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

BULLETIN 356 OCTOBER 27, 1939.

1. LICENSES - RENEWALS - CHAPTER 281, P. L. 1939, DEFINING RENEWALS, DOES NOT HAVE RETROACTIVE EFFECT AND THEREFORE WILL OPERATE, AS REGARDS YEARLY LICENSES, COMMENCING JULY 1, 1940 - APPLICATIONS FOR RENEWALS FOR THE CURRENT YEAR, FILED WITHIN THE TIME PRESCRIBED BY LOCAL REGULATION, MAY BE ENTERTAINED BY MUNICIPAL LICENSE ISSUING AUTHORITIES.

October 9, 1939

Dear Commissioner:

The City Commission has requested me to certify to you a question concerning the right to renew a license. Charles W. Maker had a plenary retail consumption license which expired on June 30, 1939. Thereafter he did not renew his license due to the fact that he did not have the required license fee of $500.00. In the meantime, the City finally approved an amendment to the local ordinance allowing sixty days from the commencement of the licensing period within which a former licensee could apply for a renewal. On August 21 Mr. Maker filed an application for renewal and deposited the license fee.

So far as the municipal ordinance is concerned, Mr. Maker was clearly within time as his application came within sixty days of the expiration of his 1938-39 license. On August 2, 1939, however, Chapter 281 of the Laws of 1939 was passed, which limited the time for a renewal application to thirty days after the commencement of the new license date.

The statute in question does not have a saving clause to take care of those who had not already applied when the statute was passed. As a matter of fact, all those who had not applied, by the literal terms of the statute, were precluded from obtaining a renewal license as the effective date of the statute was more than thirty days after the commencement of the new license term.

Would you be kind enough to advise whether the Department will construe the statute so as to permit an applicant for a renewal license to make his application within thirty days of the commencement of the new license term or <u>within thirty days of the effective date of the statute.</u>

Respectfully yours,
Samuel Backer,
City Solicitor.

October 24, 1939

Samuel Backer, Esq.,
City Solicitor,
Atlantic City, N.J.

Dear Mr. Backer:

I have before me yours of October 9th, re Charles W. Maker, who held a plenary retail consumption license for the fiscal year expiring June 30, 1939, but did not file application for renewal of such license until August 21st, 1939.

Section 5 of Alcoholic Beverage Ordinance #3, adopted by the Board of Commissioners on July 16, 1936, as amended by Ordinance #15 adopted August 10, 1939, provides:

> "Retail consumption licenses shall be limited in number to 220 provided, however, that such limitation shall not affect the licenses presently issued or renewals of the same in subsequent years; no new retail consumption licenses shall be issued until, by relinquishment, revocation or otherwise, the number of retail consumption licenses shall be reduced below the number of 220 and then new licenses may only be issued until the number of 220 is reached."

There are 246 plenary retail consumption licenses outstanding in Atlantic City as of this date. Thus, for Maker to qualify for a license, in view of the limitation in Section 5, it must be a renewal.

Renewal is defined by Chapter 281, P. L. 1939.

> "1. Any license which is issued for a new license term to replace a license which expired on the last day of the license term which immediately preceded the commencement of said new license term or which is issued to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new term shall be deemed to be a renewal of the expired or expiring license; provided, that said license is of the same class and type as the expired or expiring license, covers the same licensed premises and is issued to the holder of the expired or expiring license; and provided further, that the application for said renewal shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement of said new license term (. Otherwise they) shall be deemed to be applications for new licenses.
>
> "2. This act shall take effect immediately."

The bill was approved by the Governor on August 2, 1939, and so became effective immediately. Bulletin 344, Item 10.

The question is whether an application, having been filed on August 21st, after the enactment of Chapter 281, P. L. 1939 and more than thirty days after the commencement of the new license term, may be deemed to be for a renewal of an expired license or whether it must be taken to be an application for a new license. The answer depends on whether this statute is to be given retroactive, or only prospective, effect.

In the absence of clear language indicating the contrary, statutes are to be given prospective and not retroactive effect. See Bulletin 337, Item 9 and the cases cited, particularly Regan v. State Board of Education, 109 N. J. L. 1, 5 (Sup. Ct. 1932), aff'd 112 N. J. L. 196 (E. & A. 1933), where Mr. Justice Trenchard said:

> "Words in a statute ought not to have a retrospective operation, unless they are so clear, strong and imperative that no other meaning can be annexed to them, or unless the intention of the legislature cannot otherwise be satisfied. This rule ought especially to be adhered to when such a construction will alter the pre-existing situation of the parties or will affect their antecedent rights, services or remuneration, which is so obviously improper that nothing ought to uphold and vindicate the interpretation but the unequivocal and inflexible import of the terms, and the manifest intention of the legislature."

The statute plainly states that it shall take effect immediately, that is, be and constitute a part of the law from now on. But there are no words in it whatsoever to indicate that its scope and operation shall reach back and affect matters which occurred before the statute became effective. If it were not for this statute, there would be no question but that this application, although tardy, was nevertheless an application for a renewal of the license he had had during the last fiscal year. So far as your local ordinance was concerned, he was within time. If the statute were construed to have a retroactive effect it would seriously prejudice, in fact destroy the antecedent rights of the applicant. The declared intent of the Legislature can be fully satisfied by treating the statute as being prospective. In fact, the words "shall have been filed" contemplate future and not past action.

I conclude that the statute in question has no retroactive operation and therefore has no effect upon an application for renewal of a license which expired before the statute was enacted. Such application will therefore be treated according to the law then applicable thereto, independent of the statute.

The thirty-day period during which applications may be filed and considered renewals may not run, as you propose, from the effective date of the statute. The law clearly says that it shall run from the commencement of the new license term and that means thirty days from July 1st. Since, however, there is no language or intent that it shall have retroactive effect, the statute will operate, as regards the yearly licenses, not from July 1, 1939 but from July 1, 1940 on. I so rule.

Chapter 281, P. L. 1939 does not bar Maker's present application. The application was filed within sixty days of July 1st last and is within time for renewals as prescribed by Section 4(c) of your ordinance (supplement of August 10, 1939). The application may therefore be entertained by the Board of Commissioners.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

2. LICENSES - RENEWAL - CHAPTER 281, P. L. 1939 NOT BEING OPERATIVE UNTIL JULY 1, 1940, AND IN THE ABSENCE OF MUNICIPAL REGULATION FIXING A TIME LIMIT WITHIN WHICH APPLICATIONS MUST BE FILED, WHETHER A LICENSE MAY BE CONSIDERED A RENEWAL IN THE CONTEMPLATION OF THE LOCAL LIMITATION, DEPENDS ON WHETHER OR NOT WHAT THE LICENSEE HAS DONE OR LEFT UNDONE INDICATES INTENT TO PRESERVE THE BUSINESS OR TO ABANDON IT.

October 9, 1939

Dear Sir:

An ordinance of the Township of Howell dated June 28, 1937, a copy of which is enclosed, limits the number of Plenary Retail Consumption Licenses on State Highway No. 34 to three and further requires that when any license shall be revoked, surrendered or for any reason becomes invalidated, the number of licenses on State Highway No. 34 shall be reduced to two.

On June 30, 1939 Mr. Millard Batting, who held a license on State Highway No. 34 for premises known as "Town Tavern" did not apply for renewal of his license. He has now applied for renewal, stating that it was never his intention to surrender the license but only to postpone the application because of lack of funds in June. He states that at that time his wife was in the hospital, necessitating the use of all his cash. With his application he has deposited the fee for the whole year, viz., $365.00.

The Township Committee of Howell Township desires to renew the license if legal to do so under the present ordinance. Will you please advise if in your opinion the license previously held can be renewed at this date?

Yours very truly,
Elmer C. Hall,
Clerk of Howell Township.

October 24, 1939

Elmer C. Hall,
Clerk of Howell Township,
Freehold, N. J.

My dear Mr. Hall:

I have before me yours of October 9th, re Millard Batting, who held a plenary retail consumption license for premises on State Highway No. 34 for the fiscal year expiring June 30, 1939 but has just now applied for a renewal.

The application is not barred by Chapter 281, P.L. 1939, which defines renewals for the reason that this statute does not apply, so far as the yearly licenses are concerned, until the fiscal year commencing July 1, 1940. See Re Backer, Bulletin 356, Item 1, just decided.

I find nothing in your local regulations, as there was in Atlantic City and discussed in the Backer ruling, limiting the time within which applications must be filed in order to be considered renewals. The application is, therefore, not barred on that score.

Section 1 of ordinance limiting the number of alcoholic beverage licenses, adopted by the Township Committee on August 31, 1938, so far as pertinent, provides that there shall be "Not more than three plenary retail consumption licenses on State Highway No. 34" and further, that in the event any such licenses shall be revoked or surrendered or become invalidated, the number shall be reduced "on Highway No. 34 to two."

Whether Batting's license may be considered a renewal, depends on whether or not what he has done or left undone constitutes an abandonment.

That, of course, is a matter of intent, which the Township Committee will ascertain after a determination of all of the facts. His story that it was never his thought to give up the business, but merely to postpone the application because of lack of funds for the reason that his wife was in the hospital, sounds plausible. It may well be accepted by the Township Committee, no contradictory evidence appearing. Where the intent is the dispositive factor, no arbitrary time limit can be fixed. It is rather a matter of the reasonably presumable intention which may be gathered from the facts. See Re Deighan, Bulletin 141, Item 2; Berger v. Carteret, Bulletin 213, Item 9; and related rulings in Beringer v. Camden, Bulletin 144, Item 5; Re Perry, Bulletin 199, Item 1; Re Bayonne, Bulletin 216, Item 3; Conway v. Haddon, Bulletin 251, Item 3; Lucari v. Millville, Bulletin 310, Item 5.

The decision rests with the Township Committee. Not having all of the facts, I can express no opinion on the merits.

If the Township Committee finds that the intent was to continue, rather than to abandon, it may entertain the application and issue the license without contravening the provisions of either the statute or the ordinance.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on August 2, 1939, of a Ford coupe and a quantity of alcohol contained therein, on a highway between Pole Bridge Road and Broadway, in Egg Harbor Township, County of Atlantic and State of New Jersey.	#5529 CONCLUSIONS AND ORDER

Harry Castelbaum, Esq., for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On August 2, 1939 officers of this Department, in cooperation with a constable of Atlantic County, patrolling in the area of Pole Bridge Road and Broadway in Cardiff, Egg Harbor Township, Atlantic County, observed a Ford coupe come out of a woods road. They stopped the car and on searching it found a half-gallon glass jug of an alcoholic beverage bearing no indicia

of tax payment. The investigators searched the vicinity and discovered a still set up but not in operation, the subject of collective seizure hearing to be held in future. The driver of the car was arrested and charged with possession and transportation of illicit alcoholic beverages in violation of R. S. 33:1-50.

At a hearing duly held no one appeared to contest the forfeiture of the seized alcoholic beverage and the Ford sedan. Alcoholic beverages bearing no indicia of tax payment are prima facie illicit. P. L. 1939, Chapter 177. Such beverages and vehicles used for their transportation are unlawful property subject to forfeiture, pursuant to R. S. 33:1-66.

It is, accordingly, on this 22nd day of October, 1939, ORDERED, that the container of alcoholic beverage and Ford coupe, Engine #18-225-491, 1939 New Jersey Registration AJ 70 P, be and they hereby are declared unlawful property and forfeited, to be sold, destroyed or retained for the use of hospitals and State, County and municipal institutions.

D. FREDERICK BURNETT,
Commissioner.

4. ALCOHOL - LABELS - IF IN INTERSTATE COMMERCE AS WELL AS NEW JERSEY, LABELS MUST BEAR STATEMENT OF NET CONTENTS IN OUNCES AND ALSO IN PINTS OR QUARTS IN ORDER TO COMPLY WITH BOTH REGULATIONS.

October 24, 1939

The Black Prince Company, Inc.,
Nutley, N. J.

Gentlemen:

I have before me yours of September 21st and copy of letter from the Federal Alcohol Administration addressed to the Black Prince Co., Inc., and bearing date September 13, 1939.

On August 25th, this Department certified as acceptable certain alcohol labels and stickers which had been submitted by you for approval. That approval did not purport to certify that the labels and stickers met with the requirements of Federal as well as State law and regulations. The approval therein given was confined to the New Jersey Law and Regulations. My jurisdiction extends no further.

If distribution of the alcohol so packaged and labeled is to be interstate and foreign as well as intra-state, then the Federal Alcohol Administration Act and Regulations must also be obeyed. That means, I take it from the letter of September 13th aforesaid, that the labels will have to bear not only a statement of the net contents in ounces, as required by State Regulations No. 31, Rule 4, but also such other statement of contents as is required by the Federal Regulations. The purpose of the State Alcohol Law is to remove alcohol from the beverage category. To effectuate this purpose, I have required that the contents be stated in ounces, rather than units of quarts or pints.

The question of the concurrent effect of the State and Federal Regulations has come up before (Re Glassave, Bulletin 250, Item 8). I have ruled that the operation or application of one does not exclude the operation or application of the other, and that where both are applicable, both must be obeyed. Thus, if the Federal authorities require that you state the contents as "One quart", you can comply with both laws by stating it "One quart (32 oz.)."

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. PRACTICES DESIGNED UNDULY TO INCREASE CONSUMPTION - MOVABLE DIAL AND ITS EFFECT ON UNWARY DRINKERS - HEREIN OF THE "CATCH 'EM CLUB"

October 24, 1939

Mr. Anthony Sabatucci,
T/a Green Tree Inn,
W/S Road running from Marlton to
Moorestown in Evesboro,
Evesham Township, Burlington County, N. J.

Dear Sir:

Recent investigation discloses that behind your bar is a sign 12" x 12" with the words "Catch 'em Club, Liquor 2¢ - Other Drinks 1¢." On it is a clock hand which may be moved so as to point either to the word "Left" or "Right." Behind the bar is a register listing the names of the members. On the bar is a glass jar with a slot in the top.

Patrons wishing to join this "organization" deposit a quarter in the jar and are then registered as members. Any member may at any time move the dial either left or right and, if any other member is caught with a drink in his hand opposite to that indicated by the dial, he is fined 1¢ or 2¢, depending upon whether the dial points to "Liquor" or "Other Drinks." The fines are placed in the jar and at the end of a given period all of the members have a party and the drinks are paid for out of the fund in the jar.

Where did you get this thrilling idea? Isn't the world left-handed enough? And what will become of two-fisted drinkers? Nights must be long in Evesham! If time hangs so heavy, why not appoint a south-paw to read out loud from Joe Miller's Joke Book? Or scare up an almanac? Or run a bee on quotes from Julius Caesar?

Whatever you do, you'll have to dissolve your Catch 'em Club forthwith. It is nothing but another "come-on" sales promotion - a practice designed unduly to increase the consumption of alcoholic beverages by Evesham tourists.

Cease and desist at once.

Very truly yours,

D. FREDERICK BURNETT,
Commissioner.

6. APPELLATE DECISIONS - LIPMAN v. NEWARK.

LOUIS LIPMAN, :

Appellant, :

vs. : ON APPEAL

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, : CONCLUSIONS

Respondent. :

Louis A. Fast, Esq., Attorney for Appellant.
Joseph B. Sugrue, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from refusal to renew appellant's license for the current fiscal year for his tavern at 445 Washington Street Newark.

Respondent contends that the renewal was properly denied because of appellant's past misconduct.

During the fiscal year 1935-6, appellant, on charges in a disciplinary proceeding before respondent, pleaded guilty to employing a minor and selling liquor to minors (contrary to Statute), selling liquor after hours and employing hostesses (contrary to municipal regulation), and serving liquor to persons apparently drunk (contrary to State rule), whereupon respondent, as then constituted, suspended his license, albeit for only five days. See Re Lipman, Bulletin #324, Item 1. Because of the sale after hours on that occasion, appellant was also fined $50. in police court.

During the last fiscal year, 1938-9, appellant was again brought up on charges, and found guilty, in a disciplinary proceeding before this Department, of employing hostesses and of employing a female to tend bar and sell or serve liquor (contrary to municipal regulation) and of permitting lottery slips to be sold at his tavern (contrary to State rule), whereupon I imposed a seventy-five day penalty against him. See Re Lipman, supra.

The case, therefore, comes within the principle laid down in Kaplan vs. Newark, Bulletin #269, Item 6, where I held that sound control of the liquor traffic requires that issuing authorities have ample right to deny a renewal to a licensee guilty of misconduct even though he has already suffered suspension for that misconduct. For recent instances, see Orsi vs. Newark, Bulletin #352, Item 2; Haino vs. Newark, Bulletin #352, Item 4.

While not disputing this rule, appellant, however, contends that respondent committed error in considering the 1938-9 disciplinary case on his application for renewal since the actual evidence in that case was never before it.

Such contention is without merit. The adjudication in that case had been duly certified to the respondent. The respondent had a right to rely upon it. The record could not be patched up by parol. Neither is it to be dishonored because the respondent accepted it without examination of the evidence on which it was based. The adjudication by the State Commissioner speaks for itself and stands good unless and until reversed by a court of higher authority. In the meanwhile it is binding upon every local license issuing body. The respondent is not an appellate tribunal. Its action in accepting the conclusions of the State Commissioner, based on evidence given at a hearing where appellant had full opportunity to be heard, was eminently proper. Like any judgment it is immune to attack on the merits except in an appellate court providing the tribunal which rendered it had jurisdiction and there was no fraud or other compelling reason why full faith and credit should not be given it.

Appellant further contends that respondent was arbitrarily discriminatory in refusing to renew his license since it granted renewals to other persons who had been found guilty of misconduct.

This contention is likewise without merit. "The comparative worthiness of persons applying for a license is a question lying within the sound discretion of the issuing authority. Orsi vs. Newark, supra. My attention is not brought to any instance where respondent has renewed the license of a tavern keeper who, like appellant, has been twice found guilty of a series of violations and who escapes mandatory disqualification from a license only because he was not convicted of a statutory offense in each case. See R.S. 33:1-25; Re Lipman, supra. Furthermore, even had respondent granted a renewal to a licensee with an equal record, the remedy is not in compelling respondent to renew appellant's license but in reversal of the renewal of such other license."

Appellant further claims that he was told by one of respondent's members that, if appellant obtained a withdrawal of a written objection that had been filed against his application, the renewal would then be granted and that such withdrawal was thereafter obtained. However, this member states that, although he informed appellant of the written protest, he made no promise that on its withdrawal appellant's license would be renewed; that, in fact, the vote against the renewal had nothing to do with the written objection. I believe his testimony.

Appellant also stresses the fact that this same member, in resolving his mind against the renewal, paid heed not only to appellant's record but also to the police recommendation against the renewal. Such action, far from being error, was eminently proper.

Lastly, it is pointed out that the renewal was denied without a hearing. This, too, constituted no error, since a local issuing authority is not required to conduct any hearing as a requisite to denial of a new or renewal license. Rule 8 of State Regulations No. 2; Gomulka vs. Linden, Bulletin #294, Item 8; Sidney's, Inc. et al. vs. Newark, Bulletin #296, Item 10.

Appellant has had his full day in court in this appellate tribunal but no evidence has been adduced which in anywise shows that the respondent acted unreasonably or arbitrarily in refusing a renewal to one who had been twice disciplined for employment of hostesses.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 24, 1939.

7. SOLICITORS' PERMITS - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 19, 1939

Re: Case No. 299

On June 24, 1936, an order was entered in the Essex County Domestic Relations Court by which applicant was required to pay $15.00 a week for the support of his children. Having fallen behind in those payments, he was called before the Court and directed to deposit a bond of $500.00 to insure the payment of his weekly contributions. He spent two days in jail pending the posting of the bond. Thereafter, on December 18, 1936, the Domestic Relations Court sentenced him to three months in jail because of a misunderstanding with the Probation Department over the amount of his earnings. He was released after serving two months of that sentence.

A summary order for support in the Domestic Relations Court is not a conviction of a "crime" within the meaning of R. S. 33:1-25. That section contemplates convictions of offenses in which the safeguards of indictment and trial by jury are guaranteed to the accused. Cf. Re Case 231, Bulletin 271, Item 10 (violation of Motor Vehicle Act, and court-martial); Re Case 221, Bulletin 246, Item 7 (disorderly person); Re Case 239, Bulletin 305, Item 9 (municipal ordinance). Rather, it is similar in nature to other summary statutory proceedings, which are but quasi-criminal. See State v. Rowe, 116 N. J. L. 48 (Sup. Ct. 1935), where in passing upon a motor vehicle offense, the Court said (p. 51):

> "This is not a criminal prosecution. (Cases cited). It has been likened to a proceeding in cases of bastardy, desertion, removal of paupers and the like."

By parity of reasoning, a summary conviction in the Domestic Relations Court for an offense in the nature of a contempt of its order, is not a crime within the meaning of the cited statute. Cf. In Re Jibb, 121 N. J. Eq. 531 (Ch. 1937), where the Court points out that a perjury contempt is punishable by it summarily, and also as a crime after indictment.

Applicant also disclosed, although this does not appear as part of his criminal record, that in 1932 or 1933 he was fined by a police magistrate in the Town of Bloomfield on a charge of drunken driving in violation of the Motor Vehicle Act. A conviction of such offense is also not a conviction of a crime. State v. Rowe, supra; Re Case No. 133, Bulletin 170, Item 7.

Applicant's record is barren of any other conviction.

Applicant, therefore, did not falsify his questionnaire in stating that he had never been convicted of a crime. It is recommended that applicant be declared eligible to hold a solicitor's permit.

Samuel B. Helfand,
Attorney.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

8. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure of Mario Ciasulli's Pontiac Sedan and two 5 gallon jugs of wine contained therein, in the vicinity of 228 Broome Street, in the City of Newark, County of Essex and State of New Jersey.	Case #5242 ON HEARING CONCLUSIONS AND ORDER

Mario V. Farco, Esq., Attorney for Mario Ciasulli.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On January 28, 1939, members of the Newark Police Department, seized a Pontiac Sedan and two 5 gallon jugs of wine being transported therein by Mario Ciasulli, owner of the car, who then held a limited winery license. The seizure was adopted by this Department.

The wine was fit for use as an alcoholic beverage although probably unpalatable to the average taste because it contained sugar in excess of twenty per cent by weight. The amount of wine seized exceeded the amount which may be transported in any vehicle from a point within this State solely for personal consumption, and the Pontiac Sedan bore no transportation insignia. Since the transportation was in violation of R. S. 33:1-2 and R. S. 33:1-28 the wine and Pontiac Sedan, described in Schedule "A" annexed hereto, are unlawful property and subject to forfeiture.

However, there is a further issue here involved. Ciasulli seeks to invoke the provision of the law which authorizes the return of forfeited property to a person who has satisfied me that he has acted in good faith and violated the law unwittingly.

The excuse which Ciasulli offers for transporting the wine in an unlicensed vehicle is that when he called at his brother-in-law's home to take back the wine because it was unsatisfactory, he carelessly placed and transported the ten gallons of wine in his Pontiac Sedan. As further evidence of his good faith, he claims that earlier in the day, his brother-in-law, to whom he had given the wine for a christening, transported it in the same automobile under specific instructions for him to carry less than five gallons at a time; that he had so instructed his brother-in-law because he understood that wine intended for personal consumption, in a quantity up to five gallons, could be transported in an unlicensed vehicle. Whether or not this is what actually occurred is immaterial since Ciasulli, when pressed to explain his alleged carelessness, in the light of his previous instructions to his brother-in-law, stated, "I don't know, I took a chance."

If this be true, then having been caught, he must suffer the consequences, which include the loss of his car. His testimony contained various contradictions, and I am not convinced that he has made a full and frank disclosure of what occurred. I conclude that he has not established that he acted in good faith; consequently the motor vehicle will not be returned to him.

Accordingly, it is ORDERED that the Pontiac Sedan hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, County and municipal institutions. It is further ORDERED that the seized wine be destroyed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 24, 1939.

SCHEDULE "A"

2 - 5 gallon jugs wine
1 - Pontiac Sedan, Motor #785752,
Serial #686312, New Jersey 1938
Registration E98203

9. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938)	CONCLUSIONS AND ORDER
Case No. 66	

Dominick V. Daniels, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

Petitioner was convicted in 1927 of carnal abuse, which crime was determined to involve moral turpitude in Re Case No. 284, Bulletin 343, Item 12. He now seeks removal of the resulting disqualification.

Testimony establishes that he has resided at his present address for twelve years past, is married and has two children, and has been employed as a musician for the past fifteen years. He testified that he has never been arrested or convicted of any crime since 1927, and fingerprint returns bear out his story. In response to request for information as to any arrests, complaints or pending investigations or reports involving the petitioner, the Police Department of the city where he resides certified only the arrest and conviction above mentioned.

In support of his assertion that he had led a law-abiding existence for the five years preceding this application, petitioner produced two witnesses who testified that petitioner's reputation during the time that they had known him was good. The first was a friend who has known him for ten years and sees him two or three times a week, lives ten or eleven blocks away and knows persons in petitioner's neighborhood. The other witness was a special deputy surrogate of the county in which petitioner lives, who resides six or seven blocks away and has known petitioner for twelve years.

I am satisfied from the evidence that petitioner has conducted himself in a law-abiding manner for more than five

years last past, and I conclude, therefore, that his association with the alcoholic beverage industry will not be contrary to the interests of that industry.

It is, therefore, on this 24th day of October, 1939, ORDERED, that petitioner's disqualification from holding a license or being employed by a licensee because of the conviction referred to herein be and the same is hereby removed in accordance with R. S. 33:1-31.2 (as amended by Chapter 350, P. L. 1938).

D. FREDERICK BURNETT,
Commissioner.

10. ALCOHOL PERMITS - SALE IN EXCESS OF MAXIMUM IS NOT PERMISSIBLE EXCEPT PURSUANT TO SPECIAL PERMIT - HEREIN OF WHEN PURCHASES OF ALCOHOL MAY BE MADE DIRECT FROM A WHOLESALER.

Dear Sir:

We are the holders of a permit for non-beverage alcohol. We notice that the sale is limited to one quart at a time.

At the present we have an inquiry from the American Steel Castings Co., 410 N. Michigan Avenue, Chicago, Illinois, for two wine gallons of alcohol to their works at Newark, New Jersey.

When we applied for the permit, it was primarily for the purpose of serving the factories and laboratories whom we are supplying with first aid supplies and chemicals at the present. A great number of these users are legitimate users of gallon lots of alcohol in the regular course of their business. We would like to be able to serve them, or if it isn't possible under our permit to do so, we would like to have information to forward to them as to how they can obtain the mentioned amounts from any source.

Yours very truly,
Schwarz Druggists, Inc.

October 24, 1939

Schwarz Druggists, Inc.,
Newark, N. J.

Gentlemen:

Under your alcohol permit, you are authorized to sell not less than four ounces nor more than thirty-two ounces of alcohol to any one person in any consecutive period of twenty-four hours. Condition No. 3. The same condition is imposed upon all alcohol permits and consequently, it is a restriction with which everyone must comply. I could not, therefore, allow one to sell in greater quantities than others, under the regular permit, because all get the same permit and are entitled to the same privileges.

I can appreciate that greater quantities may be demanded on occasion and that the request may be bona fide. To satisfy such orders and allow the holders of alcohol permits to fill them, I shall entertain applications from such permittees for special permits to cover these transactions. The application will be in form of verified petition setting forth the name and address of the purchaser, the name and address of the seller, and the reasons why the

larger quantity is wanted. The fee will be $5.00 for each permit, the lowest allowable under the statute. As the holder of an alcohol permit, you may avail yourself of this special permit if you wish.

Your other alternative is to sell to your customer not more than one quart per day.

There are certain circumstances in which users of alcohol may purchase same directly from wholesalers and without restriction as to quantity. Pursuant to R. S. 33:1-29, hospitals may purchase and use alcoholic beverages (which includes alcohol) for the compounding of physicians' prescriptions and for the preparation of mixtures and medicines, unfit for use as beverages, and for dispensing to patients in accordance with physicians' orders and prescriptions, without a license. Wholesale licensees may sell alcoholic beverages directly to hospitals for such use. In R. S. 33:1-30, it is provided that the Alcoholic Beverage Law shall not apply to alcohol intended for and actually used in the manufacture and sale of patent, proprietary, medicinal, pharmaceutical, antiseptic and toilet preparations, and scientific, chemical, mechanical and industrial products when they are unfit in fact for beverage purposes. I do not know, of course, the use to which your customer, the American Steel Castings Co., wishes to put the alcohol. I have ruled (Bulletin 347, Item 11) that medical service afforded by a Board of Education is a hospital service within the law and that alcohol may be purchased by such Boards from wholesalers directly. It may be that the use the Company has in mind will also fall within one of the exceptions. If they will write me and tell me exactly what they propose to do, I shall be glad to give them a formal ruling.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

11. UNLICENSED RESTAURANTS - SALE AND SERVICE OF ALCOHOLIC BEVERAGES NOT PERMISSIBLE.

LICENSED RESTAURANTS - ILL-ADVISED TO ALLOW CUSTOMERS TO BRING IN THEIR OWN.

CRIMINAL PROSECUTION - THE BURDEN OF PROVING THAT A VIOLATION WAS COMMITTED RESTS ON THE STATE.

October 24, 1939

Mr. Raymond E. Todd,
Lakewood, N. J.

My dear Mr. Todd:

Technically, it is not in violation of the liquor law for unlicensed places to sell set-ups and accessories, such as ice, soda and ginger ale. Re McFadden, Bulletin 70, Item 10. But it is very bad practice for restaurants which do not have liquor licenses to allow customers to bring in their own. In the first place, it would be against the law for either the restaurant proprietor or his employees to serve the beverages. Under the New Jersey Alcoholic Beverage Law, such service would constitute

a sale and would be a misdemeanor if a license had not been obtained. Re Vaccaro, Bulletin 87, Item 2; Re Baker, Bulletin 289, Item 13; Re Illan, Bulletin 290, Item 3. Non-licensees are prohibited from servicing alcoholic beverages. Re Walsh, Bulletin 187, Item 9. In the second place, even if the persons served themselves, it would look very much as if unlicensed sales were being made. If on such a suspicion, charges were preferred, it would take a lot of explaining to exonerate the proprietor. Unlicensed places have gotten into such trouble before. See Re Davidow, Bulletin 159, Item 11. In one case, involving a club, the authorities refused to accept the explanation, to the great embarrassment of the club and its members. See Re Berry, Bulletin 87, Item 13.

The customer would not be breaking any law. But it's risky business so far as the proprietor is concerned. That is why I have always discouraged the consumption of liquor on unlicensed public or quasi-public premises. See Re Wismer, Bulletin 288, Item 1. If a restaurant wants to sell or serve or have anything to do with alcoholic beverages, it should first take out a license. Otherwise, the proprietor is apt to get his fingers burned. Carrying out the thought in Re Wismer, I have recommended to the Legislature a bill (Assembly No. 219) to provide that operators of unlicensed restaurants, dining rooms or other places where food is sold or served to the general public shall not permit alcoholic beverages to be consumed at such premises and that no persons shall consume alcoholic beverages thereat. Bulletin 298, Item 8. If enacted into law, that will take care of the situation so far as public restaurants are concerned.

Even if the restaurant has a liquor license, it is not good policy. Licensees are fully responsible for whatever occurs on their premises. Hence, if a customer brought in beverages on which the tax had not been paid, or which for some other reason were illicit, the mere fact that the stuff was in his place would subject the licensee to arrest. Re Meyers, Bulletin 155, Item 2; Re Rollka, Bulletin 142, Item 4. It is foolish for licensees to take such chances and impose upon themselves the burden of later explaining that because the stuff belonged to someone else they in fact were innocent.

Criminal prosecution under the Alcoholic Beverage Law is the same in general procedure as under any other law. Upon an arrest, the offender is arraigned before the local Recorder or magistrate who, if a prima facie case is made out, may hold him for the Grand Jury. If the Grand Jury indicts and the matter comes to trial, the burden of proving that a violation was committed lies with the State.

Very truly yours,

D. FREDERICK BURNETT,

Commissioner.

12. ENTERTAINMENT - HALLOWE'EN PARTY - PRIZES FOR MOST ORIGINAL COSTUMES.

Dear Commissioner:

I am a tavern owner and am planning on sponsoring a Hallowe'en party. Is it within the law to give prizes for the most original costume? The judges will be picked from the audience.

Yours very truly,
Joseph A. Laccitiello

October 26, 1939

Mr. Joseph A. Laccitiello,
85 Bloomfield Avenue,
Newark, N. J.

Dear Mr. Laccitiello:

I have your letter.

O.K. but keep an eye on the black cat and watch out for the witches and minors. A mask is no passport.

Very truly yours,
Frederick Burnett

Commissioner.