

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 777

SEPTEMBER 23, 1947.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 777

SEPTEMBER 23, 1947.

1. APPELLATE DECISIONS - SANDRAS v. NEWARK.

GUSTAS SANDRAS, t/a TRAVELERS
BAR AND GRILL,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC
BEVERAGE CONTROL OF THE CITY OF
NEWARK,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

John C. Demos, Esq., Attorney for Appellant.

Thomas L. Parsonnet, Esq., by George B. Astley, Esq., Attorney for
Respondent.

BY THE COMMISSIONER:

Appellant appeals from the action of respondent whereby there was inserted in his plenary retail consumption license for the present fiscal year the following condition:

"That the premises known as #26 Park Place be used for storage space only and the premises known as #5 Saybrook Place be used only for the sale, service and delivery of alcoholic beverages."

On July 1, 1935, respondent issued a plenary retail consumption license for premises at 5 Saybrook Place to Travelers Bar and Grill Inc. This license was transferred to and renewed annually by George L. Lilakos to and including the fiscal year which began on July 1, 1941.

In November 1941 George L. Lilakos filed an application to transfer his license from 5 Saybrook Place to 5 Saybrook Place and 26 Park Place. The two buildings in question form an "L"; are connected at the rear parts thereof; and have separate entrances on Saybrook Place and Park Place. On November 21, 1941 a hearing was held by respondent at which the licensee Lilakos stated, and subsequently inserted in his application for transfer, that he intended to use the premises known as 26 Park Place merely for the purpose of storage. On December 11, 1941 the license in question was transferred to include both premises. Thereafter the license was renewed in the name of George L. Lilakos for premises known as 5 Saybrook Place and 26 Park Place to and including the 1944-45 fiscal year. On November 9, 1944, the license was transferred to George Lambros and George Eleftheriou, who obtained renewals thereof for the 1945-46 and 1946-47 fiscal years. On July 1, 1946 the license was transferred to appellant herein. None of the license certificates heretofore mentioned contained the condition specifically imposed upon the current license and from which appellant appeals.

On March 27, 1947, appellant applied by letter to respondent for permission to remodel his premises. The extent of the proposed alteration has not been disclosed in this appeal but appellant planned to install a bar and it is evident that he sought to alter his premises so that he might thereafter use the store known as 26 Park Place for the sale of alcoholic beverages. To use his own words, he intended to establish a "saloon, regular saloon", at the said premises. Thus, in effect he sought to obtain a new outlet for the sale of alcoholic beverages at 26 Park Place instead of restricting said sales to 5 Saybrook Place and continuing the use of 26 Park

Place merely for storage. Objections having been filed to the remodeling of the premises, a hearing was held by respondent on April 3, 1947, at which all interested persons were heard, but the license expired on June 30, 1947, before any action was taken by respondent upon appellant's application to remodel his premises. The license issued to appellant for the present fiscal year contained the condition from which he appeals.

A review of the facts of this case leads me to conclude that respondent would not have transferred the license on December 11, 1941 to include the premises known as 26 Park Place were it not for the fact that the individual who then held the license agreed to use the latter premises merely for the storage of alcoholic beverages. The evidence discloses that seventeen premises in the neighborhood of Saybrook Place and Park Place have been licensed for the sale of alcoholic beverages. The objectors contend that there is no need for an additional outlet for the sale of alcoholic beverages at 26 Park Place. Perhaps it would have been better practice if, in December 1941, respondent had inserted in the license the condition which is the subject of this appeal. However, for a period of more than five years thereafter, the various licensees accepted renewals of the license with knowledge that the premises at 26 Park Place had been used only for storage.

Appellant contends that he should not be bound by the agreement made by his predecessor Lilakos, and that respondent acted improperly in specifically imposing the condition upon his present license. I cannot agree with these contentions. Respondent depended upon the agreement with Lilakos in extending the license. If, as appellant contends, he was misled by the persons from whom he purchased the business, this cannot bind respondent. When appellant took the license by a transfer in July 1946, the physical condition of the premises was such that it was apparent that the store at 26 Park Place was being used merely for the storage of alcoholic beverages and not for the sale of alcoholic beverages. Considering the number of licenses in the neighborhood, the condition appears to be reasonable.

Under all the circumstances, I shall approve the condition in accordance with the provisions of R. S. 35:1-32, and affirm the action of respondent.

Accordingly, it is, on this 10th day of September, 1947,

ORDERED that the action of respondent herein be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Commissioner.

2. SEIZURE - FORFEITURE PROCEEDINGS - ILLEGAL STORAGE OF TAX-PAID LIQUOR BY HOLDER OF PLENARY RETAIL CONSUMPTION LICENSE WITH INTENT TO EVADE FEDERAL FLOOR TAX - FEDERAL TAX SUBSEQUENTLY PAID - LICENSEE ORDERED TO OBTAIN VALIDATING PERMIT ON PAYMENT OF \$300.00 FEE AND COSTS OF SEIZURE.

In the Matter of the Seizure on August 11, 1944 of 62 cases of various brands of alcoholic beverages at 82-84 Washington Street in the City of Perth Amboy, County of Middlesex and State of New Jersey.

Case No. 6701

ON HEARING CONCLUSIONS AND ORDER

Susan Mitruska and Joseph Callahan, Pro Se. Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 62 cases of various alcoholic beverages, itemized in the schedule attached hereto, seized on August 11, 1944 at 82-84 Washington Street, Perth Amboy, constitute unlawful property and should be forfeited.

It appears that on the day in question ABC agents visited the licensed tavern of Joseph Callahan at the above address to check a complaint that he had alcoholic beverages stored in the attic, which is not part of the licensed premises. Callahan resided on the second floor of the building. After they checked Callahan's stock of alcoholic beverages on the licensed premises, the agents, with his consent, examined the upper floors, although Callahan told them that there were no alcoholic beverages stored in the attic. However, when the agents entered the attic, they found the 62 sealed cases of alcoholic beverages.

It is unlawful for a retail liquor licensee to store any part of his stock of alcoholic beverages at any place other than his licensed premises or a public warehouse licensed to store alcoholic beverages, pursuant to R. S. 33:1-14, unless the licensee first obtains a permit from the State Commissioner of Alcoholic Beverage Control. Rule 25 of State Regulations No. 20. Re Gold, Seizure Case No. 6383, Bulletin 653, Item 6. Alcoholic beverages stored unlawfully, although tax paid, nonetheless constitute illicit alcoholic beverages and are subject to forfeiture. R. S. 33:1-1(i), (y), and R. S. 33:1-66.

Upon discovery of the alcoholic beverages in the attic, Callahan expressed surprise. He acknowledged that two cases of scotch in the lot were owned by him and said that he had last seen these two cases in his living quarters and he could not account for their presence in the attic. Callahan then stated all of the other alcoholic beverages must be owned by his father-in-law, Michael Mitruska, who resided with him and to whom he had sold cases of alcoholic beverages from time to time, amounting to not more than 14 cases.

Since there was a strong inference from the circumstances that the alcoholic beverages were actually owned by Callahan and stored in the attic possibly to evade Federal "floor tax", imposed in 1942 and 1944, the alcoholic beverages were seized by the ABC agents pending presentation of satisfactory evidence that they were not in fact owned by Callahan.

Mr. Mitruska died on August 31, 1944, after the seizure.

When the matter came on for hearing pursuant to R. S. 33:1-66, Susan Mitruska, widow of Michael Mitruska, appeared and sought return of the alcoholic beverages, excepting the two cases of scotch, which were claimed by Callahan.

From the markings on 35 of the cases of alcoholic beverages, an ABC agent was able to trace them to the wholesalers, whose records disclose that they had been sold to Callahan at various times between 1942 and 1944. Mr. Mitruska formerly owned the tavern and sold it to Callahan, his son-in-law. He had some financial means and it is said that he purchased a considerable quantity of alcoholic beverages because he regarded it as a good investment. His widow claims that when she visited him in the hospital during his last illness, he executed a document, witnessed by a notary public, which purported to bequeath to her his personal property, specifically mentioning whiskey among other items.

Mrs. Callahan testified that the two cases of scotch owned by her husband might have been placed in the attic by a handy man.

While this direct testimony that the alcoholic beverages were owned by Michael Mitruska was not to be disregarded, nevertheless it did not entirely overcome the strong inference that Callahan actually was the owner of the alcoholic beverages. Decision in the case was therefore deferred pending further investigation.

Thereafter additional evidence was developed by agents of the Federal Alcohol Tax Unit who participated in the case, which apparently was sufficient to establish a prima facie case under Federal law that the alcoholic beverages were actually owned by Callahan and stored by him in the attic to avoid payment of the Federal "floor tax". In the spring of 1945 Callahan was arrested by Federal authorities on this score.

The outcome of the Federal proceedings was that Callahan, while apparently steadfastly maintaining that they were not his alcoholic beverages, nevertheless concluded not to litigate the matter and recently paid the Federal "floor tax" and penalty amounting to \$1,434.42, effecting a compromise with the Federal authorities whereby he paid them \$663.00 in compromise of his civil and criminal liability under the Federal law. On August 26, 1947 the Federal authorities advised this Department that the case was closed in so far as they were concerned.

The presence of the alcoholic beverages, including the two cases of his scotch, in Callahan's attic, and his final acceptance of responsibility for their storage there, is cogent evidence of ownership. In contrast, the document which Mrs. Mitruska presented does not specifically identify the quantity or brand of whiskey purportedly given to her and hence is, at best, doubtful evidence that the 60 cases of alcoholic beverages seized were owned by her husband.

I therefore conclude that the seized alcoholic beverages were part of Callahan's stock, intended for resale at his tavern.

Callahan apparently did not know that the storage of such alcoholic beverages in his attic, off the licensed premises, was a violation of the Alcoholic Beverage Law. Callahan, who has held a liquor license since 1940, apparently has no previous criminal record or record of misconduct at his tavern.

On July 17, 1947 Callahan transferred his license to another person. Callahan is presently a stockholder in the Pines of Raritan Township, Inc., which holds a retail consumption license in Raritan Township. Callahan has indicated that, in the event the alcoholic beverages are returned to him, he proposes to sell such beverages to Pines of Raritan Township, Inc.

Normally, "off premises" storage by a licensee, in ignorance of the law and without any fraudulent intent in other respects, is corrected by validating permit rather than forfeiture of the alcoholic beverages. Since Callahan has been permitted to compromise his offenses against the Federal law, I conclude that, in his case, as in previous similar cases, it would be unfair to disregard the action of the Federal authorities and reestablish the evasion of the Federal "floor tax" solely for the purpose of supporting a forfeiture. See Seizure Case No. 6585, and Re Keene, Seizure Case No. 6575, Bulletin 618, Item 9.

I shall therefore, in lieu of forfeiture, accept Joseph Callahan's application for a permit retroactively validating the unlawful storage and authorizing sale of the alcoholic beverages to such corporate licensee, at a fee of \$300.00. The issuance of this permit will also serve in lieu of disciplinary proceedings on the score of unlawful storage since, the offense having been validated, it obviously cannot also serve as a basis for such proceedings. This conclusion, in net effect, is similar in principle to Gold Seal Liquor Co., Bulletin 653, Item 7.

Upon issuance of such permit and the payment of the costs due, paid or incurred by the Department in the seizure and storage of the alcoholic beverages itemized in Schedule "A" attached hereto, such alcoholic beverages will be made available to Joseph Callahan for delivery to Pines of Raritan Township, Inc.

ERWIN B. HOCK
Commissioner.

Dated: September 10, 1947.

SCHEDULE "A"

- 13 - cases Dixie Belle Gin
- 24 - cases Schenley Red Label Whiskey
- 5 - cases Old Drum Whiskey
- 1 - case Calvert Whiskey
- 1 - case Green River Whiskey
- 6 - cases Barcarda Rum
- 2 - cases Jacquin Gin
- 4 - cases St. Cruix Rum
- 1 - case Teachers Scotch Whisky
- 2 - cases Black & White Scotch Whisky
- 1 - case Havana Special Rum
- 1 - case Granada Rum
- 1 - case Cubita Rum

3. DISQUALIFICATION - APPLICATION TO LIFT - ALIEN ENGAGED IN ALCOHOLIC BEVERAGE BUSINESS WITHOUT EMPLOYMENT PERMIT - FALSE STATEMENTS - PETITION DISMISSED.

In the Matter of an Application) to Remove Disqualification) because of a Conviction, pursuant) to R. S. 33:1-31.2.)	CONCLUSIONS
Case No. 588) -----)	

BY THE COMMISSIONER:

Petitioner seeks the removal of a disqualification resulting from his conviction in 1919 of the crime of highway robbery. Petitioner pleaded non vult and was sentenced to probation for three years and a fine at the rate of \$1.00 per week during said probationary period.

The crime of highway robbery, per se, is a crime involving moral turpitude. Re Case No. 318, Bulletin 606, Item 5.

Petitioner is a national of Syria and as such must secure a permit prior to accepting employment by a licensee. R.S. 33:1-25, 26. In fact, prior to 1943, his employment by a licensee, even under permit, was limited to services other than selling, soliciting the sale of, or participating in the manufacturing, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage.

Regardless of these disqualifications, petitioner, for at least ten years and since 1937, has been employed by various holders of liquor licenses in this State as a bartender. Thus he obviously, during the period from 1937 to 1943, was not permitted to work as a bartender and since 1943 was otherwise violating the Alcoholic Beverage Law by working without a permit, regardless of his criminal conviction.

Petitioner, in maintaining his status during these ten years as one entitled to be employed by holders of liquor licenses in this State, stated at various times that he was born in Newark, naturalized in Newark, and that he never had been convicted of crime. At least on three occasions these untruths were told to agents of the State Department of Alcoholic Beverage Control, and at least two such false statements were made under oath. I am of the opinion that petitioner's action was a deliberate attempt to conceal his disqualification.

In view of the above, I am not satisfied that petitioner has conducted himself in a law-abiding manner during the last past five years and that his association with the alcoholic beverage industry will not be contrary to the public interest. In a business so closely regulated, lies and untruths cannot be overlooked, especially when, as here, such untruths appear to have been told with the purpose of preventing proper enforcement of the law.

If and when petitioner becomes a naturalized citizen of the United States, he may file a new petition for renewal of his

disqualification or, failing naturalization, he may make an application for an employment permit and file a new petition for removal of his disqualification after July 1, 1948.

The petition herein is dismissed.

ERWIN B. HOCK
Commissioner.

Dated: September 11, 1947.

4. APPELLATE DECISIONS - FIRST REGULAR DEMOCRATIC CLUB OF LAWNSIDE v. LAWNSIDE.

FIRST REGULAR DEMOCRATIC CLUB)
OF LAWNSIDE,)
)
Appellant,)
)
-vs-)
)
BOROUGH COUNCIL OF THE BOROUGH)
OF LAWNSIDE,)
)
Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Charles L. Rudd, Esq., Attorney for Appellant.
Robert Burk Johnson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of appellant's application for a club license in the Borough of Lawnside.

The testimony of the secretary of the club and that of a member disclosed that the appellant never had a clubhouse but met at the homes of various members. Thus it appears that appellant was not in continuous possession of a clubhouse or club quarters for a period of at least three years continuously immediately prior to the submission of its application for a license as required by Rule 4 of State Regulations No. 7. Under the circumstances, respondent was without jurisdiction to grant appellant's application for a club license. Raccoon Club v. Swedesboro, Bulletin 739, Item 2. Hence the action of respondent is affirmed.

Accordingly, it is, on this 9th day of September, 1947,

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

ERWIN B. HOCK
Commissioner.

5. COURT DECISIONS - NEW JERSEY COURT OF ERRORS AND APPEALS - KRAVIS v. ERWIN B. HOCK, DEPUTY COMMISSIONER.

NEW JERSEY COURT OF ERRORS AND APPEALS
No. 27, May Term, 1947.

EDWARD KRAVIS,)
Prosecutor-Appellant,)
-vs-)
ERWIN B. HOCK, Deputy Commissioner)
of Alcoholic Beverage Control of)
the State of New Jersey,)
Respondent.)

Argued May 22, 1947; decided SEP 12 1947.

On appeal from the New Jersey Supreme Court.

For the prosecutor-appellant, Irving I. Jacobs.

For the respondent, Walter D. Van Riper, Attorney-General:
(Samuel B. Helfand, of counsel).

The opinion of the Court was delivered by
OLIPHANT, CHANCELLOR.

This case presents an appeal from a judgment of the Supreme Court dismissing a writ of certiorari allowed to review what is termed a "Ruling and Determination" of the Commissioner of Alcoholic Beverage Control which adjudged the prosecutor-appellant ineligible to hold employment in the alcoholic beverage trade by reason of his entering a plea of nolle contendere to an indictment for an offense involving moral turpitude. R. S. 33:1-25, 26.

Prosecutor-appellant was the licensed operator of a cafe located in Atlantic City where entertainment in the form of a floor show was presented. In August, 1943, his license was suspended as the result of an investigation by alcoholic beverage control agents which disclosed a lewd and obscene performance. He was indicted for the crime of aiding and abetting a lewd and lascivious entertainment based upon the same facts which resulted in the suspension of his license. On December 10, 1943, he pleaded nolle contendere to the indictment and was sentenced thereon.

Thereafter, on June 8, 1944, appellant transferred his liquor license to his mother who still holds it. Because of the commission's suspicion that such transfer was one in name only and made for the purpose of allowing the appellant to, in fact, continue to operate the cafe, he and his mother were requested by letter to appear before the commission, he to be examined under oath, and he was advised that a hearing would be held to determine his eligibility to be employed in any capacity in the alcoholic beverage business.

Appellant voluntarily appeared, the hearing was held and he was examined under oath. He admitted his plea of nolle contendere to the indictment hereinbefore referred to, which was put in evidence.

The Commissioner ruled that appellant was ineligible to be employed by any liquor licensee in New Jersey because of his conviction of a crime involving moral turpitude and advised him of such ruling by letter enclosing a "copy of his decision".

The statute R. S. 33:1-25 provides that no license shall be issued to any person who has been convicted of a crime involving moral turpitude, which admittedly the crime charged against this appellant did, while R. S. 33:1-26 provides that no person who cannot qualify as a licensee "shall be knowingly employed by or connected in any business capacity whatsoever with a licensee".

It should be noted that neither of the cited sections empower the Commissioner to make any rule or decision concerning the eligibility of an individual for employment on licensed premises. Nor is any such specific authorization given to the Commissioner under any other section of the statute.

The Alcoholic Beverage Law will be searched in vain for any provision authorizing the Commissioner to inquire generally into the status of a person desiring to be employed on licensed premises.

This is not to say that the Commissioner is powerless to act when a disqualified person is found actually employed on licensed premises. Under R. S. 33:1-31, the Commissioner may institute disciplinary proceedings against any licensee found employing an ineligible person. In addition, such violation of the statute is made a misdemeanor subjecting the offender, the licensee, to criminal proceedings. R. S. 33:1-51.

The plain language and intentment of the statute is to place the responsibility for the employment of a prohibited person on the licensee. This construction of the act was, on the argument, admitted and acquiesced in by counsel for the Commissioner.

The only control the Commissioner has over those employed in the liquor business is through the licensees. He has no power to rule a person ineligible to work in a licensed establishment except, on proper grounds, to order the licensee not to employ such person.

The action of the Commissioner was legally without force or effect. He was wholly without jurisdiction in the premises. It needs no citation of authorities to support the proposition that jurisdiction may not be conferred by consent and the failure to object to a lack of jurisdiction is not lost by acquiescence. If appellant had not voluntarily appeared the Commissioner was powerless to compel him so to do. Any order made by him could not be criminally enforced against the employee.

It is argued on behalf of respondent that the Commissioner's opinion is not the proper subject of review and that it was merely an advisory opinion. We agree with the opinion of the Supreme Court that the action of the Commissioner was more than an opinion. It was a ruling and determination in accord with an opinion or decision filed in the department and is the proper subject of review.

While the question of jurisdiction is not raised specifically in the reasons for reversal the rule is, this court may and can consider a question which goes to the jurisdiction or involves public policy, even though such a question was not raised below. *A. Makray, Inc. v. McCullough*, 103 N.J.L. 346, 348, 135 At. Rep. 815; *Punk v. Botany Worsted Mills*, 105 Id. 647, 147 Atl. Rep. 458; *Jasion v. Preferred Accident Ins. Co.*, etc., 113 Id. 108, 111, 172 At. Rep. 367; *Dickinson v. Plainfield*, 116 Id. 336, 338, 184 At. Rep. 195.

The main contention of appellant is that a plea of nolle contendere is not a conviction of a crime and relies on the decision of this court in *Schireson v. State Board*, 130 N. J. L. 570, 33 At. Rep. 2nd. 911.

The opinion of the Supreme Court in the instant case held that decision did not apply. It attempted to distinguish the two cases on

the ground that the Schireson decision was upon the theory that a property right was involved while it was concerned with no property right but a mere privilege. With this we cannot agree. The right of a person to work in trade or business is as much a property right as that of a licensed physician to practice his profession.

We do, however, agree with the conclusion of the Supreme Court that by appellant's plea of nolle contendere, followed by sentence and judgment, for the purpose of the Alcoholic Beverage Control statute he admitted his guilt and in so doing was, within the meaning of the statute, convicted of the crime charged. This not because the decision in Schireson v. The Board does not apply but because we are of the opinion that decision should be expressly reversed.

The plea of nolle contendere has the same effect as a plea of guilty, so far as regards the proceedings on the indictment and the authorities in this state show that upon the acceptance of this plea the court is unrestricted by law with respect to the sentence which it may impose within the limits fixed by the statute for the punishment of the specific offense. State v. Henson, 66 N.J.L. 601, 608, 50 At. Rep. 468; State v. Osborne, 79 N. J. Eq. 430, 436, 82 At. Rep. 424. In this particular there is no distinction between a plea of nolle contendere, a plea of guilty, or a conviction after trial; although it is not necessary or proper that the court should adjudge the party to be guilty, but sentence should or can be imposed forthwith. State v. Osborne, supra, p. 436, 443.

When in a collateral civil proceeding the issue is one of guilt or innocence, the plea is not binding for the same wrong and the defendant is not estopped to deny his guilt. But where the issue is merely whether he has been convicted of a crime the plea can be shown. Cf. Hill v. Maxwell, 77 N.J.L. 766, 73 At. Rep. 501; State v. Duelks, 97 Id. 43, 48, 116 At. Rep. 856. Chancellor Walker in Johnson v. Johnson, 78 N.J. Eq. 507, 511, 80 At. Rep. 119, quoted with approval from 12 Cyc. 354 "a plea of nolle contendere which is still allowed in some jurisdictions, is an implied confession of the crime charged and as regards the case in which it is entered is equivalent to a plea of guilty, except that it gives to the accused the advantage of not being estopped to deny his guilt in a civil action based upon the same facts as he would be upon a plea of guilty".

Following sentence a person is convicted after both the pleas of guilty and nolle contendere even though there are differences in the general purpose of these pleas. If the Schireson case in this court is not overruled it would merely increase the great difficulty found by the legislature in attaining desired results in legislation because of the many fine spun niceties woven by the courts into words which seem clear and understandable to the legislature when statutes are enacted.

The case of Neibling v. Terry, 177 S.W. 2nd 502 closely parallels the one at bar. Terry had pleaded nolle contendere to an information charging him with using the mails to defraud. Action to disbar him was taken under a statute which provided "If the charge alleges a conviction for any criminal offense involving moral turpitude, the court shall, on production of the record of such conviction, remove the attorney so convicted*** without further trial". His answer asserted the convictions could not be used in the disbarment proceedings because they were entered on pleas of nolle contendere. In its opinion the

Court said "By statute, in certain instances, a judgment of conviction has been given force because of the fact of its rendition. In such instances the judgment of conviction is made a basis for enforcing a statutory disability. Such statutes in no wise authorize the use of a conviction as an admission to be used to establish liability in a civil suit. Nor do the statutes make any distinction in convictions according to the nature of the plea resulting in such convictions. Nor is there any logical reason for a distinction. For statutory purposes a conviction on a plea of not guilty carries the same force as one entered on a plea of guilty". We subscribe to this doctrine. It is well settled that a judgment of conviction follows a plea of nolle contendere as a matter of course. *White v. Creamer*, 175 Mass. 567, 56 N. E. 832; *State v. Swick*, 195 Wis. 175, 217 N. W. 743; *Buck v. Commonwealth*, 107 Pa. 486; *State v. LaRose*, 71 N. H. 435, 52 A. 943; *United States v. Dasher* (D.C.) 51 F. Supp. 805; *United States v. Norris*, 281 U. S. 619, 50 S. Ct. 424, 74 L. ed. 1076. In *United States v. Reimer*, 98 Fed. (2d) 92, it was held that after a plea of nolle contendere to an indictment a sentence upon such a plea is a conviction. The Supreme Court of Pennsylvania in *Commonwealth v. Jackson*, 94 At. Rep. 233 held that while a plea of nolle contendere does not preclude a defendant in a civil suit from contesting the facts charged in the indictment it has the same effect so far as the indictment is concerned, and when judgment is entered on the plea the record is competent evidence of the fact of conviction. In line with the decision in that case, where the action is to enforce a statutory provision, as would be the situation in the instant case if the Commissioner had jurisdiction, the conviction being admitted, the only thing remaining would be to carry out the provisions of the statute.

Where the legislature by statute expressly provides for the revocation of a license upon conviction of a crime involving moral turpitude, it is immaterial whether that conviction is a result of a plea of guilty, or nolle contendere. The word "conviction" encompasses the sentence after a plea of nolle contendere, not the plea standing alone.

The judgment of the Supreme Court is reversed.

ENDORSED:

FILED

SEP 12 1947

Lloyd B. Marsh

Clerk.

Oliphant, C.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WILLIAM H. DONST)
T/a LOG CABIN INN)
Route 8, halfway between)
Columbia and Delaware)
Knowlton Township)
P.O. Columbia, R.D. 1, N.J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Knowlton.)
-----)

William H. Donst, Defendant -licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On July 3, 1946, an investigator of the State Department of Alcoholic Beverage Control seized two 4/5 quart bottles labeled "Four Roses A Blend of Straight Whiskies" and one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", when his field tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Department Chemist warrants the conclusion that the three bottles had been at least partly refilled with an alcoholic beverage different from that described on the label.

Defendant, though pleading guilty, seeks to excuse his dereliction by offering as an explanation that these three bottles were part of the open stock recently taken over by him from his predecessor. This explanation, even if true, is no excuse. The licensee is responsible for the condition of his stock of alcoholic beverages. Cf. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156.

Defendant has no previous adjudicated record. I shall therefore suspend his license for the usual minimum of twenty days (Re Zeidner & Cohen, Bulletin 680, Item 2), less five days for the plea (Re Gelb, Bulletin 741, Item 8), leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of September, 1947,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Knowlton to William H. Donst, t/a Log Cabin Inn, for premises on Route 8, halfway between Columbia and Delaware, Knowlton Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 12:01 a.m. September 29, 1947, and terminating at 12:01 a.m. October 14, 1947.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

EDWIN A. DOLAN and)
MRS. MARY A. REININGER)
T/a THE IDLE HOUR)
Lakewood Road and Barton Ave.)
Point Pleasant, N. J.,)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-5 issued by the Mayor and Council of the Borough of Point Pleasant.)

Defendant-licensee, by Edwin A. Dolan, Partner.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded guilty to charges alleging that, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20, they sold alcoholic beverages to, and permitted the consumption of alcoholic beverages by, four minors on their licensed premises.

The file herein discloses that on September 12, 1947, at about 10:00 p.m., two ABC agents observed two marines and two girls seated at a table in defendants' premises. After a waitress employed by defendants had served three glasses of beer and a highball to the parties seated at the table, the agents identified themselves and each member of the party admitted that he or she was a minor. Each of the marines was nineteen years of age, and each of the girls was eighteen years of age. The waitress had made no inquiry as to the age of any member of the party before making service.

Defendants have a prior record. On November 4, 1946, their license was suspended for a period of fifteen days for possession of illicit liquor. Re Dolan and Reininger, Bulletin 736, Item 3. The minimum suspension for sale to minors where a licensee has no prior record, and no aggravating circumstances appear, is ten days. In this case, however, four minors were involved and defendants have a prior record. Hence I shall suspend the license for a period of twenty days, less five days for the plea, making a net suspension of fifteen days. Cf. Re Mazza, Bulletin 744, Item 4.

Accordingly, it is, on this 22nd day of September, 1947,

ORDERED that Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Point Pleasant to Edwin A. Dolan and Mrs. Mary A. Reininger, t/a The Idle Hour, for premises at Lakewood Road and Barton Avenue, Point Pleasant, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. September 29, 1947, and terminating at 2:00 a.m. October 14, 1947.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN APPLICATION - AIDING AND ABETTING NON-LICENSEE (NON-RESIDENT) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against)

ERNEST D'AMATO & CAMILLO J. TETI)
S/E Cor. Pennsville-Auburn Rd.)
and Plant St.)
Upper Penns Neck Township)
P.O. Penns Grove, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Upper Penns Neck.)

Thomas L. Smith, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded non vult to charges alleging (1) that applications for the present license and for a prior license filed by defendant Ernest D'Amato, contained misstatement of fact in failing to reveal that defendant Camillo J. Teti had an interest in the business to be conducted under said licenses, in violation of R. S. 33:1-25; (2) that from May 13, 1947 to August 7, 1947, the said Camillo J. Teti exercised the rights and privileges of the licenses issued to Ernest D'Amato, in violation of R. S. 33:1-26, and (3) that the said Ernest D'Amato knowingly aided and abetted the said Camillo J. Teti in such violation of the law, in violation of R.S. 33:1-52.

Apparently this business was, since its inception, the business of a partnership consisting of the two defendants, Ernest D'Amato and Camillo J. Teti. Teti's interest was undisclosed and concealed because he was not a resident of New Jersey and because an existing agreement between Teti and a third party prevented him from engaging in any business other than a machine business conducted by Teti and the third party.

Shortly after the State Department of Alcoholic Beverage Control became suspicious of the situation and before the completion of the investigation, the illegal situation was corrected by a transfer of the license on August 7, 1947 to the two defendants, as partners. The file herein indicates that Camillo J. Teti became a resident of New Jersey prior to August 7, 1947. It is noted that after the commencement of the investigation, both defendants readily admitted the facts herein and both fully cooperated with the Department.

Defendants have no previous record. In view of the prompt correction of the illegal situation and absence of aggravating circumstances, I shall impose the minimum suspension for "front" cases involving non-residence, namely, thirty days. Re Fricke, Bulletin 737, Item 6.

Accordingly, it is, on this 22nd day of September, 1947,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Upper Penns Neck to

Ernest D'Amato and transferred to Ernest D'Amato and Camillo J. Teti, s/e cor. Pennsville-Auburn Rd. and Plant Street, Upper Penns Neck Township, be and the same is hereby suspended for a period of thirty (30) days, commencing at 1:00 a. m. September 30, 1947, and terminating at 1:00 a.m. October 30, 1947.

ERWIN B. HOCK
Commissioner.

9. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN 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. 636)
-----)

BY THE COMMISSIONER:

By Conclusions and Order dated April 25, 1942, it was ruled that the crime of atrocious assault and battery, of which petitioner was convicted in 1925, involved moral turpitude. Petitioner was denied relief in the prior proceeding because he had attempted to suppress material facts at the hearing. Re Case No. 184, Bulletin 506, Item 5.

Five years have elapsed. It now appears that, since the entry of the foregoing order, petitioner has not been engaged in or associated with the alcoholic beverage industry and that he has not been arrested for or convicted of any crime.

Petitioner produced three witnesses -- one a former co-worker who has known him for ten years; another a neighbor who has known him twenty-five years, and the third an official of the Police Department in petitioner's home community who has known him over thirty years. They testify that petitioner bears a good reputation as a law-abiding person.

Under all the circumstances and in view of the fact that five years have passed since his former hearing, I now find that petitioner has been law-abiding 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 19th day of September, 1947,

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

ERWIN B. HOCK
Commissioner.

10. APPELLATE DECISIONS - DELSERRO v. SOMERVILLE.

JOHN DELSERRO, JR.,)
t/a JOHNNY'S BAR AND GRILL,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOROUGH COUNCIL OF THE BOROUGH)
OF SOMERVILLE,)
Respondent)

-----)
John E. Toolan, Esq., Attorney for Appellant,
Leon Gerofsky, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of appellant's application for renewal of his plenary retail consumption license for premises located at 40 Division Street, Borough of Somerville.

No order was entered extending the license in accordance with the provisions of R. S. 33:1-22.

Prior to the hearing herein, appellant's attorney advised in writing that his client desired to withdraw the appeal. No reason appearing to the contrary,

It is, on this 19th day of September, 1947,

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

ERWIN B. HOCK
Commissioner.

11. STATE LICENSES - NEW APPLICATIONS FILED.

N. Y. & N. J. Freightways Inc.
161 - 2nd St., Jersey City, N. J.
Application for Transportation License filed September 12, 1947.

Max Milask, t/a Neptune Distributors
3707 Sunset Ave., Atlantic City, N. J.
Application filed September 15, 1947 for transfer of State Beverage Distributor's License SBD-121 from Edmond F. Boyle.

Sidney Frankel, t/a Standard Distributing Company
1311-13 Baltic Ave., Atlantic City, N. J.
Application for Plenary Wholesale License filed September 19, 1947.

D.L.M. Liquor Company
200-202 N. Texas Ave., Atlantic City, N. J.
Application filed September 19, 1947 for transfer of Plenary Wholesale License W-73 from Samuel and Henrietta Packman, t/a Packman Brothers, 310-318 N. Indiana Ave., Atlantic City, N. J.

Roadway Express, Inc.
1200 Adams St., Hoboken, N. J.
Application filed September 22, 1947 for Transportation License.