

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, N. J.

BULLETIN 504

APRIL 20, 1942.

1. 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 be- )  
cause of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 202  
----- )

BY THE COMMISSIONER:

On July 5, 1933 petitioner pleaded guilty to an indictment charging him with grand larceny, resulting from his arrest for stealing penny gum and weighing machines. The court imposed a suspended sentence upon him.

Grand larceny is a crime which ordinarily involves moral turpitude. Cf. Re Case No. 154, Bulletin 466, Item 11. The circumstances surrounding petitioner's arrest and conviction do not warrant a finding that the crime in question is free of that element.

Petitioner now requests that the statutory disqualification arising from such conviction be lifted. See R. S. 33:1-31.2.

After the conviction, petitioner was employed on county road work, as a foreman for several W.P.A. projects, and, since January 1938, has been a night watchman of a municipal garage. He is married and has one child.

Three witnesses testified that petitioner has completely atoned for his one "slip" and now bears an excellent reputation in his community for being an honest and law-abiding citizen. One is the Register of Deeds and Mortgages for the county in which petitioner resides, another a practicing lawyer of forty years' standing, and the third a proprietor of a butcher and grocery store. They have known him for ten, fifteen and seven years, respectively.

Petitioner's fingerprint returns, corroborated by a report received from the Chief of Police of the municipality in which petitioner lives, disclose no arrests or convictions other than the one heretofore mentioned.

Since it appears that petitioner has a clean record since 1933 and that his association with the alcoholic beverage industry will not be detrimental to the public interest, I shall lift his disqualification.

Accordingly, it is, on this 11th day of April, 1942,

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

ALFRED E. DRISCOLL,  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - DEVICE DESIGNED FOR GAMBLING - MILLS "SPINNING REELS" ONE-BALL MACHINE - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

ELIZABETH LODGE #289, B. P. O. ELKS, 17-21 Westfield Avenue, Elizabeth, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the State Commissioner of Alcoholic Beverage Control.

Giuliano & Giuliano, Esqs., by Anthony Giuliano, Esq., Attorneys for Defendant-Licensee. Charles Basile, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that on March 31, 1941, and prior thereto, it possessed a Mills "Spinning Reels" one-ball machine, a device and apparatus designed for the purpose of gambling, in violation of Rules 7 and 8 of State Regulations No. 20.

The file discloses that the method of operation of this machine is substantially like that involved in Re Stafford, Bulletin 461, Item 3, except that, in addition, the machine in question is equipped with an automatic cash pay-off drawer.

I note that licensee suffered a one-day suspension for being open and selling on Election Day November 6, 1934.

Since that violation is wholly dissimilar to that herein charged, and since licensee's record is otherwise clear of any convictions in the intervening eight years, I deem the previous violation to be too remote to warrant an increase of penalty in the instant proceedings.

In view of the guilty plea, five days of the usual ten-day penalty for this type of infraction will be remitted, leaving a net of five days.

Accordingly, it is, on this 11th day of April, 1942,

ORDERED, that Plenary Retail Consumption License C-4, heretofore issued to Elizabeth Lodge #289 B. P. O. Elks, for premises 17-21 Westfield Avenue, Elizabeth, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 A. M. April 12, 1942 and concluding at midnight, April 16, 1942.

ALFRED E. DRISCOLL, Commissioner.

3.

REFERENDA CONCERNING ALCOHOLIC BEVERAGES:

April 13, 1942.

The present New Jersey Alcoholic Beverage Law (R.S. 33:1-1 et seq.) authorizes municipal referenda relating to alcoholic beverages on five specific questions; viz.:

- R.S. 33:1-44: "Shall the retail sale of alcoholic beverages, other than brewed malt alcoholic beverages and naturally fermented wine, for consumption on the licensed premises by the glass or other open receptacle pursuant to chapter 1 of the title Intoxicating Liquors of the Revised Statutes (§33:1-1 et seq.), be permitted in this municipality?"
- R.S. 33:1-45: "Shall the retail sale of all kinds of alcoholic beverages, for consumption on the licensed premises by the glass or other open receptacle pursuant to chapter 1 of the title Intoxicating Liquors of the Revised Statutes (§33:1-1 et seq.), be permitted in this municipality?"
- R.S. 33:1-46: "Shall the sale of all alcoholic beverages at retail, except for consumption on railroad trains, airplanes and boats, and the issuance of any retail licenses, except as aforesaid, pursuant to chapter 1 of the title Intoxicating Liquors of the Revised Statutes (§33:1-1 et seq.), be permitted in this municipality?"
- R.S. 33:1-47: "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?"
- R.S. 33:1-47.1: A question as to whether or not the hours between which the sale of alcoholic beverages at retail may be made in the municipality, on weekdays, Sundays, either or both, shall be fixed as requested in the petition for the referendum.

Since December 6, 1933, when the law became effective, such referenda have been held in the following municipalities:

<u>R.S. 33:1-44</u>	<u>R.S. 33:1-45</u>	<u>R.S. 33:1-46</u>	<u>R.S. 33:1-47</u>	<u>R.S. 33:1-47.1</u>	<u>Result</u>	<u>Date Held</u>
				(1) Allendale	Yes	11/5/35
			Avalon		Yes	11/6/34
		Barrington			Yes	11/2/37
			Bernards		Yes	11/8/38
			Bloomfield		Yes	11/6/34
				(2) Bogota	Yes	11/2/37
			Boonton (Town)		No	11/5/35
			Boonton (Twp.)		Yes	11/5/40
		Bridgeton			Yes	11/6/34
		Bridgeton			Yes	11/8/38
			Burlington (Twp.)		No	11/8/38
				(3) Burlington (Twp.)		
				Both questions	No	11/4/41
				(4) Camden	No	11/2/37
				(5) Camden	No	11/5/40
			Cape May		Yes	11/6/34
			Chatham (Boro)		No	11/8/38
		Collingswood			No	11/5/35
	Commercial				No	11/5/35
	Delanco		Dennis		No	11/5/35
		Dennis			No	11/6/34
			Dennis		Yes	11/5/35
					No	11/7/39
			Deptford		Yes	11/5/35
			Dover (Town)		Yes	11/2/37
	Downe				No	11/6/34
		Downe			No	11/2/37
		Downe			No	11/5/40
			Dunellen		Yes	11/6/34
			East Orange		No	11/6/34
				(6) East Orange	No	11/5/35
			East Orange		No	11/8/38
Elk					No	11/3/36
			Englewood		Yes	11/6/34
			Ewing		Yes	11/5/35
		Fairfield			Yes	11/6/34
		Fairfield			Yes	11/8/38
			Fairfield		No	11/8/38
			Fairfield		No	11/4/41
				(7) Florence	No	11/7/39
			Freehold (Boro)		No	11/8/38
				(8) Freehold (Boro)	Yes	11/4/41
			Gloucester (Twp.)		No	11/6/34
				(9) Gloucester (Twp.)	No	11/2/37
				(10) Gloucester (Twp.)	Yes	11/5/40
			Gloucester City		Yes	11/5/35
	Greenwich (Twp.)					
	(Cumberland Co.)				No	11/5/35
		Haddon			Yes	11/8/38
		Haddonfield			No	11/6/34

<u>R.S. 33:1-44</u>	<u>R.S. 33:1-45</u>	<u>R.S. 33:1-46</u>	<u>R.S. 33:1-47</u>	<u>R.S. 33:1-47.1</u>	<u>Result</u>	<u>Held</u>
			Hamilton (Twp.) (Mercer Co.)		No	11/6/34
				(11) Hamilton (Twp.) (Mercer Co.)	Yes	11/8/38
				Both questions	No	11/6/34
		Harrison (Twp.) Hopewell (Twp.) (Cumberland Co.)			No	11/5/35
			Hopewell (Twp.) (Mercer Co.)		Yes	11/8/38
			Jamesburg		No	11/8/38
			Kingwood		No	11/8/38
				(12) Kingwood	Yes	11/7/39
				Both questions	Yes	11/5/35
			Landis		No	11/6/34
			Lawrence (Twp.) (Mercer Co.)		No	11/6/34
			Lawrence (Twp.) (Mercer Co.)		No	11/2/37
				(13) Lawrence (Twp.) (Mercer Co.)	Yes	11/5/40
				Both questions	No	11/5/35
		Linwood			No	11/5/35
			Little Egg Harbor		Yes	11/5/35
Little Silver					No	11/5/35
			Lower		Yes	11/6/34
			Magnolia		Yes	11/5/35
			Manasquan		Yes	11/2/37
		Mansfield (Twp.) (Burlington Co.)			Yes	11/3/36
				(14) Mansfield (Twp.) (Burlington Co.)	No	11/8/38
			Mansfield (Twp.) (Burlington Co.)		No	11/7/39
			Marlboro		No	11/3/36
			Marlboro		Yes	11/7/39
Maurice River					No	11/6/34
Merchantville					No	11/6/34
		Merchantville			Yes	11/6/34
			Merchantville		No	11/6/34
			Middle		No	11/5/40
			Midland Park		No	11/6/34
				(15) Midland Park	No	11/8/38
			Montgomery		No	11/6/34
				(16) Montgomery	No	11/7/39
				Both questions	Yes	11/5/40
		Moorestown		(17) Montgomery	No	11/5/35
			North Cape May		Yes	11/7/39
			North Wildwood		Yes	11/6/34
			Oxford		No	11/5/35
			Paulsboro		No	11/6/34
			Phillipsburg		No	11/6/34
		Pilesgrove			Yes	11/5/40
				(18) Plainfield	No	11/7/39
Plainsboro					Yes	11/5/35
		Plainsboro			No	11/4/41
				(19) Pleasantville	No	11/5/40
				Both questions	Yes	11/6/34
			Ridgefield Park		No	11/7/39
				(20) Riverside	Yes	11/8/38
			Rocky Hill		Yes	11/2/37
			Roxbury		No	11/6/34
			Runnemede		Yes	11/8/38
				(21) Runnemede	Yes	11/6/34
			See Isle City		Yes	11/5/35
Shrewsbury (Boro)					No	11/8/38
				(22) Somerville	No	11/6/34
			Southampton		No	11/8/38
				(23) Southampton	No	11/6/34
			South Orange		No	11/8/38
			Springfield (Twp.) (Burlington Co.)		No	11/8/38
			Stafford		Yes	11/5/35
			Stafford		Yes	11/8/38
			Stone Harbor		Yes	11/6/34
			Union (Twp.) (Ocean Co.)		Yes	11/5/35
		Upper			Yes	11/7/39
		Upper Deerfield			No	11/6/34
		Upper Deerfield			No	11/2/37
Upper Freehold					Yes	11/5/35
			Verona		No	11/6/34
			Verona		No	11/2/37
			Verona		Yes	11/5/40
			Wall		Yes	11/8/38
			Warren		Yes	11/8/38

R.S. 33:1-44	R.S. 33:1-45	R.S. 33:1-46	R.S. 33:1-47	R.S. 33:1-47.1	Result	Date Held
		Washington (Twp.) (Gloucester Co.)			No	11/6/34
			Washington (Twp.) (Mercer Co.)		No	11/7/39
				(24) Washington (Twp.) (Mercer Co.) Both questions	Yes	11/5/40
			West Deptford		Yes	11/5/35
			Westville		No	11/6/34
			Westville		No	11/2/37
				(25) Westville	Yes	11/5/40
				(26) Westville	No	11/5/40
			Wildwood		Yes	11/6/34
		Wildwood Crest			No	11/5/40
			Woodbine		Yes	11/6/34
		Woodstown			Yes	11/2/37
		Woodstown			Yes	11/5/40
				(27) Wrightstown Both questions	Yes	11/5/40

- (1) "Shall the sale of Alcoholic Beverages, at retail, be permitted in this Municipality on Sundays except between the hours of 2:00 A.M. and 12:00 Noon?"
- (2) "Shall the sale of all alcoholic beverages be permitted on Sunday, except between the hours of 3 A.M. and 12 o'clock Noon?"
- (3) "Shall the sale of Alcoholic Beverages be permitted on Sundays in Burlington Township between the hours of midnight Saturday and 2 A.M. Sundays?"  
"Shall the sale of Alcoholic Beverages be permitted on Sundays in Burlington Township between the hours of 1 P.M. and midnight?"
- (4) "Shall the sale of alcoholic beverages be permitted on Sundays in the municipality after 1 P.M.?"
- (5) "Shall the sale of alcoholic beverages be permitted on Sundays in the Municipality after 1:00 P.M.?"
- (6) "Shall the sale of Alcoholic Beverages at retail be permitted in this Municipality between the hours of 12 Midnight Saturday and 2 A.M. Sunday?"
- (7) "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality between the hours of 1:00 P.M. and 12:00 Midnight, Eastern Standard Time, except for that period between the last Sunday in April and the last Sunday in September of each year when the times aforementioned shall be computed in accordance with Eastern Daylight Saving Time?"
- (8) "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality between the hours of 1:00 P.M., and midnight Eastern Standard Time, except from 2:00 A.M. on the last Sunday in April until 2:00 A.M. on the last Sunday in September of each year when the hours shall be Eastern Daylight Saving Time?"
- (9) "Shall the sale of alcoholic beverages be permitted in the Township of Gloucester on Sundays after 1 P.M.?"
- (10) "Shall the sale of alcoholic beverages at retail be permitted in the Township of Gloucester, Camden County, on Sundays between the hours of 12:00 Midnight Saturday and 2:00 A.M. Sunday, except for that period between the last Sunday in April and the last Sunday in September of each year when the times aforementioned shall be computed in accordance with Eastern Daylight Saving Time?"
- (11) "Shall the sale of Alcoholic Beverages be permitted in this Municipality between the hours of 1 P.M. on Sunday and 2 A.M. on Monday?"  
"Shall the sale of Alcoholic Beverages be permitted in this Municipality between the hours of 12 o'clock midnight on Saturday and 2 A.M. on Sunday?"
- (12) "Shall the sale of alcoholic beverages at retail be permitted in the Township of Kingwood, in the County of Hunterdon on week days between the hours of six o'clock in the forenoon until two o'clock in the forenoon of the succeeding day."  
"Shall the sale of alcoholic beverages at retail be permitted in the Township of Kingwood, in the County of Hunterdon on Sundays between the hours of twelve o'clock noon until two o'clock in the forenoon of the succeeding day."
- (13) "Shall the sale of alcoholic beverages at retail be permitted in the Township of Lawrence in the County of Mercer on Sundays between the hours of one o'clock P.M. and twelve o'clock midnight Sunday, except that from one P.M. on the last Sunday in April until one P.M. on the last Sunday in September of each year, during which period the hours of sale shall be Eastern Daylight Saving Time?"  
"Shall the sale of alcoholic beverages at retail be permitted in the Township of Lawrence in the County of Mercer on Sundays between the hours of twelve o'clock midnight Saturday and two A.M. Sunday, except that from two A.M. on the last Sunday of April until two A.M. on the last Sunday of September of each year during which period, the hours for sale shall be Eastern Daylight Saving Time?"
- (14) "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality between the hours of twelve o'clock noon and twelve o'clock midnight?"
- (15) "Shall the sale of alcoholic beverages at retail be permitted on Sundays in the Borough of Midland Park between the hours of 1 P.M. and 12 P.M. midnight Eastern Standard Time except between the last Sunday in April and the last Sunday in September of each year when the time shall be computed in accordance with Eastern Daylight Saving Time?"

- (16) "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?"
- (17) "Shall the sale of alcoholic beverages be permitted in Montgomery Township on Sundays between 1:00 P.M. and midnight on Sundays?"
- (18) "Shall the sale of alcoholic beverages be permitted in this municipality between the hours of 1 P.M. Sunday and 1 A.M. Monday?"
- (19) "Shall the sale of alcoholic beverages be permitted in the City of Pleasantville on Sundays between the hours of midnight Saturday and 2:00 A.M. Sunday, and also between the hours of 2 P.M. and midnight, the hours aforementioned to be Eastern Standard Time except from 2 A.M. on the last Sunday in April until 2:00 A.M. on the last Sunday in September each year when they shall be Eastern Daylight Saving Time?"  
 "Shall the sale of alcoholic beverages be permitted in the City of Pleasantville on weekdays between the hours of midnight and 2:00 A.M. and also between the hours of 7:00 A.M. and midnight, the hours aforementioned to be Eastern Standard Time except from 2:00 A.M. on the last Sunday in April until 2:00 A.M. on the last Sunday in September each year, when they shall be Eastern Daylight Saving Time?"
- (20) "Shall the sale of Alcoholic beverages at retail be permitted in this municipality on Sundays between the hours of 12:00 o'clock midnight Saturday and 2:00 A.M. and between the hours of 2:00 P.M. and 12:00 midnight, Eastern Standard Time, except for that period between the last Sunday in April and the last Sunday in September of each year when the times aforementioned shall be computed in accordance with Eastern Daylight Saving Time."
- (21) "Shall the sale of alcoholic beverages at retail be permitted in this municipality on Sundays between the hours of 12:00 o'clock midnight Saturday and 3:00 A.M., and between the hours of 1:00 P.M. and 12:00 midnight, Eastern Standard Time, except for that period between the last Sunday in April and the last Sunday in September of each year when the times aforementioned shall be computed in accordance with Eastern Daylight Saving Time?"
- (22) "Shall the sale of alcoholic beverages be permitted on Sundays between the hours of 12.00 Midnight Saturday and 2.00 A.M. on Sunday in this municipality?"
- (23) "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality between the hours of one o'clock P.M. and twelve o'clock midnight?"
- (24) "Shall the sale of alcoholic beverages at retail be permitted in the Township of Washington in the County of Mercer on Sundays between the hours of one o'clock P.M. and twelve o'clock midnight Sunday, except that from one P.M. on the last Sunday in April until one P.M. on the last Sunday in September of each year, during which period the hours of sale shall be Eastern Daylight Saving Time?"  
 "Shall the sale of alcoholic beverages at retail be permitted in the Township of Washington in the County of Mercer on Sundays between the hours of twelve o'clock midnight Saturday and two A.M. Sunday, except that from two A.M. on the last Sunday of April until two A.M. on the last Sunday of September of each year during which period, the hours for sale shall be Eastern Daylight Saving Time?"
- (25) "Shall the sale of alcoholic beverages at retail be permitted in this municipality on Sundays between the hours of 12:00 midnight Saturday and 2:00 A.M. eastern standard time, except for that period between the last Sunday in April and the last Sunday in September of each year when the times aforementioned shall be computed in accordance with eastern daylight saving time?"
- (26) "Shall the sale of alcoholic beverages at retail be permitted in this municipality on Sundays between the hours of 1:00 P.M. and 12:00 midnight eastern standard time, except for that period between the last Sunday in April and the last Sunday in September of each year when the times aforementioned shall be computed in accordance with eastern daylight saving time?"
- (27) "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality between the hours of One P.M. and Midnight?"  
 "Shall the sale of alcoholic beverages be permitted on Monday in this Municipality between the hours of Midnight and Two A.M.?"

Referenda, other than those listed above, have also been held in Butler, Evesham, Merchantville, Milltown, Penns Grove, Riverside, Runnemede, Rutherford, Trenton, Union City, Wildwood Crest and Wyckoff, but either for failure to submit a question authorized by the Alcoholic Beverage Law or for failure to comply with the procedure required by the Alcoholic Beverage Law, they are merely advisory, and have no binding effect.

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4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE FOR CONSUMPTION OFF LICENSED PREMISES IN OTHER THAN ORIGINAL CONTAINER - BOTTLING IN VIOLATION OF R. S. 33:1-78 - PREVIOUS SIMILAR VIOLATION - 25 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against FRANCIS J. ORLANDO, 500 Paul St., Gloucester City, N. J., Holder of Plenary Retail Consumption License C-7, issued by the Common Council of the City of Gloucester City.

CONCLUSIONS AND ORDER

Francis J. Orlando, Defendant-Licensee, Pro Se. Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges that:

"1. On or about December 23 and December 26, 1941, you, not being the holder of a New Jersey brewery, distillery, winery or rectifier's license, bottled an alcoholic beverage for sale and resale in that you filled a pint bottle with whiskey taken from a quart bottle and sold the same, in violation of R.S. 33:1-78.

"2. On or about the dates aforesaid you sold an alcoholic beverage not pursuant to and within the terms of your plenary retail consumption license in that you sold a pint of whiskey in other than the original container for consumption off your licensed premises contrary to R. S. 33:1-12(1), in violation of R.S. 33:1-2."

It appears that on December 23, 1941 two agents of the Federal Internal Revenue Service, Alcohol Tax Unit, entered the licensed premises. Shortly thereafter, by prearrangement, a third person entered carrying an empty pint bottle which he gave to the bartender, who proceeded to fill that bottle from a quart bottle of Seagram's Whiskey. The third person paid the bartender the sum of \$1.85 and left the premises with the pint bottle of whiskey. The same occurrence took place several days later on December 26, 1941.

The statutory prohibition against selling alcoholic beverages in other than original containers for off-premises consumption must be adhered to scrupulously. The only exception to this salutary provision is that permitting the sale of draught beer in open containers for consumption off the premises. The problem was considered by the late Commissioner Burnett in Re Simandl, Bulletin 27, Item 2, where he said:

"The evils attendant upon the sale of hard liquor in open containers for consumption off the licensed premises and consequent breaking of bulk and incidental rebottling are evident. The provisions of Section 13 of the Control Act (now R.S. 33:1-12) were

intended to eliminate them. Similar evils, however, have not accompanied the sale of draught beer for off-premises consumption and the practice of purchasing such beer in paper or metal containers for consumption off premises has always been considered economically and socially acceptable."

This is licensee's second similar offense. In June 1940 his license was suspended by the local issuing authority for five days for the same type of unlawful sale. In view of this previous record and the two occasions involved in the present proceeding, I shall impose a penalty of twenty-five days, less five days for the guilty plea, leaving a net of twenty days.

Accordingly, it is, on this 13th day of April, 1942,

ORDERED, that Plenary Retail Consumption License C-7, heretofore issued to Francis J. Orlando by the Common Council of the City of Gloucester City, for premises 500 Paul Street, Gloucester City, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 A. M. April 17, 1942 and concluding at 2:00 A. M. May 7, 1942.

ALFRED E. DRISCOLL,  
Commissioner.

5. MORAL TURPITUDE - LARCENY AND RECEIVING AND ATTEMPTED LARCENY INVOLVE MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FAILURE TO PRESENT FULL, FRANK AND CONVINCING STORY - APPLICATION DENIED.

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

CONCLUSIONS AND ORDER

Case No. 180.

BY THE COMMISSIONER:

In 1920 petitioner, then twenty-two years of age, was convicted of larceny and receiving, and released on eighteen months' probation. In 1924 he was fined \$20.00 for a motor vehicle violation. Later that same year he was convicted of attempted larceny, and sentenced to six months in the county penitentiary. In 1931 he was fined \$100.00 for disorderly conduct. He was also arrested in 1927 for fornication, and in 1932 for assault and battery, but was released in each instance when the complaint was not pressed.

Apart from the other offenses, "larceny and receiving" and "attempted larceny" are crimes which, from their very nature, ordinarily involve moral turpitude. See Re Case 135, Bulletin 449, Item 6; Re Case 138, Bulletin 451, Item 8. cf. Re Case 45, Bulletin 169, Item 14. No circumstances are shown to rebut the presence of that element in petitioner's convictions for such crimes. Hence he is disqualified, under R. S. 33:1-25, 26, from obtaining any liquor license or working for any liquor licensee in this State.

However, his record being clear for more than five years, petitioner applies, under R. S. 33:1-31.2, for removal of the disqualification.

At the hearing on such petition, it was disclosed that petitioner's wife is, and for several years has been, the holder of a license for a tavern in this State. To learn whether petitioner has any forbidden interest in that tavern or has been working there while disqualified, the Hearer, among other things, questioned petitioner on these issues. In answer, petitioner expressly swore that he had no interest in the tavern and never worked there, and further, that he had nothing to do with the ownership of a hotel which is being operated in conjunction with the tavern.

In contradiction of these claims, the records of this Department show that, on routine inspection of the tavern in October 1940, petitioner was listed as the "manager" there. Independent investigation at the present time shows that petitioner has been giving liquor orders at the tavern and has been hiring employees. It further appears from the Department's investigation that petitioner and another man have filed, with the county clerk, a trade name for the hotel in question and are apparently operating the hotel under that name as partners.

From the foregoing, it is amply clear that petitioner has not told a truthful story at the hearing.

Petitioners who appeal to the discretion of the State Commissioner for a removal of their criminal disqualification take the surest road to outright denial by suppressing material facts at the hearing. I have consistently ruled, and here reaffirm, that petitioners, to warrant favorable action, must give a full, frank and truthful story. Unless they comply with this cardinal and obviously necessary principle, they are entitled to no relief. See Re Case No. 166, Bulletin 481, Item 3, and cases there cited; Re Case 188, Bulletin 491, Item 9.

Hence, without further consideration of the merits in this case, the present petition is hereby denied.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: April 14, 1942.

6. APPELLATE DECISIONS - LOOLOIAN v. TOWNSHIP OF GREENWICH (2 CASES).

MEHRAN H. LOOLOIAN, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF GREENWICH, WARREN )  
COUNTY, and HARRY C. BANNISTER, )  
Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

Cases No. 1 and 2. )  
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Frank J. Kingfield, Esq., Attorney for Appellant and Objectors.  
Francis L. Thompson, Esq., Attorney for Respondent Township Committee.

Edward L. Duggan, Esq., Attorney for Respondent Harry C. Bannister.

BY THE COMMISSIONER:

Both cases involve the same issue and Case No. 2 has been submitted on the testimony taken in Case No. 1.

Appellant appealed in Case No. 1 from the granting of a plenary retail consumption license for the fiscal year 1940-1941 to respondent Harry C. Bannister for premises known as Old Mill Movies, located on Bloomsbury Road, Stewartsville, R.D., in the Township of Greenwich, and appellant appeals in Case No. 2 from the renewal of said license for the present fiscal year.

The grounds of appeal may be summarized as follows:

- (1) A large number of property owners and residents in the Township opposed the granting of the license.
- (2) A sufficient number of licensed places exist in the Township.
- (3) The granting of said license will create a traffic hazard.
- (4) Respondent Harry C. Bannister has not been a resident of New Jersey for five years immediately prior to the submission of his application for a license.

The evidence shows that when the application for the original license was filed, three residents of the Township filed written objections with the Township Clerk. A hearing was duly scheduled and, shortly prior to the time fixed for hearing, petitions objecting to the issuance of the license were filed with the Township Committee. These objections were based solely upon grounds 1, 2 and 3 considered herein. The petitions were signed by approximately 200 individuals. At said hearing five objectors appeared and were heard. Respondent Township Committee, after hearing the objectors, voted, by a 2 to 1 vote, to grant the license.

As to (1): The weight to be given to petitions is a matter properly within the discretion of the local issuing authority. Re Powell, Bulletin 59, Item 15; Re Dunster v. Bernards, Bulletin 99, Item 1; Re Goff v. Piscataway, Bulletin 234, Item 5. In the present case the evidence discloses that there is no residence within 4/10 of a mile along the Bloomsbury Road in one direction and 1/2 a mile in the other direction. Apparently, none of the signers of petition resided in such close proximity to the licensed premises that they would be directly affected by the operation thereof. I cannot say that respondent abused its discretion in issuing the license, despite the petition filed at the hearing.

As to (2): The Township has adopted no regulation limiting the number of licenses. At the time it granted Bannister's license, four other plenary retail consumption licenses were in existence. On its face, this would seem more than ample for a township having a population of approximately 1120. However, it appears that the section is rural; that there are no other licensed premises within a distance of two miles and that the licensed premises are located on a tract of ground covering approximately 76 acres. It has consistently been ruled that the number of licenses which may be granted in a municipality or any particular section thereof lies, primarily, within the sound discretion of the local issuing authority. See, e.g., Marsteller v. Somers Point et al., Bulletin 244, Item 7; N. J. Licensed Beverage Ass'n v. Paterson et al., Bulletin 408, Item 1; Delia v. New Providence et al., Bulletin 408, Item 3; Alberts et al. v. Roselle et al., Bulletin 465, Item 6; Playdium Inc. v. Orange, Bulletin 491, Item 1. The evidence in the present case does not warrant a finding that the Township Committee has necessarily abused this discretion in issuing the license for the premises in question.

As to (3): A large portion of the testimony concerned traffic conditions on Bloomsbury Road. It appears that the road is winding and that there is a bridge which crosses a creek some 400 feet from the Bannister property. However, there appears to be plenty of parking space at the licensed premises and the evidence fails to disclose that any accidents have occurred in the vicinity. The Chief of Police testified that in his opinion the granting of the license created no additional traffic hazard.

As to (4): Harry C. Bannister is an actor and producer of theatrical entertainments. He purchased the property in question in May 1935, spent large sums in renovating the home, and at or about that time established his residence there. He testified that at that time he told his attorney and the Chief of Police that he intended to make this place his permanent home. Since that time "Stewartsville, N. J." has appeared as his address on all his business and personal stationery. He has received his mail at that address since 1935. The evidence satisfies me that he became a resident of this State "animo manendi" early in the year 1935. In fact, he has been registered as a voter in the Township since that time, although he testified that because of the nature of his business which required frequent absences from the State, he never voted in the Township.

The word "residence" as used in the Alcoholic Beverage Law (R. S. 33:1-25) means "domicile" or the place where a person maintains his permanent home, to which, when he is absent, he has the intention of returning. Lilly v. Way, Bulletin 220, Item 1; Breslow v. Way, Bulletin 345, Item 6.

The nature of Bannister's business required frequent absences from the State and it appears that for a period of about six or eight months in the year 1940 he and his family resided at a hotel in the City of New York and rented their home in Stewartsville to another individual. However, they returned to Stewartsville after the theatrical engagement was concluded and have resided there since that time. The law presumes that when a person takes up his residence "animo manendi" his residence continues at that place despite temporary absence. Cadwalader v. Howell, 18 N. J. Law 138; Harrell v. Harrell, 39 N. J. Equity 279; Valentine v. Valentine, 61 N. J. Equity 400; see also 19 C. J. 433.

The only evidence which might lead me to believe Bannister had no intention of returning to New Jersey when he took his family to the City of New York is that he voted in New York City at the general election held in 1940. He testified that when he attempted to register in New York City he was first told that he was ineligible to vote and thereafter was advised that he could be considered in the same category as a college student temporarily absent from his permanent home. The fact that a person votes in a particular place is strong evidence that he considers the place as his permanent home, but it is not conclusive evidence. Re Sedgwick, 223 Fed. 655.

Considering all the circumstances of this case, I conclude that Harry Bannister established a permanent residence in the State of New Jersey in May 1935 and that during his temporary absence for business purposes in 1940 he at all times intended to return to his permanent home in New Jersey.

Appellant has failed to sustain the burden of proof in showing that Harry C. Bannister did not have the required residential qualifications at the time the application for license was filed.

For the foregoing reasons the action of the Township Committee in granting the license to Harry C. Bannister and in renewing the same for the present fiscal year is affirmed.

Accordingly, it is, on this 13th day of April, 1942,

ORDERED, that the appeals herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL,  
Commissioner.

7. MORAL TURPITUDE - PARTICIPATION IN EXTENSIVE BOOTLEGGING ACTIVITIES SINCE REPEAL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - APPARENT SUPPRESSION OF FACTS - FAILURE TO PRESENT FULL, FRANK AND CONVINCING STORY - APPLICATION DENIED.

In the Matter of an Application )	
to Remove Disqualification because )	
of a Conviction, pursuant to )	CONCLUSIONS
R. S. 33:1-31.2. )	AND ORDER
Case No. 173. )	
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BY THE COMMISSIONER:

In 1915 petitioner was convicted of "larceny and receiving" and sentenced to the reformatory for an indefinite term, being released after about a year.

In 1926 he was convicted (apparently in joint indictments) of maintaining a disorderly house and fined \$200.00; maintaining a gambling house and fined \$50.00; and of violating the Prohibition Laws and fined \$100.00.

In 1936 he was convicted in State Court for operating a large "bootleg" still in violation of the Alcoholic Beverage Law, fined \$250.00 and placed on probation for three years.

For the same illicit still activities, he was also indicted in Federal Court for violation of the Internal Revenue Laws but not convicted until October 1940, when he was given a five years' suspended sentence and released on probation.

It is clear that the convictions of 1936 and 1940, arising from operation of a large "bootleg" still since Repeal, actually involve moral turpitude and hence disqualify petitioner, under R. S. 33:1-25, 26, from holding a liquor license or working for a liquor licensee in New Jersey. Re Case 276, Bulletin 313, Item 1; Re Case 162, Bulletin 477, Item 6; Re Case 177, Bulletin 478, Item 10; Re Case 188, Bulletin 491, Item 9; Re Case 197, Bulletin 502, Item 10. For a previous ruling by this Department that petitioner's 1915 conviction likewise renders him ineligible, see Re Case 290, Bulletin 346, Item 13.

Petitioner now applies to this Department, under R. S. 33:1-31.2, for an order removing such disqualification.

Since petitioner's last disqualifying conviction is the one which occurred in Federal Court in 1940, his petition must necessarily be viewed as premature. R. S. 33:1-31.2 provides:

"Any person convicted of a crime involving moral turpitude, may after the lapse of five years from date of conviction, apply to the commissioner for an order removing the resulting statutory disqualification...."

Although it is true that the conviction in State Court in 1936 and in Federal Court in 1940 resulted from the same acts of misconduct, it does not follow that the 1940 conviction should be disregarded and the five-year period counted from 1936. To the contrary, since the 1940 conviction actually stands as a disqualifying conviction, no application for removal may, under the terms of the statute, be filed until at least five years have elapsed therefrom.

Hence, as matters now stand, petitioner is not eligible to seek a removal until October 1945.

However, even were the five-year period to begin with the 1936 conviction, I would, nevertheless, deny this petition on its merits. When questioned about his criminal record at the hearing, petitioner apparently suppressed the fact of his triplicate convictions in 1926. In addition, his testimony as to his activities during the last few years and his possible connection with a State Beverage Distributor licensee scarcely impresses me as being worthy of belief.

Petitioners who do not make full, frank and truthful disclosure of all material facts are simply not entitled to relief in these cases. See Re Case 180, Bulletin 504, Item 5, and cases there cited.

The petition is therefore denied.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: April 16, 1942.

8. MORAL TURPITUDE - ATROCIOUS ASSAULT AND BATTERY IN THE COURSE OF A HOLD-UP INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FAILURE TO PROVE GOOD CONDUCT FOR FIVE-YEAR PERIOD - APPLICATION DENIED.

In the Matter of an Application )  
to remove Disqualification be- )  
cause of a Conviction, pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 205.  
- - - - - )

BY THE COMMISSIONER:

In 1932 petitioner, who then was, and still is an Italian alien, pleaded guilty to the charge of atrocious assault and battery and was placed on probation for three years. Since this offense apparently occurred during the course of a hold-up by petitioner and several accomplices, it is clear that the conviction involves moral

turpitude, and hence disqualifies petitioner from holding a liquor license or working for a liquor licensee in this State. R.S. 33:1-25, 26.

Petitioner, in this proceeding, seeks removal of such disqualification pursuant to R. S. 33:1-31.2, upon claim that he has led a decent, law-abiding life for at least five years last past.

After his conviction petitioner worked, in turn, as a farmer, as a laborer on Federal relief projects and in a lead factory, and for the last four years as a county employee on road construction, where his earnings averaged \$110.00 a month. Last summer he obtained additional employment tending bar in his spare time, until investigators of this Department informed him, about a month before he filed this petition, that it was doubtful whether he could work on the licensed premises because of his criminal record.

Evidence favorable to the petitioner has been presented concerning his industry, good reputation and the sincerity of his claim that he did not know that he was disqualified. This is offset, to a considerable extent, by his conviction in April 1938 of petty larceny, and in May 1938 of simple assault, both before local magistrates, who, in each case, suspended sentence; further, because of a police record in his locality, which shows that in January 1940 there was an allegation that he stole some money and whiskey from a tavern, although no formal complaint was made.

While it is true that the convictions in 1938 are for minor offenses, apparently the result of neighborhood squabbles, and do not appear to involve moral turpitude, nevertheless they evince conduct of the same character as that which led to the disqualifying conviction. The theft of which he was suspected in 1940 is another disturbing factor. I cannot, in good conscience, disregard these incidents and find that petitioner's record has been wholly clear during the past five years merely to give him a chance to be a part-time bartender in addition to his steady employment on road construction.

This is entirely apart from the fact that as an Italian alien, he cannot, in any event, sell or serve or solicit the sale of alcoholic beverages, or participate in their manufacture; that at most, even if otherwise qualified, he could obtain a special permit to be employed merely in a limited capacity on licensed premises.

In view of all the circumstances, I shall not, at this time, exercise my discretionary power to lift his disqualification.

The petition is therefore denied.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: April 16, 1942.

9. DISCIPLINARY PROCEEDINGS - CONSISTENTLY INADEQUATE PENALTIES AND SUSPENDED SENTENCES IN GARFIELD - DISCIPLINARY POWERS WITHDRAWN.

April 16, 1942

Joseph J. Novack,  
City Clerk,  
Garfield, N. J.

My dear Mr. Novack:

I have before me your letter of March 17th re disciplinary proceedings conducted by the City Council against Frank Barcelona, 38 Harrison Avenue, charged with sale of alcoholic beverages to minors, and note that he was found guilty, whereupon the license was suspended for three days whereupon the sentence itself was suspended.

The suspended three-day suspension is hardly calculated to impress the licensee with the seriousness of the violation of which he was found guilty by the City Council.

I understand that three boys, aged 17, 19 and 20, admitted that they had been served one or more rounds of beer on the licensed premises. These are the same boys who, together with a fourth, were arrested by the Hackensack Police on suspicion of stealing gasoline.

While I appreciate the fact that the City Council conducted these proceedings, I must again indicate my objection to the imposition of suspended sentences in disciplinary proceedings. Apparently the Council has not given much heed to the warning issued by this Department on May 27, 1941, when, in a review of the suspended sentences imposed by it in disciplinary proceedings against Mary Schott (Rev. 2154) and Sarah Spindel (Rev. 2151), it was stated:

"The 'suspended sentence' is a mockery and a delusion, having form but no substance. It may sound imposing but it means nothing.

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"I shall expect the imposition of suitable penalties in future cases."

A review of the record of the Garfield City Council since 1940 discloses a remarkably consistent leniency notwithstanding the constant insistence by this Department that suitable penalties be imposed.

Here is the record:

1. Anthony Kasica (Rev. 2012). Open, selling and screen violation during prohibited hours and employing hostesses. Although a second offender, license suspended for only four days rather than an indicated forty.

2. Edward Veech (Rev. 2013). Open, selling and screen violation during prohibited hours. Also a second offender but license suspended only five days rather than an indicated twenty-five.

3. Ralph Esposito (Rev. 2050). Open and selling during prohibited hours. License suspended for two days rather than an indicated five, but sentence suspended.
4. Joseph Klecha (Rev. 2084). Screen violation. Charges dismissed rather than an indicated conviction and five days' suspension.
5. Karl Lotcpeich (Rev. 2075). Employing hostesses. License suspended for forty-five days.
6. Caroline Duda and Michael Miller (Rev. 2093). Open and selling during prohibited hours. License suspended for three days rather than an indicated five.
7. Antonia De Vries (Rev. 2124). Permitting numbers writing, making cash pay-offs for bagatelle scores, and open, selling and screen violation during prohibited hours. License suspended for only seven days rather than an indicated twenty-five.
8. Mary Schott (Rev. 2154). Selling to a minor. Suspended sentence rather than an indicated five-day suspension of license.
9. Sarah Spindel (Rev. 2151). Open, selling and screen violation during prohibited hours. Suspended sentence rather than an indicated ten-day suspension of license.

The attention of the City Council has been directed to the inadequacy of its penalties in every one of the above cases with the single exception of that of Lotcpeich where the penalty was in keeping with the violation committed. With a batting average so consistently weak, a new batter would appear to be in order. This is a step which I take with reluctance.

Where the municipality issues the licenses and retains the revenue therefrom, it should be prepared to assume in full measure the attendant obligations. In the case of Garfield, the revenue received by it from retail licenses amounts to approximately \$27,000.00 annually. The primary purpose of the alcoholic beverage control law is control, not revenue. Therefore, if our municipalities desire to continue to retain the revenue received from the issuance of retail liquor licenses, they must be prepared not only to police licensed premises but to insure impartial and adequate enforcement of the law. The only sure cure for those who deliberately violate the law is a penalty sufficiently severe to make it highly unprofitable for the licensee to repeat his misconduct.

In the future, I shall not transfer any more cases to Garfield until such time as we may reach an agreement with respect to the imposition of suitable penalties. These disciplinary proceedings against Garfield licensees will be handled directly by this Department.

Very truly yours,

CHECKED BY No. 6

*Alfred E. Briscoll*  
Commissioner.