

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

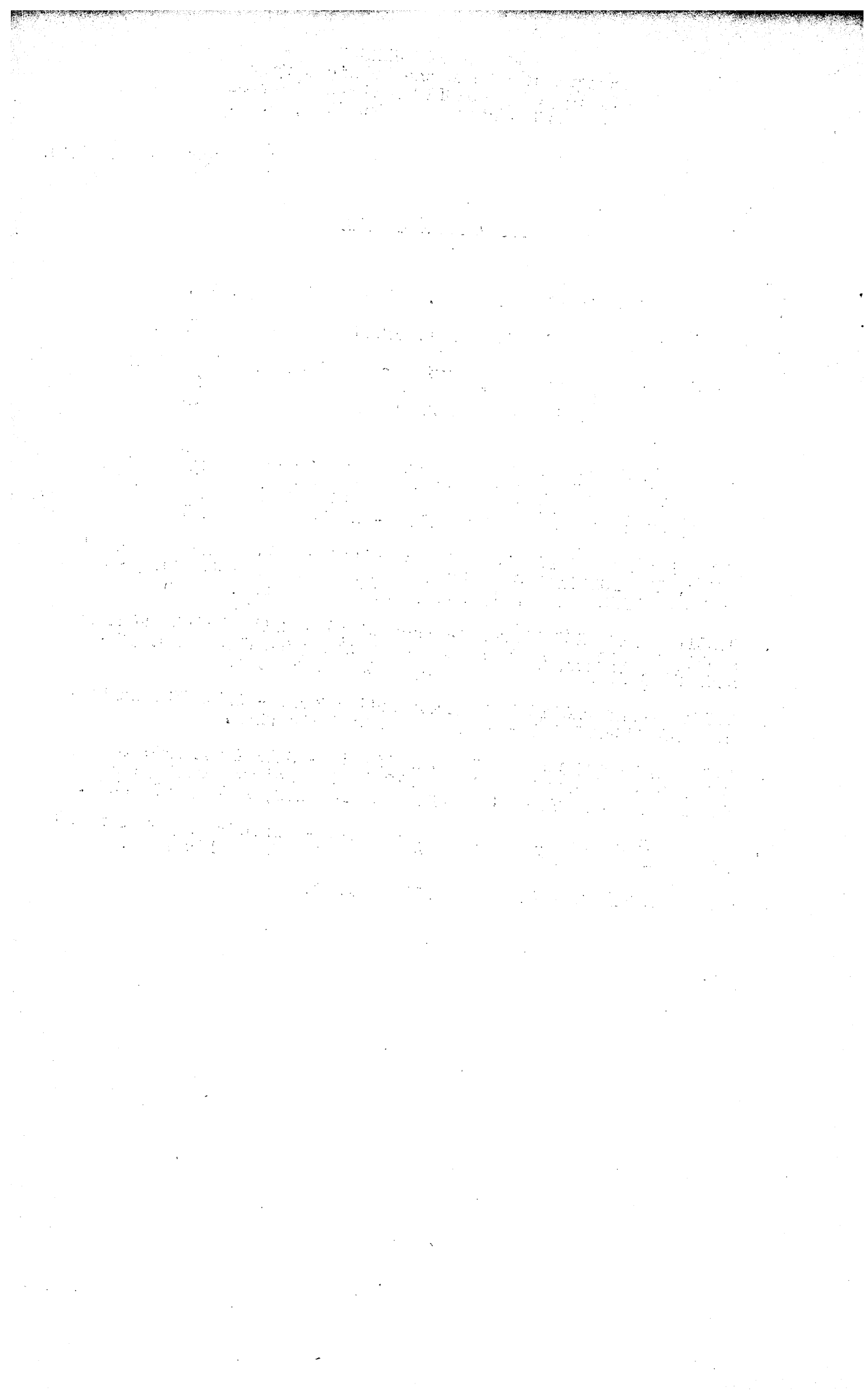
BULLETIN 957

FEBRUARY 24, 1953.

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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 957

FEBRUARY 24, 1953.

1. APPELLATE DECISIONS - CESAR v. TRENTON (CASE NO. 2).

Case No. 2

HENRY CESAR, t/a CESAR'S CAFE, )

Appellant, )

-vs-

BOARD OF COMMISSIONERS OF THE )

CITY OF TRENTON, )

Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

Saul C. Schutzman, Esq., Attorney for Appellant.

Louis Josephson, Esq., by John A. Brieger, Esq., Attorney for  
Respondent.

BY THE DIRECTOR:

Appellant appeals from a suspension for a period of six months of his plenary retail consumption license for premises 460-464 Lamberton Street, Trenton.

On November 13, 1952, respondent, after a hearing held upon a charge it preferred against appellant, adopted the following resolution:

"Whereas, the Board of Commissioners on November 6, 1952, heard a charge against Henry Cesar, trading as Cesar's Cafe, Holder of License C-159, for premises 460-464 Lamberton Street, Trenton, N. J., charging that the above-named licensee violated Rule 5 of State Regulations No. 20, and at the hearing duly held thereon the testimony having established the truth of said charge; it is therefore

"RESOLVED and ORDERED by the Board of Commissioners of the City of Trenton that License C-159 issued to Henry Cesar, trading as Cesar's Cafe, be suspended for a period of six months, said penalty to commence on Monday, November 17, 1952, at 2:00 A.M. and ending on Sunday, May 17, 1953 at 5:00 P.M., and be it further

"RESOLVED, that said license, upon the expiration of its term, shall not be renewed in the name of said licensee, nor to any other person, persons or corporations, directly or indirectly, connected with or heretofore or hereafter associated with or employed by said licensee \*\*\*."

The petition of appeal alleges that the action of respondent is "oppressive, unreasonable, capricious, unlawful and discriminatory."

Upon the filing of the appeal an order was entered staying the suspension, in accordance with the provisions of R. S. 33:1-31.

From the voluminous testimony given at the hearing held herein I find that the following are the facts in this case:

On the evening of July 4, 1952, Bobby Reed was one of the patrons in the barroom of appellant's licensed premises. While in

the barroom he and a girl named Margo had an argument with reference to a ring. During the course of this argument, which was described as "boisterous and loud", Bobby attempted to prevent Margo from using the telephone. However, after Anthony DiCesare, one of the bartenders, came from behind the bar and requested him to "get away from the phone" and Margo apparently convinced Bobby that she did not intend to call the police but intended merely to call a taxi, Bobby permitted her to use the telephone.

Some time later in the evening Bobby Reed went to the rear room of the licensed premises which is used as a dance hall. While Bobby was dancing with a girl, someone threw a firecracker at them and Bobby suspected that it had been thrown by another girl who was seated at a table. Bobby went to the table and told her that he would "smack her if she done it again." Anthony DiCesare came from the barroom and told Bobby to get out. Bobby told him he would when he finished his beer. This apparently was not satisfactory to Anthony, who started to push Bobby toward the side door of the rear room. At this time a waitress summoned Levio DiCesare, who is a brother of Anthony DiCesare and who was also tending bar on the evening in question. Anthony and Levio forcibly ejected Bobby through the side door. After the door had been closed, Bobby pushed the door open and re-entered the rear room. He struggled with Levio and some small panes of glass in the door were broken either when Bobby forced the door open or during the course of this struggle. In the meantime Anthony had returned to the barroom and obtained from behind the bar a heavy stick (approximately sixteen inches long) which is described in the testimony as an "ice stick". Anthony then returned to the rear room and, while helping Levio to eject Bobby through the door for the second time, Anthony struck Bobby on the head three or four times with the stick. As a result, Bobby received several cuts on his head. Anthony and Levio eventually succeeded in ejecting Bobby through the rear door for the second time. Five or ten minutes later Bobby entered the barroom through the front door of the premises and went to the bar where he had a couple of drinks which were served by Anthony DiCesare. During this period of time Anthony wiped the blood from Bobby's face. Later Anthony allegedly called Bobby a vile name, and Bobby reached over the bar and punched him in the mouth. According to the evidence of Anthony DiCesare, these events took place between 11:00 p.m. on July 4 and 1:15 a.m. on July 5 -- that is, during a period of more than two hours. Admittedly neither Anthony nor Levio, at any time, telephoned to the local police.

In Re Polster, Bulletin 388, Item 10, Commissioner Burnett said:

"If customers become unruly, obstreperous or abusive, the proper procedure is to call the Police, instead of indulging in a punitive expedition to vindicate personal prowess and purge the record of naughty names."

In Re Teevan and Lynch, Bulletin 676, Item 11, Commissioner Driscoll said:

"There is no justification, short of the acute need for emergent self-defense in the face of unexpected and unprovoked attack, for a licensee to resort to violence and, even then, the use of force should be restricted to that necessary to permit a strategic retreat for the purpose of calling the police."

The evidence herein clearly supports the finding of guilt. Caso v. Belleville, Bulletin 101, Item 8; Klucke v. Orange, Bulletin 256, Item 3; Davalos v. Camden, Bulletin 257, Item 8; Plikaytis v. Harrison, Bulletin 754, Item 1.

Despite the fact that appellant was not present, he is responsible for the acts of his agents and employees in the conduct of the business. Rule 31 of State Regulations No. 20; Essex Holding Corp. v. Hock, 136 N. J. L. 28. The action of respondent in finding appellant guilty as charged is affirmed.

Appellant has a prior record. The local issuing authority suspended his license for five days, effective September 26, 1944, for selling alcoholic beverages to minors. On April 28, 1950, the Director suspended his license for fifteen days for a similar violation. Re Cesar, Bulletin 874, Item 14. Moreover, in an appeal case decided December 4, 1952, I affirmed respondent's action in imposing on appellant's license a condition prohibiting the playing of music other than music furnished by radio or television. Cesar v. Trenton, Bulletin 951, Item 2. Considering the prior record, the case last cited and the facts in this case, I cannot say that the penalty herein is excessive. The action of respondent in suspending the license for six months is affirmed.

The following portion of the resolution, however, is without legal effect:

"RESOLVED, that said license, upon the expiration of its term, shall not be renewed in the name of said licensee, nor to any other person, persons or corporations, directly or indirectly, connected with or heretofore or hereafter associated with or employed by said licensee \*\*\*."

There is no provision in the Alcoholic Beverage Law which would justify respondent in adopting a resolution at this time referring to the renewal of the license. That question must be determined by the local issuing authority when and if an application to renew the license is filed.

Accordingly, it is, on this 2nd day of February, 1953,

ORDERED that the six-months' suspension by respondent of appellant's plenary retail consumption license for premises 460-464 Lamberton Street, Trenton, which suspension was held in abeyance pending disposition of this appeal, is hereby restored and said license is hereby suspended for the balance of its term, to commence at 2:00 a.m. February 10, 1953, and it is further

ORDERED that, if the license be issued to any person for the premises in question for the 1953-54 licensing year, such license shall be under suspension until 2:00 a.m. August 10, 1953.

DOMINIC A. CAVICCHIA  
Director.

## 2. APPELLATE DECISIONS - GELBER v. FREEHOLD AND McCORMICK.

WILLIAM H. GELBER,

Appellant,

-vs-

ON APPEAL  
CONCLUSIONS AND ORDERTOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF FREEHOLD, and HAROLD  
F. McCORMICK and WILLIAM S.  
McCORMICK, trading as McCORMICK  
BROTHERS,

Respondents.

Melvin S. Taub, Esq., Attorney for Appellant.

Jerry Sokol, Esq., Attorney for Respondent Township Committee of the  
Township of Freehold.Stout and O'Hagan, Esqs., by Richard R. Stout, Esq. and William J.  
O'Hagan, Esq., Attorneys for Respondents Harold F. McCormick  
and William S. McCormick, trading as McCormick Brothers.

BY THE DIRECTOR:

This is an appeal from the action of the respondent Township Committee whereby it allegedly denied appellant's application for a plenary retail distribution license for premises on Jerseyville Avenue, Township of Freehold, and granted an application filed for a similar license by respondents Harold F. McCormick and William S. McCormick, trading as McCormick Brothers, for premises on Lakewood Road in the Township of Freehold, Monmouth County.

Appellant alleges in his petition of appeal that "The action of the respondent was erroneous in that: no reasons were given for denial of application for license and action of the Board was arbitrary and capricious in denying the application of appellant. The Board further erred in granting said application of Harold and William McCormick in that the committeeman Albert V. McCormick, a brother of the persons who were granted the license, showed bias and prejudice in favor of his brothers Harold and William McCormick and should have excused himself from voting. Furthermore, the McCormick brothers were not present at the hearing and all questions concerning their application were answered by their brother the committeeman, Albert V. McCormick who then voted on the very same application."

The issuance of one plenary retail distribution license in the Township is not barred by P.L. 1947, ch. 94. An examination of the record herein discloses that on June 27, 1952 an existing ordinance was amended by respondent Township Committee to provide for the issuance of one plenary retail distribution license in the Township. Committeeman Russell D. Clayton and Alfred Parenteau voted on the final reading in favor of the adoption of the aforesaid amendment. Committeeman Albert V. McCormick did not vote.

At the same meeting of respondent Township Committee the Township Clerk announced that he was in receipt of four applications for plenary retail distribution licenses. He further advised that the applications were in order with the exception of one which was improperly signed. The Chairman of the Committee, Alfred Parenteau, requested that the Clerk, Claude Irons, act as temporary chairman. Thereafter, Committeeman Alfred Parenteau presented the following resolution: "Be it resolved that Plenary Retail Distribution License D-1 be issued to McCormick Bros. for the year 1952-53."

Committeeman Alfred Parenteau and Albert V. McCormick voted in favor of the resolution. Committeeman Russell D. Clayton, although present, did not vote on the resolution.

A careful reading of the record, including the official minutes of the meeting of June 27, 1952, discloses that no formal action to grant or deny appellant's application for a license was taken by the respondent Township Committee. Thus, there was no action from which appellant may appeal.

The reason advanced by appellant for setting aside the granting of the license to McCormick Brothers -- i.e., because the granting was tainted with self-interest inasmuch as the deciding vote was cast by Committeeman Albert V. McCormick, a brother of the successful applicants -- gives me great concern. Jerry Sokol, Esq., attorney for Freehold Township, wrote a letter dated May 7, 1952 to the Acting Director of the Division of Alcoholic Beverage Control inquiring, among other things, whether there would be any objection to the issuance of a liquor license to Harold F. McCormick and William S. McCormick, trading as McCormick Brothers, in view of the fact that Committeeman Albert V. McCormick is a brother of the applicants. The reply, in part, by the Acting Director, dated May 12, 1952, to the aforementioned inquiry, which is pertinent to the matter now under consideration, was as follows:

"Under circumstances in which Township Committeeman Albert V. McCormick is not in any way monetarily or otherwise interested or connected in the business with his brothers Harold and William there appears to be no legal objection to the Township Committee's adoption of an ordinance removing the present prohibition and fixing the fee for a plenary retail distribution license and later acting upon the McCormick and other applications, if any. In the situation here considered, however, it would seem very plain that Committeeman McCormick should, in propriety, take no part whatever in the adoption of such ordinance or in subsequent action upon a plenary retail distribution license application."

Despite the communication received from this Division, Township Committeeman Albert V. McCormick cast the deciding vote in favor of the plenary retail distribution license being issued to his brothers Harold F. McCormick and William S. McCormick, trading as McCormick Brothers. In legal contemplation, the blood relationship does not of itself create any interest in the application which would disqualify a member of the issuing authority from voting thereon. Re Simmill, Bulletin 76, Item 2; Reier v. Passaic and Mihal, Bulletin 786, Item 7. Committeeman Albert V. McCormick's participation in the matter transgressed mere blood relationship. I shall review in detail the various events which culminated in the issuance of the license to Harold F. McCormick and William S. McCormick, trading as McCormick Brothers. The undisputed facts in the instant case definitely indicate that practically all the preliminary steps to obtain the license were engineered by Committeeman Albert V. McCormick. Neither Harold F. McCormick nor William S. McCormick was present when the application was considered by the respondent Township Committee. Committeeman Albert V. McCormick, on behalf of his brothers, answered questions asked by the temporary chairman with reference to the license application and the business to be conducted pursuant thereto. Furthermore, in 1950, before Committeeman Albert V. McCormick was a member of the respondent Township Committee, he appeared before the then governing body requesting that the ordinance which permitted only the issuance of a plenary retail consumption license be amended to provide for the issuance of a plenary retail distribution license.

He then explained to the members of the said Township Committee that he was appearing for his brothers who desired a plenary retail distribution license at their place of business. Neither Harold F. McCormick nor William S. McCormick was present on that occasion. It has also been shown by the evidence that Committeeman Albert V. McCormick went to New York City and negotiated on behalf of his brothers for the purchase of a building. The building was moved to the present site where McCormick Brothers now conduct their business after the formerly used building had been demolished. Although the evidence adduced fails to reveal with certainty that Committeeman Albert V. McCormick has a monetary interest in the liquor license or the business operated by McCormick Brothers, it certainly indicates that he acted as a representative of McCormick Brothers previous to and at the time the application for the license in question was approved. He cast the decisive vote when, as he says, "it was a stalemate".

A course of conduct such as that displayed by Committeeman Albert V. McCormick cannot be defended as an impartial performance on the part of a public official. A consideration of all the facts leads me to conclude that Albert V. McCormick was interested in the license to such an extent that his participation in the proceedings was improper. The concurrence of an interested member in the action taken by the body taints it with illegality. Kuberski v. Haussermann, 113 N.J.L. 162. His vote was not primarily motivated by the consideration whether the issuance of the license was advisable in the interest generally of the citizens of Freehold. Cf. Pyatt v. Dunellen, 9 N. J. 548.

Other reasons, among which is the need for or convenience to be served by the issuance of the license in question, might be discussed. However, since the conclusion is inescapable that the participation of Albert V. McCormick in the issuance of the plenary retail distribution license to Harold F. McCormick and William S. McCormick, trading as McCormick Brothers, tainted the proceedings with illegality, it is unnecessary to pass formally on anything further in the matter.

Accordingly, it is, on this 4th day of February, 1953,

ORDERED that the action of the respondent Township Committee of the Township of Freehold in issuing a plenary retail distribution license to respondents Harold F. McCormick and William S. McCormick, trading as McCormick Brothers, for premises on Lakewood Road, Township of Freehold, be and the same is hereby reversed and said license is hereby cancelled, effective immediately. In view of the fact that no formal action was taken on appellant's application, no order will be entered herein concerning said application.

DOMINIC A. CAVICCHIA  
Director.



3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (STRIP-TEASE DANCE) - PRIOR VIOLATION OF SIMILAR AND DISSIMILAR CHARACTER - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

LOUIS NEU )  
T/a NEU'S CAFE )  
765-767 Springfield Ave. )  
Irvington 11, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-31, issued by the )  
Board of Commissioners of the )  
Town of Irvington. )  
- - - - - )

Dultz, Miller & Zeller, by Herman E. Dultz, Esq.; and Glickenhau-  
and Glickenhau, by Jacob S. Glickenhau, Esq., Attorneys for  
Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant originally pleaded not guilty to the following  
charge:

"On Saturday night, December 6, 1952, you allowed, permitted  
and suffered lewdness and immoral activity in and upon your  
licensed premises in that a female entertainer performed in  
a lewd, indecent and immoral manner; in violation of Rule 5  
of State Regulations No. 20."

Prior to the date for the hearing defendant withdrew his plea  
of not guilty and entered a plea of non vult.

The file discloses that, at approximately 7:45 p.m., on  
Saturday, December 6th, 1952, three ABC agents arrived in the vic-  
inity of defendant's licensed premises to investigate a complaint  
that a lewd performance was to take place at the licensed premises  
that night. Two of the agents entered the barroom while the other  
agent remained outside. Three men, including the licensee, were  
tending bar. There were between thirty and forty men in the barroom  
and an additional twenty to twenty-five men seated at tables in the  
dining room which is to the rear of the licensed premises (behind  
the barroom). A special policeman was stationed at the door to the  
dining room. It was later learned that a dinner was being held in  
the dining room to honor an employee of an industrial establishment  
who was retiring from active employment. The door to the dining  
room was open and the agents could see into the dining room where a  
male pianist and a female accordionist were entertaining. Later,  
several men made speeches and the door was closed.

At approximately 9:00 p.m., the agents approached the door to  
the dining room and drew back the curtain, thus obtaining a view  
into the dining room. They saw a female dancer, later identified as  
Lillian ---, dancing to music furnished by the male pianist. As she  
danced she swayed from side to side and back and forth in a manner  
commonly known as "bumps and grinds"; and from time to time she  
removed parts of her clothing, in what is known as a "strip tease",  
to a chorus of "take it off, take it off" from the male patrons.  
Later Lillian reappeared and performed a second "strip tease" com-  
plete with "bumps and grinds"; and when she was finally reduced to

what is known as a "G-string" and a small net brassiere with only enough solid material to cover the nipples of her breasts, the male patrons again yelled for her "to take it off" while she caressed her limbs in a sensuous manner and touched the "G-string" with her hands tantalizingly.

The two agents identified themselves and the third agent, who had been advised of the situation, called the local police.

Signed statements were obtained from the licensee and the dancer by the ABC agents and by the local police. The licensee admitted that he had known that a female dancer had been hired for the occasion but denied that he had seen anything immoral in her dance or that he had seen her doing a "strip tease", but further admitted that he had not seen the entire performance. He said that he had seen her "... dressed in her theatrical costume" consisting of a brassiere and "panties".

Lillian, in her statements, admitted that she is an entertainer; that she had performed the same "acts" in burlesque theatres in this state and claimed that she is always accompanied on the piano by her husband (as she was on this occasion). She admitted that she had been hired to do her "... dance number which consisted of a mild strip tease plus mild bumps and grinds, meaning swaying ..." and described in detail her movements and disrobing as reported by the agents.

It has been held repeatedly that the "strip tease" and "bumps and grinds" have no place on licensed premises. Re The MLC Corporation, Bulletin 934, Item 7; Re Eagle Bar & Grill, Inc., Bulletin 935, Item 2; Re Corma, Bulletin 913, Item 4; Re Russell's Bar & Restaurant, Inc., Bulletin 879, Item 6; Re DiAngelo, Bulletin 753, Item 4. Nor can the licensee be relieved of his responsibility and liability merely because the act was booked through an agency. He must see to it that such entertainment as is permitted upon the licensed premises is fit for licensed premises (Re Hyett, Bulletin 947, Item 2) and it is no excuse that he did not arrange for the entertainment. Re Blume, Bulletin 920, Item 6.

The usual minimum penalty for an unaggravated first offense of this kind is a thirty-day suspension of the license. (Re DiAngelo, supra.) However, defendant has a prior record. His license was suspended for ninety days, effective January 15, 1952, by order of the Director (Neu v. Irvington, Bulletin 923, Item 3) affirming the prior order of the local issuing authority whereby he was found guilty of two violations, i.e., (1) permitting a lewd performance upon his licensed premises (similar to the charge in the instant case) and (2) hindering an investigation. (The order below did not specify the amount of penalty imposed for each violation.) Where there is a second offense of a similar nature occurring within a period of five years it is the policy of the Director to double the penalty (cf. Re Carr, Bulletin 947, Item 3; Re Behling, Bulletin 811, Item 3); and where there is a prior offense of a dissimilar nature occurring within five years the penalty is usually increased by five days (Re Dos Santos, Bulletin 928, Item 6). Therefore, in view of defendant's aforementioned recent suspension involving both similar and dissimilar violations, I shall suspend his license for sixty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of sixty days.

Defendant might well give serious thought to the possibility that any further transgressions may cost him his license.

Accordingly, it is, on this 2nd day of February, 1953,

ORDERED that Plenary Retail Consumption License C-31, issued by the Board of Commissioners of the Town of Irvington to Louis Neu, t/a Neu's Cafe, 765-767 Springfield Avenue, Irvington, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 a.m. February 9, 1953, and terminating at 2:00 a.m. April 10, 1953.

DOMINIC A. CAVICCHIA  
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AND PERMITTING PERSONS OTHER THAN LICENSEE OR HIS AGENTS OR EMPLOYEES ON LICENSED PREMISES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary  
Proceedings against

STEPHEN HORAK  
T/a STEVE'S TAVERN  
309 Johnston Avenue  
Jersey City 4, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-503, issued by the  
Municipal Board of Alcoholic  
Beverage Control of the City of  
Jersey City.

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Jesse Moskowitz, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

- "1. On Thursday, October 30, 1952, between 2:00 A.M. and 2:40 A.M. you conducted your licensed business; in violation of Section 4 of an ordinance regulating the sale and distribution of alcoholic beverages by all those holding plenary retail consumption licenses in the City of Jersey City, adopted by the Board of Commissioners of the City of Jersey City on June 20, 1950, which prohibits any such activity between the hours of 2:00 A.M. and 6:00 A.M. on any such weekday.
- "2. On the occasion aforesaid you suffered and permitted persons except yourself and your actual employees and agents in and upon your licensed premises; in violation of the above mentioned ordinance which also requires that persons except the licensee and his actual employees be excluded from the licensed premises between 2:00 A.M. and 6:00 A.M. on any such weekday."

The testimony given at the hearing by two ABC agents may be summarized as follows: They arrived in the vicinity of defendant's licensed premises at about 2:10 a.m. October 30, 1952. As they passed the premises in an automobile they observed a dim light in the premises and people moving therein. They parked about a half-block away and kept the premises under observation until about 2:30 a.m. At that time one of the agents walked to the door of the licensed premises and, while looking through the venetian blinds which were hung

on the door, he observed three men drinking what appeared to be an amber-colored liquid. Shortly thereafter two men left the premises through this doorway and walked away. This agent then entered the premises through the same doorway and saw the licensee and one Nevin Horn at the end of the bar. He (the agent) requested the licensee to sell him a drink, but the licensee replied, "It is 2:00 a. m.; we don't sell anything after two o'clock." The other agent then entered the licensed premises. Both agents identified themselves to the licensee and seized the contents of two glasses which were upon the bar. Subsequent analysis by the Division chemist disclosed that the contents of the two glasses were, respectively, beer and whiskey.

Defendant testified that he ceased serving any drinks shortly before 2:00 a.m., but admitted that a few of his patrons remained on the licensed premises to finish their drinks and left about 2:10 a.m. He testified that Nevin Horn had remained upon the premises after the other patrons left because he desired to discuss with the licensee the purchase of a heater. The licensee denied that he served any drinks to Mr. Horn or poured any drinks for himself after 2:00 a.m. Nevin Horn testified that he remained on the premises after two o'clock to discuss the purchase of the heater, and that no drinks were served to him after 2:00 a.m.

After carefully considering the evidence I conclude that defendant conducted his licensed business and permitted persons other than himself and his actual employees and agents on his licensed premises during prohibited hours in violation of local regulation. Hence I find defendant guilty as charged.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days. Re Croal, Bulletin 935, Item 8; Re Lei Club, Bulletin 946, Item 9.

Accordingly, it is, on this 26th day of January, 1953,

ORDERED that Plenary Retail Consumption License C-503, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Stephen Horak; t/a Steve's Tavern, for premises 309 Johnston Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. February 2, 1953, and terminating at 2:00 a.m. February 17, 1953.

DOMINIC A. CAVICCHIA  
Director.

5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

NICHOLAS CHIPKO )

T/a CHIPKO'S )

467 Communipaw Ave. )

Jersey City 4, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-50, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )  
- - - - - )

Nicholas Chipko, Defendant-licensee, Pro Se.

David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold and delivered an alcoholic beverage at retail in its original container for off-premises consumption on Sunday, in violation of Rule 1 of State Regulations No. 38.

The file discloses that two ABC agents entered the licensed premises at approximately 10:30 p.m., on Sunday, January 11, 1953. Shortly thereafter they observed the bartender, later identified as the licensee's brother, hand a package containing six cans of beer to a patron who then left the premises. One of the agents then asked the bartender for a pint of "Seagram's" whiskey to take home. The bartender told the agent that he would get the bottle for him when he was ready to leave. At approximately 10:45 p.m., the agents told the bartender that they were ready to leave and the bartender then handed a sealed pint bottle of Seagram's 7 Crown Blended Whiskey to the agent who had asked for it and told him to put it in his pocket. The agent handed the bartender three one-dollar bills and received twenty cents in change. Both agents then left the premises but returned immediately and identified themselves as agents to the bartender, who verbally admitted the sale of the whiskey to the agent and the sale of the beer to the other patron.

State Regulations No. 38 prohibit the sale of alcoholic beverages in original containers for off-premises consumption at any time on Sunday.

Defendant has no prior adjudicated record. I shall impose the minimum penalty for violations of this type -- fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Stevens Tavern, Inc., Bulletin 952, Item 9.

Accordingly, it is, on this 30th day of January, 1953,

ORDERED that Plenary Retail Consumption License C-50, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Nicholas Chipko, t/a Chipko's, 467 Communipaw Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. February 9, 1953, and terminating at 2:00 a.m. February 19, 1953.

DOMINIC A. CAVICCHIA  
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ALICE RUBY, EXEC'X OF THE EST.  
OF HENRY RUBY  
T/a RUBY'S  
178 Central Avenue  
Jersey City 7, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-36, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Alice Ruby, Exec'x of the Est. of Henry Ruby, Defendant-licensee, Pro Se.  
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on Sunday, January 11, 1953, she sold alcoholic beverages in original containers for consumption off her licensed premises, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that, about 9:30 p.m., on Sunday, January 11, 1953, two ABC agents observed the bartender employed by defendant sell a bottle of whiskey to a patron. After the bartender placed the bottle in a paper bag he handed it to the patron who then left the licensed premises. One of the ABC agents ordered two one-quart bottles of beer to take home. The bartender placed two one-quart bottles of beer in a paper bag, and put the bag under the bar directly in front of the ABC agent, remarking "When you're leaving -- I'll give it to you". After the ABC agent paid eighty cents to the bartender, the ABC agent requested the beer which the bartender handed to him. Both ABC agents then left the licensed premises. They immediately returned to the licensed premises and identified themselves to the bartender. The latter admitted the violation.

Defendant has no prior record. Therefore, I shall impose a suspension of the license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Bernstein, Bulletin 884, Item 12.

Accordingly, it is, on this 30th day of January, 1953,

ORDERED that Plenary Retail Consumption License C-36, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Alice Ruby, Exec'x of the Est. of Henry Ruby, t/a Ruby's, 178 Central Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. February 9, 1953, and terminating at 2:00 a.m. February 19, 1953.

DOMINIC A. CAVICCHIA  
Director.

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

In the Matter of Disciplinary  
Proceedings against

MICHAEL PERRY  
T/a PERRY'S PARAMOUNT GRILL  
125 Park Ave.  
East Rutherford, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-19, issued by the  
Borough Council of the Borough of  
East Rutherford.

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Chandless, Weller, Kramer & Frank, Esqs., by Ralph W. Chandless,  
Esq., Attorneys for Defendant-licensee.  
David S. Piltzer, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to minors, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on Friday evening, January 9, 1953, while two ABC agents were in defendant's licensed premises, they observed two youths each being served with a glass of beer. After the youths consumed the beer, each was served another glass of beer. At this time the ABC agents identified themselves to the youths and inquired as to their age. It was ascertained that both were nineteen years of age. The youths stated that on the evening in question, neither was asked concerning his age. The ABC agents then made known their identity to the bartender and the defendant. The bartender verbally admitted the sale and service of beer to the minors. The defendant acknowledged that the violation had been committed.

Defendant has no prior adjudicated record. I shall therefore suspend his license for ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.  
Re The Clock Bar and Grill, Inc., Bulletin 931, Item 11.

Accordingly, it is, on this 29th day of January, 1953,

ORDERED that Plenary Retail Consumption License C-19, issued by the Borough Council of the Borough of East Rutherford to Michael Perry, t/a Perry's Paramount Grill, 125 Park Avenue, East Rutherford, be and the same is hereby suspended for a period of five (5) days, commencing at 6:00 a.m. February 9, 1953, and terminating at 6:00 a.m. February 14, 1953.

DOMINIC A. CAVICCHIA  
Director.

8. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

GUSTAVE LANG  
T/a GUS LANG LIQUORS  
245 West Front Street  
Plainfield, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distri-  
bution License D-7, issued by the  
Common Council of the City of  
Plainfield.

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Sydney Schwartz, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold at retail an alcoholic beverage at less than its price as listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file discloses that, on December 23, 1952, the licensee's son who was acting as clerk, sold a 30-ounce bottle of Noilly Prat Vermouth to an ABC agent for \$2.47. The minimum consumer resale price of this product, as listed in the Minimum Consumer Resale Price List then in effect, was \$2.60.

In alleged mitigation of this offense, defendant points out that his son quoted the correct price (\$2.60) to the agent and showed him the listing in a Minimum Consumer Resale Price List. Defendant now seeks to claim that the sale was made at \$2.47 only after the agent called attention to the fact that the licensee had listed this product at \$2.47 in his own advertising catalogue, after which the agent is alleged to have insisted that to charge more than \$2.47 "would be a misrepresentation". The agent who made the purchase and his fellow agent who accompanied him both report that the licensee's son quoted the correct price (\$2.60) and that the price of \$2.47 as listed in the advertising catalogue was brought to his attention by the agent. They report however, that, at that point, the licensee was summoned by his son and acquainted with the situation, and that the licensee directed his son to make the sale at the lower price as long as it had been so listed in the advertising catalogue. They further report that the licensee's son admitted that he knew it was a violation but claimed that it was not "wilful".

I believe the reports of the agents. In any event, it is noteworthy that page 1 of the advertising catalogue contains (among other things) the following:

"It is the policy of this store to sell merchandise at the most reasonable prices, at all times, and the prices listed in this catalogue are the mandatory minimum Fair Trade prices, errors and omissions excepted, and subject to official changes, without notice, as required by State law".

Thus, defendant was conscious of the possibility of error in the catalogue and more specifically was aware of the fact that the sale of this particular product at \$2.47 was a sale of an alcoholic beverage below the price listed in the then currently effective Minimum Consumer Resale Price List in violation of the Regulation.



Defendant has no prior adjudicated record. I shall suspend the license for the minimum period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Heim, Bulletin 946, Item 11.

Accordingly, it is, on this 30th day of January, 1953,

ORDERED that Plenary Retail Distribution License D-7, issued by the Common Council of the City of Plainfield to Gustave Lang, t/a Gus Lang Liquors, 245 West Front Street, Plainfield, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. February 9, 1953, and terminating at 9:00 a.m. February 14, 1953.

DOMINIC A. CAVICCHIA  
Director.

9. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE  
SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

JOSEPH SANTORO & JAMES POLICASTRO )  
4701 Broadway )  
Union City, N. J., )

CONCLUSIONS  
AND ORDER

Holders of Plenary Retail Consump- )  
tion License C-229 issued by the )  
Board of Commissioners of the )  
City of Union City. )

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Frank A. Musto, Esq., Attorney for Defendant-licensees.  
William F. Wood, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed on their licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe the contents thereof, in violation of Rule 27 of State Regulations No. 20.

On January 14, 1953, an ABC agent examined twenty-four opened bottles of alcoholic beverages on defendants' licensed premises and seized one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky 90.4 Proof" when his field tests indicated a variance between the description on the label of the bottle and the contents thereof. Subsequent analysis by the Division chemist disclosed that the contents of the seized bottle were not genuine as labeled.

Defendants have a prior record. Effective July 1, 1951, the local issuing authority suspended a license then held by Joseph Santoro and Augustine Nigro for a period of five days for allowing gambling and possessing gambling devices on their licensed premises. Effective September 22, 1952, the local issuing authority suspended the license held by defendants for five days for selling alcoholic beverages on the licensed premises and permitting the premises to be open during prohibited hours in violation of a local ordinance. The minimum penalty imposed for a violation of the kind herein charged is a suspension for a period of fifteen days. Re Rudolph, Bulletin 680, Item 1. In view of the fact that the license has been

twice suspended during the past two years for violations of a character different from the violation herein, I shall suspend defendants' license for a period of twenty-five days. Five days will be remitted for the plea herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 11th day of February, 1953,

ORDERED that Plenary Retail Consumption License C-229, issued by the Board of Commissioners of the City of Union City to Joseph Santoro and James Policastro, for premises 4701 Broadway, Union City, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. February 18, 1953, and terminating at 3:00 a.m. March 10, 1953.

DOMINIC A. CAVICCHIA  
Director.

10. STATE LICENSES - NEW APPLICATION FILED.

National Wine & Liquor Co.  
19-37 Delaware Avenue  
Passaic, N. J.

Application filed February 16, 1953 for additional warehouse at  
24 Black Horse Pike, Bellmawr, N. J.

*Dominic A. Cavicchia*  
Dominic A. Cavicchia  
Director.