

COMMISSIONER BURNETT
SENT TO REGULAR MAILING LIST

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

BULLETIN NUMBER 92

October 22, 1935.

1. SPECIAL PERMITS - DENIED WHEN SOUGHT TO DISPENSE ALCOHOLIC BEVERAGES AT DANCE PROMOTED BY INDIVIDUALS FOR PRIVATE PROFIT.

October 10, 1935.

Re: Application for Special Permit by Frank
McLaughlin, John White, Ed Tierney

Application for a Special Permit to dispense beer at a dance Saturday night at the Veterans of Foreign Wars Hall, 17 Belleville Ave., Belleville, N. J., was applied for by three individuals.

The affair is not sponsored or for the benefit of any organization. Although the three applicants declare the affair is not to be run for profit, they admit that any proceeds over and above cost, will be split among the three.

I can find nothing in the Control Act, rules or regulation or in the Bulletins which provides for the issuance of a social permit to one or more individuals. As I understand it, the Special Permit for social affairs is confined to organizations of one type or another. I believe the issuance of a permit of this kind would set a precedent which might very easily develop into a dangerous condition from the control standpoint. Further, I believe it would be unfair to licensees to allow individuals to obtain Special Permits to sell beverages under the guise of a dance or other social function.

I feel that a ruling should be promulgated to guide the Licensing Division in applications of this kind for the future. To which admittance is charged for the profit of individual promoters.

Respectfully submitted,

ERWIN B. HOCK
Deputy Commissioner

APPROVED

D. FREDERICK BURNETT
Commissioner

2. LICENSES - SPECIAL CONDITIONS - MUST BE EXPLICITLY DEFINED

October 11, 1935.

Mr. Harold L. Bailey,
Clerk of Downe Township,
Dividing Creek, New Jersey.

Dear Sir:

New Jersey State Library

I have before me for consideration your certification of the issuance of Plenary Retail Distribution License No. 3 to Samuel

Engle for premises on Main Street, Fortescue, with the special condition that the issuance is "Subject to conviction or acquittal on pending charges of violation of Alcoholic Beverage Control Act."

The condition does not state what action is contemplated by the Township Committee either in the event of subsequent conviction or in the event of subsequent acquittal. I take it, then, that the purpose of the condition was to reserve, pending the outcome of the criminal charges, ultimate decision as to whether or not the license shall remain in force and effect.

I cordially suggest that when imposing conditions to the issuance of licenses you word them to indicate the specific requirements on compliance with which the continuance of the license will depend. In common fairness to the licensee, he should know. When no standards are set, there is no way for him to anticipate what the eventual outcome will be. Whenever special conditions are deemed necessary, they should be prescribed as definitely as the nature of the case will permit. The only question then remaining will be one of the practical application of the rule imposed.

In the instant case, I shall approve presuming that the condition means that upon acquittal the license would be permitted to continue and that upon conviction it would be thereupon revoked. In the future, however, a more explicit statement would be desirable so as to avoid complaints and misunderstandings which may arise and perhaps also avoid appeals.

The scope and extent of approvals by the Commissioner of local regulations and their review, should an appeal be taken from their application in given instances, are governed by the principles set forth in Bulletin 43, item 12 and Bulletin 34, item 5.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. LICENSES - SPECIAL CONDITIONS - SUBJECT TO COMPLETION OF ADVERTISING

October 11, 1935.

Mr. Joseph J. Novack,
City Clerk,
Garfield, New Jersey.

Dear Sir:

I have the resolution adopted by your City Council on July 2, 1935 authorizing the issuance of plenary retail consumption licenses, among others, to Peter Decda and Walenty Szewczyk for premises 267 Lanza Avenue, subject to the completion of advertising notice of intention the second time July 5, 1935 and to Howard Haberthur and John Svahra for premises 72 Grand Street, subject to completion of advertising notice of intention the second time July 12, 1935.

The special conditions are approved as submitted.

When authorizing the issuance of licenses to those who have not yet completed advertising their notice of intention to apply, I cordially suggest that the condition be worded so as to leave no room for doubt that it was the intention of the City Council that the advertising be completed before, not after, the issuance of the license. Until the advertising has been satisfactorily completed all of the statutory requirements to the issuance of the license have not been complied with and the

license can not legally be issued. The cure is to revise, in future cases, the condition to read: "Subject to completion of advertising notice of intention the second time, July 5, 1935, prior to the issuance of the license by the City Clerk."

The scope and extent of approvals by the Commissioner of local regulations and their review, should an appeal be taken from their application in given instances, are governed by the principles set forth in Bulletin 43, item 12 and Bulletin 34, item 5.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. DISTILLERIES - RECTIFIERS AND BLENDERS - BREWERIES - WINERIES -
WHOLESALEERS - RULES - NECESSARY REPORTS

TO ALL HOLDERS OF DISTILLERY, BREWERY, RECTIFIER AND BLENDER,
WINERY AND WHOLESALE LICENSES:

Effective immediately, distilleries, rectifiers and blenders and wholesalers are no longer required to submit to this Department copies of United States Treasury Department forms 338, 52A or 52B; rectifiers and blenders are no longer required to submit to this Department copy of United States Treasury Department form 45; breweries are no longer required to submit to this Department copy of United States Treasury Department form 103; and wineries are no longer required to submit to this Department copies of United States Treasury Department forms 702 or 702A.

This does not affect the requirements of any other Departments, Federal or State, with respect to the above mentioned reports.

Dated: October 16, 1935.

D. FREDERICK BURNETT
Commissioner

5. BULLETIN ITEMS -- ITEMS SUPERSEDED

Rules concerning filing of reports as set forth in Bulletin #24, Items #3, #6, #7, #8 and #9, are superseded by Bulletin #92, Item #4.

6. SOLICITORS' PERMITS -- MORAL TURPITUDE -- FACTS EXAMINED --
CONCLUSIONS

October 9, 1935

Re: Application for Solicitor's Permit - Case No. 3

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. It appeared that applicant was convicted on May 1, 1933 in County Court of Queens County, New York, for abandoning children in destitute circumstances and was sentenced to an indeterminate term, actually serving 14 months in the New York Penitentiary. Notice was served upon the applicant to show cause why his application should not

be denied on the ground that he had been convicted of a crime involving moral turpitude and hearing was duly held.

The following facts appear from the statement submitted and testimony taken at the hearing. Applicant was ordered to pay \$50.00 per week alimony in April, 1929, in a divorce action instituted by him against his wife. He paid the alimony until about October of that year, when he stopped paying because he learned that his wife had placed their four children in a home in Newburgh. At that time the ages of the children ranged from three to ten years. Applicant paid money to the home until 1930 and then stopped when he could not take the children out of the home. The four children remained at the home until after the time of the trial -- 1933. Applicant sent them no money from 1929 to 1933, except what he spent on them Sundays when he went up there. The home sued the wife for the care of the children and recovered a judgment against her.

The duty of a parent to provide for a helpless child, and that of a husband to provide for a helpless wife, lie at the foundation of society and are wrought up with the law's chief sanctions; Wharton's Criminal Law, p. 2083.

Moral turpitude is defined as: "An act of baseness, villany or depravity in the private social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man." Ex parte Machida, 277 Fed. 239.

In my opinion the crime involves moral turpitude, and there is nothing in the facts as set forth above which would tend to lessen the gravity of the crime, especially in view of the fact that the present applicant was convicted by a jury and received a severe sentence.

It is recommended that the application for solicitor's permit be denied.

EDWARD J. DORTON,
Attorney

Approved:

D. FREDERICK BURNETT
Commissioner.

7. ALIENS - WHEN NOT EXCLUDED FROM PRIVILEGES UNDER THE CONTROL ACT - TREATY PROVISIONS

MEMO TO: E. B. HOCK, Deputy in Charge of Licensing.

I have your memorandum of October 9th, inquiring whether the United States has concluded, with the countries therein listed, reciprocal treaties containing exemptions similar to those accorded German nationals and discussed in Bulletin #84, Item #15.

Alien nationals from the following countries listed in your memorandum are protected by treaty provisions and may, therefore, not be excluded from obtaining licenses or being employed by licensees solely on the ground that they are such aliens:

Germany
 Poland,
 Jugo-Slavia,
 Austria,
 Norway,
 Denmark,
 Hungary.

Alien nationals from the following countries listed in your memorandum are not protected by treaty provisions and may not, therefore, hold licenses or be employed by licensees:

Greece,
 The Netherlands,
 Russia,
 Czecho-Slovakia,
 Portugal.

Action should be deferred on applications filed by aliens from the following countries pending my receipt of advices from the Secretary of State:

Great Britain,
 Italy,
 Irish Free State,
 Scotland,
 Canada.

NATHAN L. JACOBS
 Counsel

October 10, 1935.

8. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
 CONCLUSIONS

September 18th, 1935

RE: Application for Solicitor's Permit - Case No. 2

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. Our investigation shows that about May 9th, 1933 applicant was indicted by Federal Grand Jury in New Jersey for misapplying bank funds and aiding and abetting in misapplying bank funds. He pleaded guilty on March 9th, 1934. On the same day the Judge imposed a sentence of six months in the County Jail and immediately suspended sentence and placed the applicant on probation for six months. Notice was served upon the applicant to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude and hearing was duly held.

At the hearing applicant explained that he had been a director of the---National Bank and had exchanged checks for \$650.00 with his brother-in-law; that he had deposited his brother-in-law's check in said National Bank and drew against these funds. It subsequently developed that the check so deposited by him was returned marked "insufficient funds" and that when this item was charged against applicant's account, the account was overdrawn. He further testified that at the time he took the check from his brother-in-law he believed that it was good; that he subsequently made a deposit in his account

to cover the shortage and that the bank sustained no loss. He also testified that his account was in good condition at the time the bank examiners came in but, because of the circumstances, the matter was reported by them and he was indicted for misapplication of bank funds and for aiding and abetting the cashier in the misapplication of bank funds, both indictments arising out of the same transaction.

It has been held that, in order to determine whether or not there is moral turpitude, a court may when doubtful look behind a plea of guilty to the indictment. U. S. ex rel Valenti vs. Karmuth, 1 Fed. Sup. 370.

Considering all the facts, I believe there was no moral turpitude involved, but rather that the crime was a technical violation of the law. This would seem to be supported by the fact that the Judge immediately suspended sentence and placed the applicant on probation.

It is recommended that the application for solicitor's permit be granted.

EDWARD J. DORTON,
Attorney-in-Chief

Approved:

D. FREDERICK BURNETT
Commissioner

9. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS

September 23rd, 1935.

Re: Application for Solicitor's Permit - Case No. 4

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. It appears that on March 18th, 1930, applicant pleaded guilty of petty larceny on two indictments for grand larceny, and was sentenced for an indeterminate period, actually serving twenty months in the New York Penitentiary. Notice was served upon the applicant to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude and hearing was duly held.

At the hearing applicant presented a copy of petition made to the Parole Board, which petition was received in evidence and the facts therein considered. He also gave additional testimony as to the circumstances which lead up to the indictments.

The indictments grew out of various transactions affecting the purchase and sales of stocks during the boom days of 1929, when applicant was a member of a firm bearing his name and the name of another. He contended that he was a figurehead and that the parties who were really guilty escaped without any punishment. It appears from the statement submitted, however, that he remained in this business long after his suspicions as to these other parties were or should have been aroused.

In view of the fact that larceny has been held to involve moral turpitude (Tillinghast vs. Edmead, 31 Fed. 2nd, 81; U. S. ex rel Patricola vs. Karmuth (March 5, 1935) 9 Fed. Sup. 961), the attempted explanation is not sufficient to change the nature of the crime to which he pleaded guilty.

It is recommended that the application for solicitor's permit be denied.

EDWARD J. DORTON,
Attorney-in-Chief

APPROVED:

D. FREDERICK BURNETT
Commissioner

10. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS

September 18th, 1935.

Re: Application for Solicitor's Permit - Case No. 5

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. It appears that applicant was tried in 1924 on two indictments charging embezzlement, and was found guilty on both charges. Sentence was suspended on one conviction, and applicant was sentenced to New Jersey Reformatory on the other. He remained at the Reformatory for five months and was then paroled and placed on probation for two years. Notice was served upon the applicant to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude and hearing was duly held.

At the hearing applicant testified that prior to the time of the indictment he had been in the jewelry business, handling jewelry on consignment. He had taken some jewelry which had been consigned to him to his home. He contended that burglars had entered the house one night and stole the jewelry. It seems that the police investigated and were in doubt as to the fact of the burglary. Thereafter, on complaints made by two of the consignors, the applicant was indicted.

In view of the conviction by the jury, embezzlement would seem to be established, despite the attempted explanation by the applicant.

Embezzlement involves moral turpitude. Bartos vs. U.S., 19 Fed. 2nd, 722; in re Kirby, 10 So. Dak. 322, 39 LRA 856; in re Cruickshank, 47 Cal. Appeals 496; 190 Pac. 1038.

It is recommended that the application for solicitor's permit be denied.

EDWARD J. DORTON
Attorney-in-Chief

Approved:

D. FREDERICK BURNETT
Commissioner

11. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS.

September 17, 1935.

RE: Application for Solicitor's Permit - Case No. 6.

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. Our investigation shows that the applicant was arrested in 1931 and pleaded non vult to an indictment charging him with receiving stolen goods. Thereafter he was fined \$500.00 and placed on probation. Notice was served upon the applicant to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude and hearing was duly held.

At the hearing the applicant admitted the above facts, but contended that he did not know that the goods had been stolen.

Our investigator has reported that he read statements given by four men who were sentenced to from four to five years for stealing the goods. These statements do not mention the applicant by name, but state that there were meetings between the applicant, a go-between and the gang who stole the goods, in pool parlors and on street corners in Paterson. At the hearing applicant denied that he had ever met the members of the gang, or that he knew where the pool parlor was. He did admit that he knew the go-between who has since disappeared, and that the go-between told him about the goods which were then in a store with whitewashed windows.

The crime of receiving stolen goods ordinarily involves moral turpitude: in re Thompson 37 Cal. Appeals 344, 174 Pac. page 86.

In view of the plea of non vult, the sentence and probation and the evidence as outlined above, we cannot at this time redetermine the question of applicant's intent and find a lack of guilty intent under the circumstances.

It is recommended that the application for solicitor's permit be denied.

EDWARD J. DORTON,
Attorney-in-Chief.

APPROVED:

D. FREDERICK BURNETT
Commissioner

12. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS

September 10th, 1935.

Re: Application for Solicitor's Permit - Case No. 8

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. It appeared that

in 1922 applicant was sentenced to Atlanta for one year and one day on a charge of smuggling cocaine into the United States. Notice was served upon the applicant to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude and hearing was duly held.

It appears from the testimony that after his conviction the applicant received a full and unconditional pardon from the President of the United States.

A person who has been convicted of a crime involving moral turpitude and thereafter obtains a complete pardon is not disqualified from holding a license. In re Court of Pardons, 3 N. J. Misc. 585 (1925).

It is, therefore, recommended that the application for solicitor's permit be granted.

EDWARD J. DORTON,
Attorney-in-Chief

APPROVED:

D. FREDERICK BURNETT
Commissioner

13. WAREHOUSE RECEIPTS LICENSE - NOT REQUIRED FOR SALES OF WAREHOUSE RECEIPTS OUTSIDE THIS STATE.

MEMO TO: E. B. HOCK, Deputy Commissioner in Charge of Licensing.

I have considered your memorandum inquiring whether sales of warehouse receipts made outside this State to persons holding New Jersey licenses other than warehouse receipts licenses are prohibited by the Control Act.

It may well be questioned whether the New Jersey legislature could constitutionally regulate sales of liquor warehouse receipts effected outside this State. See *Allgeyer vs. Louisiana*, 165 U. S. 578 (1897).

No determination need be made of the constitutional issue, however, since the Control Act does not purport to regulate sales of warehouse receipts outside this State. Section 73 provides that the sale of liquor warehouse receipts is prohibited except under the provisions of warehouse receipts licenses issued by the Commissioner. The act makes no reference to sales of such receipts outside the State. No reason appears for legislative interest in sales outside this State and the conclusion seems evident that the legislature intended to regulate solely matters within its territorial limits.

Section 73, therefore, must be construed to mean that no sales of warehouse receipts within this State may be made except pursuant to a warehouse receipts license.

NATHAN L. JACOBS
Counsel

Dated: October 17, 1935.

14. APPELLATE DECISIONS - GREAT NOTCH VILLA vs. CITY OF CLIFTON - PETITION FOR REHEARING - WHEN DENIED - APPLICATION FOR SPECIAL PERMIT WILL BE ENTERTAINED WHEN PROPER CAUSE IS SHOWN.

GREAT NOTCH VILLA,)
 a corporation,)
)
 Appellant,)
)
 -vs-)
)
 MAYOR AND CITY COUNCIL OF THE)
 CITY OF CLIFTON,)
)
 Respondent.)

On Petition for Rehearing and to Stay Order Entered on Appeal

CONCLUSIONS

Harold Sokobin, Esq., for Selenfriend, Sokobin & Duff, Esqs., Attorneys for Great Notch Villa, Petitioner.

BY THE COMMISSIONER:

Respondent having suspended appellant's plenary retail consumption license for a period of 12 days, appellant filed an appeal with the Commissioner pursuant to Section 28 of the Control Act. After final hearing the Commissioner affirmed respondent's action. See Bulletin #91, Item #11. Appellant now files a petition for leave to reopen said appeal to permit the introduction of additional testimony, and prays that the Commissioner's order be stayed pending the introduction of said testimony.

The petition alleges that the Commissioner's Conclusions (Bulletin #91, Item #11) rest upon the fact that the properties of the contents of a bottle bearing the label "*****Blended Scots Whisky - Haig & Haig - 86.8 proof" seized on the licensed premises, vary considerably from the properties of an admittedly genuine bottle of Five Star Haig & Haig Blended Scots Whiskey; that appellant was unable to explain at the hearing why the alcoholic content of said bottle did not conform with the label; that since the filing of said Conclusions appellant has discovered that a bartender, formerly employed by appellant, did, on occasion, take drinks from said bottle, and in order not to be discovered, refill the same with one or two glasses of domestic Scotch whiskey; that appellant has been informed and verily believes that a chemical analysis of the contents of the admittedly genuine bottle will show that if two or four ounces of the whiskey contained therein were removed and a similar amount of domestic whiskey inserted, that the chemical analysis would be identical with the Department's analysis of the contents of the seized bottle; that said bartender was subsequently discharged; that throughout the entire operation of its business appellant took great care to prevent any such occurrence; that the order of suspension became effective on Monday, October 14th, 1935, at 12:00 o'clock noon, to continue for 12 days; that long before the entry of this order the American Legion Post 40/8 of Paterson arranged to have its annual dinner at appellant's premises on Saturday, October 19th, 1935; that said American Legion Post 40/8 of Paterson has made 200 reservations for said dinner and has gone to considerable expense for advertising and printing; that appellant will suffer irreparable injury unless the petition be granted.

The petition erroneously assumes that the Conclusions filed by the Commissioner in the above matter and the order complained of rest entirely upon the variation in the analyses of the two bottles of Haig & Haig Scotch Whiskey. That, however, was only one of the considerations leading to the conclusion that appellant was guilty as charged. The presence of loose internal revenue

stamps and bottling paraphernalia in a locked room upon the licensed premises still remains unexplained. No explanation thereof was offered at the hearing and none is offered now. The only thing which appellant offers to do is to explain the variation in the analyses.

The rule is well settled that a new trial will be granted upon the ground of newly discovered evidence only where such evidence is of such a character that it would probably change the result. *Hoban v. Sanford & Stillman Co.*, 64 N. J. L. 426 (Sup. Ct. 1900). The newly discovered evidence offered here falls far short of meeting this requirement. Assuming its truth, not only does it fail to negative all the incriminating facts, but it also shows a violation of Section 78 of the Control Act committed upon the licensed premises by appellant's employee, for whose conduct appellant is responsible. Such evidence could not change the result on the appeal.

Furthermore, our courts have repeatedly held that upon an application for a new trial on the ground of newly discovered evidence it must appear that the evidence could not have been ascertained by reasonable diligence prior to the trial. William Tell Hotel Corporation v. Ridgewood, Bulletin #79, Item #4, citing Murphy v. Skelly, 101 N. J. Eq. 793 (E. & A. 1927); Bennett v. Hinrichsen, 8 N. J. Misc. 131 (Sup. Ct. 1930), affirmed 107 L. 373 (E. & A. 1931).

Appellant in the instant case does not allege or explain why the so-called newly discovered evidence could not have been produced before the case was finally disposed of. After the first hearing of the appeal a supplemental hearing was arranged in order to afford appellant an opportunity to produce additional evidence. Again, after the full analysis had been made appellant was advised of the contents thereof and offered another opportunity to explain the same but waived further hearing. There is nothing to show the exercise of reasonable diligence by appellant.

Finally, the nature and materiality of the newly discovered evidence must appear from affidavits or other satisfactory evidence. William Tell Hotel Corporation v. Ridgewood, supra. The only affidavit submitted in connection with the present petition is a short form verification by the President of appellant corporation. No reason appears why an affidavit from the bartender who is alleged to have refilled the seized bottle of imported whiskey with the domestic whiskey could not have been obtained and submitted with the petition.

Proper administration requires that, aside from exceptional cases where the clear interests of justice compel a contrary conclusion, determinations on appeal be final and not subject to redetermination. The petition is denied.

No reason appears, however, why the American Legion Post 40/8 of Paterson should be penalized or prejudiced in the conduct of its annual dinner because of the order of suspension directed against appellant. All arrangements for the annual dinner were consummated before said order was entered. The affair has been widely advertised and 200 persons have made arrangements to attend. Each of these persons and the Post itself would be seriously inconvenienced if the dinner could not take place according to schedule. In view of this unnecessary hardship upon a large group of innocent persons the Commissioner will entertain an application permitting appellant to sell alcoholic beverages in accordance with

its license from 12:00 o'clock noon Saturday, October 19th, 1935, until 12:00 o'clock noon Sunday, October 20th, 1935, upon condition that said order of suspension, which would expire by its terms on Saturday, October 26th, 1935, at 12:00 o'clock noon, be extended until Sunday, October 27th, 1935, at 12:00 o'clock noon. The fee for this permit will be \$10.00.

D. FREDERICK BURNETT
Commissioner

Dated: October 17th, 1935.

15. SPECIAL PERMITS - STATE ARMORIES - NOT ISSUABLE.

October 18, 1935.

Hon. Harold G. Hoffman,
Trenton, New Jersey

My dear Governor Hoffman:

I have your telegram of October 13th referring to the request of the Elizabeth Police Department for a special permit to dispense alcoholic beverages on November first at the Elizabeth Armory.

Section 39 of the Control Act provides that:

"No sales of alcoholic beverages shall be made in any public building belonging to or under the control of the State or any political subdivision thereof except as to the National Guard as hereinbefore provided, and except as permitted by the commissioner in specified cases and subject to rules and regulations."

This section imposes upon me the duty to determine, in the exercise of reasonable discretion, whether such sales should be permitted in these public buildings.

Sometime ago similar application for a special permit to dispense beverages at the Passaic Armory was made by a unit of the Veterans of Foreign Wars. The proceeds in that instance were to go to a relief fund for furnishing milk to undernourished babies and clothing and Thanksgiving and Christmas baskets. I communicated with Major General John J. Toffey of the New Jersey National Guard, who took the matter up with the State Military Board. At a meeting convened at Trenton the Board recorded by a majority vote their disapproval of the use of the armory for such sales. Major Toffey, in a letter to me, expressed his opposition to the issuance of any special permit for the sale of alcoholic beverages to any individual or organization leasing armories for the conduct of dances. He declared that such use might prompt insobriety in the persons who for the time being are not under the control of the National Guard, but whose conduct should trouble arise, might reflect discredit upon the military establishment. Upon this action of the Military Board I refused to issue the special permit.

I also declared at that time that the ruling would apply to all armories and to all organizations whatsoever unless,

at least, the consent of the Quarter Master General is obtained and the affair comes within any exceptions which the State Military Board, as a policy forming body, shall create.

Major Toffey subsequently informed me that:

"Paragraph 5, Article 4, Chapter 46, Laws of New Jersey 1935, provides that the Quarter Master General shall prescribe rules and regulations for the management, maintenance, policing, rental and use of armories."

Circular letter 135, which was published in accordance with the provisions of this Act, declares:

"The storage, sale and distribution of intoxicating liquors in State-owned armories, rented drill halls or on State military reservations are prohibited. Applications for the use of armories by non-military users should be accepted with this understanding and all future contracts for the non-military use of buildings should include this provision."

Although I am in hearty sympathy with the laudable objective of the affair, I cannot consider an application for a special permit to dispense beverages at the Elizabeth Armory unless the consent of the Quarter Master General is obtained or the affair comes within any exceptions created by the State Military Board.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

16. REVOCATION PROCEEDINGS - ELECTION DAY VIOLATIONS - INADEQUATE PENALTIES DISRUPT DECENT AND ABIDING RESPECT FOR LAW AND ORDER.

October 18, 1935.

Theodore W. Brokaw, Clerk,
Municipal Board of Alcoholic Beverage Control,
City Hall,
Elizabeth, N. J.

Dear Mr. Brokaw:

I have report of the proceedings before your Municipal Board in the matter of the charges preferred against:

Herman Ehrenberg,
Alex Wentlant, and
Michael O'Donnell

for selling liquor on an election day while the polls were open.

It appears that each pleaded guilty and the licenses were suspended for one day, viz.: for October 14, 1935.

Frankly, I am greatly disappointed at the merely nominal punishment imposed. A penalty of but one day, and a Monday at that, is utterly inadequate. It merely substitutes a blue Monday in place of the profitable election day on which the licensees operated unlawfully. It, therefore, is not punishment at all.

It puts a premium on failure of the enforcement authorities to detect without imposing any real penalty if caught. Such nominal punishment is entirely unfair to all the honest licensees who scrupulously complied with the law and closed their places. It tends to bring disrespect not only upon the alcoholic control act but upon law generally.

Believing that your Municipal Board, in their effort to temper justice with an overdose of mercy, did not appreciate the disrupting effects their action will have on law enforcement and that they bona fidely purpose to cooperate with me, I shall continue to transmit to them further charges for trial as from time to time they may arise, but ask that you convey to them my candid reactions in the present cases to the end that subsequent offences may be dealt with much more drastically and that the punishment therefor will be commensurate with the offence and inculcate a decent and abiding respect for law and order.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

17. REVOCATION PROCEEDINGS - VIOLATIONS OF LOCAL CLOSING HOURS - INFLICTION OF PROPER PENALTIES.

October 19, 1935.

Mr. Harry F. Bach,
Township Clerk,
Franklinville, New Jersey.

My dear Mr. Bach:

I have your certified copy of resolution of the Township Committee of the Township of Franklin, Gloucester County, suspending the plenary retail consumption license of Edward B. Fuller for a period of thirty days. I note that he has on several occasions violated the closing hours and shown no desire to cooperate or make any real bona fide effort to obey.

When the privilege of selling liquor is abused, stern measures are necessary. The law is made to be obeyed. If this licensee again takes it into his head that he can trifle with law enforcement, I suggest that his license be revoked outright.

The action of your Township Committee in inflicting the above mentioned punishment, which is commensurate with the offence, will go far to inculcate a decent and abiding respect for law and order in your community.

Please convey to the members of your Committee my profound respect and appreciation.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

18. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS.

September 10, 1935.

RE: Application for Solicitor's Permit - Case No. 7

Application was filed for solicitor's permit pursuant to the provisions of P. L. 1935, c. 256. In 1923 applicant was convicted in the Court of Common Pleas on a charge of lewdness, was fined \$50.00 and placed on probation for two years. Notice was served upon the applicant to show cause why his application should not be denied on the ground that he had been convicted of a crime involving moral turpitude and hearing was duly held.

The crime of lewdness may or may not involve moral turpitude, depending on the circumstances.

At the hearing the applicant gave testimony from which it appears that under the circumstances of this case no moral turpitude is involved.

It is recommended that the application for solicitor's permit be granted.

EDWARD J. DORTON,
Attorney-in-Chief

Lewdness might involve great moral turpitude. The facts, however unpleasant, must be stated, else the precedent is of no value. The applicant was driving through a park, stopped his car and had gone some distance away to use the park as an emergency urinal. A woman riding in another car saw him and he was arrested. Inelegant and not nice, but certainly not moral turpitude. The conclusions are approved.

D. FREDERICK BURNETT
Commissioner

19. PROPOSED RULES CONCERNING IDENTITY OF ALCOHOLIC BEVERAGES
SOLD ON LICENSED PREMISES

October 21, 1935.

Complaint has been made to the Department by the New Jersey Brewers Credit Association that a practice has grown

up by certain unscrupulous retail licensees of substituting inferior draught beer for that ordered by name by the purchaser, viz.: When a customer calls for Brand A or Brand B, the barkeeper palms off Brand X, an inferior beer purchased by the retailer at a much cheaper price than Brands A or B which he advertises as being on sale. This practice constitutes not only unfair competition by the cheating licensee with his fellow competitors but it is unfair to the breweries with an earned reputation, and is a rank deceit upon the trusting consumer.

While the Department has a distinct aversion to burdening the industry with regulations unless reasonably necessary from the standpoint of proper control, it seems appropriate to require suitable protection both to the trade and to the consumer.

Accordingly, after careful study of the situation, Proposed Rules Concerning Identity of Alcoholic Beverages Sold on Licensed Premises have been prepared by Chief Deputy Commissioner and Counsel, Nathan L. Jacobs, as follows:

"1. No plenary or seasonal retail consumption licensee shall possess on the licensed premises any barrel or other container from which brewed malt alcoholic beverage is drawn unless there is attached to the spigot or other dispensing apparatus thereof the name or brand of the manufacturer of the product contained therein, provided that where such alcoholic beverage is served at a bar the manufacturer's name or brand must appear in full view of the purchaser.

2. Plenary and seasonal retail consumption licensees shall, at all times, maintain on the interior of their licensed premises a sign, prominently displayed, listing the manufacturers' names or brands of the draught brewed malt alcoholic beverages sold thereon.

3. No retail licensee shall permit or suffer in or on the licensed premises any sign or other matter advertising the sale of any particular brand or type of alcoholic beverage unless such brand or type of alcoholic beverage is actually available for sale at such premises.

4. No licensee shall serve to any purchaser any alcoholic beverage other than that ordered.

5. Rules #1 and #2 her inbefore set forth shall take effect thirty (30) days from the date hereof and rules #3 and #4 shall take effect immediately.

6. Violation of the foregoing rules shall be cause for revocation."

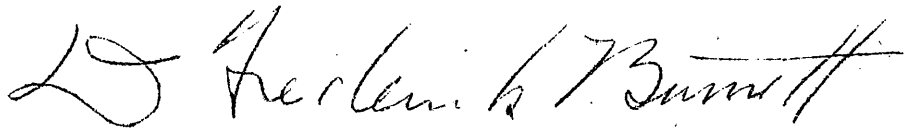
These Proposed Rules are being transmitted today to every brewery located in New Jersey or licensed to do business herein,

as well as to official representatives of the retail consumption licensees for their criticisms and suggestions. The reactions of all retailers and of the public generally will be cordially welcomed.

Identification of beers has already been made compulsory in the neighboring State of Pennsylvania, as well as in a few other states.

Simple and inexpensive devices are now on the market for identifying beers at the tap.

When, as and if the above Rules are finally promulgated, regular inspections will be made by the Enforcement Division of this Department to insure that the labeled taps and piping are properly connected with the beers which they purport to identify.



COMMISSIONER