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

BULLETIN 305 MARCH 28, 1939.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - REFILLING BOTTLES - 30 DAYS' SUSPENSION - HEREIN OF A NEW ALIBI.

March 14, 1939

Arthur C. Malone,
City Clerk,
Hoboken, N. J.

My dear Mr. Malone:

I have before me staff report and your letter of March 7th re disciplinary proceedings conducted by the Board of Commissioners against Sylvester Czaplewski, 232 River Street, charged with refilling liquor bottles, and note that his license was suspended for thirty days.

I can, of course, express no opinion on the merits, because, perchance, the case may come before me on appeal. I wish, however, that you would convey to the Board of Commissioners my deep appreciation for their conduct of these proceedings and the appropriate penalty imposed.

I wrote the City Clerk of Jersey City earlier today in connection with a similar charge: "Refilling of liquor bottles is a problem of first magnitude. The salutary action of your Board will go far to stamp it out." This applies equally to your Board.

It was interesting to note how the licensee's alibi changed between the time that my men discovered the violation and the date of the hearing. He told my men that he had no idea how the straight whiskey got in the blended whiskey bottle and the blended whiskey got in the straight whiskey bottle, and hazarded the guess it must have been the cook who made the substitution. Yet, at the hearing he blamed it on his customers, who, when they got drunk, were wont, he vouchsafed, to pour their drinks back into the bottles! Perhaps this is subconscious temperance, but I surmise it is only attempted appeasement!! As an alibi it doesn't make par!!!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

New Jersey State Library

2. MUNICIPAL REGULATIONS - PROHIBITION OF SALE AND SERVICE OF ALCOHOLIC BEVERAGES BY FEMALES - EXCEPTION ALLOWING SALES BY MEMBERS OF THE IMMEDIATE FAMILY OF THE LICENSEE DOES NOT INCLUDE STOCKHOLDERS AND OFFICERS OF CORPORATIONS - THE REGULATION MUST SPECIFY THE PARTICULAR FAMILY RELATIONSHIPS CONTEMPLATED AND NOT AFFORD SUCH EXEMPTIONS AS WOULD NULLIFY THE RULE.

March 13, 1939

Milton T. Lasher, Esq.,
Attorney, Borough of Edgewater,
Hackensack, N. J.

My dear Mr. Lasher:

I note that you have been authorized by the Council to advise this Department that Section 11 of Ordinance No. 262, adopted by the Council on October 1, 1935, will be interpreted to permit the sale and service of alcoholic beverages by female stockholders or officers of corporate licensees.

Section 11, so far as pertinent, reads: "The right of females to serve, sell or in any manner engage in the actual dispensing of alcoholic beverages shall be limited to the licensee or members of the immediate family of the licensee, over the age of twenty-one years....."

I fail to see how the above section can be so interpreted. What has holding office or owning stock in a corporation to do with family relationship?

As Section 11 now reads, it will be my duty to transmit charges, together with recommendation that disciplinary action be instituted, against any corporate licensee permitting a female stockholder or officer of the corporation to sell or serve any alcoholic beverages. It is clear, as the regulation now stands, that sales or service of alcoholic beverages by female stockholders or officers of corporate licensees would be unlawful.

As the Council may wish to amend Section 11 so as to expressly permit this, it might be helpful if at this time I expressed my thoughts regarding such amendment.

Section 11, by its terms, contemplates an evil in the general employment of females to sell and serve alcoholic beverages. An exception is made, but only where the female is the licensee or a member of the "immediate family of the licensee." That phrase, by the way, should be changed in any event. Just what the term "immediate family" encompasses is uncertain. It might mean only wives and daughters, and then it might also include aunts, nieces or the wife's relatives who may be living with the licensee. Section 11 should be amended to specify just what classes of relatives are to come within the exception; e.g., wives, daughters, sisters, etc.

But even as so worded, Section 11 would still evince an intention to bar the promiscuous employment of females generally, to serve liquor. Hence, notwithstanding further amendment or supplement to extend the exception to include female stockholders or officers of corporations, I would be extremely loath to give my approval unless adequate safeguards were provided to preserve the general prohibition. If it is deemed necessary in principle, it

should not be whittled away by exceptions which make it a nullity. All a corporation would have to do to employ any female, willy nilly, would be to give her a share of stock, assigned in blank if you choose, so that it could be recovered when the employment terminated. The opportunity for evasion is too apparent. On the other hand, were she the bona fide owner of a substantial block of of stock and a bona fide officer of the corporation, an exception allowing such females to handle liquor on licensed premises might well be proper. If you will prepare such a regulation, I shall be glad to consider it.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. LIMITED WINERY LICENSE - NOT PERMISSIBLE TO MIX NATURALLY FERMENTED WINES AND FRUIT JUICES MADE PURSUANT TO THE LIMITED LICENSE WITH ANY OTHER WINE OR PRODUCT.

Dear Commissioner Burnett:

I am the holder of limited winery licenses No. VL-41 and 42, pursuant to which I have manufactured wine.

I should now like to purchase California wine and blend it with the wine which I have manufactured. Is it permissible for me to do this under the terms of my license?

If not, may I obtain a special permit to blend a specified number of gallons of wine to be purchased by me with a specified number of gallons of my own wine?

Very truly yours,
Jerry Albertine

March 13, 1939

Mr. Jerry Albertine,
Belleville, N. J.

Dear Mr. Albertine:

A limited winery license permits the holder, in so far as the making of liquor is concerned, to do no more than manufacture "any naturally fermented wines and fruit juices." R.S.33:1-10(2b

Therefore, you may not, under your limited winery licenses, mix your wine with any other wine or product. In order to do that you must obtain from this Department a plenary winery license (fee $500.00), which permits the holder not only "to manufacture any fermented wines" but also "to blend, fortify and treat wines", or a rectifier and blender license (fee $2500.00), which permits the holder "to rectify, blend, treat and mix distilled alcoholic beverages, and to fortify, blend and treat fermented alcoholic beverages and prepared mixtures of alcoholic beverages." R.S.33:1-10(2a) and (4).

One thought more which may be pertinent to your problem: The above three licenses vary as to the persons in this State to whom the licensee may sell the liquor produced by him. The wine produced under a limited winery license may be sold by the licensee to consumers as well as to wholesalers and retailers in this State.

However, the wine produced under a plenary winery license may be sold by the licensee to wholesalers and retailers but to no consumers other than churches for religious purposes. The liquor produced under a rectifier and blender license may be sold by the licensee only to wholesalers and retailers, and not to consumers.

All three types of license permit the liquor produced thereunder to be sold outside the State to any persons so long as the sales conform to the law of that place.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. APPELLATE DECISIONS - GUARANTE v. HO-HO-KUS

JOHN GUARANTE, Appellant, -vs- BOROUGH COUNCIL OF THE BOROUGH OF HO-HO-KUS, Respondent	ON APPEAL CONCLUSIONS

Hamilton Cross, Esq., by Charles W. Symanski, Esq., Attorney for Appellant.
Thomas H. Doughty, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of a plenary retail consumption license for premises located at 620 North Maple Avenue, Borough of Ho-Ho-Kus.

In its answer respondent alleges that there is no need for an additional license in the Borough.

Appellant now conducts a shoe repair and shoe store in Ho-Ho-Kus. There is no question as to his good character because it appears that he is "held in the highest regard by every member of the Council." Appellant's premises are located on a street containing a number of small stores. There is presently outstanding in the Borough one consumption license, which has been issued to Ho-Ho-Kus Inn, located about one thousand feet from appellant's premises. Another consumption license has been issued by the Village of Ridgewood to Burke's Inn, which is located a short distance beyond the dividing line between the Borough and the Village. Burke's Inn appears to be within one-half mile of appellant's premises.

Appellant contends that the Ho-Ho-Kus Inn does not cater to the ordinary working man, and that Burke's Inn should not be considered because it is within another municipality. The existence of a licensed place nearby, even if located in another municipality, may be considered in determining the question of need. Gomulka v. Linden, Bulletin 294, Item 8. Moreover, aside from appellant and two of his relatives, no one appeared at the hearing to complain that they had any difficulty in obtaining alcoholic beverages at either of the places which are now licensed.

The only other evidence of alleged necessity consists of a petition containing about sixty-six names, requesting that an additional license be granted to appellant because there is only one licensed tavern in the Borough. Aside from the fact that this petition was not presented to the Borough Council, it is not sufficient in itself to show that there is need for an additional license in Ho-Ho-Kus.

Considering the fact that it has been stipulated that the population of the Borough is between twelve hundred and thirteen hundred, and considering further the existence of the licensed places referred to herein, it cannot be said that respondent's refusal to issue another license in the Borough is unreasonable. Palmer v. Englishtown, Bulletin 116, Item 4; Cf. Brost v. East Amwell, Bulletin 303, Item 12.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 16, 1939.

5. NAMES - "HOLY CITY TAVERN" IS IRREVERENT AND OFFENSIVE - CEASE AND DESIST ORDER ISSUED.

March 16, 1939

Mr. Morris Heller,
314 Manor Avenue,
Harrison, N. J.

Dear Sir:

I have before me your advertisement in which you describe your place as "Holy City Tavern."

Your license confers no power to use such a trade name. It is irreverent, offensive and wholly out of order.

Cease and desist forthwith.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. APPELLATE DECISIONS - TAXPAYER'S AND CITIZEN'S ASSOCIATION, INC. v. SADDLE RIVER and SHUPACK.

TAXPAYER'S AND CITIZEN'S ASSOCIATION, INC., Appellant,	
-vs-	ON APPEAL CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF SADDLE RIVER and MARGARET SHUPACK, Respondents	

Morris Novick, Esq., Attorney for Appellant.
Herbert A. Chary, Esq., Attorney for Respondent Township Committee.
Paul A. Vivers, Esq., Attorney for Respondent, Margaret Shupack.

BY THE COMMISSIONER:

Appellant appeals from the action of respondent Township Committee in granting a plenary retail consumption license to respondent Margaret Shupack, for vacant premises at Route 6 and 7th Street, Township of Saddle River.

Appellant sets forth numerous reasons for reversal but presented evidence concerning only three of the assigned reasons, namely: (1) That Margaret Shupack is a "front" for her husband, Jack Shupack; (2) that Margaret Shupack does not live at 24 Frankos Avenue, Saddle River, as set forth in her application; (3) that there is no building at Route 6 and 7th Street, Saddle River, as stated in the application and advertisement.

As to (1): The only evidence on this point was given by respondent, Margaret Shupack, who was called as a witness for appellant. She testified:

"Q What connections, if any, will your husband have in this business? A None whatsoever. This is solely my property.
Q You mean as to the paying of the bills? A As to everything. Have I no right with my own money?
Q What gain, if any, will your husband have in this business? A He will have no gain."

She further testified that she purchased the land in question about two months ago and has expended about $1,000.00 of her own money in purchasing and grading the property; that she obtained this money from an insurance policy on her furniture, which was destroyed by fire on Labor Day 1938; that she worked as a beautician on and off between 1929 and 1937, and saved some money; that the sum to be invested in this enterprise is coming out of her sole account; that her husband is not going to put up "one penny" because he has no money; that she has arranged to give a mortgage on the building to be erected at the premises in question.

Appellant refers to Shupack v. Paterson, Bulletin 248, Item 5, in which case the Board of Aldermen of Paterson denied a transfer of a license to Margaret Shupack because that Board found as a fact that she was a "front" for her husband. On that appeal, the burden of proof was on her, since she was the appellant, and the evidence given was not sufficient to cause reversal. In the instant case, however, respondent Township Committee evidently was satisfied that no question of a "front" was involved and, on this appeal, the burden of proof is not on her but on the present appellant. On the present record, it is clear from the foregoing resume of the testimony in the instant case that appellant has not sustained the burden of proof in showing that Margaret Shupack is a "front" for another person. There is no question raised as to appellant's personal qualifications. If it develops at any time hereafter that she really is a "front", proceedings may be instituted to revoke her license.

As to (2): Margaret Shupack, on appellant's case, testified that she and her husband resided on Frankos Avenue from March

1937 to Labor Day 1938, at which time a fire destroyed their home; that, since that time, they have resided with Mrs. Zuber in a house which is next door to their former residence. The testimony of a neighbor that she has seldom seen the Shupacks at the Zuber home since last Labor Day is not sufficient to offset the testimony of Mrs. Shupack that she lives on Frankos Avenue.

As to (3): The application, after stating location of premises, describes the building to be licensed as "frame building (plans attached)." Mrs. Shupack testified that plans and specifications for the building to be erected were filed with the application. The plans and specifications have been introduced herein as part of the application. The action of respondent Township Committee in granting the license for vacant property was not erroneous. Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8; Marsteller v. Somers Point, Bulletin 244, Item 7. Of course, the license cannot be issued until the building is completed in conformity with the plans and specifications. Raney and Flynn v. Ewing, Bulletin 228, Item 9. The notice of intention, as published, was in the usual form but omitted the statement that "plans and specifications of building to be constructed may be examined at the office of the Municipal Clerk", as required by State Regulations No. 2. However, no one seems to have been misled or prejudiced by such omission. No complaint is made that the place as planned is not suitable. I see no necessity for requiring respondent Shupack to go through the empty formality of readvertising.

At the close of appellant's case, motions were made by both respondents to dismiss. Since I find that the testimony introduced by appellant, assuming it to be true, fails to make out a case, the motion will be granted.

The appeal is therefore dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 18, 1939.

7. AUTOMATIC SUSPENSION - APPLICATION TO LIFT - GRANTED.

In the Matter of a Petition by GEORGE W. HILL To Lift the Automatic Suspension of Plenary Retail Consumption License No. C-6, issued by the Township Committee of the Township of Pequannock.	CONCLUSIONS AND ORDER

Frank C. Scerbo, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

After licensee pleaded non vult to an indictment for selling alcoholic beverages to a minor, and was sentenced to pay a fine of $25.00, his license was picked up on March 15, 1939 as a result of its automatic suspension because of said conviction. R. S. 33:1-31.1.

The petitioner's license was suspended for ten days (November 20, 1938 to November 30, 1938) by the local issuing authority for the violation upon which the indictment and conviction were based.

Review of the evidence given at the disciplinary proceedings held before the local issuing authority shows that a young man, aged 18, paid the licensee for four glasses of beer at the bar and carried the glasses to a table where three other young people were seated; that one of the three was a girl, aged 16; that, while the beer was being consumed, two investigators from this Department discovered the violation. There is a dispute as to whether the order for the beer was given directly to the licensee or whether the drinks were ordered by a waitress.

This is licensee's first offense of record. Including the ten day suspension imposed in November, he will have suffered a total suspension of fifteen days as of March 19, 1939. That is enough.

Accordingly, it is on this 18th day of March, 1939, ORDERED that the automatic suspension of the license be lifted, effective at the opening hour on March 20, 1939.

D. FREDERICK BURNETT,
Commissioner.

8. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of R.S.33:1-31.2 (as amended by Chapter 350, P. L. 1938)

Case No. 52

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

On May 11, 1932 petitioner pleaded guilty to an indictment for aiding and abetting a robbery, and was sentenced to three months in a county jail.

Since 1932 petitioner has resided in the municipality in which he lived at the time of his conviction. From 1932 until September 1935 he was employed by a State Beverage Distributor licensee, and left said employment when his application for a solicitor's permit was denied because he had been convicted of the crime set forth above. During the following three years he was employed by the municipality in which he resides and, during part of said period, was a member of the Fire Department until the paid Fire Department was abolished in 1938. Since that time he has been employed as a truck driver by one of the largest refining companies.

At the hearing petitioner produced three character witnesses - a business man who has known him fourteen years, a neighbor who has known him nineteen years, and the licensee by whom he was formerly employed who has known him about fifteen years. All testified that his reputation in the community is very good and that, so far as they knew, petitioner had never been in any trouble except in 1932. I am satisfied from their testimony that they have

had opportunities to judge his character and observe his conduct since the date of his conviction.

I conclude that petitioner has led an honest and law-abiding life since 1932, and that his association with the alcoholic beverage industry will not be prejudicial to the interests of that industry.

It is, therefore, on this 18th day of March, 1939, ORDERED, that petitioner's disqualification from holding a license or being employed by a licensee, because of the conviction referred to herein, be and the same is hereby removed, in accordance with R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938).

D. FREDERICK BURNETT,
Commissioner.

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

March 22, 1939

Re: Case No. 239

Hearing was held to determine whether the applicant is disqualified from holding a liquor license or being employed by a liquor licensee in this State by reason of conviction of a crime involving moral turpitude. R. S. 33:1-25, 26.

In July 1915, applicant was convicted of violating a local liquor ordinance and given a suspended sentence. In January 1916, he was again convicted of violating such ordinance and fined $25.00. However, since violations of a municipal ordinance are not "crimes" within the meaning of R. S. 33:1-25, 26, applicant's convictions thereof do not mandatorily disqualify him under those statutory sections. Re Application for Removal of Disqualification Case No. 46, Bulletin 299, Item 9; Re Case No. 249, Bulletin 303, Item 8.

In February 1916, applicant was arrested for operating a disorderly house, but the records of disposition of this matter are missing.

In September 1929, applicant was arrested for kidnapping, but was later acquitted.

In February 1932, applicant was indicted for conspiracy to distribute slot machines and similar devices for gambling purposes, through Passaic, Clifton and Little Falls, and to operate gambling establishments equipped with such machines or devices. He stood trial and was found guilty by a jury in February 1934, and was sentenced to a term of from two and one-half to three years' imprisonment and a fine of $1,000.00. He paid the fine and served one year and ten months of his prison term, being released on parole in December 1935.

Applicant testified that he is innocent of this crime and was "railroaded" by politicians who wanted to put him out of the way. However, his conviction cannot be collaterally attacked in this proceeding. Re Case No. 236, Bulletin 279, Item 2.

Furthermore, despite applicant's claim of innocence, inquiry of the member of the County Detectives who worked on the prosecution's case against him reveals that applicant was "the head and

main owner of a slot machine gang that operated from the City of Passaic" and that he was not above resorting to methods of violence through his mobsters in conducting his slot machine "racket."

Commercial gambling is a crime which ordinarily involves moral turpitude. Re Questions and Explanations, Bulletin 2, Item 8; Re Ulhich, Bulletin 70, Item 2. So, too, the operation of a ring to distribute gambling machines and conduct gambling establishments involves that same element, especially where, as here, attended by methods of violence.

It is recommended that applicant be declared disqualified, by reason of his conviction in 1934, from holding a liquor license or being employed by a liquor licensee in this State.

Nathan Davis,
Attorney.

Approved as to result:
D. FREDERICK BURNETT,
Commissioner.

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

March 22, 1939

Re: Case No. 258

Hearing was held to determine whether applicant is disqualified from holding a liquor license or being employed by a liquor licensee in this State by reason of conviction of a crime involving moral turpitude. R. S. 33:1-25, 26.

In July 1919, applicant, pursuant to a plea of non vult, was convicted of embezzlement and sentenced to imprisonment for three years. He was paroled in January 1921, after serving a year and a half of that sentence.

Applicant testified that, at the time of the embezzlement, he was employed by an express company as an expressman; that one day, after finishing his own route, he went along with a fellow expressman on his route for the purpose of assisting him; that the fellow expressman made a C.O.D. delivery in Camden, collected the money due thereon (apparently $685.00), and gave applicant half; that applicant did not at first know that his companion was proposing that each keep half of the money; that, however, he soon realized this proposal and kept his share; that the fellow expressman was convicted with him on the same charge.

The only serious question in the case is whether applicant was under eighteen years of age at the time of the embezzlement. If under that age, his youth is a pertinent circumstance to be considered in determining whether his crime involved moral turpitude. Re Application for ARC Permit, Case No. 36, Bulletin 149, Item 1; Re Case No. 192, Bulletin 215, Item 3; Re Application to Remove Disqualification, Case No. 13, Bulletin 228, Item 3.

Applicant testified that he was born in Philadelphia on January 18, 1902, but that the attending physician died soon thereafter and never recorded his birth; that in 1916 applicant's father misrepresented applicant's age as being two years more than it actually was in order to set him to work; that applicant assumed

that his age, as thus advanced, was correct until 1925, when two of his maternal aunts (who live in Philadelphia) informed him of his true age and of his father's misrepresentation; that he never corrected his age in thereafter renewing his driver's license because he thought "there was no need causing possible trouble"; that his mother died in 1915 and his father in 1923.

Investigation reveals that there is no birth certificate for applicant on record at Philadelphia for either 1899 or 1902. However, public records show that in 1915 his age was listed as thirteen at the school which he was then attending. Applicant also produced at the hearing a notice from a hospital where he was operated upon in 1915, which states that the hospital's records list his age as thirteen in that year.

Applicant's story and the corroboration of the school and hospital records sufficiently prove that he was born in 1902, and hence was but seventeen years of age when convicted in July 1919. I do not believe that his crime of embezzlement was attended by such aggravating circumstances as to outweigh the fact of his youth and hence to brand his crime as one which involves moral turpitude.

There is no evidence of any other conviction.

It is recommended that applicant be declared not mandatorily disqualified, despite his above record, from holding a liquor license or being employed by a liquor licensee in this State.

Nathan Davis,
Attorney.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

11. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 22, 1939

Re: Case No. 259

Hearing was held to determine whether the applicant is disqualified from obtaining a solicitor's permit by reason of conviction of a crime involving moral turpitude. R. S. 33:1-25, 26.

In June 1937, applicant was, pursuant to his plea of non vult, convicted of embezzling $241.61 of moneys collected by him as salesman and collector for his employer. He was released on probation for three years and ordered to pay twenty-five cents a week and to make restitution.

In explanation of his offense, the applicant claims that he took the moneys (in November 1936) because he was in need of funds to finance medical attention for his wife, who suffered a miscarriage.

However, independent investigation indicates that the applicant's wife, at the time of the alleged miscarriage, was in the early stages of pregnancy and that the medical attention which applicant procured for her was for the purpose of performing an abortion.

Embezzlement is a crime which ordinarily involves moral turpitude. Re Case No. 40, Bulletin 151, Item 2. The fact that here the applicant took his employer's money in order to procure an abortion upon his wife scarcely cleanses away that element of moral turpitude.

Hence, it is recommended that the applicant be declared disqualified from holding a solicitor's permit and that his application therefor be denied.

Nathan Davis,
Attorney.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

12. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

March 22, 1939

Re: Case No. 260

Applicant's fingerprints disclosed that, in 1935, he had been committed to a county jail for violation of probation. At the hearing applicant testified that, prior to the date on which he was committed to jail, he had been ordered to pay $22.50 a week for the support of his wife, by a Judge in a Domestic Relations Court; that he had been committed because of his failure to make such payments; that he had been in jail two or three days when his friends paid the amount due to the wife, after which applicant was released. Investigation discloses that applicant's story is correct. There is no question of moral turpitude involved in this conviction.

Although the fingerprint records fail to disclose this information, applicant admits that he was convicted, in 1923, for illegal transportation of alcoholic beverages and fined $100.00. He testified that, at that time, he was working as a truck driver and was not engaged in the manufacture of liquor. Since there appear to be no aggravating circumstances, I believe that this conviction did not involve moral turpitude.

It is recommended that solicitor's permit be issued.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

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

March 22, 1939

Re: Case No. 261

Hearing was held to determine whether respondent is disqualified from being employed by a liquor licensee in this State by reason of conviction of a crime involving moral turpitude. R. S. 33:1-25,26.

In April or May 1929, respondent, then seventeen years of age, was, pursuant to his plea of non vult, convicted of larceny of an automobile and released on probation for three years and ordered to pay fifteen cents per week.

Investigation reveals that the respondent and several other youths were arrested on this occasion for taking and driving around in an automobile, without permission, on an apparent "joy ride." One of the boys later attempted to strip the tires from the car (in the course of which the arrest occurred), and one or more of the boys stole some tools valued at $20.00.

Since the respondent was under eighteen years of age at the time of his misbehavior, his youth is a pertinent circumstance to be considered in determining whether his crime involves moral turpitude. Re Application for ABC Permit, Case No. 36, Bulletin 149, Item 1; Re Case No. 192, Bulletin 215, Item 3; Re Application to Remove Disqualification, Case No. 13, Bulletin 228, Item 3. In view of the fact that his misconduct was a "joy ride" escapade, I do not, weighing his youth, believe that his crime, though reprehensible, involves moral turpitude.

In February 1936, the respondent was convicted of violating Section 47 of the Control Act (now R. S. 33:1-49) as a result of knowingly making an illicit purchase of liquor, and was fined $25.00. In explanation, he testified that he had bought a pint of liquor from a bootlegger and that someone apparently revealed this fact to the police.

Violation of the Alcoholic Beverage Control Law is not per se a crime involving moral turpitude. Re Case No. 41, Bulletin 166, Item 5; Re Hearing No. 157, Bulletin 190, Item 12; Re Case No. 63, Bulletin 195, Item 1; Re Case No. 188, Bulletin 212, Item 2; Re Case No. 238, Bulletin 288, Item 14. While the respondent's illicit purchase of a pint of liquor from a bootlegger should not be condoned in these days of Repeal, no such aggravating circumstances here appear as to indicate the presence of moral turpitude.

However, the respondent has one "strike" on him by reason of this violation of the Alcoholic Beverage Control laws. Another "strike" will permanently disqualify him. R. S. 33:1-25.

It is recommended that the respondent be declared not mandatorily disqualified, despite his above record, from being employed by a liquor licensee in this State.

Nathan Davis,
Attorney.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

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

March 24, 1939

Re: Case No. 264

In May 1938 applicant pleaded non vult to an indictment for embezzlement, at which time he was placed on probation for three years and ordered to pay fifty cents per week.

At the hearing applicant testified that he was a member of the Bar in December 1937; that, at that time, a client had given him about $2200.00 to be used for real estate deals; that subsequently the deals were cancelled and a criminal complaint made against applicant, when he returned only about $1500.00 to his client; that his indictment for embezzlement was based on this charge. Applicant was subsequently disbarred.

Embezzlement ordinarily involves moral turpitude. No facts have been shown which would lead to a different result in this case.

It is recommended that applicant be advised that he is not eligible to be employed by a liquor licensee in New Jersey.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

15. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - GAMBLING - BAGATELLE PAY-OFF.

In the Matter of Disciplinary Proceedings against

LEO and LOUIS AVERGON,
108 Broad Street,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-96, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

Licensees plead guilty with an explanation to a charge of permitting gambling on their licensed premises on March 4, 1939, in violation of Rule 7 of State Regulations No. 20.

The evidence shows that, on the date in question, two investigators from this Department visited the licensed premises and played a machine known as an "Atlantic City" bagatelle. One of the investigators was paid ten cents by the bartender after he happened to light seven of the ten numbers on the machine, and again was paid fifteen cents by the bartender after he happened to light eight of these numbers.

The licensees' sole explanation is that the bartender permitted the gambling contrary to their instructions. Licensees, however, are responsible for the acts of their agents performed within the usual scope of their duties.

This is the licensees' first conviction although, in May 1938, they received a warning for paying off on a bagatelle machine with drinks. I shall suspend their license for seven days.

Accordingly, it is, on this 24th day of March, 1939, ORDERED, that Plenary Retail Consumption License No. C-96, heretofore issued to Leo and Louis Avergon by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same hereby is suspended for a period of seven (7) days, commencing on March 30, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

16. DISCIPLINARY PROCEEDINGS - STATE BEVERAGE DISTRIBUTOR - FURNISHING EQUIPMENT TO RETAIL LICENSEE.

In the Matter of Disciplinary Proceedings against POZNAK BEVERAGE CO., INC., 105 Clay Street, Newark, New Jersey, Holder of State Beverage Distributor's License No. SBD-90, issued by the State Commissioner of Alcoholic Beverage Control.	CONCLUSIONS AND ORDER

George S. Pearse, Esq., Attorney for the Licensee.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge served upon the licensee alleges that, on or about April 12, 1938, it guaranteed to New Jersey Beer Equipment Co. the payment of fixtures and equipment which were installed at the premises of Daniel and Thomas Lawson, retail licensees, at 245 Academy Street, Newark, New Jersey, and thereafter paid for such fixtures, contrary to Rule 1 of State Regulations No. 21, which provides:

> "No manufacturer or wholesaler shall directly or indirectly furnish (by sale, loan, gift or otherwise), deliver, service or repair any fixtures, equipment, signs or other advertising matter to any retail licensee or at any retail licensed premises * * *."

In March 1938 the retail licensed premises operated by Lawsons were destroyed by fire. At that time the Lawsons owed about four hundred dollars to Poznak Beverage Co., Inc. Subsequently, New Jersey Beer Equipment Co. installed a thirty-six inch beer cooler in Lawsons' premises. William B. Linn, Vice-President of Poznak Beverage Co., Inc., signed a written statement, which has been admitted in evidence, the pertinent part of which follows:

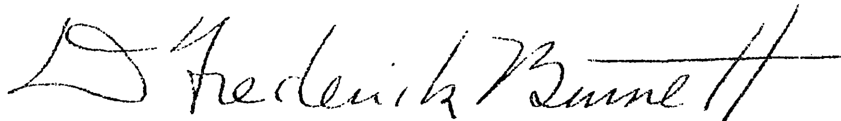
> "They (Daniel and Thomas Lawson) purchased a cooler about that time from the New Jersey Beer Equipment Company for $42.00, and upon the equipment being delivered C.O.D. the Lawsons informed the New Jersey Beer Equipment Company that they could not pay for it. The New Jersey Beer Equipment Company then called our office and I informed them that the Lawsons had always been reliable customers and we felt that the account would be good and that we would guarantee it. They then sent us an invoice for the cooler. This cooler had not been paid for by the 1st of May, 1938, and the New Jersey Beer Equipment Company demanded payment from us. On May 7th, 1938, we made a payment of $25.00, and subsequently paid the balance.

"Business conditions have been such that our account with the Lawsons, exclusive of this item, has run behind and we have been unsuccessful in collecting it from them."

The defendant-licensee's records show that, on April 12, 1938, New Jersey Beer Equipment Co. billed them for the item in question and that said item was paid for by checks dated May 7, 1938 and August 2, 1938. The Lawsons have not paid for the beer cooler and, at the time the defendant-licensee's books were inspected, the item was not charged to the Lawsons on its books. The evidence is sufficient to show that Poznak Beverage Co., Inc. indirectly furnished the fixture, which consisted of the beer cooler, to the retail licensees and, hence, it is guilty as charged.

Since this is the first case of its kind, and the defendant-licensee has no prior record, I shall suspend its license for five days.

Accordingly, it is, on this 24th day of March, 1939, ORDERED that State Beverage Distributor's License No. SBD-90, heretofore issued to Poznak Beverage Co., Inc. by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby suspended for a period of five (5) days, commencing April 3, 1939 at 3:00 A.M.



Commissioner.

New Jersey State Library