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

BULLETIN 502 APRIL 13, 1942.

1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - SECOND DELIBERATE AND INTENTIONAL VIOLATION - 30 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against

GUS STEIN,
T/a MARKET WINES & LIQUORS,
110 Market Street,
Passaic, N. J.,

Holder of Plenary Retail Consumption License C-124, issued by the Board of Commissioners of the City of Passaic.

CONCLUSIONS AND ORDER

Greenburg, Wilensky & Feinberg, Esqs., by Victor Greenburg, Esq., Attorneys for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads guilty to the charge that he sold liquor below the Fair Trade price in violation of Rule 6 of State Regulations 30.

The facts are that, on November 6, 1941, an investigator of this Department visited the defendant's premises and purchased a quart bottle of "Three Feathers Blended Whiskey" from him for $2.65 although the established Fair Trade price for such item was then $2.98. See Bulletin 480.

From the Department's file, it appears that the defendant knew he was selling below the permissible price and that, when the agent and a fellow investigator identified themselves, he asked them to give him a "break."

Were this a first offense I would, in line with my recently enunciated policy on deliberate Fair Trade violations, suspend the defendant's license for fifteen days, with five being remitted for the plea. See Re Samuel Vogel Inc., Bulletin 493, Item 10; Re Washington Wine & Liquor Co., Bulletin 499, Item 9.

However, I note that the defendant has a past record. Last fiscal year his license was suspended by this Department for fifteen days (less five for a plea) for a Fair Trade violation occurring on April 7, 1941, and for allowing, on that same date, the holder of a minor's permit to sell alcoholic beverages in violation of Rule 3 of State Regulations 11. See Re Stein, Bulletin 458, Item 3. Although the Conclusions in that case are not express on the point, examination of the record clearly shows that the Fair Trade violation in that instance was, as here, deliberate.

There is no excuse for even a first deliberate Fair Trade violation, much less a second. Apparently the defendant's last suspension taught him little. Because of his past record, penalty for his present wilful disregard of the Fair Trade regulations will be double the penalty which would have been given if this were his first Fair Trade offense.

Hence, his license will be suspended for thirty days, less five for the plea, or a net of twenty-five days.

I trust that this will impress upon the defendant that the Fair Trade regulations were made to be obeyed and not flouted.

Accordingly, it is, on this 2nd day of April, 1942,

ORDERED, that Plenary Retail Consumption License C-124, heretofore issued to Gus Stein, t/a Market Wines & Liquors, by the Board of Commissioners of the City of Passaic, for premises 110 Market Street, Passaic, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 3:00 A. M. April 7, 1942, and concluding at 3:00 A. M. May 2, 1942.

ALFRED E. DRISCOLL,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - DEVICE IN THE NATURE OF A SLOT MACHINE - DEVICE DESIGNED FOR GAMBLING - HIGH HAND POKER MACHINE - 10 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against CHARLES C. PIERSON, T/a PIERSON'S RATHSKELLER, 212 Crown Point Road, Westville, N. J., Holder of Plenary Retail Consumption License No. C-4 issued by the Borough Council of the Borough of Westville.	CONCLUSIONS AND ORDER

Charles C. Pierson, Pro Se.
Richard E. Silberman, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charges alleging that (1) on September 30, 1941, and prior thereto, he possessed a five-reel, electrically operated High Hand poker machine, a device in the nature of a slot machine, in violation of Rule 8 of State Regulations No. 20, and (2) possessing the same machine, a device and apparatus designed for the purpose of gambling, in violation of Rule 7 of State Regulations No. 20.

This machine is operated upon inserting a nickel, by pressing a button which causes five reels to whirl. These reels bear pictures of a full deck of playing cards. The reels stop in rotation left to right, thus "dealing" one card at a time. If a winning hand is not "dealt" the player may "draw" by inserting another nickel and pressing the buttons in front of the reels bearing the cards he desires to hold. This permits only the remaining reels to spin. Winning hands are awarded free games, starting with a minimum of three games for three of a kind and a maximum of forty-five free games for a royal flush.

The game is one of pure chance, involving no skill whatsoever and placing the score entirely beyond the player's control. This type of machine is clearly a device in the nature of a slot machine and as well a device and apparatus designed for the purpose of gambling. Cf. Re Stafford, Bulletin 461, Item 3; affirmed by the N. J. Sup. Ct., Jan. 1942 Term (see Bulletin 498, Item 2).

Licensee has no previous record. In view of the guilty plea, five days of the minimum ten-day penalty for a first offense of this kind will be remitted, leaving a net of five days.

Accordingly, it is, on this 2nd day of April, 1942,

ORDERED, that Plenary Retail Consumption License No. C-4, issued to Charles C. Pierson for premises 212 Crown Point Road, Westville, by the Borough Council of the Borough of Westville, be and the same is hereby suspended for a period of five (5) days, commencing April 6, 1942, at 2:00 A.M. and terminating April 11, 1942, at 2:00 A.M.

ALFRED E. DRISCOLL,
Commissioner.

3. MORAL TURPITUDE - ROBBERY INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS AND NOT CONTRARY TO PUBLIC INTEREST - APPARENT INNOCENT EMPLOYMENT ON LICENSED PREMISES DESPITE DISQUALIFICATION - APPLICATION GRANTED.

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

Case No. 163.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

In 1918 petitioner, then twenty-three years of age, was convicted of petty larceny and sentenced to serve thirty days in jail. In 1920 he was convicted of assault and battery, and highway robbery, sentenced to serve from three to fifteen years in State Prison and released on parole in January 1923. In 1931 he was convicted of violating the Prohibition Act, fined $150.00 and sentenced to serve thirty days in jail.

Aside from his other convictions, the crime of robbery, per se, involves moral turpitude. Re Case No. 313, Bulletin 393, Item 8; Re Case No. 278, Bulletin 397, Item 5. Hence he is disqualified not only from holding a liquor license, but also from working for a liquor licensee in this State. R. S. 33:1-25, 26.

Petitioner, in this proceeding, and pursuant to R. S. 33:1-31.2, seeks removal of such disqualification.

Petitioner is a bartender by trade and has been working in a licensed tavern in the State since Repeal. He claims that he did not know he was disqualified and that he filed the present petition after a customer at the tavern raised the question.

The owner of an automobile repair shop testified that he has known petitioner for about thirty-five years; that in recent years he has seen petitioner frequently at the tavern where he is employed and that he considers petitioner to be of good reputation. Another acquaintance, who has known petitioner for about ten years, testified that the petitioner visited his home frequently and he visited petitioner at the tavern, and that petitioner is of good reputation.

The Director of Public Safety of the municipality in which the petitioner resides advises that the records of his department show no charges, complaints, investigations or warrants pending against the petitioner at the present time.

In view of the favorable evidence on petitioner's behalf, and the fact that he appears to be sincere, I accept his sworn declaration that he has been working in the tavern in ignorance of his disqualification. Hence, were there nothing more in the case, I would have little hesitancy in removing the disqualification. See Re Case No. 96, Bulletin 405, Item 7; Re Case No. 97, Bulletin 407, Item 14; and Re Case No. 161, Bulletin 477, Item 11.

What gives me serious pause is the fact that petitioner was held as a material witness in 1938 and again in 1939 in gambling house raids. The first raid was in an apartment where bookmaking was being carried on, although petitioner claims that he was merely visiting one of his friends there. The other raid was at a candy store, also engaging in bookmaking, where petitioner claims that he was merely playing a bagatelle machine when the police officers entered.

The operators of the establishments were convicted, but no charges of any kind were preferred against petitioner, who was booked with various other patrons merely as a material witness.

In fairness, I do not believe these incidents should outweigh the fact that petitioner's record for the last eleven years is free of any criminal charge or conviction, and that there has been no complaint concerning his conduct while serving as a bartender for the last seven years.

I am loath to deprive petitioner of what appears to be his only means of livelihood. Hence he will be permitted to continue to demonstrate his ability to go straight and live down his past. A single slip on his part will warrant reconsideration of the action now taken.

In view of the above, I conclude that petitioner has been law-abiding for at least five years last past, and that his continued association with the alcoholic beverage industry will not be contrary to public interest.

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

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

ALFRED E. DRISCOLL,
Commissioner.

4. ACTIVITY REPORT FOR MARCH, 1942

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - 5 Bootleggers - - - - - - - - 12
Personating an ABC officer - - - - - - - - - - 1
Total number of persons arrested - - - - - - - - - - - - - - - - - - 18

SEIZURES: Stills - 1 to 50 gallons daily capacity- - - - - - - - - - - - - 1
50 gallons and more daily capacity- - - - - - - - - - 3
Total number of stills seized- - - - - - - - - - - - - - - - - - 4
Mash - gallons - 1,100
Motor vehicles - Trucks- 0
Passenger cars- - - - - - - - - - - - - - - - - - 0
Total number of motor vehicles seized- - - - - - - - - - - - - 0
Beverage alcohol - gallons - 17.56
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons- - - 27.03
Wine - gallons - 156.50
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons- 41.50

RETAIL LICENSEES:
Number of premises in which were found:
Illicit (bootleg) liquor - 6 "Fronts" (concealed ownership) - 6
Gambling devices - - - - - 1 Improper beer tap markers- - - - 5
Prohibited signs - - - - - 3 Stock disposal permits necessary 5
Unqualified employees- - -79 Other types of violations- - - -10
Total number of premises where violations were found- - - - - - - 109
Total number of premises inspected- - - - - - - - - - - - - - -1,722
Total number of unqualified employees found - - - - - - - - - - - 103
Total number of bottles gauged- - - - - - - - - - - - - - - - - - 14,070

STATE LICENSEES:
Premises inspected- 50
License applications investigated - - - - - - - - - - - - - - - - - 13

COMPLAINTS:
Investigated, reviewed and closed - - - - - - - - - - - - - - - - - 243
Investigation assigned, not yet completed - - - - - - - - - - - - - 598

LABORATORY:
Analyses made - 143
"Shake-up" cases (alcohol, water and artificial coloring) - - - - - 18
Liquor found to be not genuine as labeled - - - - - - - - - - - - - 23

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made - - - - - - - - - - - - - 23
Persons fingerprinted for non-criminal purposes - - - - - - - - - - 116
Identification contacts with other enforcement agencies - - - - - - 72
Motor vehicle identifications via N.J. State Police Teletype- - - - 14

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities - - - - - - - - - - - - - - - - 22
Cases instituted at Department- - - - - - - - - - - - - - - - - - - 22

HEARINGS HELD AT DEPARTMENT:
Appeals - - - - - - - - - - - 6 Tax revocations- - - - - - - - - 16
Disciplinary proceedings- -24 Seizures - - - - - - - - - - - - - 5
Eligibility - - - - - - - -11
Total number of hearings held - - - - - - - - - - - - - - - - - - 62

PERMITS ISSUED:
Unqualified employees - 560
Solicitors- 92
Social affairs- 120
Home manufacture of wine- 3
Disposal of alcoholic beverages - - - - - - - - - - - - - - - - - 69
Miscellaneous permits - 249
Total number of permits issued- - - - - - - - - - - - - - - - - - 1,093

Respectfully submitted,

E. W. GARRETT,
Chief Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - INFORMATION DISCLOSED TO MUNICIPAL ISSUING AUTHORITY - NO EVIDENCE THAT ISSUING AUTHORITY WAS MISLED IN GRANTING LICENSE - 3 DAYS' SUSPENSION.

ORDER TO SHOW CAUSE DISMISSED.

In the Matter of Disciplinary Proceedings against

MICHAEL PETTI,
Route 23 and Boulevard,
Pequannock Township,
P.O. Pompton Plains, N.J.,

Holder of Plenary Retail Consumption License C-7, issued by Pequannock Township Committee.

CONCLUSIONS AND ORDER

Francis N. Silvestris, Esq., Attorney for Defendant-Licensee.
G. George Addonizio, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant was ordered to show cause why his license should not be cancelled for the following reason:

"Said license was improvidently issued to you in violation of R. S. 33:1-25, in that in 1930 you were twice convicted in the Union County Court of Quarter Sessions and once convicted in the Union County Court of Special Sessions of the crime of engaging in and advertising lottery, a crime involving moral turpitude."

The following charge was also served upon the licensee:

"In your applications for licenses filed with the Board of Commissioners of the City of Bayonne, dated March 7, 1939 and June 6, 1939, upon which Plenary Retail Consumption License C-178 for the year 1938-39 theretofore issued to Frank Lorenzo was transferred to you, and Plenary Retail Consumption License C-80 for the year 1939-40 was granted to you, and in your application for license dated June 11, 1941, filed with the Pequannock Township Committee, upon which Plenary Retail Consumption License C-7 for the year 1941-42 was granted, you falsely stated 'No' in answer to Question 29 of the 1938-39 and 1939-40 applications and Question 30 of the 1941-42 application, which ask: 'Have you....ever been convicted of any crime?' and thereby suppressed material facts, since in truth and fact in 1930 you were twice convicted in the Union County Court of Quarter Sessions and once convicted in the Union County Court of Special Sessions of the crime of engaging in and advertising lottery; said false statement being in violation of R. S. 33:1-25."

Licensee appeared in opposition to the rule to show cause and pleaded not guilty to the charge.

On March 7, 1939 defendant filed with the Board of Commissioners of the City of Bayonne an application to transfer a license from Frank Lorenzo to himself. The transfer was granted and, on April 4, 1939, defendant took over the operation of the licensed business. On June 6, 1939 defendant filed with the same Board an application to renew his license for the fiscal year 1939-40. The renewal was granted. Defendant operated under renewal of his license from July 1, 1939 to May 7, 1940. On June 11, 1941 defendant filed an application with the Pequannock Township Committee for a plenary retail consumption license. The application was granted and defendant has been operating under said license since July 1, 1941.

It is admitted that, in each of the three applications referred to above, Michael Petti answered "No" to the question "Have you or has any person mentioned in this application ever been convicted of any crime?".

The evidence herein shows that, on December 1, 1930, Michael Petti pleaded non vult in the Union County Court of Quarter Sessions to two indictments for engaging in and advertising a lottery. On the same date, he pleaded non vult in the Union County Court of Special Sessions to an allegation for engaging in and advertising a lottery. He was sentenced to pay a fine of $100.00 on each conviction. The indictments and allegation appear to concern activities carried on by Petti shortly before his conviction in three different municipalities in Union County. At the hearing herein, defendant testified that, in 1930, because he was then unemployed, he sold lottery tickets and collected from storekeepers in the three municipalities for a syndicate in Newark. He testified that he was paid on a commission basis. The light sentence imposed tends to confirm his testimony.

As to the order to show cause: Commercialized gambling may or may not involve moral turpitude. If it appeared that there had been a single conviction against defendant, it would be determined, under the established precedents, that the conviction did not involve moral turpitude. Re Case No. 296, Bulletin 353, Item 12; Re Case No. 354, Bulletin 435, Item 2; Re Case No. 392, Bulletin 479, Item 11; Re Case No. 143, Bulletin 500, Item 6. The fact that defendant was thrice convicted should not, under the circumstances of this case, result in a different conclusion. While multiple convictions may show such a reckless disregard for law as to warrant the conclusion that the last offense involved moral turpitude, that principle is applied only to cases where there is a period for repentance between convictions. Cf. Re Case No. 63, Bulletin 195, Item 1. The record does not show that defendant has been convicted of any crime since December 1, 1930. While not controlling herein, it appears that, in June 1941, the Pequannock Township Committee, after hearing all the facts, concluded that the convictions mentioned herein did not involve moral turpitude. With that conclusion, I agree. The rule to show cause is dismissed.

As to the charge: The attorney for defendant testified that he prepared the three applications; that he had no personal knowledge of the convictions and that defendant told him that he had never been convicted of a crime. Defendant testified that he honestly felt he had never been convicted of a crime. In mitigation of his offense defendant alleges that the Chief of Police of Bayonne knew of his record and that the Pequannock Township Committee held a hearing, at which all of the circumstances of the convictions were explained, before his present license was granted. The attorney for defendant also testified that, at said hearing, his client offered to amend his

application so as to disclose the convictions but that he was told by the members of the Township Committee that this was unnecessary. It does not appear that the issuing authorities were actually misled but the answers were false. Despite his testimony, I believe that defendant knew he had been convicted of the crimes referred to herein. The offer to amend the application filed in Pequannock came too late. I find the defendant guilty as charged. Under the circumstances, I shall suspend his license for three (3) days. Re Revallo, Bulletin 499, Item 6; Re J. Barnes Operating Corp., Bulletin 500, Item 7.

Accordingly, it is, on this 2nd day of April, 1942,

ORDERED, that Plenary Retail Consumption License C-7, issued to Michael Petti for premises located on Route 23 and Boulevard, Pequannock Township, by Pequannock Township Committee, be and the same is hereby suspended for a period of three (3) days, commencing April 7, 1942, at 2:00 A.M. and terminating April 10, 1942, at 2:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

6. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

April 6, 1942

The next official publication of minimum resale prices, pursuant to the fair trade rules (Regulations No. 30), will become effective on or about Friday, April 24, 1942. New items and changes in old items must be filed at the offices of this Department not later than Monday, April 13, 1942.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to all retail licensees.

ALFRED E. DRISCOLL,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - DISCREPANCY IN PROOF, ACID, SOLID AND COLOR CONTENT - PREVIOUS RECORD - 15 DAYS' SUSPENSION.

DEFENSE OF LACHES IS NOT AVAILABLE TO LICENSEES.

In the Matter of Disciplinary Proceedings against

KINNEY CLUB INC.,
36 Arlington Street,
Newark, N. J.,

Holder of Plenary Retail Consumption License C-292, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Licensee.
Emerson A. Tschupp, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant entered a plea of not guilty to charges alleging that:

"1. On or about June 2, 1941 you possessed an illicit alcoholic beverage in that one 4/5 quart bottle labeled 'Mount Vernon Brand Straight Rye Whiskey Bottled in Bond,' found in your licensed premises, contained an alcoholic beverage which varied from a genuine sample used for comparative purposes in proof, and acid, solid and color content, in violation of R. S. 33:1-50.

"2. On or about the date aforesaid and prior thereto, you, not being the holder of a brewery, distillery, winery or rectifier's license, bottled an alcoholic beverage for sale and resale in that you refilled one 4/5 quart bottle labeled 'Mount Vernon Brand Straight Rye Whiskey Bottled in Bond' with other whiskey, in violation of R. S. 33:1-78."

On June 2, 1941 Junior Inspectors Thorne and Schramp of the Alcohol Tax Unit, Bureau of Internal Revenue, examined twenty-seven opened bottles of alcoholic beverages in defendant's licensed premises and seized the bottle mentioned in the charges. They testified that they had found this bottle on the back bar located on the lower floor of the licensed premises and that they had seized it because the contents of the bottle were too low in proof and contained artificial coloring. Subsequent analysis by Assistant Chemist Blakeley of the Alcohol Tax Unit disclosed that the contents of the seized bottle tested as follows:

"Proof: 88.1°
Acid content: 28.8 grams per 100 liters
Solid content: 289 grams per 100 liters
Color: Approximately fifty-five per cent artificial color and approximately forty-five per cent natural color."

The same chemist testified that straight rye whiskey bottled in bond is not permitted to contain artificial coloring; that he has examined other samples of "Mount Vernon Brand Straight Rye Whiskey Bottled in Bond" which he received with the original seal unbroken and has never found any of those bottles to contain artificial color; that, in his opinion, the analysis shows the seized bottle does not contain genuine Mount Vernon Whiskey. Chemist Blakeley further testified that the records of his Department disclosed that an authentic sample of "Mount Vernon Brand Straight Rye Whiskey Bottled in Bond," analyzed about two years ago, gave the following result:

"Proof: 100.1°
Acid content: 72 grams per 100 liters
Solid content: 198 grams per 100 liters
Color: All natural."

Menoth G. Battista, a chemist employed by the Department of Alcoholic Beverage Control, testified that since 1938 he has analyzed the contents of about fifteen bottles of this product which he received with the revenue stamp unbroken; that he found the proof of contents of these bottles varied between 99.8° and 100.3°; the acid content varied between 55 and 70 grams per 100 liters; the solid content varied between 190 and 215 grams per 100 liters and the color had always been natural.

William J. Sullivan, a senior inspector of the Alcohol Tax Unit, Bureau of Internal Revenue, testified that, under no circumstances, can artificial color be added to bottled-in-bond whiskey and that all bottled-in-bond whiskey must be 100 proof.

After the evidence was presented on behalf of the Department, defendant moved to dismiss upon the following grounds: (1) that the continuity of the bottle had not been proven; (2) that there was no proof that defendant possessed an illicit alcoholic beverage; (3) that the Department was guilty of laches; (4) that Rules 1 and 2 of State Regulations 15 are unconstitutional; and (5) that the search and seizure of the bottle were illegal.

As to (1): The proof shows the continuity of the bottle from the time of its seizure to the date of hearing. As to (2): A prima facie case was established by the evidence under the provisions of P.L. 1939, c. 177. As to (3): The bottle was seized by agents of the Alcohol Tax Unit on June 2, 1941; charges were served on October 17, 1941 and scheduled for hearing on November 10, 1941. On the latter date the case was adjourned at request of defendant. While there is no evidence of laches in this case, it is to be noted that the defense of laches is not available to defendant. The general rule is that the government is not barred by the laches of its officers. Chesapeake & Delaware Canal Co. v. United States, 250 U.S. 123, 63 L. Ed. 889; McCarter v. Lehigh Valley Railroad Co., 78 N.J.E. 346, 364. Nor does the Alcoholic Beverage Law contain any limitation within which disciplinary proceedings must be brought. Even where applicable in our Court of Chancery, the doctrine of laches involves more than mere delay or lapse of time. As to (4): Rules 1 and 2 of State Regulations 15 were promulgated pursuant to the power conferred on the Commissioner by R. S. 33:1-39. As to (5): Under the provisions of Sections 2804 and 3170 of the Internal Revenue Code, the bottle was lawfully seized. In any event, the bottle was admissible in evidence. State v. MacQueen, 69 N.J.L. 522; State v. Gould, 99 N. J. L. 17; State v. Gillette, 103 N. J. L. 523.

The motion to dismiss the charges is denied.

On behalf of the licensee, Herman Pontesof, Secretary and Treasurer of defendant corporation, testified that on June 1, 1941 its inventory showed that it possessed seven hundred and one gallons of whiskey; that its opened stock had been examined ten or twelve times previously; and that Mount Vernon was a very slow seller. He further testified that this brand is not usually kept at the bar located on the lower floor of the licensed premises, but that it is occasionally called for by patrons who visit the second floor of the licensed premises, and that waiters sometimes permit opened bottles to be carried to patrons at the table.

The testimony of Benny Geltzeiler, Vice-President of defendant corporation, was substantially the same as the testimony of Herman Pontesof. It appears that Edward Geltzeiler, the President of defendant corporation, was in California at the time the alleged violation occurred.

Both Herman Pontesof and Benny Geltzeiler testified that they have never tampered with the contents of the seized bottle. They also produced three bartenders, the head waiter and two other waiters, who testified that they had never tampered with the contents of the seized bottle. The waiters testified that they had frequently brought opened bottles to tables and left the bottles with patrons.

As to charge (1): P.L. 1939, c. 177, provides that "any alcoholic beverage in any *** bottle, flask or similar container shall, in any proceeding under the chapter which the act supplements, be deemed prima facie an illicit beverage, where the container *** bears a label which does not truly describe its contents ***." The label on the seized bottle described the contents thereof as "Mount Vernon Brand Straight Rye Whiskey, bottled in bond under supervision of U. S. Gov't, 100 Proof, bottled by National Distillers Products Corporation, Baltimore, Md." It is evident from the Department's testimony that the label did not truly describe the contents of the seized bottle. No proof was offered by defendant-licensee to rebut the prima facie case established by the Department that the seized bottle contained an illicit beverage. Hence I find defendant guilty as to charge (1).

It has been the general policy of this Department to impose a single penalty where a licensee has been found guilty of possessing an illicit alcoholic beverage as set forth in charge (1) and of refilling the bottle containing the illicit alcoholic beverage, as set forth in charge (2). Re Cutter, Bulletin 479, Item 12. Under the circumstances of this case it is unnecessary, therefore, to consider the guilt or innocence of the licensee as to charge (2) herein.

As to penalty: The records of this Department show that in July 1939 defendant's license was suspended for five days after it had been found guilty of being open during prohibited hours, and that in February 1940 its license had been suspended for eighteen days after it had been found guilty of charges of selling during prohibited hours and employing a female to sell alcoholic beverages in violation of an ordinance of the City of Newark. While there do not appear to be any aggravating circumstances in so far as the present violation is concerned, I shall suspend the license in this proceeding for a period of fifteen days because of the prior record of dissimilar violations. Re Rosenberg, Bulletin 470, Item 1.

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

ORDERED, that Plenary Retail Consumption License C-292, issued to Kinney Club Inc. for premises 36 Arlington Street, Newark, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing April 13, 1942, at 3:00 A.M. and terminating April 28, 1942, at 3:00 A. M.

ALFRED E. DRISCOLL,
Commissioner.

8. MORAL TURPITUDE - ROBBERY INVOLVES MORAL TURPITUDE.

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

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

Case No. 196.

CONCLUSIONS AND ORDER

BY THE COMMISSIONER:

Petitioner has applied for a lifting of the disqualification resulting from his conviction in May 1933 of robbery, a crime which, per se, involves the element of moral turpitude. Re Case No. 183, Bulletin 498, Item 7.

Petitioner and two other persons were arrested in February 1933 after stealing the sum of $97.00 from a proprietor of a grocery store. He was sentenced to probation for three years.

At the hearing petitioner testified that he was a barber by profession, although unemployed at the time of his arrest. After his conviction he held several temporary jobs until February 1936 when he obtained a position as a children's hairdresser at a large department store and is still employed there.

Three witnesses, two of whom are lawyers and the other a municipal employee, appeared on petitioner's behalf. They testified that they have known him upwards of twenty years and that his reputation as an honest and law-abiding member of society is good. In addition, a representative of the local issuing authority of the city in which petitioner resides, stated that an independent investigation made by it disclosed that petitioner has completely rehabilitated himself and associates only with respectable citizens. The Chief of Police of that city also advises that there are no complaints or criminal investigations pending against petitioner.

Under the circumstances, and in view of petitioner's unsullied record since 1933, I conclude that his association with the alcoholic beverage industry will not be detrimental to the public interest. I shall, therefore, lift his disqualification.

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

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

ALFRED E. DRISCOLL,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - FRONT - FALSE STATEMENT IN LICENSE APPLICATION - AIDING AND ABETTING NON-LICENSEE (DISQUALIFIED BECAUSE OF RESIDENCE) TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - SITUATION NOT CORRECTED - SUSPENSION FOR BALANCE OF TERM WITH LEAVE TO PETITION TO LIFT AFTER 10 DAYS UPON PROOF THAT FRONT HAS BEEN CORRECTED.

In the Matter of Disciplinary Proceedings against)

ABE STEINMAN,)
T/a HATTIE INN,) CONCLUSIONS
66 Adams Street,) AND ORDER
Hoboken, N. J.,)

Holder of Plenary Retail Consumption License C-167, issued by the Board of Commissioners of the City of Hoboken.)

Abe Steinman, Pro Se.
Abraham Merin, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary retail consumption license for a tavern in Hoboken, pleads guilty to the charges that:

(1) When applying for his license he concealed Aaron Kipnis' interest in the tavern, in violation of R. S. 33:1-25.

(2) He has permitted the said Aaron Kipnis to exercise the rights and privileges of the license, in violation of R. S. 33:1-26, 52.

The facts are that Aaron Kipnis owns the tavern in question but, lacking the requisite five years' residence in the State to obtain a license in his own name (R. S. 33:1-25), induced the defendant, his cousin, to obtain the license as a mere "front" for him.

Since it does not appear that this "front" has been corrected, the license must, to prevent continued operation of the business in this unlawful manner, be suspended for the balance of its term. However, in view of the plea and the frank disclosure of facts by the defendant and Kipnis, this suspension may, on proper showing of a bona fide correction, be lifted after at least ten days of such suspension have been served in penalty for the "front." For similar disposition in these "front" cases to evade the residence requirement, see Re Margrie, Bulletin 423, Item 10; Re Cliffside Park Town Tavern Inc., Bulletin 492, Item 4. Cf. Re Nelson, Bulletin 498, Item 8.

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

ORDERED, that Plenary Retail Consumption License C-167, heretofore issued by the Board of Commissioners of the City of Hoboken to Abe Steinman, t/a Hattie Inn, for 66 Adams Street, Hoboken, be and the same is hereby suspended for the balance of its term, effective April 13, 1942, at 2:00 A.M., and it is further

ORDERED that, if it satisfactorily appears, on verified petition and proper proof, that the "front" herein has been fully and properly corrected, the said suspension will be lifted, provided, however, that in no event shall such suspension be lifted prior to the expiration of ten days from the effective date of the suspension.

ALFRED E. DRISCOLL,
Commissioner.

10. MORAL TURPITUDE - PARTICIPATION IN EXTENSIVE BOOTLEGGING ENTERPRISE INVOLVING ILLICIT STILL SINCE REPEAL INVOLVES MORAL TURPITUDE.

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

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.	CONCLUSIONS AND ORDER
Case No. 197	

BY THE COMMISSIONER:

On February 28, 1935 petitioner pleaded guilty to an indictment charging him with defrauding the United States of taxes, possessing an unregistered still, working in a distillery and fermenting mash, in violation of the United States Internal Revenue Laws. On the four counts he was fined a total of $700.00, penalized $500.00 and sentenced to imprisonment for a year and a day. After serving about six months of the jail sentence, he was paroled and on July 31, 1936 released from supervision.

Petitioner's conviction was the result of his association with a substantial bootleg ring which was operating two stills, one of 1500 gallon capacity and the other of 750 gallon capacity. Such activity in illicit liquor since Repeal involves the element of moral turpitude. Re Case No. 162, Bulletin 477, Item 6.

More than five years having elapsed since petitioner's release from jail, he now requests that the disqualification arising from his conviction be lifted. See R. S. 33:1-31.2.

Petitioner is married and has two children, the elder being nine years of age. Shortly after his release from prison, he obtained employment as a presser in a clothing factory and retained that job until the summer of 1940. He then received his present position as a driver for a trucking company.

Three character witnesses - a credit manager of a large piano concern, the daughter of the proprietor of the clothing factory where petitioner worked as aforesaid, and a grocery store clerk -

were produced by petitioner. They have all known him at least seven years. They testified that petitioner is industrious, leads a normal home life with his family and that he bears a good reputation for being honest and law-abiding.

Petitioner's criminal record discloses no other arrests or convictions. The Chief of Police of the municipality where petitioner lives advises that there are no complaints or criminal investigations pending against petitioner.

From all of the evidence, it appears that the public interest would not be harmed by petitioner's association with the liquor industry and I shall, therefore, grant the relief requested in the petition.

Accordingly, it is, on this 9th day of April, 1942,

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

ALFRED E. DRISCOLL,
Commissioner.

11. MORAL TURPITUDE - VIOLATION OF NATIONAL PROHIBITION ACT MAY OR MAY NOT HAVE INVOLVED MORAL TURPITUDE - POSSESSION OF SLOT MACHINES - NOT MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICANT FOUND NOT TO HAVE BEEN DISQUALIFIED.

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

Case No. 206

CONCLUSIONS

BY THE COMMISSIONER:

Petitioner seeks in this proceeding to have determined whether either of the crimes of which he was convicted involves moral turpitude and in the event that either does, to have the statutory disqualification resulting therefrom removed pursuant to R. S. 33:1-31.2.

On January 5, 1931 petitioner was found guilty of violating the National Prohibition Act and was sentenced to serve 30 days in a county jail and to pay a fine of $400.00. He testified at the hearing herein that he had been convicted of selling beer prior to the repeal of the National Prohibition Act. Investigation discloses no aggravating circumstances and, in the absence thereof, the crime of which petitioner was convicted does not involve moral turpitude.

On January 11, 1934 petitioner herein was convicted of possessing slot machines. He testified that at that time he was the steward of a political club and that the club owned the machines. Subsequent investigation discloses that at the time of petitioner's arrest, two five-cent slot machines were taken out of the premises

occupied by the political club. Under these circumstances, the crime of which petitioner was convicted does not involve moral turpitude.

I find that petitioner has never been convicted of a crime involving moral turpitude.

In view of the result reached herein, no order removing disqualification is necessary. Re Case No. 145, Bulletin 500, Item 6.

Alfred E. Driscoll

Commissioner.