

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

BULLETIN 419

AUGUST 16, 1940.

1. DISCIPLINARY PROCEEDINGS - GAMBLING - SECOND AND THIRD OFFENSES -  
15 DAYS ON CONFESSION OF GUILT.

In the Matter of Disciplinary )  
Proceedings against )

LEO FARESICH, )  
T/a Faresich's Bar & Grill, )  
159 - 60th Street, )  
West New York, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-38, issued by the )  
Board of Commissioners of the Town )  
of West New York. )

----- )

Leo Faresich, Pro Se.  
Charles Basile, Esq., Attorney for the State Department of  
Alcoholic Beverage Control.

The licensee has pleaded guilty to a charge that Anthony Faresich, his predecessor in interest, allowed, permitted and suffered gambling, to wit, the accepting and placing of bets on horse races on June 19 and 21, 1940, in violation of Rule 7 of State Regulations No. 20; and that he allowed, permitted and suffered a similar violation on July 5, 1940.

Rule 2 of State Regulations No. 15 provides:

"Any license may be suspended or revoked for proper cause, notwithstanding that such cause arose prior to transfer or extension of the license, or during the term of a prior license held by the licensee or his predecessor in interest."

By virtue of the foregoing rule, the first charge was preferred against the present licensee.

Although the transfer of the license from Anthony to Leo apparently was bona fide and devoid of any collusion between the parties, it appears that Leo is a "partner in crime"; that when he secured the transfer of the license he had knowledge of the potential consequences.

It appears from the Department investigation that at the time of the violation by his predecessor in interest, the present licensee was employed as bartender in charge of the licensed premises and actively participated therein.

The Department records show that a prior license held by Anthony for the premises in question was suspended for five days on a plea of guilty on a charge of permitting gambling (stud poker) on October 1, 1938. Bulletin 276, Item 12.

At that time the present licensee was acting as bartender and manager for Anthony and was in charge of the premises.

So long as the law prohibiting bookmaking is on the books it is not going to be permitted in taverns.

Under all the facts and circumstances, the license will be suspended for twenty (20) days, less five (5) days for the plea of guilty.

Accordingly, it is, on this 1st day of August, 1940,

ORDERED, that Plenary Retail Consumption License C-38, heretofore issued to Leo Faresich, T/a Faresich's Bar & Grill, by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of fifteen days, effective August 5, 1940, at 4:00 A.M., Daylight Saving Time.

E. W. GARRETT,  
Acting Commissioner.

2. APPELLATE DECISIONS - SAM KARPf CO. v. WILDWOOD ET AL.

<u>Case #1</u>	)	
SAM KARPf CO.,	)	
	)	
Appellant,	)	
	)	
-vs-	)	
	)	
BOARD OF COMMISSIONERS OF THE	)	
CITY OF WILDWOOD,	)	
	)	
Respondent	)	ON APPEAL
-----	)	
<u>Case #2</u>	)	CONCLUSIONS
SAM KARPf CO.,	)	
	)	
Appellant,	)	
	)	
-vs-	)	
	)	
BOARD OF COMMISSIONERS OF THE	)	
CITY OF WILDWOOD and PERRY R.	)	
RIEFSNYDER,	)	
	)	
Respondents	)	
-----	)	

T. Millet Hand, Esq., Attorney for Appellant.  
Irving Shenberg, Esq., Attorney for Respondent Board of Commissioners.  
J. Victor D'Aloia, Esq., Attorney for Respondent Riefsnyder.

Appellant appeals from the denial of a renewal of its plenary retail distribution license for premises 3501 Pacific Avenue, Wildwood, and the granting of a plenary retail distribution license to respondent Riefsnyder for premises at Rio Grande and New Jersey Avenues.

Appellant has held a plenary retail distribution license continuously since 1934, its original license being ordered issued in Sam Karpf Co. v. Way, Bulletin 81, Item 15. Since that time, its record as a law-abiding licensee has been clear. Riefsnyder has not heretofore held a license in the city of Wildwood, nor has a plenary retail distribution license been heretofore issued for his premises.

No objections to the renewal of the Karpf license were made. However, when respondent Board of Commissioners considered the Karpf application for renewal, the Mayor read a written statement in which he referred to the provision of the local alcoholic beverage ordinance prohibiting the issuance of "seasonal" licenses, and stated that the Karpf company did not keep its licensed premises open for business during the entire year. Appellant offered to operate the year 'round, but the application was nevertheless denied. A week later, the Board of Commissioners granted a plenary retail distribution license to Perry R. Riefsnyder.

At the hearing herein no witnesses were produced by respondent to explain the reason for the denial of the Karpf license and the granting of the Riefsnyder license. However, the attorney for respondent Board of Commissioners stated that the Board felt that the three existing plenary retail distribution licenses should not be concentrated within one and a half blocks of each other in the business section of Wildwood, and that the residents of the outlying section of the city, in which the Riefsnyder premises are located, were entitled to have a plenary retail distribution licensed premises more readily accessible.

The denial of a renewal license to appellant must be reversed. The principle is aptly stated in Costa v. Red Bank, Bulletin 133, Item 5:

"This licensee, so far from being convicted of a serious violation, has never been convicted at all of having violated any of the provisions of the Control Act or the Rules and Regulations. She stands upon equal grounds with any of the other licensees on her block who have been granted renewals of their consumption licenses. Consequently it would be unfair to single her out and deny her license and grant the others. As stated in Rajca v. Belleville, Bulletin 101, Item 1:

'While a renewal, like an original liquor license, is a privilege and not a right, Re Marritz, Bulletin 61, Item 8, nevertheless, it is but fair, and therefore reasonable that issuing authorities should weigh the facts that worthy licensees, in reliance upon their license have expended money, incurred commitments and otherwise changed their position. In those cases private justice is weighed as against the public interest of the community.'

"It appears from the record before me that she is just as much entitled to a renewal of her license as the other licensees who have obtained renewals on the same block where her store is located."

Nor is it a valid reason for denial that appellant operates only during the summer season and the local ordinance prohibits the issuance of "seasonal" licenses. Specifically, the ordinance prohibits the issuance of not "seasonal" licenses (a vague and inartistic appellation), but rather seasonal retail consumption licenses (a specific class of license provided for by R. S. 33:1-12(2)). Appellant sought a plenary retail distribution license, not a seasonal retail consumption license. Furthermore, it appears that approximately one-third of the fifty-four licensees in Wildwood operate only during the summer. None of these licensees were denied renewal. It should be noted that mere non-user does not invalidate a liquor license (Re Stephans, Bulletin 319, Item 4), nor prevent its renewal (Re Galloway, Bulletin 352, Item 8).

As for the Riefsnyder license: Wildwood ordinance #407, adopted June 11, 1940, provides by Section 6 that the number of plenary retail distribution licenses issued and outstanding in the City of Wildwood shall not exceed three. At the time the Karpf renewal was improperly denied, there were issued and outstanding two plenary retail distribution licenses for the year 1940-41. Had the renewal license been granted to the Karpf company, as it properly should have been, there would have been three such licenses issued and outstanding and the issuance of a plenary retail distribution license to Riefsnyder, or to anyone else, would have been precluded by the ordinance above mentioned. Consequently, the granting of a plenary retail distribution license to respondent Riefsnyder was improper and the action of respondent Board of Commissioners in granting such license must be reversed.

Accordingly, respondent Board of Commissioners of the City of Wildwood is hereby directed to issue to appellant the plenary retail distribution license for which application was made.

The action of respondent Board of Commissioners of the City of Wildwood in granting a plenary retail distribution license to respondent Perry R. Riefsnyder is reversed and said license is hereby declared void and of no effect. Operations thereunder shall cease and terminate forthwith.

E. W. GARRETT,  
Acting Commissioner.

Dated: August 3, 1940.

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT BY CLUB LICENSEE RE EXCLUSIVE POSSESSION OF PREMISES - FRONT FOR INDIVIDUAL - CLUB LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

POLISH-AMERICAN CITIZENS CLUB, INC., )  
184 Westfield Avenue, )  
Clark Township, Union )  
County, N. J., )  
P.O. Rahway, R.F.D. 2, )

CONCLUSIONS AND ORDER

Holder of Club License CB-2 for fiscal year 1939-40 and now holder of Club License CB-2 for the current (1940-41) licensing year, issued by the Township Committee of Clark Township. )  
- - - - - )

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.  
Morris Barnett, Esq., Attorney for Defendant-Licensee.

The defendant is charged (1) with falsely stating in its application for license for the year 1939-40 that it had been in exclusive, continuous possession and use of the premises for which the license was sought for at least three years immediately

prior to making application, in violation of R. S. 33:1-25, and (2) with aiding and abetting Frank Stankiewicz, a non-licensee, to exercise the rights and privileges of its license, contrary to R. S. 33:1-26, 52.

As to (1): Rule 2 of State Regulations No. 7 provides that no license shall be issued to any club unless it shall have been in exclusive, continuous possession and use of a clubhouse or club quarters for at least three years immediately prior to the submission of its application for a license.

The defendant club was incorporated in 1922. Its President, since 1930, has been Frank Stankiewicz. In 1932 the club was apparently compelled to vacate quarters on Lennington Street, Rahway, which it then maintained. Thereafter, and until April 1937, its few remaining members met "about once a year" in a store room in Stankiewicz's private residence on Jaques Street, Rahway. Stankiewicz then moved to a combination store and dwelling in Clark Township, taking the club with him. From April 1937 until March 1940, the club was permitted to hold its meetings in the vacant "front store" of those premises.

On March 2, 1940 the club applied for a club license for this "front store", stating, in its application for license, that it had been in continuous and exclusive possession and use of club quarters for at least three years last past.

It appears, however, that the combination store and dwelling in Clark Township has been leased since 1937 in the name of Stankiewicz's daughter. At the hearing, Stankiewicz admitted that up until March 1940, when, as he claims, the club entered into a verbal agreement with his daughter to pay \$30.00 per month as rental for the premises used for meeting purposes, the club could have been turned out at any time. Prior to that date, no rent other than irregular reimbursement for electric light was paid by the club.

Irrespective of whether or not this alleged sublease may be deemed bona fide, it is clear from the foregoing that the club had not been in exclusive, continuous possession and use of the "front store" for three years at the time of making application in March 1940, and further, despite the sublease allegedly made at that time, that it still lacks such exclusive and continuous possession and use of club quarters for three years in order to qualify for a club license.

Accordingly, I find the defendant guilty on the first charge.

As to (2): Stankiewicz, in a statement given to Department investigators prior to the hearing, stated that, at a meeting held on January 5, 1940:

"It was decided that a club beverage license be applied to the Clark Township Committee. It was agreed at that time that I would apply for the license in the name of the club. Further that I would be responsible for all bills pertaining to alcoholic beverages and any other bills that might be incurred. It was understood that I would be solely responsible for anything that happened on the licensed premises financially or otherwise. This was a verbal agreement between the members and myself.....Whatever profits are derived from the sale of alcoholic beverages is mine for

operating the business and being responsible for the conduct of the business and otherwise. If I default in the payment of any bill, the Club is not responsible in any way."

A week later, another statement was taken from Stankiewicz wherein he repeated that he alone was responsible for the payment of liquor bills and that he received all profits and paid all losses out of his own pocket.

At the hearing Stankiewicz told another story. He testified that he was employed by the club as manager of the bar; that he received, as payment for his services, twenty per cent of the total income from the running of the bar; that the club is "responsible for everything". When confronted with his earlier statements, Stankiewicz claimed that he did not understand some of the questions asked him; that when he stated that he was responsible for the payment of all bills, he forgot to state that he was reimbursed by the club.

As between the statements which Stankiewicz made to the investigators and the story which, after deliberation, he has brought forward in contradiction of those statements, I believe that the former represent the true facts. I am convinced, moreover, that Stankiewicz conceived and engineered the whole scheme of obtaining a club license in the name of the club and used it to build up the club for his own personal gain.

I find the defendant-licensee guilty on the second charge.

As to penalty: In view of the "club's" misstatements as to its qualifications for club license as regards three years exclusive, continuous possession and use of club quarters, and in view of Stankiewicz's operation of the licensed business under guise of a club license, outright revocation is indicated.

This proceeding, though instituted during the last licensing term which expired June 30, 1940, does not abate but remains effective against the defendant's renewal license for the current term.

Accordingly, it is, on this 3rd day of August, 1940,

ORDERED, that Club License CB-2, for the current (1940-41) licensing year, heretofore issued by the Township Committee of Clark Township to the Polish-American Citizens Club, Inc., 184 Westfield Avenue, Clark Township, be and the same is hereby revoked, effective immediately.

E. W. GARRETT,  
Acting Commissioner.

4. SPECIAL EMPLOYMENT PERMITS - PERSONS DISQUALIFIED BECAUSE OF AGE, RESIDENCE OR CITIZENSHIP - BEGINNING JULY 1, 1940, PERMITS ISSUED TO EMPLOYEE INSTEAD OF EMPLOYER - WARNING RE EMPLOYMENT OF UNQUALIFIED PERSONS WITHOUT PERMIT.

August 5, 1940

TO ALL LICENSEES:

Special Employment Permits for the employment of persons disqualified because of age, residence or citizenship for the fiscal year beginning July 1st, 1940, are issued to the employee rather than to the employer as heretofore. This change was adopted to facilitate more effective control by this Department of such employments and to provide a more reasonable opportunity for compliance with the law by both licensees and persons disqualified because of age, residence or citizenship.

Pursuant to the new type of permit, an employee may change his employment at will and work in any number of licensed establishments throughout the State so long as the restrictions set forth therein are complied with fully. A licensee must not employ an unqualified person unless such person first presents a permit issued by this office. A licensee who employs an unqualified person to whom a permit has not been issued is committing a misdemeanor subjecting himself to criminal prosecution and his license to suspension or revocation.

For the information of all licensees, Employment Permit must be obtained by the following:

1. All minors.
2. All aliens except those protected by a reciprocal trade treaty between the United States and the country of their citizenship. The countries which have concluded such treaties are set forth in the Pamphlet Rules, issue of September 1939 (page 11), except that Italy and Japan have been stricken therefrom and Greece and Siam added.
3. All persons employed by retail licensees, who have not resided in New Jersey for at least five years continuously immediately prior to the commencement of such employment, except persons employed in a bona fide hotel or restaurant who do not in any manner whatsoever serve, sell or solicit the sale of alcoholic beverages or participate in the mixing processing or preparation thereof.

Licensees will be given fifteen (15) days from the date of this notice to comply with the above mentioned requirements and see that all unqualified persons employed by them have obtained proper permits.

Effective August 20th, 1940, any licensee employing a person disqualified because of age or residence or citizenship to whom an Employment Permit has not been issued will be required to obtain a Special Permit to validate the employment of such unqualified person or persons in violation of the law. The minimum fee for the validating permit in each such instance of violation will be \$5.00 for the first person employed, plus \$1.00 for each additional person discovered at the same time to be so employed. Persistent and flagrant violations will result in the suspension or revocation of license.

Application forms and instructions for Employment Permits are obtainable at this office upon request.

E. W. GARRETT,  
Acting Commissioner.

5. DISCIPLINARY PROCEEDINGS - REFILL - 20 DAYS' SUSPENSION.

In the Matter of Disciplinary )  
Proceedings against )

JULIA SNIATH, )  
T/a Ye 300 House, )  
N/E Cor. Old Tappan Road and )  
Orangeburg Road, )  
Old Tappan, P.O. Westwood, )  
Route 1, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-5 for the fiscal )  
year 1939-1940, issued by the )  
Borough Council of Old Tappan. )  
- - - - - )

Stanton J. MacIntosh, Esq., Attorney for Department of  
Alcoholic Beverage Control.

Charge served upon the licensee alleges that on or about October 30, 1939 she possessed illicit alcoholic beverages on her licensed premises, in violation of R. S. 33:1-50.

At the hearing, Junior Inspector Fox of the Alcohol Tax Unit testified that on October 30, 1939 he had seized four bottles of alcoholic beverages at the licensed premises, two of which were labeled "Calvert Reserve Blended Whiskey", the third of which was labeled "Calvert Special Blended Whiskey", and the fourth labeled "Schenley's Red Label Blended Whiskey".

Chemist Blakeley of the Alcohol Tax Unit testified that the contents of the four bottles varied substantially in acid content and solid content from genuine samples; that the coloring of the liquor contained in each of the four bottles was nearly all natural or genuine color, whereas the genuine samples contained a very large percentage of artificial coloring. He further testified that in his opinion all of the four bottles were refilled with the same kind of spirits and that he discovered no denaturants.

At the hearing the licensee did not appear. Her husband testified that she had been seriously ill and that she did not intend to renew the license for the fiscal year 1940-1941. He stated that at the time of the violation the premises were in charge of an employee but the employee was not produced.

The evidence is sufficient to show that the licensee is guilty as charged and the license will be suspended for twenty days.

It appears from the records of the Department that the licensee has not renewed her license for the fiscal year 1940-1941 and that up to the present time no license has been issued for the present fiscal year for the premises in question.

Accordingly, it is, on this 8th day of August, 1940,

ORDERED, that said license C-5 be and the same is hereby suspended for a period of twenty (20) days, and since said license has already expired, it is further

ORDERED, that no license shall be issued to Julia Sniath or for said premises for the 1940-1941 licensing year before August 28, 1940.

E. W. GARRETT,  
Acting Commissioner.

By: EDWARD J. DORTON,  
Deputy Commissioner and  
Counsel.

6. COURT DECISIONS - NEW JERSEY SUPREME COURT - PHILLIPSBURG v. D. FREDERICK BURNETT, COMMISSIONER ET AL.

NEW JERSEY SUPREME COURT

BOARD OF COMMISSIONERS OF THE	)
TOWN OF PHILLIPSBURG,	)
	)
Prosecutor,	)
	)
-vs-	)
	)
D. FREDERICK BURNETT, COMMIS-	)
SIONER, and HERBERT J. FRANCO	)
and WILLIAM H. SWICK,	)
	)
Respondents	)
-----	)

Argued May 9, 1940. Decided 1940.  
On writ of certiorari.  
Before Justices Case, Donges and Heher.  
For prosecutor, Sylvester C. Smith, Jr.  
For D. Frederick Burnett, Edward J. Dorton.  
For Herbert J. Franco and William H. Swick, Robert B. Meyner.

The opinion of the court was delivered by

Case, J. The writ brings up an order of the State Alcoholic Beverage Commissioner made March 11, 1940, wherein (1) an ordinance of the Town of Phillipsburg was "set aside, vacated and repealed pursuant to the power conferred by R. S. 33:1-41" and (2) two new plenary retail distribution licenses granted by the Board of Commissioners of the Town of Phillipsburg were "cancelled and declared null and void, and of no force and effect".

On May 22, 1935, the Board of Commissioners of the Town of Phillipsburg adopted a resolution, pursuant to the provisions of P.L. 1934, ch. 85, limiting the number of plenary retail distribution licenses to three. Three licenses were granted thereunder and are not questioned in this litigation. On August 16, 1939, the Board adopted an ordinance, pursuant to the provisions of R. S. 33:1-40, infra, fixing the number of plenary retail distribution licenses at five and repealing the previous limitation.

Thereupon the board issued two additional licenses. It is that ordinance that the Commissioner of Alcoholic Beverages undertook to repeal and those licenses that he declared void. Prosecutor contends that the power to enlarge or to remove entirely the limitation on the number of licenses lay in the governing body of the town, that the commissioner was without authority to vacate or repeal the ordinance, that the statute, if and to the extent that it undertook to grant such authority, is unconstitutional and that, assuming authority, the evidence does not support the commissioner's decision.

The controlling statute was originally passed as ch. 436, P. L. 1933, and is now embraced within the revision as ch. 1 of Title 33. The sections which have particular application are:-

33:1-3 which established the office of state commissioner of alcoholic beverages and provided that "It shall be the duty of the commissioner to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger";

33:1-5 providing that each municipality of fifteen thousand population or over may establish a municipal board of alcoholic control;

33:1-12-3a providing that the governing body may, by ordinance, enact that no plenary retail distribution license shall be granted within its municipality;

33:1-19 providing that "It shall be the duty of the governing board or body of each municipality, except in such municipalities as shall have created municipal boards pursuant to this chapter, in which latter event it shall be the duty of such respective municipal boards, to administer the issuance of all other (viz., inclusive of plenary retail distribution) licenses within their respective municipalities, in accordance with this chapter, and forthwith to report the issuance of all such licenses to the commissioner. The issuing authorities constituted by this section are sometimes hereinafter referred to as 'other issuing authority'";

33:1-22 providing that if "the other issuing authority" shall refuse to issue or shall issue a license an aggrieved party may appeal to the commissioner;

33:1-31 providing that any license, whether issued by the commissioner or any other issuing authority, may be suspended or revoked by the commissioner and that the other issuing authority may suspend or revoke a license issued by it, upon the grounds set forth therein;

33:1-38 authorizing the commissioner to order "the other issuing authority" to issue or to revoke a license and "to make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of this chapter";

33:1-40 providing "The governing board or body of each municipality may, as regards said municipality, by ordinance, limit the number of licenses to sell alcoholic beverages at retail, but any such limitation adopted by ordinance or resolution prior to July first, one thousand nine hundred and thirty-seven, shall continue in full force and effect until repealed, amended or otherwise altered by ordinance" and that "The aforesaid limitations of

number of licenses and of hours of sale shall be subject respectively to appeal to the commissioner, as hereinafter provided"; and

33:1-41 providing that "If any person affected or who might be affected by any limitation of the number of licenses or of the hours between which sales of alcoholic beverages at retail may be made shall consider himself aggrieved thereby, he may appeal to the commissioner in respect thereto and thereupon the commissioner, after public hearing, may set aside, vacate and repeal the limitation complained of or change, alter, amend or otherwise modify the same".

The 1939 ordinance increased the maximum number of plenary retail distribution licenses in this language: "The number of plenary retail distribution licenses outstanding in the Town of Phillipsburg at the same time shall not exceed five". The governing body retained to itself the local licensing power. Upon the passage of the ordinance it increased the granted licenses to five. The old licensees appealed to the commissioners from the enactment of the new ordinance and from the granting of the two additional plenary retail distribution licenses and stated, amongst other objections to the granting of the licenses, that the action was against neighborhood opposition and public convenience and that it was unnecessary and socially undesirable. The ruling of the commissioner is stated above. This writ is prosecuted by the Town of Phillipsburg.

The right extensively to regulate the sale of intoxicating liquors by retail is within the police power of the state. Meehan v. Excise Commissioners, 73 N. J. L. 382, 75 id. 557. Broad control by the commissioner over the conduct of licensees under the existing statute has been judicially sustained, Franklin Stores Co. v. Burnett, 120 N. J. L. 596, as has also the right of imposing regulations and suspending the licenses of offending licensees, Gaine v. Burnett, 122 N. J. L. 39, 123 id. 317. We think that the commissioner, under the proofs and under his finding, based upon the proofs, that public necessity and convenience did not warrant the granting of those additional plenary retail distribution licenses, had authority to revoke the licenses. However, it was not necessary for him, in reaching that result, to attempt to vacate the ordinance. The statute sharply distinguishes between the function of the Board of Commissioners as a legislative body (an ordinance is the equivalent of legislative action, Stemmler v. Madison, 82 N. J. L. 596) and its function as a license issuing authority. The fact that the ordinance limited the number of licenses to five and permitted the granting of licenses up to and inclusive of that number did not require either the board or the commissioner to issue or to sustain the issuing of licenses up to the maximum. The statutory language granting the right of appeal from limitations in number is not entirely clear; but the proposition that a state administrative officer may flatly repeal a municipal ordinance, solemnly passed in accordance with statutory authority contained within the immediate text, is rather startling. Such an authority does not appear to be consistent with the first portion of 33:1-40 supra. But we need not, and do not, determine whether or not the commissioner could, in a circumstance where such action was necessary to accomplish his desired result, repeal an ordinance. We think that the determination was unnecessary in the instant case and that it was an unreasonable exercise of the authority if the same existed. The various and detailed powers and duties of the commissioner as embraced within the statute revolve, we think, about the primary duty, R. S. 33:1-3, supra, of supervising

the manufacture, distribution and sale of alcoholic beverages in such manner as to promote temperance and eliminate the racketeer and bootlegger. The invalidating of an ordinance fixing a maximum in the number of licenses is not reasonably essential, in our opinion, to the accomplishment of any of the designated purposes inasmuch as the actual limitation in the issuance of licenses may be kept by the commissioner, as the appellate authority under R. S. 33:1-22, at a lesser number when the circumstances justify.

The commissioner's decision is so phrased as to contain at its conclusion the directive provisions of an order and no other order than it is printed. Although the statute, R. S. 33:1-38, requires the commissioner (1) to render written decisions and (2) to enter orders pursuant thereto, we have assumed that the writing was intended to serve the double purpose of giving the commissioner's conclusions and of constituting the appropriate order.

So much of the order as purports to set aside, vacate and repeal the ordinance or any part of it is reversed. So much as reverses the decision of the board to grant the licenses is affirmed. If it is considered that the commissioner's order should take the form of a direction to the board under R.S.33:1-38, counsel will be heard as to that. No costs.

7. DISCIPLINARY PROCEEDINGS - CONSUMPTION LICENSEE ALLEGED TO HAVE SOLD BY GLASS FOR CONSUMPTION OFF THE LICENSED PREMISES - EVIDENCE INSUFFICIENT - CHARGES DISMISSED.

In the Matter of Disciplinary Proceedings against )

ADAM HOLUB, trading as ADAM'S INN, Super Highway and Edward Street, Woodbridge Township, New Jersey, )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-52 (fiscal year 1937-1938), issued by the Township Committee of Woodbridge Township. )

-----  
Bernard W. Vogel, Esq., Attorney for the Licensee.  
Jerome B. McKenna, Esq., Attorney for the Department of Alcoholic Beverage Control.

Charges were served on licensee alleging that on December 9 1937 he violated the terms of his plenary retail consumption license by selling and serving glasses of whiskey for consumption off the licensed premises.

The evidence shows that, on said day, the wife of the licensee was in charge of the licensed premises, consisting of the barroom and restaurant on the first floor of building at the above address; that she sold two highballs to an investigator in the barroom. The investigator testified that he told Mrs. Holub he and another person intended to consume the drinks in a room on the second floor, which was not part of the licensed premises; that he carried the drinks upstairs; that Mrs. Holub accompanied him and that he and the other person drank the highballs in the upper room.

Mrs. Holub admitted selling the drinks in the barroom but testified that after the sale she went to the kitchen and did not know where the drinks were consumed.

The licensee could sell alcoholic beverages by the glass only for consumption on the licensed premises. However, the evidence does not clearly establish the guilt of the licensee on the charges preferred. The charges are dismissed.

E. W. GARRETT,  
Acting Commissioner.

Dated: August 15, 1940.

8. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2 (as amended )  
by Chapter 350, P.L. 1938). )

CONCLUSIONS  
AND ORDER

Case No. 104 )  
----- )

In 1927, petitioner, then seventeen years of age, was adjudged a disorderly person and reprimanded; in 1929 he was convicted of assault and battery and given a suspended sentence; in 1932 he was twice convicted of being a disorderly person, receiving a suspended sentence on the first occasion and thirty days' imprisonment on the second; in 1934 he was convicted of non-support in Domestic Relations Court and released on probation after serving part of a sixty-day sentence.

At the hearing petitioner testified that he has resided for the last five years, with his wife and child, in the municipality wherein he now lives and that during that period of time he has been employed as a rubber pressman, a produce merchant and as a bartender.

On behalf of petitioner, three character witnesses, his present employer, a business man and a neighborhood garage man, testified that petitioner's reputation is good and that he has been leading an honest and law-abiding life during the last past five years.

Petitioner's fingerprint record shows that he has not been arrested on any occasion or convicted of any crime since 1934. The Chief of Police in the municipality wherein petitioner resides has certified that there are no pending complaints or investigations against him.

It is concluded, despite his past record, that petitioner has been law-abiding for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

It is, therefore, on this 15th day of August, 1940,

ORDERED, that his statutory disqualification because of the convictions described herein be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

E. W. GARRETT,  
Acting Commissioner.

9. APPELLATE DECISIONS - CUTINELLE v. HIGHTSTOWN.

JOHN J. CUTINELLE,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
	)	
COMMON COUNCIL OF THE BOROUGH	)	
OF HIGHTSTOWN,	)	
	)	
Respondent	)	
-----	)	

Benjamin B. Ginsburg, Esq. and Robert E. Dietz, Esq.,  
Attorneys for Appellant.  
Aaron V. Dawes, Esq., Attorney for Respondent.

Appellant brought this appeal to test the reasonableness of Section 20 of an ordinance dated June 2, 1936.

Appellant conducted a hotel but the licensed premises were restricted to the tap room and dining room. Said Section 20 required that, during the hours when sales were prohibited, "the licensed premises shall and must remain closed and locked to all persons, except employees." There is no question involved as to the right to sell during prohibited hours. Appellant attacked Section 20 as unreasonable because it required appellant to close his dining room during said hours.

After the appeal was heard, Section 20 of the ordinance was amended on October 5, 1937 so as to except from its effect "restaurants and public dining-rooms in hotels." The amendment appears to be reasonable and was approved on May 17, 1938.

The question presented by the appeal is, therefore, moot and accordingly the appeal is dismissed.

E. W. GARRETT,  
Acting Commissioner.

Dated: August 15, 1940.

10. AGE, RESIDENCE OR CITIZENSHIP PERMIT - MORAL TURPITUDE -  
FACTS EXAMINED - CONCLUSIONS.

August 10, 1940

Re: Case No. 334

Hearing was held to determine whether applicant for an "ARC" permit has been convicted of a crime involving moral turpitude and hence is disqualified (under R. S. 33:1-25, 26) from such permit.

In September 1939 applicant was convicted in Georgia for perjury, fined \$75.00, given a suspended jail sentence and released on four years' probation.

The facts leading to such conviction are: In May 1939 a group of several couples, of which applicant was a member, visited

a "speakeasy" in Georgia to dine and dance. Just as applicant was purchasing a bottle of liquor, county police raided the premises and arrested the waiter who was making the sale. At the State's criminal trial against the waiter for thus selling liquor without license, applicant falsely and deliberately testified that he had not purchased the liquor from the waiter but had previously bought it elsewhere and had merely left it with the waiter. Despite such testimony, the waiter was nevertheless convicted. After the trial, the judge ordered applicant's arrest, with the result that applicant was indicted for perjury, a charge to which applicant, under advice of counsel, pleaded guilty.

Applicant claims that he committed the perjury at the request of the owner of the "speakeasy" and out of sympathy for the waiter.

Although applicant was but 23 at the time, and although his motive in committing the perjury may perhaps not have been vicious, nevertheless such a crime, striking at a basic root of our vital system of court justice, necessarily involves moral turpitude. Re Instructions and Explanations, Bulletin 2, Item 8. Cf. Re Case No. 270, Bulletin 314, Item 3.

It is, therefore, recommended that the application for "ARC" permit be denied, and that applicant be declared disqualified (under R. S. 33:1-25, 26) from holding a liquor license or being employed by a liquor licensee in New Jersey.

Nathan Davis,  
Attorney-in-Chief.

APPROVED:  
E. W. GARRETT,  
Acting Commissioner.

11. APPELLATE DECISIONS - BRADFORD v. PAULSBORO.

RICHARD H. BRADFORD,	)	
T/a ELMIRA CLUB,	)	
	)	ON APPEAL
Appellant,	)	CONCLUSIONS AND ORDER
	)	
-vs-	)	
	)	
BOROUGH COUNCIL OF THE	)	
BOROUGH OF PAULSBORO,	)	
	)	
Respondent	)	
-----	)	

William A. Gravino, Esq., Attorney for Appellant.  
Charles C. Cotton, Esq., Attorney for Respondent.

Appellant appeals from refusal to renew his plenary retail consumption license for the present fiscal year for premises at 12 Mantua Avenue, Borough of Paulsboro.

The answer recites that when appellant's application came up for consideration a motion was made that it be granted but that the motion was not seconded and no action or vote taken thereon.

At the hearing herein it was admitted that the full amount of the fee had been deposited and that there had been a compliance with all the statutory requirements pertaining to the filing of the application. Appellant testified that there have been no violations called to his attention and there is no evidence of any violations since appellant secured his license pursuant to conclusions entered in Bradford v. Paulsboro, Bulletin 410, Item 3.

The application was considered at a meeting held on July 2, 1940; apparently no action has been taken thereon to date. I find that the failure to reach a determination was unwarranted and the case will be determined on its merits as though an adverse decision had been rendered. Re Salsburg, Bulletin 118, Item 11. On the merits of the case, I conclude that appellant is entitled to renewal of his license.

Accordingly, it is, on this 15th day of August, 1940,

ORDERED, that respondent issue a license to appellant as applied for.

*E. W. Barrett*

Acting Commissioner.