

Mr. Ernest M. Tapner, DP
26 Rose Avenue,
Madison, STATE OF NEW JERSEY
Morris County, New Jersey.
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

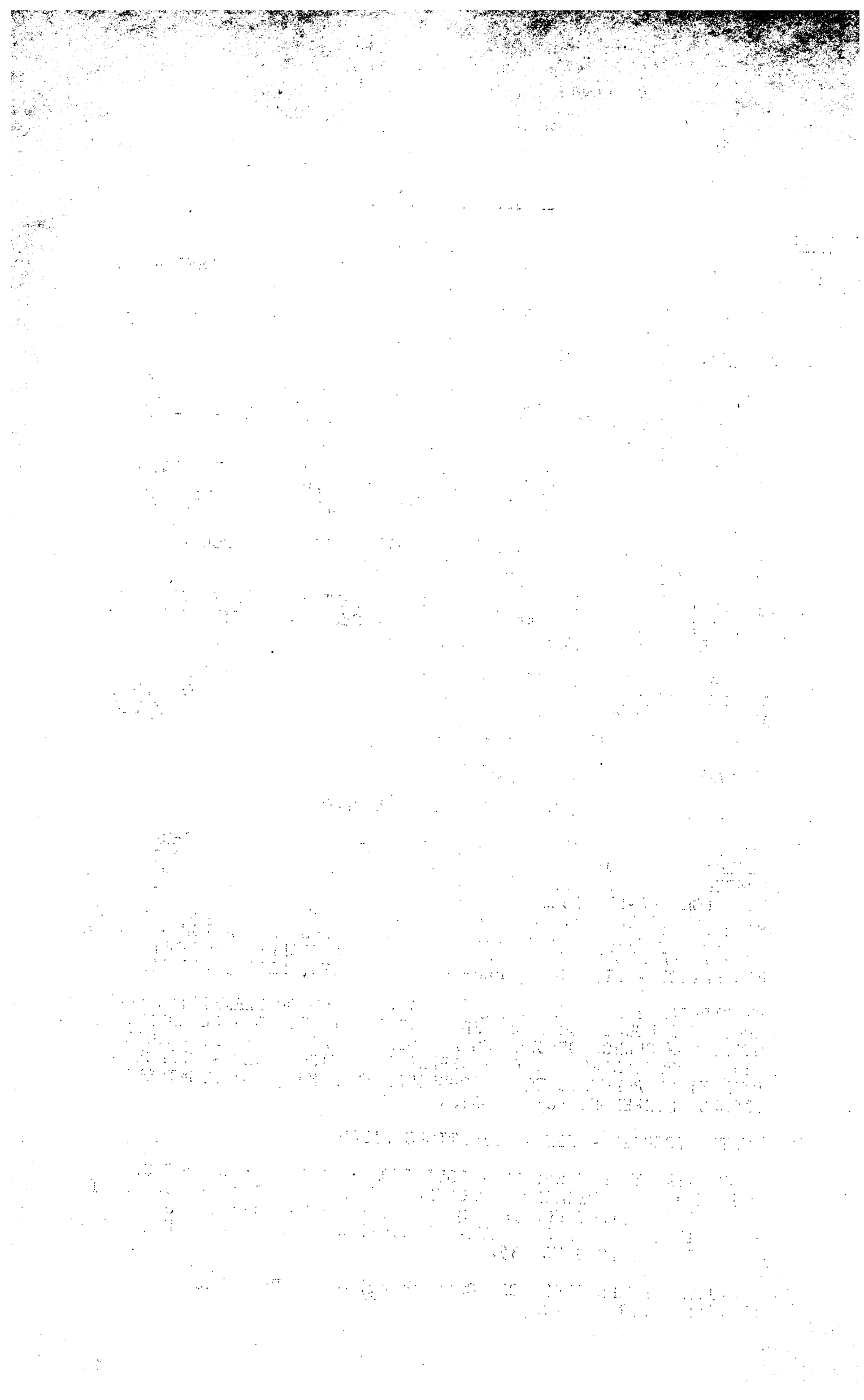
January 11, 1950.

BULLETIN 864

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

January 11, 1950

BULLETIN 864

1. DISCIPLINARY PROCEEDINGS - WHOLESALE LICENSEE - SALES TO CONSUMERS -
LICENSE SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against)

KELLY BEVERAGES (a corp.))
Kelly Place)
Stanhope, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Wholesale License W-26, issued by the Director of the Division of Alcoholic Beverage Control.)

Kelly Beverages (a corp.), defendant-licensee, by Philip J. Kelly, President.

Anthony Meyer, Jr., Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleads non vult to the following charge:

"Between February 11, 1949 and October 27, 1949, you sold and distributed various quantities of assorted alcoholic beverages not pursuant to and within the terms of your plenary wholesale license to various persons in New Jersey who were not retailers or wholesalers licensed in accordance with the Alcoholic Beverage Law, contrary to R.S. 33:1-11(1); in violation of R.S. 33:1-2."

The file in the instant case discloses that, although defendant-licensee is a holder of a wholesale license, alcoholic beverages were sold directly to consumers at listed wholesale prices, in violation of and beyond the scope of defendant's license.

Defendant has no previous adjudicated record. Under all of the circumstances, I shall suspend the operation of the defendant's license for a period of five days.

Accordingly, it is, on this 29th day of December, 1949,

ORDERED that Plenary Wholesale License W-26, issued by the Director of the Division of Alcoholic Beverage Control to Kelly Beverages (a corp.), for premises Kelly Place, Stanhope, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 a.m. January 9, 1950, and terminating at 12:01 a.m. January 14, 1950.

ERWIN B. HOCK
Director.

2. ELIGIBILITY - FACTS EXAMINED - ASSAULT AND BATTERY - APPLICANT ADVISED THAT BY REASON OF CONVICTION HE IS NOT DISQUALIFIED FROM BEING ASSOCIATED WITH THE ALCOHOLIC BEVERAGE INDUSTRY.

December 30, 1949.

Re: Case No. 610

On September 7, 1939, applicant was sentenced by a Police Court Judge to a term of three months in a county penitentiary upon being adjudged guilty of the crime of assault and battery. Applicant was released on September 25, 1939 from the penal institution by order of the Judge who had imposed the sentence.

Applicant testified that the arrest and conviction in question resulted from an altercation with his wife, during the course of which applicant either struck or pushed her. It appears from the meager records in the matter that applicant was apprehended originally by virtue of a municipal ordinance for a breach of the peace. The charge, however, was subsequently changed to assault and battery. I am satisfied that, under the circumstances, the crime of assault and battery of which applicant was convicted does not involve moral turpitude. Re Case No. 517, Bulletin 588, Item 3.

It is recommended that applicant be advised that by reason of the aforesaid conviction he is not disqualified by statute from being associated with the alcoholic beverage industry.

Clarence E. Kremer
Attorney.

APPROVED:
ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - ALLOWING, PERMITTING AND SUFFERING BOOKMAKING AND GAMBLING ON LICENSED PREMISES - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

WILLIAM SHAPIRO)
T/a BILL'S CAFE)
508 1/2 Kaighn Avenue)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-109, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)

-----)
Meyer L. Sakin, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"On November 3 and 9, 1949, you allowed, permitted and suffered bookmaking and gambling on and about your licensed premises; in violation of Rule 7 of State Regulations No. 20."

On November 3, 1949, at about 1:30 p.m., three ABC agents entered defendant's premises. At the hearing they testified that at that time they observed a group of five men, including Allie Waterhouse, at the rear end of the bar; that these men were consulting

scratch sheets, and that on several occasions men in the group would hand money to Waterhouse, who would thereupon make notations on a white paper pad. The agents further testified that, at the time they entered, William Taylor was tending bar, but that the licensee relieved Taylor shortly after 2:00 p.m., and that the activities described above continued until about 2:45 p.m., when the agents left the premises.

The three agents, accompanied by a fourth agent, returned to defendant's premises on November 9, 1949, at about 2:45 p.m. At that time the licensee was tending bar. They testified that on this occasion they observed a group of seven or eight men, including Waterhouse, at the end of the bar, and that the conversation of these men was, in general, about horse race betting. The conversation, according to the agents' testimony, could be heard in any part of the barroom. One of the agents testified that he told the licensee that he was going to place a bet with Waterhouse and that the licensee just shrugged his shoulders and smiled. This agent further testified that he then handed Waterhouse six \$1.00 bills to play "across the board" on "Nedlon running at Pimlico in the 7th race", and that Waterhouse, after accepting the money, made a notation upon a white paper pad. This agent further testified that, after handing the money to Waterhouse, he told the licensee that, if the horse came in, he was going to buy a good steak dinner for one of the other agents but that the licensee did not reply. Shortly after 3:30 p.m. the agents identified themselves to the licensee, at which time Waterhouse ran to the men's room and tried to destroy the white pad. The agents followed him and seized the white pad with a notation "Nedlon 2-4" thereon, and also seized a sum of money including the aforesaid six \$1.00 bills which Waterhouse had in his pocket.

Defendant testified that he had no knowledge that any illegal activity was being carried on on his licensed premises by Allie Waterhouse until after the agents identified themselves and a "commotion" occurred at the end of the bar. He testified that, when the agents entered the premises on November 9, he had a conversation with them concerning their automobile which had broken down at or near his licensed premises, and that at no other time did he have conversation with the agents. Admittedly the agents spoke to the licensee about the automobile. However, from the testimony I am satisfied that one of the agents told the licensee he was going to place a bet with Waterhouse, and also that he told the licensee he intended to buy a steak dinner if the horse won, and this evidence, together with the general conversation about horse race betting and the other activities at the bar, is sufficient to show that the licensee knew that Waterhouse was accepting bets and, hence, that he allowed, permitted and suffered bookmaking and gambling on his licensed premises. The evidence refers not to an isolated transaction, but indicates a series of similar events occurring over a two-day period. I find defendant guilty as charged. Re Billy Urbanski, Inc., Bulletin 793, Item 3.

It has been called to my attention that, according to a newspaper story, the Camden County Grand Jury has failed to indict Allie Waterhouse for bookmaking as a result of his activities on defendant's premises. This is immaterial in the present case. Defendant has no prior record. Since it appears that neither he nor his employees actively participated in the illegal activities, I shall suspend his license for a period of ten days. See Re Billy Urbanski, Inc., supra.

Accordingly, it is, on this 3rd day of January, 1950,

ORDERED that Plenary Retail Consumption License C-109, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to William Shapiro, t/a Bill's Cafe, for premises 508½ Kaighn Avenue, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. January 9, 1950, and terminating at 2:00 a.m. January 19, 1950.

ERWIN B. HOCK

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM, IN VIOLATION OF RULE 5 OF STATE REGULATIONS NO. 30 - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MAX and ANNA FOX)
164-66 Belmont Avenue)
Newark 3, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-210, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)
-----)

Max and Anna Fox, Defendant-licensees, by Max Fox, Partner.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging they sold alcoholic beverages below the minimum consumer price, in violation of Rule 5 of State Regulations No. 30.

On November 4, 1949, the defendants, through their agent, a clerk employed on the licensed premises, sold a pint bottle of Schenley Reserve Blended Whiskey for the sum or price of \$2.45. The then effective minimum resale (consumer) price, as published in a pamphlet issued by the State Division of Alcoholic Beverage Control and effective October 1, 1949, was \$2.54.

Defendants have no previous adjudicated record. I shall suspend their license for the minimum period for first violations of the Fair Trade Regulations, ten days. Re Belk, Bulletin 830, Item 5. Remitting five days thereof because of the plea, will leave a net suspension of five days.

Accordingly, it is, on this 3rd day of January, 1950,

ORDERED that Plenary Retail Consumption License C-210, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Max and Anna Fox, for premises 164-66 Belmont Avenue, Newark, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 a.m. January 9, 1950, and terminating at 2:00 a.m. January 14, 1950.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

ROBERT BUTTLES and OTTO B. WHITMORE, Administrators of the Estate of William P. Odom Route 6 Teterboro, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-2, heretofore issued to William P. Odom and extended to defendants by the Mayor and Council of the Borough of Teterboro.)

Defendant-licensees, by Robert Buttles, Administrator. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 28 of State Regulations No. 20.

On October 31, 1949, an ABC agent tested 40 opened bottles of alcoholic beverages on defendants' premises and seized one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" when his field test indicated that the contents of said bottle were apparently different from a genuine sample of the same product. Analysis by the chemist of the Division of Alcoholic Beverage Control clearly established that said bottle contained an alcoholic beverage different from that described in the label. See Rule 28 of State Regulations No. 20.

Defendants have no prior record. I shall suspend defendants' license for fifteen days (the minimum in illicit liquor cases). Re Rudolph, Bulletin 680, Item 1. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 3rd day of January, 1950,

ORDERED that Plenary Retail Consumption License C-2, heretofore issued to William P. Odom and extended to defendants by the Mayor and Council of the Borough of Teterboro, for premises on Route 6, Teterboro, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. January 9, 1950, and terminating at 2:00 a.m. January 19, 1950.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES
(PROCURING FEMALE FOR PURPOSES OF PROSTITUTION) - LICENSE
SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary)
Proceedings against)
ELIZABETH EKELEVICH)
T/a JOHN'S TAVERN)
600 South Second Street)
Harrison, N. J.,)
Holder of Plenary Retail Consump-)
tion License C-27, issued by the)
Town Council of the Town of)
Harrison.)

CONCLUSIONS
AND ORDER

Charles F. Paulis, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging:

"On Friday night, October 21, and early Saturday morning, October 22, 1949, you allowed, permitted and suffered lewdness and immoral activities, viz., procuring a female for purposes of prostitution, in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20."

Reports of investigation by ABC agents disclosed that the licensee's bartender procured one Pauline --- for the purpose of prostitution with one of the agents, accepting payment of \$6.00 for her services. When a raiding party of other ABC agents and local police arrived immediately thereafter, they found Pauline and the first agent in the ladies' toilet room of the licensed premises with Pauline lying on the floor prepared to engage in sexual intercourse with the agent. Search of the bartender disclosed that he had pocketed one of the six dollars, leaving the remaining five on the back bar to pay to Pauline.

There is no evidence that the licensee, who apparently is seldom on the licensed premises, knew anything about the activity of her bartender although such lack of knowledge is no defense. The facts and the plea considered, I find the licensee guilty as charged.

Considering all of the facts herein and the fact that the licensee has no prior adjudicated record, I shall suspend the license for the balance of the term. However, if the defendant applies for a renewal license, the license issuing authority should, in considering the application, carefully weigh the facts set forth herein in determining whether or not she is a fit person to hold a license.

Accordingly, it is, on this 3rd day of January, 1950,

ORDERED that Plenary Retail Consumption License C-27, issued by the Town Council of the Town of Harrison to Elizabeth Ekelevich, t/a John's Tavern, 600 South Second Street, Harrison, be and the same is hereby suspended for the balance of its term, commencing at 2:00 a.m. January 9, 1950.

ERWIN B. HOCK
Director.

7. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1949 TO DECEMBER 31, 1949
AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO RS 33:1-19

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Expired	Number Licen- ses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	487	\$ 203,050.00	69	\$ 25,950.00	16	\$ 1,549.18						572	\$ 230,549.1
Bergen	819	296,916.37	296	78,518.00	68	6,475.92	52	\$ 2,280.82	6	\$ 1,596.79	6	1235	385,787.9
Burlington	186	72,175.00	30	8,400.00	36	5,050.00	1	25.00				253	85,650.0
Camden	456	216,550.00	82	29,325.00	59	5,705.40			1	375.00	1	597	251,955.4
Cape May	133	65,750.00	11	4,150.00	15	1,583.29						159	71,483.2
Cumberland	81	34,800.00	14	3,650.00	29	3,910.00						124	42,360.0
Essex	1376	759,560.00	349	201,850.00	100	13,542.87	33	1,650.00				1858	976,602.8
Gloucester	107	33,450.00	13	2,950.00	14	1,400.00						134	37,800.0
Hudson	1562	677,292.45	298	117,766.16	75	9,202.74	73	3,111.58				2008	807,372.9
Hunterdon	79	24,075.00	6	1,787.50	5	600.00						90	26,462.5
Mercer	425	255,000.00	50	20,350.00	49	6,658.63			1	120.00	1	524	282,128.6
Middlesex	635	300,954.62	70	22,245.00	60	5,697.47	5	225.00				770	329,122.0
Monmouth	547	270,145.00	111	38,313.01	30	3,600.00	10	376.66	29	12,535.48	29	698	324,970.1
Morris	353	118,515.00	95	27,158.31	39	3,833.29	7	450.00	6	1,230.42	6	494	151,187.0
Ocean	190	106,412.87	45	19,050.00	11	1,200.00						246	126,662.8
Passaic	882	361,897.95	163	50,440.00	33	4,074.04	13	600.00				1091	417,011.9
Salem	50	18,900.00	7	1,300.00	10	925.00						67	21,125.0
Somerset	185	75,815.00	35	9,306.16	21	2,336.81						241	87,457.9
Sussex	172	45,055.00	16	3,104.45	6	360.00			1	225.00	1	194	48,744.4
Union	544	287,200.00	142	57,300.00	61	7,015.96	23	1,142.60				770	352,658.5
Warren	148	41,380.00	17	3,307.50	28	2,655.00			2	247.54	2	193	47,590.0
Total	9417	\$4,264,894.26	1919	726,221.09	765	87,375.60	217	9,861.66	46	16,330.23	46	12318	5,104,682.8

ERWIN B. HOCK, DIRECTOR

Respectfully submitted, John H. Michelson, Deputy Director.

8.

ACTIVITY REPORT FOR DECEMBER 1949

January 3, 1950

ARRESTS:		
Total number of persons arrested	-----	28
Licensees and employees	----- 3	
Bootleggers	----- 25	
SEIZURES:		
Motor vehicles - cars	-----	4
- trucks	-----	1
Stills - over 50 gallons	-----	3
- 50 gallons or under	-----	1
Alcohol - gallons	-----	119.41
Mash - gallons	-----	6,350.00
Distilled alcoholic beverages - gallons	-----	9.79
Wine - gallons	-----	11.08
Brewed malt alcoholic beverages - gallons	-----	33.68
RETAIL LICENSEES:		
Premises inspected	-----	936
Premises where alcoholic beverages were gauged	-----	726
Bottles gauged	-----	12,865
Premises where violations were found	-----	28
Violations found	-----	31
Type of violations found:		
Reg. #38 sign not posted	----- 7	Other mercantile business----- 3
Gambling devices	----- 4	Improper beer taps----- 1
Unqualified employees	----- 4	Prohibited signs----- 1
Probable fronts	----- 3	Other violations----- 8
STATE LICENSEES:		
Premises inspected	-----	37
License applications investigated	-----	12
COMPLAINTS:		
Complaints assigned for investigation	-----	302
Investigations completed	-----	328
Investigations pending	-----	146
LABORATORY:		
Analyses made	-----	153
"Shake-up" cases (alcohol, water and artificial color) - bottles	-----	8
Liquor found to be not genuine as labeled - bottles	-----	8
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-----	16
Persons fingerprinted for non-criminal purposes	-----	101
Identification contacts made with other enforcement agencies	-----	106
Motor vehicle identifications via N. J. State Police Teletype	-----	9
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	7
Violations involved:		
Sale during prohibited hours	----- 3	Sale to minors----- 1
Permitting bookmaking on premises	----- 1	Permitting hostesses on premises----- 1
Sale to non-members by clubs	----- 1	Permitting females to tend bar----- 1
Cases instituted at Division	-----	10
Violations involved:		
Sale under Fair Trade price	----- 3	Failure to report retailer in default----- 1
Advertising below Fair Trade price	----- 1	Delivery on credit to retailer in default----- 1
Sale outside scope of license	----- 1	Permitting pin ball machines on premises----- 1
Illegal activity connected with licensed premises	----- 1	Sale to minors----- 1
Possessing illicit liquor	----- 1	Conduct of sales promotion contest by wholesaler----- 1
Cases brought by municipalities on own initiative and reported to Division	-----	7
Violations involved:		
Permitting brawls on premises	----- 3	
Sale to minors	----- 2	
Sale during prohibited hours	----- 2	
Conducting business as a nuisance	----- 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	35
Appeals	----- 4	
Disciplinary proceedings	----- 13	Seizures----- 3
Eligibility	----- 10	Tax revocation----- 5
PERMITS ISSUED:		
Total number of permits issued	-----	799
Employment	----- 75	Social affairs----- 230
Solicitors	----- 56	Special wine----- 192
Disposal of alcoholic beverages	----- 89	Miscellaneous----- 157

ERWIN B. HOCK, DIRECTOR

9. APPELLATE DECISIONS - SARZYNSKI v. PASSAIC.

MARCEL SARZYNSKI, trading as)
 MARCEL'S TAVERN,)
 Appellant,)
 -vs-)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF PASSAIC,)
 Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

 Manfield G. Amlicke, Esq., Attorney for Appellant.
 Oscar R. Wilensky, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby appellant was found guilty in disciplinary proceedings of the charges herein-after set forth, and his plenary retail consumption license for premises at 161 Passaic Street, Passaic, suspended for a period of twenty days. Upon the filing of the instant appeal, an order was entered herein staying the suspension pending determination of the appeal. R.S. 33:1-31.

The charges of which appellant was found guilty are as follows:

- "1. On Saturday, March 5, 1949, you sold an alcoholic beverage to Sylvia ---, a minor, in violation of R.S. 33:1-77.
- "2. On Saturday, March 5, 1949, you sold, served or delivered an alcoholic beverage to Sylvia ---, a person under the age of 21 years or allowed, permitted or suffered the consumption of such beverage by said Sylvia ---, upon your licensed premises in violation of State Regulation 20, Rule 1."

At the hearing below, no certified shorthand reporter was in attendance and, hence, no transcript of the testimony of the witnesses who testified at said hearing could be produced. It is agreed, however, by the parties herein that Sylvia ---, the minor in question, did not testify at that hearing. It appears that she could not be produced at that time because she was then confined to a penal institution in the State of New York.

At the time this appeal was heard, Sylvia --- was then confined to a penal institution in the State of New Jersey, to which institution she had been committed after having been released by the New York authorities. She was brought from the New Jersey penal institution for the purpose of testifying herein.

At the hearing of this appeal Sylvia --- testified that she was born on April 30, 1933; that she visited defendant's premises on a date she could not recall, and ordered a Schenley's and lemon soda from Mary Sarzynski, appellant's daughter. She said that, after she told Mary Sarzynski she was twenty-two years of age, she was served with and consumed the drinks she ordered. After examining a statement dated April 4, 1949, she testified that the date on which she entered defendant's premises was March 5, 1949, at about 9:30 p.m. She also testified that on said date she was accompanied by two girls, but later said that she was accompanied only by Lillian ---. The testimony of Lillian --- is not helpful. She testified that she visited defendant's premises with Sylvia --- on one occasion between 8:00 p.m. and 9:00 p.m., but was unable to recall the exact date even after examining the statement taken on April 4, 1949. As to the service to Sylvia ---, she testified as follows:

"Q Did you hear Sylvia order a Schenley and lemon soda?

A No.

Q You did not. Did you say so in the statement?

A That was only because Sylvia said it."

On behalf of appellant, Marcel Sarzynski, the licensee, testified that he was tending bar on the evening of Saturday, March 5, 1949, and that he did not see either of the two girls mentioned herein on his licensed premises on that evening. Mary Sarzynski testified that she did not begin to tend bar until 10:00 p.m. on the evening of Saturday, March 5, 1949, and that she did not see either of the two girls on the licensed premises at any time on that evening. It is true that both girls identified Mary Sarzynski as the person who had served the drink when they were taken to defendant's premises by ABC agents on April 4, 1949, and that Mary Sarzynski said, "They are bums coming around and getting people in trouble.", but it does not appear that the licensee or Mary Sarzynski at any time admitted serving the drink to the minor.

Since this is a trial de novo, I have considered the testimony of Sylvia --- despite the fact that she did not appear at the hearing below. Cf. Ritter v. North Bergen, Bulletin 546, Item 2. However, her testimony was contradictory in many respects and unconvincing. Lillian --- did not hear Sylvia order the drink, and testified that the drink served to Sylvia was the same color as a Coca Cola which she ordered. There was no other corroborating testimony. In view of the uncertain character of the testimony given by respondent's witnesses and the positive testimony given by appellant and his daughter, I must reverse respondent's action.

Accordingly, it is, on this 3rd day of January, 1950,

ORDERED that the action of respondent be and the same is hereby reversed.

ERWIN B. HOCK
Director.

- 10. DISCIPLINARY PROCEEDINGS - POSSESSING ALCOHOLIC BEVERAGES IN BOTTLE WHICH DID NOT BEAR LABEL DESCRIBING ITS CONTENTS, IN VIOLATION OF RULE 28 OF STATE REGULATIONS NO. 20 - SALE FOR OFF-PREMISES CONSUMPTION OF WINE IN OTHER THAN ITS ORIGINAL CONTAINER, IN VIOLATION OF R. S. 33:1-2 - SALE DURING PROHIBITED HOURS, IN VIOLATION OF MUNICIPAL REGULATION - FAILURE TO HAVE PREMISES OPEN TO PUBLIC VIEW, IN VIOLATION OF MUNICIPAL REGULATION - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SAMUEL SLATNICK and DANIEL WEINSTEIN)
 526 S. Park Street)
 Elizabeth 1, New Jersey,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.

 Samuel Slatnick and Daniel Weinstein, Defendant-licensees, by Daniel Weinstein, Partner.
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded guilty to four charges which may be summarized as follows: (1) that they possessed on their licensed premises a pint bottle of wine which bore no label describing its contents, in violation of Rule 28 of State Regulations No. 20; (2) that they sold this pint of wine in other than its original container for off-premises consumption, in violation of R. S. 33:1-2; (3) that they sold this wine during prohibited hours on a Sunday, in violation of municipal ordinance; and (4) that they failed to afford public view of the interior of their licensed premises, in violation of municipal regulations.

It appears that on Sunday, October 16, 1949, at about 10:40 a.m., an ABC agent, investigating a complaint that package goods were sold at the licensed premises for off-premises consumption on Sunday mornings contrary to State Regulations No. 38, was in fact sold a pint bottle of wine by Samuel Slatnick, one of the licensee-defendants. Apparently seeking to circumvent Regulations No. 38, which prohibits sale of alcoholic beverages in original containers for off-premises consumption during certain hours on weekdays and all day on Sundays, Slatnick broke the seal on the bottle, thereby converting it into an opened and no longer original container. At the same time, he tore off practically all of the label from the bottle, presumably in an effort to prevent tracing of the bottle back into the licensed premises. At the particular time the sale was made, viz., at 10:40 a.m., the sale was also in violation of the local curfew regulation. Likewise, the screens and blinds, by completely preventing view of the interior of the premises from the exterior (presumably to shield from scrutiny the various illegal acts being committed) involved infraction of still another municipal regulation. Thus, to avoid prosecution for violation of State Regulations No. 38, the licensees, as they know now ran afoul of the liquor law and regulations in several other ways, inviting a penalty substantially increased over that normally imposed in cases involving a simple sale of package goods for off-premises consumption during prohibited hours.

Since these defendants have no previous adjudicated record and considering all of the circumstances in this case, I shall suspend

the license for a period of forty-five days, less five days' remission for the plea, leaving a net suspension of forty days.

Accordingly, it is, on this 4th day of January, 1950,

ORDERED that Plenary Retail Consumption License C-69, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Samuel Slatnick and Daniel Weinstein, for premises 526 S. Park Street, Elizabeth, be and the same is hereby suspended for a period of forty (40) days, commencing at 2:00 a.m. January 9, 1950, and terminating at 2:00 a.m. February 18, 1950.

ERWIN B. HOCK
Director.

- 11. DISCIPLINARY PROCEEDINGS - CHARGE OF PERMITTING FOUL AND ABUSIVE LANGUAGE ON LICENSED PREMISES DISMISSED - DEFENDANT FOUND GUILTY ON CHARGE OF SELLING AND SERVING ALCOHOLIC BEVERAGES TO A PERSON WHO WAS ACTUALLY OR APPARENTLY INTOXICATED - CHARGE OF PERMITTING PREMISES TO BE CONDUCTED AS A NUISANCE DISMISSED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

JOSEPH BODNER)
111 Washington Street)
Newark 2, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-897 for the 1948-49 and 1949-50 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

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Sidney Simandl, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to charges alleging that, on January 25, 1949, he (1) permitted the use of foul and abusive language on his licensed premises, in violation of Rule 5 of State Regulations No. 20, (2) sold and served alcoholic beverages to a person who was actually or apparently intoxicated, in violation of Rule 1 of State Regulations No. 20, and (3) permitted his place of business to be conducted as a nuisance, in violation of Rule 5 of State Regulations No. 20.

The language which resulted in the institution of the first charge emanated from a married couple who were having an argument while seated at stools at the defendant's bar. The obscenity of the invectives hurled at one another by the couple is not in dispute. The only question is whether they were uttered under such circumstances as to fasten responsibility therefor upon the licensee.

The record does not establish that the vile language was used continuously over a substantial period of time. On the contrary, it appears that there were three sporadic interludes, after the second of which the bartender cautioned the couple. When it happened the third time, the bartender, after ordering them to leave, went to phone the police, and the wife immediately left the premises.

While it may be argued that the bartender was extremely patient with the married couple and might well have taken more immediate action to terminate the verbal fracas, I cannot say, after a careful review of the entire record, that the bartender was so remiss in his duty, under the recited circumstances, as to amount to a violation of the rule in question. The first charge is dismissed.

The description of the husband, as given by two ABC agents, leaves no doubt that, at least, he was in an apparently intoxicated condition. They testified that his eyes were "bloodshot", his hair was "disheveled", his face was "flushed", he "weaved back and forth on his stool", his "tongue was thick" and, when walking, he "weaved and staggered from side to side". While in this condition, he was served two glasses of beer by the bartender. I find the defendant guilty on the second charge.

The evidence falls short of supporting the allegation of the third charge, within the pertinent principles of the decisions heretofore rendered on this issue. Cf. Re Victoria Bar, Inc., Bulletin 841, Item 5. This charge must, therefore, likewise be dismissed.

Since the defendant has no prior adjudicated record, the minimum twenty-day suspension will be imposed for the violation resulting in the second charge herein. Cf. Re Regan, Bulletin 815, Item 8.

Although this proceeding was instituted during the 1948-49 licensing period, it does not abate but remains fully effective against the renewal license for the 1949-50 licensing period. State Regulations No. 16.

Accordingly, it is, on this 4th day of January, 1950,

ORDERED that Plenary Retail Consumption License C-897, issued for the current licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Joseph Bodner for premises at 111 Washington Street, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. January 10, 1950, and terminating at 2:00 a.m. January 30, 1950.

ERWIN B. HOCK
Director.

12. STATE LICENSES - NEW APPLICATIONS FILED.

Napa Valley Wines, Inc.
139 Davenport Ave.
Belleville, N. J.

Application filed January 3, 1950 for transfer of Wine Wholesale License WW-35 from Virginus D. Mattia.

The Middlesex Transportation Co., Inc.
Burnet Street
New Brunswick, N. J.

Application for Transportation License filed January 9, 1950.

ERWIN B. HOCK
Director.

13. DISCIPLINARY PROCEEDINGS - SOLICITORS' PERMITS - CHARGE OF ALLEGED "TIE-IN" SALES DISMISSED BECAUSE NOT IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 34, AS THEN EXISTING - "TIE-IN" SALES NOW PROHIBITED BY RULE 8 OF STATE REGULATIONS NO. 34 AND RULE 3 OF STATE REGULATIONS NO. 35.

In the Matter of Disciplinary Proceedings against GERALD L. DONAHUE 759 Stuyvesant Avenue Irvington, N. J.,

Holder of Solicitor's Permit No. 862, issued by the State Commissioner of Alcoholic Beverage Control for 1945-46.

In the Matter of Disciplinary Proceedings against JULIAN S. LEVY 357 Irving Avenue South Orange, N. J.,

Holder of Solicitor's Permit No. 1284, issued by the State Commissioner of Alcoholic Beverage Control for 1945-46.

In the Matter of Disciplinary Proceedings against PHILIP M. ZURICH 596 Broadway Newark 4, N. J.,

Holder of Solicitor's Permit No. 469, issued by the State Commissioner of Alcoholic Beverage Control for 1945-46.

In the Matter of Disciplinary Proceedings against HARRY A. HAIT 999 Stuyvesant Avenue Irvington, N. J.,

Holder of Solicitor's Permit No. 460, issued by the State Commissioner of Alcoholic Beverage Control for 1945-46.

In the Matter of Disciplinary Proceedings against ROBERT COHN 406 Academy Circle Merion, Pa.,

Holder of Solicitor's Permit No. 233, issued by the State Commissioner of Alcoholic Beverage Control for 1945-46.

In the Matter of Disciplinary Proceedings against PAUL B. BOWES 115 N. Martindale Ave. Ventnor City, N. J.,

Holder of Solicitor's Permit No. 236, issued by the State Commissioner of Alcoholic Beverage Control for 1945-46.

William Rubin, Esq., Attorney for Defendant-permittees Donahue, Levy, Zurich, Hait.

E. George Aaron, Esq., Attorney for Defendant-permittees Cohn, Bowes. Edward F. Ambrose, Esq., appearing for Division of Alcoholic

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

Disciplinary and cancellation proceedings were brought against each of these six holders of solicitor's permits, based upon the claim that during 1945 they had imposed "tie-in" sales upon various retail licensees, i.e., that they had required such retailers to purchase certain additional brands of alcoholic beverages in order to obtain the brands which said retailers wanted.

The proceedings were brought upon the theory that such "tie-in" sales constituted a type of "combination sale" and "inducement" which alcoholic beverage manufacturers or wholesalers were prohibited from offering to retail licensees under Rule 4 of State Regulations No. 34 as then existing, and that the solicitors in question, in failing to adhere to said regulation governing their employers, thus violated Rule 13 of State Regulations No. 14.

It is pointless here to recite the evidence other than to observe that there is much in these cases to suggest that at least some of the solicitors involved may have engaged in the above alleged practice during the war days in question when various brands of alcoholic beverages were scarce. However, be this evidence as it may, I cannot find that the practice constituted any violation as alleged in these proceedings.

So far as pertinent, Rule 4 of State Regulations No. 34, as then existing, provided:

"No manufacturer or wholesaler shall furnish to a retailer any rebate, allowance, grant of money or any thing of value (whether by sale, loan, gift or otherwise), or other discount or inducement, including 'free goods', 'deals', 'combination sales', and similar transactions, whether furnished directly by the licensee or indirectly by an employee, except as provided in Rules 7 and 8 hereof and by Regulations No. 21."

The purpose of the above quoted rule was to prevent manufacturers or wholesalers from inducing retailers to buy alcoholic beverages under lure of obtaining "free goods" or a rebate or a similar type of inducement of "something for nothing". The rule did not contemplate the converse, viz., requiring a retailer to order and pay for additional brands of alcoholic beverages as a prerequisite to purchasing certain other items desired by him. When the rule was promulgated, such type of problem was not then in existence.

Since the alleged conduct in these cases was not prohibited at the time to manufacturers or wholesalers by Rule 4 of State Regulations No. 34, it therefore follows that the solicitors, even if engaging in such conduct, did not violate Rule 13 of State Regulations No. 14, which prevents them from engaging in conduct prohibited to their employers.

It may be observed that, since the institution of the proceedings in question, State Regulations No. 34 have been appropriately revised and amplified in order, among other things, to specifically prohibit thereafter the type of conduct allegedly involved in these cases. In such revision, effective February 10, 1949, the aforesaid Rule 4 has now become Rule 8, which, so far as here pertinent, specifically includes the following (Bulletin 831, Item 4):

"...nor shall any such manufacturer or wholesaler sell to a retailer any particular brand or brands of alcoholic beverages tied in with, or contingent upon the retailer's purchase of, some other beverage, alcoholic or otherwise, or any other merchandise or service."

Similarly, Rule 3 of State Regulations No. 35, as revised effective February 10, 1949, now specifically provides with respect to holders of solicitor's permits:

"....nor shall such holder of a solicitor's permit sell to any retailer, or solicit from any retailer any order for, any particular brand or brands of alcoholic beverages tied in with, or contingent upon the retailer's purchase of, some other beverage, alcoholic or otherwise, or any other merchandise or service."

In view of the foregoing, it is, on this 9th day of January, 1950,

ORDERED that the above proceedings against the six solicitor-permittees here involved be and the same are hereby dismissed.

ERWIN B. HOCK
Director.

14. DISCIPLINARY PROCEEDINGS - PIN BALL MACHINE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
GUTTENBERG POST NO. 64,
AMERICAN LEGION
309 - 70th Street
Guttenberg, N. J.,
Holder of Club License CB-180,
issued by the Director of the
Division of Alcoholic Beverage
Control of the Department of Law
and Public Safety.

CONCLUSIONS
AND ORDER

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William J. Bozzuffi, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that, on November 17, 1949, it possessed a machine or device commonly known as a bagatelle or pin ball machine on its licensed premises, in violation of Rule 7 of State Regulations No. 20.

In the absence, as here, of any previous record, the usual ten-day suspension will be imposed, less five days' remission for the plea, leaving a net suspension of five days. Re Fedullo, Bulletin 817, Item 17.

Accordingly, it is, on this 6th day of January, 1950,

ORDERED that Club License CB-180, issued by the Director of the Division of Alcoholic Beverage Control of the Department of Law and Public Safety to Guttenberg Post No. 64, American Legion, 309 - 70th Street, Guttenberg, be and the same is hereby suspended for a period of five (5) days, commencing at 3:00 a.m. January 16, 1950, and terminating at 3:00 a.m. January 21, 1950.

Erwin B. Hock
Director.