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

BULLETIN 531 OCTOBER 9, 1942.

1. DISCIPLINARY PROCEEDINGS - PERMITTING KNOWN PROSTITUTE AND PERSON OF ILL REPUTE IN AND UPON LICENSED PREMISES, IN VIOLATION OF RULE 4 OF STATE REGULATIONS NO. 20 - EMPLOYMENT OF PERSON WHO WOULD FAIL TO QUALIFY AS A LICENSEE BY REASON OF CONVICTION OF CRIME, IN VIOLATION OF R. S. 33:1-26 - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against PHILIP SCOTT and CAMILLO CARABELLI, Cookstown-Pointville Road, New Hanover Township, N. J., Holder of Plenary Retail Consumption License C-11 (fiscal year 1941-42) and holder of Plenary Retail Consumption License C-11 (fiscal year 1942-43) issued by the Township Committee of New Hanover Township.	CONCLUSIONS AND ORDER

Mario Hugo Volpe, Esq., Attorney for Licensees.
William F. Wood, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensees have entered a plea of not guilty to charges alleging:

1. On January 31, 1942 they allowed, permitted and suffered Dorothy _____, a known criminal, prostitute and person of ill repute, in and upon their licensed premises, in violation of Rule 4 of State Regulations No. 20.

2. On November 20, 1942 and divers days prior thereto, they knowingly employed said Dorothy _____, a person who would fail to qualify as a licensee by reason of her conviction of the crime of prostitution, said employment being in violation of R. S. 33:1-26.

The licensed premises are located on the Cookstown-Pointville Road, New Hanover Township, in the vicinity of Fort Dix. The application executed by the defendants for the license covering the 1941-42 period discloses that the licensed premises consist of a one-story frame building used as a "tavern and restaurant" as well as "all grounds adjacent to licensed premises."

From the evidence submitted at the hearing, it appears that on January 31, 1942 four soldiers met Donald J. Barnett, a nephew of defendant Philip Scott, on the licensed premises. After some conversation the latter agreed to procure a girl for the soldiers for the purpose of prostitution. Thereupon the nephew sought out Dorothy _____, who was among a considerable number of patrons then on the premises. The nephew, subsequently convicted of the crime of aiding and abetting prostitution, apparently did not speak to either licensee or anyone else in charge concerning his nefarious business. As a result of his conversation with Dorothy, she left the licensed premises, joined the soldiers, and later had sexual intercourse with one or more of them at a place some distance from the defendants' premises.

The proofs also disclose that Dorothy had been engaged by Scott and employed by the licensees as one of the kitchen help for a period of one or two weeks during November 1941.

A certified copy of the minutes of the Court of Special Quarter Sessions (Burlington County), offered in evidence, discloses that on June 9, 1939 Dorothy had been convicted of prostitution and sentenced to the New Jersey Reformatory for Women.

The sole question is whether the girl was a "known criminal, prostitute or person of ill repute" within the meaning of those terms as used in the State Regulations.

In a statement given to investigators of the Department of Alcoholic Beverage Control on March 6, 1942, Philip Scott admitted that he had known Dorothy _____ for six or more years, and he further admitted that he knew she had been convicted in the courts of Burlington County on a charge of prostitution and that she had been committed to the State Reformatory for Women. At the hearing herein he testified that he meant to say only that he knew she had been sent to the Reformatory. He denied that he knew she had been convicted of prostitution.

Recently, I had occasion to consider this question in Bilowith v. Passaic, Bulletin 527, Item 3. In that case I said:

> "In view of all the evidence, it strains credulity to believe that the true character of these women was unknown to the licensee, his agents or employees. There can be no denying that the women in question were known to be prostitutes by the patrons of the place. Licensees may not avoid their responsibility for the conduct of their premises by merely closing their eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent the improper use of their premises. Fortunately, most licensees do so. In this case the licensee knew, or should have known, the notorious facts known to his customers. The word 'known' as used in Rule 4 of Regulations No. 20 is not restricted to the provable knowledge of the licensee where the notoriety of the condition and the continuity of the conduct charges the licensee with knowledge as in this case."

The evidence convinces me that the girl was a known prostitute. The confidence with which Barnett, the nephew, agreed to procure a girl for the purpose of prostitution, his unerring location of her on the licensed premises, and the alacrity with which Dorothy accepted the proposition, bespeak rather eloquently the true state of affairs. In licensees' favor is the fact that they do not appear to have participated in or been advised of Dorothy's activities on the evening in question.

With respect to the charge of employment, it conclusively appears that the defendant-licensee Scott had known Dorothy and her family for a period of approximately seven years. Both prior to and at the hearing, Scott consistently admitted that he knew that Dorothy had been committed to the Reformatory and was out on parole. Under these circumstances and irrespective of defendant's actual knowledge as to the reason Dorothy had been sent to the Reformatory, he should not have employed the girl without making proper inquiry as to her eligibility for employment on licensed premises. Had diligent inquiry been made, the licensees would have been apprized of the disqualification of Dorothy for employment. In the face of her known

record, it was not sufficient for the licensees to rely upon the alleged statement of the girl that she had worked for other licensees. The licensees, therefore, knew or should have known at the time they employed Dorothy that she was not qualified for employment. I accordingly find them guilty as to charge #2.

The evidence before me fails to disclose that the defendant, Camillo Carabelli, had any actual knowledge either of the employment of Dorothy, her previous record or her presence on the premises. He is, however, chargeable with the knowledge of his partner.

It has been indicated in previous cases that the proper penalty for permitting known prostitutes on licensed premises is, ordinarily, revocation of the license. However, revocation, carrying with it, as it does, a statutory disqualification of both licensees for a two-year period, would be unduly harsh as to defendant Carabelli. I will, therefore, suspend the license for the balance of its term.

Accordingly, it is, on this 24th day of September, 1942,

ORDERED, that Plenary Retail Consumption License C-11 issued to Philip Scott and Camillo Carabelli for the current fiscal year, for premises on Cookstown-Pointville Road, New Hanover Township, by the Township Committee of the Township of New Hanover, be and the same is hereby suspended for the balance of its term ending June 30, 1943, effective immediately.

ALFRED E. DRISCOLL,
Commissioner.

2. ELIGIBILITY - FACTS EXAMINED - CRIME OF SIMPLE ASSAULT AND BATTERY FOUND NOT TO INVOLVE MORAL TURPITUDE - APPLICANT DECLARED ELIGIBLE TO HOLD EMPLOYMENT PERMIT FOR PERSON DISQUALIFIED BY REASON OF CITIZENSHIP - ISSUANCE OF PERMIT ORDERED WITHHELD PENDING APPROVAL BY APPROPRIATE FEDERAL AUTHORITIES.

September 30, 1942

Re: Case No. 460

This case comes before me following petitioner's application for employment permit for person disqualified by reason of citizenship. Applicant is by profession a chef. He desires a permit so that he may be employed as a chef upon licensed premises.

The fingerprint records disclose that petitioner was convicted on May 20, 1942 for simple assault and battery and sentenced to three months in the Essex County Penitentiary. The operation of this sentence was suspended and applicant was released on three years' probation.

At the hearing it appeared that petitioner was arrested and convicted as the result of a charge of having molested a policewoman seated next to him in a theatre. Petitioner's record otherwise appears to be clear.

After having carefully examined the entire record I have reached the conclusion that this single lapse does not show a baseness of conduct warranting a finding that moral turpitude was involved. Cf. Case No. 182, Bulletin 208, Item 10.

Subject to proof that petitioner is otherwise eligible for employment permit, it is recommended that the petitioner be held not to have lost his eligibility for employment as the result of the conviction of the crime aforesaid and that he be so notified.

Petitioner is an enemy alien. The record before me indicates that he may not have registered as required by law and that he is perhaps illegally in this country. The issuance of a permit will be withheld pending approval by the appropriate Federal authorities.

Herbert F. Myers, Jr.,
Legal Assistant.

APPROVED:
ALFRED E. DRISCOLL,
Commissioner.

3. APPELLATE DECISIONS - KELLEY v. MANALAPAN TOWNSHIP AND FORMAN (CASE 1)
Case #1 KELLEY v. MANALAPAN TOWNSHIP AND FORMAN (CASE 2)

JOHN J. KELLEY,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MANALAPAN and HARRY N. FORMAN,

Respondents

ON APPEAL
CONCLUSIONS AND ORDER

Case #2

JOHN J. KELLEY,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MANALAPAN and HARRY N. FORMAN,

Respondents

Benjamin Kleinberg, Esq., Attorney for Appellant.
Bernard H. Weiser, Esq., Attorney for Respondent-Licensee, Harry N. Forman.
M. Raymond McGowan, Esq., Attorney for Objectors.
Bernard Devin, Esq., Attorney for the landlord of the premises from which license was transferred.

BY THE COMMISSIONER:

During the past year and a half appellant has conducted a tavern on the south side of State Highway 33, west of Millhurst, in Manalapan Township. From September 1937 to September 1940 he operated a tavern directly across the highway from his present location at premises owned by the respondent Harry N. Forman. Since April 1942 the latter premises have been conducted as a tavern by Forman under a person to person and place to place transfer of a consumption license from premises licensed to Daley and located on the highway about four-fifths of a mile east of Forman's establishment.

These two appeals have been taken by appellant, first, from such transfer to Forman, and second, from the renewal of Forman's license for the present fiscal year.

Appellant is chiefly concerned with the added competition resulting from placing Forman's license directly opposite his.

Apparently appellant is of the opinion that, as set forth in his petition of appeal, the "granting of the license was a direct violation of the rights of the appellant and the consideration to which he was entitled in the carrying on of his business." This is not so. An issuing authority is not obligated to consider, when reaching a determination of whether to grant a liquor application, whether the financial interests of any pre-existing licensee will be promoted or harmed. The test in the issuance of liquor licenses is the welfare of the entire community and not the interference with the private rights of any individual. It is settled that a denial of a license may not be predicated upon the sole ground of injury to the profitable conduct of the business of existing licensees. 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; Turetsky v. Garfield, Bulletin 524, Item 3.

Appellant produced as a witness one of the three members of the respondent Township Committee. This member, although not present at the meeting at which Forman's transfer application was approved, testified that he was opposed to the number of taverns on this highway (the map offered in evidence shows that there are five, including those of Kelley and Forman, located within a stretch of some two and one-half miles), and that he was in favor of reducing that number. This is a highly laudable attitude, and one with which I am in complete sympathy. However, where, as here, there is no attack made on the personal fitness of the applicant or the suitability of the premises as such, a refusal to transfer, whether from person to person or place to place, cannot, in the absence of good independent cause, be sustained. The transfer of Daley's license to Forman did not increase the number of licenses in the vicinity. It merely transferred its location within that vicinity. Nor is there any proof that it aggravated to any appreciable degree the concentration of licenses in that vicinity. Under such circumstances, respondent issuing authority did not abuse its discretion in granting the transfer in question. Cf. Costa v. Verona, Bulletin 501, Item 2, and cases therein cited.

Appellant also suggests on the record that a traffic hazard has been created by the transfer, that it will depreciate property values in the vicinity, and that the respondent issuing authority was motivated by bad faith when granting the transfer and renewal to Forman. I have examined the record with care and need only state that the proofs, if any, fall far short of substantiating any of these alleged issues.

While it is true that a petition containing the names of approximately 150 persons opposed to the transfer was presented to the Township Committee, it is apparent that the Committee was of the opinion that a majority of the local residents was in favor of approving Forman's application. In any event, the most that can be said is that there was a difference of opinion concerning the advisability of granting the transfer. Under the circumstances, respondent's decision to allow the transfer as requested, and its subsequent renewal of the license, cannot be considered so unreasonable and unwarranted as to constitute an abuse of discretion.

The action of respondent is affirmed.

Accordingly, it is, on this 30th day of September, 1942,

ORDERED, that both petitions of appeal be and the same are hereby dismissed.

ALFRED E. DRISCOLL,
Commissioner.

4. SEIZURES - FORFEITURE PROCEEDINGS - DELIVERY OF ALCOHOLIC BEVERAGES IN CAR SANS INSIGNIA AUTHORIZING THE USE OF SAME FOR TRANSPORTATION OF ALCOHOLIC BEVERAGES - BEVERAGES IN QUESTION TAX-PAID - NO PREVIOUS RECORD - VIOLATION FOUND NOT DELIBERATE - VALIDATING PERMIT REQUIRED.

DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN CAR NOT BEARING PROPER INSIGNIA - LICENSEE GUILTY - VALIDING PERMIT REQUIRED.

Case No. 6296)
In the Matter of the Seizure on July 14, 1942 of a Chevrolet sedan and 24 12-ounce bottles of beer contained therein, in the vicinity of 414 East Third Avenue, in the Borough of Roselle, County of Union and State of New Jersey,)

-and-)

In the Matter of Disciplinary Proceedings against)

SOLOMON FISHMAN, 500 Chandler Avenue, Roselle, N. J.,)

Holder of Plenary Retail Distribution License D-7 for the year 1942-43, issued by the Borough Council of the Borough of Roselle.)

ON HEARING
CONCLUSIONS AND ORDER

- - - - - - - - - - - - - - - - - - - -

Solomon Fishman, Pro Se.
Abraham Merin, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

These cases involve the same issues, hence may be decided together.

The seizure proceedings come before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, and further pursuant to a stipulation entered into by Solomon Fishman on the 15th day of July, 1942, to determine whether Fishman's Chevrolet sedan and twenty-four bottles of beer seized on July 14, 1942 constitute unlawful property and should be forfeited.

Fishman is the holder of a plenary retail distribution license for premises 500 Chandler Avenue, Roselle. Prior to the hearing, the Chevrolet sedan was returned to Fishman when he paid its appraised value of $185.00. This payment was made under protest, pursuant to R. S. 33:1-66, and it was stipulated that the Commissioner should hold a hearing and determine whether said sum should be forfeited or returned. Fishman appeared at the hearing and sought return of the money and the beer.

It is admitted that the licensee attempted to deliver a case of beer by transporting it in his Chevrolet sedan, although he had not obtained an insignia authorizing the use of the vehicle for that purpose.

The licensee's defense is that he violated the law unwittingly. He testified that he conducts a delicatessen and liquor store; that he does a comparatively small liquor business in proportion to his other business; that he, his wife and his son are the only persons employed in the store and that he seldom makes any deliveries.

As to the incident in question, he says that he received an order over the telephone for a case of beer from what appeared to be a new customer, to be delivered at a certain address; that he attempted to make the delivery as an accommodation, hoping to gain a new customer and not realizing that it was a serious offense. He asserts that in the five years that he has held a liquor license, this is the first complaint concerning his conduct of such business. This is confirmed by Departmental records.

Fishman knew that he could obtain an insignia for his car for a nominal sum, but claims that he did not apply for one because he did not make any deliveries of alcoholic beverages. He likewise was aware of the fact that he was required to obtain commercial plates for his car if he wished to obtain an insignia from this Department.

The investigators of this Department who made the seizure had the licensed premises under surveillance because of a complaint concerning the licensee's delivery of alcoholic beverages in his sedan. However, they observed no other deliveries except the instant one, which resulted in the seizure. From the licensee's testimony, resolving all doubts against him, the most that can be inferred is that he may have made similar deliveries on a few occasions.

The licensee's failure to obtain a transportation insignia may have been due, as he says, to the infrequency with which he delivered alcoholic beverages, or, on the other hand, may have been due to his reluctance to obtain commercial plates for his pleasure car. In any event, he violated the law, and hence must be penalized. However, he did not transport bootleg alcoholic beverages -- if he did, I would forfeit the property instanter. On the contrary, tax-paid beverages were being transported; the offense being that the licensee used an unlicensed vehicle. It is a familiar type of case in which a licensee unwittingly oversteps the bounds governing his delivery of alcoholic beverages. See Seizure Case No. 5419 and Seizure Case No. 5613.

I shall, therefore, entertain an application by Solomon Fishman for a special permit, the fee for which will be twenty-five ($25.00) Dollars, to validate the unlawful use of his vehicle in the transportation of alcoholic beverages, and, in addition, he is to pay the costs involved in the seizure and storage of the motor vehicle and beer.

Accordingly, it is hereby ORDERED that there shall be deducted from the $185.00 paid by Solomon Fishman (1) the sum of Twenty-five ($25.00) Dollars, to be applied as the fee for such special permit, and (2) the costs due, paid or incurred in connection with the seizure of the motor vehicle and beer. The balance of the money deposited, as well as the case of beer, is to be returned to Solomon Fishman when the permit is issued.

As to the affiliate disciplinary proceedings to suspend or revoke the license because of the unlicensed transportation, I find the licensee guilty as charged, but will impose no penalty therefor in view that the issuance of such permit will validate the unauthorized transportation by the licensee. See Re Crociata, Bulletin 512, Item 3.

ALFRED E. DRISCOLL,
Commissioner.

Dated: September 29, 1942.

5. ACTIVITY REPORT FOR SEPTEMBER, 1942

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - 6 Bootleggers - - - - - - - 18
Total number of persons arrested- - - - - - - - - - - - - - - - - - 24

SEIZURES: Stills - 1 to 50 gallons daily capacity- - - - - - - - - - - 1
50 gallons and more daily capacity - - - - - - - - 0
Total number of stills seized - - - - - - - - - - - - - - - - - - - 1
Mash - gallons - 0
Motor vehicles - Trucks- - - - - - - - - - - - - - - - - - 2
Passenger cars- - - - - - - - - - - - - - - - 0
Total number of motor vehicles seized - - - - - - - - - - - - - - - 2
Beverage alcohol - gallons - 1.50
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons- - - - 36.38
Wine - gallons -136.44
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons- - 25.61

RETAIL LICENSEES:
Number of premises in which were found:
Illicit (bootleg) liquor - 6 "Fronts" (concealed ownership) - - 2
Gambling devices - - - - - 1 Improper beer tap markers- - - - - 0
Prohibited signs - - - - - 1 Stock disposal permits necessary - 6
Unqualified employees- - -58 Other types of violations- - - - - 2
Total number of premises where violations were found- - - - - - - - 76
Total number of premises inspected- - - - - - - - - - - - - - - - -1,268
Total number of unqualified employees found - - - - - - - - - - - - 69
Total number of bottles gauged- - - - - - - - - - - - - - - - - - -8,692

STATE LICENSEES:
Premises inspected- 22
License applications investigated - - - - - - - - - - - - - - - - - 4

COMPLAINTS:
Investigated, reviewed and closed - - - - - - - - - - - - - - - - - 343
Investigation assigned, not yet completed - - - - - - - - - - - - - 713

LABORATORY:
Analyses made - 116
"Shake-up" cases (alcohol, water and artificial coloring) - - - - - 14
Liquor found to be not genuine as labeled - - - - - - - - - - - - - 0

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made - - - - - - - - - - - - - 29
Persons fingerprinted for non-criminal purposes - - - - - - - - - - 96
Identification contacts with other enforcement agencies - - - - - - 77
Motor vehicle identifications via N. J. State Police Teletype - - - 10

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities - - - - - - - - - - - - - - - - 11
Cases instituted at Department- - - - - - - - - - - - - - - - - - - 34

HEARINGS HELD AT DEPARTMENT:
Appeals- - - - - - - - - - - - 9 Eligibility- - - - - - - - 8
Disciplinary proceedings - -15 Seizures - - - - - - - - - 4
Total number of hearings held - - - - - - - - - - - - - - - - - - - 36

PERMITS ISSUED:
Unqualified employees - 443
Solicitors- 61
Social affairs- 169
Home manufacture of wine- 121
Disposal of alcoholic beverages - - - - - - - - - - - - - - - - - 84
Miscellaneous permits - 171
Total number of permits issued- - - - - - - - - - - - - - - - - - -1,049

Respectfully submitted,

Charles Basile,
Senior Inspector.

MINORS - SALE OF ALCOHOLIC BEVERAGES TO - MINORS WHO MISREPRESENT OR MISSTATE THEIR AGE FOR THE PURPOSE OF SECURING ALCOHOLIC BEVERAGES SUBJECT TO FINE NOT EXCEEDING $200.00.

September 30, 1942

H. C. Scudder, Esq.,
Ewing Township Attorney,
Trenton, N. J.

My dear Mr. Scudder:

I have before me your letters of August 24th and 26th re disciplinary proceedings conducted by the Township Committee against Herman J. Meury, Ewingville Road, charged with selling to minors. It is noted that the licensee was found guilty and had his license suspended for thirty days.

I understand that our investigators observed service of beer at the tavern to eight minors, viz., two 18-year-old girls, one aged 19 and one 20, and to four boys, one aged 16 and three 19. Seven of the minors admitted in signed statements that they were not questioned as to their ages, four that they had visited the licensed premises on previous occasions, and the 16-year-old boy that he had been refused service on a previous occasion because of his youth, but not on the date in question.

From the facts before me, including the record of a license suspension in 1936 for possessing illicit liquor, it appears that the licensee merited the suspension imposed. Under the circumstances, the licensee has now had two strikes. If he is found guilty of a similar offense, it is recommended that he be struck out.

While a licensee may possibly offer a plausible excuse for the sale of alcoholic beverages to a minor who is past his twentieth birthday, it is difficult to conceive of any valid excuse for the sale of alcoholic beverages to a youngster 16 years of age. It should be noted that the same law which makes it a misdemeanor for anyone to sell alcoholic beverages to a minor provides (R.S.33:1-81):

> "Any person who shall misrepresent or misstate his or her age or the age of any other person for the purpose of inducing any licensee or any employee of any licensee to sell, serve or deliver any alcoholic beverage to a person under the age of twenty-one years shall be deemed and adjudged to be a disorderly person and upon conviction thereof shall be punished by fine not exceeding two hundred dollars."

Minors, who by implication misrepresent their age when they order alcoholic beverages, should not be permitted to go unpunished.

Will you express to the members of the Township Committee my sincere appreciation for their handling of the case in question.

Very truly yours,
ALFRED E. DRISCOLL,
Commissioner.

7. APPELLATE DECISIONS - HEISTEIN v. RANDOLPH TOWNSHIP.

JOSEPH HEISTEIN,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF RANDOLPH,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Jack M. Lilien, Esq.
Samuel S. Saiber, Esq. } Attorneys for Appellant.
Morris H. Saltz, Esq., Attorney for Respondent.
I. Ezra Newmark, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to renew appellant's plenary retail consumption license for his tavern located on Brookside Road, Mount Freedom, Randolph Township. The respondent refused the renewal on the ground that appellant conducted his liquor business in an improper and undesirable manner.

The petition of appeal alleges various grounds for setting aside the action of the respondent but at the hearing appellant urged the following specific grounds:

(1) His attorney was precluded from exercising the right of cross-examination of objectors at the hearing before the local issuing authority.

(2) No formal or specific charges were made against the appellant by the local issuing authority.

(3) The local issuing authority abused its discretion when it refused to renew appellant's license.

As to (1): It appears that appellant's attorney did have an opportunity to cross-examine the objectors at the local hearing. While it was true that formal court procedure was not used, the Mayor who presided at the hearing informed the attorney for the appellant that all questions must be directed to him and that anyone desiring to speak must first be recognized by him and given permission to do so. The attorney was not precluded from his right of cross-examination provided he used the method designated by the Mayor. In any event, full opportunity has been afforded to everyone to examine and cross-examine witnesses at the hearing of this appeal.

As to (2): In disciplinary proceedings to revoke or suspend a license, charges must be served upon the licensee. R. S. 33:1-31. However, it is not necessary for an issuing authority to make formal or specific charges against a licensee seeking renewal of his license. Even in the absence of objections, an issuing authority is under a duty to investigate and determine whether or not an application should be granted and to reach a decision as a result of its investigation. Delbono v. New Brunswick, Bulletin 322, Item 12. Whether a renewal should be granted or not is, like the original issuance of the license, a matter to be decided in the light of the best common interests of the public at large. Re Marritz, Bulletin 61, Item 8.

As to (3): Appellant contended that he was being persecuted by a group of townspeople, some of whom are hotel owners and liquor licensees who, he alleges, seek to put him out of business so that they can obtain his trade. He further contended that these people had put "pressure" on the local Township Committee and that the Committee acceded to the will of these people for political reasons.

It is quite obvious, from the testimony, that the objectors have, for many years, tolerated unsatisfactory conditions at appellant's premises in the hope that these conditions would be improved. This seems to be true also as to the members of the Township Committee. The chairman of the Township Committee testified that when the license was renewed in previous years the licensee had been warned to correct conditions.

The evidence shows that during the preceding fiscal year the Township Committeeman in charge of the Police Department received at least three or four different complaints concerning fights and disorders at appellant's premises; that, during that period, intoxicated persons were seen leaving the premises and that there were excessive noises in and near the premises. One witness testified that in May 1942 he saw three or four men "stretched out" in the barroom and three or four men seated at a table who were "obviously drunk." This witness also testified that, on the same occasion after a police officer arrived, there was a "free for all" in the barroom and a call was made to the State Police to send someone down there. It appears that at the hearing below the Recorder of the Township objected to renewal of the license because "it was considered too much trouble."

Improper conduct under a prior license warrants denial of a renewal application. Thaler v. Trenton, Bulletin 138, Item 1; Schelf v. Weehawken, Bulletin 138, Item 10; Buczek v. Piscataway, Bulletin 529, Item 7. While I realize that objections by competing licensees might be motivated solely by a desire to eliminate competition, I feel that, on the evidence produced, the competing licensees are to be commended for attempting to clean up the industry. Moreover, evidence of the unsatisfactory conditions was given by witnesses who are not licensees. There is nothing to show that the members of the Township Committee were improperly motivated. The objectionable conduct, which appears in the record, reasonably sustains the determination of the issuing authority to refuse a renewal license. The action of respondent is, therefore, affirmed.

Accordingly, it is, on this 1st day of October, 1942,

ORDERED, that the appeal be and the same is hereby dismissed; and it is further

ORDERED, that the extension of appellant's 1941-42 license, granted by order of July 1, 1942, to permit appellant to continue to operate pending disposition of this appeal, be and the same is hereby terminated, and that the appellant cease any alcoholic beverage activity thereunder forthwith.

ALFRED E. DRISCOLL,
Commissioner.

8. MORAL TURPITUDE - PARTICIPATION IN EXTENSIVE BOOTLEG ACTIVITIES SINCE REPEAL INVOLVED MORAL TURPITUDE.

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

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 240.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Petitioner, in his application for a solicitor's permit, disclosed that in April 1936 he was sentenced, by a Federal court, to serve a year and a day for operating an illicit still.

A hearing was held to consider whether such crime involved the element of moral turpitude and, if it did, to determine whether petitioner's disqualification should be lifted.

Petitioner testified that he and three other persons were arrested while operating what appears to have been a large illicit still, located in an open section of woodland. The operation, after Repeal, of an illicit still, involves the element of moral turpitude. Re Case No. 211, Bulletin 513, Item 6. Hence, petitioner is disqualified from holding a liquor license or working for a liquor licensee in this State. R. S. 33:1-25, 26.

Petitioner is thirty-four years of age, has always lived in this State and has been married for about a year. This is his only serious criminal offense, although, in 1933, he was convicted, in police court, of driving while intoxicated, and in 1934 he was convicted, by a Justice of the Peace, of carrying a gun during gunning season without a permit. Neither of these two convictions appear to involve moral turpitude.

Prior to petitioner's conviction in 1936, he was employed as a truck driver, farmer and in various other types of work. Following his release from prison in October 1936, he worked for a relative on a poultry farm until February 1937; he then worked in a gas station until December 1939; next he opened up his own gas station, which he had for a little over a year, and then returned to work at the gas station where he had been formerly employed. Here he worked until May 1942, when he was laid off because of the current gasoline shortage. Shortly thereafter he went to work as a truck driver for a wholesale liquor dealer of this State.

Petitioner says that he did not know that his criminal record disqualified him from working for a liquor licensee. It appears that after driving the truck for a month or two, he sought to take on additional work as a solicitor. This led to the filing of his application for a solicitor's permit, in which he disclosed that he was convicted of crime. After this Department had ascertained the facts concerning the crime and informed petitioner that such crime might well involve the element of moral turpitude, he filed the instant petition to remove his disqualification.

The owner of the gasoline station where petitioner was employed appeared as a character witness. He testified that he met

petitioner in 1936 and that he personally has, and the other residents of the community have, a high regard for petitioner and consider him to be an upright, law-abiding citizen in whom they repose complete confidence. A farmer who resides in the community testified that he met petitioner about five years ago and saw him practically every day and has a high regard for him; that the other residents of the community likewise consider petitioner to be an honest, law-abiding citizen. The petitioner's present employer also appeared as a character witness but his testimony cannot be considered because he is not a disinterested witness.

The Chief of Police of the community where petitioner resides reports that he has no complaints against him and that "he is O.K. with us."

I therefore conclude that petitioner has led a law-abiding life for at least five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 2nd day of October, 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.

9. MORAL TURPITUDE - CRIME OF BREAKING AND ENTERING WITH INTENT TO STEAL INVOLVED MORAL TURPITUDE.

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

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2.

Case No. 199.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1929 petitioner was convicted of breaking and entering with intent to steal and fined $100.00. It appears that he and two companions entered the club house of a fraternal organization and were caught before they had actually committed any theft. This crime involved the element of moral turpitude.

Petitioner is, therefore, disqualified from working for a liquor licensee or holding a liquor license in this State. R. S. 33:1-25, 26. He seeks removal of this disqualification on claim that he has been law-abiding since his conviction in 1929. This appears to be his only criminal offense.

Petitioner, who is now thirty-eight years of age, has worked, for the most part, as a clerk since his early youth. He has also been in business for himself, conducting a confectionery store for about a year, and a rooming house for one or two months. In 1941 he obtained employment as a bartender in a tavern and was so employed at the time of the hearing.

Petitioner, with seeming sincerity, testified that he did not know he was disqualified from acting as a bartender because of his criminal record; that he understood, from reading the newspapers, that a person who had a clear record for five years could work in a tavern. I shall accept petitioner's sworn statement as true, in view of the fact that he has had a clear record for thirteen years.

A lawyer who was a former police court judge, appeared as a character witness for the petitioner and testified that he and the petitioner grew up together in the same neighborhood; that petitioner has a good reputation in the community and is considered an honest and law-abiding person; that petitioner's conviction in 1929 was a misadventure of his youthful days. Two business men who have known petitioner for seventeen years and twenty-four years, respectively, testified that petitioner is of good character and is regarded in the community as a law-abiding citizen.

However, there is some reflection cast upon petitioner's conduct in that recently he and the licensees by whom he is employed were arrested on the charge of permitting hostesses on the licensed premises, in violation of a local ordinance. If, in fact, petitioner, while acting as a bartender, participated in misconduct of this character, I would unhesitatingly consider him personally unfit to be connected with the liquor industry even though he had not been convicted of a crime within the past five years.

When this charge was considered in the police court, it was dismissed as against all the parties; later, when considered in a separate disciplinary proceeding against the licensees, it was also dismissed. In view of this outcome and especially in view that there is no independent evidence in the Departmental files which, in fairness, would warrant the conclusion that petitioner participated, or acquiesced, in the employment of hostesses on licensed premises, I will give him the benefit of the doubt and conclude that he did not misconduct himself while acting as a bartender. However, I shall expect that petitioner's behavior will be wholly exemplary and that he will, by his future conduct, demonstrate that my confidence in him was not misplaced.

I therefore conclude that petitioner has led a law-abiding life for at least five years last past and his continued association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 2nd day of October, 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. APPELLATE DECISIONS - GRAHAM v. NEWARK.

HENRY CLAY GRAHAM,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Leon J. Lavigne, Esq., Attorney for Appellant.
Raymond Schroeder, Esq., by Joseph A. Ward, Esq., Attorney for Respondent.
Leonard H. Goldberg, Esq., Attorney for Ike Kesselman.

BY THE COMMISSIONER:

This is an appeal from denial of transfer of license C-622 (fiscal year 1942-43) from Ike Kesselman to Henry Clay Graham, appellant herein. The premises in question are located at 46 Rutgers Street, Newark.

On July 30, 1942, when respondent denied the application to transfer, it gave the following reasons for its action:

> "Let it be noted that the Board is denying it because Mr. Graham had testified at various hearings before the Department of Alcoholic Beverage Control that his wife was purchasing the tavern in question, as an individual venture, in which he was to have no concern; and, in fact, he had no intention or desire to go in the tavern business at all. And because the Alcoholic Beverage Commissioner took him at his word, he directed that the license be issued to his wife upon the condition that he should not be permitted on the licensed premises at any time for any reason. Now, he seeks a license in his individual name in this very tavern. In the opinion of the Board, this casts a serious reflection upon his previous testimony, and it may well indicate that the true situation, that is now brought to light, indicates that from the very beginning, it indicated he was the purchaser interested in that tavern."

Appellant herein is the husband of Wilma Graham.

In Graham v. Newark, Bulletin 513, Item 7 (decided May 27, 1942), I reversed the action of respondent in refusing to transfer to Wilma Graham a license which Ike Kesselman then held for the fiscal year 1941-42. Conclusions therein were based upon testimony which led me to believe that Wilma Graham, who was fully qualified, was the actual purchaser of the licensed business. In that case there was testimony that the husband did not intend to have any connection whatsoever with the business. Because the facts therein raised some doubt as to the good faith of the wife and husband, the order of reversal contained a condition that Henry Clay Graham should not be permitted on the licensed premises at any time for any reason whatsoever.

The license for the prior fiscal year was never transferred to Wilma Graham. Instead, on June 8, 1942, she cancelled her agreement with Ike Kesselman and obtained a return of $2500.00 cash which she had deposited with him. Kesselman renewed his license for the present fiscal year. He entered into a new agreement with Henry Clay Graham. By the terms of this agreement, Kesselman consented to transfer his present license to Henry Clay Graham and the latter

deposited $2500.00 cash to bind the transaction. After application duly made, respondent refused to transfer the license to appellant for the reasons stated above. Hence this appeal.

Wilma Graham now says that she cancelled her agreement because she was advised, in the early part of June, that she would have to undergo an operation which would incapacitate her for six months. She has not been operated upon and appeared and testified at the hearing herein. Appellant says that since the prior appeal was heard, his friends advised him that it was a money-making proposition and "I figured I would take it over."

The steps taken by appellant herein and his wife after decision rendered in the prior appeal are sufficient to support respondent's conclusion that, from the very beginning, appellant was the purchaser interested in the tavern. The attempted fraud in the prior case, standing alone, is a sufficient reason for denial of the present application.

In addition, it appears that, in 1935, appellant was convicted of possessing and operating an unregistered still. It is true that, on May 27, 1942, I lifted his statutory disqualification because of said conviction. Case No. 211, Bulletin 513, Item 6. Despite this, respondent had the power to decide, in its sound discretion, whether applicant was a fit person to hold a license. As was said in Re Chiaravalli, Bulletin 300, Item 15:

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

Respondent's action herein was fully justified because of appellant's record and because of the attempted fraud in the prior case. Hence, I affirm its action in denying the transfer.

Accordingly, it is, on this 5th day of October, 1942,

ORDERED, that the appeal herein be and the same is hereby dismissed.

Alfred E. Driscoll
Commissioner.