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

BULLETIN 345 SEPTEMBER 20, 1939

1. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES TO AND EMPLOYMENT OF MINOR.

In the Matter of Disciplinary Proceedings against

NINETY-NINE, INC.,
99 Broadway,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-1024 for the fiscal year 1938-1939, issued by Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded non vult to Charges (1) and (2) which allege, in substance, that on May 24, 1939 it sold alcoholic beverages to one Frances F---, a minor, contrary to R. S. 33:1-77, and Rule 1 of State Regulations No. 20, and also pleaded non vult to Charge (3) alleging, in substance, that on the same date it knowingly employed one Frances F----, a minor, and resident of the State of New Jersey for less than five years, contrary to R. S. 33:1-26.

In view of the plea, the only question to be decided is the penalty which should be imposed.

Frances F----, who admitted that she had been served alcoholic beverages in the licensed premises where she was employed on May 24, 1939, testified that she was born in Harlan, Kentucky, on February 7, 1919, and that she had never been in the State of New Jersey before May 1936. She testified also that, when she obtained employment at the licensed premises in May 1939, she had told an agent of the licensee corporation that she was then twenty-three years of age. It appears that as a result of the events which took place on May 24, 1939, Frances F---- was arrested and subsequently fined $25.00 in the Police Court after being convicted as a disorderly person under the provisions of R. S. 33:1-81.

Mr. Pace, President of the licensee corporation, admitted that he had made no inquiries as to the age of the girl or the length of time she had resided in New Jersey, but testified that he had relied upon information which he had obtained from his bartender, Ross. Mr. Ross testified that in 1937 he was one of the partners then operating the licensed business; that in August 1937 Frances F---- was employed on the said premises; that in the same month he was present when the girl obtained a marriage license, at which time she gave her age as twenty-one or twenty-two; that he never knew the girl came from Kentucky.

The violation occurred prior to the enactment of Chapter 228, P. L. 1939, but, in any event, the licensee would not be protected by that statute because it had not obtained a written representation of age from the minor.

However, there are mitigating circumstances as explained above, and I shall suspend the license for five days instead of the usual ten days because of the violations alleged in Charges (1) and (2). The license will be suspended for a further period of five days because of the violation alleged in Charge (3), since it appears that no inquiry was made at the time of employment as to the length of time Frances F--------had resided in New Jersey. A credit of five days will be given because of the plea made herein, making a total suspension of five days.

Subsequent to the institution of these proceedings, the above mentioned license expired and has been renewed by the issuance of plenary retail consumption license No. C-976.

Accordingly, it is, on this 15th day of September, 1939,

ORDERED, that Plenary Retail Consumption License No. C-976, heretofore issued to Ninety-Nine, 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 five (5) days, effective September 20, 1939 at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

2. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK ORDERED.

In the Matter of the Seizure on July 25, 1939 of a still at 305 Elm Avenue, in the City of Hackensack, County of Bergen and State of New Jersey.	Case No. 5514 ON HEARING CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On July 25, 1939 investigators from this Department discovered an unregistered still in a one-story frame garage at premises known as 305 Elm Avenue, Hackensack, New Jersey. They seized the still, equipment and all articles set forth in Schedule "A" annexed hereto. Subsequently, Charles Del Vecchio and William Romeo were arrested and held on charges of operating an unregistered still and possessing illicit alcoholic beverages. It appears that on the same premises, which are owned by George Tobel, there is a bungalow which was unoccupied at the time of the seizure.

At a hearing held herein, no one appeared to contest the proceedings, despite the fact that all interested parties were duly notified.

Accordingly, it is determined that the seized property constitutes unlawful property and is forfeited in accordance with the provisions of R. S. 33:2-5, and, further, that the premises should be padlocked for a period of six months.

It is ORDERED, therefore, that the premises known as 305 Elm Avenue, City of Hackensack, being the premises in which the

illicit still was found, including all buildings erected thereon, shall not be used or occupied for any use whatsoever for a period of six (6) months, commencing the 18th day of October, 1939; and it is further

ORDERED, that the seized property set forth in Schedule "A" annexed hereto be and hereby is forfeited, in accordance with the provisions of R. S. 33:2-5, 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.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 18, 1939.

SCHEDULE "A"

1 - galvanized cooker
5 - copper mushroom plates
1 - copper gooseneck
1 - steam boiler
1 - boiler base
1 - copper tri-box
1 - set of coils
1 - galvanized condenser
1 - galvanized receiving tank
26 - 150 gallon vats with mash
6 - empty vats
Approximately 900 pounds of coke
100 - pounds of sugar
3 - 5 gallon cans of molasses
Miscellaneous personal property.

3. DISCIPLINARY PROCEEDINGS - GAMBLING - RUMMY.

In the Matter of Disciplinary Proceedings against UKRAINIAN LABOR BUSINESS CORP., 57-59 Beacon Street, Newark, N. J., Holder of Plenary Retail Consumption License C-175, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Stanton J. MacIntosh, Esq., Attorney for State Department of Alcoholic Beverage Control.
Simon L. Fisch, Esq., by Joseph L. Kaplan, Esq., Attorney for Defendant-Licensee.

BY THE COMMISSIONER:

The licensee was charged with permitting a rummy game for money on the licensed premises in violation of State Regulations 20, Rule 7.

It appears that on June 8, 1939, investigators of this Department entered the barroom of the licensee at 2:20 P.M. While

they sat at the bar they observed three men at a table in the corner of the barroom play three or four hands of rummy. One of the players had money on the table before him; the other two had money on the seats of the chairs upon which they sat. At the conclusion of each hand the player who went rummy collected a quarter from each of the other two; if no one went rummy, the man with the lowest hand collected fifteen cents. As the investigators watched, the game broke up because of a dispute between the players, whereupon the investigators identified themselves and obtained statements from the bartender and two of the players.

The testimony of the investigators was clear, unequivocal and unshaken by vigorous cross-examination. The licensee produced as witnesses the bartender and the three players, all of whom denied that the game was played for stakes. However, in a statement that the bartender signed at the time, he admitted that the men were playing for drinks. His later explanation that he had not read the statement; that he was forced to sign it by the investigators, who threatened to call the police, and that he signed it only to avoid trouble, does not ring true. In a statement signed at the time, one of the players also admitted that he was playing for drinks, but at the hearing he too denied having read the statement, and while admitting that his other answers in the statement were correct, sought to deny that he had said that the game was played for drinks.

No reason appears why the investigators should concoct the story of the violation out of thin air. The Hearer reports that he was impressed with the credibility of the witnesses for the State and was not impressed at all by those for the defense.

I find the licensee is guilty as charged.

Accordingly, it is ORDERED that plenary retail consumption license C-175, heretofore issued to Ukrainian Labor Business Corp. for premises 57-59 Beacon Street, Newark, N. J. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of five days, effective September 25, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Dated: September 18, 1939. Commissioner.

4. APPELLATE DECISIONS - TOBEY v. NEWARK.

GEORGIA TOBEY, trading as BULL PEN COCKTAIL BAR,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent

ON APPEAL
CONCLUSIONS

Mortimer D. Heutlinger, Esq. and Sidney Simandl, Esq., Attorneys for Appellant.
James F. X. O'Brien, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of renewal of her plenary retail consumption license for premises located at 366 - 18th Avenue, Newark.

In its answer, respondent alleges that "the Municipal Board of Alcoholic Beverage Control, in its discretion, after careful consideration of the application and the police reports attached thereto, denied the application of the appellant."

Prior to hearing herein, the following Stipulation was filed:

> "WHEREAS, the same matters involved in the above appeal were fully heard and disposed of by decision of Commissioner D. Frederick Burnett, under date of August 14, 1939, in disciplinary proceedings wherein charges were dismissed, and
>
> "WHEREAS, the members of the Excise Board of the City of Newark are of the opinion that the appeal from the denial of license herein, should be withdrawn and the matter referred back to the Excise Board of the City of Newark, for the purpose of granting the license for the year beginning July 1, 1939 and ending June 30, 1940.
>
> "THEREFORE, it is stipulated by and between Sidney Simandl, representing the applicant, and James F. X. O'Brien, representing the members of the Newark Excise Board, that the appeal heretofore filed in this matter, be withdrawn, and the matter referred back to the Excise Board of the City of Newark, for the purpose of granting a renewal of the plenary retail consumption license held by Georgia Tobey, covering premises 366 - 18th Avenue, Newark, New Jersey, for the period beginning July 1, 1939 and ending June 30, 1940."

That is mighty fair!

The appeal cannot be withdrawn at this time and the matter referred back to respondent because respondent, having denied the license, is without jurisdiction to reconsider its previous action. Plager v. Atlantic City, Bulletin 80, Item 11.

Stipulation, however, will be considered as a consent to the reversal of respondent's action in denying renewal. It is apparent that the stipulation was signed as a result of an order entered on August 13, 1939, dismissing disciplinary proceedings against appellant herein. Re Tobey, Bulletin 343, Item 1.

Nothing appears before me against the character or conduct of appellant and since respondent is satisfied that its action should be reversed, I conclude that appellant is entitled to a license. Clarkson v. Sea Girt, Bulletin 133, Item 9; Zeichner v. Orange, Bulletin 137, Item 5; Katzner v. Newark, Bulletin 175, Item 5.

The action of respondent is therefore reversed and respondent is ordered to issue the license as applied for.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 18, 1939.

5. APPELLATE DECISIONS - NEUBERGER v. WALPACK.

DAVID M. NEUBERGER,

Appellant

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF WALPACK, and EMMET WELTER,

Respondents.

On Appeal

CONCLUSIONS

David M. Neuberger, Esq., of the New York bar, pro se.

Lewis Van Blarcom, Esq., Attorney for Respondents Walpack Township Committee and Emmet Welter.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail consumption license for premises in the Village of Flatbrookville.

Appellant owns ninety acres of land and is mortgagee in possession of another fifteen, all in Flatbrookville, on which he has expended approximately $20,000. He has improved his property by the building of roads, the construction of a nine-room house, a California bungalow and a combination garage and barn, his purpose being to develop an estate where he might entertain his friends. He contemplates the construction of a private nine-hole golf course. The premises that were licensed are within 2,500 feet of appellant's property and something less than a mile from his residence.

Appellant contends that the issuance of the license was erroneous in that (1) the building for which the license was granted was formerly used as a church and still retains the outward appearance of a church; (2) that public necessity and convenience do not warrant the granting of a license in the vicinity, and (3) that the lives of persons traveling to and from the licensed premises may be endangered by falling boulders and rocks caused by landslides in the vicinity.

Testimony discloses that the building, sheathed in white clapboard, was formerly the Flatbrookville Reformed Church, but that it had not been used for any purpose for at least fifteen years. Photographs in evidence show that the building still retains on the front a group of three tall windows, each with a pointed Gothic arch, and a window light over the front door with a similar arch. It certainly looks like a country church. The steeple, however, has been removed.

I do not enthuse about granting a liquor license for premises which retain the semblance of a church.

The issuance of the license will be affirmed on condition that the licensee, within thirty days from the date hereof, remove the Gothic arches from the three windows in the front and the arch over the door and substitute such windows and window light as will not convey the impression to the ordinary observer that the premises licensed for the sale of liquor have been or now are a church. In the event of the refusal or failure of the licensee to comply with this condition within the time named, the action of respondent Township Committee will be reversed and the license will be set aside.

I will personally pass on the plans and specifications of the alterations if the licensee chooses to submit them.

Appellant urges that since the population of Flatbrookville from September to June of each year totals only twelve voters, there is no necessity for a licensed place in the vicinity and that since the voting population in the Township totals only 151, the three existing licensed places are sufficient for the community as a whole. However, Walpack Township is extensive, it being characterized by the attorney for the respondents as being almost as large as Essex County. The nearest licensed place is six miles away. Possibly, if the licensee had to rely on the year-round residents of Flatbrookville for his business, the revenue would be insufficient to assure proper operation of the licensed business, which is the reason why one of the three Township Committeemen voted to deny the application. But it appears that during the summer months the population of Flatbrookville is substantially increased by vacationers, the average additional population being 50 to 100; that on good nights 100 people attend the dances at the licensed premises, some coming from as far away as Blairstown, and that the licensee has thus far taken in at least ten dollars a day. These facts indicate that there is some demand for the accommodations afforded the public by the licensing of the premises, and that, consequently, the action of the Township Committee is not unreasonable on that ground.

Proof of danger to persons visiting the licensed premises from falling rocks and landslides in the spring of the year consisted only of the introduction of photographs of roadside signs reading:

"D A N G E R
FALLING ROCKS
GO SLOW"

which have been placed, probably by the State Highway Department, about 2,000 feet from the licensed premises. No evidence was produced that any person had been injured by falling rocks, nor does any reason appear why persons who might be injured by falling rocks would be more apt to be injured if traveling to the licensed premises than if traveling to appellant's bungalow or golf course or passing through without stopping. The licensed premises have successfully survived the danger for some fifteen years or more. There is no substance to appellant's third ground of appeal.

The action of the respondent Township Committee in granting a license to respondent Welter is affirmed subject to performance of the condition aforesaid.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 18, 1939

6. APPELLATE DECISIONS - BRESLOW v. WAY.

JACK BRESLOW,)

Appellant,)

-vs-) ON APPEAL CONCLUSIONS

HON. PALMER M. WAY, JUDGE OF THE COURT OF COMMON PLEAS IN AND FOR CAPE MAY COUNTY AND ISSUING AUTHORITY,)

Respondent)

Wertheimer & Hyman, Esqs., Attorneys for Appellant.
A. J. Cafiero, Esq., Attorney for Respondent.
Irving Shenberg, Esq., Attorney for Cape May County Beverage Association, an Objector.
Charles Bonnell, Esq., Attorney for James Breslow, an Objector.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail consumption license for premises on the northerly side of Route 49 between Dennisville and East Creek, in Dennis Township.

Respondent contends, inter alia, that appellant has not been a continuous resident of the State for five years immediately prior to his application and, hence, is disqualified under the Alcoholic Beverage Control Law (R. S. 33:1-25) from obtaining a liquor license.

It appears that appellant was a life-long resident of the Borough of Woodbine, N. J., until at least March 1938, when he sold his business - a licensed tavern in the Borough - to his cousin. The question at issue is whether appellant then moved into Philadelphia and there established his home, thus shifting his domicil to Pennsylvania.

Appellant admits that, after the sale, his wife and three of their four children went to Philadelphia and there lived in an apartment at least partially stocked with some of the furniture which had been used in his New Jersey home; also, that the three children were enrolled at a Philadelphia school.

However, he denies that he ever changed his domicil from Woodbine. Thus, he testified that his wife went to Philadelphia merely to be near a doctor who was treating her; that, after a sojourn of 3 or 4 weeks, she went to Atlantic City for the sea air; that, throughout, he himself stayed at his father's home in Woodbine, where he stored some of his furniture; that his eldest son, a junior at high school, also stayed with him in order to finish out his school year; that he (appellant) voted in Woodbine in the Fall of 1938.

However, a past Police Chief of the Borough testified that he met appellant in Philadelphia on May 4, 1938 at a funeral; that appellant then stated he was living in Philadelphia and pointed out the street; that appellant further stated at that time that he was "through in Woodbine" and intended to stay in Philadelphia or Chester (Pa.), wherever he could locate a business.

The cousin to whom appellant sold his tavern testified that appellant, before moving out on March 9, 1938, had told the witness that he was "tired of the town" and was going to "Washington, Philadelphia or somewhere else"; that he, too, met appellant at the funeral in Philadelphia on May 4, 1939, and appellant was then living in that City; that appellant's eldest child, who was left behind in Woodbine, joined his parents in Philadelphia after the school semester was over.

The wife of this witness testified that "all the relatives knew he (appellant) was living in Philadelphia and had made his residence there" after selling his business; that, in fact, about a month and a half before selling, he had spoken to her mother about a grocery store which he wanted to buy and operate there.

The Borough's relief director testified that appellant had told him that he was going to Philadelphia and actually went there; that a "few months later" appellant, on meeting him, stated that he had moved from Philadelphia to Atlantic City.

A member of the Woodbine Board of Education testified that, at a Board meeting, the Principal of the Woodbine school reported that appellant's family had removed from Woodbine "presumably to Philadelphia."

The word "residence" as used in the Alcoholic Beverage Control Law means "domicil" or the place where a person maintains his permanent home, to which, when away, he has the intention of returning. Re Conover, Bulletin 16, Item 4; Re Orland, Bulletin 143, Item 6; Lilly v. Way, Bulletin 220, Item 1.

In the present case, despite appellant's denial, I am convinced by the evidence that he actually established his home in Philadelphia in March 1938 and, when so doing, had no intention of return to this State. Since his eldest son, who was left behind in Woodbine to finish out his high school year there, joined his parents in Philadelphia at the end of school term, presumably appellant was still living in Philadelphia as late, at least, as June.

The fact that appellant, after several months, may have returned to New Jersey and re-established his home here does not wipe out the fact that his domicil during those few months was actually in Philadelphia. The Alcoholic Beverage Control Law requires that residence in New Jersey during the requisite five-year period be continuous and unbroken.

Appellant being thus disqualified under the residence requirement of the Statute, it is unnecessary to consider the grounds assigned by respondent below in denying his application.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 18, 1939.

7. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938)

Case No. 67.

CONCLUSIONS AND ORDER

S. Thurman Lovitt, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In January 1928 petitioner pleaded guilty to "receiving stolen goods" and was sentenced to imprisonment for a term of one to three years. In May 1928 he was paroled after having served five months of that sentence.

Petitioner now claims that actually he did not know, when buying the goods (20 cases of tomatoes), that they were stolen. However, he may not, especially after having pleaded guilty, here collaterally attack the merits of his conviction. Re Case No. 236, Bulletin 279, Item 2; Re Case No. 239, Bulletin 305, Item 9; Re Case No. 267, Bulletin 313, Item 1; Re Case No. 280, Bulletin 326, Item 8.

"Receiving stolen goods" is a crime which ordinarily involves moral turpitude. Re Case No. 198, Bulletin 220, Item 9; Re Case No. 242, Bulletin 292, Item 2. Since no facts appear which cleanse petitioner's crime of that element, his conviction disqualifies him from holding a liquor license or being employed by a liquor licensee in this State. R. S. 33:1-25, 26.

Such disqualification will be removed by the State Commissioner only if convinced that the petitioner has lived an honest and law-abiding life for five years last past warranting such removal. R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938); Re Rehabilitation Case No. 31, Bulletin 273, Item 2.

Petitioner testified that, on his release from prison in 1928, he stayed in Philadelphia for about three months and then moved to New Jersey, where he has been continuously residing and engaging in the grocery business.

He produced three character witnesses - an automobile salesman who has known petitioner for five or six years; a real estate operator who has known petitioner for seven or eight years; and a bartender who has known him for almost seven years. These witnesses testified favorably on petitioner's behalf.

However, on December 15, 1938 petitioner, in violation of the Alcoholic Beverage Control Law, became a partner in a plenary retail consumption licensee's tavern business without benefit of transfer of the license into their joint names. Although petitioner claims that the partnership was not to take effect until they had obtained a license for the 1939-40 term in their joint names, their written agreement (which was originally uncovered by investigators of this Department) is specific in stating that, from December 15 last, petitioner and the licensee were partners sharing all profits and losses equally.

Furthermore, investigation shows that petitioner, who, though separated from his wife since 1928, has never been divorced from her, has been living meretriciously with another woman with whom he has had two illegitimate children; that he has acted as manager in a tavern operated by this woman, an employment which he failed to mention at the present hearing; that, while he was manager, the police were called upon to answer numerous calls that "fights, brawls and disturbances" were occurring at the tavern.

In view of such facts, I am, despite the favorable testimony of petitioner's character witnesses, not satisfied that he has been leading an honest and law-abiding life for the last five years warranting removal of his disqualification.

His petition is, therefore, dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 18, 1939.

8. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

August 16, 1939

Re: Case No. 285

Applicant seeks a determination as to whether he is disqualified from obtaining a liquor license or working for a liquor licensee in New Jersey by reason of a conviction of crime involving moral turpitude. See R. S. 33:1-25, 26.

In 1936 applicant, on plea of guilty, was convicted in this State of embezzling monies of his employer (a beverage company), was sentenced to jail for a term of one to three years and was paroled in 1937 after serving ten months of that term.

Applicant testified that he was, for fourteen or fifteen months, a salesman (with certain clerical duties) for the beverage company and, as such, went around in automobile to some seventy-five or eighty retailers to solicit business and also to collect from them; that each retailer, on collection, was entitled to a credit for the empty cases that the retailer was returning to the company; that he (applicant), for some four months prior to his arrest, engaged in the dishonest practice of pocketing part of the monies collected, and accounted to the company for such sums by falsely claiming that the retailers had returned a greater number of "empties" than actually was the fact; that the average sum he embezzled on each occasion was three or four dollars; that, in total, he embezzled between one hundred and two hundred dollars. Applicant was thirty-one years old when arrested.

Investigation by the Department indicates that the total amount actually embezzled was one thousand dollars. In explanation applicant claims that, after he had pleaded guilty, the manager of the beverage company declared to the judge that applicant embezzled as much as twenty-four hundred dollars; that a quantity of the company's beverages had disappeared, and the manager seemingly believed that applicant took it.

Embezzlement ordinarily involves moral turpitude. Re Case No. 264, Bulletin 305, Item 14. Even if it be assumed that the sum embezzled by applicant was between one and two hundred dollars (as

claimed by him), nothing appears in the case to negative the element of turpitude.

It is therefore recommended that applicant be declared disqualified from holding a liquor license or being employed by a liquor licensee in this State.

Nathan Davis,
Attorney-in-Chief.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

9. ALCOHOL PERMITS - REGISTERED PHARMACIES - FEDERAL RETAIL LIQUOR DEALER'S TAX STAMP REQUIRED.

August 3, 1939

B. R. Rhees, Acting District Supervisor,
Alcohol Tax Unit,
Newark, N. J.

My dear Dr. Rhees:

On July 11, 1939, P. L. 1939, Chapter 173 became law. This is the legislation pertaining to alcohol which I have been advocating for over two years. A copy of the law (Bulletin 333, Item 4) is enclosed.

The objective of the legislation is to wipe out illicit activity in the home manufacture and rectification of alcoholic beverages. In brief, it prohibits all sale of alcohol at retail except pursuant to special permit. I have great faith in the Bill. Also enclosed is copy of notice of July 28, 1939 (Bulletin 338, Item 1), which sets out the conditions under which the permits will be issued. You will note that they will permit the sale of alcohol for non-beverage purposes only. The size of containers is specified. I have prescribed the maximum amounts to be sold to any one person in any consecutive period of twenty-four hours. There are labeling requirements. A certificate of non-beverage use must be taken from each purchaser. Adequate records must be kept. Further conditions may be imposed by the Commissioner, or the permit may be cancelled, in the Commissioner's discretion. You will note the stringent restrictions placed upon certain kinds of licensees. Only package goods stores may sell and not even then in all cases. On the other hand, registered pharmacies are encouraged to handle the legitimate demand for alcohol if really intended for therapeutical purposes. With these safeguards, I sincerely believe that the Bill will accomplish its purpose.

I do not have to tell you, because you already know it from your long and worthy service in New Jersey and intimate knowledge of the way I conduct the Department, that the law will be strictly enforced and full compliance with the terms of the permit required.

Will you kindly at earliest convenience give me your ruling as to whether for such sale of alcohol for non-beverage use, the Retail Liquor Dealer Tax Stamp will be required. I hope you will see your way clear to dispense with it so far as registered pharmacies are concerned.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

August 4, 1939

Dear Commissioner Burnett:

In reply to your letter dated August 3, 1939, with reference to new legislation pertaining to alcohol in the State of New Jersey, please be advised that I am in full accord with your desire to prevent the sale of alcohol for the home manufacture and rectification of alcoholic beverages. Your stringent but necessary restrictions upon the sale of alcohol should eliminate numerous fraudulent devices which have been resorted to from time to time by individuals rectifying liquor in the home and thus avoiding the payment of rectification tax to the Federal government.

I am in sympathy with your desire to exempt registered pharmacies from the payment of special tax as retail liquor dealers when they sell alcohol for non-beverages. However, by the provision of section 3246, Revised Statutes, a druggist is permitted to keep spirits and wines, and use them, in combination with drugs, in the preparation of medicines that are not beverages and to sell such medicines without paying special tax as a liquor dealer under the internal revenue laws of the United States. But, under the uniform rulings of this office and the decisions of the United States Courts, he can not, without subjecting himself to this special tax, sell spirits or wines that are not combined with drugs or materials of any kind taking these liquors out of the class of beverages, even when he sells the liquors on a physician's prescription and for medicinal use only.

In a specific case, viz.: United States v. Stafford, 20 Fed. 720, Justice Caldwell said, in part, when charging the jury:

> "A portion of the revenue to support the government and pay the public debt is derived from a tax on distilled spirits, and a license tax imposed on dealers therein. The act of congress provides that 'every person who sells or offers for sale foreign or domestic distilled spirits or wines, in any less quantities than five gallons at the same time, shall be regarded as a retail dealer in liquors'; and persons engaging in that business are required to pay a license tax to the United States at the rate of $25.00 a year. You will observe this license tax is required of 'every person who sells or offers for sale foreign or domestic distilled spirits or wines.' The quantity sold, whether a gill or a gallon, or the purpose for which it is sold, whether as a beverage or a medicine, or for any other purpose, is not material. Distilled spirits or wines cannot be sold in any quantity, or for any purpose, by any person who has not paid the required special tax. It is a popular error that doctors or druggists can sell liquors without paying the special tax. Doctors and druggists have no greater privileges in this business than other people. The law does not treat liquor as a drug or medicine. If a doctor prescribes liquor for a patient, neither he nor a druggist can sell the liquor to fill such prescriptions unless he has paid the special tax required of liquor dealers."

From the above, you will see that it is not within my power to exempt registered pharmacies from the requirement that they must pay special tax as retail liquor dealers when they sell alcohol, even if for non-beverage purposes.

From your work, I know that the law will be strictly enforced and full compliance with the terms of permits required. It is gratifying to note that you limited the issuance of such permits to persons who will be least inclined to abuse this special privilege.

Very truly yours,
B. R. Rhees,
Acting District Supervisor.

10. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES AND SERVICE BY FEMALES CONTRARY TO MUNICIPAL REGULATION.

In the Matter of Disciplinary Proceedings against PIETRA & WILLIAM J. ZAPPULLA, 506 Springfield Ave., Newark, N. J., Holders of Plenary Retail Consumption License C-161, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Pietra & William J. Zappulla, by William J. Zappulla.

Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensees have pleaded guilty to charges of employing two females, one of whom is the wife of one of the licensees, to sell and serve alcoholic beverages on June 17, June 24 and July 1, 1939, contrary to Section (a) of Resolution #4889 adopted by the Board of Commissioners of the City of Newark on May 24, 1939.

The license will, therefore, be suspended for seven (7) days instead of the usual ten (10).

Accordingly, it is, on this 19th day of September, 1939,

ORDERED, that Plenary Retail Consumption License C-161, heretofore issued to Pietra & William J. Zappulla by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of seven (7) days, effective September 25, 1939 at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

11. APPELLATE DECISIONS - CODINGTON v. WARREN TOWNSHIP.

HORACE CODINGTON,

Appellant,

vs.

TOWNSHIP COMMITTEE of the TOWNSHIP OF WARREN, GERMANO and PETER PERANGELI, SCHWABISCHE ALE CORP., CHARLES WICHT, ANDREA COLOSSO, JOSEPH ROOS, LEON TOUCHON and MAURICE POGGIO,

Respondents.

ON APPEAL

CONCLUSIONS

Horace Codington, Pro se.
Joseph C. Paine, Esq., Attorney for Respondent-Township Committee.
Other Respondents, Pro se.

BY THE COMMISSIONER:

This appeal is from the refusal of the Township Committee of Warren to institute, pursuant to appellant's complaint, disciplinary proceedings against the respondent licensees for violation of the local curfew hour. See R. S. 33:1-31.

The Township ordinance of 1937 prohibits sales after 2:00 A.M.

The Township Committee adopted a resolution on December 5, 1938, extending curfew on Christmas morning to 3:00 A.M. and on New Year's until 5:00.

On December 10th the Township Clerk informed the local licensees.

Accordingly, respondent licensees, on those mornings, continued to sell and serve after 2:00 A.M. but none remained open or sold liquor after the time extended by the resolution.

Extension of hours was within the power of the Township Committee and, if it had been done correctly, would have been approved.

But the Township Committee did it by resolution instead of by ordinance. This would have been all right at that time if it had not been for the fact that the local curfew had originally been fixed by ordinance. Now an ordinance can only be amended by an act of equal solemnity, that is, it takes an ordinance to change an ordinance. If the Township Committee had read "Every Man His Own

Lawyer", they might have known that - perhaps! As it was, they erred. So too did the trusting licensees.

The Township Committee refused to prosecute. It shouldered the blame itself instead of passing it on to the licensees who relied on what they reasonably thought was the written word of the law.

There is no reason for reversal.

The appeal is, therefore, dismissed.

Frederick Burnett

Commissioner.

Dated: September 19, 1939.