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

BULLETIN 222 DECEMBER 23, 1937

1. ADVERTISING - RENTAL OF VACANT STORES TO DISPLAY EMPTY CANS AND BOTTLES AND DECORATE WINDOWS WITH ADVERTISING MATTER - DISAPPROVED.

Dear Sir:

We are very anxious to have a ruling as to whether or not we are permitted to rent empty stores to be used for display purposes. By that we mean decorating the window with empty display cans and bottles and advertising matter.

Yours very truly,

John F. Trommer, Inc.

December 15th, 1937

John F.Trommer, Inc.
Orange, N. J.

Gentlemen:

There is nothing in the Control Act or the rules or regulations of this Department which would prohibit a brewery from renting an empty store solely for the purpose of using the windows for display purposes.

I believe, however, that you are making a mistake in adopting this method of advertising. I have heretofore permitted advertising at industrial exhibitions. See In Re Krueger Bulletin 71, Item 7. Your plan, however, if once started, might involve a contest among manufacturers for choice locations, which would lead to abuses. Complaints are being constantly received that liquor is being over-advertised. I think that all manufacturers should restrict their advertising to the mediums presently permitted. In line with this thought I have prohibited the advertising of liquor on movie screens and restricted radio advertising.

I disapprove your contemplated plan of advertising and, if necessary, will promulgate a rule to prohibit it.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

2. LICENSES - CLUB LICENSES MAY NOT BE SUBLET OR EXCLUSIVE CONTROL IN MANAGEMENT OF A CLUB FARMED OUT TO ANOTHER PERSON.

December 16th, 1937.

Reynold C. Marra, Esq.,
Plainfield, N. J.

Dear Sir:

A club licensee may not sublet its licensed privilege or grant exclusive control and management of its bar to another person.

Club licenses are granted at lower fees than other licenses and are intended for the exclusive use of the members and their bona fide guests.

If a club, holding a club license, permitted a member to control and manage its bar and to retain a portion of the profits, its license would be subject to instant revocation.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. LICENSES - ORDINANCES - MUNICIPAL ORDINANCE MAY NOT IMPOSE FEE AGAINST STATE LICENSEES AND RETAIL LICENSEES OF OTHER MUNICIPALITIES FOR PRIVILEGE OF USING VEHICLES IN THE CONDUCT OF THEIR BUSINESSES - IN ABSENCE OF JUDICIAL DETERMINATION TO THE CONTRARY, THIS DEPARTMENT WILL RECOGNIZE VALIDITY OF ORDINANCE IMPOSING FEE FOR USE OF VEHICLES IN SO FAR AS IT IS APPLIED TO LOCAL RETAIL LICENSEES.

December 15, 1937.

Hon. David C. Reed,
Assistant Commissioner,
Atlantic City, N. J.

Dear Sir:

I have considered your inquiry as to whether the $10.00 annual fee imposed by Ordinance #16, adopted by the Board of Commissioners of Atlantic City on May 20, 1937, for the use of delivery wagons or automobiles for business purposes may be applied to liquor licensees using such vehicles in the conduct of their licensed businesses.

The ordinance states that the fees "are imposed for revenue" and was presumably enacted pursuant to the Home Rule Act. Under a long line of cases, it may not lawfully be applied to persons who are engaged outside Atlantic City in the retail liquor business but deliver from their places of business to points within Atlantic City. See Lynch vs. Long Branch, 111 N.J.L. 148 (Sup. Ct. 1933); Benesh vs. Wolf, 114 N.J.L. 127 (E. & A. 1934). And in view of P.L. 1927, c. 280, p.521, it likewise may not be applied to a person conducting his business pursuant to a State license issued by this Department.

In so far as any persons engaged in the retail business within Atlantic City are concerned, the ordinance is presumably valid (See Giant Tiger Corporation vs. Board of Commissioners of Trenton, 11 N.J. Misc. 797 (Sup.Ct.1933), aff'd 113 N.J.L. 34 (E. & A. 1934)) and should be considered applicable to all such persons, notwithstanding that they hold liquor licenses, unless there is something in the Control Act which compels a contrary conclusion. There is no provision in that Act which deals expressly with the question. Section 25 does provide that licensees may deliver alcoholic beverages in their own vehicles bearing transportation insignia and it may be urged that by implication this negatives any municipal authority to impose an additional fee for such deliveries. The soundness of this contention is not beyond question but in any event the determination should be permitted to rest exclusively with the Courts in a judicial proceeding directed against the ordinance. In the meantime and in the absence of an authoritative judicial determination to the contrary, this Department will recognize

that the $10.00 annual fee imposed by the Atlantic City ordinance for the use of delivery wagons or automobiles for business purposes is a valid requirement in so far as it is applied to vehicles used by Atlantic City retail liquor licensees in the conduct of their respective businesses.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel

4. HOURS OF SALE - NO DISPENSATION MAY BE GIVEN IN RESPECT TO A MUNICIPAL REGULATION UNLESS IT IS AFFORDED EQUALLY TO ALL LICENSEES - ALL NIGHT SALES ON CHRISTMAS ARE OUT OF ORDER - 3 A.M. IS LONG ENOUGH FOR A FAMILY DAY LIKE CHRISTMAS.

December 18, 1937.

The New Krueger Auditorium,
Newark, N. J.

Gentlemen:

I have before me your request of the 6th for an extension of the closing hour from 3:00 A. M. to 6:00 A.M. on Christmas Night, i.e., the morning of Sunday, December 26th, in order that alcoholic beverages may be sold to the guests attending a dance to be held on your premises at that time.

Hours of sale in Newark are fixed in Section 1 of Ordinance No. 6579 adopted by the Newark Board of Commissioners on December 23, 1936 which, so far as pertinent, provides:

> "Section 1: No person or persons, partnership, firm or corporation shall sell or serve any alcoholic beverage between the hours of three o'clock A.M. and seven o'clock A.M. on weekdays, and between the hours of three o'clock A. M. and twelve o'clock noon, on Sundays, except on January 1st of any year."

Since everybody must be treated alike, no dispensation may be given to you, however worthy the establishment you conduct, unless it is afforded to every other licensed place. It follows that until this ordinance is changed, all sales in the City must stop at 3:00 A. M. every day, except New Year's.

Personally, I see no reason for changing this ordinance. Three A.M. is late enough. The exception of New Year's Day is in line with the decision made this week in Pearce v. West Orange, Bulletin 220, Item 10 (copy enclosed).

Very truly yours,

D. FREDERICK BURNETT
Commissioner

5. DISCIPLINARY PROCEEDINGS - MISCELLANEOUS VIOLATIONS - SCALE OF PENALTIES RECOMMENDED.

December 17, 1937

Eugene Ertle,
City Clerk,
Jersey City, N. J.

Dear Sir:

I have staff report and your certification of the disciplinary proceedings against the following eighteen Jersey City licensees.

1. Martin Feeney - License C-49
2. Joseph Mazzacarro - License C-467
3. William Collins - License C-625

charged with having sold alcoholic beverages on General Election Day, November 2, 1937, while the polls were open for voting. I note all these licenses were suspended for a period of two days.

4. Joseph Andruskiewicz - License C-160
5. Joseph Goodall - License C-178
6. William Murtagh - License C-331
7. Thomas Reilly - License C-2
8. James McDonough - License C-459
9. Lester Bannon - License C-474

charged with having sold alcoholic beverages on Primary Election Day, September 21, 1937, while the polls were open for voting. I note these licensees received a two-day suspension of their licenses with the exception of Lester Bannon, where the charges were dismissed after testimony was taken.

10. William Guskind - License D-13
11. Louis and Paul Caruso - License D-96

charged with having sold alcoholic beverages to minors. I find that these licensees pleaded guilty and that Guskind received a three-day suspension and Louis and Paul Caruso a two-day suspension.

12. Nicholas Valiante - License C-356
13. Rueben Wolff - License C-592
14. Casmo Scairado - License C-151
15. Anthony Giordano - License C-23
16. Philip Digeno - License C-141
17. Emil D'Angelo and John Botti - License C-335

all charged with having sold alcoholic beverages during prohibited hours in violation of your local regulation. I note further that all these licenses were suspended for a period of two days.

18. Gus Kilowkowski - License D-30

charged with having sold alcoholic beverages for consumption on the licensed premises in violation of the terms of his plenary retail distribution license. I find he pleaded guilty to the charge and that his license was also suspended for two days.

Please express to the members of the Board of Commissioners my appreciation for their wholesale backstopping.

One suggestion:- The penalties in Election Day and closing hour violation cases should be stepped up as follows: first offenders should receive a five days' suspension; second offenders, ten days, and third offenders should lose their license. With this scale in force, there won't be so much work for your Board to do in these disciplinary matters after a while.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

6. DISCIPLINARY PROCEEDINGS - MISCELLANEOUS VIOLATIONS - INCREASED PENALTIES WELCOMED.

December 17, 1937.

Harry S. Reichenstein, Secretary
Municipal Board of Alcoholic
Beverage Control
City Hall,
Newark, N. J.

Dear Mr. Reichenstein:

I have staff report and your certification of the proceedings before the Municipal Board of Alcoholic Beverage Control of Newark against:

1. Joseph Steinreich, t/a Joe's Radio Tavern, charged with having sold or served alcoholic beverages on Primary Election Day while the polls were open for voting. I note the licensee was adjudicated guilty and his license suspended for five days.

2. Julius Kaplan, charged with having sold or served alcoholic beverages to a minor; found guilty and license was suspended for two weeks.

3. Anna Zochowski, charged with having sold or served alcoholic beverages during prohibited hours in violation of your local regulation; found guilty and license was suspended for five days.

Expressing no opinion on the merits of these cases because they might come before me by way of an appeal, I desire to extend to the members of the Board appreciation for the substantial penalties imposed which command respect and which signify, I take it, that from now on your Board has resolved that it is a mistaken kindness to be lenient when the liquor privilege is abused.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

7. HOURS OF SALE - ALL NIGHT SALES ON CHRISTMAS EVE ARE OUT OF ORDER - 3 A. M. IS PLENTY LONG ENOUGH THE NIGHT THAT CHRISTMAS STOCKINGS ARE HUNG.

December 18, 1937.

Miss Katherine E. Flynn
Borough Clerk
Franklin, New Jersey

My dear Miss Flynn:

I have before me the two resolutions adopted by the Council on December 9, 1937, superseding hours theretofore fixed by resolution of the Council, providing that sales of alcoholic beverages by retail licensees may be made from 7:00 a. m., December 24th, to 1:00 a. m., December 26th, and from 7:00 a. m., December 31st, to 1:00 a. m., January 2d, otherwise the existing regulations to continue in full force and effect.

To the extent that the resolutions permit licensees to sell alcoholic beverages after 3:00 a. m. on the morning of December 25th, they are disapproved for the reasons stated in Pearce v. West Orange, Bulletin 220, item 10.

Three a. m. is plenty late enough on the night that Christmas stockings are hung. As said in the West Orange case:

> "The man who has spent the whole night in a tavern and comes home plastered at seven does not contribute anything to the family cheer, except gloom. I don't see that public policy is served by taking all wraps off on Christmas Eve."

Your licensees, therefore, will have to close at 3:00 a. m. on December 25th and stay closed until the regular opening hour.

Please give appropriate notice at once to each retail licensee in your Borough of this ruling so as to supplement and correct the previous notice you have given them. You might add that it is my wish that each licensee personally sees to it that nothing occurs either during the extended time on Christmas morning or any time on New Year's which would give me cause to regret the approval which I now give herewith to these two resolutions subject to the 3:00 o'clock exception on Christmas morning as aforesaid.

Very truly yours,

D. FREDERICK BURNETT,

Commissioner.

8. LICENSEES - CHANGE OF NAME BY MARRIAGE - PROCEDURE.

December 18, 1937.

Mrs. Clarence Dodd,
Echo Lake Road,
R.F.D. No. 1,
Newfoundland, N.J.

My dear Mrs. Dodd:

I have before me yours of the 29th ult. by which I note that upon your first husband's death, his license was transferred into your name, then Mary Sell; that you have since remarried and your name is now Mary Dodd.

There is no provision in the Control Act on this point. The contingency of the change of women licensees' names due to marriage was not thought of and the question has not heretofore arisen.

Since the only change is one of name, and not of person, there is no necessity of having your license transferred into your new name and you may continue to operate under it until it expires on June 30th next.

As a matter, not only of courtesy, but of effecting record identification, I suggest that you at once write the Clerk of West Milford Township advising him of your remarriage and of your present name, and requesting that notation be made upon his records. Do this also with the State Tax Department. Hereafter, until the expiration of the present license, in your business correspondence or official reports, or advertising - in fact, whenever you refer to yourself as the licensee - I suggest that you sign or refer to yourself as "Mrs. Clarence Dodd, formerly Mrs. Mary Sell."

If you take out a renewal license it should be issued in your then name.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

9. APPELLATE DECISIONS - WITHERSPOON LODGE vs. PRINCETON TOWNSHIP

WITHERSPOON LODGE #178)
I.B.P.O.E. of W.,)
Appellant,)
-vs-) ON APPEAL
) Conclusions
TOWNSHIP COMMITTEE of the)
TOWNSHIP OF PRINCETON,)
Respondent.)

. . . . . .

J. Leroy Jordan, Esq., Attorney for Appellant
Louis Gerber, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of a club license to the Witherspoon Lodge #178, I. B. P. O. E. of W. for premises 64½ Birch Avenue, Princeton Township.

No formal answer was filed by the respondent but at the hearing its attorney stated for the record that the denial had been predicated upon (1) the residential character of the neighborhood, coupled with the objections of neighbors, and (2) the prior refusal of the Township Committee to renew a plenary retail consumption license for the same premises.

The resolution denying the license was also introduced in evidence at the hearing. It reads as follows:

> "RESOLVED that the Township Committee feels that the colored people should be granted a Club license but objections are so strong that the Township Committee feels that the license should not be granted in this location. That is the decision of the Township Committee at this time."

Seven witnesses testified for appellant urging a reversal of the denial. All were members of the club. The Township Clerk of Princeton and eight witnesses -- persons residing close to the premises sought to be licensed -- testified in the respondent's case. No member of the Township Committee appeared at the hearing. The evidence shows substantially the following situation:

Witherspoon Lodge #178 formerly owned its own home in Princeton Borough where it held a liquor license since Repeal. This license is still outstanding in that borough. Through financial difficulties, the property owned by the Witherspoon Lodge in the Borough of Princeton was lost and the property now sought to be licensed at 64½ Birch Avenue in Princeton Township was obtained by the Lodge. The appellant has been in possession of these premises for several months. These premises at 64½ Birch Avenue were formerly licensed to Sebastiano Conte, but due to misconduct of patrons on and about the premises, the Township Committee of Princeton -- after objections had been filed by neighbors -- refused to renew his plenary retail consumption license for those premises. The denial of that renewal was the subject matter of an appeal to the State Commissioner, and the action of the Township Committee of Princeton was affirmed for reasons stated in Conte vs. Princeton, Bulletin 139, Item 8.

As to the residential character of the neighborhood:- Testimony at the hearing revealed that 64½ Birch Avenue is in about the middle of the block between Bayard Lane and Witherspoon Avenue; that on the corner of Bayard Lane and Birch Avenue there is located a tavern; that another plenary retail consumption license was issued by the Township Committee of Princeton for premises near the corner of Witherspoon and Birch Avenues; further, that on Lee Avenue, which parallels Birch Avenue in the rear of the premises sought to be licensed, there is another licensed tavern which is not over 200 feet from the rear of 64½ Birch Avenue. Hence, on the same Township block in which the premises sought to be licensed is located, there are three other licensed liquor establishments all open and

catering to the public at large. In addition, testimony further revealed that one of the objectors conducts a beauty parlor in her house which is located next to 64½ Birch Avenue.

While I have consistently upheld the denial of licenses in neighborhoods which were substantially residential -- see Lojewski vs. Bayonne, Bulletin 201, Item 1, and cases therein cited -- in view of the testimony adduced at the hearing on this appeal, disclosing as it does, the presence of a beauty parlor and three other licensed establishments in the immediate vicinity coupled with the fact that the premises sought to be licensed had already been the subject of a liquor license, I am necessarily obliged to reach the conclusion that the neighborhood in question does not come within the purview of such rulings to justify the denial of a club license on that ground.

As to the previous denial of a license for the same premises based upon misconduct by patrons of a prior licensee:- While I have ruled on numerous occasions in appellate matters that the reputation of the premises sought to be licensed is a proper factor to be considered by the issuing authority in determining whether to issue a license for that place, and have upheld the denial of licenses for such premises, all such decisions involve the denial of plenary retail consumption licenses. See Mulligan vs. Lyndhurst, Bulletin 146, Item 6, and cases therein cited. However, a very different situation presents itself in the consideration of the present applicant for a club license due to the restrictions which surround the sales of alcoholic beverages by such a licensee. A club license confines the liquor business of such a licensee to members and bona fide guests of members. The holder of this license cannot cater to the public at large. Hence, I cannot agree that the refusal to renew a plenary retail consumption license for the same premises to another person should, of itself, be sufficient basis for the denial of the application by a reputable fraternal organization. No testimony whatsoever was introduced at the hearing which indicated that the appellant had improperly conducted its former licensed premises in the nearby Borough of Princeton. On the other hand, the evidence is to the contrary.

The action of the respondent is, therefore, reversed.

Respondent is directed to issue the club license as applied for.

D. FREDERICK BURNETT
Commissioner

Dated: December 19, 1937.

10. LICENSE APPLICATIONS - PROCEDURE AFTER LIMITATION OF THE NUMBER OF LICENSES HAS BEEN EFFECTED - INVESTIGATION ON MERITS STILL NECESSARY IN FAIRNESS TO APPLICANT AND TO OBVIATE REMAND.

Dear Commissioner:

Enclosed herewith please find copy of Ordinance adopted at last night's meeting of the Township Committee of Haddon Township.

Sometime on yesterday's date, an application was presented for an additional license, and notwithstanding the

fact that the Clerk advised the applicant of the probability that the Ordinance would be adopted yesterday, the applicant insisted on its filing. This application, after publication, will come up for consideration before the Township Committee at its meeting on December 21st, and I have been instructed to inquire from you as to whether or not it will be necessary to consider the application at all in view of the adoption of the Ordinance, or whether the same can be rejected for consideration in view of the existence of the Ordinance in question.

I would appreciate your advice.

Yours very truly,

Mark Marritz
Solicitor

December 20, 1937.

Mark Marritz, Esq.,
Solicitor for Haddon Township,
Camden, New Jersey.

My dear Mr. Marritz:

The ordinance adopted November 30th does not need my approval in the first instance since it concerns only a limitation of the number of licenses. It is, however, subject to review under Section 38 of the Control Act. The application was actually on file before the ordinance was adopted.

The applicant should, therefore, have an opportunity to contest the reasonableness of the municipal regulation and its application to him. Widlansky vs. Highland Park, Bulletin 209, Item 7.

Therefore, the application to which you refer should be investigated and considered on its merits by the Township Committee at its meeting on December 21st. Investigation should include inquiry into the qualifications of the applicant, the suitability of the premises and examination of the application to see that the statutory requirements have been complied with.

It might happen that after such investigation the Township Committee might come to the conclusion that the ordinance ought to be enlarged so as to embrace the present application. In such an event, it would be possible to hold the application over until the ordinance was amended accordingly. If, however, the Committee came to the conclusion after such investigation that the ordinance was reasonable not only in its adoption but in its application to the pending applicant, that of itself would be the end of the case so far as the Township authorities are concerned.

The ordinance limiting the number of licenses is binding, of course, on the applicant as well as the municipality until it is set aside, altered or amended. Smith vs. Warren, Bulletin 217, Item 2. The point is that, in respect to an applicant whose application was on file before the ordinance was finally adopted, fair consideration ought to be given to the question as to whether, in view of such application, the ordinance should be altered or amended.

In fairness to any applicant, whether before or after adoption of such an ordinance, such investigation should be made

so that if the license is denied all the reasons for the Township's action should be set forth in the resolution denying the application. The Township gets an investigation fee and ought to earn it by making the investigation. The applicant would then be in position to know exactly what he has to meet if he files an appeal. If the sole reason for denial is the limiting ordinance, then the reasonableness of the ordinance and its application to him would be the sole questions on appeal. If additional reasons for denial are stated, the appeal would test not only those questions but likewise the validity of the other reasons for denial. In other words, the Township Committee should so proceed that a single appeal will dispose of all the issues which may reasonably arise in a given case. Such a procedure saves a remand to the municipality as in Merritt vs. Tabernacle Township, Bulletin 156, Item 3.

Very truly yours,

D. FREDERICK BURNETT

11. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of Chapter 76, P.L. 1937 -- Case No. 9.	))))	CONCLUSIONS AND ORDER

Nicholas M. Giordano, Jr., Esq., Attorney for Petitioner

BY THE COMMISSIONER:

Petitioner was indicted in 1907 for robbery, pleaded guilty and was sentenced to one year in a reformatory. That was thirty years ago.

At the hearing, he testified that he is now fifty-three years of age and has resided all his life in the municipality where he now makes his home; that after his release from the reformatory he was steadily employed for many years by various manufacturing concerns, and that he thereafter became steward of a club. He worked as such steward for about eight years prior to Repeal. After Repeal he obtained a retail liquor license, which he held for about one year. Thereafter he was employed as bartender by two retail licensees, until his last employer closed up his place of business about six months ago. Since that time petitioner has been working as a chef in various places.

At the hearing two businessmen and a city official testified as character witnesses. One businessman has known petitioner for forty years, the other for twenty-seven years and the city employee has known him all his life. They testified that petitioner has never been arrested for or convicted of any crime, except in 1907. Fingerprint records taken at the time of the hearing disclose that, with the exception of the conviction in 1907, petitioner has no additional criminal record. In June 1932 petitioner duly obtained a restoration to citizenship.

After examining the evidence, I am satisfied that the petitioner has conducted himself in a law-abiding manner for the

past ten years and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is on this 18th day of December, 1937, ORDERED that petitioner's disqualification from obtaining or holding a license or permit, or being employed by a licensee, because of the conviction set forth herein, be and the same is hereby removed in accordance with provisions of Chapter 76, P.L. 1937.

D. FREDERICK BURNETT
Commissioner

12. DISQUALIFICATION - REMOVAL PROCEEDINGS - REFUSAL TO LIFT.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of Chapter 76, P. L. 1937 -- Case No. 16.	CONCLUSIONS AND ORDER

John J. Meehan, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

At a hearing previously held to determine his eligibility, petitioner admitted that he had been convicted of murder in Italy in 1921, and that he had served ten years in prison in Italy. Case No. 181, Bulletin 208, Item 2. In said proceedings it was determined that the individual was ineligible to hold a license or to be employed by a licensee.

At the hearing held herein, petitioner testified that in January 1921, when he was seventeen years and seven months of age, he shot his stepmother because she neglected and ill treated his brothers and himself. He testified that his stepmother was immediately removed to a hospital, but that she lived three weeks thereafter and died of pleurisy. He admitted that he was arrested, but denied that he was sentenced to jail. Asked to explain his admission at the previous hearing, that he had served ten years in jail, he said that he "can't talk so good." He now contends that, instead of being confined to jail for ten years, he was sent to a juvenile detention camp in 1921 and remained there until about November 1927. He further testified that, when released from the detention camp, he worked for his father in Italy until he came to this country in 1935, since which time he has been working for his brother, a liquor licensee in the State of New Jersey.

The first contention is that the crime does not involve moral turpitude. At the close of the testimony, petitioner's attorney requested that this Department investigate to determine the true facts concerning the alleged conviction. After the hearing had been closed, it was suggested that petitioner submit to fingerprinting in order that the facts concerning the alleged conviction in Italy might be investigated. Petitioner refused to submit to fingerprinting because of the length of time it would take to obtain the records from Italy.

On the record as it now stands, I must conclude that he has been convicted of a crime involving moral turpitude. This conclusion is not necessarily final, and may be altered if petitioner files a new petition, submits to fingerprinting and cooperates with this Department so that the full facts concerning

the conviction in Italy may be ascertained.

It is contended, secondly, that, even if the crime did involve moral turpitude, the disqualification should be lifted on the record presented. Chapter 76, P. L. 1937, does not contemplate a mere automatic lifting of disqualifications. It gives the Commissioner discretion to lift such disqualification only if petitioner affirmatively shows that at least ten years have elapsed from the date of conviction; that he has conducted himself in a law abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to the public interest. The evidence produced herein falls far short of that. It consists of six letters, two from attorneys, one from a priest and three from businessmen, who state in mere general terms that they have known petitioner for several years and that he has properly conducted himself during that period of time. All of those who have written reside in New Jersey. I presume that none of them knew petitioner before March 1935 when he returned to this country. Certainly there is nothing in those letters which makes any approach to the requisite proof. Aside from the fact that the evidence of good character was not given under oath and subject to cross-examination, it is not sufficient in any manner whatsoever to satisfy me that the petitioner has conducted himself in a law abiding manner during the past ten years.

I realize the practical difficulties which confront petitioner in endeavoring to show that he has conducted himself in a law abiding manner in Italy during the greater part of the ten year period. If in fact he was in jail or in the so-called detention camp until 1931, I would not consider any of the time while he was so confined as part of the ten years probationary period. That period contemplates voluntary action while he is "on his own." Of course, his conduct in jail was "law abiding." But he gets no credit for something he had to do anyway.

Petition to remove his disqualification is, therefore, denied, with leave to file a new petition, to submit to fingerprinting and to present further evidence if the petitioner so desires.

D. FREDERICK BURNETT
Commissioner

Dated: December 20, 1937.

13. DISCIPLINARY PROCEEDINGS - FIRST OFFENSES - NO DOCTRINE OF IMMUNITY FOR FIRST BITE.

December 21, 1937.

Joseph D. Pacella,
Borough Clerk,
Municipal Building,
Lodi, New Jersey.

Dear Mr. Pacella:

I have staff report and your certification of the proceedings before the Borough Council of Lodi against Alexander Hochheiser, charged with having sold alcoholic beverages on Sunday during prohibited hours in violation of your local regulation and note that a plea of guilty was entered; that sentence was suspended "due to being his first offense and good reputation in the past."

I regret that I cannot go along with the Council on this. Licensees who sell during prohibited hours are deadly conscious that they are violating the law. I believe that the only warning they respect is a suspension of their license. As a matter of fact, my men did not just happen in there that Sunday which he alleges to be his first offense. It was, to be sure, the first time he was caught. My men went there because we had received a complaint that alcoholic beverages were being sold on Sundays at Hochheiser's during prohibited hours in violation of your own local regulation. It would be well, therefore, if your Council hereafter turned a deaf ear to this talk of "first offenses." The slogan that dogs are entitled to their first bite has no application to liquor licensees who enjoy special privileges.

I suggest, therefore, for future cases a minimum of five days for the first closing hour violation; twice that for the second offense, and outright revocation upon the third.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

14. MUNICIPAL ORDINANCES - RESERVATION OF POWER TO AMEND BY RESOLUTION - EFFECT OF SUCH AMENDMENT ON ENFORCEABILITY OF PENALTY CLAUSE.

December 21, 1937.

Alexander Clifford,
Borough Clerk,
Haledon, N. J.

My dear Mr. Clifford:

I have before me the amendment to Section 2 of the Council's ordinance concerning alcoholic beverages, adopted December 13, 1937.

I note that the amendment fixes the plenary retail consumption license fee and the hours during which the licensed premises shall be closed, further providing that the hours may subsequently be amended, repealed or otherwise superseded by resolution.

According to Section 37 of the Control Act, my approval is required only of municipal regulations dealing with the conduct of licensed businesses or the nature and condition of licensed premises. Exception is made with respect to regulations limiting hours of sale. See Bulletin 43, Item 2.

I am, therefore, considering the amendment for approval only to the extent that it provides that during the specified hours licensed premises shall be closed. In that regard it is approved as submitted subject, of course, as in the case of all ex parte approvals, to review on appeal. See in this connection Re Hauck & Felter, Bulletin 130, Item 3, and the items cited therein.

As regards the reservation of power to change the hours by resolution, I see no legal objection. Hours may be fixed by resolution in the first place, and, so long as the power to amend by resolution is expressly reserved in the ordinance, I believe that hours subsequently fixed by resolution would be binding.

But whether or not, in the event the hours are changed by resolution, the penalties of fine or imprisonment provided for in Section 7 of the ordinance could be imposed, is another question. Penalties of fine or imprisonment may be imposed only for violations of ordinances. That means that they can be imposed for violation of Section 2 as it now stands or as it may later be changed by amendment or supplement in the form of an ordinance. I doubt that they could be imposed for violation of an amendment to the hours which had been made by resolution. All this because penal ordinances are construed strictly, and it might well be urged that the solemnities necessary to an amendment by ordinance have not been observed, e.g., advertising of notice, successive readings, public hearing, and a chance to be heard. I therefore suggest that to eliminate doubt as to the efficacy of those penalties, that any change of hours be made only by ordinance.

Of course, a violation of hours prescribed by resolution pursuant to the authority reserved in the proposed amendment to Section 2, could be punished by the suspension or revocation of the license, irrespective of the penalties in the ordinance.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

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

December 22, 1937.

Re: Case #190

This is to determine whether applicant is disqualified from employment by a licensee in this State by reason of conviction of a crime involving moral turpitude within Section 22 of the Control Act.

In 1930 applicant pleaded non vult to a charge of forcible rape and was thereupon sentenced to the county jail for six months. Since the crime of rape necessarily involves moral turpitude within the meaning of Section 22, it follows that applicant's conviction of that crime disqualifies him. Re Killie, Bulletin 131, Item 2.

Applicant claims, however, that his relation with the girl involved (a 13-year-old child) was by consent and was not such as to constitute rape. Under this version, applicant was guilty, not of actual, but of so-called "statutory rape". Section 115 of Crimes Act, 2 Comp. Stat. 1783; State vs. Lanto, 98 N.J.L. 401 (Sup. Ct., 1922), modified 99 N.J.L. 94 (E & A, 1923).

However, even if applicant's conviction be treated as a conviction for "statutory rape", moral turpitude is nevertheless present. The girl involved was but a 13-year-old child, admitted-

ly of good reputation. Although Applicant (himself 18 or 19 years old at the time) denies that he knew the girl was so young, he admits he knew she was in the eighth grade at primary school. There is indication that on several occasions he either induced or compelled her to submit to intercourse with him. There is further indication that the girl's character subsequently took a turn for the worse. While "statutory rape" does not necessarily involve moral turpitude within the meaning of Section 22, Re Killie, supra, Re Case #68, Bulletin 203, Item 13, nevertheless the particular facts in the present case indubitably bring it within that classification.

It is therefore recommended that applicant be declared disqualified for employment by a licensee in this State.

Nathan Davis
Attorney

Approved

D. FREDERICK BURNETT
Commissioner