

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

BULLETIN 386

FEBRUARY 19, 1940.

1. LICENSES - SURRENDERS - REFUNDS - METHOD OF COMPUTATION -
REFUNDS ARE COMPUTED FROM DATE OF ACTUAL SURRENDER, NOTWITHSTAND-
ING THAT BUSINESS MAY HAVE STOPPED AT AN EARLIER DATE.

LICENSES - FEES - MUST BE PAID AT THE TIME THE APPLICATION IS
FILED - INSTALLMENT PAYMENTS ARE NOT PERMISSIBLE.

February 13, 1940

Walter S. Terhune,
Township Clerk,
West Milford, N. J.

My dear Mr. Terhune:

You report that on December 1, 1939 plenary retail
consumption license No. 14 held by Anna R. Barber was surrendered,
as of November 17, 1939, and that a refund of \$76.20 was made.

There are, apparently, two things wrong; namely, the
date and the amount.

The statute provides (R. S. 33:1-31) that refunds shall
be made as of the date of the surrender. If, as you report, the
license was surrendered on December 1st, then that is the date
from which the refund is computed, and not from November 17th.

The statute further provides (R. S. 33:1-31) that if any
licensee except a seasonal licensee shall voluntarily surrender
his license, there shall be returned, after deducting fifty per
cent of the fee originally paid, the prorated fee for the unex-
pired term, provided he has not committed any violation of the
Act or Regulations or done anything else which would bar the re-
fund and further provided that all taxes or other set-offs or
counterclaims due the State or municipality have been paid.
Using December 1st as the date of surrender, the prorated fee
for the unexpired term is \$145.20. Deducting half of the fee
originally paid, or \$125.00, the amount of the refund is found
to be \$20.20. Using November 17th as the date of surrender and
making the computation in the same way, the refund is found to
be \$29.79.

It is not permissible to date back surrenders notwith-
standing that the licensee may have terminated his business at
an earlier date. The licensee has the use of his license to
continue in business or to transfer it to another person until
he actually surrenders it. If he wishes to continue to hold it,
in anticipation of making a transfer, without engaging in busi-
ness himself, he may do so but he must at the same time assume
the risk that the transfer may not go through. The refund must
be computed as of the date of the actual surrender. He can't
have his cake and eat it too.

Computed as above, the refund to Charles V. Struble, the
holder of plenary retail consumption license No. 28, also appears
to be incorrect.

The resolution of January 12, 1940, and the procedure apparently followed by the Township Committee in the matter of the license of William Devonmille, Jr., are wholly out of order. There is no power in the Township Committee to cancel a license for non-payment of the balance due on a license fee. There is no power in the Township Committee to cancel the unpaid balance. There is no power in the Township Committee to act upon an application unless the full fee has already been paid, or to accept a lesser amount or to allow installment payments. R. S. 33:1-25 provides that a deposit of the full amount of the required license fee must accompany the application. Unless it is accompanied by the full fee, the application is not properly or lawfully filed. It is necessary that the Township Committee take immediate steps to collect the balance of \$102.52 from Mr. Devonmille. Please do not allow the filing of any applications without the full fee in the future.

When you have ascertained the correct refunds due Barber and Struble, and when you have gotten back from Barber and Struble the difference between the correct refund and the amount returned to them, and from Devonmille the \$102.52 he still owes, please give me further report so that my records will be in order.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. RETAIL LICENSEES - GIFTS OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION PROHIBITED.

February 13, 1940

Henry's Clam Bar, Inc.,
R. F. D., Hackensack, N. J.

Gentlemen:

Rule 20 of State Regulations No. 20 provides:

"No retail licensee shall, directly or indirectly, offer or furnish any gifts, prizes, coupons, premiums, rebates, discounts or similar inducements with the sale of any alcoholic beverage for consumption off the licensed premises; provided, however, that nothing herein contained shall prohibit retail licensees from furnishing advertising novelties of nominal value."

Pursuant to the rule, all gifts by retailers to induce the sale of alcoholic beverages for off-premises consumption are barred, excepting only advertising novelties of nominal value.

That means, so far as distribution licensees are concerned, that all gifts are out (except the advertising novelties aforesaid), for distribution licensees may sell only for off-premises consumption and I have construed the rule to forbid all special inducements whether made at the time of the sale or not. Re Liebesman, Bulletin 219, Item 7.

Consumption licensees sell for off-premises consumption, and for on-premises consumption as well. I do not see, however,

that this additional privilege should afford them the right to do what distribution licensees are prohibited from doing. If the inducement is to purchase alcoholic beverages for consumption on the premises, it is an inducement nevertheless. The inducement is prohibited because it is objectionable per se and hence, if wrong in one case it is just as wrong in the other.

I have allowed, on occasion, gifts of drinks by consumption licensees. See Re Ziegler, Bulletin 370, Item 10, in which permission is given for Hot Tom & Jerry on the house on New Year's Day. I shall expect licensees who wish to do this to confine themselves to recognized occasions which are celebrated by all, such as New Year's Day. As pointed out in the Liebesman ruling, and also in Re Eckstein, Bulletin 290, Item 11, I have no intention of allowing licensees to create or establish their own holiday occasions, as the spirit moves, for if that were permitted, holidays or "celebrations" of some sort or other could be declared at will.

A pint bottle of wine is not an advertising novelty and therefore may not be distributed as a gift. If you wish on this occasion to distribute some advertising novelty of nominal value and you will submit it to me with a statement of the advertising matter to be used and the cost, I shall be glad to consider it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - WAREHOUSE RECEIPTS LICENSEE - FAILURE TO REMAIN IN POSSESSION AND CONTROL OF WAREHOUSE RECEIPTS PENDING CONSUMMATION OF CONTRACTS - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against)

GILMORE WHISKEY CORPORATION,
1819 Broadway,
New York City,)

CONCLUSIONS
AND ORDER

Holder of Warehouse Receipts License WR-7 issued by the State)
Commissioner of Alcoholic Beverage Control.)

Krause, Hirsch & Levin, Esqs., by Hyman Gold, Esq.,
Attorneys for Raphael P. Koenig, Trustee of Gilmore
Whiskey Corporation in reorganization proceedings.

Richard E. Silberman, Esq., Attorney for Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

On October 5, 1939 charges were served upon the licensee alleging, in substance, that on dates mentioned therein it had entered into contracts with various New Jersey retail licensees for the sale of warehouse receipts and had thereafter failed to remain in possession and control of said warehouse receipts pending consummation of said contracts, contrary to Rule 4 of State Regulations No. 8. The first and second charges refer to warehouse

receipts issued by Coffey Distilling Co., Inc. and the third charge relates to warehouse receipts issued by Kinsey Distilling Company.

After the institution of these proceedings, licensee filed a petition for reorganization under Chapter 10 of the Bankruptcy Act and, prior to the hearing herein, the trustee appointed in said proceedings surrendered to this Department warehouse receipts license WR-7 and plenary wholesale license W-73, both of which had been issued to Gilmore Whiskey Corporation.

At the hearing herein no one appeared on behalf of the licensee to contest these proceedings, but a representative of the trustee made a plea that the surrender of the licenses should be accepted and a refund granted for the benefit of the creditors of licensee-corporation.

The attempted surrender of the license does not bar proceedings to revoke the license. R. S. 33:1-31.

It appears from investigation made by Investigators Boehm and Zelliff of this Department that the warehouse receipts of Coffey Distilling Co., Inc. referred to in the charges had been issued to Paul Heyman, President of licensee-corporation; that thereafter the corporation-licensee entered into contracts, not yet consummated, with three New Jersey retail licensees to sell the same barrels of whiskey covered by said warehouse receipts; that pending consummation of these contracts, two of said warehouse receipts had been pledged by Paul Heyman to Chase National Bank, New York City, to secure his note, and that the warehouse receipts were in possession of said bank at the time of the investigation.

Investigation also discloses that the Kinsey Distilling Company warehouse receipts were issued in the name of Gilmore Whiskey Corporation and pledged by the licensee to City National Bank, Philadelphia, Pa. under a written agreement to secure its note for approximately \$181,000.00; that despite the fact that the warehouse receipts had been so pledged, licensee entered into contracts, not yet consummated, with three New Jersey retailers to sell the barrels of whiskey covered by these warehouse receipts.

Rule 4 of State Regulations No. 8 provides:

"No warehouse receipts licensee shall sell or offer for sale any warehouse receipt given upon the storage of alcoholic beverages unless such licensee is the owner of the receipt and in possession and control thereof at the time of the solicitation or sale. Where such licensee enters into a contract for the sale of a warehouse receipt, he must at all times during the continuance of the contract and pending consummation thereof remain in possession and control of the receipt."

The evidence is sufficient to show that the licensee was not in possession and control of the various warehouse receipts during the continuance of the contracts with the retailers and pending consummation of said contracts. I therefore find it guilty as charged and shall revoke its warehouse receipts license WR-7.

Accordingly, it is, on this 14th day of February, 1940,

ORDERED that warehouse receipts license WR-7, heretofore issued to Gilmore Whiskey Corporation by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately.

Although the question of the surrender of the wholesale license need not necessarily be passed upon herein, I shall decide that question so that the entire matter may be disposed of in one proceeding. It does not appear that the licensee committed any violation of the law or State regulations in connection with its wholesale license. I conclude, therefore, that it should not be barred from making the claim for refund in so far as its wholesale license is concerned. However, the State Tax Commissioner has filed with me a claim for a large sum of money in connection with unpaid taxes due to the State of New Jersey from Gilmore Whiskey Corporation, and hence the refund, when computed, will be made subject to the claim of the State Tax Commissioner. R. S. 33:1-31.

D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - MERKOWSKY v. BAYONNE.

DOROTHY MERKOWSKY, SAMUEL MALTZ,)
JACOB MALTZ and TILLIE MALTZ,)
Appellants,)

-vs-

ON APPEAL
CONCLUSIONS

BOARD OF COMMISSIONERS OF THE)
CITY OF BAYONNE, and MICHAEL)
KARMAN,)
Respondents)

-----)

Irving C. Picker, Esq., for Appellant, Dorothy Merkowsky.
David L. Maltz, Esq., for Appellants, Samuel Maltz, Jacob Maltz and Tillie Maltz.
William Rubin, Esq., for Respondent, Board of Commissioners.
Michael V. Donovan, Esq., for Respondent, Michael Karman.

BY THE COMMISSIONER:

Appellants appeal from the granting of a transfer of plenary retail consumption license issued to Michael Karman from 355 Broadway to 294 Avenue A, Bayonne.

Appellants, owners of property in the vicinity, urge reversal for numerous reasons, only one of which need be considered, viz., that the neighborhood is residential and that applications for licenses in the vicinity have heretofore been denied for that reason.

In Lojewski v. Bayonne, Bulletin 201, Item 1, the refusal of the Bayonne Commissioners to transfer a tavern license to premises at 291 Avenue A was affirmed because the neighborhood

was substantially residential. Since that case was decided, there has been no change in the neighborhood.

The same reasons which called for an affirmance of the Board of Commissioners' decision when it denied a tavern license at 291 Avenue A are equally eloquent in requiring the reversal of the Board's decision which granted a tavern license at 294 Avenue A just across the street.

The action of the respondent Board of Commissioners of Bayonne in granting a transfer of respondent Karman's license to premises 294 Avenue A, Bayonne, is therefore reversed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 14, 1940.

5. APPELLATE DECISIONS - GROSS v. LANDIS TOWNSHIP.

DAVE GROSS,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF LANDIS,)	
)	
Respondent)	
-----)	

D. J. Novaria, Esq. and Nathan L. Jacobs, Esq.,
Attorneys for Appellant.
Solve Tusso, Esq., Attorney for Respondent.
Herbert C. Bartlett, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to transfer appellant's 1938-9 plenary retail consumption license from premises at the northwest corner of Landis and West Avenues, in Landis Township, to premises across the street near the southwest corner.

Pending disposition of the appeal which was instituted at the end of the 1938-9 fiscal year, appellant renewed his license for the northwest corner for the current fiscal year. However, the appeal does not thereby become moot but is dispositive of identical issues on any application for transfer of appellant's current license. Shelby v. Trenton, Bulletin 129, Item 1.

Appellant's present place, a street-corner store converted into a "bar", abuts on West Avenue, the municipal line between Landis Township and Vineland Borough, and fronts on Landis Avenue.

Landis Avenue at this vicinity is, although containing various residences, described by the Landis Tax Assessor as "definitely getting to be a business section" and as being as important a business area as exists in the Township.

Landis Avenue itself is the main local thoroughfare, being over 70 feet wide. In the center of the intersection there is a large automatic traffic control. At the northwest corner there is a two-story building containing apartments on the second floor and three stores on the first, one being appellant's. At both the northeast and southwest corners there is a gasoline station. At the fourth (southeast) corner there is a dwelling or apartment house. On appellant's block there are, it is estimated, fourteen business places, including, in addition to those already named, a used car lot and a "lunch room."

Appellant's proposed site, diagonally across the street from his present place, is an attractive-looking bungalow type of building. There is a residence between it and the gasoline station at the southwest corner, a residence behind it and three others to the west, all five residences being set on a building line about 80 feet from the sidewalk. Appellant's new building stands on a line 18 feet from the walk.

On the same side of the street but further west along Landis Avenue, is the Vineland High School, of which the entire locality is justly proud. The end of a semi-circular driveway leading to the school is about 311 feet from the nearest entrance to appellant's proposed place. The walk leading from the street to the school entrance is some 437 feet away. Appellant's present place, in addition to being on the opposite side of the street, is some 153 feet further from the school.

The main issue is whether the transfer was properly denied because of the proximity of the school. Although four of respondent's five members at first indicated to appellant their willingness to grant the transfer (and upon the strength of which he apparently built the new building), nevertheless, when protest arose from a great many residents and civic organizations because of the nearby school, respondent denied the transfer.

Local desire to keep school vicinities free of liquor places is a civic sentiment which commands respect and which ordinarily should be followed. Thus, in case after case I have affirmed the refusal of a local issuing authority to permit a liquor establishment near a school even though, as here, the distance between them would be greater than the statutory minimum of 200 feet. Staciewicz v. Trenton, Bulletin 35, Item 10; Persi v. Trenton, Bulletin 46, Item 13; Serafin v. Bayonne, Bulletin 107, Item 3; Hill v. Montville, Bulletin 148, Item 9; Rafalowski v. Trenton, Bulletin 155, Item 8; McDonald v. Clayton, Bulletin 161, Item 5. See Re Yeomans, Bulletin 77, Item 6; Goldberg v. Livingston, Bulletin 163, Item 2.

Hence here too, were appellant located outside the area and seeking to transfer into it, I would sustain the refusal to transfer.

However, appellant has already been permitted to establish a tavern in the vicinity, having in fact been continuously licensed at the corner, without any protest heretofore, since July 1935. What he now purposes to do is to move across the street from a corner saloon to a place which, while nearer the school, is still substantially at the business intersection and is of a much higher type - a place which, in comparison to the old, is described by the Township Tax Assessor as "an asset to that part of the community."

However, it is asserted that the transfer will nevertheless be prejudicial since more school children pass on the side of the street of the proposed site. Of the school's 1300 students,

900 arrive by bus and the other 400 by foot from various directions. The Vineland police head, who did traffic duty at the intersection, states that both sides are used equally by the walkers. Three nearby residents declare that many more use the proposed side.

In any event, whichever side is more frequently used is immaterial. The children merely pass by and congregate, if anywhere, at a "lunch room" opposite the school. The police heads of both Landis and Vineland and a member of the local school board testified that there has never been any problem resulting from the students merely having to pass a liquor place at the intersection. Cf. Katz v. Caldwell, Bulletin 143, Item 3.

In view of all the facts, I conclude that the location of the school does not warrant refusal of the transfer since, so far as appears, such transfer would, if anything, convert the liquor place already in the vicinity of the school from a corner saloon to a decent-appearing retail establishment.

Additional objections against the transfer were urged by various objectors at the hearing on appeal.

Three such objectors, who own or reside at the three residences between appellant's proposed site and the high school, oppose the transfer on the ground that it will depreciate the residential value of the dwellings. However, since the vicinity at and around the intersection is now increasingly business in character, such objection is unavailing, especially to prevent a transfer merely from one side of the street to the other. Guenther v. Parsippany-Troy Hills, Bulletin 121, Item 8; DeChristie v. Gloucester, Bulletin 121, Item 10; Conn v. Kearny, Bulletin 173, Item 1; Ford's Tavern, Inc. v. Bergenfield, Bulletin 230, Item 17; Land v. Way, Bulletin 232, Item 14; Rucereto v. Dumont, Bulletin 253, Item 6.

In addition, two sisters who live at a dwelling just beyond the gasoline station at the northeast corner, claim that appellant has been misconducting his present liquor place.

They testified, in sum, that there has been noise ("talking loud, cursing, swearing") at appellant's place in the early morning, especially at week-ends; that about a year ago, between three and four A.M., it sounded as though "they were killing a woman" at the tavern; that drunken patrons have entered their yard and broken their hedges, one such occasion being a year and another six months ago; that several times during the last two years their front yard was used as "a regular comfort station"; that one morning, about two years ago, they saw a drunken man, with body exposed, lying across the street, and notified the police; that last May a drunken man called at their home to sell a dog and later went to appellant's tavern; that on three occasions during the last year a man tried the front door of the tavern before the local opening hour on Sunday and then entered through the side door.

In support of such evidence of misconduct, the testimony of another resident, taken at the hearing before respondent, was admitted by consent. This witness there testified that, during the past, there has been noise at the tavern from "11 o'clock or 12 o'clock....until closing time at 2" and that he has seen "drunks" many times during the daytime and on two or three occasions has seen persons lying near the tavern "dead drunk." On cross-examination he admitted that he was opposed to liquor in any form.

No other residents testified as to any misconduct. On the other hand, the police heads of Landis and Vineland, as corroborated by various police officers, testified that appellant's place has always been properly conducted and that no complaints have ever been received against it. The Township Clerk testified that no objection was ever made to the original issuance or to the 1936-7, 1937-8 and 1938-9 renewals of appellant's license.

Viewing all the evidence pro and con as to misconduct, I do not, in view of the lack of previous complaint, see sufficient to warrant the refusal to transfer appellant's license across the street at this business intersection, especially since respondent itself, having continuously renewed appellant's license since 1935 and having denied the present transfer only because of the three hundred odd feet distance from the school, which, after all, is not within the statutory prohibition, apparently found no misconduct.

The action of respondent is reversed. As already explained, this decision, since appellant's 1938-9 license has expired, shall guide respondent on any application of appellant for a transfer of his current license to the same proposed site. Since appellant has not had the benefit of a transfer of his 1938-9 license, it is directed that respondent return the fee posted by him for such transfer.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 14, 1940.

6. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED - PADLOCK ISSUED.

In the Matter of the Seizure)	Case 5647
on December 14, 1939, of a number)	
of still parts at 275 Highland)	ON HEARING
Road, in the Village of South)	CONCLUSIONS AND ORDER
Orange, County of Essex and)	
State of New Jersey.)	
-----)		

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

BY THE COMMISSIONER:

Investigators of this Department seized the unregistered still parts set forth in Schedule "A" annexed hereto, which they found in a shed at 275 Highland Road, South Orange.

At a hearing duly held to determine whether the seized property should be confiscated and the building padlocked, no one appeared to contest the proceedings.

Under the Statute, unregistered still parts are declared to be unlawful property, R. S. 33:2-2, and, in addition, a padlocking penalty may be imposed upon the premises in or upon which such still parts are found. R. S. 33:2-5. No cause was shown why confiscation and padlocking should not result in the instant case.

Accordingly, it is ORDERED that the property set forth in Schedule "A" 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, State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

It is further ORDERED that the building erected on premises located at 275 Highland Road in the Village of South Orange, County of Essex and State of New Jersey, being the premises in which the illicit still parts were found, shall not be used or occupied for any purpose whatsoever for a period of six months, commencing the 14th day of March, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 14, 1940.

SCHEDULE "A"

- 1 - 40-gallon copper cooker
- 1 - 15-gallon galvanized cooler
and copper coils

7. SEIZURES - CONFISCATION PROCEEDINGS - AUTOMOBILE RETURNED UPON ISSUANCE OF RETROACTIVE PERMIT - OTHER PROPERTY FORFEITED.

In the Matter of the Seizure of) William Hopping's Chevrolet) Sedan, two cases of beer, one) bottle of gin, and three bottles) of soda, in the vicinity of 29) Vinton Road, in the Borough of) Madison, County of Morris and) State of New Jersey.) - - - - -)	Case 5419) ON HEARING) CONCLUSIONS AND ORDER)
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William Hopping, Pro Se.
 Samuel D. Mayerson, Pro Se.
 Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On May 24, 1939, Investigator Flynn of this Department stopped Frank Burton as he stepped out of a Chevrolet Sedan, with a package containing a bottle of gin and three bottles of soda. The car was owned and being driven by William Hopping. The car contained 48 bottles of beer. Burton stated that he was delivering the alcoholic beverages for his employer, Samuel D. Mayerson, a retail licensee. Since the motor vehicle was not licensed to transport alcoholic beverages, it and the liquor were seized.

The alcoholic beverages, although tax-paid, are technically illicit, because they were transported in an unlicensed vehicle. Hence, such beverages and the automobile in which they were transported are unlawful property, and subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-66.

William Hopping obtained the return of the motor vehicle upon the payment to the Commissioner, under protest, of its appraised retail value, to wit, the sum of \$75.00. He stipulated that the Commissioner should hold a hearing and determine whether said sum should be forfeited or returned to him, and agreed that such determination should be dispositive of any and all rights he may have acquired in making payment of said sum to the Commissioner.

Hopping appeared at the hearing and sought the return of the money deposited by him on the ground that he acted in good faith and had no intention of violating the law. Mayerson, the licensee, also appeared and although he questioned some of the witnesses, did not testify or request any specific relief.

Hopping testified that he has lived in Madison for many years, and is an automobile mechanic; that he made occasional purchases at Mayerson's store, and thus became acquainted with Mayerson and Burton; that he knows nothing about Mayerson's business practices, and on the occasion in question he, at Burton's request, agreed to give him a lift as a casual act of friendship. There is no evidence that Hopping's vehicle had previously been used to make similar illegal deliveries, or that his conduct was part of any plan to help Mayerson evade the law. Hopping has no criminal record.

I am satisfied that Hopping violated the law unwittingly, and therefore payment of a license fee for a special permit legalizing retroactively the unauthorized transportation will serve as a sufficient penalty. I shall entertain his application for such special permit, the fee for which will be Twenty-five Dollars, and, in addition, he is to pay the costs incurred in the seizure and storage of the motor vehicle.

Accordingly, it is ORDERED that there be deducted from the \$75.00 paid by William Hopping, under protest, (1) The sum of Twenty-five dollars, to be applied as the fee for the special permit aforementioned, and (2) the costs due, paid or incurred in connection with the seizure and storage of the motor vehicle. The balance is to be returned to William Hopping when the permit is issued.

The beer, gin and soda, to which no claim has been presented, will be destroyed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 14, 1940.

8. VETERANS - SPENDING OF PENSIONS TO NEGLECT OF FAMILY -
ALLEVIATING MEASURES INDICATED.

Dear Sir:

The members of this post wish to know what can be done about Veterans who are getting a pension and spending same in bar rooms and neglecting their families.

We have several such men who come to us for relief after their pensions are spent in this manner.

Please advise what can be done.

Yours truly,
Clarence P. Turner, Adj.

February 15, 1940

Clarence P. Turner, Adj.,
Veterans of Foreign Wars of the U.S.,
Becker-Karg-Caldwell Post 2692,
Mount Holly, N. J.

Dear Mr. Turner:

I disapprove of veterans spending their pension funds at taverns. Usually, there are too many necessities that the family has to forego when a veteran indulges in the luxury of alcoholic beverages.

However, it is not my function to determine how pension checks shall be spent, but rather that of the Federal government. If the donor will restrict the use of the checks so as to forbid the recipients to buy alcoholic beverages, I shall endeavor to back-stop it by formulating a rule forbidding licensees to sell them. But so long as there is no such restriction, the veteran has as much right to purchase liquor as any other commodity.

Of course, it is a wise licensee who will not always stand upon his legal rights. I doubt that any licensee will be so shortsighted as to want to furnish fodder to those people who desire a return to Prohibition days. I shall be glad to write those tavern-keepers whom you have in mind, requesting their cooperation, if you will furnish me with the names and addresses. In addition, I shall need authorization to cite the names of the particular veterans involved. Mere generalizations, I have found, are not very effective. It is only when specific instances are mentioned that real cooperation is obtained. If such information is submitted, I shall endeavor to see what can be done to alleviate the situation.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. LICENSES - EXTENSIONS TO RECEIVERS - LICENSES MAY NOT BE EXTENDED TO RECEIVERS APPOINTED AT THE INSTANCE OF ONE OR MORE JUDGMENT CREDITORS FOR THE PURPOSE OF COLLECTING PRIVATE DEBTS OWED A PARTICULAR CREDITOR - LICENSES MAY BE EXTENDED TO RECEIVERS ONLY WHERE THE RECEIVER REPLACES THE LICENSEE AND REPRESENTS ALL OF THE CREDITORS.

Dear Sir:

I will thank you to advise me if the Alcoholic Beverage Law, R. S. 33:1-26, applies to a Receiver appointed upon application of a judgment creditor of a duly qualified licensee, wherein the rule granted empowers the Receiver "to collect and administer all the assets and property of the defendant."

I will also thank you to advise whether a licensee is bound to dispose of his license and deliver said license to the Receiver when the terms of the rule granted orders him to

"convey and deliver to said Receiver herein appointed all his property and rights in action and such evidence thereof as he may from time to time be requested by the Receiver herein appointed."

Yours very truly,
Joseph B. Sugrue,
Assistant Corporation Counsel
of Newark.

February 13, 1940

Joseph B. Sugrue, Esq.,
Assistant Corporation Counsel,
Newark, N. J.

Dear Mr. Sugrue:

I have heretofore ruled that R. S. 33:1-26 does not contemplate the extension of a liquor license to a receiver appointed pursuant to R. S. 2:32-175 by a District Court. Re Lee, Bulletin 309, Item 3.

For the same reasons, it is not within the contemplation of the Alcoholic Beverage Law that any liquor license shall be extended to a receiver appointed by any court at the instance of one or more judgment creditors where the object of the legal proceedings is to subject the license to execution or levy or to collect a private debt owing to a particular creditor or creditors. This is so because R. S. 33:1-26, after providing for an extension of the license in case of death, bankruptcy, receivership or incompetency of the licensee, or where for any reason the operation of the business covered by the license shall devolve upon a person other than the licensee, expressly declares: "Under no circumstances, however, shall a license or rights thereunder be deemed property subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this chapter."

That means that a license is nothing but a personal privilege which cannot be transferred or disposed of except to

the extent expressly set forth in the other provisions of the Alcoholic Beverage Law. That means that a license cannot be levied upon or seized for debts by any creditor, directly or indirectly.

The appointment of a receiver at the instance of a creditor for his individual benefit to collect and administer the assets and property of a licensee-debtor is merely a special statutory method for enabling a creditor to effect liquidation of personal property upon which the creditor has levied and had a right to levy. So with the appointment of an equity receiver upon a creditor's bill in Chancery to collect private debts which the licensee owes to the complaining creditor or creditors. In none of these cases may a liquor license be extended to such a receiver.

The foregoing situations are to be carefully distinguished from bankruptcy and from a receivership where the receiver takes the place of the licensee and represents all the creditors and is not merely a collecting agency for the particular creditor or creditors at whose instance he was appointed as, for instance, the statutory receiver of a corporation appointed by the Court of Chancery.

Delivery of a license to a receiver, whatever the terms of the order, would be inept and inert. The transfer of a liquor license, like its original issuance, is a matter of high discretion to be exercised only by the duly constituted license issuing authorities.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. ELIGIBILITY & MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS

February 14, 1940

Case No. 311

Applicant was, on September 28, 1936, adjudged in contempt of the Court of Chancery of New Jersey for the recited reason that he, a defendant in a certain cause:

".....filed an answering affidavit under oath dated September 8, 1936, and sworn to before Samuel H. Nelson, a Master in Chancery of New Jersey, wherein he did willfully, corruptly and falsely deny certain matters then and there material to said issue, to wit, the execution and existence of a certain affidavit made by one Sobel;

"And it further satisfactorily appearing to the Court that the said (Applicant), who was a former officer and director of the Metropolitan Dairy Products, Inc., an insolvent corporation, knowing that Israel B. Greene, Receiver of said corporation, appointed by this Court, was investigating the affairs of said corporation and the whereabouts of its assets, represented to the said Israel B. Greene, Receiver as aforesaid, that he, the said (Applicant), and his associates, Rubenfeld and Sobel had given a \$60,000 bribe to one Howard J. O'Connor, the President of said corporation, in order

to induce the said Howard J. O'Connor to consent to a resale by said corporation to the said (Applicant) and his associates, of the stock then owned by the said corporation in its subsidiary corporations, Slate Hill Milk & Cream Co., Inc. and Middletown Milk & Cream Co. Inc., and that the said (Applicant) made said representations to the said receiver, for the purpose of inducing the said receiver to bring an action to set aside the sale of said stock, which suit was filed by said Receiver.

"And it further satisfactorily appearing to the Court that in the answering affidavit filed by the said (Applicant) in said cause as aforesaid, and in his testimony taken orally before the Court, the said (Applicant) admitted that the aforesaid representation made by him to the said receiver with respect to said bribe was false, and known to him to be false when made, and that he made said representation maliciously for the purpose of gaining a personal advantage.

"And it further satisfactorily appearing to the Court that the said (Applicant), upon being examined under oath, in the presence of the Court, he willfully, testified falsely and evasively with respect to matters material in said cause, and that he attempted to impose upon the Court by the aforesaid false answering affidavit filed in said cause and by willfully misleading the said Israel B. Greene, the receiver of said Metropolitan Dairy Products Co. Inc., appointed by this Court, and by giving false and evasive testimony before the Court, when cross-examined on his aforesaid affidavit, relating to matters material to said cause"

For this he was sentenced to pay a fine of \$1,000.00 and imprisonment for thirty days, which was commuted after service of fifteen days because of his advanced age and the condition of his health.

Applicant stands adjudged in criminal contempt of court. Before any inquiry is made whether the adjudication involves moral turpitude, it must first be decided whether applicant has been (1) convicted of (2) a crime. If he has not, then he is not, merely because of having been adjudged in criminal contempt of court, disqualified from holding a liquor license (or being employed on licensed premises), since the applicable portion of the law provides, by R. S. 33:1-25:

"No license of any class shall be issued.....to any person who has been convicted of a crime involving moral turpitude." (Italics mine)

Generally speaking, a crime is the violation of any State or Federal law which subjects the offender to fine, imprisonment or other punishment. Re Leonard, Bulletin 253, Item 8 (distinguishing things that are not).

Bouvier's Law Dictionary (Rawle's Third Revision) defines crime as:

"An act committed or omitted in violation of a public law forbidding or commanding it. A wrong which the government notices as injurious to the public, and punishes in what is called a criminal proceeding in its own name."

And in 16 C. J. 50:

"A 'crime' has been defined to be 'an act committed, or omitted, in violation of a public law either forbidding or commanding it'; but it is more accurately defined as a wrong directly or indirectly affecting the public, to which the state has annexed certain punishments and penalties, and which it prosecutes in its own name in what is called a criminal proceeding, or as an act or omission which is prohibited by law as injurious to the public, and punished by the state in a proceeding in its own name or in the name of the people or the sovereign."

"Conviction" strictly pertains solely to proceedings in a criminal court. Re Haney, Bulletin 283, Item 5 (distinguishing "commission"). "Convict" means "To condemn. To find guilty of a crime or misdemeanor". "Conviction" is "Finding a person guilty by verdict of a jury" or "before an authorized magistrate without the intervention of a jury" in which case it is known as a summary conviction. (Bouvier's Law Dictionary).

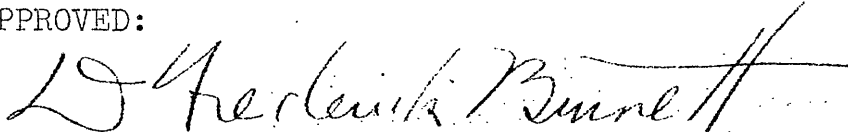
In the instant case, applicant's contempt of court was criminal by reason of its being in facie curia, not because it was in violation of any public law expressly forbidding or commanding it under pain of punishment. It was punished not in the name of the State of New Jersey, in a separate proceeding wherein the State and the applicant were adversary parties (as for example a prosecution in a criminal court for the crime of perjury) but incidentally in the course of a civil proceeding in the Court of Chancery (which is a court of civil and not criminal jurisdiction) in the exercise of its unquestioned jurisdiction to mete out summary punishment of fine and imprisonment for acts, whether civil or criminal, contemning its dignity.

It must be concluded that applicant's adjudication of having committed a criminal contempt of court is not a conviction of crime within the meaning of R. S. 33:1-25.

It is recommended that applicant be advised that he is not eligible for employment on licensed premises merely because of his adjudication of guilt of criminal contempt of court.

Emerson A. Tschupp,
Attorney.

APPROVED:



Commissioner.

New Jersey State Library