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

BULLETIN 357 NOVEMBER 1, 1939.

1. APPELLATE DECISIONS - LEE ET AL. v. RAHWAY.

CHRISTIAN A. LEE,

Appellant,

vs.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF RAHWAY,

Respondent.

ON APPEAL

CONCLUSIONS

HERMAN SCHULTZ and RALPH SCHULTZ,

Appellants,

vs.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF RAHWAY,

Respondent.

William C. Egan, Esq., Attorney for all Appellants.
Eugene F. Mainzer, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

Since both these appeals involve the same issue, they will be decided together.

In the first, Christian A. Lee appeals from a five-day suspension of license on charge that he possessed a slot machine, or device in the nature thereof, at his tavern at 1590 Irving Street, Rahway, on September 21, 1938.

In the second, Herman and Ralph Schultz appeal from a similar five-day suspension on charge of possessing the same type of machine at their tavern at 297 West Grand Avenue, Rahway, on October 6, 1938.

State Regulations No. 20, Rule 8, provides:

"No licensee shall possess, allow, permit or suffer on or about the licensed premises any slot machine or device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing."

The sole issue is whether the machines in question were slot machines or devices in the nature thereof.

The machines were of the so-called "horse racing" variety. A nickel is inserted into a slot in the machine, whereupon an electric flash board at the head automatically lights up a number and a set of odds. At the same time, five or so balls become available to the player, who shoots them to the top of the tilted playing surface by a single stroke of the plunger. The balls then roll to the bottom of the playing surface, where there are various numbered pockets. If the first ball down reaches a pocket corresponding to a number on the flash board, the player wins the game at the stated odds.

The machines each contained an automatic coin "pay-off" box. However, so far as appears, the box in each case was locked and there is no evidence of any actual "pay-off" at any time.

In Re Conover, Bulletin #51, Item 6, I pointed out the difference between a bagatelle machine, on the one hand, and slot machines or devices in the nature thereof, on the other.

I there said:

"It is apparent that Rule 8 does not create new law but is a mere restatement of existing law. Both under the Law and the Rule, the test of an illegal machine is not the presence of the slot but rather that it is a machine 'which may be used for the purpose of playing for money or other valuable thing.' Therefore, you must distinguish on the one hand between harmless bagatelle games and variations thereof, such as the baseball game, where the primary purpose is skill and amusement, and on the other hand, the common type of so-called slot machine which contains coins and pays money or other valuable thing to the player if he is lucky enough to draw certain combinations when he operates the lever which spins the wheels. The gist of gambling is the payment of money for the opportunity to win more money by a scheme of chance. The vice of gambling is the chance of a gain disproportionate to the price of the chance. A slot machine, the deposit of money in which entitles the player to a chance to get money from the machine, is illegal per se. Its mere presence on licensed premises violates both the Law and the Rule. A machine of this type is quite different from bagatelle and kindred games which do not pay out or deliver to the player at any time, however lucky he may be, any money or other valuable thing. To be sure, those games may be used illegally, in which event they violate both the Law and the Rule ***, yet intrinsically they are not illegal. If the slot machines which you mention are the common type which pay money itself to the lucky player, you do not have to pause to determine the sometimes difficult question as to whether the use made thereof is illegal, because, to use the words of Vice Chancellor Buchanan in Pure Mint Co. vs. LaBarre, 96 N.J. Eq. 186, 'the machines are intended to do what they in fact do', and hence their very presence is illegal, irrespective of the use made of them. Such slot machines are gambling devices. Hence there is no necessity for you to see it being actually operated by a player, or to determine anything more than that such machine is on the licensed premises."

In other words, both may be used for gambling. The bagatelle game is not of itself a violation but it may become so if it is used for gambling. On the other hand, a slot machine, or a device in the nature thereof, is illegal of itself, and hence its very presence on licensed premises violates the rule irrespective of whether it is actually used for gambling or not.

Therefore, in Re Twin Brooks Country Club, Bulletin #282, Item 12, where the machine known as "Paces Races" automatically paid off the winner in coins, I held that it was a machine of the type, the mere possession of which is forbidden on licensed premises, - and this irrespective that there was no evidence that the machine was actually being used for gambling purposes.

The fact that the "pay-off" is not in cash but in its equivalent or in something valuable makes it none the less a slot machine of prohibited type. Hence the pay-off of the "DeLuxe Preakness" in a ticket redeemable in money, Re Carteret, Bulletin #307, Item 13, or of the "Mills Golf Ball Vender", payable in golf balls, Re Upper Montclair Country Club, Bulletin #235, Item 12, did not alter the conclusion that these machines were gambling devices per se.

In the instant cases, the respective "Paddock" and "Turf Champ" machines each were equipped with a pay-off box. If these boxes had been unlocked and in actual operation, there would be no question but that both of these machines were illegal per se. The question then is whether the fact that, at the time they were observed, the pay-off boxes were temporarily locked, cured the fact that they were intrinsically illegal. The presence of an old fashioned slot machine with its plums and lemons and jackpot would be unlawful on licensed premises whether it were temporarily out of commission or not. The point is not whether the machine is in operation or needs tuning up, but whether - in the words of the rule - it "may be used for the purpose of playing for money or other valuable thing." An automobile does not cease to be such when the ignition is turned off. Nor a gun just because its safety catch is temporarily on. A machine that is set up for play, designed and equipped for automatic pay-off and capable of doing just that by the turn of a key in the lock when there are no strangers about, is a slot machine just the same.

However, appellants contend that the machines were actually stripped of all "pay-off" mechanism and that the "pay-off" box was merely a vestigial remnant. To this end one Smith, the owner of the machines, who installed them in appellants' taverns with their consent, testified that, when he bought the machines second-hand, the "pay-off" mechanism was already out and the box fastened shut; that the machines were installed in the taverns merely for entertainment as a "fascinating" game; that, although now destroyed, he had offered to produce them at the hearing before respondent.

The defense stretches credulity to the breaking point. If these machines were internally amputated, as now suggested, the take on this "fascinating" game would hardly be worth counting. Grown-ups are not fools. Ennui would plumb new depths if an emasculated plaything of this kind could hold attention. No one in his senses would pay for such a privilege if there were no pay-off. If these machines had been actually stripped of their pay-off gear, such fact would surely have been known to appellants and their bartenders. Yet, when the Department Investigators on

the dates in question told Lee's bartender and one or both of the Schultzes that the machines then at their taverns were banned because of the pay-off box, no one thought to reply that there actually was no internal mechanism for pay-off.

I find as fact that the pay-off was there all the time ready to be unlocked and tuned in when the coast was thought to be clear.

The action of respondent in both these appeals is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 27, 1939.

2. DISCIPLINARY PROCEEDINGS - GAMBLING - BOOKMAKING - 20 DAYS IN PASSAIC.

October 26, 1939

Arthur D. Bolton,
City Clerk,
Passaic, N. J.

My dear Mr. Bolton:

I have before me your letter of October 18th reporting suspension of license of James J. Cahill for twenty days on charges of permitting bookmaking on the licensed premises.

While I do not entertain, let alone express, any opinion on the merits of this case because I have no knowledge of the facts, I have no hesitancy in requesting you to convey to the members of the Board of Commissioners my appreciation for their institution of these proceedings on their own initiative and for the substantial penalty imposed.

I am glad that your Board of Commissioners is wholly opposed to bookmaking and gambling on licensed premises.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. PADLOCK PROCEEDINGS - PADLOCK ORDER MODIFIED - EXTENSION GRANTED TO BONA FIDE TENANT IN NO WAY INVOLVED IN THE ILLICIT ACTIVITIES.

In the Matter of the Seizure of a still at 1814 Baltic Avenue, in the City of Atlantic City, County of Atlantic and State of New Jersey.	Case 5246 ORDER

BY THE COMMISSIONER:

By order entered October 11, 1939, the second floor at 1814 Baltic Avenue, Atlantic City, is to be padlocked on November 11, 1939. Bulletin 353, Item 3.

Mrs. Grace Harper, the present tenant of the second floor of said premises, has requested that she be relieved from the effect of said order or at least that the effective date of said order be deferred until December 1, 1939.

Mrs. Harper rented this apartment on March 1, 1939 and was in no way connected with the operation of the still which was seized on January 30, 1939 when the said premises were occupied by a former tenant. She says that she is a widow in straitened circumstances; that she has three small children; and that she has no money at present with which to pay the expenses of moving.

I am satisfied that Mrs. Harper finds herself in her present plight because she was unaware when she rented the apartment that it was subject to padlocking.

The landlord of the premises must be punished for failure to exercise reasonable prudence in renting the premises to an unnamed man on November 3, 1938, but there is no reason why Mrs. Harper should equally suffer. Her request for extension until December 1st is most reasonable. I shall give her an extra month besides.

It is therefore ORDERED that the effective date of the order heretofore entered herein be deferred from November 11, 1939 until such time as Mrs. Harper removes from the premises and notifies me of such removal, but in no event beyond January 2, 1940; the order heretofore entered will otherwise remain in full force and effect.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 28, 1939.

4. DISCIPLINARY PROCEEDINGS - LICENSEES ACTING AS FRONTS FOR THOSE IN REAL INTEREST - HEREIN OF DEVICES TO DEFEAT CREDITORS AND THE EFFECT OF PARTICIPATION THEREIN UPON THE ADMINISTRATION OF THE ALCOHOLIC BEVERAGE LAW.

October 28, 1939

Richard W. Berkstresser,
Wall Township Clerk,
West Belmar, N. J.

My dear Mr. Berkstresser:

I have before me staff report and your letter of October 12th re disciplinary proceedings conducted by the Township Committee against Herman Blumenthal, T/a Homestead Tavern, charged with being a front for others, and note that his license was suspended for ten days but that sentence was suspended pending his future good conduct.

Please express to the members of the Township Committee my appreciation for their conduct of these proceedings.

The Committee's opinion was very helpful to me in understanding its action. It reads:

> "The evidence in this case discloses to the Township Committee that the licensee is guilty of the charges preferred against him. The Committee feels that the violation is at the most a technical violation. The Committee sees good cause why a longer suspension should be adjudged in the case where the named licensee is a dummy or a front for one who would be ineligible for a license. However, in this case, there is nothing to show that the under cover man is ineligible. In fact, the Committee finds that he is eligible and that the license was put in Blumenthal's name not for the purpose of defeating the Alcoholic Beverage Control Account, but for the purpose of defeating creditors of the Belfors.
>
> "The Committee feels that while not condoning the practice, they should take no interest in machinations of persons who seek to avoid their creditors, and that the Legislature and the Commissioner of Alcoholic Beverage Control did not intend to penalize such a practice when the act and rulings were adopted.
>
> "The Committee therefore will make an order for the suspension of the license for ten (10) days and will suspend the operation of the suspension pending the good conduct of the licensee.
>
> "In the event of any further violation, this suspension shall become effective."

It is true that it is not within the power of a liquor license issuing authority to set aside fraudulent transactions made to defraud, harass, hinder or prejudice creditors even though they

involve liquor licensees. Those are matters for the Courts of Chancery and of Bankruptcy. Nor is it within the province of such issuing authority to discipline a licensee because of his participation in some fraudulent transaction unless the fraud concerns or affects him in his capacity as a licensee. The exception shows that it is not correct to say that license issuing authorities should take no interest in machinations of licensees who seek to avoid their creditors. Certainly it is something that should be taken into consideration in determining whether a renewal of a license should be granted. So, if the fraud were such that had it been known at the time the license was issued it would have prevented such issuance, then revocation is the appropriate remedy.

I doubt very much if your Township Committee, had it known the facts at the time, would ever have issued this license at all. Irrespective of defeating the creditors of the Belfors, or whatever the purpose, it was a fraud by Blumenthal against your Township Committee to represent to it that he was the sole party in interest. Misstatement and suppression of material facts are hardly to be classed as "technical" violations. They would seem quite substantial. He knowingly violated an important provision of the Control Act. He should have been punished. His license should have been revoked.

Moreover, and here is where the rub comes in, I take it that the business still belongs to Abraham Belfor and Rose Belfor even though the license for the current year has been issued to Herman Blumenthal. It is wholly improper that this condition should continue because it permits the Belfors to exercise the rights and privileges of a license when they are, in fact, not licensees. R. S. 33:1-26 provides:

> "Any person who shall exercise or attempt to exercise, or hold himself out as authorized to exercise, the rights and privileges of a license except the licensee and then only with respect to the licensed premises, shall be guilty of a misdemeanor."

At the least, therefore, if, as your Committee finds, the Belfors are eligible for license, the license should be transferred forthwith from Blumenthal to the Belfors so that the true situation is reflected and the law obeyed.

I therefore suggest and request that your Township Committee immediately reconvene and, in view of their finding of facts heretofore made, either revoke his license outright or, if it deems this punishment too drastic, then at least suspend his license effective immediately and until such time as proceedings are instituted and completed to transfer the license from Blumenthal to the Belfors.

Every day this situation continues constitutes a fresh offense against the statute. Time, therefore, is very important. I am affording your Committee the opportunity to straighten this matter out themselves by appropriate action, as above indicated, but must ask that this matter be given immediate effective attention.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. CASH REGISTERS - CASH REWARDS FOR FAILURE TO GIVE RECEIPT - PERMISSION GRANTED UPON CONDITIONS.

October 30, 1939

Sinder's Drug Store,
387 Jackson Avenue,
Jersey City, N. J.

Gentlemen:

I understand that your new cash register releases a receipt for each sale rung up and that the National Cash Register Company has furnished you with posters, for display on your premises, reading:

> "$1.00 Free! If you are not offered a National Cash Register Receipt for the correct amount of your cash sale you will receive One Dollar Free!
>
> "Claim must be made at time of purchase."

I take it that the purpose is to induce your customers to act as detectives under hope of reward if they report carelessness or dishonesty on the part of clerks who are required not only to deposit in the cash register the full amount of each sale, but also to take the initiative in giving a receipt.

If this is all there is to it, I would have no objection.

If, however, this device is utilized to cover gifts, rebates or discounts or any other inducement for the sale of alcoholic beverages for off-premises consumption in violation of Regulations 20, Rule 20, or to evade minimum Fair Trade prices in violation of Regulations 30, you will, of course, be held strictly responsible without previous warning.

Permission is hereby granted to operate under the proposed plan provided, however, that a true and complete record is kept of each dollar so paid out including the date, name of person to whom paid and his residence and also the name and residence of the clerk whose failure to obey your rules was the cause of such payment and of the disciplinary measures taken by you in respect to such clerk.

This permission is subject to cancellation at any time in absolute discretion.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure of a Dodge Sedan and a quantity of alcoholic beverages and miscellaneous personal property, in a garage on premises located at the intersection of Maple Avenue and Black Horse Pike, in the Borough of Haddon Heights, County of Camden, and State of New Jersey.	Case #5347 On Hearing CONCLUSIONS AND ORDER

Anthony Giuliano, Esq., Attorney for Mitchell Leonard.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On April 14, 1939, investigators of this Department arrested Joseph Jans, a former liquor violator, as he was transporting twenty 5-gallon cans of alcohol in a Dodge Sedan owned by Mitchell Leonard. They seized the car and the alcohol contained therein, as well as some additional alcohol and other articles found in the garage. Jans has since been convicted, sentenced to pay a fine of $550.00, and, in addition, received a suspended prison sentence.

No one contests the fact that Joseph Jans was engaged in illegal activity. The alcohol was prima facie bootleg, since, although fit for beverage purposes, it bore no tax stamps. Hence, the motor vehicle, alcohol, and other articles constitute unlawful property, subject to seizure and confiscation.

However, Mitchell Leonard, the owner of the motor vehicle, appeared at the hearing in the case, claimed to be innocent of any wrong-doing, and requested the return of his automobile. Under the provisions of R.S. 33:1-66(f), I am authorized to return forfeited property to a person who has satisfied me that he acted in good faith and could not have anticipated the unlawful use made of his property. Cf. Bulletin #354, Item #4.

The evidence shows that shortly after Mitchell Leonard purchased the Dodge Sedan in 1937, he turned it over to his brother, Charles Leonard, with whom he resides in Philadelphia. From then on, Charles Leonard made the monthly payments to the finance company and used the car whenever he wished. Mitchell Leonard seldom, if ever, used the car, although it continued to be registered in his name. Thus it appears that the vehicle was registered in Mitchell Leonard's name merely for convenience, its real owner being his brother, Charles Leonard. Therefore, Charles Leonard must satisfy me of his innocence before I will order the car returned.

Charles Leonard testified that he had known Jans for about a year prior to the seizure; that he visited Jans' pool-room

from time to time, and had seen him altogether about ten or a dozen times; that on the day of the seizure, while at the pool-room, Jans borrowed the car, claiming that he wished to see a young lady, but would be back within an hour; that he acceded to Jans' request merely as a matter of courtesy, being unaware of Jans' previous illegal activities, and having no reason to suspect that Jans' real purpose was to transport illicit alcoholic beverages in the vehicle. Charles Leonard further testified that he has been in the produce business in Philadelphia for many years, has never been arrested, and had always conducted himself in a law-abiding manner.

There are, however, various suspicious circumstances which must be considered, namely: (1) Shortly before the seizure, Charles Leonard had repaid over a period of three months a loan of $300.00 on the seized car, although his income from the produce business was small; (2) The car had heavy rear springs. Charles Leonard states that he installed them because he carted heavy loads of produce. They could also have been installed in order to transport heavy loads of alcoholic beverages; (3) When Jans failed to return within the hour as promised, Leonard waited for three hours or more, and then at an early morning hour returned to Philadelphia by bus, without making any real effort to ascertain where Jans lived or notifying the police of Jans' failure to bring back the car; (4) At about 3:30 in the morning, Jans came to Leonard's home in Philadelphia, and notified him that the car had been seized. Pressed to explain how Jans, a mere casual acquaintance, knew his address, Leonard said that he had originally given him the address because "He asked me sometime if he was passing through Philadelphia he would stop in"---.

Charles Leonard has not convinced me that he acted in good faith and could not have anticipated the unlawful use of his property by Jans. Hence, request for return of the car is denied.

Accordingly, it is ORDERED that the seized property, as set forth in Schedule "A" annexed hereto be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 29, 1939.

SCHEDULE "A"

25 - 5 gallon cans alcoholic beverages
1 - 10 gallon keg alcoholic beverages (part full)
1 - 25 gallon copper filter
3 - galvanized funnels
Miscellaneous personal property
1 - Dodge Sedan, Serial #4728567, Engine #D5-225160, 1939 Pennsylvania Registration 861B6

7. SEIZURES- CONFISCATION PROCEEDINGS - PROPERTY FORFEITED, PADLOCK IMPOSED IN PART.

In the Matter of the Seizure on March 8, 1939, of a still and two motor vehicles found on premises owned by Mary Rizulo, located on Maple Street, in the Borough of Moonachie, County of Bergen, and State of New Jersey.	Case #5284 On Hearing CONCLUSIONS AND ORDER

William S. Grimaldi, Esq., Attorney for Frank Rizulo and Mary Rizulo.

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

BY THE COMMISSIONER:

On March 8, 1939, investigators of this Department seized a large unregistered alcohol distillery, a Ford Coach, a Buick Sedan, and other items set forth in Schedule "A", annexed hereto, at premises owned by Mary Rizulo, located on Maple Street, in the Borough of Moonachie. The still was found being operated in the barn; the Ford car, owned by Rizulo, was found between the barn and the dwelling; and the Buick Sedan arrived on the premises while the seizure was in progress. Frank Rizulo, husband of Mary Rizulo, was one of the persons arrested and later convicted in criminal proceedings instituted as a result of the seizure.

At the seizure hearing, Frank Rizulo appeared with counsel and contested only forfeiture of his Ford Coach, a steel filing cabinet, and padlocking of his dwelling. Rizulo claimed that the filing cabinet disappeared after the seizure. It does not appear on the inventory of seized property made at the time by the investigators, and Investigator Robbins, who participated in the seizure, testified that it had not been seized.

As to the Ford Coach: It is claimed that it had not been used either to transport illicit alcoholic beverages, or in furtherance of the operation of the still. Even if this were true, nevertheless, the vehicle would be subject to forfeiture, because it was found with the still. It is immaterial what the reason was for its presence on the premises or what use was made of the vehicle. Cf. Tricoli, Bulletin #164, Item #9.

The articles seized, including the motor vehicles, constitute unlawful property.

As to padlocking: Rizulo does not contest padlocking of the barn in which the still was being operated. He merely seeks permission to remain in his dwelling. The evidence indicates that the still could not have been operated without his knowledge. His conviction of aiding and abetting in its

operation confirms this conclusion. Therefore, he cannot be entirely relieved of the padlocking penalty. However,mitigating circumstances will be considered in determining to what extent the penalty should be imposed.

Rizulo's testimony shows that he resides on the premises with his family, consisting of his wife, and two minor children that for the past twenty-two years he has been steadily employed by one firm as a mechanic. Although his claim that he did not know that the still was on the premises obviously is a pretense, the evidence does not show that he was operating the illicit still. He was convicted of aiding and abetting its operation, and sentenced to serve six months in the County Jail. He does not appear to have a previous criminal record.

In view of the forfeiture of his motor vehicle, the jail sentence imposed upon him, and the other circumstances disclosed, his eviction from his dwelling seemingly would impose an undue hardship. However, all other buildings on the premises will be padlocked.

Accordingly, it is ORDERED that premises owned by Mary Rizulo, located on Maple Street, in the Borough of Moonachie, being the premises in which the illicit still was found, including all buildings erected thereon, with the exception of the dwelling, shall not be used or occupied for any purpose whatsoever, for a period of six months, commencing the 29th day of November, 1939; and it is further

ORDERED that the seized property set forth in Schedule "A" be and hereby is forfeited in accordance with the provisions of R.S. 33:2-5, and that it be retained for the use of hospitals, and State, county and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: October 29, 1939.

SCHEDULE "A"

1 - 50 gallon water pressure tank
1 - 1000 gallon steel cooker
4 - sections copper column
1 - copper Dephlegmator
1 - galvanized cooler
2 - receiving tanks
36- 5 gallon cans (empty)
1 - 5 gallon measuring can
1 - 50 gallon drum molasses
1 - 150 gallon mixing tank
1 - electric motor pump
1 - Worthington steam pump
18- bags coke
33 - 100 lb. bags sugar
1 - Upright steam boiler
1 - 5 gallon can alcoholic beverages
3 - vats with mash

Miscellaneous personal property

1 - Buick Sedan, Engine #2496731, bearing New Jersey 1938 Registration E91124
1 - Ford Coach, Engine #A3668833, bearing New Jersey 1938 Registration B18051

8. DISCRIMINATORY PRICES AND DISCOUNTS - SAMPLES - PROPOSED REGULATIONS.

October 30, 1939.

Mr. Wm. H. Sinsheimer
New York, N. Y.

My dear Mr. Sinsheimer:

Enclosed is copy of Chapter 87, P. L. 1939 (Bulletin 324, item 13), effective June 12, 1939, and applicable to all sales of alcoholic beverages except malt beverages, which makes it unlawful for licensed manufacturers or wholesalers to grant to any retailer any discount, rebate, free goods, allowance or other inducement over and above that available to any other retailer purchasing the same item. Also enclosed is copy of notice of public hearing to be held November 1st on the proposed regulations.

The regulations, when promulgated, will bar all discounts, free goods and other inducements not expressly permitted. See Rule 4, et seq.

Samples, being in the nature of free goods, may very properly be made the subject of discussion at the hearing.

To provide a basis for this discussion, I shall submit at the hearing a rule, conforming substantially with the Federal Alcohol Administration rule and certain recommended changes (Regulations No. 6, Section 3(e)3), to be included in the proposed regulations immediately following Rule 5, reading:

> "A manufacturer or wholesaler may furnish and give to a retailer who has not previously purchased the particular product, not more than one pint of any brand of alcoholic beverage, or if the brand is not packaged in containers of less than one quart, not more than one quart of such brand of alcoholic beverage; provided, however, that any alcoholic beverage furnished as a sample shall have printed or stamped in ink on its brand label, the words 'SAMPLE - NOT FOR SALE' in letters not less than one-half inch high and of proportionate width. Nothing hereinabove contained shall apply to malt alcoholic beverages."

It is not permissible, at the present time, for manufacturers or wholesalers to provide retailers, other than the holders of plenary retail transit licenses, with samples in the form of nips or miniatures. The miniatures may be carried by the salesman and displayed to the retailer, but not given him. Re Wilkinson, Gaddis & Co., Bulletin 100, item 11. Regulations No. 23, governing the size of

containers, prohibit retail licensees other than plenary retail transit licensees not only from selling nips but also from possessing them on licensed premises. See Rules 2, 3 and 4. The minimum for distilled spirits is one-tenth gallon; for brandy and Holland gin, three-fourths pint; for cordials, liqueurs, cocktails, gin fizzes and bottled highballs, one-half pint; for still wines, six ounces; and for champagnes and sparkling wines, four ounces. See Rule 1. On the question of whether or not miniatures marked as samples and not for resale may be possessed by retailers notwithstanding Regulations No. 23, I shall reserve judgment until after the matter has been fully discussed at the hearing.

You, and all others interested, are cordially invited to attend the hearing and express your views.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF FEMALE BARTENDER - THREE DAYS ON GUILTY PLEA.

In the Matter of Disciplinary Proceedings against HARRY HORTON, 233-235 South Street, Newark, New Jersey, Holder of Plenary Retail Consumption License C-162, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Harry Horton, Pro Se.
Charles Basile, Attorney for the State Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee has pleaded guilty to charge of allowing a female to tend bar and sell and serve alcoholic beverages to patrons on his licensed premises, contrary to municipal resolution.

The usual penalty for this violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three days, instead of five days.

Accordingly, it is, on this 30th day of October, 1939,

ORDERED, that plenary retail consumption license C-162, heretofore issued to Harry Horton by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, commencing November 3, 1939 at 3:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

10. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

October 26, 1939

Re: Case No. 302

Applicant disclosed, at a hearing to determine his eligibility to be employed by a liquor licensee in this State, that in 1931 he was convicted by court-martial of desertion from the U. S. Army.

He testified that he enlisted as a private in 1927, when not quite 17 years old, served one year and was honorably discharged by reason of expiration of term of service; he again enlisted in 1928 and was honorably discharged in 1931, for the same reason; that he again enlisted in 1931 for a further 3-year term. On August 16, 1931, while still a minor, he deserted the Army, as a result of which he was found guilty by court-martial and sentenced to forfeit all pay and to be confined at hard labor for 15 months. He was released after serving nine months and was dishonorably discharged from the Army. This is confirmed by information received from the Adjutant General's Office of the War Department.

He explained that the reason he deserted was that there was so much sand at the camp where he was stationed that "you eat it and sleep it"; that it "got on my nerves."

Such an offense during time of peace, for which indictment and trial by jury are not guaranteed to the accused, with resultant conviction by a summary court-martial, is not a "crime" within the meaning of R. S. 33:1-25. Re Case 299, Bulletin 356, Item 7; cf. Re Case 231, Bulletin 271, Item 10 (peace-time desertion from U. S. Navy).

On March 1, 1939, applicant was arrested in the State of Pennsylvania and charged with operating an automobile while intoxicated, and reckless driving without an owner's or driver's license. He testified that it had been raining and the automobile, which he was driving, slid on the wet pavement and ran into a parked truck. No one was seriously injured, one man receiving a bruised arm and another a bruised face. Neither of the foregoing convictions constitute conviction of a "crime" within the meaning of the cited statute. Re Case 133, Bulletin 170, Item 7; Re Case 152, Bulletin 170, Item 8 (conviction for drunken driving in Pennsylvania). Also, as an outgrowth of this occurrence, he was held on a charge of assault and battery, as a result of which he received a suspended sentence and was released. While the crime of assault and battery may involve moral turpitude (see Re Case 213, Bulletin 232, Item 6), the circumstances here involved do not justify such a finding.

It is recommended that applicant be declared eligible to be employed by a liquor licensee in this State.

Samuel B. Helfand,
Attorney.

DISAPPROVED.

This young man needs more sand, not less. Nothing in the testimony commends him to favorable discretion. Dishonorable discharge from the Army, whether in peace or war time is not lightly to

be disregarded. In his own words: "I just left and didn't return." Later he gave himself up because "I was getting tired of being hunted. -- All you have to do is to go in the Post Office and they have bulletin boards with your name and face." Fifteen months at hard labor shows how seriously the Army regards those who back out or run away from their sworn obligation. Stigma earned in the first line of national defense is not to be dissipated by questioning the propriety of a court-martial. It is the law of the land for those in the army. The case in Bulletin 356 is not in point. The item in Bulletin 271 was approved as to result and not as to reason. On further reflection, I conclude that one who deserts from the army or navy, whether in peace time or war time, is deficient in moral responsibility and is, therefore, unfit either to be a liquor licensee or to be employed by one and is therefore to be treated the same as one guilty of moral turpitude. The applicant is therefore declared to be ineligible.

LO Frederick Burnett

Commissioner.

October 31, 1939.