

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 608

MARCH 8, 1944.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 608

MARCH 8, 1944.

1. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES FROM NON-LICENSEE, IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - LICENSEE'S CONVICTION DURING CURRENT LICENSE PERIOD OF THE CRIME OF RECEIVING STOLEN GOODS FOUND TO INVOLVE MORAL TURPITUDE - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO BONA FIDE TRANSFEREE TO PETITION TO LIFT UPON THE EXPIRATION OF AT LEAST 90 DAYS.

In the Matter of Disciplinary)
Proceedings against)

THOMAS F. VESEY)
75 Orange Street)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-924, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

Louis C. Selenfriend, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant was served with charges alleging (1) on September 7, 1943 he purchased alcoholic beverages from a non-licensee, in violation of Rule 15 of State Regulations No. 20, and (2) on September 21, 1943 he was convicted of a disqualifying crime involving moral turpitude (receiving stolen goods). See R. S. 33:1-25.

He pleaded non vult to the first charge and, although admitting the conviction in the second charge, denied that it involves moral turpitude.

The defendant was arrested on September 11, 1943 and charged with the crime of receiving stolen goods. In a written statement given to the police on the day of his arrest, he admitted that he had purchased, on September 7, 1943, four cases of alcoholic beverages from one Christopher Mohr, for which he paid the sum of \$140.00. On September 21, 1943, following his plea of non vult to the crime of receiving stolen goods, he was placed on probation for one year.

At the hearing held herein for the purpose of inquiring into the facts surrounding the purchase, in order to determine whether the conviction involves moral turpitude, the testimony shows that Christopher Mohr, an employee of a trucking concern which transports alcoholic beverages, was introduced to the defendant by the latter's bartender as one who "may be able to get hold of some liquor for you." Several weeks later Christopher Mohr, after stealing four cases of liquor from his employer's premises, delivered them to the defendant's tavern, where he deposited them in a rear room. The defendant, who was at his home at the time, spoke with Mohr on the phone and told him to leave the liquor at the tavern and to meet him there later that evening. When they met to discuss the question of payment, Mohr told the defendant to "make his own price", whereupon the defendant fixed the price at \$35.00 per case, or \$140.00 for the four cases.

The defendant denies that he had any knowledge that the goods were stolen. It is true that there is no direct evidence to that effect. However, I am satisfied from the evidence that, if defendant did not actually know he was purchasing stolen goods, he, at least, had reasonable cause to suspect that such was the fact. He testified that he was under the impression that Christopher Mohr received liquor as gifts from legitimate purveyors and then resold it at a profit of "five or ten dollars a case." He admitted, however, that the price of \$140.00 which he had paid to Mohr for the four cases was some \$9.00 under the established price. He further stated that he had made no inquiries of Mohr concerning the source of the liquor and then, directly contradicting this testimony, said that Mohr had denied, when questioned by him, that the liquor had been stolen. He also testified that Mohr was unable to produce any bill or invoice for the liquor and that this, coupled with certain information given to him by his bartender, had made him suspicious of the transaction. When asked why, in view of such suspicions, he had made the purchase, his answer was, "That is where I made my mistake."

The defendant's testimony is vague and replete with inconsistencies. He has not made a full and frank disclosure of his dealings with Christopher Mohr or of the events which led to the purchase. A careful review of his testimony convinces me that, if he lacked actual knowledge that the merchandise had been stolen, it was because he deliberately refrained from making such inquiries as a reasonably prudent licensee would have made under the circumstances. The defendant was aware that the purchase from Mohr, a non-licensee, was violative of Rule 15 of State Regulations No. 20, which prohibits a licensee from purchasing alcoholic beverages except from the holder of a New Jersey manufacturer's or wholesaler's license. The defendant was also aware that, in purchasing liquor from a non-licensee, he was aiding and abetting Mohr in the commission of a misdemeanor under the Alcoholic Beverage Law, to wit, the sale of alcoholic beverages without a license. If, despite these prohibited practices, a licensee heedlessly decides to enter into such an illegal transaction, he cannot complain if all the consequences that follow therefrom are visited upon him. As one engaged in a privileged business, he is held to the strictest accountability in the operation of his business. This accountability is not discharged by conduct such as was exhibited by this defendant. He was apparently content to risk the possibility, which eventuated into actual fact, that the liquor was stolen. His crime is hardly less reprehensible, therefore, than if he had had positive information to that effect. I find, as a fact, that the crime in question involves the element of moral turpitude.

There still remains to be decided whether the defendant has been "convicted of a crime" within the meaning of the Alcoholic Beverage Law (R. S. 33:1-25). That statute provides that no license shall be issued to an individual "who has been convicted of a crime involving moral turpitude." Ever since the creation of the Department of Alcoholic Beverage Control more than ten years ago, the Commissioner has held that a "conviction" within the intendment of the Alcoholic Beverage Law results as well from the implied confessional pleas of non vult and nolo contendere as it does from a direct plea of guilty or verdict of guilty after trial. Cf. Re Boettner, Bulletin 17, Item 1 (decided February 25, 1934). This decision has been uniformly and consistently followed since its inception, and applied as recently as Re Case No. 288, Bulletin 582, Item 6 (decided August 20, 1943). Adequate authority to sustain this position may be found in decisions of our Court of Errors and Appeals. In State v. Henson, 66 N.J.L. 601 (1901), that Court held that a witness may properly be asked on cross-examination whether he has pleaded non vult to an indictment in order to show that he has been convicted of a crime for the purpose of affecting his credibility.

This decision rested upon the ground that the judgment and sentence following a non vult plea is conclusive upon the defendant in all collateral proceedings except "in a civil suit for the same wrong." Idem p. 608. In other words, the ratio decidendi of that decision is that where, in a collateral proceeding, the issue is one of guilt or innocence, the defendant is not estopped to deny his guilt, despite his non vult plea, whereas, where the issue is merely whether the defendant has been convicted, he is estopped to deny the conviction. Cf. also Hill v. Maxwell, 77 N.J.L. 766 (E. & A. 1909).

The question, however, must now be re-examined in the light of the recent decision of the Court of Errors and Appeals in Schireson v. State Board of Medical Examiners, 130 N.J.L. 570 (1943). In that case the accused, a medical doctor, had pleaded nolo contendere to charges of unlawfully concealing assets and making false oath, and non vult to a charge of perjury. The State Board of Medical Examiners, under its act which authorizes it to proceed against the holder of a license who "has been convicted of crime involving moral turpitude" (see R. S. 45:9-16), revoked Schireson's license. The only evidence before the Board was a judgment record showing a conviction pursuant to the aforesaid pleas. It was held that "the judgment and commitment of the appellant (licensee), following his plea of nolo contendere to the charges of the indictment, do not amount to a conviction of the designated crime within the contemplation of the statute (Medical Act), and hence may not be used as such for the revocation of the appellant's license."

Although, at first blush, the last cited case would seem dispositive of the case at hand, I am of the opinion, upon careful study, that it has no application in these proceedings under the Alcoholic Beverage Law.

There is a well-recognized doctrine in the law that a long-continued construction given to a statute by the administrative official charged with its enforcement will not be lightly disturbed by the courts. Cf. United States v. Farrar, 281 U.S. 624, 74 L. ed. 1078, holding that the fact that a construction, for a period of ten years, by the executive departments charged with the administration of the National Prohibition Act, has not been questioned by the Congress, is evidence of the correctness of such construction. This doctrine has also been applied by our Supreme Court to a construction by the Commissioner of the Alcoholic Beverage Law. See Cino v. Driscoll, 130 N.J.L. 535 (1943), where Justice Perskie, in writing the decision for that court, said:

"Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N.J.L. 329; 22 Atl. Rep. (2d) 523. The contemporaneous construction thus given to a law of the state for over a decade is necessarily respected by us. State v. Kelsey, 44 N.J.L. 1; Graves v. State, 45 Id. 203; affirmed, Id. 347; Central Railroad Co. v. Martin, 114 Id. 69, 80; 175 Atl. Rep. 637; Burlington County v. Martin, 128 N.J.L. 203; 28 Atl. Rep. (2d) 116; Martini v. Civil Service Commission, 129 N.J.L. 599, 603; 30 Atl. Rep. (2d) 569."

It is significant, therefore, that the pertinent language of the statute in question (R. S. 33:1-25), although under consideration by the legislature on five different occasions since its original passage in 1933, has not been changed.

In the Schireson case, supra, there is no indication that the construction of the Medical Act contended for by the State Board of Medical Examiners had been consistently and uniformly applied over a period of time. The court, therefore, was apparently not guided in its interpretation of that statute by any established practice of the administrative body charged with its enforcement. This is an important distinguishing factor between that case and the one under consideration.

The court, in the Schireson case, supra, considered that the license of a medical doctor constituted a "property right." Idem p. 575. It may well be that the court was motivated in its conclusion by that fact and was loathe to disfranchise an individual of a "property right" upon the sole basis of a judgment record such as was involved in that case. A liquor license, on the other hand, has never attained a legal status higher than that of a mere privilege, as distinguished from a property right. See Meehan v. Excise Commissioners, 73 N.J.L. 382 (Sup. Ct. 1906). Indeed, the Alcoholic Beverage Law specifically provides that "Under no circumstances, however, shall a license.....be deemed property...." See R. S. 33:1-26.

Moreover, the defendant, in his plea to the second charge heroin, has admitted the fact that he has been convicted of the crime of receiving stolen goods, although contending that it does not involve moral turpitude. The admission by the defendant of the conviction further distinguishes this case from the Schireson decision. In fairness to the defendant, however, I am not resting the decision herein solely upon such technical ground.

In any event, the court, in the Schireson case, expressly reserved the question whether the doctor's license could be revoked "after hearing on the merits of charges that he committed crime involving moral turpitude." In this case the defendant was afforded a full hearing on the merits and all of the circumstances attending his purchase of the stolen goods were inquired into fully. As heretofore stated, I have reached the conclusion, after careful consideration of all of the evidence submitted, that the crime to which the defendant pleaded non vult involves the element of moral turpitude.

Under the circumstances, the defendant's license might well be revoked outright, since the conviction in question is an "act or happening, occurring after the time of making of an application for a license which if it had occurred before said time would have prevented the issuance of the license." R. S. 33:1-31. However, the defendant, who has held a liquor license since 1934, has an otherwise clear record. I shall, therefore, suspend the license for the balance of its present term, viz., until June 30, 1944. However, I shall entertain a petition from a bona fide transferee of the license to lift the suspension after at least ninety days of the suspension have been served. Cf. Re Mylor, Bulletin 535, Item 6, in which, in the absence of a criminal conviction, a sixty-day penalty was imposed in a similar case. In no event, however, may the defendant receive any renewal of his license since he is mandatorily disqualified under the Alcoholic Beverage Law from holding a liquor license or being employed upon licensed premises in this state. R.S.33:1-25, 26.

Accordingly, it is, on this 29th day of February, 1944,

ORDERED, that Plenary Retail Consumption License C-924, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Thomas F. Vesey, for premises 75 Orange Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 A.M. March 6, 1944; and it is further.

ORDERED, that application by verified petition may be a bona fide transferee of the license to lift such suspension upon the expiration of ninety days from the effective date of the suspension herein.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN LICENSE APPLICATION
CONCEALING MATERIAL FACT - PURCHASE OF ALCOHOLIC BEVERAGES FROM
NON-LICENSEE - STORING ALCOHOLIC BEVERAGES OFF THE LICENSED
PREMISES - LICENSEE'S CONVICTION DURING CURRENT LICENSE PERIOD OF
THE CRIME OF RECEIVING STOLEN GOODS FOUND TO INVOLVE MORAL
TURPITUDE - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary)
Proceedings against)

ALFRED P. SERRA)
85 Broadway)
Newark, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-781, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)
- - - - -)

Anthony Giuliano, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant was served with charges alleging, in substance, that (1) and (2) he falsified his license application by concealing the fact that Richard M. Bird, Jr. was a partner in his license and business conducted thereunder; (3) he purchased alcoholic beverages from a non-licensee; (4) he stored alcoholic beverages off his licensed premises; and (5) he was convicted of a crime involving moral turpitude (receiving stolen goods).

The defendant pleaded non vult to the first four charges. As to the fifth charge, he "admits the conviction there alleged but denies that such conviction involves moral turpitude."

With respect to charges (1) and (2), it is admitted that, between May 24, 1943 and September 6, 1943, Richard M. Bird, Jr., who was apparently not disqualified at that time from holding a liquor license, was an undisclosed partner of the defendant. It appears that the partners decided not to effect a transfer of the license into both names in order to obviate any difficulty about obtaining a renewal of the license for the licensing year commencing July 1, 1943. Thereafter, it is claimed, an application for

transfer was submitted to the local issuing authority but was withdrawn when the partnership was terminated after a disagreement between the partners.

On September 21, 1943 the defendant pleaded non vult to a criminal charge of receiving stolen goods and was sentenced to probation for a period of one year. This charge resulted from the purchase by the defendant of approximately five cases of alcoholic beverages from one Christopher Mohr, a non-licensee, on three separate occasions between the middle of July 1943 and August 29, 1943. On the last occasion, Mohr, known to the defendant as an employee of a trucking concern which transports alcoholic beverages, delivered two cases of alcoholic beverages to the defendant's tavern. This liquor had been stolen by Mohr from his employer's premises. Instead of receiving these two cases at his tavern, however, the defendant insisted that Mohr deliver them to the home of one of his (defendant's) friends.

The defendant, who is of foreign extraction and speaks English poorly, testified as follows:

- "Q Why didn't you keep those two cases at the tavern?
A Because have no receipt and afraid they stolen or something like that.

.

- Q Then why were you afraid to keep it (the two cases of liquor) in the tavern?
A I am afraid get in a jam.
Q What kind of a jam were you afraid of?
A If they ask for receipt I have no receipt to prove it.
Q Did you think at that time that maybe the liquor might be stolen?
A Right."

It is clear from these admissions by the defendant that he strongly suspected that the alcoholic beverages purchased by him from Mohr were stolen goods, if indeed he did not have actual knowledge to that effect.

Under the circumstances, I find that the crime of receiving stolen goods, of which the defendant was convicted, involves the element of moral turpitude. On the question as to whether the defendant's non vult plea to the criminal charge results in his "conviction of a crime" within the contemplation of the Alcoholic Beverage Law (R. S. 33:1-25), see Re Vesey, Bulletin 608, Item 1.

The seriousness of the charges herein would ordinarily warrant a revocation of the defendant's license. Since he has no previous record, and because, in any event, his criminal conviction mandatorily disqualifies him from holding a liquor license (see R.S. 33:1-25), I shall not revoke the license but shall impose a suspension for the balance of the term, viz., until June 30, 1944. However, no order for lifting of the suspension as in Re Vesey, supra, will be entered in view of the additional violations herein involved.

Accordingly, it is, on this 29th day of February, 1944,

ORDERED, that Plenary Retail Consumption License C-781, heretofore issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Alfred P. Serra, for premises 85 Broadway, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 A.M. March 6, 1944.

ALFRED E. DRISCOLL
Commissioner.

3. MORAL TURPITUDE - CRIMES OF BURGLARY AND UNLAWFUL ENTRY INVOLVE MORAL TURPITUDE.

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

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

CONCLUSIONS
AND ORDER

Case No. 314.
-----)

BY THE COMMISSIONER:

Petitioner, an Italian national, when sixteen years of age was convicted in New York State of burglary third degree, as a consequence of which he was sentenced on May 29, 1922, to a reformatory for a period of ten years. On August 18, 1924 petitioner was paroled, but, because of violation of the terms of his parole, he was returned to the penal institution on December 29, 1924, remaining there until February 21, 1927, when he again was released on parole.

On April 20, 1931 petitioner pleaded guilty to a charge of unlawful entry and, as a result thereof, was sentenced by the Judge of the Essex County Quarter Sessions Court to a term of eighteen months in the Essex County Penitentiary. Petitioner was discharged from the penitentiary on July 17, 1932. Following this discharge petitioner's record apparently is clear with the exception that on December 12, 1938 he was fined \$5.00 by a Police Judge for gambling. With reference to the unlawful entry charge, petitioner explained that he was with several youths when they broke into a store to get some candy. As to the gambling incident, petitioner states that he was in a place when it was raided by the police. The crimes of burglary and unlawful entry involve moral turpitude.

A national of Italy, if law-abiding, even though disqualified from holding a liquor license, may be employed, however, in any capacity in the liquor industry upon obtaining the proper permit from the Department of Alcoholic Beverage Control. Petitioner wishes to obtain an employment permit so that he may work as a helper in a brewery.

The petitioner produced several witnesses who appeared to be substantial persons and they were all in agreement that petitioner, to their knowledge, enjoys a good reputation in the community in which he resides.

Notwithstanding the fact that petitioner had become involved with the law on several occasions, I am satisfied that during the past five years he has made a sincere and successful effort to rehabilitate himself. Being thus satisfied that he is a law-abiding person, I shall therefore lift his existing statutory disqualification.

Accordingly, it is, on this 29th day of February, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - FRONT - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - ILLEGAL SITUATION CORRECTED - 10 DAYS' SUSPENSION.

In the Matter of Disciplinary Proceedings against

ORADELL BAR & GRILL
2-4-6 Kinderkamack Road
Oradell, N. J.,

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Oradell, and which license has, during the pendency of these proceedings, been transferred by said Mayor and Council to

MARIE PROSS

for the same premises.

CONCLUSIONS
AND ORDER

Kimmel & Kimmel, Esqs., by David Kimmel, Esq.,
Attorneys for Defendant-Licensee.
Gaylord R. Hawkins, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee, through its attorney, pleaded non vult to a charge alleging that it falsely concealed in its application for a license for 1943-1944 that Marie Pross was the real and beneficial owner of all of its corporate stock, in violation of R. S. 33:1-25.

In September 1942 Marie Pross purchased the tavern in question and leased the building wherein the business was conducted. Marie Pross was not then eligible to hold a liquor license because she had not been a bona fide resident of this State for a period of five years, nor was a corporation in which she held ten per cent or more of its corporate stock then eligible to hold a license. None the less, the defendant was organized for the purpose of acquiring and holding a license. Marie Pross was the beneficial owner of all of its corporate stock although Michael Michota was listed in the application for the license as the owner of eighteen shares of capital stock, Anna Michota as the holder of one share, and Marie Pross as the holder of one share.

An investigation by the Department of Alcoholic Beverage Control revealed the interest of Marie Pross and, further, that the other two persons named had no interest whatsoever in the corporation.

On March 27, 1943 the residence requirement of the Alcoholic Beverage Law (R. S. 33:1-25) was amended. Five years' prior residence is no longer required. In lieu thereof, an applicant, or the holder of more than ten per cent of the stock of a corporate applicant, is required to be a citizen of the United States and a bona fide resident of the State of New Jersey at the time of the submission of the application. Cessation of United States citizenship or New Jersey residence by either the applicant or the holder of ten per cent or more of the stock of a corporate licensee is cause for suspension or revocation of the license. See P.L. 1943, ch. 46.

Marie Pross is now and has been for more than one year a bona fide resident of New Jersey. During the pendency of these proceedings the license was transferred to her.

The defendant has no previous record. Therefore, the usual penalty of ten days will be imposed, which punishment shall be fully effective against the transferee. State Regulations No. 15, Rule 3.

Accordingly, it is, on this 29th day of February, 1944,

ORDERED, that Plenary Retail Consumption License C-2, heretofore issued by the Mayor and Council of the Borough of Oradell to Oradell Bar & Grill, and transferred during pendency of these proceedings to Marie Pross for premises 2-4-6 Kinderkamack Road, Oradell, be and the same is hereby suspended for ten (10) days, commencing at 2:00 A.M. March 6, 1944 and terminating at 2:00 A.M. March 16, 1944.

ALFRED E. DRISCOLL

Commissioner.

5. MORAL TURPITUDE - CRIME OF GRAND LARCENY INVOLVES MORAL TURPITUDE.

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

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

CONCLUSIONS
AND ORDER

Case No. 315.
- - - - -)

BY THE COMMISSIONER:

This matter is before me pursuant to the provisions of R. S. 33:1-31.2, on a petition to remove the statutory disqualification resulting from the conviction of a crime involving moral turpitude as provided for in R. S. 33:1-25.

In April of 1924 applicant, then about 19½ years old, was committed to the New York State Reformatory following his conviction of the crime of grand larceny. In November 1925 he was paroled and in June of 1927 he was discharged from parole. The conviction seems to have followed the taking of an automobile for a joy ride. Grand larceny involves moral turpitude. Re Case No. 192, Bulletin 495, Item 3.

Applicant's only other brush with the law was in January of 1943, when he was sentenced to thirty days after a plea of guilty to a disorderly person charge. Two days later, the judge, upon reconsidering all the facts in the case and finding that applicant's character was apparently good, reconsidered the jail sentence and imposed a fine of \$10.00. Upon payment of the fine two days after his admission to the county jail, applicant was released. A conviction as a disorderly person has been held not to be a conviction of a crime. See Case No. 318, Bulletin 394, Item 17.

Applicant produced three witnesses, one a sergeant of police in the town wherein applicant has lived and worked for about fifteen

years. The sergeant says he has known applicant for about fifteen years and has made many contacts with him seeking information for the police, that outside of the 1943 arrest applicant has no other police record in the town wherein he lives, and that the witness believes applicant is a law-abiding and useful citizen living a normal family life.

Two other witnesses produced by applicant, business men of his locality, who have been acquainted with him for ten and six years, respectively, say that his reputation as a law-abiding citizen in the community wherein he resides and works is good.

At the time applicant filed his petition for the removal of his disqualification, there was pending before the local issuing authority his application for a transfer of a plenary retail consumption license. In the said application his 1924 conviction was fully set forth. The license inspector of the local issuing authority for the community where applicant's only recent dereliction occurred reported to that body, "Applicant enjoys a good reputation. I see no reason why the transfer should not be made." The transfer was granted. Obviously, applicant, having been convicted of a crime involving moral turpitude, was not qualified, but I will be guided somewhat by the action of the local issuing authority which indicates that after an investigation they felt petitioner was entitled to a license.

It is my opinion that the statute under which this petition was filed is for the salutary purpose of assisting in the rehabilitation of those who have run afoul of the law. If it appears that there has been a reasonable return to a normal, law-abiding living, I am inclined to grant the relief permitted by the statute.

It appears that applicant's only crime was committed in his youth, that he is apparently completely rehabilitated, and that he has been convicted of no crime since then.

The conviction as a disorderly person in 1943 would seem to be his single lapse during the last sixteen years. This single conviction of a misdemeanor, not a crime, Re Case No. 65, Bulletin 193, Item 11, and obviously not considered seriously by the local issuing authority and his townsmen, will not be permitted to overcome petitioner's otherwise clear record and the favorable testimony of his character witnesses, or to interfere with his apparently complete rehabilitation, Re Case No. 46, Bulletin 299, Item 9; Re Case No. 48, Bulletin 300, Item 8.

I find that petitioner has conducted himself in a law-abiding manner during the five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 29th day of February, 1944,

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

ALFRED E. DRISCOLL
Commissioner.

6. DISCIPLINARY PROCEEDINGS - CHARGES OF SELLING ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS AND HINDERING INVESTIGATION DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary)
Proceedings against)

ROBERT SORIANO)
169 High Street)
Newark, 2, N. J.,)

CONCLUSIONS)
AND ORDER)

Holder of Plenary Retail)
Consumption License C-329,)
issued by the Municipal Board)
of Alcoholic Beverage Control)
of the City of Newark.)
- - - - -)

Maurice H. Pressler, Esq., Attorney for Defendant-Licensee.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee entered a plea of not guilty to charges alleging (1) that he sold alcoholic beverages during prohibited hours on Primary Election Day, in violation of Rule 2 of State Regulations No. 20, and (2) that he hindered and failed to facilitate an investigation by agents of the Department of Alcoholic Beverage Control, in violation of R. S. 33:1-35.

The proof submitted by the Department in support of its charges is not sufficient to warrant a finding of guilt on the part of defendant-licensee.

Defendant-licensee has been the holder of a plenary retail consumption license since 1933. He has a clean record.

Under the circumstances, he is entitled to the benefit of the doubt that exists in my mind with reference to the accuracy of the instant charges. Cf. Re Bentivogli, Bulletin 590, Item 7.

Accordingly, it is, on this 29th day of February, 1944,

ORDERED; that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

7. MORAL TURPITUDE - CRIME OF GRAND LARCENY INVOLVES MORAL TURPITUDE.

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

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

CONCLUSIONS
AND ORDER

Case No. 326.

BY THE COMMISSIONER:

Petitioner, pursuant to provisions of R. S. 33:1-31.2, prays to have any statutory disqualification removed that may exist resulting from a criminal conviction.

The petition filed herein discloses that, on February 14, 1923, the petitioner pleaded guilty to the crime of grand larceny and was placed on probation for a period of three years. Grand larceny is a crime which involves moral turpitude.

The testimony of the petitioner shows that he has been acting in the capacity of bartender for a period of eight months. When questioned regarding his association with the alcoholic beverage industry, petitioner stated that he was unaware that he was disqualified to be employed by a liquor licensee. As soon as he learned that he was doing something illegal, petitioner said that he consulted his attorney, who advised him to file a petition to remove any existing disqualification. Ignorance of the law is no excuse in criminal or disciplinary proceedings. Knowledge of the law, however, is not a necessary ingredient of the good faith essential in these rehabilitation proceedings. Re Case No. 61, Bulletin 338, Item 2. After careful consideration of the testimony of the witness regarding his employment by a liquor licensee, I am satisfied that petitioner acted in good faith.

Three witnesses who have known petitioner for six or more years testified that petitioner bears a good reputation in his community and to their knowledge he has been a law-abiding citizen.

I am, therefore, of the opinion that petitioner has been leading a law-abiding life for at least five years last past and conclude that his association with the alcoholic beverage industry will not be contrary to the public interest. Consequently, I shall lift his disqualification which resulted by reason of his conviction of the crime of grand larceny on February 14, 1923.

Accordingly, it is, on this 29th day of February, 1944,

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.

8.

ACTIVITY REPORT FOR FEBRUARY, 1944

To: Alfred E. Driscoll, Commissioner

ARRESTS: Licensees and employees - - - - 7 Bootleggers - - - - 10
 Total number of persons arrested - - - - 17

SEIZURES: Stills - 1 to 50 gallons daily capacity - - - - 1
 50 gallons and more daily capacity - - - - 2
 Total number of stills seized - - - - 3
 Mash - gallons - - - - 15,700
 Motor vehicles - Trucks - - - - 1
 Passenger cars - - - - 1
 Total number of motor vehicles seized - - - - 2
 Beverage alcohol - gallons - - - - 37
 Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - 4.20
 Wine - gallons - - - - 2,307.92
 Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons 1,596.83

RETAIL LICENSEES:

Total number of premises inspected - - - - 1,514
 Total number of bottles gauged - - - - 10,641
 Total number of premises where violations were found - - - - 86
 Total number of violations found - - - - 98
 Type of violations found:
 Illicit (bootleg) liquor - - - - 1 Improper beer tap markers - - - - 0
 Gambling devices - - - - 1 Stock disposal permits necessary - - 3
 Prohibited signs - - - - 1 No sign denoting legal sale hours - -
 Unqualified employees - - - - 46 off-premises consumption - - - 29
 "Fronts" (concealed ownership) - 1 Other types of violations - - - 16

MILITARY AREA PATROL INSPECTIONS: - - - - 591STATE LICENSEES:

Premises inspected - - - - 6
 License applications investigated - - - - 15

COMPLAINTS:

Investigated, reviewed and closed - - - - 372
 Investigation assigned, not yet completed - - - - 264

LABORATORY:

Analyses made - - - - 128
 "Shake-up" cases (alcohol, water and artificial coloring) - - - - 6
 Liquor found to be not genuine as labeled - - - - 3

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - 15
 Persons fingerprinted for non-criminal purposes - - - - 172
 Identification contacts with other enforcement agencies - - - - 212
 Motor vehicle identifications via N. J. State Police Teletype - - - 22

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - 11
 Cases instituted at Department - - - - 34

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - 52
 Appeals - - - - 2 Seizures - - - - 12
 Disciplinary proceedings - - 32 Tax revocations - - - - 1
 Eligibility - - - - 5

PERMITS ISSUED:

Total number of permits issued - - - - 500
 Unqualified employees - - - - 161
 Solicitors - - - - 52
 Social affairs - - - - 110
 Home manufacture of wine - - - - 15
 Disposal of alcoholic beverages - - - - 68
 Miscellaneous permits - - - - 94

Respectfully submitted,
 Sydney B. White
 Chief Inspector.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - 15 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary)
 Proceedings against)

ANTHONY KNAST)
 T/a Pennsauken Bottling Works)
 7807 Park Avenue)
 Pennsauken Township)
 P.O. Merchantville, N. J.,)

CONCLUSIONS
 AND ORDER

Holder of Plenary Retail Distri-)
 bution License D-3, issued by the)
 Township Committee of the Township)
 of Pennsauken.)

Anthony Knast, Pro Se.
 Edward F. Ambrose, Esq., Attorney for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that he sold alcoholic beverages for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulations No. 38.

On Friday, February 4, 1944, at about 10:20 P.M., two ABC agents observed the sale of two cases of beer by the defendant. Such sale is violative of Rule 1 of State Regulations No. 38 which, among other things, prohibits the sale of alcoholic beverages for off-premises consumption after 10:00 P.M. of any week day.

The defendant has no previous record. The usual penalty of fifteen days, therefore, will be imposed. Five days will be remitted for the guilty plea, leaving a net suspension of ten days. Re Alfare, Bulletin 606, Item 1.

Accordingly, it is, on this 2nd day of March, 1944,

ORDERED, that Plenary Retail Distribution License D-3, heretofore issued by the Township Committee of the Township of Pennsauken to Anthony Knast, t/a Pennsauken Bottling Works, for premises 7807 Park Avenue, Pennsauken Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 A.M. March 6, 1944 and terminating at 3:00 A.M. March 16, 1944.

ALFRED E. DRISCOLL
 Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE AND RULE 1 OF STATE REGULATIONS NO. 38 - 20 DAYS' SUSPENSION, LESS 5 FOR GUILTY PLEA.

In the Matter of Disciplinary Proceedings against)

SAMUEL WASILUK)
T/a CENTRAL CAFE)
1055-57 Central Avenue)
Camden, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-100, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)
-----)

Samuel Wasiluk, Pro Se.
Edward F. Ambrose, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to the following charges:

"1. On Sunday, January 23, 1944, at about 5:30 P.M., you sold, served and delivered and suffered and permitted the sale, service and delivery of alcoholic beverages on your licensed premises, viz., three quart bottles of beer in one instance and two quart bottles of beer in another, in violation of Section 5 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, which Section prohibits any such activity after 2:00 A.M. on Sunday.

"2. On the date and time aforesaid, you sold and delivered and allowed, permitted and suffered the sale and delivery of the above mentioned alcoholic beverages at retail in their original containers for consumption off the licensed premises, thereby violating Rule 1 of State Regulations No. 38, which prohibits any such type of sale or delivery on Sunday."

On the afternoon in question, investigators of the ABC Department, acting upon information that the licensee was selling on Sundays, visited the premises. While the place was under their observation, they noticed a man enter the premises by a side door. A few minutes later a woman entered through the same entrance. Shortly thereafter, the woman left the premises carrying a package. Upon investigation, the package was found to contain three one-quart bottles of beer which the woman admitted she had purchased on the premises of the licensee. As the investigators, accompanied by the woman, approached the tavern, the man came out carrying a package. This was found to contain two one-quart bottles of beer.

The minimum penalty for a violation of Rule 1 of State Regulations No. 38 is a suspension for a period of fifteen days. Re Gattuso, Bulletin 587, Item 1. The minimum penalty for selling after hours in violation of local ordinance is a suspension for a similar period. Re Morgan, Bulletin 542, Item 10. Where there

were separate violations of the Regulations and the ordinance, a separate penalty of fifteen days for each violation, or a total of thirty days, was imposed. Re Healey, Bulletin 600, Item 4. In the latter case, the licensee not only sold alcoholic beverages for on-premises consumption in violation of the local ordinance, but, as well, sold for off-premises consumption in violation of the State Regulations. Individual penalties for each violation were, therefore, justified under the circumstances of that case.

In this case, however, the licensee's offense consisted of the single act of selling for off-premises consumption. While it is true that such single sale constitutes a violation of both the local ordinance and the State Regulations, a separate penalty of fifteen days for each violation would appear to be unreasonably severe. I shall, therefore, impose a penalty of twenty days on both charges. Five days will be remitted for the guilty plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 2nd day of March, 1944,

ORDERED, that Plenary Retail Consumption License C-100, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Samuel Wasiluk, t/a Central Cafe, for premises 1055-57 Central Avenue, Camden, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 A.M. March 7, 1944 and terminating at 2:00 A.M. March 22, 1944.

Alfred E. Driscoll
Commissioner.