

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

BULLETIN NUMBER 208

October 22, 1937

1. ILLEGAL CONTRACTS - TIED HOUSES - AGREEMENTS BETWEEN MANUFACTURER OR WHOLESALER WITH A RETAILER WHEREBY THE LATTER IS GRANTED EXCLUSIVE RIGHTS TO SELL A CERTAIN PRODUCT ARE INVALID.

September 22, 1937.

Dear Sir:

We would appreciate it if you would give us your ruling as to the following:- we have the exclusive distribution in the state of New Jersey on a certain brand of liquor, have we the right to select exclusive retailers for this exclusive brand and refuse to sell other retailers in the immediate locality where we give the sale on an exclusive basis.

Yours truly,

GREENSPAN BROS. CO.
PHILIP GREENSPAN.

October 18, 1937.

Greenspan Bros. Co.,
Perth Amboy, New Jersey.

Gentlemen:

Att: Mr. Philip Greenspan.

In considering your letter of September 22nd, I have had the benefit of a communication sent to me under the same date by Joseph D. Levitan, a consumption licensee of Linden, referring, I believe, to the same question presented in your letter. He tells me that your firm is the sole agent in New Jersey for products manufactured by the American Distilling Co. of Pekin, Illinois; that your firm has entered into an agreement, either written or verbal, with another retailer in Linden whereby you have agreed not to sell any products of the American Distilling Co. to Mr. Levitan but to grant to his competitor the exclusive right to sell such products at retail in that section of the City.

I have heretofore ruled in Re Liebmann Breweries, Bulletin #167, Item 7, and in Re Nightingale, Bulletin #175, Item 7, that, so far as the Control Act is concerned, wholesalers of liquor, like wholesalers of any other commodity, may choose their customers. These rulings were based upon the belief that wholesalers and manufacturers should be free to determine their own business policies and, since there is nothing in the Act which compels them to sell to all retailers, they may, therefore, decline to sell to any retailer for any reasons which they deem to be sufficient. In effect, that means with or without reason. Under these rulings, if you declined to sell to Mr. Levitan, the only relief which he might obtain would be by way of a petition for leave to purchase items manufactured by the American Distilling Co. from wholesalers outside of the State, since you have the exclusive right for sales of such products in New Jersey. Such leave should be granted for, while you have the right to choose your own customers, you have no right to prevent a legitimate licensee from buying from whom he pleases if you arbitrarily refuse to sell him. I say

this assuming, of course, that the licensee is himself without fault. For instance, he could not expect to come to me with a petition for leave to buy outside the State if in fact he had violated the laws of this State or its Fair Trade Act. Assuming the petitioner's proper standing, however, the relief would be granted as a necessary and fair correlative to your right to refuse to supply him.

The question before me, however, goes far beyond these considerations. It is represented that you have entered into an agreement, written or verbal, to grant an exclusive right to a certain retailer to sell in a certain territory the products which you control. Such an agreement, if permitted, might well lead to an unwholesome alliance between manufacturers and wholesalers, on one hand, and certain retailers on the other. If the favored retailer receives exclusive rights, he must in one way or the other furnish a sufficient consideration to the manufacturer or wholesaler. Such an arrangement puts the manufacturer or the wholesaler into the retail trade. From that moment on, he has a definite, specific interest in the retailer who thus becomes his sole distributor. The retail outlet has thereby become a unit of his own organization. But all interest, direct and indirect, between manufacturers and wholesalers on one side and retailers on the other are forbidden by Statute. Cf. Re Hogan, Bulletin #196, Item 14, which held that an agreement between a saloonkeeper and a brewery for the exclusive sale of the brewery's products was invalid because of the provisions of Section 40 of the Control Act. I there said:

"The statute contemplates that retailers shall be free to purchase at any time from any legitimate source of supply they choose. Agreements tending to destroy or impair that freedom of choice constitute, I believe, an indirect interest between brewery and retailer and hence are prohibited by Section 40."

Hence your question must be answered in the negative.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

October 13th, 1937.

IN RE: Case No. 181.

Investigation disclosed that the individual in question, who has been employed by a retail licensee, had been convicted for murder. At a hearing scheduled to determine his eligibility, the individual testified that he had been convicted of murder in Italy in 1921; that he was eighteen years of age at the time he killed his stepmother for neglecting her stepchildren; that subsequently he served ten years in prison in Italy; that he returned to this country, in which he had been born, about the year 1935; that he has since been employed by a retail licensee.

Murder must necessarily involve moral turpitude. In Re Kennedy, Bulletin #118, Item 10. The individual in question is ineligible to be employed by a licensee.

There is likewise pending an application by this same individual for an Age, Residence and Citizenship Permit, requesting leave to be employed by the retail licensee despite the fact that the applicant has not been a resident of the State of New Jersey for five years last past. Under the circumstances, it is recommended that the application for this permit be denied.

Edward J. Dorton,
Attorney-in-Chief

Approved:

D. FREDERICK BURNETT
Commissioner

3. REFERENDUM - HOURS OF SALE - REFERENDUM ON THE QUESTION "SHALL THE SALE OF ALCOHOLIC BEVERAGES BE PERMITTED ON SUNDAYS IN THE MUNICIPALITY AFTER 1 P.M.?" MAY BE HELD PURSUANT TO CHAPTER 254 OF THE LAWS OF 1935 - ERRONEOUS BUT UNNECESSARY REFERENCE TO INAPPLICABLE STATUTORY PROVISION MAY BE TREATED AS SURPLUSAGE AND DISREGARDED.

- T E L E G R A M -

October 4th, 1937

Clay W. Reesman, City Clerk,
Camden, N. J.

The Commissioner is of the opinion that the question quote shall the sale of alcoholic beverages be permitted on Sundays in the municipality after one P. M., unquote contained in the petition submitted to the Board of Commissioners of the City of Camden is sufficient within Chapter 254 of the Laws of 1935 and should be submitted to the Electorate upon compliance with the statutory requirements therein set forth. Letter follows.

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
By:

Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

October 15th, 1937

Mr. Clay W. Reesman,
City Clerk,
Camden, N. J.

Dear Sir:

Kindly refer to your letter of October 2d and telegram dated October 4th in reply thereto.

The Control Act in its original form authorized, among other referenda, the submission to the electorate of the question as to whether sales on Sunday shall be entirely prohibited or allowed. See P. L. 1935, c.436, sec.44. It did not authorize the fixing of the hours of sale on Sunday by popular vote. To meet this situation, the Commissioner in his Second Annual Report to the Governor and Legislature, recommended as follows:

"Several municipalities have evinced a desire to have the hours of Sunday sales fixed by popular vote. Although the Act permits referenda on Sunday sales generally, it does not permit referenda on hours of sale for Sunday or week days. In order that community opinion may prevail on such questions, which are essentially local, it is recommended that the Act be amended to provide for referenda on hours of sale for Sunday and week days."

Thereafter, P. L. 1935, c. 254 (Control Act Reprint Section *44A) was enacted. Under this Act a referendum may properly be held in Camden, upon compliance with the statutory procedure, to determine whether the hours of sale on Sunday shall be fixed as set forth in the petition for the referendum. See Bulletin #89, Item #6.

The remaining question is whether the form of the petition submitted is sufficient within Section *44A. As the Commissioner stated in Bulletin #91, Item #5, "sound policy requires that every reasonable effort be made to ascertain the will of the electorate". Consequently, if the question contained in the petition is sufficiently definite to advise the voters as to the exact issue submitted, it should be considered legally adequate, notwithstanding defects in form.

Although Sections 41 to 44 inclusive set forth the precise terminology of the questions which may be submitted to the electorate pursuant thereto, Section *44A does not do so. The petitioners may select their own phraseology on any question "as to whether the hours between which the sale of alcoholic beverages at retail may be made in said municipality on week days, Sundays, either or both" shall be fixed as set forth in the petition. While admittedly the question contained in the petition under consideration* is inartistically phrased, it appears sufficient to submit to the voters the issue as to whether the hours for such sales on Sunday shall be fixed between 1 P.M. and 12 midnight. If a majority vote in the affirmative, Sunday sales may be made within, but only within, the hours thus fixed; if a majority vote in the negative, Sunday sales may be regulated exactly as theretofore.

The sentence* to the effect that the referendum is required in accordance with Chapter 436 Pamphlet Laws 1933 is incorrect. The referendum is authorized under P. L. 1935, c.254. However, since there is nothing in the Act which requires that the legislative authority for the referendum be set forth in the petition, the sentence may be treated as surplusage and disregarded. It in nowise nullifies the effect of the question set forth in the petition.

Accordingly, you are advised that the Commissioner is of the opinion that the question "Shall the sale of alcoholic beverages be permitted on Sundays in the municipality after 1 P.M.?" contained in the petition submitted to the Board of Commissioners is sufficient within Chapter 254 of the Laws of 1935 and should be submitted to the electorate upon compliance with the statutory requirements therein set forth.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

* The Petition read:

"To the Board of Commissioners City of Camden

"We, the undersigned qualified voters of the city of Camden herewith petition your honorable body to cause to be placed upon the official ballot of the next ensuing general election the question:

'Shall the sale of alcoholic beverages be permitted on Sundays in the municipality after 1 P.M.?'

"Said referendum being required in accordance with Chapter 436 Pamphlet Laws 1933."

October 19, 1937.

Clay W. Reesman,
City Clerk,
Camden, N. J.

Dear Mr. Reesman:

Supplementing Mr. Jacobs' opinion to you of October 15th, which I wholly approve as to form and substance:

I feel it my duty to call to your official attention a point which, if not emphasized, might escape attention and which the electorate of Camden should understand in voting either for or against the referendum.

The opinion states: "If the majority vote in the affirmative, Sunday sales may be made within, but only within, the hours thus fixed." (italics mine). That means that, if the referendum goes through, sales on Sunday may be made from 1:00 P. M. until 12:00 midnight, but can no longer be made, as at present, from midnight Saturday to 2:00 A. M. on Sunday mornings.

This is so because the petition was valid only because of P. L. 1935, c. 254 (Control Act Reprint Section *44A). That Statute and the petition were construed liberally because sound policy requires that every reasonable effort be made to ascertain the will of the electorate. The question set forth in the petition "Shall the sale of alcoholic beverages be permitted on Sundays in the municipality after 1 P.M.?" did not specifically name "the hours between which" (italics mine) the sale of alcoholic beverages at retail may be made on Sundays as required by Section *44A. However, under a liberal construction, it was not necessary to make a Chinese copy of the Statute in preparing the question for submission to the voters. The plain meaning of permitting sales on Sundays after 1:00 P.M. is that sales could be made Sundays at any time after 1:00 P.M. for the remainder of the day, that is, until midnight on Sunday. Thus, in effect, although not in words, the hours "between which" sales could be made on Sundays are being submitted to the electorate for approval. It was on that basis that the petition was approved but, by the same token, it

follows that, if that question is voted in the affirmative, those hours so fixed by the referendum become the only hours "between which" the sale of alcoholic beverages may be made on Sundays. This is because the referendum, being the direct voice of the people, wipes out and supersedes all hours previously fixed by the local governing body.

I thought it but fair that the electorate should have these considerations before them in voting on the referendum and therefore ask that you give such public notice of this letter as your Mayor and Board of Commissioners may direct.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. BULLETIN ITEMS CORRECTED

Bulletin Number 207 contains two items each numbered 9, one on Sheet 13; the other on Sheet 15.

Item 9 on Sheet 15, being letter to Edgar C. Warren, Borough Clerk of Princeton, re Princeton Ordinance, is now renumbered as Item 10.

5. DISCIPLINARY PROCEEDINGS - OUTRIGHT REVOCATION ADMINISTERED TO CLUB LICENSEE WHICH VIOLATED THE ELECTION DAY RULE.

October 19, 1937.

Lester F. Rice, Clerk,
Borough Council of Spring Lake Heights,
Spring Lake, New Jersey.

Dear Mr. Rice:

I have staff reports and your certifications of the proceedings before the Borough Council of Spring Lake Heights against the Spring Lake Golf and Country Club, holder of your club license CB-1, charged with (a) having sold alcoholic beverages to non-members on two different occasions, and (b) having sold or served alcoholic beverages on Primary Election Day while the polls were open for voting.

I note a plea of guilty was entered by the licensee to the charge of having sold to non-members and that thereupon the license was suspended for twenty-four hours --September 13, 1937.

The report relative to the Election Day violation reads as follows:

"While on investigation duty on Primary Election Day, September 21, 1937, Investigators Kingsley and Chinery visited the above licensed premises at about 12:30 P. M. As they drove up, they observed a man and woman seated at a table on the lawn; one with a glass containing a 'Tom Collins' and the other with a glass containing an 'Old Fashioned' cocktail.

"The investigators immediately proceeded to the bar and, as they entered, observed the bartender behind the bar shaking up a 'punch'. Seated at a table in the barroom were five men; three had a bottle of beer before them, and the other two were drinking a 'punch'. Investigator Chinery recognized one of these men as Mr. Patterson, Secretary of the Club. Upon being questioned, Mr. Patterson pleaded ignorance of the State rule which prohibits sales on Election Day while the polls are open for voting and said he felt sure the Club had the privilege of selling on that day.

"At the hearing the investigators testified to the above happenings and as to the conversation with Mr. Patterson.

"They also report that Mr. Patterson testified in behalf of the Club substantially as follows:

"That on the day in question he and some friends went down to Squankum Inn for lunch and found the place closed; that they then returned to the club house and were having lunch when the investigators came in; that the bottles on the table contained 'Ginger Beer' and the glasses contained milk and iced-tea; that the bartender is a former Philadelphian and only reads Philadelphia papers, so he did not know it was Primary Election Day, but that nevertheless he did not sell any liquor; that the two people who were drinking at the table out on the lawn had brought their own liquor and the bartender had simply furnished them with 'set-ups' for a 'Tom Collins' and an 'Old Fashioned'.

"No other witnesses appeared for the Club.

"The Borough Council went into executive session, and returned in about ten minutes. On roll call, a motion to revoke the license was carried by a vote of four to two.

"Verdict: Guilty

"Sentence: License revoked."

Expressing no opinion on the merits of the case involving the Election Day violation because it might come before me by way of an appeal, I wish to extend my sincere appreciation to the members of the Council and to their attorney, Elvin R. Simmill, Esq., for their prompt and effective action.

The penalty of revocation of the license is indeed severe and should bring home strikingly to all club licensees throughout the State that they are just as much obligated to obey scrupulously all laws and rules and regulations governing the conduct of their liquor business as are other licensees.

It is indeed a late day for licensees to plead ignorance of the law and the rules and regulations affecting the conduct of their business. The Election Day rule has been in force since 1934. When licensees trifle with the law, it is well that governing bodies vindicate it. Revocation is none too severe for those licensees who flaunt defiance at duly constituted authorities.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. DISQUALIFICATION - REMOVAL PROCEEDINGS - NO LIFTING ORDER
MADE UNLESS CONVICTION INVOLVES MORAL TURPITUDE.

In the Matter of an Application)	
to Remove Disqualification be-)	
cause of a Conviction, Pursuant)	
to the Provisions of Chapter 76)	CONCLUSIONS
P. L. 1937 -)	AND
)	ORDER
<u>Case No. 1.</u>)	

Felcone & Felcone, Esqs., by Joseph J. Felcone, Esq.,
Attorneys for Petitioner.

BY THE COMMISSIONER:

Hearing having been held pursuant to a petition filed herein, it appears that petitioner was convicted in 1921 of the crimes of assault and battery and atrocious assault and battery, and that in 1926 he was convicted of the crime of possessing and transporting intoxicating liquor for beverage purposes.

The primary inquiry in this case is whether or not any of said crimes involved moral turpitude because, if it be determined that they do not, there is no disqualification to be removed.

Petitioner testified at the hearing that the two convictions in 1921 arose out of a dispute with his wife; that during the dispute he slapped his wife in the face; whereupon his mother-in-law summoned a policeman; that he did not strike the policeman, but admitted that he was arrested and indicted for assault and battery upon his wife and atrocious assault and battery upon the police officer. The latter indictment alleges that the petitioner "did then and there strike and kick the said (here appears the name of the police officer) in and upon the head, shoulders, legs, arm and body." Having been found guilty in a Court of Special Sessions on both indictments, petitioner was fined \$1. on the conviction of assault and battery and \$200. on the conviction of atrocious assault and battery. He was also placed on probation on the latter conviction.

The conviction for assault and battery, under the circumstances of this case, does not involve moral turpitude. In Re Barone, Bulletin #90, Item 11. Atrocious assault and battery may or may not involve moral turpitude. The indictment found does not allege the use of any weapon, and the most that appears is that petitioner struck and kicked the police officer apparently in resisting arrest. Petitioner has been punished for his crime, but the crime itself was not of such a serious nature that it can be said to involve moral turpitude.

As to his conviction in 1926, petitioner testified that at that time he was working in a garage and had been requested by a friend to transport a three-gallon can of alcohol to a distant city. While so transporting the alcohol he was arrested, thereafter was indicted for possession and transportation of intoxicating liquor for beverage purposes, pleaded guilty and was fined \$200. Under the facts of this case this conviction does not involve moral turpitude. In Re Case No. 50, Bulletin #176, Item 2.

After the hearing petitioner was fingerprinted, but the returns disclose "no record."

It appearing that petitioner has never been convicted of a crime involving moral turpitude, no order removing disqualification because of conviction is required.

It is determined that, under the circumstances, petitioner is eligible to obtain a license or to be employed on licensed premises despite the convictions disclosed herein, provided, however, that he is otherwise fully qualified.

D. FREDERICK BURNETT
Commissioner

Dated: October 19, 1937.

7. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In the Matter of an Application)	
to Remove Disqualification because)	
of a Conviction, Pursuant to the)	
Provisions of Chapter 76, P. L.)	CONCLUSIONS
1937 -)	AND
)	ORDER
<u>Case No. 2.</u>)	

I. Harry Levin, Esq., Attorney for Petitioner

BY THE COMMISSIONER:

Hearing was held in the above matter pursuant to a petition filed in accordance with the provisions of Chapter 76, P. L. 1937.

From the evidence it appears that petitioner was convicted in a District Court of the United States on February 18, 1925, on an indictment for transporting, receiving and concealing a motor vehicle stolen and transported in interstate commerce, and likewise was convicted in the same court on February 27, 1925 on an indictment for transporting, receiving and concealing a stolen motor vehicle. He was sentenced to serve thirteen months in the United States Penitentiary at Atlanta, Ga. on each of said indictments, sentences to run concurrently. Unquestionably the crime for which he was convicted involves moral turpitude.

Petitioner was discharged from imprisonment after ten months and returned to the municipality in which he resided at the time of his conviction. He has continued to reside in said municipality since that time. Since 1926 he has been employed as follows: For a period of about five years he was engaged in the garage business and employed as an auto mechanic; for three years thereafter he conducted a restaurant in the municipality where he lives; during the following year he managed a restaurant, the owner of which held a consumption license during that time; since 1935 he was engaged in farming, was unemployed for some time and, at the time of the hearing, was a part-time salesman working on a commission basis for a firm engaged in selling automobiles. He has never been convicted of any crime since 1925. In 1932 he

and two other individuals were arrested and investigated in connection with the hold-up of a lunch wagon, but the State Police advise that they "were unable to associate these men with the commission of this crime, and they were released without further action." Examined as to this arrest, petitioner admitted that he and the others had been brought before a Magistrate and immediately discharged. He denied that he had been connected with the hold-up. This arrest, without more, does not show that petitioner has not conducted himself properly since his conviction in 1925.

At the hearing petitioner introduced a letter from the Chief of Police of the municipality in which petitioner resides, wherein he set forth that he has known petitioner for twenty years and "of the late years will say that he has been conducting himself in a very good manner and has not been in conflict with the law.*** He has been in business of various types during the past ten years and has not given us any trouble of any kind." Petitioner likewise presented a petition signed by three residents of the municipality who have known him, respectively, for fifteen, twenty and eighteen years, wherein they set forth that petitioner has not within the past ten years or more been involved in any trouble, either directly or indirectly. Hearing in this matter was held before the effective date of my ruling requiring all character witnesses to appear in person, and petitioner was advised that letters from reputable citizens who were not available would be accepted at the time of hearing. Under the circumstances, I shall accept the letter from the Chief of Police and petition from the three citizens, but shall hereafter require production of character witnesses in person.

After examining the evidence in this case, I am satisfied that the petitioner has conducted himself in a law-abiding manner for the past ten years, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 19th day of October, 1937, ORDERED that petitioner's disqualification from obtaining or holding a license or permit, because of the convictions set forth herein, be and the same is hereby removed in accordance with the provisions of Chapter 76, P. L. 1937.

D. FREDERICK BURNETT
Commissioner

8. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In The Matter of an Application)	
to Remove Disqualification because)	
of a Conviction, Pursuant to the)	
Provisions of Chapter 76, P. L.)	CONCLUSIONS
1937 -)	AND
	ORDER
<u>Case No. 8.</u>)	

Joseph M. Mentz, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Petitioner was convicted in 1924 on two indictments

charging embezzlement. It has been held that the conviction involved moral turpitude. In Re Application for Solicitor's Permit Case No. 5, Bulletin #92, Item 10.

At the hearing held herein, petitioner testified that he has never been convicted of any crime except the conviction heretofore described.

After his release from the New Jersey Reformatory he returned to the county in which he was convicted, and has resided at various places in said county since that time. He has resided for the past six years in the municipality where he now makes his home.

Since his release from the Reformatory, he has been continuously engaged in the business of selling jewelry on consignment, except for the period of about two years during which time he was a salesman for a liquor wholesaler.

At the hearing two wholesale jewelers testified on behalf of petitioner. One of them who has known petitioner for the past twelve years testified that he has placed small amounts of jewelry on consignment with petitioner, and that his experience with petitioner has always been satisfactory. The other testified that he has known petitioner for sixteen years; that he knew of petitioner's conviction; that he believes petitioner was innocent in that case and that he has continued to do business with him since that time despite his conviction; that he has placed large amounts of jewelry on consignment with petitioner, and that his experience with petitioner has always been satisfactory. In addition to these witnesses, five neighbors of petitioner appeared and testified under oath as to his good character. Three of said neighbors have known him for about three years each; another has known him for twelve years, and the fifth has known him for a period of about seventeen years.

Investigation disclosed that petitioner was arrested in 1930 on a subsequent charge of embezzlement; that he was indicted on said charge, but that the indictment was subsequently nolle prossed. In explaining this arrest, petitioner testified that in 1930 he received two watches worth about Thirty Dollars from a jewelry concern, which did not satisfy his customer and which were immediately returned to a salesman for the jewelry concern. At an adjourned hearing, he produced the complaining witness in that case, who testified that in fact the watches had been returned; that the complaint was made because of the error of a clerk in failing to note the return upon the original records, and that the case was nolle prossed after the complaining witness had explained the situation to the Prosecutor. The arrest, under the circumstances, does not show that petitioner has not conducted himself properly since his conviction in 1924.

I am satisfied from the evidence that petitioner has conducted himself in a law-abiding manner for the past ten years, and that his association with the alcoholic beverage industry will not be contrary to public interest.

It is, therefore, on this 19th day of October, 1937
ORDERED that petitioner's disqualification from obtaining or holding a license or permit, because of the conviction set forth herein, be and the same is hereby removed in accordance with the provisions of Chapter 76, P. L. 1937.

D. FREDERICK BURNETT
Commissioner

9. DISCIPLINARY PROCEEDINGS -- GAMBLING - SIXTY-DAY PENALTY.

October 19, 1937

Louis L. Lowe, Esq., Secretary
Municipal Board of Alcoholic
Beverage Control
City Hall
Orange, New Jersey

Dear Mr. Lowe:

I have yours of October 14 re disciplinary proceedings against Frank N. Trezza, charged with having violated Section 10 of your local ordinance which prohibits gambling and the conduct of a lottery on a licensed premises and note the licensee was adjudicated guilty and that his plenary retail consumption license was suspended for sixty days.

I am expressing no opinion as to whether or not the licensee was properly adjudicated guilty because I am informed that an appeal has been filed by the licensee and my mind, therefore, must be entirely open on that score. Everything, therefore, hereinafter said is without prejudice to the merits of his appeal.

Gambling creates grave problems. In many homes contract bridge and pinochle are played for stakes; wagers are made on golf, on fights, on football games, on elections. While lotteries are forbidden and gambling is by statute made a crime, there seems to be a disposition on the part of the American public to take a chance, to speculate and to put money stakes on so many things they do. This, admittedly, makes a very difficult situation with which to cope.

So long as the law against gambling remains on our statute books, it is our duty to enforce it. Otherwise, commercialized gambling will get a foothold in licensed places leading to racketeering and other evils which will quickly get out of hand if we do not keep the lid on all the time. Let us stop at the source the abuses that brought Prohibition.

Honest licensees who scrupulously comply with the law and do not permit gambling on their licensed premises complain bitterly that they pay high license fees but so often get little or no protection against those cheaters in their trade who take a chance to reap a major profit if not detected, but, if caught, get off with minor penalty. If they themselves think so, we, whose duty it is to enforce the law, may well give ear to their desire for strict regulations. For the sake of their economic future, they ask for stringent penalties, such as your Board has strikingly administered in this case.

Please thank the members of your Board for their cooperation in proper law enforcement.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

10. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 19th, 1937.

In Re: Case No. 182

In his questionnaire employee admitted that he had been convicted in 1927 for the crime of petty larceny, and that he was placed on probation for six months.

At a hearing duly held, it appeared that employee, who was thirteen years of age at the time, was arrested with two other boys for stealing a child's bank containing Eight Dollars, and that he was charged with "juvenile delinquency". In view of his youth, moral turpitude is not involved in this conviction. Re Application for A.R.C. Permit Case No. 36, Bulletin #149, Item 1; Re Hearing No. 146, Bulletin #167, Item 4.

Fingerprint records disclosed that said employee was convicted in 1934 on a charge of adultery and fined \$10. in a Police Court. At that time he was less than twenty years of age and unmarried. He testified that he and another young man were visiting a disorderly house when it was raided and all those present were placed under arrest; that he did not know any of the women inmates of the house; that shortly thereafter he was married and has lived with his wife for the past thirteen years.

This single lapse does not show the baseness of conduct in which moral turpitude inheres. Cf. Re Case No. 66, Bulletin #202, Item 6; Re Case No. 68, Bulletin #203, Item 13.

As to his failure to disclose his conviction for adultery, employee testified that in answering the question as to whether he had been convicted of a crime he "thought it was for larceny offences." I am satisfied that, in view of his immediate release upon the payment of \$10. fine, employee felt that his conviction for adultery was not of a serious nature and that he had no intention of deliberately misrepresenting the facts as to his criminal record.

It is recommended, therefore, that no further action be taken.

EDWARD J. DORTON
Attorney-in-Chief

Approved:

D. FREDERICK BURNETT
Commissioner

11. TRANSFERS - SIXTH CLASS COUNTIES - LICENSES MAY NOT BE TRANSFERRED FROM ONE MUNICIPALITY TO ANOTHER.

October 20, 1937

Hon. Percy Camp,
Judge of the Court of Common Pleas,
Toms River, New Jersey.

My dear Judge:

I have before me your letter reporting the transfer of plenary retail consumption license N.J. 860 issued to John Jeannette, from 133 Hamilton Avenue, Seaside Heights, to premises located on Locust Street, Toms River (Dover Township).

Of course you have the power to transfer licenses within the limits of the municipality for which they were originally issued. But in this case you have crossed municipal lines. Section 6 of the Control Act, from which your powers are derived, declares that there repose in you the powers conferred and the duties imposed "upon issuing officials in and for each municipality" in the county. The municipal officials, if the licensing function were vested in them, would have the power to make the transfer only within their municipal limits. As the only power which has been transferred to you is that which was originally vested in them, it follows that your power to make transfers is similarly limited. In other words, you hold the aggregate of the powers which were originally conferred upon the municipalities, and not a totality as to the county as a whole. The administrative unit, in the contemplation of Section 6, is still the municipality, not the county. You may, of course, treat them all alike if you wish, but you cannot treat them all as one.

Again, licensees in Sixth Class Counties have no greater rights than those in other Counties elsewhere. They cannot transfer from one municipality to another except by taking out a new license. So also in Sixth Class Counties.

It follows, then, that the transfer which has been made is void and of no effect and should be set aside as having been inadvertently granted. If Mr. Jeannette wants to continue in business at Toms River, he will have to take out a new license. I realize that by now he has undoubtedly given up his Seaside Heights place and may suffer from having to discontinue for the present. If he will file his application with you for the Toms River premises and deposit the required fee, I will entertain at your request a petition from him for a special permit to conduct the business pending your action on his application. The fee for the permit will be \$10.00 and must accompany the petition.

Mr. Jeannette may, of course, surrender his Seaside Heights license if he wishes, in which event he will be entitled under Section 28 of the Act, provided no deductions are in order, to the legal refund. For the method of computing that refund, see Re Schneider, Bulletin 48, Item 6, and Re Jones, Bulletin 48, Item 9.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. WINE PERMITS - MAKING WINE FOR HOME CONSUMPTION - NECESSITY OF PERMIT AND THE PROCEDURE.

October 13, 1937.

Miss Myldred Lipman,
Vineland, New Jersey

My dear Miss Lipman:

Every person who makes wine should have a license to do so. Persons who do not are guilty of a misdemeanor, and hence, subject to arrest and liable to a fine of not more than \$1,000 or imprisonment for not more than three years or both. It makes no difference how little they make or that they do not sell it. It is unlawful to make it unless they have a license.

Those who wish to make wine for their personal use would be foolish indeed to risk these penalties when compliance with the provisions of the law requires nothing more than the simple act of applying for and obtaining a special wine permit from this Department at the nominal cost of \$1.00. Application forms can be obtained by writing direct to me at 744 Broad Street, Newark.

The law will be enforced. I will do everything in my power to see to it that those who are required by law to have the permits, take them out. It is absolutely unfair to the law-abiding citizens who take out permits that others should evade them.

If public-spirited citizens will send me, in full confidence, the names of those who manufacture wine without permits, I will see to it that the necessary permits are procured or else arrest the offenders.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

13. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to the Provisions of Chapter 76,)
P.L. 1937 - Case No. 10.)

CONCLUSIONS
AND ORDER

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Ronald Stone, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Petitioner was convicted on April 25, 1924 of the crime of assault with intent to kill. It has heretofore been ruled that such a crime involves moral turpitude. Re Ulich, Bulletin 70, Item 2; In re Hearing No. 17, Bulletin 116, Item 5.

Petitioner testified that since 1925, when he was released from the penitentiary after serving his full term of one

year at hard labor, he has resided in Bloomfield and had been engaged in the trucking business from that time until March, 1937. At that time he was compelled to dissociate himself from the business for the reason that the company applied for and obtained a transportation license. Since then he has been unemployed, and supports himself, his wife and two children on money received from his brother in monthly payment for his stock in the company that applicant was compelled to dispose of when the company was licensed. Petitioner testified that the trucking business is the only business he knows, and if the disqualification is lifted he will be re-employed by the same company in an executive capacity. His testimony that he had never been arrested or convicted since his conviction in 1924 is corroborated by Departmental investigation of his fingerprint record.

To establish that he had conducted himself in a law-abiding manner since his conviction and that his association with the alcoholic beverage industry would not be contrary to the public interest, petitioner produced three witnesses, with all of whom he had done business both before and after his conviction.

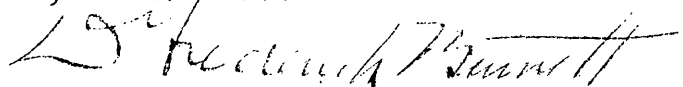
The first witness, engaged in the automobile tire business, has known him since 1916, and has since that time been in close association with him. He knew of petitioner's conviction, and continued to do business with him. He testified that petitioner's character was of the best, that he was honest and square, kept his promises, and was industrious and clean-living.

Petitioner's second witness, also engaged in the automobile tire business as a competitor of the first witness, has known him for twenty years. He has since that time employed one of petitioner's brothers, and has seen petitioner once or twice a month. He holds a high opinion of his reputation, character, and industriousness.

The third witness, a salesman and field representative for a large tire and rubber company, has known petitioner for fifteen or twenty years, has had rather close contact with him, and believes him to be a real man, of fine character and integrity.

I find that petitioner has satisfactorily established that at least ten years have elapsed since the date of his conviction; that he has conducted himself in a law-abiding manner since the date of his conviction, and that his association with the alcoholic beverage industry will not be contrary to the public interest.

It is, therefore, on this 21st day of October, 1937, ORDERED, that petitioner's disqualification from obtaining or holding a license or permit because of the conviction set forth herein, be and the same is hereby removed in accordance with the provisions of Chapter 76, P. L. 1937.



Commissioner