

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

BULLETIN 387

FEBRUARY 28, 1940.

1. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED -
PADLOCK DENIED.

In the Matter of the Seizure on) Case 5634
November 27, 1939, of a still and)
a quantity of alcoholic beverages) ON HEARING
at 117-24th Street, in the Town) CONCLUSIONS AND ORDER
of Guttenberg, County of Hudson)
and State of New Jersey.)
-----)

Thomas S. Clancy, Esq., Attorney for Nicholas Mauro.
Harry Castelbaum, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

On November 27, 1939, after a fire occurred in the rear building at 117-24th Street, Guttenberg, police officers of Guttenberg seized an unregistered still, appurtenant paraphernalia and a quantity of illicit alcohol in the second floor apartment in said premises occupied by John Paragian. The seizure was adopted by this Department.

No one appeared at the hearing herein to contest the forfeiture of the seized articles.

It is therefore determined that the seized property constitutes unlawful property. R. S. 33:2-2.

As to the padlocking: Nicholas Mauro testified at the hearing that he and his mother are the owners of the premises at 117-24th Street, on which is located a front building and a rear building; that they purchased the property in September, 1939; that the rear building was then occupied by two tenants, one of whom was John Paragian, who paid thirteen dollars per month rent for three rooms; that the only time he had visited Paragian's apartment was when the property was purchased, at which time he saw no equipment for the distillation of alcohol or any other illicit activity which might arouse his suspicions; that since that time he has had no occasion to visit the premises because Paragian paid the monthly rental promptly at Mauro's home. Mauro further testified that he had given legal notice to Paragian to vacate the premises by January 1, 1940. Since the hearing I have been advised that Paragian has vacated the premises.

No evidence was presented at the hearing to implicate either Mauro or his mother in the illicit still activities. In view of the foregoing evidence, I shall not padlock the premises.

Accordingly, it is ORDERED that the seized property be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5, 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: February 13, 1940.

New Jersey State Library

SCHEDULE "A"

- 1 - 15-gallon copper still containing 15 gallons of mash
- 1 - gas burner plate and hose
- 1 - 1-gallon bottle whiskey
- 1 - 1/2-gallon bottle whiskey
- 1 - 1/2-gallon bottle flavoring
- 2 - 1-quart bottles beer
- 1 - 1/2-gallon bottle anisette
- 1 - 1-pint bottle anisette
- 1 - 1-quart bottle wine

2. DISCIPLINARY PROCEEDINGS - FAIR TRADE - CASE DISMISSED.

In the Matter of Disciplinary Proceedings against
 BENJAMIN GOLDBERG,
 T/a Library Delicatessen
 and Food Shop,
 275 Main Street,
 Hackensack, N. J.,

CONCLUSIONS

Holder of Plenary Retail Distribution License D-1, issued by the City Council of the City of Hackensack.

 Stanton J. MacIntosh, Esq., Attorney for the State Department of Alcoholic Beverage Control.
 Benjamin Goldberg, Pro Se.

BY THE COMMISSIONER:

The licensee was charged with sale of a case of Haig & Haig Scots Whisky below the Fair Trade price in violation of State Regulations 30, Rule 6.

The charge was preferred on the basis of the licensee's signed statement to an investigator that he had sold the liquor to a customer at a price of \$42.84, the minimum price per case at the time being \$45.37.

Testimony establishes that a regular customer, contemplating the giving of liquor as Christmas gifts to business associates, requested prices on a quantity of scotch and rye whiskey; that the customer (a non-drinker) was advised by a friend that the brands he intended purchasing were little known and suggested that well known brands be bought instead; that the customer then ordered 20 quarts of Four Roses and 20 fifths of Haig & Haig Pinch Decanter; that Goldberg informed the customer that those brands would cost more money, whereupon the customer gave Goldberg his company's check for \$114.60, the computed price of the original brands, and told him to charge the balance to his personal account. Goldberg keeps no books and trusted to his memory.

When questioned by the investigator, he computed the total price in the latter's presence, attaining a total of \$140.68, by figuring the 20 quarts of Four Roses at \$3.30 each; eight bottles of Haig & Haig at \$3.98 each and the remaining

twelve at \$42.84 for the case. The price on the first two items was the correct Fair Trade minimum. As above indicated, the price on the third was too low.

But the computation was made by the licensee with the Fair Trade price list before him — a fact which appeared for the first time at the hearing, and which is corroborated by the investigator.

The licensee made a mistake in arithmetic, not a sale in violation.

The charge is dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 15, 1940.

3. APPELLATE DECISIONS - MUSICO v. JERSEY CITY.

JOHN MUSICO,)	
)	
Appellant,)	
)	
-vs-)	
)	
BOARD OF COMMISSIONERS OF THE)	
MAYOR AND ALDERMEN OF THE CITY)	
OF JERSEY CITY,)	
)	
Respondent)	

ON APPEAL
CONCLUSIONS

James F. McGovern, Jr., Esq., Attorney for Appellant.
N. Louis Paladeau, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals the denial of his application for a plenary retail consumption license for premises 269 Monticello Avenue, Jersey City.

An ordinance adopted October 5, 1937, limiting the number of licenses to be issued, and establishing a minimum distance between licensed premises, is presently in effect. The issuance of the license sought would be prohibited both by the lack of a vacancy in the quota and by proximity of premises already licensed within the minimum distance, were it not for Section 6 of the ordinance which, subject to seven provisos not here material, provides that:

".....the Board of Commissioners of the City of Jersey City may grant a license.....notwithstanding any limitation in this ordinance....."

Respondent admits appellant's compliance with the seven provisos aforementioned but contends that it may nevertheless deny the application by reason of the sufficiency of licenses in the vicinity.

I find that there are, in this mixed business and residential area of six blocks, nineteen licenses, four of which are respectively only 297, 385, 390 and 410 feet distant from the

premises sought to be licensed. No one need go thirsty here. The neighborhood seems well supplied. Re Abrams, Bulletin 224, Item 7 (collecting previous cases); Berkey v. Pine Hill, Bulletin 262, Item 5; Skeba v. Millstone, Bulletin 274, Item 1; Bernstein v. Hillside, Bulletin 289, Item 7; Wenzel v. Maywood, Bulletin 310, Item 3.

Section 6 of the local ordinance provides that a license may be granted. There is no "must" about it where, as here, the vicinity is adequately supplied.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 15, 1940.

4. APPELLATE DECISIONS - McWALTERS v. JERSEY CITY.

FRANK JOSEPH McWALTERS,)	
	Appellant,)
-vs-)	ON APPEAL
)	CONCLUSIONS
BOARD OF COMMISSIONERS OF THE)	
MAYOR AND ALDERMEN OF THE CITY)	
OF JERSEY CITY,)	
	Respondent)
-----	-----	

James E. Pyle, Esq., by Hyman S. Starr, Esq.,
Attorney for Appellant.
N. Louis Paladeau, Jr., Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals the denial of his application for transfer of a plenary retail distribution license from premises 637 Ocean Avenue to premises 424 Ocean Avenue, Jersey City.

Respondent denied the transfer for the reason that the vicinity of the proposed premises is already adequately supplied.

Appellant alleged in his petition of appeal that the nearest package store was a mile away from the proposed premises. At the hearing, however, it appeared that there were two package stores on Ocean Avenue - one five blocks north and the other nine blocks south of the proposed premises, and that on Jackson Avenue, which is but two blocks west of Ocean Avenue, there were five in a space of six blocks.

In addition, in the fourteen blocks on Ocean Avenue separating the two existing package stores, there are fourteen other licensed premises, two of which at 422 and 426 Ocean Avenue would sandwich the proposed premises at 424. Jackson Avenue, in a space of nine blocks, has in addition to the five package stores, ten other licensed premises.

These facts speak for themselves.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 15, 1940.

5. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

February 14, 1940

Re: Case No. 310

Applicant, employed as bartender and manager by a retail licensee, was convicted on November 15, 1939 of the crime of attempting to obtain money by false pretense, whereupon he was sentenced to three months' imprisonment, which sentence was subsequently vacated and applicant placed on probation for five years to pay 50¢ per week.

Applicant's conviction followed his claim upon an insurance company for damage done to his automobile, stolen while parked on the street. Upon its recovery several days later, he inspected the car and thereupon made claim, inter alia, for the substitution of four tires, alleged to have been newly purchased just prior to the theft of the car. To verify his claim, he obtained a receipted bill in the amount of \$65.00 from a tire dealer. At his trial, the dealer testified that he had sold no tires to applicant.

Applicant seems to have been apprehended in the all too common practice of trying to soak the insurance company.

Although applicant hazards the guess that the explanation for the double-cross that he got from his friend the tire dealer was the result of the dealer pocketing the money in fraud of his partners, the explanation, albeit ingenious, is unavailing. The verdict of guilt cannot be collaterally attacked in this proceeding. Re Case No. 239, Bulletin 305, Item 9.

This was not the crime of a man impecunious and demoralized by the dole. Cf. Re Case No. 185, Bulletin 217, Item 4, where under the circumstances it was held that the crime of obtaining relief under false pretenses did not involve moral turpitude. Instead, applicant has been steadily employed as a tavern manager for four and a half years at a salary of thirty dollars a week. Following his conviction he quit his job and immediately went on relief. The Essex County Probation Department reports:

"Investigation also showed that on a previous occasion he had made a similar claim against another insurance company, was arrested, prosecuted on a charge of false pretense, but upon trial the jury disagreed.

"Experience with this man on probation during the year 1939 indicated he was of a surly, street-wise individual and inconsiderate in his responsibilities toward his wife and children. He refused to work for relief and continually protested against his food order and was constantly at odds with the Emergency Relief Administration."

The crime of obtaining goods or money under false pretenses ordinarily involves moral turpitude. Re Case No. 164, Bulletin 175, Item 12; Re Case No. 309, Bulletin 384, Item 6. The crime of attempting to obtain money under false pretenses involves the same element.

It is recommended that applicant be advised he is ineligible to be employed on licensed premises.

Emerson A. Tschupp,
Attorney.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

6. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

February 15, 1940

Re: Case No. 312

In 1929, when 15 years of age, applicant stole an automobile "to go joy riding", as a result of which he was found guilty of auto larceny and placed on probation for two years.

On January 10, 1931, applicant was arrested and charged with auto larceny and carrying concealed weapons. Upon his plea of non vult, sentence was suspended and he was placed on probation for three years. He testified that he had taken the weapon from the home of his brother, who was a police officer, and that he, and two others, stole an automobile to transport them to a store which they intended to rob. They were apprehended before reaching their destination.

On September 13, 1936 applicant was again arrested and charged with entering, larceny and receiving, and also with conspiracy to rob. He explained that he and two companions broke into a factory and "cracked" the safe from which they extracted slightly less than \$100.00. Before they had an opportunity to leave the factory, they were apprehended by the police. He further testified that he and his companions, for a period of six months prior to this arrest, "broke into a number of places, and the goods which we had taken we sold for what money we could get"; that "we broke into a trucking garage and took face powders and lotions"; that "we walked in through the back entrance of a jewelry place, and took a diamond ring out of the safe"; that "we broke into the _____ Company, where we had taken a few hundred shower curtains, which we later sold".

After this arrest, the police visited a garage which applicant had rented and there they found a loaded revolver, wire, and stolen license plates. Applicant explained that these articles were intended to be used in connection with a "job" which he and another had "planned" for some time in the future. He was thereupon charged with conspiracy to rob for which he received a suspended sentence.

To the charge of entering, larceny and receiving, he pleaded non vult and was sentenced to an eighteen months' jail term.

It is recommended that applicant be declared ineligible to be employed by a liquor licensee in this State.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

Samuel B. Helfand,
Attorney.

7. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - TWENTY-FIVE DAYS' SUSPENSION FOR SECOND OFFENSE.

February 19, 1940

Andrew J. Conover, Esq.,
Freehold Township Counsel,
Freehold, N. J.

My dear Mr. Conover:

I have before me staff report and your letter of February 13th re disciplinary proceedings conducted by the Freehold Township Committee against James P. Cartwright, t/a Cartwright's Inn, W/S Freehold-Adelphia Road, charged with sale of alcoholic beverages during prohibited hours, and note that he was found guilty and his license suspended for twenty-five days.

Please express to the members of the Township Committee my deep appreciation. The substantial penalty imposed is a service to the public. It is also a kindness to law-abiding licensees. It emphasizes the homely but necessary reminder that rules were made to be obeyed.

This is Cartwright's second offense. His license was suspended for two weeks for a similar violation in 1937. If he does it again, revoke his license outright and let somebody else have a chance. There are hundreds who would enjoy and respect the privilege. One who can't tell time isn't fit to be a licensee.

Your information that the Township has no police force and cannot employ one of the constables to see that the order of suspension is observed, and requesting assistance of this Department, is also noted. I shall be glad to have my men make spot checks during the period of suspension to see that no sales of alcoholic beverages are made.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. ELECTION DAY RULE - RETAIL LICENSEE WHOSE WAREHOUSE IS IN A MUNICIPALITY WHERE ELECTION IS BEING CONDUCTED MAY TRANSPORT LIQUOR FROM THE WAREHOUSE THROUGH THE MUNICIPALITY FOR DELIVERIES TO CUSTOMERS IN MUNICIPALITIES OTHER THAN WHERE THE ELECTION IS HELD IF THE DELIVERIES ARE THE RESULT OF ORDERS TAKEN PREVIOUSLY TO ELECTION DAY.

February 19, 1940

L. Bamberger & Co.,
Newark, N.J.

Att: George Roath

Gentlemen:

I have your inquiry of February 19th re tomorrow's Special Election in Newark.

It is permissible for you to transport liquor from your warehouse at Elizabeth Avenue through Newark for deliveries to your customers in municipalities other than Newark where the deliveries are the result of orders taken previous to Election Day.

Regulations 20, Rule 2 prohibits you from selling or offering for sale at retail, or delivering to any consumer, any alcoholic beverages in Newark on Election Day while the polls are open for voting.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

In the Matter of an Application)	
to Remove Disqualification)	
because of a Conviction, Pursuant)	CONCLUSIONS
to R. S. 33:1-31.2 (as amended by)	
Chapter 350, P.L. 1938))	
Case No. 77)	
-----)	

BY THE COMMISSIONER:

In 1915, petitioner was convicted in a Federal Court on charges of possessing narcotics in violation of the Harrison Act.

This petition prays that an order be made lifting his disqualification, if any, by reason of the aforesaid conviction.

At the threshold of the case, question arises as to whether the crime of which the petitioner stands convicted involves moral turpitude. If it did not, there is no disqualification to be removed.

The conviction arose from the finding of a small quantity of morphine in the possession of the petitioner. He pleaded guilty and was fined \$25.00.

At the hearing on this petition, the petitioner testified that he had never used narcotics and that the package found in his possession had been pledged with him by a fellow worker, to whom he had advanced money, as security for the loan. While the report from the Probation Office of the Federal Court states that the petitioner had been trailed by customs inspectors as a known narcotic peddler and user, the comparatively small fine that he received does not indicate that "aggravating circumstances" were involved.

In the absence of aggravating circumstances, conviction for unlawfully possessing drugs does not involve moral turpitude. See Re Rehabilitation Case No. 7, Bulletin 224, Item 2. Cf. Case No. 301, Bulletin 358, Item 6.

I find that petitioner has never been convicted of a crime involving moral turpitude. No order, therefore, removing disqualification because of conviction is required. Re Rehabilitation Case No. 1, Bulletin 208, Item 6; Re Rehabilitation Case No. 68, Bulletin 364, Item 3.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 23, 1940.

10. SEIZURES - CONFISCATION PROCEEDINGS - ORDER MODIFIED -
HEREIN A LESSON LEARNED.

In the Matter of the Seizure on)
 December 5, 1939, of a still, a)
 quantity of alcohol, some house-) Case #5644
 hold furniture, and miscellaneous)
 personal property at 94 Liberty) ORDER
 Street, in the Borough of Lodi,)
 County of Bergen, and State of)
 New Jersey.)
 -----)

Gaudielle and Shuart, Esqs., Attorneys for Rose Della Penta.

BY THE COMMISSIONER:

The furniture of Rose Della Penta was seized in the raid as well as the still, and, by order of January 19, 1940, was determined to be unlawful property and forfeited and sold, destroyed or retained for the use of hospitals and State, county and municipal institutions. Bulletin 378, item 5.

The order stated:

"As second-hand furniture is usually of but small value and I surmise that the State Finance Commissioner will not desire to retain it for the use of hospitals and State, County and municipal institutions, I shall, if he so decides, rather than destroy the furniture, or attempt to sell it for what it will bring, entertain a petition by Rose Della Penta for its return to her upon payment of the costs of seizure and storage."

Rose Della Penta has filed her verified petition whereby it appears that her home is subject to a \$5800.00 mortgage held by a Building & Loan Association; that up to August 1939, she lived in this house with her husband, her stepson and her daughter, Margaret, eleven years old, and her grandson, Armand, nine years old; that, owing to certain difficulties, both her husband and stepson left her home in August; that she has continued to live in the house with the two young children; that her husband from time to time has paid her a small weekly allowance which has enabled her and the two young children to get along with their daily needs.

The petition then states:

"At this time I am greatly distressed financially. Ever since the seizure of my furniture the two children and I have slept on a mattress on the bare floor. We have had no heat in the house and during the cold spell we have endured great physical and

mental suffering. For the last few weeks I have received no moneys from my husband. The Mutual Building and Loan Association have announced their decision that they are going to foreclose and they want me to leave my premises as quickly as possible. I am destitute and I am fearful for our livelihood for the next day, that we shall not have enough to eat. That because of this seizure I have suffered a great deal of humiliation and a great deal of mental anguish for, in all my life with the exception of the present offense, I have never consciously committed any legal wrong and an investigation by you among my neighbors will unquestionably convince you that I am truthful in what I say. I would gladly meet the conditions your Honor has imposed upon me for the acquisition of my furniture, to wit: the payment of all costs and seizure and storage, but as I said, at this moment it is utterly impossible for me to meet such costs."

Hon. Bernard Lamb, State Finance Commissioner, believing that justice should be tempered with mercy if warranted, writes me agreeing to the return of the furniture if the statements in the petition are substantially true.

I am satisfied from the facts appearing independently in the record that the averments of the petition are true, and believe that the interests of society will be best served by returning the furniture so to reestablish a home for petitioner and the young children.

In order that mercy may be as thorough as justice, the costs of the seizure and storage are waived.

Accordingly, it is ORDERED that furniture and personal effects of Rose Della Penta be released forthwith, without costs.

Dated: February 24, 1940. D. FREDERICK BURNETT,
Commissioner.

11. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of Seizure, on)	Case 5623
November 15, 1939, of about 400)	
gallons of wine at 158 Jefferson)	ON HEARING
Street, City of Newark, County of)	CONCLUSIONS AND ORDER
Essex and State of New Jersey.)	
-----)	

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

No other Appearances.

BY THE COMMISSIONER:

On November 15, 1939, agents of this Department, while engaging in the seizure of Salvatore Tamburri's wine in the basement of 158 Jefferson Street, Newark, also there discovered and seized fourteen barrels (totaling about 400 gallons) of home-made wine apparently belonging to Arthur Silva.

At the time of the seizure, Silva admitted to the agents that he (with Tamburri's help) had made the wine in October last without license or permit.

When this case first came on for hearing (December 15, 1939), a person purporting to be Arthur Silva's brother appeared at the Department and, on representation that Arthur Silva was unable to attend the hearing, obtained an adjournment until December 28, 1939.

However, at the adjourned date, no one appeared to contest that the wine constituted unlawful property under R.S.33:1-1 (i and y) or that it should be forfeited under R. S. 33:1-66.

Accordingly, it is ORDERED that the property seized in this case, more particularly set forth in Schedule "A", be and 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: February 18, 1940.

SCHEDULE "A"

5 - 50-gallon barrels wine
4 - 30-gallon barrels wine
3 - 10-gallon barrels wine
2 - 5-gallon barrels wine

12. ADVERTISING - INDECENT PICTURES AND POSES - CONDEMNED.

February 26, 1940.

Mr. O. E. Grimme,
Newark, N. J.

Dear Sir:

I have examined the blotters which you submitted for ruling.

The pictures of scantily attired, craftily posed females which feature the advertising are shoddy, inartistic and lascivious - wholly unworthy of a decent liquor establishment. Their presence on licensed premises would violate Regulations 20, Rule 17 and be cause for revocation or suspension of license.

Don't try to sell these wares to New Jersey licensees for it will only get them into trouble.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. TAVERNS - MAINTENANCE OF ORDER - WAYS AND MEANS - HEREIN OF
STOUT STICKS AND THE GARDEN HOSE.

Dear Sir:

I am writing to you for information regarding the sale of tickets and punch boards in taverns.

And the protections of oneself and premises should an argument start. So far I have had no trouble.

Would I be allowed to use a garden hose or stick if I was attacked in trying to preserve order in a tavern which I have charge of or if the business happens to be my own?

I want to treat all my customers the same and run the business as smoothly as possible.

Yours truly,
W. Fremont Oakes

February 26, 1940

Mr. W. Fremont Oakes,
Washington, N. J.

Dear Mr. Oakes:

Punch boards are lotteries. So, also, is the sale of chance tickets for prizes. They are prohibited by Rule 6 of Regulations 20, violation of which is cause for revocation or suspension of license.

Don't carry order to extremes. Tavern arguments are not necessarily disorder even if they do shock the logicians. A spring housecleaning of unaired suppressions is a safety valve in a Presidential year. The inspiration wears off in reasonable time especially if you give the vociferous ones a seductive chaser of molasses and sulphur.

As regards the garden hose. It's equally quieting and much safer to use it as an aqueduct rather than a section as a third degree persuader.

A kindly but firm word from you will do more to keep order than brandishing an Oakes' stick or a blackthorn shillelagh.

If you are actually attacked, then show who's boss but don't use force unless absolutely necessary. Better call a cop! It always works!!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

14. DISCIPLINARY PROCEEDINGS - REFILLS - 30 DAYS' SUSPENSION.

February 26, 1940

Herbert S. Killie, Esq.,
Mount Holly Township Solicitor,
Mount Holly, N. J.

My dear Mr. Killie:

I have before me staff report and your letter re disciplinary proceedings conducted by the Mount Holly Township Committee against Gertrude E. Turner, rear 219 Washington St., charged with possession of two refilled whiskey bottles, and note that she was found guilty and her license suspended for thirty days.

Please express to the members of the Township Committee my deep appreciation. The fearless imposition of substantial penalties in these illicit liquor cases is the only thing that will teach licensees that it doesn't pay to tamper with the stock. It is a pleasure to compliment this old township, incorporated as long ago as 1688, upon its vigorous action in maintaining respect for the law.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application)	Case No. 86
to remove disqualification be-)	
cause of a conviction, pursuant)	CONCLUSIONS
to R. S. 33:1-31.2 (as amended)	AND ORDER
by Chapter 350, P. L. 1938) <i>March 1</i>	

BY THE COMMISSIONER:

Petitioner seeks removal of his disqualification resulting from conviction of larceny in 1929 and grand larceny in 1932.

It appears that the first conviction followed the theft of candy, soda, a camera and a baseball glove from a Community House by petitioner, then seventeen years old, and another. The second conviction followed his "borrowing" an automobile while intoxicated and an accident while driving the stolen car. In the first case, sentence was suspended and petitioner placed under the supervision of the Secretary of the Community House; in the second, he was placed on probation for two years.

Thereafter, he was twice arrested, once in 1932 for grand larceny of an automobile and once in 1933 for attempted grand larceny of an automobile. On both occasions he was under the influence of liquor, and both cases were dismissed by the Grand Jury.

Since his last arrest in 1933, his record is clear. The Acting Chief of Police of the municipality wherein petitioner resides reports that there are no pending complaints, investigations or reports involving petitioner.

At the hearing herein, petitioner produced three residents of his neighborhood, one of whom holds a solicitor's permit issued by this department. Two knowing him for ten years and the third all his life, testified that petitioner has a reputation as a law-abiding citizen.

In view of the evidence presented herein, I conclude that petitioner has conducted himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Normally, petitioner's disqualification would be lifted effective immediately, but in his application for solicitor's permit filed with this department he denied under oath that he had been convicted of crime. He explains his false statement by claiming that he thought that a conviction meant the imposition and service of a jail sentence. Be that as it may, the fact remains that he did swear falsely in his application. For this, his disqualification will not be lifted for another month.

Accordingly, it is, on this 26th day of February 1940,

ORDERED, that the petitioner's disqualification from holding a license or permit or being employed by a licensee because of the convictions referred to herein be and the same is hereby removed effective March 26, 1940, in accordance with the provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938.

D. FREDERICK BURNETT,
Commissioner.

16. SEIZURES - CONFISCATION PROCEEDINGS - AUTOMOBILE RETURNED, OTHER PROPERTY FORFEITED AND PADLOCK GRANTED.

In the Matter of the Seizure on) Case No. 5633
November 26, 1939 of a still, a)
quantity of household furniture) ON HEARING
and other miscellaneous personal) CONCLUSIONS AND ORDER
property, at 115 Conover Alley, in)
the City of Trenton, County of
Mercer and State of New Jersey.)
- - - - -

Frank Howell Wimberley, Esq., Attorney for Casey Evans.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

On November 26, 1939, a fire occurred at 115 Conover Alley, Trenton, as a result of which Police Officers of Trenton discovered a still and barrels of mash in the attic of said premises. Investigators of this Department subsequently seized the still, mash and household furniture located in the house.

The still was not registered with this Department. It is, therefore, unlawful property. R. S. 33:2-2. No one contests the forfeiture of the still or mash.

At the seizure hearing, Casey Evans resisted forfeiture of the household furniture. However, R. S. 33:2-2 provides that unregistered stills, articles adaptable for use therewith, and

"all personal property of whatsoever kind, found in a building ** in which such still or distilling apparatus or parts thereof are found, are declared to be unlawful property."

R. S. 33:2-5 provides:

"If after such hearing the commissioner determines that the seized property constitutes such unlawful property he shall declare such property forfeited **."

Since the household furniture was in the building where the unregistered still was seized, I find, therefore, that it is unlawful property and declare it forfeited.

The only relief which can be granted to Casey Evans is that set forth in R. S. 33:2-7, which provides:

"**The commissioner, upon being satisfied that a person whose property has been seized or forfeited pursuant to the provisions of this chapter has acted in good faith and has unknowingly violated the provisions of this chapter, may order that such property be returned upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the commissioner."

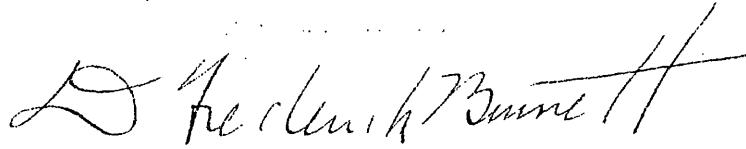
Casey Evans testified that he rented the premises in 1935 and resided there with his wife until September 1939; that he owned some of the household furniture in 1935 and purchased some since that time; that in September 1939, he and his wife went to Florida, leaving his cousin Murphy Evans in charge of the premises; that no still was on the premises when they left; that Murphy Evans was then employed as a laborer. Casey Evans further testified that he and his wife returned from Florida on December 11, 1939 and found the house vacant and boarded up. Independent investigation leads me to conclude that Casey Evans was in Florida for some time prior to the date of the seizure and I shall accept his sworn testimony that he had no knowledge of the existence of the still. Hence, I find that he acted in good faith and shall return his household furniture to him upon payment of costs of seizure and storage thereof.

As to padlocking: The property is owned by United New Jersey Railroad & Canal Co., whose agent has advised me that the owner does not intend to re-rent the building but that it has no objection to the padlocking of the building provided leave be granted to petition to lift the padlock if it decides to demolish the building. Leave to file such petition is granted.

Accordingly, it is ORDERED that the property described in Schedule "A", annexed hereto, as "miscellaneous quantity of household furniture" be and the same is hereby forfeited, but that it may be returned to Casey Evans, provided that on or before the 25th day of March, 1940, he pays the costs of seizure and storage thereof; and it is further

ORDERED that all other property set forth in said Schedule "A" be and hereby is 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; and it is further

ORDERED that the premises known as 115 Conover Alley, Trenton, being the premises in which the still was found, shall not be used or occupied for any purpose whatsoever for a period of six months, commencing the 25th day of March, 1940.



Commissioner.

Dated: February 25, 1940.

SCHEDULE "A"

- 1 - 50-gallon copper still
- 1 - 15-gallon galvanized cooler with copper coils
- 2 - 15-gallon galvanized tubs
- 1 - 3-burner oil stove
- 1 - 2-burner oil stove
- 1 - oil heater
- 2 - 50-gallon barrels of rye mash
- 2 - 35-gallon barrels of rye mash
- Miscellaneous quantity of household furniture.