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

BULLETIN 543 DECEMBER 22, 1942.

1. MILITARY RESERVATIONS - SALE OF ALCOHOLIC BEVERAGES PROHIBITED IN COMMUNITIES "DRY" BY REFERENDUM.

December 8, 1942

Dear Mr. _____:

You have asked our opinion as to whether or not the military authorities may open a post exchange in the Borough of _____ and include, among the articles to be sold, beer.

I understand that certain Federal forces are now established in the area immediately adjacent to your junior and senior high schools. I do not know, however, whether the area occupied by these forces has been either ceded to the Federal government or taken over as a military reservation.

Federal laws forbid the sale of or dealing in intoxicating liquor on military reservations, but permit the sale of beer and light wine of not more than 3.2 per cent alcohol content by weight. Under these laws, the announced War Department policy and regulations prohibit the sale of or dealing in intoxicating liquor on military reservations, but permit the sale of soft drinks, including beer and light wines containing not more than 3.2 per cent alcohol by weight, on those reservations located in states whose laws permit such sales at such places. Such sales are not permitted, however, on reservations located within any state, territory or district whose laws do not permit such sales within its borders.

Military forces not on military reservations are subject to the same laws, both Federal and State, that govern the conduct of other citizens.

Pursuant to R. S. 33:1-45, the citizens of _____, by referendum (November 1935), determined, by a vote of 3859-NO to 774-YES, that no retail licenses should be issued in the Borough. The sale of alcoholic beverages within the Borough is, therefore, presently illegal, and hence prohibited. The prohibition against the sale of alcoholic beverages, while initiated by the governing body of the Borough and confirmed by the citizens of the community by referendum, is based upon the law of this State. It is, therefore, the law of the State of New Jersey which does not permit the sale of alcoholic beverages within the borders of _____. The Federal authorities are required to recognize and observe the New Jersey law as well as the public policy of the State and the Borough. If I understand correctly the position of the Secretary of War, it is "that it would be harmful to the men in the Service, as well as unnecessary to direct a prohibition against them that did not apply to other citizens."* Presumably the converse is also true.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

*See letter by Henry L. Stimson, Secretary of War, to Robert R. Reynolds, Acting Chairman, Committee on Military Affairs, dated May 2, 1941.

2. MORAL TURPITUDE - CRIME OF KEEPING A DISORDERLY HOUSE (HOUSE OF PROSTITUTION) INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION DENIED.

In the Matter of an Application to remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 244.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1931 petitioner pleaded non vult in the Essex County Court of Quarter Sessions to the charge of keeping a disorderly house (house of prostitution). He was sentenced to serve three years in prison and released on parole in November 1932.

The crime in question, per se, involves the element of moral turpitude. See Re Case No. 289, Bulletin 346, Item 11; Re Case No. 99, Bulletin 417, Item 7.

In 1936 petitioner was convicted of assault and battery and received a suspended sentence. In February 1937 he was again convicted of assault and battery, sentenced to serve six months in a county penitentiary, and released in March 1937. In this case it was charged that petitioner met a woman in a night club, took her to his apartment and attempted to assault her. In 1939 petitioner was convicted of having undersized lobsters in his car, in violation of the Game Laws, and was sentenced to pay a fine of $500.00. Upon his failure to pay the fine, he was arraigned in February 1941 for violation of his probation in the case.

In addition, petitioner was arrested in 1930 on charge of receiving stolen goods; in 1934 on charge of violating the Motor Vehicle Law, and in February 1942 on charge of assault and battery. All of these charges were dismissed.

Petitioner claims that he has been law-abiding for at least five years last past, and hence, pursuant to R. S. 33:1-31.2, seeks removal of his disqualification from working for a liquor licensee or holding a liquor license in this State by reason of his conviction of a crime involving moral turpitude.

However, the evidence does not sustain petitioner's claim. His conviction in 1939 of violating the Game Laws, even assuming that it is not a crime involving moral turpitude, was misconduct, and hence bars a finding that he has been law-abiding during the five years last past. It should also be noted that petitioner's unsavory record might well warrant the conclusion that it would be against public interest to permit him to become associated with the liquor industry at this time.

Hence, I shall not exercise my discretionary power to lift petitioner's disqualification.

The petition is, therefore, denied.

ALFRED E. DRISCOLL,
Commissioner.

Dated: December 14, 1942.

3. STATE BEVERAGE DISTRIBUTOR LICENSEES - HEREIN OF SOLICITATION.

December 14, 1942

David L. Horuvitz, Esq.,
Bridgeton, N. J.

Dear Sir:

I have your letter dated December 9th asking, on behalf of the holder of a State Beverage Distributor's License, the following questions:

"(1) Can licensed solicitors solicit orders for beer from the truck operated by them?

"(2) Can they sell more than once a week from a truck to a consumer?

"(3) Is it necessary for them to have an order before they sell?

"(4) Can they sell directly from the trucks?

"(5) Is there any limitation on the amount to be sold from a truck?"

As to question (1): Licensed solicitors may not solicit orders for beer if such activity is in any way connected with solicitation from house to house. This is so because Rule 3 of Regulations No. 20 provides:

> "No licensee shall directly or indirectly solicit from house to house, personally or by telephone, the purchase of alcoholic beverages, nor allow, permit or suffer such solicitation."

The driver of a truck who is also the holder of a solicitor's permit may, however, solicit orders for unchilled beer in quantities of not less than one hundred forty-four fluid ounces from licensed retailers at the retailers' premises because such solicitation is within the terms of his permit and does not in any way involve a violation of Rule 3 of State Regulations No. 20.

I believe that questions (2), (3) and (4) may be answered together. In Re Konvitz, Bulletin 198, Item 10, the Commissioner said:

> "A wholesaler in alcoholic beverages is not permitted to adopt the business methods outlined in your letter, viz., to put a solicitor on a truck loaded with alcoholic beverages; to stop at customers' places, take orders and then make delivery directly from the truck.
>
> "What you would set up is, in effect, a movable warehouse. The law makes no provision for warehouses on wheels."

Hence, it follows that a solicitor employed by a State Beverage Distributor licensee may not sell beer directly from the truck. He may, of course, make a delivery to a retail licensee or a consumer pursuant to an order previously accepted by his employer on the licensed premises. There is no limitation imposed in the Alcoholic Beverage Law or the Regulations of this Department upon the number of deliveries which may be made to a consumer during a week or any other period of time.

As to question (5): No beer may be sold from a truck. Under the provisions of R. S. 33:1-11(2c), a delivery by the holder of a State Beverage Distributor's License to a consumer of less than one hundred forty-four fluid ounces of unchilled beer is not permissible, but there is no maximum as to the amount which may be delivered to a consumer pursuant to orders previously received at the licensed premises.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

4. DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 185.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Petitioner has renewed his application to remove disqualification in accordance with the provisions of a previous order entered herein on November 26, 1941. See Re Case No. 185, Bulletin 486, Item 2.

In the petition filed herein, petitioner alleges that he has not been convicted of any crime since October 31, 1937. I have communicated with the teacher and postmaster who testified as character witnesses in the previous proceeding, and have been advised by both of them that petitioner has conducted himself in a law-abiding manner since the time of the last hearing. The Chief of Police has also advised me that there are no complaints or investigations pending against petitioner.

Upon the evidence submitted herein, I am satisfied that petitioner has been law-abiding for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 15th day of December, 1942,

ORDERED, that petitioner's statutory disqualification because of the convictions described in Re Case No. 185, supra, be and the same is hereby lifted in accordance with the provisions of R. S. 33:1-31.2.

ALFRED E. DRISCOLL,
Commissioner.

5. NATIONAL DEFENSE - RETAIL LICENSEES ARE REQUIRED TO COMPLY WITH REQUESTS FROM MILITARY AUTHORITIES THAT THEY REFRAIN FROM SELLING ALCOHOLIC BEVERAGES TO MEN IN UNIFORM AFTER SPECIFIED HOURS.

December 15, 1942

Dear Sir:

This will acknowledge receipt of your letter of December 12th, inquiring whether "there is a City, State or Military Law which prohibits the sale of alcoholic drinks to soldiers, sailors or marines after 12 P.M. midnight in Trenton, N. J."

There is no State law and, so far as we know, there is no applicable City ordinance.

On the other hand, all licensees in the City of Trenton have been requested by the military authorities to refrain from selling to men in uniform after 12:00 midnight. The Commissioner, in whom the statute vests authority to promulgate rulings, has ruled that, wherever military authorities, by appropriate action, request licensees to refrain from selling to men in uniform after a specific hour, the licensees in question must obey the request. It is essential that licensees cooperate with the military authorities.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

6. APPELLATE DECISIONS - DI GIROLAMO v. NORTH HANOVER TOWNSHIP.

ANTHONY DI GIROLAMO, )
Appellant, )
-vs- ) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF NORTH HANOVER, )
Respondent )

Joseph P. Wilson, Esq., Attorney for Appellant.
Powell & Parker, Esqs., by Albert McCay, Esq., Attorneys for Respondent.

BY THE COMMISSIONER:

This case comes before me on an appeal from the decision of the Township Committee of North Hanover Township denying the appellant's application for a plenary retail consumption license for the period expiring June 30, 1943.

Respondent community is located in the County of Burlington, almost immediately adjacent to Fort Dix, and, according to the 1940 census, has a population of 731. At the time of the application it appears that there were three plenary retail consumption licenses outstanding within the municipality. Two of these were located in the area adjacent to Cookstown, a considerable distance from the premises on which the appellant sought to operate a licensed business. The third license is in that area of the respondent township known as New Egypt. The record discloses that the appellant had previously applied for a plenary retail consumption license in the

Borough of Wrightstown, and that the application was denied. The premises where the appellant seeks to conduct a licensed business are within approximately 2,000 feet of the boundary line between North Hanover Township and the Borough of Wrightstown. In the latter community there are eight plenary retail consumption licensees and two plenary retail distribution licensees. The Borough of Wrightstown is reported to have a population of 241. In New Hanover Township, with a population of 983, there were, until recently, ten plenary retail consumption licenses and one plenary retail distribution license. When the Army acquired that portion of New Hanover Township known as Pointville, nine plenary retail consumption licensees, as well as the plenary retail distribution licensee, surrendered their licenses. Five other municipalities abut or are almost immediately adjacent to respondent. These municipalities are:

| | | | |
|---|---|---|---|
| Springfield Township | - population | 1,299 | - 2 consumption licenses |
| Chesterfield Township | - population | 1,766 | - 2 consumption licenses |
| Hamilton Township | - population | 30,219 | -52 consumption licenses<br>5 distribution licenses |
| Plumsted Township | - population | 1,580 | - 3 consumption licenses |
| Upper Freehold | - population | 1,839 | - 1 consumption license |

Somewhat further away is the City of Bordentown, with a population of 4,223 and nine consumption licenses; Township of Bordentown, with a population of 1,095 and eight consumption licenses; and finally, the City of Trenton, with a population of 124,697 and 295 consumption licenses and 25 distribution licenses.

The testimony discloses that the respondent municipality denied the license (1) on the ground that there are already a sufficient number of licenses in existence within the township; and (2) upon the further ground that the members of the Township Committee desire to cooperate with the State Commissioner of Alcoholic Beverage Control. It appears that the Township Clerk advised the members of the Township Committee that he had received a letter dated October 6, 1942, signed by the Commissioner of Alcoholic Beverage Control, reading, in part, as follows:

> "After having carefully studied the reports from the military authorities in the Fort Dix area, we report that neither they nor the Commissioner approve of the issuance of a license to the applicant. In the absence of this approval, the application should be denied."

While the members of the Township Committee testified that it was their independent judgment that there was a sufficient number of licenses outstanding at the time they considered the application of the appellant, it is perfectly apparent from their testimony that they were impressed by the letter which they received from the Department of Alcoholic Beverage Control and that it undoubtedly carried considerable weight with them in their consideration of the application.

R. S. 33:1-3 provides:

> "It shall be the duty of the Commissioner to supervise the manufacture, distribution and sale of alcoholic beverages in such manner as to promote temperance and eliminate the racketeer and bootlegger."

Likewise, R. S. 33:1-23 provides:

"It shall be the duty of the Commissioner to administer and enforce this chapter and administer the department of alcoholic beverage control;***"

Similarly, R.S. 33:1-39 provides:

"The commissioner may make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, in addition thereto, and not inconsistent therewith, and may alter, amend, repeal and publish the same from time to time."

This appeal has two phases. The first phase warrants a consideration of the appropriate number of licenses which should be issued in any municipality permitting the issuance of alcoholic beverage licenses.

Licenses are not issued as a matter of right. Licenses are a privilege, denied to the many and granted to the few. Local municipal issuing authorities are required to carefully consider in every instance whether the general welfare of the community will be best served by the issuance of an additional retail license or whether there are a sufficient number of such licenses outstanding. Local issuing authorities are required to give consideration to the problem just mentioned irrespective of whether or not the municipality in question may have adopted an ordinance limiting the number of licenses to be issued. In other words, notwithstanding the fact that a municipality may not have adopted an ordinance limiting the number of licenses, the issuing authority is still required to consider whether or not the public welfare will be served by the issuance of an additional license, and it may, acting within its sound discretion, refuse to grant a retail license in any case wherein it finds that there are already a sufficient number of licenses to service the needs of the general public. In reaching its decision on this point, the local issuing authority may take into consideration not only the number of licenses outstanding within the borders of their community but may also consider the number of licenses which may be in existence in communities immediately adjacent to their own.

In the present case it appears from the testimony that the members of the issuing authority did give some consideration to the number of licenses outstanding in the area adjacent to their own community. The testimony discloses that, in the adjacent Borough of Wrightstown and within 4,000 feet of appellant's proposed premises, there is located a tavern, the license for which was issued by the Borough. The latter premises, as well as appellant's proposed premises, are located on the same road and would presumably draw patrons from the same general area.

A careful study of the entire problem with respect to the number of licenses that should be issued indicates that one license per one thousand of population is probably a safe rule. See Studies in Alcoholic Beverage Control, February 2, 1942. Certainly one license per five hundred of population would appear to be overly generous. In the instant case, it develops that there are already in existence in respondent municipality one license per approximately every two hundred and fifty people.

The testimony fails to disclose that respondent, in refusing to grant the application for the reasons stated, abused the authority vested in it under the law. Under the circumstances, the

decision below must be sustained upon this ground if for no other reason.

The second phase of the case has to do with the communication direct to the local issuing authority by the Commissioner.

As previously indicated, the Commissioner of Alcoholic Beverage Control is charged with the administration of the Alcoholic Beverage Law and is authorized to promulgate rulings, both general and special, as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages. Under date of September 10, 1942, the Commissioner published in the official bulletin of the Department of Alcoholic Beverage Control (Bulletin 530, Item 3), a letter addressed to the Clerk of North Hanover Township, wherein it was stated:

> "The control of alcoholic beverages, and allied problems, in the areas immediately adjacent to army forts and posts in this State is a vital matter. As a result, it has been found desirable to rule that new licenses are not to be issued, or old licenses transferred to new locations, within the area mentioned, without the approval of the Commissioner of the Department of Alcoholic Beverage Control having been first sought and obtained."

In the instant case the record discloses that the Township Clerk of the respondent community advised the Department of Alcoholic Beverage Control of the application of the appellant, and that the Department of Alcoholic Beverage Control thereafter, on October 6, 1942, wrote the Township Clerk, the letter first referred to in these conclusions.

The question presented by this second phase of the appeal is undoubtedly novel and, so far as I know, has not been previously presented. The War has developed many new problems in the field of liquor control. Not the least of these are those which have developed in the areas adjacent to the many military forts and posts located within this State. New rules have necessarily had to be developed to meet the changing times. The rule referred to in Bulletin 530, Item 3 was not intended to nor did it in fact deprive the appellant of an opportunity either to be heard with respect thereto or to present his testimony. Rule 6 of Regulations No. 14 provides:

> "All appeals shall be heard de novo and the parties may introduce oral testimony and documentary evidence, but the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed shall rest with the appellant."

The appeal in this case was a hearing de novo. Both parties were given full opportunity to present such evidence as they may have thought pertinent to the issues raised by the pleadings or necessary for the successful prosecution of their case.

Experience indicates, and the Commissioner has found, that it is better to have too few rather than too many liquor licenses in the areas adjacent to army camps. The rule referred to was designed to prevent an unseemly growth in the number of licenses on the roads approaching army camps in those communities where there was no ordinance, as in the instant case, limiting the number of licenses that might be issued. The rule was further calculated to give the military authorities and the State Department of Alcoholic Beverage Control an

opportunity to study individual applications as they were filed, to the end that the best interests of the armed forces might be protected.

As the Court of Errors & Appeals said in State Board of Milk Control v. Newark Milk Company, 118 N. J. Eq. 504, 521, (1935):

> "The legislature indubitably has power to vest a large measure of discretionary authority in the agency charged with the administration of a law, enacted in pursuance of the police power, to secure the health and safety of the people."

The Alcoholic Beverage Law vests in the Commissioner broad discretionary authority over the manufacture, distribution and sale of alcoholic beverages. Specifically included within this authority is the power to advise or "instruct" local municipalities. R.S.33:1-39. The problem of liquor control and its relation to the members of the armed forces is not confined to a single municipality or locality. The area immediately adjacent to Fort Dix embraces many municipalities, including respondent. These municipalities are located in three different counties.

There is no more worthy object requiring the exercise of the Commissioner's discretionary authority, including the power to "instruct" and to make "such special rulings and findings as may be be necessary", than the control of liquor traffic and the "promotion of temperance" in these areas.

No reason appearing why the decision below should be reversed, it will therefore be affirmed.

Accordingly, it is, on this 16th day of December, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

7. SPECIAL PERMITS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS MAY NOT BE AUTHORIZED BY SPECIAL PERMIT.

December 16, 1942

Mr. Percy L. Douglass,
Clerk of Middle Township,
Cape May Court House, N.J.

Dear Mr. Douglass:

I have your letter of December 11th, asking for "about a dozen applications for special permits to extend hours of selling beverages on special occasions, such as Christmas Parties."

On April 4, 1940, the Township Committee of the Township of Middle adopted an ordinance reading, in part, as follows:

> "No licensee shall sell or offer for sale any alcoholic beverage between the hours of 12 o'clock midnight Saturday night and 7 o'clock Monday morning, and during any week-day between the hours of 2 A.M. and 7 A.M."

The hours fixed by the ordinance apply to all without exception. They apply regularly throughout the year and also where speci permits for social affairs are issued by this Department. There are no special dispensations.

Some New Jersey municipalities have established special extended hours of sale for New Year's Eve. Such an extension, if desired in the Township, must apply uniformly to all licensees and can be accomplished only by ordinance (see P. L. 1939, c. 234). I am convinced that there should be no extension on Christmas Eve sinc Christmas, as distinguished from New Year's, is a holy day -- a family day. The enclosed release of December 14th (Bulletin 542, Item 10) expresses my thought and feeling as to extension of holiday hours generally.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

8. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO PERSONS APPARENTLY AND ACTUALLY INTOXICATED DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against )
)
JOSEPH CLAUS, )
Waterloo Road ) CONCLUSIONS
Allamuchy Township ) AND ORDER
P.O. Stanhope R.D., N. J., )
)
Holder of Plenary Retail Consumption License C-2, issued by the )
Township Committee of the Township )
of Allamuchy. )

Wilbur M. Rush, Esq., Attorney for Defendant-Licensee.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to a charge alleging that:

> "On May 2, 1941 you sold, served and delivered, and allowed, permitted and suffered the service and delivery of alcoholic beverages to persons apparently and actually intoxicated, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons upon your licensed premises, in violation of Rule 1 of State Regulations No. 20."

The only witness produced by the Department at the hearing herein was Wilbur H. Timbrook, who was present on the licensed premises when the violation is alleged to have occurred. He testified that he saw the licensee serve drinks to a number of patrons, but that all of these patrons were sober at the time the drinks were served. The Department has made unsuccessful attempts to find other persons who allegedly were present at the time in question but has not been able to locate any of these persons. On the evidence presented, I find that the Department has not sustained the burden of proving that the defendant is guilty as charged.

Accordingly, it is, on this 16th day of December, 1942,

ORDERED, that the charge herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

9. ENFORCEMENT - CITIZENS FURNISHING DEPARTMENT WITH INFORMATION REQUESTED TO SIGN NAME AND ADDRESS - HEREIN OF THE DEPARTMENT'S PROMISE NOT TO DISCLOSE NAMES AND ADDRESSES OF COMPLAINANTS.

December 16, 1942

Dear Sir:

I have before me your letter stating: "I sure would like to be a spotter for (your) Department."

Your offer to act as "a non-paid agent" is greatly appreciated. Our rules, however, do not permit us to employ "non-paid agents."

On the other hand, it is the duty of every citizen of the State to pass along to us any information that he or she may have with respect to violations of the Alcoholic Beverage Control Law and the regulations of this Department, as well as municipal regulations. In a very real sense, therefore, every citizen of this State is a non-paid agent of all of the enforcement agencies that are operating in New Jersey -- Federal, State and municipal.

The general public has a right to anticipate not only that enforcement agencies will perform their respective duties but that fellow members of the general public will obey the law.

Information submitted to the Commissioner is regarded as confidential. The name and address of the informant will not be disclosed under any circumstances, without the informant's permission having been first sought and obtained. Throughout its history, this Department has never broken its promise that the identity of those who submit information will not be disclosed. It is for this reason that we have repeatedly requested citizens writing the Department not to hide behind the cloak of anonymity but to sign their names and give us their addresses. This gives us an opportunity to keep them advised of the progress of our investigation and perhaps to secure additional pertinent information -- thus saving time and expense.

You will likewise be interested to know that our agents are trained to secure facts, not to make cases. Our men are not paid according to the number of convictions they secure but for the work which they perform. It is just as important that we protect the innocent as it is that we punish the guilty. For this reason our agents must be paid a living wage so that their sole responsibility and loyalty may be to the Department of Alcoholic Beverage Control.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

10. ELIGIBILITY - ATROCIOUS ASSAULT AND BATTERY ACCOMPANIED BY USE OF WEAPON INVOLVED MORAL TURPITUDE - APPLICANT DECLARED INELIGIBLE TO BE EMPLOYED BY A LIQUOR LICENSEE - APPLICATION FOR EMPLOYMENT PERMIT DENIED.

December 17, 1942

Re: Case No. 474

Applicant, a non-citizen, has applied for an employment permit.

Applicant's fingerprint returns disclose that, in February 1931, he was arrested for abandoning and wilfully refusing to support

his wife and three minor children, as a result of which he was found guilty of the crime of desertion and placed on probation for a period of three years.

In March 1933 he was found guilty of two charges of atrocious assault and battery and sentenced to a jail term of eighteen months on each count, to run concurrently. It appears that he slashed his wife with a butcher knife about the face and arms and, when his thirteen year old son attempted to protect her, he cut him (the son) on the right hand.

The crime of atrocious assault and battery with a weapon such as was employed in this case involves the element of moral turpitude. Re Case No. 455, Bulletin 529, Item 4.

Moreover, in his first application for permit, applicant denied that he had ever been convicted of any crime. In a corrected application, he merely stated that he had been convicted of "Family arguments." No satisfactory explanation was offered for these false statements. In addition, his testimony is so replete with evasions, suppressions and contradictions that, in any event, the Commissioner should not exercise his discretionary power of issuing the permit. See Re Case No. 332, Bulletin 418, Item 2.

It is recommended that the application for permit be denied.

Samuel B. Helfand
Attorney.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

11. MORAL TURPITUDE - CRIME OF ATROCIOUS ASSAULT AND BATTERY FOUND TO INVOLVE THE ELEMENT OF MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - GOOD CONDUCT FOR FIVE YEARS LAST PAST AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 251

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Petitioner in this proceeding prays that his disqualification resulting from a conviction of crime be lifted pursuant to R. S. 33:1-31.2.

In August 1926 petitioner pleaded non vult in a Court of Special Sessions to the crime of atrocious assault and battery. He was sentenced to serve nine months and actually served six months in a County Penitentiary. His fingerprint returns disclose that he has never been convicted of any other crime.

For more than fifteen years last past, petitioner has resided in the same municipality in which the crime was committed and has been steadily employed as a laborer and truck driver. A counsellor at law of the State of New Jersey, who has known him for the past twelve

years, testified that petitioner has been law-abiding and industrious during that period of time. The owner of a fish and sea food business and an employee in said place of business testified that they have known petitioner for the past seven and nine years respectively, and that his conduct during that period has been good. I am satisfied that petitioner has been law-abiding for more than five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 17th day of December, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

2. APPELLATE DECISIONS - TSIBIKAS AND PARKER LIQUOR STORES, INC. v. JERSEY CITY, KEDES, YAMOURIDES AND MATENGIS.

ASTOR J. TSIBIKAS and PARKER LIQUOR STORES, INC.,
Appellants,
-vs-
THE BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, STEPHEN KEDES, STARROS YAMOURIDES and CHRIST MATENGIS,
Respondents.

HUDSON-BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION
Appellant,
-vs-
THE BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, STEPHEN KEDES, STARROS YAMOURIDES and CHRIST MATENGIS,
Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Carey & Lane, Esqs., by Harry Lane, Esq.
Samuel Moskowitz, Esq.
Attorneys for Appellants.
N. Louis Paladeau, Esq., Attorney for the Respondent, The Board of Commissioners of the City of Jersey City.
Richard J. Tarrant, Esq., Attorney for Respondent-Licensees.
Mark A. Sullivan, Esq., Attorney for Landlord.

BY THE COMMISSIONER:

Since both of these appeals involve the same issues they were consolidated, by agreement of all interested parties, for the purposes of hearing and determination.

These appeals are from the issuance, on October 20, 1942, of a plenary retail distribution license to respondents Stephen Kedes, Starros Yamourides and Christ Matengis for premises 752 Bergen Ave., Jersey City.

The Jersey City ordinance adopted October 5, 1937 fixes a limitation of seventy distribution licenses for the municipality. As

there was no vacancy in that quota when the license herein involved was issued, the sole question (no attack having been made on the validity of the ordinance) is whether the action of the Board may be sustained as coming within the purview of Section 6 of that ordinance, which reads:

"Section 6. If any license is surrendered, transferred to another premises, or is permitted to lapse, the Board of Commissioners of the City of Jersey City may grant a license for said premises, notwithstanding any limitation in this ordinance, provided:

"(a) That the owner of said premises files a petition with the City Clerk, which petition shall be accompanied by an application for a license in proper form, requesting the Board of Commissioners of the City of Jersey City to grant a license for said premises;

"(b) That said petition and application shall be filed within six (6) months of the date that the license for said premises was surrendered, transferred, or permitted to lapse;

"(c) That said license applied for is of the same class as the one that was surrendered, transferred, or lapsed;

"(d) That the owners of said premises making said application shall have held the fee simple title to said premises for which said application is made, for a period of at least one (1) year prior to said surrendering, transferring, or lapsing;

"(e) That the said surrendering or lapsing is not the result of any action on the part of said owner who knowingly permitted a violation of the rules and regulations of the City of Jersey City, of the Statutes of the State of New Jersey, or of the rules and regulations of the Department of Alcoholic Beverage Control;

"(f) That the owner of the premises making said application, whether an individual, partnership or corporation, or any member of the family of said individual or partnership or stockholder in said corporation, shall have had no interest whatsoever in the license surrendered, transferred, or permitted to lapse for said premises; provided, however, that this prohibition shall not be enforced in the case of the lapsing of a license caused by a death in the family of an individual owner;

"(g) That said petition and application is not filed for the purpose of circumventing the policy of the Board of Commissioners of the City of Jersey City established herein to reduce the number of licenses."

The distribution license for the premises in question was issued for the past fiscal year, 1941-42, to D. A. Schulte, Inc., who vacated the premises about May 1, 1942. This license "lapsed" within the meaning of the cited ordinance because of the failure to renew it for the present fiscal year.

On August 25, 1942 the landlord, Estate of Margaret A. Wheelihan, filed a petition pursuant to Section 6, in which it requested the issuance of a distribution license to the respondents Stephen Kedes, Starros Yamourides and Christ Matengis. The application for license accompanying said petition was executed, not by the landlord-petitioner, but by the three individual respondents who, admittedly,

are not the owners in fee simple of the premises. See paragraph (d) of Section 6. The latter hold a twenty-year lease for the premises, entered into in March 1940.

The theory upon which the Board granted the application for license is that the respondent-licensees, by reason of their long unexpired leasehold interest in the premises, fall within the spirit of paragraph (d), although not the letter. It maintains that the applicants, to all intents and purposes, are, for the next seventeen and one-half years, the "owners" of the property. A sufficient answer to this contention is that the "letter" of the ordinance is so clear and unambiguous as to leave no room for interpretation of its "spirit." The expression characterizing an owner of property "in fee simple" has a definite and unqualified meaning. It means "the entire and absolute interest and property in land; it means an indefeasible legal title; the entire title and interest in land." Borgquist v. Ferris, 112 N. J. Eq. 324, at p. 327 (1933). An estate for years as held by respondent-licensees is, of course, not an estate "in fee simple." Had the framers of the ordinance intended to include therein any type of interest other than fee simple ownership, they could readily have done so. But this they did not do. Where, as here, there is no ambiguity in the language of the ordinance, and its literal meaning leads to no absurd result and is not repugnant to other parts of the ordinance, such literal meaning should be accorded to it. Bauer v. Board of Fire and Police Commissioners of Paterson, 102 N.J.L. 235, at p. 238 (1926). Cf. Easton v. Galloway Township, Bulletin 241, Item 9; Cassullo v. White Township, Bulletin 399, Item 4.

The landlord contends, however, that it is the fee simple owner of the premises and therefore that the requirement of paragraph (d), as to fee simple ownership, has been met. In support of this contention, it is argued that paragraph (a) does not require that the owner necessarily shall both file the petition and make the application for license; but, instead, that it is sufficient if the owner's petition is accompanied by such application even though the applicant be merely a tenant of the premises. I cannot agree with this interpretation of the ordinance section. The words "making said application" in both paragraphs (d) and (f) can refer only to the "application for a license" designated in paragraph (a). Thus, although paragraph (a) appears to be inartistically worded, the indicated later paragraphs of Section 6 make it manifest that the applicant for the license must be the owner of the premises.

Since the application for the license in question was made by, and the license issued to, persons other than the owners in fee simple of the premises for which the license was issued, Section 6 of the ordinance adopted October 5, 1937 has not been complied with, and, therefore, the action of the respondent Board must be reversed.

Accordingly, it is, on this 17th day of December, 1942,

ORDERED, that the action of the Board of Commissioners of the City of Jersey City in issuing a plenary retail distribution license to the respondents Stephen Kedes, Starros Yamourides and Christ Matengis for premises 752 Bergen Avenue, Jersey City, be and the same is hereby reversed, and such license is hereby declared null and void, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

13. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION FOR EMPLOYMENT PERMIT CONCEALING CRIMINAL RECORD - EMPLOYMENT PERMIT REVOKED.

In the Matter of Disciplinary)
Proceedings against )
GIUSEPPE BERNABO, )
858 Second Avenue )
New York, N. Y., ) CONCLUSIONS AND ORDER
Holder of Employment Permit )
No. 2622, issued by the State )
Commissioner of Alcoholic )
Beverage Control. )
- - - - - - - - - - - - - - - - -)

William F. Wood, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant in these proceedings is charged with having given a false answer in his application for an employment permit. Accompanying the charge served upon the defendant was an order directing the defendant to show cause why the employment permit previously issued to him should not be suspended or revoked.

The defendant failed to appear at the hearing. The following day the defendant returned his permit to the Department and indicated that he did not intend to contest either the validity of the charge or oppose the order to show cause why the permit should not be suspended or revoked.

Subsequent to the issuance of the employment permit, the Department obtained a copy of the defendant's fingerprint record. This record disclosed that defendant had had a substantial criminal history dating from 1933. His crimes included unlawful entry, burglary and possession of burglary tools. In his application for employment permit and notwithstanding the fact that he swore under oath to the truthfulness of the statements therein contained, defendant failed to disclose any of the above mentioned convictions.

The return of the permit was not accepted as a surrender. The failure of the defendant to disclose his criminal record warrants the revocation of the permit and his disqualification for further employment in the alcoholic beverage business in this State.

Accordingly, it is, on this 18th day of December, 1942,

ORDERED, that Employment Permit No. 2622, heretofore issued to Giuseppe Bernabo by the State Commissioner of Alcoholic Beverage Control, be and the same is hereby revoked, effective immediately.

Alfred E. Driscoll
Commissioner.

CHECKED BY No. 9