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

ULLETIN 269. SEPTEMBER 22, 1938

. ADVERTISING - USE OF SEMI-NUDE WOMEN IN SUGGESTIVE POSES EMPHASIZING SEX APPEAL, DISAPPROVED.

September 16, 1938

Messrs. Brown & Bigelow,
St. Paul, Minnesota.

Gentlemen:

I have before me your letter of August 30th, and sample blotters illustrating your "Hot Cha Girl" series purposed to be printed for Gassman's Liquor Store, Atlantic City.

The use of semi-nude women in suggestive or other poses emphasizing sex appeal is disapproved in any form of advertising by liquor dealers.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS AND PERMITTING ASSEMBLY ON LICENSED PREMISES AFTER HOURS.

In the Matter of Disciplinary Proceedings against)

JOHN J. REDDAN, trading as THE OLD HOMESTEAD, 552 Park Avenue, West New York, New Jersey,) CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License No. C-86, issued by the Board of Commissioners of the Town of West New York.)

John J. Reddan, Pro Se.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant is charged with (1) selling and serving alcoholic beverages on his licensed premises on Friday, August 5, 1938 after 3:00 A.M., and (2) suffering and permitting persons other than the licensee, his actual employees and agents in or upon his licensed premises on said date after 3:00 A.M., in violation of a resolution adopted by the Board of Commissioners of the Town of West New York on December 22, 1936.

Defendant pleads guilty. His only explanation is that he was not on the premises at the time. He admits that his bartender, who was in charge, permitted the violations. That is no excuse.

On the morning in question, Investigators Hendrickson and Arts purchased alcoholic beverages on the licensed premises at 3:05

A.M., 3:20 A.M., 3:45 A.M. and 4:03 A.M. At 3:45 A.M. twenty-five persons, exclusive of the Investigators, were on the premises; at 4:05 A.M. fourteen persons, exclusive of the Investigators, were drinking on the premises.

The licensee has no previous record. There will be a five-day suspension for selling and serving during prohibited hours, and an additional five-day suspension for permitting unauthorized persons on the licensed premises during prohibited hours, making a total of ten days in all.

Accordingly, it is on this 17th day of September, 1938,

ORDERED that Plenary Retail Consumption License No. C-86, issued to John J. Reddan, t/a The Old Homestead, by the Board of Commissioners of the Town of West New York, be and hereby is suspended for a period of ten (10) days, effective at 3:00 A.M. (Daylight Saving Time) on September 24, 1938.

D. FREDERICK BURNETT,
Commissioner.

DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS AND PERMITTING ASSEMBLY ON LICENSED PREMISES AFTER HOURS.

In the Matter of Disciplinary Proceedings against BLUE FLAME, INC., 5148 Hudson Boulevard, West New York, New Jersey, Holder of Plenary Retail Consumption License No. C-28, issued by the Board of Commissioners of the Town of West New York.	CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant is charged herein with conducting its business, and permitting persons other than the licensee and its actual employees and agents in or upon the licensed premises, during prohibited hours, namely, after 3:00 A.M. on July 14, 1938, in violation of a resolution adopted by the Board of Commissioners of the Town of West New York.

Defendant, by Leo Schiff, its President, pleads guilty to said charges "with an explanation."

On July 14, 1938 Investigators Kane and DiPietro were served alcoholic beverages at 3:07 A.M., 3:22 A.M. and 3:40 A.M. During the period between 3:00 A.M. and 3:40 A.M. a number of patrons entered and were served with alcoholic beverages. At the latter time there were thirty-five patrons in the premises.

The President of the corporate licensee, admitting the violation, states that the place was kept open so as to make enough money to pay the help. He makes a plea for leniency because of the hardship which a lengthy suspension would inflict upon the twenty-one persons employed on the premises. I sympathize with the employees, but licensees must learn to conform to municipal regulations.

The defendant has a past record. In February 1938 its license was suspended for one day by the Board of Commissioners of the Town of West New York after it was found guilty of having sold alcoholic beverages during prohibited hours and having permitted loud and unnecessary noises in and upon the licensed premises. Re Swenson, Bulletin 232, Item 5. The meager penalty apparently taught the licensee nothing.

If this were a first offense, I would suspend the license for five days on each count, making ten days in all, but as it is the second adjudicated offense, the penalty will be twice that or a total suspension of twenty days in all.

Accordingly, it is, on this 17th day of September, 1938,

ORDERED, that plenary retail consumption license No. C-28, issued to Blue Flame, Inc. by the Board of Commissioners of the Town of West New York, be and the same is hereby suspended for a period of twenty (20) days, effective September 24, 1938 at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

APPELLATE DECISIONS - HELD v. DEPTFORD TOWNSHIP.

EZRA HELD,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DEPTFORD,)
Respondent)

Frank Sahl, Esq., Attorney for Appellant.
James B. Avis, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Appellant appeals from the denial of a plenary retail consumption license for premises located on Mantua Road, at the intersection of Fifth Avenue, and also from the denial of a license of the same type for premises located at 22 East First Avenue, both in the Township of Deptford, Gloucester County. He prays herein that the action of respondent be reversed, and that it be ordered to issue a license to appellant for either of said premises.

Respondent denied both applications upon the ground that the premises for which the respective licenses were sought are located in purely residential districts.

In March 1938 a consumption license theretofore held by one Hansford, for premises located at Mantua Road and East First Avenue, was transferred to appellant herein. At that time respondent adopted a resolution that the license for the property at Mantua Road and East First Avenue would not be renewed after June 30, 1938. The validity of said resolution is not in question in this case, but it appears that appellant herein had knowledge of said resolution and that, on June 8, 1938, he applied for a license for premises located at Mantua Road and Fifth Avenue. Written objections having been filed, a hearing was held on June 29, 1938, at

which time said license was denied. The validity of said denial will first be considered.

It appears from photographs introduced in evidence that the premises at Mantua Road and Fifth Avenue consist of a two-story building having all the appearances of a private home. There are a number of residences nearby, and no stores or business houses in that section of the Township. A petition containing the names of thirty-three objectors, most of whom reside in close proximity to the premises for which the license is sought, was presented to respondent at the hearing below. From all the evidence, I am satisfied that the premises at Mantua Road and Fifth Avenue are located in a residential district, and that the license for said premises was properly refused.

As to the application for a license for 22 East First Avenue, it is undisputed that, immediately following the meeting held on June 29, appellant had a conference with the members of the Township Committee. That conference concerned the possibility of obtaining a license for 22 East First Avenue. There is a dispute as to exactly what occurred at said conference. Appellant testified that the Chairman of the Township Committee suggested to appellant that he obtain the consent of the persons residing in the vicinity of 22 East First Avenue; that he told the Chairman that three persons who resided in that section of the Township would be opposed to the granting of the license, and that the Chairman replied, "That don't matter; three won't matter." Late that evening appellant obtained approximately sixty signatures to a petition favoring the granting of a license for 22 East First Avenue and, on the following day, presented the petition to the Chairman, who then told him "It looks very good; advertise tomorrow." The Chairman of the Township Committee admits that the version of the conversation given by appellant is substantially correct except that he has no recollection as to the portion of the conversation concerning the weight to be given to the objections of the three persons who were known to be opposed. Whatever the conversation, it does appear that, after notice of intention had been advertised, nine written objections to the issuance of the license were received by the Clerk and, after a hearing held on July 14, 1938, the application for 22 East First Avenue was denied because of the residential character of the neighborhood.

Even if the appellant's version of the conversation be accepted as true, it in no way bound the members of the Township Committee to act favorably upon his new application. The purpose of advertising the notice of intention is to afford objectors an opportunity to be heard and, at least in the absence of evidence sufficient to constitute an estoppel, the members of a license issuing authority should not be bound by any informal action taken prior to the hearing on objections filed. Stein v. West New York, Bulletin 101, Item 7; Cf. Lewis v. Phillipsburg, Bulletin 232, Item 13; Polansky v. Millburn, Bulletin 258, Item 2. The most that appears herein is that the members of the Township Committee suggested to appellant that he should sound out the sentiment of the persons who lived in the vicinity of the place in which he was seeking a license. Such advice was proper but in no way bound the members of the Township Committee to act favorably on the application at the hearing held on July 14th.

The evidence shows that 22 East First Avenue is located in what is known as the "Lake Tract." The "Lake Tract" contains about thirty bungalow-type residences. It contains no stores and no business places with the possible exception of one some distance

away from the premises for which the license is sought, at which gasoline may be purchased. The "Lake Tract" is separated from Mantua Road by a body of water used for recreational purposes. While 22 East First Avenue is located within a few hundred feet of the premises formerly licensed to appellant, it is located on the opposite side of the lake, and in a section which is predominantly residential. Photograph introduced into evidence shows that the premises for which the license is sought consist of a one-story bungalow, having the appearance of a private residence. Appellant has failed to sustain the burden of proof in showing that respondent's denial of his application for a license at 22 East First Avenue, because of the residential character of the neighborhood, is unreasonable.

Appellant argues that, as a result of respondent's determination herein, he is effectively prevented from obtaining a license in the Township at the present time; that this is so because of a resolution effective in the Township restricting the number of consumption licenses to seventeen. It appears that, after appellant's application was denied, a new consumption license was issued to Mrs. Rose Burns, so that seventeen consumption licenses are now outstanding. The Chairman of the Township Committee testified that Mrs. Rose Burns was turned down at least five times to give Mr. Held a chance to file. The Chairman testified, "We carried him on for those three months waiting and one month afterward, even before we did accept the application of Burns."

It was apparently only after appellant had been given ample opportunity to obtain a new place satisfactory to the respondent that the Burns application was entertained and granted. There is nothing in the case to show that there was any unjust discrimination against appellant and in favor of Mrs. Burns.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 17, 1938.

5. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of R.S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).)

Case No. 30.

CONCLUSIONS AND ORDER

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BY THE COMMISSIONER:

In Case No. 7, Bulletin 224, Item 2, an application previously made by petitioner herein to remove his disqualification was denied with leave to renew on or after August 5, 1939. Since the date of Conclusions therein, Chapter 350, P. L. 1938 has reduced the period of probation from ten to five years. Accordingly, petitioner was given leave to file his present petition prior to August 5, 1939.

Since his release from prison in 1929, petitioner has been arrested three times in 1931 for illegal sales of liquor and sentenced on said charges to serve one hundred days in a workhouse.

Subsequent to 1931 he has never been arrested or convicted. Three character witnesses testified that they have known him since 1933 and that he has conducted himself in a law-abiding manner. Their testimony and the absence of any criminal record in the past seven years would ordinarily lead me to lift the disqualification.

It appears, however, that on or about June 22, 1935 petitioner filed an application for a liquor license in which he failed to disclose his criminal record. He obtained and held a liquor license during the summer of 1935 for an hotel in New Jersey. In attempted explanation of his false application, he testified that he did not realize he was committing a serious offense in filing the false application; that a disclosure of his record would have held up the issuance of the license during part or all of the summer season; that he obtained the license to protect the investment of a friend who owned the hotel and who, because of circumstances beyond his control, became ineligible to hold a liquor license.

The burden is upon petitioner to convince me that he has conducted himself in a law-abiding manner during the past five years.

I find that petitioner, in June 1935, knowingly misstated a material fact in failing to disclose his criminal record in his application for a liquor license and, hence, committed a misdemeanor. R. S. 33:1-25 (Control Act, Section 22). At the hearing held in Case No. 7, supra, petitioner failed to disclose the facts concerning the false application or the issuance of the license to him; in fact, he testified that, during the summer of 1935, he was employed at the hotel as "watchman and janitor."

The petition to remove disqualification is, therefore, denied, with leave to file a new petition on or after June 22, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 17, 1938.

6. APPELLATE DECISIONS - KAPLAN v. NEWARK and K. & K. CO., INC. v. NEWARK.

JULIUS KAPLAN,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

K. & K. CO., INC.,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS

George R. Sommer, Esq., Attorney for Appellants.
Joseph B. Sugrue, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

These appeals may be decided together for the issue is the same. They were taken from the respondent's refusal to renew the

plenary retail consumption license of the respective appellants upon the ground that each applicant was personally unfit by reason of previous violations of the Rules and Regulations relating to the conduct of licensed premises.

During the fiscal year which expired June 30th last, the license of appellant Kaplan was suspended by respondent for two weeks because of selling to a minor. This suspension was sustained on appeal. Kaplan v. Newark, Bulletin 232, Item 12. Later, during the same year, I found Kaplan guilty of permitting "known criminals" and "persons of ill-repute" upon his licensed premises, whereupon his license was suspended from May 27, 1938 through the balance of its term and it was ordered that no renewal or other license be issued to him before July 10, 1938. Re Kaplan, Bulletin 247, Item 2.

During the same year, I found the appellant K. & K. Co., Inc. guilty of permitting a known prostitute to solicit men on its licensed premises, and of failing to notify respondent that its president (and holder of 10% or more of its stock) had been convicted of a crime involving moral turpitude, whereupon its license was suspended from June 5, 1938 through the balance of its term and it was ordered that no renewal or other license be issued to it before August 8, 1938. Re K. & K. Co., Inc., Bulletin 250, Item 6.

It is essential to sound control of the liquor traffic that issuing authorities shall have full right to deny renewals to those who violate the rules.

Case after case has been decided where renewals have been denied and upheld on appeal because of previous misconduct of the licensee. White v. Bordentown, Bulletin 130, Item 4; Wellens v. Passaic, Bulletin 134, Item 4; Schelf v. Weehawken, Bulletin 138, Item 10; Girard v. Trenton, Bulletin 140, Item 2; Greenberg v. Caldwell, Bulletin 141, Item 7; Brown v. Newark, Bulletin 146, Item 9; Hagenbucher v. Somers Point, Bulletin 192, Item 6; American Legion v. Beverly, Bulletin 200, Item 4; Repici v. Hamilton, Bulletin 201, Item 8; Hagerty v. Cranbury, Bulletin 202, Item 2; Klotz v. Trenton, Bulletin 202, Item 7; Callahan v. Keansburg, Bulletin 204, Item 6.

It is argued that the action of the respondent amounts to an attempt again to punish licensees for an offense for which they have been already punished. This argument loses sight, however, of the essential fact that a renewal license, like the original, is a privilege, and not a right. Its fallacy is the use of the term "punishment" in a loose, lay and generic sense. Punishment for violation of the rules is administered via suspension or revocation and may be inflicted only in respect of an existing license. These appellants now have no licenses for they expired on June 30th. Respondent's refusal to renew is not, therefore, a new or additional or cumulative "punishment" but merely an exercise of discretion which happens to be based on the same facts for which they already have been punished. The refusal was not made to punish the applicants but to protect the public. All that has occurred is that these licensees were punished for a violation of the rules and because of such violation, the Municipal Board refused to renew their licenses.

The action of the respondent in each of the present cases is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 19, 1938.

7. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to the Provisions of R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938).) CONCLUSIONS AND ORDER

Case No. 32)

David Bernheim, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Petitioner prays for the removal of his disqualification because of the convictions against him which are set forth in Re Anna Gulka, Bulletin 263, Item 9.

At the hearing it appeared that, during the past five years, petitioner has been arrested on three occasions; in July 1935, on a charge of being illegally employed in violation of the Alcoholic Beverage Control Act; in April 1936, on a charge of grand larceny, and in March 1937, on a charge of grand larceny. The arrest in July 1935 arose from the fact that petitioner was employed in the licensed premises of his daughter, Anna Gulka, despite his criminal record. The case was heard by a Police Judge, who adjourned the matter "without day." No further proceedings appear to have been taken in the case. The arrests in April 1936 and March 1937 were both on complaints of obtaining large sums of money by means of a so-called "Con game" or "box-switch." Petitioner was indicted on both occasions, but neither of the cases has been disposed of by trial or otherwise and both indictments remain open at present. Petitioner swears that he is innocent and attributes his arrests and indictments to the fact that he has a long criminal record. The burden is upon petitioner to show that he has conducted himself in a law-abiding manner during the past five years, and that his connection with the alcoholic beverage industry will not be contrary to public interest. Despite the fact that petitioner has not been convicted of a crime during the past five years, I am not satisfied from the record that he has conducted himself in a law-abiding manner during that time.

The petition to remove the disqualification is, therefore, dismissed with leave to renew upon proof that the pending indictments have been disposed of by trial or otherwise.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 18, 1938.

8. ADVERTISING - FIREWORKS - DEPRECATED.

Gentlemen:

Kindly advise if a brewery can advertise in the form of Fireworks such as was done at the Carnival of Lights here in Trenton last evening by the Trenton Brewery - that is, they set off a piece of Fireworks that read as follows: "Trenton Old Stock Beer" - this display being held out in the open on the play grounds on Chestnut St. below Hamilton Ave.

I should like to know about this as we may use something of the same nature in the near future.

Very truly yours,
Keystone Distributors, Inc.

September 18, 1938

Keystone Distributors, Inc.,
Trenton, N. J.

Gentlemen:

There is nothing, strictly speaking, in the law or the regulations at the present time prohibiting such advertising, although, candidly, I am not, now that you bring it to my attention, very favorably impressed with it. I don't relish breweries and wholesalers vying with each other for bigger and better fireworks. For the good of the industry, it is my conviction that advertising should be confined to recognized media and simple statements describing the product. Trick schemes and sensational displays may sell a few extra halves but in the long run do more harm than good because they consciously antagonize so many people who look on the excessive promotion of liquor sales with disfavor. If we are to continue to have licensed liquor sales, it is advisable to respect the wishes of these people.

Generally, our manufacturers and wholesalers have kept their advertising dignified and restrained. I hope they continue to do so for I have no desire to encumber the trade with a multiplicity of regulations. The matter to which you refer is, therefore, not at present one of "You must not!" It is rather: "Please don't!" Your joinder in self-regulation will be appreciated.

Sincerely yours,
D. FREDERICK BURNETT,
Commissioner.

). RULES CONCERNING CONDUCT OF LICENSEES - REGULATIONS 20, RULE 18 - REINSTATED.

August 25, 1938

NOTICE TO LICENSEES:

Under date of August 11, 1937, Rule 18 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises, prohibiting possession by licensees of malt, hops, coloring agents, liquor extracts, etc. on licensed premises, was promulgated, effective September 1, 1937. Thereafter, proceedings were instituted seeking a judicial determination of the validity of the rule. Pending adjudication of these proceedings, the effective date of the rule was deferred.

On August 15, 1938, the New Jersey Supreme Court held that the rule was "entirely reasonable and proper" and on August 24, 1938, an Order was entered dismissing the writ of certiorari which had theretofore been issued.

Accordingly, Rule 18 of the Rules Concerning Conduct of Licensees and Use of Licensed Premises (Regulations No. 20), set forth below in full, is hereby reinstated, effective September 10, 1938:

"18. No licensee shall sell or possess, or allow, permit or suffer on or about the licensed premises, any malt, hops, oak shavings or chips, flavoring or coloring agents, cordial or liquor extracts, essences or syrups, or any ingredient, compound or preparation of similar nature."

D. FREDERICK BURNETT,
Commissioner.

By: Nathan L. Jacobs,
Chief Deputy Commissioner
and Counsel.

0. CIVIL RIGHTS - DISCRIMINATION AGAINST COLORED FOLKS - HYPOCRITICAL MASKS ARE NOT TO BE ASSUMED FOR THE OCCASION.

September 19, 1938

Mr. LeRoy Collins,
Passaic, N. J.

Dear Sir:

I have your letter of September 7th re Karol John Szot, 22 William Street, Wallington.

Generally, it is within the discretion of a tavernkeeper to sell to whom he chooses.

The reason is that tavernkeepers have great responsibilities under the law. They must maintain good order and conduct at all times. Since they are fully responsible for all violations that may occur, it is only fair that they be permitted to exclude persons who they have reasonable cause to believe will not conduct themselves properly. Re Dorflinger, Bulletin 136, Item 12.

Discrimination on account of race, creed or color, however, is not permissible. It is a misdemeanor under the Civil Rights Act (R. S. 10:1.1 et seq.), which provides, inter alia:

10:1-2. "All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any places of public accommodation, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons."

10:1-3. "No owner, lessee, proprietor, manager, superintendent, agent or employee of any such place shall directly or indirectly refuse, withhold from, or deny to, any person any of the accommodations, advantages, facilities or privileges thereof, or directly or indirectly publish, circulate, issue, display, post, or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from, or denied to, any person on account of race, creed or color, or that the patronage or custom thereat of any person belonging to or purporting to be of any particular race, creed or color is unwelcome, objectionable or not acceptable, desired or solicited."

10:1-5. "A place of public accommodation, resort or amusement within the meaning of this chapter shall be deemed to include any inn, tavern, road house or hotel,.....any restaurant,..... any place.....where any beverages of any kind are retailed for consumption on the premises;....."

See Re Grant, Bulletin 231, Item 1; Re Tait Paul, Bulletin 188, Item 9.

The foregoing does not, of course, impair the right of a tavernkeeper to refuse service or accommodations where it may result in disturbance or violation of the law. But this does not mean that a tavernkeeper may arbitrarily refuse to sell to a colored man, simply because of his color, and thereafter try to cover himself up by pretending that it was his judgment that such service or accommodation might result in disturbance. The burden of proof is on the tavernkeeper to justify such a judgment. To be successful in such a defense, he will have to show that his "judgment" was not born of mere desire to discriminate but was based upon facts and circumstances which would lead any ordinarily reasonable and fair-minded man to such a conclusion. Hypocritical masks are not to be assumed for the occasion.

From what you relate, I take it that there may have been a violation of the Civil Rights Act. If so, on proper complaint, charges may be brought and penalties assessed in accordance with the provisions of the Act. See R. S. 10:1-6 and 10:1-7. But that is a matter as to which you should consult your own lawyer. I have no jurisdiction to enforce the Civil Rights Act because that Act itself imposes its own penalties which means that they are the only penalties that can be inflicted when the Act is violated.

I am deeply sympathetic with the obstacles that confront members of the colored race and, when the matter is within my jurisdiction, have faced them fearlessly and endeavored to give them practical and fair solutions. See Manning v. Trenton, Bulletin 247, Item 1; Sears Roebuck v. Absecon and Jones, Bulletin 185, Item 10; Williams v. Township of Hillsborough, Bulletin 268, Item 7.

I am writing today to the tavernkeeper at whose place the alleged discrimination occurred, as per copy enclosed, in the hope that once he understands what the law is on this point he will not trespass again. I really think this is a better way than engendering bitterness and race consciousness by taking the matter into court. A word to the wise should be sufficient. Please advise your co-signers.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

11. ELIGIBILITY FOR EMPLOYMENT - MORAL TURPITUDE - HEREIN AGAIN OF YOUTH.

September 12th, 1938.

Re: Case No. 229.

Applicant requests a ruling as to his eligibility to be employed on licensed premises.

On January 1st, 1932 and again on February 27th, 1932 applicant was arrested charged with larceny of an automobile. He was found guilty on both charges and sentenced to Rahway Reformatory, but the operation of the sentence was suspended.

On November 14th, 1932 he was again arrested on a charge of larceny of an automobile and subsequently sentenced to serve five days in a County Jail.

Applicant, born April 20th, 1915, was under eighteen years of age at the time of the three arrests described above. He testified that he and two other young men had taken these autos for a "joy ride" and that the autos were returned to their owners. In view of his youth, I do not believe that these convictions involved moral turpitude. Re Hearing No. 146, Bulletin 167, Item 4.

On April 25th, 1934 applicant was arrested on a charge of statutory rape. He pleaded non vult, received a suspended sentence of six months in a County Jail, was placed on probation for eighteen months and fined $50. The Probation Officer reports that applicant and two other young men pleaded non vult at the same time to statutory rape; that the girl involved was fifteen years of age; that her reputation was bad and that she has been sent to the State Home for Girls; that the Officer has no further information of applicant since he was released from probation. At the hearing applicant testified that the girl had told him she was eighteen years of age. The girl was no beginner. I believe that the crime did not involve moral turpitude. Re Case No. 68, Bulletin 203, Item 13.

On April 30th, 1938, applicant was arrested charged with violating R.S. 33:1-77 (Control Act, Section 77). At that time he was acting as bartender for a retail licensee, and the arrest followed an alleged sale of alcoholic beverages to a minor of the age of eighteen years. The license was suspended for ten days in disciplinary proceedings against the licensee. The criminal case has not been tried. Since applicant has not been convicted, it is not necessary to determine at this time whether the crime involved moral turpitude.

Applicant's record is not an enviable one, but it does not appear that he is disqualified by any of his convictions. It is recommended, therefore, that applicant be advised he is eligible to be employed by a liquor licensee.

EDWARD J. DORTON
Attorney-in-Chief

DISAPPROVED:

Larceny normally involves moral turpitude. It is true, however, that, in Bulletin 167, Item 4, I excused a boy just past

his seventeenth birthday, who had been convicted of taking an automobile for a joy ride, and held that his crime, in view of his youth, did not involve moral turpitude. That was the only blot on his record.

The reason for the exception in favor of youth is stated in the leading case, Bulletin 149, Item 1, viz.:

> "In view of the harsh, practically permanent and far-flung consequences of deciding that a crime does involve moral turpitude, I am extremely reluctant in any case so to determine unless that conclusion is clearly indicated or is demanded by the precedents. In the case of boys and girls, who, at the time of the offence were under the age of 18 years, I feel justified, in order to save as far as possible a lasting blight upon their lives, in giving the requirement as strict a construction as the specific facts will admit. This will be the guiding principle hereafter. It applies only to minors under the age of eighteen."

In the instant case, it is well said that the applicant's record is an unenviable one. Besides his two convictions before he was eighteen, he has been convicted of statutory rape at the age of nineteen and arrested when he was twenty-three, charged with another misdemeanor.

The ruling made in the leading case was not designed to render youth immune from criminal consequences or to abet them in criminal career, but rather to prevent blighting their lives by a decision that a single thoughtless offense committed in early youth was a fatal and permanent barrier to their present employment, notwithstanding they had turned over a new leaf and gone straight ever since.

In the instant case, no such blighting effect will occur by a decision holding the present applicant fully responsible for his acts. Whatever blight there is, he has brought upon himself by his later acts. Leaving out of consideration the latest unproved, but still pending, criminal charge, it is apparent that he has not turned over a new leaf. There is no reason here to apply the protective doctrine which obtained in the other cases. Cessante ratione cessat lex. Considering his record as a whole, I find that the crime of November 14, 1932, his second offense of the same kind, did involve moral turpitude. It follows that he is not eligible to be employed by a liquor licensee.

Dated: September 21, 1938.

D. FREDERICK BURNETT,
Commissioner.

2. APPELLATE DECISIONS - CALEDONIAN CLUB, INC. and MEARNS v. PATERSON et al.

CALEDONIAN CLUB, INC. and JOHN MEARNS,
Appellants,
-vs-
BOARD OF ALDERMEN OF THE CITY OF PATERSON and VETERANS OF FOREIGN WARS, ALEXANDER HAMILTON POST #139,
Respondents

ON APPEAL
CONCLUSIONS

Mortimer L. Mahler, Esq., Attorney for Appellants.
George Dimond, Esq., Attorney for Respondent Board of Aldermen.
M. Metz Cohn, Esq., appearing specially for Veterans of Foreign Wars, Alexander Hamilton Post #139.

BY THE COMMISSIONER:

Appellants, Caledonian Club, Inc. and John Mearns, its President, appeal from the issuance of a club license by respondent Board of Aldermen to Veterans of Foreign Wars, Alexander Hamilton Post #139 (hereinafter called Alexander Hamilton Post) upon the ground that respondent's action in issuing said license was discriminatory and in direct violation of the State Control Act, Section 13(5).

Respondent, Alexander Hamilton Post, has appeared specially herein by its attorney, M. Metz Cohn, Esq., and objected to these proceedings on the grounds (1) that it has paid for a license pursuant to the law as prescribed by the Alcoholic Beverage Control Act, having duly advertised in accordance with the law and, at the time of the granting of the original license in 1937 and the renewal in 1938, there were no objections made by anybody at the public meeting of the Board of Aldermen of the City of Paterson; (2) that the Commissioner is biased and prejudiced in these proceedings. Having appeared specially and noted his objections, the attorney for said respondent refused to take any further part in the proceedings.

As to (1): R. S. 33:1-23 (Control Act, Section 20) provides that "it shall be the duty of the Commissioner to administer and enforce this act." Under the broad power conferred, it becomes my duty, on an appeal duly filed, to determine whether the license in question has been granted in conformity with the provisions of the Control Act. If not, it becomes my duty to set aside the license. The fact that no objections were filed below does not preclude appellants from filing this appeal. White v. Atlantic City, 62 N. J. Law 644 (Sup. Ct. 1899).

As to (2): An affidavit of bias or prejudice must show that the judge has a personal bias or prejudice either against affiant or in favor of any opposite party to the suit. Benedict v. Seiberling, 17 Fed. 2nd 831 (Dist. Ct. Ohio 1926). The alleged basis for the charge herein is that, in 1937, an arrest was made as a result of an official investigation by this Department, which disclosed that sales of alcoholic beverages were being made upon the premises occupied by Alexander Hamilton Post, despite the fact that no license for said sales had been obtained. This fact falls far short of showing bias or prejudice. There is no affidavit. There is no bias or prejudice. There is nothing on the record except the mere unsupported assertion of the learned attorney.

At the hearing, respondent Board of Aldermen moved to dismiss the appeal on the grounds that appellant, Caledonian Club,

Inc. is in no way affected by the grant of a license to Alexander Hamilton Post #139 and, further, because the Caledonian Club has no legal status before the Commissioner in this case. Appellant, Caledonian Club, Inc. qualifies in all respects as a club licensee under State Regulations No. 7. It complains of unfair discrimination under the wording of the Paterson resolution in that it was denied a club license, whereas such a license was issued to Alexander Hamilton Post. Caledonian Club, Inc., therefore, has a standing to bring this appeal. Assuming, however, that neither of the appellants herein has any standing, the State Commissioner, on his own motion, either in this or some other proceeding, has authority to declare a license void if in fact it has been issued in violation of the provisions of R. S. 33, Chapter 1 (Alcoholic Beverage Control Act). Trustees of The First Particular Baptist Church of Paterson v. Paterson and Silver Rod Stores, Inc., Bulletin 245, Item 8.

As to the merits: Prior to November 15, 1937 respondent Board of Aldermen had adopted no ordinance or resolution providing for the issuance of club licenses or fixing fees therefor. Hence, at that time no club licenses were or could have been outstanding in the City of Paterson. Lysaght v. Denville, Bulletin 250, Item 1. On November 15, 1937 respondent Board of Aldermen adopted the following resolution:

> "BE IT RESOLVED That the Board of Aldermen of the City of Paterson, pursuant to Chapter 436, Laws of 1933 as amended by Chapter 85 Laws of 1934, issue a club license to any nationally recognized veteran organization having a Post Chapter or Camp located in the City of Paterson for a period of at least ten years.
>
> "The fee for said club license shall be $50.00 annually and said license shall run from July 1st to June 30th, of the year following."

On November 24, 1937 respondent Alexander Hamilton Post filed an application for a club license, pursuant to said resolution, and said license was granted and issued. Said license was renewed for the present fiscal year and it is from the latter action that appellant appeals.

Authority for the adoption of the resolution dated November 15, 1937 must be found, if at all, under R. S. 33:1-12 (Control Act, Section 13(5)), which provides:

> "***Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes and not for private gain, and comply with all conditions which, subject to rules and regulations, may be imposed by the Commissioner."

State Regulations No. 7, being Rules Governing the Issuance of Club Licenses, were adopted pursuant to said Section of the Control Act. Rule 2 thereof provides:

> "Club licenses shall be issued only to bona fide clubs. No license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously, immediately prior to the submission of said application, and shall have been in exclusive, continuous possession and use of a clubhouse or club quarters for the same period of time; *** provided further that nothing in this section shall prevent the issuance of a club license to any constituent unit, chartered or otherwise duly

> enfranchised chapter or member club of a national or state order, organization or association, which order, organization or association shall have been in active operation in the State of New Jersey for at least three years continuously, immediately prior to the submission of said application, and which unit, chapter or member club shall have been duly credentialed by said national or state order, organization or association to and approved by the Commissioner."

The purpose of the Section of the Control Act providing for club licenses, and the State Regulations issued in pursuance thereof, was to fix the qualifications of organizations which might obtain club licenses. All organizations which so qualify are entitled to be treated alike. A municipal regulation permitting some qualified organizations to obtain a liquor license and effectively prohibiting other qualified organizations from obtaining such a license is void because discriminatory. Morgan v. Orange, 50 N. J. Law 389 (Sup. Ct. 1887); Village of South Orange v. Heller, 92 N. J. Eq. 505; Kohr v. Atlantic City, 104 N. J. Law 468 (Sup. Ct. 1928); Altschuler v. Scott, 5 N. J. Misc. 697 (Sup. Ct. 1927). In Re DuPree, Bulletin 216, Item 6, I considered the resolution in question and said:

> "I could not, however, approve at all a regulation endeavoring to confine the issuance of club licenses exclusively to veterans' organizations. The Control Act, Section 13(5), provides for the issuance of club licenses to such corporations, associations or organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes and not for private gain. The Aldermen cannot make fish of one club and fowl of another. If the Veterans may have a club liquor license, so may the Elks, the Moose, and all the orders. If club licenses are to be issued, they must be issued to all those which fall within the statutory definition and fulfill the requirements. Re Siracusa, supra; Re Glass, Bulletin 181, Item 2. Licenses, to be sure, are privileges, as distinguished from rights, but no one group may monopolize those privileges."

For the reasons above stated, the resolution dated November 15, 1937 is void.

The action of respondent Board of Aldermen of the City of Paterson, in issuing Club License No. CB-3 to Veterans of Foreign Wars, Alexander Hamilton Post #139, is, therefore, reversed. All activity under said license must cease forthwith and the license must be surrendered to the Municipal Clerk.

D. FREDERICK BURNETT,
Commissioner.

Dated: September 21, 1938.

13. APPELLATE DECISIONS - CALEDONIAN CLUB, INC. v. PATERSON.

CALEDONIAN CLUB, INC.,
Appellant,
-vs-
BOARD OF ALDERMEN OF THE CITY OF PATERSON,
Respondent

ON APPEAL
CONCLUSIONS

Mortimer L. Mahler, Esq., Attorney for Appellant.
Salvatore D. Viviano, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a club license for premises known as 20 Belmont Avenue, Paterson.

Appellant, incorporated sixty-five years ago, in 1873, qualifies in all respects as a club licensee under State Regulations No. 7. It formerly held a plenary retail consumption license for its premises, but instead of renewing this license for the current fiscal year, it applied in due form for a club license.

Prior to November 15, 1937 there was no ordinance or resolution of respondent Board providing for the issuance of club licenses, or fixing a fee therefor.

Respondent's resolution of November 15, 1937 having been today set aside, Caledonian Club, Inc. and John Mearns v. Board of Aldermen of the City of Paterson and V. F. W., Alexander Hamilton Post #139, it follows that there is presently no municipal regulation fixing the fee for club licenses. Hence, at present no club licenses can be issued in Paterson. Lysaght v. Denville, Bulletin 250, Item 1.

The action of respondent is, therefore, affirmed.

Both club licenses herein mentioned may be lawfully issued if the Board of Aldermen of Paterson will only enact a resolution applicable to all clubs without provisions for unfair discrimination such as I have had to set aside.

Harlan P. Burnett

Commissioner.

Dated: September 21, 1938.