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

BULLETIN 303

MARCH 17, 1939.

1. DISCIPLINARY PROCEEDINGS - WEST NEW YORK LICENSEES - CONDUCTING TAVERN CONTRARY TO REGULATIONS - 15 DAYS.

In the Matter of Disciplinary Proceedings against

FRANK DUZDEVICH,
434 Hudson Avenue,
West New York, N. J.,

Holder of Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the Town of West New York.

CONCLUSIONS AND ORDER

Stanton J. MacIntosh, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Joseph M. Tierney, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged with violating a West New York resolution (1) by conducting his tavern between 4:00 A.M. and 1:00 P.M. on Sunday, January 8, 1939; (2) by permitting persons other than himself and his employees and agents there between those hours; and (3) by failing to afford a clear view of the bar in his tavern between those hours.

The defendant pleaded not guilty to (1) but guilty to (2) and (3).

On the Sunday in question, Inspector Kenney and Investigators Flynn and King, of this Department, viewed the defendant's tavern at 9:40 A.M. and noted that the screens and shades were drawn and that a view into the barroom from the street was impossible.

Investigators Flynn and King returned to the tavern at 11:10 A.M., knocked at a side door, and gained entrance after stating that they wanted a drink. Inside, they saw a man and two women seated at a table with three glasses of beer before them. When the investigators identified themselves, the defendant claimed that these three persons were friends and customers who had been served by his wife free of charge.

That the defendant was "conducting" his tavern before the opening hour, there is no doubt. To sustain the charge of "conducting" the tavern requires only proof that the defendant entertained members of the public there, even though behind locked doors. It is immaterial whether these persons were regaled or plied with liquor gratuitously or for pay. Re Zenda, Bulletin 271, Item 5. In any event, the investigators were permitted to enter as actual purchasers and not on a pair of "Annie Oakleys."

I find the defendant guilty on charge (1).

New Jersey State Library

His license will be suspended for five (5) days for conducting his tavern before the opening hour on Sunday, for an additional five (5) days for permitting persons other than himself and his employees or agents there before that hour, and for a further five (5) days for failing to afford a clear view of the bar in his tavern up until that hour; or a total of fifteen (15) days.

Accordingly, it is, on this 11th day of March, 1959, ORDERED, that Plenary Retail Consumption License C-21, heretofore issued to Frank Duzdevich by the Board of Commissioners of the Town of West New York, shall be and the same is hereby suspended for a period of fifteen (15) days, commencing March 16, 1959, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

2. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against JOHN REVALLO, 1186 Mechanic Street, Camden, N. J., Holder of Plenary Retail Consumption License C-88, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of selling, on January 13, 1959, a pint bottle of Wilson "That's All" Whiskey and a pint bottle of Calvert's "Special" Blended Whiskey (the Fair Trade price of each being $1.16) for $1.15 apiece, in violation of Rule 6 of State Regulations No. 30.

The bottle of Calvert's was sold to Investigator Lockwood of this Department, and the Wilson's to Investigator Sullivan, who entered the defendant's tavern soon after Lockwood had made his purchase.

In explanation, the defendant testified that he first told Investigator Lockwood (who represented himself as being a WPA worker) that the price of Calvert's was $1.20; that Lockwood kept asking for a cheaper price; that, finally, feeling sorry for Lockwood, he said, "I will let you have it for $1.15"; that he sold the Wilson's to Investigator Sullivan for $1.15 because he seemed to be a friend of Lockwood.

Investigator Lockwood squarely denied that he haggled with the defendant over the price, and states that the licensee never quoted to him any price other than $1.15.

In view of this forthright denial, I do not believe the defendant's contention that he was insistently "persuaded" to make the sales. He himself admitted that he readily sold to Investigator

Sullivan, who (in the defendant's own words) was "nice dressed up", merely because he appeared to be a friend of Lockwood.

As to the fact that the items were sold no more than one cent off the minimum resale price, such deliberate, although petty sniping at the Fair Trade prices is not to be tolerated. Penny "chiseling" is no different, in principle, from cheating in dimes or dollars.

The defendant's license will be suspended for ten (10) days.

Accordingly, it is, on this 11th day of March, 1939, ORDERED, that Plenary Retail Consumption License C-88, heretofore issued to John Revallo by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of ten (10) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

3. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against

RAYMOND F. CAMPBELL,
9 South Third Street,
Camden, N. J.,

holder of Plenary Retail Consumption License C-186, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.
Raymond F. Campbell, Pro Se.

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of selling a pint bottle of Kessler's Private Blend (the Fair Trade price being $1.02) for $1.00, in violation of Rule 6 of State Regulations No. 30.

On January 27, 1939, shortly after noon, Investigators Riggins and Roberts of this Department entered the defendant's tavern and found there, as bartender, the defendant's deaf mute son. Through a patron at the bar, they asked the price of a pint of Wilson Whiskey (whose Fair Trade price was $1.16). The bartender left the room, asked the defendant (who was upstairs) the price of this item, returned, and, through the same patron at the bar, informed the investigators that the price was $1.20 (four cents above the Fair Trade price). Through the same patron, the investigators then asked the price of a pint of Kessler's Private Blend (a blended whiskey) and were told by the bartender that it was $1.00, at which price they made a purchase. The defendant, when notified of the sale, stated that he was sorry that his son had made a mistake.

A licensee is responsible for the mistakes of his employees in selling liquor at prices in violation of the Fair Trade Regulations. While I am personally very sorry for the defendant's afflicted son, nevertheless I have to enforce the rules.

The defendant's license will be suspended for five (5) days.

Accordingly, it is, on this 11th day of March, 1939, ORDERED, that Plenary Retail Consumption License C-186, heretofore issued to Raymond F. Campbell by the Municipal Board of Alcoholic Beverage Control of the City of Camden, be and the same is hereby suspended for a period of five (5) days. Pursuant to notice of December 17, 1938, Bulletin 289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

4. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES DURING PROHIBITED HOURS AND TRANSPORTATION WITHOUT TRANSIT INSIGNIA.

In the Matter of Disciplinary Proceedings against

NEIDEN BAR & GRILL, INC., 300 Market Street, Newark, New Jersey,

Holder of Plenary Retail Consumption License C-60, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Louis Zemel, Esq., Attorney for the Defendant-Licensee.

BY THE COMMISSIONER:

The defendant is charged (1) with selling liquor before noon on Sunday, November 20, 1938, in violation of Newark Ordinance No. 6579, and (2) with transporting such liquor in a vehicle without proper transit insignia, in violation of R. S. 33:1-2, 28.

The defendant operates a small restaurant at its licensed premises. At about 10:30 A.M. on the Sunday in question, Officers Volz and Hull of the Newark Police Department, while stationed in an automobile near the defendant's premises, were notified by an informer that "there was a fellow going to leave from there with some liquor." The officers, seeing Sidney Neiden (the defendant's night manager) leave the premises with a package almost immediately thereafter and drive off in his automobile (which bore no transit insignia), followed him. Neiden first drove to his uncle's nearby place (a restaurant and liquor establishment similar to the defendant's), and after stopping off there momentarily, drove to a four-family dwelling at 7 Patten Place, Newark, which he reached at about 10:45 A. M. He there entered the flat of Joseph Margulies through the rear door with a package and emerged empty-handed a few minutes later.

The officers accosted Neiden as he thus emerged but found him uncommunicative. Officer Volz testified that, seeing the door into the Margulies flat to be still partly opened, he entered, identified himself as a policeman and asked Mrs. Margulies (who was on the premises) for the liquor which had just been delivered there; that Mrs. Margulies showed him 6 pints of Green River Whiskey on the kitchen gas range, 5 bottles being in one bag and the sixth bottle being in a separate bag; that Mrs. Margulies admitted that the liquor had just been delivered by Neiden, and called the officer's attention to a delivery slip which Neiden had left, reading as follows:-- "Recd from Neiden Bar & Grill, Inc., 6 pt. Green River @ 99 5.94"; that she stated that her husband had telephoned her earlier in the morning that a man would deliver a package between 9:00 and 10:00 A.M. Officer Volz further testified that his conversation with Mrs. Margulies occurred within hearing of Neiden and Officer Hull; that Neiden, when pressed for an explanation at Police Headquarters, stated that Mr. Margulies had ordered the liquor by telephone on the previous afternoon but that he (Neiden) had forgotten to deliver it until Sunday morning.

The 6 pints of Green River Whiskey and the delivery slip mentioned in Officer Volz's testimony were placed in evidence. By stipulation, that testimony was corroborated by Officer Hull.

The story of the defense is that Neiden delivered nothing but 36 frankfurters and rolls to the Margulies flat on Sunday morning, and that the liquor which Officer Volz found on the kitchen gas range had been purchased at the defendant's premises by Mr. Margulies, and taken away with him, on the previous Saturday night (November 19, 1938).

Neiden testified that, as the defendant's night manager, his hours of duty are from 7:00 P.M. until the following 7:00 A.M.; that Mr. Margulies entered the premises on Saturday night and ordered 36 frankfurters and rolls to be delivered at his home on Sunday morning and purchased 6 pints of Green River Whiskey to take out immediately; that he (Neiden), having forgotten the price of Green River and being too busy at the time to check on the price, told Mr. Margulies that he would collect for the liquor when he delivered the frankfurters and rolls at his home the next morning; that Mr. Margulies thereupon left with the liquor; that he (Neiden), after finishing duty at 7:00 A.M. on Sunday, spent until 10:00 A.M. taking candid camera shots, and then set about making delivery of the frankfurters and rolls to the Margulies home; that, being short of rolls, he went to his uncle's place to borrow them (a statement corroborated by his uncle); that he then proceeded to the Margulies home, where he delivered the frankfurters and rolls and was paid one dollar by Mrs. Margulies; that, when he told Mrs. Margulies the price of the liquor which he had sold to her husband the evening before, she stated, "Joe takes care of the liquor"; that he therefore left the delivery slip to show how much money her husband owed for the whiskey. Neiden also testified that the defendant has no telephone in its premises.

Mr. Margulies corroborated Neiden's story as to his purchase of the liquor and ordering the frankfurters and rolls on Saturday night. He further testified that, after taking the 6 pints of whiskey with him, he reached home with the whiskey at about 10:00 P.M. on Saturday and placed the liquor on the kitchen gas range. Mrs. Margulies testified that she permitted the liquor to remain there over night and that Neiden delivered nothing but thirty-six frankfurters and rolls to her on Sunday morning.

That the story of the police officers and the story of the defense are at loggerheads is not surprising. However, a major implausibility attaches to the defendant's story, viz.: That neither Mrs. Margulies nor Neiden, when confronted by the police officers at the Margulies home on Sunday morning, showed the officers any such thing as frankfurters and rolls. If that merchandise, and not liquor, had just been delivered on that morning, it would, I am sure, have been revealed to the officers on the spot to discount their charge that liquor had been brought and would, in view of the trouble which had brewed and Neiden's arrest, have been exhibited at police headquarters to prove Neiden's story.

I see no reason for believing that the police officers concocted their story out of thin air, and I find as fact that their version is the correct one.

It is immaterial that there is no evidence, even under the officers' story, that the liquor was actually ordered on Sunday morning. The delivery of the liquor to the purchaser's home on that morning was the completion or consummation of the sale. Re Weston & Co., Bulletin 171, Item 1; Re Quality Liquor Co., Inc., Bulletin 189, Item 12.

I find the defendant guilty on the first charge, viz., of selling liquor before hours on Sunday.

As to the second charge, viz., transporting the liquor in a vehicle without proper transit insignia, there is little room for doubt. The delivery to the Margulies home was made in an automobile without such insignia. The fact that the vehicle belongs to Neiden, the defendant's night manager, merely heightens the defendant's culpability. A retail licensee may deliver liquor (sold in the ordinary course of its business) only in the retailer's own vehicle with proper transit insignia thereon, or in the vehicle of a licensed transporter. R. S. 33:1-2, 28. It may not, as here, use the automobile of an employee unless it has leased that vehicle for the purpose of deliveries, and, in addition, has obtained transit insignia therefor. Cf. Re Stiassny, Bulletin 125, Item 13.

I find the defendant guilty as to the second charge.

Its license will be suspended for five (5) days for selling liquor before hours on Sunday, and for an additional five (5) days for transporting such liquor in a vehicle without proper transit insignia.

Accordingly, it is, on this 12th day of March, 1939, ORDERED, that Plenary Retail Consumption License C-60, heretofore issued to Neiden Bar & Grill, Inc. by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and the same is hereby suspended for a period of ten (10) days, commencing March 16, 1939, at 6:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

5. APPELLATE DECISIONS - HAHN'S RESTAURANT, INC. v. TEANECK.

HAHN'S RESTAURANT, INC., a corporation of New Jersey,

Appellant,

-vs-

TOWNSHIP COUNCIL OF THE TOWNSHIP OF TEANECK,

Respondent

ON APPEAL
CONCLUSIONS

William A. Schlosser, Esq., Attorney for Appellant.
Donald Waesche, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal seeking a declaration that paragraphs (d) and (e) of Section 6 of Ordinance No. 684, adopted by the Township of Teaneck, are invalid.

The Ordinance in question was adopted on June 24, 1935. It provided, in effect, that no plenary retail consumption license shall be issued to persons who did not then hold licenses or for premises within five hundred feet of existing licensed establishments, subject, however, to an express exemption in favor of restaurants as defined therein. The definition of restaurants was contained in Section 6, which provided, among other things, in paragraphs (d) and (e), that alcoholic beverages shall be served and consumed in the dining room and not at any bar, and that guests shall be excluded from the room where alcoholic beverages are prepared for service.

Subsequently, on October 16, 1935, respondent issued a plenary retail consumption license to Gustav Rothenbach for premises located at 444 Cedar Lane, Teaneck. This license was issued pursuant to the restaurant exemption in the ordinance. Gustav Rothenbach's license was renewed in June 1936, was transferred to Richard Strauss, and was later transferred to the appellant, Hahn's Restaurant, Inc. In June 1937 and again in June 1938 renewals of the license were granted to the appellant. Each of the license certificates issued to the appellant contained an express endorsement that it was issued subject to the conditions embodied in Section 6 of Ordinance No. 684.

Municipal restrictions seeking to limit the aggregate number of consumption licenses and the minimum distance between licensed premises are directly in the public interest and their general validity is not here questioned. Furthermore, it is clear that such restrictions may properly be accompanied by exceptions in favor of designated types of businesses where reasonable basis for the classification exists. Thus, bona fide "restaurants" may properly be excluded from a numerical limitation of licenses designed primarily to reduce the number of taverns. See Tedona v. Hackensack, Bulletin 256, Item 7. Cf. Peck v. West Orange, Bulletin 171, Item 10, where an exemption in favor of restaurants and clubs from a closing hour regulation was sustained on the ground that "there is reasonable basis for distinguishing or classifying restaurants and clubs apart from the general run of other licensees."

In the instant situation, the exemption from the restrictive provisions of the ordinance has not been afforded to all establishments which are restaurants in fact; instead, it has been confined to restaurants without bars. But this sub-classification of restaurants is entirely reasonable. Just as taverns are distinguishable from restaurants, so are restaurants with bars differentiated from those without bars. The difference between a tavern and a restaurant with a bar may readily shade into indistinction. Cf. Tedona v. Hackensack, supra. The possibility of a similar transposition when dealing with a restaurant without a bar is negligible. A municipal governing body may, therefore, consistently and justifiably take the position, as the respondent has in its ordinance, that restrictions directed primarily at taverns would be endangered by an exception in favor of restaurants with bars but not by an exception confined to restaurants without bars.

The appellant argues that all other restaurants in Teaneck have bars and that, consequently, it is being discriminated against. Unlike the appellant, these other restaurants obtained their original licenses before the adoption of the ordinance and their present licenses were not issued under the exception in Section 6 in favor of restaurants without bars. The license which appellant holds was first issued after the adoption of the ordinance and only by virtue of the aforementioned exception. If the ordinance had not excepted restaurants without bars, appellant could not have obtained any license at all and could not have effectively complained that others were permitted to operate restaurants and bars under their preexisting licenses. Clearly, appellant is in no better position to complain that others may so operate where, as here, it knowingly availed itself of the benefits of the limited exception and received a license which, in express terms, is subject to the consequent restriction against the maintenance of a bar.

The appeal herein is dismissed.

D. FREDERICK BURNETT,
Commissioner.

Dated: March 12, 1939.

6. DISCIPLINARY PROCEEDINGS - FAIR TRADE - SALES AT CUT RATES.

In the Matter of Disciplinary Proceedings against

CATHERINE SPEIVY,
Lake and Hessian Avenues,
National Park, New Jersey,

Holder of Plenary Retail Consumption License No. C-5, issued by the Borough Council of the Borough of National Park.

CONCLUSIONS AND ORDER

Catherine Speivy, Pro Se.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on December 16, 1938, she sold a pint bottle of Kessler's Private Blend Whiskey below the minimum retail price, in violation of State Regulations No. 30.

On December 16, 1938 Investigator Roberts, of this Department, visited the licensed premises and asked the bartender, Joseph Pollock, for a pint of Kessler's Private Blend whiskey. Upon being informed by the bartender that the price was One Dollar, Investigator Roberts purchased the item at that price. The minimum Fair Trade price of the item is $1.02 per pint.

The bartender testified that he had not checked the pamphlet price of the item in question until after Investigator Roberts made the purchase; that he took it for granted that the price per pint was One Dollar.

Licensee testified that she conducts a saloon; that, while she had received a price pamphlet, the price on this item had not been changed; that "If a man comes in and lays down a dollar, we feel that it would be awful cheap to ask that man for two cents." So is the talk of the licensee caught cheating. It is the cheapening tactics of certain licensees that have inflicted trouble upon the whole liquor industry and which caused the enactment of the Fair Trade regulations. Or, as I said in Re Kraus, Bulletin #286, Item 10:

> "It is the few cents here and the few cents there that make all the trouble. Rules are plain and easy of application and, if violated, a mere disclaimer of attempt to do so is no defense. Otherwise the regulations, which the licensees themselves asked for, would be rendered inert."

The licensee is guilty as charged. I shall suspend the license for ten days.

Accordingly, it is on this 12th day of March, 1939

ORDERED that Plenary Retail Consumption License No. C-5, heretofore issued to Catherine Speivy by the Borough Council of the Borough of National Park, be and same is hereby suspended for a period of ten (10) days.

Pursuant to notice of December 17, 1938, Bulletin #289, Item 1, the effective date of such suspension is reserved for future determination.

D. FREDERICK BURNETT,
Commissioner.

7. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - FAILURE TO CLOSE ON TIME - HEREIN OF UXORIAL COURTESY.

In the Matter of Disciplinary Proceedings against

CHARLES GALLAGHER,
56 - 11th Avenue,
Newark, New Jersey,

Holder of Plenary Retail Consumption License No. C-775, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Charles Basile, Esq., Attorney for the State Department of Alcoholic Beverage Control.
Arthur J. Connelly, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant is charged with keeping his tavern open, and failing to afford a free public view therein from the street, after 3:00 A.M. on Sunday, December 11, 1958, in violation of Newark Ordinance No. 6579.

At 5:30 A.M. on the day in question, Officers Riker and Graf, of the Newark Police Department, visited the defendant's tavern (located at a street corner) and observed that no free public view was possible from the street into the interior. They heard "talking on the inside," tried the front door, and, finding it to be locked, rapped until admitted. Inside, they turned on the lights and there discovered Gallagher, his wife, a Mr. and Mrs. Dolan, a Mr. McGarry and a Mr. Dougherty. On the bar they saw a small glass of beer.

In defense, the licensee testified that Mr. McGarry entered the tavern at 11:00 P.M. (on December 10th), had a drink at midnight, and remained on the premises; that Mr. Dougherty entered at 2:10 A.M., and Mr. and Mrs. Dolan and the defendant's wife at 2:30 A.M., from a nearby benefit dance where drinks had been served; that Dougherty, the Dolans and the defendant's wife had a drink in the tavern at 2:40 or 2:50 A.M.; that at 3:00 A.M. he (the defendant) put his "change away and locked the windows and doors - regular routine - opened the shades," i.e., the lattice work on Venetian blinds at the front entrance; that he told the group in the tavern to go home; that his wife wanted another drink but he refused; that "she got a little contrary and would not go home" and "went behind the bar and drew a small beer for herself;; that this was the glass of beer which the officers found on the bar; that from 3:00 A.M. until 5:30 A.M., when the officers came in, he and the others were trying to coax his wife to go home; that his night light, which he had turned on shortly before 3:00 A.M., was still burning when the officers entered.

The defendant also produced Mrs. Dolan, who verified that she, her husband, and the defendant's wife entered the tavern at about 2:30 A.M. en route from a nearby dance. She further testified that they dropped in to get a glass of beer at the tavern and a cup of coffee at a restaurant and to go home together; that at 3:00 A.M. the defendant put his hat and overcoat on, had his keys in his hand, "and was ready to close the place"; that he locked the

doors and opened the Venetian blinds; that the defendant's friends remained on the premises because his wife "didn't want to go home"; that they "talked to her and tried to humor her"; that "none of us had any intention of staying for a drinking party, or anything like that. We humored her, and in the meantime the others got talking about the dance, etc."; that they did not realize the passage of time; that, just before the officers entered, the defendant's wife, angered by her husband's refusal to give her a drink, went behind the bar and drew a glass of beer herself; that she took a small mouthful of the beer a short time prior to the entry of the officers.

I find no reason for disbelieving the police officers' testimony that no free public view was possible from the street into the tavern. Were the lattice work of the Venetian blinds at the front entrance sufficiently open to afford a view into the interior, the officers, who rapped at that entrance and entered through it, would unquestionably have observed that fact.

As to the defendant's story that he and his friends remained on the premises from 3:00 until 5:30 A.M. in an effort to coax his balky wife to leave, I am, frankly, skeptical. While the party may perhaps have begun for that reason, there is no adequate explanation for its continuing until approaching dawn when the officers interrupted it. There is a time when uxorial courtesy ends. Licensees, however fearful of marital reprisals, must close their places on time. Even Eve will have to learn that when three o'clock comes the party is over.

A licensee cannot play host to his friends on his licensed premises after the closing hour, even though (as here contended) no drinks are served. The fact that the defendant's tavern doors were locked merely shows that he had restricted his party. Cf. Re Casarico, Bulletin 268, Item 1; Re Zenda, Bulletin 271, Item 5; Re Weitzman, Bulletin 282, Item 9.

I find the defendant guilty as charged.

His license will be suspended for five (5) days for keeping his tavern open after the closing hour, and for an additional five (5) days for failing to afford a free public view therein from the street after that hour, or a total of ten (10) days.

Accordingly, it is, on this 12th day of March, 1939, ORDERED, that Plenary Retail Consumption License No. C-775, heretofore issued to Charles Gallagher by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of ten (10) days, commencing March 16, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

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

January 28, 1939

Re: Case No. 249

This is to determine whether applicant is disqualified under R. S. 33:1-25, 26 (Control Act, Secs. 22, 23) from employment by a liquor licensee in this State by reason of conviction of a crime involving moral turpitude.

In 1912, applicant was convicted of soliciting men for immoral purposes, and released on 3 months' probation. She now testifies that she was but 15 years old at the time of the soliciting. Investigation reveals that, when arrested on that occasion, she gave her age as 20. Were she then actually 15, or any age under 18, her tender youth would be a pertinent circumstance to be considered in determining whether her crime involved moral turpitude. Re Application for A.R.C. Permit - Case 36, Bulletin 149, Item 1; Re Case 226, Bulletin 261, Item 6. However, it is unnecessary to determine the question of her precise age, in view of her subsequent conviction of crime which, as indicated below, necessarily disqualifies her.

In 1919, applicant, when at least 22 years of age, committed, and was convicted of, petit larceny in New York under a statute defining that crime as ordinary theft of goods of a value less than $50.00. N. Y. Penal Law, Secs. 1294, 1296, 1298, as amended L. 1912, c. 164. Investigation discloses that applicant and another woman were caught shoplifting goods of the value of $48.00 in a large New York City department store; that applicant's accomplice stole the goods while applicant sought to shield her from view; that additional merchandise was found on the accomplice which had apparently been shoplifted from other stores. Applicant was sentenced to the County Penitentiary for an indefinite term not to exceed three years, and was paroled after one year's imprisonment.

Whether petit larceny is a crime involving moral turpitude, depends upon the particular circumstances of each individual case. Re Case 213, Bulletin 232, Item 6; Re Case 228, Bulletin 265, Item 12. I believe that such element was here present in view of the fact that a fairly substantial quantity of merchandise was being stolen and the further fact that this was apparently not an isolated instance of shoplifting.

In 1935, applicant was convicted in Newark Police Court for "throwing buck dice" in violation of a local ordinance, and fined $10.00. However, violation of a local ordinance is not a "crime" within the meaning of R. S. 33:1-25, 26 (Control Act, Secs. 22, 23). Zicherman v. Newark, Bulletin 227, Item 7; Re Case 213, supra. In 1937, applicant was arrested for distributing filthy cards, but her case was dismissed by the Grand Jury.

In view of the above conviction in 1919, it is recommended that applicant be declared mandatorily disqualified from holding a liquor license or being employed by a liquor licensee in this State.

Nathan Davis,
Attorney.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

9. SOLICITOR'S PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

February 15, 1939

Re: Case No. 250

This is to determine whether applicant is disqualified from obtaining a solicitor's permit by reason of conviction of a crime involving moral turpitude. See R. S. 33:1-25.

Applicant was convicted in 1929 of issuing worthless checks, apparently totalling $25.00.

In explanation, applicant testifies that during 1929 he was engaged on a contracting job in which a bonding company stood as surety for his full performance; that he "went under" on this job; that the bonding company, after having made good for him, tied up all his assets, including his bank account; that, so far as he recalls, a series of five checks which he had previously drawn on that account were therefore protested; that he stood trial as to three checks and was acquitted; that, however, he "took a plea" as to the two other checks because he had a job waiting for him and hoped, by such plea, to avoid the delay of further trial.

Because of the destruction by fire of various criminal and probation files in the county where applicant was convicted, the records concerning his conviction are meagre. What is available corroborates applicant's story.

A member of the Probation Department in that county, who was in the County Clerk's office during 1929 and who docketed the records in applicant's case, states that in 1929 two indictments were returned against the applicant, one for three and the other for two worthless checks; that the applicant pleaded not guilty to both indictments; that he stood trial as to the indictment involving the three checks and was acquitted on July 9,1929; that, later that day, he retracted his plea of not guilty as to the other indictment and pleaded non vult thereto; that, in penalty, he was given a suspended sentence and placed on probation for a year, and ordered to pay the costs of prosecution; that, subsequently, a sixth worthless check (in the same series of checks) turned up; that, on August 2, 1929, the applicant, charged therewith, waived indictment and pleaded guilty, and was placed on probation for two years to make restitution.

This informant, on being told the applicant's story of the reason for "taking a plea," states that, so far as he can recall, that explanation represents the truth. He does not recall the amount of the checks involved; but the probation records reveal that applicant made restitution of $25.00 and satisfactorily served his probation.

The crime of issuing a worthless check may or may not involve moral turpitude dependent upon the particular facts of each case. Re Case No. 43, Bulletin 158, Item 7; Re Hearing No. 161, Bulletin 171, Item 17. Here, in view of the applicant's explanation and the mild penalty imposed upon him, I do not believe the crime involved that element.

Applicant was arrested in 1922 for manslaughter resulting from an automobile accident, and in 1938 for issuing a bad check. In each instance, the matter was dismissed.

It is recommended that the applicant be declared eligible to receive a solicitor's permit.

Nathan Davis,
Attorney.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

10. A.R.C. PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

February 15, 1939

Re: Case No. 251

This is to determine whether the applicant, a non-resident of the State, should, despite his criminal record, be granted an A.R.C. permit for employment with a liquor licensee in New Jersey.

Under R. S. 33:1-25, 26, no person "convicted" of a crime involving moral turpitude may hold a liquor license or be employed by a liquor licensee in this State.

In August 1938, the applicant pleaded guilty to a charge of conspiracy with 105 other defendants to violate the Federal Internal Revenue Laws by illicit purchase, possession, transportation and sale of untaxed liquor. As yet, the applicant, who is to be used as the prosecution's witness in the trial of the other defendants, has not been sentenced.

In explanation of his crime, the applicant states that, from 1935 to 1937, he was engaged in an illicit liquor business in New York City in which he purchased 700 gallons of bootleg alcohol, or mixed alcohol and water, per month, and resold the same to some 20 consumers at their homes. Departmental investigation discloses that the applicant was engaged in these bootlegging activities from 1934 to June 1938 and was considered "a very shrewd operator."

While bootlegging activities during Repeal days may not, per se, involve moral turpitude (Re Case 41, Bulletin 166, Item 5), nevertheless where those activities, as here, are extensive and over a period of years, the element of moral turpitude is present.

There is serious question, however, whether a person, for the purpose of R. S. 33:1-25, 26, is "convicted" of a crime until sentence or judgment has actually been imposed upon him. In People v. Jennings, 240 N.Y.S. 91, 94 (1930), it is stated:

> "Where pains, penalties, fines, forfeitures, and disqualifications follow upon conviction, the 'conviction' means the sentence or judgment of the court entered upon the verdict or plea of guilty and proved by the record."

Also see Commonwealth v. Kiley, 23 N.E. 55 (Mass. 1890); Ex Parte Blank, 88 Pac. 301 (Ore. 1907); People v. Fabian, 85 N.E. 672 (N. Y. 1908); Kauz v. State, 124 So. 177 (Fla. 1929); Donnell v. Board of Registration, 149 Atl. 153 (Me. 1930).

However, it is unnecessary here to determine whether the applicant has as yet been technically "convicted" of his crime. Whether a permit shall be issued to a non-resident for employment by a liquor licensee in this State is a matter lying within the sound discretion of the State Commissioner. See R. S. 33:1-26. Where an applicant has pleaded guilty to a crime which, as here, involves moral turpitude, sound discretion requires that he, although perhaps not yet technically "convicted", nevertheless be considered personally unfit for the permit.

It is, therefore, recommended that the present application be denied.

Nathan Davis,
Attorney.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

11. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - SALES AFTER HOURS AND OBSTRUCTING VIEW - HEREIN OF SHORT BEERS AND OF THE CORRESPONDENCE OF PROOFS WITH ALLEGATIONS.

In the Matter of Disciplinary Proceedings against VITO CARLUCCI, 648 North Sixth Street, Newark, N. J., Holder of Plenary Retail Consumption License C-922, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Richard E. Silberman, Esq., Attorney for the State Department of Alcoholic Beverage Control.
James R. Giuliano, Esq., Attorney for the Licensee.

BY THE COMMISSIONER:

The defendant is charged with (1) selling and serving liquor in his tavern and (2) failing to afford a free public view therein from the street, after 3:00 A.M. on Sunday, October 23, 1938, in violation of Newark Ordinance No. 6579.

At about 4:00 A.M. on the Sunday in question, Officers Gibson and Ferrise of the Newark Police Department, while cruising in a police radio car, were attracted to the defendant's tavern (located on a street corner) because of its being lighted. They parked outside the tavern and noted that, up to a height of some eight feet, no view was possible from the street into the interior. Officer Gibson then tried the front door and, finding it locked, rapped until admitted. Inside, he found the defendant, his bartender and a porter cleaning the premises.

There is sharp conflict as to what then occurred. Officer Gibson testified that, upon entry, he told the defendant that he was violating the local ordinance by being open and by not permitting free view into his tavern after 3:00 A.M.; that the defendant, who appeared to have had a few drinks, opened a "blind" in the front and declared, "There, are you satisfied?"; that he (the officer) then said, "I am satisfied you are violating the law and I am going to take you in and make a test case of it"; that the defendant replied, "If I haven't any right in here, you haven't"; that a short tussle then followed between the two; that he (Gibson) told Officer Ferrise, who had come to the tavern door, to call the "wagon"; that, while Ferrise was gone on this mission, the defendant said to Gibson, "What is the use of being that way, making my arrest, we can square it up", and suggested a glass of beer; that the porter, without direction from anyone, drew a small glass of beer and put it on the bar; that he (the officer), who was in the middle of the room, thereupon walked over to the bar and picked up the glass of beer; that he then brought the beer to the tavern door and there handed it to Officer Ferrise, who had just returned; that the bartender said, "That's a dirty, rotten way of getting evidence." Officer Ferrise testified that the glass of beer which Gibson handed to him on his return from calling the "wagon" seemed freshly drawn.

The defendant denied that he offered any drink or "compromise" to Gibson. He testified that at 3:00 A.M. the porter opened a panel in one of the street display windows of his tavern to afford a public view from the street into the interior; that, at the same time, he (the defendant) closed the tavern, but remained with the bartender and the porter to clean up the premises; that about 3:55 A.M. he heard Officer Gibson knock and, when learning that a policeman was at the door, immediately admitted him; that Gibson seemed to have had a few drinks and became abusive and used vulgar language (facts denied by the officer on rebuttal), eventuating in the tussle; that, when Gibson directed Ferrise to get the "wagon", he (the defendant) insisted on such procedure and spoke to Ferrise to get Gibson out of the tavern; that the small glass of beer in question had been drawn by him (the defendant) at about 3:00 A.M. for personal consumption with a steak sandwich which he had prepared for himself; that, consuming only a mouthful, he had left the glass of beer on the bar; that he did not see the officer take this glass, and first learned of it at the police station.

The bartender and the porter supported the defendant's story. In addition, the porter testified that he saw Officer Gibson take the glass from the bar and call the bartender's (but not the defendant's) attention to this fact. The bartender stated that, when his attention was thus called, he remonstrated with Officer Gibson but said nothing to the defendant because he "didn't want to excite him."

I am not called upon to determine whether the beer in this case was drawn to induce forgetfulness in the officer, or whether the licensee forgot for a whole hour the beer he had drawn for personal consumption, or to discuss the amenities of short beers in general. The charge on which the licensee was tried was that he had sold and served an alcoholic beverage after closing hours and not that there was an attempt to bribe an officer. There is no proof of either sale or service. Hence, the first charge is dismissed.

I am satisfied by the officers' testimony that no free public view was possible from the street into the interior of the tavern. I therefore find the defendant guilty of the second charge. For that, his license will be suspended for five (5) days.

Accordingly, it is, on this 13th day of March, 1939, ORDERED, that plenary retail consumption license C-922, heretofore issued to Vito Carlucci by the Municipal Board of Alcoholic Beverage Control of the City of Newark, shall be and the same is hereby suspended for a period of five (5) days, commencing March 20, 1939, at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

12. REVOCATION PROCEEDINGS - SOLICITOR'S PERMIT - LEWDNESS - REVOCATION INDICATED AND EFFECTED.

In the Matter of Proceedings to :
Suspend or Revoke Solicitor's
Permit issued to : CONCLUSIONS

THEODORE A. BAIRD. :

Theodore A. Baird, Pro se.
Samuel B. Helfand, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On December 21, 1938 solicitor pleaded non vult to two indictments for open lewdness, received a suspended sentence and was placed on probation for two years. Charge was served upon him requiring him to show cause why his solicitor's permit should not be suspended or revoked because he had been convicted of a crime, which conviction, if it had occurred before making application for the permit, would have prevented issuance thereof. R.S. 33:1-31.

At the hearing solicitor testified that he had been arrested on July 13, 1938 on a charge of indecent exposure; that, on said date, while in an amusement park, he had exposed himself to a number of women who were passing in a boat on an amusement device. He further testified that, after his arrest, the Chief of Police of another municipality made an additional complaint that, on June 27, 1938, solicitor, while in his own car, had exposed himself to a woman who was a passenger on a bus. The two indictments were based on the actions of solicitor on these dates.

Solicitor's only excuse is that, on both occasions, he had been drinking heavily. He testified: "I had been drinking and it affects me that way and I could not help myself. I explained to the court that way. I was under Doctor's care and the Doctor says as long as I don't drink I will be all right, and it has been that way so far. I was intoxicated at the time."

If these things had happened before his permit was issued, the application would have been denied. One who is affected in this way by liquor is not to be licensed to talk and sell liquor to others.

The permit is hereby revoked, effective immediately.

Franklin Burnett

Commissioner.

Dated: March 14, 1939.

New Jersey State Library