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

BULLETIN NUMBER 209 NOVEMBER 1, 1937

1. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE

In the Matter of the Application to Remove Disqualification because of a Conviction of Crime Involving Moral Turpitude - Pursuant to Provisions of Chapter 76, Laws of 1937 -

CONCLUSIONS AND ORDER

Case No. 6

BY THE COMMISSIONER:

Petitioner was convicted in Atlantic County, New Jersey, in 1919, of the crime of robbery. This conviction involved moral turpitude. In re Blank, Bulletin 149, Item 2. Hence, petitioner was disqualified from being a licensee or being employed by a licensee in this state.

Hearing was held on his petition to remove this disqualification in accordance with provisions of Chapter 76, P.L. 1937. The evidence showed substantially the following:

Petitioner was discharged from State's Prison after serving six months of a five to fifteen-year sentence, having been recalled by the sentencing judge and placed on probation. He immediately commenced work at his trade as a glass-maker. In 1923 he married and now has two children, a boy thirteen years of age and a girl four years old. In July 1925, after the factory in which he was employed as a glass maker burned down, he purchased a tire and gasoline business of his own in Atlantic City, which he operated until 1932. Petitioner states that he lost his business due to the depression. He then moved with his family to Cumberland County, where he lived at his brother's house for about a year during which time he was out of work. In 1933, he obtained work with a P.W.A. project in Cumberland County which continued until April 1934, when he obtained a position with a wholesale liquor dealer of Atlantic City, first as a truck driver and later as a solicitor. It was then discovered that he was disqualified from such employment by reason of his conviction.

In addition to the petitioner's own testimony as to his conduct and mode of livelihood during the past ten years, three character witnesses appeared and testified in his behalf at the hearing. One is the postmaster in the town where petitioner now resides. This witness testified that he has known the petitioner for at least fifteen years and characterizes him as a splendid law-abiding citizen. So also was the sworn testimony of a magistrate and Township Committeeman of a municipality close to the one wherein petitioner resides. This witness stated that he has known the petitioner practically all his life. A Councilman from petitioner's own municipality also testified that he had known petitioner all his life and had an opportunity to observe his conduct and character during the past ten years. He also attests to the good reputation and exemplary conduct of petitioner. Commendatory letters were also received from the Mayor of the municipality wherein petitioner now resides, from a justice of the peace in his county, from his family doctor in Atlantic City (as to the years between 1925 and 1932) and from a merchant in Cumberland County.

After examining the evidence, I am satisfied that the petitioner has conducted himself in a law-abiding manner for the past ten years and that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is on this 23rd day of October, 1937, ORDERED that petitioner's disqualification from obtaining or holding a license or permit, because of the conviction set forth herein, be and the same is hereby removed in accordance with provisions of Chapter 76, P. L. 1937.

D. FREDERICK BURNETT
Commissioner

2. DISCIPLINARY PROCEEDINGS - ELECTION DAY RULE - FIVE DAYS PENALTY

October 22, 1937.

Harry F. Bach, Clerk,
Township Committee of Franklin,
Franklinville, New Jersey

Dear Mr. Bach:

I have staff report of the proceedings before the Township Committee of Franklin Township against Earl M. Jones, charged with having sold alcoholic beverages on Primary Election Day, September 21 last, while the polls were open for voting.

I note the licensee pleaded guilty and that the license was suspended for a period of five days beginning 2:00 A.M., October 25, 1937.

Please extend to the members of the Council my sincere appreciation for their prompt and salutary action in this case.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - TEN DAYS PENALTY.

October 22, 1937

Axford J. Wood, Clerk,
Township Committee of Mansfield,
Oxford R.D. 1
New Jersey

Dear Mr. Wood:

I have staff report of the proceedings before the Township Committee of Mansfield Township against Raymond Housel, t/a Cedar Castle, charged with having sold alcoholic beverages to minors.

I note the licensee pleaded guilty to the charge and that his license was suspended for a period of ten days.

The penalty administered is severe but its severity should go a long way to inculcate a profound respect for law and order in your community. Licensees soon know

that a governing body means business. We are having much trouble all along the line with sales to boys and girls under age. Your Committee has gone a long way to stop it.

Please extend to the members of your Committee my sincere appreciation for their cooperation in law enforcement.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

4. APPELLATE DECISIONS - SOLOMON vs. BLOOMFIELD

ABRAHAM SOLOMON, Appellant,	)	
-vs-	)	ON APPEAL
TOWN COUNCIL OF THE TOWN OF BLOOMFIELD, Respondent.	)	CONCLUSIONS

Walter P. Reilly, Esq., Attorney for Appellant.
Edward C. Pettit, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial by respondent, Town Council of the Town of Bloomfield, of appellant's application for plenary retail distribution license for premises located at 425 Broad Street, Bloomfield, New Jersey.

Prior to May 1937 a resolution was adopted by respondent limiting the number of plenary retail distribution licenses in Bloomfield to 14 and that number was actually issued. When appellant filed his application on May 6, 1937 for such license, there was considerable sentiment among certain members of the Council in favor of the lifting of the limitation. However, Councilman Oscar J. Rees reported to his fellow-councilmen that the appellant had theretofore, for the purpose of influencing his judgment, offered him a partnership in the business for which the license was sought. The ultimate effect of this report is well expressed in the following testimony of Mayor Harry E. Newell who had been favorably disposed towards the application:

> "My attention was again drawn to these allegations concerning Mr. Solomon making an offer with Mr. Rees to take him in partnership. By that time, Mr. Rees had returned from Europe and I discussed the thing with Councilman Huck, and it was agreed that, in all fairness to all concerned, we should have a showdown. Then we

> decided that portion of the conference would be adjourned to bring Mr. Rees and Mr. Solomon together and they were brought together. Mr. Solomon, as has been stated previously, denied that he had made any such offer to Mr. Rees, but Mr. Rees stood firm, and it was my feeling that it was a question of taking one man's word against another's, and that, under the circumstances, I did not feel that I could conscientiously vote to grant the license."

The application was denied by votes of all the Councilmen, except Councilman Charles J. A. Ernst, who did not vote.

At the hearing on appeal, considerable testimony was introduced with respect to the issue of whether the license was properly denied in view of the limitation and on the related ground that there were already enough licensed premises in the vicinity. However, this issue need not be dealt with since the determination of this appeal rests upon an independent consideration.

There is no doubt that a municipal issuing authority may, and indeed, should, deny an application for a license where it appears that the applicant has improperly attempted to influence the judgment of the issuing authority or one of its members in the consideration of the application. If the liquor business is to be kept on a decent plane, license privileges must be confined to persons whose ethical standards are wholly incompatible with attempts to corrupt the judgment of the officials charged with its regulation.

Under the Rules Governing Appeals, the burden of establishing error in the respondent's action rests upon the appellant. Where a municipal issuing authority denies an application on the basis of a fact controverted on appeal, its action will not be upset unless the evidence adduced by the municipal issuing authority does not reasonably sustain its finding. Cf. Granger vs. Oakland, Bulletin #91, Item 1; Hodanish vs. Trenton, Bulletin #121, Item 6. Councilman Rees reported to his fellow-councilmen that the appellant had improperly attempted to influence him and testified fully to the same effect during the hearing on the appeal. Notwithstanding the appellant's denial, the Commissioner is unable to find that the evidence introduced on his behalf sustains the burden of proof imposed upon him to establish that the respondent erred in accepting as true the report of Councilman Rees and in concluding, on the basis thereof, that the appellant was not worthy of holding a license.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: October 22, 1937.

Many a person, far younger, indulges in spook and burglar thrills without being branded as incompetent. Her answers to questions were entirely responsive and her demeanor was normal. She is not under medical care for physical ailment or otherwise and witnesses on her behalf testified that she is a "sensible woman" and "all right." Appellant testified that in the event she obtains the license applied for, she will personally have charge of the conduct of the licensed business but, as in the past, will be assisted by a bartender and one other person.

In view of all of the foregoing, respondent's evidence with respect to appellant's temporary aberrations lends inadequate support for its conclusion that she will be unable properly to conduct a licensed place of business. She has done so before, and, with the aid of her employees, she should readily be able to do so now.

The action of respondent is, therefore, reversed.

Respondent is directed to issue the license as applied for.

D. FREDERICK BURNETT
Commissioner.

Dated: October 23, 1937.

6. ELIGIBILITY FOR EMPLOYMENT OR SOLICITOR'S PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 22, 1937.

Re: Case #186

This is to determine applicant's eligibility to obtain a solicitor's permit or to be employed by a liquor licensee in this State.

In 1933, applicant, then twenty years of age, broke into certain premises at night and stole sixty dollars worth of cue balls, cigars, candy, etc. He was duly apprehended for this criminal behavior and charged with unlawful breaking and entering and larceny. Pleading guilty to such charge, applicant was duly convicted and placed on probation for three years.

Applicant's crime indubitably involves moral turpitude within the meaning of Section 22 of the Control Act. Re Case #179, Bulletin 206, item 12. It is unnecessary to consider an alleged crime of larceny in 1931, of which applicant was apparently convicted but which he denies having committed.

It is recommended that applicant be declared disqualified under Section 22 of the Control Act from obtaining a solicitor's permit or from being employed by a liquor licensee in this State.

NATHAN DAVIS
Attorney

Approved:

D. FREDERICK BURNETT
Commissioner

7. APPELLATE DECISIONS - WIDLANSKY vs. HIGHLAND PARK

ROSE WIDLANSKY, trading as PARK WINE & LIQUOR STORE,

Appellant,

-vs-

BOROUGH COUNCIL OF THE BOROUGH OF HIGHLAND PARK,

Respondent.

ON APPEAL

CONCLUSIONS

St. Elmo Ferrara, Esq., Attorney for Appellant

Horace E. Barwis, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This appeal is from the denial of a plenary retail distribution license for a concession in a confectionery store, #335 Raritan Avenue, Borough of Highland Park.

The borough is a residential community, with a population of approximately 8600. Appellant's premises are located in a business section. The two distribution establishments already outstanding are in the immediate vicinity. One, a drug store, is located across the street from where appellant proposes to operate; the other, an "A. & P." store, is a block away.

Respondent sets up that the two distribution establishments in existence are a sufficient number of "package" stores to satisfy the needs of the borough. Appellant contends that this reason is insufficient because it is not predicated upon a formal regulation limiting the number of distribution licenses in the municipality. This contention is without merit. A local issuing authority may validly refuse a license if there are a sufficient number already outstanding in the municipality. Formal ordinance or resolution is not necessary in order to accomplish this salutary result. Palmarozza vs. Keansburg, Bulletin 190, item #10, and cases therein cited.

Moreover, on August 2, 1937, an ordinance limiting the number of distribution licenses to two was adopted on final reading.

It is true that this ordinance was enacted after the present application was denied and this appeal was filed.

A similar situation occurred in Franklin Stores vs. Elizabeth, Bulletin #61, Item 1. In that case, too, the application was made and denied before the ordinance was enacted. It was there contended by the appellant that such subsequently enacted ordinance did not validate denial of the application; that such an ordinance could not have any retroactive effect; that the appeal must be adjudicated on the factual situation as it existed at the time of the denial of the application.

I there ruled:

"The spirit and not the letter of the law should dominate. Sound public policy requires that if a special privilege is to be given, the grant must be consonant with such policy at the time the grant is made. Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW..... True, the ordinance had not been adopted at the time of the denial, but it was in actual, bona fide contemplation. The good faith of respondents is demonstrated by the actual adoption of such ordinance the month following the denial. I find, as fact, that the policy existed at the time the application was denied even though it was not formally manifested until a later date. The contention of appellant fails, not because the application was barred by the ordinance but rather because to grant it now would be in defiance of the local policy manifested by the ordinance in active, bona fide contemplation at the time the application was denied."

See also Tenenbaum vs. Salem, Bulletin #109, Item 1 and cases therein cited; Burdo vs. Hillside, Bulletin 191, Item 10; and Duffield vs. Allenhurst, Bulletin 202, Item 1.

So, in the case at bar, the ordinance is a factor because I ought to take it into consideration in determining whether the license should be granted now. In cases, however, where the ordinance is enacted after application is denied, appellant should have an opportunity to contest the reasonableness of the municipal regulation and its application to him.

Appellant has had just such opportunity, and has, in fact, contested the ordinance at the hearing on this appeal, which was held after the ordinance had been passed on first reading. It was one of the grounds set forth in respondent's answer. The reasonableness of the ordinance and its application to appellant has thus been made an issue in this case.

On this issue, I find that the municipality has a population of 8600 and, in addition to the two package stores, which, incidentally, are in the immediate vicinity of appellant's premises, as above set forth, there is one club and six consumption licenses issued and outstanding. There is no convincing evidence to demonstrate that the limitation of two package goods stores is unreasonable. There is no evidence at all of any personal discrimination against appellant because the two distribution licenses which have been issued are mere renewals of former licenses.

In Colonna vs. Montclair, Bulletin 39, Item 8, I said:

"The burden of proof requisite to demonstrate that a community needs or will be more properly or conveniently

serviced by another liquor store is difficult to sustain, especially in the case of a distribution license for off-premises consumption. For, with telephone and transportation facilities, such a store can properly service an area of much greater ambit than a consumption license. It is very largely a matter for the exercise of sound discretion by the governing body of the particular municipality. Its decision may be reversed if it fails in the ultimate test of public necessity and convenience."

Appellant has not sustained the burden of proof in showing that public necessity and convenience require the issuance of a third distribution license.

I find that the ordinance was adopted in good faith. A year before a similar ordinance then proposed was tabled only because the Borough Council determined to control the situation at that time without any formal limitation. All the present ordinance did was to crystallize the policy which had already been in force in this municipality.

The action of respondent is, therefore affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: October 25, 1937

8. SOLICITOR'S PERMIT - MORAL TURPITUDE - FACTS EXAMINED -CONCLUSIONS

October 23, 1937.

In re: Case #184

Permit was issued to solicitor pursuant to his sworn application and questionnaire containing the denial of conviction of any crime. A check-up, after his fingerprints were taken, revealed he had been convicted of the crime of larceny in the State of Maryland in the year 1933; that he had served nine months in the Maryland House of Correction under sentence of the Criminal Court of Baltimore City.

At the hearing held in connection with this matter, the solicitor testified that he is twenty-eight (28) years of age; that at the time the crime was committed he was twenty-three (23) years old; that he, together with several other employees of the company for which he worked, stole a carton of ten suits of clothes valued at $241.15; that of the loot, he had taken as his share two suits of clothes which he kept for his own use. By way of extenuation, the solicitor stated he was married at the time and earned only $15.50 a week and that his wife was about to become a mother and he needed money for food and clothing. The solicitor also stated he had pleaded guilty in addition to the charge of "larceny" to another charge of "receiving stolen goods" consisting of a pair of shoes which had been stolen from his employer's warehouse by one of the other employees and given to him, that his sentence of nine months was on both charges, running concurrently.

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Ordinarily, larceny and receiving stolen goods are crimes involving moral turpitude. In re Bergenfield, Bulletin 70, Item 2; In re Application for A.R.C. Permit, Case No. 9, Bulletin 94, Item 1, and cases therein cited; In re Application for Solicitor's Permit, Case No. 42, Bulletin 156, Item 4. While it does not appear that this solicitor is a hardened criminal and apparently has a clear record except for these two missteps, the facts show clearly that he deliberately participated in the theft of the suits and knowingly received the stolen shoes. Under these circumstances, the crimes involved moral turpitude. Applicant cannot be given the benefit of the doubt under the strict construction rule set forth in Case No. 36, Bulletin 149, Item 1, because he was well above the age of eighteen (18) at the time the crime was committed.

It further appears that in the questionnaire filed at the time the solicitor was employed by the licensee, he swore he had never been convicted of a crime. In two other subsequent affidavits filed on solicitor's applications, he persisted in this falsehood. At the hearing he admitted he had concealed his convictions because he thought they would disqualify him.

It is recommended that this Solicitor's permit be cancelled forthwith.

JEROME B. McKENNA,
Attorney.

Approved:

D. FREDERICK BURNETT
Commissioner

9. DISQUALIFICATION - REMOVAL PROCEEDINGS - LIFTING ORDER MADE

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of Chapter 76 P.L. 1937 -	)	CONCLUSIONS
Case No. 11	)	AND ORDER

Frederic M. P. Pearse, Jr., Esq., Attorney for Petitioner

BY THE COMMISSIONER:

In November, 1919, petitioner was convicted in this State for grand larceny of an automobile tire, tube, and rim. In 1921, he was released from prison, after having served less than his original sentence. In 1935, he received a partial pardon which restored to him the right of suffrage, but which did not remove the disqualification imposed by Section 22 of the Control Act. Re Tanski, Bulletin 164, Item 12.

Since petitioner's release from prison in 1921, he has continuously resided in the same city. In 1924, he divorced his wife, and their only child, a son, was placed in petitioner's custody and is now, through petitioner's efforts, a sophomore in attendance at a leading eastern university.

After his release and until 1935, petitioner has been successively employed as a helper on an ice-wagon, handy-man at a fishery, and houseman at a hotel. During this period and especially at the present time, he has also been doing skilled carpentry work.

The sexton of the synagogue where petitioner is a member has testified that he has known petitioner for approximately the last twenty years, that he has heard nothing against petitioner, and that petitioner is well-esteemed in his community. A neighbor of fifteen years standing, and a neighbor of ten years standing, corroborate this testimony. Petitioner's fingerprint record is faultless since his crime in 1919. The local Chief of Police has forwarded a communication affirming the fact that nothing stands against petitioner's record since his release from prison in 1921.

I am satisfied from the evidence before me that petitioner has conducted himself in a law-abiding manner since 1921 and that his association with the alcoholic beverage industry in this State will not be contrary to public interest.

It is, therefore, on this 25th day of October, 1937, ORDERED that petitioner's disqualification from obtaining or holding a license or permit, because of the conviction set forth herein, be and the same is hereby removed in accordance with the provisions of Chapter 76, P. L. 1937.

D. FREDERICK BURNETT
Commissioner

10. COUPONS - RULES CONCERNING CONDUCT OF LICENSEES - THE RULE FORBIDDING RETAIL LICENSEES TO GIVE COUPONS APPLIES TO SALES OF ALCOHOLIC BEVERAGES AND NOT TO OTHER COMMODITIES.

October 26, 1937.

J. H. Goodwin & Co.,
Westwood, N. J.

Gentlemen:

Rule 20 of the State Rules Concerning Conduct of Licensees provides, among other things, that no retail licensee shall, directly or indirectly, offer or furnish any coupons, premiums or similar inducements with the sale of alcoholic beverages for off-premises consumption.

The distribution of coupons by the Westwood package goods licensees in connection with the Merchants' Association's

proposed sales promotion campaign would be in violation of the rule and cause for the revocation of the licenses if the coupons are given out with the sale of alcoholic beverages. I understand that some of the stores in Westwood are so-called "combination" stores, that is, they are groceries or delicatessens which have a license to sell liquor. The rule applies, of course, only to the sale of liquor. It has no application to the sale of groceries or delicatessen goods.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

11. REFERENDUM - A REFERENDUM REMAINS EFFECTIVE, NOT ONLY FOR THREE YEARS, BUT UNTIL A DIFFERENT RESULT IS REACHED BY LATER REFERENDUM.

My dear Commissioner:

I am writing regarding the issuance of licenses for the sale of alcoholic beverages in Washington Township in Gloucester County.

Three years ago this fall, the question was voted upon in this Township and the ballot was unanimously against the issuance of licenses for the dispensing of alcoholic beverages within the limits of the said Township. The Township Committee has kept faith with the expressed desire of the people and have issued no licenses.

Now as we understand the matter that action of three years ago is binding for three years which period would be up this year. We desire to know this: Does that action continue to hold good until it is again placed on the ballot and some opposing action taken?

We have been informed by the County Clerk's office that no petition has been presented to them to place the question on the ballot this year and since according to law it cannot therefore be submitted at this late date. We want to be sure that this township is kept dry. We therefore will appreciate your advice in the matter and the ruling upon the same.

Cordially yours,

CHARLES RUDOLPH SMYTH

October 28, 1937.

Rev. Charles Rudolph Smyth,
Bethel Methodist Episcopal Church,
Hurffville, N. J.

My dear Rev. Smyth:

As a result of the referendum held in Washington Township on November 6th, 1934, it became unlawful to issue liquor licenses in respect to that municipality. That referendum remains effective until a different result is reached by a later referendum.

The three year period which you mention is material only to the extent that within such period no further referendum on the same question may be held.

It is now possible to hold another referendum but, until held, the result of the original referendum stands.

Very truly yours,

D. FREDERICK BURNETT
Commissioner

12. MORAL TURPITUDE - WHAT CONSTITUTES - FRAUDULENT MISAPPLICATION OF BANK'S FUNDS.

In Re application by)
)
_____)
) CONCLUSIONS
for Solicitor's)
Permit)
)

For the applicant, Coult, Satz & Tomlinson (Meyer E. Ruback, of counsel).

BY THE COMMISSIONER:

The issue presented is whether the applicant is qualified to obtain a solicitor's permit, notwithstanding his conviction in 1935 for violation of the National Bank Act (12 U.S.C. Sec. 592).

Under the provisions of Sections 22 and 23 of the Control Act, no person who has been convicted of a crime involving moral turpitude may be employed by or connected in any business capacity whatsoever with any licensee. Consequently, if the applicant's conviction was for a crime involving moral turpitude, he is, in all events, disqualified from holding the solicitor's permit applied for pursuant to Section *14b (1) (P.L. 1935, c. 256), which would authorize him to solicit the sale of alcoholic beverages within this State on behalf of a licensed New Jersey wholesaler.

In April 1937 I found that the crime for which the applicant had been convicted involved moral turpitude. This finding was made after full consideration of the record of two hearings previously held, during which the applicant testified in detail with respect to his version of the circumstances resulting in his conviction. See Bulletin #170, Item #6. Thereafter, a further hearing was granted to the applicant on the plea that he had not previously been represented by counsel. In June 1937, after considering the record of the further hearing at which the applicant was represented by counsel and again testified, together with a witness on his behalf, I reaffirmed my previous finding. See Bulletin #184, Item #3.

The matter is now again before me on a formal petition for reconsideration. In support of this petition, counsel has filed a Memorandum and has argued orally.

The material facts attendant upon the applicant's violation and the nature of the resulting conviction may be stated briefly: In 1933 and previous thereto, applicant had a checking account at the Richmond National Bank of New York. Over a period of several months beginning in October 1932, the applicant issued a series of checks against this account and delivered them to various stock brokerage firms. The applicant did not have a sufficient balance to meet these checks and had only a nominal credit at the bank. Nevertheless, as the result of a previous arrangement with - - - - -, a bookkeeper at the bank, they were all honored and the applicant thus effected a transfer of the bank's funds, aggregating $9701.79, to which he was not entitled. In July 1935, the bookkeeper and the applicant were indicted for violation of the National Bank Act (12 U.S.C., Sec. 592). The indictment charged that the bookkeeper, - - - - -, "did wrongfully, wilfully, knowingly and fraudulently and with intent to injure and defraud the said member bank, then and there wilfully misapply certain of the moneys, funds and credits of the said member bank and convert the same to the use, benefit and advantage of the said - - - -," and that - - - - - did "unlawfully, wilfully, knowingly and feloniously and with intent to injure and defraud the said member bank *** aid, abet, command, counsel and procure the said - - - - - to wilfully misapply certain of the moneys, funds and credits of the said member bank as aforesaid." Pleas of guilty were entered by the applicant and the bookkeeper. The applicant was placed on probation for five years, with the proviso that he make full restitution.

Counsel for the applicant asserts in his Memorandum that "all that appears is the fact of over-draft and the non-payment thereof." I do not agree. The statute interdicts fraudulent misapplication of the bank's funds. The indictment to which the applicant pleaded guilty expressly charged him with participating in such fraudulent conduct. The applicant now seeks to assert, despite his plea of guilty, that there was no actual intent to defraud on his part, and that he had merely overdrawn his account without any previous understanding with the bookkeeper. In this connection it is sufficient to refer to the following excerpt from his own testimony at one of the hearings:

> "Q****with whom did you make arrangements to have it honored?
> A With the bookkeeper.
> Q Had you spoken with the president or any of the directors? A No.
> Q. Why did you speak with the bookkeeper?
> A Because of the confidence they had in me and because I thought I would be able to keep any promise I made. How it was done, I don't know. It showed my account as an overdraft.
> Q There was no juggling of figures? A No.
> Q It was perfectly apparent once the Receiver got there what had happened? A Right.
> Q Why did you go to the bookkeeper instead of one who had authority to enter into a transaction of this kind?
> A That's what I should have done.
> Q Did you do it because you didn't think the president would give you that much credit?
> A Probably.

Q How big an account did you carry there?
A I banked there eight or nine years and carried balances as high as five thousand dollars or more.
Q Did you ever have any credit in that bank?
A Yes, nominal credit.
Q Did you ever make formal application for a loan and been refused? A No.
Q Where did you make arrangements with the bookeeper?
A Right on the telephone.
Q Was he a personal friend of yours?
A He was.
Q Is that why he did it for you?
A Yes."

The sole question of any substance is whether the applicant's conviction for participating in the fraudulent misapplication of the bank's funds in violation of the National Bank Act involves moral turpitude. I am satisfied that it does. In general, offenses are considered to involve moral turpitude if they are inherently shameful or immoral, irrespective of the fact that they are punishable by law. Cf. Rudolph vs. United States ex.rel. Rock, 6 F. (2d) 487 (App. D.C.1925), Cert. denied 269 U.S. 559 (1925). Within this test, fraudulent conduct declared criminal by statute has invariably been held to involve moral turpitude--if it does not bring a sense of shame or moral wrong, it ought to. See Ponzi vs. Ward, 7 F.Supp. 736 (D.Mass. 1934) and In Re Comyns, 132 Wash. 391, 232 Pac. 269 (1925) (using mail with intent to defraud); United States ex.rel. Millard vs. Tuttle, 46 F. (2d) 342 (D.La. 1930) (encumbering property with intent to defraud); United States ex.rel. Medich vs. Burmaster, 24 F. (2d) 57 (C.C.A. 8th, 1928) (concealing assets in bankruptcy). Cf. United States ex.rel. Portada vs. Day, 16 F. (2d) 328 (D. N.Y. 1926) (fraudulent issuance of check).

Counsel for the applicant advances the contention that the only crimes which involve moral turpitude are those offenses which were malum in se at common law and cites authorities which are allegedly in support. None of those authorities dealt with fraudulent conduct declared to be criminal by statute and no useful purpose would be served by their detailed consideration here. In the language of the court in Rudolph vs. United States, supra,

> "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."

Conduct accepted as inherently base and immoral under all modern standards and declared criminal by statute might nevertheless not constitute criminal offenses at common law. The courts have consistently recognized that such conduct involves moral turpitude. See Bendel vs. Nagle, 17 F. (2d) 719 (C.C.A. 9th, 1927) (statutory rape); Lane ex.rel. Cronin vs.Tillinghast, 38 F. (2d) 231 (C.C.A. 1st, 1930) (statutory lewdness); In Re

Wallace, 19 S.W. (2d) 625 (Mo.1929) (seduction); People vs. Kaufman, 5 P. (2d) 1114 (Colo.1931) (embezzlement). Cf. Grievance Committee vs. Broder, 112 Conn. 263, 152 Atl. 292 (1930); where the court disbarred an attorney on the ground inter alia that his conviction for adultery (which was not indictable at common law, State vs. Lash, 16 N.J.L. 380 (Sup. Ct. 1838); State vs. Gray, 37 N.J.L. 368 (Sup.Ct. 1875)) involved moral turpitude. See Bulletin #202, Item #6.

I am not unmindful of the humane considerations which have been advanced in favor of the applicant nor am I unaware of the severity of the consequences attendant upon his disqualification. Nevertheless, the facts establish that he was convicted of having fraudulently participated in the misapplication of bank funds; under the law, this constitutes a conviction for a crime involving moral turpitude and disqualifies him from being employed by a licensee.

I must, therefore, and do find in accordance with my previous findings that the applicant is not qualified to hold a solicitor's permit.

Frederick Burnett

Commissioner.

Dated: October 29, 1937.