

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

BULLETIN NUMBER 182.

JUNE 7, 1937.

1. RULES GOVERNING SIGNS AND OTHER ADVERTISING MATTER - LICENSED MANUFACTURERS AND WHOLESALERS MAY FURNISH SIGNS TO RETAIL LICENSEES AND MAY KEEP THEM IN REPAIR PROVIDED THE COST OR VALUE OF SUCH SIGNS AND SERVICES INCIDENT TO THEIR ERECTION AND OTHER ADVERTISING MATTER AND SERVICES INCIDENT THERETO FURNISHED DURING THE LICENSE YEAR PLUS THE COST OR VALUE OF REPAIRS DOES NOT EXCEED \$100 FOR EACH LICENSED PREMISES.

Dear Commissioner Burnett:

I have read over very carefully your communication of April 26th headed, "Notice to Breweries and Wholesale Beer Distributors".

Will you please give me a ruling on the following questions:

Is it permissible for a wholesaler to furnish an outside sign for a customer, the value not to exceed \$100.00?

Is it permissible for a wholesaler to repair outside neon signs for customers?

Very truly yours,

PENN BEVERAGE CO.
Benjamin Stone.

May 28, 1937.

Penn Beverage Co.
Atlantic City, N. J.

Gentlemen: Attention: Mr. Benjamin Stone

The Rules Governing Signs and Other Advertising Matter are calculated to prohibit licensed manufacturers and wholesalers from furnishing to retailers signs or other advertising matter exceeding in cost the sum of \$100 for each licensed premises during each license year. This limitation is intended to include not only the cost or value of signs or other advertising matter furnished but also the incidental services. Accordingly the answers to your inquiries are as follows:

1. A manufacturer or wholesaler may furnish to a retail licensee an outside sign which does not bear the name, brand or trademark of any manufacturer or wholesaler, provided the cost or reasonable value of such sign and any services incident to its erection and all other advertising matter and services incident thereto furnished during the license year, does not exceed \$100. for each licensed premises.

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- 2. A manufacturer or wholesaler may repair such outside sign provided the cost or value of such sign and any service incident to its erection and all other advertising matter and service incident thereto furnished during the license year, plus the cost or value of the repairs, does not exceed \$100.00 for each licensed premises.

Very truly yours,
 D. FREDERICK BURNETT,
 Commissioner.

By: Nathan L. Jacobs,
 Chief Deputy Commissioner
 and Counsel.

2. DISCIPLINARY PROCEEDINGS - ILLICIT ALCOHOL WITH POISONOUS INGREDIENTS.

In the Matter of Disciplinary Proceedings against
 ANTONIO COSTANZO, trading as
 MAPLE TREE INN,
 Long Valley Road,
 Chester, New Jersey,

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Consumption License No. C-3, issued by the Borough Council of the Borough of Chester.
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Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.
 Frank C. Scerbo, Esq., Attorney for Respondent Licensee, and for the licensee and Anna Donnamaria, Owners of licensed building.

BY THE COMMISSIONER:

Disciplinary proceedings were instituted after a report of the results of a Federal investigation was forwarded to this Department and after independent investigation by this Department revealed that a person of a name similar to licensee's had been convicted of the crime of larceny and receiving stolen goods.

Charges served on licensee contained three counts:

- 1 - Possession of illicit beverages contrary to Section 48 of the Control Act.
- 2 - Possession of illicit beverages adulterated with isopropyl alcohol and acetone, in violation of Rule 10 of Rules Concerning Conduct of Licensees and Use of Licensed Premises.
- 3 - Knowingly misstating a material fact, under oath, in his application for a license in that he had sworn he had never been convicted of a crime.

As to the first and second counts, an Inspector of the Alcohol Tax Unit, Internal Revenue Service, testified that he found two bottles of liquor on the back bar of the licensed premises which

tested under proof. The certificate of a chemist attached to said Alcohol Tax Unit was introduced into evidence. The certificate disclosed that one of the seized bottles was labeled "Apple Brandy 90 proof" and was found to be 87.7 proof; that the other seized bottle was labeled "Blended Whiskey 90 proof" and was found to be 96.9 proof; that both bottles contained small quantities of isopropyl alcohol and acetone and appeared to contain completely denatured alcohol Formula #10 or 10-M which had been manipulated. At the hearing, another chemist testified that the small amount of these adulterants found in the bottles analysed would have no harmful effect. Hence, I find that these bottles did not contain poisoned liquor, but did contain illicit liquor.

Licensee testified that the premises are managed by Louis Donnataria, the husband of Anna Donnataria who owns a half-interest in the licensed building. Louis Donnataria testified that he had not tampered with the liquor; that it was purchased from reputable wholesalers; that at the time of the seizure the premises were in charge of an employee who cleans up the place. He testified further that his wife had nothing to do with the conduct of the licensed business and that Antonio Costanzo, the licensee, is present only a "couple of times a week."

The inference to be drawn from this testimony is that the man who cleaned up the place adulterated the contents of the two bottles. This man was not produced at the hearing, and no excuse was given for his non-appearance. Licensees, however, are responsible for what goes on upon the licensed premises. In Re Kneller, Bulletin 49, Item 4.

I find the licensee guilty upon the first and second counts set forth in the charges served upon him, namely, possession of illicit alcoholic beverages in violation of Section 48 of the Control Act, and possession of alcoholic beverages adulterated with isopropyl alcohol and acetone in violation of Rule 10 of Rules Concerning Conduct of Licensees and Use of Licensed Premises.

As to the third count, further investigation made after service of charges and before the hearing discloses that the person convicted of the crimes of larceny and receiving stolen goods was not the licensee but another individual who bore the same name as licensee. Hence, at the hearing the attorney for this Department withdrew the third count.

In Re Felsenfeld, Bulletin 175, Item 8, I established the precedent that when a licensee is convicted of the possession of liquor, illicit because of acetone content, that good cause is not shown why the statutory automatic suspension should be lifted. The application to lift it was, therefore, denied with the result that the suspension remained in effect until the end of the term of the license.

Applying the same principle to the instant case, the foregoing finding of guilt requires that the license should be suspended until the end of its term.

Since a penalty as drastic as revocation has not been indicated from the evidence in this case, I shall not declare the building ineligible for a further license.

Accordingly, it is on this 28th day of May, 1937, ORDERED, that Plenary Retail Consumption License No. C-3, heretofore issued to Antonio Costanzo, trading as Maple Tree Inn, by the Borough Council of the Borough of Chester, be and the same is hereby suspended until the end of its term, effective May 31, 1937.

D. FREDERICK BURNETT,
Commissioner.

3 ENFORCEMENT DIVISION ACTIVITY REPORT FOR MAY 1 to 31, 1937, INCLUSIVE.

To: D. Frederick Burnett, Commissioner.

ARRESTS: Total number of persons - - - - 44
 Licensees - - 2 Non-Licensees - - - 42

SEIZURES: Stills - total number seized - - - - - 21
 1 to 50 gal. capacity - 10 Over 50 gal. capacity - 11

Motor Vehicles - total number seized - 6
 Trucks - 1 Pleasure cars - 5

Alcohol
 Beverage alcohol - - - - - 274 Gallons

Mash - total number of gallons - 28,480.

Alcoholic Beverages
 Beer, Ale, etc. - - - - - 236 Bottles
 Wine - - - - - 275 Gallons
 Whiskies and other hard liquor- - - - 26 Gallons

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - 1942
 Illicit (Bootleg) liquor- - - - - 5
 Gambling violations - - - - - 60
 Sign violations - - - - - 59
 Unqualified employees - - - - - 88
 Other violations- - - - - 43
 Total violations found- - - - - 255
 Total number of bottles gauged- - - - - 11,668

COMPLAINTS:

Investigated and closed - - - - - 267
 Investigated, pending completion- - - - 417

LABORATORY:

Number of samples submitted - - - - - 150
 Number of analyses made - - - - - 163
 Number of poison liquor cases - - - - - 0
 Number of cases of alcohol, water and
 artificial coloring - - - - - 16
 Number of cases of moonshine
 (Home-made finished product of
 illicit still) - - - - - 23

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

4. DISCIPLINARY PROCEEDINGS - FEEBLE REPRIMANDS ARE OUT OF PLACE FOR VIOLATIONS OF A CHARACTER WITH WHICH DECENT SELF-RESPECTING LICENSEES WON'T COMPETE AND FOR DELIBERATE VIOLATIONS OF SUNDAY SALES WITH WHICH THOSE WHO OBEY THE LAW CANNOT COMPETE

June 2, 1937

Mrs. Ann M. Baumgartner
Secretary, Municipal Board of
Alcoholic Beverage Control
516 Stevens Street
Camden, New Jersey

Dear Mrs. Baumgartner:

I have staff report of the proceedings before the Municipal Board of Alcoholic Beverage Control of Camden against Louis Zaleski, charged with having sold alcoholic beverages to minors, and against Antoni Dolinski, charged with having sold alcoholic beverages on Sunday in violation of local ordinance.

As regards Zaleski, the report states:

"On Sunday, April 18, 1937, as a result of a raid on a disorderly house in Camden by Camden Police, three girls - ages 15, 18, and 18 - were taken in custody.

"Questioning of these girls by the police and Investigators Brooks and Howe revealed that they had been served alcoholic beverages in the above licensed premises.

"On April 21, 1937, the Investigators, accompanied by Police Officers Shapiro, Wilmot and Welch, took the three girls to the above licensed premises. They there identified the licensee's son, John Zaleski, as the one who had served them on April 16, 1937.

"The licensee and his son were arrested by the Camden Police and charged under the City Ordinance. The licensee's son was found guilty and fined \$100.00.

"Verdict is Guilty.

"Sentence - Licensee placed on probation for the balance of the licensing period.

"NOTE: The Investigators report that a reprimand was administered by the Board; that in imposing no suspension the Board stated it had taken into consideration the fact that the son had assumed full responsibility; further, that a \$100.00 fine had been paid in the police court."

As regards Dolinski, the report states:

"On Sunday, May 2, 1937, Investigators Brooks and Howe proceeded to the vicinity of the licensed premises, arriving at about 9:45 A. M. At about 10:15 A.M. they observed a young man leave with a package under his arm. The Investigators stopped him and questioned him as to the contents of the package. It was found to contain two quarts of beer. He stated he had purchased same at the above licensed premises. He was taken back to the store. The licensee stated he knew it was against the law but as business had been bad during the week, he thought he could make a little money on Sunday.

"Sentence - Reprimand with warning that future violation would result in revocation of the license."

If enforcement is to amount to anything in Camden, much more is required than feeble reprimands.

Decent, self-respecting licensees won't compete with the conditions which obtained in the Zaleski case. What has a paltry fine to do with cleansing a place which needs it? Why should it be condoned at all?

Nor can licensees who scrupulously close up shop when the law requires it, compete with those who deliberately take chances to "make a little money on Sunday" and then are allowed to get away with it!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - EFFECT OF SURRENDER UNDER FIRE - HEREIN OF THE PROTECTION OF MUNICIPALITIES OTHER THAN THE ONE WHICH FORCED THE SURRENDER.

June 2, 1937

W. P. Stephenson, Clerk,
Township of Parsippany-Troy Hills,
Tabor, New Jersey:

Dear Mr. Stephenson:

I have staff report and your certification of the proceedings before the Township Committee of Parsippany-Troy Hills against William A. Moran, charged with a misstatement and suppression of material facts in his application for license, in that he failed to disclose the true owner.

The report states:

"On April 21, 1937, Investigators Wolf and Emmetts visited the licensed premises. They found James O'Leary in charge. Wolf remembered he had visited the licensed premises several months before and had asked where the licensee could be located. O'Leary at that time told him Moran was at the Doctor's.

"Under questioning by Wolf, O'Leary stated he was bartender and foreman. Wolf then asked him as to what the sign 'O'Leary's Tavern and Grill' meant. No satisfactory reply was given.

"A duplicate copy of the license application was obtained and it was noted that Moran claimed therein that he was the only person interested in the licensed premises.

"Moran was contacted at Montville Township and gave the following written statement:

"Dated April 21, 1937

"Voluntary statement of William A. Moran,
Route 32, Main Rd. Montville Twsp.

In May 1936 I went to work for James O'Leary as a bartender. The license was in the name of G. Spats.

James O'Leary hired me and paid me every week the sum of \$7.50 and board for my son and myself. On July when the time came to renew the license I made the application for the license in my name with money furnished by James O'Leary which I believe was a check the sum of \$200.00.

I worked there as a bartender until some time in Oct. 1936 at which time I was discharged O'Leary giving the reason business was bad.

I never paid any of the bills, all bills were paid by James O'Leary. I don't intend to go back there as far as I know. I have no interest whatever in that license premises although my name is on the license and the license was issued to me.

(Signed) William A. Moran."

I note that upon the return day of the order to show cause in this case, the licensee appeared by his attorney, and voluntarily surrendered his license; that this surrender was accepted by the Committee in lieu of hearing on proceedings to revoke same.

Permit me to thank the members of the Committee for their prompt action in this case.

Acceptance of a surrender, while it closes the particular place down, does not have the same effect as a revocation for the latter would disqualify the licensee from receiving any other license for a period of two years whether his application were welcome or not. So far as your community is concerned, I am sure that your Township Committee would not give a man who perpetrated a fraud upon it another license. As regards other municipalities in the State, they may properly justify their refusal to give Moran any license, not because he is technically ineligible, but simply because the double dealing which occurred in this case and his surrender under fire constitutes good ground for a refusal to issue a license to him in another community.

It would be well, therefore, if other municipalities made note of the name.

Moreover, Block 13 of the questions in the prescribed form of application reads: "Have you or any person mentioned in this application ever applied for or had any interest directly or indirectly in any application for a license in New Jersey to manufacture, sell, transport or warehouse alcoholic beverages?_____"

If so, state name of applicant _____ To whom was application made and when? _____ Was license issued? _____ (a) Have written charges of violations ever been served upon you? _____ If so, state details _____. "(b) Was license ever surrendered, suspended or revoked? _____ State details _____."

The point is that definite answers to every one of the questions in this block must be exacted and if the answer to either Question (a) or (b) is in the affirmative that special investigation should be made to determine the fitness of the applicant. The files of this Department are at the service of all municipalities.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - LIMITED RETAIL DISTRIBUTION LICENSEES - 3 DAYS' SUSPENSION.

June 2, 1937

Mr. Harold J. Landshof,
Borough Clerk,
Rutherford, New Jersey.

Dear Mr. Landshof:

I have staff report and your certification of the proceedings before the Borough Council of Rutherford against Michael Ieslin and John Gruber, holders of limited retail distribution licenses, charged with having sold beer on Sunday in violation of local ordinance and in quantity below the minimum amount prescribed by the terms of their licenses; also chilled instead of unchilled beer which is all that their licenses permit.

I note both licensees pleaded guilty to the charges and that the licenses were suspended for a period of seventy-two hours.

Actually, each licensee was guilty of three offenses. The penalty, therefore, was lenient. I note that Mayor Mead and Councilman Pickett were aware of this and publicly declared that the governing body had been lenient in both cases because they were first offenses, but if there is another violation the penalty would be more severe. I take it that this warning applies to all licensees and not merely to the two who happened to get caught. If so, Rutherford licensees will know that the Borough Council means business and that violations will not be tolerated.

Please express to the members of the Council my appreciation.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - MISSTATEMENTS AND SUPPRESSION OF FACTS - ONE DAY PENALTY TOO FEEBLE - HEREIN OF MISPLACED SYMPATHY FOR THOSE WHO DO NOT KNOW WHAT IT MEANS TO KEEP A NEW LEAF TURNED OVER.

June 2, 1937

John Dobnack,
Clerk of Weymouth Township,
Dorothy, New Jersey.

Dear Mr. Dobnack:

I have staff report of the proceeding before the Township Committee of Weymouth against Charles J. Wedra, charged with having made a misstatement in his application, in that he failed to disclose that he had been convicted of a crime.

I note the licensee pleaded guilty to the charge and that his license was suspended for twenty-four hours.

On its face, the penalty appears to be extremely light for such a serious offense. However, my attention is called to that portion of the report reading as follows:

"Investigator Tracy reports the case was heard by Township Committeeman Seelman, Chairman, W. Turner and S. Serbeck, Jr.; that the decision was rendered by Mr. Seelman after an executive session of three or four minutes; that Mr. Seelman, speaking for the Committee, stated in effect as follows: 'that knowing Mr. Wedra as they did, they did not wish to be too severe with him but felt that they must bring back some sort of a penalty for his having falsified his application and that the Committee had decided on suspending his license for twenty-four hours.'"

I am wholly in sympathy with those who, having gone wrong, have turned over a new leaf and thereafter go straight. It is not going straight, however, to lie about what happened and then swear to it. A man-sized penalty was indicated and I regret that your Committee did not administer it. There is criticism enough of licenses being granted to ex-convicts, let alone to those who swear falsely about it.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT ALCOHOL WITH POISONOUS INGREDIENTS AS WELL AS BOOKMAKING ON THE SIDE - 40 DAYS' PENALTY.

In the Matter of Disciplinary Proceedings against :

JOHN F. CULLEN, 17 Kitchell Street, Newark, New Jersey, :

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-334, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. :

Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

James N. Pappas, Esq., for Respondent Licensee and Owner, John F. Cullen.

BY THE COMMISSIONER:

Disciplinary proceedings were originally instituted against licensee after a report of the results of a Federal investigation was forwarded to this Department.

Later, as a result of an investigation by this Department, additional charges were served upon licensee and a supplemental hearing was held. The original charges and the supplemental charges will be considered together.

The original charges alleged that licensee did possess five certain bottles of illicit alcoholic beverages including one bottle labeled "Canadian Club Straight Whiskey" which was adulterated with acetone. Because there was no evidence that any of four of these bottles contained illicit alcoholic beverages or denaturants, the charges were withdrawn as to four of the five seized bottles and the hearing proceeded as to the bottle labeled "Canadian Club Straight Whiskey."

An Inspector attached to the Alcohol Tax Unit, Internal Revenue Service, testified that he had seized a bottle of "Canadian Club" upon the licensed premises; that it was one-tenth full and tested above proof. A chemist attached to that Unit testified that, whereas the label on said bottle called for 90.4 proof, the contents were found on analysis to be 97.2 proof; that the color was found to be artificial, with a small amount of natural color, whereas genuine "Canadian Club" is all natural color; that the sample contained a small amount of glycerine, none of which was found in a genuine sample, and contained also a small amount of acetone, a substance used as a denaturant in certain Governmental formulas for denatured alcohol. The chemist testified that the amount of acetone present would be less than five-tenths of one per cent.

On behalf of the licensee, the bartender, who was present at the time of the seizure, testified that he had been employed by the licensee for two years and that the licensee was sick in bed at the time the seizure was made. The bartender opined that the bottle of "Canadian Club" was adulterated by a colored man who had been employed to clean up the premises and who had been discharged five or six days before the seizure. The bartender further testified that shortly before he discharged the colored man he had found in a nearby garage, where Mr. Cullen's car was stored, a small Coca-cola bottle containing whiskey; that he thereupon asked the colored man, who sometimes acted as chauffeur for Mr. Cullen, what he was doing with the Coca-cola bottle and that the colored man replied "I brought that from the house."

The bartender and the licensee's wife also testified that a purchase of odd lots of whiskey had been made at one time from a licensed wholesaler who has since gone out of business; that the lot purchased included two bottles of "Canadian Club."

Licensee has thus attempted to set up two separate defenses: (1) that the man employed to clean up the premises adulterated the contents of the bottle; (2) that the bottle when purchased contained illicit liquor adulterated with a denaturant.

As to the first defense, the facts alleged, even if true, would not exonerate licensee. Licensees are responsible for the acts of their employees upon the licensed premises. In Re Fuchs, Bulletin 178, Item 9 and cases therein cited. The attempt to blame it on the colored chauffeur, while novel, is unworthy. The colored race have their own specialties but acetone is not on the list. Evidently the licensee didn't think much of this defense, either, for the independent explanation next mentioned, if true, explodes the first.

As to the second defense, the most that can be said is that it rests upon mere surmise. There is, to be sure, evidence that in the month of April 1936, which was a month before the Federal seizure, licensee purchased sixty-nine gallons of alcoholic beverages from a wholesaler who has since discontinued business. But there is no identification or tie-up of this purchase with the bottle in question. Mrs. Cullen, asked "Did you buy Canadian Club there?", replied "I could not pick out what was bought." The wholesaler mentioned had a clean record so far as the files of this Department show. Even if the bottle had been identified as part of the purchase, it was, when seized, an open bottle and capable of countless refills. The record is barren of any complaint made to the wholesaler. The evidence falls far short of proving that the seized bottle, when purchased, contained illicit alcoholic beverages adulterated with a denaturant. The possibility that the adulterant mentioned would get into legitimate liquor at a legally authorized distillery is so remote that it need not be considered. Re Grembo-wiec, Bulletin 178, Item 6.

On behalf of the licensee, Dr. Simons testified that the amount of acetone found in the seized bottle would not have a harmful effect upon the human system. His testimony as to the effect of acetone in small quantities substantially agrees with the authoritative opinions cited in Re Felsenfeld, Bulletin 175, Item 8. But, even though the liquor was not poisonous in the lay

sense that it was deadly, nevertheless it did contain acetone and that fact brings it within the ruling in Re Grembowiec, supra, which held that "Licensed places are not laboratories in which to experiment with human lives. Licensees may not escape punishment because the illicit liquor they purchase or possess happens to be concocted under a formula which renders the deleterious effect negligible. The public will suffer if other formulae or processes are not so fortunate."

Upon the evidence I find the licensee guilty of possession of illicit alcoholic beverages, in violation of Section 48 of the Control Act, and of possession of alcoholic beverages containing acetone, in violation of Rule #10 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises.

The supplemental charges alleged that licensee did allow, permit and suffer bookmaking and gambling on results of horse racing in and about the licensed premises in violation of Rule 7 of Rules Concerning Conduct of Licensees and Use of Licensed Premises.

The evidence given at the supplemental hearing discloses that Investigator George N. Anderson, of this Department, visited the licensed premises on March 11th, 13th and 27th and observed people reading racing charts and making out slips; that on March 29th he again visited licensee's restaurant and placed a \$2. bet with one Lemme on "Snap Judgment" running at Tropical Park; that on the following day, while Anderson was in licensee's restaurant, the bartender said to him "Be careful, the law is down there, I think" (referring to two other A.B.C. investigators then present) and Anderson was unable to make a bet on that day. On March 31st Anderson went back again. Here's the testimony:

"Q Tell us what happened on the 31st.

A A little after twelve noon I contacted the bartender and I said to the bartender, 'You were right, a couple of Burnett's men were there yesterday', and he said, 'I thought so.'

MR. PAPPAS: I move it be stricken, it is not binding on the defendant.

THE HEARER: I will allow it, if it was the bartender.

A (continuing) I told the bartender they were a couple of Burnett's men. The bartender called Mr. Cullen over and the tall fellow whom I afterwards found out was Endholm, and he said, 'Listen to what this fellow has to say', and I told him about these investigators following me up and asking whether I was placing a bet, and I said, 'They can't bother me, can they?' and he said, 'Don't be afraid.' So, after having a little conversation, I placed a bet with Endholm on the third race at Tropical Park, a \$2.00 bet. That day I made a carbon copy of my bet, the name of the horse was 'Sickle Lass.'

Q You wrote it down on a slip of paper?

A Yes, and handed it to the fellow who took the bet, the tall fellow.

Q Did you visit the premises on April 16th?

A I went to the premises again.

Q Tell us what took place on the 16th?

A I had Investigator Hill with me on the 16th. He stood by the bar and about 2:30, approximately, in the afternoon, -- he stood by the bar -- and I placed a bet with

the one called 'Joe', who took the bet down by the slot machine. I gave him a \$2.00 bet on a horse named 'Flopsie', the first race in Jamaica. I had a slip made out for that.

Q Did you give him the original?

A Yes. After he took the bet, I gave Hill the signal so he went out and got the two detectives who were waiting outside, Messner and Catena, and they came in and placed the two bookies under arrest.

Q Was Cullen there at that time?

A He was.

Q Where?

A In the side room, sitting by a table, they were playing cards.

Q Who was?

A Mr. Cullen and the two bookies and some other fellow.

Q When you say the two bookies, you mean?

A Endholm and Lemme.

Q The two men you placed bets with?

A Yes."

The licensee testified that he did not know either Lemme or Endholm and denied the conversation with Investigator Anderson on March 31st. Opportunity was given to the licensee to produce the men who had been arrested but they, as licensee's attorney says in his brief, "since arrest have vanished into thin air." To corroborate licensee's denial of his conversation with Anderson, he produced a well-known physician of the City of Newark who testified that he treated Mr. Cullen at his home, located above the licensed premises, on March 29th and March 30th for an attack of grippe; that on those days Mr. Cullen was sick in bed; that in the Doctor's opinion Mr. Cullen was not able or strong enough to walk downstairs and stay in his saloon on the following day. So far as March 31st was concerned, the Doctor's testimony as to facts stopped short with what occurred on the two previous days. From there on, it is his mere opinion as to whether Cullen would be able to walk. The recuperative powers of grippe patients, when stimulated by interest in the cash register downstairs, often surprise the doctors. If George N. Anderson says that Cullen was downstairs in the saloon on March 31st, he was!

I am satisfied from the evidence of the conversation between Investigator Anderson and Mr. Cullen on March 31st, and from the fact that Lemme and Endholm were seated with Mr. Cullen at a table in a side room when they were arrested on April 16th, that these men were known to the licensee and that he knew that they were making book upon his premises. Hence, I find him guilty upon the supplemental charges.

The finding of guilt on the original charges calls for a suspension of the license until the end of its term. Re Grembowiec, supra. But the end of the term is now less than thirty days away. The minimum suspension for illicit liquor is thirty days. The finding of guilt on the bookmaking charge warrants a suspension of ten days, or a total suspension of the license for forty (40) days. Since, however, the present licensing period will expire prior to the expiration of forty days, the present license will be suspended for the balance of its term, and the Municipal Board of Alcoholic Beverage Control of the City of Newark will be directed not to issue any renewal of said license prior to the expiration of forty days from the effective date of the suspension ordered herein.

Since a penalty as drastic as revocation has not been indicated by the evidence in this case, I shall not declare the building ineligible for any further license.

Accordingly, it is on this 3rd day of June, 1937, ORDERED, that Plenary Retail Consumption License No. C-334, heretofore issued to John F. Cullen by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended until the end of its term, effective June 6, 1937, and it is FURTHER ORDERED that no further license be issued for the same premises prior to July 16, 1937.

D. FREDERICK BURNETT,
Commissioner.

9. LICENSEES - SALES TO STEAMSHIP LINE FOR ULTIMATE LAWFUL RESALE IN WATERS BEYOND THE JURISDICTION OF NEW JERSEY - LIMITED BREWERY MAY SELL ITS MALT BEVERAGES TO A STEAMSHIP LINE NOT HOLDING ANY NEW JERSEY LICENSE OR PERMIT PROVIDED THE MALT BEVERAGES ARE TRANSPORTED OR DELIVERED TO THE BOAT IN A LICENSED VEHICLE AND ARE ACTUALLY WITHDRAWN FROM THIS STATE FOR ULTIMATE LAWFUL RESALE IN WATERS BEYOND THE JURISDICTION OF NEW JERSEY.

May 25, 1937

Gentlemen:

Will you kindly inform us at your earliest convenience if we are permitted to sell beer to a steamship line who are the holders of a Federal License to sell alcoholic beverages past the nine mile limit.

We are the holders of a BL-9 license in the State of New Jersey.

Very truly yours,
Harry Efraimson,
Booth Bottling Co., Inc.

June 3, 1937

Booth Bottling Company, Inc.,
Camden, N. J.

Attention: Mr. Harry Efraimson.

Gentlemen:

I have your letter of May 25th.

Alcoholic beverages may not be sold on steamships while docked at New Jersey piers or while in waters which are subject to the jurisdiction of this State, except pursuant to proper license or permit. Alcoholic beverages may, however, be sold without such license or permit on steamships while in waters beyond the jurisdiction of this State.

Your present inquiry is whether you are authorized, under the terms of your limited brewery license, to sell your products within this State to a steamship line which does not hold any New Jersey license or permit for ultimate lawful resale in waters beyond the jurisdiction of this State.

Section 11(1)b of the Control Act provides that the holders of limited brewery licenses may sell their products within this State to licensed Jersey "wholesalers and retailers." However,

under the recent ruling in Bulletin 181, Item 4 enclosed herewith, and for the reasons therein stated, this provision should receive a broad construction to the end that although limited breweries may not sell malt beverages intended for ultimate resale or consumption within this State to any persons except licensees, they may sell to foreign dealers malt beverages actually withdrawn from this State for lawful resale elsewhere.

Accordingly you are advised that a New Jersey limited brewery may sell its malt beverages within this State to a steamship line not holding any New Jersey license or permit, provided the malt beverages are transported or delivered to the boat in a licensed vehicle and are actually withdrawn from this State for ultimate lawful resale in waters beyond the jurisdiction of New Jersey.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

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

June 2, 1937

Re: Solicitor's Permit #3460, issued April 26, 1937 -
Hearing No. 167.

Permit was issued to solicitor, who stated in his sworn application and questionnaire that he had never been convicted of any crime. Departmental check-up subsequently disclosed that he had been convicted of various offenses. Accordingly, a hearing was held to determine whether solicitor's permit should be revoked, or other action taken.

Solicitor is a man of middle age, married 27 years, with four children, the youngest being 16. Since 1911 he has been operating a cigar store which he is continuing to operate at the present time.

In May, 1917, solicitor was arrested in this State on a charge of receiving stolen goods, but was released. Several days later he was in the hands of the New York authorities to stand trial on a similar charge in apparently the same matter. He reached the New York authorities in this matter by being arrested and transported from this State as a fugitive from justice (as the police record states) or by having voluntarily gone into New York to face trial (as he claims). In any event, the trial resulted in an acquittal.

In August, 1925, solicitor was again arrested on a charge of receiving stolen property. He claims that he was taken into custody only as a material witness; but the police record shows that he was arrested as an accused in the matter. The grand jury returned "no bill" against him, and he was discharged.

In June, 1933, solicitor was arrested for violating a local ordinance by littering the streets with papers but was released after a reprimand.

In July, 1927, solicitor was convicted in police court of violating a local ordinance by the illegal sale of fireworks at his cigar store, and was fined ten dollars. Although this was his only

conviction on such score, it was apparently not his first violation of the ordinance. However, there is nothing in the circumstances of this offense to suggest moral turpitude. In addition, it may well be that the offense (merely violation of an ordinance) is technically not a crime within the meaning of Section 22 of the Control Act. See In re Hearing No. 144, Bulletin 168, Item 8.

In March, 1935, solicitor was convicted in police court as a disorderly person under Laws 1934, c. 133, for having lottery slips in his possession, and was sentenced to ten days in county jail. Here again, there is nothing to suggest moral turpitude; and here again it may well be that the offense, technically, is not a crime within the meaning of Section 22 of the Control Act. See Re Application for a Solicitor's Permit, Case No. 35, Bulletin 123, Item 2.

Much confusion surrounds solicitor's experience with certain slot machines. He gives the following story -- in 1928 or 1929 he was loading gaming machines onto a truck as an employee of a certain company; a police officer stopped him, took his name and confiscated the machines; he was never arrested, but read in the newspaper of a charge against the officials of the company and others, including himself; he was informed not to worry; some arrangement was made in the prosecutor's office whereby a plea of non vult was to be entered on behalf of the defendants, but he never entered any plea and was never in court in connection with the matter.

Nothing appears on record which shows that solicitor was before any superior criminal court on any charge concerning gaming machines. Consequently, no conviction appears against him in such court.

However, it does appear on record that in February, 1932, solicitor was convicted in police court on pleading guilty to a charge of possessing gaming machines, and was given a suspended sentence. Independent investigation has disclosed that this charge was for violation of state statute.

Solicitor insists that he never pleaded guilty to any such charge, and states that he does not recollect any such conviction. He vaguely suggests that all this may have been the result of the settlement at the prosecutor's office.

It is difficult to understand how the police court entertained jurisdiction in this gaming machine matter, and hence it may be that the conviction therein must be treated as a technical nullity. See Case No. 38, Bulletin 142, Item 6. Irrespective of that fact, however, there are no circumstances concerning the gaming machines which suggest moral turpitude.

Reviewing solicitor's past, it thus appears that though arrested many times he has never been convicted of an offense involving moral turpitude. And it may (for present purposes) be conceded that technically he has never been convicted of a crime within the meaning of Section 22 of the Control Act.

However, there still remains the question of solicitor's answer in his application and questionnaire denying conviction of any crime. Even assuming that he may have been technically correct in that answer, nevertheless the matter does not stop there. Solicitor has admitted that he actually believed that he was answering falsely.

In justification of his readiness to swear falsely, solicitor states that a permit meant a chance for him to escape the

drudgery of a cigar store, and that he did not want to jeopardize his chances for such a permit. He further claims that he made his answer under advice of attorney. However, he admits that the attorney gave no reason for this advice; so that the fact that solicitor actually believed he was answering falsely is unshaken.

Solicitor must be taught that he cannot try to deceive or hoodwink this Department. True, technically he may perhaps not have deceived it. But he admits to the fact that he tried.

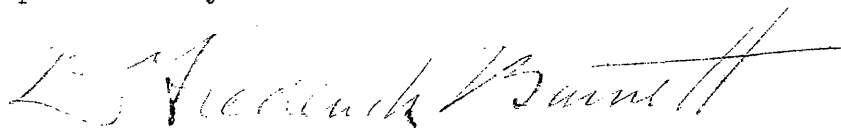
In determining what penalty should be inflicted upon solicitor because of his attitude, it is well to note that he intensified his guilt by displaying an evasive manner in answering questions at the present hearing.

To show that honesty here is the only policy, it is recommended that solicitor's permit be suspended for the remainder of its term, effective immediately.

Nathan Davis,
Attorney.

DISAPPROVED. Since solicitor has never been convicted of a crime, his answer was correct. He may not be hanged for what he believed but only for what he did. The revocation proceedings are, therefore, dismissed.

BUT, he has done enough to warrant refusal to issue any renewal when his permit expires on June 30th. Although none of his offenses amount to technical crime, he has a long and unenviable police record. He is not fit to be a solicitor. No further permits may be issued to him.



Commissioner.

