

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

BULLETIN 300

FEBRUARY 21, 1939.

1. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary)
Proceedings against)

MORRIS BASHER,)
1534 Main Street,)
Rahway, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distri-)
bution License D-5, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Rahway.)

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

Sarah G. Needell, Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of selling to an investigator of this Department, on January 6, 1939, a fifth bottle of Gordon's (London Dry) Gin (whose Fair Trade price was \$1.59) for \$1.55 in violation of Rule 6 of State Regulations No. 30.

The sale was made by the defendant himself. In explanation, he testified that, a short while before, he had been told that his 15 year old daughter, suffering from an attack of appendicitis, would have to undergo an operation in the event of another attack; that he was upset by this news; that he therefore failed to see that the fifth bottle of Gordon's (London Dry) Gin, which he sold to the investigator for \$1.55, was correctly marked \$1.59 in pencil on the bottle label; that, when he asked his clerk to make out a receipt for the sale, the clerk told him that he had charged four cents under the Fair Trade price; that he thereupon requested an additional four cents from the investigator. He admits, however, that, when he requested this additional sum, he had already surmised the purchaser's identity.

Retail licensees are held to strict accountability for sale of liquor in violation of the Fair Trade Regulations. "Mistakes" must fall on their own shoulders. In the instant case, the correct Fair Trade price was marked on the bottle label itself. I am sorry about defendant's daughter but I have a worry too which he would do well to share, and that is to see that the law is enforced.

The defendant's license will be suspended for ten (10) days.

Accordingly, it is on this 9th day of February, 1939, ORDERED that Plenary Retail Distribution License D-5, heretofore issued to Morris Basher by the Municipal Board of Alcoholic Beverage Control of the City of Rahway, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

New Jersey State Library

2. UNLICENSED PLACES - SERVICE OF ALCOHOLIC BEVERAGES - THE ATTENDANT RISKS - HEREIN OF THE RESUSCITATION OF FROZEN FIREMEN.

February 9, 1939

James N. Wright, Esq.,
Paterson, N. J.

My dear Mr. Wright:

Technically, there is nothing in the Alcoholic Beverage Law which would prevent the Radburn Volunteer Fire Company from conducting cocktail parties for members and guests at the new fire house prior to Company-sponsored dances at the Country Club, provided the service of alcoholic beverages is absolutely free, no tickets are sold, no admission is charged, or other fee necessary in order for anyone to share in the cocktails. No license or permit is required for the purely gratuitous service of alcoholic beverages. The service is gratuitous, in the contemplation of the Alcoholic Beverage Law, if there is no payment of any kind required, regardless of what that payment may be for, before the guests can get a drink.

But it is my personal thought, nevertheless, that it is not the wise thing to do, and I am consequently constrained to advise against it, as I have countless times in the past.

You can readily see that such cocktail parties lend themselves very readily to the appearance of non-licensed sales by the Company. Should one of my men or the local police happen by chance to drop in while the wine was flowing, the Company would undoubtedly have to do some tall explaining in order to exonerate itself. Clubs and associations have gotten into such trouble before. See Re Davidow, Bulletin 159, Item 11. In one case, the authorities refused to accept the explanation to the great embarrassment of the club and its members. See Re Berry, Bulletin 87, Item 13.

All in all, the consumption of liquor on unlicensed public or quasi-public premises is mighty risky business, and that is why I have always discouraged it. Re Trenton Chamber of Commerce, Bulletin 231, Item 10; Re Wismer, Bulletin 288, Item 1.

The best and safest way for the Company to handle the proposed cocktail parties would be for it to get a special permit covering each function. This would authorize not only the service, but also the sale of alcoholic beverages, if such were desired. The fee to Volunteer Fire Companies is \$5.00 for each special permit. Applications are available from this office on request.

I note your further inquiry relating to the keeping of a bottle or two of liquor in the fire house for the resuscitation of frozen, or, at least, well chilled firemen. I gather that the Radburn fire laddies are so efficient that Radburn fires never reach the proportions necessary to warm a fellow! There is nothing to prevent the Company from buying the liquor from duly licensed retailers and keeping it in the fire house for such wholly humanitarian purpose.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to the Provisions of R.S. 33:1-31.2)
(as amended by Chapter 350, P. L.)
1938))
Case No. 43.)
-----)

CONCLUSIONS
AND ORDER

Sidney Simandl, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In 1926 petitioner pleaded non vult to an indictment for larceny and receiving stolen goods, at which time he was placed on probation for two years. That case involved the purchase by petitioner, then engaged in business as a wholesaler, of a quantity of cigars valued at \$1200.00. In view of the plea entered in the criminal case, the question of guilt cannot be redetermined herein. The crimes involved moral turpitude. Case No. 17, Bulletin 232, Item 1.

In the same year petitioner was fined \$50.00 for maintaining a gambling house as a result of permitting card playing for money in his place of business, and was also fined \$350.00 for violating the Hobart Act by conducting a speakeasy. In 1930 he was fined \$200.00 and his driver's license revoked for driving while drunk.

On behalf of petitioner, a former Assemblyman, a retired police officer, a United States Deputy Marshal and an insurance agent, all of whom have known petitioner for at least eighteen years, testified that for more than five years last past he has conducted himself in a law-abiding manner.

Petitioner admits that he conducted a speakeasy for some years prior to Repeal. He testified that during part of the years 1933 and 1934 he was employed as a gardener and that, since 1934, he has been manager of retail licensed premises formerly owned by his sister-in-law and now owned by her and petitioner's wife. Petitioner stated that no one questioned his right to be employed on licensed premises until, in July 1938, investigators from this Department raised the question during the course of a routine inspection of the licensed premises. Thereafter the present petition was filed.

It further appears that, in October 1937, petitioner was fined \$50.00 after having been convicted of a violation of a city ordinance prohibiting taverns being open during certain hours and that, in May 1938, he was fined \$100.00 on the same charge.

It is true that petitioner has not committed any crime within the last five years, but on two occasions within the last year and a half he has been twice convicted of violation of the closing hour regulations. There is no excuse for this. There is, admittedly, great difficulty in determining the age of a minor and an honest mistake might well be made. But there is no reason why those in the liquor trade should not gratefully and scrupulously obey the hours fixed during which their special privileges may be enjoyed. Anyone can tell what time it is.

In order to lift his disqualification I would have to find that petitioner has conducted himself in a law-abiding manner for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

What is forbidden by law is unlawful whether or not it constitutes a crime. This man has not obeyed the law. Rather, he has violated it twice within the last year and a half. I cannot, therefore, find that he has been a law-abiding citizen except from the date of his last conviction in May 1938. It is from that date that the five years will have to run.

Accordingly, the petition is dismissed with leave to re-apply in May 1943.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 10, 1939.

4. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED -
CONCLUSIONS.

February 15, 1939

Re: Case No. 252

In his questionnaire applicant admitted that he had been convicted in 1929 for violating the National Prohibition Act and sentenced to four months' imprisonment in a Federal House of Detention. Fingerprint returns confirm this information, except that they show that the date of conviction was January 8, 1932.

At the hearing applicant testified that he was arrested in 1929, at which time he was employed as a truck driver by a brewery licensed to manufacture near-beer but actually manufacturing beer in violation of the National Prohibition Act; that the two owners of the brewery and two other employees were arrested at the same time; that all were convicted, the owners sentenced to Atlanta and the employees to the Federal House of Detention; that the convictions were appealed and affirmed; that applicant began to serve his sentence in January 1932 and actually served four months and two days. Applicant testified that he has never been arrested or convicted at any other time, and fingerprint records confirm this testimony.

No aggravating circumstances appear and, in the absence thereof, I believe that the crime set forth above does not involve moral turpitude.

It is recommended that the solicitor's permit be issued.

Edward J. Dorton,
Attorney-in-Chief.

APPROVED:

D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - POSSESSION OF CHILLED BEER AND OF REFILLED BOTTLES - TEN AND THIRTY DAYS.

February 16, 1939

Walter Beisch, Secretary,
Municipal Board of Alcoholic Beverage Control,
North Bergen, N. J.

My dear Mr. Beisch:

I have before me staff report and your letters of February 7th re disciplinary proceedings conducted by the Board against

1. Morris J. Goldman,
923 Bergenline Avenue,
License DL-11, Rev. 1513
2. Harry Jones,
5524 Hudson Boulevard,
License C-46, Rev. 1528

I note that Goldman was charged with possession of chilled beer and his license suspended for ten days; that Jones, charged with possession of illicit alcoholic beverages (refilled bottles) had his license suspended for thirty days.

Please express to the members of the Municipal Board my appreciation for their prompt handling of these proceedings and the wholly satisfactory penalties that were imposed. The suspension for the refilling is exactly in accordance with my recommendation of a minimum suspension of thirty days for possession of illicit liquor.

Good work!

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAY - SECOND VIOLATION - MONTH'S SUSPENSION FOR PLAYING HORSE.

February 16, 1939

W. Andrew Cray,
Township Clerk, Delaware Township,
Stockton, N. J., R. D. No. 1.

My dear Mr. Cray:

I have before me staff report and your letter of January 30th re disciplinary proceedings conducted by the Township Committee against Frank Knoll, Sergeantsville, charged with sale of alcoholic beverages on Sunday, and note that his license was suspended for the month of February.

Please express to the members of the Committee my appreciation for their prompt conduct of these proceedings and the wholly satisfactory suspension that was imposed for a second violation.

I note that the licensee was warned that a future violation would result in the revocation of his license, which is just right.

Liquor licensees are given a privilege which is restricted as to hours, and, in Delaware Township, against any Sunday selling. When they abuse that privilege and sell during forbidden hours or days, they show their contempt for the wishes of the people of your community.

The only way to handle licensees who play horse with the duly constituted authorities is to inflict stringent penalties, and, if that doesn't suffice, then to revoke the privilege outright.

It is a pleasure wholly to endorse the action taken by your Township Committee.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALES ON SUNDAY - THIRTY DAYS FOR SECOND OFFENSE.

February 16, 1939

Howard Eastwood, Esq.,
Florence Township Solicitor,
Burlington, N. J.

My dear Mr. Eastwood:

I have before me staff report and your letter of January 24th re disciplinary proceedings conducted by the Florence Township Committee against

1. Joseph Buddy,
17 Alden Avenue, Roebling,
License C-6, Rev. 1462
2. George Pall,
20-22 Alden Avenue, Roebling,
License C-7, Rev. 1463
3. Roebling First Hungarian Men's and Women's
Sick, Burial and Social Society,
51 Norman Avenue, Roebling,
Club License CB-1, Rev. 1464
4. Russian Union Society,
140 Norman Avenue, Roebling,
Club License CB-2, Rev. 1465

I note that all were charged with sale of alcoholic beverages on Sunday, in violation of local regulation, and that the licenses of Buddy, Pall and Russian Union Society were suspended for six days, while the license of Roebling First Hungarian Society was suspended for thirty days.

I can, of course, express no opinion on the merits of the Roebing First Hungarian Society case because perchance it may come before me on appeal. I have no hesitation, however, in saying that if the licensee was properly found guilty, the thirty days' suspension is indeed substantial and commands respect. It is amply justified by the fact that this is a second offense of the same nature. If this Society cannot learn that it is the duty of liquor licensees strictly to obey the law, then the next step will be to revoke its license outright.

As to the other suspensions imposed, they are in accordance with my recommended minimum suspension for first offenses against hours of sale regulations.

I am deeply indebted to the members of the Township Committee and you personally for splendid civic-consciousness in conducting these proceedings and building a wholesome respect for law and order.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

8. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, pursuant to the)
Provisions of R. S. 33:1-31.2, as)
amended by Chapter 350, P. L. 1938;)
1938 C. S. R. S. 33:1-31.2.)
Case No. 48.)
-----)

CONCLUSIONS
AND ORDER

Frank Goldman, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

In February 1931 petitioner was convicted of receiving stolen goods, fined \$500.00, and placed on three years' probation. On September 17, 1935, when applying for a solicitor's permit at this Department, he was declared disqualified because his crime involved moral turpitude. Re Case No. 6, Bulletin 92, Item 11.

Petitioner now prays that his disqualification be lifted under 1938 C.S.R.S. 33:1-31.2, which authorizes the State Commissioner, in his discretion, to remove such ineligibility five years or more after the disqualifying conviction.

Petitioner has resided in Paterson continuously since the time of his conviction. Until 1934 he there engaged in the business of buying and selling bankrupt stock. He then obtained employment as a solicitor for a wholesale liquor licensee and so continued until 1935, when the law first required such solicitors to obtain a permit. P. L. 1935, c. 256 (now R. S. 33:1-67). After being ruled disqualified as aforesaid, he remained unemployed for a year and then obtained work as a salesman and collector for a retail shoe concern in Paterson.

At the hearing, petitioner produced five character witnesses - a detective on the Paterson police force, who has known petitioner for ten years as a fellow townsman and who was, in fact, the officer who arrested him in 1931; petitioner's present employer,

who has known him for nine or ten years; the credit manager of the above wholesale liquor licensee, who has known petitioner for five years; a business man, owner of hospital supply stores in Paterson and Hackensack, who has known him as a friend for nine and a half years; and the landlady at whose premises petitioner has been living for the last five years.

These witnesses testified that petitioner's character and reputation are good and that, in their opinion, he has been leading an honest and law-abiding life since his conviction in 1931.

The only thing against petitioner since 1931 is his conviction in November 1934 in Paterson Police Court as a disorderly person because of an argument between him and a local police officer over the way in which he had parked his automobile to permit a passenger to alight. Petitioner was given a suspended sentence. It was foolish to argue such a matter with a cop. But I am passing on his conduct, not on his judgment. The trivial incident weighs but lightly.

I conclude that petitioner has led an honest and law-abiding life since 1931, and that his association with the liquor industry will not be prejudicial to the interests of the public or of that industry.

It is, therefore, on this 17th day of February, 1939,

ORDERED that petitioner's disqualification from holding a license or being employed by a licensee because of the conviction referred to herein, be and the same is hereby removed, in accordance with R. S. 33:1-31.2, as amended by Chapter 350, P.L. 1938; 1938 C.S.R.S. 33:1-31.2.

D. FREDERICK BURNETT,
Commissioner.

9. LICENSED PLACES - MUSIC - HEREIN OF COPYRIGHTS AND OF THE FEES EXACTED BY THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS FOR THE PLAYING OF COPYRIGHTED MUSIC.

February 18, 1939

Mr. Giuseppe Carbonara,
Sussex, N. J.

My dear Mr. Carbonara:

I have before me your letter asking advice in regard to the demand of the American Society of Composers, Authors and Publishers that you take out a license from it for which you have to pay a fee for the privilege of playing certain copyrighted music on your premises.

This matter has no connection whatsoever with my Department, or, in fact, any other State Department. It has nothing to do with alcoholic beverage control. It pertains exclusively to the playing of copyrighted music.

So that you may know exactly what it is all about, I will try to give you a quick picture of the situation, viz.: If you should write a book, or compose an opera or symphony, or a new song or dance music, the book, or the song, or whatever the "opus" might be, would be your property so long as you kept it to yourself. If, however, you published your work, that would be giving it away to the outside world - a so-called dedication - and then anybody could reproduce what you had written or composed. In order to encourage the literary and musical arts, the Federal Copyright Law provides that the author or composer may, by following a certain

procedure, obtain a copyright which will protect his exclusive property right in his production or composition notwithstanding publication. In other words, the author or composer, by complying with the copyright statute, obtains the sole right to reproduce that which he has created so long as the copyright is in force, which, incidentally, is good for a term of twenty-eight years.

Since the right is exclusive, it follows that the holder of the copyright may impose such fee or charge for the privilege of reproducing a copyrighted work as he may choose to exact. Unless the license is granted by the author or composer, it is unlawful to reproduce in any way anything that has been copyrighted.

The American Society of Composers, Authors and Publishers, as I understand it, owns certain copyrights or acts as agent for those who hold copyrights and sees to it that the playing of music copyrighted by the members is made to reproduce such revenue as is permissible.

The license that the Society requires relates solely to the right to play copyrighted music. Of course, if you do not play copyrighted music, there is no obligation on your part to pay for the privilege. But in so far as copyright privileges are concerned, it makes no difference whether the place wherein the music is played has a liquor license or not.

In short, if you play music which is not copyrighted, or in which the copyright has run out, you have full right to do so irrespective of who composed it. If, however, you play music which is copyrighted, you will have to get permission from the owners of the copyright and make your own arrangements with them.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

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

CONCLUSIONS
AND ORDER

Case No. 44.)
-----)

Petitioner Pro Se.

BY THE COMMISSIONER:

R. S. 33:1-25, 26 provides that no one convicted of a crime involving moral turpitude may hold a liquor license or be employed by a liquor licensee in this state.

In November 1930, petitioner, pursuant to a plea of non vult, was convicted of embezzling \$600.00 from his employer, given a suspended sentence, and placed on probation for three years to make restitution (which was satisfactorily made).

Embezzlement ordinarily involves moral turpitude. Re Case No. 187, Bulletin 211, Item 6; Re Case No. 193, Bulletin 217, Item 5. No circumstances are here present which cleanse petitioner's crime of that element. Hence, petitioner's conviction in 1930 disqualifies

him from holding a liquor license or being employed by a liquor licensee in this State.

Petitioner prays, however, that this disqualification be lifted under 1938 C.S.R.S. 33:1-31.2, which authorizes the State Commissioner, in his sound discretion, to remove such ineligibility five years or more after the disqualifying conviction.

Petitioner is married and has two infant children. Since 1930, he has resided alternately in the adjoining municipalities of Dover and Wharton, with the exception of six months (in 1931) during which he lived in Newark. He remained without employment for half a year after his conviction, and was then rehired until February 1938 as a truck driver by his former employer (who held a limited wholesaler's license from December 1933 to July 1934 and a State beverage distributor's license thereafter). Petitioner then obtained work as a truck driver for a brewery licensee in this State. Upon recently being advised that his conviction in 1930 might render him ineligible for such employment, he immediately filed the present petition.

At the hearing, petitioner produced four character witnesses - his old employer, who has also known him as a neighbor for at least ten years; the manager of the Dover branch of the above brewery licensee, who at one time was a co-employee with petitioner and who has known him for four years; and two local insurance agents, one of whom has known him as a neighbor for eleven years but has done no business with him, the other of whom has known him since a boy and has insured him on at least two occasions.

These witnesses testified that petitioner's character and reputation are very good, and that he has never been involved in any trouble since his conviction in 1930. Petitioner's fingerprint record, clear since that date, corroborates the testimony.

As for petitioner's working as a truck driver for the above liquor licensees since Repeal, I am satisfied that he was unaware of his disqualification from such employment. His fingerprints were submitted to this Department late in 1933 or early in 1934, and all his questionnaires filed with it thereafter frankly revealed his conviction in 1930. He states that he assumed, in the absence of contrary advice from this Department, that he was qualified to work for a liquor licensee.

In view of the foregoing, I conclude that petitioner has led an honest and law-abiding life since 1930, and that his association with the liquor industry will not be prejudicial to the interests of the public or of that industry. His disqualification will be removed.

It is, therefore, on this 19th day of February, 1939,

ORDERED, that petitioner's disqualification from holding a license or being employed by a licensee because of the conviction referred to herein, be and the same is hereby removed, in accordance with R. S. 33:1-31.2, as amended by Chapter 350, P.L. 1938; 1938 C.S.R.S. 33:1-31.2.

D. FREDERICK BURNETT,
Commissioner.

11. APPELLATE DECISIONS - BOODY v. GLOUCESTER.

JOHN FREDERICKS BOODY,)
 Appellant,)
 -vs-)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF GLOUCESTER,)
 Respondent)
 - - - - -)

ON APPEAL
CONCLUSIONS

Joseph R. Moss, Esq., Attorney for the Appellant.
George D. Rothermel, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail distribution license for store premises located in a business section on the Black Horse Pike, north of Church Street, in Blackwood, Gloucester Township.

Respondent denied the license on the ground that the two consumption establishments located on Black Horse Pike a few doors away from the proposed store are sufficient liquor places for that vicinity.

Determination of the number of liquor establishments to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Mita v. Orange, Bulletin 266, Item 10; Sudol v. Wallington, Bulletin 267, Item 10. There is no proof that respondent abused that discretion in determining that a third liquor place - even though a "package" store as distinguished from the existent consumption establishments - should not be permitted in the area in question.

Appellant contends, however, that there are, at present, only consumption places and no "package" stores in the Township; that it is unreasonable to compel a man or woman seeking to purchase bottled liquor to walk into or through the barroom of a tavern; that, therefore, a "package" store should be permitted in the Township.

This contention is without merit. In the first place, it does not appear that anyone in the Township is suffering inconvenience resulting from the lack of a "package" store. Furthermore, even were appellant's argument well taken that there is need of such a store in the Township, it does not follow that the store must be located at the vicinity in question. As already stated, respondent was reasonable in determining that a sufficient number of liquor places already exist in that area.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 19, 1939.

12. LICENSE ISSUING AUTHORITIES - SOLICITATION OF OR PARTICIPATION IN BUSINESS MATTERS BY MEMBERS OF EXCISE BOARD WITH OPERATORS OF LICENSED PREMISES DISAPPROVED.

February 19, 1939.

Samuel R. Morton, City Clerk,
Rahway, N. J.

Dear Mr. Morton:

I have before me certified copy of resolutions adopted by the Rahway Common Council on December 28, 1938, and am in hearty accord with the resolution disapproving the practice of solicitation or participation in business matters between the members of the local Excise Board, or its Clerk, and the owners or operators of licensed premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

13. APPELLATE DECISIONS - PAINI v. BLOOMSBURY.

SECONDO PAINI,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS
BOROUGH COUNCIL OF THE)	
BOROUGH OF BLOOMSBURY,)	
Respondent)	

Harry Runyon, Esq., by Saul N. Schechter, Esq., Attorney for Appellant.
Clyde C. Jefferson, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of a plenary retail consumption license for premises located at 34-36 Church Street, in the Borough of Bloomsbury.

No reasons for the denial were given by respondent at the time the license was denied, and no reasons were set forth in the answer filed herein. In fairness to appellant, the Borough Council should have stated the reasons for denial. Rosenvinge v. Metuchen, Bulletin 249, Item 6. In any event, the reasons for the denial should have been set forth in the answer filed herein since the purpose of the pleadings is to define the issue. Crociata v. Clifton, Bulletin 189, Item 6.

About two years ago appellant purchased the premises in question, which are known as the Bloomsbury Hotel. In August 1938 he attempted to file an application for a plenary retail consumption license for said premises, but the Borough Clerk refused to accept said application because no fee for this type of license had been fixed by the Borough Council. Miller v. Greenwich, Bulletin 57, Item 9. Thereafter the Borough Counsel suggested that the only way to find out whether or not appellant's application should be granted was to fix a fee, thus permitting appellant to file his application and affording the members of the Council an opportunity to vote thereon. Accordingly, on October 11, 1938 the Borough Council adopted a resolution fixing the annual fee for plenary retail consumption

licenses at Three Hundred Sixty-five Dollars (\$365.00). The Mayor cast the deciding vote in favor of said resolution because an equal number of Councilmen had voted in favor of and against said resolution. A few days later appellant filed an application, paid the required fee, and thereafter complied with all other statutory requirements. No written objections were filed to the issuance of the license, and hence no hearing was held thereon, but on November 8, 1938, a resolution authorizing the issuance of said license to appellant was defeated by the following vote:

"Yes - L. A. Heinrich, DeWitt Melick;
Nays - Charles W. Cope, James A. Gardner, Jacob Krants, Earl D. H. Pickel."

It is from this action that appellant appeals.

At the hearing on appeal Councilmen Cope and Krants testified that, in their opinion, the majority of the people in the Borough were opposed to the issuance of the license. Mayor Rush, who did not vote on the resolution to grant the license, testified that, in his opinion, the sentiment of the Borough was decidedly opposed to the issuance of the license. There was some evidence that a petition containing about two hundred names had been presented to the members of the Borough Council in 1937 protesting against the issuance of any liquor licenses, and Councilman Cope testified that his decision was based, to some extent, upon the existence of said petition. Mayor Rush testified that the Council had taken this petition into consideration when it denied the license. Four residents of the Borough also appeared at the hearing and testified that, in their opinion, a licensed place of business was not needed because, at the present time, two licensed places exist in adjoining municipalities near the Borough line, and also because the issuance of this license would attract undesirable persons to the Borough.

The Borough has a population of six hundred thirty-nine, and an area of four square miles; it is residential in character, with small stores on practically all the streets; it has had no licensed places since Repeal. In view of the character of the Borough, and the evidence of the sentiment of those residing therein, it cannot be said that the denial was unreasonable. Where there is, as here, an homogeneous residential community of the rural type which has allowed no liquor stores since Repeal, the bona fide objection of a large part of the population is of great weight. Apgar v. Tewksbury, Bulletin 66, Item 2; Hickey v. Lopatcong, Bulletin 68, Item 1; Thomas v. Evesham, Bulletin 80, Item 2; Dries v. Hainesport, Bulletin 191, Item 6.

It is apparent that the resolution fixing a fee was passed solely to permit consideration of the present application on its merits. There is a difference between may and must, and the mere fact that the fee was fixed did not require the Council to grant the license.

Appellant may prove that public necessity or convenience requires that the license should be granted, despite the local sentiment. He testified that he is not operating the hotel because he has no liquor license. However, he must have known when he purchased the property two years ago that he could not obtain a license at that time. The fact that Councilman Pickel then told him that he would help him to get a liquor license in no way estops the Borough Council or casts doubt on the good faith of the Councilman in voting against the present application. Moreover, a hotel is not ipso facto entitled to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. Current v. Fredon, Bulletin 184, Item 1. Appellant has failed to sustain the burden of proof in showing that public necessity and convenience require a liquor license at his premises.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 18, 1939.

14. LIQUORIZED ICE CREAM — MANUFACTURE AND SALE PROHIBITED IN
NEW JERSEY

Dear Mr. Commissioner:

Many thanks for the courtesies and civilities which you have accorded our Mr. London when he visited you today with further reference to "Liquorized Ice Cream."

We cannot over-emphasize in re-stating that our product, unlike others of apparently similar nature, is not primarily an ice cream containing liquor. On the contrary, it is a liquor the component ingredients of which are similar to those of ice cream. In fact, it might be best described as a frozen cordial.

Then, too, we cannot over-emphasize when we re-state that our product, unlike others of apparently similar description and composition, is a cordial to be sold ONLY by licensed establishments having the right to sell liquor and it is our suggestion that it be sold in small containers for on-premises consumption only so that under no condition would it be likely to fall into the hands of children, as children do not frequent liquor establishments and a consumer would not be able to purchase this product for home consumption where children might lay their hands on it.

It may be well to note here that aside from having the permission to manufacture and sell this new product from the Federal Alcohol Administration, Alcohol Tax Unit, U.S. Food and Drug Division of the Department of Agriculture, Department of Health of the State of New Jersey, Bureau of Food Control of the State of New York, Dairy and Food Commission of the State of Connecticut, we have now in our possession a patent from the United States Patent Office.

We are now ready to start preparations for the manufacture, sale and distribution of this new product, but cannot do so until we receive your approval.

In commenting editorially on this product, one of the trade periodicals remarks: "It would add to the banquet and restaurant trade and would be a stimulant to business."

We sincerely hope that you will give this new product your approval as promptly as possible as we should very much like to proceed with the preparation of special equipment necessary for its manufacture.

Yours very truly,

LONDON & COMPANY, INC.

By: S. W. Pitchenik

February 20, 1939.

London & Company, Inc.,
Elizabeth, N. J.

Gentlemen:

I have carefully reconsidered my decision made last July re "Liquorized Ice Cream", Bulletin 260, Item 5, in the light of

your subsequent correspondence with the several Federal Departments and the New Jersey Department of Health. The correspondence submitted clearly indicates that these Departments do not object to the manufacture and sale of your proposed product under a fanciful name, provided it was manufactured pursuant to a rectifier's basic permit and appropriately labeled. There is no question of adulteration or misbranding.

The only question, therefore, which remains, is whether the manufacture of liquorized ice cream having an alcoholic content up to 25% should be permitted by a licensed rectifier and its sale allowed under a fanciful name in four ounce cup containers at licensed retail establishments for on-premises consumption only. This is a question of liquor control policy and not of labeling, taxes or health.

The proposed container presents a problem analogous to nips, which likewise were unusually attractive to minors who purchased them for off-premises consumption, and oftentimes consumed them on public highways. The first step was to ban the sale of nips for off-premises consumption. This proved insufficient for many licensees allowed the nips to be taken off their premises. Not until the possession and sale of nips for any purpose was prohibited was the evil eradicated. So here, your four ounce frozen package will be intriguing to minors for off-premises consumption. The longer it is carried, the more it melts into a drink of insidious potency. Its very possession by retail licensees is likely to lead to the same type of evasions encountered in our previous dealings with nips.

Again, your product will necessarily be served and spooned as ordinary ice cream. Whether you call it frozen cordial or Alexander Frappe, it will look like ice cream and there is no one who can tell by appearances whether it is ordinary or liquorized ice cream. No one on licensed premises is going to partake from a cardboard cup. Hence after the contents have once been removed from the containers for on-premises service, my investigators would have no objective test to determine whether service was being made to minors except to take and taste a portion - a practice of doubtful propriety.

I have therefore concluded that the experiment would be contrary to the interest of effective liquor control and hence that liquorized ice cream under any name will not be permitted in this State.

The previous ruling is therefore affirmed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

15. APPLICANTS FOR LICENSES - MORAL TURPITUDE - AN ORDER PURSUANT TO R.S. 33:1-31.2, LIFTING THE MANDATORY STATUTORY DISQUALIFICATION, IS NOT A "PARDON" - IT MEANS THAT INSTEAD OF BEING MANDATORILY DISQUALIFIED, THE ISSUING AUTHORITY MAY PASS ON THE APPLICANT'S GENERAL QUALIFICATIONS ON THE MERITS.

February 20, 1939

Samuel Chiaravalli, Esq.,
Bound Brook, N. J.

My dear Mr. Chiaravalli:

On December 19, 1938, pursuant to R.S. 33:1-31.2, as amended, I entered an order removing your client's statutory disqualification from holding a license or being employed by a licensee

arising out of the convictions set forth in the order. See Case No. 42, Bulletin 289, Item 8. The conclusions refer to the case by number, no name being given so as to save the petitioner unsavory publicity, but it will be apparent to you from your knowledge of the facts that it is your client's case.

You inquire if the effect of the order is that now he is qualified to hold a license.

R. S. 33:1-31.2, as amended June 14, 1938 by Chapter 350, P.L. 1938, provides:

"33:1-31.2. Any person convicted of a crime involving moral turpitude, may after the lapse of five years from the date of conviction, apply to the commissioner for an order removing the resulting statutory disqualification from obtaining or holding any license or permit under this chapter. Whenever any such application is made and it appears to the satisfaction of the commissioner that at least five years have elapsed from the date of conviction, that the applicant has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to the public interest, the commissioner may, in his discretion and subject to rules and regulations, enter an order removing the applicant's disqualification from obtaining or holding a license or permit because of the conviction.

"On and after the date of the entry of such order, the person therein named shall be qualified to obtain and hold a license or permit under this chapter, notwithstanding the conviction therein referred to, provided he is, in all other respects, qualified under this chapter."

An order entered pursuant to this statute does not qualify the person therein named to hold a license. Rather it removes the disqualification which otherwise would exist. It means that instead of being mandatorily disqualified, the application of such person may be considered on its merits. The order does not have the effect of a pardon. It does not wipe out the crime. Rather, it merely extinguishes the statutory effect which a crime involving moral turpitude would normally have. It, therefore, is still necessary that the issuing authority pass on the question as to whether or not under all the facts the applicant should be given a license.

Of course, before your client may go into partnership with the present licensee, the license must first be formally transferred by the municipality from the present licensee to himself and your client, as partners. Such transfer involves application to the municipality, payment of fee, advertisement of notice, resolution of the local board, etc., all in accordance with the Rules Governing Transfers, which you will find in State Regulations No. 3, Pamphlet Rules, page 37. Concealed partnership arrangements are unlawful. It is a misdemeanor for any non-licensee to exercise the rights or privileges of a license. R. S. 53:1-26.

I neither entertain nor express any opinion on the merits, notwithstanding the order in Bulletin 289, Item 8, whether or not your client should have a license. The order removes the mandatory statutory disqualification. The municipality must decide whether he is generally qualified.

Very truly yours,

D. Frederick Bunn

Commissioner.