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

BULLETIN 351 OCTOBER 10, 1939.

1. GAMBLING - CARD PLAYING ON LICENSED PREMISES - HEREIN OF THE SUBMARINES WHICH MAKE IT ADVISABLE TO MAINTAIN THE EMBARGO ON CARDS.

Dear Sir:

Now it is coming on the long winter evenings and a fellow cannot go to the movies every night and can't stay in his furnished room every night, so I go to a tavern to meet the fellows.

But here is where this is no good either because I got to keep on buying drinks or get out, where I think it's a nice thing if we could play a couple of games of Pinocle or Rummy, not for gambling sake as there are a lot of Fake Clubs in the city with free membership that I don't want either. When cards are played out in view of everybody it is easy to tell if gambling is going on or not. In fact gamblers like to be where it is nice and quiet and no lookers on around. But I am informed by owners that no card playing is allowed. Is this true and why?

Yours respectfully,

GEO. J. KELLY

October 6, 1939.

Mr. George J. Kelly,
Newark, N. J.

My dear Mr. Kelly:

There is nothing in the law or the State rules which prohibits card playing on licensed premises, whether pinocle, rummy or red dog. What is prohibited is gambling.

So long as no gambling takes place, there is no legal objection to playing cards for fun on licensed premises.

A tavern-keeper, however, is well advised when he refuses to allow it. For, if patrons pretending to play in fun are actually gambling, it is he, not they, who takes the rap! It is his license which is suspended or denied renewal. They go scot-free! Why should he take the chance just because some customers want to shuffle the pasteboards to while the time away? He knows too well it usually isn't done "just for fun." It's a wise boss who knows the score.

So, have a heart for the tavern-keeper or bartender who tells you kindly but firmly that he is sorry but doesn't want and won't allow cards to be played in his place.

Incidentally, for your own sake, don't be too sure in your size-up of professional gamblers. They're looking for lonely fellows like you.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

2. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED - PADLOCK NOT AUTHORIZED IN CASE OF WINE SEIZURES.

In the Matter of the Seizure of approximately 1150 gallons of wine, 3 containers of alcohol and various other articles, on premises occupied by Harry Demaria, on Summer Avenue, Minotola, Township of Buena Vista, County of Atlantic and State of New Jersey.	:	Case #5466 On Hearing CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

On June 27, 1939 Investigators McTighe and Wagner of this Department seized approximately 1150 gallons of wine (in barrels and various containers), three jugs of alcohol, a jug of caramel coloring and miscellaneous empty barrels, bottles and jugs at a farm in Buena Vista Township.

The farm contains thirty-five acres, twelve being devoted to a vineyard. Its owner died on June 11 last, apparently leaving the farm and all his property to his widow.

The Investigators went to the farm in the early afternoon of June 27 on information that Harry Demaria, the widow's son, was engaged in selling bootleg wine stored there. On approaching the Demaria dwelling, they accosted a colored man and woman sitting on the back porch of a small nearby "tenant house." McTighe asked the man about getting wine and was told: "Oh, the wine, that's over in the house. There is the girl, talk to her."

Accordingly, the Investigators went over to the Demaria house and there spoke to a girl on the back porch. When McTighe stated that they wanted to get "some good wine", the girl brought them indoors to Demaria's mother who, acting through the girl as interpreter, sold a gallon of wine to the Investigators for $1. and took twenty-five cents as a deposit for the jug.

The Investigators returned early that evening and, when Harry Demaria arrived, asked him for the purchase of another gallon of wine. They state that Harry, however, recognizing McTighe as a past State trooper, declared that the wine was not really for sale but for personal use. The Investigators identified themselves and, with Demaria's permission, searched the premises and found the wine, the alcohol, the caramel coloring and miscellaneous barrels and jugs in the cellar.

At the hearing Demaria testified that his father made the wine in various years between 1922 and 1932 to salvage a surplus of grapes from the vineyard; that it originally included twenty-six or seven barrels, all for personal use; that, however, only three or four barrels were used in the seven-year interval between 1932 and the seizure in 1939.

He denies the existence of any caramel coloring and states that what the Investigators found was probably only sediment which his father had scooped from the top of the wine. As to the jugs of alcohol, he claims that his father used such to clean out wine barrels. As to the sale to the Investigators, he testified that his mother and the girl told him the Investigators represented themselves to be friends of his; that (in keeping with the Italian custom of hospitality) his mother offered them wine to drink; that she gave them a gallon of wine on their request and, in return, accepted their token of gratitude, viz., $1.00. Demaria produced neither his mother nor the girl.

I see no reason for disbelieving the story of the Investigators. They have no ax to grind in the matter, nor are they given to fairy tales. On the other hand, Demaria's story of keeping as much as twenty-seven barrels of wine on hand for personal consumption though using but little of it, his denial of the coloring matter, his explanation of the alcohol, and the contention that his mother gave the wine to the Investigators and accepted their $1. merely as a gift are more than I can swallow.

In view of the ease with which the colored man and the girl knew what the Investigators were talking about when they said they wanted wine, and the ready manner in which Demaria's mother sold the wine, it is clear that the Demarias, irrespective of the origin of their wine, were possessing it with illegal intent to sell without a license and, in fact, were in the business of so selling it.

Hence, the wine and the other articles seized in the cellar constituted unlawful property. R.S. 33:1-1(i) and (y); 33:1-2; 33:1-66. No reason appears why they should not be forfeited.

However, the premises may not be padlocked since the law authorizes such padlock only if illicit still or still parts are found thereon. See R.S. Title 33, Chapter 2.

Accordingly, it is ORDERED that the property seized in this case (and more specifically detailed in Schedule "A" annexed hereto) be and the same is hereby forfeited in accordance with the provisions of R.S. 33:1-66, 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: October 7, 1939.

SCHEDULE "A".

23 - barrels containing approximately 1100 gallons of wine
18 - other containers with wine
3 - containers alcohol
1 - gallon jug with caramel coloring
Miscellaneous empty barrels and jugs.

3. REFERENDUM - SUBMISSION TO ELECTORATE OF PARTIAL HOURS OF SALE FOR SUNDAYS, WEEKDAYS OR BOTH - EFFECT OF AFFIRMATIVE VOTE IN CONFINING HOURS OF SALE TO THOSE SPECIFICALLY NAMED IN THE REFERENDUM.

October 6, 1939

Reger & Smith,
Somerville, N. J.

Gentlemen:

I have before me yours of September 22nd requesting my views as to whether the questions which are set out in the petition for referendum in Montgomery Township, Somerset County, are proper subjects of a referendum under R. S. 33:1-47.1, and if so, whether the questions are properly framed to go on the ballots.

The petition reads:

"We, the undersigned, qualified electors of Montgomery Township, County of Somerset, and State of New Jersey, request the Governing Body of the Township of Montgomery, Somerset County, New Jersey, for a referendum at the next General Election, pursuant to R. S. 33:1-47, on the question,

"'Shall the sale of alcoholic beverages be permitted in this municipality between the hours of 12 o'clock midnight on Saturdays and 2:00 A.M. on Sundays, and between 12 o'clock noon on Sundays and 12 o'clock midnight on Sundays?'

"'Shall the sale of alcoholic beverages be permitted in this municipality between the hours of 12 o'clock midnight on Sundays and 2:00 A.M. on Mondays?'"

The petition submits two propositions but, ineptly, uses the word "question" in the singular. The intent, however, is clear that two questions are in contemplation. There would be no doubt if the petition were worded "questions." I shall so construe it.

Again, I note that the petition invokes a referendum pursuant to R. S. 33:1-47. That is unfortunate but not fatal. The correct section is R. S. 33:1-47.1. There is nothing in the Act which requires that the legislative authority for the referendum be set forth in the petition. Hence, the incorrect reference to the statute may be treated as surplusage and disregarded. Re Camden, Bulletin 208, Item 3.

The question first stated is properly framed.

So is the question secondly stated, but the interpretation of its effect, if voted in the affirmative, has caused me much thought.

The difficulty arises because this section provides that if a majority shall vote affirmatively, the Municipal Clerk shall forthwith notify the State Commissioner and thereafter "the retail

sale of alcoholic beverages may be made only within the hours fixed by such referendum. Such sale at any other time within such municipality shall be unlawful and constitute a violation of this chapter." (Italics mine).

It might well be contended that the italicized words mean, if the referendum goes through, that sales may be made only in these two early hours on Monday morning, and that sales at any other time on Monday or on Tuesday and the rest of the week become unlawful. If this be the necessary result, then those who vote affirmatively in the belief that they are amplifying the hours of sale will wake up to find that they have seriously shortened them - in fact, knocked out all sales except during the two owlish hours of Monday morning.

I have concluded that this is not the necessary or the right result. The intention of the Legislature was to effectuate, not to thwart, the properly expressed wishes of the local electorate. The quoted statutory words are not aptly chosen to cover all the wide gamut of effects which may arise from the submission of questions based on the broad provisions of the statute. They must, therefore, be given such significance as may be appropriate in any given case but should not be stretched to defeat the common sense implications upon which the average voter would, in good faith, cast his ballot on one side or the other.

The wording of the question is couched in terms of permission. The voter decides whether he is for or against the granting of such permission. Of all the days in the week, his attention is drawn specifically and only to Monday. He is not thinking of Tuesday, or Wednesday, or any other day in the week.

The original Alcoholic Beverage Control Act authorized submission via referendum of the question as to whether sales on Sundays shall be entirely prohibited or allowed. P. L. 1933, c.436, Sec. 44. It did not authorize the fixing of partial hours of sale on Sunday by popular vote. I therefore recommended to the Governor and Legislature:

> "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." Bulletin 62, Sheet 10.

Thereafter, P. L. 1935, c. 254, now R. S. 33:1-47.1 was enacted.

This is the genesis of the statute. Its interpretation should be consonant to its objective.

If the literal words of the statute were applied to the instant case, then an affirmative vote on the second question would, of necessity, nullify an affirmative vote on the first. But this result cannot have been intended for the statute expressly contemplates the submission of "any proposed questions." It does not require them to be voted upon one at a time. The statute says that referendum may be had on hours of sale "on week days, Sundays, either or both." Accordingly, it is clear that an affirmative vote on the

second question will have no effect at all upon Sunday sales. Why then should it have effect on sales upon any other day in the week when the question submitted is expressly confined to Monday sales?

I therefore rule that an affirmative vote on the second question is confined to sales on Mondays.

The remaining question is - just what is the effect?

A similar question was presented in Re Camden, supra. There, the referendum concerned Sunday selling. I pointed out that, if the referendum went through and thereby permitted sales on Sunday between 1:00 and 12:00 P.M., then those hours so fixed by referendum become the only hours "between which" (in the words of the statute) the sale of alcoholic beverages might be made on Sundays and hence sales could no longer be made from midnight Saturday until 2:00 A.M. on Sunday mornings as then allowed by local ordinance. That ruling gave full effect to the operative terms of the statute. The voters knew where they stood for the very question to which their attention was drawn was the hours "between which" alcoholic beverages might be sold on Sundays.

So in the instant case: If the local electorate vote that the two hours named shall be the hours between which sales may be made on Mondays, then they will become the only Monday hours.

If that is not the question that the proponents of the petition wished to have submitted, then they should have worded the question appropriately as they did in the first question which relates to sales on Sundays and in which they prescribed hours both in the early morning and also in the afternoon and evening.

It would be but fair that the voters should have these considerations before them and I therefore request that you advise the Township Committee to give such public notice as they may deem proper.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - FERRI v. FORT LEE.

GLADYS FERRI,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
BOROUGH COUNCIL OF THE)
BOROUGH OF FORT LEE,)
Respondent)
- - - - - - - - - - - - - - - - - -)

Tipping & Schneider, Esqs., by C. Conrad Schneider, Esq., for Appellant Gladys Ferri.
Lawrence A. Cavinato, Esq., for Respondent Borough Council of Fort Lee.
John J. Meehan, Esq., for the Objector Joseph McCurry.

BY THE COMMISSIONER:

This is an appeal from the denial of a seasonal retail consumption license for premises 2153 Hudson Terrace, Fort Lee, New Jersey.

The premises are the same as those involved in O'Rourke v. Fort Lee, Bulletin 189, Item 14, decided June 23, 1937, in which the denial of a plenary retail consumption license was affirmed. In that case it appeared that the vicinity, although zoned for business, was nevertheless residential in character; that a license was outstanding a block away and another four or five blocks away; that there were no business premises within an area of several blocks; that at the hearing below a petition representing all but a few of the residents of the immediate neighborhood was filed in protest of O'Rourke's application; that the license was denied because the vicinity was residential in character and an adequate number of licensed premises were already located in the general area, and on appeal the appellant failed to show that public necessity and convenience required the issuance of the license.

Several neighbors were produced who testified that they favored the granting of the license to Gladys Ferri because the place would be convenient for them. Appellant claims that unless she can sell beer she will have to close her restaurant. Aside from this, I find the situation substantially the same as in the O'Rourke case. The proof falls far short of establishing that social convenience and necessity require the granting of the license. There is a licensed place (McCurry's) nearby, which should be adequate to supply the needs of the sparsely settled neighborhood. The mere fact that appellant conducts a restaurant is not of itself sufficient reason why a license should be issued. Landgraff v. North Plainfield, Bulletin 284, Item 9.

The action of the respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 7, 1939.

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

October 6, 1939

Re: Case No. 294

At a hearing held herein, applicant testified that in 1924 he pleaded guilty to a charge of illegally manufacturing liquor and was fined Three Hundred Dollars ($300.00). He further testified that in 1924 he was operating a farm and that the charge of illegally manufacturing liquor had been preferred against him after a small still was found in his home; that he has never been arrested or convicted at any other time.

Fingerprint returns disclose no record of any conviction against him. The Prosecutor of the Pleas of the County in which the conviction occurred has advised that the applicant herein pleaded guilty to the above charge in September 1924 and was sentenced to pay a fine of Three Hundred and Fifty Dollars ($350.00) and costs.

There appear to be no aggravating circumstances and in the absence thereof the conviction does not involve moral turpitude.

It is recommended that applicant be advised that he is eligible to hold a license or be employed by a liquor licensee.

EDWARD J. DORTON,
Deputy Commissioner and Counsel.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

6. TRANSPORTATION - IMPORTATION OF ALCOHOLIC BEVERAGES OWNED BY OR SOLD TO A MANUFACTURER OR WHOLESALER NEEDS NO LICENSE PROVIDED IT IS EFFECTED BY A LICENSED TRANSPORTER OR ELSE BROUGHT INTO THE STATE IN SUCH LICENSEE'S VEHICLE BEARING PROPER INSIGNIA - HEREIN OF THE NECESSITY OF OBTAINING A LICENSE WHERE A BREWER OUTSIDE THE STATE SOLICITS BUSINESS IN NEW JERSEY.

Dear Sir:

I have recently had an inquiry from a brewer in Massachusetts in regard to the New Jersey laws and regulations covering shipments by a Massachusetts brewer of malt beverages into the state of New Jersey. Such a sale would be on an f.o.b. platform basis without any solicitation of business in the State of New Jersey.

It was his understanding that an outside brewer cannot ship into New Jersey without first acquiring a wholesaler's license costing $750.00. From my understanding of the New Jersey law, this is not necessary.

Am I correct in assuming that a Massachusetts brewer may ship to a licensed New Jersey wholesaler without the payment of any fee for a license or certificate of approval of any sort? I would appreciate a statement on the requirements for such an action, and if possible, an explanation of the rumor that $750.00 fee is required.

Very truly yours,
Philip P. Wadsworth

October 7, 1939

Mr. Philip P. Wadsworth,
c/o Massachusetts Brewers Association,
Boston, Mass.

Dear Mr. Wadsworth:

Rule 1 of State Regulations No. 17 provides:

> "Alcoholic beverages owned by or sold to the holder of a New Jersey Manufacturer's or Wholesaler's license, may be brought into this State by a licensed transporter, or in the licensee's vehicle bearing a proper transportation insignia."

Without obtaining a license in this State, the Massachusetts brewer may sell to a New Jersey wholesaler, f.o.b. brewer's platform and thereafter the beer can be brought into this State in accordance with above.

This ruling presupposes that the sale was not solicited in New Jersey. If the brewer desires to solicit business or have missionary men here, he must obtain a limited wholesale license, the annual fee for which is $750.00, and each of his salesmen or missionary men must obtain a solicitor's permit. A limited wholesale license would also permit him to sell to licensed New Jersey retailers.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. CORDIALS AND LIQUEURS - DEFINED - APPLE BRANDY NOT A CORDIAL.

STANDARDS OF FILL - CORDIALS AND LIQUEURS - MINIMUM IS ONE-HALF PINT - HEREIN OF THE MINIMUM FOR APPLE BRANDY.

Dear Commissioner:

It has come to my attention that half pints may be sold in the State of New Jersey in cordials carrying the name of liqueurs or fruit flavored brandies, providing they have a high sugar content, and regardless of the proof.

We would greatly appreciate it if you would give me a definite ruling on this subject, and whether or not it might include Apple Brandy.

Very truly yours,
B. L. Barling,
Sales Manager, Laird & Company.

October 7, 1939

Laird & Company,
Scobeyville, N. J.

Att: B. L. Barling, Sales Manager.

Gentlemen:

State Regulations No. 23 provide that the minimum standard of fill for cordials and liqueurs shall be one-half pint of eight fluid ounces.

Cordials and liqueurs are products obtained by mixing or redistilling neutral spirits, brandy, gin or other distilled spirits with or over fruits, flowers, plants, or pure juices therefrom, or other natural flavoring materials, or with extracts derived from infusions, percolations, or maceration of such materials, and to which sugar or dextrose or both have been added in an amount not less than 2½% by weight of the finished product.

Apple brandy would not be classified as a cordial or liqueur within the above definition.

State Regulations No. 23 provide that the minimum standard of fill for brandy shall be three-fourths pint.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED - PADLOCK DENIED.

In the Matter of the Seizure of a number of still parts and a quantity of alcoholic beverages on a farm occupied by Lester Adsit, on Washington Avenue North, in the Borough of Old Tappan, County of Bergen and State of New Jersey.	Case #4999 ON HEARING CONCLUSIONS AND ORDER

Frank Pascarella, Esq., Attorney for Lester Adsit.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On September 7, 1938, investigators of this Department seized unregistered still parts, some thirty gallons of applejack, two hundred gallons of berry wine, two hundred gallons of hard cider, and the other items set forth in Schedule "A", annexed hereto, at Lester Adsit's farm on Washington Avenue North, in the Borough of Old Tappan. The still parts were found in two open sheds, and the alcoholic beverages at the farm house.

At the hearing in the case, Adsit contested only forfeiture of the applejack, and padlocking of the premises. He testified that he made the berry wine and the cider at the farm during Prohibition; that the still parts do not belong to him, but were brought to the farm in 1926 or 1927 by persons who bought his cider, which they distilled into applejack on the premises; that they left the still parts and a small quantity of applejack; that he was unaware that it was illegal for him to possess the alcoholic beverages or the still parts, and had merely neglected to destroy or dispose of them.

No cause appears why the berry wine, cider and applejack should not be forfeited. Even if Adsit's story be true, nevertheless it shows that they were bootleg in origin, since made during Prohibition. A still or still parts, no matter when acquired, must, since Repeal, be registered with this Department. Since the still parts were not registered, said still parts and any personal property found on the same premises are subject to forfeiture.

As to padlocking: Adsit testified that he has occupied and cultivated the farm for the past fourteen years; that in recent years he has occupied the farm only occasionally because he supervises another farm in South Jersey, and travels extensively in his business of marketing produce; that he has never sold alcoholic beverages, and has never been convicted of any crime.

There is no evidence that the still parts, which were found openly exposed to view, have been used since Repeal. Under the circumstances, padlocking, which will result in Adsit's eviction from the farm, merely because he did not dispose of what were apparently relics of the Prohibition era, would seemingly inflict too harsh a penalty. The premises will therefore not be padlocked.

Accordingly, it is determined that the seized property 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: October 7, 1939.

SCHEDULE "A"

1 - 150 gallon copper cooker
1 - 3 section mushroom type copper still
1 - 10 gallon pressure tank
1 - gasoline burner
1 - 75 gallon galvanized cooler and copper coil
1 - mushroom type still
5 - 5 gallon glass jugs alcoholic beverages
8 - 1 gallon glass jugs alcoholic beverages
6 - 50 gallon barrels alcoholic beverages
1 - 35 gallon barrel alcoholic beverages
3 - 25 gallon barrels alcoholic beverages
27 - empty barrels
1 - 1 quart bottle alcoholic beverages

9. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAYS IN VIOLATION OF REFERENDUM.

October 7, 1939

Mrs. Della I. Nash,
Clerk, Lawrence Township (Mercer County),
Trenton, R. D. 3, N. J.

My dear Mrs. Nash:

I have before me copies of notices of suspension and resolutions and orders adopted by the Township Committee in disciplinary proceedings conducted on municipal initiative against:

1. Stephen James Andrews
T/a Fireside Inn,
Cor. Brunswick Pike & Baker's Basin Rd.
License C-2
Mun. Rev. 137

2. Paul Altman
T/a Geneva Inn,
Brunswick Pike
License C-3
Mun. Rev. 138

3. Anthony Colavito
55 Rolfe Avenue
License C-6
Mun. Rev. 139

4. Gus Randhahn & Curt Hempel
T/a Marroe Inn
Brunswick Pike
License C-9
Mun. Rev. 140

I note that Andrews, Altman and Randhahn & Hempel, charged with sale of alcoholic beverages on Sunday in violation of local ordinance and referendum, had their licenses suspended for five days, and that Colavito, charged with failure to afford proper view of the interior of the licensed premises in violation of local regulation, had his license suspended for ten days.

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings and the penalties imposed.

It is indeed gratifying to see that the Committee is policing its own licensees and punishing violations discovered.

In future cases involving sale of alcoholic beverages on Sunday in violation of the referendum, you might consider imposition of a minimum suspension of ten days. It is bad enough for licensees to disregard the regulations concerning hours of sale when they have been adopted by the governing body, but to flaunt the solemnly declared will of the electorate is worse.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

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

October 6, 1939

Re: Case No. 295

Applicant admits that in 1934 he was convicted on an indictment for conspiracy.

At the hearing applicant testified that in 1934 he was employed as bookkeeper at a weekly salary of Thirty-Five Dollars ($35.00) by a firm conducting a number lottery; that during the course of a clean-up on the number racket, he and twenty-four others connected with the business were indicted on a charge of conspiracy; that he pleaded non vult to said charge, was fined One Thousand Dollars ($1,000.00), and sentenced to six months in jail, of which he actually served four and one-half months.

A letter received from the Prosecutor of the county in which the conviction occurred substantially corroborates the testimony given at the hearing, except that he describes the applicant as a "collector-employe" and says "his duties were to collect incoming monies from the smaller places, deliver it to the main headquarters and later in the day, distribute the prize money at these various small places of distribution."

A conviction for conspiracy involving commercialized gambling may or may not involve moral turpitude, depending upon the facts. In Re Case No. 239, Bulletin 305, Item 9, it was decided that a conviction on said charge of the head man of a ring conducting gambling establishments where the activities of the ring were attended by methods of violence involved moral turpitude. In Re Case No. 283, Bulletin 337, Item 14, it was determined that a person who had been convicted in Connecticut for "setting up a lottery" was ineligible to be employed by a liquor licensee in this State where it appeared that he was one of the "lieutenants" engaged in the operation of the lottery. In the present case, however, it appears that the extent to which the applicant was involved

in the conspiracy was merely that of a minor employee at a small weekly salary. He was not one of the master minds or one of the lieutenants who put into operation the unlawful activities.

Applicant's record is otherwise clear and he appears to be a man of good character, with no criminal tendencies. It is recommended that, under the circumstances, it should be held that the crime of which he was convicted did not involve moral turpitude and, therefore, that applicant be advised that he is eligible for employment by a liquor licensee.

Edward J. Dorton,
Deputy Commissioner and Counsel.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FAIR TRADE AND SALES OUT OF HOURS - 10 DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

LOUIS SILVERSTEIN,
807 F Street,
Belmar, New Jersey,

Holder of Plenary Retail Consumption License C-6 issued by the Board of Commissioners of the Borough of Belmar.

CONCLUSIONS AND ORDER

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Ellamarye H. Failor, Attorney for the Department of Alcoholic Beverage Control.

Louis Silverstein, Pro Se.

BY THE COMMISSIONER:

The licensee has pleaded guilty to three charges preferred against him by the Department of Alcoholic Beverage Control.

The first charge to which the licensee pleaded guilty was that of selling liquor at less than the Fair Trade price at his licensed premises, on July 23, 1939, in violation of Rule 6 of State Regulations No. 30.

The usual practice of the Department is to reserve the effective date of suspension for violation of Rule 6 of State Regulations No. 30 for future determination, pursuant to notice of December 17, 1938, Bulletin 289, Item 1. However, the licensee is desirous of serving his 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.

The second and third charges to which the licensee has pleaded guilty are, respectively, selling and serving alcoholic beverages at his licensed premises, and having his licensed premises open at or about 9:45 A.M. Daylight Saving Time on Sunday, July 23,

1939, both in violation of Section 9 of Ordinance 298 adopted by the Board of Commissioners of the Borough of Belmar on December 18, 1934.

The usual penalty for a violation of each of the second and third charges is five days or a total of ten days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for five days instead of ten days on the first charge and for five days instead of ten on the second and third charges, making a total suspension of ten days.

Accordingly, it is, on this 7th day of October, 1939,

ORDERED, that Plenary Retail Consumption License C-6, heretofore issued to Louis Silverstein for premises 807 F Street, Belmar, New Jersey, by the Board of Commissioners of the Borough of Belmar, be and the same is hereby suspended for a period of ten (10) days effective October 12, 1939, at midnight.

D. FREDERICK BURNETT,
Commissioner.

12. AGE, RESIDENCE OR CITIZENSHIP PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 4, 1939

Re: Case No. 293

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

In 1934 a five-story building in New York City, with an "equity" of nine or ten thousand dollars, was deeded without consideration to applicant by his brother and his brother's wife. At the time a fourteen or fifteen thousand dollar judgment was about to be rendered against the transferors. Shortly after the transfer, the transferors were thrown into bankruptcy.

As a result of the transfer, applicant in June 1935 was, after trial, convicted in New York criminal court of receiving the property in a scheme to defraud the creditors of the transferors, in violation of Section 1172 of the New York Penal Law. He was sentenced to six months in the Workhouse and, after an unsuccessful appeal, served out his term, being released in May or June 1936.

As a result of the same transaction applicant, in December 1936, was, on pleading guilty, convicted in Federal Court of concealing and conspiring to conceal the property from the trustee in bankruptcy of the transferors, in violation of U. S. C. Title 11, Sec. 52(b) and Title 18, Sec. 88. He was sentenced to imprisonment for eighteen months but execution of sentence was suspended and he was placed on probation for that period of time.

Applicant asserts that the transfer was bona fide and without intent to defraud or conceal; that he had always had a half interest in the building; and that the property was deeded over to him on advice of counsel to safeguard his interest therein.

Even under this version, it appears that applicant accepted a fraudulent transfer of at least the half interest in the property which did not belong to him. In any event, he may not here collaterally attack the merit of his convictions. Re Rehabilitation Case No. 67, Bulletin 345, Item 7; Re Case No. 291, Bulletin 346, Item 16.

Crimes involving perpetration of fraud ordinarily involve moral turpitude. See Re Application for Solicitor's Permit, Bulletin 209, Item 12. Nothing appears in the present case to cleanse applicant's crime of that element. His convictions thereof mandatorily disqualify 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.

13. SEIZURES - CONFISCATION PROCEEDINGS - SEIZURE OF THE "BABY FLASH" DISMISSED UPON CONDITION OF TAKING OUT RETROACTIVE LICENSES COVERING A PERIOD OF TWO YEARS.

In the Matter of the Seizure of two motor boats and a quantity of alcoholic beverages from Roxy Fiola, of the Borough of Highlands, County of Monmouth and State of New Jersey.	#4993 CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

On August 30, 1938, investigators of this Department in a chartered motor boat approximately 1000 feet from the shore of Sandy Hook, observed the operator of the motor boat "Baby Flash" obtain bottles of beer from a larger motor boat, the "Flash", and then deliver the beer to fishermen in anchored row boats. The investigators hailed the "Baby Flash", and told the operator they wanted some beer, which he obtained from the "Flash" and sold to the investigators. The investigators then ascertained that the "Flash" had no liquor license, whereupon they seized the two boats and their equipment, together with twenty bottles of beer. Malcolm Miller and Ward Parker, captain and mate of the "Flash", Stephen E. Berosky, operator of the "Baby Flash", and Roxy Fiola, the owner of both boats, were arrested.

Following the seizure, Roxy Fiola applied for a plenary retail transit license for each boat for the fiscal year 1938-39, and deposited license fees totaling $160.00. He also deposited $250.00 under an agreement that such sum was to insure his compliance with the terms of any order thereafter entered by the Commissioner involving the payment of the costs of seizure or the payment of any further license fee. The boats were then returned to Fiola. The beer was retained by this Department and will be disposed of after collective seizure hearing to be held in future.

By written stipulation, Fiola waived hearing and requested that the matter be determined upon the basis of the facts set forth in a verified petition and the records of this Department. The petition sets forth that shortly after Repeal, Fiola obtained a retail transit license for one of his boats, but discontinued sale of alcoholic beverages when he discovered that it was impractical. The

records of this Department disclose that a retail transit license was issued to him on July 18, 1934, which he surrendered on October 8, 1934. The petition further sets forth that in May 1938, when Fiola appointed Miller captain of the "Flash", Miller suggested the sale of beer as a cooperative venture with Fiola, who acceded because he thought that since the "Flash" was used for deep sea fishing, at some distance from the shore, the sale of beer without a license from this Department was lawful. Thereafter, Fiola's employees would hail Miller when he was in their vicinity, obtain beer from him, and deliver it to fishermen.

Fiola swears that his total sales from May, 1938 until August 30, 1938, the date of the seizure, did not exceed twenty-five cases. He further swears that he has never previously been arrested for violation of any liquor laws; that he has been in business in Highlands for over nine years and has an investment of $50,000.00 in his business; and that he has acted in good faith and made a full and frank disclosure of his business practices relating to the sale of alcoholic beverages.

Alcoholic beverages may be sold on boats in waters subject to the jurisdiction of this State only pursuant to license or permit. Re Poth Brewing Company, Bulletin 341, Item 4. Ignorance and good faith do not excuse violation of the law, but may be considered in fixing the penalty to be imposed. Since the violation was discovered, Fiola has applied, as above mentioned, for the licenses for both his boats. Under the circumstances, and in view of the licensing requirements to be imposed, the boats will not be forfeited.

Where a license is not applied for until after the applicant has been caught violating the law, the applicant is required to pay the full annual license fee without proration. In the instant case Fiola admits unlicensed sales of beer in the fiscal years 1937-38 and 1938-39. Licenses must therefore be obtained for the two boats for the fiscal years 1937-38 and 1938-39, which, together with payment of the costs involved in the seizure, will serve as a sufficient penalty.

Accordingly, it is ORDERED that there shall be retained the sum of $160.00 deposited as license fees for the year 1938-39, and that there shall be deducted from the $250.00 paid by Roxy Fiola, the sum of $160.00 as and for license fees for the year 1937-38, together with the costs due, paid or incurred in connection with the seizure, the balance to be returned to Roxy Fiola.

Frederick Burne

Commissioner.

Dated: October 9, 1939.