

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark, N. J.

BULLETIN 524

AUGUST 19, 1942.

1. MORAL TURPITUDE - CRIME OF ASSAULT AND BATTERY WITH INTENT TO KILL INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - CONTINUED EMPLOYMENT AS BARTENDER NOTWITHSTANDING DISQUALIFICATION AND NOTICE THEREOF - APPLICATION DENIED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, Pursuant )  
to R. S. 33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 223  
-----)

BY THE COMMISSIONER:

In 1929 petitioner, then about sixteen years of age, was convicted and fined \$10.00 in police court on a charge of petty larceny. In 1930 he was convicted of carrying a concealed weapon (a revolver) and sentenced to the reformatory, from which he was released on parole in 1931. In 1932 he was arrested on the charge of burglary, which case is still pending. Later, in 1932, he was convicted in police court (apparently on the charge of being disorderly) and received a suspended sentence. His last offense was in 1935 when, while riding in his car, he sought to hijack a load of illicit alcohol from another car, struck a pole, then left his car and fired several shots at the other driver. For this he was convicted of assault and battery with intent to kill, sentenced to serve eighteen months in the penitentiary, and released in February 1937.

Aside from petitioner's other convictions, this last conviction clearly involved moral turpitude and hence disqualified him from being employed by a liquor licensee in this State. R. S. 33:1-25, 26. Petitioner now seeks removal of such disqualification pursuant to R. S. 33:1-31.2 on claim that he has led a decent, law-abiding life during the past five years and has truly reformed.

Petitioner's extensive and comparatively fresh criminal record, which includes the pending burglary charge, is in itself sufficient to deny relief to him because it shows a criminal bent of mind, and hence his present association with the liquor industry would be against public interest notwithstanding the fact that he has not been convicted of a crime during the past five years. However, a far more forceful reason for denying relief to petitioner is that, up to the date of hearing in the case in June 1942, he persisted in working as a bartender, although in January 1942 the local Chief of Police told him that he was disqualified from such employment by reason of his criminal record. This deliberate disregard of the warning by the Chief of Police evidences petitioner's continued disrespect of law and order.

Hence I shall not, at this time, exercise my discretionary power to lift petitioner's disqualification.

The petition is therefore denied.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: August 5, 1942.

2. ACTIVITY REPORT FOR JULY, 1942

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u> Licensees and employees - - -	16	Bootleggers - - - - -	11
Total number of persons arrested - - - - -	27		

<u>SEIZURES:</u> Still - 1 to 50 gallons daily capacity - - - - -	0
50 gallons and more daily capacity - - - - -	0
Total number of stills seized - - - - -	0
Mash - gallons - - - - -	10
Motor vehicles - Trucks - - - - -	1
Passenger cars - - - - -	2
Total number of motor vehicles seized - - - - -	3
Beverage alcohol - gallons - - - - -	0
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -	46.38
Wine - gallons - - - - -	80.32
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -	13.43

RETAIL LICENSEES:

Number of premises in which were found:	
Illicit (bootleg) liquor - 2 "Fronts" (concealed ownership) - - -	4
Gambling devices - - - - - 3 Improper beer tap markers - - - - -	2
Prohibited signs - - - - - 3 Stock disposal permits necessary - - -	10
Unqualified employees - - 117 Other types of violations - - - - -	11
Total number of premises where violations were found - - - - -	128
Total number of premises inspected - - - - -	1,436
Total number of unqualified employees found - - - - -	258
Total number of bottles gauged - - - - -	10,394

STATE LICENSEES:

Premises inspected - - - - -	19
License applications investigated - - - - -	16

COMPLAINTS:

Investigated, reviewed and closed - - - - -	256
Investigation assigned, not yet completed - - - - -	503

LABORATORY:

Analyses made - - - - -	88
"Shake-up" cases (alcohol, water and artificial coloring) - - - - -	12
Liquor found to be not genuine as labeled - - - - -	12

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -	37
Persons fingerprinted for non-criminal purposes - - - - -	420
Identification contacts with other enforcement agencies - - - - -	221
Motor vehicle identifications via N. J. State Police Teletype - - - - -	4

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -	26
Cases instituted at Department - - - - -	20
Cancellation proceedings instituted at Department - - - - -	2

HEARINGS HELD AT DEPARTMENT:

Appeals - - - - -	19	Eligibility - - - - -	14
Application for warehouse - - - 1		Investigatory hearing - - -	1
(hearing on objections)		Seizures - - - - -	4
Disciplinary proceedings - - - 32			
Total number of hearings held - - - - -	71		

PERMITS ISSUED:

Unqualified employees - - - - -	3,964
Solicitors - - - - -	2,212
Social affairs - - - - -	222
Home manufacture of wine - - - - -	75
Disposal of alcoholic beverages - - - - -	63
Miscellaneous permits - - - - -	673
Total number of permits issued - - - - -	7,209

Respectfully submitted,  
Sydney B. White,  
Chief Inspector.

3. APPELLATE DECISIONS - TURETSKY v. GARFIELD - CASE REMANDED WITH INSTRUCTIONS TO ISSUING AUTHORITY.

JOSEPH TURETSKY, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 CITY COUNCIL OF THE CITY )  
 OF GARFIELD, )  
 )  
 Respondent )  
 )  
 ----- )

ON APPEAL  
CONCLUSIONS AND ORDER

Chandless, Weller & Kramer, Esqs., by Julius E. Kramer, Esq.,  
 Attorneys for Appellant.  
 Henry L. Janowski, Esq., Attorney for Respondent.  
 Philip A. Oliva, Esq., Attorney for Objector, Garfield Tavern  
 Owners Association.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of appellant's application for a plenary retail distribution license for premises 114 Outwater Lane, Garfield.

The sole ground for such denial, as stated in respondent's answer, is that "tavern owners located on Outwater Lane, in the said City of Garfield, objected to the issuance of said Plenary Retail Distribution License because it would compete with their business."

The vote against appellant's application was 3-1. None of the three Councilmen who voted to deny appeared at the hearing. It is clear, however, that the only reason considered by the majority Councilmen was that the issuance of the license to appellant would afford competition to other licensees located in the vicinity of appellant's proposed premises.

The test in the issuance of liquor licenses is not the interference with the private rights of any individual but rather the welfare of the entire community. It has been held that the fact that holders of existing licenses would be injured in the profitable conduct of their businesses is not, standing alone, a valid ground for denial of a license. Sobocienski et al. v. Newark et al., Bulletin 239, Item 8; Licata v. Camden, Bulletin 342, Item 1; Delia v. New Providence et al., Bulletin 408, Item 3.

Had respondent made an independent determination that there already existed a sufficient number of licensed establishments in the vicinity in question or in the community at large and that, therefore, there was no public need or necessity for the issuance of an additional license to appellant as applied for, it may well be that such determination would be deemed valid and sustained on appeal. However, that is a question which, in the first instance, must be passed upon by the local issuing authority. Since respondent reached no personal conclusion on that issue, this case must be remanded so that respondent may inquire into and make a definitive finding on that issue. Cf. Schwartz et al. v. Carteret, Bulletin 250, Item 4; Vasa Temple Association of Kearny v. Kearny, Bulletin 509, Item 6.

Accordingly, the case is remanded to respondent to pass upon all pertinent issues and to determine whether, irrespective of the

competition to existing license holders in the vicinity, a plenary retail distribution license should issue to appellant.

ALFRED E. DRISCOLL,  
Commissioner.

Dated: August 6, 1942.

4. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - 10 DAYS' SUSPENSION,  
LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary )  
Proceedings against )

FREEHOLD LODGE B.P.O. ELKS )  
No. 1454, )  
Broadway and East Main Street, )  
Freehold, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-55 for )  
fiscal year 1942-43, issued by the )  
State Commissioner of Alcoholic )  
Beverage Control. )  
- - - - - )

McDermott & Finegold, Esqs., Attorneys for Defendant-Licensee.  
William F. Wood, Esq., Attorney for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Licensee pleaded guilty to charges (1) and (2), alleging that, on June 8, 1942, it possessed on its licensed premises one twenty-five cent, one ten cent and one five cent "Mills" pull handle jackpot slot machine, which were designed or might be used for the purpose of gambling or playing for money and other valuable things; and charge (3), alleging that, on the same date, it possessed on its licensed premises a punch board and thirty-seven lottery tickets, devices for the purpose of pool-selling and gambling, in violation of Rules 7 and 8 of State Regulations No. 20.

It appears from the Department file that during the course of a routine inspection of the licensed premises on June 8, 1942, investigators found the slot machines in a wall niche opposite the bar. The punch board for chances on boxes of candy, and the tickets for a drawing for defense bonds to be given away as prizes, were found on the back bar.

The licensee represents that the slot machines are no longer on the premises; that the purpose of the drawing was to raise funds for the Christmas Basket Committee; and that there is no profit or private gain to any individual or group of individuals.

It is no excuse that the proceeds obtained by the Lodge from such activities have been or are to be used for charitable purposes. Re B. P. O. Elks, Englewood, Bulletin 492, Item 6. Laudable objectives and high purposes must not be achieved by violating the law. The mere possession of the slot machines or the other devices on the licensed premises is a violation. Yountakah Country Club, Bulletin 488, Item 4; Re Balog, bulletin 499, Item 3.

As to penalty:

If these varied devices were component parts of a gambling establishment, commercial in aspect, conducted in conjunction with the licensed business, possession of each type of device would be treated as a separate violation for which separate penalties would be imposed. Cf. Re Balog, supra. Similarly, if the licensee permitted its patrons to gamble on the licensed premises as a social pastime, it would be a separate violation. Re Thirteenth Ward Republican Club, Bulletin 512, Item 8. However, these factors do not appear to be here involved.

I shall therefore treat the matter as a single violation, for which, since the licensee has an otherwise clear record, the usual penalty of suspension of the license for ten days, less five days for the guilty plea, will be imposed.

Accordingly, it is, on this 6th day of August, 1942,

ORDERED, that Club License CB-55, issued by the State Commissioner of Alcoholic Beverage Control to Freehold B. P. O. Elks No. 1454, for premises at Broadway and East Main Street, Freehold, be and the same is hereby suspended for a period of five (5) days, commencing August 10, 1942, at 1:00 A.M. and terminating August 15, 1942, at 1:00 A. M.

ALFRED E. DRISCOLL,  
Commissioner.

5. CHURCH AND TAVERN - HEREIN OF THE 200 FOOT RULE - LOCAL ISSUING AUTHORITY NOT REQUIRED TO ISSUE LICENSES IN THE IMMEDIATE VICINITY OF CHURCH OR SCHOOL.

July 27, 1942.

Dear Mr. Driscoll:

I heard it rumored this afternoon that Mr. Stansley would be granted a right of way from your department providing he could move his door another ten feet. How true this is I do not know. If this is true, I want to inform the board that we, the Manville Pillar of Fire Church, can also make a change to a better advantage. This we can do by erecting steps on the north side of the entrance and making our driveway another entrance. This would bring our line 25 feet closer to the proposed saloon entrance. That is, our northern gate would be 25 feet nearer to the proposed licensed building. I think it is a shame to have to go thru all this in order to keep a saloon away from the children playing in the school yard right across the street. I do hope and pray that the above is only a rumor and not the truth.

Sincerely yours,

Louis Meretta,  
Pastor, Pillar of Fire Church.

August 6, 1942.

Rev. Louis Meretta,  
Pillar of Fire Church,  
Manville, N. J.

Dear Mr. Meretta:

Our Department has no authority to grant a "right of way,"

nor do we have any intention of doing so. Responsibility for the issuance of licenses lies with the local municipal authority, subject always to the right of appeal to the Commissioner.

It is true that we have been asked to explain to a number of citizens who were apparently interested in an application for a license in Manville, the method of measuring the distance between licensed premises and churches and schools in the neighborhood. We endeavored to explain the rules to these parties in exactly the same manner as they were stated to you when you visited our office. We have further explained to everyone who has indicated any interest, that the local issuing authority is not required to issue a license merely because the proposed entrance to the premises sought to be licensed appears to be more than 200 feet from the entrance to a church or school.

As we pointed out in our letter to the Chairman of the Alcoholic Beverage Committee of the Borough Council, a municipal issuing authority may refuse to issue licenses for premises in close proximity to churches or schools even though the statutory distance is more than 200 feet.

Your suggestion that if the applicant changes the entrance to the proposed premises in order to escape the ban of the 200 foot rule, it may be countered by changing the entrance to your church, demonstrates the absurdity of the present method of measuring distance as prescribed by the statute.

By and large, local issuing authorities should consider first and foremost the welfare of their community -- particularly the welfare of the school children. This welfare is not to be measured by the foot, but rather by a conscientious regard for sound public policy and the common good.

Very truly yours,

ALFRED E. DRISCOLL,  
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS - 5 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against )  
MRS. ROSE SHAPIRO, )  
t/a ANCHOR CAFE, )  
900 Walnut Street, )  
Camden, N. J., )  
Holder of Plenary Retail Consumption License C-116, issued by the )  
Municipal Board of Alcoholic Beverage Control of the City of Camden. )  
----- )

CONCLUSIONS  
AND  
ORDER

Mrs. Rose Shapiro, Pro se.  
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant is charged with selling alcoholic beverages during

prohibited hours on Sunday, May 3rd, 1942, and on Sunday, May 10th, 1942, in violation of Section 5 of the ordinance adopted December 27th, 1934, by the Board of Commissioners of the City of Camden.

The defendant pleads not guilty as to the sale on Sunday, May 3rd, 1942, and pleads guilty to the sale on Sunday, May 10th, 1942.

The file in this case discloses that on Sunday, May 10th, 1942, at about 10:30 P.M., Chief Frost of the Camden Police saw one Charles Somerville leaving defendant's licensed premises with a package. Thereupon, the Chief questioned Somerville, who admitted that he had just purchased a quart of wine from the husband of the licensee. Defendant, by her plea, has admitted that this sale was made on May 10, 1942.

As to the alleged sale on May 3rd, 1942: At the hearing, said Charles Somerville testified that on the previous Sunday, namely, May 3rd, 1942, at about 10:00 A.M., he had been admitted to the licensed premises through a side door thereof, by the husband of the licensee and that he had then purchased a bottle of wine for thirty-five cents from the husband of the licensee, who was the only person on the premises. The licensee, however, testified that on May 3rd, 1942, she and her husband left Camden at 7:30 A.M. and went to New York City and that neither of them was on the licensed premises on that date. Since time is of the essence of the violation, it is possible that the witness for the Department may have been mistaken as to the date upon which he made the purchase. In view of the sworn testimony of the licensee and the complete lack of corroboration of the time of the sale, I conclude that the Department has not sustained the burden of proof as to the alleged sale during prohibited hours on May 3rd, 1942 and hence that portion of the charges is dismissed.

As to penalty for the violation which occurred on May 10th, 1942: The licensee has no previous record. The minimum penalty for sale during prohibited hours is five days. Since no aggravating circumstances appear, I shall impose the minimum penalty.

Accordingly, it is, on this 7th day of August, 1942,

ORDERED that plenary retail consumption license C-116, heretofore issued to Mrs. Rose Shapiro, t/a Anchor Cafe, by the Municipal Board of Alcoholic Beverage Control of the City of Camden for the current fiscal year, for premises 900 Walnut Street, Camden, be and the same is hereby suspended for a period of five (5) days, effective August 17th, 1942, at 3:00 A.M. and concluding August 22d, 1942, at 3:00 A.M.

ALFRED E. DRISCOLL,  
Commissioner.

7. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION BY CLUB LICENSEE - FAILURE TO DISCLOSE MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against )

EIGHTH WARD PROGRESSIVE REPUBLICAN CLUB, 1727 VanBuren Street, Camden, New Jersey, )

CONCLUSIONS AND ORDER

Holder of Club License CB-7 for the fiscal year 1941-42, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )

Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a club license which expired June 30, 1942, was served with charges alleging in substance that (1) it falsified its application for license for the fiscal year 1941-42 by failing to disclose therein that Frederick Henderson and Charles Edwards, Sr., were the real and beneficial owners of the license, in violation of R.S. 33:1-25; and (2) it permitted said Frederick Henderson and Charles Edwards, Sr., to exercise the privileges of its license contrary to R.S. 33:1-26, in violation of R.S.33:1-52.

At the hearing herein no appearance was entered on behalf of the defendant club, probably because it did not renew its license for the current fiscal year.

Statements in the Departmental file made by the nominal treasurer and by one of the nominal trustees of the club show that neither of them knew how or why they were appointed to their respective offices other than that it was the act of either Henderson or Edwards. The treasurer says that he is not an active member; that he has not attended a meeting for over two years; and that he never handled any money for the club. The trustee says that, in so far as he knows, there has not been a general meeting of the members or a trustees' meeting in the eighteen months during which he has been trustee; that he knows nothing about the club's finances or activities; and that he is a trustee in name only.

Moreover, Henderson, who claimed to be the president, and Charles Edwards, Sr., alleged to be the secretary and steward of the club, have made written statements which establish that the club was a mere subterfuge under which they operated a liquor business at the premises.

Expiration of the license does not bar proceedings to revoke it. R.S. 33:1-31. State Regulations No. 15. The "Club's" misstatement in its application was deliberate. The licensed business was fraudulently operated under the guise of a club license for the private gain of an individual.

As far as can be ascertained from the Departmental records,

the club does not hold any liquor license in New Jersey at the present time, nor has there been a license issued for the premises in question. Hence, the only practical penalty that can be imposed is to revoke such license, even though it has expired. This will prevent the club from obtaining another liquor license in this State for the period of two years from the date hereof. R.S.33:1-31. Cf. Re Capelli, Bulletin 482, Item 6.

Accordingly, it is, on this 8th day of August, 1942,

ORDERED that Club License CB-7, heretofore issued to Eighth Ward Progressive Republican Club by the Municipal Board of Alcoholic Beverage Control of the City of Camden for premises 1727 VanBuren Street, Camden, for the fiscal year 1941-42, be and the same is hereby revoked, effective immediately.

ALFRED E. DRISCOLL,  
Commissioner.

8. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - FAILURE TO DISCLOSE MATERIAL FACTS - PERMITTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - UNLAWFUL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against  
  
SHAPIRO, INC.,  
491 Southard Street,  
Trenton, N. J.,  
  
Holder of Plenary Retail Consumption License C-263 for fiscal year 1941-42, issued by the Board of Commissioners of the City of Trenton, which license, subject to the outcome of these proceedings, was transferred to and thereafter renewed for the current fiscal year 1942-43 by  
  
CHARLES GEROFISKY,  
  
same address.

CONCLUSIONS  
AND  
ORDER

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David Shapiro, Vice-President and Treasurer, appearing for  
Defendant, Shapiro, Inc.  
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, Shapiro, Inc., pleads guilty to charges alleging, in substance, that (1) in violation of R.S. 33:1-25, it falsified its application for license for the fiscal year 1941-42 by failing to disclose therein that David Shapiro was the real and beneficial owner of the licensed business; and (2) in violation of R.S. 33:1-52, it permitted said David Shapiro to exercise the rights and privileges of its license.

The file in this case discloses that David Shapiro was the record owner of only one of the thirty shares of defendant corporation. In fact, as he admitted at the hearing herein, he was the

real and beneficial owner of all of the shares of said corporation. Apparently, the license was taken in the name of the corporation because David Shapiro believed that he lacked the necessary residential requirement.

At the present time the situation has been corrected by the transfer of the license to and the subsequent renewal thereof by Charles Gerofsky.

The application in question was for a license for the fiscal year 1941-42. Hence it does not come within the ruling as to increased penalties to be imposed where a "front" is created or continued after July 1, 1942. Bulletin 512, Item 9.

I shall suspend the license for a period of ten days. Re Cliffside Park Town Tavern, Bulletin 492, Item 4. The penalty will be effective against the license now held by Charles Gerofsky, who obtained the transfer and renewal subject to any penalty imposed herein.

Affiliate proceedings were brought to cancel the license outright because of the corporation's illegal set-up. However, in view of the above disposition, these proceedings for cancellation are dismissed. Re A. M. Home Stores, Inc., Bulletin 512, Item 6.

Accordingly, it is, on this 10 day of August, 1942,

ORDERED that plenary retail consumption license C-263, formerly held by Shapiro, Inc. and now held by Charles Gerofsky, for premises at 491 Southard Street, Trenton, be and the same is hereby suspended for a period of ten (10) days, effective August 17, 1942, at 2:00 A.M. and concluding August 27, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,  
Commissioner.

9. MORAL TURPITUDE - COMMERCIALIZED GAMBLING ON LARGE SCALE INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPLICATION GRANTED.

In the Matter of an Application )  
to Remove Disqualification be- )  
cause of a Conviction, Pursuant )  
to R.S. 33:1-31.2. )  
Case No. 232. )  
----- )

CONCLUSIONS  
AND  
ORDER.

BY THE COMMISSIONER:

In March 1935 petitioner was arrested and charged with making book on horse races and, upon his guilty plea, was placed on probation for three years and fined \$500.

A report from the Probation Department states that "they (the police) raided the cigar store operated by \_\_\_\_\_, at \_\_\_\_\_, and confiscated fifty horse racing bets, which \_\_\_\_\_ admitted were his, and further stated that he was taking bets himself. The officer further contends that \_\_\_\_\_ did a big horse betting business."

Commercialized gambling may or may not involve moral turpitude, depending upon the facts of each case. In view of the fact that petitioner was a principal and not merely an agent for another,

and that the gambling enterprise was fairly extensive in scope, I am of the opinion that petitioner's conviction herein involves the element of moral turpitude. Cf. Case No. 283, Bulletin 337, Item 14; Case No. 189, Bulletin 485, Item 10.

A lawyer, a doctor and a dentist testified on behalf of petitioner. They have all known petitioner upwards of ten years. They state that petitioner's reputation in the community for being an honest and law-abiding citizen is good. For the past fifteen years petitioner has been conducting a luncheonette and cigar store. The only other conviction against petitioner occurred in April 1937, when he pleaded guilty to violating a city ordinance prohibiting possession of bagatelle machines. Conviction of a local ordinance, however, is not viewed as a conviction of a "crime" within the meaning of the Alcoholic Beverage Law. Re Case No. 361, Bulletin 441, Item 11.

I am satisfied that petitioner, whose criminal record is clear for more than five years last past, has fully rehabilitated himself, and that his association with the alcoholic beverage industry will not be detrimental to the public interest.

Accordingly, it is, on this 10th day of August, 1942,

ORDERED that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby lifted, in accordance with the provisions of R.S. 33:1-31.2.

ALFRED E. DRISCOLL,  
Commissioner.

10. ELIGIBILITY - MANSLAUGHTER BY AUTOMOBILE DOES NOT NECESSARILY INVOLVE MORAL TURPITUDE - LIKewise WITH TRANSPORTATION OF ILLICIT LIQUOR - APPLICANT NOT DISQUALIFIED BY STATUTE - FITNESS TO HOLD LICENSE TO BE DETERMINED BY ISSUING AUTHORITY.

August 11, 1942.

Re: Case No. 449.

In 1929, applicant, while driving a truck, accidentally struck a young boy and caused his death, for which applicant was convicted of manslaughter and fined \$100. In 1936 he pleaded non vult to the charge of transporting illicit liquor and was fined \$200.

Applicant seeks a ruling as to whether these convictions involved moral turpitude and hence disqualify him from holding a liquor license or working for a liquor licensee in this State. R.S. 33:1-25, 26.

The criminally negligent operation of an automobile resulting in an unintentional death, although constituting the crime of manslaughter, does not necessarily involve moral turpitude. Re Case No. 240, Bulletin 290, Item 7. The light sentence imposed indicates that there were no aggravating circumstances in the case.

As to applicant's conviction of violating the liquor laws, it appears that he was caught transporting some 225 gallons of bootleg alcohol. He says that he had been out of work and jumped at the chance of earning a few days' pay; that he had actually been working as a truck driver for four days.

Possession or transportation of illicit alcoholic beverages

does not per se constitute a crime involving moral turpitude. Cf. Re Case No. 400, Bulletin 491, Item 2. That element is present when the violation is connected with the operation of an illicit still (Re Case No. 291, Bulletin 346, Item 16); also, where one of the principals is convicted of large scale commercial bootlegging activities; and where other aggravating circumstances appear. Cf. Re Case No. 371, Bulletin 453, Item 6. In the present instance, applicant was apparently merely a minor figure in the case.

I do not believe that either of applicant's convictions involved the element of moral turpitude within the meaning of the Alcoholic Beverage Law. He is, therefore, not automatically barred from the liquor industry by reason of his criminal record.

Hence, it is recommended that applicant be advised that he is eligible to hold a liquor license or be employed by a liquor licensee in this State.

Whether applicant is personally fit to hold a liquor license is a separate matter, to be determined in the first instance by the issuing authority to whom applicant may hereafter apply for a liquor license or permit.

Harry Castelbaum,  
Attorney.

Approved:

ALFRED E. DRISCOLL,  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE AND DISTRIBUTION OF ALCOHOLIC BEVERAGES IN VIOLATION OF LOCAL ORDINANCE BY LICENSEE OF ADJOINING MUNICIPALITY - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
  
CARL ZIMMERER,  
1039 Broad Street,  
Bloomfield, N. J.,  
  
Holder of Plenary Retail Distribution License D-11 for the fiscal year 1941-42, and now holder of Plenary Retail Distribution License D-11 for the current (1942-43) year, issued by the Town Council of the Town of Bloomfield.

CONCLUSIONS  
AND  
ORDER

Levy, Fenster & McCloskey, Esqs., by John J. McCloskey, Esq.,  
Attorneys for Defendant-Licensee.  
Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail distribution license in the Town of Bloomfield, pleaded guilty to a charge alleging that on Sunday, May 24, 1942, at about 3:45 P.M., he sold and distributed a case of beer in the Town of Montclair in violation of an ordinance of the latter town prohibiting the sale and distribution of alcoholic beverages therein after 2:00 A.M. on Sundays.

It appears that, on the day in question, one Robert Sempier was apprehended by a Montclair police officer while speeding in an automobile owned by the licensee. Upon being questioned, Sempier admitted that he was employed by the licensee and had just made a delivery of a case of beer to a Montclair residence.

In attempted extenuation, licensee explains that, prior to making the delivery, he had phoned the Montclair Police Department and was informed that, because the pertinent ordinance carried no penalty provision, deliveries of alcoholic beverages could be made in Montclair on Sundays with immunity. Assuming this statement to be true, it presents no defense to the proceedings herein which look to a suspension of the liquor license.

From all of the facts, it would appear that the violation was unwitting, and not deliberate. Nevertheless, licensees must learn that, if they desire to do business in municipalities other than where their licensed premises are located, they must observe the regulations of those other municipalities as scrupulously as they are required to observe their own local regulations.

The licensee has no previous record. Under all the circumstances, I shall impose a penalty of ten days, less five days for the guilty plea, leaving a net penalty of five days.

Although this proceeding was instituted during the last licensing year, which expired June 30, 1942, it does not abate but remains fully effective against the defendant's renewal license for the current (1942-43) year. State Regulations No. 15.

Accordingly, it is, on this 13th day of August, 1942,

ORDERED that Plenary Retail Distribution License D-11, heretofore issued to Carl Zimmerer by the Town Council of the Town of Bloomfield, for the current fiscal year, for premises 1039 Broad Street, Bloomfield, be and the same is hereby suspended for a period of five (5) days, effective August 17, 1942, at 2:00 A.M. and concluding August 22, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,  
Commissioner.

12. APPELLATE DECISIONS - DROMSKY v. TOWNSHIP OF PENNSAUKEN.

TEKLA DROMSKY, trading as )  
GARDEN CAFE, )

Appellant, )

On Appeal

v. )

CONCLUSIONS AND ORDER

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF PENNSAUKEN, )

Respondent. )

George G. Tartar, Esq., Attorney for Appellant.  
Thomas F. Salter, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to renew appellant's

plenary retail consumption license for her tavern, the "Garden Cafe," 1906- 49th Street, Pennsauken Township.

Apparently, respondent denied the renewal because the tavern is located in what is claimed to be a residential type of neighborhood and has, according to the protest of local residents, become a noisy and distressing factor there.

However, in thus denying the renewal, respondent expressly stated that it was doing so "without prejudice" to appellant's seeking a transfer "to another suitable premises."

In taking such action respondent seemingly was under the erroneous notion that appellant could apply for transfer of her last year's license (1941-2) even after expiration. As matters actually stand, appellant, in view of the local quota, may become a licensee at other premises in the Township only if first obtaining a renewal of her license for the current year (1942-3) and then applying for a transfer to the other location.

There has now been submitted, on the appeal, a consent-order, signed by attorneys for both appellant and respondent, that the case "be remanded to the Township Committee of the Township of Pennsauken for the issuance of a license to the Appellant subject to the condition that the same be transferred to a new location."

In view of the proffered consent-order and respondent's aforesaid misconception when acting on the renewal application in question, I shall remand this case to respondent to consider whether, in its sound judgment as the local issuing authority, it wishes to deny the application outright or to grant it upon special condition that appellant apply for a transfer to a suitable location within a designated period of time and such other conditions as may appear reasonable and desirable. Should any such conditions be imposed, they must, as with all special conditions imposed upon issuance of the license, be submitted to me in accordance with R.S. 33:1-32 for my approval.

Accordingly, it is, on this 13th day of August, 1942,

ORDERED that this case be, and the same is hereby remanded to respondent, the Township Committee of the Township of Pennsauken, to proceed in accordance with this decision.

ALFRED E. DRISCOLL,  
Commissioner.

13. PLENARY RETAIL CONSUMPTION LICENSES - NOT CONVERTIBLE INTO PLENARY RETAIL DISTRIBUTION LICENSES.

August 14, 1942.

Samuel Moskowitz, Esq.,  
Secretary, Hudson-Bergen County  
Retail Liquor Stores Association,  
Union City, N. J.

Dear Sir:

There is no provision in the Alcoholic Beverage Law which permits conversion of a license of one type to a license of another type. It seems to me that it is immaterial whether the proposed conversion involves an increase or decrease of privileges. I agree, therefore, with the result reached in Re Bright,

Bulletin 45, Item 6; Re Duffy, Bulletin 103, Item 1, and Re Boyce, Bulletin 224, Item 11.

The only previous ruling which permitted conversion to a type of license affording different privileges under the Alcoholic Beverage Law was made in Re Keevil, Bulletin 158, Item 11. That ruling, which permitted conversion of a club license into a plenary retail consumption license, seems to me to be inconsistent with the other rulings referred to herein. The mere fact that public policy was promoted by the conversion would not be sufficient, in my opinion, to permit the conversion in the absence of statutory authority to so convert. If the question presented in Re Keevil, supra, is hereafter presented to me, I shall overrule the decision therein.

I have carefully considered your argument and can see no valid reason for overruling the previous conclusion that a plenary retail consumption license may not be converted into a plenary retail distribution license.

Very truly yours,

ALFRED E. DRISCOLL,  
Commissioner.

14. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF UNQUALIFIED ALIEN - PERMITTING UNQUALIFIED ALIEN TO SELL AND SERVE ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 11 AND R.S. 33:1-26 - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against  
  
LOUIS BADER, t/a BADER'S CAFE,  
538 Kaighn Avenue,  
Camden, New Jersey,  
  
Holder of Plenary Retail Consumption License C-38 for fiscal year 1942-43, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.  
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CONCLUSIONS  
AND  
ORDER

Louis Bader, Defendant-Licensee, Pro se.  
G. George Addonizio, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant has pleaded guilty to the charge that:

"On or about December 16, 1941, and on divers days prior thereto, you knowingly employed and had connected with you in a business capacity Jacob Bader, a person who would fail to qualify as a licensee because of non-citizenship, without a permit from the State Commissioner of Alcoholic Beverage Control, in that you allowed, permitted and suffered the said Jacob Bader, a Russian national, to tend bar and sell and serve alcoholic beverages, in violation of Rule 1 of State Regulations No. 11 and R.S. 33:1-26."

The Department file shows that there was a prior disciplinary proceeding instituted by the issuing authority against the license for the last fiscal year, on charge that the licensee had

sold alcoholic beverages on the licensed premises during prohibited hours on Sunday, which resulted in suspension of the license for a period of three days. During the course of this proceeding, it developed that the employee who sold the alcoholic beverages in question was Jacob Bader, the licensee's father. This was an additional violation in that Jacob Bader could not be so employed because he was a Russian alien. Hence, the present disciplinary proceeding was instituted by this Department.

Since these offenses, although subject to separate penalties are inter-related and were uncovered at the same time, I shall not, on this score, consider the instant charge to be a second offense requiring increased penalty. However, the licensee has committed other violations which must be considered. In February 1939, the licensee was convicted in police court for selling alcoholic beverages during prohibited hours, and in April 1940, was again convicted in police court for selling alcoholic beverages to minors.

It is represented on licensee's behalf that he was actually innocent of these charges and that his trial and acquittal for these same offenses by the issuing authority in disciplinary proceedings confirms his statements and, hence, that these convictions should likewise not result in an increased penalty.

I have given careful consideration to this plea, as well as to the representation that by reason of his being at present in the armed forces licensee is unable to appear at this Department and present evidence of his innocence of the police court charges. While I cannot completely disregard his convictions, after trial, in the police court, and must treat them as aggravating the present offense to some degree, nevertheless the divergent views of the issuing authority and the police court judge as to the licensee's guilt of the 1939 and 1940 charges, as well as the practical impossibility of the licensee presenting his defense in person at this time, indicate that I should be as lenient as the circumstances permit.

The usual penalty imposed on a first offender for employing a disqualified person is a five-day suspension of the license. The minimum increase of penalty where the record discloses even one prior violation is likewise five days. The license will, therefore, be suspended for a period of ten days, less five days for the guilty plea, or a net of five days.

Accordingly, it is, on this 14th day of August, 1942,

ORDERED that Plenary Retail Consumption License C-38, issued for the current fiscal year by the Board of Commissioners of the City of Camden to Louis Bader, t/a Bader's Cafe, for 538 Kaighn Avenue, Camden, be and the same is hereby suspended for a period of five (5) days, commencing at 2:00 A.M. on August 24, 1942, and terminating at 2:00 A.M. on August 29, 1942.

*Alfred E. Driscoll*  
Commissioner.