

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

BULLETIN 478

SEPTEMBER 25, 1941.

1. LICENSEES - EMPLOYEES - POLICE OFFICERS - AN EMPLOYEE OF A LICENSEE MAY NOT BE A POLICEMAN - A LICENSEE MAY EMPLOY A SPECIAL OFFICER FOR THE PROTECTION OF PROPERTY AND MAINTENANCE OF ORDER ON THE LICENSED PREMISES IF SUCH OFFICER IS NOT ENTRUSTED WITH THE GENERAL ENFORCEMENT OF THE LAW.

Gentlemen:

A question has been raised about the appointment of Special Police who are paid by the license holder and perform the duties of parking cars and checking for Draft Cards before admittance to the premises and also general Peace Officers. They do not serve in a capacity of waiters or bartenders or in any way dispense liquors.

The Township Committee are of the opinion that it would be illegal to appoint men to serve in this capacity. The reason for the necessity of these Special Officers is that there is no paid Police Department in the Township of Egg Harbor and the Township covers fifty-seven (57) square miles.

The Police Force consists of five men which is inadequate to take care of the great strain put on this community during the peak summer period.

Thank you for your ruling in this matter.

Respectfully yours,
HAROLD H. GRAY,
Chief of Police

September 12, 1941

Harold H. Gray, Chief of Police,
Egg Harbor, N. J.

Dear Chief:

I have before me your letter of August 5th.

Unfortunately, there were so many important problems requiring immediate study when I took over on August 11th, that this is the first opportunity that I have had to give you an opinion with respect to the question raised by you.

It has heretofore been ruled that officers entrusted with the enforcement of the law may not hold liquor licenses or be employed by licensees. Re Scott, Bulletin 109, Item 5, and Re Franco, Bulletin 109, Item 6 (policemen); Re Schepis, Bulletin 115, Item 3 (constable); Re DuPree, Bulletin 156, Item 11 (marshal); Re Everson, Bulletin 162, Item 10 (member of police committee); Re Osborn, Bulletin 174, Item 16 (constable). Sound public policy demands that those persons whose duty it is to compel observance of the liquor laws shall have no personal or financial interest in the liquor trade. Where there is a potential conflict between private interest and public duty, the latter must prevail.

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It is entirely repugnant to our sense of just and proper law enforcement that a person in official capacity should wield official power over his own or his employer's business competitors. Persons performing the duties of regular police officers, either part time or full time, are, therefore, barred from employment with liquor licensees in any capacity whatsoever.

But there is no such conflict where the officer's duties are confined to purely private work and he is not charged with the general enforcement of the law, as he would be if he were a regular police officer. In such case, the rule does not apply. Thus it was for this reason that in Re Franco, Bulletin 262, Item 11, it was held that a bartender could be drafted as a police officer to disperse trespassers upon a golf course instead of dispensing refreshers to members. So also in Re Higgins, Bulletin 203, Item 14, it was held that a bartender may be a constable, provided his duties were confined to the protection of a municipal water shed.

Liquor licensees are not to be deprived of necessary protection solely because they are licensees. They have as much right to preserve their property and maintain good order as anyone. Their responsibilities in many respects are infinitely greater. They are strictly accountable for the proper conduct of their places. For misconduct, their licenses are subject to revocation, whether the disturbance was with their knowledge or acquiescence or not. The conduct of premises where people congregate to drink in numbers is a troublesome problem. Of course, the employment of special officers is no panacea.

Special officers are appointed pursuant to the authority contained in R. S. 40:47-19, which provides, among other things, that they shall not be members of the regular police force. When, on occasion, such special officer is assigned to protect licensed premises and to maintain proper order and decorum thereon, there is no conflict between his work on behalf of the licensee in maintaining order on the licensed premises and his public duty, albeit he is compensated by the licensee for the service rendered by him. Such special officer, however, may not be permitted to sell, serve or deliver alcoholic beverages on behalf of the licensee, since this would be incompatible with his obligations as a police officer.

I will therefore permit employment of special officers by licensees for the protection of property and the maintenance of order, provided such special officers have no police duties other than those essential to the discharge of their private employment and are not engaged in the general enforcement of the law.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

2. MORAL TURPITUDE - CONSPIRACY TO DISTRIBUTE SLOT MACHINES 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.)

ON HEARING
CONCLUSIONS AND ORDER

Case No. 149.
-----)

BY THE COMMISSIONER:

In 1934 petitioner was convicted of the crime of conspiracy, fined \$1,000.00 and sentenced to serve from two and a half to three years in State Prison. He was released on parole in December 1935. The probation office reports that he was supposed to have been an owner of slot machines and to have been in league with others to keep them in saloons.

Petitioner admits that he was one of the principals in the conspiracy, but claims that he became mixed up in the slot machine business because he was then unable to make a living at his trade as a bricklayer. However, this does not alter the fact that the crime of which he was convicted involved the element of moral turpitude. Re Case No. 239, Bulletin 305, Item 9.

Prior to this offense, petitioner, in 1930, was convicted of disorderly conduct and fined \$26.80; later in the same year he was arrested and indicted on the charge of carrying concealed weapons, but this charge was nolle prossed in November 1939.

At the hearing to remove his disqualification, petitioner testified that after his release from prison he worked for a baker for about a year and a half; thereafter, and up to the present time, he has worked as a bricklayer; that if his disqualification is removed, he will seek employment in the liquor industry whenever bricklaying work is scarce.

As evidence of petitioner's good character, a business acquaintance, who has known him for about twenty years, testified that petitioner is now actually employed as a bricklayer, and is very well liked and honest; that the feeling in the community is that petitioner is not a "gangster," but made a slip when he became involved in the slot machine activities. A telephone company employee, who has known petitioner for about seven years, testified that in the course of his friendship with petitioner's brother, he visited their home and knows that petitioner was employed by a contracting company and that his reputation is "100%."

The Chief of Police of each municipality wherein the petitioner has resided since 1935, has certified that there are no complaints, reports or investigations presently pending against him, and his fingerprint record does not show any arrests or convictions of crime since 1935.

From all the evidence, I conclude that petitioner has led a law-abiding life for at least 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 12th day of September, 1941,

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

ALFRED E. DRISCOLL,
Commissioner.

3. MEMBERS OF DEPARTMENT STAFF - NOT TO HOLD OFFICE AS COUNTY COMMITTEEMEN.

September 13, 1941.

Rocky Hill Citizens and Taxpayers Association,
Rocky Hill, N. J.

Gentlemen:

The question posed by your letter is one which has interested me greatly.

You ask if a member of my Department may hold a public office such as County Committeeman. Neither the statutes nor the rules and regulations promulgated by my predecessor prohibit the holding of such office by a member of this Department.

A County Committeeman occupies a party office. With respect to this office, I have no hesitancy in saying that while I recognize the position as an important and honorable one, and it is my personal hope that more and more high-minded citizens will occupy such important party positions in both major parties, none the less I know that the success of a County Committeeman is all too frequently dependent upon his ability to do favors. I am therefore of the opinion that in counties and municipalities where there are liquor licenses, the chance of a conflict arising between one's duty as County Committeeman and one's duty as a law enforcing officer is too great to permit the holding of such office by an employee of this Department.

There is always a possibility that the Department may be subject to criticism, either justifiable or otherwise, because of suspicions which may arise in the minds of those opposed to the County Committeeman that he is using his position with this Department in an improper manner.

This is a criticism which I desire most earnestly to avoid, irrespective of its justification, because to a very large degree I recognize that the ability of this Department to enforce a law charged with social significance is dependent upon public confidence. Unfortunately, public confidence sometimes turns upon matters which have no basis in fact.

Therefore, I am presently of the opinion that I must necessarily ask any employee associated with me in the administration of the alcoholic beverage law to determine whether he prefers to be a County Committeeman or an officer of this Department.

Trusting that this answers your inquiry, and thanking you for your interest, I am,

Very truly yours,

ALFRED E. DRISCOLL,
Commissioner.

PRIMARY ELECTION DAY REPORT.

To: Alfred E. Driscoll, Commissioner

September 17, 1941

For your information, I submit report of activities on Primary Election Day, September 16, 1941:

<u>COUNTY</u>	<u>NUMBER OF CALLS MADE</u>	<u>VIOLATIONS</u>
Atlantic	583	0
Bergen	1064	2
Burlington	152	2
Camden	515	0
Cape May	45	0
Cumberland	114	0
Essex	1842	0
Gloucester	50	0
Hudson	1993	0
Hunterdon	31	0
Mercer	456	0
Middlesex	679	0
Monmouth	557	3
Morris	303	1
Ocean	183	0
Passaic	818	3
Salem	64	0
Somerset	125	0
Sussex	144	1
Union	658	2
Warren	138	0
	<u>10,514</u>	<u>14</u>

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

BERGEN COUNTY

East Paterson	The Independent Social Club, Inc., 5 Chamberlain Ave.	CB-1
Norwood	Frieda Lommatzsch, Piermont Rd.	C-4

BURLINGTON COUNTY

Fieldsboro	Emma Wallace Zabriskie, Front St.	C-3
Pemberton	Henry E. Willitts, s/s S. Pemberton Rd.	C-3

MONMOUTH COUNTY

Brielle	Alfred W. Dorrer, intersection Highway 35 & Rte 4N	D-1
Highlands Boro	Mrs. Marie Black, Bayside Drive	C-3
"	Franz H. Bosman, Allen St. & Bayside Dr.	C-16

MORRIS COUNTY

Parsippany-) Troy Hills)	Emil Gasser, e/s State Highway 10	C-9
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PASSAIC COUNTY

North Haledon	Mary McCabe, Sicomac Rd.	C-4
Passaic	Anthony Kurzawa, 504 Van Houten Ave.	C-61
"	Peter Prigoditz, 503 Van Houten Ave.	C-96

SUSSEX COUNTY

Wantage	Domenick Cutrupi, Sussex-Unionville Road	C-8
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UNION COUNTY

Elizabeth	Daniel P. Byrnes & Thomas R. Timmons, 1120 Elizabeth Ave.	C-114
Rahway	Rahway Yacht Club, 1706 Paterson St.	CB-4

Respectfully submitted,

SYDNEY B. WHITE
Chief Inspector.

5. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - OPEN DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 10 DAYS, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against LUDWIK LANUCHA, 81 Lester St., Wallington, N. J., Holder of Plenary Retail Consumption License C-20, issued by the Borough Council of the Borough of Wallington

CONCLUSIONS AND ORDER

Ludwik Lanucha, Pro Se. Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee pleaded guilty to charges that (1) at about 11:30 A.M. on Sunday, April 6, 1941, he sold, served and delivered, and allowed the consumption of alcoholic beverages on his licensed premises, and (2) his licensed premises were open in violation of Section 1 of the alcoholic beverage ordinance adopted by the Mayor and Council of the Borough of Wallington on January 20, 1940, which ordinance prohibits the sale and consumption of alcoholic beverages on licensed premises and requires the entire licensed premises to be closed on Sundays between the hours of 3:00 A.M. and 1:00 P.M.

The Department file discloses that at about 11:30 A.M. on Sunday, April 6, 1941, two of my investigators proceeded to the licensed premises. They found the doors locked but heard voices inside. They rang the bell and were admitted by the licensee, who refused to serve them alcoholic beverages. However, the investigators observed two men at the bar drinking bottled beer, which they seized for evidential purposes. A signed statement was secured from the licensee, admitting that two men were at the bar drinking, and further admitting that he knew his premises could not be open until 1:00 P.M. on Sunday. The licensee stated, however, that the men drinking were friends of his and had not paid for their drinks. Staff reports indicate that thirty cents in change was on the bar in front of one of the patrons!

The Wallington ordinance expressly prohibits not only the mere service of alcoholic beverages but also the consumption thereof on licensed premises. The licensee's statement, therefore, that no charge was made, even if true, is immaterial. Moreover, R.S.33:1-1(w) defines "the gratuitous delivery or gift of any alcoholic beverage by any licensee" as a sale. See Re Grande, Bulletin 442, Item 4. The charge that the premises was "open" during prohibited hours requires only proof that the licensee "continues to entertain the public." Re Zenda, Bulletin 271, Item 5.

As to penalty: The licensee has heretofore never been convicted for any violation of the liquor law or regulations. Hence, for his present violations his license will, as in like cases, be suspended for five days on each charge, or a total of ten days. See Re Grande, supra; Re Gamba, Bulletin 407, Item 6. From such total, five days will be remitted because of the licensee's entry of a guilty plea prior to the time set for hearing, thus leaving a net suspension of five days. Re M. Potter, Inc., Bulletin 474, Item 1.

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

ORDERED, that Plenary Retail Consumption License C-20, heretofore issued to Ludwik Lanucha by the Borough Council of the Borough of Wallington, be and the same is hereby suspended for a period of five (5) days, effective September 22, 1941, at 3:00 A.M. (D.S.T.).

ALFRED E. DRISCOLL,
Commissioner.

6. PLENARY WINERIES - MAY FILTER WINES OF OTHER MANUFACTURERS
PURSUANT TO SPECIAL PERMIT.

September 19, 1941

F. & A. Distributing Co.,
Bayonne, N. J.

Gentlemen:

I have carefully considered your letter, dated August 15, asking for a permit to have the Liquor Distributors of America, a plenary winery licensee in this State, uncork, filter and refill for you, without change in label, various bottles of clouded Vermouth which you apparently have in stock as a licensed wholesaler.

Your request raises, among other things, the basic question whether or not the license of the winery actually permits or forbids it to engage in any such filtering service on wines which do not belong to it and are not its own product.

Under the terms of its license (as defined by the Alcoholic Beverage Law), a plenary winery is authorized, "subject to rules and regulations, to manufacture any fermented wines, and to blend, fortify and treat wines, and to distribute and sell his products...." See R. S. 33:1-10(2)a.

It is perhaps arguable that use of the phrase "his products" at the end of this provision actually means that all the winery's privileges are restricted to the making up and selling of the winery's own products and that, therefore, the winery has no authority to filter or in any other way process or treat wines as a mere service for others.

However, on full reflection, I believe that this is an unwarrantably narrow view. The phrase "his products" seems, by the very wording of the provision, to relate only to the winery's privilege of selling alcoholic beverages. (Compare the similar wording as to "his products" when used with respect to the other manufacturing licensees in R. S. 33:1-10.) So construed, such phrase serves the apparent and salutary purpose of restricting the winery to sale of its own products and thus preventing it from engaging in any general wholesaling without a proper wholesaler's license. I can discern no legislative intent to also restrict the winery's other privileges - viz., the manufacturing, processing and treating of wines - to merely its own products, and not to allow it to process or treat wines as a service for others.

Hence, I conclude that (so far as the State Alcoholic Beverage Law is concerned) the winery is privileged under its license to perform a filtering process to any wine even though such wine is not its own product.

However, you will note that all the winery's privileges are expressly "subject to rules and regulations." Where, as in the case you propose, a winery is to filter bottled wine which bears another manufacturer's label and which has already been put on the open market, this Department should have the opportunity of checking to insure that the winery merely filters the wine to remove the cloud and in no way adds or takes away any actual ingredient from the wine.

To give the Department such opportunity, I hereby rule that the uncorking, filtering and refilling which you desire may be performed only after a permit has been first sought and obtained from this Department. The fee for the same will be Ten Dollars (\$10.00). Such permit is not issued for the purpose of raising revenue or to invest the winery with any unique privileges, but solely to insure proper control in each case.

To obtain this permit you should file a petition, under oath, clearly setting forth:

- (1) Your name and address, and the number and type of your alcoholic beverage license or licenses in New Jersey.
- (2) The type, brand and amount (in gallonage) of the wine in question, and the kind of container the wine is in (viz., quart bottles, etc., as the case may be).
- (3) When and from whom you purchased the wine, and where it is now being stored.
- (4) The condition of the wine which you seek to correct, and whether the wine was in such condition when you purchased it.
- (5) What effort, if any, you have made to return the wine to the manufacturer. If no such effort was made, state why.
- (6) The name and address of the holder of the plenary winery license which you want to uncork, filter and refill the wine into the original containers without change in label.
- (7) What type of filtering process will be used, and the precise days when the uncorking, filtering and refilling will take place.

Such petition should be accompanied by a letter (or photostatic copy) from the Federal Alcohol Tax Unit, showing written permission for this process to be performed; a letter (or photostatic copy) of tax release from the State Tax Department; and the requisite permit fee of \$10.00 in cash, or money order or certified check payable to the State Department of Alcoholic Beverage Control.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

7. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

September 18, 1941

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30) will become effective on or about October 10, 1941. New items and changes in old items must be filed at the offices of this Department not later than Thursday, September 25, 1941.

It is advisable that the next publication combine all of the prices into one complete booklet because of the extreme difficulty now encountered by the trade in attempting to keep abreast of prices in the eight separate pamphlets now in force.

In submitting price lists to this Department for this complete publication, it is requested that:

(1) Complete schedule of all items for which price maintenance is desired, including those presently listed, should be submitted. Any items not submitted will be considered withdrawn.

(2) If no change in brand name or description is made of items presently subject to price maintenance, list those items exactly as they appear in the pamphlets or official bulletins.

(3) Indicate by appropriate notation the new items which will be scheduled for the first time, and those items in which a change in brand name or description is made.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to retail licensees.

Unless you advise me in writing, on or before September 25, 1941, that you agree to pay your share of the cost of such complete publication, it will be deemed that you are not desirous of participating therein. In such case, your products will be withdrawn from the fair trade price list, and will no longer be subject to enforcement by this Department.

ALFRED E. DRISCOLL,
Commissioner.

8. ELIGIBILITY - DESERTION - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

September 19, 1941

Re Case No. 391

Applicant seeks a determination of whether the crime of desertion, of which he was convicted in 1931, involves moral turpitude, thus disqualifying him from holding a liquor license or being employed by a liquor licensee in this State. See R.S. 33:1-25, 26.

At the hearing, he testified that he was married in 1914 and, although his wife was quite extravagant, they had no real difficulties until 1930, when he became unemployed; that he was then compelled to take odd jobs at which he made little money; that as a result, he and his wife had constant quarrels over finances which terminated in his leaving her and his three sons, then between the

ages of six and fifteen, in the latter part of 1930; that he was charged in January 1931 with desertion and, upon his guilty plea, was ordered to post a bond for \$300.00 to secure the payment of \$10.00 weekly for the support of the children; that he made such payments for about two years until his wife became seriously ill and was taken to a county hospital where she died in 1935; that when she was taken to the hospital he established a home for himself and his sons.

The crime of desertion may or may not involve moral turpitude, depending upon the circumstances surrounding the commission of the offense. Re Ulich, Bulletin 70, Item 2; Re Case No. 286, Bulletin 346, Item 15. There are no such aggravating circumstances here involved as would justify a finding that the element of moral turpitude is involved in applicant's crime.

Fingerprint returns substantiate applicant's testimony that, on no other occasion, has he ever been arrested or convicted of any crime.

It is recommended that applicant be advised that the aforesaid crime does not disqualify him from being employed by a liquor licensee in this State.

Samuel B. Helfand,
Attorney.

APPROVED:

ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - OPEN DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - TOTAL: 10 DAYS.

In the Matter of Disciplinary Proceedings against JAMES SANTA MARIA, 478 Market St., Newark, N. J., Holder of Plenary Retail Consumption License C-905, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Robert Freund, Esq., Attorney for Defendant-licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee, alleging:

"1. At or about 5:20 A.M. on Sunday, June 29, 1941, you sold and served alcoholic beverages in violation of Section 1 of Ordinance No. 3930 adopted by the Board of Commissioners of the City of Newark on December 21, 1938, which ordinance prohibits the sale of alcoholic beverages on Sundays between the hours of 3:00 A.M. and 12:00 o'clock noon.

"2. At or about 5:20 A.M. on Sunday, June 29, 1941, your licensed premises, where the principal business is the sale of alcoholic beverages, were open in violation of Section 1 of the aforesaid ordinance, which requires that establishments where the principal business is the sale of alcoholic beverages be closed during hours when sales are prohibited."

The licensee pleaded not guilty as to the first charge and nolo contendere as to the second charge.

As to the first charge: Detectives Connor and Griffith of the Newark Police Department testified that at about 5:20 A.M. on Sunday, June 29, 1941, they saw a number of persons in the licensed premises and a partially filled beer glass on the bar; that shortly thereafter a number of people ran out of the rear door of the licensed premises, "jumping a fence" onto adjoining property; that they arrested these people, namely, John Smith, Myra Proctor and Bernice Roder, and an unidentified man; and that they also arrested Peter Rinaldi, the bartender, who later admitted to them that he had made sales totaling approximately \$9.00 after the closing hour.

On June 30, 1941 Rinaldi, the bartender who had been in charge of the licensed premises during the early hours of the preceding morning, gave a statement under oath to members of the Newark Police Department. In this statement he admitted that after 3:00 A.M. he had sold about six gin rickeys and that Bernice Roder drank about three glasses of beer. He also said that:

"About twenty minutes after five this morning I had the two girls in the tavern. A fellow named 'Smitty' and another man was with them; we were all drinking. I had a birch beer in front of me and Myra had a gin rickey in front of her. Bernice Roder had just finished drinking her glass of beer."

At the hearing, when called to testify in behalf of the licensee, Rinaldi denied that he had made any sales after 3:00 A.M. He further testified that he can neither read nor write and that the statement which he gave to the police is untrue. He admitted, however, that the statement had been read to him before he signed it. Myra Proctor testified that no drinks were served after the closing hour. Bernice Roder testified that she arrived at the premises about 3:45 A.M. and drank a glass of beer which was then upon the bar. It is to be noted that this is forty-five minutes after the closing time.

Considering the statement given by the bartender; the admission which he made shortly after his arrest; the unsuccessful attempt of the witnesses to escape; and the evidence given by the police officers, I am unable to give any credence to the testimony given at the hearing that there was no sale or delivery after closing hour.

Men and women who wish to establish the innocence of themselves and/or their favorite bartender should be warned not to run out rear doors and start jumping fences in the presence of the police. Such futile exhibitions of athletic prowess should be saved for a more propitious time. The police and my ABC men have an aversion to fence jumping in the wee hours of the morning. It's too suggestive!

The evidence satisfies me that alcoholic beverages were sold or served by the bartender after closing hour. The licensee is responsible for the acts of his agent and I find him guilty as to Charge 1.

The license will be suspended for five days on the first charge and for an additional five days on the second charge, to which defendant pleaded nolo contendere, making a total suspension of ten days.

Accordingly, it is, on this 19th day of September, 1941,

ORDERED, that Plenary Retail Consumption License C-905, heretofore issued to James Santa Maria for premises 478 Market Street, Newark, by Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for ten (10) days, effective September 23, 1941, at 3:00 A.M. (D.S.T.).

ALFRED E. DRISCOLL,
Commissioner.

10. MORAL TURPITUDE - POSSESSION OF ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - PETITIONER APPARENTLY INVOLVED IN BOOTLEGGING ACTIVITIES IN 1939 AND 1940 - 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. 177.)
-----)

BY THE COMMISSIONER:

In 1935, petitioner, then about nineteen years of age, was convicted in Connecticut of possessing an illicit still and sentenced to pay a fine of \$200.00 and to serve four months in jail. This sentence was suspended and he was placed on probation for five years.

Petitioner says that it was a youthful indiscretion; that, in need of money because of his father's failure to provide for the family, he tried to operate a small still which his father had left on the premises and it caught fire, thus leading to his disclosure and subsequent arrest.

This explanation, even if true, does not change the character of the crime. Possession of an illicit still after repeal is a crime involving moral turpitude, within the meaning of the Alcoholic Beverage Control Law. Re Case No. 267, Bulletin 313, Item 1; Re Case No. 326, Bulletin 409, Item 3.

Prior to this conviction, petitioner was involved in two minor offenses. In 1931 he was arrested for breach of the peace, on which charge judgment was suspended; and in 1934 he was fined \$15.00 for speeding and driving without a license.

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

from these convictions. Petitioner must establish to my satisfaction "that at least five years have elapsed from the date of conviction, that the applicant has conducted himself in a law-abiding manner during that period, and that his association with the alcoholic beverage industry will not be contrary to public interest." R. S. 33:1-31.2.

To meet this requirement, petitioner and his witnesses testified that he has been steadily employed as a truck driver since 1935 and that he has not been in any trouble since then.

However, this testimony must be considered in the light of the probation officer's report that the petitioner was suspected of bootlegging activities in 1939 and 1940.

The report shows that petitioner's father has been a bootlegger; that petitioner's uncle was arrested in 1939, while transporting illicit alcohol in a car actually owned by petitioner; that in 1940, his uncle was again arrested while transporting alcohol in another car owned by petitioner and, at this time, the uncle stated that petitioner had loaned him the money with which to purchase the liquor.

Petitioner, when asked for his version of these incidents, claimed that he had established his innocence as to the 1939 occurrence at a hearing held in the Federal Court for the return of his car. However, he admits that the car was not returned to him, but to the finance company, which had a lien thereon. As to the 1940 offense, he claims that the report is incorrect; that it was his brother's car and that he knew nothing about the affair.

It appears from the evidence that petitioner's original offense was for illegal liquor activities after repeal; that in 1939 and 1940, either he was actually involved in illegal liquor activities with his uncle, or at least, he skirted dangerously close to such activities.

Petitioner was burned once and apparently has been unable to get very far away from the fire since that occasion. After considering all the evidence presented, I am unwilling at this time to permit petitioner to become associated with an industry in which there are so many temptations.

Petitioner may seek employment in many other industries and hold jobs less fraught with peril for him because of his previous record.

I therefore find that the removal of his disqualification at this time would be contrary to public interest.

The petition is therefore denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: September 19, 1941.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - PRIOR CONVICTION OF DISSIMILAR OFFENSE - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

LEONARD STEIN,)
194 Passaic Street,)
Passaic, New Jersey,)

CONCLUSIONS
AND
ORDER

Holder of Plenary Retail Consumption License C-116 issued by the Board of Commissioners of the City of Passaic.)

Meehan Brothers, Esqs., by John J. Meehan, Attorneys for Leonard Stein.
Abraham Merin, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to a charge of selling an alcoholic beverage below Fair Trade price in violation of Rule 6 of State Regulations No. 30.

Reports of Department agents, who took part in the investigation, show that on June 19, 1941 at about 3 P.M., they purchased a 4/5 quart bottle of Haig and Haig Five Star Scots Whisky for the sum of \$3.18. The minimum consumer price at which a 4/5 quart bottle of this whisky could be sold at this time was \$3.38. Bulletin 459.

In the absence of a previous record and in the absence of aggravating circumstances as in this case, defendant's license would have been suspended for ten days for his present offense.

Unfortunately for the defendant, however, he does have a previous record. Departmental files disclose that the defendant, on August 12, 1941, in disciplinary proceedings before the Board of Commissioners of the City of Passaic, pleaded guilty to a charge of permitting gambling on the licensed premises in violation of Rule 7 of State Regulations No. 20. Petitioner's license was then suspended for three days.

In view of this record, the defendant's license will now be suspended for fifteen instead of ten days for his present offense.

By entering a plea of guilty, the licensee has saved the Department the time and expense of proving its case. Five days of the penalty of fifteen days will, therefore, be remitted.

Accordingly, it is, on this 19th day of September, 1941,

ORDERED that Plenary Retail Consumption License C-116, heretofore issued to Leonard Stein by the Board of Commissioners of the City of Passaic, be and the same is suspended for a period of ten (10) days, effective September 29, 1941 at 3 A. M.

ALFRED E. DRISCOLL,
Commissioner.

12. MORAL TURPITUDE - ASSAULTING A POLICE OFFICER INVOLVES MORAL TURPITUDE.

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

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

CONCLUSIONS
AND ORDER.

Case No. 178.
-----)

BY THE COMMISSIONER:

In 1923 petitioner was convicted on a charge of loitering and fined \$10.00. During 1924 he was twice arrested on charges of assault and battery but both charges were dismissed. In 1927 he was again convicted of loitering and received a suspended sentence. In December 1933 he was found guilty of assaulting a police officer who, apparently, had attempted to arrest his brother. After this conviction he was placed on probation for three years. During the following year he was again arrested for assault and battery but the charge was withdrawn. On April 13, 1936 petitioner was sentenced by a Judge of a Criminal Court to thirty days in a County Penitentiary. His commitment read that he was charged with grand larceny but there is a doubt as to whether he was convicted of that crime or merely found guilty of violation of his parole. It is unnecessary to decide that question because I am satisfied that petitioner's conviction in 1933 involved moral turpitude and hence that he is ineligible to be employed by a liquor licensee unless his disqualification is removed.

The mere fact that petitioner has not been convicted of a crime within the past five years does not automatically entitle him to relief. Removal of disqualification is discretionary.

Petitioner's past record has failed to convince me that his association with the alcoholic beverage industry will not be contrary to the public interest.

The petition is denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: September 24, 1941.

13. RETAIL LICENSEES - SIGNS - NOTICE RE REGULATIONS NO. 21 - SIGNS ADVERTISING THE TAX INCREASE VISIBLE FROM THE STREET, AND DIRECTLY OR INDIRECTLY REFERRING TO PRICE, ARE PROHIBITED.

September 22, 1941

The President has signed H. R. 5417, known as the Revenue Act of 1941, in which is included an increase in the tax on alcoholic beverages to become effective on October 1, 1941.

In the past, upon the passage of such an Act, various retail licensees have posted on their premises signs, visible from the street, advising the public of the fact of the increased tax. Some signs went further and advised: "Stock Up Now", "We Absorb The Tax", and the like.

In order to avoid the recurrence of this practice, specific attention is hereby called to the fact that all such signs are indirect advertising of price and hence violate Rule 3 of State Regulations No. 21, which reads:

"No retail licensee shall directly or indirectly advertise or permit or suffer the advertising of the price of any alcoholic beverage or relative size of the container thereof on the exterior of the licensed premises or in the show window or door thereof or in the interior thereof when visible from the street; except, however, that placards not exceeding $1\frac{1}{2}$ inches by $1\frac{1}{2}$ inches and advertising the price of alcoholic beverages being sold in original containers for consumption off the licensed premises may be displayed within the show window of the licensed premises."

Violation of this rule will result in suspension or revocation of license.

Alfred E. Driscoll
Alfred E. Driscoll,
Commissioner.