Commissioner Burnett
Sent to Regular Mailing List

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

BULLETIN NUMBER 149. NOVEMBER 27, 1936.

1. MORAL TURPITUDE - WHAT CONSTITUTES - STRICT CONSTRUCTION HEREAFTER TO BE ADOPTED IN CASES INVOLVING MINORS UNDER EIGHTEEN YEARS OF AGE

November 10th, 1936

RE: Application for A.R.C.Permit - Case No. 36

Applicant, nineteen years of age, applied for an Age, Residence, Citizenship Permit so that he might be employed in licensed premises as a counterman and porter, not handling alcoholic beverages.

In his questionnaire he admitted that he had been convicted of breaking and entering in 1933. Notice was served upon him to show cause why the permit should not be denied because he had been convicted of a crime involving moral turpitude and a hearing was held.

It appears that applicant, then sixteen years of age, and two other young boys forced open the window of a gasoline station at about 11:00 P.M., entered the premises and stole eight dollars. Thereafter applicant was arrested, pleaded guilty and was sentenced to Annandale, where he served eleven months. The crime of burglary involves turpitude. Tassari vs. Schmucker, 53 Fed. 2nd 570.

At the hearing an appeal was made for leniency because of the youth of applicant at time the crime was committed and because of his subsequent good record while on parole. The provision of the Control Act disqualifying one convicted of a crime involving moral turpitude from being employed by a licensee in any business capacity, is mandatory. Hence, subsequent good conduct cannot be considered as mitigating his guilt.

It is recommended that the permit be denied.

EDWARD J. DORTON
Attorney-in-Chief

November 16, 1936

BY THE COMMISSIONER:

Good conduct is a mitigating circumstance. The trouble is deeper, i.e. that I cannot count it, for once it appears that a person has been convicted of a crime involving moral turpitude, he is, under the law disbarred for all time, both from having a liquor license and also from being employed by such a licensee. Re Vandervalk, Bulletin 39, Item 12. Hence, however great my sympathy and my belief that it would do more good than harm to allow one who has lived down his earlier wrong to have a license or work for a licensee, I have no option. Re Vandervalk, supra; Re Blank, Bulletin 148, Item 3.

Therefore, the only point left open to decide in case of any conviction is whether the crime did involve moral turpitude.

The consequences of determining that it does are often appalling. See for instance, Re Vandervalk, supra, where a man had been convicted twenty-two years ago and had been a respectable citizen and good businessman ever since. There I had to rule that, if the crime did involve moral turpitude, the local Board had no power to use their own good judgment but were in duty bound to refuse the license because of the mandatory provisions of the Control Act. See also Bulletin 147, Item 11, where a young man of twenty had broken into a railroad station and stolen $25.00 worth of shirts. On taking his fingerprints, the Department ascertained that he had been convicted back in 1920 of breaking, entering and larceny. Of course that crime involves moral turpitude, and there was nothing to do except revoke his solicitor's license notwithstanding that that blot of sixteen years ago was the only one on his record and his life had been exemplary ever since. He was a married man with two children and had worked for his present employer since Repeal and made a highly favorable impression. He asked that if the decision was unfavorable, notice of revocation be sent to him direct so that he might resign rather than be discharged. Of course, I granted such request. To have refused it, would have meant, as a practical matter, that he would soon be on the bread line because every person to whom he applied for employment would at once inquire of his last employer not only of his work but why he had left and, on learning that, instead of resigning supposedly to better himself, he had been discharged because of the commission of a crime involving moral turpitude, although years ago, his chances of employment by a reputable business house are practically zero. The charitable, good Samaritan thoughts we have on Sunday are so seldom translated into action on Monday! It makes no difference what line of work he seeks or however far it is removed from alcoholic beverages, if he is discharged, he is sunk!

No wonder it is, then, that men lie to their employers when the latter make out their questionnaires. See Bulletin 147, item 12, and particularly the candid answer in Bulletin 147, item 13. The fear of loss of their jobs and the ensuing suffering of the innocent wife and children begets the lie. This is so time and again when clearly no moral turpitude whatsoever is involved - for instance, a conviction for violation of the former National Prohibition Act - something malum prohibitum as distinguished from malum in se. Although he pays in full whatever penalty the court metes out, organized society seems to continue to punish him forever and a day. I hope the time will shortly come when by statute crimes which have been fully expiated are outlawed like debts.

In view of the harsh, practically permanent and farflung consequences of deciding that a crime does involve moral turpitude, I am extremely reluctant in any case so to determine unless that conclusion is clearly indicated or is demanded by the precedents. In the case of boys and girls, who, at the time of the offence were under the age of 18 years, I feel justified, in order to save as far as possible a lasting blight upon their lives, in giving the requirement as strict a construction as the specific facts will admit. This will be the guiding principle hereafter. It applies only to minors under the age of eighteen.

In the instant case, the boy was only sixteen years old when the crime was committed. He is but nineteen now and seeks employment as a counter man and porter. He is not to handle alcoholic beverages. His crime consisted of forcing open a window of a gasoline station with a couple of other young boys. They stole $8.00. Of course it was wrong. Of course he should be punished. He has been - eleven months! Of course burglary, considered abstractly, is a crime involving moral turpitude. There

is no showing, however, either of previous or subsequent offence. It does not appear that he was a gangster or a hardened indelible criminal - nothing in fact except that, with the plastic mentality of youth in the presence of his peers, he yielded to the urge to steal and was caught. All that the record shows is a single isolated offence. He wants to work - not to consort with his erstwhile friends. The best way to make a better citizen of him is not to deplore what he did but to afford him a chance of earning an honest living.

In view of his tender age at the time of the commission of the offence, I decide that his crime, on these facts, did not involve moral turpitude.

Issue the permit.

D. FREDERICK BURNETT
Commissioner

2. MORAL TURPITUDE - THE PRINCIPAL OF STRICT CONSTRUCTION IN CASES INVOLVING MINORS (BULLETIN 149, ITEM 1) APPLIES ONLY TO THOSE UNDER EIGHTEEN YEARS OF AGE.

Dear Commissioner:

Mr._____of _____ has presented in our office this morning a letter stating that he can not legally represent us or any other licensee on account of being convicted in 1919 of a crime involving moral turpitude.

We have investigated this matter thoroughly and we feel in justice to Mr. _____ you should know the full particulars.

We understand that Mr._____was arrested in 1919 when he was only 18 years of age, and as some young men do, he got in with a bad crowd who prevailed upon him to join them in a holdup. They were, of course, caught and convicted of the crime, but _____, bearing such a good reputation for himself and his family, was paroled in six months and discharged in the custody of the probation officer.

After we learned of this trouble through your Department, we made a thorough investigation and found that the young man has been living a straight forward, honest life since, and the lesson, while an extreme one, taught him to be careful in the future.

We employed _____, since we started in business, as a driver on our truck, and he has never been short one penny, and has increased our business consistently. He was so competent as a salesman that we took him off the truck and put him in our whiskey department exclusively, where he has proven to be the most successful salesman in our organization.

Before we hired Mr. _____ to drive the truck he had been out of work for two years, and on the Relief, as he is a married man with a wife and two children to support. And if Mr. _____loses his job with us he will probably have to go back on the Relief again, and become a liability to his community instead of an asset.

We feel that with this information before you, you will give this matter further thought and instead of cancelling Mr._____'s permit you will grant it, and assist a young man to a good position in society instead of driving him down to be

scorned by his neighbors, who will no doubt find out exactly what happened. For the past seventeen years this man has been a credit to his community.

Trusting you can apply the Golden Rule in this case, we remain,

Respectfully yours,

_____

November 17, 1936.

Gentlemen:

I have yours re _____.

While I agree with everything you say and applaud your action, I was unable, unfortunately, to do anything for him much as I sympathized with him for, although he had lived a clean life for all these many years and had the respect and confidence of yourself and the community, he had, as he frankly admitted, been convicted in 1919 for robbery, fined $500. and sentenced to State's Prison for five to fifteen years. Such a crime, without debate, involves moral turpitude.

Much as I would like to apply the Golden Rule, the law gives me no discretion. As the law stands, once a person is convicted of a crime involving moral turpitude, he can never get a liquor license, nor can he be employed by a licensee. I hope that the Legislature will modify this harsh result by providing that where a man's record is clear for say six or ten years following such conviction, that the Commissioner may, in the exercise of sound discretion, approve the granting of a license or permission to work for a licensee. That would outlaw the disastrous permanent effect of a conviction which has been lived down by an exemplary life.

The situation is explained in a decision which I made yesterday (Bulletin 149, item 1) where the crime was committed by a boy of the tender age of sixteen years. Logically, I suppose that that boy should be forever barred just as your Mr._____was. It seemed to me, however, that in considering whether a given crime involves moral turpitude, I could and should take into consideration the tender age of the boy or girl. What may be shameful in an adult, is not necessarily so in a child. Copy of this decision is enclosed. In applying the principle to the facts of that case, I found the crime for which the boy was convicted did not involve moral turpitude.

That is as far as I can go. So long as the law stands as it is, it must be given full, reasonable effect. While I believe that commonsense humane interpretation allows age to be taken into consideration, the line must be drawn somewhere. I drew it at eighteen years which is the age at which children usually finish their high school education. From then on only the parents think of them as "children".

The enclosed decision then will not be of any value to Mr. _____ because he was eighteen at the time of the crime. If perchance the law should be changed along the lines indicated, he may reapply.

I am indebted to you for your letter. I am sending Mr. _____ a copy of this reply in order that he may know first-handed just why it is that he cannot be employed by you.

Sincerely yours,

D. FREDERICK BURNETT
Commissioner

3. MORAL TURPITUDE - STEPS HERETOFORE TAKEN BY LEGISLATURE TO RELIEVE DISABILITIES INCIDENT TO CONVICTION - REASONS FOR FURTHER STEPS.

November 17, 1936.

Dear Commissioner:

I received your ruling under date of November 16th, in re: Moral Turpitude and the strict construction in regard to cases involving minors under eighteen years of age.

I wish to heartily commend you for your attitude in the matter in extending the age limit from sixteen to eighteen years in order to benefit youths who might otherwise be charged with a crime involving moral turpitude. This is a step in the right direction; in fact, I would go one step further and increase the age to twenty years.

In this respect I call your attention to Chapter 160, Laws of 1930, entitled "An Act for the relief of persons convicted of crime committed while under the age of twenty years", and particularly to Paragraph 5 of the Act, which empowers the judge hearing the case to make an order in writing adjudging that such conviction shall not thenceforth operate as a disqualification for any position, etc.

This law permits the person so convicted under the age of twenty years to make this application at any time after the expiration of ten years from the date of such conviction, providing the applicant has led a clean, upright life and has not had any further difficulties with the law. It is reasonable to assume that in such cases the court would order that the record of conviction be expunged.

In conclusion, I hope to see the day when the statute will be amended to permit you to judge every individual case, and to say, for instance, that if a man has led a good life for a period of ten or more years, you could permit him or her, as the case may be to be employed in the liquor industry and to have his or her rightful place in the sun.

That, Sir, is the practical comment of a hard-headed police official and public servant.

Sincerely yours,
PHILIP SEBOLD
Acting Chief of Police

November 18, 1936

Hon. Philip Sebold,
Acting Chief of Police,
Newark, N. J.

My dear Chief:

I have your valued letter of the 17th and am very glad that you regard the decision as a step in the right direction.

Several steps have been made by our Legislature to humanize the law and to avoid the harsh, permanent and farflung consequences of conviction of a crime involving moral turpitude.

In 1912, Juvenile Courts were created where children under sixteen years instead of being handled as criminals were treated as delinquents. Provision was made that "No adjudication under the provisions of this act shall operate as a disqualification of the child for any office under any State or municipal civil service, and such child shall not be denominated a criminal by any such adjudication, nor shall such adjudication be denominated a conviction".

In 1930 came the statute to which you refer. It provided that any person convicted of crime committed while he was under the age of twenty years and not again convicted, may at any time after the expiration of ten years from the date of such conviction petition any judge of the County Court of Quarter Sessions and, after hearing, obtain an order, adjudging that such conviction shall not thenceforth operate as a disqualification "for any position or office". It did not apply to any one who had been committed to the New Jersey State Prison. The quoted words confine the relief to very narrow limits. The conviction is not expunged. The disabilities incident to conviction are not removed except as to the disqualification "for any position or office".

In 1931 (Chap. 345) the Legislature made it possible by similar procedure where no subsequent conviction has occurred to remove all disabilities by reason of criminal conviction, viz: "an order may be granted directing the clerk of said court to expunge from the records all evidence of said conviction and that the person against whom such conviction was entered shall be forthwith thereafter relieved from such disabilities as may have heretofore existed by reason thereof". This statute, however, by its express terms applies only to those convictions whereon sentence was suspended and twenty years have elapsed after the conviction. If a man "served time" at all, this statute would be of no avail to him even after twenty years of exemplary life.

It is apparent from this brief survey that our Legislature has been very cautious and sparing in granting relief from disabilities incident to conviction except in the case of children of tender years. It is well so in matters involving alcoholic beverages in order to exclude from that industry, which is vitally affected by a public interest, the unworthy and the undesirable. The provision that no person convicted of a crime involving moral turpitude shall be granted a liquor license or be employed by a licensee serves a valuable purpose. I think, however, the Legis-

lature should place a time limit. Folks can change from evil to good just as they can from good to bad. When they travel the hard course uphill, as we exhort them to do, and demonstrate genuine repentance by actions as well as words - say for six or ten years - Society can well afford, I believe, to give them a helping hand and wipe out the disability. Such an amendment would not let down the bars to racketeers or habitual criminals, but would encourage the toiler up the long come-back hill by pointing a tangible attainable goal.

I appreciate that you mention the statute of 1930 only to suggest raising the age limit, so far as concerns the principle of strict construction which I recently laid down, from eighteen to twenty years. Eighteen is midway between the twenty years' age limit of that narrow statute and the sixteen year limit under the broad act governing delinquencies in Juvenile Courts. The latter did away with convictions by that name when the offender was under sixteen. My decision did not raise that age limit. Of course, a boy between sixteen and eighteen can commit a crime and the crime may involve moral turpitude. If it does, he is barred. What I decided was that in determining whether what he did involved moral turpitude I should regard the facts strictly in the light of his youth, and, if there is any doubt as to the inference of turpitude to be drawn therefrom to give him the benefit of that doubt provided he was under eighteen at the time of the crime. Further than that, I do not think it wise to go until the Legislature expressly decides that it is the better policy.

With appreciation of your letter and particularly for your constant effective cooperation in law enforcement, I am,

Sincerely yours,

D. FREDERICK BURNETT
Commissioner

4. DISCIPLINARY PROCEEDINGS - HOSTESSES - PRACTICE OF EMPLOYING WOMEN AS SIRENS PAID ON A COMMISSION BASIS TO ENTICE MEN TO DRINK IS AN INSULT TO DECENCY AND A CHALLENGE TO THE MAINTENANCE OF THE PRIVILEGE TO DISPENSE LIQUOR.

November 19th, 1936.

Mr. William A. Miller,
City Lerk,
Clifton, N. J.

Dear Mr. Miller:

I have before me staff report and your certification of the proceeding before the Mayor and Council of Clifton against Rudolph Shupik. He was charged with violating Sections 4 and 5 of your City regulations reading:

> "4. No hostess, waitress, waiter, entertainer or other employee of any licensee shall be served with any food or beverage, alcoholic or otherwise, at the table with or at the expense of any customer or patron.
>
> "5. No hostess, waitress, waiter, entertainer or other employee of any licensee shall sit at any table or stand at any bar with any customer or patron."

The report states:

"On June 8, 1936, Investigators Boehm and Ilaria visited the licensed premises at about 8 P.M. They observed unescorted girls strike up conversations with men patrons who ordered drinks for themselves and for the girls. They observed the bartender, Jackie Shupik, make a notation on a pad at the end of the bar each time a girl had a drink. The Investigators left at 9:30 and returned at 10:30 P.M. They sat down at a table with a girl named Alicia and engaged her in conversation. She asked for several drinks of scotch whiskey. Every time she drank the Investigators observed that a notation was made by the bartender on a pad. Other girls were observed drinking and after each drink notations were made on the pad. At 1 A.M. June 9, 1936 the Investigators disclosed their identity and inspected the licensed premises. They seized the pad and observed the names of June, Marie, Alicia and Ruth thereon with marks after the names. A search upstairs revealed that all the girls were there.

"On October 9, 1936 Investigators King, Higginbotham and Kaufman visited the licensed premises at about 11 P.M. They remained until 2:30 A. M., the following morning. Higginbotham and Kaufman entered first and went to the bar and sat down. They were immediately approached by a girl who requested they buy her a drink. They did. She called another girl and it was suggested that they sit at a table in the rear. Conversation with the girls revealed that they worked for the licensee, one on a salary and the other on a commission basis.

"Investigator King entered the licensed premises soon after Higginbotham and Kaufman and sat at a table opposite the bar. He was approached by a girl who suggested they sit in the rear. They did so and the girl commenced to order liquor as fast as the waiter could deliver it. She informed King, in the course of the conversation, that she was employed by the licensee.

"The licensee and his son, the bartender, denied that the girls were employed by them. They stated the pad containing the names referred to a bagatelle game.

"Verdict: Guilty

"Sentence: License suspended for two days from 7 A.M. Saturday, November 21st to 7 A.M. Monday, November 23, 1936."

So far as the penalty is concerned I question its adequacy. I note it covers Saturday and Sunday - probably the best days in the week. On the other hand, it appears that your regulations have been violated on more than one occasion. My men went there because complaints came to me that the place made a practice of flagrantly and flamboyantly defying your regulation.

I note with pleasure that your Council acted with promptness in this matter. I presume they took into consideration that this was the first case of its kind that had arisen in your municipality and felt that the imposition of even a minor penalty would serve as a sufficient deterrent to further violations. I hope it does. Reports reach me, from time to time, from various parts of the State that the nefarious practice of taverns employing women, as sirens, paid on a commission basis, to entice men to drink, is

growing rather than abating. I take it we all agree that the practice is an insult to decency, and a challenge to the maintenance of the privilege to dispense liquor.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. DISCIPLINARY PROCEEDINGS - SALE FOR CONSUMPTION BY RETAIL DISTRIBUTION LICENSEE - ADMINISTRATION OF SEVERE PENALTIES IN PROPER CASES WILL EVENTUALLY LESSEN THE DISAGREEABLE TASK OF ADMINISTERING PUNISHMENT.

November 19, 1936.

Mr.F.S. Grogan,
Township Clerk of Riverside,
Riverside, N.J.

Dear Mr. Grogan:

I have before me staff report and your certification of the proceedings before the Township Committee against Harry Grab charged with having sold alcoholic beverages for consumption on the licensed premises contrary to the terms of his plenary retail distribution license.

I note the licensee was adjudicated guilty and that his license was suspended for two weeks, November 12th to 25th inclusive.

I am not expressing any opinion on the merits of the case because perchance, it may come before me by way of appeal, and my mind, therefore, is entirely open on that score. I am convinced, however, that the action of the Committee in administering a severe penalty will go a long way in the interest of proper law enforcement in Riverside.

I feel confident that, as licensees begin to learn in well governed communities that the civic minded officials thereof mean business, the work of such governing bodies, so far as the disagreeable task of administering punishments is concerned, will become less and less.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

6. APPELLATE DECISIONS - GRUNER vs. WASHINGTON TOWNSHIP

WALTER E. GRUNER, )
Appellant, )
-vs- ) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WASHINGTON, (WARREN COUNTY), ) CONCLUSIONS
Respondent. )
. . . . . .)

Stryker & Maddock, Esqs., by James B. Maddock, Esq.,
Attorneys for Appellant.

Clark C. Bowers, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of his application for a plenary retail consumption license for premises located at or near the D. L. & W. Railroad Bridge in the Village of Port Colden, Washington Township, Warren County.

1. Respondent contends that the building sought to be licensed stands upon an abandoned Township Road and was erected without respondent's permission and hence the owners of the building, appellant's lessors, are only "squatters" wherefore appellant, it is contended, has not a sufficient interest to warrant the granting of a license.

A civil engineer employed by the New Jersey State Highway Department testified that the building is constructed on an unused portion of a county road. About 1920, traffic was diverted from that road by the construction of a bridge, and shortly thereafter the building was erected. It is conceded that the appellant's lessors do not have legal title. Their interest is claimed to be derived from a purchase made seven or eight years ago by their brother, since deceased. They have paid taxes, however, upon the building; the land is not assessed. Their lessee, the appellant, is in possession. The respondent has not asserted its claim of title, taxes have been accepted and the premises have been previously licensed by it. The appellant is in possession by virtue of a lease under a claim of right of his lessors. No attempt has been made to terminate appellant's possession. The possibility that the Township might succeed in an action of ejectment against him does not invalidate his lessors' ownership until the ejectment succeeds on the strength of the respondent's title and not on the weakness of that of its adversary. Possession has ever been nine points of the law. This is not the forum to try title. Until the Township's alleged right is determined by a court of competent jurisdiction, the lease to appellant under which he pays rent and holds actual possession stands good. While the applicant for a license must have an interest in the place sought to be licensed, there is no requirement as to the quantum of such interest. Yacula vs. Jersey City, Bulletin #144, item 7; Beekwilder vs. Wayne, Bulletin #122, item 3, and cases therein cited. Appellant's interest is sufficient.

2. Respondent contends that the premises are unsuitable in equipment and location.

In support of this allegation the respondent showed that the water supply for the premises was obtained from a nearby spring; that the only toilet facilities are of the out-moded outhouse type. In a rural community such as this, however, where there is no municipal water supply, it cannot be said that these survivals of "orchard plumbing" necessarily disqualify a building for a license. Inns and taverns have been famous without better equipment. Nothing unsanitary was shown. The most that can be said is that it is old fashioned. That of itself is not an indictment.

As regards location, there was also testimony that parking facilities were inadequate and that the operation of a tavern in this locality would create a traffic hazard. It appears, however, from photographs of the premises that there is ample space for cars to park along a side road well off the line of traffic. The testimony of a member of the Township Committee was to the same effect.

3. The respondent contends that the premises were improperly conducted by the previous licensee.

The last licensee surrendered the premises in 1935. While she was in charge, a fight occurred across the road and the police were called. They were not her customers. There was also a complaint about the failure of male patrons to use the designated toilet facilities at night. There was no evidence, however, that the place bore a bad reputation in the neighborhood. There was no proof of anything amounting to nuisance. At the hearing before the Township Committee, only two people appeared in opposition to the license, and then only on general grounds applicable to any liquor license. Neither was present at the hearing on appeal.

On the other hand, several neighbors and residents testified that they had no objection to the granting of the license. Among these witnesses was a member of the Township Committee.

The reasons advanced in support of the denial having been fully considered and determined to be insufficient cause, the action of respondent is accordingly reversed. Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: November 20, 1936.

7. LABELING REGULATIONS - FEDERAL ALCOHOL ADMINISTRATION'S LABELING REGULATIONS PERTAINING TO WINE ARE ADOPTED WITH RESPECT TO THE STATE OF NEW JERSEY

The public interest requires that sufficient information be furnished on labels to acquaint purchasers of alcoholic beverages with their identity and ingredients. Where the consumer is adequately informed, however, there would be no useful purpose served by the imposition of separate labeling requirements by each State. Uniformity is particularly appropriate in this field.

The distilled spirits labeling regulations of the Federal Alcohol Administration have heretofore been adopted for New Jersey. The wine labeling regulations of the Federal Alcohol Administration, which will take effect on December 15, 1936, have been carefully studied; they are calculated to protect fully the consuming public and should be made applicable to all alcoholic beverages within this State, whether or not shipped in interstate or foreign commerce.

Accordingly, the following regulation has been adopted effective December 15, 1936:

> "Regulations No. 4 announced by the Federal Alcohol Administration, as amended, relating to labeling of wine packaged for shipment in interstate or foreign commerce, are made a part hereof as though fully set forth and are hereby promulgated with respect to the State of New Jersey; the aforesaid regulations shall apply to wine packaged purely for intrastate shipment within New Jersey to the same extent as though intended for inter-

state or foreign shipment."

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs
Chief Deputy Commissioner
and Counsel

November 23, 1936

8. MORAL TURPITUDE - STRICT CONSTRUCTION - VIEWS OF COMMANDER JOHN D. PENNINGTON, RECENTLY DISTRICT SUPERVISOR OF THE ALCOHOL TAX UNIT FOR THE STATES OF NEW JERSEY AND DELAWARE, AND NOW SECRETARY OF WELFARE OF PENNSYLVANIA.

November 21, 1936.

My dear Mr. Burnett:

With a great deal of interest I have read your brief on what constitutes moral turpitude, and your decision as to strict construction in cases involving minors under eighteen years of age. I find myself to be heartily in accord with your decision in the case at issue - the first offender without previous or subsequent offenses without criminal tendency.

I understand that this boy is not to be employed in the handling of alcoholic beverages, but that he is to be employed as a counterman and porter. In my experience with the penal and correctional institutions of the State of Pennsylvania as Secretary of Welfare, I realize how difficult it is to find employment for our parolees. In all of our penal and correctional institutions there is a considerable body of youths and adults who are being detained beyond the date set for parole by the inability of the individual even when assisted by our officers of our Classification Clinics to obtain employment.

Further, I have noted that when the matter of employment has been waived and the boy has gone out under good sponsorship, that the lack of steady employment has resulted in his slipping back to his old associations and to the violation of his parole, either by the infraction of the parole rules or by the commission of a new offense.

It is my conviction that the best thing that can be done, especially for youths who have gotten off on the wrong step, is to provide for them adequate employment after release. The difficulty which they have, or we have, in working in their behalf, securing employment for them after they have been committed to a penal or correctional institution, cannot be exaggerated. Unless something can be done to solve this problem, the work of rehabilitation that has been begun in the institutions, and should be continued while on parole, will prove ineffectual and our finely elaborated and articulated programs of restoration will go for naught.

Therefore, in the construction of the term "Moral Turpitude", I believe that it is not only humane but just and in the interests of society that a liberal construction of the law should be allowed in the case of youthful offenders. It is my judgment, however, that every case should be decided on its own merits after a careful investigation of all of the facts in the case, and of the conditions under which he should be employed.

Employment under proper conditions is not only a means of the boy's earning a livelihood, but is of direct rehabilitative value in the reclaiming of youthful offenders.

Cordially yours,

JOHN D. PENNINGTON
General Superintendent.

9. SEARCHES AND SEIZURES - NO DWELLING HOUSE MAY BE ENTERED UNLESS ENTRY AND SEARCH ARE MADE PURSUANT TO A WARRANT DULY OBTAINED UPON PROBABLE CAUSE - ONLY TWO EXCEPTIONS TO THE RULE, VIZ: (1) WHERE ACTUAL CONSENT TO ENTER AND SEARCH IS VOLUNTARILY GIVEN AND (2) WHERE PREMISES ARE LICENSED FOR THE SALE OF LIQUOR - HEREIN AS TO WHAT CONSENT MEANS AND THE NECESSARY DIVORCE OF LIQUOR INVESTIGATORS FROM OTHER BUSINESS ACTIVITIES WHICH MAY GIVE THE PUBLIC FAIR GROUND TO FEAR ARE INCONSISTENT.

November 25, 1936

Investigator Alvin J. Williams,
Roselle,
New Jersey.

Dear Mr. Williams:

I am much disturbed to learn that certain dwelling houses in Union County have been raided without search warrants. Perhaps they were justifiable; perhaps not. Hence this letter.

A man's home is his castle. Its sanctity is protected by the Constitution against unreasonable searches and seizures.

Dwelling houses, therefore, may not be entered unless the entry and search are made pursuant to a warrant duly obtained upon probable cause.

There are but two exceptions to this rule, viz:

1. Where actual consent to enter and search is voluntarily given. This because to one consenting there is no injury.

2. Where the premises are operated pursuant to a license issued under the Control Act. This is grounded upon two reasons:

(a) Every retail licensee, by making an application for a liquor license, consents that the building containing the licensed premises in so far as it is under their control, may be searched without warrant;

(b) Section 32 of the Control Act expressly confers the right to search licensed premises without reference to any consent.

The second exception applies, therefore, only to licensed premises.

I call your attention especially this morning to the principle that where entry without warrant is to be justified under the first exception, the consent must be actual and be given.

voluntarily. Consent means capable and deliberate assent. It implies a choice by someone having the physical and mental power freely to dissent. Consent by trick or artifice will not suffice. The consent must be actual and real, not simulated or merely colorable. By capable assent, I mean by someone qualified and authorized, not a child or a servant in the house. Consent, if given, must be upon fair disclosure by our men that they are my men. Access cannot be made under any pretext whatsoever. The truth must be disclosed, else the consent is void. Access cannot properly be made in one capacity to be taken advantage of in another.

I am today in receipt of letter from Hon. Abe J. David, Prosecutor, Union County, reading:

> "The October Term 1936 Union County Grand Jury has requested me to call your attention to the fact that one of your investigators, Mr. Alvin J. Williams, is also Building Inspector of the Borough of Roselle. I believe it came to the attention of the Grand Jury that Inspector Williams, while inspecting buildings in Roselle, made searches without warrants as one of your investigators.
>
> "The Grand Jury feels that it is inconsistent for Mr. Williams to hold both of these positions at the one time."

Without at this moment going into the question whether the searches you are alleged to have made without warrants were justified because of actual consent voluntarily given, I agree wholly with the Grand Jury that your building inspectorship gives color, if not cause, to their complaints. Holding the two positions that you do, and knowing your zeal to enforce the law, the temptation is naturally strong to utilize as an investigator of my Department information gained in your capacity as a part time building inspector. We who enforce the law must not only ourselves obey it, but also give no reasonable cause to others to think that possibly we ourselves violate it. None of us can hold two jobs which may give the public fair ground to fear they are inconsistent.

In view of your effective and faithful work and the wholly good record which you have made in the discharge of your duties to this Department, I desire you to continue, but such continuance must be conditioned upon your immediate resignation as such building inspector.

I am pleased to note, by reference to your employment application of March 4th, 1934, that you frankly disclosed that you were a part time building inspector for Roselle, receiving therefor, about $400.00 per annum. If there is any fault, therefore, in allowing you to continue heretofore in the dual capacity, it is wholly on my shoulders. I did not appreciate its significance or the possible conflict of duties until receipt of the communication from the Grand Jury.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

10. MORAL TURPITUDE - STRICT CONSTRUCTION - VIEWS OF JOSEPH P. MURPHY, CHIEF PROBATION OFFICER OF ESSEX COUNTY.

November 19, 1936.

Dear Mr. Burnett:

Your letter of November 16, with copy of your decision regarding what constitutes moral turpitude, is not at all surprising. After our short working association in the ERA I would expect, in a matter of this kind, the humane and socially constructive opinion which you have rendered in this matter. I want sincerely to congratulate you upon the social vision you are displaying and to say that I regard it as sound public policy.

The whole subject has always been one of great interest to me, not only because of the implications of such policies on probation administration but because my experience has shown the wisdom of such procedure. Two years ago in speaking before the Attorney General's Conference on Crime at Washington on the subject: "Does Conviction Mean Punishment?", I dealt at some length with the punishment which convicted persons suffer over and above that which is permitted the court to pronounce at the time of sentence. More and more, additional penalties and disabilities are being added to the legal punishment which convicted offenders must absorb as the result of their indiscretions.

These punishments not only result frequently in loss of citizenship but they extend to Civil Service and to employments or occupations where integrity and loyalty are prime requisites and the position is one of trust. Moreover, through character restrictions the Army and the Navy are denying enlistment to persons convicted of crime or those adjudged guilty of juvenile delinquency; and this policy was carried over into the CCC administration for a time when persons on probation and parole were denied admittance to that organization.

There is a steadily growing number of occupations which are forever barred to persons convicted of crime. In recent years, States and municipalities have shown an increasing tendency to refuse licenses of one kind or other: taxi-cab drivers, peddlers etc., to those whose histories show criminal convictions. Even social groups, unions, fraternities and other similar organizations are imposing character restrictions in this respect.

While such punishments are understandable, they are making it more and more difficult for those who have violated a law and subsequently rehabilitate themselves to persevere in the policy that "honesty is the best policy".

For all these reasons, therefore, I am delighted to see you take this far-sighted attitude which in reality, in so far as it relates to persons under 18 years, is in line with a large part of our Juvenile Court legislation throughout the United States. Many of our States have raised the Juvenile Court age to 18 years and there is a growing tendency in this regard throughout the entire country.

I find myself, therefore, in complete agreement with a policy which while safeguarding the administration of the Alcoholic Beverage Control Law in every essential respect, at the same time recognizes the humane and social implications of such administration.

With best wishes, I am,

Sincerely yours,

JOSEPH P. MURPHY
Chief Probation Officer

11. MORAL TURPITUDE - STRICT CONSTRUCTION - VIEWS OF S. H. SOUTER, JR., SUPERINTENDENT OF NEW JERSEY REFORMATORY AT ANNANDALE.

November 23, 1936

Dear Commissioner Burnett:

May I take this opportunity to commend you for the stand you have taken in the recent case of a parolee who would have been deprived of an opportunity to work had it not been for your understanding decision.

A great majority of the boys who leave this institution return to their communities with a determination to make good. Often they are prevented from carrying out their good resolutions because of the attitude of those with whom they come in contact. It is very discouraging for a boy who has made a mistake to be called a jail-bird or ex-convict and have other uncomplimentary connotations connected with his name, and unless he has great strength of character he becomes discouraged and says - "What's the use".

Although the uninitiated often accuse us of coddling criminals, I have never known a single instance of a boy denied his liberty who has been coddled. As one who is entrusted with the care of the State's wards, I would be one of the last to be guilty of pampering an offender, but I am in favor of giving each of them a "square deal" and it is gratifying to know that you, in your position, concur in this treatment of the offender.

Yours very sincerely,

S. H. SOUTER, JR.,
Superintendent.

12. MORAL TURPITUDE - STRICT CONSTRUCTION - VIEWS OF THE PUBLISHER OF ONE OF NEW JERSEY'S DAILY NEWSPAPERS.

November 24, 1936

Dear Commissioner:

It was really refreshing to read in your letter of November 16th the broad interpretation you give the phrase "moral turpitude" in disposing of and handling cases brought before you when minors are involved.

It seems almost unbelievable to me that one misstep should blast the hopes and the future of either boy or girl. The time to lend a helping hand is when the first mistake is made, instead of (as so often happens) throwing the offender into the discard by turning them over to the police to be dealt with according to law.

In more than a dozen cases of wrong-doing (mostly petty theft) which it has been necessary for me to dispose of as an executive, the offender has always been given an opportunity to correct his mistake, and get off to a fresh start in life, and with but one exception, my confidence in the offender in giving him the opportunity to make good has never been misplaced.

The reshaping of those lives, in my opinion, is the most worthwhile thing which I have accomplished in my business experience.

It might also interest you to know that it is a part of our editorial policy not to mention the names of minors in crime in news stories, except where it is a major crime such as murder, etc., or the act of a chronic offender.

Very sincerely,

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13. RETAIL DISTRIBUTION LICENSEES - SALES MAY BE MADE ONLY IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION - HEREIN OF DELICATESSEN MANAGEMENT.

Dear Sir:

Kindly inform me if it is permissible in a combination store such as ours is, to keep liquor bottles on the same shelves with grocery items; if beer may be kept on ice in the same box containing groceries.

Respectfully yours,

NATHAN OSTROV

November 27, 1936.

Mr. Nathan Ostrov,
West Collingswood, N. J.

Dear Mr. Ostrov:

Since your municipality permits you to have a package goods license in connection with your delicatessen store, you may keep liquor on the same shelf and beer in the same box with your foodstuffs.

So long as the liquor is kept sealed in a bottle, it won't turn the butter or pickle the groceries nor put you in a jam for unlawful sale.

But don't let anyone draw the cork on your premises!

Very truly yours,

D. Frederick Burnett

D. Frederick Burnett
Commissioner