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

BULLETIN 925

February 14, 1952

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

February 14, 1952

BULLETIN 925

1. COURT DECISIONS - IN RE LARSEN - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
No. A-68-51, September Term, 1951

In the Matter of Disciplinary )  
Proceedings against VIRGINIA P. )  
LARSEN, t/a OLE'S RANCH, Dutchtown )  
Road, Kresson, Voorhees Township, )  
P.O. Marlton RFD, N.J., Holder of )  
Plenary Retail Consumption License )  
C-2 for the 1950-51 and 1951-52 )  
Licensing Years, Issued by the )  
Township Committee of Voorhees )  
Township. )  
-----)

Argued January 7, 1952. Decided January 29, 1952.

Before Judges McGeehan, Jayne, and Wm. J. Brennan, Jr.

Mr. Joseph Tomaselli argued the cause for appellant  
(Messrs. Malandra & Tomaselli, attorneys).

Mr. Samuel B. Helfand, Deputy Attorney General, argued  
the cause for respondent (Mr. Theodore D. Parsons,  
Attorney General of New Jersey).

The opinion of the court was delivered by

JAYNE, J.A.D.

On October 22, 1951, the Director of the Division of Alcoholic Beverage Control suspended for a period of one hundred and eighty days the plenary retail consumption license theretofore issued to the appellant for the premises known as Ole's Ranch in Voorhees Township.

The alleged infraction which occasioned the disciplinary proceedings was that on May 31, 1951, and on divers days prior thereto, the licensee allowed, permitted, and suffered lewdness and immoral activity in and upon the licensed premises, viz., the renting of rooms for the purpose of illicit sexual intercourse, in violation of Rule 5 of State Regulations No. 20. Vide, R. S. 33:1-26, 31, 39, 73; R. S. 52:17B-51.

In the consideration of the present appeal we hold fast to the legal principles that we have heretofore deemed applicable to similar proceedings as announced in our recent decisions in In re Schneider, 12 N. J. Super. 449 (App. Div. 1951); Greenbrier, Inc. v. Hock, 14 N. J. Super. 39 (App. Div. 1951), cert. den. 7 N. J. 581 (1951).

The subjects debated in the prosecution of the present appeal are (1) whether the evidence adduced adequately sustains the determination of the Director that the licensee was guilty of the alleged transgression comprehended by Rule 5, State Regulations No. 20; (2) whether the investigatory methods and course of conduct pursued by the agents of the Division in quest of evidence are contrary to law or public policy; and (3) whether the suspension of the license for the stated period of 180 days was inordinately harsh, excessive, and arbitrary.

In view of the pertinent principles of law which by reference to the opinion in the Schneider case, supra, we iterate in the determination of the present appeal, our comment will relate to the three points thus projected.

It is immediately obvious that the testimony, together with the exhibits such as the registration cards, room keys, and identified money, adequately warranted in an evidential respect the factual conclusion that the servants of the licensee in the pursuit of their employment arranged for the rental of, and actually let in the licensed premises "rooms for purposes of illicit intercourse".

We are earnestly importuned by counsel for the appellant to recognize the appeal as the practical equivalent of a trial before us de novo on the record submitted. The overture sprouts from a speculative perversion of Rule 3:81-13. Interpretative expositions of the import and meaning of this rule have been numerous. We are empowered not only to review the facts and make independent findings thereon, but the exercise of this power is permissive and a litigant may not as a matter of right require our exercise of it. Cf. Rules 1:2-20 and 4:2-6.

In the oral discourse at the argument of this appeal it was pointed out that the Director promulgates the rules, employs the agents to make the investigations, and ultimately adjudicates the merits of the complaints made by and, as here, supported by the testimony of his own representatives. The answer which immediately falls off the tip of the tongue is that in the evolution of governmental administrative and supervisory agencies, the Congress and the state Legislatures have constitutionally and quite uniformly delegated to such agencies the power to adjudicate controversies arising within the area of the particular administrative field. The problem of merger of powers of prosecutor and judge in administrative agencies is one with which students of American administrative law have been much concerned. See Schwartz, American Administrative Law (1950), p. 101, et seq. In Brinkley v. Hassig, 83 Fed. 2d 351, 356 (Ct. of App., 10th Cir. 1936), the court stated: "The spectacle of an administrative tribunal acting as both prosecutor and judge has been the subject of much comment, and efforts to do away with such practice have been studied for years. The Board of Tax Appeals is an outstanding example of one such successful effort. But it has never been held that such procedure denies constitutional right. On the contrary, many agencies have functioned for years, with the approval of the courts, which combine these roles. The Federal Trade Commission investigates charges of business immorality, files a charge in its own name as plaintiff, and then decides whether the proof sustains the charges it has preferred. The Interstate Commerce Commission and state Public Service Commissions may prefer complaints to be tried before themselves." Vide, Gellhorn, Administrative Law, p. 731, et seq.; "Invective and Investigation in Administrative Law", 52 Harv. L. Rev. 1201. The wisdom and prudence of the legislative delegation of such a broad variety of functions to an administrative executive or board are not justiciable subjects.

Strictly, an administrative adjudication is not judicial; hence its characterization as "quasi-judicial" is employed to denote its detachment from the judicial branch of the government. Administrative adjudications are nevertheless subject to judicial review. If, for example, the adjudication offends the state or federal Constitution, is ultra vires the statutory grant, is unsupported by adequate evidence, or is unreasonable, unjustly discriminatory, arbitrary, or capricious, the intervention of the courts may be invoked.

Of what relevancy to the consideration of the present appeal has the mere breadth of the delegated duties and powers of the Director?

We suspect that we are invited even in the absence of any indicative evidence judicially to entertain the inference that the Director by reason solely of his official situation and environment did not critically scrutinize the testimony of his investigators.

Where such a proposed inference is neither based upon evidence nor upon the substructure of common knowledge and experience, it is essentially visionary, resting only upon a foundation purely imaginary and supposititious. To improvise and effectuate such an inference in proceedings of this nature would be an untenable abridgment and unjustifiable weakening of the disciplinary powers expressly conferred upon the Director by the Legislature. Moreover in its pragmatical consequence, the Division of Alcoholic Beverage Control would, as suggested by the Deputy Attorney General, "become little more than a medium for the transmission of evidence to the appellate court."

Our courts have repeatedly declared that a license to vend intoxicating liquor is not a contract but a privilege. It is a business which may be restricted by "such conditions as will limit to the utmost its evils." It should be carefully supervised and conducted by reputable people in a reputable manner, and the governmental power extensively to regulate the conduct of those privileged to maintain premises for the sale of intoxicating liquors, especially by retail, is accorded broad judicial support. In re Schneider, supra, and cases cited therein.

We therefore decline to fabricate for use in the review of proceedings of this nature artificial inferences of the inevitable existence of the suggested disadvantageous influence in the factual adjudications of the administrative commissioner or director. The normal inference is to the contrary. 42 Am. Jur. 680, § 240.

It must also be realized that it is not within the domain of the courts to dictate the fashion, manner, method, and course of covert action which the Director shall pursue in the investigations he is lawfully authorized to make. Our remedial appellate function enables us to nullify those lines of detection and exposure which offend the law or public policy.

Violations of the character charged in the instant proceedings are undoubtedly difficult to detect and prove, except through the services of governmental investigators. It is said that furtive watchfulness is labor in vain and that timely and opportune invasions of the inn and tavern are too speculative, and that in consequence the investigators by their own solicitations tempt the licensee to transgress the rule of morality.

The words of Justice Minturn in his concurring opinion in State v. Dougherty, 88 N. J. Law 209, 218 (E. & A. 1915), reverberate: "The dormant energy for transgression, more or less smouldering in human breasts, awaits only the opportunity presented by a more acute, energetic and subtle mind, supported by the apparent respectability, character and social standing of the tempter, to produce the leap that blasts hope and character, and spells moral destruction in an abyss of remorse and shame."

But Horace philosophized that he who is moral and innocent within is well armed to repel the temptation. Anent the motives of the public investigators, see Camden v. Public Service Railway Co., 84 N. J. Law 305 (E. & A. 1913).

We must be aware that we are not here concerned with a conviction of crime but rather with a purely disciplinary proceeding

relating to the exercise by the licensee of a highly restricted and conditional temporary privilege to the treatment of which the ordinary analogies of the law are not always made applicable.

The foregoing subjects have evidently filtered into the argument of this appeal because in view of the contradictory state of the evidence on one of the elements of the charge it is sought thereby to induce us to substitute our entirely independent conception of the factual proof.

We perceive in the transcript of the evidence certain components which doubtless contributed a preponderate weight to the verification of the charge. It is acknowledged that the investigators made three visits to the licensed premises and on each occasion conversed with one or both bartenders concerning the availability of rooms. In particular we allude to the testimony of the investigators that after informing the bartender of the use for which they desired the bedrooms, they inquired of him the manner in which the register should be signed and he replied, "Just sign Ben Franklin or John Smith, but put Mr. and Mrs." Such are in fact the registrations. The bartender acknowledged that he told the investigators: "As long as you sign the register and are respectable people, that is all that is necessary." We add the following excerpts from his testimony:

Q. This conversation before you showed them the rooms, at the time when you made the expression 'There will be no trouble,' what occasioned that remark? What was it that the agents said to you which prompted you to say 'There will be no trouble'?

A. Because there would be no trouble. We don't run that kind of place.

Q. What was it that the agent said to you which prompted you to make that remark?

A. I don't know the exact words but it would probably be to the effect -- I just don't know why it would bring out anything like that, it must be something pertaining to they was in doubt about something and I told them there would be no trouble because we run everything on a legitimate basis.

Q. There was a question came up between you and the agents as to signing the register, was there not?

A. Yes.

Q. What did the agents say to you about registering and what did you say to them?

A. I told them we had a regular hotel set-up, we had registration cards and they would have to sign cards like any other hotel.

Q. What was the occasion which brought that conversation up?

A. I imagine in answer to one of their questions.

Q. Remember what question it was?

A. No.

Q. With that, you also told us that you told him he would have to sign 'Mr. and Mrs.'; isn't that what you told us?

A. I believe that's correct.

Q. Why did you tell him that if you hadn't inquired about women?

A. In answer to one of his questions.

Q. What do you think that question was?

A. I wouldn't remember well enough to testify."

The evidence and the derivative inferences are substantial and clearly sufficient to sustain the factual finding of the Director. Traymore of Atlantic City, Inc. v. Hock, 9 N. J. Super. 47 (App. Div. 1950).

The remaining ground of appeal relates to the reasonableness of the period during which the license is to be suspended. The duration of the suspension of the privileges of a liquor license rests within the sound discretion of the Director. Grant Lunch Corp. v. Driscoll, 129 N. J. Law 408 (Sup. Ct. 1943), affirmed 130 N. J. Law 554 (E.&A. 1943), cert. den. 320 U. S. 801, 88 L. Ed. 484 (1944); Galsworthy, Inc. v. Hock, 3 N. J. Super. 127 (App. Div. 1949); R.S. 33:1-31.

The contention that the period of the suspension should vary in proportion to the contradictory state of the proof of the infraction is unimpressive.

A suspension for 180 days appears to have been the disciplinary forfeiture uniformly exacted from licensees who through wilfulness or laxity are responsible for a transgression of this nature. Cf. In re Hartman, Bulletin 904, Item 2; In re Moleno, Bulletin 910, Item 1; In re McCarthy, Bulletin 919, Item 3; In re Schneider, supra.

The order here subjected to review is affirmed.

BRENNAN, J.A.D. (concurring):

Concern with the problem of merger of the powers of prosecutor and judge in the same agency springs from the fear that the agency official adjudicating upon private rights cannot wholly free himself from the influences toward partiality inherent in his identification with the investigative and prosecuting aspects of the case; in other words, that the atmosphere in which he must make his judgments is not conducive to the critical detachment toward the case expected of the judge. In a sense the combination of functions violates the ancient tenet of Anglo-American justice that "No man shall be a judge in his own cause". Bonham's Case, 8 Co. 113b, 118a, 77 Eng. Rep. 646, 652 (K. B. 1610). "The litigant often feels that, in this combination of functions within a single tribunal or agency, he has lost all opportunity to argue his case to an unbiased official and that he has been deprived of safeguards that he has been taught to revere." Rep. Atty. Gen. Comm. Ad. Proc., 204 (1941), S. Doc. No. 8, 77 Cong., 1st Sess., 204 (1941).

Here the degree of concentration of functions in the Director himself is virtually complete. He is responsible for the direct supervision of every function of his agency. He has broad authority to create such divisions, and alter them, "in such manner and at such times as he considers advisable". R. S. 33:1-4(a). See Laws, 1948, c. 439, sec. 17, p. 1713; R. S. 52:17B-17. He appoints and removes the investigators and legal assistants engaged in the investigative and prosecuting functions. His assistants are not subject to or protected by the civil service laws. He may remove investigators for cause after three years service, and legal assistants (and investigators with less than three years service) for any or no cause at any time. R. S. 33:1-4(d) and (f). He orders such

investigations as he "shall deem proper in the administration" of the act, issues the complaints, prosecutes the charges and then decides whether the proof sustains the charges preferred. R.S. 33:1-35. True, the actual investigating, the determination whether complaints shall issue, the issuance of the complaints and the making of the record at the hearings is doubtless done almost entirely by his assistants without his personal participation. But, "The crux of the matter lies in the concentration of functions, \* \* \*. \* \* 'can there be a practical separation of prosecuting and deciding functions where both are subject to one ultimate authority?' \* \* \*". Schwartz, American Administrative Law (1950), p. 104.

There is no question of the legislative authority to make this broad delegation of powers. No constitutional inhibitions or violations of due process are involved. However, there is general agreement that there is substance in the fear that in such concentration inheres the danger of partiality in judgments having an impact upon private rights and that the danger cannot be ignored. Roscoe Pound, Justice According to Law (1951), pp. 78 et seq.; Davis, Administrative Law (1951), c. 10, pp. 386 et seq.; Schwartz, supra, pp. 61 et seq.; Landis, Crucial Issues of Administrative Law, 53 Harv. L. Rev. 1077 (1940); Landis, Administrative Process, p. 34; Cooper, Administrative Agencies and the Courts (1951), pp. 50 et seq., and the wealth of national and state governmental studies listed in notes 2 to 8, inclusive, to Mr. Justice Jackson's decision in Wong Yang Sung v. McGrath, 339 U. S. 33, 94 L. ed. 616 (1950).

It is conceded by most commentators that the problem can be best dealt with by legislation as its solution implicates considerations of administrative efficiency in effectuating legislative policy. The most notable example of a legislative effort is the Federal Administrative Procedure Act of June 11, 1946, 60 Stat. 237, 5 U. S. C. A., secs. 1001 et seq., applicable to Federal administrative agencies. That statute embodies the theory of internal separation, leaving the functions with the agency but providing safeguards to assure their insulation from one another and to further the independence of personnel engaged in judging. The United States Supreme Court has said that the Act's "fundamental purpose" is "to curtail and change the practice of embodying in one person or agency the duties of prosecutor and judge" and "to ameliorate the evils from the commingling of functions", Wong Yang Sung v. McGrath, supra. The Federal statute has not, however, escaped criticism; it has been said that it deals only partially with the problem of separation. "Ultimate decision still rests with the agency, which also exercises general supervision over investigation and prosecution". Schwartz, supra, p. 104. In our own state a proposed administrative procedure act is again before the Legislature (Senate Bill No. 48, introduced January 21, 1952). The proposed bill goes further than the Federal Act in the direction of complete separation of functions.

The problem becomes one of judicial cognizance when we scrutinize the evidence underlying the Director's decision. The now generally accepted gauge of administrative factual finality is whether the finding is supported by substantial evidence. That test will usually appear in remedial legislation, Federal Administrative Procedure Act, sec. 10 (e)(5); it is included in the proposed New Jersey Senate Bill No. 48. But the test long ante-dated any legislation. It is the product of judicial thinking that the courts have a duty to supervise administrative justice "in a political scheme grounded upon the wisdom of checks and balances to prevent usurpation and arbitrary exercise of power by any one of the three branches of government", that "judicial review of administrative decisions constitutes a vital and essential feature of the total plan, and the substantial evidence rule stands as a rather considerable fraction of judicial review". Stason, 89 Univ. of Penn. Law Rev. 1026, 1029 (June 1941); N. L. R. B. v. Thompson Products, Inc., 97 F. 2d, 13, 15 (C.C.A. 6th, 1938).

Admit that the test is unprecise and susceptible to different application by different courts. Much favored is Dean Stason's definition that the reviewing court should sustain the administrative decision if "the evidence, including the inference therefrom, is found to be such that a reasonable man, acting reasonably, might have reached the decision". Stason, supra, p. 1038. Admit, also, that references to the substantial evidence test by that name are not to be found with any frequency in the New Jersey decisions; nevertheless it has certainly been followed in effect many times. Are we precluded when applying the substantial evidence test from taking into account the implications of the merger of functions merely because the legislature has combined the functions in the Director? I think not. The measure of our duty is to set aside any administrative decision when we "cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, \* \* \*". "The substantiality of evidence must take into account whatever in the record fairly detracts from its weight." Universal Camera Corp. v. Nat. L. R. B., 340 U. S. 474, 95 L. ed. 456 (1951).

Indeed, our Rule 3:81-13 (cf. Rules 1:2-20 and 4:2-6) actually contemplates a scope of review beyond the limits of the substantial evidence test because the rule empowers us to make independent findings of fact. I am not suggesting that the occasion to use this power should arise too often. We should be cautious in invoking the power at least when, as here, dealing with the fact finding of an experienced agency of demonstrated competence. Cf. Dobson v. Commissioner, 320 U. S. 489, 88 L. ed. 248 (1943). We should appreciate the undesirability of trying cases de novo from such an agency and of the value of having the agency assume a real responsibility for weighing and considering the facts in a field where it has considerable experience.

The implications of merger stand in bold relief when the Director's factual findings rely heavily on his investigators' testimony. We should, and do, approach the record with the assumption that the Director, despite his official position and environment, conscientiously endeavored to give the same critical scrutiny to the investigators' testimony that an independent judge would have tried to give it. But a relationship of mutual trust and confidence necessarily obtains between the Director and his appointees; the Director naturally and very properly imposes trust and confidence in his investigators or his agency could not function efficiently. When we scrutinize the evidence to assay its quality, therefore, we cannot, it seems to me, close our minds to the plainly implied obstacle to the Director's complete critical detachment which inheres in that relationship. To do so is to risk inviting distrust in litigants of the fairness of the judicial process. And complete critical detachment in appraising testimony of investigators is peculiarly requisite in view of the widespread recognition given the fact that there are "disqualifications produced by investigation (which) are personal psychological ones which result from engaging in (that) type of activity". Rep. Atty. Gen. Comm. Ad. Proc., supra, 56.

The necessity for extensive regulation of the sale of intoxicating liquors to minimize the evils which inhere in the traffic is fully recognized. So too, that the liquor license is not a contract but a privilege. Nevertheless, a liquor license is of value to the holder and, though not property in any legal or constitutional sense, it may not upon considerations of simple fairness be taken from him capriciously or arbitrarily. Drozdowski v. Sayreville, 133 N. J. L. 536 (Sup. Ct. 1946); State v. Bradish, 95 Wisc. 205, 70 N. W. 172 (Wisc. Sup. Ct. 1897); Yates v. Mulrooney, 245 App. Div. 146, 281 N. Y. S. 216 (1935). In the Drozdowski case the revocation of a retail liquor license was set aside when two of the three municipal councilmen sitting in judgment gave evidence against the licensee at the hearing. In the Bradish case, a revocation based

on the sale of liquor to a minor was set aside when it appeared that one of three members of the town board passing judgment hired the minor to purchase the liquor. Too, we do not hesitate to nullify jury verdicts when extraneous matter having the mere tendency to prejudice gets into the jury room, and will not inquire whether prejudice in fact results. Panko v. Flintkote Co., 7 N. J. 55 (1951); Palestroni v. Jacobs, 10 N. J. Super. 266 (App. Div. 1950).

The dangers of partiality inherent in the merger of functions are greatly minimized if not entirely removed when legislation effectively makes the investigating and prosecuting functions independent of the function of judging. But certainly this court on review cannot ignore them because of some supposed legislative inhibition upon the scope of review spelled out of the delegation of the several inconsistent functions to the agency.

However, there is more in this record than the investigators' testimony alone. The Director could reasonably have found corroboration of that testimony in the inferences he might reasonably draw from the quoted excerpts from the bartenders' testimony, considered with the other evidence mentioned in the majority opinion. I therefore agree that we should in this instance affirm the Director's action.

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2. APPELLATE DECISIONS - ROGERS, INC. v. HOBOKEN.

ROGERS, INC., trading as	)	
RINGSIDE INN,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
BOARD OF COMMISSIONERS OF THE	)	
CITY OF HOBOKEN,	)	
	)	
Respondent.	)	

-----

DeFazio, Davidson & DeFazio, Esqs., by Samuel J. Davidson, Esq.,  
Attorneys for Appellant.  
Dominick J. Marrone, Esq., by William Gottlieb, Esq., Attorney for  
Respondent.

BY THE DIRECTOR:

This is an appeal from a thirty-day suspension imposed by the respondent after it had found the appellant guilty of (1) employing sixteen-year-old Helen --- as a barmaid, in violation of Rule 2 of State Regulations No. 13, which provides:

"No licensee shall knowingly allow, permit or suffer any person under the age of twenty-one (21) years to sell, serve or solicit the sale of any alcoholic beverage, or to participate in the manufacture, rectification, blending, treating, fortification, mixing, processing, preparing or bottling of any alcoholic beverage",

and (2) allowing and permitting said Helen --- to consume alcoholic beverages while so employed, in violation of Rule 1 of State Regulations No. 20, which provides:

"No licensee shall sell, serve or deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of any alcoholic beverage by any such person in or upon the licensed premises."

Upon the filing of the appeal an order, dated September 24, 1951, was entered by me staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

The entire case for the respondent rests solely upon the testimony of Helen ---, a wayward minor, who admits having run away from home and refusing to return, despite the frantic pleas of her mother.

Helen testified that on July 16, 1951, one of her male friends introduced her to Mrs. Sylvia Rogers, President of the corporate licensee, who was in need of a night bartender; that she informed Mrs. Rogers that she was an experienced barmaid, having previously been employed at other taverns; that Mrs. Rogers agreed to hire her at \$30.00 per week; that her age was not discussed; that she voluntarily quit the job after working three nights, for which she received the sum of \$7.00 as wages.

Mrs. Rogers admitted hiring Helen after the latter had told her that she was twenty-three years of age and had produced a letter from an army officer certifying to that age and to her general reliability; that Helen's manner of dress, make-up and unusual hair style gave her the appearance of an adult; that Helen told her of her previous experience as a barmaid at other taverns, whereupon she agreed to put her to work immediately at a weekly salary of \$35.00. Mrs. Rogers further testified that she dismissed Helen some three or four hours later that same evening, as a result of a 'phone call from her day barmaid, who informed her that Helen was a minor.

The day employee testified that she was present at the tavern when Helen was hired, and that Helen impressed her as being well over twenty-one years of age; that, after leaving the tavern, she received an anonymous 'phone call informing her that Helen was a minor and that she thereupon relayed this information to Mrs. Rogers over the telephone.

A third witness -- a patron who was present when Helen was employed -- corroborated her adult appearance and testified that she was discharged by Mrs. Rogers that same evening. He further stated that, early on the following evening, he saw Helen at another tavern and, later that evening, he visited the appellant's tavern and observed that Helen was not working there.

The minor's story does not ring true. In addition to several glaring contradictions in her testimony, she gave a lame explanation for quitting the employment, and the fact that she received only \$7.00 in payment of her services is more consistent with the version of the appellant's witnesses concerning the duration of her employment than with that of the minor. I find that the evidence weighs heavily in favor of the appellant with respect to the pertinent events which resulted in the hiring and discharge of the minor.

It nevertheless remains to be decided, in view of the admission that Helen did work at the tavern for several hours, whether she was "knowingly" employed by the appellant, within the meaning and intent of Rule 2 of State Regulations No. 13. In large measure, the determination of this question depends upon Helen's appearance at the time she was employed. The appellant's witnesses testified that

3. APPELLATE DECISIONS - KURLANSIK v. NEW BRUNSWICK - APPEAL WITH-DRAWN AND SUSPENSION REIMPOSED.

JACOB KURLANSIK, trading as )  
MARINE BAR AND GRILL, )

Appellant, )

-vs-

BOARD OF COMMISSIONERS OF THE )  
CITY OF NEW BRUNSWICK, )

Respondent. )

ON APPEAL  
O R D E R

-----  
Leo J. Berg, Esq., Attorney for Appellant.  
Paul W. Ewing, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellant's License C-76 for a period of twenty days after it had found appellant guilty of selling alcoholic beverages to a minor in violation of Rule 1 of State Regulations No. 20. The premises in question are located at 36 New Street, New Brunswick.

On the filing of the appeal I entered an order, dated January 18, 1952, staying the effect of respondent's order of suspension until the entry of a further order herein.

Prior to the date of hearing, the attorney for appellant has advised me in writing that his client desires to withdraw his appeal. The attorney for respondent has advised me verbally that he has no objection thereto. No reason appearing to the contrary,

It is, on this 25th day of January, 1952,

ORDERED that the within appeal be and the same is hereby dismissed; and it is further

ORDERED that my Order dated January 18, 1952, shall be vacated, effective at 2:00 a.m. January 26, 1952, and that Plenary Retail Consumption License C-76, issued by the Board of Commissioners of the City of New Brunswick to Jacob Kurlansik, trading as Marine Bar and Grill, for premises at 36 New Street, New Brunswick, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. January 26, 1952, and terminating at 2:00 a.m. February 15, 1952.

ERWIN B. HOCK  
Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

TOM'S CAFE & TAVERN, INC. )  
T/a TOM'S CAFE )  
79-81 Main Street )  
Hackensack, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-38, issued by the City Council of the City of Hackensack. )

-----)  
Defendant-licensee, by Edip Shaplo, 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 three minors, and permitted the consumption thereof by said minors on its licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that between 1:00 a.m. and 1:30 a.m. on October 27, 1951, a party of eight people, including George --- (20 years of age), Laura --- (20 years of age) and Vincent --- (19 years of age), were present on defendant's premises. During that period of time various drinks of alcoholic beverages were served by the bartender to each of the three minors, two of whom admit that they consumed their drinks and the third of whom alleges that he did not consume the drink although he admits that it was served to him.

Defendant has a prior record. As a result of a disturbance on defendant's premises on September 23, 1951, charges were preferred against defendant-licensee by the local issuing authority. After defendant had pleaded non vult to charges alleging that it permitted a brawl and permitted obscene language upon its licensed premises, the local issuing authority suspended its license for a net period of three days, commencing November 4, 1951.

Under all the circumstances, I shall suspend defendant's license in the instant case for a period of fifteen days, with a remission of five days because of the plea, leaving a net suspension of ten days. Re Lombardi, Bulletin 919, Item 6.

Accordingly, it is, on this 16th day of January, 1952,

ORDERED that Plenary Retail Consumption License C-38, issued by the City Council of the City of Hackensack to Tom's Cafe & Tavern, Inc., t/a Tom's Cafe, for premises 79-81 Main Street, Hackensack, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. January 22, 1952, and terminating at 3:00 a.m. February 1, 1952.

ERWIN B. HOCK  
Director.

5. MORAL TURPITUDE - BOOKMAKING.

DISQUALIFICATION - FIVE YEARS' GOOD CONDUCT - APPLICATION GRANTED.

In the Matter of an Application )  
to Remove Disqualification because )  
of a Conviction, Pursuant to R.S. )  
33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 944.  
- - - - - )

BY THE DIRECTOR:

On March 15, 1946, petitioner was fined \$1,000.00 by a Judge of a Court of Quarter Sessions as a result of his plea of non vult to a charge of bookmaking. On the same date petitioner received a suspended jail sentence from the said Court upon entering a plea of non vult to an additional charge of having possession of lottery slips.

Petitioner testified that another person conducted the book-making establishment, and that he was merely a "runner" in the illegal enterprise. After careful review of the evidence in the instant matter, I am satisfied, especially in view of the fine imposed, that petitioner was a co-principal in the operation of the gambling establishment, and that the crime of bookmaking of which he stands convicted involves the element of moral turpitude. It is unnecessary at this time to determine whether the conviction for possession of lottery slips in the present case involves moral turpitude.

Petitioner testified that he has never been associated in any capacity with the alcoholic beverage industry. Petitioner testified that he has been employed by a railroad company for sixteen years and, although unemployed during the past two months, he expects to be reinstated in his former position with the railroad.

Petitioner produced three character witnesses (a retired railroad employee, a disabled veteran who is presently unemployed, and a railroad employee) who testified that they have known petitioner ten or more years and that he bears a reputation for being a law-abiding person in the community in which he resides.

The police department of petitioner's home municipality has advised this Division that there are no complaints, charges or investigations now pending involving the petitioner.

I find that the petitioner has conducted himself in a law-abiding manner during the past five years and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 11th day of January, 1952,

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

ERWIN B. HOCK  
Director.

6. AUTOMATIC SUSPENSION - SALE TO MINOR - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY FOR 15 DAYS - APPLICATION TO LIFT GRANTED.

Case No. 81.

In the Matter of a Petition by )

ANDREW LOVRETIN )

T/a ANDREW'S DELICATESSEN AND )

GROCERY STORE )

40 Washington Avenue )

Westwood, N. J., )

ON PETITION  
CONCLUSIONS AND ORDER

Holder of Plenary Retail Distri- )  
bution License D-4, issued by the )  
Borough Council of the Borough of )  
Westwood. )

- - - - - )

Louis A. Mounier, Jr., Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears from a verified petition filed herein that on January 21, 1952, the above named licensee pleaded non vult in the Criminal Judicial District Court of Bergen County to a charge alleging that, in violation of R. S. 33:1-77, he sold alcoholic beverages to a minor, as a result of which he was sentenced to pay a fine of \$50.00, which fine has been paid.

It appears from the records of the Division of Alcoholic Beverage Control that on December 11, 1951, the Borough Council of the Borough of Westwood suspended the license held by petitioner for a period of twenty days, less five for the plea, making a net suspension of fifteen days, after he had pleaded non vult in disciplinary proceedings to a charge alleging that he had sold alcoholic beverages to a minor on the licensed premises. As a result of said suspension, no alcoholic beverage activities were conducted at the licensed premises from 8:00 a.m. January 2, 1952, to 8:00 a.m. January 17, 1952. The charge in the criminal proceeding and the charge in the disciplinary proceeding were based upon the same facts. The case concerns the sale of alcoholic beverages in original container by the licensee to a minor who was sixteen years of age. The conviction in the criminal proceeding has resulted in the automatic suspension of the license held by petitioner for the balance of its term. R. S. 33:1-31.1. The petitioner herein prays that the automatic suspension of the license may be lifted.

After reviewing the facts, I am of the opinion that the suspension heretofore imposed by the local issuing authority was adequate under the circumstances of the case. Hence, the relief sought herein will be granted.

Accordingly, it is, on this 21st day of January, 1952,

ORDERED that the automatic suspension of Plenary Retail Distribution License D-4, held by Andrew Lovretin, t/a Andrew's Delicatessen and Grocery Store, for premises 40 Washington Avenue, Westwood, be and the same is hereby lifted, and said license is hereby restored to full force and operation, effective immediately.

ERWIN B. HOCK  
Director.

7. AUTOMATIC SUSPENSION - SALE TO MINOR - LICENSE PREVIOUSLY  
SUSPENDED BY DIRECTOR FOR 10 DAYS - APPLICATION TO LIFT GRANTED.

Case No. 82.

In the Matter of a Petition by )

GEORGE WARHOL )

Ramapo Valley Road )

Mahwah, N. J., )

ON PETITION  
CONCLUSIONS AND ORDER

To Lift the Automatic Suspension )

of Plenary Retail Consumption )

License C-6, issued by the Township )

Committee of the Township of Mahwah. )

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BY THE DIRECTOR:

It appears from a verified petition filed herein that on January 21, 1952, the licensee, George Warhol, pleaded non vult in the Criminal Judicial District Court of Bergen County to a charge alleging that, in violation of R. S. 33:1-77, he had sold alcoholic beverages to a minor, as a result of which he was sentenced to pay a fine of \$100.00, which fine has been paid.

It appears from the records of the Division of Alcoholic Beverage Control that at about 4:55 p.m. on January 21, 1952, an ABC agent picked up the license held by petitioner, and no business has been conducted since that time.

It further appears from the records of the Division of Alcoholic Beverage Control that on July 31, 1951, I suspended the license held by petitioner for a period of fifteen days, less five for the plea, making a net suspension of ten days, after he had pleaded non vult in disciplinary proceedings to a charge alleging that he had sold alcoholic beverages to, and permitted the consumption of alcoholic beverages by, a minor on his licensed premises. Said suspension was effective from 2:00 a.m. August 6, 1951, until 2:00 a.m. August 16, 1951.

The charge in the criminal proceedings and the charge in the disciplinary proceedings were based upon the same facts. The case concerns the sale of alcoholic beverages to a seventeen-year-old soldier. Bulletin 914, Item 9.

The conviction in the criminal proceedings has resulted in the automatic suspension of the license held by petitioner for the balance of its term. R.S. 33:1-31.1. The petition herein prays that the automatic suspension of the license may be lifted.

I am satisfied that the suspension heretofore imposed by me was adequate under the circumstances of the case. Hence, the relief sought herein will be granted.

Accordingly, it is, on this 22nd day of January, 1952,

ORDERED that the automatic suspension of License C-6, held by George Warhol, for premises on Ramapo Valley Road, Mahwah, be and the same is hereby lifted, and said license is hereby restored to full force and operation, effective immediately.

ERWIN B. HOCK  
Director.

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## STATE LICENSES - NEW APPLICATIONS FILED

1. Lawrence Brown  
Mountain Avenue (Route 24)  
Hackettstown, N. J.

Application filed February 4, 1952 for transfer of State Beverage Distributor's License SBD-126 from Julia Krumm, Admin. Estate of George Krumm, Mountain Avenue, Hackettstown, N. J.

Terminal Freight Transport, Inc.  
Paterson Plank Rd. & Route #3  
E Rutherford, N. J.

Application filed February 6, 1952 for transfer Transportation License from Lincoln Hwy. & Jacobus Avenue, South Kearny, N. J.

Volor Beverage Company, Inc.  
278 Main Street,  
New Milford, N. J.

Application filed February 6, 1952 for transfer State Beverage Distributor's License from 339 Elm Avenue, Bogota, N. J.

*Edward J. Dorton.*  
Acting Director