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

BULLETIN NUMBER 193 JULY 7, 1937.

1. APPELLATE DECISIONS - HOWARD v. SOMERS POINT.

REVEREND WILLIAM C. HOWARD, :

Appellant, :

-vs- :

COMMON COUNCIL OF THE CITY OF SOMERS POINT and HAROLD EDWIN MANYPENNY, :

Respondents. :

ON APPEAL

CONCLUSIONS

Bleakly, Stockwell & Burling, Esqs., by William S. Zink, Esq., Attorneys for Appellant.
Enoch A. Higbee, Esq., Attorney for Respondent Common Council of the City of Somers Point.

BY THE COMMISSIONER:

Appellant appeals from the issuance of a plenary retail distribution license to Harold Edwin Manypenny for premises known as the Scull property on the southerly side of the Mays Landing-Ocean City Road at the Traffic Circle, Somers Point.

There are numerous grounds for appeal, which may be summarized as follows: (1) there is no necessity for a package store in Somers Point; (2) the main purpose of the license is to supply "dry" Ocean City; (3) licenses have been twice refused for adjoining property on the ground that there is no necessity for a liquor store; (4) it creates a traffic hazard; (5) no building is constructed; (6) the licensee is a "dummy"; (7) objectors were not granted an opportunity to be heard.

(1): It appears that this is the only plenary retail distribution license existing in Somers Point. There is a consumption license outstanding for premises on the same circle, and there are four places licensed for consumption on Shore Road, which runs into the circle. The number of licenses which shall be issued in any municipality is primarily a matter within the discretion of local issuing authorities. Kalish vs. Linden, Bulletin #71, Item 14. The evidence produced by appellant is not sufficient to show that respondent abused its discretion in issuing this license.

(2): The testimony shows that a bridge connecting Somers Point and Ocean City was completed in 1933 and that the traffic circle upon which the licensed premises are located is at the Somers Point end of the bridge. The traffic circle was completed in 1935. There is evidence that much of the traffic into Ocean City passes around the circle and over the bridge, and it may well be, as appellant contends, that the licensee will obtain a large percentage of his business from persons residing in Ocean City. But that of itself is not a reason for denying a license in Somers Point. If Ocean City chooses to be "dry," it is well within its rights, but, by the same token, Somers Point has equal right to decide for itself. Free and equal sovereignties are, by their very nature, mutually exclusive. The very fact that no licenses

are granted in Ocean City naturally attracts to its borders those who cater to the thirsts of its inhabitants. Thus there are now two distribution licensees in Upper Township at the other end of Ocean City, which are almost as close to Ocean City as the premises in question. There is no wrong in this. The liquor industry is a legitimate business and its location at strategic points is merely a matter of business sense. Whether it is profitable or not may well depend on the patronage it receives from the inhabitants of Ocean City. Undoubtedly, there are many people who, with families and growing children, or for just personal reasons, prefer to have a summer home in a municipality where there are no licensed premises. If, in addition, they refuse to patronize a liquor store in adjoining municipalities, those places may well fold up. If, however, they choose to buy, there is no law which says they may not. The appellant himself resides in Somers Point but most of the objectors reside in Ocean City. Objections coming from or in behalf of another municipality may well be considered as a matter of comity or neighborliness, but have no mandatory extra-territorial effect.

(3): In 1935 the Common Council of the City of Somers Point, then in office, denied a consumption license to Sam Karpf Co. for premises adjoining those now in question, upon the ground that there were sufficient consumption licenses outstanding. Its determination was affirmed on appeal. Sam Karpf Co. vs. Somers Point, Bulletin #81, Item 6. So, again, in 1936, the Common Council, then in office, denied a distribution license to the same Company upon the ground that the number of consumption licenses then outstanding were adequate to supply the needs of the community and of the transient trade therein. That determination was likewise affirmed on appeal. Sam Karpf Co. vs. Somers Point, Bulletin #137, Item 4. The first of these Karpf cases is distinguishable from the present because it concerned a consumption license whereas the present appeal concerns a distribution license. There is a vast difference between the two kinds of licenses. They afford different privileges and are separately treated throughout the Control Act. Premises licensed for retail distribution are like any other package goods store. The liquor which is sold is for off-premises consumption only. Liquor so long as sealed in a bottle has no appreciable effect on human conduct. A consumption license is something quite different, for, as the name implies, this permits consumption of the liquor on the premises. The control problem is, therefore, intrinsically different in the case of premises licensed for consumption of liquor thereon as distinguished from its sale in sealed containers. Detail of further differentiation from the behaviorist angle is set forth in Lackowitz vs. Waterford, Bulletin #125, Item 12. The second Karpf case in which an application for a package goods license, the same as granted in the instant case, was turned down, presents a question which I have considered and weighed with care. Here are the salient facts: There is nothing to show that conditions have changed since the decision in the second Karpf case in 1936 so far as need for a distribution license in Somers Point is concerned. In that case I said:

> "There are now seventeen consumption licenses and one club license issued and outstanding in Somers Point, which has a population of slightly more than 2,000. There have been no distribution licenses issued. The evidence shows that the existing places get 90% to 95% of their business from transient and out-of-town trade, including residents of the adjoining 'dry' city of Ocean City. One of appellant's witnesses admitted that so far as the local residents were concerned a single licensed place would be sufficient.

"Appellant does not question the fact that the existing licensed places are adequate to supply the needs of the community, but argues that a package store devoted solely to sales of bottled goods for off-premises consumption would be a convenience to the residents, particularly the women, who would thereby be able to purchase liquor without going into a saloon or tavern.

"Practically all of appellant's witnesses, consisting mainly of the members of the City Council who voted in favor of granting the application, admitted, however, that the sole benefit conferred upon the City of Somers Point by the issuance of appellant's application would be the financial gain derived from the receipt of the license fee of $1,000.00. They further admitted that, even if there were any demand for a package store, the location of appellant's proposed premises on the outskirts of the municipality and fronting upon a heavily traveled traffic circle would not be convenient to the residents of the municipality unless they came by automobile. It is obvious that appellant's place is designed more for the convenience of the residents of Ocean City, with a summer population of approximately 100,000, than for the convenience of the residents of Somers Point. A municipality cannot be compelled, either for the sake of revenue or out of consideration for an adjoining municipality, to overburden itself with retail liquor dispensaries.

"Appellant has not sustained the burden of proof requisite to demonstrate that the residents of Somers Point need or will be more properly serviced by the issuance of a distribution license to him for his presently proposed location."

In other words, the principle of home rule was given full and proper rein by holding that the applicant could not force the municipality against its will to issue to him a liquor license of any kind unless he demonstrated that public convenience and necessity would be served by the issuance of such a license and this he failed to do. In the instant case, the shoe is on the other foot. The municipality has changed its mind and granted to another the very kind of license which it previously denied to Karpf. That may well be unfair to Karpf. If he were the appellant herein, entirely different considerations would apply but unfairness to or discrimination, if in fact there were such against him, is not a legal leverage in favor of the present appellant who is not in privity and has nothing in common with Karpf. The instant question is not whether the Karpf license was improperly denied but whether the Manypenny license was properly issued. The burden of proof, as in any appeal case, rests upon appellant and it is not sustained in this case by showing that respondent had previously done something wrong in another case. Whether it did or not is, therefore, not an issue and I express no opinion thereon, reserving that for consideration when a case of alleged discrimination shall be considered on its merits. But in passing, I note that the application of the Sam Karpf Co. for a distribution license was denied by the Common Council by a vote of four against and three in favor; that the membership of the Common Council, however, has changed since 1936; that two new members have been elected and of the hold-over members three had voted in 1936 against the Karpf license and two in favor; that the vote in favor of the issuance of the present license was unanimous. Hence, despite the natural suspicion aroused by such a sudden change of front, the changes in the membership of the Board may be quite sufficient to explain the conclusion they reached in the instant case. Certainly, there is no evidence of any

fraudulent action by the members of the Common Council either now or as constituted in 1936.

(4): The evidence shows that the building erected is set back seventy feet from the curb and has a private driveway providing a means of reaching the licensed premises from the traffic circle. There seems to be no substantial reason why the licensed premises should create an additional traffic hazard at this point.

(5): It appears from the photographs introduced in evidence that at the time of the hearing a substantial one-story structure had been erected which was suitable for the business to be conducted therein. Whatever the condition at the time the license was granted, it appears that any objection on this score was removed before the hearing of the appeal.

(6): The licensee testified that he is the sole person interested; that he himself has paid the license fee and all other expenses incidental to the filing of the application. He has sub-let the building from one who in turn holds a lease from the owner of the land. The lessee financed the erection of the building, but licensee, as sub-lessee, testified that his landlord has no other interest whatsoever in the licensed premises. There is no proof per contra.

(7): The testimony showed that no objections, either written or verbal, were filed against the issuance of the license in question. The matter was first considered at a regular meeting held on April 5th, and the license was granted at a regularly adjourned meeting held on April 13th. Since no objections had been filed, it was not necessary to provide a hearing at which they might be heard.

In any event, full opportunity has been afforded to everyone to be heard on this appeal which, as usual, has been heard de novo.

I find no valid reason in this case on which to base reversal.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 30, 1937.

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

June 30, 1937

In Re: Case No. 61.

Applicant admits in his application for solicitor's permit that he was convicted in 1932 in Florida for theft of an automobile.

At a hearing duly held, applicant explained the circumstances of his conviction as follows: He was visiting Florida at that time with his cousin. They needed a car to get to another city. He testified that his cousin was told by some men in a poolroom that he could get a car which was parked some distance away. All of them drove around to the place, and solicitor and his

cousin entered the car and drove off. They had gone about thirty miles when they were stopped and arrested. Applicant testified that he did not find out until later that the car was owned by another man, and also testified that subsequent to the arrest the car was returned to its true owner. Both applicant and his cousin pleaded guilty to theft of the automobile.

A letter was sent to the Chief of Police of the city in which the arrest occurred, outlining applicant's testimony and requesting complete information as to the circumstances surrounding this case. In reply the Chief of Police writes:

> "At the trial they both pleaded guilty, but sentence was deferred from day to day, with the understanding that if either one got into any more trouble, they would be taken back and sentenced."

Applicant testified that he has never been convicted of any other crime.

Theft ordinarily involves moral turpitude, but is apparent from the letter received from the Chief of Police that the Judge either considered the offense trivial or felt that there were mitigating circumstances. Otherwise theft of an automobile would warrant a severe sentence. I believe that, in the absence of any evidence to the contrary, the testimony given by the applicant should be accepted. According to that testimony he had no guilty intent at the time the car was taken for the purpose of making this trip.

It is recommended, therefore, that the permit be granted.

Edward J. Dorton,
Attorney-in-Chief.

DISAPPROVED:

The only question to be decided is whether the theft of an automobile involves moral turpitude. The answer is YES. No mitigating circumstances are shown. The fact that the Judge was lenient was his luck but is offside the present inquiry. His plea of guilt explains the absence of other evidence. If no guilty intent, why such a plea? The permit must be denied.

D. FREDERICK BURNETT,
Commissioner.

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

June 28, 1937

In Re: Case No. 169

Permit was issued to solicitor pursuant to his sworn application and questionnaire containing the denial of conviction of any crime. Check-up disclosed that he had been convicted in a superior criminal court of this State on a charge of carrying a concealed weapon. Accordingly, a hearing was held to determine whether solicitor's permit should be revoked or other action taken.

Solicitor is a young man now about 23 years of age and unmarried.

In the small of a summer morning in 1933, solicitor, then a youth of 19, was returning home with a young friend from a drinking adventure. Before reaching home, solicitor achieved the idea of secretly obtaining the revolver of his father (a government employee who was duly authorized to possess the gun). Solicitor states that he had no reason for wanting the revolver except a sudden desire to finger a real gun. Solicitor entered his home, secretly abstracted his father's gun from its accustomed place, and rejoined his friend who was waiting outside. Together they crossed the street and, while still on the public thoroughfare, solicitor, pointing the gun in the air, fired a shot. He claims that although it was still dark, the street was nevertheless well lighted at the time, and that there was no one on it except himself, his friend, and an apparently hitherto unseen policeman who quickly approached the scene of the shot. Solicitor, frightened at the discharge, threw the gun over a nearby fence.

The police report and solicitor's story are consistent thus far. But solicitor states that, after firing the shot and throwing the revolver away, he walked to the street corner and did not attempt to escape as the policeman approached. In contradiction, however, the police report states that solicitor and his companion attempted to run away. In any event, the two gun-players were arrested by the policeman, the hour being 3:10 A. M.

Solicitor was indicted for carrying a concealed weapon, a charge to which he at first entered a plea of not guilty. Later and without benefit of counsel, he pleaded either non vult or guilty, was given a suspended sentence and placed on probation for one year. He claims that, because of good behavior, he was released from probation before the year expired.

Although solicitor's crime is pregnant with the possibility that some evil was intended, there is no evidence to suggest such. Solicitor was then barely 19 years of age, was given over to drink at the time, and was apparently in an irresponsible mood. He asserts that he had no evil purpose in obtaining the gun and that the judge, in sentencing him, pointed out that there was no evidence of any such purpose. This fact is corroborated by the nature of solicitor's sentence.

Since solicitor's crime of carrying a concealed weapon is free of any aggravating circumstance, it does not involve moral turpitude.

In addition to the above conviction, solicitor also states that about ten months ago he was convicted in West New York traffic court of a traffic violation for "taking a corner on two wheels," and was given a small fine. This conviction does not appear on record. However, it appears that some three years ago he was convicted in Jersey City Traffic Court for operating an automobile with fictitious plates and without a driver's license.

Whether either or both of these offenses be taken to represent the fact, they do not involve any moral turpitude. Nor are they crimes within the meaning of Section 22 of the Control Act. See In Re Case #133, Bulletin 170, Item 7; In re Case 152, Bulletin 170, Item 8.

Solicitor was arrested on three other minor occasions: when 17 for loitering; when 19 for driving without a driver's and owner's license, and again for driving without a driver's license. He was released in all three cases.

Nothing appears in solicitor's record of a nature serious enough to disqualify him.

Solicitor offers a stock explanation for not revealing his conviction for carrying a concealed weapon — namely, that he believed that he had not been convicted within the meaning of the question on his application and questionnaire, inasmuch as he had been given merely a suspended sentence and had not been committed to jail. This explanation does not strike home as an adequate excuse for solicitor's false answer under oath.

It is recommended that solicitor's permit be suspended for the remainder of its term effective immediately, and that he be disqualified from obtaining a new permit at the commencement of the coming term for as many days as, when added to the days of suspension of this term, total 45.

Nathan Davis,
Attorney.

APPROVED both as to reason and result. But 45 days' suspension is rather long for a lie. That length of penance is reserved to refresh the memory of those who actually spent time in jail but can't remember that they were ever convicted of any crime. We'll make it 10 days in the instant case. He's only a kid!

D. FREDERICK BURNETT,
Commissioner.

4. ENFORCEMENT DIVISION ACTIVITY REPORT FOR JUNE 1 to 30, 1937, INCLUSIVE.

To: D. Frederick Burnett, Commissioner

ARRESTS:

Total number of persons - - - - - 61
Licensees - - 3 Non-Licensees - - - 58

SEIZURES:

Stills - total number seized- - - 11
1 to 50 gal. capacity - 6 Over 50 gal.capacity - 5

Motor Vehicles - total number seized - 5
Trucks - 0 Pleasure cars - 5

Alcohol
Beverage alcohol - - - - - 327 Gallons
Denatured alcohol- - - - - 100 "

Mash - total number of gallons - 45,350 Gallons

Alcoholic Beverages
Beer, Ale, etc. - - - - - - - - - -253 Bottles
Whiskies and other hard liquor- -109 Gallons

RETAIL INSPECTIONS:

Licensed premises inspected - - - -1602

Illicit (Bootleg) liquor - - - - 11
Gambling violations- - - - - - - 50
Sign violations- - - - - - - - - 41

RETAIL INSPECTIONS (Cont'd):

Unqualified employees	127
Other violations	72
Total violations found	301
Total number of bottles gauged	9,618

COMPLAINTS:

Investigated and closed	333
Investigated, pending completion	361

LABORATORY:

Number of samples submitted	145
Number of analyses made	129
Number of poison liquor cases	0
Number of cases of alcohol, water and artificial coloring	9
Number of cases of moonshine (Home-made finished product of illicit still)	12

Respectfully submitted,

E. W. Garrett,
Deputy Commissioner.

5. LICENSES - SPECIAL CONDITIONS - VENEREAL DISEASE IN FAMILY OF LICENSEE.

July 1, 1937

Joseph D. Burgess,
Township Committeeman,
McAfee, New Jersey.

My dear Mr. Burgess:

There is nothing at present in the Alcoholic Beverage Control Act or the State Rules imposing any special regulations or course of conduct on licensed places where the daughter and son-in-law of the licensee have a venereal disease.

Such a condition, without more, would not be cause for the denial of the license or for its subsequent revocation. If the daughter and son-in-law are not connected in any way with the business, it is entirely possible that it can be conducted in a clean and sanitary manner, free from any danger of infection.

I do think, however, that in the interest of protecting the health and welfare of the community as a whole, persons so infected should not be allowed to be knowingly employed on licensed premises. It occurs to me that the State or local health regulations governing persons handling foodstuffs or beverages and the employment of persons in connection with such businesses may cover the situation. Your own general health ordinances may control. If not, I would deem it wholly proper for the Township Committee to impose upon the license a special condition prohibiting the daughter and son-in-law from being connected in any capacity whatsoever with the licensed business or employed in any manner on the licensed premises until such time as the medical examiner of the Township shall certify to the Committee that all danger of infection is removed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. SOLICITORS' PERMITS - ELIGIBILITY - FACTS EXAMINED - CONCLUSIONS.

June 30, 1937

In Re: Case No. 59

This is to determine applicant's eligibility to hold a solicitor's permit. In the past, several such permits have been held by him, all of which were at various times surrendered. At present, he is operating under a special permit pending determination of this proceeding.

Applicant is an elderly man of 59; is of poor health; and now, in his later years of life, suffers the misfortune of having himself and his family dependent upon the benevolent hand of charity.

Applicant's history is filled with illicit liquor traffic. From 1919 to 1924, he and a partner operated a "bootlegging" business at Trenton, wherein they purchased various lots of liquor (ranging up to $3000) which they resold to other "bootleggers."

Although applicant denies that he was ever arrested during these "bootlegging" days, his record shows that in 1922 he was charged with illegal possession of liquor (no indictment found); that in 1923 and again in 1924 he was indicted on similar charges which were subsequently nolle prossed.

In 1924, applicant and his partner gave up the wholesaling end of "bootlegging" and ventured into the retailing. They conducted a fairly large and apparently decent "speakeasy" in Trenton, which, after almost a year's operation, was sold to another.

In 1924, applicant was convicted of making sales at this saloon in contravention of the National Prohibition Act, and spent approximately one year in jail therefor.

In February, 1935, applicant and his son were arrested in Pennsylvania by the State Police for violation of the liquor laws. At the time of the arrest, applicant was being driven by his son on a trip from New Jersey into Pennsylvania in an automobile containing thirty-four 5-gallon cans of alcohol which were hidden in the rear. Applicant was indicted by the State of Pennsylvania but the proceeding was discontinued on the theory that the arrest or seizure had been illegal. Applicant was prosecuted, however, in the Federal Court on the charge of unlawfully removing, concealing and possessing distilled spirits on which taxes had not been paid. He pleaded guilty, and was given a thirty days' suspended sentence and a year's probation.

Applicant protests innocence in this matter. He states that a Trenton "bootlegger" offered his son $5.00 to drive the car to Shenandoah, Pennsylvania; and that he, totally unaware of the hidden alcohol, was taken along merely for the ride.

In August, 1935, applicant was arrested in Passaic for illegally transporting 10 cans of alcohol in an automobile, in violation of Section 48 of the Control Act. This violation resulted in forfeiture of the automobile in a proceeding before this Department wherein applicant admitted to the crime. It also resulted in prosecution in the criminal court where applicant pleaded guilty and was fined $150.00.

Applicant, however, again protests innocence. At the time of his arrest, he was driving an automobile (registered in

his wife's name) in the rear of which were hidden the 10 cans of alcohol. He states that he was en route to a man in Passaic to seek his financial aid, when he was suddenly stopped, the automobile searched, and the alcohol brought to light; that he knew nothing about the alcohol, and that when he queried his wife about it after the disclosure, she merely told him that it was "none of your business."

I find applicant actually guilty of the crimes which occurred in 1935. He entered a plea of guilty to both those crimes. Since no exceptional circumstances appear, there should be no inquiry behind that confessive plea. See In re Case #122, Bulletin 184, Item 4.

By virtue of these two crimes, each of which constituted a violation of the Control Act in this State, applicant is disqualified under Section 22 from holding a permit. The "bootleg" ride which occurred in February, 1935, from Trenton, New Jersey, into Pennsylvania, necessarily involved a violation of Section 48 of the Control Act.

In addition to the statutory disqualification, applicant's history reveals that he has a pronounced weakness for violating the liquor laws and that, however much his misfortune arouses sympathy, he is, nevertheless, unfit to hold a solicitor's permit. From the very dawn of prohibition, he dealt for many years in the illegal traffic of liquor. Since prohibition he has already been twice convicted of liquor violations.

It is recommended that applicant be declared ineligible to hold any further solicitor's permit and that the permit under which he is now operating be cancelled forthwith.

Nathan Davis,
Attorney.

APPROVED to the extent that no new permit may be issued and that the special permit under which he is now operating be cancelled forthwith.

I do not find, however, that applicant is disqualified by Section 22 which provides that no license of any class shall be issued to an individual "who has committed two or more violations of this Act." The adjudication in the Passaic affair proves one such violation. But the Pennsylvania affair, resulting in proceedings in the Federal Court, was not a violation "of this Act," i. e., the New Jersey Control Act. The bootleg ride of February, 1935 may possibly, aye even probably, have involved a violation of Section 48 of the New Jersey Control Act, but that is not a necessary inference. Even if it were, it would not support a present adjudication of permanent ineligibility for (1) the disqualifying statute, being penal in nature, must be strictly construed; so construing it, I find that (2) no charges of violating the New Jersey Act in February, 1935, have ever been preferred against applicant and hence he has had no opportunity to defend himself thereon; and (3) that applicant has had no day in Court in any tribunal on any such charge. It is but fair that, however strong any inference of guilt may be, he should be given full opportunity to meet it. I cannot, therefore, in this incidental and collateral inquiry as to his eligibility, adjudge him guilty of having committed a violation of the New Jersey Act in February of 1935. An inquiry is not a trial. It is a mere search for the truth concerning his record. His record shows one violation of the New Jersey Act. It does not show two. Hence, I rule that he is not disqualified by the Statute.

His commission of one violation of the Act plus a long record of illicit traffic with liquor are sufficient grounds, however, to warrant refusal to issue any further permit to him. The mere fact that an applicant is not automatically disqualified by the Statute is no reason why he must be entitled to a renewal. Re Bailey, Bulletin 172, Item 10. So, in Hodanish v. Trenton, Bulletin 121, Item 6, in ruling that respondent's adverse determination was not unreasonable, I said:

> "There is no conviction against appellant, let alone conviction for a crime involving moral turpitude. Nevertheless, it is competent for municipal issuing authorities to confine their selection of licensees to those who are clearly worthy. Speranzo v. Millburn, Bulletin 57, Item 8. Appellant is not disqualified by statute from receiving a license, but respondent has the power and is under the duty to examine into the character and fitness of all applicants, and to deny the application of those they determine are unfit to receive a license."

Renewals should be given only to those who are worthy and who have good records. Re Hinchcliffe, Bulletin 171, Item 7. This applicant has already been adjudicated guilty of committing one violation of the Act and his record generally is bad.

The application for the renewal permit is, therefore, denied.

D. FREDERICK BURNETT,
Commissioner.

7. LICENSES - TRANSFER - NO LICENSE MAY BE TRANSFERRED SO LONG AS THE STATUTORY AUTOMATIC SUSPENSION THEREOF HAS NOT BEEN LIFTED.

STATUTORY AUTOMATIC SUSPENSION - LIFTING - NO SUCH SUSPENSION WILL BE LIFTED AFTER THE LICENSE HAS EXPIRED.

LICENSE ISSUING AUTHORITIES - CHANGE OF MIND - THE RIGHT TO RECONSIDER JUDICIAL OR QUASI-JUDICIAL ACTION CEASES WHEN A FINAL DETERMINATION HAS BEEN REACHED - HEREIN OF THE ABSENCE OF LADIES' PRIVILEGE IN SUCH MATTERS.

July 1, 1937

Wm. M. Untermann, Esq.,
Newark, N. J.

Dear Mr. Untermann: Re: Felsenfeld and Machino.

Mr. Leo Ertag, of your office, presents to me today a certified copy of a resolution of the Board of Commissioners of Irvington, adopted June 29th, purporting to grant the application made by Edward Machino for the transfer of the license of Samuel Felsenfeld for premises at 223 Orange Avenue, Irvington, to said Machino at the same place.

In view of this resolution he requests that I enter an order lifting the statutory automatic suspension, pursuant to my letter to you of May 9th (Bulletin 175, Item 9).

The procedure is correct because if the Irvington Board saw fit to grant the transfer, it was still necessary to lift the statutory automatic suspension because as long as a license is suspended nothing can be done pursuant to it nor can it be transferred.

The trouble is deeper. I must deny the application to lift the suspension for two reasons:

1 - The Felsenfeld license expired yesterday and there is no license in existence on which to lift any suspension.

2 - The Board of Commissioners had no power to transfer the license by resolution of June 29th because the Board, at its meeting of June 15, 1937, had voted to deny such transfer. (Plager v. Atlantic City, Bulletin 80, Item 11, and cases cited therein).

It follows that the moment that the Irvington Board denied the application for transfer that it lost all jurisdiction and the only remedy was by appeal. Hence, even if your application had been made to me within the life of the license, I should have denied it because of the failure of the Irvington Board to approve the transfer of the license. As the record stands, they denied it and the reconsideration was ineffective. There is no ladies' privilege of change of mind so far as licenses or transfers thereof are concerned.

The application is therefore denied.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. SIGNS - LICENSED MANUFACTURERS AND WHOLESALERS MAY ADVERTISE THE NAME OF THE BEER THEY DISTRIBUTE ON THEIR TRUCKS - CAUTION AS TO ABUSE OF THE PRIVILEGE.

July 2, 1937

Mr. Samuel Klein,
Belmar, New Jersey.

My dear Mr. Klein:

There are no regulations prohibiting wholesalers from having the name of the beer they distribute on their trucks.

The present State Rules Governing Signs (compiled Rules, Page 57) apply, so far as they deal with the displaying of signs advertising products on the exterior of licensed premises, only to retail licensees. As you are a wholesaler, they do not apply in that respect to you.

There are no present regulations restricting the manner in which manufacturers or wholesalers may display advertising matter off their premises. It has not yet been necessary to extend the rules in this regard. Therefore, keep the signs you put on your trucks within reasonable and proper bounds.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

July 1, 1937

In Re: Case No. 60

In his questionnaire and in his application for a permit for 1936-1937, solicitor swore that he had never been convicted of a crime. His fingerprint record disclosed, however, that this denial was untrue. Hearing was accordingly held to determine whether solicitor's permit should be revoked or other action taken. No application has yet been filed for a solicitor's permit for the term expiring June 30, 1938.

Solicitor is a middle-aged man of very good appearance, married 17 years, with one child, a minor. He is primarily an accountant by profession, and is credit manager and accountant for the concern where he is presently employed. Solicitor's permit was obtained to cover occasional instances when customers, in connection with arranging for credit over the telephone, place orders directly with him.

Solicitor was indicted in 1932 and again in 1933 for conspiracy with many others to violate the National Prohibition Act. Solicitor claims that his arrest was occasioned by the fact that his name appeared on the books of two Philadelphia "bootlegging" organizations as a purchaser and as an agent; but that he was never more than a customer of the organizations.

Solicitor, however, under advice of counsel, pleaded guilty to the indictment found in 1932 because (so he claims) a suspended sentence was promised if he made such plea. He was given a 15 months' suspended sentence and placed on probation for two years.

The indictment found in 1933 was reached for trial in May, 1934, after Repeal had been effected, and was therefore nolle prossed by the government.

Violation of the National Prohibition Act is not *per se* a crime involving moral turpitude (*In re Hearing #145*, Bulletin 167, Item 5); it follows that the crime of conspiracy to violate that Act falls within the same category. No aggravating circumstance appearing in this case, solicitor's crime does not involve moral turpitude.

However, solicitor admits that in his questionnaire and application he falsely swore that he had never been convicted of a crime. It seems that he was reluctant, because of his good standing in the community, to reveal this one blot on his record.

In view of solicitor's false oath, it is recommended that no solicitor's permit issue to him for the term expiring June 30, 1938, until a period of ten (10) days has elapsed, effective July 12, 1937.

Nathan Davis,
Attorney.

APPROVED.

D. FREDERICK BURNETT,
Commissioner.

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

July 1, 1937

In Re: Hearing No. 173

In his questionnaire and in his application for permit for 1936-1937, solicitor swore that he had never been convicted of a crime. His fingerprint record disclosed, however, that he had been convicted of an offense in this State in 1933. A hearing was accordingly held to determine whether solicitor's permit should be revoked or other action taken. Solicitor's application for a permit for 1937-1938 is now on file and is awaiting the determination of this proceeding.

Solicitor claims that his conviction was "framed." He states that he attended a meeting of a local political club where, because of his stand on a certain question, he was threatened with retaliation by various members of the club. Liquor was provided at the meeting and when the meeting broke up, solicitor was given two pints of the unconsumed liquor. Several days thereafter one of the members of the club approached solicitor asking for the favor of one of these pints. Solicitor states that this person expressed a desire for the liquor because of illness, and that the liquor was given as an outright gift.

Several days later (December 16, 1933) solicitor was brought, on that person's complaint, before the local police recorder in an informal proceeding for illegal sale of liquor. He was convicted by the recorder of violation of a municipal ordinance and fined $50.00. It was stated in that proceeding that solicitor was being released on $500.00 bail and that the matter would be held over for the Grand Jury. Since that time, however, nothing has been forwarded to the County Prosecutor for action and the matter has apparently been completely dropped.

The violation of ordinance on which solicitor was convicted, does not constitute a crime within Section 22 of the Control Act. See In re Hearing #144, Bulletin 168, Item 8; Re Hearing #167, Bulletin 182, Item 10. Consequently, solicitor was accurate in stating in his questionnaire and application that he had never been convicted of any crime.

In view of solicitor's story of his conviction, which has been substantiated by letters received from various local officials, that conviction, although involving a violation of a liquor ordinance subsequent to Repeal, should not be entertained as a ground for considering solicitor unfit to hold a permit.

It is recommended that no further action be taken in this matter, and that a solicitor's permit for the term expiring June 30, 1938, be issued as applied for.

Nathan Davis,
Attorney.

APPROVED.

D. FREDERICK BURNETT,
Commissioner.

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

July 2, 1937

In Re: Case No. 65

Applicant filed an application for a solicitor's permit for the term expiring June 30, 1938, stating therein that he has been convicted of a crime. Applicant has never held a solicitor's permit before. A hearing was held to determine whether he is disqualified from obtaining such a permit. His application is awaiting determination of this proceeding.

In 1931, applicant worked for his parents in a small hotel in South Jersey, and also made occasional trips transporting beer for a local "bootlegger." On the fifth of such trips, applicant was driving a heavy load of beer en route to Elizabeth in an automobile disguised as an express company truck. His slow progress up a steep hill in Bordentown so obstructed traffic that the truck was investigated by the State Police and the beer discovered. Applicant was arrested for violation of the Hobart Act. He pleaded guilty and was fined $500.00.

Illegal possession and transportation of liquor during the Prohibition days is not per se a crime involving moral turpitude. In re Hearing No. 147, Bulletin 168, Item 9. Since no aggravating circumstances appear in applicant's case, his crime is free of moral turpitude.

Applicant was convicted on one other occasion. In 1936, while working at his parents' hotel, he forcibly ejected one of the hotel musicians who was creating a disturbance. This resulted in a rowdy display of fisticuffs out-of-doors. The musician procured applicant's arrest; and at an informal hearing before a local justice of the peace, applicant was convicted of being a disorderly person and fined $8.00.

Conviction as a disorderly person is not conviction of a crime within the meaning of Section 22 of the Control Act. See Re Hearing No. 167, Bulletin 182, Item 10; Re Application for a Solicitor's Permit, Case No. 35, Bulletin 123, Item 2.

It thus appears that applicant has not been convicted of any crime involving moral turpitude within the meaning of that section.

It is recommended that a solicitor's permit for the term expiring June 30, 1938, be issued forthwith to applicant, as applied for.

Nathan Davis,
Attorney.

APPROVED. So also as to eviction of "musician creating a disturbance." They so often do!

D. FREDERICK BURNETT,
Commissioner.

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

July 2, 1937

In Re: Case No. 67

Applicant obtained a solicitor's permit in July, 1935, and again in July, 1936. In filing his application for a renewal for the term expiring June 30, 1938, he revealed for the first time that he had been convicted of a crime in 1925. Hearing was accordingly held to determine whether this application should be denied, or other action taken. His application is on file, and is awaiting the determination of this proceeding.

In 1926 applicant was arrested near Bordentown for driving a small truck loaded with beer. Applicant claims that he was out of work at the time, and was promised $5.00 to drive the truck to Riverside; that he was unaware that the truck contained beer; and that it was the only time that he ever violated any liquor laws.

Applicant was charged and convicted of illegal transportation of liquor, and was fined $250.00.

Illegal possession and transportation of liquor during Prohibition days is not per se a crime involving moral turpitude. In re Hearing No. 147, Bulletin 168, Item 9. Since no aggravating circumstances appear in applicant's case, his crime is free of moral turpitude.

Our investigation has further disclosed that a man with a name similar to applicant's was convicted in 1925 of a violation of the National Prohibition Act and fined $200.00. This crime, however, was committed by a Newark resident with "dark yellowish curly hair." Applicant, who was never a resident of Newark, and whose hair is straight and black, denies that he is the person who committed that crime.

However, there remains the fact that applicant failed to reveal his above conviction in his previous application for a solicitor's permit and has revealed such conviction in his present application for the first time.

His story is that when filling out his previous applications with the help of a friend, it was concluded that the question relating to conviction of a crime did not pertain to violations of the National Prohibition Act, inasmuch as Prohibition had been repealed; but that in filling out the present application, it was concluded that disclosure was in order.

Although it may well be that the reason for this sudden change in interpretation is the fact that solicitors are learning that they cannot falsify their criminal records without punishment when caught, it goes far to redeem applicant that he voluntarily, and despite the fact that his previous applications caused no difficulty, disclosed his conviction.

Had applicant revealed his record when filing his previous applications, his present application for permit would not have suffered the delay of the present hearing and the consequent delay in issuance of a permit to him for the term expiring June 30, 1938. This delay is sufficient punishment for appellant's failure to disclose his conviction in his previous applications.

It is recommended that a solicitor's permit for the term expiring June 30, 1938, be issued to applicant forthwith.

APPROVED July 2, 1937. Nathan Davis, Attorney.

Commissioner

Inspected by: J. L. ARTS and found O. K.