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

BULLETIN NUMBER 184 JUNE 10, 1937

1. APPELLATE DECISIONS - CURRENT v. FREDON TOWNSHIP.

DANIEL H. CURRENT, :

Appellant, :

-vs- : ON APPEAL

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF FREDON (SUSSEX COUNTY), : CONCLUSIONS

Respondent. :

Marshal Hunt, Esq., Attorney for Appellant.
Lewis VanBlarcom, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of an application for a plenary retail consumption license for premises known as The Fountain House, located at Fredon, in Fredon Township, Sussex County.

Respondent contends that it properly denied the application because it has by resolution limited the number of licenses in the Township to four and that number of licenses has already been issued. Appellant does not attack the reasonableness of the resolution itself, but contends that the numerical restriction is unreasonable as to him because he operates a hotel.

The Fountain House is an old established hotel containing twenty-two rooms and equipped to take care of transients as well as resident guests. It is located about four miles from Newton. Prior to 1917 The Fountain House was licensed for the sale of alcoholic beverages, but has not been licensed since Repeal. On March 12, 1937 appellant rented The Fountain House from Frances Cucchiara, the owner, for a period of two years to commence March 1, 1937 with an option to buy the premises.

The question is thus squarely presented as to whether or not a hotel is entitled to a license despite a prior resolution adopted by a municipality limiting the number of licenses and the prior issuance of the number of licenses provided for in said resolution.

The question has not been decided in any previous appeal. In A.B.C. Holding Co. vs. Newton, Bulletin #58, Item 11, it appeared that the hotel had been previously licensed for the period expiring June 30, 1934 and that, due to financial difficulties, it did not file application for renewal of its license until after six licenses then outstanding had been issued. In that case respondent denied the hotel's application because a sufficient number of licenses had been issued, but no resolution limiting the number of licenses had ever been adopted or even contemplated until after appellant's application was filed. I held that, in view of the public nature of appellant's hotel, the interests of the community would be best served by the issuance of a license to it.

In Maurer vs. Sussex, Bulletin #79, Item 10, the resolution provided "that the number of retail licenses for the sale of alcoholic beverages in the Borough of Sussex be limited to four, and be it further resolved that said licenses be issued only to regularly established hotels." From the evidence in that case it appeared that there were five regularly established hotels in the community, four of which had been licensed, and appellant excluded because of such resolution. I concluded that the numerical limitation of licenses unfairly discriminated against appellant's hotel. In Latz vs. Somers Point, Bulletin #146, Item 5, respondent contended that the application was properly denied because the number of retail licenses outstanding was adequate. In view of the fact that appellant's premises in that case was conducted as a hotel, I held that respondent's determination that there are a sufficient number of licensed places in the City was unreasonable in its application to appellant. In Petrusha vs. Mine Hill, Bulletin #146, Item 8, a resolution limiting the number of consumption licenses was held to be a nullity because the Chairman of the Township Committee presided at the meeting at which the resolution was adopted despite the fact that he was himself a liquor licensee. The action of respondent in denying the application in that case was reversed for the reason that the tainted resolution could not be invoked by respondent as a basis for denying the application.

In the present case the resolution limiting the number of licenses was in effect at the time the application was denied. Thus the case is distinguished from all the cases above cited except Maurer vs. Sussex, in which case the resolution was held to be unreasonable because it discriminated against one hotel in favor of the other four hotels in the municipality.

While municipalities may make an exception in favor of hotels in drawing a limiting resolution, In Re Butera, Bulletin #180, Item 3, respondent's resolution as adopted contained no such exception.

Section 37 of the Control Act authorizes the governing board or body of each municipality to limit the number of licenses to sell alcoholic beverages at retail. While hotels are distinguishable from ordinary drinking places and are not to be discriminated against in the issuance of licenses; see cases supra; also Retail Liquor Dealers Association vs. Plainfield, Bulletin #70, Item 1 and Peck vs. West Orange, Bulletin #147, Item 1; nevertheless it does not follow that a hotel is ipso facto entitled to a license just because it is a hotel. There is no "must" in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed.

The evidence in the instant case shows that The Fountain House has not had a license since Repeal. No reason appears for the long delay in seeking a license. There is no evidence of any discrimination against The Fountain House in denying a license at this late date. There is no evidence of public necessity and convenience, - nothing, in fact, in the record, aside from colloquies of counsel except that the applicant could not make the place "pay without a license." That is all I have before me. It is far from enough. The test has not been passed.

I conclude that appellant has not shown that the numerical restriction contained in the resolution previously adopted is

unreasonable as to him merely because he wishes to begin operation of a hotel and cannot make it pay unless he has a license. I am concerned with public service, not with private profits.

There is nothing contained in Ignatz v. Phillipsburg, Bulletin 167, Item 16, which is in any way contrary to the views expressed herein. In that case I affirmed respondent's action in denying a transfer from the Osborne House to premises owned by appellant therein because of respondent's contention that it would be obliged to issue another license to any worthy applicant who subsequently applied for a license at the Osborne House and thus increase the number of licenses outstanding despite its resolution to reduce said number. The argument made therein was valid because the Osborne House was already licensed for the sale of alcoholic beverages. In the instant case, however, it appears that The Fountain House has never been licensed since Repeal.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 6, 1937.

2. RESTAURANTS - UNLICENSED - MAY NOT DABBLE IN LIQUOR - HEREIN OF THE ONLY SAFE ATTITUDE FOR PROPRIETORS OF UNLICENSED RESTAURANTS TO TAKE TOWARD CUSTOMERS WHO "CARRY THEIR OWN."

June 7, 1937

Mr. I. Bashover, Prop.,
Lakewood Lunch,
Newark, N. J.

Dear Sir:

Kindly refer to yours of May 14th and acknowledgment of the 22nd.

According to the records of this Department you are not a licensee. You inquire "If a customer comes into my restaurant and orders something to eat, and while eating he takes out a bottle of liquor which he has bought legally in another store and drinks it, if this man is caught with this liquor in my restaurant, can I be held for violation of the liquor law?" If the facts are exactly as outlined by you, the answer is "No." The practice, however, is very dangerous and may lead you into serious difficulty. You are responsible for what goes on in your place.

Neither you nor any of your employees may, directly or indirectly, serve liquor with meals or take any orders for alcoholic beverages. To do either of these things would be a misdemeanor. In Re Vaccaro, Bulletin 87, Item 2, copy of which is enclosed.

Your attention is also called to the ruling which I made in Re Murnane, Bulletin 153, Item 5, copy of which is also enclosed. You will note therefrom that you are not permitted to service people who bring their own drinks, or anywise to dabble in liquor. If you want to do that you will have to take out a license. If you wish to keep out of all possible trouble, don't let anybody drink any liquor in your restaurant. You are the boss of your own place.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

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

June 7, 1937

In Re: Case #168

Permit was issued to solicitor pursuant to his sworn application and questionnaire containing a denial of conviction of any crime. This denial was discovered to be false. Accordingly, a hearing was held to determine whether solicitor's permit should be revoked or other action taken.

Solicitor is a man of middle age, resident in Philadelphia, 25 years married, with three children, all grown.

In 1928 or 1929 solicitor was convicted in Pennsylvania for violating the National Prohibition Act. At the time of his arrest he was operating an ordinary restaurant in Philadelphia, capable of seating some 60 persons; his crime was in selling "high powered" beer to his patrons there. Solicitor was sentenced to a 60 day jail term which he served.

In 1931 solicitor was convicted of violating the Hobart Act for having liquor in his possession. At the time of the arrest in this matter he was running a wayside inn in New Jersey and State Troopers, in a raid upon his place, found several pints of liquor under a couch in the attic room on the second floor. Solicitor's explanation, a perhaps dubious one, is that he knew nothing about the liquor - that it apparently belonged to two unemployed men who were allowed to sleep in that room. A fine of $350.00 was imposed upon him, which he paid.

These two violations of the liquor laws during the prohibition era do not per se involve moral turpitude or render solicitor unfit to hold a permit. Bulletin 46, Item 3; Re: Application for ARC Permit - #15; Bulletin 99, Item 10; Re: Application for Solicitor's Permit - #32; Bulletin 119, Item 10.

The fact that solicitor was engaged in the practice of selling "high powered" beer to his restaurant patrons in Philadelphia, and may perhaps have been engaged in the practice of selling liquor at his wayside inn in New Jersey, is not an aggravating circumstance. See Re: Application for Solicitor's Permit - Case #19, Bulletin 94, Item 2; also see Tankle v. Trenton, Bulletin 56, Item 10; Re: Application for Solicitor's Permit - Case #26, Bulletin 109, Item 18; In Re: Hearing #143, Bulletin 166, Item 8.

Since no aggravating circumstances are present, solicitor's crimes do not involve moral turpitude.

But there still remains the question of solicitor's falsely denying conviction of any crime in his application and questionnaire. His explanation is that a certain business secretary of his employer handled the task of preparing his application and questionnaire; that she called him in one morning to fill out those forms (which she had on hand); that she asked him the questions and typed in his answers; that, in reference to conviction of crime, she asked him only the question of whether he had ever been convicted of any crime within the last five years; that he correctly answered "No"; that he never saw the forms before and that he did not personally read the

questions since the secretary was taking charge of the entire matter, and since he was due out on the road in a hurry. This secretary, whom he mentions, is the same person that has notarized solicitor's application and questionnaire.

An official of the company employing solicitor testified in solicitor's support. In addition to vouching for solicitor's good character, this official substantiates the story respecting the secretary.

I believe solicitor's story about the secretary to be true. The only thing that gives pause to complete exoneration of solicitor is the fact that he failed to read over his application and questionnaire. However, though it was unwise, it was not entirely unreasonable for solicitor, a man of the road, to rely upon his employer's business secretary who handled all that type of work and who appeared to know all about it.

It is recommended that no further action be taken in this matter.

Nathan Davis,
Attorney.

DISAPPROVED. There is no question about conviction of crime "within the last five years." The question reads: "Have you ever been convicted of any crime?" The answer was "no." The effort to place the blame on Eve has neither novelty nor merit. It was his signature to the application and his oath to the affidavit in which he swore that the answers made "are absolutely true in all respects." It must have been comforting when the secretary invented a question which was not on the questionnaire, but it must have made him conscious of the sixty days he spent in jail and of the fine he had paid for the fault of some one else - as he claimed. Yet, knowing that he was on delicate ground, he doesn't read the questions, he leaves everything so conveniently to the secretary and then hurries out because he is due on the road. If it hadn't been for the fingerprints we might never have known the truth which it was his duty frankly to disclose.

Pursuant to the ruling in Bulletin 166, Item 8, his license will be suspended for forty-five days which will refresh his memory day by day and remind him not to take his oath lightly hereafter. Order will be entered accordingly.

D. FREDERICK BURNETT,
Commissioner.

Dated: June 8, 1937.

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

June 4, 1937

In Re: Case #122

This matter has now been heard for the third time. Previous hearings led to the finding that solicitor had been convicted of a crime involving moral turpitude. Accordingly, solicitor was declared ineligible to hold a permit, and the special permit under which he was operating at the time was cancelled.

The present hearing was granted at solicitor's application on the ground that he has not had the benefit of counsel in the past hearings, and was allowed on the proviso that such hearing be limited to the introduction of facts not inquired into before and to legal argument of counsel. At this hearing solicitor was represented by counsel, additional testimony was taken within the designated limitation and a brief was submitted on solicitor's behalf. The whole matter has been given careful attention.

Meanwhile and pending outcome of this present proceeding, solicitor's special permit has been restored.

No vital addition has been made at the present hearing to the facts already adduced at the previous hearings. Those facts are adequately related in In Re Case #122, Bulletin 170, Item 6, which expresses the decision reached in this matter after the second hearing. Those facts lend themselves to easy summary.

In 1932-33 solicitor had an account at a certain national bank. In an effort to cover his failing margin at various stock brokerage houses, solicitor accomplished $9,701.79 worth of overdrafts upon the bank in favor of the brokerage houses. At the time, solicitor had only a nominal credit at the bank; and the overdrafts were respected only as the result of ledger falsifications of his account by the bank's bookkeeper. It was solicitor's hope to dispose of his stock under such circumstances that he could readily make good the overdrafts before any troublesome discovery. This hope, however, failed when his stocks were sold out.

The bank was later placed in the hands of a receiver who discovered the defalcations, and criminal proceedings were instituted against solicitor and the bookkeeper. The bookkeeper was charged with misapplication of bank funds for benefit of solicitor and in fraud of the bank, in violation of 12 U. S. C. A. 592. Solicitor was charged with aiding and abetting her, in violation of the same statute.

At first both defendants pleaded not guilty; but the bookkeeper, under advice of counsel, changed her plea to guilty, and solicitor (who was represented by independent counsel) soon followed suit. Both defendants received a suspended sentence, but solicitor was put on probation for five years to make restitution to the bonding company which covered the bookkeeper's defalcations.

At the present hearing, solicitor produced the attorney who represented him in the criminal proceeding. In substance that attorney testified that solicitor pleaded guilty over his protest, that solicitor felt that he should share in the bookkeeper's guilt despite his own innocence, and that had solicitor's case gone to trial, the bookkeeper would have testified that solicitor was completely ignorant of her ledger falsifications and would thereby have exonerated solicitor.

I do not think that there can be any question of the fact that solicitor committed the crime interdicted by 12 U.S.C.A. 592. I think that he made deliberate overdrafts to the extent of $9,701.79 on the understanding that the bookkeeper would cooperate with him by falsifying the records of his account. In this view, he fell well within the charge of aiding and abetting the bookkeeper in misapplication of bank funds.

Solicitor argues that he had previously made overdrafts and was, during the time in question, simply doing the same thing over again; but this argument meets several answers. In the first place, he had never before made overdrafts comparable in size. In

the second place, I believe that he deliberately made the series of overdrafts in question in reliance upon the fact that the bookkeeper would falsify his account.

Solicitor further argues that he lacked the necessary intent to constitute a violation of 12 U.S.C.A. 592. This argument is without merit. To constitute a violation of 12 U.S.C.A. 592, it is not necessary that solicitor had in mind the specific motive of injuring or defrauding the bank. All that is necessary is that he wilfully performed acts which, as he knew, would have the effect of injuring or defrauding the bank. See 7 Mitchie, Banks and Banking (1932) Section 146a, at p. 162, and cases therein cited.

Practically all solicitor's above mentioned arguments to divert criminal liability from his shoulders were made and refuted in United States v. Kenny, 90 F. 257 (C. C. Del. 1898).

In addition, there is the vital fact that solicitor pleaded guilty to the charge against him. In the absence of exceptional circumstances, there should be no inquiry behind that confessive plea. United States v. Day, 16 F. (2d) 329 (D. N. Y. 1936). The explanation that this plea was entered as a "decent" and "chivalrous" gesture to the bookkeeper and not from any awareness of guilt, does not, under the circumstances, ring true.

Coming now to the question whether the crime involves moral turpitude, solicitor argues that it does not because the crime is merely a misdemeanor under the statute. This, of course, is an ineffective argument. Obviously, crimes which rank only as misdemeanors may, dependent upon the facts, nevertheless involve moral turpitude. For example, assault and battery may involve moral turpitude. See Re Sciarrotta, Bulletin 128, Item 6.

Solicitor further argues that the crime is only malum prohibitum; but that fact is not determinative. It was well stated in Rudolph v. United States ex rel. Rock, 6 F. (2d) 487 (App. D. C., 1925), dealing with the question of a crime involving moral turpitude:

> "We are not much concerned with the distinction sought to be made between crimes malum in se and those which are merely malum prohibitum. Many things which were not considered criminal in the past have, with the advancement of civilization, been declared such by statute; and the commission of the offense, if it involves the violation of a rule of public policy and morals, is such an act as may involve moral turpitude."

Solicitor further relies upon language in State v. Rickey, 9 N. J. L. 293 (Sup. Ct. 1827), to the effect that ordinary overdrafts do not constitute a crime or misdemeanor against the public. However, that language, stating that a deliberate overdraft is not a common law crime, does not state that, should such be declared a crime, it would not involve moral turpitude. Furthermore, that language does not contemplate a situation like the present case, where solicitor has abstracted large sums of money through deliberate overdrafts by working in hand with a falsifying bank employee.

What solicitor has done is very similar to joint action with a bank employee to embezzle funds from the bank (hoping to restore them before discovery). Embezzlement ordinarily involves moral turpitude. See Re: Application for Solicitor's Permit - Case No. 40, Bulletin 151, Item 2; Re: Application for Solicitor's Permit - Case No. 21, Bulletin 147, Item 10; Re: Application for Solicitor's Permit - Case No. 5, Bulletin 92, Item 10; and cases therein cited.

It must be remembered that solicitor has pleaded guilty to the intent of defrauding the bank. This element of fraud, to which he thus admits, indubitably connotes moral turpitude. See United States v. Day, supra.

I see no reason to disturb the determination of the previous hearings. It is therefore recommended that such determination remain unchanged and that solicitor's special permit be cancelled.

Nathan Davis,
Attorney.

APPROVED. Thoroughly and well done.

D. Frederick Burnett,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - WHOLESALERS - SALES TO NON-LICENSEES.

In the Matter of Revocation Proceedings against

1. Wilkinson Gaddis Company, holder of Plenary Wholesale License W-2 for premises 95 Parkhurst Street, Newark.

2. Suffern Bottling Works, Inc., holder of Plenary Wholesale License W-78 for premises 132 E. Main Street, Ramsey.

3. National Wines and Liquors, Inc., holder of Plenary Wholesale License W-80 for premises 587 Main Avenue, Passaic.

CONCLUSIONS AND ORDER

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J. Lewis Hay, Esq., President of Wilkinson Gaddis Company.
Sidney Mayer, Esq., Attorney for Suffern Bottling Works, Inc.
I. Robert Schefrin, Esq., Attorney for National Wines and Liquors, Inc.
Jerome B. McKenna, Esq., for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Notices to show cause why the licenses issued to the above licensees should not be suspended or revoked, were served upon the licensees. Hearings were held and the licensees afforded full opportunity to be heard.

All were charged with having sold and delivered alcoholic beverages to a non-licensee - Charles (Karol) Skrzysczak.

The facts as disclosed by the evidence were substantially as follows:

An investigation conducted by this Department revealed that Henry Pross, holder of Plenary Retail Consumption License C-33 issued by the Borough Council of Wallington, N. J., for premises 189 Main Street, had sold his business conducted under said license to one Karol (Charles) Skrzysczak; that no transfer of the license had ever been effected; that notwithstanding that fact, Skrzysczak had placed his name in the front window of the licensed premises and proceeded to conduct the business therein; that he had ordered and purchased alcoholic beverages from National Wines and Liquors, Inc., Suffern Bottling Works, Inc., and Wilkinson Gaddis Company, wholesalers, as evidenced by duplicate vouchers or billheads of these concerns found by the Department investigators at the licensed premises, made out to Charles Skrzysczak.

Charges preferred against Harry Pross, at the request of this Department, by the Borough Council of Wallington in respect to the illegal transfer of this liquor business without transfer of license, resulted in a thirty day suspension of Pross' license.

Re Wilkinson Gaddis Company

The evidence disclosed that two sales of alcoholic beverages had been made to "Charles Skrzysczak" Bridge Tavern, 189 Main Street, Wallington, N.J. Both on October 23, 1936.

J. Lewis Hay, president of the licensed corporation, testified that the orders had come in from a salesman named "Wyka"; that they were C.O.D. orders and made up and delivered in the name of "Charles Skrzysczak"; that so far as the house was concerned, they thought he was a licensee; that no investigation was made to ascertain as to whether or not he held a retail license.

The following is an excerpt from Mr. Hay's testimony:

Q Did you make any investigation as to whether or not Skrzysczak was a licensee?

A No.

Q Why not? The house knows they are allowed to sell only to licensees?

A I think the general method is to take the salesman's statement that the man is a licensee.

Mr. Hay further testified that no prior sales had been made, either to Pross or to the licensed premises at 189 Main Street, Wallington.

Re Suffern Bottling Works, Inc.

The evidence disclosed that on October 29, November 2, and November 9, 1936, sales of alcoholic beverages were made to Charles Skrzysczak and delivered to him at 189 Main Street, Wallington, by one, "Laiks" a salesman for Suffern Bottling Works, Inc.

Gustave Mayer, President and General Manager of the licensee corporation, testified that the error in billing and delivery of alcoholic beverages to Charles Skrzysczak was the fault of their salesman, Laiks; that Laiks had seen Skrzysczak's name on the window of the tavern at 189 Main Street, Wallington, and had asked for the license number; that they relied on their salesmen to see that no sales were made to any person other than a licensee. Mr. Mayer made the following statement:

"The salesman turned in orders and gave us the license number. The Suffern Bottling Works is a fairly large-sized corporation with a great many accounts. The manager cannot check each order and make sure it is going to a licensed person. We must depend on salesmen to take care of those things for us.....Our salesman did make a mistake and we regret that."

Re National Wines and Liquors, Inc.

The evidence disclosed that on November 4 and November 7, 1936, sales of alcoholic beverages were made to Charles "Skrzyphak" and delivered at 189 Main Street, Wallington, which premises were licensed in the name of Harry Pross. On the duplicate voucher or billhead of National Wines and Liquors, Inc., of November 4, 1936, the name of Harry Pross appears, in addition to that of "Skrzyphak."

Herbert Hain, President of the licensee corporation, testified that his company had carried the account of Harry Pross, licensee C-33, of 189 Main Street, Wallington, for some time prior to the first sale where "Skrzyphak's" name appeared on the billhead; (a copy of the ledger account of Pross was introduced in evidence showing sales to him from September 4, 1936 to February 1, 1937); that the reason for Skrzyphak's name appearing on the billhead of November 4, was because the salesman marked down that name more as a memorandum than anything else; that he himself (Hain) took the other order of November 7, 1936, from Skrzyphak at the office of National Wines and Liquors, Inc., and through an error, billed the order to Skrzyphak instead of Pross; that when the order was entered in the books, no licensee named Skrzyphak could be found and it was listed in the ledger under "Pross"; that later sales were made to the licensed premises, 189 Main Street and all billed to Pross. Mr. Hain stated the two erroneous billings were the result of an "unfortunate error."

The evidence in each of the above cases clearly discloses that sales were made and billed to a non-licensee by all three wholesalers.

Plenary wholesale licenses issued under Section 12 (1) of the Alcoholic Beverage Control Act confine the holders thereof to "distribute and sell to retailers and wholesalers, licensed in accordance with this Act," alcoholic beverages, etc.

Charles Skrzysczak held no retail or wholesale license and hence all sales made to him by these wholesalers were in direct violation of the terms of their licenses.

The evidence having substantiated the truth of the charges, the three respondent licensees are hereby adjudged guilty.

As to the penalty: - There was apparently no deliberate intent consciously to violate the law. It is a fact that Charles Skrzysczak was in control of the premises licensed to Harry Pross at 189 Main Street, Wallington, even though his operation of the business under Pross' license was illegal. That, however, does not excuse the sale and billing of alcoholic beverages in the name of a man who does not in fact hold a license. That, to say the very least, amounts to gross and inexcusable carelessness on the part of the wholesalers. It is not sufficient to say that it was the unfortunate mistake of an employee. Retail licensees are held responsible for the acts of their employees irrespective of their own personal innocence. Wholesalers are equally responsible. Salesmen's enthusiasm for new customers with euphonious names is commendable and quite understandable in view of the urge for turnover and commissions but it does not relieve their employers from making sure at their peril that the person to whom they sell and deliver is a retail licensee - a burden easily discharged by bare inspection of the license and incomparable to that imposed on retailers that they make sure not to sell to minors. Strict enforcement will go a long way to save the liquor industry from annihilation. It is the only fair thing to those licensees who refuse to

take chances. Those vested with special privileges under the law are charged to be personally conscious of what the law requires.

Accordingly, it is on this 8th day of June, 1937, ORDERED, that Plenary Wholesale License W-2 heretofore issued to Wilkinson Gaddis Company, Plenary Wholesale License W-78 heretofore issued to Suffern Bottling Works, Inc., and Plenary Wholesale License W-80 heretofore issued to National Wines and Liquors, Inc., be and they are hereby suspended for a period of three days effective June 14, 1937.

D. FREDERICK BURNETT,
Commissioner.

6. LICENSES - RULE REQUIRES APPLICATION TO BE FILED BEFORE FIRST INSERTION OF ADVERTISEMENT - THE REASONS FOR THE RULE AND CONDITIONS UNDER WHICH THE STATE COMMISSIONER MAY, PERHAPS, WAIVE IT.

Dear Mr. Burnett:

The notice you sent out under date of May 6th, 1937 says that all applications for a renewal must be filed together with the license fee for 1937 and satisfactory evidence that a new Federal Tax Stamp has been obtained and all applications must be filed at or before the first insertion of Notice of Intention. Must that law be enforced or not? I see that our licensee has advertised her notice of intention in this week's paper, May 20th, but has not filed her application or paid her fee. What must I do about it?

A. G. Dunphey,
Clerk.

June 9, 1937

A. G. Dunphey, Township Clerk,
Evesham Township,
Marlton, New Jersey.

Dear Sir:

The State Rules for Advertising Notice of Intention to apply for a License now require that the application must be filed with the issuing authority at or before the first insertion of advertisement.

Under the old rule which permitted advertising before application was filed, it sometimes happened that protests or objections came in to the Municipal Clerk which he was unable to identify with any application then on file. Laying the protest aside to match up later with an application often resulted in confusion and lack of notice. As you know, the Municipal Clerk must give notice to all objectors. Under the present rule, when a protest comes in as a result of an advertisement, the application is already on file and can be readily matched up and identified.

The rule has the incidental merit of preventing applicants from "sending up trial balloons" by mere advertising before putting up the money necessary to filing the application.

In the instant case I take it that the advertising prior to filing of the application was done in good faith and without any

intent to evade the rule. Hence, if it meets with the approval of the local issuing authority and they direct you to so certify to me and further certify that all objections or protests against the issuance of licenses in your municipality have been identified and that due and proper notice has been given to each objector against this particular license before the license was actually issued so that such objectors have been afforded full opportunity to be heard, I shall waive the rule in this particular case.

Please caution the licensee hereafter to see that strict compliance is made with the rules.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - INDECENT AND IMMORAL ACTIVITIES - REVOCATION INDICATED AND EFFECTED.

June 9, 1937

Edward Du Pree, Esq.,
City Clerk,
Paterson, New Jersey.

Dear Mr. Du Pree:

I have staff report of the proceedings before the Board of Aldermen of Paterson against:

1. Scott Easton, charged with (a) having sold alcoholic beverages to a minor; (b) having permitted prostitutes to ply their trade on the licensed premises and allow same to be conducted as a nuisance; (c) having concealed in his application for license the fact that he had been convicted of a crime and the fact that he was not the real owner of the licensed business.

The report states: "Complaints had been received, that the above licensed premises - presumably owned and operated by Scott Easton - was used for immoral purposes: that prostitutes congregated therein and plied their trade; an investigation was made.

"On March 20, 1937, Investigators Flynn and Wagi inspected the premises. They saw a woman, later identified as Mae Miller, alias Mary Nixon there, and heard a conversation she had in the course of which she stated that she owned the place.

"On April 30, 1937, Investigators Best and King were assigned to continue the investigation. On that day they visited the Paterson Police Department and contacted Captain James Smith who informed them that on the previous day, he, together with Officers Brennan and Robinson, were looking for several burglars; that they had occasion to enter the licensed premises and observed a young girl by the name of Marie Brown at the bar drinking whiskey with two men; that they questioned her and found she was a minor - sixteen years of age; that they recalled she was wanted by Policewoman Sarah M. Leigh on

complaint of waywardness and incorrigibility, filed by her mother; that accordingly, they took her in custody and secured a written statement from her wherein she set forth that she had been frequenting the licensed premises for about three months, drinking with men at the bar after she had asked them to buy her drinks; that she further stated, Mae Miller was the one who advised her to solicit the men to buy her drinks; that Mae Miller was the owner of the tavern.

"As a result of the information from this girl - on April 30, 1937, at about 10:30 P. M. - Investigators King and Best, together with Captain Smith and Officers Naumann, Keys, Cosgrove and Robinson of the Paterson Police Department, raided the licensed premises. They arrested Scott Easton, the licensee, Mae Miller, alias Mary Nixon, and Roy Miller, her husband, who were charged with having sold alcoholic beverages to a minor - Marie Brown - and with "maintaining a disorderly house"; five women inmates of the place were also arrested. One of these women gave a complete written statement disclosing that she had served three years in the New Jersey State Home for Women; that she is being treated for a venereal disease; that she and other women had been soliciting men in the licensed premises and then taking them out for immoral purposes.

"A check of Scott Easton's application revealed that he stated no person other than himself had any interest in the licensed premises. He further stated therein that he had never been convicted of a crime. Subsequent check revealed that on February 15, 1935, Scott Easton pleaded non vult, before Judge Delaney, to a charge of 'possession of illicit alcoholic beverages' and paid a fine of $150.00.

"Subsequent check of Mary Nixon revealed convictions of (a) disorderly house - fine $50.00; (b) disorderly house - Clinton Reformatory; (c) larceny - Clinton Reformatory.

"At the hearing before Judge Vincent Duffy at the Paterson Police Court, Scott Easton, Roy Miller and Mae Miller, alias Mary Nixon, were held under $1,000.00 bail each for Grand Jury action. Four of the women arrested were charged as disorderly persons and received a ten months' suspended sentence each. The fifth was held with Marie Brown for further examination. Verdict is Guilty; Sentence - License Revoked."

2. Mae-Christina Trentacosta, charged with having permitted the solicitation for drinks from men patrons by hostesses and entertainers.

The report states: "Pursuant to complaint previously received that hostesses were being employed, investigators were assigned.

"Investigator Dyrwood Williams visited the place on three occasions - April 21, 29 and 30, 1937. On the first visit he saw three girls working there. He was solicited by two to buy them drinks which he did. On April 29, 1937, he saw several girls at the bar including Stella, Rose, Annie, Bebe and a colored entertainer. He was asked by Stella to buy her a drink which he did. Annie and Bebe then requested that he buy for them, which he did.

He spent $4.00 out of a $5.00 bill buying them drinks. He also observed another patron spend about $12.00 with the girls. On April 30, 1937, Williams found all the girls there with two added starters. He was solicited to buy them drinks. He states, 'As it was getting near the closing time, they worked very fast on me, and before consuming the drink presently before them, they would order another one.'

"While Williams was on his last visit, Investigator Briscoe followed him in about twenty minutes later. He heard the girls requesting Williams to buy them drinks. One of the girls came over to Briscoe and put her arms around his neck and asked him to buy her a drink. He bought her a Scotch whiskey. He had thirty-five cents in change on the bar. The girl asked him for it. Briscoe told her he needed the money to buy his breakfast the next day. She asked him to buy her another drink. Verdict is Guilty; Sentence - License Revoked."

Expressing no opinion on the merits because I may have to examine them on appeal, nevertheless, if the adjudications of guilt were properly made, there is no question but that the Aldermen, by revoking these licenses outright, have done what the decent people of Paterson had the right to expect them to do.

Please extend my sincere thanks not only to the Aldermen but also to Chief of Police Murphy and Captain James Smith and his men, above named, for their splendid cooperation in ridding Paterson of undesirables.

Cordially yours,
D. FREDERICK BURNETT,
Commissioner.

8. LICENSES - ISSUANCE - TRANSFER - BUILDING NOT YET CONSTRUCTED - PLANS AND SPECIFICATIONS TO BE FILED WITH APPLICATION.

LICENSED PREMISES - BUILDING NOT YET CONSTRUCTED - APPLICATION MAY BE GRANTED SUBJECT TO SPECIAL CONDITION.

SPECIAL CONDITIONS - MUST BE DEFINITE.

RULES AND REGULATIONS - PROPOSED AMENDMENT.

June 9, 1937

Thomas F. Salter, Esq.,
Solicitor for Pennsauken Township,
Camden, New Jersey.

Dear Mr. Salter:

I note that application has been made to the Township Committee for the transfer of a plenary retail consumption license to premises presently a vacant lot but on which a building subsequently will be erected.

I agree with you that in such case complete plans and specifications for the proposed building should be filed with the application.

The nature of the building to be erected and its location on the lot may well give cause for objection. It is then but

fair that the surrounding residents and others who may be interested should have the opportunity of examining the plans and specifications in advance, before the application is granted. The published notice of intention to apply should, therefore, as you suggest, advert to the fact that a building is to be erected and state where the plans may be seen.

Municipal license issuing authorities have the power, under Section 29 of the Act, to grant applications subject to special conditions, effective only upon compliance with the conditions and revocable for subsequent violation thereof. The conditions should be worded so as to indicate the specific requirements upon compliance with which the issuance of a license or the granting of a transfer depends. The applicant must be told exactly what is required of him. Otherwise there is no way of his knowing what there remains for him to do. Re Girard, Bulletin 66, Item 7. Special conditions should be prescribed as definitely as the nature of the case will permit. Re Downe Township, Bulletin 92, Item 2. Indefiniteness in prescribing conditions inevitably results in misunderstanding. What the applicant deems an adequate building, the Township Committee may not see fit to accept. He will then have been put to expense for naught. The only safe thing to do is to get it down in black and white in advance.

I think that the best course for the Township Committee to follow, where application is made for a building not yet constructed, is to grant the application subject to the express condition that the premises as described in plans and specifications submitted and found acceptable by the municipality, shall first be built. Re Harris, Bulletin 183, Item 11. The transfer, of course, may not become effective until the special condition has been complied with.

This I deem to be a better procedure than that adopted by the Township Committee in resolution of April 12, 1937 when it authorized the transfer of license from Elmer H. Mayberry to Marguerite E. Peterman, subject to the special condition that the building which the applicant proposed to erect would be suitable in the opinion of the Township Committee for the proper dispensing of alcoholic beverages and conform to all of the provisions of the local building code. I approved the special condition in that case deeming that it amounted to no more than a finding that the applicant was personally qualified, reserving decision as to the suitability of the premises until the building was built and adequate inspection could be made, and considering that so long as the applicant, in whom was reserved the right to appeal, had accepted it, there was no need for ex parte disapproval.

The State Rules do not at the present time provide for the change in procedure and advertising that you suggest. The Pamphlet Rules and Regulations are, however, presently being revised and a revision will be issued shortly. The Rules and Instructions Governing the Issuance of Municipal Licenses, the Rules Governing Advertising "Notice of Intention" to Apply and the Rules Governing Transfers, pages 20, 22 and 31 respectively, will at that time be amended in line with the above. In handling the situation you now have before you, I suggest that you follow the procedure herein indicated.

Cordially yours,

D. FREDERICK BURNETT,
Commissioner.

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

June 9, 1937

In Re: Case No. 51

Applicant denied in his present application that he had ever been convicted of a crime. Investigation disclosed that on January 16th, 1935 he was convicted in Pennsylvania on a charge of violating the Liquor Control Act of that State. The violation consisted of selling liquor on four Sundays and, after conviction, applicant was fined $200.00 and costs and sentenced to serve from three months to two years in a County Jail.

At a hearing duly held, applicant admitted the above conviction. He testified that prior to his arrest he was licensed to sell alcoholic beverages in Pennsylvania; that his bartender served drinks after midnight Saturday in violation of the Pennsylvania law; that after his arrest applicant was found guilty by a jury and sentenced as above; that the minimum jail sentence was served.

Requested to explain his false affidavit, applicant testified that he noted the question in the application reading, "Have you ever been convicted of any crime?"; that he asked an officer of the Company by whom he now seeks to be employed as to the meaning of the question and was told "Maybe that means New Jersey"; that since he had never been convicted of a crime in this State, he answered "No." He contended also that he did not intend to deceive the Department and, as evidence of his good faith, called attention to the fact that he had disclosed this conviction in a prior application to this Department for a solicitor's permit. Our records show that such application disclosing the conviction was filed but that no permit was then issued because, before that application could be investigated, the brewery for which he then worked advised that applicant was no longer in its employ.

Even if the prior disclosure is considered as a mitigating circumstance, the fact remains that he swore falsely in his present application. His explanation that he relied on the advice of another as to the meaning of a question which seems perfectly clear is no excuse. Re Hearing No. 166, Bulletin 180, Item 7.

Conviction for violating existing liquor laws, where such violation concerns only sales during prohibited hours, should not, in my opinion, be construed as conviction of a crime involving moral turpitude. Hence, applicant is not forever barred. However, the fact that when licensed in Pennsylvania he failed to live up to his obligations as a licensee, plus the fact that he filed a false affidavit here, are sufficient reasons for denying his present application.

It is recommended that the application be denied.

Edward J. Dorton,
Attorney-in-Chief.

Approved:

D. Frederick Burnett,
Commissioner.

Inspected by:
J. EDGAR
and found O. K.