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

BULLETIN 534 OCTOBER 30, 1942.

1. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN HOLDER OF EMPLOYMENT PERMIT TO SELL ALCOHOLIC BEVERAGES, IN VIOLATION OF R.S. 33:1-26 AND STATE REGULATIONS NO. 11 - 5 DAYS' SUSPENSION, LESS 2 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT, IN VIOLATION OF R. S. 33:1-26 - PERMIT PRIVILEGES SUSPENDED FOR 30 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

BERNARD ENGELMAN,)
T/a THE BEVERAGE SHOP,)
1439 Irving Street,)
Rahway, N. J.,)

Holder of Plenary Retail Distribution License D-4, issued by the Municipal Board of Alcoholic Beverage Control of the City of Rahway,) CONCLUSIONS AND ORDER

-and-)

EMANUEL SHAPIRO,)
1154 St. George Avenue,)
Linden, N. J.,)

Holder of Employment Permit No. 2467, issued by the State Commissioner of Alcoholic Beverage Control.)

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John E. Barger, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded guilty to a charge of permitting his employee, Emanuel Shapiro, who holds an employment permit for a person disqualified by reason of residence and citizenship, to sell alcoholic beverages in violation of R. S. 33:1-26, and also in violation of Rule 1 of State Regulations No. 11. The defendant-permittee has pleaded guilty to a charge of selling alcoholic beverages contrary to the condition upon which his employment permit was issued. Both proceedings will be treated and disposed of herein since they arise out of the same transaction.

It appears that, on August 31, 1942, investigators of the Department of Alcoholic Beverage Control purchased alcoholic beverages from the defendant-permittee on the premises of the defendant-licensee. The sales are admitted by the licensee and permittee. Both defendants, however, state that they were under the impression that the permittee was permitted to sell alcoholic beverages due to the existence of a

reciprocal trade treaty between this country and Lithuania. No such treaty exists. The permit in question is expressly conditioned that if its holder "does not qualify as to -- citizenship -- such permittee shall not in any manner whatsoever serve, sell or solicit the sale -- of any alcoholic beverages."

Ignorance of the law or regulations presents no defense. See Re Stein, Bulletin 458, Item 3.

Since no previous record appears against either licensee or permittee, the usual penalties of five days and thirty days, respectively, will be imposed. Two days of the licensee's suspension and five days of the permittee's suspension will be remitted because of the guilty pleas. Re Stein, supra.

Accordingly, it is, on this 16th day of October, 1942,

ORDERED, that Plenary Retail Distribution License D-4, heretofore issued to Bernard Engelman, trading as The Beverage Shop, by the Municipal Board of Alcoholic Beverage Control of the City of Rahway, for premises at 1439 Irving Street, Rahway, New Jersey, be and the same is hereby suspended for a period of three (3) days, commencing at 2:00 A.M. October 26, 1942, and concluding at 2:00 A. M. October 29, 1942; and it is further

ORDERED, that Employment Permit No. 2467, heretofore issued to Emanuel Shapiro by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 7:00 A.M. October 26, 1942, and concluding at 7:00 A. M. November 20, 1942.

ALFRED E. DRISCOLL,
Commissioner.

2. CANCELLATION PROCEEDINGS - LICENSE ISSUED IN VIOLATION OF LOCAL LIMITATION SUBJECT TO CANCELLATION - LIMITATION IMPOSED BY ORDINANCE BINDING UPON ISSUING AUTHORITY UNTIL AMENDED, REPEALED OR SET ASIDE - LICENSE SURRENDERED TO ISSUING AUTHORITY - PROCEEDINGS DISMISSED.

In the Matter of Proceedings to)
Declare Void License C-20 issued to)
STELLA SUSKOWITZ,)
T/a LIBERTY CAFE,) CONCLUSIONS
for premises located at 79 Whitehead)
Avenue, South River, N. J.)

William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.
George S. Applegate, Jr., Esq., Attorney for Stella Suskowitz.

BY THE COMMISSIONER:

Notice was duly served upon Stella Suskowitz to show cause why License C-20, issued to her for the year 1942-43 by the Borough Council of the Borough of South River, should not be cancelled and declared null and void and all operations thereunder terminated on the ground that the license was granted in violation of Section 1 of an Ordinance adopted by the Borough Council of the Borough of South River on February 9, 1942, and providing as follows:

"The number of plenary retail consumption licenses outstanding in the Borough of South River at the same time shall not exceed twenty-one, provided, however, that nothing herein contained shall prevent the renewal of plenary retail consumption licenses outstanding upon the adoption of this ordinance or the transfer of such licenses and the renewal of licenses so transferred."

At a meeting held on July 13, 1942, the Borough Council granted plenary retail consumption license C-20 to Stella Suskowitz, to become effective July 14, 1942, for premises located at 79 Whitehead Avenue, South River, New Jersey. During the license year 1941-42, License C-20 was held for the same premises by one Nicholas Wiazevich. The Wiazevich license, in the absence of any renewal or transfer, expired on June 30, 1942.

It is the contention of counsel for Stella Suskowitz that the issuing authority, in deliberating over his client's application, did not consider the applicant as a new licensee, but considered only the premises. This contention is based upon the fact, already noted, that the Wiazevich license was for premises at 79 Whitehead Avenue; and further, that Stella Suskowitz had formerly, for a period of two years, held a license for the same location. Despite these representations and recognizing that Council members may have been thinking primarily of the premises rather than of the applicant, the license granted on July 13, 1942 was nevertheless clearly a new license.

On July 13, 1942, when Council granted the license in question, there were thirty-eight plenary retail consumption licenses outstanding in South River. Since the ordinance plainly contemplated that no new plenary retail consumption license could be issued unless and until the number outstanding became fewer than twenty-one, License C-20 for the year 1942-43 was issued improperly. An ordinance, until repealed or set aside, is binding upon the action of the governing body. Franklin Stores Co. v. Belleville, Bulletin 102, Item 2, and cases therein cited; see also Bachman v. Phillipsburg, 68 N. J. L. 552; 53 Atl. 620 (Sup. Ct. 1902). So long, therefore, as the limitation ordinance remained operative, the Borough had no jurisdiction lawfully to issue the new license applied for. Duffield v. Allenhurst, Bulletin 236, Item 12.

Section 36 of the Alcoholic Beverage Control Act (R. S.33:1-39), empowering the Commissioner to make "such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this act", furnishes express authority for the instant proceeding and the finding pursuant thereto that License C-20 issued to Stella Suskowitz for premises at 79 Whitehead Avenue, South River, shall be cancelled. Under the present circumstances, however, a different finding is indicated.

In a letter to the Commissioner, dated October 14, 1942, the Clerk of the Borough of South River advised that:

1. Stella Suskowitz had surrendered to him on October 13, 1942, License C-20 which was issued on July 14, 1942;

2. The Borough Council, at a meeting held on October 13th, issued to Stella Suskowitz another license (C-41), to become effective October 14, 1942;

3. The fee paid to the municipality by Stella Suskowitz for said license C-41 was $256.41; and

4. That there were no objections filed with the Clerk against the granting of this license.

Accordingly, it is, on this 16th day of October, 1942,

ORDERED, that the present proceeding be and is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION INSIGNIA MUST BE AFFIXED TO VEHICLE FOR WHICH IT IS ISSUED - WHOLESALE LICENSEE MAY NOT SELL ALCOHOLIC BEVERAGES TO CONSUMER - TRANSPORTATION FOR PERSONAL CONSUMPTION IN EXCESS OF PERMISSIBLE AMOUNT RENDERS VEHICLE AND BEVERAGE SUBJECT TO FORFEITURE - APPLICANT FOR REMISSION OF FORFEITURE MUST ESTABLISH HIS GOOD FAITH AND UNWITTING VIOLATION - ALCOHOLIC BEVERAGES AND VEHICLE DECLARED UNLAWFUL PROPERTY - BOND GIVEN BY LICENSEE TO SECURE RETURN OF SUCH PROPERTY ENFORCED.

In the Matter of the Seizure on January 9, 1942 of a DeSoto sedan and 14 quart bottles of Carstairs White Seal Blended Whiskey and 6 - 1/5 gallon bottles of John Begg Blue Cap Scotch found therein, at or near the intersection of Central Avenue and Golden Street, in the City of Newark, County of Essex and State of New Jersey.	ON HEARING CONCLUSIONS AND ORDER

David Stoffer, Esq., for Frazer, Stoffer and Jacobs, Esqs., Attorneys for G. Loewus & Co., Inc.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, of the Revised Statutes, to determine whether certain seized property, consisting of a DeSoto sedan and fourteen quart and six 1/5 gallon bottles of whiskey, constitutes unlawful property, and whether I should proceed to enforce the obligation of a certain bond given to secure the return of the sedan and liquor to G. Loewus & Co., Inc.

At the statutory hearing held at this Department it was established that on January 9, 1942, A.B.C. agents seized the car and whiskey from Joseph Hudes because there was no transportation insignia affixed to the vehicle. At the time of the seizure, Hudes at first stated that he was on his way to deliver the whiskey to a retail licensee for his employer, G. Loewus & Co., Inc., a plenary wholesale and winery licensee of this State. However, when the agents pointed out to him that the direction in which he was driving was not towards the retailer's licensed premises, he confessed that the whiskey was fictitiously consigned to the retailer; that actually he was taking it home. He claimed that he intended to give away some of the whiskey and keep the balance for his own use.

After the seizure and pending the present proceedings, G. Loewus & Co., Inc., which leased the DeSoto sedan from its President, Michael M. Weiss, who is a brother of Hudes, obtained the return

of the car and whiskey on posting in its stead a surety bond with this Department, pursuant to R. S. 33:1-66(a).

The whiskey was taken from the licensed premises of G. Loewus & Co., Inc. and was being transported in a vehicle leased to said licensee. Hence, it would appear that such transportation is governed by the law concerning delivery of alcoholic beverages by a licensee. R. S. 33:1-28; State Regulations No. 16, Rule 6. Under this section and rule, the licensee is not permitted to transport alcoholic beverages in its vehicle unless a transportation insignia is affixed to such vehicle. On the other hand, if it is argued that the whiskey was not being transported for the licensee but by Hudes in his individual capacity, he could not transport more than twelve quarts of whiskey, even for personal consumption, without first obtaining a permit from this Department. R. S. 33:1-2. He did not have such permit. Hence, in either event, the whiskey was being transported unlawfully. It therefore follows that the whiskey and the motor vehicle are subject to forfeiture. R. S. 33:1-1(i); R. S. 33:1-66.

However, G. Loewus & Co., Inc. claims that the violation was not intentional and requests that it be relieved of forfeiture in the case (R. S. 33:1-66(e)) and that enforcement of the bond be waived.

Mr. Weiss, President and holder of most of the stock of the corporate licensee, states that an insignia had been obtained for the car; that he was unaware that it was not properly displayed thereon when he gave his brother permission to use the car; and further, that his brother concealed from him the fact that he billed the liquor to one of licensee's customers but actually took it for his own use.

While it appears that an insignia had been issued for the vehicle, such insignia, with Mr. Weiss' knowledge, was not affixed to the vehicle but was mounted on a small sheet of metal. Insignia must be attached to and used only on the vehicle for which it is issued. It appears from the evidence that two days before the seizure, this loose insignia on a metal plate was picked up from the floor of one of licensee's trucks by our agents and turned in to this Department. This occurrence was known to licensee's general manager and shipping clerk, but Mr. Weiss claims that they did not report it to him. It seems doubtful that his subordinates failed to call his attention to so serious a matter.

Moreover, the offense in question is an aggravated one, in that the unlawful transportation is coupled with the unlawful sale of the whiskey to a consumer. This is an independent violation which renders the whiskey illicit and subjects it and the motor vehicle to seizure and forfeiture. R. S. 33:1-1(i). The gist of this offense is that G. Loewus & Co., Inc. is not authorized to sell alcoholic beverages to its employees or, for that matter, to any other consumer. To circumvent this restriction, Hudes made an arrangement with a retail licensee to bill him for alcoholic beverages which actually were not ordered by or delivered to such retailer. Instead, Hudes diverted the alcoholic beverages to his own use and paid the retailer for them; the retailer, in turn, paid the licensee. Hudes testified that he had four or five such transactions in December. Mr. Weiss admits that he knew of this method of obtaining liquor from a wholesaler for personal consumption, but denies that his concern ever acquiesced or participated in such a transaction.

I am not impressed with Mr. Weiss' effort to shift to his brother the responsibility for unlawfully obtaining this whiskey for personal consumption. Actions are more forceful than words and Mr. Weiss' actions subsequent to the return of the car to his concern upon filing of the bond clearly demonstrates his utter disregard both for the requirements concerning insignia and the prohibition of sales by the licensee to consumers.

On the very day the car was returned to the licensee, and while it still had no insignia affixed, Mr. Weiss personally violated the law by transporting alcoholic beverages falsely billed to a retailer but actually intended for his own use, thus duplicating the offense for which the car was originally seized. Indeed, Mr. Weiss testified that he requested another brother, also employed by licensee, to give him the name of the retail licensee who could be billed for the liquor. Actually, Weiss brought this liquor home and donated some of it to his brother as a wedding gift and kept the balance for his own use.

When this was disclosed at the hearing, Weiss gave the excuse that he made more than one trip in order to transport less than twelve quarts at a time, presumably to come within the permissive quantity which a person is allowed to transport for personal consumption in an unlicensed vehicle. He could not, of course, give any reason for diverting the licensee's liquor to his own use. He merely stated that he knew that a "wash" sale to a retailer was the only way it could be accomplished.

In the face of this conduct by the licensee's executive officer, it is clear the licensee has not established that it acted in good faith and unknowingly violated the provision of the law. Since this is the only ground upon which I am authorized to remit forfeiture, I cannot waive enforcement of the bond.

Consequently, I shall enforce the obligation of the parties to the bond to pay to the Commissioner for the use of the State the full retail value of the DeSoto sedan and the liquor.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that the same be and is hereby forfeited in accordance with the provisions of R. S. 33:1-66; and it is further

ORDERED, that the application of G. Loewus & Co., Inc. to be relieved from its obligation of the bond be and the same is hereby denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: October 16, 1942.

SCHEDULE "A"

14 - quart bottles of Carstairs White Seal Blended Whiskey
6 - 1/5 gallon bottles of John Begg Blue Cap Scotch
1 - DeSoto sedan, Engine No. 88-44868, 1941 N. J. Registration No. XJ 6996

4. APPELLATE DECISIONS - TURNER AND KAUFFMAN v. KEANSBURG, SHEEHAN AND ANDREACH (CASE #1).
TURNER AND KAUFFMAN v. KEANSBURG, SHEEHAN AND ANDREACH (CASE #2).

Case #1
WILLIAM TURNER, JR. and GEORGE KAUFFMAN,

Appellants,

-vs-

MUNICIPAL COUNCIL OF THE BOROUGH OF KEANSBURG, JEREMIAH SHEEHAN and BENJAMIN ANDREACH,

Respondents

Case #2
WILLIAM TURNER, JR. and GEORGE KAUFFMAN,

Appellants,

-vs-

MUNICIPAL COUNCIL OF THE BOROUGH OF KEANSBURG, JEREMIAH SHEEHAN and BENJAMIN ANDREACH,

Respondents

CONCLUSIONS AND ORDER

Parsons, Labrecque & Borden, Esqs., by Theodore D. Parsons, Esq. and Edmund J. Canzona, Esq., Attorneys for Appellants.
John M. Pillsbury, Esq., Attorney for Respondent, Municipal Council of the Borough of Keansburg.
Edward F. Juska, Esq., Attorney for Respondents, Jeremiah Sheehan and Benjamin Andreach.

BY THE COMMISSIONER:

These two appeals are respectively from the issuance of a plenary retail consumption license to respondents, Sheehan and Andreach, for the fiscal year 1941-42, and from the renewal of said license for the present fiscal year. The premises in question, known as 69-71 Carr Avenue, Keansburg, are located at the southwest corner of Carr Avenue and Center Avenue, in the Borough of Keansburg.

Appellant, William Turner, Jr., is the Mayor of the Borough of Keansburg, and appellant, George Kauffman, is the holder of a plenary retail consumption license for premises known as 67 Carr Avenue, on the northwest corner of Carr Avenue and Center Avenue, Borough of Keansburg.

Appellants allege that the license was improperly granted and renewed because:

(1) it would add to traffic congestion;
(2) it would increase fire hazards;
(3) it would be contrary to the adopted policy of respondent against the issuance of such licenses for places of business on opposite corners in said Borough; and
(4) it would be against the health, welfare and morals of the citizens.

As to (1) and (2): Carr Avenue is one of the principal business streets of the borough. It is approximately 40 feet in width from curb to curb. Seven or more side streets which run into it or across it, including Center Avenue, are 20 feet in width from curb to curb. There is no doubt that during the summer season there is a large amount of traffic on Carr Avenue and that some of this traffic leaves Carr Avenue at its intersection with Center Avenue and proceeds westerly along Center Avenue to Ideal Beach and other points. In 1939 the Police Department prohibited parking on the southerly side of Center Avenue and on the southerly side of each street which runs into or intersects Carr Avenue. This regulation has been enforced since 1939. The parking regulation referred to above eliminates parking on the side of the premises occupied by Sheehan and Andreach. A fire hydrant located on Carr Avenue in front of their building effectively prevents parking in front of the premises. The municipality has installed a traffic light at the intersection of Carr Avenue and Center Avenue. The building occupied by the licensees appears to be a modern one-story structure.

The Borough Manager and the Chief of Police testified that since the license was granted there have been no traffic problems at this intersection. The traffic situation appears to be well controlled at the present time and, in view of the modern character of the licensed building, I fail to see how the issuance of the license could be said to increase the fire hazard. The Fire Chief of the borough testified that the fire hazard would not be increased. Neither the first nor the second reason alleged in the petition is sufficient to warrant reversal.

As to (3): Mayor Turner alleges that prior to 1937 respondent adopted a policy of permitting only one licensed place at any intersection on Carr Avenue. He voted against issuance and renewal of this license because, aside from the question of traffic and fire hazard, he contends that this policy continues in existence and bars the issuance and renewal of the license. He refers to the action of the Commissioner, on June 25, 1937, in upholding denial of a transfer to one John Palmarozza because of the existence of such a policy. Palmarozza v. Keansburg, Bulletin 190, Item 10.

The respondent body consists of the Mayor and Commissioners Martin and Fallon. Each of its three members has a right to vote. While the Mayor voted against the issuance and renewal of the license, the two Commissioners voted in favor of the issuance and renewal thereof. The membership of respondent body has not changed since the decision was rendered in the Palmarozza case.

Commissioners Martin and Fallon apparently do not agree with the Mayor as to the exact extent of the policy adopted in 1937. They contend that it was their understanding that the policy would apply only to those cases where the existence of licensed premises on opposite corners would create fire hazards or traffic jams. The conclusions in the Palmarozza case show that the policy was then adopted to alleviate the parking problem which now appears to have been corrected by the parking regulations adopted in 1939. The testimony in the Palmarozza case also tends to confirm the Commissioners' understanding of the policy. Thus, in the Palmarozza case, Commissioner Martin, after testifying that he agreed with the general policy of prohibiting more than one licensed place at any intersection of Carr Avenue, testified as follows:

"And that is the only reason that the transfer was refused, together, of course, with the condition and appearance of the premises, which is an added factor? A. Yes."

Commissioner Fallon, in the same case, after testifying that he agreed with the general policy, then stated:

"And this saloon was right across the way and there was only 20 feet street there and that certainly would have caused a lot of traffic jams on that corner."

While it is true that the Palmarozza transfer was sought for premises on Carr Avenue only three blocks away, it does appear from the record in that case that the building for which the transfer was sought was old and dilapidated, thus creating a fire hazard, and that there were then no regulations as to parking on side streets.

There is no evidence that either Commissioner Martin or Commissioner Fallon was improperly motivated in reaching their decisions in these cases. The Mayor voted for denial because of his sincere belief that his was the proper construction to be placed upon respondent's prior policy. The two Commissioners apparently did not believe that the Mayor's construction of the policy was correct. So far as I can ascertain from the testimony, the two Commissioners reached the conclusion that since no traffic or fire hazard would be created by the issuance of this license, the general policy would not apply to this case. A change in policy by the same members of respondent body must be carefully considered. Northend Tavern, Inc. v. Northvale, Bulletin 493, Item 5; Taylor v. South River and Duttkin, Bulletin 520, Item 4. However, I am not convinced that there was, in fact, a change in policy in this case. At most, there appears to have been a disagreement between the three members as to the circumstances under which the general policy would apply.

This case illustrates the difficulties which may arise when an alleged municipal regulation is not set forth in the form of an ordinance, as provided in P. L. 1939, c. 234. It has been the general practice of this Department to support a municipal policy even if it was not expressed in the form of a resolution or ordinance provided the policy was reasonable and uniformly applied. However, the local policy should, if possible, be set forth in an ordinance in order that there may be no dispute as to the existence and the meaning of the policy. It appears from the evidence herein that there were eight licensed places on Carr Avenue in June 1937; there were only six licensed premises on that avenue when the present license was granted. I conclude that the question as to whether this license should be issued and renewed was within the sound discretion of respondent and that appellants have not sustained the burden of showing that the majority of respondent's members abused their discretion in voting to issue and renew the license.

As to (4): There is no evidence that the issuance and renewal of the license would be contrary to the health, welfare and morals of the citizens of the borough. Hence I shall affirm the action of respondent in issuing and renewing the license considered herein.

Accordingly, it is, on this 16th day of October, 1942,

ORDERED, that the appeals herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - PERMITTING ALIEN HOLDER OF EMPLOYMENT PERMIT TO SELL ALCOHOLIC BEVERAGES IN VIOLATION OF R.S. 33:1-26 AND STATE REGULATIONS NO. 11 - AGGRAVATING CIRCUMSTANCES - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

DISCIPLINARY PROCEEDINGS - SALE AND SERVICE BY ALIEN PERMITTEE CONTRARY TO CONDITIONS OF EMPLOYMENT PERMIT IN VIOLATION OF R. S. 33:1-26 - PERMIT REVOKED.

In the Matter of Disciplinary Proceedings against

ROSARIO MOTTA,
394-396 W. Laurel Street,
Bridgeton, N. J.,

Holder of Plenary Retail Consumption License C-6 issued by the City Council of the City of Bridgeton.

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In the Matter of Disciplinary Proceedings against

VENANCE HARRY HAMIDY,
1 Grant Street,
Bridgeton, N. J.,

Holder of Employment Permit No. 1365 issued by the State Commissioner of Alcoholic Beverage Control.

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CONCLUSIONS AND ORDER

Philip L. Lipman, Esq., Attorney for Defendant-Licensee and Defendant-Permittee.

Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has pleaded non vult to a charge of permitting his employee, Venance Harry Hamidy, an Italian alien, who holds an employment permit for a person disqualified by reason of non-citizenship, to sell alcoholic beverages, in violation of R. S. 33:1-26 and Rule 1 of State Regulations No. 11. The defendant-permittee has pleaded non vult to a charge of selling and serving alcoholic beverages contrary to the condition upon which his employment permit was issued and in violation of R. S. 33:1-26. Both proceedings will be treated and disposed of herein since they arose out of the same transaction.

It is admitted that Hamidy acted as a regular bartender for the licensee for the past several years, despite the fact that the employment permits issued to him were expressly conditioned that the permittee shall not "serve, sell or solicit the sale....of any alcoholic beverages." If the violation were unwitting or merely an isolated one, I would, in line with the usual penalty for such type of infraction, suspend the license for five days, less two days for the guilty plea. However, where, as here, the licensee was aware of the non-citizenship of the employee, and nevertheless allowed such employee to act as a regular bartender over an extended period of time in direct contravention of the express language of the regulations and the employment permit, a penalty of ten days is warranted. Cf. Re Fromm, Bulletin 500, Item 8. By reason of the guilty plea, five days of such penalty will be remitted, leaving a net suspension against the licensee of five days.

The permit applications executed by Hamidy all state, in answer to the question therein requiring the permittee to state fully the nature of his duties, that he was to be employed as a delivery clerk. It is clear that Hamidy was fully aware that his alienage barred him from acting as a bartender. Because of such deliberate disregard of the restriction against his selling or serving alcoholic beverages, the false statements contained in his employment applications, and the further fact that Hamidy has advised me in writing that "it is perfectly satisfactory for your Department to revoke the permit previously issued to me as I do not intend to work in an establishment where alcoholic beverages are dispensed", his permit will be revoked.

Accordingly, it is, on this 20th day of October, 1942,

ORDERED, that Plenary Retail Consumption License C-6, heretofore issued to Rosario Motta by the City Council of the City of Bridgeton, for premises 394-396 N. Laurel Street, Bridgeton, be and the same is hereby suspended for a period of five (5) days, commencing October 26, 1942, at 12:01 A.M. and concluding October 31, 1942, at 12:01 A.M.; and it is further

ORDERED, that Employment Permit No. 1565, heretofore issued to Venance Harry Hamidy by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

6. ELIGIBILITY - FACTS EXAMINED - REPEATED CONVICTIONS OF ATROCIOUS ASSAULT AND BATTERY - CRIMES FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

October 21, 1942

Re: Case No. 464

On October 8, 1935 applicant was arrested and charged with assault and was sentenced to the Essex County Jail. On December 25, 1937 he was found guilty of atrocious assault and battery and sentenced to six months in the Essex County Penitentiary. On March 11, 1938 he was found guilty on two charges of atrocious assault and battery and malicious mischief and was sentenced to two terms of six months in the Essex County Penitentiary, the terms to run concurrently. On July 10, 1941 he was arrested as a disorderly person for annoying a woman in a public park and spent forty days in jail in lieu of a $20.00 fine. On November 16, 1941 he was arrested as a disorderly person and was sentenced to six months in the Essex County Penitentiary.

In view of these repeated arrests and convictions, applicant's apparent propensity for constantly getting into trouble and his utter disregard for law and order, I believe the three convictions of the crime of atrocious assault and battery involve the element of moral turpitude. See Re Case No. 324, Bulletin 407, Item 4.

It is recommended that application for employment permit be denied and that applicant be advised that he is ineligible to hold a liquor license or be employed by a liquor licensee in the State of New Jersey.

Herbert F. Myers, Jr.,
Legal Assistant.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

7. ELIGIBILITY - FACTS EXAMINED - CRIME OF ASSAULT AND BATTERY FOUND NOT TO INVOLVE MORAL TURPITUDE - APPLICANT, AN ALIEN, HELD ELIGIBLE FOR LIMITED EMPLOYMENT BY LICENSEE PURSUANT TO PERMIT.

October 22, 1942

Re: Case No. 465

Applicant pleaded guilty to the charge of assault and battery and was sentenced on October 7, 1937 to serve eighteen months to two years in the State Prison. Shortly after being received at the prison, he was transferred to the Leesburg Farm, where he remained until he was paroled on December 2, 1938.

At the hearing, applicant testified that, prior to his arrest, he had boarded with a young married couple for about three years and that his arrest and conviction arose out of a quarrel with the young woman. She called him insulting names. He, being much older than she and of the "old school", slapped her face twice because he considered this grossly disrespectful to a man of his age. Our independent investigation tends to corroborate his story.

I find no aggravating circumstances and hence conclude that this single conviction of assault and battery does not involve moral turpitude.

It is recommended that the applicant be advised that he is not disqualified by statute from being employed by a liquor licensee in this State. It should be noted that, since applicant is an Italian national, the employment permit for which he has applied will not permit him to handle, sell or serve alcoholic beverages.

Herbert F. Myers, Jr.,
Legal Assistant.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

8. HOURS OF SALE - THE SALE AND SERVICE OF ALCOHOLIC BEVERAGES TO MEMBERS OF THE ARMED FORCES - HEREIN OF A MUNICIPAL CURFEW WITH RESPECT THERETO.

October 22, 1942

Michael Vanore,
Chief of Police,
Fair Lawn, N. J.

Dear Chief Vanore:

I have before me your letter of September 19th, in which you ask four specific questions on the effect of a "ruling" made September 18th, when Police Commissioner John J. Kriesmer called together the Borough's retail liquor licensees.

It is difficult to answer your questions without greater knowledge of what happened at the meeting. All that we have to go on is your statement that: "The purpose of the meeting was to request the licensees to refuse to serve members of the armed forces who appeared intoxicated, and for them to request said persons to leave their place of business after the hour of 11:00 o'clock P.M."

It may be that there is no police order or police regulation in this matter, but merely an informal request followed by a cooperative agreement or understanding between the licensees and your Police Commissioner. If that is true, the negotiations at the September 18th meeting would appear to have no enforceable effect.

Assuming, however, that Commissioner Kriesmer's action amounted to a police order, regulation or "ruling", it would appear to be unenforceable as too indefinite. The licensees affected would have no clear notion of what they may be required to do, or not to do. I understand, of course, that it is this very vagueness of the "ruling" that prompted the questions in your letter.

If you are contemplating a police regulation or ordinance that may be sufficiently precise, then taking your questions in order, I should comment in the following manner:

> "A. What effect would the ruling have in respect to commissioned or non-commissioned officers, who might be accompanied by a member of their family?"

The expression "members of the armed forces" means all such members, including commissioned and non-commissioned officers. If officers are not to be affected, they should be expressly excepted, though that would seem to be an unwarranted discrimination, and hence poor policy.

Further, the language "members of the armed forces" places too heavy a burden upon the licensees, and therefore should preferably read: "persons in the uniform of the armed forces."

I am not sure of your thought as to an officer who is accompanied by a member of his family. If a man is apparently intoxicated he should not be served with liquor irrespective of whether he is in a uniform or attending a family reunion. And if all soldiers and sailors must leave the licensed premises at 11:00 o'clock except those accompanied by a member of their families, I suspect an epidemic of "sisters", "brothers", "wives", "cousins" and even an occasional and convenient "aunt" thrown in for good measure. The bona fides of these relationships would be up to the poor licensee.

> "B. What effect would the ruling have respecting officers and men from foreign countries?"

Several states and cities have established a curfew for military and naval personnel, and in every instance the regulation applies to persons in the uniform of the armed forces of the United States -- with no mention of those wearing the uniform of a foreign country. Waiving all questions of jurisdictional authority, reasons for not including foreign officers and men seem obvious.

> "C. What effect would the ruling have in cases where the licensee was engaged in serving meals, as in hotels or restaurants?"

There can certainly be no intention to authorize the service of liquor to intoxicated persons (see State Regulations No. 20, Rule 1). There may, however, be a nice question of local policy as to whether the 11:00 o'clock curfew should apply in hotels and bona fide restaurants.

> "D. Would this ruling also include those licensees selling bottled goods and not offering for sale - liquor for consumption on the premises, regardless of their associated side lines, such as drug stores, ice cream stores, delicatessen stores, etc.?"

As you state the "ruling", it would apply to all retail licensees. If it is desired to except off-premises licenses, that would have to be done expressly.

Generally speaking, regulations of the type herein discussed are best handled by ordinance, with an eye to reasonableness, enforceability, and the public policy to be put into effect.

If there are further questions, please do not hesitate to call upon us.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

9. LICENSEES - WAR EFFORT -- POSTING BULLETINS WARNING AGAINST "LOOSE TALK."

October 26, 1942

TO ALL RETAIL LICENSEES:

The Department of Alcoholic Beverage Control in this State has entered into an agreement with the Office of War Information whereby, from time to time, posters warning against dangerous war gossip will be forwarded to all retail licensees. The first of these posters will be forwarded to you in the near future.

Upon receipt of the poster, you are directed to immediately post the same in a prominent position and to continue its display until a new poster is received, at which time the new one is to be posted in place of the old one.

It is anticipated that all licensees will be more than anxious to cooperate with the Office of War Information and this Department in the elimination of "loose talk." The strategic position of New Jersey and the important role its citizens are playing in the war effort makes it imperative that promiscuous gossip with respect to war activities be eliminated. The record demonstrates that "loose talk" is dangerous! Enemy agents are constantly on the alert for vital information. Frequently this information is pieced together by eavesdroppers who have listened in on unguarded conversations.

"Loose Talk" may result in the loss of lives. You will help the American cause by the control of war gossip.

ALFRED E. DRISCOLL,
Commissioner.

10. FAIR TRADE - NOTICE OF PUBLICATION - 1942 FEDERAL TAX INCREASE TO BE INCLUDED.

In order that you may adjust the minimum resale prices of your products to include Federal excise taxes which are effective November 1, 1942, it is my decision that a complete new publication of minimum resale prices, pursuant to Fair Trade rules (Regulations No. 30) shall become effective on Monday, November 9, 1942.

The publication will combine all the prices into one complete book superseding the May 1942 publication and the succeeding supplements of August and September now in force.

In submitting price lists to this Department, bear in mind the Federal General Maximum Price Regulations which establish a ceiling at top prices prevailing in March 1942. Accordingly, unless you have specific permission from the OPA to do otherwise, your new prices will be no higher than those now appearing in current minimum resale price publication or supplements, plus the addition of the Federal 1942 excise tax affecting the items.

Listings must be submitted in the following form:

Brand	Size	Base Price*	1942 Federal Tax Increase	Minimum Consumer Price Including 1942 Federal Tax Increase

Permissible discount of _____% on case lot purchases to be applied to base price exclusive of new Federal tax.

*"Base Price" means price exclusive of 1942 Federal tax increase.

The form indicated above shall also apply to new items submitted for listing and not presently under protection of Fair Trade Regulations.

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New items and changes in old items must be filed at the offices of this Department not later than Friday, October 30, 1942. It is requested that:

(1) Complete schedule of all items for which price maintenance is desired, including those presently listed, should be submitted. Any items not submitted will be considered withdrawn.

(2) If no change in brand name or description is made of items presently subject to price maintenance, list those items exactly as they appear in the pamphlets or official bulletins.

(3) Indicate by appropriate notation the new items which will be scheduled for the first time, and those items in which a change in brand name or description is made.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to retail licensees.

Unless you advise me in writing, on or before October 30, 1942, that you agree to pay your share of the cost of such complete publication, it will be deemed that you are not desirous of participating therein. In such case, your products will be withdrawn from the Fair Trade price list, and will no longer be subject to protection and enforcement by this Department.

Alfred E. Driscoll
Commissioner.

Dated: October 23, 1942.