

BULLETIN 1087

NOVEMBER 16, 1955.

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An examination of the file in the instant case discloses that defendant has held a plenary retail consumption license for his present premises since 1934; that Jerome Capozzi started to work for defendant about fifteen years ago. It further appears that about seven years ago defendant "retired" from the business, at which time he made a verbal agreement with Capozzi permitting the latter to operate the said business and retain all the profits derived therefrom, with the exception of a stipulated amount of money to be paid weekly to defendant. This arrangement was carried out and has continued to date, thereby constituting an unlawful "farming out" of the license to Capozzi. An investigation discloses that Capozzi has never been convicted of a crime involving moral turpitude.

Defendant has submitted evidence indicating that the former agreement between him and Capozzi has been terminated and that the licensed business is being conducted by the defendant. Thus, the unlawful situation has been corrected.

Defendant has no prior adjudicated record. Therefore, I shall suspend defendant's license for twenty days, the minimum penalty imposed in cases of this kind. Cf. Re Marple, Bulletin 1006, Item 5.

Accordingly, it is, on this 11th day of October, 1955,

ORDERED that Plenary Retail Consumption License C-783, issued for the 1955-56 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Louis Papera, 61 Clifton Avenue & 174-76 Seventh Avenue, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. October 18, 1955, and terminating at 2:00 a.m. November 7, 1955.

WILLIAM HOWE DAVIS
Director.

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary Proceedings against)

ANTHONY GIORDANO)
T/a GIG'S)
223 Mallory Avenue)
Jersey City 4, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-20, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)
-----)

Jeremiah J. O'Callaghan, Esq., Attorney for Defendant-licensee.
Dora P. Rothschild, appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to a charge alleging that on August 5, 1955, he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a minor on his licensed premises, in violation of Rule 1 of State Regulations No. 20.

At the hearing herein George --- (eighteen years of age) testified that he entered defendant's licensed premises on Friday, August 5, 1955, at about 9:45 p.m. and purchased seven containers of beer from Joseph Gibson, the bartender on duty in defendant's licensed premises. When the minor asked for the beer, the bartender said, "You aren't twenty-one". The minor then displayed a Selective Service card (marked Exhibit S-1 in evidence) which had been altered so that it appeared that the minor was born February 15, 1933, instead of the correct date of his birth (February 15, 1937). The bartender then delivered the beer to the minor, who paid him therefor. The bartender did not ask the minor to sign any written representation as to his age.

The minor left the premises with the beer to join four companions who were waiting outside of the premises, but was apprehended by ABC agents who brought him back to the licensed premises. An ABC agent, who was in defendant's licensed premises with other agents when the minor entered, testified in substantial accord with the minor's recital of what occurred. It was stipulated that the other agents who were present at the hearing would testify to like effect, and that two of the minor's companions who were also present at the hearing would testify that they saw the minor enter and emerge from defendant's licensed premises on the date in question.

Although defendant pleaded not guilty, he admitted that the facts were as stated by the Division's witnesses. Apparently his only purpose in entering such plea was to present his bartender to testify that, although he had doubt that the minor was over twenty-one years of age, he honestly felt and was convinced after he inspected the draft card that the minor was over twenty-one years of age and, for that reason, he did not ask the minor to sign any written representation as to his age. The defendant contends that the bartender's inquiry of the minor and observation of the draft card before selling beer to him are the equivalent of a written document or representation as to age sufficient to establish a defense as provided for by R. S. 33:1-77. This exactly similar contention was advanced and rejected in Re Wedemeyer, Bulletin 1050, Item 8, and is here likewise rejected. As I said in the Wedemeyer case, supra, a licensee is required to follow the statutory requirement of having the patron sign a representation of his age rather than limiting himself to examination of a draft card.

I find defendant guilty as charged. Defendant has a prior adjudicated record. The license for the above premises was suspended December 21, 1936, for a violation concerning the size of containers, and suspended on February 25, 1952, for an "hours" violation. Licenses held by defendant for other premises were suspended on December 13, 1937; November 20, 1939, and January 6, 1947, for violations other than sales to minors. None of these dissimilar violations, except that of February 25, 1952, will be considered in fixing penalty herein because such violations occurred more than five years prior to the violation herein.

In view of the particular circumstances that exist in the instant case, similar in most respects to those present in Re Wedemeyer, supra, defendant's license will be suspended for five days, with an additional penalty of five days because of the previous record, making a total suspension of ten days.

Accordingly, it is, on this 17th day of October, 1955,

ORDERED that Plenary Retail Consumption License C-20, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Anthony Giordano, t/a Gig's, for premises 223 Mallory Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. October 24, 1955, and terminating at 2:00 a.m. November 3, 1955.

WILLIAM HOWE DAVIS
Director.

3. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED BY DIRECTOR - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)	
John DiThomas, Jr., to Lift the)	
Automatic Suspension of Plenary)	
Retail Consumption License C-8,)	ON PETITION
issued by the Township Committee)	O R D E R
of Winslow Township to)	
JOHN DiTHOMAS, JR., and MARY)	
DiTHOMAS)	
t/a LITTLE JACK'S)	
Blue Anchor Rd.)	
Winslow Township, PO Cedar Brook, N.J.)	

William B. Knight, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a petition filed herein that on October 6, 1955, petitioner, John DiThomas, Jr., was sentenced to serve ninety days in a county jail, which sentence was immediately suspended and petitioner was placed on probation for two years and fined \$100.00 after he pleaded non vult in the Camden County Court to a charge of selling alcoholic beverages to minors, in violation of R. S. 33:1-77. Said conviction has resulted in the automatic suspension of the license held by John DiThomas, Jr. and Mary DiThomas for the balance of its term. R. S. 33:1-31.1. The petition herein requests the lifting of said suspension.

By order dated June 1, 1955, the Director suspended the license then held by John DiThomas, Jr. and Mary DiThomas, for a period of twenty-five days (less five days for the plea) after they pleaded non vult in disciplinary proceedings to a charge alleging that they sold alcoholic beverages to minors. Said suspension was effective from 2:00 a.m. June 9, 1955 to 2:00 a.m. June 29, 1955. See Bulletin 1069, Item 6.

The conviction in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts. Since the suspension heretofore imposed is adequate, the relief sought herein will be granted.

Accordingly, it is, on this 7th day of October, 1955,

ORDERED that the automatic suspension of License C-8, now held by John DiThomas, Jr. and Mary DiThomas, t/a Little Jack's, for premises on Blue Anchor Rd., Winslow Township, be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - HOLDER OF SOLICITOR'S PERMIT EMPLOYED BY A RETAILER OF ALCOHOLIC BEVERAGES - PERMIT SUSPENDED FOR 5 DAYS.

In the Matter of Disciplinary Proceedings against)

JOHN KEVIN CASSIDY)
104 Atlantic Avenue)
Manasquan, N. J.,)

CONCLUSIONS AND ORDER

Holder of Solicitor's Permit No. 3826 issued by the Director of the Division of Alcoholic Beverage Control.)

John Kevin Cassidy, Defendant-permittee, Pro se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to the following charge:

"From May 27, 1955 to June 18, 1955, you, the holder of a solicitor's permit, were employed by and connected in a business capacity with a retail licensee, in that you were employed as a bartender at the retail licensed premises of Osprey Hotel, Inc., t/a Osprey Hotel, 201 First Avenue, Manasquan, New Jersey; in violation of Rule 7 of State Regulations No. 14."

The file herein discloses that the defendant, while employed as a solicitor for a wholesale licensee, was also employed steadily, from May 27, 1955 to June 18, 1955, as a bartender by a retail licensee. Defendant urges in mitigation that he had the impression that he could be employed as a bartender by a retailer to whom he did not sell alcoholic beverages on behalf of the wholesaler; that he accepted the additional employment because he had need for the added income. However, the above mentioned Rule clearly provides that no holder of a solicitor's permit shall be employed by or connected in any business capacity with any retail licensee.

In the absence of a prior record or aggravating circumstances, I shall suspend defendant's permit for a period of five (5) days. Re Donohue, Bulletin 999, Item 6.

Accordingly, it is, on this 10th day of October, 1955,

ORDERED that Solicitor's Permit No. 3826, issued to John Kevin Cassidy by the Director of the Division of Alcoholic Beverage Control, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. October 17, 1955 and terminating at 9:00 a.m. October 22, 1955.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SPORTSMENS, INC.
408-410 Broad Avenue
Palisades Park, N. J.,

Holder of Plenary Retail Consumption License C-18, issued by the Borough Council of the Borough of Palisades Park.

CONCLUSIONS
AND ORDER

Defendant-licensee, by John Brancato, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to two minors and permitted the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on September 25, 1955, at about 12:15 a.m., two ABC agents who were then in defendant's premises observed two apparent minors as they entered the premises and took places at the bar. Shortly thereafter John Brancato, who was acting as bartender, served a twelve-ounce bottle of beer to each of the apparent minors and, as they started to consume the beer, the agents identified themselves and seized the beer. Subsequent investigation disclosed that the persons to whom the bartender had made the service were Horst --- and Marie ---, both of whom are nineteen years of age. John Brancato verbally admitted to the agents that he had served the beer, and stated that Horst had told him he was twenty-one years of age. It is apparent that neither minor represented in writing that he or she was twenty-one years of age or over. R. S. 33:1-77.

Defendant has no prior record. Under all the circumstances, I shall suspend defendant's license for ten days (the minimum penalty in a case involving two minors over eighteen years of age). Re Goldsmith, Bulletin 1076, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 17th day of October, 1955,

ORDERED that Plenary Retail Consumption License C-18, issued by the Borough Council of the Borough of Palisades Park to Sportsmens, Inc., for premises 408-410 Broad Avenue, Palisades Park, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. October 24, 1955, and terminating at 3:00 a.m. October 29, 1955.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against THE HOWIN CORPORATION T/a THE WINSLOW 1 Stuyvesant Avenue Lyndhurst, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Board of Commissioners of the Township of Lyndhurst.

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

BY THE DIRECTOR:

The defendant pleaded non vult to a charge alleging that it allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets upon the licensed premises, in violation of Rule 7 of State Regulations No. 20.

The file herein discloses that at 1:27 p.m., on October 28, 1954, county detectives visited defendant's licensed premises. After making known their identities to Max Krause, the bartender on duty at the time, the detectives searched the rubbish pile located in the rear of the premises and found slips of paper upon which were written names of horses scheduled to run in races that day and also other racing paraphernalia. The bartender, upon being questioned by the officers, admitted that he had accepted bets on horses from patrons in the licensed premises and placed them by telephone with a bookmaker.

In mitigation, it is claimed that the president of the corporate licensee had no knowledge of the fact that Krause was accepting bets for transmittal to a bookmaker. Nevertheless, the licensee is responsible for the violations committed by its employees, even though without its knowledge or contrary to instructions, Re Mayers, Bulletin 731, Item 9; Rule 31 of State Regulations No. 20.

Defendant has no prior adjudicated record. I shall suspend its license for a period of twenty days, the minimum penalty for this type of violation involving a licensee or one of its employees, Re Jarvis, Bulletin 897, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 18th day of October, 1955,

ORDERED that Plenary Retail Consumption License C-6, issued by the Board of Commissioners of the Township of Lyndhurst to The Howin Corporation, t/a The Winslow, for premises 1 Stuyvesant Avenue, Lyndhurst, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. October 26, 1955, and terminating at 2:00 a.m. November 10, 1955.

WILLIAM HOWE DAVIS Director.

7. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (OBSCENE LANGUAGE) - CHARGES ALLEGING THAT PREMISES WERE ALLOWED TO BE CONDUCTED AS A NUISANCE AND PERMITTING A FEMALE IMPERSONATOR ON LICENSED PREMISES, DISMISSED - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against)

HERMAN WEINER)
T/a HERBIE'S BAR & GRILL)
44 Broadway)
Paterson 1, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-219, issued by the Board of Alcoholic Beverage Control for the City of Paterson.)

Nicholas O. Beery, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charges:

"1. On August 3 and 10, 1955 you allowed, permitted and suffered a female impersonator in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On August 3 and 10, 1955 you allowed, permitted and suffered lewdness and immoral activity, and foul, filthy and obscene language and conduct in and upon your licensed premises and your licensed place of business to be conducted in such a manner as to become a nuisance, in that you permitted a person who appeared to be a homosexual to engage in and participate in foul, filthy and obscene language and conduct and to solicit and make overtures for and arrangements with patrons for acts of perverted sexual relations, and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20.

"3. On the night of August 5 and the early morning of August 6, 1955 you allowed, permitted and suffered your licensed place of business to be conducted in such a manner as to become a nuisance in that you permitted unescorted females frequenting your licensed premises to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them and by others, and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

A careful consideration of the lengthy testimony in this case leads me to conclude that the third charge should be dismissed. As to this charge, the evidence shows that two ABC agents entered defendant's licensed premises on August 5 at about 11:45 p.m. and left the premises about two hours later. One of the agents testified that, when they observed a female patron, known as Rita, she was seated with four male patrons; that one or more of the males purchased drinks for her; that, after the four males left the premises, the agents moved their stools to a position near the stool on which Rita remained seated; that Rita introduced herself to the agents and said, "When are you fellows going to buy me a drink?" The agent further testified

that, when they observed another female patron, known as Joan, she was seated with a male patron; that, after the male patron left, Joan turned to one of the agents and asked if he would like to play shuffle alley and later asked if he would buy her a drink. The evidence shows that Rita, Joan and the two agents played shuffleboard and that the agents purchased for the females at least four drinks which were served by defendant. Defendant testified that, at the time in question, Rita (who has been one of his patrons for ten years) entered unescorted, and Joan (whom he has known for eighteen years) entered with her boy friend. He admitted that the agents had purchased drinks for both females. Rita testified that she is steadily employed and works from 3:30 p.m. to midnight; that, as had been her custom for many years, she entered the premises alone after leaving her place of employment; that Joan came in later with a boy friend; that, when the agents drew their stools near to her (Rita), they asked her name and asked if she would like a drink. In this case the evidence fails to establish that defendant permitted female "bar flies" to prey upon male patrons, which practice is the basis for a nuisance charge. Cf. Re Arlington Inn, Bulletin 982, Item 1; Re Marrone, Bulletin 1076, Item 4. I shall dismiss charge 3.

As to charges 1 and 2: The same agents had previously visited defendant's premises on the evening of August 3, 1955. At that time Raymond --- was a patron, and defendant was tending bar. The agent testified that Raymond told the agents to call him "Vi" and made unnatural remarks about a fighter appearing on television. The same agents visited defendant's premises on the afternoon of August 10, 1955. The agent testified that Raymond, who was then acting as bartender, engaged in a conversation with them concerning unnatural sexual intercourse. It is sufficient to say that the conversation, as testified to by the agent, was foul, filthy and obscene. The agent further testified that Raymond invited them to come back in the evening, at which time he would take them to his room to engage in unnatural practices. The agents then identified themselves to Raymond. At the hearing Raymond denied the agent's testimony, but I conclude that the agent was telling the truth. Defendant, who was not present on August 10, denied that he ever heard Raymond use any improper language. He further testified that he has known Raymond for fifteen years; that he has employed him for five months and never heard him make any immoral suggestion to anyone. A retired Police Captain testified that he has known Raymond for the past two to three years, and that he has never seen or heard anything that would indicate that Raymond was a homosexual or sex deviate. The ABC agent testified that Raymond wore normal male attire, but that he swayed when he walked.

I conclude that it is unnecessary to decide if Raymond is a homosexual because the evidence is insufficient to show that defendant had any knowledge that he was employing a person with these unfortunate proclivities. In the absence of such knowledge, it would be unfair to penalize a licensee. For this reason I shall dismiss charge 1.

The situation as to charge 2 is entirely different. Even in the absence of actual knowledge, licensees are responsible for violations committed by their agents, servants or employees in the conduct of the licensed business. Rule 31 of State Regulations No. 20; Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947); Greenbrier, Inc. v. Hock, 14 N. J. Super. 39 (App. Div. 1951). There is no doubt that the bartender used foul, filthy and obscene language on the afternoon of August 10, 1955. Hence, I find defendant guilty of that portion of charge 2 which alleges that on August 10, 1955, defendant allowed, permitted and suffered foul, filthy and obscene language in and upon his licensed premises.

Defendant has a previous record. Effective March 21, 1945, and again, effective June 8, 1950, his license was suspended for dissimilar violations. Since these dissimilar violations occurred more than five years ago, I shall disregard them in fixing a penalty herein. Effective June 1, 1954, his license was again suspended for twenty days for permitting gambling on his licensed premises (Re Weiner, Bulletin 1021, Item 4). Since this last dissimilar violation occurred within the past five years, I shall consider it in fixing the penalty in this case. Under all the circumstances, I shall suspend defendant's license for twenty days. Cf. Re Berger, Bulletin 1023, Item 4; Re Purcell Corp., Bulletin 1082, Item 1.

Accordingly, it is, on this 18th day of October, 1955,

ORDERED that Plenary Retail Consumption License C-219, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Herman Weiner, t/a Herbie's Bar & Grill, for premises 44 Broadway, Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. October 25, 1955, and terminating at 3:00 a.m. November 14, 1955.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING LICENSEE CONDUCTED PLACE OF BUSINESS AS A NUISANCE, DISMISSED.

In the Matter of Disciplinary Proceedings against
 FLORENCE TABATNECK
 T/a THREE O'CLOCK CLUB
 176 Paterson Street
 Paterson 1, N. J.,
 Holder of Plenary Retail Consumption License C-135 (for the 1954-55 and 1955-56 licensing years), issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS
AND ORDER

Spitz & La Cava, Esqs., by Joseph A. La Cava, Esq., Attorneys for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charge:

"On April 20, 29, May 7, 11, 12 and 18, 1955 you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you permitted unescorted females frequenting your licensed premises to solicit male patrons to purchase numerous drinks of alcoholic beverages for consumption by them and by others and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulations No. 20."

The above rule reaches a particularly objectionable type of misconduct evidenced by a well-developed practice whereby unescorted females attach themselves to various male patrons as soon as the latter enter the licensed premises, and such females are served drinks of alcoholic beverages at the expense of the

male patrons, many of whom are not consulted before the drinks are served. It is a practice of permitting "bar flies" to prey upon male patrons. Re Arlington Inn, Bulletin 982, Item 1. Stated in different language, unescorted females frequent the licensed premises, some boldly asking male patrons to buy drinks for them, while others, more subtle, attach themselves to male patrons for considerable periods of time, during which they consume numerous drinks paid for by these male patrons and served by the ever-willing licensee and his employee. On occasion the females "shuttle" between various male patrons, drinking with each in turn. Re Porcuri, Bulletin 1001, Item 2.

Another variant of this highly objectionable practice is where the licensee more or less constantly utilizes a number of females who pose as merely customers, rather than employees, but who obviously are engaged in inducing male patrons to spend as much money as possible on drinks for them. Re Cosfair Corporation, Bulletin 875, Item 9.

Any conduct of the above nature on licensed premises will not be tolerated.

Without making a detailed analysis or evaluation of the considerable testimony that was developed at the hearing herein, the evidence presents a strong inference that the defendant-licensee permitted at least two females to patronize her tavern regularly where males frequently purchased drinks for them, one of the women moving about from place to place therein. A further matter to be regarded with suspicion is that all of the drinks purchased for the females were of the one brand of wine at a substantial price per drink. On the other hand, ABC agents testified that on five occasions when they were at the defendant's licensed premises to observe such conduct, they did not hear any female ask any male to purchase a drink for her, and on three occasions when they conversed and played shuffleboard with the females in question, none of these women asked the agents to purchase drinks for them. It further appears that the agents did not ascertain on any occasion whether the men from whom these females accepted drinks were relatives, friends, or strangers, nor whether the females were escorted or unescorted when entering the premises. There is no suggestion that the female and male patrons, when observed by the agents, engaged in any otherwise unseemly conduct, used any indecent language, or were other than well behaved. The three females involved testified in defendant's behalf and asserted that they never asked a patron to buy them a drink when in the premises; that they were more or less acquainted with the persons they met there; and that on occasions they paid for their own drinks. Defendant, who has been operating only a short time, has no prior record.

This is a borderline case. I have given serious consideration to the entire record and am inclined, for reasons of fairness, to give the defendant the benefit of the doubt, without in any manner condoning the appearance of misconduct created by the behavior of the females in question. The defendant is sternly warned that any future conduct of similar nature on the licensed premises will be regarded as evidence that she actually permits her licensed premises to be a haven for "bar flies", rather than an establishment where her male and female patrons maintain normal social contacts usually to be found in a well-conducted tavern.

For the reasons above expressed, I find the defendant not guilty.

Accordingly, it is, on this 18th day of October, 1955,

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

WILLIAM HOWE DAVIS
Director.

9. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY FOR 30 DAYS, LESS 5 FOR PLEA - APPLICATION TO LIFT GRANTED.

In the Matter of a Petition by)

HELEN BENZING)
T/a ARCADIA BAR & GRILL)
39 Harding Avenue)
Clifton, N. J.,)

ON PETITION
O R D E R

To Lift the Automatic Suspension)
of Plenary Retail Consumption)
License C-120, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Clifton.)
-----)

James J. Murner, Jr., Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a petition filed herein that on October 21, 1955, petitioner was convicted in the Passaic County Court on a charge of selling alcoholic beverages to minors, in violation of R. S. 33:1-77, after pleading non vult to said charge and, as a result, was fined \$150.00 on one indictment and sentenced to pay a fine of \$150.00 on the other indictment, which latter fine was immediately suspended. Said conviction resulted in the automatic suspension for the balance of its term of the license held by petitioner. R. S. 33:1-31.1. Petitioner's license certificate was picked up by ABC agents on October 21, 1955.

It further appears from the petition and from the records of this Division that, in disciplinary proceedings instituted by the Municipal Board of Alcoholic Beverage Control, petitioner pleaded guilty to a charge of selling alcoholic beverages to three minors, two of whom were seventeen years of age and one of whom was sixteen years of age, and that, as a result thereof, the Municipal Board of Alcoholic Beverage Control suspended her license for a period of thirty days (less five for the plea) commencing on August 3, 1953, and terminating on August 28, 1953.

The conviction in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts. Since the suspension imposed by the Municipal Board of Alcoholic Beverage Control in the disciplinary proceedings appears to be adequate, the petitioner's request for the lifting of the automatic suspension of her license will be granted.

Accordingly, it is, on this 21st day of October, 1955,

ORDERED that the automatic suspension of License C-120, held by Helen Benzing, t/a Arcadia Bar & Grill, for premises 39 Harding Avenue, Clifton, be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

10. DISQUALIFICATION - FALSE STATEMENT IN QUESTIONNAIRE - APPLICATION TO LIFT DISQUALIFICATION GRANTED TO BECOME EFFECTIVE 90 DAYS AFTER FILING PETITION HEREIN.

In the Matter of an Application to)
 Remove Disqualification because of)
 a Conviction, Pursuant to R. S.)
 33:1-31.2.)
 Case No. 1242)
 -----))

CONCLUSIONS
 AND ORDER

BY THE DIRECTOR:

On July 6, 1937, petitioner, then about 19 years of age, was convicted of the crime of Grand Larceny of an automobile, received a suspended sentence to a reformatory, and was placed on probation for three years. This appears to be his only criminal offense.

The crime of Grand Larceny of an automobile involves the element of moral turpitude, and consequently petitioner is disqualified from engaging in or being employed in the alcoholic beverage industry in any capacity in this State. R.S. 33:1-25, 26. Re Case No. 848, Bulletin 883, Item 13.

At the hearing herein, petitioner testified that he had been employed for about sixteen years by an industrial concern; that when its plant was closed in January 1954 he obtained employment as a helper on a delivery truck of a licensed beer distributor; and that he was unaware that he was disqualified from engaging in such employment.

Three persons (a former fellow employee in the industrial plant, a millwright and the president of a labor union) testified that they have known petitioner for fifteen or more years; that he has a good reputation in the community, has been law-abiding during the period that they were acquainted with him and they are of the opinion that his association with the alcoholic beverage industry will not be detrimental to the public interest. The Chief of Police of the municipality in which petitioner resides reports that there is no complaint or investigation involving petitioner presently pending.

The serious obstacle to immediate relief to the petitioner is that he filed an application for a solicitor's permit and a questionnaire with the Division in which he denied that he had ever been convicted of a crime. Petitioner explains that "it was a little embarrassing, it happened such a long time ago, and I thought I was stirring up something that was dead. I was all right since then. I haven't done anything since then and I figure it wouldn't make any difference". The difference is that nevertheless he was untruthful under oath which is inexcusable no matter how understandable the reason.

In view of petitioner's otherwise good background for the past fifteen years, I shall grant his petition but withhold the effective date thereof until ninety days after August 1, 1955, the date upon which he filed his petition. Case No. 1223, Bulletin 1075, Item 7.

Accordingly, it is, on this 17th day of October, 1955,

ORDERED that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2, effective October 31, 1955.

WILLIAM HOWE DAVIS
 Director.

11. ELECTION DAY - RULE 2 OF STATE REGULATIONS NO. 20 CONSTRUED AS TO FIRST MUNICIPAL COUNCIL ELECTION.

October 17, 1955

Hon. Paul A. Trocola
Chief of Police
Lodi, N. J.

We have received from Borough Clerk Pacella copy of notice of election of members of the first Municipal Council under the municipal manager form of government, to be held in the Borough of Lodi on Tuesday, October 25, 1955, with polling hours from 7:00 a.m. to 9:00 p.m., apparently pursuant to the Municipal Manager Form of Government Law (R.S. 40:79-1, et seq., and particularly R. S. 40:81-4).

This will be a municipal election within the contemplation of Rule 2 of State Regulations No. 20. Cf. Re Dooling, Bulletin 310, Item 8; Re Colsey, Bulletin 310, Item 9. Accordingly, the rule is applicable in Lodi during polling hours. It provides:

"No licensee shall sell or offer for sale at retail or deliver to any consumer any alcoholic beverage, or allow, permit or suffer the consumption of any alcoholic beverage in or upon the licensed premises, in any municipality in which a general, municipal, primary or special election is being held, while the polls are open for voting at such election."

Accordingly, if you have not already done so, you should advise all Lodi retail liquor licensees that they must not sell or offer for sale at retail or deliver to any consumer any alcoholic beverages or permit the consumption of any alcoholic beverages on their licensed premises between 7:00 a.m. and 9:00 p.m. on Tuesday, October 25, 1955.

WILLIAM HOWE DAVIS
Director.

12. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LOTTERY - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

HELEN RYBICKI)
T/a OLD FIRE HOUSE TAVERN)
42 Plauderville Avenue)
Garfield, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-30, issued by the Mayor and Council of the City of Garfield.)

Helen Rybicki, Defendant-licensee, Pro se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded non vult to charges alleging that (1) during prohibited hours she sold alcoholic beverages

in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38; and (2) she allowed, permitted and suffered a lottery and sold and offered for sale and had possession of tickets and participation rights in such lottery in and upon her licensed premises, in violation of Rule 6 of State Regulations No. 20.

The file herein discloses that at 4:15 p.m., Sunday, August 28, 1955, ABC agents entered defendant's licensed premises and seated themselves at the bar therein. At 4:45 p.m., observing the barmaid sell 2 quart-bottles of beer to a male patron for off-premises consumption, the agents ordered 2 quart-bottles of "any kind" of beer and the barmaid, after accepting 90¢ in payment, placed 2 quart-bottles of Schaefer's beer in a paper bag and put the package under the bar, saying "I'll put them behind the bar until you're ready to leave." Shortly thereafter, when a couple entered, the barmaid took the package and told the agents "I'll put them on the back table." At 5:10 p.m. the agents picked up the merchandise and departed. They returned immediately and made known their identities to the barmaid who readily admitted the sale and then called her sister who identified herself as the licensee. The agents made known the violation to the licensee and searched the premises. They found in a drawer of the back bar a slip of paper recognizable as a "baseball pool" covering the period from April 19 to August 30, 1955. They also found under the bar a cigar box which contained slips of paper on which were written the names of persons who, having obtained a certain score on a shooting gallery machine on the premises, would, as explained by the licensee, be entitled to participate in a drawing for a weekly prize.

Defendant has no prior adjudicated record. I shall suspend her license for a period of fifteen days on the first charge (Re Imbornone, Bulletin 1080, Item 3), and fifteen days on the second charge (Re Muchnicki et al., Bulletin 1076, Item 6), or a total of thirty days. Five days will be remitted for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 27th day of October, 1955,

ORDERED that Plenary Retail Consumption License C-30, issued by the Mayor and Council of the City of Garfield to Helen Rybicki, t/a Old Fire House Tavern, 42 Plauderville Avenue, Garfield, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 4:00 a.m. November 3, 1955, and terminating at 4:00 a.m. November 28, 1955.

WILLIAM HOWE DAVIS
Director.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Peter Scheid and Robert F. Scheid
t/a Scheid Beverage Co.
Longwood Valley Road
Jefferson Township

Rural Route No. 1, Oak Ridge, N. J.

Application filed November 9, 1955 for person-to-person transfer of State Beverage Distributor's License SBD-113 from Alfred Bischoff, Longwood Valley Road, Jefferson Township, Rural Route No. 1, Oak Ridge, N. J.

Pasquale J. Casanova
131 Walter Street
South Plainfield, N. J.

Application filed November 9, 1955 for Transportation License.

Frank Waskewich
30 Overlook Terrace
Fords, N. J.

Application filed November 15, 1955 for Transportation License.

Charles J. Feeley
15 Albert Drive
Sayreville, N. J.

Application filed November 15, 1955 for Transportation License.

George Beagan
29 Second Street
Sayreville, N. J.

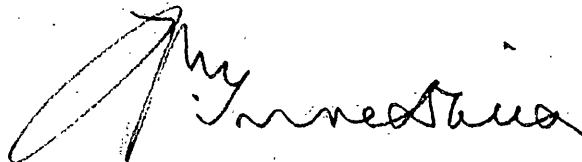
Application filed November 15, 1955 for Transportation License.

Frederick M. Greasheimer
58 Laurel Street
Hopelawn, N. J.

Application filed November 15, 1955 for Transportation License.

Eastern Brewing Corporation
334 and 329 North Washington Street
Hammonton, N. J.

Application filed November 16, 1955 for Limited Wholesale License.



William Howe Davis
Director.