

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

BULLETIN 373

JANUARY 10, 1940

1. ADVERTISING - BY NEW JERSEY LICENSEES IN OUT-OF-STATE PAPERS - NOTHING IN THE NEW YORK LAWS TO PROHIBIT - HEREIN OF GENERAL DISSENT ON PRINCIPLE TO ARBITRARY BARRIERS AGAINST INTERSTATE COMMERCE.

January 4, 1940.

State Liquor Authority,
420 Lexington Avenue,
New York, N. Y.

Gentlemen:

Att: Francis V. McHugh,
Counsel

I have before me your letter complaining of an advertisement, by a New Jersey licensee in a New York newspaper, which shows prices per drink and a "full line of package goods" as well as specials from the grill.

Your request for cooperative action which you base on Section 102, 1(a) of the New York State Alcoholic Beverage Control Law, is noted as well as your Section 130, Sub-division 3, which makes the offense a misdemeanor.

I believe, in general, that it is good public policy that liquor licensees of this State shall respect the liquor laws and regulations of neighboring states.

The only question is whether the instant case warrants such reciprocal action on my part.

Your Statute reads:

"102. General prohibitions and restrictions.

1.(a) No person shall send or cause to be sent into the state any letter, postcard, circular, newspaper, pamphlet or publication of any kind containing an advertisement or a solicitation of any order for any liquors and/or wines, unless such person shall be duly licensed hereunder to traffic in liquors and/or wines, as the case may be."

I do not see that the New Jersey licensee has in any way violated this Section. He has not sent any newspaper or any other publication into your State. The newspaper was there to start with.

Nor does Sub-division 1(b) of your Section 102 afford ground for reciprocal action. It reads:

"(b) No person shall issue or publish or cause to be issued or published in the state any letter, postcard, circular, newspaper, pamphlet or publication of any kind containing an advertisement or a solicitation of any order for any liquors and/or wines, unless such person shall be duly licensed hereunder to traffic in liquors and/or wines, as the case may be."

New Jersey State Library

As written, it might prevent the publication of any newspaper containing liquor advertisements -- say The New York Times -- unless the publisher himself be duly licensed to traffic in liquor. In any event, it affects only the publisher and not the advertiser.

I conclude, therefore, that there is no cause for action in the instant case.

While on this subject of advertising in out-of-state newspapers, may I respectfully dissent on principle to any laws or regulations which prevent or impair the right of a licensee to advertise in an out-of-state newspaper solely because he is not licensed to do business in the latter state.

Interstate commerce has been sapped and mined by various kinds of state legislation. So far as alcoholic beverages are concerned, the tariff walls have been erected and the interference created by discrimination against out-of-state wine, beer and liquor vendors, their employees and their products.

The Council of State Governments is meeting tomorrow at Buffalo to consider palliation, if not cure, for this cancerous growth. It seems to me that it might well consider this question of out-of-state advertising.

Assuming that there is nothing offensive, indecent or otherwise contrary to the laws of the State, why should not a New York licensee be able to place in a New Jersey newspaper the same kind of advertisement that our licensees may insert? Vice versa, why not a New Jersey licensee in New York?

Magazines, which carry liquor advertisements, cross state lines with impunity. So does the radio. So do newspapers, particularly in the metropolitan areas adjacent to New York and Philadelphia. Other commodities are frequently advertised in both states with reference to stores in one of them. What is wrong about advertising which offers goods for sale in New Jersey to residents of New York and such other places where the New York papers circulate? Why should its sanction depend on the State where the license was issued? If right for one, why not for all?

I believe this matter is worthy of consideration by the Interstate Conference and will therefore endeavor to submit it tomorrow and will welcome your candid criticism, and, if you see your way clear, your cooperation.

Very truly yours,

D. FREDERICK BURNETT,

Commissioner



2. ENFORCEMENT DIVISION ACTIVITY REPORT FOR DECEMBER, 1939

To: D. Frederick Burnett, Commissioner

ARRESTS: Total number of persons - - - - - 21
Licensees - 1 Non-licensees - 20

SEIZURES: Stills - total number seized - - - - - 8
Capacity 1 to 50 Gallons - - - - 4
Capacity 50 Gal. & Over - - - - 4

Motor Vehicles - total number seized - - - - - 2
Trucks - 0 Passenger cars - 2

Alcohol
Beverage Alcohol - - - - - 69 Gallons

Mash - total number of gallons - - - 7016

Alcoholic Beverages
Beer, Ale, etc. - - - - - 11 Gallons
Wine - - - - - 2781 "
Whiskies & other hard liquor - - - - 16 "

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1336
Illicit (bootleg) liquor - - - - 2
Gambling violations - - - - - 6
Sign violations - - - - - 32
Unqualified employees - - - - - 54
Other mercantile business - - - - 9
Disposal permits necessary - - - 8
"Front" violations - - - - - 7
Improper beer markers - - - - - 2
Other violations found - - - - - 20
Total violations found - - - - 140
Total number of bottles gauged - - - - - 11420

STATE LICENSES:

Plant Control Inspections Completed - - - 77
License Applications Investigated - - - - 19

COMPLAINTS:

Investigated and closed - - - - - 485
Investigated, pending completion - - - - 375

LABORATORY:

Analyses made - - - - - 91
Alcohol and water and
artificial coloring cases - - - - - 15
Poison and denaturant cases - - - - - 0

Respectfully submitted,
E. W. Garrett,
Chief Deputy Commissioner

By: S. B. White,
Chief Inspector

3.

SCHEDULE OF NET EARNED REVENUE
December 31, 1939

	December 1939	This Year to date	Last Year to date
Plenary Brewery Licenses		16,000.00	16,000.00
Limited Brewery Licenses		11,000.00	13,500.00
Plenary Winery Licenses		18,819.18	15,938.35
Limited Winery Licenses		2,675.00	4,900.00
Limited Distillery Licenses	547.95	5,290.42	6,000.00
Supplementary Limited Distillery Licenses		850.00	650.00
Rectifier and Blender Licenses	2,835.62	35,308.22	36,205.47
Bonded Warehouse Bottling Licenses		500.00	
Plenary Wholesale Licenses		111,694.51	114,834.25
Limited Wholesale Licenses		45,195.20	38,180.14
Wine Wholesale Licenses		15,238.35	15,002.73
State Beverage Distributor Licenses	263.01	88,675.34	95,072.61
Plenary Export Wholesale Licenses		24,000.00	26,428.77
Plenary Export Wholesale - Conv. Licenses	293.15	660.27	500.00
Limited Export Wholesale Licenses		3,750.00	3,750.00
Plenary Retail Transit Licenses		2,238.90	1,800.00
Transportation Licenses	116.16	18,366.58	19,470.68
Public Warehouse Licenses		878.08	900.00
Warehouse Receipts Licenses	209.60	2,232.61	2,364.66
Municipal Licenses		1,170.00	1,140.00
Change of Address Licenses	25.00	105.00	120.00
Additional Premises Licenses		4,037.50	4,260.62
Transfer of Licenses	10.00	80.00	100.00
Wine Permits	373.00	2,664.00	1,887.00
Special Permits	3,346.98	36,330.22	36,420.89
Solicitors Permits	560.00	15,005.00	13,965.00
Age, Residence, Citizenship Permits	283.00	4,269.00	3,245.00
Extension of Permits	3.00	6.00	89.64
Special Transportation Certificate Rev.	16.00	1,112.00	818.00
Transportation Insignia Revenue	284.00	9,080.00	7,990.00
Seizure Costs Revenue	58.34	242.40	157.38
Cash Seizure Revenue	.20	2.85	
Certified Copy Fee Revenue	1.00	267.00	268.00
Bulletin Fee Revenue	70.00	1,826.50	2,083.50
Mailing List Fee Revenue	46.50	1,814.75	1,221.00
Tax Revocation Service Charge Revenue	50.00	70.00	100.00
Adjusted License Fee Revenue		320.00	125.00
Investigation Fee Revenue	19.60	221.48	288.32
Forfeiture Fee Revenue	13.00	326.67	333.00
Forfeited Seizure Security Deposits Rev.	35.00	35.00	
Prior Years Revenue		299.04	483.00
Miscellaneous Revenue		33.25	10.00
GROSS EARNED REVENUE	9,460.11	482,690.32	486,603.01
Less LICENSE SURRENDER REFUNDS	784.25	1,263.93	1.37
NET EARNED REVENUE	8,675.86	481,426.39	486,601.64

W. J. Bork,
Certified Correct.

RECAPITULATION OF ENFORCEMENT DIVISION ACTIVITY
FOR PERIOD FROM JULY 1ST TO DECEMBER 31ST, 1939, INCLUSIVE

TO: D. Frederick Burnett, Commissioner

<u>ARRESTS</u>	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>OCT.</u>	<u>NOV.</u>	<u>DEC.</u>	<u>TOTALS</u>
Licenseses	2	1	0	0	0	1	4
Non-Licenseses	56	40	20	39	22	20	197
Total Number	58	41	20	39	22	21	201
<u>SEIZURES</u>							
<u>Stills</u>							
1 to 50 Gal. capacity	4	4	3	4	6	4	25
Over 50 Gal. capacity	6	6	1	2	6	4	25
Total Number	10	10	4	6	12	8	50
<u>Motor Vehicles</u>							
Trucks	0	1	1	1	0	0	3
Passenger Cars	1	5	2	9	4	2	23
Total Number	1	6	3	10	4	2	26
<u>Alcohol</u>							
Beverage Alcohol (Gallions)	35	465	75	1,071	48	69	1,763
<u>Mash</u>							
Total number gallons	53,376	17,175	56,530	18,600	9,517	7,016	162,214
<u>Alcoholic Beverages</u>							
Beer, Ale, etc. (Gallions)	7	6	6	34	17	11	81
Wine (Gallions)	481	172	198	8	1,043	2,781	4,683
Whiskies & hard liquor "	71	33	168	195	50	16	533
<u>RETAIL INSPECTIONS</u>							
Licensed premises inspected	1,340	1,189	903	1,770	1,099	1,336	7,637
Illicit (bootleg) liquor	9	5	2	4	5	2	27
Gambling violations	7	4	3	14	12	6	46
Sign violations	23	21	13	30	21	32	140
Unqualified employees	253	221	53	99	70	54	750
Other mercantile business	24	19	12	8	8	9	80
Disposal permits necessary	9	8	7	7	3	8	42
"Front" violations	3	2	4	1	6	7	23
Improper beer markers	2	1	1	2	3	2	11
Other violations found	18	19	20	26	17	20	120
Total violations found	348	300	115	191	145	140	1,239
Number of bottles gauged	10,259	9,524	7,187	12,132	9,093	11,420	59,615
<u>STATE LICENSEES</u>							
Plant Control Inspections Completed	65	65	47	86	71	77	411
License Applications Investigated	17	10	14	12	14	19	86
<u>COMPLAINTS</u>							
Investigated and closed	261	348	423	428	306	485	2,251
Investigated, pending	398	438	365	426	478	375	
<u>LABORATORY</u>							
Analyses made	92	189	115	112	120	91	719
Alcohol, water and artificial coloring cases	30	32	11	15	19	15	122
Poison and denaturant cases	0	1	3	0	0	0	4

Respectfully submitted,

E. W. Garrett
Chief Deputy Commissioner

5. SEIZURES - CONFISCATION PROCEEDINGS - AUTOMOBILE OF INNOCENT OWNER RELEASED BUT ILLICIT ALCOHOL FORFEITED.

In the Matter of the Seizure on)
July 23rd, 1939, of a Ford)
Coupe and a gallon jug of)
alcohol found therein, on)
Market Street, in the Town of)
Morristown, County of Morris)
and State of New Jersey.)

CASE #5505
CONCLUSIONS AND
ORDER

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Orville V. Meslar, Esq., and
James W. Phelan, Esq., for William Murray, Sr. and William
Murray, Jr.,

Harry Castelbaum, Esq., for the State Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

On July 23, 1939, Investigator Wagi purchased from William Murray, Sr., a gallon of alcohol at the latter's candy store at 25 Market Street, Morristown. They left the store and entered a Ford coupe owned by William Murray, Jr., a son of William Murray, Sr. After the car had been driven a short distance away, an officer of the Morristown Police and Investigator Robbins stopped the car and seized the car and alcohol. William Murray, Sr. was not licensed to sell alcoholic beverages, the jug of alcohol bore no indicia of tax payment and the automobile bore no transit insignia.

Analysis made by the Department's chemist disclosed that the alcohol had a proof of 186.9 degrees and was fit for beverage purposes when diluted. Since the jug bore no indicia of tax payment, the alcohol was prima facie illicit. It is determined that the alcohol and the vehicle in which it was being transported are unlawful property, subject to forfeiture. R. S. 33:1-66(c).

At a hearing held herein, William Murray, Jr., the owner of the automobile, appeared and urged that it be returned to him, claiming that he was wholly innocent of any wrongdoing. Seized property may be returned to its owner in cases where the owner satisfies me that he has acted in good faith and has unknowingly violated the law, provided the owner pays the reasonable costs incurred in connection with the seizure. R. S. 33:1-66(e).

William Murray, Jr. testified that he is employed as a machine operator in Millington, New Jersey; that on July 23, 1939 he drove the Ford coupe from his home to his father's store, left it parked in front of the store, and proceeded with his family to the World's Fair; that he left the Ford coupe so that his father might return home at night; that he knew nothing about the sale of the illicit alcoholic beverages and that he had never known of any previous sales of such beverages by his father, although he worked in the store on Sundays and occasionally during the week.

Neither the father nor the son has any previous criminal record.

On the evidence presented, there is nothing to show that the son knew or had reason to know that his father was engaged in illegal activities. I conclude, therefore, that the son acted in good faith and shall return the Ford coupe to him upon payment of the costs incurred in connection with the seizure. Re Case No. 5174, Bulletin 354, Item 4.

Accordingly, it is ORDERED that the Ford Coupe described in Schedule "A" annexed hereto be returned to William Murray, Jr., upon payment of the costs of seizure; and it is further

ORDERED that the alcohol described in Schedule "A" be and it hereby is forfeited in accordance with the provisions of R. S. 33:1-66 and that it be retained for the use of hospitals and State, County and municipal institutions or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: December 31, 1939.

SCHEDULE "A"

- 1 - 1-gallon jug of alcohol
- 1 - Ford Coupe, Engine #1137204,
1939 N. J. License VA57F

6. DEFINITIONS - FIFTH - IN TERMS OF FLUID OUNCES.

January 3, 1940

Mr. Ralph Ferraro,
Jersey City, N. J.

My dear Mr. Ferraro:

I have before me your letter of December 29th.

A fifth of a U. S. gallon is exactly equal to four-fifths of a U. S. quart, both being 25.6 fluid ounces.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. REPORT OF SPECIAL PERMITS ISSUED DURING THE MONTH OF DECEMBER,
1939, SHOWING COMPARATIVE TOTALS FOR THE FISCAL YEARS 1938-39
AND 1939-40.

January 3, 1940.

SPECIAL PERMITS	Total Issued this month	Total Issued this year to date	Total Issued last year to date
Athletic Clubs	14	77	84
Charitable organizations	1	24	16
Churches & affiliated organizations	33	411	398
Civic Clubs	3	62	56
Clubs fostering citizenship	3	19	18
Country Clubs	6	13	22
County Fair Associations	-	1	3
Dramatic & Singing Societies	8	37	38
Educational Societies	3	14	15
Employees Organizations	1	66	66
Fraternal Orders	17	128	151
Granges & Farmers Protective Ass'ns.	-	-	3
Hunt, racing and kennel ass'ns.	-	5	18
Labor Unions	10	48	37
Licensed Beverage Dealers Ass'ns.	-	4	12
ORGANIZATIONS RENDERING DIRECT PUBLIC SERVICE:			
Fire & Police Departments	-	25	6
Police Benevolent Associations	1	12	11
Firemen's Benevolent Associations	-	4	11
Volunteer Fire Companies	4	108	129
Parent Teachers Associations	-	7	6
Political Organizations	7	147	188
Service Clubs	-	-	9
Sick & Death Benefit Societies	24	191	170
Social Clubs	27	312	325
Sport Clubs	6	33	22
Trade Associations	-	6	11
Veterans Organizations	8	88	111
Yacht Club & Motor Boat Clubs	3	15	12
Musical Organizations	-	3	11
All Others	-	2	2
	179	1867	1961

MISCELLANEOUS PERMITS

To consumer to import for personal consumption	15	60	306
To import to permittee's licensed premises for resale	1	7	4
To transfer title in stock of alcoholic beverages	74	431	357
To transfer title in stock of alcohol	-	1	-
HAVING FORCE AND EFFECT OF LICENSE:			
To transport alcoholic beverages	7	12	3
To licensee pending issuance of State License	-	5	1
To applicant pending action upon application for retail license and issued at request of Municipal Issuing Authority	3	57	79
To transport and warehouse alcoholic beverages	1	10	4

MISCELLANEOUS PERMITS (Cont'd)	Total issued this month	Total Issued this year to date	Total Issued last year to date
To possess and sell alcohol	-	89	-
To sell alcohol on hand	2	2	-
To limited winery licensee to sell wine manufactured prior to repeal or wine of illegal purchase or manufacture	3	4	1
To store and transport for storage, wine for personal consumption	9	93	95
To receivers and trustees to sell stocks of alcoholic beverages	1	16	11
To wholesale licensee to sell wine for sacramental purposes	-	6	6
To bailiff to sell for landlord distraint for rent	-	1	4
To legal representative to carry on business	-	1	1
To purchase for laboratory, test- ing and commercial purposes	2	21	18
In lieu of Solicitors' and ARC permits	-	-	2
To sell warehouse receipts, certi- ficates, contracts, etc.	1	3	1
To sell CCC & WPA Camps	-	3	6
To transport between points outside N.J. and piers of im- port and export	1	30	27
To give, in connection with li- censed beverage dealers conven- tion	-	-	37
To give, demonstration of apparatus	-	5	4
To transport to points outside of N.J.	1	173	185
To transport to N.J. - Return Shipments	1	24	21
To transport, vehicles scheduled	-	5	5
Blanket - To employ persons known as Pin Boys	8	211	171
Blanket - To employ persons dis- qualified, entertainers, etc.	-	21	25
Blanket - To employ persons dis- qualified, caddies	3	24	18
To give alcoholic beverages to em- ployees and guests	2	2	1
To persons, pending Letters of Ad- ministration and action by issu- ing authority	6	28	21
To employ specialized technical workers	-	6	3
To authorize illegal transportation and delivery	5	28	10
To authorize illegal purchase & sales	4	15	15
To authorize unlawful possession & sale of alcohol	5	5	-
To applicant pending application for transfer premises	-	-	1
To sheriff or constable to sell, levy of execution upon judgment	-	3	7
To sell certain designated places as Port Exchange, State Parks, etc.	-	1	1
To carloading and distributing - temporary storage	-	5	2
All Others	2	11	5
	<u>157</u>	<u>1419</u>	<u>1458</u>
TOTAL PERMITS ISSUED	336	3286	3419

Income from Permits:

Total for month of December, 1939	\$ 3,346.98
Total this year to date	36,330.22
Total last year to date	36,420.09

APPLICATIONS FOR SPECIAL PERMITS DENIED	Total this month	Total this year to date	Total last year to date
Application not complete	-	6	4
Objections by licensee & hearing held	-	-	1
Approval of Issuing Authority withheld	-	-	2
Regulations do not permit issue	-	13	6
Municipal ordinance does not permit issuance	-	13	-
Ad Interim, not previously licensed	-	-	1
To store on premises prior to transfer of license	-	-	1
Application filed to replace	-	-	1
Not Bona Fide organization	-	-	2

APPLICATIONS FOR SPECIAL PERMITS FEES FORFEITED

Blanket to employ disqualified persons. Employed prior. Permit denied	-	2	2
For social affair where application and/or fee was not received before period for which affair was to be held	-	-	4
To store wine for personal consumption, period expired prior to issue	1	2	-
Operated without license and prior to issuance of permit	-	1	-
Transfer of alcoholic beverages - all requisites not completed	-	4	8
No release from Tax Dept.	-	-	2
Illegal operation of business by Executor	-	-	1
Application not completed	-	3	-
Blanket to employ par boys. Employed prior. Permit denied	-	2	-

APPLICATIONS FOR SPECIAL PERMITS WITHDRAWN

Permit not necessary	1	14	9
Transaction not consummated	1	9	4
Affair not held	-	1	6
Withdrawn prior to issue	-	3	3
Duplicate application	-	1	-
Affair postponed	-	-	1
	<u>3</u>	<u>74</u>	<u>58</u>

Respectfully submitted,

Erwin B. Hock,
Deputy Commissioner.

8. SIXTH CLASS COUNTIES - MUNICIPALITIES MAY CREDIT MONEYS ACTUALLY RECEIVED AS LICENSE FEES TOWARD PAYMENT OF THE PRO-RATED FEES PAYABLE ON THE APPLICATIONS FOR REISSUANCE - SPECIAL RULING.

January 8, 1940

To Municipal Clerks in Cape May and Ocean Counties except Ocean City and Dennis Township in Cape May County:

In the special ruling of December 27, 1939 (Bulletin 371, Item 1) all licenses in Ocean and Cape May Counties were re-issued by the State Commissioner for a period of thirty days on condition that the licensees forthwith apply to the local governing bodies of the municipalities for reissuance of their licenses and take all necessary steps in connection therewith including publication, payment of the prorated fee and presentation of the Federal Tax Stamp.

Inquiries are now being received as to whether it is permissible for a local governing body to credit, towards payment of the prorated fee, moneys heretofore actually received as license fees for the current annual license period.

Under the terms of R. S. 33:1-21.2 the judges of the Cape May and Ocean County Courts of Common Pleas were obliged to transmit forthwith the annual license fees received by them to the County treasurers, who, in turn, were obliged to remit forthwith 90% thereof to the respective municipalities and retain the remaining 10% as a fund for the payment of administration expenses. Pursuant to the foregoing each municipality has, I believe, actually received 90% of the license fee paid by each licensee operating within its borders; whether any more will be received from the County treasurer must await future accounting of the 10% fund.

Under these circumstances there is no substantial reason why each municipality should not be permitted to credit moneys actually received by it as license fees towards payment of the prorated fees payable on the applications for reissuance.

For illustration: Where the same annual fee heretofore fixed for licenses within the municipality is continued by the local governing body, applications for reissuance may be accepted if accompanied by 10% in cash of the prorated fee, the remaining 90% of the prorated fee to be charged against the moneys heretofore received by the municipality. The same principle applies, of course, whether the fee fixed by the municipality is higher or lower than heretofore.

This procedure will not only operate equitably insofar as the licensees are concerned but may also facilitate budgetary and record matters for the municipality; and it is, therefore, ruled that it is permissible.

Questions as to further credits, refunds and related items will be deferred for later consideration.

D. FREDERICK BURNETT,
Commissioner.

9. SIXTH CLASS COUNTIES - SPECIAL RULING - STATUTE LIMITING THE NUMBER OF LICENSES IN SIXTH CLASS COUNTIES NO LONGER EFFECTIVE.

January 7, 1940.

Francis Tanner, Esq.,
Barnegat, N. J.

Dear Mr. Tanner:

I have yours of the 4th and note your concern as to the law limiting the number of licenses in Sixth Class Counties, P. L. 1939, C. 61.

As this question has been raised by several others and will probably come up in each of the municipalities affected, I will rule on that point now.

The decision of the New Jersey Supreme Court, in Township of Dover v. Van Kirk, Bulletin 371, Item 10, declared Section 1-21 of the Alcoholic Beverage Law to be unconstitutional so far as it purported to authorize the granting of plenary retail consumption licenses by the Judges of the Court of Common Pleas in Sixth Class Counties. It did not mention the statute of 1939 aforesaid. Technically, all it did was to set aside the issuance by Judge Camp of a plenary retail consumption license to the respondent Van Kirk.

That is what always happens in any decision which holds that a statute, or some part of it, is unconstitutional. The decision determines only the specific controversy before the court. That is as far as it goes in terms. It does not act in rem. But since the result in a particular case depends upon the reason, it follows that in any case where the reason applies, the result must be the same. The practical effect of such a decision is therefore much wider than the operative language in which it is couched.

Thus, the license of any other plenary retail consumption licensee issued by a Judge of the Court of Common Pleas in Sixth Class Counties would likewise be set aside for the same reason as the license of Van Kirk, viz.: because the statute has been declared unconstitutional. That decision stands as the law of our state unless and until reversed by higher authority. So, while the decision in terms did not mention plenary retail distribution licenses issued by such Judges, the result is undoubtedly the same. And this for the same reason, to wit, that the legislative classification having been held by the court to be illusory, was therefore unconstitutional and void. Consequently, in practical effect, every license issued by either Judge was automatically affected. So the whole N.R.A. structure collapsed upon the decision of the U. S. Supreme Court in the Schechter case, even though, by its operative terms, it affected only the parties immediately before the court.

It was for the reason that perforce the Supreme Court decision, the 355 licensees in these two counties could no longer lawfully make any sales of alcoholic beverages and would not be protected by the de facto doctrine after a judicial declaration

that the statute was unconstitutional, that I made the special ruling of December 27, 1939 to bridge the gap. Bulletin 371, Item 1.

The statute of 1939 aforesaid, which effects a limitation of the number of licenses in Sixth Class Counties, is based on the same classification which was condemned as unconstitutional in the Van Kirk case, supra. The reason for the decision in that case applies with equal force to the statute of 1939.

I therefore rule that P.L. 1939, C. 61 is no longer in force and effect.

The law, however, does confer power upon the governing board or body of each municipality, each for itself, to limit, by ordinance, the number of licenses to sell alcoholic beverages at retail. It is therefore within its power to determine for itself, according to local conditions and as experience teaches, the maximum number of licenses which may be outstanding at any one time.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

January 4, 1940

Re: Case No. 307

On July 5, 1939 applicant pleaded guilty to an indictment in the United States District Court charging that on May 3, 1935 he defrauded the United States of taxes; possessed an unregistered still; fermented mash; and removed untaxpaid spirits, in the Township of Middletown, County of Monmouth. On July 19, 1939 he was sentenced to one year and one day on each of the four counts, the terms to run concurrently, fined a total of \$900.00, and penalized \$500.00. The entire sentence was suspended and he was placed on probation for two years.

Applicant claims that he was merely working at the still as a helper on a truck at a weekly salary; that he drove the truck only twice; that he had been employed only about three weeks before the still was seized; that he had been at the still site only three times; that, although he had no interest in the still other than his salary as an employee, he pleaded guilty to all counts of the indictment because "the evidence was against me that I was the owner, because I was seen around the place. The farmer that rented the place said I was the owner. I had some fellows up there, the fellow that was up on trial with me, and they thought we were together. I didn't want to make it hard; I said I was guilty."

Conviction of crime resulting from activity in illicit liquor since Repeal involves moral turpitude. Re Case No. 267, Bulletin 313, Item 1. Collateral evidence may not be accepted in this proceeding to contradict the confessional plea of guilt. Re Case No. 247, Bulletin 294, Item 12; Re Case No. 267, supra.

Accordingly, it is recommended that applicant be advised he is ineligible to be employed by a liquor licensee in this State.

Emerson A. Tschupp,
Attorney.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

11. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED IN PART.

In the Matter of the Seizure of)	Case 5268
a Ford Sedan and two 5-gallon)	
cans and one 1-gallon glass jug)	
of alcohol found therein, in the)	ON HEARING
vicinity of 334 Gray Street, in)	CONCLUSIONS AND ORDER
the City of Orange, County of)	
Essex and State of New Jersey.)	

Saul C. Schutzman, Esq., Attorney for Anna Taliaferro.

Julius Goldberg, President of the Gold Loan Co., for the Gold Loan Co.

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On February 21, 1939, police officers of the City of Orange seized a Ford Sedan owned by Anna Taliaferro, in the vicinity of 334 Gray Street. At police headquarters the rear trunk of the car was unlocked and two 5-gallon cans and one 1-gallon jug of alcohol were found therein. The sedan and alcohol were then turned over to this Department.

No one contested the fact that the alcohol, which is fit for beverage purposes, was in containers which bore no tax stamps. It is therefore prima facie illicit. R. S. 33:1-1(i). Hence, it and the motor vehicle in which it was contained are unlawful property, subject to forfeiture. R. S. 33:1-66(c).

However, Anna Taliaferro appeared at the hearing in the case, claimed that the motor vehicle had been stolen from her husband shortly before its seizure; that they were both innocent of wrongdoing, and requested its return.

The Gold Loan Co., by its president, Julius Goldberg, also entered an appearance, and claimed to be a bona fide lienor of the car. It does not contest forfeiture, but merely seeks to impress its lien upon the forfeited vehicle.

As to Anna Taliaferro's claim: There is no evidence that she was in any way connected with the alleged violation. However, her husband, Angress Taliaferro, had contributed to the purchase

price and had permission to use the car whenever he wished. Hence, I must be satisfied also as to his innocence.

Angrèss Taliaferro testified that on February 21, 1939, at about 7:45 A.M., he took the car from a garage located in the City of Newark and drove to Main Street, East Orange, where he parked, leaving the keys, including one for the trunk, in the car; that later he was unable to find the car and telephoned to the East Orange Police to report that it had been stolen.

The seizure was made in front of 334 Gray Street, in the City of Orange, between 9:30 A.M. and 9:40 A. M. Taliaferro was not in the car and no one saw him in the vicinity at that time. It is important, therefore, to determine whether the telephone call was made in good faith or was made merely to create evidence in favor of Taliaferro.

Sergéant Hector of the East Orange Police testified that he received the telephone call at 10:01 A.M. The butcher from whose store the call was made testified that he had seen Taliaferro stop in front of his store and look up and down, before entering the store and telling the butcher that the car had been stolen; that, thereafter, Taliaferro telephoned to the East Orange Police.

A test made in another car shows that it would take at least twelve minutes to drive a car from 334 Gray Street, Orange, to the butcher shop on Main Street in East Orange, so that even if Taliaferro had been near the place of seizure in another car, it is doubtful if he could have reached the butcher shop in East Orange in time to make the telephone call. He testified further that he knew no one who resided on Gray Street, Orange.

In view that Taliaferro has no criminal record and has been engaged in business for himself as an auto mechanic in the City of Newark for fourteen years, I shall accept as true his testimony that the car had been stolen and that he knew nothing of the presence of the illicit liquor in the car. Hence, the Ford Sedan may be returned to Anna Taliaferro provided that, on or before the 5th day of February, 1940, she pays the costs of its seizure and storage. R. S. 33:1-66(e).

Under the circumstances, it is not necessary to consider the claim of the Gold Loan Co.

Accordingly, it is ORDERED that the property set forth in Schedule "A" (excepting the Ford Sedan described therein) be and the same is hereby forfeited and that it be retained for the use of hospitals and State, County and municipal institutions or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: January 5, 1940.

SCHEDULE "A"

- 2 - 5 gallon cans of alcohol
- 1 - gallon glass jug of alcohol
- 1 - Ford Sedan, engine #3811042,
New Jersey 1938 Registration 1E81868
Miscellaneous personal property.

12. LICENSES - ELIGIBILITY - TWO OR MORE VIOLATIONS OF THE STATE REGULATIONS DO NOT MANDATORILY DISQUALIFY ONE FROM A LIQUOR LICENSE AS WOULD ONE WHO HAS COMMITTED TWO OR MORE VIOLATIONS OF THE LAW ITSELF.

January 8, 1940.

William F. Hanlon, Esq.,
Bradley Beach, N. J.

Dear Mr. Hanlon:

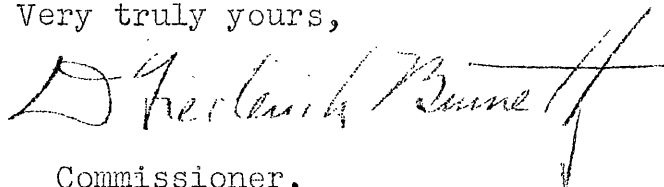
I have before me your letter of December 30th re John Gaine.

The Alcoholic Beverage Law provides (R. S. 33:1-25) that no liquor license shall be issued to any one who has committed **two** or more violations of the Alcoholic Beverage Law.

The two adjudications against Gaine were for violations, not of the law, but of the Commissioner's Fair Trade regulations (Re Gaine, Bulletin 288, Item 9 and Bulletin 304, Item 6). Hence, he is not mandatorily disqualified from a liquor license.

This does not mean that the Borough Council of Neptune City must, therefore, consider him personally qualified for a **retail** license in Neptune City. Whether he is, in view of his record, to be deemed fit or unfit for such license there, is a question which rests within the sound judgment of the Borough Council.

Very truly yours,



Commissioner.