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

BULLETIN 479 OCTOBER 7, 1941.

1. APPELLATE DECISIONS - FLANAGAN v. HOPEWELL.

NEIGHBORHOOD SUBSTANTIALLY RESIDENTIAL - PUBLIC NECESSITY NOT SHOWN - DENIAL AFFIRMED.

THOMAS J. FLANAGAN,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HOPEWELL (MERCER COUNTY),)
Respondent.)

Frank I. Casey, Esq., Attorney for Appellant.
Cassel R. Ruhlman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to grant a plenary retail distribution license to appellant to open a liquor store on the Pennington-Hopewell Road in Marshall's Corner, Hopewell Township.

Marshall's Corner is a small unofficial community located in open country at the juncture of the Pennington-Hopewell and Woodsville Roads in the Township. Clearly rural and residential in character, it consists, in total, of a cluster of sixteen residences (three being apparently old or poor dwellings), a "community house", and an additional residence set off by itself some distance away. Its only business is the rural enterprise of a chicken farm at the rear of one of the homes and the sale of eggs.

Respondent denied appellant's license chiefly because of the residential character of this small "village" and the fact that various of its residents (apparently at least some six householders) were in active protest.

Whether a liquor license shall be issued for any particular locality is, like all general questions involving the issuance of a license, committed, in the first instance, to the sound and bona fide discretion of the issuing authority. See Neuschwender v. Fort Lee, Bulletin 475, Item 4; Siebel v. Randolph, Bulletin 477, Item 1.

In the present case it cannot be said that respondent in anywise abused that discretion. To the contrary, its action seems wholly salutary and farsighted since nothing is better calculated to arouse just resentment than the location of a liquor place in the midst of a residential community, especially against the wishes of a substantial number of its inhabitants. See Held v. Deptford, Bulletin 269, Item 4; also see Hobbs v. Lower Penns Neck, Bulletin 372, Item 6, and cases there cited.

While it is true that there are no package stores in the Township and that the nearest to Marshall's Corner is eight miles away in Ewing Township, there does not appear to be any public need or other reason why there should be any such place in this rural residential "village." In view of its character and comparatively meager size and the adverse sentiment of at least a third of its population, the plenary retail consumption establishment some quarter of a mile away (where liquor may be sold by the bottle as well as by the drink) would seem wholly adequate to service whatever liquor needs may arise in this community.

Respondent's action in the present case must be affirmed.

Accordingly, it is, on this 27th day of September, 1941,

ORDERED, that this appeal be and hereby is dismissed.

ALFRED E. DRISCOLL,
Commissioner.

2. MORAL TURPITUDE - BREAKING AND ENTERING WITH INTENT TO STEAL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - INDICTMENT FOR ATROCIOUS ASSAULT AND BATTERY PENDING - ASSOCIATION WITH ALCOHOLIC BEVERAGE INDUSTRY CONTRARY TO PUBLIC INTEREST BECAUSE OF PAST RECORD - APPLICATION DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 146

ON HEARING
CONCLUSIONS

BY THE COMMISSIONER:

In 1930 petitioner was convicted of possessing lottery slips and was sentenced to sixty days in the workhouse; in 1934 he was found guilty of possessing fictitious motor vehicle license plates and failing to have a driver's license and was given a suspended sentence; later, in the same year, he pleaded guilty to a charge of adultery and received a suspended sentence; in 1935 he pleaded non vult to an indictment charging him with breaking and entering with intent to steal and was given a suspended sentence and placed on probation for three years. Petitioner's criminal record shows, in addition to the convictions above set forth, several other arrests (suspected robbery in 1921; violation of the Hobart Act in 1931; possessing dangerous weapons in 1932), which did not result in actual convictions. It further appears that, at the same time petitioner was indicted for breaking and entering in 1935, another indictment, arising out of the same series of acts and charging him with atrocious assault and battery, was returned against him. The Prosecutor of the Pleas of the county wherein petitioner resides and where the crime is alleged to have taken place reports that "the indictment for atrocious assault and battery is still open of record and I cannot at this time say when the case will be listed for trial."

Petitioner's last conviction (breaking and entering with intent to steal), in 1935, resulted from the forcing of entrance, by petitioner and two other men, into a building of a railroad company,

during the course of a strike, with the purpose of unlawfully removing a truck therefrom. It further appears that considerable property damage was done before the trespassers were apprehended. Under these circumstances, the crime clearly involved moral turpitude. See Re Case No. 13, Bulletin 228, Item 3; Re Case No. 101, Bulletin 147, Item 11. In view of the above finding, petitioner stands disqualified (R. S. 33:1-25, 26). It, therefore, becomes unnecessary to determine whether moral turpitude was involved in any of the preceding convictions.

Petitioner now seeks, in this proceeding and pursuant to R. S. 33:1-31.2, to have removed that statutory disqualification.

Removal of disqualification is discretionary. Re Case No. 178, Bulletin 478, Item 12. That petitioner is presently under indictment for a criminal offense, in itself, would preclude me from exercising that discretion until such time as final disposition was made of the pending indictment. Disregarding, however, the pending indictment and its possible consequences, petitioner's past and lengthy criminal record fails to convince me that his association with the alcoholic beverage industry would not be contrary to the public interest.

The petition, therefore, is denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: September 29, 1941.

3. MORAL TURPITUDE - ROBBERY AND RAPE INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - ASSOCIATION WITH ALCOHOLIC BEVERAGE INDUSTRY CONTRARY TO PUBLIC INTEREST BECAUSE OF PAST RECORD - APPLICATION DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 174.

ON HEARING
CONCLUSIONS

BY THE COMMISSIONER:

In 1928 or 1929 petitioner was convicted of attempted robbery and placed on probation for two years; in 1929 he was convicted of assault and battery and fined $25.00; in 1930 he was arrested on a charge of grand larceny (later dismissed); in 1931 he was arrested on charges of being a suspicious person and driving without a license and was fined $100.00; during the same year he was arrested on at least four other occasions on charges of obtaining goods by false pretense (dismissed), fraud (no record of disposition), assault and battery (dismissed), and counterfeiting (dismissed); in 1932 he was arrested as a suspicious person (suspicion of robbery) and was given a suspended sentence; during the same year he was convicted of uttering a bad check and robbery (a crime involving moral turpitude) and received an aggregate sentence of two years' imprisonment; the same year he was convicted of rape (another crime involving moral turpitude) and sentenced to serve a three year term commencing immediately upon the expiration of the beforementioned two year term; in 1936 he was convicted of consorting with criminals and was fined $10.00.

The New Jersey State Prison reports that petitioner's conduct while in that institution was unsatisfactory and that on seven occasions he violated the prison rules.

While it does not appear that petitioner has been convicted of any crime within the past five years, he is not entitled, on that score alone, to have his disqualification removed. Re Case No. 178, Bulletin 478, Item 12. Removal of disqualification is discretionary and that discretion will be exercised only where I am satisfied that applicant's rehabilitation has been such that his association with the alcoholic beverage industry will not be contrary to the public interest.

Petitioner's record, which is highly indicative of a criminal propensity, is so extensive and comparatively fresh that I am unwilling, at this time, to jeopardize the public interest by removing his disqualification.

The petition is denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: September 29, 1941.

4. DISCIPLINARY PROCEEDINGS - SALE OF AN ALCOHOLIC BEVERAGE TO A MINOR - HEREIN OF MUNICIPAL ADMINISTRATION OF DISCIPLINARY MATTERS, RECOMMENDED MINIMUM PENALTIES, AND REMISSIONS FOR GUILTY PLEAS - VANISHING PENALTIES DISAPPROVED.

September 26, 1941

Florence R. Morey,
Town Clerk,
Belleville, N. J.

My dear Miss Morey:

I have before me staff report and your letters of September 11th and 15th re disciplinary proceedings conducted by the Board of Commissioners against Max Kraus, T/a Kraus Liquor Shop, 562 Union Avenue, charged with sale of a bottle of whiskey to a minor, and note that his license was suspended for three days.

I understand from the staff report and true copy of "excerpts of minutes" that the Board of Commissioners found the licensee guilty and imposed a ten day suspension; that, immediately thereafter, three days of the penalty were remitted because the licensee allegedly pleaded guilty; that another three days were remitted because the minor, although seventeen years of age, was alleged to appear, by reason of his weight and height, to be over twenty-one, and finally still another day was remitted because of the licensee's previous good reputation. This is a curious procedure which, if followed in other cases, might very well lead to disastrous results.

Furthermore, after the ten day penalty was contracted to three by the series of remissions, it was made effective commencing on September 16th - which was Primary Election Day and on which no alcoholic beverages could be sold at retail by any licensee until 9:00 P.M. (Daylight Saving Time). Thus the apparent suspension for three days merely deprived the licensee of two days' business.

Well, well! Now you see it and now you don't - a ten day suspension settled for two! That's no way to control the sale to minors!

It is all very well to remit a portion of a penalty for a guilty plea, but such remission is properly given only where a bona fide guilty plea has saved this Department and the local issuing authority the time and expense incident to the preparation of a case and the conduct of a hearing. In this case apparently it was necessary to have a hearing. Two witnesses were called for the prosecution and nine for the defense. Furthermore, it is difficult to ascertain whether or not in fact the licensee did plead guilty.

In my opinion in cases of this particular type, it is not desirable to remit for any other purpose than for a bona fide guilty plea. The minimum ten day penalty for the sale of alcoholic beverages to minors is to be imposed only in cases lacking aggravating circumstances. The fact that the minor appeared to be of age, and that the licensee bore a good reputation were reasons why this licensee was entitled to the minimum penalty of ten days rather than a suspension of greater duration.

I realize that cases of this type present difficulties which must necessarily trouble conscientious local issuing authorities. On the other hand, I know that it will be dangerous for all concerned if we whittle away the minimum penalties recommended by the Department. Licensees must be constantly on their guard against the sale of liquor to minors. In their business they assume many responsibilities not ordinarily assumed in other lines of endeavor.

Will you please bring this letter to the attention of the Board of Commissioners.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

5. MORAL TURPITUDE - MAINTAINING A DISORDERLY HOUSE AS PROPRIETOR OF A BOOKMAKING ESTABLISHMENT INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.	ON HEARING CONCLUSIONS AND ORDER
Case No. 168.	

BY THE COMMISSIONER:

In 1935 petitioner, following a police raid upon a horse race betting and bookmaking establishment of which he, admittedly, was one of the proprietors, pleaded guilty to charges of maintaining a disorderly house and was sentenced to pay a fine of $500.00. Petitioner's crime, under these circumstances, involved moral turpitude. See Re Case No. 239, Bulletin 305, Item 9; Re Case No. 283, Bulletin 337, Item 14.

His record is otherwise clear.

More than five years having elapsed since the date of the conviction, petitioner now seeks, in this proceeding and pursuant to R. S. 33:1-31.2, to remove the statutory disqualification resulting from such conviction.

As evidence that he has conducted himself in a law-abiding manner since his conviction, petitioner produced, as character witnesses, the Mayor of the municipality wherein he lives, and a businessman, who have known him for 25 and 6 years, respectively. Both men testified that petitioner's reputation in the community is good and that, in their opinion, it would not be harmful to the public interest to allow him to become engaged in the liquor industry. Another person who has known the petitioner for some twenty years, and who is presently employed by petitioner's wife, also appeared as a character witness. Because of his interest, his testimony, while favorable to the petitioner, has had no weight in this proceeding.

The Chief of Police of the municipality wherein petitioner resides has certified that his records disclose no arrests or complaints against petitioner within the past five years and that petitioner is not the subject of any pending investigations or reports.

In view of the favorable character testimony and the report of the Chief of Police, I would, under ordinary circumstances, conclude that petitioner, since his conviction, has been leading a law-abiding life and would lift his disqualification.

It appears, however, that since 1938 petitioner's wife, along with another person, has been the owner and operator of a roadside restaurant business. It appears also that petitioner loaned some money to his wife and assisted her in the operation of the restaurant up until June 1941, when a liquor license was granted to petitioner's wife and the other co-owner of the business. Question arises whether petitioner, while disqualified, has been associated with or engaged in the liquor business since June 1941, in violation of the Alcoholic Beverage Law.

At the hearing petitioner, while admitting having loaned money to his wife and having assisted her in the operation of the restaurant prior to the time that it was licensed, testified that he is not an owner of that business; that since the granting of the liquor license, in June 1941, he has taken no part in the restaurant business; that he is now "asking for this removal so I can help her (his wife) out."

Subsequent and independent investigation by this Department tends to corroborate petitioner's testimony that he is not the owner of the licensed business and that he has not taken any part in the operation of the business since the acquisition of the liquor license.

I conclude, therefore, from all of the evidence, that petitioner has conducted himself in a law-abiding manner for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 30th day of September, 1941,

ORDERED, that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

6. MORAL TURPITUDE - RECEIVING STOLEN GOODS AND MAINTAINING A DISORDERLY HOUSE AS PROPRIETOR OF A BOOKMAKING ESTABLISHMENT INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 169.

ON HEARING
CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1921 petitioner, while 19 years of age, was convicted of receiving stolen goods (automobiles) and was sentenced to imprisonment for two years. In 1935, following a police raid upon a horse race betting and bookmaking establishment of which he, admittedly, was one of the proprietors, petitioner pleaded guilty to charges of maintaining a disorderly house and was sentenced to pay a fine of $1,000.00. Both of these crimes involved moral turpitude. See Re Case No. 67, Bulletin 345, Item 7; Re Case No. 292, Bulletin 344, Item 12 (receiving stolen goods); Re Case No. 239, Bulletin 305, Item 9; Re Case No. 283, Bulletin 337, Item 14 (gambling house proprietor).

More than five years having elapsed since the date of the conviction, petitioner now seeks, in this proceeding and pursuant to R. S. 33:1-31.2, to remove the statutory disqualification resulting from such conviction.

As evidence that he has conducted himself in a law-abiding manner since his last conviction, petitioner produced as character witnesses the Mayor of the municipality wherein he lives, and an attorney at law, of the same community, who have known him for 25 and 10 years, respectively. Both testified that petitioner's reputation in the community is good and that, in their opinion, it would not be harmful to the public interest to allow him to become engaged in the liquor industry. Another person, who has known the petitioner for some 20 years, also appeared as a character witness. The testimony of this witness, who admitted being in the employ of petitioner's wife, has, because of his interest, no weight in this proceeding. Re Case No. 168, Bulletin 479, Item 5.

The Chief of Police of the municipality wherein petitioner resides has certified that his records disclose no arrests or complaints against petitioner within the past five years and that petitioner is not the subject of any pending investigation or complaint.

In view of the favorable character testimony and the report of the Chief of Police, I would, under ordinary circumstances, conclude that petitioner, since his last conviction, has been leading a law-abiding life and would lift his disqualification. Question arises, however, as in Re Case No. 168, supra, the facts and circumstances of which are closely related to the instant proceeding and which was heard at the same time, whether petitioner, while actually disqualified, has been engaged as an employee or principal in a liquor business, in violation of the Alcoholic Beverage Law.

It appears that petitioner's wife, along with the wife of the petitioner in Re Case No. 168, supra, have been, since 1938, the owners and operators of a roadside restaurant business; that petitioner loaned to his wife some of the money with which she entered the business; that during the period when the restaurant was unlicensed for the sale of liquor, petitioner was employed on the premises as cashier and kitchen helper.

Subsequent investigation by this Department tends to show that petitioner is not an owner of the restaurant business and that, since the acquisition of the liquor license in June 1941, he has not been employed in or associated with the licensed business.

I conclude, therefore, from all of the evidence, that petitioner has conducted himself in a law-abiding manner for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is, on this 30th day of September, 1941,

ORDERED, that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

7. RETAIL LICENSEES - MAY REFUSE TO SELL TO WHOM THEY WISH EXCEPT ON ACCOUNT OF RACE, CREED OR COLOR - RESPONSIBILITY FOR PROPER CONDUCT OF PREMISES CONFERS REASONABLE DISCRETION IN CHOOSING CUSTOMERS.

September 26, 1941

Mr. Thomas M. Toule,
West Orange, N. J.

My dear Mr. Toule:

This will acknowledge receipt of your letter of September 24th in which you ask me to settle a friendly argument in which: "A contends that any tavern proprietor is within his rights to refuse to serve any person he does not care to even though that person never broke any laws, was in good health, and was of a temperate nature relative to drink," while "B believes that under state law the tavern owner must sell a drink to any person of good health and habits who asks for it provided he is sober and law abiding."

A wins! Subject, however, to one very important observation hereinafter set forth.

A tavern owner has the right to refuse to sell in any given case provided such refusal to sell is not based upon some prejudice against race, creed or color. In other words, the licensee must of necessity be the master of his tavern.

The reason for this is that tavernkeepers, like all other liquor licensees, are required by our law to assume tremendous responsibilities. They are not permitted to sell to minors; they may not sell to persons who are intoxicated, and, among many other requirements, they must keep order on the licensed premises. It is no excuse for a violation of any of these that the licensee may have guessed that the purchaser was over twenty-one, or was sober, or that his customers would maintain the decorum reasonably to be expected of grown men and women. Likewise, the licensee must assume full responsibility that his liquors are as represented on the labels on the bottles from which they are poured. Since the tavernkeeper is solely responsible in the event of a violation, it is but fair that he be given wide discretion to determine whether or not to sell to any particular person.

The only limitation upon the discretion thus given to the tavernkeeper is that imposed by the Civil Rights Act, which forbids discrimination based on race, creed or color. Discrimination of this type is out.

It is the exercise of this broad discretionary power which permits a licensee to refuse to sell where he has reasonable grounds to believe that service of alcoholic beverages will ultimately result in arguments, brawls, drunkenness or disturbances offensive to other patrons.

It is to be hoped that taproom owners generally will realize the advantages to be derived from a sensible exercise of this discretionary power.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

8. ELIGIBILITY - SALES OF ALCOHOLIC BEVERAGES TO A MINOR - SALES DURING PROHIBITED HOURS - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

September 30, 1941

Re: Case No. 388

Applicant seeks to be advised whether he is disqualified under R. S. 33:1-25, 26 (by reason of conviction of a crime involving moral turpitude) from holding a liquor license or working for a liquor licensee in this State.

In 1938 applicant, who at that time was the holder of a plenary retail consumption license, was convicted in a criminal court of selling liquor to a minor, in violation of the Alcoholic Beverage Law (R. S. 33:1-77), and was sentenced to pay a fine of $150.00. A few months later, in 1939, he was convicted in police court of selling alcoholic beverages during prohibited hours, in violation of a municipal alcoholic beverage regulation, and was fined $50.00.

As regards the conviction for sale to a minor, the records of this Department disclose that applicant served a highball to a seventeen year old girl who was seated at a table in his tavern with two male companions. Departmental files further disclose that applicant's wife, with the apparent knowledge of applicant, prepared, for this same trio, several other rounds of drinks which she permitted the minor, who purported to be a friend of applicant's family, to take from the bar and serve at the table where she was sitting with her friends.

Generally, and in the absence of aggravating circumstances, a single violation of the Alcoholic Beverage Law does not involve moral turpitude. Re Case No. 367, Bulletin 447, Item 7; Re Case No. 366, Bulletin 445, Item 10; Re Case No. 361, Bulletin 441, Item 11. While any sale of liquor to a seventeen year old girl is, in itself, highly reprehensible, the circumstances surrounding the above described offense were not, under our decisions, of such a character as to warrant the conclusion that the element of moral turpitude was involved. See Re Case No. 273, Bulletin 318, Item 9. Since the conviction occurred prior to the enactment of P.L. 1941, Chapter 97, applicant is not disqualified by the provisions of that amendment. Re Case No. 375, Bulletin 465, Item 8; Bulletin 465, Item 10.

The conviction in police court for violation of the municipal alcoholic beverage regulation was not a conviction of a "crime" within the meaning of R. S. 33:1-25, 26. Re Case No. 382, Bulletin 463, Item 9; Re Case No. 361, supra; Re Case No. 314, Bulletin 393, Item 9. Hence, no disqualification therefrom results.

It further appears that separate disciplinary proceedings involving, essentially, the same charges which formed the basis for the above mentioned convictions, were instituted by this Department following both convictions. On the first occasion (sale to minor) applicant's license was, in effect, suspended for forty days. The second time (sale during prohibited hours) his license was suspended for the balance of its term (May 4, 1939 through June 30, 1939). Thereafter the local issuing authority refused to renew applicant's license and he has held no liquor license since that time. The adjudications of guilt in the disciplinary proceedings instituted by this Department, however, are not convictions of crimes within the meaning of R. S. 33:1-25, 26. See Re Haney, Bulletin 283, Item 5.

It appears from the foregoing that applicant has never been convicted of a crime involving moral turpitude. It is recommended, therefore, that he be advised that he is not disqualified by reason of the before-mentioned convictions and adjudications from holding a liquor license or being employed by a liquor licensee in this State. Whether, in view of his past record as a liquor licensee, and despite his eligibility under the statute, he is a fit person to hold a liquor license, however, is a matter to be decided by the local issuing authority in the event that he again makes application for a license.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

9. ACTIVITY REPORT FOR SEPTEMBER, 1941

TO: Alfred E. Driscoll, Commissioner

ARRESTS:	Licensees - - - - - - - - - 1	Bootleggers - - - - - - - 25	
	Total number of persons arrested - - - - - - - - - - - - - - - - -		26
SEIZURES:	Stills - 1 to 50 gallons daily capacity - - - - - - - - 4		
	50 gallons and more daily capacity - - - - - - - 2		
	Total number of stills seized - - - - - - - - - - - - - - - - -		6
	Mash - gallons -		4480.15
	Motor vehicles - Trucks - - - - - - - - - - - - - - - - 2		
	Passenger cars - - - - - - - - - - - - - 2		
	Total number of motor vehicles seized - - - - - - - - - - - - -		4
	Beverage alcohol - gallons -		16.0
	Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - -		13.39
	Wine - gallons -		32.16
	Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons		772.30

RETAIL LICENSEES:	Number of premises in which were found:				
	Illicit (bootleg) liquor - 12		"Fronts" (concealed ownership)	4	
	Gambling devices	- 19	Improper beer tap markers	- 0	
	Prohibited signs	- 10	Stock disposal permits nec.	21	
	Unqualified employees	109	Other types of violations	- 6	
	Total number of premises where violations were found - - - - - - -				176
	Total number of premises inspected - - - - - - - - - - - - - - - -				1780
	Total number of unqualified employees found - - - - - - - - - - -				148
	Total number of bottles gauged - - - - - - - - - - - - - - - - - -				15,311

STATE LICENSEES:	Premises inspected -	69
	License applications investigated - - - - - - - - - - - - - - - -	9

COMPLAINTS:	Investigated, reviewed and closed - - - - - - - - - - - - - - - -	246
	Investigation assigned, not yet completed - - - - - - - - - - - -	537

LABORATORY:	Analyses made -	161
	"Shake-up" cases (alcohol, water and artificial coloring) - -	10
	Liquor found to be not genuine as labeled - - - - - - - - - - -	22

IDENTIFICATION BUREAU:	Criminal fingerprint identifications made - - - - - - - - - - -	26
	Persons fingerprinted for non-criminal purposes - - - - - - - -	57
	Identification contacts with other enforcement agencies - - -	214
	Motor vehicle identifications via N. J. State Police Teletype	62

DISCIPLINARY PROCEEDINGS:		
	Cases transmitted to municipalities - - - - - - - - - - - - - - -	19
	Cases instituted at Department - - - - - - - - - - - - - - - - -	5
CANCELLATION PROCEEDINGS:	- -	0

HEARINGS HELD AT DEPARTMENT:				
	Appeals	- 7	Eligibility	-16
	Disciplinary Proceedings	-15	Application for special permit	- 1
	Seizures	- 6		
	Total number of hearings held - - - - - - - - - - - - - - - - - -			45

PERMITS ISSUED:	Unqualified employees -	482
	Solicitors -	89
	Social affairs -	266
	Home manufacture of wine -	183
	Disposal of alcoholic beverages - - - - - - - - - - - - - - - - -	100
	Miscellaneous permits -	133
	Total number of permits issued - - - - - - - - - - - - - - - - - -	1,253

Respectfully submitted,
E. W. Garrett
Chief Deputy Commissioner

10. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENTS IN LICENSE APPLICATIONS CONCEALING THE INTEREST OF ANOTHER - AIDING AND ABETTING A NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - EXERCISE OF SAID PRIVILEGE BY A NON-LICENSEE - BOTH PARTNERS QUALIFIED - NO APPARENT FRAUDULENT PURPOSE OR INTENT - SITUATION CORRECTED - 5 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against NICHOLAS PROTOMASTRO and JUSTINE PROTOMASTRO, T/a HUDSON RECREATION, 38-42 First Street, Hoboken, N. J., Holders of Plenary Retail Consumption License C-128, issued by the Board of Commissioners of the City of Hoboken.	CONCLUSIONS AND ORDER

Nicholas Protomastro and Justine Protomastro, Pro Se.
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensees pleaded guilty to charges alleging: (1) that in various applications for licenses dated between October 31, 1936 and July 8, 1940, Nicholas Protomastro falsely stated that no other individual had any interest in the respective licenses applied for, whereas Justine Protomastro had such an interest; (2) that between November 10, 1936 and June 24, 1941 Nicholas Protomastro aided and abetted Justine Protomastro, a non-licensee, in exercising the rights and privileges of a licensee; and (3) that Justine Protomastro, a non-licensee, exercised said privileges.

Defendant, Justine, is a sister-in-law of defendant, Nicholas, and both appear to be fully qualified to hold a license.

The file shows that both defendants have been operating the licensed business, as partners, since November 1936; that on June 24, 1941, after our investigators advised them that the license should be in both names, the license then held was transferred to both defendants and renewed in both names for the current fiscal year.

In a statement given to our investigators, Nicholas Protomastro alleges that the only reason the various licenses were taken in his name alone was because he "was advised by friends not to have a woman's name on license." Of course, the names of all partners must be disclosed in applications so that issuing authorities may pass upon the qualifications of licensees. The only mitigating circumstance, here, is that the woman seems to have been qualified at all times to hold the license.

The correction of the situation is not a defense but goes only to mitigation of any penalty that may be imposed. Despite the licensees' prompt action after the violation was called to their attention, the fact remains that the licensee, Nicholas Protomastro, did swear falsely in his license application and that the licensee, Justine Protomastro, did exercise the privileges of a licensee in the absence of such a license.

In cases involving an undisclosed partner, the minimum suspension has been ten days where the undisclosed partner was disqualified by reason of non-residence and the violation, upon discovery, was immediately corrected. Re Casagrande, Bulletin 396, Item 11. This case, however, involves parties fully qualified and related to each other as well as a case where the situation has been corrected. I shall, therefore, suspend the license for five days.
Cf. Re DiGiovanni, Bulletin 401, Item 6; Re Sowa, Bulletin 457, Item 9; Re Schauchulis, Bulletin 443, Item 7.

Accordingly, it is, on this 30th day of September, 1941,

ORDERED, that Plenary Retail Consumption License C-128, heretofore issued by the Board of Commissioners of the City of Hoboken to Nicholas Protomastro and Justine Protomastro, T/a Hudson Recreation, for premises 38-42 First Street, Hoboken, be and same is hereby suspended for a period of five (5) days, commencing October 6, 1941, at 2:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

11. ELIGIBILITY - POSSESSION OF LOTTERY SLIPS AS MINOR EMPLOYEE OF GAMBLING ENTERPRISE - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTIONS.

September 30, 1941

Re: Case No. 392

In February 1940 applicant was convicted of possessing lottery slips, fined $150.00 and placed on probation for two years. In April 1941, he was again convicted on two charges of possessing lottery slips and sentenced to three months in a County Penitentiary.

Applicant testified that, at the time of both arrests, the police found a number of lottery slips in his possession and admitted that at the time of each arrest he had been employed as a collector and that his commissions averaged $20.00 to $25.00 per week. Report received from a probation officer tends to confirm applicant's testimony that he was a minor employee and not one of the principals engaged in the conduct and operation of the unlawful enterprise. Under the circumstances, I believe that neither conviction involved moral turpitude. Re Case No. 296, Bulletin 353, Item 12; Re Case No. 315, Bulletin 396, Item 4; Re Case No. 354, Bulletin 435, Item 2.

It is recommended that applicant be advised that he is not disqualified by statute from being employed by a liquor licensee in this State.

Edward J. Dorton,
Deputy Commissioner
and Counsel.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCIES IN ACID AND SOLID CONTENT - 10 DAYS' SUSPENSION - THE ILLICIT LIQUOR PROBLEM RESTATED AND THE PENALTIES REVIEWED.

In the Matter of Disciplinary Proceedings against

SAMUEL CUTTER,
286 N. Clinton Avenue,
Trenton, N. J.,

Holder of Plenary Retail Consumption License C-24, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Frank I. Casey, Esq., Attorney for Licensee.
Robert R. Hendricks, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded not guilty to the following charges:

"1. On or about April 29, 1941 you possessed an illicit beverage in that one quart bottle labeled 'Calvert Special Blended Whiskey 90 Proof' found in your licensed premises contained a beverage which varied from genuine samples similarly labeled used for comparative purposes in acid and solid content, in violation of R. S. 33:1-50.

"2. On or about the date aforesaid and prior thereto, you, not being the holder of a brewery, distillery, winery or rectifier's license, bottled alcoholic beverages for sale and resale in that you refilled one quart bottle labeled 'Calvert Special Blended Whiskey 90 Proof' with other whiskey, in violation of R. S. 33:1-78."

Investigator Holman, of this Department, testified that, on April 29, 1941, he, with Investigator Chinery, visited the licensed premises; that he examined the contents of fifteen opened bottles on the back bar and found one quart bottle of "Calvert's Special Blended Whiskey," about one-half full, the contents of which did not compare with the known variations for that whiskey, either in proof or color; that he seized said bottle and also an unopened bottle of the same brand for purposes of comparison and turned over both bottles to the Department chemist. Investigator Chinery testified that, after the seizure, the licensee told him that "he didn't know anything about it."

An analysis made by the Department chemist and introduced into evidence discloses that the contents of the seized opened bottle agree as to alcoholic content and proof with the contents of the seized unopened bottle. The analysis further shows that the contents of both bottles contain added artificial color. The analysis shows also that, in the opened bottle, the solids are 519.2 grams per 100 liters and the acids 32.4 grams per 100 liters, whereas in the unopened bottle the solids are 133.6 grams per 100 liters and the acids 26.4 grams per 100 liters. The chemist certified that he has examined about 100 sealed original bottles of this type of whiskey and that the solids in said bottles varied between 120 and 165 grams per 100 liters and that the acids varied between 24 and 30 grams per 100 liters.

P.L. 1939, c. 177 provides that any alcoholic beverages in any bottle shall, in any proceeding under this chapter, be deemed prima facie an illicit beverage where the container bears a label which does not truly describe its contents. Defendant has offered no proof to overcome the presumption that the seized opened bottle contained illicit beverages.

In view of the fact that the solid content and acid content of the liquor contained in the seized opened bottle varied substantially from the solid content and acid content of genuine samples, I find that its contents were not genuine as labeled, and since mere possession of illicit beverages constitutes a violation of R. S. 33:1-50, I must find defendant guilty on the first charge. Re Jacobs, Bulletin 315, Item 8; Re Pucovic, Bulletin 365, Item 10; Re Orbach, Bulletin 406, Item 10; Re DiGiacomo, Bulletin 461, Item 1.

Giving the defendant the benefit of every doubt, it is apparent from the analysis in this case that the bottle in question was refilled. Refilling of an alcoholic beverage from one container to another constitutes bottling within the meaning of R. S. 33:1-78. Re Haney, Bulletin 304, Item 13; Re Heuring, Bulletin 445, Item 12. The defendant is therefore guilty on the second charge. Since the two charges arose out of the same set of circumstances, but one penalty will be imposed.

At the hearing, defendant testified that neither he nor any member of his family employed on his premises tampered with the opened bottle. Defendant says that the only one he can accuse is a former employee engaged to clean up the premises, and says that this former employee denied that he tampered with the bottle. Defendant testified that he has been in the liquor business continuously for fifty years, except during Prohibition, and that this is the first time a charge of any nature has been made against him. His evidence convinces me that there are no aggravating circumstances in this case but that does not affect the question of his guilt or innocence on the first charge.

This case presents a problem with dangerous ramifications. This must be recognized even where the licensee's past record and alleged personal innocence carries a special appeal. The issue involved goes to the very heart of our enforcement procedure.

It is essential to the welfare of all concerned that in every case the liquor contained in the bottle be in fact the liquor described on the label attached thereto. To permit of anything less would be to throw the doors wide open not only to the disposition of bootleg stuff through legitimate channels but also the adulteration of legitimate liquor with ingredients which may or may not be poisonous.

To hold the licensee responsible in cases where he has professed his personal innocence of any wrongdoing and stated his complete ignorance as to the cause for the presence of illicit beverages in his licensed premises may seem unduly harsh. Customers are entitled to receive the liquor which they order. Re Haney, supra. Regardless of personal innocence, the licensee is strictly accountable for his liquor stock. Re Perna, Bulletin 442, Item 6.

This is licensee's first offense of any kind. No aggravating circumstances appear. In previous similar cases the penalty for this offense has been ten days. Re Wnoroski, Bulletin 454, Item 6. The same penalty will be imposed herein. Had there been a previous warning, the penalty would have been raised to fifteen days. Re Novack,

Bulletin 406, Item 11. Had there been aggravating circumstances or any evidence of large scale cheating, the penalty would have been thirty days. Re Gypsy Camp, Inc., Bulletin 454, Item 2. If there had been other similar or, for that matter, dissimilar adjudicated violations against the licensee, the penalty would be correspondingly increased.

Accordingly, it is, on this 2nd day of October, 1941,

ORDERED, that Plenary Retail Consumption License No. C-24, issued to Samuel Cutter by the Board of Commissioners of the City of Trenton, for 286 N. Clinton Avenue, Trenton, New Jersey, be and hereby is suspended for a period of ten (10) days, commencing October 8, 1941, at 2:00 A.M.

Alfred E. Driscoll
Commissioner.