

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

BULLETIN 346

SEPTEMBER 25, 1939.

1. PRIMARY ELECTION DAY REPORT

September 20, 1939

To: D. Frederick Burnett, Commissioner.
From: E. W. Garrett

For your information, I submit report of activities on Primary Election Day, September 19th:

<u>COUNTY</u>	<u>NUMBER OF CALLS MADE</u>	<u>VIOLATIONS</u>
Atlantic	500	0
Bergen	876	2
Burlington	197	0
Camden	481	0
Cape May	93	0
Cumberland	117	0
Essex	1773	2
Gloucester	40	0
Hudson	1584	4
Hunterdon	81	0
Mercer	487	0
Middlesex	496	1
Monmouth	539	0
Morris	338	0
Ocean	194	0
Passaic	858	1
Salem	61	0
Somerset	157	0
Sussex	81	0
Union	687	0
Warren	<u>121</u>	<u>0</u>
TOTAL	9761	10

On the basis of preliminary reports, violations appear to have occurred on the following licensed premises:

BERGEN COUNTY

Lyndhurst Township	Rose A. Giaimo 298 Ridge Road	D-3
Boro of Lodi	Joseph A. Kozel 480 Main Street	C-10

ESSEX COUNTY

Bloomfield	Patty Principe 69 Park Ave.	DL-23
Newark	Vallatese Political Club Inc. 424 - 15th Ave.	CB-43

HUDSON COUNTY

Jersey City	Jeffries Alexander 280 Jackson Ave.	D-7
" "	Otto Keenal 238 Old Bergen Road	D-114
Secaucus	John Mangini 106 Centre Avenue	DL-2
Weehawken	Jay-Dee Wine & Liquor, Corporation of N.J. 88 Highwood Ave.	D-7

MIDDLESEX COUNTY

Raritan Township	May Eugenia O'Dea T/a Louis' Rest Route 25 and Main St. R. F. D. 1, Perth Amboy	C-22
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PASSAIC COUNTY

West Milford Township	William Devonmille, Jr. Hamburg Turnpike P. O. Newfoundland	C-27
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E. W. Garrett,
Chief Deputy Commissioner.

2. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - 4 MONTHS' SUSPENSION

September 19, 1939

S. Wayne Clerk,
Borough Clerk,
Clementon, N. J.

My dear Mr. Clark:

I have before me your letter of September 9th re disciplinary proceedings conducted on municipal initiative by the Borough Council against Elizabeth Starr, 100 Berlin Road, charged with sale of alcoholic beverages to minors, and note that her license was suspended for four months.

While I do not entertain let alone express any opinion on the merits of this case because I have no knowledge of the facts, I have no hesitancy in requesting you to convey to the members of the Borough Council my appreciation for their institution of these proceedings on their own initiative and for the substantial penalty imposed, which I take it means that the Council does not desire licensees in Clementon to sell to minors.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - CLUB LICENSES - SALES TO OTHERS THAN MEMBERS AND BONA FIDE GUESTS.

In the Matter of Disciplinary Proceedings against)
 BURLINGTON LODGE #965,)
 LOYAL ORDER OF MOOSE,)
 S. E. Cor. Wood & Broad Streets,)
 Burlington, New Jersey,)
 Holder of Club License No. CB-41,)
 issued by the State Commissioner of)
 Alcoholic Beverage Control.)
 - - - - -)

CONCLUSIONS
AND ORDER

Richard E. Silberman, Esq., Attorney for the Department of
Alcoholic Beverage Control.
BY THE COMMISSIONER:

Licensee pleaded guilty to selling alcoholic beverages to three investigators of this Department, who were neither members

nor guests of members of the club, contrary to R. S. 33:1-2 and Rule 5 of State Regulations No. 7.

On April 26, 1939 the investigators visited the licensed premises. One was served two glasses of beer; the others one glass each.

The licensee, through one of its officers, stated, in mitigation, that explicit instructions had been given to its bartenders "never to sell to outsiders"; that the sales in this case were made by a relief bartender who was employed but one day a week.

Under the circumstances of the frank admission of responsibility, and in view that this is the first time that any charges have been preferred against the licensee, I shall suspend the license for three days.

Accordingly, it is, on this 19th day of September, 1939,

ORDERED, that Club License No. CB-41, heretofore issued to Burlington Lodge #965, Loyal Order of Moose, by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of three (3) days, commencing September 25, 1939, at 2:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - 5 DAYS.

In the Matter of Disciplinary Proceedings against M. I. REALTY CO., 252 South Orange Avenue, Newark, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-367, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.
Philip Insabella, Esq., Attorney for the Licensee.

The licensee, by its President, has pleaded guilty to charges of (1) sale of alcoholic beverages and (2) keeping the licensed premises open during prohibited hours in violation of local ordinance.

The license will, therefore, be suspended for five days instead of the usual ten.

Accordingly, it is, on this 21st day of September, 1939,

ORDERED, that Plenary Retail Consumption License C-367, heretofore issued to M. I. Realty Co. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for the period of five days, effective September 25, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

5. THE NOISE NUISANCE -- FUTILITY OF ANONYMOUS COMPLAINTS -- THE PROPER PROCEDURE INDICATED -- HEREIN OF HOW THE POLICE CAN COOPERATE.

September 20, 1939.

Hon. John F. Harris,
Chief of Police,
City Hall,
Newark, N. J.

My dear Chief:

Enclosed are copies of the public notice of August 11th (Bulletin 342, Item 10) concerning the noise nuisance.

Despite the plain statement therein that if those who suffer from noise are unwilling to allow their names to be disclosed, there is no use in writing me and that anonymous complaints will, therefore, go into the waste-basket, I continue to receive them.

Here, for instance, is one which has just come in. It reads, omitting the names of the taverns,

"The both taverns are a source of great activity between 12 and 3 A. M. and also a source of much noise. Many of the residents of this section have had lots of reason to complain a good deal, and I have been chosen to write you. For obvious reasons I must remain anonymous and I trust you will treat this letter with the same interest as if my name were signed.

"We have contacted the radio division many times and from them we discover many, many complaints have been received. Also contacted the captain of this precinct who promised cooperation. You are our last resource and we are sure of your cooperation. Last night at 2:15 or rather this A.M. (the 17th) we were all awakened and no sleep until closing and then, sleep being broken, it is hard to get asleep again. Music, singing and arguing comprise some of the noises.

"Hoping for some relief and more sleep, I am,

Very truly yours,

Vailsburgite."

I have no way of notifying this party as to the proper procedure. The thought strikes me that it would be a help if your several Captains and the Radio Division were given copies of the notice, and they in turn could instruct all those who complain of noise to write in to me and give their own names and addresses.

In these noise cases, it is idle to call the police for they have no objective test by which to determine the degrees of noise, and besides they cannot sit there all night and superintend the operation of the tavern.

It is my job to control this nuisance if, in fact, it be that and I purpose to do it, provided those who claim they suffer are willing to stand up and testify.

Noise is entirely different from other types of violations. It is purely subjective, that is, it is offensive only to those who actually hear it. If the neighbors are satisfied, so am I. That's why anonymous complaints go in the waste-basket.

As I said in the public notice:

"The full cooperative forces of this Department will, however, be given without stint to sincere complainants upon compliance with the foregoing conditions. If the matter cannot be settled informally, I shall then institute disciplinary proceedings to determine whether the complainants are supersensitive or otherwise unreasonable in their demands, or whether it is the licensee who is at fault. If I find the latter, then I shall impose stringent conditions upon the license or else suspend or revoke it."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - RENTING OUT LICENSES - NUTLEY CLEAN-UP.

September 21, 1939

Simon Blum,
Town Clerk,
Nutley, N. J.

My dear Mr. Blum:

I have before me staff report and letter of July 5th of Acting Town Clerk Eccles re disciplinary proceedings conducted by the Board of Commissioners against

1. Frank F. Grandinetti, Sr.,
106 Park Avenue
Rev. 1667
2. Salvatore A. Samara, Administrator for the
Estate of Pasquale Samara
36-38 Union Avenue
Rev. 1668

both charged with renting out their licenses to non-licensees, and note that the license of Grandinetti was suspended for thirty days and that of Samara for fifteen days.

Please express to the members of the Board of Commissioners my appreciation for their conduct of these proceedings and the penalties imposed. I take it that the lighter suspension was given to Samara because the unlawful arrangement was terminated as soon as it was brought to his attention, whereas from all that appears Grandinetti continued to let someone else operate his licensed business. Under the circumstances, both penalties appear to be adequate.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. ENTERTAINMENT -- HYPNOTIC PERFORMANCE FOLLOWED BY BURIAL ALIVE --
CEASE AND DESIST ORDER ISSUED.

September 20, 1939.

Mr. Willy Cremer,
t/a Three Towers,
State Highway #31,
R.D. 1, Somerville, N. J.

Dear Sir:

Your local newspaper yesterday carried a first page
item:

"HYPNOTIST WILL BURY GIRL ALIVE TOMORROW

"A young woman will be hypnotized and
buried here tomorrow evening in an attempt to
break the present record of 26 days of 'live
burial.'

"Sponsored by the Veterans of Foreign
Wars, the event will take place at 8 o'clock
at Three Towers, South Somerville. Hypnotist
will be Hanyan, said to be first person to
freeze a subject in ice.

"The young lady is to be put in a state
of suspended animation on the Three Towers'
dance floor in full view of everyone, and will
be placed in a casket furnished by a local under-
taker.

"She will then be carried outside the club
and lowered into a six foot grave. A shaft
extending from the top of the casket will allow
the public to view the girl any time during the
day or night.

"During the time she is in the earth, the
girl will not eat or drink, and, unless Hanyan
believes her health is in danger, the grave will
not be opened for two weeks or more."

Investigator Charles J. Wolf, of my staff, has just
reported that the newspaper item is correct in all respects
except that the event is to take place at 9 P.M. tonight and
that the grave will be but four feet instead of six because
in digging you struck rock; that the price of admission to view
the body tonight will be 25¢ and thereafter a dime.

Now, Willy, I'm allergic to these live burials.

You'll have the barflies in panic lest the Professor
in a moment of absent-mindedness mistake his Trilby. To be

sure, uneasy dreams of caskets, without benefit of clergy or embalmer, might end in vows of eternal abstinence. But action and reaction, as you know, are always equal and opposite in direction, especially after dawn, so I do not count these horrors strongly as a temperance measure.

The proposed "entertainment" is particularly out of place in these days when the press is full of reports of men and women dying for love of country or to uphold the best traditions or because they are innocent victims of ruthless war. This is no time to cater to diseased emotions.

Nor is it proper at any time to trifle with the pretense or semblance of rites which mankind of every race and creed hold sacred.

Licensed places may not be used for morbid stunts of this kind.

Therefore cease and desist forthwith or else I shall have to revoke your license.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. TIED HOUSES - CHATTEL MORTGAGES - MAY BE GIVEN TO AND HELD BY A TAVERN VENDOR TO SECURE PURCHASE MONEY PROVIDED HE IS NOT OTHERWISE DISQUALIFIED.

Dear Sir:

I represent the prospective vendor of a tavern business, who proposes to receive a part of the purchase price of the business from his purchaser and to take back a chattel mortgage for the unpaid balance. I desire to have the chattel mortgage cover all of the fixtures and stock in trade, including the liquor which may be on the premises at the time of the sale. Will you please let me have a ruling as to whether such a chattel mortgage covering, inter alia, liquor on the premises is in violation of any law or regulation of your Department?

Very truly yours,
Leslie S. Kohn

September 22, 1939

Leslie S. Kohn, Esq.,
Newark, N. J.

Dear Sir:

Persons interested in any way whatsoever in the manufacturing or wholesaling of alcoholic beverages may not be directly or indirectly interested in the retailing thereof. R. S. 33:1-43 (Control Act, Section 40).

Assuming, however, that your client is not disqualified from holding a chattel mortgage because of the article cited above, the purchaser of the business may give him a chattel mortgage covering the fixtures and stock in trade, including the liquor which may be on the premises at the time of the sale.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. ADVERTISING - DEPOSITS IN AMAZON JUGS ON THE INDEFINITE PROMISE OF THE PROPRIETOR TO THROW A PARTY FOR THE DEPOSITORS DISAPPROVED AS ANOTHER "COME-ON" SALES PROMOTION.

Gentlemen:

We submit for your approval a promotion plan for use by the Wilson Distilling Company, the essence of which is as follows: The use of a half gallon empty bottle of Wilson Whiskey into the cork of which a slot has been bored.

The package in this condition is to be used by on-premise retailers.

Patrons may at their own option deposit coins of small denominations in this bottle. Those so doing receive a card testifying that they have deposited one or more coins in this manner, and when a certain amount of money has thus accumulated, the retailer gives a party using the funds that have been collected to defray the expenses of such party. Those who deposit coins are invited to attend this party, gratis.

Please note that no sale of merchandise to the retailer by the Wilson Distilling Company or its distributor is involved. The entire plan is one used by the retailer in which an empty package of the distilling company is used.

We have already received the approval of the Federal Alcohol Administration in Washington and we would appreciate hearing from you as to the acceptability of such a plan.

Very truly yours,
White-Lowell Co., Inc.
Allen A. Funt.

September 22, 1939

White-Lowell Company, Inc.,
New York City.

Att: Mr. Allen A. Funt.

Gentlemen:

It is true that I have permitted containers on bars for contributions to charities such as the Betty Bacharach Home for Crippled Children, or to the Red Cross for flood sufferers in the Ohio and Mississippi Valleys, Re Buddy, Bulletin 162, Item 1, or for a civic purpose such as raising funds to purchase an ambulance for a fire department, Re Wildwood, Bulletin 179, Item 8, or even for mutual refreshments in a bona fide private club, Re Lynch, Bulletin 302, Item 5.

But it is going too far to allow tavern proprietors to solicit contributions on a vague promise to throw a party.

The scheme sounds childish. Certainly it is not charitable, or civic, or fraternal. The idea is to make patrons think they are getting much for little. But are they? It trades on their sportsmanship to contribute early and often. Everyone knows

they wouldn't have the "face" to attend the party, even if invited, because once, in the dim past, they had deposited a thin dime in the half gallon jug. When it is filled, no one knows how much money will be squandered on the party and how much retained for compensation of the proprietor in advertising the brand you are pushing.

This is nothing but another "come-on" sales promotion — a practice designed unduly to increase the consumption of alcoholic beverages, and is, therefore, disapproved.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. ADVERTISING - DISTRIBUTION OF HAND BILLS FROM PEDESTAL IN FRONT OF STORE - DISAPPROVED - HEREIN OF WHAT CONSTITUTES ADVERTISING ON THE EXTERIOR OF LICENSED PREMISES.

Dear Commissioner:

Please advise if it is permissible for us to have hand bills on a small pedestal or something similar in the front of our store that may be picked up by any passerby desiring to do so.

Very truly yours,
Weston & Company, Inc.

September 22, 1939

Weston & Company, Inc.,
Newark, N. J.

Gentlemen:

Your proposal is not technically a violation of Regulations 21, Rule 3, which prohibits retail licensees from advertising or permitting price advertisements "on the exterior" of licensed premises. The quoted words contemplate something tacked, pasted, clamped or otherwise affixed to the outside surface of the building. The purposed pedestal or other gadget, if physically detached from the building, might be said not to be part of its exterior.

But the proposal would violate the spirit of the rule as much as would chalk writing upon the sidewalk and would eventually lead to amendment via further express restrictions.

Moreover, I doubt the practicability. Even if you had a man stationed to give out hand bills to passersby, most of those who'd take them would drop them on the sidewalk. So with your self service plan — the moment curiosity is gratified, the streets become littered with liquor circulars.

I therefore advise against it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

September 8, 1939

Re: Case No. 289.

Applicant was convicted in 1925 of maintaining a bawdy house and permitting and aiding prostitution. He was sentenced to pay a fine of \$250.00 and to serve eighteen months in prison.

At the hearing, he explained that at the time of his conviction he was but nineteen years old; that his only connection with the disorderly house was that he was employed there as bartender and general handy-man; that although he knew that the rooms in the house were being used for immoral purposes, he never actually rented any of the rooms to anyone. His conviction, however, cannot be collaterally attacked in this proceeding. Re Case 236, Bulletin 279, Item 2.

The crime of maintaining a house of prostitution, per se, involves the element of moral turpitude. Re Instructions and Explanations, Bulletin 2, Item 8.

It is recommended that applicant be declared disqualified from holding a liquor license or being employed by a liquor licensee in this State.

Samuel B. Helfand,
Attorney.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

12. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of a Seizure on)	
July 12, 1939 of a Still in a)	No. 5491
section of woodland in the)	
vicinity of Deans Branch Road, in)	ON HEARING
Dennis Township, County of Cape)	CONCLUSIONS AND ORDER
May, State of New Jersey.)	
-----))	

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

BY THE COMMISSIONER:

On July 12, 1939, Cape May County Detectives Sauder and Keene seized an unregistered still and equipment in woodland about one-half mile south of Deans Branch Road, Dennis Township, Cape May County. Thereafter, the seizure was adopted by this Department and investigators from this Department placed under arrest Lucian Saduk, through whose farm ran the only road to the still.

At a hearing to determine whether the seized articles should be confiscated, no one appeared to contest the forfeiture.

Accordingly, it is determined that the seized property set forth in Schedule "A" annexed hereto constitutes unlawful property and it is ordered that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5 and that it be retained for the use of hospitals and State, county and municipal institutions or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 22, 1939.

SCHEDULE "A"

1 - steam boiler
2 - cast iron preheaters
1 - copper column
1 - copper dephlegmator
4 - iron tanks
2 - copper tri-boxes
1 - Worthington steam pump
1 - Laidlaw-Bunn-Corson Co. steam pump
7 - wooden vats with mash
10 - 50 gallon drums molasses
4 - 5 gallon cans alcohol
125 - empty 5 gallon cans
250 - pounds yeast
200 - pounds lime
1500 - pounds coke
13 - empty drums
Miscellaneous personal property.

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

September 8, 1939

Re: Case No. 290

Applicant admits that in 1915 he was convicted on a charge of larceny and receiving stolen goods and received an indeterminate sentence to a reformatory, where he remained for a period of about one year. This conviction involved moral turpitude. Case No. 17, Bulletin 232, Item 1.

It further appears that in May 1936 he was convicted for violating the Alcoholic Beverage Control Act, at which time he was fined \$250.00 and placed on probation for three years.

At the hearing herein, applicant testified that he was in fact not guilty of the charge of violating the Control Act because he had no knowledge of any unregistered still, in the operation of which he was alleged to have participated. However, in view of the finding of guilt by the Jury, the question of his guilt or innocence cannot be redetermined herein.

It appears that the conviction in 1915 bars him from employment by a liquor licensee and, hence, it is not necessary to determine whether his conviction in 1936 was a conviction for a crime involving moral turpitude.

It is recommended that petitioner be advised that he is ineligible to be employed by a liquor licensee in New Jersey.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

Edward J. Dorton,
Deputy Commissioner and Counsel.

14. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against
 VINCENT CONTE,
 T/a Union Sanitary Market,
 1017-19 Stuyvesant Ave.,
 Union Township, N. J.,
 Holder of Plenary Retail Distribution License D-9, issued by the Township Committee of the Township of Union.
 -----)

CONCLUSIONS AND ORDER

Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.
 Vincent Conte, Pro Se.

The licensee has pleaded guilty to a charge of selling liquor at less than the Fair Trade price at his licensed premises on August 24, 1939, in violation of Rule 6 of State Regulations No. 30. His license will, therefore, be suspended for five days instead of the usual ten.

The usual practice of the Department is to reserve the effective date of such suspension for future determination, pursuant to notice of December 17, 1938, Bulletin 289, Item 1. However, it now appearing that the licensee is desirous of serving said suspension and getting it over with regardless of the ultimate determination of the constitutionality of Chapter 208 of the Laws of 1938 and the Fair Trade regulations adopted pursuant thereto;

It is, therefore, on this 22nd day of September, 1939,

ORDERED, that Plenary Retail Distribution License D-9, heretofore issued to Vincent Conte, t/a Union Sanitary Market, for premises 1017-19 Stuyvesant Avenue, Union Township, New Jersey, by the Township Committee of the Township of Union, be and the same is hereby suspended for a period of five (5) days effective September 25, 1939, at 2:30 A.M.

D. FREDERICK BURNETT,
Commissioner.

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

August 28, 1939

Re: Case No. 286

Applicant requested a determination of whether the crime of desertion, of which he was convicted in the Hudson County Common Pleas Court in 1937, involves moral turpitude, thus disqualifying him from holding a liquor license, or being employed by a liquor licensee, in this State. See R. S. 33:1-25, 26.

At the hearing, he testified that he was married when twenty years of age; that his wife is six years his senior; that from the very beginning of their marriage they constantly quarreled;

that he left his wife and child after three years, during all of which time they had lived with his wife's parents; that because of his failure to find gainful employment, his wife and her parents "didn't want him up there."

On September 27, 1937, he was arrested, and upon his inability to post a bond to secure the order of the court that he contribute \$7.00 weekly to the support of his wife and child, he was sentenced to a year in jail, of which he served ten months. He testified that the Judge was in favor of placing him on probation, but that he was remanded to jail on the insistence of his wife.

He has now been offered employment as a salesman in a package goods store and swears that if permitted to work there he will obey the court order and contribute to the support of his family the sum fixed by the Court.

The crime of desertion may or may not involve moral turpitude, depending upon the circumstances surrounding the commission of the offense. See Re Ulhich, Bulletin 70, Item 2. The case at hand does not present any such aggravating circumstances as to warrant a finding that the element of moral turpitude is here involved.

It is recommended that applicant be declared not disqualified by reason of the aforesaid conviction from being employed by a liquor licensee in this State.

Samuel B. Helfand,
Attorney.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

16. AGE, RESIDENCE OR CITIZENSHIP PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

September 11, 1939

Re: Case No. 291

Applicant seeks permit to be allowed, despite his non-citizenship, to work for a retail liquor licensee in this State. R. S. 33:1-26.

In 1935 applicant, then about 44, was arrested in New Jersey in a raid by Federal agents upon a building where a large illegal still of 1,000 gallons capacity, was found. Applicant, after being released on bail, failed to return for trial because, so he now claims, he was told that it was all right for him to go away. He was found in 1938 and, on pleading guilty, was convicted in Federal Court for operating the illegal still and sentenced to imprisonment for a year and a day and ordered to pay a fine of \$800.00 and a penalty of \$500.00.

Because of the same offense, applicant, on being paroled from prison in February 1939, soon thereafter pleaded guilty in State Court to violation of the Alcoholic Beverage Law and was given a suspended sentence.

Applicant now denies that he was really operating the still. However, he may not, especially after having pleaded guilty, here collaterally attack the merits of his convictions. Re Case No. 236, Bulletin 279, Item 2; Re Case No. 239, Bulletin 305, Item 9; Re Case No. 267, Bulletin 313, Item 1; Re Case No. 280, Bulletin 326, Item 8.

Illegal operation of a large still since Repeal is a crime which involves moral turpitude and stamps the operator as morally unfit for the liquor industry. Re Case No. 262, supra; Re Case No. 280, supra. Applicant's conviction of such a crime mandatorily disqualifies him from holding a liquor license or being employed by a liquor licensee in this State. R. S. 33:1-25, 26.

It is, therefore, recommended that his application for permit be denied.

Nathan Davis,
Attorney-in-Chief.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

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

September 22, 1939

Re: Case No. 287

Applicant requests determination of his eligibility to be employed on licensed premises, notwithstanding his conviction for violation of the National Prohibition Act, and another conviction for violation of the laws of Pennsylvania prohibiting the manufacture of alcoholic beverages.

Testimony establishes that applicant, in the business of making general repairs, was hired to repair vats used in connection with an illicit still in 1931; that upon completing his work the still operators pleaded poverty and gave him, in lieu of his wages, ten five-gallon cans of bootleg liquor, in possession of which he was apprehended. For this he was convicted of manufacturing intoxicating liquor, possessing property designed for the manufacture of intoxicating liquor and maintaining a common nuisance, and sentenced to ten months' imprisonment.

Applicant also admits (although the fingerprint returns are silent on this score) conviction in the Bucks County (Pennsylvania) Court of Quarter Sessions in 1932, at which time he was found not guilty as to manufacture of alcoholic beverages but guilty as to an attempt to manufacture. On this occasion he was sentenced to pay a fine of \$50.00, one-half the costs, and given a suspended sentence of imprisonment for one year. Once again his arrest resulted from his employment by still operators, this time in the construction of vats.

Applicant testified that he has never been arrested or convicted at any other time, and fingerprint records confirm this testimony. No aggravating circumstances appear, and in the absence thereof I believe that the crimes of which applicant was convicted do not involve moral turpitude.

It is recommended that applicant be declared eligible for employment on licensed premises.

APPROVED: All before Repeal
D. FREDERICK BURNETT,
Commissioner.

Emerson A. Tschupp,
Attorney.

18. APPELLATE DECISIONS - FINE vs. ELIZABETH.

EVA FINE,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY
OF ELIZABETH,

Respondent.

ON APPEAL

CONCLUSIONS

.

Milton A. Feller, Esq., Attorney for Appellant, Eva Fine.

John J. Griffin, Esq., and Raymond A. Leahy, Esq., Attorneys for Respondent, Elizabeth Municipal Board of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This is an appeal from the denial of a license to appellant for premises 26 First Street, Elizabeth.

Respondent denied the application because the premises were within 1500 feet of an existing licensed premises in violation of resolution adopted by the City Council on November 6, 1935, reading:

"BE IT RESOLVED, That no licenses whatsoever, excepting renewals, shall be granted for any premises within the area of a circle having a radius of 1500 feet and having as its central point an existing licensed premises. In the event, the holder of a license desires to transfer to another premises, he shall be permitted to do so within 1500 feet of the premises wherein he is located at the time of said transfer but shall comply with the provisions aforementioned when transferring to premises over 1500 feet from his present location."

Appellant owned the premises before this regulation became effective. They have been used as a tavern for approximately sixty years and cannot be converted to any other use except at great expense. Appellant alleges that she will suffer irreparable loss and hardship and will be unable to pay the taxes and other fixed charges upon the premises; that the premises were vacated by a licensee who transferred his license to another place.

Appellant does not contend that the regulation is unreasonable as applied to the municipality as a whole, but urges that in view of the circumstances it is unreasonable as it applies to her.

The regulation above quoted was approved by me ex parte on November 18, 1935, subject, however, to appeal.

Since then, in the light of later experience and because of the difficulty in applying such a rule and attempting to make such measurements, I will no longer approve areas measured by a circle having a certain radius and as its central point an existing licensed premises.

Thus, in Re North Bergen, Bulletin 246, Item 4, where the local prohibited area was indicated by describing a circle having a radius of 750 feet with the existing licensed premises

as the center, I said:

"Does that mean that the center of the circle is to be the center of the licensed premises or the point on the licensed premises nearest to the premises sought to be licensed? Some licensed premises are large and it would make a difference. As it now stands, there is no specific point established from which the measurement is to be taken."

And again in Re Hillside, Bulletin 271, Item 2, where the local ordinance provided that the 1500 feet should be measured in a straight line from the nearest point of the building which is licensed to the nearest point of the building for which the license was sought, I said:

"I think it would be much better to change this so that it provides that the distance shall be measured in the same manner that has been established with respect to churches and schools pursuant to Section 76 of the Act. I offer for your consideration:

'The said 1500 feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of the licensed premises to the nearest entrance of the premises sought to be licensed, in conformity with the procedure established pursuant to R.S. 33:1-76.'

"I make this suggestion because the statute has provided a simple, well-defined method of measurement which over the course of years has been worked out in rulings and interpretations to such an extent that we now have a procedure that will cover any situation that may arise. If you adopt this and make your rule of measurement the same as the State rule, it will have the advantage not only of uniformity, thereby giving you one rule to apply instead of two; but also of providing in every case a rule that any layman can apply by merely measuring along the public highway and without climbing over buildings or trespassing on others' property or going to the expense of having the distance computed by engineers."

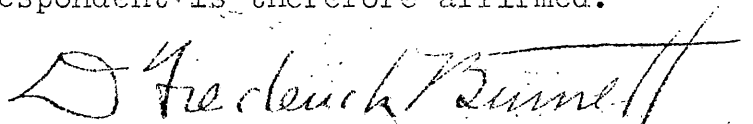
The propriety of the method of measurement need not be further considered, since it clearly appears that there are at least ten licensed premises "well within" the 1500 feet radius, thereby bringing the place for which the license is sought within the prescription of the regulation.

I am sorry that appellant will suffer financial loss because of the lack of a liquor license, but the test is not the deprivation of an individual but rather the welfare of the community at large. Sobocienski vs. Newark, Bulletin 239, Item 8.

The fact that a particular premises has enjoyed long use as a tavern is no reason why it should be excepted from the operation of limiting regulations. One place is not entitled to a license more than another. Re Konesky, Bulletin 217, Item 7.

The action of the Respondent is therefore affirmed.

Dated: September 23, 1939.



Commissioner.