

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

BULLETIN 530

OCTOBER 2, 1942

1. HOURS OF SALE - THE NEED FOR UNIFORMITY - MUNICIPALITIES IN THE VICINITY OF MILITARY POSTS CALLED UPON TO ADOPT EARLIER CLOSING HOURS - HEREIN OF THE WAR EFFORT AND THE LICENSED PRIVILEGE.

September 24, 1942.

TO THE GOVERNING BODIES OF ALL MONMOUTH COUNTY MUNICIPALITIES:

In Monmouth County's fifty-one municipalities, the local regulation of hours during which liquor sales are prohibited varies beyond all reasonable expectation. Certain of the municipalities are wide open - without any prohibited hours; while others, in fixing the hour after which liquor may not be sold, range all the way from 12:00 midnight to 5:00 a. m.

Normal peace-time experience has demonstrated, without question, that many of the worst and most troublesome disorders occur at those late-closing places toward which early morning drinkers seem inevitably to gravitate. In the present war emergency, the need for earlier closing hours is more obvious and more urgent than ever before.

The closing hour problem has recently been brought into sharper focus by local situations that have developed in your County. Military and naval personnel are being stationed there in increasing numbers. As public officials sharing the responsibilities of effective liquor control, we must cooperate whole-heartedly with the military and naval authorities. In this regard, and recognizing our job as one clearly related to the vigorous and successful prosecution of the war, we should place no obstacle in the way of those in command of our armed forces. I believe, however, that experience will show it to be unwise for civilian authorities (except when so requested by commanding officers in the area), to require that sales to men in uniform shall stop at an earlier hour than sales to civilians. It has been suggested that such special curfews do not aid morale; and that if soldiers and sailors must leave licensed premises at a certain time, civilians should be willing to leave at the same time.

In view of the foregoing statements, I call upon you in each of the Monmouth municipalities to adopt ordinances fixing the hour when the sale and service of alcoholic beverages must stop at not later than 2:00 a. m. - an earlier hour would be even better. More specifically, I am suggesting that liquor shall not be sold or served in your municipalities between 2:00 a. m., or such earlier hour as you may fix, and 6:00 a. m. (or 7:00 or 8:00 a. m.) of any day; except that the Sunday opening hour should not be earlier than 12:00 noon or 1:00 p. m., or sales might be prohibited all day Sunday. In addition to the hours of sale provision, I am suggesting a provision to the following effect: "During the hours sales are prohibited, the entire licensed premises shall be closed." Without such a closing hour clause, proper enforcement has been, and will remain, not only extremely difficult but virtually impossible. If it is thought proper and desirable, an exception from the closing hour requirement may be made for bona fide restaurants and hotels. In excepting restaurants, the definition used should be that contained in R. S. 33:1-1(t): "An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted." This Department stands ready to assist in matters of language and form of the proposed ordinances.

I realize that the regulation of hours of sale has been considered primarily a matter for local determination based upon the policy favored in each separate municipality. The urgent request now being made is prompted by the special circumstances we now face; and will be applied not only to Monmouth but to other regions of the State where problems of vital military and defense areas are similar to those in your County. You are undoubtedly familiar with the fact that in a number of municipalities in various seaboard states, the military authorities have insisted upon a much earlier curfew. This curfew has been applicable to civilians as well as to men in uniform. It is suggested that unless immediate action is taken by the various municipalities adjacent to areas where there are substantial numbers of troops in this State, more drastic action may be anticipated by outside authorities.

I am counting upon your understanding the spirit and purpose of my request, and upon your sincere and unselfish cooperation. I shall appreciate it if you will give the matter your promptest consideration. Please advise me of the action taken or contemplated in view of the request made herein.

ALFRED E. DRISCOLL,
Commissioner.

2. HOURS OF SALE - COOPERATION BETWEEN CIVILIAN AND MILITARY AUTHORITIES - HEREIN OF DISCRIMINATION BETWEEN MEN IN UNIFORM AND CIVILIANS.

September 8, 1942

Charles Frankel, Esq.,
City Solicitor,
Asbury Park, N. J.

Dear Mr. Frankel:

This will confirm our conversation of this morning.

The paramount obligation of every citizen is to assist in every possible way in winning the war. One of the most practical ways of rendering this assistance is to wholeheartedly cooperate with those charged with the responsibility of training, preparing and maintaining our armed forces.

The presence, within your city and Monmouth County generally, of an ever-increasing number of men in uniform makes it imperative that we consider anew the whole problem of alcoholic beverage control, and in particular the question of a proper closing time for licensed premises. You will remember that on April 9th I wrote to the Acting City Clerk expressing my objection to the 5:00 A.M. closing hour.

In times of peace the Department urged, first, the advisability of uniform closing hours, and second, the desirability of an earlier, rather than a later, closing time.

The progress of the war, the training of our armed forces and the part allotted to New Jersey in the whole scheme of things requires that I now direct that all municipalities wherein a substantial number of troops are quartered, as well as those municipalities immediately adjacent thereto, require licensed premises to cease selling alcoholic beverages not later than 2:00 A.M. -- preferably before. All licensed premises, with the possible exception of bona fide restaurants and hotels, should be closed at the same time. In the

case of restaurants and hotels, they may, of course, remain open for business as usual provided alcoholic beverages are not sold or consumed on the premises after the closing hour.

Following a careful review of the situation in Monmouth County, and after having carefully considered the reports which we have received from our Inspectors subsequent to their conferences with various responsible officers, I am of the opinion that this direction with respect to closing time applies in particular to all municipalities in Monmouth County, including Asbury Park. This request is equally applicable to all municipalities throughout the State where a comparable set of facts exists.

I have found municipal officials in Monmouth County cooperative, patriotic and intelligent. I am sure that these municipal officials are fully aware of the problem and are willing to take whatever steps may be necessary under the circumstances. An even earlier curfew may soon be required. It is to be noted that many municipalities in Monmouth County have already wisely chosen an earlier closing hour. It is to be hoped that this problem will be quickly disposed of by municipal action. The successful handling of the problem locally will make embarrassing action by outside agencies unnecessary.

With respect to the suggestion that sales to men in uniform should cease at 12:00 o'clock while sales continue to civilians to a later hour, may I say that I have not looked with favor upon any discrimination between the civilian and the man in uniform. While it is apparent that a certain amount of discrimination is necessary in favor of members of the armed forces in order to insure proper food, transportation, etc., and while in some municipalities, either upon the initiative of the military authorities or with the approval of those in command, earlier closing hours for soldiers are in force, the objections to this arrangement appear to carry considerable force. The morale of our armed forces is not likely to be increased by discrimination in favor of the civilian, even though it is suggested that such discrimination is in the interest of the soldier. It is rather difficult to ask a man in uniform to leave the party while it is in full swing without his feeling just a little put out. If it is wise to close our licensed premises at 12:00 o'clock in so far as soldiers are concerned, then it is equally desirable that they be closed at that time for civilians. I am sure that our licensees and our civilian population are willing to make the same sacrifice that the members of our armed forces are being asked to make.

I would be grateful to you if you would express to the Mayor and his associates my sincere appreciation for their having taken the initiative in reconsidering this very important problem. It is additional evidence of their good citizenship, as well as their desire to promote, in every way possible, the war effort.

All of the municipalities in your County are being requested to take similar action.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

P. S. Our statement with regard to discrimination has reference to those cases where the discriminatory action is initiated by civilian authorities. It, of course, has no application to orders issued by military authorities covering men in the service. It is entirely within the province of the military authorities to take such action as they may deem desirable. Wherever such action is taken, it will receive the wholehearted support of this Department.

3. NEW LICENSES NOT TO BE ISSUED, OR OLD LICENSES TRANSFERRED, IN AREAS ADJACENT TO MILITARY POSTS WITHOUT THE APPROVAL OF THE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL HAVING BEEN FIRST SOUGHT AND OBTAINED.

September 9, 1942

Alfred E. Driscoll, Commissioner,
Alcoholic Beverage Control,
Newark, N. J.

Dear Sir:

At a meeting of the Township Committee of the Township of North Hanover County of Burlington, held on September 4, 1942, _____ came to the meeting and stated to the Township Committee that, until the Village of Pointville, N. J. was taken over by the U. S. Government to add to Fort Dix, he had been operating the _____ Cafe, in Pointville, under License _____ issued to him by the Township Committee of New Hanover Township.

_____ told the Township Committee that he intended to make application for a retail consumption license in North Hanover Township for premises to be located near Wrightstown, N. J.

As one of your inspectors called upon me on September 3, 1942, requesting me to state to the Township Committee that you would like to be notified by the Township Committee of any applications received by them before any action was taken on same, the Township Committee requested me to write you, stating that in all probability they would receive an application from the above named _____ in the near future, so that if there was any action you cared to take in the matter before the application was received you could do so.

Very truly yours,
Harry S. Asay,
Township Clerk.

September 10, 1942

Harry S. Asay, Clerk,
North Hanover Township,
Wrightstown, N. J.

Dear Mr. Asay:

We are grateful to you for your thoughtfulness in writing us under date of September 9th.

The control of alcoholic beverages, and allied problems, in the areas immediately adjacent to army forts and posts in this State is a vital matter. As a result, it has been found desirable to rule that new licenses are not to be issued, or old licenses transferred to new locations, within the area mentioned, without the approval of the Commissioner of the Department of Alcoholic Beverage Control having been first sought and obtained.

We understand from your letter that there is a probability that _____ will apply to the Township Committee for a license within a short time. If and when he does so, will you please advise us as to the proposed location so that we may confer with those in authority at the Post as to the availability of such location.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - LICENSEE CHARGED WITH AIDING AND ABETTING TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT LICENSE OR PERMIT, CONTRARY TO R. S. 33:1-2, IN VIOLATION OF R. S. 33:1-52 - CHARGES DISMISSED FOR INSUFFICIENCY OF PROOF.

In the Matter of Disciplinary
Proceedings against

MORRIS AND ISIDORE SILVERSTEIN,
T/a ACE WINE & LIQUOR STORE,
201-203 First Street,
Hoboken, N. J.,

Holder of Plenary Retail Distribu-
tion License D-13 for the fiscal
year 1941-42, issued by the Board
of Commissioners of the City of
Hoboken, and now holder of Plenary
Retail Distribution License D-17
for the current fiscal year (1942-
43), issued to

MORRIS AND ISIDORE SILVERSTEIN,

for the same premises.

CONCLUSIONS
AND ORDER

Charles Korn, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensees were served with the following
charge:

"On April 26 and 27, 1942, and divers days prior
thereto, you knowingly aided and abetted transportation of
alcoholic beverages in and about the City of Hoboken, N. J.,
by James Spencer and Louis Gordon, without license or per-
mit, contrary to R. S. 33:1-2, in violation of R.S. 33:1-52."

At the hearing the licensees stipulated that the decision
in the matter was to be made upon the basis of the evidence presented
in an affiliate seizure hearing (Seizure Cases #6262 and 6263); that
they did not intend to dispute any inferences of law to be deducted
therefrom.

The charge against the licensees was preferred because
Louis Gordon, one of their customers, had, on a number of occasions,
purchased large quantities of liquor from them and transported such
liquor in his cars without any license or permit; that this resulted
in three separate seizures by Alcoholic Beverage Control agents of
Gordon's cars and liquors, and it was felt that the licensees had
knowingly aided him to violate the law. The details concerning Gor-
don's activities are more fully set forth in an order entered con-
temporaneously herewith forfeiting two of Gordon's cars and the
liquor transported therein.

The licensees' position is (1) that, under the Alcoholic
Beverage Law, they may sell liquor in unlimited quantities to cus-
tomers for personal consumption; (2) that it is not their duty to
make inquiry of their customers as to where or by what means they in-
tend to transport their purchases; and (3) that they did not know or

have any reason to believe that Gordon did transport his purchases illegally and thus violate the law.

It is true that, under the provisions of the Alcoholic Beverage Law, a retailer may sell unlimited quantities of alcoholic beverages to a customer for personal consumption. There is no evidence that defendants knew or had reason to believe that these purchasers intended to resell the alcoholic beverages.

As a general rule, the licensee is not called upon to question his customers concerning transportation of the liquor where the customers take their purchases with them. The licensee has a right to assume that his customers will comply with the law. Of course, as a matter of service and good business, the licensee should apprise those customers who apparently intend to transport their large purchases of liquor in their own cars as to the law governing such transportation. Re Weston & Co., Bulletin 121, Item 1. The licensee will thus effectually cooperate in enforcing the liquor laws and, at the same time, will probably prevent his customers from running afoul of the law.

I have carefully examined the evidence and have come to the conclusion that the Department has not sustained the burden of proof necessary to establish that the licensees knew or had reason to know that Gordon or Spencer intended to transport the liquor illegally, or participated with them in such violation. I therefore find the licensees not guilty.

Accordingly, it is, on this 21st day of September, 1942,

ORDERED, that the charge herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

5. LIMITATION OF NUMBER OF LICENSES SHOULD BE ACHIEVED BY FORMAL ORDINANCE - APPLICATION FOR LICENSE MAY BE DENIED IN ABSENCE OF NUMERICAL LIMITATION IF SUFFICIENT NUMBER ARE OUTSTANDING.

September 22, 1942

Mr. Walter H. Stull,
Clerk of Pemberton Township,
Browns Mills, N. J.

Dear Mr. Stull:

You inform me that under date of February 23, 1938 the Committee asserted and had spread on the minutes of this meeting "That in their opinion there were enough Licenses in the Township and that they would grant no more." You request my opinion whether the Committee can, without an ordinance to that effect, continue this policy and reject new applications based on the fact that this opinion was spread on the minutes and has been the policy of the Township Committee since that time.

The Alcoholic Beverage Law provides that, after July 1, 1937, municipal action limiting the number of licenses is required to be by ordinance. (R. S. 33:1-40). At the same time, it is possible for a local issuing authority to accomplish its purpose of calling a halt without a formal limiting ordinance. The State Commissioner has

sustained municipalities wherein licenses have been denied on the ground that there were already enough in the community, if the policy has been fairly adopted and uniformly applied. See Spezio v. Jamesburg, Bulletin 492, Item 10; Brost v. East Amwell, Bulletin 304, Item 1; Watts v. Princeton, Bulletin 301, Item 2; Goff v. Piscataway, Bulletin 234, Item 5; Widlansky v. Highland Park, Bulletin 209, Item 7; Dunster v. Bernards, Bulletin 121, Item 11; and Haycock v. Roxbury, Bulletin 101, Item 3.

But if there is to be a limitation in practice, I firmly believe that the better procedure is to enact it by formal ordinance and bring it officially into effect. The power exists and as a matter of policy should be exercised in the manner the law prescribes.

The advantages of an ordinance are, of course, apparent. With the limitation expressed in a formal regulation, there will be no misunderstanding or misinterpretation such as might arise from the language contained in the minutes of your Township Committee meeting of February 23, 1938. And there will be no implication that for some special reason one person may be favored with a license and another arbitrarily kept out.

I suggest, therefore, that under the circumstances in the Township as described in your letter, the definitely more desirable course would be to enact the limitation by proper ordinance.

There is a form of limiting ordinance; an exception authorizing the issuance of renewals and transfers; and the reason why the limitation must be imposed with respect to each individual, class of license and not in the aggregate for all classes. Re Sahl, Bulletin 198, Item 11.

I wish to make one earnest request. The Township's 1940 population was 2,386. With 18 plenary retail consumption licenses you have one license to each 132 persons. I submit that by any reasonable standard, that is too many licenses. It is recognized that no two communities have identical needs and circumstances, but recent unbiased studies estimate that in the average one consumption license to each 1,000 persons, or at most to each 750, appears to be adequate.

I am not selecting your Township for special criticism -- the Committee's present policy is commendable. I do urge, however, that the Township Committee consider at this time the fixing of a quota at less than the number of licenses now outstanding, and looking toward a reduction of that number by surrender, revocation or non-renewal. The determination of the quota figure should depend upon what is reasonable and proper in view of present circumstances, the population; the character of the municipality, and public convenience and necessity.

Please give me the thoughts of your Township Committee in the light of this letter. I shall be ready to furnish such further information or proper assistance as may be needed.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - CHARGES DISMISSED FOR INSUFFICIENCY OF PROOF.

In the Matter of Disciplinary
Proceedings against

GEORGE MINTZ,
286-288 - 16th Avenue,
Newark, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-414, issued by the Municipal Board of Alcoholic Beverage
Control of the City of Newark.

Sidney Simandl, Esq., Attorney for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads not guilty to the following charges:

"(1) In your application for a license you falsely answered Question 16 by stating that no one other than yourself had any interest in the business to be conducted under the license, whereas in truth and in fact Harry Mintz was so interested; said false statement being in violation of R. S. 33:1-25.

"(2) From on or about July 1, 1934, and until the present time, you knowingly aided and abetted Harry Mintz, 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."

The pleadings and the testimony presented at the hearing develop a single issue of law and fact. From the testimony it appears that one Harry Mintz held a liquor license in the City of Newark for the 1933-34 fiscal year. In June 1934 his son, George Mintz, the present licensee, applied for a license in his name for the 1934-35 fiscal year for the same premises for which the father had formerly held the license. George Mintz has continued to hold the license up to and including the date of the hearing.

The defendant-licensee testified that he took over the business at the suggestion of his father because of the latter's poor health and that from time to time, out of the profits of the business, he has contributed to the support of his parents and the education of his younger brother. Indeed, it appears from the evidence before me that the rent for the home occupied by the defendant's father and mother was, as a matter of habit, paid by the son from the proceeds of the licensed business. Defendant admits that his father obtained checks drawn on the former's account whenever he was in financial need. Both the father and the licensee vigorously deny that anyone had any proprietary interest in the business other than the licensee. Father and son appear to be equally qualified to hold a license.

While it developed at the hearing that the father had from time to time performed small tasks in the tavern, there is no evidence that he was in fact formally employed by the licensee. The evidence fails to disclose that he tended bar or had any specific hours when he was on the premises. Further, reference to the social security records fails to disclose his name as an employee. Perhaps

even more significant, there is no evidence in the case indicating that the father exercised any control over the business or had any voice in its management.

While the factual question may be a close one, a study of the record leads me to the conclusion that this is a case involving a son with a high sense of loyalty and responsibility to his family. From the conflicting inferences that may be drawn from the testimony I am inclined to accept the one most favorable to the defendant-licensee. The Department having failed to sustain the burden of proof, the defendant must prevail.

While the Department has failed to sustain the burden of proof, it may be well to point out that the defendant-licensee should so conduct his business in the future as to avoid any future suspicion with respect to his observance of the law.

Accordingly, it is, on this 24th day of September, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

7. AUTOMATIC SUSPENSION - R. S. 33:1-31.1 - SALE OF ALCOHOLIC BEVERAGES TO MINORS - LICENSEE PAID FINE OF \$250.00 - LICENSED PREMISES CLOSED FOR 10 DAYS - PETITION TO LIFT GRANTED.

In the Matter of a Petition by)

LLEWELLYN FARMS, INC.,)
Cor. Route 10 and Littleton Road,)
Township of Parsippany-Troy Hills,)
New Jersey,)

ON PETITION
ORDER

To Lift Automatic Suspension of Plenary)
Retail Consumption License C-25 issued)
by the Township Committee of the Town-)
ship of Parsippany-Troy Hills.)
-----)

Edward R. McGlynn, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

After licensee was found guilty on an indictment for selling alcoholic beverages to a minor and, on September 18, 1942, was sentenced to pay a fine of \$250.00, its license was picked up today as a result of its automatic suspension because of said conviction.
R. S. 33:1-31.1.

The petitioner's license was suspended for ten days, effective September 9, 1942, at 7:00 A.M. and terminating September 19, 1942 at 7:00 A.M., by the local issuing authority, for the same violation upon which the indictment and conviction were based.

This case concerns the sale of alcoholic beverages to a girl, aged 18. In view that the licensee has served its ten-day suspension and paid the fine imposed in the criminal proceeding, I conclude that it has been sufficiently punished, and hence I shall lift the automatic suspension of its license.

Accordingly, it is, on this 21st day of September, 1942,

ORDERED, that the automatic suspension of License C-25, issued to Llewellyn Farms, Inc. by the Township Committee of the Township of Parsippany-Troy Hills, be and the same is hereby lifted, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION
CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO
EXERCISE THE RIGHTS AND PRIVILEGES OF A CLUB LICENSE - CLUB LICENSE
USED FOR PROFIT AND GAIN - LICENSE REVOKED.

In the Matter of Disciplinary
Proceedings against

SWIMMING RIVER GOLF CLUB,
N/S Riverdale Avenue,
Shrewsbury Township,
P. O. Red Bank, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-101 for
the fiscal year 1941-42 issued by
the State Commissioner of Alcoholic
Beverage Control.

John C. Rohrey, Pro Se.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The following charges were preferred against the defendant,
a club licensee:

"1. In your application for license dated June 12, 1941 filed with the State Commissioner of Alcoholic Beverage Control upon which Club License CB-101 for the current year was granted, you falsely stated 'No' in answer to Question 30 therein which asks, 'Has any individual.....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 John Rohrey was the true owner of said license and the business conducted thereunder and had such an interest; said false statement being in violation of R. S. 33:1-25.

"2. From on or about July 1, 1937 until the present time, you knowingly aided and abetted John Rohrey, 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."

At the hearing no appearance was made by the defendant, but John Rohrey appeared in his own behalf.

The testimony of Rohrey definitely established that he had organized the defendant golf club for his own personal profit and gain. Rohrey received all the profits from the so-called club as well as from the bar, and shouldered all of the responsibility. Those who used the facilities of the "club", for which they paid a fee, were members in name only.

There can be no doubt that the defendant is guilty of the charges preferred against it. It is apparent that a club license should never have been issued.

The record discloses that the license for the present fiscal year has not been renewed. I find the defendant guilty on both charges, and will revoke its license for the year 1941-42.

Accordingly, it is, on this 22nd day of September, 1942,

ORDERED, that Club License CB-10, heretofore issued to Swimming River Golf Club for premises N/S Riverdale Avenue, Shrewsbury Township, for the fiscal year 1941-42, by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

9. MORAL TURPITUDE - CRIMES OF BREAKING, ENTERING, LARCENY AND RECEIVING, AND ASSAULT AND BATTERY INVOLVED MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST 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.)

CONCLUSIONS
AND ORDER

Case No. 225.
-----)

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualification resulting from the convictions of crime, be lifted pursuant to R. S. 33:1-31.2.

In 1927 and 1928 the petitioner first indicated his wayward tendencies. This leaning toward wrongdoing was manifest by his constant truancy, which was so flagrant that it was necessary for him to be placed in the Newark Parental Home and the Newark City Home on several occasions. In 1933 he was convicted of larceny and was sentenced to one year's probation. During the years of 1932 and 1933 he became involved in a series of serious crimes. During this period he was found guilty of breaking, entering, larceny and receiving; assault and battery and robbery; attempted larceny; and attempted larceny of an automobile. He was sentenced to Annandale Reform School and, after serving time, was released but was later returned for his subsequent offenses. Thereafter he escaped. Upon his return he served considerable time and was finally paroled in 1935. All the crimes of which the petitioner was guilty involved moral turpitude. His fingerprint records do not disclose any arrest or conviction since his release from the Reform School.

At the hearing petitioner produced six character witnesses - a lawyer, his pastor and neighbors, all of whom, with the exception of his pastor, have known him from ten to twelve years and, in most instances, all his life. His pastor testified that, although he has only known petitioner for a year, he has been in position to closely observe petitioner's conduct and knows him to be of good character, and that he now bears a good reputation in his community. All the other witnesses testified that they have known petitioner for a great number of years and knew all his past record. They were, however, of

the opinion that, since 1935, petitioner had lived a normal, law-abiding life and that, in their opinion, his trouble in his youth had come from "keeping bad company." They further testified he no longer associated with the type of people who had gotten him into trouble, and that he was considered and looked upon with great respect in his community as an honest, conscientious, hard-working person.

Apparently petitioner's career of crime was in part the result of having fallen into evil company. It is also evident that he started out at seventeen years of age by being a truant. He then graduated to the class of juvenile delinquent, and later became embroiled in major crimes.

Petitioner testified that, since his parole from Annandale Reform School, he has worked steadily. It appears that he was employed by one concern for a period of five and a half years and only has been unemployed for four or five months during this entire period. The latter the result of illness.

A report from police department of the city in which petitioner resides indicates that there have been no complaints concerning the conduct of petitioner since the last offense was committed and that there are no pending investigations against him.

I therefore conclude that the petitioner committed all his offenses while a youth and that he has now seen the light and, for at least the five years last past, has been a law-abiding and respectable citizen. I am convinced that his regeneracy has been complete, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 24th day of September, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWERS IN LICENSE APPLICATIONS CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary
Proceedings against

MARY CONTESTABLE,
T/a HEIDELBERG,
130 Hudson Street,
Hoboken, N. J.,

Holder of Plenary Retail Consump-
tion License C-37 for the fiscal
year 1941-42, issued by the Board
of Commissioners of the City of
Hoboken; and License C-192 issued
for the current fiscal year to

MARY CONTESTABLE and ERICH FROBEL,
T/a HEIDELBERG,

for the same premises.

CONCLUSIONS
AND ORDER

William J. Miller, Esq., Attorney for Defendant-Licensee.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant-licensee has entered a plea of guilty to the following charges:

"1. In your applications for license dated June 12, 1940 and June 11, 1941 filed with the Board of Commissioners of the City of Hoboken, upon which Plenary Retail Consumption License C-37 was granted to you for the 1940-41 and 1941-42 periods, you falsely stated 'No' in answer to Question 28 therein which asks: 'Has any individual....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 in fact Erich Frobel was so interested as an equal partner in the licensed business; said false statements being in violation of R. S. 33:1-25.

"2. From on or about July 21, 1936 and until June 30, 1939, you knowingly aided and abetted Erich Frobel, a non-licensee, to exercise the rights and privileges of your plenary retail consumption licenses transferred and issued to you and Betty Kelly by the Board of Commissioners of the City of Hoboken for the 1936-37, 1937-38, 1938-39 periods; and from on or about July 1, 1939 and until June 30, 1940 you knowingly aided and abetted Erich Frobel, a non-licensee, to exercise the rights and privileges of your plenary retail consumption license issued to you and Catherine Marston by the Board of Commissioners of the City of Hoboken for the 1939-40 period; and from July 1, 1940 until the present time you knowingly aided and abetted Erich Frobel, a non-licensee, to exercise the rights and privileges of your plenary retail consumption license issued to you by the Board of Commissioners of the City of Hoboken for the 1940-41 and 1941-42 periods; said aiding and abetting being contrary to R. S. 33:1-26, in violation of R. S. 33:1-52."

It appears from the testimony that one Mary Frobels held a license for premises located at 130 Hudson Street, Hoboken, known as the "Heidelberg," until July 7, 1936. On that date the license was transferred to Mary Contestable and Betty Kelly. Mary Frobels is the wife of Erich Frobels, named in the charges as having had at all times an undisclosed interest in the licensed business. Mary Contestable and Betty Kelly appear to have operated the licensed business until June 30, 1939, when Mary Contestable and Catherine Marston secured the license. The latter two continued to operate the business until June 30, 1940, when the defendant, Mary Contestable, secured a license in her individual name. On July 1, 1942, subsequent to the date of the charges but prior to the hearing herein, the license was issued in the names of Mary Contestable and Erich Frobels.

It is admitted by the defendant that, during the entire period from 1936 until June 30, 1942, Erich Frobels was employed on the premises as a bartender and participated in the management of the business. During the period his wife held the license, the two appear to have shared the profits equally. Likewise, Frobels appears to have shared the profits when the license was in the individual name of Mary Contestable. On the other hand, when the license was in the name of Mary Contestable and either Betty Kelly or Catherine Marston, Erich Frobels appears to have had a third interest in the business and the profits. The conclusion is inescapable that Erich Frobels was at all times an undisclosed partner. I find the defendant-licensee guilty as charged.

Notwithstanding his eligibility for a license, Frobels apparently preferred to remain in the background because of alleged marital difficulties.

The unlawful situation was fortunately corrected in the application for the current license.

While the defendant-licensees have escaped the revocation of this license, a substantial penalty must be imposed in view of the persistent and continued character of the defendant's attempt to "beat" the New Jersey law. Licensees, in applying for licenses, are required to make a full and frank disclosure of all material facts.

Although this proceeding was instituted during the last licensing year which expired June 30, 1942, it does not abate but remains fully effective against the defendant's renewal license for the current (1942-43) year. State Regulations No. 15.

Accordingly, it is, on this 24th day of September, 1942,

ORDERED, that Plenary Retail Consumption License C-192, heretofore issued to Mary Contestable and Erich Frobels, t/a Heidelberg, by the Board of Commissioners of the City of Hoboken for the current fiscal year, for premises 130 Hudson Street, Hoboken, be and the same is hereby suspended for a period of twenty (20) days, effective 2:00 A. M. September 30, 1942 and terminating 2:00 A.M. October 20, 1942.

ALFRED E. DRISCOLL,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT ON EXPIRATION OF THIRTY DAYS AND TRANSFER OF LICENSE TO QUALIFIED HOLDER THEREOF - APPLICATION TO RECONSIDER PENALTY GRANTED - PENALTY REDUCED TO TWENTY-THREE DAYS - PETITION TO LIFT AS AFORESAID GRANTED.

In the Matter of Disciplinary)
Proceedings against)

WILLIAM C. MERKLE,)

T/a ROOSEVELT STADIUM,)

Danforth & West Side Aves.,)

Jersey City, N. J.,)

ON PETITION TO LIFT
SUSPENSION

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consump-)
tion License C-549, issued by the)
Board of Commissioners of the City)
of Jersey City.)

-----)
John Drewen, Esq., Attorney for the licensee and
Harry M. Stevens, Inc.

BY THE COMMISSIONER:

On August 15, 1942 I suspended the license of the defendant herein for the balance of its term, effective August 20, 1942, after he had pleaded nolo contendere to charges alleging, in substance, that he was a "front" for Harry M. Stevens, Inc.

In said order it was further provided that if the "front" was fully and properly corrected, leave was given to make application to me to lift such suspension, provided, however, that in no event should such suspension be lifted until at least thirty days thereof had been served. Re William C. Merkle, Bulletin 525, Item 2.

Pursuant to said leave, Harry M. Stevens, Inc., of New Jersey, a recently organized corporation, filed a verified petition on September 8, 1942 wherein it set forth that it had purchased the business formerly conducted by William C. Merkle; that it is qualified to hold a license; that it is not acting for or on behalf of William C. Merkle; and that the Board of Commissioners of Jersey City transferred said license to it.

It appears from such petition and from the Departmental records that the license herein has been transferred to a duly qualified person. However, since the thirty-day period of suspension had not elapsed when the petition was filed, petitioner requested that the penalty be reduced. Its request was influenced by the fact that the licensed premises were in a baseball stadium and patrons of the League "play-off" would be unduly inconvenienced. I immediately considered the matters urged in the petition and re-examined the entire record of the case. I then concluded to grant the relief prayed for by the petitioner, in view of the strong public interest involved, and further, in view that the unlawful situation had been corrected. Hence, on September 12th, when the suspension had already been in force for twenty-three days, I advised the attorney for the petitioner, by telegram, that the suspension was lifted effective immediately, and I am now entering a formal order to that effect.

Accordingly, it is, on this 24th day of September, 1942,

ORDERED, that the suspension heretofore imposed be lifted and that Plenary Retail Consumption License C-549, issued by the Board of Commissioners of the City of Jersey City, be and the same is hereby restored to full force and operation as of September 12, 1942.

ALFRED E. DRISCOLL,
Commissioner.

12. ELIGIBILITY - CRIME OF BREAKING, ENTERING AND LARCENY INVOLVED MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

September 28, 1942

Re: Case No. 458

Applicant has applied for an alien's employment permit.

Applicant's fingerprint record shows that in 1933 he was convicted of breaking, entering and larceny. He testified that, being out of work, he broke into the restaurant of his former employer and stole about \$34.00 from the cash register.

Breaking, entering and larceny is a crime which ordinarily involves the element of moral turpitude. Re Case No. 235, Bulletin 526, Item 8. There is nothing here presented to eliminate that element.

It is therefore recommended that applicant be advised that, by reason of his conviction of a crime involving moral turpitude, he is automatically disqualified, pursuant to R. S. 33:1-26, from working for a liquor licensee in this State, and hence, that his pending application for an employment permit is denied.

Harry Castelbaum,
Attorney.

APPROVED:

ALFRED E. DRISCOLL,
Commissioner.

Alfred E. Driscoll
Commissioner.

New Jersey State Library

NEW JERSEY STATE LIBRARY