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

BULLETIN NUMBER 202 August 16, 1937.

1. APPELLATE DECISIONS - DUFFIELD vs. ALLENHURST

LEROY BANKS DUFFIELD, :

Appellant, :

-vs- :

BOARD OF COMMISSIONERS OF THE BOROUGH OF ALLENHURST, : ON APPEAL

: CONCLUSIONS

Respondent. :

. . . . . .

Lester C. Leonard, Esq., Attorney for Appellant.

Richard W. Stout, Esq., by William J. O'Hagan, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

On June 16th, 1937, appellant perfected this appeal from an alleged denial on June 7th, 1937, of a plenary retail consumption license. The appeal concerns an application filed on June 4, 1937, for the balance of the fiscal year which ended June 30, 1937, and affects premises known as the Allenhurst Inn at the corner of Norwood, Allen and Corlies Avenues, Allenhurst. The appeal came on for hearing on June 28, on which date the appeal was partially heard and continued to July 1 when the hearing was completed.

It was stipulated on June 28 that the hearing should be completed and decision rendered herein despite the fact that prior to completion of hearing and final decision, the fiscal year for which the license was sought would have expired on June 30th.

The facts are briefly as follows: On June 4, appellant filed his application with the Borough Clerk. At respondent's meeting, held on the evening of June 7, the Borough Clerk announced, in the presence of appellant, the members of the Board of Commissioners and the Borough Counsel, that she had returned appellant's application to him by mail earlier on the same day. Appellant's attorney was not present at the time said announcement was made. Thereafter appellant's attorney returned, and the Board of Commissioners went into an executive session at which he was present, which session lasted nearly two hours. When the Board of Commissioners reconvened in regular session, appellant's attorney requested that some record be made of the conclusions reached at the executive session. Acting on advice of the Borough Counsel, the members of the Board declined to make a record of their conclusions, but caused the following entry to be made in the minutes of said meeting:

> "Mr. Lester C. Leonard, as Attorney for the Morris County Savings Bank, inquired as to what disposition had been made of the application of LeRoy Duffield for a Plenary Retail Consumption license and he was informed that the application, together with the check, had been returned to Mr. Duffield by mail."

The application and all papers pertaining thereto were received through the mail on the following day by the appellant.

On December 11, 1933, the Board of Commissioners of the Borough of Allenhurst adopted a resolution fixing a fee for plenary retail distribution licenses, but failing to fix a fee for plenary retail consumption licenses. On February 5, 1934, it amended said resolution by providing for the issuance of one plenary retail consumption license and fixing a fee therefor. On July 1, 1934, respondent issued a plenary retail consumption license to Leo V. Quinlan, for Allenhurst Inn, which license expired June 30, 1935. An application by Quinlan to renew his license for the fiscal year 1935-1936 was at first refused, and said refusal affirmed on June 26, 1935 in Quinlan vs. Allenhurst, Bulletin #81, Item 17. It appears from the records of this Department, however, that a plenary retail consumption license was subsequently issued to Quinlan for the same premises on July 30, 1935 for the balance of the fiscal year expiring June 30, 1936. The Allenhurst Inn has not been licensed since June 30, 1936. It is apparent from the testimony that Quinlan conducted the Inn as a night club, and that the noises from the interior and the exterior of the premises, especially in the early hours of the morning, were very annoying to residents in the vicinity. The Inn is situated in a residential section of the Borough and is surrounded by many fine residences. Appellant represents that he will conduct an entirely different type of business from that carried on by the former licensee; that he will conduct a high class restaurant business in which the sale of alcoholic beverages will be merely incidental.

In view of the ordinance hereinafter mentioned, it is unnecessary to decide whether or not respondent's action on June 7th was equivalent to a denial of appellant's application so as to afford him a right to appeal or whether the past history of the premises as a licensed establishment was sufficient to sustain respondent's determination against issuance of another consumption license, or the weight to be attached to the opinions expressed by the Mayor and one of the Commissioners that they would have no objection to the issuance of a consumption license for these premises if three or four stories were added and the place were run as an hotel.

For, it appears that on June 2, 1937, respondent adopted a resolution which attempted to enact that no plenary retail consumption licenses should be issued in the Borough. The Clerk testified that it was because of the existence of such resolution that she returned appellant's application. I disapproved this resolution on June 11th because such action could, under the statute, be taken only by way of an ordinance. On June 21st, the following ordinance was introduced at a regular meeting of the Board of Commissioners:

> "BE IT ORDAINED by the Board of Commissioners of the Borough of Allenhurst:
> 1. That no plenary retail consumption license shall be granted within the Borough of Allenhurst.
> 2. This ordinance shall take effect immediately."

This ordinance was finally adopted at a meeting of the Board of Commissioners held on July 2, 1937.

Appellant argues that said ordinance does not affect his application because it was filed prior to the introduction of the ordinance.

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.

I therefore conclude that the municipal policy exhibited by the Allenhurst Ordinance, properly enunciated and in force at the time of this decision, is the true criterion on which this decision must be based rather than the factual situation as it existed at the time of the denial of the application. It duly accomplishes what the resolution attempted, but failed upon technical grounds.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner

Dated: August 12, 1937

3. APPELLATE DECISIONS - HAGERTY vs. CRANBURY

WILLIAM HAGERTY,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CRANBURY, MIDDLESEX COUNTY,) CONCLUSIONS
Respondent.)
. . . . . .

Frederic M. P. Pearse, Esq., by George Pearse, Esq., Attorney for Appellant

Wilton Applegate, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from denial of a renewal of plenary retail consumption license for premises located on Old Hightstown Road, Cranbury Township.

Respondent contends that its action was proper, alleging that appellant had not conducted his premises in a proper manner.

For the licensing period 1934-1935 appellant had a consumption license for premises on Maplewood Avenue in the Village of Cranbury. When he sought renewal for those premises in 1935, objections were made by nearby residents because of fights which had taken place on the then licensed premises. Appellant agreed to move his present place of business about three-quarters of a mile away, and a license was thereupon granted to him for the licensing period 1935-1936. His license was renewed for the fiscal year 1936-1937. His present application was denied, although no written objections were filed prior to its consideration, as a result of independent investigation by respondent.

It appears that appellant caters principally to colored trade. There are about two hundred permanent colored residents of the Township who, apparently, give no trouble at all. During the period from July to October in each year about four hundred transient colored persons come from the South to work on farms in the vicinity. There is no doubt that they, invariably, have given Hagerty trouble; in fact, he admits it, and places the blame for the disturbances on these transients. There have been about fifty fights in premises conducted by appellant since he first obtained a license. During the past fiscal year there have been ten arrests in which a fine or imprisonment has been imposed as a result of disturbances on appellant's premises.

Hagerty himself was complainant in four of these cases. Township Committeeman Schnell testified as follows:

> "I cannot recall what date -- the latter part of August of last year. I have a house to house bakery, and the place across Hagerty's called me to bring him some goods and while there I heard this noise across the way and looked across and I saw different colored people scattering right and left, and saw two come out and one chasing the other and this fellow in the rear had a knife and was cutting this fellow's coat-tail, and ran in this roadstand and out the back door. I didn't stay to see the outcome.
>
> "Q Have you ever seen any gambling in the place?
> A On the premises and saw a card game with money on the table.
> Q When was this?
> A Not over two months ago.
> Q Did you ever see any crap shooting around the place?
> A Yes, this past summer when the colored people came from the South. That was five or six feet from the building itself."

It is apparent that appellant has not been able to control his patrons. While it is true that he requested members of the Township Committee to swear in an officer to protect his place and offered to pay the officer, it appears that the members advised him that they were afraid the officer might hurt somebody and cause them trouble. The action of the Township Committee in refusing to appoint an officer was reasonable. Licensees should be able to control the conduct of their privileged business without the aid of special officers.

Appellant argues that his license should be renewed because, otherwise, colored persons will be unable to obtain alcoholic beverages in the Township. This is denied by respondent's witnesses who contend that Warmsley, to whom a license was issued after appellant's was denied, can take care of the needs of respectable patrons, regardless of color. I do not find any evidence that appellant's license was denied because of any prejudice on the part of respondent against colored persons. If that were the real cause, I would unhesitatingly reverse. Cf. Sears Roebuck & Co. v. Absecon and Jones, Bulletin #185, item 10. I find, rather, that renewal was denied solely because appellant improperly conducted his business.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT
Commissioner.

Dated: August 13, 1937.

3. DISCIPLINARY PROCEEDINGS - PUNISHMENT - A REVOCATION MAY BE MITIGATED INTO A SUSPENSION NOTWITHSTANDING THAT THE TERM OF THE LICENSE WHICH WAS REVOKED HAS EXPIRED.

August 12, 1937.

Frederic M. P. Pearse, Jr., Esq.,
Newark, N. J.

My dear Mr. Pearse:

I have before me the Henry A. Muhlenbrink - Long Branch files and find:

1. His plenary retail consumption license for the past year ending June 30, 1937 was revoked by the Board of Commissioners of the City of Long Branch on April 20, 1937, for permitting lewd and immoral performances by female entertainers and the exhibition of lewd and immoral moving pictures on his licensed premises in violation of State Rule #5 Concerning Conduct of Licensees and the Use of Licensed Premises. By the terms of the Control Act, he thereby was barred from receiving any license of any kind or class for a period of two years.

2. Notwithstanding the revocation, Muhlenbrink later applied to said Board for a plenary retail consumption license for the current fiscal year ending June 30, 1938. His application was reported to the Board at their regular meeting on June 15th, 1937, at which time an objection from the Women's Christian Temperance Union was received and read. The Board thereupon set June 22nd, at 3:00 P. M. as the date for hearing on the application and directed that the applicant and objectors be notified of such hearing.

3. On June 22nd, the hearing was held, all five members of the Board being present. The minutes show that Mayor Evans extended an opportunity to all those present desiring to be heard; that Rev. Herbert J. Lane, representing the Women's Christian Temperance Union, addressed the Board and stated that the basis of their objection was the conduct of the applicant in past months; that Miss Abby Kennedy, a member of the Union, addressed the Board and expressed her objections; that Mayor Evans stated that the applicant had been punished for the violation and, in his opinion, one should not be punished for the rest of his life for one act - that if there is a future violation, the Board will deal with it accordingly; that on the motion of Commissioner Jones, the motion to grant the license was carried unanimously.

4. Thereafter, a license for the current fiscal year was issued to Muhlenbrink and certified to the State Department, where, on recording it and checking the files, the revocation came to light. Accordingly, on July 10th, I directed the Chief of Police of Long Branch to close down the licensed premises at

once and pick up the license on the ground that the revocation aforesaid had rendered the licensee ineligible to hold or receive any other license for a period of two (2) years and hence, the local Board of Commissioners had no jurisdiction to issue any license for the current year. Muhlenbrink has thus been closed down since July 10th.

5. On July 20th, a resolution and order was enacted by the local Board, which, after reciting their aforesaid resolution of April 20, 1937 and declaring that at the time of its passage it was the intention of the Board to impose only a penalty of temporary suspension for the period ending June 30, 1937, and that through a misunderstanding and inadvertence the words "be revoked" were used instead of "be suspended", resolved that the resolution of April 20th be amended to read that the Muhlenbrink license be suspended, effective from April 22, 1937 to June 30, 1937, inclusive.

Passing the recitative language without comment, the resolution of July 20th purports in its operative clauses to mitigate a penalty and, therefore, stands or falls on what it does rather than on what it declares.

If the resolution of July 20, 1937 is valid, then the Board of Commissioners of the City of Long Branch have the power to issue a new license to Muhlenbrink in respect to the current fiscal year.

There is no question of the existence of the power of a license issuing body to mitigate a penalty previously imposed. I have heretofore ruled in Re Bischoff, Bulletin 53, Item 5:

> "While for the sake of finality of decision and affording terminal facilities to repeated litigation, no rehearing may be held by a municipal governing body or local excise board after it has once adjudicated facts, or guilt, or innocence (see Re Hendrickson, Bulletin 47, item 10), there is nothing to prevent the mitigation of a penalty or punishment previously inflicted. It often lends to the cause of enforcement to remit a part of the penalty after the violator has been sufficiently punished and has shown genuine repentance and convinces the issuing authority by his acts as well as his words of his sincere determination thenceforth to comply with the law in all respects. Of course, if mercy is overplayed it may generate disrespect for the law and a belief that penalties imposed are mere gestures to be remitted after nominal punishment. On the other hand, justice is often accomplished by a wise and kindly mercy to first offenders, especially after partial atonement."

The only question is whether this general power may be exercised after the license, which it purports to affect, has itself expired.

There is no guide in the Control Act itself and there is no precedent so far as I am aware. Analogies based on criminal procedure in the Federal and State courts fail because such procedure is based on respective statutes. The

question must, therefore, be decided on general principles.

The objective of revocation or suspension proceedings under Section 28 of the Control Act is to effect and maintain discipline - to control licensees in the exercise of their privileges by fear of outright revocation of the license or temporary suspension thereof. Such punishment is more potent in the cause of sound enforcement, so far as licensees are concerned, than all the fines in Christendom. It carries with it an unspoken moral. It teaches an unforgettable lesson. But, so may a wise and kindly mercy if based on genuine repentance. To forgive is not to forget. I see no reason why mercy may be exercised only during one period but not at a later time - why forgiveness must be confined within technical limits. The longer the offender has suffered punishment, the greater should be his hope of remission. If this penalty had been mitigated during the term of the original license, there would have been no question of the power to do so. Remission later on, and after the offender has suffered just so much longer, seems to me all the more in the power of the Board. If ineligibility can be lifted on June 30th, I see no substantial reason why it may not be removed on July 20th.

Again, the State Rules provide that revocation shall not be barred or abate by the expiration of the license; that any license may be suspended or revoked for proper cause notwithstanding that such cause arose during the term of a prior license. It is a poor rule that doesn't work both ways.

I conclude, therefore, that power exists in the Board of Commissioners of the City of Long Branch to mitigate the penalty of revocation inflicted upon Muhlenbrink after the term of his license had expired. I neither express nor entertain any opinion as to the policy of its exercise for that question is not before me.

It follows that the license for the current fiscal year, granted to Muhlenbrink, may be restored to him, effective immediately.

D. FREDERICK BURNETT
Commissioner

4. SIGNS - SIGNS SUGGESTIVE OF INTEMPERANCE ARE BARRED - HEREIN OF LIGHTHOUSES.

August 13, 1937

Mrs. Minerva Dora Wetzlar,
Asbury Park, N. J.

Dear Mrs. Wetzlar:

Confirming our conference of this morning: You are to remove forthwith the sign "Get Lit at the Lighthouse."

To be sure, it is a smart, catchy phrase and does no harm if your customers disobey it. If, however, I allowed you to get away with it, then shortly we would be flooded with signs such as "Get Soused at Sousa's", "Stewed at Stuart's", or "Pie-eyed at the Pianola". Competitors are ever alert to filch successful ideas in the effort to outdo, resulting usually in overdo.

Signs suggestive of intemperance are inconsistent with better vision and so I am glad to have your wholehearted assurance that the offending sign will be removed forthwith.

Your purposed new slogan "Meet Me At The Lighthouse" is approved.

Cordially yours,

D. FREDERICK BURNETT
Commissioner

5. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

August 12, 1937

Re: Case #69

This is to determine applicant's eligibility for employment by a licensee in this State.

Applicant is approaching 23 years of age, and is unmarried.

In October, 1935, applicant was convicted in this State for manslaughter, and was sentenced to an indefinite term at the reformatory, where he remained for two months, being then released on parole.

The manslaughter arose out of applicant's negligent operation of an automobile. On March 17, 1935, at 11 P.M., he was driving through Hawthorne with two friends on their return home from a movie. He was speeding homeward to retire as soon as possible in preparation for arising at 3 o'clock the next morning for his work at a wholesale vegetable market. As he approached a cross-road in Hawthorne, an automobile issued out of that cross-road into the intersection. This automobile was being driven without any lights save one headlight. Applicant, not seeing the automobile, crashed into it, causing the death of three of its five occupants. He himself and his fellow passengers were not seriously injured.

Applicant was immediately arrested and convicted in traffic court for reckless driving. He was also charged in criminal court with manslaughter, to which charge he pleaded non vult.

The criminally negligent operation of an automobile resulting in an unintentional death, although constituting the crime of manslaughter, is not a crime involving moral turpitude within the meaning of Section 22 of the Control Act. See In re Schiano Di Cola, 7 F.Supp. 194 (D.,R.I.,1934); U. S. ex. rel. Mongiovi v. Karnuth, 30 F.(2d) 825 (W.D., N.Y. 1929); Re Case #44. Bulletin #163, item #4; cf. U. S. ex. rel. Sollano v. Doak, F.Supp. 561 (N.D., N.Y., 1933) aff. 68 F.(2d) 1019 (C.C.A. 2, 1933); Pillisz v. Smith, 46 F.(2d) 769 (C.C.A. 7, 1931); U. S. ex. rel. Allessio v. Day, 42 F.(2d) 217 (C.C.A. 2, 1930).

The greater crime of manslaughter not involving moral turpitude in this instance, a fortiori neither does the lesser offense of reckless driving. Furthermore, conviction in traffic court for violation of the traffic or motor vehicle laws, even

though involving reckless driving, is not a crime within the meaning of Section 22 of the Control Act. Re Hearing #133, Bulletin #170, item #7; Re Case #152, Bulletin #170, item #8.

It is recommended that applicant be declared eligible for employment by a licensee.

Nathan Davis
Attorney

Approved:
D. Frederick Burnett
Commissioner

6. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED

CONCLUSIONS

July 13, 1937

In re: Case #66

Applicant, in obtaining a solicitor's permit for the past term, swore that he had never been convicted of a crime. His fingerprint record disclosed, however, that he had been convicted in this State of fornication in 1932. A hearing was accordingly held to determine whether his permit should be revoked or other action taken.

In the meanwhile, applicant's permit for 1936-1937 has expired, and his application for renewal is now on file and awaiting determination of this proceeding.

Applicant is 35 years of age, 8 years married, and has one child.

Applicant and his wife did not weather the earlier years of their marriage with success. In 1931, applicant left his wife, but upon being brought into court in May, 1932, in a non-support proceeding, a reconciliation was effected. However, not long thereafter applicant arranged a rendezvous with an unmarried woman and lived with her in a hotel room over the Labor Day weekend of 1932. On his return home from this weekend, a bitter quarrel arose between applicant and his wife over the use of the family car. During the course of this quarrel applicant's escapade was bared, emotions ran high, and applicant slapped his wife and drove off in the automobile. In the heat of anger, his wife procured applicant's arrest on the ground of assault and battery upon herself and for fornication.

Only the latter charge was pressed; applicant, pleading guilty thereto, was sentenced to the County workhouse for six months. After applicant served 28 days at the workhouse, his wife obtained a reconsideration of his sentence and applicant was accordingly released and placed on probation for six months. Husband and wife effected a reconciliation and have lived together very compatibly since his release.

Applicant has never run afoul of the criminal law on any other occasion and his escapade at the hotel is apparently his only sexual offense.

The question to be determined is whether this single instance of fornication is a crime involving moral turpitude within the meaning of Section 22 of the Control Act.

Sexual incontinence, whether adultery or fornication, was not a crime at common law, unless attended with an element of public indecency or lewdness. See State v. Lash, 16 N.J.L. 380 (Sup. Ct. 1838); State v. Gray, N.J.L. 368 (Sup. Ct. 1875); 3 Wharton, Criminal Law (11th edition 1912) p. 2234, sec. 2062, and p. 2251, sec. 2086; 1 Amer. Juris. sec. 2, 3 and 13 at pp. 681, 683 and 687; 74 A.L.R. 1361 (ann.); and 71 A.L.R. 190 (ann.) at 204.

However, adultery and fornication have been made misdemeanors under our statutes. 2 C.S. p. 1760, sec. 47 and p. 1761, sec. 48. The former crime is subject to fine not exceeding $1000, or imprisonment with or without hard labor for a term not exceeding three years, or both. 2 C.S. p. 1760, sec. 47, and p. 1812, sec. 218. The latter crime is subject to fine not exceeding $50, or imprisonment not exceeding 6 months, or both.

Whether these crimes involve moral turpitude within the meaning of Section 22 of the Control Act is a troublesome question. See 43 Harvard Law Review 113 (note) at 120.

The crimes indubitably involve immorality; but this fact does not characterize them as crimes necessarily involving moral turpitude. As was said in Crabb v. Dental Examiners, 235 p. 829 (Kan. 19--) at 830: "Whatever is forbidden by law must for the time being be considered as immoral." Yet, it cannot be well contended that every crime therefore involves moral turpitude.

The term "crime involving moral turpitude" was little used or known at common law. See 43 Harvard Law Review 113 (note) at 118. When used today, proper interpretation requires that it be considered in the light of the purpose for its use.

There are many authorities which declare that, with reference to the purpose then before them, the ordinary crimes of adultery, fornication, and sexual incontinence necessarily involve "moral turpitude." These authorities, however, are fundamentally distinguishable from the present type of case.

In the law of torts respecting slander, it has been held that to charge a person with adultery or fornication in a jurisdiction where such has been made a crime, is to charge him with a "crime involving moral turpitude" and hence is slanderous per se. See Joralemon v. Pomeroy, 22 N.J.L. 271 (Sup. Ct. 1849) at 274; Pollard v. Lynn, 91 U. S. 225 (1875); and see cases collected in 11 A.L.R. 669 (ann.) at 674. The term is obviously here used in the sense that the crime imputed is one which holds the slandered person up to social embarrassment and moral censure, and that to charge a person with such a crime is therefore slanderous per se.

8 U.S.C.A. 90, sec. 136 (e), relating to the immigration laws, provides that aliens who have been convicted of or admit having committed a "crime involving moral turpitude" shall not be allowed entry into the country. It has been declared that sexual incontinence, whether strictly fornication or adultery, if made a crime where committed, falls within this section. See U.S. ex. rel. Tourney v. Reimer, 8 F.Supp. 91 (S.D. N.Y., 1934); Lane v. Tillinghast, 38 F. (2nd) 231 (C.C.A. 1, 1930); Ex parte Rodriguez, 15 F. (2nd) 878 (S.D. Tex., 1929). It is apparent that the purpose of the term in the immigration laws is to prevent entry of aliens undesirable with reference (inter alia) to our social institutions, etc. Adultery and fornication obviously fall within the intendment of such a purpose.

Yet judicial determinations in even the immigration cases display extreme reluctance to consider adultery or fornication as a "crime involving moral turpitude" for the purpose of the immigration laws. See Ex parte Rocha, 30 F. (2nd) 825 (S.D. Tex. 1929); Ex parte Isojoki, 222 F. 151 (N.D. Cal. 1915); U. S. ex. rel. Huber v. Sibray, 178 F. 144 (W.D. Pa. 1910) rev. on other grd. 185 F. 401 (C.C.A. 3, 1911); and Matter of Cathcart, 10 Misc. Dockets, S.D. N.Y. 335.

In Morrison v. State, 209 S.W. 742 (Tex. Crim. 1919), the crime of adultery was held to be a "crime involving moral turpitude" for the purpose of a rule allowing witnesses who have been guilty of a "crime involving moral turpitude" to be impeached thereby. The term as here used relates solely to the purpose of impeaching witnesses.

In Grievance Committee v. Broder, 152 A at 292 (Conn. 1930), it was held that a lawyer guilty of the crime of adultery has committed a "crime involving moral turpitude" and is therefore to be disbarred. Here, the purpose of the term is to show that the crime does not accord with the standards of an old and responsible profession allied to the courts.

However, the purpose of the term in Section 22 of the Control Act is not to describe crimes which expose a person to social embarrassment, or to protect our general social structure, or to allow for impeachment of witnesses, or to keep inviolate the standards of a high time-honored profession, but the specific purpose of divorcing from the liquor industry those criminal characters who have brought or may bring that industry in hostile conflict with the public good. Whether a person convicted of adultery or fornication fits this description depends upon the facts. See The Mohawk Restaurant, Inc. v. Newark, Bulletin #160, item #10; Bulletin #45, item #10.

In a recent (unreported) application made to Justice Parker for a writ of certiorari to review the action of the Commissioner in the case of The Mohawk Restaurant, Inc. v. Newark, supra, the Justice stated, but purely by way of obiter dictum, that the adultery there involved was a crime involving moral turpitude under Section 22 of the Control Act. I do not think that this obiter dictum of itself is sufficient authority to obviate the rationale of the situation or that it is justification to disregard that rationale and necessarily deny a person convicted of adultery or fornication the legal possibility of ever being a licensee or employee under the Control Act.

Applicant's crime was a single lapse from virtue. In no case cited above (other than the cases of slander) was the crime of adultery or fornication merely a chance or single instance of sexual incontinence, but a prolonged practice. In Grievance Committee v. Broder, supra, it was significantly pointed out at p. 294 (of 152A) that the adultery there involved was not the result of a single instance of youthful or irresponsible folly.

Furthermore, applicant's crime constituted, not adultery but fornication, because the woman participant was unmarried. The gist of the crime of adultery is, as the term implies, the adulteration of the blood -- the possibility that the husband of the married woman may be unwittingly supporting children not his own and that his inheritance may be diverted to a false heir. See State v. Lash, supra.

Our Crimes Act has recognized a very decided difference between the crime of adultery and the crime of fornication, as is evidenced by the serious penalty ascribed to the former and the comparatively minor penalty ascribed to the latter.

In this view, the authorities declaring adultery to be a "crime involving moral turpitude" are not in point.

I have dealt at length with the question involved in this proceeding because the authorities, on first reading, seem to interdict applicant's offense as a "crime involving moral turpitude" within the meaning of Section 22 of the Control Act; yet, on rational reflection are not controlling.

I therefore conclude that applicant's isolated instance of fornication, even though reprehensible and to be severely condemned from a moral and social viewpoint, is not a "crime involving moral turpitude" within the intendment of Section 22 of the Control Act. Nor, in view of applicant's exemplary life since the offense, do I deem him to be unfit to hold a solicitor's permit in this State.

However, there still remains the fact that applicant failed to reveal his conviction in his questionnaire and in his application for the solicitor's permit which he held during the last term. His explanation is that he acted upon the advice of another in not revealing that conviction. His chief concern in concealment seems to have been to keep the information from his employer. This is not an adequate excuse for his false oath.

It is recommended that applicant be declared eligible for a solicitor's permit, but that no permit be issued to him for the term expiring June 30, 1938, as applied for, until August 1, 1937, in punishment for applicant's false oath.

Nathan Davis
Attorney

Approved:
D. Frederick Burnett
Commissioner

7. APPELLATE DECISIONS - KLOTZ vs. TRENTON

Jacob Klotz,)
Appellant,)
-vs-) ON APPEAL
City Council of the City of Trenton,) CONCLUSIONS
Respondent.)
. . . . . .

Harry G. Lenzner, Esq., Attorney for Appellant
Adolph F. Kunca, Esq., Attorney for Respondent

BY THE COMMISSIONER:

This is an appeal from the denial of a renewal of the plenary retail consumption license for premises at 324 Calhoun Street, Trenton.

Appellant has been a licensee of the City of Trenton since 1934.

Mrs. Edith H. Moore, City Investigator of Alcoholic Beverage Control, testified that her recommendation disapproving the re-issuance of the license was based on brawls in the licensed premises between licensee and his wife. She said:

> "During the current year, 1936 and 1937, on April 24th, I was called at my home and requested to go to the licensed premises, 324 Calhoun Street. I was accompanied there by two police officers in a radio car. I found evidences of there having been a nasty brawl. Mr. Klotz was intoxicated behind the bar. The identification tags on the beer taps were broken and scattered on the floor. The glasses behind the bar were a miscellaneous collection of very few beer glasses and three or four whiskey glasses, and the others were glasses from the kitchen -- cheese and jelly glasses. Mrs. Klotz was not on the first floor. I inquired where she was and was informed by a young son that she was on the second floor. With one of the police officers I retired to the second floor and found her in a deep stupor on a daybed. I think there were six glasses, one containing beer, several whiskey glasses, one containing a large drink of liquor on the floor. Mrs. Klotz had a very black eye, and a severe laceration over one, and a slightly black eye on the right side, her arms and neck was a mass of bruises, and her face was badly bruised. I was unable to arouse her and withdrew to the first floor. Mr. Klotz was very abusive to me. I advised him not to sell beer until he procured new identification tags. On June 27th, I was ordered, by City Manager Morton, to make an investigation on a complaint of a fight on Saturday, the preceding Saturday, June 24th, and I proceeded to the premises. Mr. Klotz was sober, and Mrs. Klotz was not at home. I inquired of a young son of Mr. Klotz what the trouble had been on the previous Saturday, and he said his father had been intoxicated."

And again:

> "Q. To your knowledge, how many times was Mr. and Mrs. Klotz summoned to the police station during the past licensed year?
> A. 1936 and 1937?
> Q. Yes.
> A. To my knowledge, twice.
> Q. Now, frequently have you gone to the Klotz place to investigate or inspect the premises during the year 1936-1937?
> A. I should imagine I have been there seven or eight times, that I actually remember.
> Q. And on those occasions what was Mrs. Klotz's condition as to sobriety?
>
> MR. LENZNER: The license is in the name of Mr. Klotz, and any evidence against Mrs. Klotz should be inadmissible.
> THE HEARER: Was Mrs. Klotz employed there?
> THE WITNESS: He is employed as a hat maker, and she is then in charge of the premises.
> THE HEARER: I will allow it.
>
> A. I found Mrs. Klotz intoxicated on the premises.

THE HEARER: How many times?
THE WITNESS: Three or four; Mr. Klotz I have seen not as often on the premises as her in the past year, but I have seen him intoxicated three times, I think.
THE HEARER: On the premises?
THE WITNESS: Yes, sir."

Investigator Clarence White made a similar recommendation on the same grounds.

Lt. Lewis Sigafoos of the Trenton Police, testified:

" October 16, 1936, as a result of a telephone call that morning, I detailed policemen there and as a result they came back with persons they apprehended coming out of the place with beer, six or seven Sunday morning. Later, Mrs. Klotz called me on the 'phone, and from her manner of talk, my impression was she was intoxicated. She said, 'You thought you were smart in sending police up', and said, 'I don't care for you or Burnett'. That is all I had to do with that complaint. Then, April 24th, I received complaints of fighting in the place, and detailed policemen and copied their report and turned it over to Mrs. Moore and got Mrs. Moore on the 'phone and requested her to go there personally.

Q. Any other complaints?
A. I have been called on the 'phone three times by Mrs. Klotz, complaining about Mr. Klotz being intoxicated.
THE HEARER: Can you fix the times?
THE WITNESS: Two weeks ago, the last time, she called me, and I told her I was going to do all I could to take her license away, and she said, 'You cannot do that, I have everything fixed up.' I have seen Mr. and Mrs. Klotz on five occasions and they have always been intoxicated."

Patrolman Frederick Price testified:

"A. On April 24th, passed about 9:00 p.m., detailed there to investigate a fight. On arriving there, found Mrs. Klotz in the kitchen intoxicated; she was screaming and pulling her hair; said the children were going to kill her; she seemed to be out of her mind; her eye was black and had two cuts over each eye, and she said the boy did it to her, and I persuaded her to go to bed, and I talked to the boy and he said he had to hit her, she was going out of her mind. She came down again and said, they stole her money. She walked behind the bar and picked up a couple of glasses -- the boy said she had broken them all evening and destroyed some of the furniture. We called Doctor Epstein and he gave her some sleeping tablets. I have been there on several occasions, sometimes she would call, and sometimes the call would be anonymous, and would find him or her intoxicated. Mr. Klotz, when intoxicated, is loud and abusive and uses profane language.

"Q. How many times have you seen Mr. Klotz drink on the licensed premises during the year 1936-1937? A. Four or five times.
Q. When was the last time you saw him intoxicated?
A. June 25th, last -- sent there to investigate a disturbance. When I arrived there, Mrs. Klotz was sitting outside, and said the neighbors had thrown a brick threw the door, and we went to 320, and they said they didn't. Mr. Klotz, that day, was on the premises, intoxicated; and we summoned all of them before Judge Devlin and he bound them over to keep the peace."

Officer John Rogaczewski of the Trenton Police corroborated the testimony as to the occurrences on April 24th.

Officer Nicholas Lichtfuss of the Trenton Police, like the others, arrived "after the brawl was over." He testified:

"A. I was there, on April 25th, with Mrs. Moore. Mr. Klotz was behind the bar, had the taps off the bar, and Mrs. Moore called him, and he used a lot of nasty language. Finally, Mrs. Moore went upstairs, and Mrs. Klotz had a bruised face.
Q. Did you ever notice Mrs. Klotz's demeanor on the sidewalk?
A. Yes.
Q. Describe what she does?
A. I picked her up out of the snowbank one night and put her to bed.
Q. Was she intoxicated on that occasion? A. Yes.
Q. Have there ever been any complaints that she picks her dress up to the neighbors?
A. The woman does not realize what she is doing."

Against the weight of this testimony the denials of the licensee and the gallant defense of his wife make scant impression. So too her thought that these matters were mere family discussions. The evidence was abundant to warrant the City Council in refusing to renew the license.

The action of respondent is therefore affirmed.

Commissioner

Dated: August 13, 1937.