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

BULLETIN 343 AUGUST 17, 1939.

1. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF KNOWN CRIMINALS - HEREIN OF THE WIFE.

In the Matter of Disciplinary Proceedings against GEORGIA TOBEY, 366- 18th Avenue, Newark, New Jersey, Holder of Plenary Retail Consumption License No. C-695, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Mortimer Heutlinger, Esq., by Sidney Simandl, Esq., Attorney for Defendant-Licensee.
Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that:

1. At or about January 28th, 1939 and divers days prior thereto you knowingly employed or had connected in a business capacity with you, Walter E. Tobey, a person who, because of conviction of a crime involving moral turpitude, would fail to qualify as a licensee, in violation of R.S. 33:1-26.

2. On or about January 28th, 1939 you allowed, permitted or suffered in or upon your licensed premises a known criminal, pick-pocket, swindler, confidence man, or person of ill repute, in violation of Rule 4 of State Regulations No. 20.

The evidence shows that, between September 14, 1938 and January 28, 1939, one Walter E. Tobey, alias "The Velvet Kid", was employed as manager of the licensed premises; that he had been convicted in 1929 and again in 1933 of crimes involving moral turpitude; and that the licensee knew that he had been so convicted.

Walter E. Tobey is the husband of Georgia, the licensee.

Prior to his employment as her manager, he applied to this Department for a permit to be employed by her. One of the questions asked in the affidavit to which he swore was "Have you ever been convicted of any crime?" He answered "No." He lied. He had.

He came back to her with the permit and told her he had made a clean breast of everything -- criminal record and all -- and had gotten his permit because, as he told her, of some recent law

New Jersey State Library

which permitted persons to sell alcoholic beverages if their conviction dated back more than five years previous to the application for the permit. She believed him. Why shouldn't she? He was her husband. But he lied. The only reason he had gotten his permit was because of his false affidavit.

Asked on cross-examination, she testified:

"Q In view of the nature of the crimes of which your husband had been convicted, didn't you believe that it was your duty to see that he did answer those questions truthfully?
A I didn't think he would be quite foolish enough to swear to a sworn affidavit.
Q You knew he had been convicted of a crime of swindling, fraud, of using the mails to defraud. Didn't the fact that he had been convicted of those crimes raise a question in your mind as to whether he would answer truthfully in an application?
A Not where it would jeopardize me, I didn't believe so. I didn't believe he could be quite so low as to jeopardize me. I didn't think any man could be quite that heartless."

It was she who, after his arrest on new charges in January of 1939, insisted that he discontinue his employment by her and this despite his protestations of absolute innocence. It was she who insisted that he surrender the employment permit to me. It was she who located the permit among his effects after he had run off with another woman, and mailed the permit to me requesting cancellation.

What more could she do?

The case is dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 13, 1939.

2. ON-PREMISES CONSUMPTION LICENSEES - CONDUCTING OTHER MERCANTILE BUSINESS - HEREIN OF THE WALKING ADVERTISEMENTS OF THE DUDE RANCH.

August 14, 1939

Thomas P. Endicott,
T/a Dude Ranch,
605 Boardwalk,
Atlantic City, N. J.

Dear Sir:

I have before me your newspaper advertisement which appeared in the Atlantic City Daily Press reading in part:

"We sell a souvenir bracelet with a ten-gallon hat and a Western riding boot, which have the words Dude Ranch on them, for two-bits. They cost more but I figure the wearer is a walking advertisement."

Now, pardner, just what is it you're selling for the two bits? And what's this "a Western riding boot" — something for one-legged horsemen? Or is the wristlet just a handcuff with dangling miniatures — jitterbug jewelry a la Western? Whatever it

is, you'll have to hi-yo Silver and away with the whole idea. You see, R. S. 33:1-12 prohibits you, as a holder of a plenary retail consumption license, from conducting any other mercantile business on your licensed premises. You've been poaching. Doff your sombrero quick, so we don't have to shoot it out.

You are hereby directed immediately to cease and desist from the advertised practice.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. ADVERTISING - BEER FOR GOLFERS - HEREIN OF HOLE IN ONE.

My dear Commissioner:

Your ruling of July 20th prohibits a brewery from offering as a gift a case of beer to members of certain golf clubs who make "A Hole in One". Would it not be permissible for a holder of a State beverage distributor's license to make this offer?

Very truly yours,
State Beverage Distributor's Ass'n
of N. J.
Leo J. Berg,
Counsel.

August 14, 1939

Leo J. Berg, Counsel,
State Beverage Distributor's Association of N.J.,
Newark, N. J.

Dear Sir:

I have yours of July 31st.

The ruling applies also to beverage distributors, for a distributor is essentially a wholesaler with the hybrid privilege of sales to consumer via so-called beer routes.

It isn't that I'm anxious over much about the number of cases to be given away, nor do I suppose that any distributor will have insomnia worrying lest he has been impulsively over generous in his offer to duffers. It's rather that I think the ancient and honorable game can get along well enough without introduction of hop hoes and malt mashies.

A hole in one is sufficient unto itself. The Beer Barrel Roll is out of place on the greens.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK LIFTED.

In the Matter of the Seizure of two stills, on premises occupied by James Bateman on Earl Avenue, near Delsea Drive, Glassboro Lawns, in the Borough of Glassboro, County of Gloucester and State of New Jersey.	No. 4804 ON HEARING CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

On June 24, 1939, Conclusions and Order were entered herein whereby, among other things, it was ordered that the premises in question be padlocked for a period of six months, commencing June 30, 1939 and terminating December 30, 1939.

On June 30, 1939, Cora Bateman and James Bateman, tenants in said premises, requested me, in writing, to withhold the padlocking of the premises on the ground that it would work an undue hardship on them and their seven children, the youngest of whom is ten months of age. From a subsequent letter received from them on August 2, 1939, I am satisfied that their failure to appear at the hearing originally scheduled herein was due to their ignorance of the nature of these proceedings. In said letter they state also that they had no intention of manufacturing alcohol for sale and that they have never been involved in any previous liquor activities.

Review of the file shows that James Bateman has no previous criminal record; that the stills were not of the type generally used or adaptable for use in the manufacture of illicit alcoholic beverages on an extensive commercial scale; and that the Grand Jury returned no bill in the criminal proceeding.

Under these circumstances, the eviction of James Bateman, Cora Bateman and their children would result in an undue hardship.

Accordingly, that portion of the order of June 24, 1939 which padlocked the premises for a period of six months commencing the 30th day of June, 1939 and terminating the 30th day of December 1939 is hereby vacated and set aside, and said order is, in all other respects, continued in full force and effect.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 11, 1939.

5. APPELLATE DECISIONS - SCHWARZ DRUG STORES, INC. v. NEWARK.

SCHWARZ DRUG STORES, INC., a corporation,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and QUALITY HOUSE WINE & LIQUOR, INC., a corporation,

Respondents

ON APPEAL
CONCLUSIONS

Bertram S. Grand, Esq., Attorney for Appellant.
James F. X. O'Brien, Esq., Attorney for Respondent Board.
Leon W. Kapp, Esq., Attorney for Respondent, Quality House Wine & Liquor, Inc.
Milton M. Unger, Esq., Attorney for H. K. Investment Company, Owner, and American Grocery Company, Lessee of premises at 448-450 Clinton Avenue, Newark.

BY THE COMMISSIONER:

Appellant appeals from the transfer of a plenary retail distribution license for the fiscal year 1938-1939 from David Jelling, Inc. to Quality House Wine & Liquor, Inc. (hereafter called Quality House), and from 486 Clinton Avenue to 448-450 Clinton Avenue, Newark.

Appellant contends that (1) the transfer is prohibited by Section 5 of an ordinance of the City of Newark, adopted May 4, 1938 entitled "An ordinance to limit the number of plenary retail consumption licenses and plenary retail distribution licenses to sell alcoholic beverages at retail in the City of Newark, and to regulate the renewing and transferring of plenary retail consumption licenses and plenary retail distribution licenses to sell alcoholic beverages at retail in the City of Newark"; (2) there are sufficient licenses in the neighborhood; and (3) transfer should not have been granted to premises located in a super-market.

There is no dispute about the facts; 486 Clinton Avenue and 448-450 Clinton Avenue are located within 750 feet of each other; the premises of Quality House are within 750 feet of other premises licensed for distribution; there are numerous other licensed premises in this section of Clinton Avenue; and the premises of Quality House are located in a so-called "super-market."

As to (1): Said Section 5 provides:

"Section 5. No plenary retail distribution license, excepting renewals for the same premises as have heretofore been licensed, and transfers from person to person, shall be granted or transferred to another premises within a distance of seven hundred and fifty (750) feet from an existing licensed premises covered by a plenary retail distribution license. In the event a licensee desires to transfer to another premises he shall be permitted to do so within seven hundred and fifty (750) feet of the premises wherein he is located at the time of such transfer. He shall comply with the provisions aforementioned when transferring to premises more than seven hundred and fifty feet from the premises from which a transfer is sought."

The purpose of said section is to prevent the overcrowding of distribution licenses in any particular section of the City and, as said purpose appears to be in the public interest, the section is reasonable. Hence, if it prohibits the transfer, the action of respondent should be reversed.

There is serious dispute, however, between the parties as to the construction to be placed on said Section 5. Quality House contends that the first sentence of Section 5 excepts all transfers from person to person; appellant contends that said exception should be construed to apply only to transfers from person to person for the same premises.

The construction contended for by Quality House would defeat the very purpose of the section since it would permit any transfer from one person to another without regard for the 750 feet rule. While I cannot rewrite an ordinance, the construction to be placed on the words as written should be such as to make the ordinance reasonable rather than unreasonable. The term "transfers from person to person" has a definite meaning as distinguished from a transfer from place to place or a transfer from person and place to another person and another place. I conclude that appellant is right on this point and that the first sentence of Section 5 of the ordinance excepts merely transfers from person to person for the same premises. But this holding is not dispositive of the controversy. For there are other clauses in this section which require interpretation.

The second and third sentences of Section 5 concern a situation not covered by the first sentence. They permit a licensee to transfer his license to another premises within 750 feet of the premises wherein he is located at the time of the transfer, despite the other provisions of Section 5. Appellant contends that these sentences apply only to the transfer of a license from place to place by the licensee and that they do not apply to a transfer from place to place and from person to person, as in the present case. The language used, however, must be considered in connection with the provisions of R. S. 33:1-26, which permits transfers from place to place and person to person. The ordinance should not be construed to restrict that statutory right unless it explicitly provides otherwise. Under the language of the last two sentences in Section 5, if the licensee desires to transfer his license to another premises he is permitted to do so provided only that the new premises are within 750 feet of the old premises. The emphasis of these sentences is upon the place and not upon the person. The place to which the transfer is sought is within 750 feet of the former licensed premises. If an objective may be lawfully accomplished in two moves, i.e., first, a transfer from place to place, and, second, a transfer from person to person, there is no rule or principle which declares that the two moves cannot be consolidated into one. There is no requirement to make two bites out of a cherry! It therefore appears to be immaterial whether, under said circumstances, the license is transferred in the licensee's name or transferred to another person under the provisions of R. S. 33:1-26. Hence, I conclude that Section 5 of the ordinance does not bar the transfer of the license considered herein.

As to (2): It should be noted that the transfer does not increase the number of licenses in the neighborhood. The question as to the number of licenses which should be permitted in a business neighborhood is primarily within the discretion of the issuing authority. Sobocienski v. Newark and International Liquor Co., Bulletin 239, Item 8. It does not appear that respondent Municipal Board abused its discretion in granting the transfer.

As to (3): Whether a license should be issued for premises located in a super-market is primarily an economic and not a licensing question. The Great Atlantic & Pacific Tea Co. v. Conover, Bulletin 153, Item 12; Conover v. Burnett (Sup. Ct. 1937), 118 N.J.L. 483. Cf. 179 Duncan Ave. Corp. v. Board of Adjustment of Jersey City (Sup. Ct. 1938), 122 N. J. L. 292. It does not appear that the action of the Municipal Board, in granting the transfer to premises located in a super-market, was erroneous.

The action of respondent, Municipal Board of Alcoholic Beverage Control of the City of Newark, is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 13, 1939.

6. APPELLATE DECISIONS - BERGMAN v. NEWARK.

SAMUEL BERGMAN,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and FRANK J. SOLDO and EDWARD KALINOSKI,
Respondents

ON APPEAL
CONCLUSIONS

Paul C. Gorneman, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent Board.
Maurice Schapira, Esq., Attorney for Respondent, Frank J. Soldo.
Fred Frieman, Esq., Attorney for Respondent, Edward Kalinoski.

BY THE COMMISSIONER:

Appellant appeals from the transfer of a plenary retail consumption license for the fiscal year 1938-1939 from Edward Kalinoski to Frank J. Soldo for premises 35-37 Orange Street, Newark.

Appellant contends that the transfer was improper because the license certificate was in his possession under a written agreement, dated March 28, 1939, between him and Edward Kalinoski, one of the respondents.

Kalinoski closed his place of business in the latter part of January 1939; on March 28, 1939 he and Bergman entered into a written agreement whereby he granted to Bergman, his nominees or assigns, the exclusive right to purchase the license in question. Bergman agreed to purchase the license provided he, his nominees or assigns, obtained a suitable lease on premises 447 or 474 Broad Street, Newark, and provided further that the parties to the agreement and/or either of them obtain a transfer of the license by the City of Newark to Bergman, his nominees or assigns. The agreement further sets forth that Bergman had paid to Kalinoski the sum of Twenty-five Dollars ($25.00) on account of the purchase price, which sum was to be returned if a satisfactory lease of either of the stores mentioned in the agreement was not obtained or if a transfer of the license for

either of said stores was not obtained, and Kalinoski thereby granted to Bergman the right to retain possession of the aforesaid license certificate until said deposit had been returned. Bergman held the license certificate when the transfer to Soldo was granted.

The evidence shows that Kalinoski subsequently entered into an agreement to transfer his license to respondent Soldo. This agreement, which apparently was not reduced to writing, was entered into on April 18, 1939, as appears from the consent to this transfer and the fact that Soldo advertised his notice of application for the first time on April 19, 1939. On May 2, 1939 Soldo filed a formal application for transfer of said license from Kalinoski to himself and was required to readvertise his notice of application. Bergman filed written objections to the transfer and four hearings were held before respondent Municipal Board, which granted the transfer to respondent Soldo on June 1, 1939. It is from this action that appellant appeals.

I am not called upon to pass herein upon the legal remedies which appellant may have against Kalinoski by virtue of the alleged breach of the agreement dated March 28, 1939. In so far as the licensing question is concerned, the appellant obtained no right to the license by said agreement. The transfer to Bergman could be made only by the respondent, Municipal Board, after a formal application for such transfer had been filed, and Bergman never filed such application.

There is no question in the case as to Soldo's fitness or his compliance with all the statutory requirements concerning his application for transfer, which was filed on May 2, 1939. Appellant apparently contends that the Board was without power to grant the transfer because appellant had physical possession of the license certificate. This contention is without merit. The Municipal Board had the power to grant the transfer despite the fact that the license certificate was in the possession of Bergman. Of course, the transfer of the license itself could not be thereafter effected until the license certificate was endorsed by the Municipal Clerk. Re Volcker, Bulletin 140, Item 9. Soldo, however, has never attempted to operate the business, and hence the question of the actual endorsement of the license certificate is not involved in this case. If that question had been involved, I would grant some form of relief to Soldo because the agreement of March 28, 1939 gives Bergman an unlawful interest in the license by permitting him to retain the license certificate, although he was not the licensee. Walsh v. Bradley (Ch. 1937), 121 N. J. Eq. 359.

Appellant further contends that the transfer was improper because a salesman for a brewery is interested in some way in the transfer to Soldo. However, the salesman appeared as a witness and testified that he had no interest in the transaction except that after Kalinoski had asked him if he knew of anyone who would be interested he had spoken to Soldo about the matter, and further, that he had filled out the application for transfer. This evidence falls far short of showing that the salesman had any interest in the license.

The action of respondent Municipal Board is affirmed.

Ordinance 2419 of the City of Newark provides for renewals of licenses despite limitations fixed therein. Section 6 of said ordinance defines a renewal and provides that an application shall

be considered an application for renewal if the licensee applying for said new license was the holder of a similar license in good standing the last day of the period immediately preceding the period for which the new license was applied for or granted, and provided further that said application for renewal is filed not more than thirty days after the expiration date of the old license. In view that appellant's improper action in withholding the license certificate prevented respondent Soldo from holding the license in question on June 30, 1939, and the pendency of the appeal herein, leave will be granted to Frank J. Soldo to file a formal application for a license for the premises in question within thirty days from the date hereof, and respondent Municipal Board will consider said application as an application for renewal within the meaning of the terms of said ordinance.

Dated: August 13, 1939.

D. FREDERICK BURNETT,
Commissioner.

7. ON-PREMISES CONSUMPTION LICENSEES - CONDUCTING OTHER MERCANTILE BUSINESS - HEREIN OF FOX HUNTING AND SOUVENIRS OF THE CHASE.

Dear Sir:

I have a tavern on the Atlantic City Boulevard in the Town of Bayville, N. J. We have about three months' business and in the winter time I go into the woods and kill wild fox.

I have these fox made up into chokers. I would like to know if it is permissible for me to sell these fox in my place of business.

Yours truly,
William F. Sleight

August 15, 1939

Mr. William F. Sleight,
Box 213,
Beachwood, N. J.

My dear Mr. Sleight:

The law says that you cannot conduct any mercantile business on a place which is licensed for on-premises consumption.

Hence, wherever you can sell beer, you can't sell fox.

For instance, - your dining room. Since you can serve liquor there, therefore no fox.

Why not take your customers out to the barn or the ice house or wherever it is you keep the pelts?

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

8. SEIZURES - CONFISCATION PROCEEDINGS - ADJUDICATION OF LIENS, FORFEITURES AND PADLOCKING.

In the Matter of the Seizure of a still and three motor vehicles, at the "Sweetbriar Farm", located on West Park Avenue, Oakhurst, in the Township of Ocean, County of Monmouth, and State of New Jersey.	#5339 On Hearing CONCLUSIONS AND ORDER

. . . . . .

I. Samuel Sodowick, Esq., Attorney for Jersey Loan Company.
Martha O. Lyons, Pro Se.
Elizabeth Sciallo, Pro Se.
Harry Castelbaum, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On April 6, 1939, Investigators of this Department discovered a large unregistered alcohol distillery being operated in a barn on the "Sweetbriar Farm", located on West Park Avenue, Oakhurst, in Monmouth County. James Sciallo, Dominick Damia, and Beajjo Albano, who were in the barn, and Peter Sciallo and Peter DeKato, who were in a dwelling on the premises, were arrested. The still and equipment, a quantity of mash, and illicit alcohol, DeKato's Plymouth coupe, and James Sciallo's Dodge truck (found on the premises, and described in Schedule "A" annexed hereto) were seized as unlawful property under the provisions of R.S.Title 33, Chapter 2.

Harvey Smith arrived on the farm in his Packard coupe as the seizure was being made. Upon being questioned, he was unable to give any satisfactory reason for his presence on the farm. He was thereupon arrested and his car seized as unlawful property.

At a hearing duly held to determine whether the seized articles should be confiscated and the premises padlocked, appearances were entered by Martha Lyons, one of the owners of the realty, who sought to avoid padlocking of the premises; by Elizabeth Sciallo, who also sought to avoid padlocking, and in addition, requested that the Dodge truck be returned to her husband, James Sciallo; by counsel for Jersey Loan Company, which claimed a lien upon the Packard coupe, and requested recognition thereof; and by counsel for Harvey Smith, the owner of the coupe, who later withdrew his appearance.

The seizure and forfeiture of the articles was not contested. Accordingly, it is determined and ordered that the seized property constitutes unlawful property, and is forfeited in accordance with the provisions of R.S.Sec. 33:2-5.

To establish the validity of its lien, the Jersey Loan Company presented proof that the sum of $313.06 is due and owing to it on a chattel mortgage made by Harvey Smith covering the Packard coupe; that it made a thorough inquiry concerning Harvey Smith's employment, residence, and other pertinent matters, which revealed that he was apparently in business for himself under the name of Ritz Chemical Company, and that he was considered a good financial risk; that on the

other hand, such investigation did not disclose any information of a detrimental nature, from which it could have anticipated that Smith might be involved in unlawful alcoholic beverage activities.

I am satisfied that Jersey Loan Company has acted in good faith and has a valid lien on the Packard coupe to the extent of $313.06, which I will allow, subject to the payment of the costs involved in connection with the seizure of the vehicle.

I am further satisfied that the vehicle should not be sold to satisfy the lien, since the State Commissioner of Finance, at whose disposal forfeited property is placed, under R.S.52:23-16, has advised that although the appraised value of the vehicle is $434.30, it is his opinion from a check with the person who made the appraisal and from other sources, that its sale will not realize the appraised value or even a sum sufficient to cover the costs and the amount allowed in favor of the Jersey Loan Company. Accordingly, the Packard coupe will be returned to the Jersey Loan Company upon payment by it of the costs aforementioned.

As to James Sciallo's truck: It will not be returned to him because the evidence showed that he actively participated in the illicit still operations.

As to padlocking: Mrs. Lyons' demeanor and conduct at the hearing indicated that she did not participate in or countenance the illicit activities, but it nevertheless seems probable that she would have discovered the still if she had exercised reasonable prudence. The Sciallos are her tenants under an arrangement whereby they pay little, if any rent, but take care of Mrs. Lyons' live stock. Mr. and Mrs. Lyons reside in New York and ordinarily visit the farm on weekends. Shortly before the seizure, they took up a summer residence in a nearby community and Mrs. Lyons then visited the premises almost daily to obtain cream produced by her cows. Considering the large size of the still and the numerous activities attendant upon its operation, and the fact that her cows had been stabled in the barn where the still was found, it is apparent that she paid little if any attention to what was going on. She has, therefore, not shown any cause why a padlocking penalty should not be imposed. Nor can the Sciallos be relieved from the padlocking penalty because it appears that Peter Sciallo, the son, rented the barn for the purpose of installing the still, and his father helped in its operation.

However, mitigating circumstances will be considered in determining the extent of the penalty to be imposed. Ordinarily, the tenant responsible for the presence of the still on the premises is required to vacate. In the instant case, the farm is not only the home of the Sciallos, but is also the means of their livelihood, as their income is derived from the crops which they have planted and which are to be harvested shortly. To remove them from the farm would result in undue hardship, especially since this appears to be their first violation of the liquor laws.

Under these circumstances, the interests of society would seem to be best served by permitting the Sciallos to remain in their dwelling, and to select one out-building to house the live stock, all other buildings on the farm to be padlocked.

Accordingly, it is ordered that the premises known as the "Sweetbriar Farm", located on West Park Avenue, Oakhurst, in the Township of Ocean, and County of Monmouth, being the premises on which the illicit still was found, including all the buildings erected thereon, with the exception of the buildings hereinbefore referred to, shall not be used, or occupied for any purpose whatsoever, for a period of six months, commencing the 16th day of September, 1939.

The seized property, excluding the Packard coupe, shall be retained for the use of hospitals and State, county and municipal institutions or may be destroyed in whole or in part at the direction of the Commissioner.

Dated: August 15, 1939

D. FREDERICK BURNETT
Commissioner.

SCHEDULE "A"

4 - wood vats with mash
1 - mixing tank
1 - high pressure steam boiler
1 - compression tank
1 - copper preheater
6 - sections copper column
1 - copper dephlegmator
1 - galvanized cooler
1 - iron tank with lead coil
1 - Gould electric pump
1 - copper cooker
1 - galvanized cooker and copper coil
1 - 50 gal. barrel molasses
1 - galvanized receiving tank
1 - tribox
1 - chain hoist
20 - gallons high wine

Miscellaneous personal property

1 - Plymouth coupe, Serial #1647268, Engine #80041, New York 1939 Registration 5K1362
1 - Packard coupe, Serial #10883416, Engine #T24832, New Jersey 1939 Registration FL14Y
1 - Dodge truck, Serial #8474412, Engine #DD28940, New Jersey 1939 Registration XA5098 Farmer

9. DISCIPLINARY PROCEEDINGS - TRANSFER OF STOCK TO DISQUALIFIED PERSON AND FAILURE TO NOTIFY ISSUING AUTHORITY - 10 DAYS.

In the Matter of Disciplinary Proceedings against

12 EAST PARK STREET TAVERN, INC., 12 East Park Street, Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-498, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Martin Simon, Esq., Attorney for Licensee.
Samuel B. Helfand, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charges were served upon the licensee alleging that:

1. On or about October 27, 1938, there was transferred to Olga Gietter, a person who would fail to qualify as an individual because she has resided in New Jersey only since November 20, 1936, more than ten per centum (10%) of your stock, which transfer, had it occurred before the issuance of your present license would have prevented the issuance thereof, contrary to R. S. 33:1-31 and R. S. 33:1-12.1.

2. You failed and neglected to file with the Municipal Board of Alcoholic Beverage Control of the City of Newark a notice in writing of the aforesaid transfer within ten (10) days after the occurrence thereof, contrary to R. S. 33:1-34.

At the hearing it was admitted that Olga Gietter had not resided in New Jersey for at least five years prior to October 27, 1938, at which time five of the twelve outstanding shares of stock owned by the corporate licensee were transferred into her name. The attorney testified that, at that time, he did not believe Olga Gietter was disqualified because of the provisions of R. S. 33:1-25, although he conceded that, under the provisions of R. S. 33:1-12.1, said Olga Gietter was then disqualified from holding 10% or more of the stock of the corporation. It appears that prior to the hearing herein the stock formerly held by Olga Gietter had been transferred to a fully qualified individual.

It was admitted that the licensee failed or neglected to file a notice of change of ownership within ten days after October 27, 1938, as is required by R. S. 33:1-34. The only excuse offered was that the stock transferred on October 27, 1938 was deposited in escrow with another attorney to protect some interest of a former holder of the stock.

There does not appear to have been any deliberate intent to violate the law. That, of course, is no excuse but may be taken into consideration in fixing the penalty. I shall suspend the license for ten days.

Subsequent to the institution of these proceedings, the above mentioned license has expired and has been renewed by the issuance of plenary retail consumption license No. C-790 (1939-1940) to 12 East Park Street Tavern, Inc.

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

ORDERED, that plenary retail consumption license No. C-790 (1939-1940), heretofore issued to 12 East Park Street Tavern, 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 ten (10) days, effective August 19, 1939 at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

10. FAIR TRADE - DISCOUNT ON CASE LOTS - APPLIES NOT ONLY TO THE FULL CASE BUT ALSO TO ADDITIONAL BOTTLES PROVIDED THE TRANSACTION IS A SINGLE SALE TO ONE CUSTOMER - HEREIN OF THE DIFFERENCE BETWEEN MULTIPLES AND MINIMUMS.

Dear Commissioner:

The writer would greatly appreciate being informed how a 10% discount on Teachers Scotch affects a customer if the sale is for 21 bottles.

What we would like to know is if the 10% applies not only to full case of 12 bottles but the extra 9 bottles on same sale.

Very truly yours,
Weston & Co., Inc.

August 14, 1939

Weston & Co., Inc.,
Newark, N. J.

Gentlemen:

A "case lot" discount means that the discount is applicable to not less than one full standard case, whether twelve quarts or fifths or twenty-four pints or half-fifths. It means that a full case of just one article is sold to one customer. It therefore does not apply to a case of assorted items however that assortment is made. Re City Hall Delicatessen, Bulletin 277, Item 5.

I see no reason why the discount should apply only to multiples of case lots. That is something radically different from making the case lot the minimum amount. Consequently, I rule that the permissible (I have not paused to verify the amount) discount may be given not only on the full case but also on the additional nine bottles provided it is a single sale to one customer.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK LIFTED.

In the Matter of the Seizure of a still and other personal property at 162 Dutch Mill Road, in the Township of Franklin, County of Gloucester and State of New Jersey, on January 17, 1939.	Case #5216 ON SUPPLEMENTAL HEARING CONCLUSIONS AND ORDER

Fred A. Gravino, Esq., for Joseph Tirelli.
Harry Castelbaum, Esq., for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

By Conclusions and Order entered June 24, 1939, it was ordered that all of the buildings erected on premises known as 162 Dutch Mill Road, Franklin Township, New Jersey, be padlocked for a period of six months, commencing June 30, 1939. That order was made after failure of anyone to appear at a hearing duly held to determine whether certain still parts and other personal property should be confiscated, and the premises padlocked. Subsequent to the entry of the order, supplemental hearing was scheduled to allow Joseph Tirelli, the occupant of the dwelling on the premises, to contest so much of the order as imposed the padlock.

At the supplemental hearing, at which Tirelli appeared with counsel, he testified, through an interpreter, that he is fifty-seven years of age; that he resides on the premises in question with his wife and four children; that he owned the property until about three years ago when he lost it through foreclosure; that he is absolutely destitute and penniless; that if he is required to quit the premises, he will be without the means to find other living quarters; that he exists only on the crops he is able to raise and what small contributions are made to him by one of his sons; that there is, in addition to the dwelling, a barn in which is housed two mules, a horse, a goat and farm implements, and a shed containing a stove where the family bread is baked by his wife.

Concerning the still, Tirelli testified that three days before the seizure, he had rented the barn for $10.00 to a man for the purpose of storing empty barrels; that he had no knowledge that any illicit alcoholic beverage activity was taking place in the barn, and that had he known it, he would not have allowed it to go on.

The Chairman of the Franklin Township Committee corroborates the straitened financial circumstances of Tirelli, declaring that if the premises are padlocked, "we will have to find a home for them and place them on the relief rolls".

I am satisfied that his eviction would result in undue hardship. The interests of society would seem to be best served by permitting him to remain on the premises, keep his livestock and farm implements in the barn, and to use the shed to bake the family bread.

Accordingly, it is ORDERED that so much of the order heretofore entered on June 24, 1939 as orders "that the premises known as 162 Dutch Mill Road in the Township of Franklin, County of Gloucester and State of New Jersey, including all of the buildings erected thereon, being the premises in which the illicit still was found,

shall not be used or occupied for any purpose whatsoever for a period of six months, commencing the 30th day of June, 1939 and terminating the 30th day of December, 1939.", be and the same is hereby vacated and set aside.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 15, 1939.

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

August 15, 1939

Re: Case No. 284

Hearing was held to determine whether applicant for a solicitor's permit is disqualified therefrom by reason of conviction of a crime involving moral turpitude. See R. S. 33:1-25, 26.

In 1926 applicant, then twenty years of age and unmarried, engaged in illicit intercourse with a fifteen year old girl in a public garage. As a result of this misconduct, he was convicted in 1927 for carnal abuse (having pleaded guilty thereto) and given a suspended sentence and placed on three years' probation. Two other men were also convicted for having carnally abused the girl at about the same time.

In explanation of the offense, applicant testified that his family's car was being kept in a public garage; that one midnight, when driving the car into the garage, he saw a girl in the garage office; that as he was parking the car, the girl, who in his opinion seemed to be "a good twenty", came over and struck up a conversation with him; that she then entered the car, where they "became friendly" and engaged in intercourse; that he then offered to take her home but the garage owner said he would "take care of" her himself; that, as he (applicant) left the garage, another man drove in; that this new arrival and the garage owner were the two other men who were also convicted for illicit intercourse with the girl. Applicant further testified that the girl, who had been reported as missing, stated to the police, when they discovered her in a park the next day, that she had been forced into the intercourse; that, however, he had used neither violence nor persuasion to overcome any reluctance on the girl's part.

Applicant's denial of force or persuasion is corroborated not only by the comparative leniency of the sentence imposed upon him but also by departmental investigation of the girl's character. The head of the Children's Bureau of the City of Passaic states:

> "This girl is known to us under three aliases: -----, ----- and -----. She first came to our attention as a juvenile, age 13, in 1925 and our last contact with her was in 1935. During this time she has been in constant trouble and has implicated 6 men. The delinquent acts which she was charged with are: Theft, running away from home, arrested twice in a raid on a disorderly house, committed twice to a correctional institution, running away from institution on 2 occasions and having 2 illegitimate children."

Whether carnal abuse, or so-called statutory rape, involves moral turpitude depends upon the facts of each case. Re Case No.68, Bulletin 203, Item 13. Cf. Re Case No. 66, Bulletin 202, Item 6; Re Case No. 182, Bulletin 208, Item 10; Re Case No. 219, Bulletin 242, Item 3. For an instance involving moral turpitude, see Re Case No. 268, Bulletin 313, Item 6.

Where, as here, the offense is a chance encounter with a girl of grown appearance and loose character, who voluntarily engaged in the intercourse, I do not believe that the crime, while reprehensible from a moral standpoint, involves turpitude within the meaning of R. S. 33:1-25, 26. Re Case No. 68, supra.

However, applicant falsely denied, in his sworn application for permit, that he had ever been convicted of any crime. He testified that the application was filled out by the manager of the company for which he seeks to work as a solicitor; that the manager merely asked whether he had ever been convicted of any crime within the last five years; and that he (the applicant) signed the application without reading it.

An applicant for permit or license, in signing and swearing to his application containing a false denial of conviction of crime, may not seek ready escape from responsibility merely by claiming that some one else filled out the application for him.

In view of the foregoing, it is recommended that applicant be declared eligible for the solicitor's permit, despite his above conviction in 1927, but that no such permit issue until , 1939 in penalty for his false affidavit.

Nathan Davis,
Attorney-in-Chief.

Disapproved: Whatever she was, she was but 15 years old. That's rotten. The permit is denied.

D. FREDERICK BURNETT,
Commissioner.

3. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure of a quantity of alcoholic beverages at 7 Patten Place, in the City of Newark, County of Essex and State of New Jersey.	S-165 ON HEARING CONCLUSIONS AND ORDER

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

No other appearances.

BY THE COMMISSIONER:

On November 20, 1938, two officers of the Newark Police Department observed the night manager of Neiden Bar & Grill, Inc., then holder of plenary retail consumption license C-60 for premises 300 Market Street, Newark, deliver six pint bottles of Green River whiskey in a vehicle not bearing proper transit insignia. Disciplinary proceedings thereafter instituted and heard at this Department resulted in a finding of guilt on this charge. Re Neiden Bar & Grill, Inc., Bulletin 303, Item 4.

Alcoholic beverages, though tax paid, when transported in an unlicensed vehicle, are illicit (R.S. 33:1-1(i)), and subject to confiscation (R.S. 33:1-66(c)).

The officers, after seizing the liquor, turned the same over to this Department. At a hearing duly scheduled to determine whether the seized property should be forfeited, no one appeared to contest the proceedings. No cause, therefore, is shown why confiscation should not result in this case.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. 33:1-66, and shall be retained for the use of hospitals and State, county and municipal institutions, or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: August 16, 1939.

14. GAMING - BINGO - HEREIN OF MOONLIGHT BINGO WITH SAILS.

Dear Commissioner:

The Charity Fund of the local Lodge of Elks are to hold a moonlight boat ride on the night of September 8th. The thought occurred to the Committee in charge that it would be a novel idea to combine a Bingo party with the sail.

The question of confliction with the sale of beverages now arises, and we ask that you pass on this question. The bar on the steamer is located in the first deck, whereas the Bingo will be held on the third or top deck. No beverages will be sold to anyone participating in the actual Bingo game.

Yours very truly,
Julius A. Parnes.

August 16, 1939

Julius A. Parnes, President,
Majestic Travel Bureau,
Elizabeth, N. J.

My dear Mr. Parnes:

I have yours of the 15th.

Bingo on the top deck, under the circumstances stated, will be O.K. If the moonlight fails you, don't run the Bingo nearer the moonshine than the middle deck, or whatever they call it nautically.

Best wishes.

Cordially yours,
D. Frederick Burnett
Commissioner.

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