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

BULLETIN 466 JUNE 24, 1941.

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ITEM

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

BULLETIN 466 JUNE 24, 1941.

1. SEIZURES - CONFISCATION PROCEEDINGS - WHERE ALCOHOLIC BEVERAGES ARE SOLD WITHOUT A LICENSE, THE UNOPENED AS WELL AS THE OPENED BOTTLES ARE ILLICIT - ALCOHOLIC BEVERAGES FORFEITED.

In the Matter of the Seizure on February 21, 1941 of seven quart bottles of whiskey and thirteen bottles of beer from Polly Davis, at 243 Bloomfield Avenue, in the City of Montclair, County of Essex and State of New Jersey.	Case No. 5971 ON HEARING CONCLUSIONS AND ORDER

Samuel Rosenblatt, Esq., Attorney for Polly Davis.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

On the afternoon of February 19, 1941, Investigator Webster of this Department, together with a companion, entered the second floor apartment of Polly Davis at 243 Bloomfield Avenue, Montclair, which premises is unlicensed for the sale of alcoholic beverages, and purchased from her two glasses of whiskey. Later in the evening of the same day the investigator and his companion returned to the premises and again purchased drinks of whiskey, this time from an unidentified woman. Thereafter, on February 21, 1941, our investigators, armed with a search warrant, searched the apartment and found two partly-full quart bottles of whiskey in a closet in the dining room, five full quart bottles of whiskey in a bedroom closet and thirteen bottles of beer in a refrigerator in the dining room, all of which beverages were tax paid. The beverages were seized and Polly Davis was arrested.

At the hearing Polly Davis appeared to contest forfeiture of the seized items. However, she did not testify or offer any testimony on her behalf but at the conclusion of the Department's case, which revealed the facts above set forth, her counsel moved for a "dismissal" of the proceedings as against the unopened bottles of whiskey and beer, on the theory that since they were tax paid and were found in a private home the presumption is that they were intended for legal and legitimate purposes. This motion was denied by the Hearer, whereupon an exception was taken and the claimant rested.

Granting that claimant's attorney is correct in stating the presumption to be that tax paid liquor found in a private dwelling is intended for legitimate use, such as for personal consumption, this presumption is by no means conclusive and may be rebutted by competent evidence showing its design for illegal use. The unlicensed sales of the whiskey to Webster on two separate occasions justifies an inference that the seized beverages were also intended for sale. In this posture of the proofs it became incumbent upon the claimant to show otherwise; this her counsel did not choose to do, and hence it is determined that the seized property is illicit because possessed with intent to sell, in violation of the Alcoholic Beverage Law. R. S. 33:1-1(i); R. S. 33:1-2; R. S. 33:1-50.

Another factor to be considered is that counsel for claimant did not seek the return of the opened bottles which were seized, but, to the contrary, has virtually conceded that as to them the evidence is sufficient to warrant their detention. Assuming for purposes of argument that only the opened bottles were intended for sale, the remaining beverages would, nevertheless, be illicit under R.S.33:1-66(b), which provides, inter alia, that all alcoholic beverages located in or upon any premises in which an illicit beverage is found are declared to be unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property. Hence I find that all the seized beverages are unlawful property.

Accordingly, it is ORDERED that the seized property, more fully described 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.

E. W. GARRETT,
Acting Commissioner.

Dated: June 12, 1941.

SCHEDULE "A"

13 - 12 oz. bottles of beer
1 - 1 quart bottle 7/8 full of whiskey
1 - 1 quart bottle 1/8 full of whiskey
5 - 1 quart bottles of whiskey

2. APPELLATE DECISIONS - PAPPALARDO v. NEWARK.

A TRANSFER FROM PERSON TO PERSON MAY NOT BE DENIED SOLELY TO REDUCE THE NUMBER OF TAVERNS IN A PARTICULAR VICINITY, OR BECAUSE THE PLACE HAS BEEN A FINANCIAL FAILURE UNDER PREVIOUS OWNERS, OR BECAUSE IT MAY FAIL AGAIN, OR BECAUSE THERE HAVE BEEN PREVIOUS TRANSFERS, OR BECAUSE OF REMOTE AND PERHAPS UNJUSTIFIED FEARS OF FUTURE DISTURBANCES - DENIAL REVERSED.

SALVATORE PAPPALARDO, T/a DODGER BAR & GRILL,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Maurice H. Pressler, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent.
Charles Salzman, Objecting on behalf of Peerless Beverage Company.

This appeal is from respondent's refusal to grant to appellant a person to person transfer of Luther Wanzer's plenary retail consumption license for tavern at 8 Bedford Street, Newark.

According to the records of this Department, this tavern has been in existence since at least the summer of 1935. There are on the same block where it is located a total of three taverns, with another

a block away. The general vicinity is a fairly thickly settled and poor section which is mixed business and residential in character and where there is both a colored and white population.

From the testimony it appears that, basically, respondent denied the person to person transfer in question because of its wholesome feeling that this neighborhood should have fewer taverns, although there is no claim or showing that any particular problem has thus far arisen.

Now, since it was the respondent Board itself which in the first instance permitted these taverns to be located here, the question immediately raised is whether that Board, on now believing the number should be reduced, may deny otherwise unobjectionable person to person transfers of existing licenses in this neighborhood merely to effect that end.

A precisely similar question was raised and fully considered in the leading case of Kirschoff v. Millville, Bulletin 254, Item 8. It was there expressly ruled that a local issuing authority may not deny a person to person transfer as a means of effecting a general policy or desire to reduce the total number of licenses in the entire municipality. The late Commissioner, on sound considerations of fairness, pointedly stated:

> "Indubitably, reduction of the number of licenses in a municipality, when too many are deemed to be outstanding therein, is a praiseworthy end. But this objective may not be achieved in complete disregard of individual interests.... Licensees invest time, effort and money in their licensed businesses. The statute provides for a method whereby, through transfer of license within the sound discretion of the issuing authority, they may sell their businesses and may remove them to new sites. In fairness, they should not be denied this privilege and be forced to the alternative of remaining in their liquor business willy-nilly and at the same location or else surrendering their investment, merely because the municipal authorities erred in previously granting too many licenses and now wish to correct that mistake by destroying transferability....
>
> "Respondent Board asks the question: 'If existing licenses may be freely sold and transferred, how will the number ever be reduced?'
>
> "Here is one answer which I have repeatedly urged upon municipalities, viz.: Reduction of outstanding licenses may be effected with fairness by eliminating, through revocation or through refusal to renew, those whose owners have misconducted themselves....
>
> "Or, if public interest demands such drastic and difficult action, municipalities may adopt a numerical quota which will require, at renewal time, the selection of only the most desirable of renewal applicants....
>
> "These suggested methods reduce the quantity of licenses on a basis of quality. Reasonable and fair discrimination is substituted for the arbitrary and unfair method of denying all licensees, whether their conduct has been good or bad, the privilege to transfer their licenses and thus ultimately starve, exhaust or otherwise compel some of them to surrender or be unable to renew their licenses....

"The Board argues that the authority to grant a person-to-person transfer of an outstanding municipal license is a matter confided to the discretion of the issuing authority. It is. R. S. 33:1-26 (Control Act, Sec. 23). But it is also true that this discretion may not be exercised arbitrarily. A transfer, whether from person to person or from place to place, may be denied if there are valid and reasonable grounds to justify such refusal....No such ground here appears."

For similar decision, see DiMattia v. Bellmawr, Bulletin 294, Item 4. Also cf. Re Morten, Bulletin 126, Item 14.

By the same token, it is unreasonable for a local issuing authority to deny a person to person transfer, as here, merely as a means of effecting its general desire to reduce the number of taverns which it has permitted in a particular neighborhood.

This principle must be clearly distinguished from those cases where a local issuing authority may deny a person to person transfer for good independent cause - for example, that the proposed transfer will aggravate the situation as to the number of liquor places in the vicinity (cf. Craig v. Orange, Bulletin 251, Item 4); or that the proposed transferee is personally unfit (Chmielinski v. Clifton, Bulletin 240, Item 5); or that the licensee misconducted the tavern (Novitt v. Spotswood, Bulletin 188, Item 7). Also cf. Lingelbach v. North Caldwell, Bulletin 180, Item 8.

As to whether such good independent cause exists in the instant case, it is pointed out, on respondent's behalf, that the tavern in question has passed through the hands of several successive licensees and also that the present licensee has failed in his venture at such tavern, having in fact to close its doors several weeks before the pending application was filed.

The fact of the several prior changes in proprietorship in no way alters the merits of the case or affords any sound basis for denying the present transfer. The very purpose of the Alcoholic Beverage Law, in providing for person to person transfer, is to invest liquor businesses with valid salability. Hence, so long as a proposed transfer from person to person is actually bona fide, it is immaterial how many prior such transfers have occurred. Cf. Jacek v. Newark, Bulletin 410, Item 5. The only plausible argument to the contrary is that, by repeated transfers, the municipality is being continuously put to trouble and expense by having to pass upon such transfers. However, this argument wholly vanishes before the fact that the Alcoholic Beverage Law, visualizing this problem, expressly provides that the municipality, by way of compensation, is entitled on every application for person to person transfer to a fee of ten per cent of the full annual license fee. R. S. 33:1-26.

Nor is there any substantial merit to the fact that the present licensee apparently failed in his venture and had to close the tavern's doors. His license, despite those facts, remains in full and valid existence under the Alcoholic Beverage Law. Re Stephans, Bulletin 319, Item 11; Re Galloway, Bulletin 352, Item 8. Moreover, the licensee, as clearly appears from the evidence, never intended to abandon the tavern, but, to the contrary, promptly obtained the present purchaser whose application is now on file.

In such a case, the licensee is not to be denied the privilege of selling and transferring his license (and the tavern thereunder) merely because he failed in his enterprise. Indeed, transferability should be the reasonable privilege alike of the fortuitous failure as well as the successful licensee.

In this connection, it is well here to consider the protest of the objector (apparently a creditor of the present licensee) who appeared at the hearing on appeal. He asserts that, if the tavern be continued and again prove a financial failure, creditors will once more "take it on the chin." Such protest is clearly without merit since the question whether any person wishes to extend credit to this or any tavern is a wholly voluntary and private risk with such creditor.

It appears that an additional thought may have motivated respondent's denial of the instant transfer - viz., the fact that the present licensee for the tavern in question is colored whereas the proposed transferee is white; that such fact may mean that, since this tavern has been catering to a colored trade heretofore, a mixed trade may now develop at the tavern and possibly lead to disturbances.

Since this is a mixed colored and white neighborhood to begin with, and since there is no sign of any problem resulting therefrom either in the neighborhood itself or at the various taverns there, I believe the fear that a mixed patronage at this tavern may perhaps lead to disturbances is too remote to justify the present denial. Should any such disturbances actually occur, respondent may refuse to renew the license or, if the facts so warrant, disciplinary proceedings may be brought to suspend or revoke the license.

In net, I conclude, from all the foregoing, that respondent's grounds for denying the transfer in question are not well taken. Since no other reasons appear why the transfer should not be granted, respondent's action in refusing such transfer must be reversed.

Although apparently new members have been or are about to be inducted in respondent Board, such fact in nowise changes the present decision.

Accordingly, it is, on this 13th day of June, 1941,

ORDERED, that the action of the Municipal Board of Alcoholic Beverage Control of the City of Newark, in denying the transfer in question, be and hereby is reversed; and that the said Board shall transfer Luther Wanzer's current plenary retail consumption license for 8 Bedford Street, Newark, to Salvatore Pappalardo, T/a Dodger Bar & Grill, forthwith as applied for.

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES TO A MINOR - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

PAUL HAARLANDER and HARRY LOMBARDI, 936 South Orange Ave., Newark, N. J.,

Holder of Plenary Retail Consumption License C-823, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Paul Haarlander and Harry Lombardi, Pro Se.
Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

The defendant-licensees have pleaded guilty to charges of having sold alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The Department file on this matter discloses that on March 29, 1941 a seventeen year old girl, who was accompanied by adult friends, ordered, from Paul Haarlander, one of the defendant-licensees, a rye highball; that the defendant-licensee, after having made inquiry as to her age and after having been assured by the minor and by one of her companions that she was "twenty-one going on twenty-two", served the drink to her; that on the following evening, without further inquiry as to her age being made, the same seventeen year old girl was served several Tom Collins by the same defendant-licensee. In a statement given to the Newark police, the defendant-licensee who made the sales and served the liquor stated that the girl "looked and appeared to be of age as she was very tall and matured looking," and that the only reason he made any inquiry concerning her age at all was because "she first drank Coca Cola."

Even if the minor appeared to be over twenty-one, which may be doubted since she was only seventeen, it does not appear that the licensee relied upon any written representation made by the minor and hence her appearance alone does not excuse the violation. R. S. 33:1-77.

The usual penalty for sale of alcoholic beverages to minors, in the absence of aggravating circumstances, is ten days. Re Commercio and Santimone, Bulletin 453, Item 9; Re Kunze, Bulletin 453, Item 4. Since there is no evidence that the circumstances surrounding the instant sales were aggravated and since this is the defendant-licensee's first violation of record, the minimum penalty will be imposed. In view of the guilty plea, five days of the said penalty will be remitted - leaving a net penalty of five days.

Accordingly, it is, on this 13th day of June, 1941,

ORDERED, that Plenary Retail Consumption License C-823, heretofore issued to Paul Haarlander and Harry Lombardi by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five (5) days, effective June 16, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

4. MORAL TURPITUDE - MAINTAINING A HOUSE OF PROSTITUTION INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION - 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. 148.

CONCLUSIONS AND ORDER

Petitioner, in 1920, pleaded non vult to a charge of operating a house of prostitution, and, after serving some thirty days of a six months' sentence, was released and placed on probation. Maintaining a house of prostitution is a crime which, per se, involves moral turpitude. Re Case No. 305, Bulletin 365, Item 11; Re Case No. 289, Bulletin 346, Item 11.

Petitioner now seeks, in this proceeding and pursuant to R. S. 33:1-31.2, removal of the statutory disqualification resulting from this conviction.

As evidence that he has conducted himself in a law-abiding manner during the last past five years, petitioner produced three character witnesses - a clergyman, a businessman and a government employee, who have known him for the past eight, fifteen and ten years, respectively. All three testified that petitioner's reputation is good and that he has led an honest and law-abiding life during the time that they have known him.

The Chief of Police of the municipality wherein petitioner has resided for many years has certified that there are no warrants, complaints, reports or investigations presently pending against him. Other than an arrest in 1920 as a material witness and an arrest in 1926 on a charge (which was later dismissed) of having violated the Hobart Act, his record, since his conviction in 1920, has been clear

Petitioner has, however, despite his ineligibility because of the aforesaid conviction, been employed, since 1933, on tavern premises. He swore, at the hearing, that he was unaware of the fact that his conviction in 1920 disqualified him from working on license premises and that when he first learned of it, from the local police he immediately filed the instant petition for lifting of the disqualification. I find no manifestation of bad faith on the part of petitioner. Under the circumstances, particularly the lapse of thirteen years between conviction and start of employment, I shall give him the benefit of the doubt and accept as true his testimony that he was unaware, until apprised by the police, of his disqualification under the terms of the statute.

From all the evidence I conclude that petitioner has led an honest and law-abiding life for more than five years last past and that his continued association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 13th day of June, 1941,

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

E. W. GARRETT,
Acting Commissioner.

5. SEIZURES - CONFISCATION PROCEEDINGS - ILLICIT STILL AND TWO MOTOR VEHICLES - STILL PARAPHERNALIA AND ONE VEHICLE FORFEITED - ONE VEHICLE RETURNED TO INNOCENT PARTY IN INTEREST UPON PAYMENT OF COSTS.

In the Matter of the Seizure on April 29, 1941 of a still, a Ford sedan and a Pontiac sedan, on a farm occupied by Julian Calleis, located in the vicinity of Dutch Lane Road, in the Township of Marlboro, County of Monmouth and State of New Jersey.	Case No. 6014 ON HEARING CONCLUSIONS AND ORDER

Edward Soden, for Ernest Matthews.
Michael D. Sherman, President of Sherman Pontiac Co., Inc., for Sherman Pontiac Co., Inc.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

On April 29, 1941 investigators of this Department entered the farm tenanted by Julian Calleis, located in the vicinity of Dutch Lane Road, Marlboro Township, and halted John Medlock and Mary Simpkins as they were about to leave in a Ford sedan driven and owned by Medlock. A search of the vehicle disclosed nothing of an illicit nature but a search of the dwelling disclosed an unregistered still in operation and also a quantity of appurtenant paraphernalia, mash and alcohol, which articles, together with the Ford sedan, were seized by the investigators. Upon questioning, Medlock admitted that he had been operating the still and implicated three other persons as having participated in its operation, among whom was one John Jones. Some time thereafter, while the seizure was still in progress, a Pontiac sedan was driven upon the premises and stopped at the house. A man, later identified as John Jones, got out of the car and entered the house where he was apprehended by the investigators. John Johnson, the driver and owner of the Pontiac, was also apprehended and the vehicle was seized.

At the hearing the owners of the motor vehicles did not appear to contest forfeiture thereof but representatives of Ernest Matthews and Sherman Pontiac Co., Inc. appeared for the purpose of having their respective lien claims allowed.

It is determined that all of the seized property constitutes unlawful property. R. S. 33:2-2.

As to the Ford: Inquiry of Matthews' representative disclosed that he had no knowledge of any of the pertinent facts surrounding the placement of the lien on this car, and accordingly, at his request, hearing on Matthews' claim was adjourned for one week, at which time no one appeared. Hence the Ford sedan will be forfeited.

As to the Pontiac: Michael D. Sherman, President of Sherman Pontiac Co., Inc., testified that the car had been sold to Johnson, an employee of the company, for the purpose of enabling him to have a ready means of transportation from his home to his place of employment; that the company had no reason to suspect Johnson's participation in illicit activities, but to the contrary, he (Sherman) had personally investigated Johnson before hiring him, including a visit to Johnson's former employer, and had been assured of Johnson's honesty and reliability. He further testified that a balance of $34.00 remained due on the Pontiac by virtue of an oral arrangement

whereby Johnson paid $10.00 at the time of its purchase and agreed to pay $5.00 per week until the car was paid for. Although the parties did not execute a written conditional sales contract to secure the unpaid balance, notice of the oral arrangement was given to the Motor Vehicle Department by placing in the bill of sale filed with that department a notation that the sale of the vehicle was subject to a contract between the parties. This bill of sale further recited that title to the motor vehicle was not to vest in the purchaser until the purchase price was paid in full.

I am satisfied that Sherman Pontiac Co., Inc. acted in good faith, and, although the motor vehicle document may, perhaps, be insufficient to establish a valid lien as against third parties, it is indicative of the intention of the parties, as between themselves, to have the motor company retain title to the car until paid for. Hence it appears that the company has a sufficient interest in the car to justify me in considering its claim thereto, and, since the Commissioner of Finance of the State of New Jersey has notified me that the State cannot use this vehicle in the event that the lien claim is allowed, I shall return the Pontiac sedan to Sherman Pontiac Co., Inc. upon payment by it of the costs of seizure and storage of the vehicle.

As to padlocking: Affidavits submitted by Joseph Halpern, Esq., a Counselor at Law of New Jersey, disclose that he is the Administrator C.T.A. of the Estate of Thomas Wilkinson, deceased, and as such administrator he is in charge of the farm whereon the illicit activities took place; that in December 1936 he rented the property at $10.00 per month to Julian Calleis, at which time he inquired and was told that Calleis worked in a nearby market, was a hard-working individual and would be a good tenant; that Calleis paid the rent by money order; that he (Halpern) visited the property only once when he had occasion to inspect it for repairs; and that Calleis no longer occupies the premises. It does not appear that Calleis has previously been involved in any illicit alcoholic beverage activities or convicted of any crime.

I am satisfied that Joseph Halpern was not aware of any illicit activities on the premises or negligent in renting the premises to Calleis, and since the premises have now been vacated by Calleis, I shall not impose a padlocking penalty.

Accordingly, it is ORDERED that the Pontiac sedan be delivered to Sherman Pontiac Co., Inc., provided that on or before the 28th day of June, 1941, it pays the costs involved in the seizure and storage of this automobile; and it is further

ORDERED, that the other seized property, more fully described in Schedule "A" annexed hereto, be and the same is hereby 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.

Dated: June 18, 1941.

E. W. GARRETT,
Acting Commissioner.

SCHEDULE "A"

1 - 25-gallon copper cooker
1 - 5-burner oil stove
1 - 50-gallon steel cooler
1 - set of copper coils
1 - copper gooseneck
1 - 5-gallon can of whiskey
2 - 30-gallon steel drums
4 - 50-gallon barrels of corn mash
2 - empty 50-gallon barrels
2 - empty 5-gallon buckets
1 - Ford sedan, Engine No. 181074098, 1941 N.J. Registration No. MT 784

6. APPELLATE DECISIONS - PARADISE RESTAURANT, INC. v. WRIGHTSTOWN.

SUFFICIENT LICENSES IN VICINITY, DESPITE VACANCY UNDER MUNICIPAL ORDINANCE LIMITING THE NUMBER - DENIAL AFFIRMED.

PARADISE RESTAURANT, INC., a New Jersey corporation, Appellant, -vs- BOROUGH COUNCIL OF THE BOROUGH OF WRIGHTSTOWN, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Alexander Denbo, Esq., Attorney for Appellant.
Powell & Parker, Esqs., by Richard W. Criscuolo, Esq., Attorneys for Respondent.

This is an appeal from denial of a plenary retail consumption license for premises located on the westerly side of Trenton Road (now known as Fort Dix Road), Borough of Wrightstown.

On April 22, 1941, at a regular meeting of the Borough Council, a motion was duly made and seconded that the application of appellant be denied "as there are sufficient licenses in that block, and two of the stockholders are non-residents holding over 10% of the stock, and the President and Treasurer are also non-residents." The motion was unanimously carried. Respondent attempted to reconsider the application at a special meeting held, on April 30, 1941, for the purpose of considering Federal Defense Housing. However, since the application had been formally denied at the previous meeting, respondent had no power to reconsider. Plager v. Atlantic City, Bulletin 80, Item 11. If the action taken on April 22, 1941 was in any way improper, it could be corrected only on appeal. Eckerle v. Camden, Bulletin 114, Item 11; Katzner v. Newark, Bulletin 175, Item 5; Raney & Flynn v. Ewing, Bulletin 228, Item 9.

An ordinance of the Borough provides that "not more than nine Plenary Retail Consumption Licenses for the sale of alcoholic beverages shall or may be issued and outstanding at any one time in the Borough, providing, however, that Plenary Retail Consumption Licenses may be granted for any bona fide hotel in the Borough, notwithstanding the limitation as to the number of licenses to be granted hereinabove fixed." Eight consumption licenses for premises operated other than as bona fide hotels have been issued and outstanding, and one consumption license has been issued to a bona fide hotel, so that at present there is a vacancy under the ordinance. Appellant contends that it is entitled to a license under the ruling set forth in Eisen v. Plainfield, Bulletin 68, Item 12, and Sosnow Drug Co. v. Freehold, Bulletin 68, Item 13. These cases are authority for the proposition that where a vacancy exists under an ordinance, denial of an application without cause against person or place of appellant would be arbitrary and unreasonable. However, where an issuing authority contends that, despite a vacancy in the ordinance, there are sufficient licenses in the immediate vicinity of the place for which the license is sought and such decision is backed by facts, it has been held that the action was not arbitrary and unreasonable. Young v. Pennsauken, Bulletin 114, Item 2;

Wenzel v. Maywood, Bulletin 310, Item 3; Roberts v. Delaware, Bulletin 447, Item 11.

The evidence herein shows that licenses C-5 and C-1 have been issued respectively for premises on the same side of Fort Dix Road, one being 68 feet southerly from the premises in question and the other 132 feet southerly from the premises in question; that License C-2 has been issued for premises on the same side of Fort Dix Road, a distance of 203 feet northerly from the premises in question; that license C-4 has been issued for premises on the opposite side of Fort Dix Road, a distance of approximately 150 feet from the premises in question; and that license C-8, under which operation has not begun, has been issued for premises almost directly opposite appellant's premises. Thus, it appears that, aside from the license issued to the bona fide hotel located some distance away, five of the eight consumption licenses have already been issued to places in the immediate vicinity. Three of the members of the Borough Council appeared at the hearing and testified that they had voted to deny the application because they felt that there were enough licensed places in that block. It is true that the business area is small but it cannot be said that the action of respondent in refusing to issue a sixth license in this section of the Borough was arbitrary or unreasonable.

Appellant further contends that the Borough has adopted no uniform policy against undue congestion, and hence that denial of appellant's application was unreasonable. It appears, however, that the last license issued in this vicinity was C-8, which was granted on December 20, 1940. The Borough has issued three licenses since that date, but one was granted to a bona fide hotel and the other two to sections of the Borough far removed from appellant's location. Reasonably, there must be a point at which a halt must be made and the most that appellant has shown is a mere difference of opinion between it and the members of the Board as to whether that point has been reached in so far as this section of the Borough is concerned.

Under the circumstances, it is unnecessary to consider the question as to whether the corporation is a mere cloak to permit Nick Mendis and Theodore Pardos, who lack the required residential qualifications, to operate a licensed business in this State. If any future application for other premises is made by the corporation, that question should be carefully examined by the local issuing authority.

The action of respondent is affirmed.

Accordingly, it is, on this 18th day of June, 1941,

ORDERED, that the appeal be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

7. CORRECTION.

Bulletin 464, page 11, paragraph 2, line 16, change "not" to "now."

8. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS - OPEN DURING PROHIBITED HOURS - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA - ALLOWING A FEMALE EMPLOYEE TO ACCEPT ALCOHOLIC BEVERAGES PURCHASED BY CUSTOMERS - 2 DAYS' SUSPENSION - TOTAL: 7 DAYS.

In the Matter of Disciplinary Proceedings against WILLIAM STREET BAR AND GRILL, INC., 24 William Street, Newark, N. J., Holder of Plenary Retail Consumption License C-858, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Maurice Schapira, Esq., Attorney for Licensee.
Robert R. Hendricks, Esq., Attorney for State Department of Alcoholic Beverage Control.

Defendant-licensee pleaded non vult to charges alleging, in substance, that on Sunday, March 16, 1941, at about 5:20 A.M., it sold and served alcoholic beverages and kept open its licensed premises in violation of an ordinance of the City of Newark prohibiting sale and service of alcoholic beverages on Sunday between 3:00 A.M. and 12 o'clock noon, and requiring that establishments where the principal business is the sale of alcoholic beverages be closed during said hours.

As to Charges (1) and (2): The minimum penalty for each charge is five days. Re Grande, Bulletin 442, Item 4. The licensee has no previous record. The license will, therefore, be suspended for the minimum period of ten days, less five days for the guilty plea. Hence the license will be suspended for a net period of five days on Charges (1) and (2). Re Belmont Tavern, Inc., Bulletin 451, Item 1.

Defendant-licensee pleaded not guilty to the following additional charge:

> "3. On or about March 16, 1941, and on divers dates prior thereto, you allowed, permitted and suffered Ruth Myer, a female employed on your licensed premises, to accept beverages at the expense of and as a gift from customers and patrons of your establishment, in violation of Rule 22 of State Regulations No. 20."

As to the third charge: There is no denial of the investigators' testimony that on February 16, February 20, March 9 and March 16, 1941, Ruth Myer accepted alcoholic beverages at the expense of and as a gift from patrons, including the investigators. The sole question is whether on said dates Ruth Myer was employed on the licensed premises. She testified that shortly before Christmas 1940 she asked the President of defendant-licensee if he could use an

additional employee and was told that he could not afford it but that she could have the check room concession if she wished and could keep the tips she received. The evidence shows that she checked coats and hats on each of the evenings when the investigators visited the premises and that she visited the barroom when she was not engaged in her duties in the check room. It was during these visits to the barroom that the drinks were purchased by patrons and consumed by her. There is no evidence that defendant-licensee has at any time paid her a salary and I am satisfied that the only remuneration she received for her services in the check room was the tips received from patrons, as she testified.

The President of the licensee denied that there was any arrangement to give her a percentage of the proceeds received from drinks purchased for her, and further, that he never had any intent of violating the hostess regulation because he believed that she was not an employee within the meaning of the regulation.

The word "employee," as used in the Alcoholic Beverage Law and the rules and regulations of this Department, has been construed to include all persons whose services are utilized by the licensee or who are kept at work or entrusted with some duty on the licensed premises by the licensee. Salary or compensation is not a requisite to employment. 20 C. J. 1238; 39 C. J. 36; Re Vlaminck, Bulletin 147, Item 4; Re Haino, Bulletin 295, Item 7; Re Geller, Bulletin 312, Item 1; Re Trenton Yacht Club, Inc., Bulletin 323, Item 14; Danker v. Ocean, Bulletin 448, Item 1. Since the licensee utilized the services of Ruth Myer and permitted her to check the hats and coats of its patrons on the licensed premises, I find that she was an unsalaried employee within the meaning of the rule. Hence I find the licensee guilty as to the third charge.

In imposing penalty, however, I shall take into consideration the fact that this is not the usual type of hostess case where females are paid a percentage on the drinks purchased by patrons, and shall also accept as true the explanation of the President of licensee corporation that he honestly believed the female was not an employee within the meaning of the regulation. I shall suspend the license for an additional two days on the third charge, making a total suspension of seven days.

Accordingly, it is, on this 13th day of June, 1941,

ORDERED, that Plenary Retail Consumption License C-858, heretofore issued to William Street Bar and Grill, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of seven (7) days, effective June 18, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

9. DISCIPLINARY PROCEEDINGS - RESUMPTION OF RESPONSIBILITIES BY WEST NEW YORK - DISCIPLINARY MATTERS HERETOFORE TAKEN OVER BY THE STATE COMMISSIONER ARE HENCEFORTH TO BE HANDLED BY THE BOARD OF COMMISSIONERS.

June 21, 1941

Charles Swensen,
Town Clerk,
West New York, N. J.

My dear Mr. Swensen:

I have your letter in response to conclusions heretofore entered in Re Reddan, Bulletin 458, Item 4, wherein I expressed the hope that the Board of Commissioners would declare its willingness to resume its responsibilities in the conduct of disciplinary proceedings.

It is gratifying to hear from you that the Board of Commissioners fully accords with my view that it should conduct its own disciplinary matters as a manifestation of the fundamental principle of home rule. The good citizens of West New York will be heartened by this evidence of intention to reinstate the cardinal virtues: Fortitude, Prudence, Temperance and Justice. Fellowship in this cooperative lodge of municipalities has been extended to the Board of Commissioners. Their handclasp is token of firm resolve to shoulder and discharge a civic duty.

Effective immediately, West New York is removed from the Department blacklist and again numbered among those municipalities which are carrying their share of the load in achieving higher standards of liquor control.

The Board of Commissioners will find this Department ready and willing to cooperate in every worthy way in any disciplinary matter. Specifically, I shall be glad, upon request, to inform the Board as to recommended minimum penalties for various types of violations.

May the shadow of Justice in matters of liquor control lie long on West New York.

Very truly yours,
E. W. GARRETT,
Acting Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOLIC BEVERAGES BY MINOR EMPLOYEE HOLDING AN EMPLOYMENT PERMIT - EMPLOYEE NOT IDENTIFIED AS THE PERSON TO WHOM THE PERMIT WAS ISSUED - CHARGE WITHDRAWN.

In the Matter of Disciplinary Proceedings against

MARY BROPHY,
314 Eighth Avenue,
Asbury Park, N. J.,

Holder of Employment Permit No. 4781, issued by the State Commissioner of Alcoholic Beverage Control.

O R D E R

On April 21, 1941 charge was preferred against the permittee, Mary Brophy, which alleged that permittee, a minor, sold and served alcoholic beverages in contravention of a condition of her employment permit.

The charge was preferred as a result of reports from investigators that "Mary Brophy" was seen by them tending bar. Registered mail addressed to the permittee at three different addresses was returned because she could not be located.

The hearing was set for Monday, May 19, 1941, at 2:00 P.M. (Daylight Saving Time) at this office. Immediately prior to the scheduled hearing the investigators examined the photographs of the permittee attached to the application for the employment permit. The investigators concluded that the Mary Brophy to whom had been issued Employment Permit No. 4781 was not the Mary Brophy they had seen tending bar.

Accordingly, it is, on the 21st day of June, 1941,

ORDERED, that the charge heretofore preferred against Mary Brophy, holder of Employment Permit No. 4781, issued by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby withdrawn.

E. W. GARRETT,
Acting Commissioner.

11. MORAL TURPITUDE - GRAND LARCENY 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.

Case No. 154.

ON HEARING
CONCLUSIONS AND ORDER

In 1918 petitioner was convicted of stealing, from his employers, a case of woolen goods valued at $2,000.00, and, after serving one month of a year and a day sentence, was released. Grand larceny is a crime which ordinarily involves moral turpitude. Re Case No. 376, Bulletin 460, Item 4; Re Case No. 365, Bulletin 445, Item 7; Re Case No. 308, Bulletin 383, Item 2. There is nothing in the record which would tend to free petitioner's crime of the element of moral turpitude.

Petitioner now seeks, in this proceeding and pursuant to R. S. 33:1-31.2, to remove the statutory disqualification resulting from such conviction of a crime involving moral turpitude.

Since his conviction in 1918, petitioner has been employed, in turn, as bus driver, dock worker, and, for the past five years, haberdashery salesman. As evidence that he has conducted himself in a law-abiding manner since his conviction, petitioner produced, as character witnesses, three businessmen who have known him for thirty-five, twenty-four and seven years, respectively. All three testified that petitioner's reputation 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.

The Police Department of the municipality wherein petitioner has resided since his conviction has certified that, other than the above mentioned arrest (and subsequent conviction) in 1918, for grand larceny, petitioner's police record in the municipality is clear.

From all the evidence I conclude that petitioner has led an honest and law-abiding life for more than five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 21st day of June, 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.

E. W. Burnett

Acting Commissioner.