



BY THE COMMISSIONER:

Charge was served upon the licensee alleging that, on November 19, 1938, he sold a quart bottle of Calvert "Special" blended whiskey below the minimum retail price, in violation of State Regulations No. 30.

Investigator Carlin, of this Department, testified that he visited the licensed premises on November 19th; that he purchased a quart bottle of Calvert "Special" blended whiskey for Two Dollars from Mrs. Mary Malyska, the wife of the licensee, who was in charge of the licensed premises; that subsequently the licensee came on the licensed premises and admitted that he had received a copy of the Fair Trade price list which included the item in question. The minimum retail price of the item is \$2.25 per quart.

The licensee testified that some time ago he had marked in pencil a price of \$2.00 on the label of a similar bottle on the shelf; that he had placed no price tags on his bottles after receipt of the Fair Trade price list, and that the sale of the bottle at less than the minimum price was a mistake caused by the fact that the price of \$2.00 appeared on the label of a similar bottle.

The licensee is responsible for the acts of his employees performed within the scope of their duties, and, since the item was sold at less than the minimum price, the licensee is guilty as charged.

Accordingly, it is on this 9th day of January, 1939,

ORDERED that plenary Retail Consumption License No. C-81, heretofore issued to Frank Malyska by the Board of Commissioners of the City of New Brunswick, 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.

3. LICENSE - SUSPENSION - A SUSPENSION STOPS FOR THE TIME BEING THE EXERCISE OF THE PRIVILEGES CONFERRED BY THE LICENSE BUT HAS NO EFFECT ON SALES OF MERCHANDISE WHICH MAY BE MADE INDEPENDENT OF LICENSE.

Dear Commissioner:

When you have suspended the license of a convicted violator of State Regulations No. 30 - which prohibit the sale of alcoholic beverages below the minimum posted prices under fair trade contracts on file in your office - and the licensee sells merchandise other than distilled spirits and malt beverages, must the entire premises remain closed during the term of the suspension?

Very truly yours,  
Neil F. Deighan,  
President.

January 9, 1939

Mr. Neil F. Deighan, President,  
New Jersey Licensed Beverage Association.

My dear Mr. Deighan:

The effect of a suspension of a license for violation of the Fair Trade Rules is exactly the same as in any other disciplinary action.

The matter is fully explained in Re Spindel, Bulletin 89, Item 14, viz.:

"A liquor license confers a privilege by entitling the holder to do the things specified in his license. A revocation extinguishes the license and therefore destroys the privilege entirely. A suspension is a partial revocation, that is, it destroys the privilege during the term of the suspension. Hence, during that term, the licensee may not lawfully exercise any of the rights conferred by his license."

In a colloquial sense a place may be said to be "closed down" or "shut up" because of a liquor violation. But the law does not require it to be actually closed. All it does is to take away the privilege of selling liquor for the time being. There is no requirement that he cannot sell other merchandise. There is no way of preventing him from doing anything except from pursuing the privileges which were conferred by his license.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

4. APPELLATE DECISIONS - DIMATTIA v. BELLMAWR.

LOUIS DIMATTIA,	)	
	)	
Appellant,	)	
	)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
BOROUGH COUNCIL OF THE BOROUGH	)	
OF BELLMAWR,	)	
	)	
Respondent	)	
-----	)	

Frank M. Lario, Esq., Attorney for Appellant.  
Thomas M. Madden, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from a refusal to grant to appellant a person-to-person transfer of the plenary retail consumption license issued for the Royal Oak Tavern in the Borough of Bellmawr.

On June 8, 1937, respondent adopted a resolution limiting the number of plenary retail consumption licenses in the Borough, excepting renewals, to four. Appellant's application for the requested transfer was denied on November 25, 1938 on the ground that, there still being six consumption licenses (including the one in

question) in the Borough, it was necessary to deny the application in order to effect the aim and policy of the resolution to reduce such licenses in Bellmawr to four. That was the only reason for denial and raises the only point necessary to decide.

In Kirschhoff v. Millville, Bulletin 254, Item 8, it was expressly ruled that a local issuing authority may not validly deny a person-to-person transfer as a means to reduce the number of licenses in the municipality. I there said:

"Indubitably, reduction of the number of licenses in a municipality, when too many are deemed to be outstanding therein, is a praiseworthy end. But this objective may not be achieved in complete disregard of individual interests. Conway v. Haddon, Bulletin 251, Item 3. Licensees invest time, effort and money in their licensed businesses. The statute provides for a method whereby, through transfer of license within the sound discretion of the issuing authority, they may sell their businesses and may remove them to new sites. In fairness, they should not be denied this privilege and be forced to the alternative of remaining in their liquor business willy-nilly and at the same location or else surrendering their investment, merely because the municipal authorities erred in previously granting too many licenses and now wish to correct that mistake by destroying transferability....

"Respondent Board asks the question: 'If existing licenses may be freely sold and transferred, how will the number ever be reduced?'

"Here is one answer which I have repeatedly urged upon municipalities, viz.: Reduction of outstanding licenses may be effected with fairness by eliminating, through revocation or through refusal to renew, those whose owners have misconducted themselves. Re Renton, Bulletin 115, Item 8; Re Juska, Bulletin 116, Item 7; Re Haney, Bulletin 119, Item 9; Re Hinchcliffe, Bulletin 171, Item 7; Re Bailey, Bulletin 172, Item 10. Case after case has been decided where renewals have been denied and upheld on appeal because of previous misconduct of the licensee. White v. Bordentown, Bulletin 130, Item 4; Wellens v. Passaic, Bulletin 134, Item 4; Schelf v. Weehawken, Bulletin 138, Item 10; Girard v. Trenton, Bulletin 140, Item 2; Greenberg v. Caldwell, Bulletin 141, Item 7; Brown v. Newark, Bulletin 146, Item 9; Hagenbucher v. Somers Point, Bulletin 192, Item 6; Repici v. Hamilton, Bulletin 201, Item 8; Hagerty v. Cranbury, Bulletin 202, Item 2; Klotz v. Trenton, Bulletin 202, Item 7; Callahan v. Keansburg, Bulletin 204, Item 6. Cf. Zicherman v. Newark, Bulletin 227, Item 7.

"Or, if public interest demands such drastic and difficult action, municipalities may adopt a numerical quota which will require, at renewal time, the selection of only the most desirable of renewal applicants. See Re Hinchcliffe, supra.

"These suggested methods reduce the quantity of licenses on a basis of quality. Reasonable and fair discrimination is substituted for the arbitrary and unfair method of denying all licensees, whether their conduct has been good or bad, the privilege to transfer their licenses and thus ultimately starve, exhaust or otherwise compel some of them to surrender or be unable to renew their licenses.

"Moreover, municipal authorities are not necessarily powerless to put a time limit on the privilege of transfer in a reasonable and bona fide effort to deal with an existing over supply of liquor places in the municipality. In Re McElroy, Bulletin 247, Item 6, I approved (tentatively) a municipal regulation which required licensees, seeking transfer of their licenses because of loss or surrender of their interest in the licensed premises, to make application therefor within 30 days of such loss or surrender.

"Again, in Craig v. Orange, Bulletin 251, Item 4, I sustained a local issuing authority in its refusal, on the ground of sufficiency of 'package' stores in the municipality, to grant a transfer of a plenary retail distribution license from an office in a bank building where the licensee did a telephone and mail order business, to an ordinary store where he proposed to operate a normal type of distribution place. In such case, the transfer would aggravate the existing over supply of 'package' stores in the municipality; in the present case, the place is already licensed and the only transfer sought is from one proprietor to another.

"The Board argues that the authority to grant a person-to-person transfer of an outstanding municipal license is a matter confided to the discretion of the issuing authority. It is. R. S. 33:1-26 (Control Act, Sec. 23). But it is also true that this discretion may not be exercised arbitrarily. A transfer, whether from person to person or from place to place, may be denied if there are valid and reasonable grounds to justify such refusal. See Blumenthal v. Wall, Bulletin 169, Item 6; Parker v. Belleville, Bulletin 179, Item 13; also see Craig v. Orange, *supra*. No such ground here appears."

Everything said in the Kirschhoff case applies with full force to the instant situation. The contention of respondent has heretofore been adjudicated adversely.

The action of respondent is, therefore, reversed. Respondent is directed to issue forthwith the transfer as applied for.

D. FREDERICK BURNETT,  
Commissioner.

Dated: January 8, 1939.

5. BINGO - MAY NOT BE ACCOMPANIED BY OBJECTIONABLE INDUCEMENTS - SOLICITATION VIA THE BUTTER AND EGG ROUTE BARRED.

January 10, 1939

Messrs. Harold Katzen and Frank Buntele,  
52 Holland Street,  
Newark, New Jersey.

Gentlemen:

I have before me circular advertising your tavern and reading:

"B I N G O  
 Every Tuesday Nite!  
 at  
 Harold's & Bunt's Tavern  
 52 Holland Street,  
 Newark, N. J.

"Free! Butter, Tea, Coffee, Sugar, Eggs &  
 Etc. To the First 50 People!

"7 to 8:30 p.m. Pennys from Heaven	The Wheel of Thought is the Spin of Gold.  Seeing is Believing.
--	--

"Door Prize The Angel's Purse	Our NEW Ball Calling System is the Appreciation of our
-------------------------------------	--

"Sponsored by Mother and Daughter	HONESTY.
---	----------

"Bring this circular with you - It's Valuable!

"25 G A M E S 25¢."

It is true that Bingo is permissible on licensed premises, provided (1) there is no bar in the room in which the games are held and (2) no alcoholic beverages are sold, served, delivered or consumed in that room while the games are in progress. Regulations No. 20, Rule 16.

Why the pennies from heaven and door prizes out of the angel's purse! And why, coming down to earth, butter and eggs to the first fifty who enter your tavern!!

The Bingo dispensation is not to be used as a cover for the objectionable inducements set forth in your circular.

You are hereby directed immediately to cease and desist from the advertised practices.

Bingo alone is permissible, but only within the above regulation. All other inducements are OUT. Violation is cause for revocation.

Very truly yours,  
 D. FREDERICK BURNETT,  
 Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALES DURING PROHIBITED HOURS - NO REASON WHY LICENSEES SHOULD NOT GRATEFULLY OBEY THE HOURS FIXED DURING WHICH THEY ENJOY THEIR SPECIAL PRIVILEGES.

January 14, 1939

Hon. Percy Camp,  
Judge, Court of Common Pleas,  
Toms River, N. J.

My dear Judge Camp:

I have before me staff report and your letter of January 6th re disciplinary proceedings against George Leon Olson, East Washington Street, Toms River, charged with sale during prohibited hours, that is, after 2:00 A.M. on Sunday, and note that he pleaded guilty, whereupon his license was suspended for ten days.

Please accept my deep thanks for your prompt handling of these proceedings and the vigorous suspension imposed.

It is reported that you announced for the benefit of all licensees that you would positively revoke anyone's license who was guilty of a second violation, adding "I mean every word I say." Coupled with the substantial penalties that you have imposed in other cases in the past, your announcement should certainly show the licensees of Ocean County that you mean business.

There is no reason why licensees should not gratefully and scrupulously obey the hours fixed during which they may enjoy their special privileges. In England, the taverns close down sharp at 11:00 P.M. and their proprietors take pride in being lined up on the side of law and order. If our licensees were as farsighted, they would, at the cost of the lost good will of a few rummies, build up a public respect which would stand them in good stead in the storms ahead of local option and Prohibition sentiment. It's a small premium to pay for such insurance.

But, if they won't, then they will have to be given a bitter dose without compunction.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

7. APPELLATE DECISIONS - SHAPLEY v. DELAWARE TOWNSHIP.

JOHN J. SHAPLEY, )  
Appellant, )  
-vs- )  
TOWNSHIP COMMITTEE OF THE TOWNSHIP )  
OF DELAWARE, )  
Respondent )

ON APPEAL  
CONCLUSIONS

Angelo A. DePersia, Esq., Attorney for Appellant.  
Gene R. Mariano, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from denial of transfer of a consumption license from Edgar Russell to appellant and from premises at Chestnut

Street and Route 38, Merchantville, to premises known as the Sherwood House on Sherwood Avenue, Locustwood, both in the Township of Delaware.

Respondent filed no answer, but it appears that the transfer was denied at a hearing held at which thirty persons objected because the premises to which transfer was sought were alleged to be situated in a residential district and because a prior licensee improperly conducted said premises. No objectors appeared at the hearing held on this appeal. No testimony was produced by respondent at said hearing.

A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2; Masarik v. Milltown, Bulletin 283, Item 10. On the other hand, where it appears that the refusal of a transfer was arbitrary or unreasonable, the action of respondent in refusing the transfer will be reversed. Blumenthal v. Wall, Bulletin 169, Item 6; Conn v. Kearny, Bulletin 173, Item 1; Miller v. Paterson, Bulletin 219, Item 6; Rucereto v. Dumont, Bulletin 253, Item 6.

The premises to which the transfer is sought consist of a two-story frame building with a bar in one of the three rooms on the first floor, and living quarters, where appellant resides, on the second floor. This section of the Township is sparsely settled. The land to the rear of the Sherwood House is undeveloped. There are three homes in the immediate vicinity: one to the left on the same side of Sherwood Avenue, about thirty feet away; another to the right, on the same side of Sherwood Avenue, about two squares away, and the third on the opposite side of Sherwood Avenue, about one hundred fifty feet away. The occupant of the home which is located thirty feet away testified herein that he does not object to the transfer. The evidence shows that the section is rural in character, rather than residential, and that the Township has no business section. I am satisfied that the premises to which the transfer is sought are not located in a residential district.

As to improper conduct: It appears that Sherwood House was licensed for consumption from November 1937 to August 1938, when Egidi, the then licensee, transferred to other premises. There is no proof that Egidi conducted the premises in an improper manner. He denies it. He further testified that, during the time he conducted Sherwood House, no charges were filed against him and no objections received from any of the neighbors. The witness who resides thirty feet from the premises testified that Egidi conducted his business in a proper manner.

On the record as it now stands, there appears to be no valid reason why the transfer was denied.

The action of respondent is, therefore, reversed, and respondent is directed to issue the transfer as applied for.

D. FREDERICK BURNETT,  
Commissioner.

Dated: January 13, 1939.

8. APPELLATE DECISIONS - GOMULKA v. LINDEN.

JOSEPH GOMULKA,	:	
	:	
Appellant,	:	
	:	
-vs-	:	On Appeal
	:	
MUNICIPAL BOARD OF ALCOHOLIC	:	CONCLUSIONS
BEVERAGE CONTROL OF THE CITY	:	
OF LINDEN,	:	
	:	
Respondent.	:	
. . . . .	:	

Philip Cohen, Esq., Attorney for the Appellant,  
Lewis Winetsky, Esq., Attorney for the Respondent.

BY THE COMMISSIONER:

Respondent refused to transfer appellant's plenary retail consumption license from 3014 Tremley Point Road to 766 Brunswick Avenue in the City of Linden, stating as its ground that sufficient liquor places exist in the proposed vicinity. Hence, this appeal.

Appellant's proposed site is at the city-line between Linden and Elizabeth in a neighborhood which contains stores, scattered homes and factory sites (the Standard Oil Company - employing 3000 men, Simmons Bed Company - employing 1500 men, and Feldman Brothers - employing 100 men, being located nearby).

Six taverns are already established in the immediate vicinity. One is in Linden right next door to appellant's proposed site; another, about 200 feet away, is just across the street but in Elizabeth; the other four are also in Elizabeth within a distance of two blocks measured on one side of Brunswick Avenue and three blocks on the other side.

Determination of the number of liquor establishments to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Sudol vs. Wallington, Bulletin 267, item 10. The privilege of a place-to-place transfer of an outstanding liquor license is subject, among other things, to the reasonable and bona fide exercise of that discretion. 91 Jefferson Street, Passaic, Inc. vs. Passaic, Bulletin 255, item 9; Polansky vs. Millburn, Bulletin 258, item 2; Mita vs. Orange, Bulletin 266, item 10.

It cannot be said that the respondent abused this discretion in refusing to permit an additional tavern in the proposed vicinity where six already exist in such short compass. The fact that five of those six taverns are over the city-line in Elizabeth, is immaterial. Lisi vs. Newfield, Bulletin 121, item 9; Barthold vs. Clifton, Bulletin 160, item 7. A locality astride a municipal boundary must be realistically treated. A city line is not a fence

to halt the thirsty from crossing over to the nearby taverns on the other side.

Appellant contends that respondent was discriminatory in denying the transfer because back in 1935 it issued a consumption license to one Verchick, a predecessor at appellant's present tavern, despite the existence of three other taverns in that neighborhood (see Kalish vs. Linden, Bulletin 71, item 14); that there are still four taverns (including appellant's) and also a licensed club in that neighborhood; that such neighborhood is as congested as the place to which he now desires to transfer. This contention is without merit. If it was an error to license appellant at his present site, it is not a cure to create a fresh mistake in a new area.

Appellant's final contention is that respondent's denial was erroneous because local hearing (pursuant to the protest of an objector to appellant's application) was attended only by Commissioners Givens and Niesz of respondent's 3-man board; that the application was then carried over for further study; that it was denied at a subsequent meeting with Commissioners Givens and Erlenkotter sitting and both voting in disapproval; that Mr. Erlenkotter, not having been present at the first meeting, had no standing to vote; that respondent's action is, therefore, "coram non iudice".

The gist of this argument is that one who has not heard may not vote. It sounds plausible but it places an emphasis upon the auditory nerves which the law itself does not exact. It is true that noses are counted to make up a quorum but, after that is established, the meeting is legal and there is no requirement that those who are present must listen. Such a rule would be logical but wholly impracticable to administer. Hence the meeting would not be invalidated if one of the Commissioners left the room to telephone or to chat with a friend, or, keeping his seat, let his mind wander or snoozed and snored awhile. A brief siesta is relished by the wisest judges now and then. The law makes kindly allowance for these human frailties and imposes no subjective requirement, as in school, that the class must be "at attention" or else the proceedings are void. The validity of a meeting is determined by the objective test of who is present, though they sit and act like graven images, rather than who is within earshot.

Hence the two commissioners who sat at the second meeting constituted a quorum and had jurisdiction to deny appellant's application for transfer despite the fact that one of them had not been present at the original hearing.

In any event, the appellant is not in any position to complain. A hearing on any liquor application is necessary only for the purpose of inquiring into the merits of a protest against it. State Regulations 3, Rules 8, 9 and 10. The objector is the only party who could possibly be aggrieved by the differing constituency in the quorum of the two hearings held by the local board.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,  
COMMISSIONER.

Dated: January 14, 1939.

9. DISCIPLINARY PROCEEDINGS - NEWARK LICENSEES - REMAINING OPEN AFTER HOURS.

In the Matter of Disciplinary Proceedings against  
 EDWARD KALINOSKI,  
 35-37 Orange Street,  
 Newark, New Jersey,  
 Holder of Plenary Retail Consumption License No. C-736, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.  
 ----- )

CONCLUSIONS AND ORDER

Edward Kalinoski, Pro Se.  
 Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to the charge of keeping his licensed premises open after 3:00 A.M. on Sunday, November 20, 1938, in violation of Newark Ordinance No. 6579, which (with certain exceptions here not material) forbids licensed premises from being open between 3:00 A.M. and Noon on Sundays.

Officer White, of the Newark Police Department, testified that, on November 20, 1938, at 3:40 A.M., he saw a light in the licensed premises; that on looking over the blinds, which were pulled up, he saw two men behind the bar and ten or fifteen people at the bar; that, after he knocked on the door, which was locked, Kalinoski opened the door; that Kalinoski was instructed to close and everybody ordered out of the place. Officer Singer, of the Newark Police Department, corroborated the testimony of Officer White.

This is defendant's first offense of record.

His license will be suspended for five days for keeping his licensed premises open during prohibited hours.

Accordingly, it is on this 15th day of January, 1939,

ORDERED that Plenary Retail Consumption License No. C-736, heretofore issued to Edward Kalinoski 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 January 23, 1939 at 3:00 A.M.

D. FREDERICK BURNETT,  
 Commissioner.

10. DISCIPLINARY PROCEEDINGS - WEST NEW YORK LICENSEES - CONDUCTING BUSINESS AFTER HOURS.

In the Matter of Disciplinary Proceedings against )

ROSE C. SULLIVAN, )  
726 Hudson Avenue, )  
West New York, New Jersey, )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License No. C-18, issued by )  
the Board of Commissioners of the )  
Town of West New York. )  
-----

Arthur E. Macaulay, Esq., Attorney for the Licensee.  
Stanton J. MacIntosh, Esq., Attorney for the Department of  
Alcoholic Beverage Control.

BY THE COMMISSIONER:

Licensee pleads guilty to charges of conducting her licensed business and permitting persons other than her actual employees and agents in her licensed premises between 4:00 A.M. and 1:00 P.M. on Sunday, November 13, 1938, in violation of a resolution adopted by the Board of Commissioners of the Town of West New York. Said resolution provides that no licensee shall (a) conduct said licensed business or (b) suffer or permit any person whatsoever except the licensee and his actual employees and agents in or upon the licensed premises except during the following hours only, to wit: Weekdays from 7:00 A.M. to 3:00 A.M.; Sundays from 1:00 P.M. to 3:00 A.M.; Saturdays and holidays from 7:00 A.M. to 4:00 A.M.

Investigator Flynn, of this Department, testified that he and Investigator King visited the licensed premises on November 13, 1938 at 11:45 A.M. and were admitted by Patrick Sullivan, husband of licensee; that nineteen men were in the barroom, some of whom were being served beer or whiskey by Frank McCann, the bartender.

This is defendant's first offense of record. Her license will be suspended for five days for conducting her business during prohibited hours, and for an additional five days for permitting persons other than herself and her actual employees and agents on the premises during prohibited hours, less five days for making no alibis.

Accordingly, it is on this 15th day of January, 1939,

ORDERED, that Plenary Retail Consumption License No. C-18, heretofore issued to Rose C. Sullivan by the Board of Commissioners of the Town of West New York, shall be and the same is hereby suspended for a period of five (5) days, commencing January 20, 1939 at 3:00 A.M.

D. FREDERICK BURNETT,  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - MISLABELING BEER TAPS - PROOF OF SALE IS NOT NECESSARY.

January 14, 1939

Patrick F. Keelan, Clerk,  
Municipal Board of Alcoholic Beverage Control,  
Elizabeth, N. J.

My dear Mr. Keelan:

I have before me staff report and minutes of meeting of the Municipal Board held January 6, 1939, at which time, among other things, disciplinary proceedings were conducted against Michael Bochma, 462 East Jersey Street, charged with mislabeling beer taps, and note that his license was suspended for five days.

While I can express no opinion on the merits because perchance the case may come before me on appeal, I nevertheless wish that you would convey to the members of the Municipal Board my appreciation for their effective handling of these proceedings. If the licensee was properly found guilty, the penalty of five days is indeed substantial.

According to the staff report, the licensee's attorney moved that the charges be dismissed because no sale of beer drawn through the improperly marked tap had been proved. I was pleased to note that the Board was not taken in by his specious argument. It is perfectly clear that violation of the rule does not require proof of sale.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

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

January 18, 1939

Re: Case No. 247

In his application, applicant admitted that he had been convicted of the crime of embezzlement on December 1, 1938.

Investigation discloses that the complaint filed against applicant alleged that, while he was an employee of complainant company, he embezzled the sum of \$1467.81, which he had collected from the customers of said company; that he pleaded guilty to said charge in a criminal court and was placed on probation for two years.

At the hearing, applicant testified that he had been working as a collector for complainant company (a New Jersey liquor licensee for four and one-half years; that, at the end of the first year of his employment, he was short the sum of approximately \$600.00, which the company agreed to permit him to repay in weekly payments; that the additional shortage, which was discovered in July 1938 was due to the fact that he had not reported certain monies collected. The applicant contends that the entire shortage was spent in attempting to get new business for his company.

He testified further that he pleaded guilty to the crime of embezzlement to save his family from embarrassment; that, as a result of said plea, he was placed on probation for two years.

Ordinarily the crime of embezzlement is a crime involving moral turpitude. Case No. 21, Bulletin 147, Item 10; Case No. 49, Bulletin 186, Item 10; Case No. 187, Bulletin 211, Item 6. In view of applicant's plea of guilty to a charge of embezzlement, the question of his guilt or innocence cannot be redetermined herein. In my opinion it should be held that the crime of embezzling such a sum of money from an employer is a crime involving moral turpitude.

It is recommended, therefore, that the application for solicitor's permit be denied, and that applicant be advised that he is ineligible for employment by a liquor licensee.

Edward J. Dorton,  
Attorney-in-Chief.

Approved:

D. FREDERICK BURNETT,  
Commissioner.

13. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - 10 DAYS' SUSPENSION FOR SECOND OFFENSE.

January 19, 1939

Robert D. Kershaw,  
Borough Clerk,  
Mt. Ephraim, N. J.

My dear Mr. Kershaw:

I have before me staff report and your letter of January 11th re disciplinary proceedings conducted by the Mayor and Council against Emil Muckensturm, t/a Kings Way Tavern, Kings Highway, charged with sale of alcoholic beverages during prohibited hours, and note that his license was suspended for ten days.

No opinion upon the merits can be expressed, of course, because perchance the case may come before me on appeal. However, if the licensee was properly found guilty, I have no hesitation in saying that the ten-day penalty for a second offender such as he was, is entirely proper.

Please convey to the Council my thanks for their vigorous and effective handling of these proceedings. As a third offender, Muckensturm will subject his license to outright revocation. The realization of this fact should suffice to assure scrupulous observance of the hours of sale regulation.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

## 14. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - RIGHT ABOUT FACE IN GARFIELD.

January 19, 1939

Joseph J. Novack,  
City Clerk,  
Garfield, N. J.

My dear Mr. Novack:

I have before me staff report and your letter of December 29th re disciplinary proceedings conducted by the City Council on December 28th against Edward Veech, 279 Passaic Street, charged with sale of alcoholic beverages during prohibited hours, and note that his license was suspended for four days.

Please express to the members of the City Council my appreciation for their prompt action in instituting these proceedings and the penalty that was imposed. It is a distinct right-about-face from the suspended sentence that was given to William Hanlon and Michael Sefcik, the subject of my letter of July 1st. (Bulletin 258, Item 3). I take it that the Council is making a sincere effort to do the right thing.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

## 15. DISCIPLINARY PROCEEDINGS - SALES OUT OF HOURS - A FINE IS AN INADEQUATE PENALTY.

January 19, 1939

Miss Edith A. Varley,  
Borough Clerk,  
Somerville, N. J.

My dear Miss Varley:

I have before me your letter of January 6th re disciplinary proceedings conducted by the Borough Council on January 4th against Louis Hochstein, t/a West End Bar and Grill, 179 West Main Street, the holder of plenary retail consumption license C-17.

I note that Hochstein was charged with sale of alcoholic beverages during hours prohibited by subdivision 11 of Section 12 of ordinance adopted June 3, 1935, and that his license was suspended for a day and a half.

Please express to the members of the Borough Council my appreciation for their initiative in instituting these proceedings. I appreciate that the day and a half suspension may have been motivated by the fact that Hochstein had already been fined by the local recorder for the same violation. Nevertheless, I cordially suggest to the Council that in future, it impose a minimum suspension of five days for first offenses against the hours of sale regulation with suspensions of ten days for the second offense and outright revocation for the third - this, even though a fine has already been imposed.

It has been my experience that licensees regard fines merely as an added cost to doing business. What really impresses upon them the necessity of obeying the law and the regulations are substantial suspensions of the license privilege.

Very truly yours,  
D. FREDERICK BURNETT,  
Commissioner.

16. DISCIPLINARY PROCEEDINGS - SALES ON ELECTION DAY AND HINDERING INVESTIGATION - 15 DAYS' SUSPENSION.

January 19, 1939

Thomas J. Wieser, Secretary,  
Municipal Board of Alcoholic Beverage Control,  
Linden, N. J.

My dear Mr. Wieser:

I have before me staff report and your letter of January 10th re disciplinary proceedings conducted by the Municipal Board against Tip Top Service, Inc., 709 West Edgar Road, charged with sale or delivery of alcoholic beverages on General Election Day last past and hindering an investigation, and note that the license was suspended for 15 days.

I can, of course, express no opinion on the merits because perchance the case may come before me on appeal. However, if the licensee was properly found guilty, the 15-day suspension seems just right. I have recommended that for sales on Election Day, the penalty be ten days; the five-day suspension for the manager's attempt to destroy the evidence by knocking the beer glasses out of the hands of one of my men is also appropriate.

Licensees should know by now that they owe an affirmative duty of cooperating with investigators of this Department. The imposition of penalties such as the Board has fixed in this case will do much to impress upon licensees that they can't play fast and loose with the liquor law. Your Board has discharged its disagreeable duty well.

Very truly yours,



Commissioner.