Mr. MacIntosh

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

BULLETIN 463 JUNE 4, 1941.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
744 BROAD STREET, NEWARK, N. J.

BULLETIN 463 JUNE 4, 1941.

1. WAREHOUSE RECEIPTS LICENSES - REGULATIONS NO. 8 - AMENDMENT TO REGULATIONS ABROGATING THE PRIVILEGE OF SALES TO RETAILERS.

May 26, 1941

The Alcoholic Beverage Law (R.S. 33:1-72) provides for the issuance of a Warehouse Receipts License at an annual fee of $100.00, which entitles the holder thereof to sell such warehouse receipts subject to the rules and regulations of the State Commissioner.

Pursuant to the above, the late Commissioner Burnett on January 6, 1936 promulgated Regulations No. 8 concerning Warehouse Receipts Licenses and, in commenting thereon, said "However, the actual operation of the rules will be carefully observed; if additional safeguards are necessary, they will be adopted and if any of the present restrictions are found to be unnecessary, they will be eliminated".

Experience during the past five years has shown that the privilege granted in Rule 3 of the Regulations to allow the sale of warehouse receipts to retail licensees in New Jersey by a licensee holding both a Warehouse Receipts License and a wholesale license has proven unsatisfactory; that numerous retail licensees have complained to the Department that they had been misled by sales of warehouse receipts to them; that the complexity of the contracts involving such sales led to many misunderstandings, and that in some instances involving such licensees no longer in business outright fraud was alleged.

Moreover, there appears to be no longer any demand for such privilege. At the present time there are seven licensees who hold both a Warehouse Receipts License and a wholesale license and, therefore, may exercise the privilege of selling warehouse receipts to retail licensees. However, five of these licensees have advised the Department that they do not exercise the privilege of sales of warehouse receipts to retail licensees and a sixth advised that only isolated sales were made. All of the six stated they had no desire to make such sales in the future.

In view of the above, Rule 3 of Regulations No. 8 is hereby amended, effective July 1, 1941 as follows:

> "The holders of warehouse receipts licenses may sell receipts thereunder only to New Jersey licensed manufacturers and wholesalers authorized to sell the beverages covered by the receipts. Sales of receipts not in accordance with the foregoing may be made only pursuant to special permit issued by the State Commissioner of Alcoholic Beverage Control."

Sales of warehouse receipts to retail licensees in New Jersey on or after July 1, 1941 will be a violation of the above mentioned Regulation and cause for suspension or revocation of license.

E. W. GARRETT,
Acting Commissioner.

2. APPELLATE DECISIONS - HARVEY v. PEMBERTON.

SUFFICIENT LICENSES IN VICINITY - DENIAL AFFIRMED.

JAMES B. HARVEY,)

Appellant,)

-vs-) ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PEMBERTON,)

Respondent.)

Frank I. Casey, Esq., Attorney for Appellant.
J. Garfield Lemmon, Clifford N. Emmons, and Leon Bush, Members of the Township Committee, appearing for Respondent.

This is an appeal from denial of a plenary retail consumption license for premises on the west side of Pemberton Road and Fort Dix Road, Pemberton Township.

Appellant alleges that the action of respondent was erroneous, arbitrary, prejudicial and without justification.

The premises in question consist of a one-story frame building, which was purchased by appellant from the Peoples National Bank a few months ago. At that time these premises were occupied by the holder of a plenary retail consumption license but his license was thereafter transferred to another building located across the road and about one hundred feet away. It appears also that there is another place licensed for consumption about two hundred feet from appellant's premises.

The three members of the Township Committee testified that they voted to deny the license because of a petition filed by objectors and because there are two consumption licenses already in existence in that district. The petition was signed by twenty-one residents of the township. Even if the names of seven competing licensees be eliminated, there would remain the names of fourteen objectors, at least four of whom reside nearby. The weight to be given a petition is a matter properly within the discretion of respondent. Goff v. Piscataway, Bulletin 234, Item 5, and cases therein cited. Considering the objections, the two nearby consumption licenses and the evidence that the only possible need for an additional license is because of the existence of Fort Dix, about four miles away, it cannot be said that the action of respondent was arbitrary or unreasonable. Even in the absence of a municipal regulation limiting the number of licenses, a local issuing authority may deny an application where the granting thereof would result in the existence of too many licensed premises in any given vicinity. Young v. Pennsauken, Bulletin 114, Item 2.

Appellant testified that before purchasing the property, he spoke to the Chairman of the Township Committee and was assured that he would have no trouble in obtaining a license. However, the Chairman testified that appellant spoke to him about another property located in a different portion of the Township and not about the property being considered herein. In any event, appellant's evidence would not be sufficient to work an estoppel against respondent. Stein v. West New York, Bulletin 101, Item 7.

The action of respondent is affirmed.

Accordingly, it is, on this 28th day of May, 1941,

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

E. W. GARRETT,
Acting Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALES BY CLUB LICENSEE TO PERSONS NOT MEMBERS OR GUESTS - 5 DAYS' SUSPENSION - SALES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION - HINDERING INVESTIGATION - 2 DAYS' SUSPENSION - TOTAL: 12 DAYS.

In the Matter of Disciplinary Proceedings against

WORKMEN'S CIRCLE LYCEUM, (or WORKMEN'S CIRCLE LYCEUM ASSN. INC.), 190 Belmont Avenue, Newark, N. J.,

Holder of Club License No. CB-27 for the term expiring June 30, 1940, and now holder of Club License No. CB-48 for the current term, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Harry Cohn, Esq., Attorney for Defendant-Licensee.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

Licensee pleaded guilty to Charge (1) which, in substance, alleged that on October 29, 1939 and November 5, 1939 it sold alcoholic beverages to investigators of this Department who were not members or bona fide guests of any of its members, in violation of Rule 5 of State Regulations No. 7. It also pleaded guilty to Charge (2) which, in substance, alleged that the sale on Sunday, November 5, 1939 was made at 11:15 A.M. in violation of an ordinance of the City of Newark which prohibits such sales between 3:00 A.M. and 12 o'clock noon on Sundays.

Licensee pleaded not guilty to Charge (3) which alleged, in substance, that on or about November 5, 1939 it hindered and delayed and caused a hindrance and delay of an investigation, contrary to R. S. 33:1-35.

The third charge arises out of the admitted fact that after selling two glasses of whiskey to Investigators Gold and Togno on Sunday, November 5, 1939, the bartender, Schuckman, attempted to seize both glasses and succeeded in spilling the contents of one glass. Togno, however, obtained the contents of the other glass, which was held as evidence against the licensee. Gold testified that, after the violation was discovered, Schuckman was greatly agitated, nervous and very much excited.

Shortly after this incident, Solomon Cohn, who has been house manager of licensee's premises for the past five years, entered the premises and fully cooperated with the investigators.

Admitting all these facts, the licensee asserts that such facts show that Schuckman did not have a premeditated intent to hinder the investigators but, on the contrary, lost his head, and, on the spur of the moment, attempted to destroy the evidence; that since its manager was not present it had no opportunity to prevent Schuckman's hasty, impulsive action, which it would not have countenanced. Hence it asserts that this offense, arising from, and the outgrowth of, the unlawful sale to the investigators, is an exception to the rule by which a licensee is held responsible for an employee's actions.

However, I have recently ruled that where an employee hindered and delayed an investigation, the licensee is responsible. Re Danker, Bulletin 448, Item 1. The fact that in the instant case the licensee was not aware of Schuckman's actions and may, therefore, be said to be personally innocent of the offense, does not alter this rule. Cf. Re Jacobs, Bulletin 315, Item 8.

The act of Schuckman in destroying part of the evidence did not facilitate the investigation and may be reasonably said to have hindered and delayed the investigation. I find the licensee guilty on this charge.

As to the penalty on this charge: If the licensee personally hindered or delayed the investigation or acquiesced therein, or if it were a case where other aggravating circumstances existed, a severe penalty would be imposed. Cf. Re Danker, supra. However, neither of these elements are here present. Hence, in view that the licensee's record before and since the offense is clear, I will suspend its license for only two days on this charge.

In addition, I will suspend its license for five days on Charge (1) and an additional five days on Charge (2), a total of twelve days' suspension.

This proceeding, though instituted during the last licensing term which expired June 30, 1940, does not abate but remains effective against the defendant's renewal license for the current term. Re Laurence Brook Country Club Inc., Bulletin 335, Item 6.

Accordingly, it is, on this 28th day of May, 1941,

ORDERED, that Club License CB-48, for the current term, heretofore issued to Workmen's Circle Lyceum Assn. Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of twelve (12) days, effective the 2nd day of June, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

4. SEIZURES - CONFISCATION PROCEEDINGS - 50 FIVE-GALLON CANS OF BOOTLEG ALCOHOL SEIZED IN BUICK COUPE - ALCOHOL FORFEITED - VEHICLE RETURNED TO INNOCENT LIENOR UPON PAYMENT OF COSTS.

In the Matter of the Seizure on August 5, 1940, of fifty 5-gallon cans of alcohol, a Buick Coupe and a Dodge Coupe, at 2 Webster Avenue, in the Town of Kearny, County of Hudson and State of New Jersey.	Case No. 5815 ON HEARING CONCLUSIONS AND ORDER

Anthony A. Calandra, Esq., Attorney for John Pecoraro.
David F. Sussman, Esq., Attorney for Colonial Discount Co., Inc.
George B. Turton, Esq., Attorney for Motor Finance Corporation.
Harry Castelbaum, Esq., Attorney for the State Department of Alcoholic Beverage Control.

On August 5, 1940 an investigator of this Department and detectives of the Kearny Police Department observed a Buick coupe driven by Alfred Salerno, alias Anthony Sasso, enter the driveway of 2 Webster Avenue, Kearny, and stop in front of the garage situated beneath the house. The officers approached the car and found therein fifty five-gallon cans of alcohol bearing no indicia of tax payment. Shortly thereafter, John Pecoraro, tenant of the premises, emerged from the house and upon questioning by the officers, admitted ownership of a Dodge coupe which was parked in the street in front of the premises. The Dodge was searched and, although a strong odor of alcohol emanated from its rear compartment, no liquor was found therein. Salerno and Pecoraro were arrested, and the alcohol and both vehicles were seized.

At the hearing no one appeared to contest forfeiture of the alcohol found in the Buick coupe, which alcohol is presumably "bootleg" because, although fit for beverage purposes, it bore no tax stamps. P.L. 1939, c. 177. It is determined that the alcohol constitutes unlawful property, and hence will be forfeited. R.S.33:1-66.

As to the Dodge: John Pecoraro, its owner, claims it should be returned to him upon the ground that it does not constitute unlawful property, and Colonial Discount Co., Inc. claims to have a bona fide lien on the car.

Under the statute, a vehicle containing illicit alcoholic beverages, or used or intended to be used in the transportation of illicit alcoholic beverages, is declared to be unlawful property. R. S. 33:1-1(y); R. S. 33:1-66(c). However, it appears that the Dodge did not contain any alcohol and, while the circumstances surrounding its seizure are suspicious, the evidence is not sufficient to warrant a conclusion that it was used or intended to be used to transport illicit alcoholic beverages. Consequently, no legal authority exists to order its forfeiture. This determination renders it unnecessary to consider the claim of Colonial Discount Co. as it may now pursue its claim, if any, against Pecoraro, to whom the car will be returned by this Department.

As to the Buick: The owner did not appear to contest forfeiture, but Motor Finance Corporation requests recognition of its lien thereon and presented proof that the sum of $747.36 remains due on a conditional sales contract.

It appears that when Salerno, who has a lengthy criminal record, purchased the Buick from a local dealer, he used the name of Anthony Sasso. The finance company, believing this to be his true name, caused an investigation to be made accordingly. The testimony shows that, before purchasing the contract, it contacted a credit bureau from which it received a report that "Sasso's" credit was clear; that it also verified, through independent investigation of its credit reporter, the information it had received as to "Sasso's" residence and employment, and that it had no reason to suspect that "Sasso" was also known as Salerno or that the car would be used for unlawful purposes.

I am satisfied from the evidence that Motor Finance Corporation acted in good faith and made reasonable inquiry before purchasing the conditional sales contract. Its lien will be recognized and, since the Commissioner of Finance of the State of New Jersey has notified me that the State cannot use this vehicle in the event that the lien claim is allowed, I shall return the Buick coupe to Motor Finance Corporation upon payment by it of the costs of seizure and storage of the vehicle.

Accordingly, it is ORDERED that the Dodge coupe be returned to John Pecoraro; and it is further

ORDERED, that the Buick coupe be delivered to Motor Finance Corporation, provided that on or before the 10th day of June, 1941 it pays the costs involved in the seizure and storage of the automobile; and it is further

ORDERED, that the other seized property, more fully described in Schedule "A" annexed hereto, be and the same is hereby forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

E. W. GARRETT,
Acting Commissioner.

Dated: May 28, 1941.

SCHEDULE "A"

50 - 5-gallon cans of alcohol

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

PAUL KANIA,
171 Hathaway St.,
Wallington, N. J.,

Holder of Plenary Retail Consumption License C-33, issued by the Borough Council of the Borough of Wallington.

CONCLUSIONS AND ORDER

Paul Kania, Pro Se.
Abraham Merin, Esq., Attorney for the State Department of Alcoholic Beverage Control.

The defendant-licensee has pleaded guilty to a charge of selling alcoholic beverages on March 21, 1941 at less than the Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

Reports of Department agents, who took part in the investigation, show that in the early afternoon of March 21, 1941, one of the agents entered the licensed premises and, after consuming several drinks at the bar, purchased from the bartender a pint bottle of Wilson "That's All" Whiskey for the sum of $1.30. The minimum consumer price at which a pint bottle of this whiskey could be sold at this time was $1.33. Bulletin 424.

The minimum penalty for sale below Fair Trade is ten (10) days. Since the instant offense is the defendant-licensee's first violation of record, the minimum penalty will be imposed.

By entering the guilty plea in ample time before the date set for hearing, the defendant-licensee has saved the Department the time and expense of proving its case. Five (5) days of the penalty will, therefore, be remitted.

Accordingly, it is, on this 28th day of May, 1941,

ORDERED, that Plenary Retail Consumption License C-33, heretofore issued to Paul Kania by the Borough Council of the Borough of Wallington, be and the same is hereby suspended for a period of five (5) days, effective June 2, 1941, at 6:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGE BELOW FAIR TRADE MINIMUM - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against CHARLES J. KOENIG, 309-311 Hackensack St., Carlstadt, N. J., Holder of Plenary Retail Distribution License D-5, issued by the Mayor and Council of the Borough of Carlstadt.	CONCLUSIONS AND ORDER

Sher and Sher, Esqs., by Sydney Sher, Esq., Attorneys for the Defendant-Licensee.
Robert R. Hendricks, Esq., Attorney for the Department of Alcoholic Beverage Control.

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

The Department file on this matter shows that on September 24, 1940 the wife and employee of the defendant-licensee sold a pint bottle of Golden Wedding Rye Whiskey to an investigator for the price of $1.25. The minimum consumer price at which pint bottles of this whiskey could have been sold, lawfully, at that time was $1.35. Bulletin 416.

The defendant-licensee, while frankly admitting that the sale was made below the Fair Trade price, asks that clemency be shown in the imposition of penalty on the ground that the violation was inadvertent. He states that only three days prior thereto he had opened his new store; that on the day before the opening, he, assisted by friends and relatives, had price-marked the liquor stock "in conformity with the bulletins received....from this Department"; that through inadvertence and unintentional error the pint bottles of Golden Wedding Whiskey had been price-marked at $1.25 instead of $1.35; that he was unaware of the mistake until his attention was directed to it by the purchasing investigators.

Even assuming that the sale below Fair Trade price was not intentional or deliberate but was, as claimed by defendant-licensee, the result of a bona fide mistake, such fact does not excuse the violation. Re Cooper, Bulletin 461, Item 6. However, I am satisfied that there are no aggravating circumstances. Hence, since this is his first violation of record, defendant is entitled to the minimum penalty imposed in cases of this kind on entry of a guilty plea.

The license will be suspended for ten days, but five days of said penalty will be remitted because of the guilty plea, making a net suspension of five days.

Accordingly, it is, on this 28th day of May, 1941,

ORDERED, that Plenary Retail Distribution License D-5, heretofore issued to Charles J. Koenig by the Mayor and Council of the Borough of Carlstadt, be and the same is hereby suspended for a period of five (5) days, effective June 2, 1941, at 3:00 A.M. (Daylight Saving Time).

E. W. GARRETT,
Acting Commissioner.

7. ACTIVITY REPORT FOR MAY, 1941

To: E. W. Garrett, Acting Commissioner.

ARRESTS: Total number of persons - - - - - - - - - - - - - - - 25
Licensees - 2 Non-licensees - 23

SEIZURES: Stills - total number seized- - - - - - - - - - - - 3
Capacity 1 to 50 Gallons- - - - - - 3
Capacity 50 Gallons and over- - - - 0

Motor Vehicles - total number seized- - - - - - - - 1
Trucks - 1 Passenger cars - 0

Beverage Alcohol- - - - - - - - - - - - 0

Mash - total number of gallons- - - - 0

Alcoholic Beverages

Beer, Ale, etc. - - - - - - - - - - - - - - - -	8.66	Gallons
Wine- -	274.24	"
Whiskies and other hard liquor- - - - - -	211.56	"

RETAIL INSPECTIONS:

Licensed premises inspected - - - - - - - - - - - -	1763
Violations disclosed:	
Illicit (bootleg) liquor- - - - - - - - -19	
Gambling violations - - - - - - - - - - - 8	
Sign violations - - - - - - - - - - - - -12	
Unqualified employees - - - - - - - - -87	
Other mercantile business - - - - - - - 0	
Disposal permits necessary- - - - - - - 2	
"Front" violations- - - - - - - - - - - - 2	
Improper beer markers - - - - - - - - - - 0	
Other violations found- - - - - - - - - - 2	
Total violations found- - - - - - - - - - - -	132
Total number of bottles gauged- - - - - - - - -	14388

STATE LICENSEES:

Plant Control inspections completed - - - - - -	128
License applications investigated - - - - - -	67

COMPLAINTS:

Investigated and closed - - - - - - - - - - - -	216
Investigated, pending completion- - - - - - -	639

LABORATORY:

Analyses made - - - - - - - - - - - - - - - - -	164
Alcohol and water and artificial coloring cases- - - - - - -	18
Poison and denaturant cases - - - - - - - - -	0

HEARINGS HELD:

Appeals - - - - - 9 Disciplinary proceedings-	20
Seizures- - - - - 9 Eligibility - - - - - - -	12
Application for special permit - 1	

PERMITS ISSUED:

Unqualified employees - - - - - - - - - - - - -	522
Home manufacture of wine- - - - - - - - - - - -	1
Solicitors- - - - - - - - - - - - - - - - - - -	107
Social Affairs- - - - - - - - - - - - - - - - -	321
Disposal of alcoholic beverages - - - - - - - -	48
Miscellaneous permits - - - - - - - - - - - - -	66
Total- -	1065

Respectfully submitted,

S. B. White,
Chief Inspector.

8. APPELLATE DECISIONS - OWEN v. MEDFORD.

SUFFICIENT LICENSES IN MUNICIPALITY - PUBLIC CONVENIENCE AND NECESSITY NOT SHOWN - DENIAL AFFIRMED.

ARTEMUS W. OWEN,)

Appellant,)

-vs-) ON APPEAL
CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MEDFORD,)

Respondent.)

Davis & Davis, Esqs., by James Mercer Davis, Jr., Esq., Attorneys for the Appellant.
Herbert S. Killie, Esq., Attorney for the Respondent.

This is an appeal from the denial of a plenary retail consumption license to appellant for premises on State Highway 40, Medford Township.

This rural agricultural community, with a population of about 1700, has three consumption licenses. Respondent assigns as one reason for its denial that such number is amply sufficient to service the requirements of the Township residents.

Appellant concedes that, so far as the inhabitants of the municipality are concerned, there is no need for another consumption establishment to be located there. He contends, however, that public convenience and necessity require the issuance for his premises because (1) he has a personal following from the City of Philadelphia and (2) to satisfy the needs of transients.

As to (1): The evidence on this issue came only from appellant, unsupported by any corroboration. When asked by his attorney, "From what community or district does your trade come?", he replied, "Practically all Philadelphia trade." Even were such testimony to be deemed sufficiently competent, it fails to establish that respondent's policy of limiting the number of consumption licenses in its municipality to three is unreasonable. A similar contention was found to lack merit in the case of Turner v. Walpack, Bulletin 418, Item 3, where a like quota of three was fixed for the municipality. It was there said:

> "Although appellant claims that she intends to operate a vacationers' hotel at her premises and that, having lived in Hudson County for many years, her patronage will consist of persons in her 'following' from that county and New York City, such falls far short of establishing that public necessity or convenience require that her place also be licensed in this vicinity."

Such holding is likewise here applicable.

As to (2): The fact that on State Highway 40, a well-traveled thoroughfare, the nearest licensed places to the proposed premises are ten miles in one direction and nineteen miles in the other is not dispositive that public necessity and convenience

require that a license be granted at appellant's premises. It is but one pertinent factor to be considered by an issuing authority in reaching its decision. Standing alone, however, it is not sufficient to overcome the primary consideration to be determined by the issuing authority, namely, the needs of its own residents. Levitt v. Liberty, Bulletin 169, Item 4; Granda v. Rockaway, Bulletin 282, Item 7; Watts v. Princeton, Bulletin 301, Item 2. Liquor is not such a necessitous commodity that it must be made readily accessible to a person who, when leaving one licensed establishment, must drive his automobile twenty-nine miles farther before being able to obtain another drink.

I find that appellant has failed to sustain the burden of showing that, despite the conceded sufficiency of the existing licenses for the local residents, public necessity and convenience require the issuance of another liquor license in the Township.

The action of respondent is affirmed.

Accordingly, it is, on this 29th day of May, 1941,

ORDERED, that the petition of appeal be and the same is hereby dismissed.

E. W. GARRETT,
Acting Commissioner.

9. ELIGIBILITY - POSSESSING AND SELLING LOTTERY TICKETS - NOT MORAL TURPITUDE - APPLICANT NOT DISQUALIFIED BY SUCH CONVICTION.

May 29, 1941

Re Case No. 382

This proceeding is to determine whether applicant is disqualified under R. S. 33:1-25, 26 from holding a liquor license or working for a liquor licensee in New Jersey, by reason of conviction of a crime involving moral turpitude.

In 1930 applicant was convicted of possessing and selling lottery tickets and sentenced to serve sixty days in the County Jail.

In 1935 applicant was convicted, in police court, of opening licensed premises before noon on Sunday, in violation of municipal ordinance, and fined $25.00.

In addition, it appears that he was arrested in 1922, 1925, 1927 and 1940 on the respective charges of keeping a disorderly house, of larceny from the person, of being the proprietor of a gambling house and of possessing lottery tickets. The Grand Jury dismissed each of these charges.

His 1930 conviction of possession and sale of lottery tickets is the only one to be here considered, since his violation of a municipal ordinance is not a conviction of a "crime" within the meaning of R. S. 33:1-25, 26. Re Case No. 314, Bulletin 395, Item 9. Likewise, his arrests resulting in dismissals by the Grand Jury are not convictions of crime.

His conviction on the lottery charge does not involve the element of moral turpitude because, apparently, he was not one of the principals or lieutenants engaged in the actual conduct of such lottery. Re Case No. 354, Bulletin 435, Item 2.

If applicant hereafter applies for a license or permit, the issuing authority may consider his entire record in determining his personal fitness to hold such license or permit, but, under the statute, applicant is not disqualified by reason of the aforesaid convictions or arrests.

It is recommended, therefore, that applicant be advised that he is not disqualified by statute from holding a liquor license or being employed by a liquor licensee in this State.

Harry Castelbaum,
Attorney.

APPROVED:
E. W. GARRETT,
Acting Commissioner.

10. NEW LEGISLATION - QUALIFICATION OF APPLICANTS FOR LICENSES - AMENDMENT TO THE LAW RESPECTING CONVICTIONS - INTERPRETATION.

May 29, 1941

To: E. W. Garrett, Acting Commissioner
From: Nathan Davis, Attorney-in-Chief.

This is in response to your request for opinion as to construction of P.L. 1941, Chapter 97, which has recently amended R. S. 33:1-25.

Originally, R. S. 33:1-25, in carrying forward a provision which had existed virtually since Repeal, stated (inter alia):

> "No license of any class shall be issued to....any person....who has committed two or more violations of this chapter (i.e., the Alcoholic Beverage Law)." Also see P.L. 1933, c. 456, Sec. 22, as amended by P.L. 1934, c. 85 and P.L. 1934, c. 194.

Such provision was interpreted by this Department to mean that only violations of the Alcoholic Beverage Law and not of municipal or State liquor regulations were included (Re Wismer, Bulletin 298, Item 5; Re Hanlon, Bulletin 375, Item 12; Beam v. Caldwell, Bulletin 380, Item 3); that a formal finding of guilt in criminal court or in disciplinary or similar proceedings as to such statutory violations was necessary (Re Case No. 59, Bulletin 193, Item 6; Re Case No. 65, Bulletin 195, Item 1; Re Wizner, Bulletin 251, Item 1); and that "two or more violations" contemplated an adjudicated violation followed thereafter by a fresh violation and adjudication - i.e., two adjudications with a "locus poenitentiae," or chance to repent, between (Re Case No. 63, supra; Re Blanker, Bulletin 254, Item 6).

P.L. 1941, c. 97, effective April 30, 1941, now amends the above provision in R. S. 33:1-25 to read:

> "No license of any class shall be issued to.....any person....who has been convicted in a court of criminal jurisdiction of any violation of this chapter or has been convicted of three violations before any other authority pursuant to this chapter."

You ask for opinion (1) as to whether "three violations," used without express qualification in the amendment, refers to violations of only the statute, or also includes violations of municipal and State regulations; and (2) as to the general effect of the amendment.

As to (1): It seems reasonably clear that the amendment, like the pre-existing provision, includes only statutory violations and does not intend to include violations of municipal or State regulations. In specifically mentioning "any person....who has been convicted in a court of criminal jurisdiction of any violation of this chapter" and then continuing with "or has been convicted of three violations before any other issuing authority pursuant to this chapter," the amendment quite evidently, in thus mentioning "three violations," is referring to the type of violation mentioned in the immediately preceding clause - viz., violation of the statute.

Thus viewed, the amendment disqualifies persons convicted in criminal court of a violation of the Alcoholic Beverage Law and also persons who stand convicted of three such violations in a disciplinary proceeding.

Were there any substantial doubt as to this construction, which appears reasonably clear from the context, such doubt wholly disappears before certain rules of statutory construction here pertinent:

(a) That, although the Alcoholic Beverage Law in general is to be liberally construed (R. S. 33:1-73), this particular provision, which imposes an absolute and lifelong disqualification, is, as heretofore consistently ruled by this Department, to be strictly construed. See Re Case No. 59, supra; Re Case No. 63, supra; Re Wizner, supra;

(b) That, where a word (here "violation") is twice used in the same statutory provision, it is presumed to have the same meaning in both instances. James v. DuBois, 16 N.J.L. 285, 293 (Sup. Ct. 1836); Ross v. Miller, 115 N.J.L. 61, 63 (Sup. Ct. 1935);

(c) That, under the so-called ejusdem generis rule, "where general words (here 'three violations') follow particular words (here 'violations of this chapter'), the rule is to construe the former as applicable to the things or persons particularly mentioned." Livermore v. Bd. of Freeholders of Camden, 31 N.J.L. 507, 512 (E. & A. 1864); Syms v. West Hoboken, 90 N.J.L. 130, (Sup. Ct. 1917); Camden Safe etc. Co. v. Cape May etc. Co., 102 N.J. Eq. 351, 352 (Ch. 1928).

As to (2), viz., the general effect of the amendment: Since the pre-existing provision no longer remains law, it follows that persons, even those who were rendered ineligible by that provision, are now no longer barred thereby; that they must meet, instead, the new test set forth in the amendment; that, if they satisfy that test (and also the various other statutory qualifications in the Alcoholic Beverage Law), they are eligible for license (or employment - R. S. 33:1-26) in the liquor business in this State.

As to this new test, the amendment, in disqualifying any person "who has been convicted in a court of criminal jurisdiction" for violating the Alcoholic Beverage Law, at once raises the serious question whether it is intended to apply to such convictions which occurred before as well as after the amendment.

Although at first glance the amendment would seem by its terms to reasonably include such prior convictions, careful analysis reveals that it should properly be deemed to apply only to future and not to past convictions.

The major consideration which strongly argues for this conclusion is that, if the amendment be deemed to apply to past convictions, it must then include even the instance of a single prior conviction. As already stated, under the pre-existing law, a single such conviction did not result in automatic disqualification since two adjudications (whether in criminal or disciplinary proceeding), with "locus poenitentiae" between, were necessary. Indeed, various persons with a single conviction in criminal court for violating the Alcoholic Beverage Law were, in view of the then existing law, expressly ruled to be qualified by this Department in a regular proceeding brought to test their eligibility. See, for example, Re Case No. 41, Bulletin 166, Item 5; Re Case No. 157, Bulletin 190, Item 12; Re Case No. 59, supra; Re Case No. 63, supra; Re Case No. 188, Bulletin 212, Item 2; Re Case No. 238, Bulletin 288, Item 14; Re Case No. 241, Bulletin 290, Item 8; Re Case No. 273, Bulletin 318, Item 9; Re Case No. 349, Bulletin 432, Item 11; Re Case No. 366, Bulletin 445, Item 10; Re Case No. 367, Bulletin 447, Item 7; Re Case No. 371, Bulletin 453, Item 6.

To give the amendment the effect of now reaching back and disqualifying a person for a single such conviction in the past would mean that all persons who secured licenses, or employment (R. S. 33:1-26), in the liquor business in this State in reliance upon the fact that their single conviction did not disqualify them must now be categorically barred because of that past conviction from any renewal of such license or continuance of their employment, notwithstanding their investments of time, effort and money, or the fact that they may have been leading a wholly law-abiding life since their conviction; in other words, that their status and economic position would be peremptorily wiped out because of a fact which was actually non-disqualifying at the time they entered or were engaging in the liquor business.

While it is clear that the Legislature, in its regulatory control over the liquor traffic, may have power to disqualify in this way, such an intent should not be deemed to exist without being set forth expressly or by necessary implication in the amendment. Our courts have stated and reiterated, as a cardinal rule, that legislation is most strongly presumed, especially where harshness would otherwise result, to be prospective and not retroactive in effect as regards other than merely procedural or similar matters. See, e.g., Berdan v. VanRiper, 116 N.J.L. 7, 14 (Sup. Ct. 1837); Citizens' Gas Light Company v. Alden, 44 N.J.L. 648, 653 (E. & A. 1882); Pub. Serv. Elec. Co. v. Bd. of Pub. Util. Com., 88 N.J.L. 603, 607 (E. & A. 1916); Wittes v. Repko, 107 N.J. Eq. 132 (E. & A. 1930), and cases there cited.

In view of such cardinal rule, the evident considerations of fairness involved, and the further rule that the provision in question, being highly penal in nature, is on that account to be strictly construed, the present amendment should be deemed, I

believe, as disqualifying any person convicted after enactment of the amendment (viz., April 30, 1941) in criminal court for violation of the Alcoholic Beverage Law.

This conclusion is strengthened by the provision in the amendment which disqualifies any person who "has been convicted of three violations" of the Alcoholic Beverage Law in a disciplinary proceeding. Taking note once more that the pre-existing provision, in stating "committed two or more violations," meant two separate adjudications with "locus poenitentiae" between, I deem that, by the same token, the present phrase "convicted of three violations" means three separate adjudications with "locus poenitentiae" between each, and hence denotes a general philosophy in the amendment to give "another chance."

Thus, viewing the present amendment in full, a person heretofore disqualified by a double adjudication of guilt for violating the Alcoholic Beverage Law actually gets another chance - and no more than but one, since conviction hereafter in criminal court will, wholly without regard to his two prior adjudications, automatically disqualify him under the first part of the amendment whereas conviction hereafter in a disciplinary proceeding will, on the score that it actually constitutes a third adjudication, disqualify him under the latter part of the amendment. For I deem that such latter part, in referring to a person being "convicted of three violations" in a disciplinary proceeding, means any finding of guilt in such proceeding which shall, when added to the person's past record, constitute a third adjudication.

As to a person heretofore once convicted of violating the statute (whether in criminal or disciplinary proceeding) or a person never thus convicted, such persons, although they too will become automatically disqualified if hereafter convicted in criminal court for violating the Alcoholic Beverage Law, will nevertheless have two and three "strikes" respectively as regards adjudications hereafter in disciplinary proceedings.

Thus far, this opinion has made no mention of the provision in R. S. 33:1-25 which disqualifies any person who has been convicted of a crime involving "moral turpitude." The present amendment leaves that provision wholly unchanged. Hence, although persons heretofore disqualified by reason of a double conviction for violating the Alcoholic Beverage Law may no longer be barred under the recently amended provision in R. S. 33:1-25, nevertheless they still remain barred under the "moral turpitude" provision if one or both of their prior convictions occurred in criminal court and if any such conviction, depending on the facts, involved the element of moral turpitude.

Respectfully submitted,
Nathan Davis,
Attorney-in-Chief.

Fairness and equity virtually mandate my approval of the foregoing interpretation in the absence of judicial opinion to the contrary.

E. W. GARRETT,
Acting Commissioner.

11. DISCRIMINATORY PRICES AND DISCOUNTS - REGULATIONS NO. 34 - HEARINGS IN DISCIPLINARY PROCEEDINGS FURTHER ADJOURNED PENDING DETERMINATION BY THE SUPREME COURT OF VALIDITY OF P.L. 1939, C. 87, AND STATE REGULATIONS NO. 34 - ENFORCEMENT TO BE CONTINUED.

June 2, 1941

A writ of certiorari was today served upon me, removing into the New Jersey Supreme Court the pending disciplinary proceedings against Schenley Distributors, Inc. of New York City. The writ is returnable June 16th and by its terms acts as a stay.

Since the Supreme Court has stayed the conduct of the proceedings against Schenley Distributors, Inc., which is contesting the legality of P.L. 1939, Chapter 87 (the New Jersey Anti-Discriminatory Discount Law applicable to liquor wholesalers) and State Regulations No. 34 (the Anti-Discriminatory Discount Regulations, similarly applicable), fairness dictates that no hearings be held in pending proceedings against Austin, Nichols & Co., Inc., of Brooklyn, N. Y.; Belmont Distributing Co. of Newark, N. J.; Greenspan Bros. Co. of Perth Amboy, N. J.; Oldetyme Distillers Corporation of Jersey City, N. J.; and Joseph H. Reinfeld, Inc., of Newark, N. J., (wholesalers); and against Julius Bergman, Lewis Castelbaum, Emanuel Kremer and Jack Rosenberg of Newark, N. J.; Sam Englander of Passaic, N. J.; Mortimer W. Greenspan of Perth Amboy, N. J.; Charles H. Scofield of Bayonne, N. J.; and Jules J. Lubowitt of Hillside, N.J. (solicitors employed by the wholesalers), all of whom have been charged with violating the same law and regulations which are the subject of attack by Schenley Distributors, Inc.

Accordingly, hearings against all the wholesalers and solicitors above mentioned, scheduled for June 4, 5 and 6, 1941, have been adjourned without date until the stay of the Supreme Court is vacated.

The Supreme Court did not stay enforcement of P.L. 1939 and State Regulations No. 34. It merely ordered that no hearings be held in disciplinary proceedings against Schenley Distributors, Inc., which had been charged with violating both the law and the regulations.

The allowance of the writ does not mean that all wraps are off. Complaints of violation of either the law or the regulations will be investigated as heretofore. If evidence of violation is obtained, disciplinary proceedings will be instituted even though no hearings may be held in such cases while the law and the regulations are under attack in the courts. Hearings will be held in all cases as soon as permitted by the court.

Those who violate the law and the regulations are flirting with suspension or revocation of their licenses and possible fine and imprisonment.

Obedience is expected.

E. W. Garrett

Acting Commissioner.