Item 3. The question as to whether any future licenses should be granted to Frank W. Geiger may be determined by the local issuing authority, if and when he applies for renewal of his license for the fiscal year beginning July 1, 1942.

Accordingly, it is, on this 5th day of June, 1942,

ORDERED that the statutory automatic suspension of the license be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

8. APPELLATE DECISIONS - BLUE BELL WINES & LIQUORS v. WEST NEW YORK.

BLUE BELL WINES & LIQUORS,)	
a corporation of New Jersey,)	
)	
Appellant,)	On Appeal
)	
v.)	
)	CONCLUSIONS and ORDER
BOARD OF COMMISSIONERS OF THE)	
TOWN OF WEST NEW YORK,)	
)	
Respondent.)	

Klein & Klein, Esqs., by Emil Klein, Esq., Attorneys for Appellant.
Felix Bigotto, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On April 28, 1942, respondent suspended appellant's

plenary retail consumption license for a period of twenty days after it had found appellant guilty of selling alcoholic beverages to a minor in violation of Rule 1 of State Regulations No. 20 and of permitting unnecessary noise, brawls and otherwise conducting the business in such a manner as to become a nuisance in violation of Rule 5 of State Regulations No. 20. Appellant appeals from said suspension.

In its petition of appeal appellant alleges that the action of respondent was arbitrary, capricious and without due regard to lawful evidence.

At the hearing herein it was admitted by two bartenders employed by appellant that between December 11, 1941 and April 4, 1942 they frequently served alcoholic beverages to Margaret ----- . The evidence shows that Margaret was born on June 6, 1921, so that at all times mentioned herein she was under the age of twenty-one years. Appellant apparently contends that it is not guilty of the charge of selling alcoholic beverages to a minor because prior to the sales this girl told each of the bartenders that she was twenty-two years of age. The girl admits that she lied to the bartenders as to her true age. However, the fact that a minor verbally misrepresents his or her age does not excuse a licensee. Re Marad, Bulletin 243, Item 10; Re Fischer, Bulletin 249, Item 3. Where it has been established that alcoholic beverages were sold to a person who is actually below the age of twenty-one years, a licensee is guilty unless he can establish all of the facts set forth in R.S. 33:1-77. Pietz v. Maplewood, Bulletin 408, Item 2. Appellant has not attempted to establish such facts. Hence, the finding of guilt as to the violation of Rule 1 of State Regulations No. 20 is affirmed.

The evidence further shows that, between the dates heretofore mentioned, members of the West New York Police Department were called to the licensed premises because of disturbances therein on at least six occasions. They were summoned at three different times when a patron known as "Helen" became noisy and boisterous. They were summoned again when one of the bartenders became intoxicated and threw glasses on the floor. They were summoned at another time to "Quell a big riot or rumpus," which apparently resulted from the attempt of an officer of appellant corporation to eject a patron. On still another occasion they were summoned to eject one "Tillie" who had previously been ordered by the bartender to keep out of the said premises. Appellant argues that it should be absolved because in each instance the police were called by an officer or agent of appellant corporation. The practice of seeking police assistance when a disturbance is created on licensed premises has been commended in many previous cases. However, where, as here, brawls and disturbances frequently occur, despite the efforts of the police, I have no hesitancy in reaching the conclusion that the licensee is guilty of conducting its business in such a manner as to become a nuisance. The finding of guilt as to the violation of Rule 5 of State Regulations No. 20 is also affirmed.

The penalty imposed appears to be entirely reasonable.

The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 5th day of June, 1942,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the twenty-day suspension heretofore imposed by respondent and held in abeyance pending disposition of this appeal is hereby restored, to commence on June 9, 1942 at 3:00 A.M. and to terminate June 29, 1942 at 3:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

9. WHOLESALERS AND MANUFACTURERS - GIFTS - GIFT OR SALE OF GLASSES TO RETAILERS PROHIBITED - BULLETIN 322, ITEM 10 SUPERSEDED.

June 5, 1942.

Fox Head Waukesha Corporation,
New York, N. Y.

Gentlemen:

I have been informed that it is your practice and the practice of your distributors within this State to furnish Fox Head beer glasses to your retail accounts free of charge.

According to our records, you hold a limited wholesaler's license in this State.

State Regulations No. 21, Rule 1, provides that no manufacturer or wholesaler shall furnish by sale, loan, gift or otherwise, any fixtures, equipment, signs or other advertising matter to any retail licensee, excepting inside signs and advertising specialties (such as trays, coasters, display racks, menu cards and calendars) bearing the name, brand or trade-mark of the manufacturer or wholesaler, not exceeding \$50. in value, during any one license year.

Beer glasses, even when they bear advertising matter, cannot be considered to be advertising specialties. They are equipment, and hence may not be sold, lent, given or otherwise furnished by manufacturers or wholesalers to retailers. The ruling heretofore made in Re Seacoast Liquor Distributors, Bulletin 322, item 10, is expressly superseded.

I do not know whether my information is in fact true, but, if it is, I am giving you the opportunity to remedy the situation.

You are directed to desist from supplying your retail accounts with Fox Head beer glasses or permitting your distributors in this State to do so. You are further directed to obtain the return to you of all such glasses which you have distributed to retailers and to instruct your distributors to do likewise.

Kindly send me by return mail your pledge of compliance and also a report of the action taken to secure the return of the glasses.

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

- 10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATIONS CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BECAUSE OF RESIDENCE) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - REAL PARTY IN INTEREST NOW DISQUALIFIED BY CRIMINAL RECORD - PERMITTING KNOWN PROSTITUTE ON LICENSED PREMISES IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - LICENSE REVOKED.

In the Matter of Disciplinary)
 Proceedings against)

JOSEPH MAZZO,)
 536 White Horse Pike,)
 Hammonton, N. J.,)

CONCLUSIONS
 AND
 ORDER

Holder of Plenary Retail Con-)
 sumption License C-12, issued)
 by the Town Council of the Town)
 of Hammonton.)

Joseph Mazzo, Defendant-Licensee, Pro se.
 William F. Wood, Esq., Attorney for State Department of
 Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to charges alleging that he violated R.S. 33:1-25 in that he falsely stated in his applications for licenses that no other person had any interest in his license or business, whereas Frank Mazzo had such interest, and also that he violated R.S. 33:1-52 in that he permitted said Frank Mazzo, a non-licensee, to exercise the privileges of his license contrary to R.S. 33:1-26.

Licensee pleaded not guilty to a charge that, on or about April 18, 1942, he permitted upon his licensed premises a known prostitute and person of ill-repute, in violation of Rule 4 of State Regulations No. 20.

As to the front charge: The evidence introduced herein shows that, on April 15, 1941, Frank Mazzo purchased the building at 536 White Horse Pike, Hammonton, and the business conducted therein, from Michael A. Ruberton, who then held a liquor license for said premises; that Frank Mazzo was not qualified to hold a liquor license because he had not resided in the State of New Jersey for five years; that, because of said disqualification, he arranged to have his father, Joseph Mazzo, apply for the license; that, after the license was obtained and renewed in the name of his father, Frank Mazzo received all the proceeds of the business. It further appears that, in April 1942, Frank Mazzo was convicted of the crime of petty larceny and sentenced to serve eighteen months at the Easton Penitentiary, Pennsylvania, where he is now confined.

As to the prostitution charge: It appears from the evidence that, three days after a young woman pleaded guilty to a charge of prostitution, she was permitted to act as a hat-check girl upon the licensed premises by the person who was

then in charge of the licensed premises and who knew of her conviction. I find the licensee guilty as to this charge.

From the facts recited above, it is clear that the only proper penalty in this case is revocation of the license.

Accordingly, it is, on this 6th day of June, 1942,

ORDERED that plenary retail consumption license C-12, heretofore issued by the Town Council of the Town of Hammonton to Joseph Mazzo for premises located at 536 White Horse Pike, Hammonton, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

11. DISQUALIFICATION - APPLICATION TO LIFT - APPLICANT HAVING DISREGARDED DEPARTMENT'S RULING AS TO INELIGIBILITY - APPLICATION DENIED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, pursuant)
to R.S. 33:1-31.2.)
Case No. 151.)
-----)

CONCLUSIONS
AND
ORDER

BY THE COMMISSIONER:

In 1923 petitioner was convicted of possessing and selling liquor at a "speak-easy" in violation of the Volstead Act, and sentenced to thirty days' imprisonment. Thereafter, in 1936, he was convicted of conspiracy to violate the Federal Internal Revenue Laws by operating an illicit still during 1934, and was given a suspended sentence of imprisonment for a year and a day and released on two years probation.

In 1939 this Department, when the matter came before it, ruled that petitioner's said conviction in 1936 involved moral turpitude and hence disqualified him (under R.S. 33:1-25, 26) from holding a liquor license or working for a liquor licensee in New Jersey. See Re Case 267, Bulletin 313, Item 1.

Five years having elapsed since that disqualifying conviction, petitioner now seeks, in this proceeding, to have his disqualification removed under the provisions of R.S. 33:1-31.2.

At the very outset, I note, on reviewing the Department's records as to this petitioner, that there is abundant suspicion, although perhaps no tangible proof, that petitioner, to evade the ruling of his ineligibility, has been illegally operating a tavern in this State under the guise of one or more "fronts."

However, be such suspicion as it may, it is amply clear that petitioner has, in defiance of the said ruling as to ineligibility, been persistently engaging as at least an employee in the retail liquor business in this State. The records

thus show that when, on April 5 and 26, 1940, agents of this Department investigated a certain tavern (the license for which was in the name of petitioner's mother-in-law), petitioner was found there and on each occasion sold and served liquor to them. After the tavern's license was suspended for five days for such employment of a disqualified person (and other violations), agents of this Department, on re-investigating the tavern on November 16 and December 20, 1940, again found petitioner there, tending bar, serving food and acting in a supervisory capacity. The tavern's license was surrendered pending proceedings brought because of this repeated and other violations.

Although the petitioner claims that he was merely lending an occasional "helping hand" at the tavern and that his actual occupation is peddling silk bedspreads, his claim is wholly unconvincing. The agents' reports clearly show that, with respect to at least the last two of their investigations of the tavern, petitioner was acting in the capacity of manager.

With petitioner having thus persistently and brazenly disregarded this Department's ruling as to his ineligibility, I can scarcely say that his conduct within the last five years is such as to warrant a removal of his disqualification.

Accordingly, the petition in this case is hereby denied.

Dated: June 6, 1942.

Alfred E. Ericson
Commissioner.

EAM